

**Town of Southborough**  
**BOARD OF APPEALS**

SOUTHBOROUGH, MASSACHUSETTS 01772

  
Paul J. Berry  
Town Clerk

17 COMMON STREET  
SOUTHBOROUGH, MASSACHUSETTS 01772-1662  
508-485-0717 ext. 1

January 26, 2007

Paul J. Berry, Town Clerk  
Town of Southborough  
Town House  
Southborough, MA 01772

**NOTICE OF DECISION**

**The Southborough Zoning Board of Appeals'**  
**Revised Rules and Regulations**

The Board of Appeals of the Town of Southborough held a public meeting in the Meeting Room of the Southborough Town House on January 24, 2007 and discussed the revised Rules and Regulations governing the application process for public hearings before the ZBA.

Sitting as a Board:                      Salvatore M. Giorlandino, Chairman  
   Sam R. Stivers  
   Regina McAuliffe  
   Peter Norden  
   Justin Lundberg

Also Present:                                Edward Estella

Chairman Giorlandino motioned to adopt the Rules and Regulations as presented in the draft of December 20, 2006 with the following recommended changes from Town Counsel, Aldo Cipriano:

1.     In Section 1(A) at the end, add the phrase "and Chapter 174 Article VI Section 174-25 of the Town Zoning Code".
2.     In Section II (A) on the third line change "succeeding" to "subsequent" and in the same Section at the third bullet point, after the word "sub-committees" add the phrase: "To the extent permissible pursuant to applicable law".
3.     In Section IV, last paragraph, delete "to zoning" and insert in place thereof "to a zoning matter".

4. In General Information for Applications in Section 12, change statement to read as a question. "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?"
5. To be consistent with the Town Bylaws and State Statute in Section 4.1.1 delete the word "lawyer" and inset in place the phrase "Town Counsel and/or such Special Counsel as authorized by the Board of Selectmen".

Mrs. McAuliffe seconded the motion to approve the Rules and Regulations as proposed on December 20, 2006 and with suggested changes from Town Counsel, Aldo Cipriano.

The Board unanimously voted 5-0 to accept the Rules and Regulations as proposed on December 20, 2006 and with suggested changes from Town Counsel, Aldo Cipriano.

A handwritten signature in dark ink, appearing to read "Salvatore M. Giorlandino", written over a horizontal line.

Salvatore M. Giorlandino, Chairman  
Southborough Zoning Board of Appeals



## BOARD OF APPEALS—TOWN OF SOUTHBOROUGH RULES AND REGULATIONS

### SECTION I—AUTHORITY AND EFFECTIVE DATE

A. The following “Rules and Regulations” are adopted by the Town of Southborough (the “Town”) Zoning Board of Appeals (the “Board”) under the authority of, and in compliance with, the General Laws of the Commonwealth of Massachusetts (the “General Laws”), Chapter 40A, Section 12 and Chapter 174, Article VI, Section 174-25 of the Town Zoning Code.

B. These Rules and Regulations shall be filed with the Town Clerk, and after such filing are effective as of January 26, 2007. These Rules and Regulations supercede any and all previous regulations of the Board.

C. These Rules and Regulations may be amended at any time by a vote of four of the five then-sitting members of the Board. Any such amendments shall be filed with the Town Clerk in the same manner in which these Rules and Regulations were so filed and will be effective as of such filing date (or other later date as specified as part of such filing).

### SECTION II—OFFICERS AND DUTIES

A. Chairman: A Chairman shall be elected annually no later than August 31 by majority vote of the Full Members of the Board and will serve for a twelve (12) month term from September 1 through the subsequent August 31. Should a new Chairman not be elected by August 31 of a particular year, the then-current Chairman shall continue to serve as Chairman until a successor is elected. The Chairman shall be responsible for the overall conduct of the Board’s activities, including but not limited to:

- calling meetings;
- presiding at meetings and regulating their conduct;
- appointing sub-committees, to the extent permissible pursuant to applicable law, as he/she deems necessary, to review Board administrative issues and make recommendations to the Board for consideration and approval; and
- authorizing purchase orders for expenditures by the Board.

The Chairman may, at his/her discretion, designate another Board member to fulfill certain of these duties.

B. Acting Chairman: If the Chairman is absent from a meeting or unable to fulfill his/her duties for a period of time, he/she may appoint an Acting Chairman to fulfill the Chairman’s duties for a particular meeting or for a specified period of time. If the Chairman has not appointed an Acting Chairman to serve during such absence, the senior member present, in point of service, shall be Acting Chairman during such absence.

### SECTION III—MEETINGS, HEARINGS AND DECISIONS

The Board shall conduct its affairs, meetings and hearings and render its decisions according to the requirements of the Town Zoning By-Law (the “By-Law”), the Town Code (the “Town Code”) and the General Laws of the Commonwealth of Massachusetts (the “General Laws”), as applicable.



## **SECTION IV—PETITIONS AND APPEALS**

### **A. Process for Petitions and Appeals**

The Board's process for considering and disposing of petitions and appeals shall be according to the requirements of the By-Law, the Town Code and the General Laws, as applicable. The Board may establish related administrative processes not inconsistent with the By-Law, the Town Code and the General Laws as it deems necessary, and such administrative processes may be modified from time to time by a vote of four of the five then-sitting members of the Board.

### **B. Forms and Instructions for Petitions and Appeals**

All petitions and appeals to the Board shall be presented on forms to be supplied by the Board, according to the instructions provided with these forms. Such forms and instructions may be modified from time to time as the Board deems necessary, by a vote of four of the five then-sitting members of the Board,

If there is any conflict between these Rules and Regulations and the By-Law, the Town Code and the General Laws pertaining to a zoning matter, then the order of precedence for resolution of such conflict shall be first, the General Laws, then second the Town Code (including the By-Law) and then third, these Rules and Regulations.

Attested

### **Board of Appeals**

#### **Full Members:**

Salvatore M. Giorlandino, Chairman  
Regina McAuliffe  
Peter C. Norden  
Sam R. Stivers

#### **Alternate Members:**

Edward D. Estella  
Justin E. Lundberg



## 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.



**SOUTHBOROUGH ZONING BOARD OF APPEALS  
REGULATIONS GOVERNING FEES  
AND  
FEE SCHEDULES**

**Adopted January 24, 2007  
Effective January 26, 2007**

**SECTION 1. INTRODUCTION.**

**1.1 Procedural History.** On January 24, 2007, the Southborough Zoning Board of Appeals (the "Board") held a public hearing, pursuant to G.L. c. 41, s. 81Q and G.L. c. 40A, s. 9, to consider proposed regulations governing fees. At the close of the public hearing, the Board voted to adopt regulations governing fees and a new schedule of fees for matters heard by the Board and its consultants on the various types of applications which come before it. This document, subject to revision from time to time in a manner spelled out herein, constitutes the Board's rules governing the imposition of fees and its current fee schedules.

