



BOARD OF APPEALS—TOWN OF SOUTHBOROUGH GENERAL INFORMATION FOR APPLICANTS

AS residents of the Town of Southborough (the “Town”) find it necessary to apply for a Variance or a Special Permit from the Zoning Board of Appeals (the “Board”) or to appeal an administrative decision by the Town Building Inspector (who is also the Town Zoning Officer), they may find it helpful to understand some of the key elements of the process followed by the Board in approving or denying such applications. The Board offers the information below with the objective of making the application and hearing process more understandable to applicants, and thereby aiding applicants in gaining a successful result from their application.

The summary information below is provided as a supplement for applicants and it does not include all possible circumstances related to the individual issues. Specifically, the information provided below does not supercede the requirements of the Town’s Zoning By-Law (the “By-Law”) or the relevant “General Laws” (particularly Chapters 40A and 40B) of the Commonwealth of Massachusetts (the “Commonwealth”)—all applicants should rely only on the By-Law, the General Laws and on the specific instructions on Board application forms for information relevant to their applications.

1. What is the Board’s function?

The Board hears and decides on:

- (a) applications for Variances from zoning requirements in the By-Law;
- (b) applications for Special Permits which may be issued as specified by the By-Law for exceptional, specific uses; and
- (c) applications for various administrative appeals of decisions related to the By-Law (e.g., from the Town Building Inspector).

2. Why/when is a Variance or a Special Permit necessary?

A Variance is necessary if an individual wants to build or modify a structure or to use property in a way that is not permitted by the By-Law. A Special Permit is necessary if an individual wants to use a structure or property in a way for which the By-Law specifies that a Special Permit is required.

3. How will an individual know when a Variance or a Special Permit is necessary?

There are a number of ways an individual may become aware of the need for a Variance or a Special Permit. The most common initial event in this process is the Town Building Inspector’s denial of an application for a building permit—where the issuance of such a permit cannot occur consistent with the requirements of the By-Law. The Building Inspector will typically issue a letter of denial of the building permit application, stating the reasons for the denial and providing information relative to the process for an application to the Board for a Variance or a Special Permit.



4. What are the Board's standards for granting or denying an application for a Variance, a Special Permit or an Appeal?

The Board's activities are governed by the General Laws and the By-Law. The Board strongly recommends that applicants obtain and carefully review these documents as they pertain to a specific application. The By-Law has particular requirements for approval of Variances and Special Permits, which applicants are advised to understand and to address. For example, the By-Law has a very specific definition of "hardship" that must be demonstrated by an applicant before a Variance may be granted. The Board is obligated to make decisions within the framework of the By-Law, because decisions that are inconsistent with the By-Law's requirements may be subject to successful appeal in the courts.

5. How are the specific requirements of the By-Law determined?

The By-Law has been written and amended over the years with the approval of Town Meeting, consistent with the requirements of the General Laws of the Commonwealth. The Board cannot change the By-Law, and the Board is required to act in a manner consistent with the By-Law. If an individual (or group of individuals) desires to change particular requirements of the By-Law, the appropriate process is to work with the Town Planning Board and Board of Selectmen to get a proposal effecting such change on the warrant for a Town Meeting vote. Town Meeting approval (typically by a required two-thirds vote for By-Law changes) of such a warrant article (and subsequent review and approval by the Attorney General of the Commonwealth) will result in a change to the By-Law.

6. What is required to apply for a Variance, a Special Permit or an Appeal?

The specific requirements and the forms for an application can be obtained from the Town Building Inspector and the Board Secretary in the Town Building Department (the "Building Department").

