

# TOWN OF TOPSFIELD



## ZONING BOARD OF APPEALS

### RULES AND PROCEDURES

**NOTE:**

This document provides the required information for filings with the Topsfield Zoning Board of Appeals. Questions regarding these rules and procedures should be directed to them.

**TOWN OF TOPSFIELD  
ZONING BOARD OF APPEALS  
RULES AND PROCEDURES**

A Board of Appeals of five members is responsible for administering the Topsfield Zoning Bylaws in conformity with the provisions of Massachusetts General Laws Chapter 40A, as amended (known as “The Zoning Act”). These Rules and Procedures shall incorporate The Zoning Act, as amended, as if fully set forth herein.

I. JURISDICTION:

- A. To hear and decide applications for special permits pursuant to Article V, Section 5.02 of the Topsfield Zoning Bylaw;
- B. To hear and decide applications for findings under Section 3.05 for extension, enlargement or reconstruction of a non-conforming use of structure;
- C. To hear and decide petitions for variances from the requirements of the Topsfield Zoning Bylaws;
- D. To hear and decide applications for Site Plan Review pursuant to Article IX of the Topsfield Zoning Bylaws;
- E. To hear and decide applications for Comprehensive Permits pursuant to G.L.c. 40B, Sections 20-23;
- F. To hear and decide appeals from decisions of the Building Inspector or others pursuant to Section VII.C of these Rules and Procedures.

II. ORGANIZATION:

- A. The Board of Appeals shall annually elect a Chair and a Clerk from its membership.
- B. Meetings of the Board of Appeals shall be held at the call of the Chair. Public notice of meeting time and place shall be filed with the Town Clerk at least 48 hours prior to the meeting.
- C. The Chair may designate an alternate member to sit on the Board in case of absence, inability to act, or conflict of interest on the part of any member thereof, or in the event of a vacancy on the Board until said vacancy is filled by appointment of the Selectmen.
- D. A concurring vote of at least 4 out of 5 Board members shall be required for the granting of a variance or special permit, or any extension, modification, or renewal thereof, and for any order or decision or reversal.
- E. Records of the Board’s proceedings shall be kept by the Clerk and shall, upon approval of the Board, become public record.

III. GENERAL FILING PROCEDURES

A. The Application:

Form A (Application for Zoning Relief) and Supplement Form B (Assessor’s List) must be completed by all petitioners/applicants/appellants (hereinafter “applicants”) and are available at the Town Clerk’s Office. Applications accepted and date-stamped by the Town Clerk shall be reviewed by the Board for compliance with the submission requirements referenced in Form A.

B. Time For Filing Applications:

The Zoning Board of Appeals generally meets the fourth Tuesday of each month. Except in the matter of a Comprehensive Permit, in order for a matter which is the subject matter of an application above-described to be placed on the agenda for the next monthly meeting of the Board, the Board strongly recommends that the application be filed with the Town Clerk’s office by the first Tuesday of the

month. Note, however, that the Board can not render a decision on application for Site Plan Review for at least thirty (30) days after the filing of such an application.

C. Supporting Data:

1. Applications for Special Permits, Findings, or Variances.

All applications for a Special Permits, Findings, or Variances must be made as follows:

- a.  6 copies of Application Form A
- 6 copies of Application Supplement Form B with Assessor's certification
- 6 copies of Assessor's map
- 6 copies of Plot Plan to scale certified by a registered land surveyor
- 6 copies of Building Inspector's denial, if any
- 2 pre-addressed, stamped envelopes for each lot owner or party of interest set Forth in Supplement Form B. (Return Address shall be: ZBA, Town Hall, Topsfield, MA 01983)
- 2 self-addressed (addressed to applicant), stamped envelopes with the same return address as above.

b. Certified Plot Plan Requirements:

- All dimensions of land
- All existing and proposed structures with dimensions
- Distance of all existing and proposed structures, additions, or changes from front, side and rear lot lines
- Zoning district classification and any zoning district boundary line that may pass through the property
- All driveways and parking areas with dimensions
- All roads and properties abutting lot
- Title indicating lot number, street address, property owner and scale
- North arrow
- Certification by registered land surveyor of accuracy of plot plan (signed and Dated)

- c. The Board may, in certain circumstances, waive the requirement for a certified plot plan. Such a waiver shall be approved by the Board prior to the submission of any formal application to the Town Clerk. Copies of said waivers shall be made a part of the submission.