**1.2 Purpose.** These regulations and fee schedules have been adopted to produce a more equitable schedule of fees which more accurately reflects the costs of technical and legal review of applications to the Board; to take advantage of the procedures offered by G.L. c. 44, s. 53G; to establish a review procedure in the selection of consultants; and to promote more informed decision-making by the Board.

**SECTION 2. FEE STRUCTURES AND REGULATIONS.**

**2.1 General.** The Board shall impose reasonable fees for the review of applications which come before it. The Board shall impose Administrative Fees and may impose Project Review Fees as may be applicable to the types of applications set forth below.

**SECTION 3. ADMINISTRATIVE FEES.**

**3.1 Applicability.** An Administrative Fee shall be assessed to offset a portion of the expense of review by the Board and its office with regard to all applications set forth in Section 3.3, below.

**3.2 Submittal.** Administrative Fees shall be submitted at the time of the submittal of the application. Any application filed without this fee shall be deemed incomplete and no review work shall commence until the fee has been paid in full.

**3.3 Schedule of Administrative Fees.** The following schedule applies to the types of applications to the Board set forth below. This schedule supersedes all previous schedules as they may have appeared in the Zoning By-Laws, the Rules and Regulations of the Board, and any listings which may have been compiled from time to time for the benefit of applicants.

- A. Variance (one-family or two-family residential use) - \$150.00.  
Modification or extension of such a variance application shall also require a Fee of \$150.00.
- B. Variance (other than one-family or two-family residential use) - \$300.00  
Modification or extension of such a variance application shall also require a fee of \$300.00.
- C. Special Permit (one-family or two-family residential use) - \$150.00.  
Modification or extension of such a special permit application shall also



require a fee of \$150.00.

- D. Special Permit (other than one-family or two-family residential use) – \$300.00  
Modification or extension of such a special permit application related shall also require a fee of \$300.00.
- E. Appeal - \$300.00.
- F. Comprehensive Permit – Fees as specified in the Comprehensive Permit Regulations.

**3.4. Fee Waivers.** The Board may waive or reduce any Administrative Fee, if, in the opinion of the Board, unusual circumstances exist regarding the subject property or the applicant.

**3.5 Refund.** Once the review process has been commenced, the Board shall not refund Administrative Fees, including the case of withdrawal of the application by the applicant.

#### SECTION 4. PROJECT REVIEW FEES.

**4.1 Applicability.** In addition to the Administrative Fee, the Board may, by majority vote, impose a Project Review Fee on those applications which require, in the judgment of the Board, review by outside consultants due to the size, scale or complexity of a proposed project, the project's potential impacts, or because the Town lacks the necessary expertise to perform the review work related to the permit or approval. In hiring outside consultants, the Board may engage engineers, planners, lawyers, designers, or other appropriate professionals able to assist the Board and to ensure compliance with all relevant laws, ordinances, by-laws and regulations. Such assistance may include, but shall not be limited to, analyzing an application, monitoring or inspecting a project or site for compliance with the Board's decisions or regulations, or inspecting a project during construction or implementation.

**4.2 Submittal.** Any required Project Review Fees shall be submitted, for deposit in an account established pursuant to G.L. c. 44, s. 53G (a “53G Account”), within ten (10) days of the Board’s vote requiring such fees. Failure to deposit such fees in a timely manner may be considered by the Board to constitute a constructive request by the applicant for a continuation of additional public hearings relative to the application until the required Project Review Fees are paid.

**4.3 Schedule of Project Review Fees.** The following schedule applies to the types of applications to the Board set forth below. This schedule supersedes all previous schedules as they may have appeared in the Zoning By-Laws, the Rules and Regulations of the Board, and any listings which may have been compiled from time to time for the benefit of applicants. Where more than one type of application has been submitted for Board action, only the largest of the applicable Project Review Fees shall be collected for deposit into the 53G Account, and not the sum of those fees. The following fees are established as guidelines, and the Board may, by a majority vote, determine the required Project Review Fee, depending on, among other factors, the scope and complexity of the project:

- A. Variance or a Special Permit:

<u>Project Size</u>	<u>Fee</u>
1 Lot/Unit	\$ 1,000
2 - 5 Lots/Units	\$ 3,000
6 - 25 Lots/Units	\$ 5,000
More than 25 Lots/Units	\$10,000

- B. Special Permit for Wireless Communications Facilities - \$1,000
- C. Comprehensive Permit – As Specified in the Comprehensive Permit Regulations





**4.4 Replenishment.** When the balance in an applicant's 53G Account falls below twenty-five percent (25%) of the initial Project Review Fee, as imposed above, the Board shall consider whether to require a supplemental Project Review Fee to cover the cost of the remaining project review.

**4.5 Inspection Phase.** After the granting of a Special Permit or a Variance, the Board may require a Supplemental Project Review Fee for the purpose of ensuring the availability of funds during the inspection phase of the review process.

**4.6 Handling of Project Review Fees.** The Project Review Fee is to be deposited into a special account as set forth in G.L. c. 44, s. 53G.

- A. Outside consultants retained by the Board to assist in the review of an application shall be paid from this account.
- B. Project Review Fees shall be turned over to the Town Treasurer by the Board for deposit into a 53G Account.
- C. A copy of the latest statement from the banking institution handling the 53G Account shall be forwarded from the office of the Town Treasurer to the Board office as soon as it is received for timely and accurate accounting.
- D. The Town Accountant shall prepare a report on activity in the 53G Account on an annual basis.
  - 1. This report shall be submitted to the Selectmen for their review.
  - 2. This report shall be printed in the Annual Report for the Town.
- E. An accounting of an applicant's funds held in the 53G Account may be requested by the applicant at any time.
  - 1. The Board shall respond to the request in a timely fashion.
  - 2. This accounting shall include the following information:
    - a. The latest statement from the banking institution handling the account, which should include an accurate accumulated interest portion to the closing date of the statement if such statements are subdivided into individual applicants' accounts. Otherwise, a statement of principal and interest, prepared by the Board office, based on the latest statement from the banking institution, as well as a listing of any outstanding payable amounts.
    - b. A report of all checks authorized for issuance since that last banking statement.
- F. An applicant may request an estimate of bills pending from consultants for work completed, or in progress, but not yet invoiced.
- G. Excess fees in the 53G Account, including accumulated interest, shall be returned to the applicant or the applicant's successor in interest, at the conclusion of the review process, as defined below. For the purpose of this section, any person or entity claiming to be an applicant's successor in interest shall provide the Board with documentation establishing such succession in interest.
  - 1. With the filing of a decision with the Town Clerk denying or awarding a Special Permit, a Variance, or a Comprehensive Permit.
  - 2. With the filing of a decision with the Town Clerk regarding an Appeal.



