

## ARTICLE VII

### **SPECIAL REGULATIONS**

#### 7.01 Site Preparation.

No building permit shall be issued for any structure that requires the excavation of sod, soil, sand, gravel, stone, or any other like materials in an amount in excess of one hundred twenty (120) percent of the foundation of said structure.

Where a variance from the above has been granted by the Permit Granting Authority, the excavation and removal of said material shall be subject to the provisions of the Topsfield Soil Removal By-Law. (Art. 46, 5/9/78; Art. 23, 5/5/81)

#### 7.02 Soil Transport Within Approved Subdivision.

Within an approved subdivision soil, sod, sand, gravel, and any other like material may be moved within said subdivision for the sole purpose of constructing ways, septic systems, and laying utility lines.

The removal of sand, sod, stone, gravel, and any other like material from a subdivision shall be in compliance with the Topsfield Soil Removal By-Law.

#### 7.03 Temporary Accessory Apartment Special Permit By-Law.

##### 1. Purpose

1.1 This section permits the owner of an existing, or a proposed, single family detached dwelling to construct one additional dwelling unit for occupancy by family members who have some dependency for special housing needs due to age, mental or physical health, personal care requirements, or economic factors, or by paid or unpaid individuals, including but not limited to nurses, nurse's aids, homemakers, nannies or au pairs, who occupy the family accessory apartment to facilitate providing direct care to a family member of the owner that resides in the dwelling. The primary purpose shall be to maximize privacy, dignity, and independent living among family members preserving domestic family bonds as well as the single-family residential character of the neighborhood. Such a purpose is incidental and subordinate to the primary use of the dwelling as a single-family dwelling. A primary purpose of generating income from the additional dwelling unit is not permissible in the single-family zoning district; however, nothing shall prevent payments from the occupant to the owner. Due to the necessary family relationships among the owners of the main dwelling and the occupants of family accessory apartment, the use to be granted hereunder is personal to the owner. The permitted use is temporary to provide adequate monitoring by the special permit granting authority that the owner has continuously complied with the purpose procedures, requirements, and conditions as herein provided.

##### 2. Procedure

2.1 The Planning Board, as the Special Permit granting authority of the Town of Topsfield, shall grant a Special Permit for a period of three years upon a finding by said Board that the purpose, procedure and requirements of this section have been fulfilled.

2.2 The Application for Special Permit shall:

2.21. Be signed by 100% of the record title ownership interest of a single family detached dwelling and shall include a copy of the deed to the applicant.

2.2.2. State the name and ages of all occupants of the main dwelling and separately identify the names and ages of the proposed occupants of the family accessory apartment and the family relationship between each owner and each proposed occupant.

2.2.3. State the factual basis upon which the aforesaid purpose has been fulfilled.

2.2.4. Include a floor plan of the family accessory apartment, the main dwelling where it is to be located and all elevations where exterior modifications are proposed. All plans shall be drawn to scale and identify the existing structure and proposed modifications to create the family accessory apartment.

2.2.5. Include written verification by the Board of Health that the sewage disposal system shall have sufficient capacity to accommodate the increased proposed use within the rules and regulations of the Board of Health.

### 3. Requirements

3.1 The single family detached dwelling may be located in the Inner Residential and Agricultural District, the Outlying Residential and Agricultural District, or as nonconforming single-family residence use within any district.

3.2 A family member shall include mother, father, stepmother, stepfather, mother-in-law, father-in-law, child, stepchild, son-in-law, daughter-in-law, brother, sister, stepbrother, stepsister, grandmother, grandfather, grandchild, aunt, uncle, niece or nephew.

3.3. At least one owner shall reside in the main dwelling as a principal place of residence.

3.4. One occupant of the family accessory apartment shall be a family member with one owner of the main dwelling unless the occupant shall provide personal care to a family member of at least one owner of the main dwelling or to an occupant of the family accessory apartment.

3.5. The occupants of the family accessory apartment shall be family members of each other unless the occupants shall provide personal care to a family member of at least one owner of the main dwelling or to an occupant of the family accessory apartment.

3.6. Each occupant of the family accessory apartment shall provide personal care to a family member of at least one owner of the main dwelling or to an occupant of the family accessory apartment who is a family member to an owner of the main dwelling.

3.7. There shall be no more than two adult occupants or one adult occupant and two unemancipated children in the family accessory apartment.

3.8. There shall be no more than one family accessory apartment in any single family detached dwelling.

3.9. Modifications of the exterior of the dwelling shall be completed in a manner that maintains the appearance of the dwelling as a single-family dwelling.

3.10. No separate entry to the family accessory apartment shall be permitted unless from existing entries, from within the main dwelling, from the back or from the side of the main dwelling.

3.11. The family accessory apartment shall not contain more than two bedrooms, and shall not contain in excess of seven hundred fifty square feet, which may be exceeded by 5% due to peculiarities of the layout of the main dwelling.

3.12. The family accessory apartment shall be located within or attached to the main dwelling.

3.13. The family accessory apartment must be capable of being discontinued as a separate dwelling unit without demolition of any structural component of the main dwelling.

3.14. All parking shall be onsite.

3.15. There shall be interior access between the family accessory apartment and the main dwelling unit, which may be locked from either side.