7. How long does it take to receive a Variance or a Special Permit decision?

The timing requirements for the resolution of an application for a Variance, a Special Permit or an Appeal, are described in the By-Law. Generally speaking, the Board has one hundred days to act on an application for a Variance after the filing of the completed application with the Town Clerk and ninety days to act on an application for a Special Permit after the initial Board hearing for such a Special Permit. Some applications may be resolved more quickly than this, and others may involve continuations for multiple public hearings and require longer than these time periods. After a Board decision is filed with the Town Clerk, there is an appeal period (typically 20 days) that must pass before a decision is final and the applicant may proceed to act according to the decision. Applicants should carefully review the details of these timings as defined in the By-Law and the General Laws, as the burden to understand and adhere to the application and hearing process is on the applicant.



8. What options exist for an applicant if the Board denies an application for Variance or a Special Permit?

If the Board does not approve an application for a Variance, Special Permit or an Appeal, an individual may appeal such a decision to the courts according to the process described in the General Laws.

9. How does the hearing process work?

The following process will typically be followed in a hearing (although the Board Chairman has the discretion to conduct a hearing as he/she believes is appropriate, and hearings related to particularly complex issues may follow a somewhat different approach and include multiple hearings):

- (a) the Chairman will call the hearing to order and will read into the record the details of the specific application;
- (b) the applicant (or others who will be speaking on the applicant's behalf) will introduce themselves and will present the facts of their case, with the objective of providing the Board with the information it needs to make a favorable decision within the requirements of the By-Law;
- (d) the Chairman will allow the Board Members to ask the applicant (or their representatives) questions about the application and obtain answers to their questions;
- (e) the Chairman will allow Town officials or members of other Town boards to pose questions through the Chairman to the applicant (or their representatives) about the application and obtain answers to their questions;
- (f) the Chairman will allow members of the public, including abutters to the specific property in question, to pose questions through the Chairman to the applicant (or their representatives) about the application and obtain answers to their questions (note that anyone who speaks at the hearing will be asked to identify themselves by providing their name and their address);
- (g) the Chairman will allow the Board Members to ask the applicant (or their representatives) any final questions about the application and obtain answers to their final questions;
- (h) the Chairman will ask for a vote of the Board to close the public hearing, and upon such favorable vote will begin the Board discussion and deliberation process (no additional comments from the applicant or the public will typically be accepted after this point in the hearing);
- (i) when the Chairman believes that the Board deliberation has ended and the Board is prepared to vote, he/she will entertain a motion to approve or deny the application, and the Board will vote on this motion (note that depending on the overall timing of the hearing process and the complexity of the issue being considered by the Board, the Board may make use of its option to continue the deliberation process and the final vote to a subsequent meeting—at which no additional applicant or public comment is accepted by the Board); and
- (j) when the Board has voted, the record of the vote will be included in a formal, written decision, which will be provided to the applicant at a time after the



hearing (and posted at the Town House for public access) according to the timing requirements of the By-Law.

10. How many votes are required for approval of an application?

For approval of applications for Variances, Special Permits and Appeals of administrative decisions, the support of four of the five Board Members is required.

11. What are the sources of information about applications for Variance, a Special Permit or an administrative Appeal or Finding?

There are a variety of sources of information for applicants, including:

- (a) the By-Law, which can be obtained through the Board Secretary at the Building Department or on-line at <http://www.southboroughtown.com/>;
- (b) the General Laws of the Commonwealth, particularly Chapters 40A and 40B, which can be found on-line at <http://www.mass.gov/legis/laws/mgl/>;
- (c) the Board “Rules and Regulations” document, which can be obtained from the Board Secretary in the Building Department;
- (d) the application forms themselves, which can be obtained from the Board Secretary in the Building Department; and
- (e) the Town Building Inspector and the Board Secretary in the Building Department.

Applicants are reminded that speaking to individual Board Members about a specific application is not consistent with the General Laws. As a quasi-judicial body, the Board strives to provide full public access to all evidence related to a particular application, and such individual “ex-parte communications” can limit this full access. Board Members will typically decline to participate in such individual conversations outside of posted public hearings.

12. Is it necessary for an applicant to be represented by an advisor (e.g., a contractor, a registered engineer, an architect, etc.) or an attorney to support an application to the Board?