**4.7. Appeal.** The choice of a consultant selected by the Board for the review of an application may be appealed in writing to the Board of Selectman by the applicant, providing such appeal is initiated within two weeks of the initial selection.

- A. The Selectmen shall convene a formal hearing within twenty days of receiving a written appeal by an applicant.
- B. Two circumstances may disqualify the selected consultant. These conditions of constitute the only grounds for an appeal.
  - 1. Conflict of interest: A consultant shall not have a financial interest in the project under review, or be in a position to financially benefit in some way from the outcome of the pending review process. Consultants must be in compliance with the Massachusetts Conflict of Interest Law, G.L. c. 268A.
  - 2. Lack of appropriate qualifications: A consultant shall possess the minimum required qualifications. The minimum qualifications shall consist of either an educational degree in, or related to, the field at issue or three or more years of practice in the field at issue or a related field.
- C. The required time limits for action upon an application by the Board shall be extended by duration of the appeal.
- D. If no decision is rendered by the Board of Selectmen within one month following the filing of the appeal, the selection made by the Board shall stand.
- E. This appeal shall not preclude further judicial review, if otherwise permitted by law, on the grounds provided for in this section.

**SECTION 5. DELINQUENT ACCOUNTS.** The following rules apply to fees owed to the Board by applicants:

**5.1 Monthly Interest Charge.** All fees past due by one month from the date of invoice shall be subject to a monthly interest charge based upon an annual interest rate of 14%.

**5.2 Costs of Collection.** All costs of collection associate with past due accounts shall be borne by the applicant.

**5.3. Current Delinquents.** All applicants owing fees to the Board at the time of any amendment to these provisions of the regulations shall be sent the following:

- A. A duplicate notice of the amount past due.
- B. A copy of the applicable sections of these regulations with all amendments clearly indicated.
- C. Notice of a 30 day grace period before the commencement of any changes in interest rates or charges.

**SECTION 6. REVISION OF FEE SCHEDULES AND REGULATIONS GOVERNING FEES.**

**6.1 Amendment.** The Board may, by a majority vote, review and revise its regulations and fee schedules, from time to time, as it sees fit.

- A. Amendments shall be preceded by a public hearing.
- B. Any new regulations or alterations to the fee schedule shall take affect upon filing a copy of the amendments with the Town Clerk.



- C. The Board will review its regulations and fee schedule on an annual basis, provided that the Board may waive this provision in any year with a motion carried by a majority of the then-sitting Board members.

Attested

Board of Appeals

Full Members:

Salvatore M. Giorlandino, Chairman  
Regina McAuliffe  
Peter C. Norden  
Sam R. Stivers

Alternate Members:

Edward D. Estella  
Justin E. Lundberg

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**TOWN OF SOUTHBOROUGH  
BOARD OF APPEALS  
APPEAL APPLICATION INSTRUCTIONS**

**INSTRUCTIONS:**

1. Complete the Appeal Application Form (preferably typewritten, but if not, in legible, printed form) and submit it to the Building Department along with the supporting material specified below. A complete Appeal Application Form (and all supporting materials) must be received at least **4 weeks** prior to the scheduled hearing date to meet the legally required advertising deadline. The Board typically meets monthly. Please contact the Board Administrative Assistant at (508) 485-0717 to determine the date of the next scheduled hearing.
2. The Appeal Application Form must first be submitted to and reviewed by the Building Department to assure that the application is complete (the Town Clerk will not accept the Appeal Application Form for filing without the notation by the Building Department that the application is complete). When the Building Department confirms that the application and the required supporting materials are complete by so indicating on the application form, the Applicant must then file the application with the Town Clerk and have the application stamped by the Town Clerk to establish the official filing date.
3. Any material (in addition to that included with the Appeal Application Form) that will be referred to by the Applicant (or the Applicant's representatives) at any public hearing must be submitted to the Building Department at least 7 days prior to such hearing to ensure adequate and proper review by the Board and accessibility to the public. Any material submitted later than this deadline may, at the Board's discretion, constitute a constructive request by the Applicant for a continuation of the hearing if, in the opinion of the Board, the Board, Town staff or the public have not had adequate time to appropriately consider such material. ***Applicants should note that this additional material includes amended plans, renderings, visual displays, models, etc., that may have been prepared after the Appeal Application Form was filed and are expected to be used by the Applicant during a public hearing presentation.***
4. A copy of the Building Inspector/Zoning Officer's opinion and/or the administrative decision that is the subject of the Appeal application **must** be provided with the Appeal Application Form.
5. A check, made payable to the Town of Southborough, in the amount of the required filing fee (refer to the Schedule of Filing Fees, available from the Building Department, to determine the specific filing fee required) must be submitted with the Appeal Application Form.
6. A recent (no more than three (3) months old) certified list of abutters must be obtained from the Assessors' office and submitted with the Appeal Application Form. (Please allow at least one week from the date of request for the list to be prepared by the Assessor's office and be mailed to Applicant.)
7. The notice of the hearing will be prepared and mailed to the Applicant (or their agent or representative) by the Town. Applicants (or their authorized representatives) must attend the public hearing(s). An Applicant's consultants, engineers, surveyors, etc., whose signatures and/or stamps are on drawings or plans submitted to the Board, are expected to be available at public hearings to answer questions that the Board or the public may have about the materials they have prepared.
8. The Town will submit the notice of the hearing to a newspaper to be published twice. The Applicant (or their agent or representative) will be billed directly for this by the newspaper and the Applicant is responsible for payment of this bill.
9. The Applicant (or their agent or representative) is responsible for sending (with confirmation of delivery) copies of the notice of the hearing to all of the abutters on the certified abutters list at least two weeks prior to the hearing. Documentation of this mailing and delivery receipts for the abutter notices must be submitted to the Building Department prior to the hearing.
10. After the hearing has taken place it will be approximately fourteen (14) days before the Board's decision is filed with the Town Clerk. The date of this filing is the official date of the decision. A copy of the filed decision will be mailed to the Applicant and to the abutters by the Town.
11. There is a twenty (20) day appeal period that starts on the decision filing date. The appeal period must elapse before the Town Clerk can certify the decision. During this appeal period the Board's decision may be appealed to either Superior Court or Land Court. If an appeal is made, the Town Clerk cannot certify the decision until the court renders its decision.
12. After Board approval of an Appeal has been certified by the Town Clerk **the Applicant must have this approval recorded at the registry of deeds**. Until this recording occurs, the Appeal will not take effect. **Documentation of recording must be provided to the Building Department before a building permit will be issued.**





## **SUBMITTAL REQUIREMENTS**

Rev. 1.26.07

**A**

### **ALL APPLICATIONS:**

All required documents (and photos) must include ten copies for distribution. The Building Department may require additional copies of any documents, or other documents, to be submitted, as may be necessary. Applications must be signed by the Applicant. If the Applicant is not the Owner, the Owner must also sign the application and documentation (such as a Purchase and Sale Agreement) must be provided to confirm the Applicant's standing to apply for a Appeal.