3.16. Electricity, water and gas shall be provided by a single service to both the family accessory apartment and the main dwelling.

3.17. There shall be one mailing address of the property.

3.18. The Planning Board may impose conditions upon the grant of the Special Permit.

3.19. The owner shall record the Special Permit at the registry of deeds and provide to the Planning Board the recorded title reference.

3.20. The Special Permit shall be exclusive and personal to the owner of the main dwelling and shall not run with the land to fulfill the purpose of providing care to an owner or a family member of an owner.

3.21. The owner shall promptly notify the Planning Board of any change in the use of the family accessory apartment.

3.22. No Building Permit shall be issued until the Special Permit shall be duly recorded.

3.23. There shall be no modification of the dwelling until a Building Permit has been issued.

3.24. The Building Permit shall be revoked upon determination by the Building Inspector that any condition imposed by the Planning Board has not been fulfilled.

3.25. There shall be no occupancy of the family accessory apartment until the Building Inspector has issued a certificate of occupancy that the main dwelling and family accessory apartment shall be in compliance with all applicable health and building codes.

3.26. Owners of existing dwellings with an unpermitted family accessory apartment shall have one year of amnesty from the effective date of this section to obtain a Special Permit.

3.27. By filing the Application for Special Permit for a family accessory unit, all owners consent to an inspection without a warrant upon reasonable notice by the Building Inspector to ensure compliance with all terms of this section and conditions imposed upon the grant of the Special Permit.

3.28. All other provisions of the bylaws, rules and regulations of the Town of Topsfield shall apply.

3.29. All care givers and all care receivers must reside in either the main dwelling or the family accessory apartment.

#### 4. Termination

4.1. The Special Permit shall terminate immediately upon any of the following events:

4.1.1. Three years from the date of the grant of the Special Permit.

4.1.2. Two years from the date of the grant of the Special Permit if a substantial use thereof has not commenced, or in the case of a permit for construction, if construction has not commenced within one year from the date of the grant of the Special Permit.

4.1.3. Any transfer of title to the premises, except a mortgage.

4.1.4. One year after the birth of a child to two adult occupants.

4.1.5. Violation of any term or condition of the Special Permit that the owner fails to cure, upon two weeks written notice mailed to the applicant and to the occupants at the dwelling address by certified mail, return receipt requested.

5. Extension

5.1. The Special Permit may be extended for successive periods of three years, upon written request to the Planning Board by the applicants without further notice and hearing.

6. Duty of Owner Upon Termination

6.1. The owner shall discontinue the use of the family accessory apartment as a separate dwelling unit.

6.2. The kitchen facilities of the family accessory apartment shall be removed unless determined to be incidental and subordinate as an accessory use of a single-family dwelling.

6.3. Any additional exterior entrance constructed to provide access to the family accessory apartment shall be permanently closed.

6.4. The owner shall permit an inspection by the Building Inspector without a warrant.

6.5. The owner shall record a Notice of Termination at the registry of deeds and deliver a copy with the recorded title reference to the Planning Board.

7. Enforcement

7.1. Enforcement of this section shall be by the Zoning Enforcement Officer in accordance with the enforcement provisions of the Topsfield Zoning By-Laws.

8. Severability

8.1. All the clauses of this bylaw are distinct and severable, and if any clause shall be deemed illegal, void, or unenforceable, it shall not affect the validity, legality, or enforceability of any other clause or portion of this bylaw. (Art. 33, 5/1/2001)

7.04 Temporary Moratorium On Medical Marijuana Treatment Centers

A. Purpose.

By vote at the State election on November 6, 2012, the voters of the Commonwealth approved a law regulating the cultivation, distribution, possession and use of marijuana for medical purposes. The law provides that it is effective on January 1, 2013 and the State Department of Public Health is required to issue regulations regarding implementation within 120 days of the law's effective date. Currently under the Zoning Bylaw, a medical marijuana treatment facility is not a permitted use in the Town and any regulations promulgated by the State Department of Public Health are expected to provide guidance to the Town in regulating medical marijuana, including medical marijuana treatment centers. The regulation of medical marijuana raises novel and complex legal, planning, and public safety issues and the Town needs time to study and consider the regulation of medical marijuana treatment centers and address such novel and complex issues, as well as to address the potential impact of the State regulations on local zoning and to undertake a planning process to consider amending the Zoning Bylaw regarding regulation of medical marijuana treatment centers and other uses related to the regulation of medical marijuana. The Town intends to adopt a temporary moratorium on the use of land and structures in the Town for medical marijuana treatment centers so as to allow the Town sufficient time to engage in a planning process to address the effects of such structures and uses in the Town and to enact bylaws in a manner consistent with sound land use planning goals and objectives.

B. Temporary Moratorium.

For the reasons set forth above and notwithstanding any other provision of the Zoning Bylaw to the contrary, the Town hereby adopts a temporary moratorium on the use of land or structures for a medical marijuana treatment center. The moratorium shall be in effect through June 30, 2014. During the moratorium period, the Town shall undertake a planning process to address the potential impacts of medical marijuana in the Town, shall consider the Department of Public Health regulations regarding medical marijuana treatment facilities and related uses, and consider adopting new Zoning Bylaws to address the impact and operation of medical marijuana treatment centers and related uses, (Art. 44, 5/7/13)