No, it is not required by the Board for an applicant to be represented by an advisor in presenting a case to the Board. Many applicants choose to present their own cases and are successful with their applications. Many applicants also choose to have representatives make these presentations or assist with these presentations. The Board is prepared to work with either approach, as Board decisions are based on the requirements of the By-Law and the facts presented—not on the method of presentation.

13. Who are the Board members?

There are five Board Members and two Alternate Members. Alternate Members are available to participate in hearings when a Board Member is not able to participate in a hearing. The names of the specific members are available from the Board Secretary in the Building Department or on-line at <http://www.southboroughtown.com/>. Board Members and Alternate Members are Southborough residents who are appointed by



the Town Board of Selectmen to serve five-year terms (with Alternate Members serving one-year terms). Board Members and Alternate Members are volunteers, serving without pay.

14. When (how frequently) and where does the Board meet?

The Board typically meets on a monthly basis, but may meet more or less frequently if there are more or fewer applications than usual. The specific calendar (and agendas) for Board meetings can be obtained from the Board Secretary in the Building Department and is posted consistent with legal requirements at the Town House. Board meetings most often occur in the hearing room in the Town House, but residents and applicants are advised to check the Town House bulletin board as the official source for specific meeting schedules, agendas and locations. The Town Web site (<http://www.southboroughtown.com/>) also contains an unofficial version of Board meeting schedule and agenda information.

15. What are some important points for applicants to remember?

- (a) all of the application forms should be fully completed, as incomplete forms can delay the official filing of an application with the Town Clerk and delay scheduling of a hearing;
- (b) the applicant is typically responsible for a variety of activities in addition to completing an application form (depending on the specific application) in preparation for a hearing (including, for example, sending notices to abutters and paying filing fees), so the applicant is well advised to make sure that all of the necessary preparation steps are completed to keep the decision process moving;
- (c) an applicant's presentation at a hearing should explicitly address the requirements of the By-Law for the particular application (e.g., because demonstration of "hardship", as defined specifically by the By-Law, is required for approval of a Variance, the applicant's presentation to the Board should directly deal with this requirement);
- (d) while Board Members will typically attempt to visit a property before a hearing related to it to view it directly, applicants should consider the value of making efforts to provide a complete picture of what is being requested of the Board and the relevant facts, with appropriate plans, drawings, photos, etc. that make their case as persuasively as possible;
- (e) applicants are required to provide any additional (beyond the application and the associated required materials) supporting materials/documents/etc. for their hearing to the Board Secretary in the Building Department sufficiently in advance of (as detailed in the application form instructions) their scheduled hearing, in order for the Board Members to have access to this material before the hearing;
- (f) applicants whose petitions are approved must record the final decision at the Worcester County Registry of Deeds in order to finalize the approval and to be able to obtain a building permit based on the approval; and



(f) if an applicant encounters (or expects) opposition to an application (e.g., from abutters, from other Town residents, from other Town boards), the applicant might consider engaging in pre-hearing discussions with those in opposition in an effort to address such concerns and present a more positive case for approval.

16. What are some of the most frequent problems that applicants encounter in gaining approval of their applications?

(a) a hearing presentation by an applicant that does not address the specific requirements of the By-Law for the particular application (e.g., because demonstration of “hardship”, as defined specifically by the By-Law, is required for approval of a Variance, the applicant’s presentation to the Board that does not directly deal with this requirement makes it difficult for the Board to approve such an application);

(b) lack of success in dealing with opposition to an application (e.g., from abutters, from other Town residents, from other Town boards), which may limit the Board’s ability to approve an application; for example, the By-Law requirement for approval of a Variance application requires the Board to find that (among other things) approval may be granted without “substantial detriment to the public good and without nullifying or substantially derogating from the intent of the Zoning By-Law”, and strong public opposition to an applicant’s case makes this finding difficult.