Plans submitted (other than the single full-size copy for the Building Department files) shall be no larger than 11" x 17" and shall be stamped and signed, as appropriate, by a MA-registered engineer, land surveyor, etc.. All plans and representations must be consistent with plans and representations provided to other Town Boards for the same project.

A plan naming and showing the location of all direct abutters and those across the street from the property must be provided.

### **APPLICATIONS REGARDING USES OF PROPERTY, LOCATION OF STRUCTURES AND DIMENSIONAL REQUIREMENTS:**

A current, certified plot plan must be provided with at least the following shown:

- Existing and proposed conditions on the property, including location, size and description of all structures on the property;
- Property/building plan, square footage and dimensions, with the proposed uses clearly laid out and defined;
- Setbacks required by the Town Zoning By-Law (both in a tabular form and drawn on the plan); and
- Setback distances of structures from all property lines.

### **APPLICANT BURDEN OF PROOF:**

Applicants for an Appeal are advised that (1) their application submission and presentation in a public hearing must specifically address the point(s) being appealed relative to the Town Zoning By-Law (the "By-Law") and (2) the burden of proof is on the Applicant to demonstrate to the satisfaction of the Board that the administrative decision was in error.

### **CHECKLIST FOR APPLICATION SUBMISSION:**

☐ A. Ten (10) copies of a submission package including the following:

- \_\_\_\_\_ 1. Completed Appeal Application Form
- \_\_\_\_\_ 2. The Zoning Officer's opinion related to the Appeal application and/or the formal notification of the decision being appealed;
- \_\_\_\_\_ 3. As appropriate, plans (no larger than 11" x 17"), signed and stamped, as appropriate, by a MA-registered land surveyor, engineer, architect, etc., showing at least the following:
  - \_\_\_\_\_ — the subject property location, square footage and dimensions;
  - \_\_\_\_\_ — the location, size and description of all structures on the property (including the setbacks of all such structures from the property lines) and other relevant features (as applicable) such as driveways, parking, easements, streams, wetlands, wells, septic systems, etc.;
  - \_\_\_\_\_ — the setbacks required by the By-Law for all property boundary lines;
  - \_\_\_\_\_ — the details of the proposed construction that is related to the Appeal application (including any necessary supporting calculations related to the Appeal application);
  - \_\_\_\_\_ — the location of all direct abutters and those across the street from the subject property; and
  - \_\_\_\_\_ — as necessary, copies of any required purchase-sale agreements to confirm an Applicant's standing, or other documents as required by the Building Department.
- \_\_\_\_\_ 4. A certified list of abutters, as obtained from the Assessors' office
- \_\_\_\_\_ 5. As appropriate, current photographs of the subject premises/property, illustrating the appeal point(s).

☐ B. The required filing fee (in the form of a check payable to the Town of Southborough)

☐ C. One full-size version of any plans provided for the Building Department files.

### **CHECKLIST FOR POST-SUBMISSION MATERIALS:**

- ☐ D. Documentation of the mailing and delivery receipts for the abutter notices, which must be submitted to the Building Department prior to the public hearing.
- ☐ E. Any material (in addition to that included with the Appeal Application Form) that will be referred to by the Applicant (or the Applicant's representatives) at any public hearing, which must be submitted to the Building Department at least 7 days prior to such hearing.



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**TOWN OF SOUTHBOROUGH  
BOARD OF APPEALS**  
**APPEAL APPLICATION FORM**  
(PLEASE ANSWER ALL OF THE FOLLOWING)

1. Applicant's Name: \_\_\_\_\_
2. Applicant's Address: \_\_\_\_\_
3. Contact Telephone #(s) \_\_\_\_\_ Email Contact: \_\_\_\_\_
4. Applicant Is: Owner: \_\_\_\_\_ Tenant: \_\_\_\_\_ Licensee: \_\_\_\_\_ Prospective Buyer: \_\_\_\_\_ Other: \_\_\_\_\_
5. Property Owner's Name: \_\_\_\_\_  
(if different from Applicant)
6. Property Owner's Address: \_\_\_\_\_  
(if different from Applicant)
7. Location Of Property: \_\_\_\_\_
8. Zoning District: \_\_\_\_\_
9. Sections Of Zoning Regulations Petition Is Regarding: \_\_\_\_\_  
\_\_\_\_\_
10. Details of Decision Being Appealed: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
11. Specific Relief Requested: \_\_\_\_\_  
\_\_\_\_\_
12. Description of Petition, and Applicant's Reasons for the Board to Approve the Petition:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
12. Please list any Applicant representatives who will be present for the public hearing:

Name	Role (e.g., attorney, architect, etc.)	Address	Telephone Number

(If there are more than four Applicant representatives, please identify them on a separate sheet.)



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13. Have any prior variances or special permits been granted for this property?	_____ NO _____ YES (if "Yes", please provide details on a separate sheet)
14. Are there any outstanding enforcement actions or regulatory issues related to this property (including, but not limited to, EPA/DEP, Town Boards, Federal or State Government agencies) or have there been any such issues related to this property at any time in the past five years?	_____ NO _____ YES (if "Yes", please provide details on a separate sheet)
15. Are there any other pending applications with other Town Boards or necessary approvals from other Town Boards related to this application (including, but not limited to, Planning Board, Conservation Commission, Board of Health)? With other Towns? The State of MA?	_____ NO _____ YES (if "Yes", please provide details on a separate sheet)
16. Application Completeness Review by Building Department	REVIEWED BY _____ REVIEW COMPLETE DATE _____
17. Application Filing with Town Clerk	FILING DATE _____ _____ (Town Clerk Signature)

I hereby request a hearing before the Board of Appeals with reference to the above noted petition, and I hereby authorize the Board members and other Town officials to have full access to the subject property for purposes of viewing the subject property in preparation for such hearing.

