

TOWN OF HOPKINTON
ZONING BYLAW

ARTICLE XXII
Appeals
[Added 3-12-1973 ATM, Art. 32]

§ 210-146. Board of Appeals.

- A. Establishment. It is hereby provided that there shall be a Board of Appeals of the Town of Hopkinton.
- B. Powers. The Board of Appeals shall have the following statutory powers under MGL c. 40A: **[Amended 4-13-1978 ATM, Art. 39, 5-4-2009 ATM, Art. 25]**
- (1) Appeals. To hear and decide appeals by any person aggrieved by any order or decision of the Director of Municipal Inspections or other administrative official in violation of any provision of MGL c. 40A or of this Chapter. (See MGL c. 40A, § 8.)
 - (2) Special permits. Pursuant to MGL c. 40A, § 9, to hear and decide applications for special permits for which express provision is made in this Chapter; also, for special permits for uses accessory to an activity permitted as a matter of right which is necessary in connection with scientific research or scientific development or related production, whether or not the accessory use is on the same parcel as the permitted use, provided that the Board finds that such accessory use does not substantially derogate from the public good. A special permit shall lapse within two years of the grant thereof unless good cause is shown why substantial use thereof, or related construction, has not been begun.
 - (3) Variances. Pursuant to MGL c. 40A, § 14, to hear and decide petitions for use and dimensional variances as set forth in MGL c. 40A, § 10. Use variances permit a use of land other than a use expressly permitted in a particular district. Dimensional variances authorize deviations from restrictions dealing with such matters as setbacks, *frontage* and lot size. If the rights authorized by a variance are not exercised within one year of the date of the grant of such variance, such rights shall lapse, unless otherwise extended by the Board of Appeals pursuant to MGL c. 40A, § 10. **[Amended 5-3-1999 ATM, Art. 24]**
- C. Members. The Board of Appeals shall consist of five regular members and four associate members. They shall be appointed by the Selectmen for terms of five years each in such manner that the term of one regular member shall expire each year. The Board shall annually elect a Chairman and a Vice Chairman from among its regular members, and a Clerk from among its regular or associate members. A member can only be removed for cause by the Selectmen and only after written charges have been made and a public hearing has been held. The Chairman may designate an associate member to sit on the Board in case of the absence, inability to act or interest on the part of a member thereof, or in the event of a vacancy on said Board, in which case an associate member may sit as a member of the Board until said vacancy is filled. **[Amended 3-12-1973 ATM, Art. 32; 3-4-1974 ATM, Art. 47; 4-13-1978 ATM, Art. 39, 5-3-2004 ATM, Art. 28]**
- D. Rules. The Board shall adopt rules not inconsistent with the General Laws and the provisions of this Chapter for conducting its business and shall file a copy thereof with the Town Clerk. **[Amended 4-13-1978 ATM, Art. 39]**
- E. Meetings. Meetings of the Board shall be held at the call of the Chairman and also when called in such other manner as the Board shall determine in its rules. The Chairman or, in the absence of

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the Chairman, the Acting Chairman, may administer oaths, summon witnesses and call for the production of papers. [Amended 5-4-2009 ATM, Art. 25]

§ 210-147. Filing of appeals and repetitive applications. [Amended 4-13-1978 ATM, Art. 39 5-4-2009 ATM, Art. 25]

Appeals under MGL c. 40A, § 8 must be filed within 30 days after the administrative decision or action from which the appeal is being taken. Initial applications for special permits or variances, where not in the nature of an appeal from an administrative order or decision, may be filed at any time. A repetitive application for a special permit or variance which has been unfavorably acted upon by the Board of Appeals within the past two years shall not be reconsidered until after a public hearing held by the Planning Board and a vote of consent of eight of its members to the resubmittal, and unless four of the members of the Board of Appeals vote to admit the resubmittal after a finding, described in the record of its proceedings, that there are specific and material changes in the conditions upon which the previous unfavorable action was based.

§ 210-148. Notice of appeals and petitions.

