

# **TOWN OF SOUTHBOROUGH ZONING BOARD OF APPEALS**

## **POLICIES AND PROCEDURES**

*These policies and procedures are adopted by the Zoning Board of Appeals of Southborough under the authority of the Massachusetts General Laws, Chapter 40A, Section 12, and Town of Southborough Zoning Code Chapter 174, Article VI, §174-25. These policies and procedures, as amended from time to time, become effective upon their filing with the Southborough Town Clerk and supersede any previously filed with the Clerk, excepting any rules pertaining to the review of Comprehensive Permit Applications under G.L. c. 40B, §§20-23. These policies and procedures are effective as of March 22, 2023.*

### **1. GENERAL**

#### **a. *Jurisdiction of the Board***

In accordance with MGL c. 40A, Section 14, and Code of the Town of Southborough, Chapter 174-25, the Board of Appeals shall act on the following classes of matters:

Appeals. Any person aggrieved by any order, decision or failure to act, believed to be in violation of the State Zoning Act or Chapter 174 of the Code of the Town of Southborough, including the action of the Select Board relative to a zoning permit or a site plan, may appeal such action or failure to act to the Board of Appeals, as provided by MGL c. 40A, §§ 7, 8, 14 and 15, and the Board of Appeals may reverse or affirm, wholly or in part, any such action or decision. The Board of Appeals shall to that end have the powers under the zoning bylaw and zoning act of the officer from whom the appeal is taken and may issue or direct the issuance of a permit.

Special permits. Except as otherwise designated by the Town's Zoning Bylaws, the Board of Appeals shall be the special permit granting authority and shall hear and decide requests for special permits as provided in §§ 174-8B, 174-9 and other sections Chapter 174 of the Code of the Town of Southborough and in accordance with MGL c. 40A, §§ 9, 11, 14, et al.

Variances. The Board of Appeals shall have the power to grant, upon appeal or upon petition, variances from the terms of Chapter 174 of the Code of the Town of Southborough, not including use variances, where the Board finds that, due to circumstances relating to soil conditions, topography or shape of land or structures and especially affecting such land or structures but not affecting generally the zoning district in which they are located, literal enforcement of this chapter would involve substantial hardship to the appellant or petitioner and that the desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this chapter. The Board of Appeals may impose conditions, limitations and safeguards not based on the continued ownership by the applicant, petitioner, or any owner. If the rights authorized by a variance are not exercised within one year from the date of grant thereof and such rights are not duly extended, they shall lapse, and a new petition, notice and hearing will be required for their reestablishment.

*Comprehensive permits.* The Board of Appeals may issue comprehensive permits for publicly subsidized housing, as provided in MGL c. 40B, § 21. The Board has adopted separate rules for the consideration of Comprehensive Permit applications.

**b. *Composition of the Board; term limits***

In accordance with MGL c. 40A, Section 12 and the Code of the Town of Southborough Section 174-25, the Board consists of five regular members and two associate members, all appointed by the Select Board, for five-year terms and so arranged that the term of one member shall expire each year. An alternate member, selected by the Chair, sits as a voting member of the Board only when a regular member is absent or has recused themselves. When associate members are not sitting as voting members of the Board, they may remain at the Board table and participate in the discussion.

**c. *Chair and Clerk of the Board***

In accordance with MGL c. 40A, Section 12 and the Code of the Town of Southborough, Section 174-25, all the members of the Board annually elect one regular member to serve as chair and a regular or associate member to serve as clerk.

i. A Chairman shall be elected annually no later than June 30 by majority vote of the Full Members of the Board and will serve for a twelve-month term from July 1 through the subsequent June 30. Should a new Chairman not be elected by June 30 of a particular year, the then-current Chairman shall continue to serve as Chairman until a successor is elected. The Chairman shall be responsible for the overall conduct of the Board's activities, including but not limited to:

1. Calling meetings and establishing the agenda therefore;
2. Presiding at meetings and regulating their conduct;
3. Establishing, subject to the approval of the Board, subcommittees, to the extent permissible pursuant to applicable law, as they deem necessary; and
4. Authorizing purchase orders for expenditures by the Board, as may be applicable, consistent with law.

ii. The Chairman may, at their discretion, designate another Board member to fulfill certain of these duties.

iii. Acting Chairman: if the Chairman is absent from a meeting or unable to fulfill his/her duties for a period of time, they may appoint an Acting Chairman to fulfill the Chairman's duties for a particular meeting or for a specified period of time. If the Chairman has not appointed an Acting Chairman to serve during such absence, the senior member present, in point of service, shall be Acting Chairman during such absence.