Signature Of Applicant: \_\_\_\_\_ Date: \_\_\_\_\_

Property Owner's Signature (if not the Applicant) \_\_\_\_\_ Date: \_\_\_\_\_

Applicants are advised that all papers filed with the Board appealing a decision of the Southborough Building Inspector, seeking a variance, seeking a special permit, or seeking any other relief from or action by the Board, shall be signed and dated by the party on whose behalf the filing is made or by the party's authorized representative and shall state the address, telephone number, facsimile number, and (if available) electronic mail ("e-mail") address of the party or authorized representative. This signature shall constitute a certification that the signer has read the document and believes the content of the document is true and accurate, and that the document is not interposed for delay. Signature by an authorized representative also certifies the full power and authority to represent the party. Any paper filed with the Board that contains false, inaccurate, or misleading information may be grounds for the Board to deny any relief sought from, or request made to, the Board by any party.

Applicants are also advised that at any public hearing the Board Chairman, at his/her discretion, may elect to have the Applicant and/or the Applicant's representatives sworn in relative to the statements that they make to the Board.

The Board, at its discretion and by majority vote, may require that the Applicant submit additional information related to the Application, including, but not limited to, a proposed "Memo of Decision" specifying proposed findings and conditions.

**FOR BOARD USE ONLY**

Application Complete Date: \_\_\_\_\_

Application Filing Date: \_\_\_\_\_

Initial Public Hearing Date: \_\_\_\_\_

Decision Due Date: \_\_\_\_\_



**TOWN OF SOUTHBOROUGH  
BOARD OF APPEALS**  
**SPECIAL PERMIT APPLICATION INSTRUCTIONS**

**INSTRUCTIONS:**

1. Complete the Special Permit Application Form (preferably typewritten, but if not, in legible, printed form) and submit it to the Building Department along with the supporting material specified below. A complete Special Permit Application Form (and all supporting materials) must be received at least **4 weeks** prior to the scheduled hearing date to meet the legally required advertising deadline. The Board typically meets monthly. Please contact the Board Administrative Assistant at (508) 485-0717 to determine the date of the next scheduled hearing.
2. The Special Permit Application Form must first be submitted to and reviewed by the Building Department to assure that the application is complete (the Town Clerk will not accept the Special Permit Application Form for filing without the notation by the Building Department that the application is complete). When the Building Department confirms that the application and the required supporting materials are complete by so indicating on the application form, the Applicant must then file the application with the Town Clerk and have the application stamped by the Town Clerk to establish the official filing date.
3. Any material (in addition to that included with the Special Permit Application Form) that will be referred to by the Applicant (or the Applicant's representatives) at any public hearing must be submitted to the Building Department at least 7 days prior to such hearing to ensure adequate and proper review by the Board and accessibility to the public. Any material submitted later than this deadline may, at the Board's discretion, constitute a constructive request by the Applicant for a continuation of the hearing if, in the opinion of the Board, the Board, Town staff or the public have not had adequate time to appropriately consider such material. ***Applicants should note that this additional material includes amended plans, renderings, visual displays, models, etc., that may have been prepared after the Special Permit Application Form was filed and are expected to be used by the Applicant during a public hearing presentation.***
4. A copy of the Building Inspector/Zoning Officer's opinion on the proposed activity that is the subject of the Special Permit application **must** be provided with the Special Permit Application Form.
5. A check, made payable to the Town of Southborough, in the amount of the required filing fee (refer to the Schedule of Filing Fees, available from the Building Department, to determine the specific filing fee required) must be submitted with the Special Permit Application Form.
6. A recent (no more than three (3) months old) certified list of abutters must be obtained from the Assessors' office and submitted with the Special Permit Application Form. (Please allow at least one week from the date of request for the list to be prepared by the Assessor's office and be mailed to Applicant.)
7. The notice of the hearing will be prepared and mailed to the Applicant (or their agent or representative) by the Town. Applicants (or their authorized representatives) must attend the public hearing(s). An Applicant's consultants, engineers, surveyors, etc., whose signatures and/or stamps are on drawings or plans submitted to the Board, are expected to be available at public hearings to answer questions that the Board or the public may have about the materials they have prepared.
8. The Town will submit the notice of the hearing to a newspaper to be published twice. The Applicant (or their agent or representative) will be billed directly for this by the newspaper and the Applicant is responsible for payment of this bill.
9. The Applicant (or their agent or representative) is responsible for sending (with confirmation of delivery) copies of the notice of the hearing to all of the abutters on the certified abutters list at least two weeks prior to the hearing. Documentation of this mailing and delivery receipts for the abutter notices must be submitted to the Building Department prior to the hearing.
10. After the hearing has taken place it will be approximately fourteen (14) days before the Board's decision is filed with the Town Clerk. The date of this filing is the official date of the decision. A copy of the filed decision will be mailed to the Applicant and to the abutters by the Town.
11. There is a twenty (20) day appeal period that starts on the decision filing date. The appeal period must elapse before the Town Clerk can certify the decision. During this appeal period the Board's decision may be appealed to either Superior Court or Land Court. If an appeal is made, the Town Clerk cannot certify the decision until the court renders its decision.
12. After Board approval of a Special Permit has been certified by the Town Clerk **the Applicant must have this approval recorded at the registry of deeds**. Until this recording occurs, the Special Permit will not take effect. **Documentation of recording must be provided to the Building Department before a building permit will be issued.**



**SUBMITTAL REQUIREMENTS:****ALL APPLICATIONS:**

All required documents (and photos) must include ten copies for distribution. The Building Department may require additional copies of any documents, or other documents, to be submitted, as may be necessary. Applications must be signed by the Applicant. If the Applicant is not the Owner, the Owner must also sign the application and documentation (such as a Purchase and Sale Agreement) must be provided to confirm the Applicant's standing to apply for a Special Permit.

Plans submitted (other than the single full-size copy for the Building Department files) shall be no larger than 11" x 17" and shall be stamped and signed, as appropriate, by a MA-registered engineer, land surveyor, etc.. All plans and representations must be consistent with plans and representations provided to other Town Boards for the same project.

A plan naming and showing the location of all direct abutters and those across the street from the property must be provided.

**APPLICATIONS REGARDING USES OF PROPERTY, LOCATION OF STRUCTURES AND DIMENSIONAL REQUIREMENTS:**

A current, certified plot plan must be provided with at least the following shown:

- Existing and proposed conditions on the property, including location, size and description of all structures on the property;
- Property/building plan, square footage and dimensions, with the proposed uses clearly laid out and defined;
- Setbacks required by the Town Zoning By-Law (both in a tabular form and drawn on the plan); and
- Setback distances of structures from all property lines.