2. Applications for Site Plan Review.

All applications for Site Plan Review shall be made in accordance with the provisions of Article IX, Section 9.05 of the Topsfield Zoning Bylaw (also see Guidelines and Performance Standards for Activities Subject to the Provisions of Article IX of the Topsfield Zoning Bylaws). Supplement Form B and two pre-addressed stamped

envelopes for each lot owner or party of interest set forth in Supplement Form B are required.

3. Application for Comprehensive Permit.

All applications for Comprehensive Permit shall be made in accordance with the provisions of G.L.c. 40B, Sections 20-23. Supplement form B and two pre-addressed stamped envelopes for each lot owner or party of interest are required.

4. Building Inspector Appeals.

All appeals from decisions of the Building Inspector or others shall be made in accordance with these Rules and Procedures, Section VII.C(3). Supplement form B and two pre-addressed stamped envelopes for each lot owner or party of interest are required.

D. Filing Fees.

In the case of an application for Special Permit, Finding, Variance, or Site Plan Review, the applicant shall pay a non-refundable filing fee of \$200.00 for each such application to the Town of Topsfield. The applicant will also be responsible for the cost of the publication of the Legal Notice and other expenses associated with the required public hearing.

E. Noncomplying Applications.

It is critical for an efficient and expeditious determination of an application or appeal that all required accompanying and supporting data as set forth in Form A, Section V, be submitted with the application or appeal. Failure to submit appropriate and complete data could result in delay and/or denial of an application for zoning relief.

IV. Public Notice Procedure.

- A. The Board shall fix a date and time for the hearing of the matter subject to an application or appeal and shall cause the notice of the time and place of such hearing and of the subject matter, sufficient for identification, to be published in a newspaper of general circulation in the town once each of two successive weeks, all in accordance with M.G.L.c. 40A.
- B. The legal notice shall be posted in a conspicuous place in the Town Hall for a period of not less than 14 days before the day of the hearing, all in accordance with M.G.L.c. 40A.
- C. Notice shall be also sent by the Board to the Topsfield Planning Board, Board of Selectmen, and if pertinent, to the Planning Boards of Wenham, Hamilton, Ipswich, Danvers, Middleton and Boxford.

V. Public Hearing Procedure

- A. The following shall be read aloud at the Public Hearing: Applicant's application (or summary thereof) and Legal Notice of the Public Hearing. It shall be noted for the record that notice was sent to all lot owners within 300 feet as provided by the applicant on Supplement Form B of the application and made available to the public at the Town Clerk's Office.
- B. The Applicant is then given an opportunity to comment further upon the application if he/she so desires.
- C. Other persons present are then given an opportunity to be heard. Any person, whether entitled to notice or not, may appear in person or by agent or by attorney.
  - a. If statements or letters have been submitted by individuals who could not be or are not present, such statements (or summaries thereof) are read at this time.
  - b. When all who wish to speak have been heard, the hearing may be closed.

- c. A vote will be taken by the Board on the application following its deliberation on the application.