**d. *References***

Any proceeding before the Board, whether an application for zoning relief, a petition for a variance, an appeal of the Building Commissioner/Zoning Enforcement Officer's decision, or an application for a comprehensive permit, is referred to in these Policies and Procedures as an application. Section references are to Town Code Chapter 174 and Chapter 249, hereinafter the "Zoning Bylaws."

**e. *Conflict between these policies and the local or state zoning laws***

It is intended that the Zoning Bylaws shall govern in all respects regarding these policies and procedures. If there is any conflict between the provisions of these rules and the Zoning Bylaws, the Bylaws prevail. If there is any conflict between these rules and the General Laws of the Commonwealth of Massachusetts pertaining to zoning, the General Laws prevail.

## **2. APPLICATION FOR HEARINGS**

### **a. Form of Application**

Each application for action by the Board must be made on the official form, if one is available, issued by the Building Department or Board, or on the Town website, and filed with the Town Clerk. This filing is made by submitting the signed original to the Town Clerk and submitting an electronic copy to the Principal Assistant to the Zoning Board of Appeals on ViewPoint, the online permitting software. The applicant is responsible for ensuring that all information on the form is complete and accurate.

### **b. Application Deadlines**

Any application appealing an order or decision of the Building Commissioner/Zoning Enforcement Officer must be filed within thirty (30) days from the date of the order or decision being appealed.

### **c. Authority of applicant**

Any application brought by anyone other than the record owner of the property affected must give the name of the record owner and explain the applicant's relationship to the owner (e.g., lessee, attorney). The applicant must submit evidence before the hearing of the record holder's consent to the application being filed and heard, as well as relevant documents evidencing the applicant's authority or standing to bring the application. Relevant documents include but are not limited to: deeds evidencing ownership; signed purchase-and-sale agreements, leases, options to purchase; documents evidencing the identity of any current trustees.

### **d. Materials that must be submitted with the application**

Every application for a Variance, Special Permit, or Appeal from a decision of the Building Commissioner/Zoning Enforcement Officer must be accompanied by the materials specified in the Application Checklist available from the Building Department, or on the Town's website. These *mandatory materials* include, but are not limited to:

*Project Narrative*: a thorough description of the existing conditions and/or use; the proposed changes; justification of the proposal; and any other relevant information that the Board may need in reviewing the application.

*Existing Site Plan*: must show location, square footage, and dimensions of the lot and all structures on the property; height; setbacks of all such structures from the property lines; other relevant features such as driveways, parking, easements, streams, wetlands, wells, septic systems, etc. The plan must be prepared and stamped by a registered land surveyor.

*Proposed Site Plan*: must show location, square footage, and dimensions of the lot and all structures on the property; height; setbacks of all such structures from the property lines; other relevant features such as driveways, parking, easements, streams, wetlands, wells, septic systems, etc. The plan must be prepared and stamped by a registered land surveyor.

***Building Elevations:*** must show existing conditions and proposed changes drawn to scale. For anything other than one- and two-family residential developments, all architectural plans must be prepared by a registered architect.

The Board may at its discretion waive any and all of the requirements pertaining to all or part of an application if, based on information provided or additionally requested, it is in the judgement of the Board appropriate and does not compromise the ability of the Board to faithfully execute its authority.

**e. Inadequate plans or forms**

The Board may in its discretion reject any application as inadequate and may dismiss, with or without prejudice, any application for the failure to file adequate plans or to complete the application form. The Board may also ask the applicant to supplement the submission with additional information.

**f. Other materials that can be filed with applications**

Applicants may provide the Board with any other pertinent materials as they wish. These voluntary materials may include, but are not limited to, letters from abutters and neighbors or analysis of the neighborhood's character (e.g., average setback, lot size, house size).

**g. Mechanism for filing accompanying materials**

All mandatory accompanying materials must be filed with the Town Clerk and electronically on ViewPoint at the time of filing the official application form. All voluntary materials must be filed on ViewPoint no later than ten (10) days before the hearing so they will be available for review.