**APPLICANT BURDEN OF PROOF:**

Applicants for a Special Permit are advised that their application submission and presentation in a public hearing must, according to the Town Zoning By-Law (the "By-Law"), specifically address the areas detailed in the By-Law, Section 174-9. While there are a number of specific points detailed in Section 174-9 of the By-Law, depending on the specific type of Special Permit Application, the general requirement in the By-Law for Board approval of a Special Permit is:

"No special permit shall issue except upon a general finding that the use sought and its characteristics shall be in harmony with the intent and purpose of this chapter, shall not be in conflict with public health, safety, convenience and welfare and shall not be substantially detrimental or offensive to the neighborhood or destructive of property values herein."

**CHECKLIST FOR APPLICATION SUBMISSION:**

☐ A. Ten (10) copies of a submission package including the following:

- \_\_\_\_\_ 1. Completed Special Permit Application Form
- \_\_\_\_\_ 2. The Zoning Officer's opinion related to the Special Permit application
- \_\_\_\_\_ 3. Plans (no larger than 11" x 17"), signed and stamped, as appropriate, by a MA-registered land surveyor, engineer, architect, etc., showing at least the following:
  - \_\_\_\_\_ – the subject property location, square footage and dimensions;
  - \_\_\_\_\_ – the location, size and description of all structures on the property (including the setbacks of all such structures from the property lines) and other relevant features (as applicable) such as driveways, parking, easements, streams, wetlands, wells, septic systems, etc.;
  - \_\_\_\_\_ – the setbacks required by the By-Law for all property boundary lines;
  - \_\_\_\_\_ – the details of the proposed construction that is related to the Special Permit application (including any necessary supporting calculations related to the Special Permit application);
  - \_\_\_\_\_ – the location of all direct abutters and those across the street from the subject property; and
  - \_\_\_\_\_ – as necessary, copies of any required purchase-sale agreements to confirm an Applicant's standing, or other documents as required by the Building Department.
- \_\_\_\_\_ 4. A certified list of abutters, as obtained from the Assessors' office
- \_\_\_\_\_ 5. A set of current photographs of the subject premises/property, illustrating the proposed project area(s).

☐ B. The required filing fee (in the form of a check payable to the Town of Southborough)

☐ C. One full-size version of any plans provided for the Building Department files.

**CHECKLIST FOR POST-SUBMISSION MATERIALS:**

- ☐ D. Documentation of the mailing and delivery receipts for the abutter notices, which must be submitted to the Building Department prior to the public hearing.
- ☐ E. Any material (in addition to that included with the Special Permit Application Form) that will be referred to by the Applicant (or the Applicant's representatives) at any public hearing, which must be submitted to the Building Department at least 7 days prior to such hearing.



**TOWN OF SOUTHBOROUGH  
BOARD OF APPEALS  
SPECIAL PERMIT APPLICATION FORM**  
(PLEASE ANSWER ALL OF THE FOLLOWING)

Rev. 1.26.07

SP

1. Applicant's Name: \_\_\_\_\_
2. Applicant's Address: \_\_\_\_\_
3. Contact Telephone #(s) \_\_\_\_\_ Email Contact: \_\_\_\_\_
4. Applicant Is: Owner:\_\_\_\_ Tenant:\_\_\_\_ Licensee:\_\_\_\_ Prospective Buyer:\_\_\_\_ Other: \_\_\_\_\_
5. Property Owner's Name: \_\_\_\_\_  
(if different from Applicant)
6. Property Owner's Address: \_\_\_\_\_  
(if different from Applicant)
7. Location Of Property: \_\_\_\_\_
8. Zoning District: \_\_\_\_\_
9. Sections Of Zoning Regulations Petition Is Regarding: \_\_\_\_\_  
\_\_\_\_\_
10. Specific Relief Requested: \_\_\_\_\_  
\_\_\_\_\_
11. Description of Petition, and Applicant's Reasons for the Board to Approve the Petition:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
12. Please list any Applicant representatives who will be present for the public hearing:

Name	Role (e.g., attorney, architect, etc.)	Address	Telephone Number

*(If there are more than four Applicant representatives, please identify them on a separate sheet.)*



SP

13. Have any prior variances or special permits been granted for this property?	_____ NO _____ YES (if "Yes", please provide details on a separate sheet)
14. Are there any outstanding enforcement actions or regulatory issues related to this property (including, but not limited to, EPA/DEP, Town Boards, Federal or State Government agencies) or have there been any such issues related to this property at any time in the past five years?	_____ NO _____ YES (if "Yes", please provide details on a separate sheet)
15. Are there any other pending applications with other Town Boards or necessary approvals from other Town Boards related to this application (including, but not limited to, Planning Board, Conservation Commission, Board of Health)? With other Towns? The State of MA?	_____ NO _____ YES (if "Yes", please provide details on a separate sheet)
16. Application Completeness Review by Building Department	REVIEWED BY _____ REVIEW COMPLETE DATE _____
17. Application Filing with Town Clerk	FILING DATE _____ _____ (Town Clerk Signature)

I hereby request a hearing before the Board of Appeals with reference to the above noted petition, and I hereby authorize the Board members and other Town officials to have full access to the subject property for purposes of viewing the subject property in preparation for such hearing.

Signature Of Applicant: \_\_\_\_\_ Date: \_\_\_\_\_

Property Owner's Signature (if not the Applicant) \_\_\_\_\_ Date: \_\_\_\_\_

Applicants are advised that all papers filed with the Board appealing a decision of the Southborough Building Inspector, seeking a variance, seeking a special permit, or seeking any other relief from or action by the Board, shall be signed and dated by the party on whose behalf the filing is made or by the party's authorized representative and shall state the address, telephone number, facsimile number, and (if available) electronic mail ("e-mail") address of the party or authorized representative. This signature shall constitute a certification that the signer has read the document and believes the content of the document is true and accurate, and that the document is not interposed for delay. Signature by an authorized representative also certifies the full power and authority to represent the party. Any paper filed with the Board that contains false, inaccurate, or misleading information may be grounds for the Board to deny any relief sought from, or request made to, the Board by any party.

Applicants are also advised that at any public hearing the Board Chairman, at his/her discretion, may elect to have the Applicant and/or the Applicant's representatives sworn in relative to the statements that they make to the Board.

The Board, at its discretion and by majority vote, may require that the Applicant submit additional information related to the Application, including, but not limited to, a proposed "Memo of Decision" specifying proposed findings and conditions.