VI. Decision of the Board.

- A. The Board shall cause to be made a detailed record of its proceedings, indicating the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and setting forth clearly the reason or reasons for its decision and of its official actions, copies of all of which shall be filed within 14 days in the Office of Town Clerk and shall be made a public record; and notice of the decision shall be mailed forthwith to the Applicant, to the parties in interest (landowners within 300 feet of the property line) as show on Supplement Form B and to every person at the Public Hearing who requested that notice be sent to him/her and stated the address to which such notice was to be sent. Notice shall specify that appeals, if any, shall be made pursuant to G.L.c. 40A, Section 17 and shall be filed within 20 days after the date of filing of such notice of decision in the Office of the Town Clerk.
- B. Furthermore, upon the granting of a Variance, Finding, Special Permit or any extension, modification or renewal thereof, the Zoning Board of Appeals shall issue to the owner and to the Applicant, if other than the owner, a copy of its decision, certified by the Board of Appeals, containing the name and address of the owner, identifying the land affected, setting forth compliance with the statutory requirements for the issuance of such a Variance, Finding or Special Permit and certifying that copies of the decision and all plans referred to in the decision have been filed with the Planning Board and the Town Clerk.
- C. No Variance, Finding, or Special Permit, or any extension, modification, or renewal thereof, shall take effect until a copy of the decision bearing the certification of the Town Clerk that 20 days have elapsed and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded by the Applicant in the Registry of Deeds for the County and District in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title or as otherwise provided in Chapter 40A. The fee for recording or registering shall be paid by the owner or applicant.

VII. General Information

A. Special Permits

- 1. For uses permitted by Special Exception in the Table of Use regulations of the Topsfield Zoning Bylaws that require a Special Permit from the Permit Granting Authority (Zoning Board of Appeals), application shall be filed as outlined in Section III of these Rules and Procedures. The Board may require additional information as necessary to judge adequately the merits of the request.
- 2. Within 65 days after the filing of a complete Special Permit application, a Public Hearing shall be held as provided for in Section V of these Rules and Procedures.
- 3. The Board of Appeals in granting any Special Permit shall conform with the provisions of Section 5.04 of the Topsfield Zoning Bylaws.
- 4. The Board shall make a decision on the Special Permit within 90 days (or any extended time) following the close of the Public Hearing. Failure of the Board to take a final action within said 90 days (or any extended time) shall be deemed to be a grant of the permit applied for so long as the applicant complies with the requirements of the Zoning Act, G.L.c. 40A, Section 9 regarding notice, etc.
- 5. The decision of the Board shall be filed with the Town Clerk in accordance with Section VI of these Rules and Procedures.

6. Copies of the decision shall be sent to the Building Inspector, Board of Selectmen, Planning Board and Applicant. Issuance of the Special Permit does not constitute issuance of a building permit, which must be obtained by filing an application with the Building Inspector.
7. A Special Permit so granted shall lapse within one year of the date of approval if a substantial use thereof has not sooner commenced except for good cause, or, in the case of permit for construction, if construction has not begun by such date except for good cause.
8. No application for Special Permit which has been unfavorably acted upon by the Board of Appeals shall be considered on its merits by said Board within two (2) years after the date of such unfavorable action except in accordance with The Zoning Act and unless the Board finds, by a vote of 4 out of 5, specific and material changes in the conditions upon which the previous unfavorable action was based and describes such changes in the record of its proceedings, and unless all but one of the members of the Planning Board consents thereto and after notice is given to parties of interest of the time and place of the proceedings when the question of such consent will be considered.

B. VariANCES

1. No variance may authorize a use or activity no otherwise permitted in the district in which the land or structure is located.
2. The Board of Appeals may authorize a variance after a Public Hearing has been held in accordance with Section V of these Rules and Procedures for a particular parcel of land or to an existing building thereon from the terms of the Topsfield Zoning Bylaws where the following are found:
  - a. owing to circumstances relating to soil conditions, shape, or topography of such land or such structures, but not affecting generally the zoning district in which it is located, and
  - b. a literal enforcement of the Bylaw would involve a substantial hardship, financial or otherwise, to the applicant, and
  - c. the desired relief may be granted without substantial detriment to the public good, and
  - d. the desired relief may be granted without nullifying or substantially derogating from the intent or purpose of the Bylaw.
3. The Board of Appeals may impose conditions, safeguards and limitations both of time and of use including the continued existence of any particular structures, but excluding a condition, safeguard or limitation based upon continued ownership of the land or structures to which the variance pertains by the applicant or owner.
4. The Board shall hold the Public Hearing within 65 days after the filing of an application and shall make a decision on the application within 100 days (or any extended time) after the date of the filing of the application. Failure to take final action upon an application for a variance within said 100 days (or any extended time) shall be deemed to be a grant of the variance sought, subject to the provisions of The Zoning Act.
5. The decision of the Board shall be filed with the Town Clerk in accordance with the procedures set forth in Section VI of these Rules and Procedures.
6. Copies of the decision shall be sent to the Inspector of Buildings, Board of Selectmen, Planning Board, Board of Assessors and Applicant.

