

ARTICLE V

ADMINISTRATION AND ENFORCEMENT

5.01 Enforcement Officer and Duties.

This By-Law shall be administered and enforced by the Inspector of Buildings of the Town of Topsfield. Duties of the Topsfield Inspector of Buildings under this By-Law shall include the receiving of applications, certificates of compliance, action on violations, and any other lawful actions necessary to assure conformance with this By-Law. The Inspector of Buildings shall withhold a permit including any required certificate of occupancy for this construction, alteration, or moving of any building or structure if the building or structure as constructed, altered or moved would be in violation of this By-Law; and no permit or license shall be granted for a new use of a building, structure, or land which use would be in violation of this By-Law. (Art. 47, 5/9/78; Art. 23, 5/5/81; Art. 25, 5/4/82)

Whoever violates any of the provisions of this By-Law, including the terms and conditions of any special permit or variance granted hereunder, shall, unless other provision is expressly made, forfeit and pay a fine of not more than three hundred (\$300.00) dollars per violation. Each day such a violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder. In the discretion of the Inspector of Buildings as enforcing person, the provisions of this By-Law, including the terms and conditions of any special permit or variance granted hereunder, may be enforced by the non-criminal disposition method provided by General Laws Chapter 40, Section 21D in accordance with Section 5.06B.

(Art. 37, 5/2/95; Art. 29, 5/5/2009)

5.02 Permit Granting Authority and Special Permit Granting Authority.

A. Permit Granting Authority. The Zoning Board of Appeals, hereinafter called "The Board", shall be the Permit Granting Authority pursuant to the Zoning Act.

1. Membership. There shall be a Zoning Board of Appeals of five (5) members and four (4) associates who may sit in the place of absent members upon designation by the Chairman or in his absence, the acting Chairman.

2. Appointment. Members of The Board in office at the effective date of this By-Law shall continue in office. Hereafter as terms expire or vacancies occur, the Board of Selectmen shall make appointments pursuant to the Zoning Act. The term for members shall be five (5) years. Associates shall be appointed by the Board of Selectmen and shall serve a term of one (1) year.

3. Powers. The Board of Appeals shall have the following powers:

a. To hear and decide appeals.

b. To hear and decide applications for special permits not specifically reserved to the Planning Board by subsection B of this section.

c. To hear and decide petitions for variance.

4. Adoption of Rules. The Board shall adopt rules to govern its proceedings pursuant to the Zoning Act and shall file a copy of such rules in the Office of the Town Clerk.

5. Appeals. Appeals to The Board shall be taken in accordance with the rules of The Board and the Zoning Act. No appeal or petition from the terms of this By-Law with respect to a particular parcel of land or the building thereon and no application for a special permit which has been unfavorably acted upon by the Board of Appeals shall be

considered on its merit by said Board within two (2) years after the date of such action except in accordance with the Zoning Act.

6. Public Hearing. The Board of Appeals shall fix a reasonable time for the hearing of any appeal or other matter referred to it or any petition for a variance or application for a special permit, and shall cause the notice of the time and place of such hearing thereof and of the subject matter, sufficient for identification, to be published in a newspaper of general circulation in the Town once in each of two (2) successive weeks, the first publication to be not less than fourteen (14) days before the day of the hearing and by posting such notice in a conspicuous place in the Town Hall for a period of not less than fourteen (14) days before the day of such hearing. Notice shall also be sent by mail, postage prepaid, to the petitioner and to owners of land directly opposite on any public or private street or way and owners of land within three hundred (300) feet of the property line all as they appear on the most recent applicable tax list, notwithstanding that the land of any such owner is located in another city or town, and to the Planning Board, and, if pertinent, to the Planning Board of the adjoining city or town. The publication of notice required by this section shall contain the following printed in bold face type:

- a. Name of the petitioner.
- b. Location of the area or premises that is the subject of the petition.
- c. The date and place of the Public Hearing.
- d. The subject matter of the Public Hearing.
- e. The nature of the action or the relief requested, if any.

No such hearing shall be held on any day on which a State or municipal election, caucus or primary is held. At the hearing, any party whether entitled to notice thereof or not may appear in person or by agent or by attorney.

7. Zoning Administrator. The Board of Appeals may appoint a Zoning Administrator pursuant to the Zoning Act. The Board shall delegate such powers and duties as deemed appropriate with concurring vote of at least four (4) of the five (5) members of The Board.

B. Special Permit Granting Authority. The Topsfield Planning Board shall be the Special Permit Granting Authority pursuant to the Zoning Act. In this capacity the Planning Board shall be responsible for hearing and deciding upon applications for special permits for the following:

1. Uses in the Business Park District requiring special permits in accordance with Section 3.06 and the Table of Use Regulations.¹
 - a. The installation and maintenance of wind energy conversion systems.

1. Special Permit and Site Plan Approval for multifamily residences for the elderly in an Elderly Housing District.

3. The Board of Selectmen may appoint one town resident as an associate member of the Planning Board for a one year term, who shall be eligible to participate solely in matters in which the Planning Board is acting as the Special Permit Granting Authority, in accordance with M.G.L. Chapter 40A, § 9. The Chairman of the Planning Board, or the Acting Chairman, in the event of the absence of the Chairman, may designate the associate member to sit on the Planning Board for the purposes of acting on a special

¹Editor's Note: The Table of Use Regulations can be found following Article III of this Zoning By-Law.

permit application, in the case of absence, inability to act, or conflict of interest, on the part of any member of the Planning Board or in the event of a vacancy on the Planning Board.”,

(Art. 49, 5/9/78; Art. 23, 5/5/981; Art. 25, 5/4/82; Art. 43, 5/2/90; Art. 27, 5/5/2009)

5.03 Previously Approved Permits.

The status of previously approved permits shall be as determined by the Zoning Act.