**h. Filing fees**

Administrative Fees shall be submitted at the time of submittal of the application. Any application filed without this fee shall be deemed incomplete and no review work shall commence until the fee has been paid in full. Once the review process has been commenced, the Board shall not refund Administrative Fees, including the case of withdrawal of the application by the applicant. The fee schedule is as follows (subject to change):

Application Type	Filing Fee	Comments
Special Permit (one-family or two-family residential use)	\$150.00	Modification or extension of such a special permit application shall also require a fee of \$150.00
Special Permit (other than one-family or two-family residential use)	\$300.00	Modification or extension of such a special permit application shall also require a fee of \$300.00
Variance (one-family or two-family residential use)	\$150.00	Modification or extension of such a variance application shall also require a fee of \$150.00
Variance (other than one-family or two-family residential use)	\$300.00	Modification or extension of such a variance application shall also require a fee of \$300.00

Appeal	\$300.00	
Comprehensive Permit	As specified in the Comprehensive Permit Regulations	

**i. Additional Fees**

The applicant must sign the Billing Authorization form (available on the Town website, ViewPoint, or from the Principal Assistant to the Zoning Board of Appeals) authorizing GateHouse Media (owners of the MetroWest Daily News) to bill the applicant directly for the publication of the public hearing in the newspaper twice. The cost of these two publications is approximately \$400 and is subject to change.

**j. Revised and supplemental materials**

Any revised and supplemental materials must be submitted via ViewPoint no later than 10 days prior to the scheduled public hearing to allow time for the Board to review. Materials received less than 10 days prior to the scheduled public hearing may, at the Board's discretion, not be considered during the scheduled public hearing.

**k. Withdrawal of applications**

*Prior to the publication of the public hearing notice:* Per MGL c. 40A, Section 16, any petition for a Variance or Special Permit may be withdrawn, without prejudice by the petitioner. Requests to withdraw must be in writing. Such withdrawal will not constitute unfavorable action on the part of the Board within the meaning of MGL c. 40A, Section 16.

*After the publication of the public hearing notice:* Per MGL c. 40A, Section 16, any petition for a Variance or Special Permit may be withdrawn, without prejudice by the petitioner after the publication of the notice of a public hearing, only by the approval of the Board. Requests to withdraw must be in writing, clearly stating the reason for withdrawal. Such withdrawal will not constitute unfavorable action on the part of the Board within the meaning of MGL c. 40A, Section 16.

**3. HEARING ASSIGNMENT AND NOTICE**

**a. Assignment for hearing**

Once an application is complete, it is scheduled for hearing at a date and time set by the Board (or its agent, the Principal Assistant to the Zoning Board of Appeals). Hearings are usually held on the third Wednesday of the month, and applications are scheduled starting at 7:00 PM. Hearings may be scheduled on other nights, at the discretion of the Board. When an individual hearing cannot be completed in one session, the chair will announce the continued date and time during the public hearing.

**b. Notice of hearing**

The Principal Assistant to the Zoning Board of Appeals will draft a Public Hearing Notice stating the hearing time, place, and general subject matter, sufficient for identification, to be published in a newspaper of general circulation in the Town of Southborough once in each of two successive weeks, with the first publication not less than 14 days before the day of the hearing; and to be posted in the Southborough Town House and Building department for a period of not less than 14 days before the day of the hearing. Notice shall also be sent by mail, postage

prepaid, to; (a) the applicant and (if different) the owner of the property affected; (b) the owners of all abutting property; (c) the owners of land within 300 feet of the property, all as they appear on the most recent applicable tax list and notwithstanding that the land is located in another city or town. Notice shall also be sent to any other Town boards and parties deemed by the Zoning Board of Appeals to be interested in the subject matter of the hearing.

**c. Contents of notice**

Notices are normally prepared based on the content of the application and are often of broader scope than the application would strictly require, in order to permit flexibility. Any applicant may, by informing the Board in writing (on the application form or otherwise), suggest content for the legal notice.

**4. HEARINGS**

**a. Hearings open to public**

All hearings conducted by the Board are open to the public and conducted in accordance with the Massachusetts Open Meeting Law. State law guarantees the right to attend the hearing, but the right to speak at the hearing may be subject to reasonable requirements as set forth by the presiding chair.

**b. Presiding member**

The chair shall preside over all Board hearings unless the chair is absent or recused. In such an absence or recusal, the members shall appoint a regular member to serve as acting chair. The chair indicates the five voting members of the panel at the start of the hearing and appoints one or more associate members to the panel if a regular member of the Board is absent or recused.

**c. Personal appearance**

An applicant must either be present at the hearing or represented by a lawyer or other authorized person. If no one appears at the hearing, the Board may, in its discretion: (a) enter an unfavorable decision on the application; or (b) continue the hearing.