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**FOR BOARD USE ONLY**

Application Complete Date: \_\_\_\_\_

Application Filing Date: \_\_\_\_\_

Initial Public Hearing Date: \_\_\_\_\_

90 Day Period Expiration: \_\_\_\_\_

Town of Southborough: Special Permit Application Form



**TOWN OF SOUTHBOROUGH  
BOARD OF APPEALS**

**VARIANCE APPLICATION INSTRUCTIONS**

**INSTRUCTIONS:**

1. Complete the Variance Application Form (preferably typewritten, but if not, in legible, printed form) and submit it to the Building Department along with the supporting material specified below. A complete Variance Application Form (and all supporting materials) must be received at least **4 weeks** prior to the scheduled hearing date to meet the legally required advertising deadline. The Board typically meets monthly. Please contact the Board Administrative Assistant at (508) 485-0717 to determine the date of the next scheduled hearing.
2. The Variance Application Form must first be submitted to and reviewed by the Building Department to assure that the application is complete (the Town Clerk will not accept the Variance Application Form for filing without the notation by the Building Department that the application is complete). When the Building Department confirms that the application and the required supporting materials are complete by so indicating on the application form, the Applicant must then file the application with the Town Clerk and have the application stamped by the Town Clerk to establish the official filing date.
3. Any material (in addition to that included with the Variance Application Form) that will be referred to by the Applicant (or the Applicant's representatives) at any public hearing must be submitted to the Building Department at least 7 days prior to such hearing to ensure adequate and proper review by the Board and accessibility to the public. Any material submitted later than this deadline may, at the Board's discretion, constitute a constructive request by the Applicant for a continuation of the hearing if, in the opinion of the Board, the Board, Town staff or the public have not had adequate time to appropriately consider such material. ***Applicants should note that this additional material includes amended plans, renderings, visual displays, models, etc., that may have been prepared after the Variance Application Form was filed and are expected to be used by the Applicant during a public hearing presentation.***
4. A copy of the Building Inspector/Zoning Officer's opinion on the proposed activity that is the subject of the Variance application **must** be provided with the Variance Application Form.
5. A check, made payable to the Town of Southborough, in the amount of the required filing fee (refer to the Schedule of Filing Fees, available from the Building Department, to determine the specific filing fee required) must be submitted with the Variance Application Form.
6. A recent (no more than three (3) months old) certified list of abutters must be obtained from the Assessors' office and submitted with the Variance Application Form. (Please allow at least one week from the date of request for the list to be prepared by the Assessor's office and be mailed to Applicant.)
7. The notice of the hearing will be prepared and mailed to the Applicant (or their agent or representative) by the Town. Applicants (or their authorized representatives) must attend the public hearing(s). An Applicant's consultants, engineers, surveyors, etc., whose signatures and/or stamps are on drawings or plans submitted to the Board, are expected to be available at public hearings to answer questions that the Board or the public may have about the materials they have prepared.
8. The Town will submit the notice of the hearing to a newspaper to be published twice. The Applicant (or their agent or representative) will be billed directly for this by the newspaper and the Applicant is responsible for payment of this bill.
9. The Applicant (or their agent or representative) is responsible for sending (with confirmation of delivery) copies of the notice of the hearing to all of the abutters on the certified abutters list at least two weeks prior to the hearing. Documentation of this mailing and delivery receipts for the abutter notices must be submitted to the Building Department prior to the hearing.
10. After the hearing has taken place it will be approximately fourteen (14) days before the Board's decision is filed with the Town Clerk. The date of this filing is the official date of the decision. A copy of the filed decision will be mailed to the Applicant and to the abutters by the Town.
11. There is a twenty (20) day appeal period that starts on the decision filing date. The appeal period must elapse before the Town Clerk can certify the decision. During this appeal period the Board's decision may be appealed to either Superior Court or Land Court. If an appeal is made, the Town Clerk cannot certify the decision until the court renders its decision.
12. After Board approval of a Variance has been certified by the Town Clerk **the Applicant must have this approval recorded at the registry of deeds**. Until this recording occurs, the Variance will not take effect. **Documentation of recording must be provided to the Building Department before a building permit will be issued.**



**SUBMITTAL REQUIREMENTS:****ALL APPLICATIONS:**

All required documents (and photos) must include ten copies for distribution. The Building Department may require additional copies of any documents, or other documents, to be submitted, as may be necessary. Applications must be signed by the Applicant. If the Applicant is not the Owner, the Owner must also sign the application and documentation (such as a Purchase and Sale Agreement) must be provided to confirm the Applicant's standing to apply for a Variance.

Plans submitted (other than the single full-size copy for the Building Department files) shall be no larger than 11" x 17" and shall be stamped and signed, as appropriate, by a MA-registered engineer, land surveyor, etc.. All plans and representations must be consistent with plans and representations provided to other Town Boards for the same project.

A plan naming and showing the location of all direct abutters and those across the street from the property must be provided.

**APPLICATIONS REGARDING USES OF PROPERTY, LOCATION OF STRUCTURES AND DIMENSIONAL REQUIREMENTS:**

Current, certified plot plans must be provided with at least the following shown:

- Existing and proposed conditions on the property, including location, size and description of all structures on the property;
- Property/building plan, square footage and dimensions, with the proposed uses clearly laid out and defined;
- Setbacks required by the Town Zoning By-Law (both in a tabular form and drawn on the plan); and
- Setback distances of structures from all property lines.

**APPLICANT BURDEN OF PROOF:**

Applicants for a Variance are advised that their application submission and presentation in the public hearing must, according to the Town Zoning By-Law (the "By-Law"), specifically address the following requirements that the Board must consider in its evaluation of an application for a Variance (as found the By-Law, Section 174-25.A(3)):

"The Board of Appeals shall have the power to grant, upon appeal or upon petition, variances from the terms of this chapter, including use variances, where the Board finds that, due to circumstances relating to soil conditions, topography or shape of land or structures and especially affecting such land or structures but not affecting generally the zoning district in which they are located, literal enforcement of this chapter would involve substantial hardship to the appellant or petitioner and that the desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this chapter."

**CHECKLIST FOR APPLICATION SUBMISSION:**

☐ A. Ten (10) copies of a submission package including the following:

- \_\_\_\_\_ 1. Completed Variance Application Form
- \_\_\_\_\_ 2. The Zoning Officer's opinion related to the Variance application
- \_\_\_\_\_ 3. Plans (no larger than 11" x 17"), signed and stamped, as appropriate, by a MA-registered land surveyor, engineer, architect, etc., showing at least the following:
  - \_\_\_\_\_ – the subject property location, square footage and dimensions;
  - \_\_\_\_\_ – the location, size and description of all structures on the property (including the setbacks of all such structures from the property lines) and other relevant features (as applicable) such as driveways, parking, easements, streams, wetlands, wells, septic systems, etc.;
  - \_\_\_\_\_ – the setbacks required by the By-Law for all property boundary lines;
  - \_\_\_\_\_ – the details of the proposed construction that is related to the Variance application (including any necessary supporting calculations related to the Variance application);
  - \_\_\_\_\_ – the location of all direct abutters and those across the street from the subject property; and
  - \_\_\_\_\_ – as necessary, copies of any required purchase-sale agreements to confirm an Applicant's standing, or other documents as required by the Building Department.
- \_\_\_\_\_ 4. A certified list of abutters, as obtained from the Assessors' office
- \_\_\_\_\_ 5. A set of current photographs of the subject premises/property, illustrating the proposed project area(s).