Notice of any appeals, application or petition to the Board of Appeals shall be filed with the Town Clerk, who shall forthwith transmit copies thereof to the officer or board from whose order or decision the appeal is taken, if any, and to the members of the Board of Appeals. Such officer or board shall forthwith transmit to the Board of Appeals all documents and papers constituting the record of the case from which the appeal was taken. Any such notice of appeal, application or petition shall specify the grounds thereof.

§ 210-149. Hearings. [Amended 4-13-1978 ATM, Art. 39]

Public hearings shall be held pursuant to MGL c. 40A, § 11, on all appeals, applications for special permits and applications or petitions for variance.

§210-150. Voting. [Amended 4-13-1978 ATM, Art. 39, 5-4-2009 ATM, Art. 2009]

A vote of four of the five members of the Board of Appeals shall be necessary to reverse any order or decision of any administrative official or to decide in favor of this applicant on any matter on which it is required to pass under this Chapter or to effect any variance in the application thereof.

§210-151. Decisions. [Amended 4-13-1978 ATM, Art. 39; 5-4-1993 ATM, Art. 17, 5-4-2009 ATM, Art. 25]

- A. The Board of Appeals may, in conformity with the General Laws and the provisions of this Chapter, reverse or affirm, in whole or in part, or may modify any order or decision and may make such order or decision as ought to be made and, to that end, shall have all the powers of the officer from whom the appeal is taken and may issue or direct the issue of a permit.
- B. The decision of the Board of Appeals shall be made as follows:
 - (1) In the case of special permits: within 90 days after the public hearing.
 - (2) In all other cases, within 100 days after the date of filing.
- C. Failure of the Board of Appeals to act within the specified period shall be deemed to be the grant of the relief, application or petition sought.
- D. The Board of Appeals shall cause to be made a detailed record of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact and

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setting forth clearly the reason or reasons for its decision, and of its other official actions, copies of all of which shall be immediately filed in the office of the Town Clerk and shall be public record. Notice of decisions shall be mailed forthwith to parties in interest as designated in MGL c.40A, § 11, to the Planning Board and to every person present at the hearing who requests that notice be sent to him and states the address to which such notice is to be sent.

§210-152. Standards.

- A. Special permits, where granted, must be in harmony with the general purpose and intent of this chapter, and they shall be subject to whatever appropriate conditions and safeguards the Board of Appeals may prescribe. **[Amended 4-13-1978 ATM, Art. 39]**
- B. Variances. **[Amended 4-13-1978 ATM, Art. 39; 5-3-1999 ATM, Art. 24]**
 - (1) A variance from the terms of this chapter may be granted only where the Board of Appeals specifically finds that:
 - (a) Owing to circumstances relating to the soil conditions, shape or topography (but not size) of such land or structures, and especially affecting such land or structures (but not affecting generally the zoning district in which it is located), a literal enforcement of the provisions of this chapter would involve substantial hardship, financial or otherwise, to the petitioner; and
 - (b) Desirable 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.
 - (2) Failure to establish any of the standards shall constitute grounds to deny a petition for a variance. A variance may not be granted if the circumstance creating the hardship was self-created or the hardship is unrelated to the premises for which the variance is sought. The loss of the protection afforded a nonconforming use under § 210-127 of this chapter is not a substantial hardship justifying the grant of a variance. **[Amended 5-4-2009 ATM, Art. 2009]**
 - (3) If the Board grants a variance, it may impose conditions, safeguards and limitations, both of time and of use, including the continued existence of any particular structures. The Board may not impose conditions, safeguards or limitations based upon the continued ownership of the land or structures by the petitioner or any owner.
- C. In all matters on which it has jurisdiction to act, the Board of Appeals shall give due consideration to promoting the public health, safety, convenience and welfare, shall encourage the most appropriate use of land and shall permit no building or use injurious, noxious, offensive or detrimental to a neighborhood. To this end, it may prescribe appropriate conditions and safeguards in each case.