**d. Conduct of hearings**

The Chair shall determine the order of presentation and all other conduct of a hearing. The chair generally will ask applicants to present their application or any component thereof, after which the Board will offer comments or ask questions, followed by comments or questions of other Town officials. The Board will generally then invite persons opposing or favoring the application to speak or present evidence or arguments. When the Board decides that no further evidence or testimony is forthcoming or is merely repetitive, the Board will vote to close the public portion of the hearing, and no further public comment will be allowed, except in response to a direct question put by a Board member to a particular person.

**e. Burden of proof**

The applicant carries the legal burden to make a true and complete presentation of the case, to offer evidence on each of the pertinent legal requirements, and to provide all the relevant facts and documents necessary to a fair presentation of the issues for decision by the Board. Under MGL c. 40A, Section 15, the Board has the power to subpoena witnesses, take sworn testimony, and compel production of documents.

**f. Quorum**

*Sitting Quorum:* At least three members, whether regular or associate, must be present to constitute a quorum and hear the matters designated by state law (special permits, variances,

and appeals from the Building Commissioner/Zoning Enforcement Officer's decisions). A sitting quorum does not constitute a voting quorum required to approve or deny an application or request under the Zoning Bylaws. A sitting quorum only constitutes as sufficient quorum to open, continue, or adjourn hearings, and other administrative votes required by the Board that require a simple majority of those present.

Applicants may ask the Board to continue a hearing to another date when a full five-member panel is available. Votes to continue and other administrative votes require a simple majority of those present.

*Voting Quorum/Vote of Supermajority:* At least four members (of a full five-member board) must be present for the Board to vote on the final decision of a matter designated by state law. A vote of supermajority shall be based off of the voting quorum when acting upon a request for a special permit under the Zoning bylaws; request for variance; or to reverse an order or decision of the Building Commissioner/Zoning Enforcement Officer. A vote of supermajority requires a minimum of four members of the Board to vote in the affirmative. For further information, refer to Section 6b: Required Vote of the Board.

**g. Continuance**

The Board may continue any hearing to another specified time, provided that notice of the date, time, and place of the continued hearing and its subject matter is announced at the hearing being continued.

**5. CONSULTING FEES**

**a. Payment of consulting fees**

As provided in MGL c. 44, Section 53G, the Board may impose a reasonable fee on any applicant for a special permit, variance, or other zoning relief under the Zoning Bylaws, to pay for the employment of an outside consultant to assist the Board in reviewing the application. These consulting fees are imposed in addition to any other fees assessed under these policies and procedures.

**b. Procedure**

Whenever the Board determines that it needs the services of an outside consultant, it will so notify the applicant. Once it designates an outside consultant, it will inform the applicant in writing, giving the consultant's name, an estimate of the consultant's total fee, and the amount of the initial deposit due from the applicant.

*i. Means of appeal*

The applicant may appeal the Board's selection to the Select Board, by sending the Select Board a written request for review of the Board's designation within 14 days of the applicant's receipt of the designation.

*ii. Grounds for appeal*

Appeals are limited to claims that the consultant has a conflict of interest or does not possess the minimum qualifications under the statute. The required time limits for the Board to act on the underlying application are extended by the duration of the appeal.

*iii. Delivery of initial deposit*

If the applicant does not file an appeal within the time period specified above, the applicant must deliver the initial deposit, in the form of a certified or bank check, to the

Principal Assistant to the Zoning Board of Appeals for deposit with the Town Treasurer, within the time limits set in the designation letter.

*iv. Amount of deposit*

The initial deposit amount may be any amount up to the estimated total of the consultant's fee. If the deposit amount is less than the estimated total, the Board can ask the applicant for supplemental deposits, which shall be due and payable within 14 days of the request.

*v. Grounds for dismissal*

Failure to pay the initial or any supplemental deposit is grounds for the Board to deny the special permit, variance, or other zoning relief.

*vi. Return of unused funds*

The Town Treasurer will pay the consultant's bills, as approved by the Board, from the funds on deposit, and will return any interest earned by the deposited funds and any funds remaining unused at the conclusion of the applicant's matter, upon direction by the Board.

## **6. DECISIONS**

**a. Recomittal and rehearing**

If the Board determines, at any time after the public hearing closes, that an application or the evidence submitted to support that application fails to conform in all respects with the requirements of state and local law, or fails to entitle the applicant to the requested relief, it may, prior to making its decision, advise the applicant of its determination and provide the applicant an opportunity to revise the application or to submit additional materials into evidence. If the Applicant desires to submit new information, the Board must hold a new hearing thereon, notice of which shall be given as with an original application, before making its final decision.