7. If the rights authorized by a variance are not exercised within one year of the date of grant of such variance, they shall lapse and may be re-established only after notice and a new public hearing.
8. Variances properly granted prior to January 1, 1976, but limited in time may be extended by the Board on the same terms and conditions in effect for such variance upon said effective date.

C. Appeals

1. No appeal or petition from the terms of the Topsfield Zoning Bylaw with respect to an application for a Special Permit which has been unfavorably acted upon by the Planning Board under Section 5.02, Subsection B, shall be considered on its merits by the Board of Appeals.
2. No appeal or petition from the terms of the Topsfield Zoning Bylaws with respect to a particular parcel of land or building thereon which has been unfavorably acted upon by the Board of Appeals shall be considered on its merits by said Board within two years after the date of such unfavorable action except in accordance with The Zoning Act.
3. Otherwise, an appeal to the Board of Appeals may be taken by a person aggrieved by reason of his or her inability to obtain a permit or enforcement action from any administrative officer under the provisions of Chapter 40A, Sections 8 and 15, by the regional planning agency in which jurisdictional area Topsfield is situated, or by any person including an officer or board of the Town of Topsfield, or of an abutting city or town aggrieved by an order or decision of the Inspector of Buildings or other administrative official in violation of any provision of Chapter 40A or the Topsfield Zoning Bylaws.
  - a. Any such appeal shall be taken within 30 days from the date of the order or decision which is being appealed by filing a notice of appeal specifying the grounds thereof with the Town Clerk who shall forthwith transmit copies thereof to such officer or board whose order or decision being appealed, and to the members of the Board of Appeals. Such officer or board shall forthwith transmit to the Board of Appeals all documents and papers constituting the record of the case in which the appeal is taken.
  - b. The Board shall hold a Public Hearing within 65 days from the date of the filing of the notice of appeal.
  - c. The Board shall make a decision on the appeal within 100 days after the date of filing of the notice of appeal.
  - d. The decision of the Board shall be filed with the Town Clerk in accordance with Section VI of these Rules and Procedures.

D. Waiver of Compliance

The Board may, where such action is in the public interest and not inconsistent with the intent and purpose of the Zoning Bylaws, waive strict compliance with the application procedures set forth herein.

E. Withdrawal without Prejudice

Any application which has been transmitted to the Board of Appeals may be withdrawn without prejudice by the applicant prior to the publication of the notice of a Public Hearing thereon.

Thereafter, an application may be withdrawn without prejudice only with approval of the Board of Appeals.

F. Amendments

These Rules and Procedures may be amended from time to time in accordance with The Zoning Act and the Topsfield Zoning Bylaws.

G. Invalidity

The invalidity of any of the foregoing rules, regulations, procedures and requirements shall not affect the validity of the remainder.

H. Effective Date

These Rules and Procedures were effective on the 27<sup>th</sup> day of November, 1979 and revised on the 27<sup>th</sup> day of October, 1981, the 1<sup>st</sup> day of January, 1994 and the 25<sup>th</sup> day of May, 2006.

I. Previous Rules

Any previous rules and procedures governing the Zoning Board of Appeals are repealed in whole.

J. Conflicts with State Law and Local Zoning Bylaw

In the instance that any rule or procedure herein is in conflict with any state law or with the local Zoning Bylaw, such statutory law or local zoning bylaw shall govern.



## Town of Topsfield

TOPSFIELD, MASSACHUSETTS

### Topsfield Zoning Board of Appeals

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#### **Notice of Rules and Regulations Change**

Notice is hereby given that on June 29, 2004, the Zoning Board of Appeals adopted changes to its Rules and Regulations to require that all applicants to the Board pay for the cost of all required legal notices. The Board will arrange for the publication of the legal advertisements and will direct the newspaper to submit the invoice for the publication directly to the applicant.