

Issue Date: 04/26/2011

NATURE OF APPLICATION:

- _____ Petition for Special Permit pursuant to Article _____, Section _____ of the Zoning Bylaw.
- _____ Petition for Finding pursuant to Article _____, Section _____ of the Bylaw.
- _____ Petition for a Variance from Article _____, Section _____, of the Zoning Bylaw.
- _____ Petition for Site Plan Review pursuant to Article IX of the Zoning Bylaw (and the Guidelines and Performance Standards for Activities Subject to the Provisions of Article IX of the Topsfield Zoning Bylaw; and Supplement Form C for submitted requirements and formats).
- _____ Petition for a Comprehensive Permit pursuant to G.L.c. 40B, Section 20-23.
- ☒ Appeal from the decision dated 06/08/2023 of the Building Inspector or others pursuant to L.L. c. 40A, Section 15.

DESCRIPTION OF APPLICANT:

- a. Name Michael DiNicola
- b. Address 93 Main St, Topsfield, MA 01983
- c. Phone Number 781-367-1649
- d. Interest in Premises (e.g., owner, tenant, prospective purchaser, etc.) Abutter
(Attach copy of lease and/or letter of authorization from owner, if applicable)

DESCRIPTION OF PREMISES:

- a. Assessor's Map 32, Lot(s) 135 0, Zoning District C-R
- b. Location of Premises (number and street) 97 Main St
- c. Name and address of legal owner (if different from Applicant) Montana Development, LLC
- d. Deed to the Premises recorded at (if known):
☒ Essex South District Registry of Deeds, Book 41618 Page 419
_____ Essex South Registry District of the Land Court, Certificate Number
- e. Prior zoning decisions affecting the Premises (if any):
Date of Decision 6/08/23 Name of Applicant LOPEZ ORLANDO TR
Nature of Decision Building Permit Issued
- f. Present use of the Premises Undeveloped
- g. Present structures conform to current Zoning Bylaw. ☒ Yes _____ No. If no, in what respect does it not conform. _____

PROPOSAL (attach additional sheets if necessary):

a. General Description:

The building permit should be overturned because a) it relies on a stormwater permit that wasn't approved until after the issuance of the building permit, and b) it does not satisfy the minimum contiguous square feet of buildable area as required by Topsfield zoning bylaw

section 4.08. See attached notice of appeal for more detail

b. If proposal is for construction or alteration of an existing structure, please state:

	FRONT	REAR	SIDE(S)
1. Setbacks required per bylaw	_____	_____	_____
2. Existing setbacks	_____	_____	_____
3. Setbacks proposed	_____	_____	_____

	FRONTAGE	AREA
4. Frontage and area required by bylaw	_____	_____
5. Existing frontage (s) and area	_____	_____
6. Frontage (s) and area proposed	_____	_____

	FEET	STORIES
7. Existing Height	_____	_____
8. Height proposed	_____	_____

c. Other town, state or federal permits or licenses required, if any:

NECESSARY ACCOMPANYING DATA:

It is required that every application be accompanied by appropriate supporting data. Failure to submit appropriate and complete data could result in delay and/or denial of application for zoning relief. Place a check next to the applicable accompanying supporting data:

Variance of Special Permit Applications:

(See Zoning Board of Appeals Rules and Procedures Section III)

All required supporting data attached ☐ Yes ☐ No

Site Plan Review Applications:

(See Town of Topsfield Zoning Bylaw, Article IX, Section 9.05. See also Guidelines and Performance Standards for Activities Subject to the Provisions of Article IX of the Topsfield Zoning Bylaw)

All required supporting data attached ☐ Yes ☐ No

Comprehensive Permit Applications:

(See G.L.c. 40B, Sections 20-23)

All required supporting data attached ☐ Yes ☐ No

Appeals from decisions of Building Inspector or Others:

(See Zoning Board of Appeals Rules and Procedures, Section III (1) (e))


All required supporting data attached ☒ Yes ☐ No

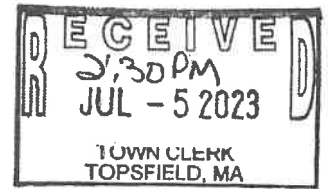
If all required supporting data is not attached, why not:

Alters list to follow

07/05/2023

Date


Signature of Applicant



July 5, 2023

Via Hand Delivery
Mary Elizabeth Willis, Town Clerk
Topsfield Town Hall
8 West Common Street
Topsfield, MA 01983

Re: Notice of Appeal to Town of Topsfield Zoning Board of Appeals of
Building Permit No. 23-154 RB

Dear Clerk Willis:

Pursuant to M.G.L. c. 40A, §§ 8 and 15, I am providing you with this Notice of Appeal of Building Permit No. 23-154 RB (the Building Permit). Please provide me with a stamped copy of this appeal indicating the date and time of receipt so I can provide copies of this appeal to the Topsfield Building Inspector and Topsfield Zoning Board of Appeals. I and my wife Kendra Robbins-Monteith own the property located 93 Main Street in Topsfield, Massachusetts (the "Harmed Property"), which abuts the property at 97 Main Street in Topsfield, Massachusetts, which is the subject of the Building Permit ("the Violation Property"). On June 8, 2023, Building Inspector Raymond Chesley filed the Building Permit with your office permitting the development of a single-family residence at the Violation Property. (See Building Permit Attached as Exhibit A). For the reasons stated below, I am requesting that the Topsfield Zoning Board of Appeals overturn the Building Inspector's decision and deny the Building Permit for the Violation Property.

