

TOWN OF ESSEX BYLAWS

APPENDIX B

SPECIAL PERMIT ISSUANCE RULES

A. An applicant for a special permit for a use or activity requiring such permit from the Planning Board (the "Board") under the Zoning By-Law, shall file with the Town Clerk an application therefor together with five copies, all substantially in the form of Exhibit I hereto and each accompanied by:

1. A plot plan (at least 8 1/2 " by 11") showing the dimensions of the lot and area, existing and proposed buildings and respective dimensions, including floor areas and distance from lot lines, all to scale, with a north arrow;

2. If construction is to be more than one story, an exhibit reflecting front and side elevations to scale; and

3. A list of the "parties in interest" including the names and addresses of the applicant, abutters, owners of land directly opposite the property on any public or private street or way and abutters to the abutters within the 300 feet of the property line. All names and addresses shall be obtained from the most recent applicable tax list maintained by the assessors. The list of names and addresses accompanying the application shall be certified as correct by the Board of Assessors or its designee.

B. All pertinent paragraphs of the application form must be completed, and all information required by the form shall be concisely stated. If there is insufficient space in the form, additional sheets may be attached bearing the applicable paragraph number and containing the additional information.

C. Any communication purporting to be an application shall be treated as mere notice of an intention to apply for such an application until such time as it is made on the approved application form. The Board shall only consider a completed form.

D. Notwithstanding any of the foregoing, The Board may, in its sole discretion, waive any of the provisions of Paragraphs A through C inclusive and may require additional information as it deems necessary.

E. The original of the application form shall be signed personally by the applicant.

F. A filing fee of \$100.00 (to cover the cost of public hearing notices and mailing) shall accompany each application. If paid by check, the check shall be made payable to the Town of Essex.

G. The Board will schedule a public hearing with respect to any duly filed application at the earliest possible date, but no later than 65 days after filing of the application depending upon the availability of needed information and response from other interested boards and agencies, and publication time as required by Section 9 of Chapter 40A of the General Laws of Massachusetts.

TOWN OF ESSEX BYLAWS

H. The notice of public hearing shall be substantially in the form of Exhibit II and shall include:

1. The name of the applicant(s);
2. A description of the area or premises;
3. The location of the area or premises including a street address, if any;
4. The subject matter of the hearing;
5. The date, time and place of the hearing; and
6. The nature of action or relief requested.

I. Notice of the public hearing shall be:

1. *Published* in the *Gloucester Times* once in each of 2 successive weeks. The first publication may not be less than 14 days before the date of hearing.

2. *Posted* in a conspicuous place in the Town Hall for a period of not less than 14 days before the date of the hearing.

3. *Mailed*, postage prepaid not less than 14 days before the date of the hearing to "parties in interest" which shall include the applicant, abutters, owners of land directly opposite on any public or private street or way, the abutters to the abutters within 300 feet of the property line, the Board, and the Planning Board of every abutting city or town; and

4. Mailed to other individuals, boards or agencies as deemed advisable by the Board.

J. If the Board has requested a review of special permit applications by other boards or agencies, these boards or agencies shall make recommendations if so desired, and send them to the Board within 35 days after they receive the application. Failure of a board or agency to report within the 35 days shall be deemed no opposition.

K. It is recommended that every applicant appear at the hearing prepared to substantiate the following propositions:

1. That the proposed use will be in harmony with the general purpose and intent of the Zoning By-Law;

2. That the specific site is an appropriate location for such use.

3. That the specific site has adequate public sewerage and water facilities or suitable soil for on-lot sewerage and water systems;

4. That the proposed use as developed will not adversely affect the neighborhood;

5. That there will not be a nuisance or serious hazard to vehicles or pedestrians presented or caused by the proposed use; and

TOWN OF ESSEX BYLAWS

6. That adequate and appropriate facilities will be provided for the proposed use.

L. An applicant may appear at the hearing on his own behalf or be represented by an agent or attorney. In the absence of any appearance without due cause on behalf of an applicant, the Board may decide on the matter using the information it otherwise receives at the hearing.

M. Within 90 days following the date of the public hearing, the Board shall take final action. If this Board fails to take final action within the 90-day limit, the special permit shall be deemed granted.

Note: The issuance of a special permit requires a two-thirds vote of the Board if it has more than 5 duly qualified members, a vote of at least 4 members of a 5-member board, and a unanimous vote of a 3-member board. These voting requirements apply to absolute Board membership as opposed to quorums present from time to time.

N. Before granting a special permit, the Board shall find that the proposed use or activity is in compliance with all provisions and requirements of the Zoning By-Law, and in harmony with its general purpose and intent.

O. Special permits may be issued subject to such conditions, safeguards, or limitations on time or use as the Board may impose for the protection of neighboring uses or otherwise serving the purposes of the By-Laws. Such conditions, safeguards and limitations shall be imposed in writing.

P. The Board shall keep detailed records of its proceedings, which will indicate:

1. The vote of each member upon each question, including whether the member was absent or failed to vote;
2. The reason or reasons for the Board decision; and
3. The official action taken.

Q. Upon the granting of a special permit, the Board shall:

1. File a copy of its decision substantially in the form of Exhibit III together with the record of its proceedings and plans, if any, substantially in the form of Exhibit IV with its Clerk and the Town Clerk;
2. Mail a certified copy of its decision to the owner and to the applicant if other than the owner; and
3. Send a notice of the decision to the "parties in interest" and to persons who requested a notice at the public hearing.

R. A special permit shall not take effect until:

1. The Town Clerk certified on a copy of the decision issued by the Board to the owner that 20 days have elapsed without filing of an appeal or that any appeal filed has been dismissed and denied; and

TOWN OF ESSEX BYLAWS

2. The certified copy of the decision has been recorded at the owner's expense in the Essex South Registry of Deeds, indexed in the Grantor Index under the name of the record owner, and noted on the owner's certificate of title, if any.

S. If an application is unfavorably acted upon, the applicant may not reapply within 2 years except by:

1. First requesting the Board's consent to such action;

2. Having the Board, before voting on whether to give such consent, notify all "parties in interest" of the time and place when the question of such consent will be considered;

3. Having the Board (by the majority described in Paragraph M) make findings of specific and material changes in the conditions upon which previous unfavorable action was based, describing such changes in the record of its proceedings; and

4. Receiving the consent of all or all but one of the members of the Board.

T. Any application for special permit may be withdrawn without prejudice by notice in writing to the Board prior to the publication of the first public hearing notice. Once the notice has been published, a withdrawal without prejudice may only be with the approval of the Board. If an application is withdrawn, the filing fee shall be forfeited.

U. These rules and regulations may be amended, revised or repealed from time to time by a majority vote of the Board. Any such amendment, revision or repeal shall become effective upon filing with the Town Clerk.

V. Any advice, opinion or information given to an applicant by any Board member or any official employee of the Town of Essex shall not be binding on the Board.