**b. Required vote of the Board**

A voting quorum is required to be present to act on the final decision of a matter designated by state law. An affirmative vote of a supermajority (i.e., four members of a full five-member board) is necessary to approve a request for a special permit under the Zoning Bylaws; to grant a variance in the application of the Bylaws; or to reverse an order or decision of the Building Commissioner/Zoning Enforcement Officer. When only four members are eligible to vote, all four must vote in favor to obtain an affirmative vote of supermajority. Applicants may ask to continue the hearing to another date when a full five-member board is available, if applicable. The vote of a simple majority of the members of the Board is required to reverse any order or decision or to grant a permit under MGL c. 41, Sections 81Y through 81CC inclusive, or to grant a comprehensive permit under MGL c. 40B, Sections 20 through 23. A simple majority vote shall be the simple majority of the members present.

**c. Time limits**

The time limits for the Board's decision shall be in accordance with state and local law. When matters are continued, the Board may ask the applicant to sign a form extending the time limits, as may be necessary.

**d. Filing of decisions**

The decision of the Board on each application or appeal, stating the reasons for the decision and the vote of each member upon each question, shall be filed in the office of the Town Clerk. Copies are furnished to the administrative officer whose decision is appealed (in the case of appeal), to the applicant or aggrieved person, and to the owner of the land (if the owner is not the applicant). A copy is retained in the permanent records of the Board. Each decision shall specify that appeals, if any, must be made pursuant to MGL c. 40A, Section 17, and must be filed within 20 days after the decision is filed in the office of the Town Clerk.

**e. Limited or conditional variances and special permits**

When the Board decides a variance or special permit may be granted if it is limited in time or use or is conditioned upon compliance with regulations to be made and amended from time to time thereafter and specially designed to safeguard the zoning district and the Town, it shall impose such limitations and conditions by setting them forth in its decision. No variance or special permit, or any extension, modification, or renewal thereof, shall take effect until a copy of the written decision (which must bear the Town Clerk's certification 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 duly recorded by the applicant in the Worcester County Registry of Deeds and indexed in the grantor index under the name of the record owner. Each such decision shall be recorded promptly after expiration of the period for appeal set by law.

**f. Lapse of decisions**

The rights authorized by the Board's orders and decisions shall lapse as follows:

*Lapse of variance:* If the rights authorized by a variance are not exercised within one year of the date the variance was granted, they lapse and may be reestablished only after notice and a new hearing, pursuant to MGL c. 40A, Section 10.

*Lapse of other rights:* If the rights granted by the Board, other than variances, are not used or exercised, they shall lapse in accordance with the time limits set forth in MGL c. 40A and the Zoning Bylaws.

## **7. COMMUNICATIONS WITH THE BOARD**

**a. Written communications only**

Other than at a hearing or as e-mail, all communications to the Board must be in writing, submitted to the Principal Assistant to the Zoning Board of Appeals for distribution to the Board members and filing in the permanent files.

**b. Electronic communications**

Messages by e-mail can be sent only to the Zoning Board of Appeals for distribution to the Board members and filing as a public record.

**c. Site Visits**

Members, may make site visits to the property and the neighborhood in question. Site visits do not constitute a public meeting under the Open Meeting Law

**d. Legal submissions**

Arguments and briefs may be submitted, as well as requests for particular findings, orders, or decisions, which the Board in its discretion may adopt or reject. All arguments and briefs as well as requests for particular findings, orders, or decisions must be furnished in sufficient quantity to permit distribution to all members of the Board, to all other interested parties, and to the file.

## **8. EFFECT OF RULES**

### **a. Waiver by the Board**

The Board may, for any particular application waive compliance with any portion of these policies and procedures but only if it finds that doing so does not impair its ability to reach a fair decision and would be fair to both the applicant seeking the waiver and the other applicants who did not or will not seek waivers.

### **b. Conflict between Policies and Procedures, General Laws, and Town Code**

If there is any conflict between these policies and procedures and the Bylaw, the Town Code and the General Laws pertaining to a zoning matter, then the order of precedence for resolution of such conflict shall be first, the General Laws, then second, the Town Code (including the Bylaw) and then third, these policies and procedures.

## **9. AMENDMENT**

This Board may at any time amend or modify these Policies and Procedures with the concurring vote of a simple majority of the members present, and the amendment or modification shall take effect when a copy is filed with the Town Clerk.