☐ B. The required filing fee (in the form of a check payable to the Town of Southborough)

☐ C. One full-size version of any plans provided for the Building Department files.

**CHECKLIST FOR POST-SUBMISSION MATERIALS:**

- ☐ D. Documentation of the mailing and delivery receipts for the abutter notices, which must be submitted to the Building Department prior to the public hearing.
- ☐ E. Any material (in addition to that included with the Variance Application Form) that will be referred to by the applicant (or the Applicant's representatives) at any public hearing, which must be submitted to the Building Department at least 7 days prior to such hearing.



**TOWN OF SOUTHBOROUGH  
BOARD OF APPEALS**  
**VARIANCE APPLICATION FORM**  
(PLEASE ANSWER ALL OF THE FOLLOWING)

1. Applicant's Name: \_\_\_\_\_
2. Applicant's Address: \_\_\_\_\_
3. Contact Telephone #(s) \_\_\_\_\_ Email Contact: \_\_\_\_\_
4. Applicant Is: Owner: \_\_\_\_\_ Tenant: \_\_\_\_\_ Licensee: \_\_\_\_\_ Prospective Buyer: \_\_\_\_\_ Other: \_\_\_\_\_
5. Property Owner's Name: \_\_\_\_\_  
(if different from Applicant)
6. Property Owner's Address: \_\_\_\_\_  
(if different from Applicant)
7. Location Of Property: \_\_\_\_\_
8. Zoning District: \_\_\_\_\_
9. Sections Of Zoning Regulations Petition Is Regarding: \_\_\_\_\_  
\_\_\_\_\_
10. Specific Relief Requested: \_\_\_\_\_  
\_\_\_\_\_

**11. Description of Petition, and Applicant's Reasons for the Board to Approve the Petition:**

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**12. Please list any Applicant representatives who will be present for the public hearing:**

Name	Role (e.g., attorney, architect, etc.)	Address	Telephone Number

(If there are more than four Applicant representatives, please identify them on a separate sheet.)



V

13. Have any prior variances or special permits been granted for this property?	_____ NO _____ YES (if "Yes", please provide details on a separate sheet)
14. Are there any outstanding enforcement actions or regulatory issues related to this property (including, but not limited to, EPA/DEP, Town Boards, Federal or State Government agencies) or have there been any such issues related to this property at any time in the past five years?	_____ NO _____ YES (if "Yes", please provide details on a separate sheet)
15. Are there any other pending applications with other Town Boards or necessary approvals from other Town Boards related to this application (including, but not limited to, Planning Board, Conservation Commission, Board of Health)? With other Towns? The State of MA?	_____ NO _____ YES (if "Yes", please provide details on a separate sheet)
16. Application Completeness Review by Building Department	REVIEWED BY _____ REVIEW COMPLETE DATE _____
17. Application Filing with Town Clerk	FILING DATE _____ _____ (Town Clerk Signature)

I hereby request a hearing before the Board of Appeals with reference to the above noted petition, and I hereby authorize the Board members and other Town officials to have full access to the subject property for purposes of viewing the subject property in preparation for such hearing.

Signature Of Applicant: \_\_\_\_\_ Date: \_\_\_\_\_

Property Owner's Signature (if not the Applicant) \_\_\_\_\_ Date: \_\_\_\_\_

Applicants are advised that all papers filed with the Board appealing a decision of the Southborough Building Inspector, seeking a variance, seeking a special permit, or seeking any other relief from or action by the Board, shall be signed and dated by the party on whose behalf the filing is made or by the party's authorized representative and shall state the address, telephone number, facsimile number, and (if available) electronic mail ("e-mail") address of the party or authorized representative. This signature shall constitute a certification that the signer has read the document and believes the content of the document is true and accurate, and that the document is not interposed for delay. Signature by an authorized representative also certifies the full power and authority to represent the party. Any paper filed with the Board that contains false, inaccurate, or misleading information may be grounds for the Board to deny any relief sought from, or request made to, the Board by any party.

Applicants are also advised that at any public hearing the Board Chairman, at his/her discretion, may elect to have the Applicant and/or the Applicant's representatives sworn in relative to the statements that they make to the Board.

The Board, at its discretion and by majority vote, may require that the Applicant submit additional information related to the Application, including, but not limited to, a proposed "Memo of Decision" specifying proposed findings and conditions.

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**FOR BOARD USE ONLY**

Application Complete Date: \_\_\_\_\_

Application Filing Date: \_\_\_\_\_

Initial Public Hearing Date: \_\_\_\_\_

100 Day Period Expiration: \_\_\_\_\_



**TOWN OF SOUTHBOROUGH  
BOARD OF APPEALS**

**REQUEST FOR CONTINUATION/EXTENSION OF A HEARING PROCESS**

TO: Chairman, Southborough Board of Appeals

FROM: \_\_\_\_\_

MOST RECENT HEARING DATE: \_\_\_\_\_

IN REFERENCE TO: \_\_\_\_\_

APPLICANT NAME: \_\_\_\_\_

APPLICANT ADDRESS: \_\_\_\_\_

APPLICANT TELEPHONE NUMBER: \_\_\_\_\_

REPRESENTATIVE NAME: \_\_\_\_\_  
(if different from Applicant)

REPRESENTATIVE ADDRESS \_\_\_\_\_  
(if different from Applicant)

REPRESENTATIVE TELEPHONE NUMBER: \_\_\_\_\_  
(if different from Applicant)

I, the above Applicant (or duly authorized representative of such Applicant), hereby request and agree to the continuation of the above referenced hearing related to the above referenced matter(s) and an extension of the Board's time to reach a decision on such matter(s). The hearing shall be continued to: \_\_\_\_\_ at \_\_\_\_\_ PM. The time that the Board shall have to reach a decision on the matter(s) shall be extended until \_\_\_\_\_.

Agreed to by:

\_\_\_\_\_  
Applicant  
(or duly authorized representative)

Date: \_\_\_\_\_

\_\_\_\_\_  
Chairman  
Board of Appeals

Date: \_\_\_\_\_