

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 Medical Marijuana Treatment Center

A. A Medical Marijuana Treatment Center which is also known as a Registered Marijuana Dispensary, shall be permitted in the Business Park District by Special Permit and shall be subject to Site Plan Review in accordance with Article IX of the Topsfield Zoning Bylaws.

B. The Zoning Board of Appeals shall be the Special Permit granting authority for a Medical Marijuana Treatment Center.

C. Medical Marijuana Treatment Centers shall be licensed and operated in accordance with 105 CMR 725.000, as may be amended from time to time.

D. Procedure:

1. Application: In addition to the materials required under Article IX, Site Plan Review, the applicant shall include:

a. A copy of its registration as an Medical Marijuana Treatment Center from the Massachusetts Department of Public Health (DPH);

b. A detailed floor plan of the premises of the proposed Medical Marijuana Treatment Center that identifies the square footage available and describes the functional areas of the Medical Marijuana Treatment Center, including areas for any preparation of marijuana-infused products;

c. A description of the security measures, including employee security policies, approved by the DPH for the Medical Marijuana Treatment Center;

- d. A copy of the emergency procedures approved by the DPH for the Medical Marijuana Treatment Center;
- e. A copy of the policies and procedures for patient or personal caregiver home-delivery approved by the DPH for the Medical Marijuana Treatment Center;
- f. A copy of the policies and procedures for the transfer, acquisition, or sale of marijuana between Medical Marijuana Treatment Centers approved by the DPH;
- g. A copy of proposed waste disposal procedures; and
- h. A description of any waivers from the DPH regulations issued for the Medical Marijuana Treatment Center.

2. The Special Permit Granting Authority shall refer copies of the application to the Town's Inspectional Services Department, Fire Department, Police Department, Board of Health, the Conservation Commission, and the Highway Department. These boards/departments shall review the application and shall submit their written recommendations. Failure to make recommendations within thirty-five (35) days of referral of the application shall be deemed lack of opposition.

3. After notice and public hearing and consideration of application materials, consultant reviews, public comments, and the recommendations of other town boards and departments, the Special Permit Granting Authority may act upon such a permit.

E. Special Permit Conditions on the Medical Marijuana Treatment Center:

The Special Permit Granting Authority shall impose conditions reasonable and appropriate to improve site design, traffic flow and public safety, protect water quality, air quality, and significant environmental resources, preserve the character of the surrounding area and otherwise serve the purpose of this section. In addition to any specific conditions applicable to the applicant's Medical Marijuana Treatment Center, the Special Permit Granting Authority shall include the following conditions in any special permit granted under this Bylaw:

- 1. Hours of operation, including dispatch of home deliveries.
- 2. The permit holder shall file a copy of any Incident Report required under 105 CMR 725.110(F) with the Zoning Enforcement Officer and the Chief of Police within 24 hours of creation of the incident report by the Medical Marijuana Treatment Center. Such reports may be redacted as necessary to comply with any applicable state or federal laws and regulations.
- 3. The permit holder shall file a copy of any cease and desist order, summary cease and desist order, quarantine order, summary suspension order, order limiting sales, notice of a hearing, or final action issued by the DPH or the Division of Administrative Law Appeals, as applicable, regarding the Medical Marijuana Treatment Center with the Zoning Enforcement Officer and the Chief of Police within 48 hours of receipt by Medical Marijuana Treatment Center.
- 4. The permit holder shall provide to the Zoning Enforcement Officer and the Chief of Police, the name, telephone number and electronic mail address of a contact person in the event that such person needs to be contacted after regular business hours to address an urgent issue. Such contact information shall be kept updated by the permit holder.
- 5. The special permit shall expire within five years of its issuance or sooner if so limited by the Special Permit Granting Authority. If the permit holder wishes to renew the special permit, an application to renew the special permit must be submitted at least 120 days prior to the expiration of the special permit.

6. The special permit shall be limited to the current applicant and shall lapse (a) if the permit holder ceases operating the Medical Marijuana Treatment Center, (b) the applicant transfers the right to operate the Treatment Center without the prior consent of the Special Permit granting authority or (c) if the majority interest in or control of the applicant is transferred without the prior consent of the Special Permit Granting Authority.

7. The special permit shall lapse upon the expiration or termination of the applicant's registration by the DPH.

8. The permit holder shall notify the Zoning Enforcement Officer and the Chief of Police in writing within 48 hours of the cessation of operation of the Medical Marijuana Treatment Center or the expiration or termination of the permit holder's registration with the DPH.

G. Prohibition Against Nuisances:

No use shall be allowed in the Business Park District which creates a nuisance to abutters or to the surrounding area, or which creates any hazard, including but not limited to, fire, explosion, fumes, gas, smoke, odors, obnoxious dust, vapors, offensive noise or vibration, flashes, glare, objectionable effluent or electrical interference, which may impair the normal use and peaceful enjoyment of any property, structure or dwelling in the area.

H. Severability:

The provisions of this Bylaw are severable. If any provision, paragraph, sentence, or clause of the Bylaw or the application thereof to any person, establishment, or circumstance(s) shall be held invalid, such invalidity shall not affect the other provisions or application of this Bylaw.”

(Art. 41, 5/06/2014)

7.05 Temporary Moratorium On Recreational Marijuana Establishments:

A. Purpose.

On November 8, 2016, the voters of the Commonwealth approved a law regulating the cultivation, processing, distribution, possession and use of marijuana for recreational purposes (new G.L. c. 94G, Regulation of the Use and Distribution of Marijuana Not Medically Prescribed). The law, which allows certain personal use and possession of marijuana, took effect on December 15, 2016 and (as amended on December 30, 2016; Chapter 351 of the Acts of 2016) requires a Cannabis Control Commission to issue regulations regarding the licensing of commercial activities by March 15, 2018 and to begin accepting applications for licenses on April 1, 2018. Currently under the Zoning Bylaw, a non-medical Marijuana Establishment (hereinafter, a “Recreational Marijuana Establishment”), as defined in G.L. c. 94G, §1, is not specifically addressed in the Zoning Bylaw. Regulations to be promulgated by the Cannabis Control Commission may provide guidance on certain aspects of local regulation of Recreational Marijuana Establishments. The regulation of recreational marijuana raises novel legal, planning, and public safety issues, and the Town needs time to study and consider the regulation of Recreational Marijuana Establishments and address such 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 Recreational Marijuana Establishments. The Town intends to adopt a temporary moratorium on the use of land and structures in the Town for Recreational Marijuana Establishments so as to allow sufficient time to address the effects of such structures and uses in the Town and to enact bylaws in a consistent manner.

B. Definition

"Recreational Marijuana Establishment" shall mean a “marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business.”

C. 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 Recreational Marijuana Establishment and other uses related to recreational marijuana. The moratorium shall be in effect through November 30, 2018 or until such time as the Town adopts Zoning Bylaw amendments that regulate Recreational Marijuana Establishments, whichever occurs earlier. During the moratorium period, the Town shall undertake a planning process to address the potential impacts of recreational marijuana in the Town, and to consider the Cannabis Control Commission regulations regarding Recreational Marijuana Establishments, and shall consider adopting new Zoning Bylaws in response to these new issues.

(Art. 32, 05/02/2017)