Standard for Appeal

Pursuant to M.G.L. c. 40A, § 8 (a) "An appeal to the permit granting authority may be taken by any person aggrieved ... by an order or decision of the inspector of buildings ..." As a direct abutter to the Violation Property, I have a rebuttable presumption of standing as an aggrieved person. See *Marashlian v. Zoning Board of Appeals of Newburyport*, 421 Mass. 719, 721 (1996).

The Building Permit Should Be Overturned Because It Relies On A Stormwater Permit That Wasn't Approved Until After the Issuance of the Building Permit

The Building Permit should be overturned because its issuance was premature. The Building Permit relies on a stormwater permit that was not issued until June 13,

2023. As the Building Permit was issued on June 8, 2023 it should not have been issued at that time. Accordingly, the Building Permit should be remanded to the Building Inspector.

**The Building Permit Should Be Overturned Because It Does Not Satisfy the
Minimum Contiguous Square Feet of Buildable Area As Required by Topsfield
Zoning Bylaw Section 4.08**

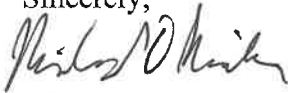
The Building Permit should also be overturned because the Violation Property does not satisfy the minimum contiguous square feet of buildable area as is required by Section 4.08 of the Topsfield Zoning Bylaws.

Section 4.08 states in relevant part:

- A. [E]ach lot in the Central Residential District shall have a buildable minimum of twenty thousand (20,000) contiguous square feet of buildable area.
- B. Buildable area shall be comprised of acreage not including any part of a street or any part of any watercourse, water body, vernal pool, bank, and bordering or isolated vegetated wetland as defined by the Massachusetts Wetlands Protection Act Regulations 310 CMR 10.00, et. seq. or the Topsfield Wetlands General Bylaw.

The Violation Property does not satisfy this zoning requirement; it does not contain at least twenty thousand (20,000) square feet of contiguous buildable area because of the presence of an intermittent stream located on the Property in its northeast corner. The presence of an intermittent stream requires a one hundred (100) foot buffer area and is to remain undeveloped (absent a permit granted by the Town's Conservation Commission that adheres to all state laws and regulations). Even though the proposed area of the Property to be disturbed is outside of the buffer area, the contiguous square feet of buildable area is reduced to less than twenty thousand (20,000) square feet and therefore does not satisfy the minimum buildable area requirement set forth in Section 4.08 of the Topsfield Zoning Bylaws and the Violation Property should have been determined to be unbuildable.

Sincerely,



Michael Dinicola

cc: Town of Topsfield Building Inspector
Town of Topsfield Zoning Board of Appeals

Exhibit A – Building Permit

POST THIS CARD SO IT IS VISIBLE FROM STREET



BUILDING PERMIT

Total Fee: \$ 5,351.00
Fee Paid: \$ 5,351.00
Received By:
Date Granted: 06/08/2023
Permit Number: 23-154RB

HIC Registration Number:

THIS CERTIFIES THAT LOPEZ ORLANDO TR

has permission to:

Construct new single family residence,

Located at 97 MAIN ST


Plat/Map 32

Lot/Block 135 0

Parcel 32 135 0

Provided that the person accepting this Permit shall in every respect conform to the terms of the application on file in this office and to the provisions of the Statutes and Ordinances relating to Zoning, Construction, Alteration and Maintenance of Buildings in the municipality and shall begin work on said building within 6 MONTHS from the date hereof and prosecute the work thereon to a speedy Completion.

Any person who shall violate any of the Statutes and Ordinances relating to Zoning, Construction, Alteration, and Maintenance in the municipality shall be punished by penalties imposed by the State Building Code and Local Zoning Ordinances.


.....

Raymond Chesley, Building Official

BUILDING INSPECTION APPROVALS:

Work shall not proceed until the inspector has approved the various stages of construction.

- | | | | |
|----------|-----------|-----------|-----------|
| 1. _____ | 7. _____ | 13. _____ | 19. _____ |
| 2. _____ | 8. _____ | 14. _____ | 20. _____ |
| 3. _____ | 9. _____ | 15. _____ | 21. _____ |
| 4. _____ | 10. _____ | 16. _____ | 22. _____ |
| 5. _____ | 11. _____ | 17. _____ | 23. _____ |
| 6. _____ | 12. _____ | 18. _____ | 24. _____ |

This Permit must be returned for Certificate of Occupancy.

On remote sites this card may be kept within the contractor's vehicle, readily available for inspection.

Application for Zoning Relief

Form A

Before you file this application, it is necessary that you be familiar with the requirements for filing plans and other materials in support of this application as specified in the Topsfield Zoning Bylaws and the Topsfield Zoning Board of Appeals Rules and Procedures that are available from the Town Clerk.

Incomplete applications will not be considered unless waivers are previously obtained from the Zoning Board of Appeals

.....

BOARD USE ONLY

Date Filed:

Date Action Due

Public Hearing:

Decision:

Revised Form Date: 04/26/2011