5.04 Special Permits.

A. Application Procedure.

1. For uses permitted by Special Exception in the Table of Use Regulations and for all other actions regulated by this By-Law, which require a special permit from the Permit Granting Authority or the Special Permit Granting Authority, application for a special permit shall be filed in eight (8) copies on forms provided by the Authorities. The Authorities may require additional information as necessary to adequately judge the merits of the request.
2. Application shall be distributed immediately by the applicant to the Town Clerk and to such other municipal boards as the Granting Authorities may direct.
3. A Public Hearing shall be held within sixty-five (65) days after the filing of the special permit application as provided for in Section 5.02A,6.
4. The Granting Authorities shall make a decision on the special permit within ninety (90) days following the Public Hearing. Failure to take final action upon an application for a special permit within said ninety (90) days shall be deemed to be a grant of the permit applied for.
5. The decision of the Granting Authority shall be filed with the Town Clerk along with detailed reasons therefor and all plans as finally approved. Certified copies shall be sent to the Inspector of Buildings and to the applicant in accordance with the Zoning Act. Issuance of a special permit does not constitute issuance of a Building Permit, which must be obtained by filing an application with the Inspector of Buildings.
6. A special permit granted under this By-Law shall lapse within one (1) year of the date of approval if a substantial use has not sooner commenced except for good cause or in the case of permit for construction has not begun by such date except for good cause.

B. Conditions and Safeguards. The Board of Appeals and the Planning Board shall not grant any special permit unless necessary conditions including, but not limited to, the following are met:

1. The use requested is listed in the Table of Use Regulations (Article III) as a special permit in the District for which application is made or is so designated elsewhere in this By-Law.
2. The requested use is not detrimental to the public convenience or welfare.
3. The requested use will not create undue traffic congestion or unduly impair pedestrian safety.
4. The requested use will not overload any public water, drainage, or sewer system, or any other municipal system to such an extent that the requested use or any developed

use in the immediate area or in any other area of the town will be unduly subjected to hazards affecting health, safety or the general welfare.

5. The requested use will not impair the integrity or character of the district or adjoining zones, nor be detrimental to the health, safety or welfare.

C. Additional Conditions. The Granting Authority shall also impose in addition to any applicable conditions in this By-Law such conditions and safeguards as it finds reasonably appropriate to protect the neighborhood, or otherwise serve the purposes of this By-Law, including but not limited to, the following.

1. Requirement of screening, buffers or planting strips, fences or walls.
2. Limitations of number or density of occupants, times or nature of operation size, scale, or other characteristics of the use or facility.
3. Regulation of the number, design and location of access drives or circulation facilities.
4. Requirements of off-street parking, loading or other features beyond the minimum otherwise required by this By-Law.
5. Requirement of front, side or rear yards greater than the minimum otherwise prescribed by this By-Law.

Such conditions shall be imposed in writing and the applicant may be required to post bond or other security for compliance with said conditions in an amount satisfactory to the Board.
(Art. 49, 5/9/78; Art. 23, 5/5/81; Art. 30, 5/3/88)

5.05 Deleted by vote at the May 5, 1981 Town Meeting.

5.06 Violations.

A. Notice of Violation. The Inspector of Buildings shall serve a written notice of VIOLATION of ORDER to any owner or person responsible for the erection, construction, reconstruction, conversion or alteration of a structure or change in use, increase in intensity, or extension or displacement of use of any structure or lot thereto; or in violation of a permit or certificate issued under the provisions of this By-Law, and such notice or order shall direct the immediate discontinuance of the unlawful action, use or condition and the abatement of the violation. Any owner who has been served with a notice shall stop work immediately, except that in ceasing any work or other activity he shall not leave any structure or lot in such a condition as to be a hazard or menace to the public safety, health, and general welfare.

If the Inspector of Buildings is requested in writing to enforce this By-Law against any person allegedly in violation of the same, and the Inspector of Buildings declines to act, he shall notify the party requesting such enforcement in writing stating the reasons therefor, within fourteen (14) days of receipt of such request.

B. Penalties. If the notice of VIOLATION of ORDER is not complied with within thirty (30) days, the Selectmen shall institute the appropriate action or proceeding at law or in equity to prevent any unlawful action, use or condition and to restrain, correct, or abate such action.

Criminal Complaint - Whoever violates any provision of this By-Law may be penalized by indictment or on complaint brought in the District Court. Except as may otherwise be provided by law, and as the District Court may see fit to impose, the maximum penalty for any violation of these provisions shall be two hundred (\$200.00) dollars for each offense.

Non-Criminal Disposition - In addition to the procedures for enforcement as described above, the provisions of this By-Law may also be enforced, by the Inspector of Buildings, by a non-criminal complaint pursuant to the provisions of Massachusetts General Laws, Chapter 40, Section 21D. Each day on which

a violation exists shall be deemed to be a separate offense. The penalty for violation of any provision of this By-Law shall be twenty-five (\$25.00) dollars for the first offense; fifty (\$50.00) dollars for the second offense; one hundred (\$100.00) dollars for the third offense and two hundred (\$200.00) dollars for the fourth and each subsequent offense.

(Art. 45, 5/9/78; Art. 23, 5/5/81; Art. 46, 5/3/88)

5.07 By-Law Construction.

This By-Law shall not interfere with or annul any other Town By-Law, rule or regulation which is more restrictive, except where this By-Law is more restrictive, it shall control.

(Art. 45, 5/9/78; Art. 23, 5/5/81)

5.08 Validity and Separability.

The invalidity of one (1) or more sections, subsections, sentences, clauses or provisions of this By-Law shall not invalidate or impair this By-Law as a whole or any other part hereof.

(Art. 45, 5/9/78; Art. 23, 5/5/81)