

A proposed ordinance amendment to Chapter 225; Chapter 185; Chapter 175; Chapter 191 that revises the waiver standards and procedures to provide consistent standards and procedures across multiple chapters. Specific Land Use Chapter changes include:

§ 225-27.I. Waiver procedures for parking performance standards.

§ 175-13.A. Waiver; conditional agreement; time limits.

§ 185-9.1. Purpose; approval; procedure.

§ 191-20. Variations and exceptions.

Remove and replace all sections with the same insertion as follows:

Chapter 225 Zoning

§ 225-27.I. Waiver procedures for parking performance standards.

~~(1) Waiver. The Planning Board may modify or waive any of the above performance standards when the Planning Board determines that because of the special circumstances of the site such application requirements or standards would not be applicable or would be an unnecessary burden upon the applicant and not adversely affect the abutting landowners and the general health, safety and welfare of the Town.~~

~~(2) The approval of a waiver shall not have the effect of making null and void the intent and purpose of this chapter. In the approval of a waiver, the Planning Board may impose such conditions as will, in its judgment, secure substantially the objectives of the standards and requirements of this chapter.~~

~~(3) Procedure for waiver. All requests for waivers shall be processed in accordance with the following:~~

~~(a) A request for a waiver shall be submitted to the Town of Topsham Planning Office on any business day. The request shall be made in writing and identify a) the specific section of this chapter which is requested for waiver; b) the proposed alternative to the requirement, when applicable; and c) justifications for an approval of the waiver or appeal.~~

~~(b) The Planning staff shall a) schedule the request for consideration by the Planning Board at a public meeting within 60 days of receipt and b) provide adequate notice to the applicant and any other involved parties of the meeting at which consideration of the request is scheduled.~~

~~(c) The Planning staff or Planning Board at their discretion shall refer the matter to the Town Peer Review Engineer for recommendations.~~

~~(d) The Planning Board shall, following the consideration of the request, take such public action~~

Chapter 175 Site Plan Review

§ 175-13. Waiver; conditional agreement; time limits.

~~A. Waiver. The Planning Board may modify or waive any of the above application requirements or performance standards when the Planning Board determines that because of the special circumstances of the site such application requirements or standards would not be applicable or would be an unnecessary burden upon the applicant and not adversely affect the abutting landowners and the general health, safety and welfare of the town.~~

Chapter 185 Street Design and Acceptance

Article IV. Waiver Procedures

§ 185-9.1. Purpose; approval; procedure.

~~A. The provisions of this chapter are the minimum standards for the protection of the public welfare. The Planning Board may grant a waiver from literal compliance with the mandatory provisions of this chapter if the applicant can demonstrate either 1) that compliance would cause hardship as it applies to a particular property, or 2) that an alternative proposal will allow for equal or better results than those stated in the standards above.~~

~~B. The approval of a waiver shall not have the effect of making null and void the intent and purpose of this chapter. In the approval of a waiver, the Planning Board may impose such conditions as will, in its judgment, secure substantially the objectives of the standards and requirements of this chapter.~~

~~C. Procedure for waiver. All requests for waivers shall be processed in accordance with the following:~~

~~(1) A request for a waiver shall be submitted to the Town of Topsham Planning Office on any business day. The request shall be made in writing and identify a) the specific section of this chapter which is requested for waiver; b) the proposed alternative to the requirement, when applicable; and c) justifications for an approval of the waiver or appeal.~~

~~(2) The Planning staff shall a) schedule the request for consideration by the Planning Board at a public meeting within sixty (60) days of receipt and b) provide adequate notice to the applicant and any other involved parties of the meeting to which consideration of the request is scheduled.~~

~~(3) The Planning staff or Planning Board at their discretion shall refer the matter to the Town Peer Review Engineer for recommendations.~~

~~(4) The Planning Board shall, following the consideration of the request, take such public action as it shall deem advisable as it shall deem advisable.~~

Chapter 191. Subdivision of Land

§ 191-20. Waivers; Variations and exceptions. [Amended 5-18-1994 STM, Art. 17]

~~A. Whenever the tract to be subdivided is of such unusual size or shape or is surrounded by such development or unusual conditions that the strict application of the requirements contained in these regulations would result in substantial hardships or injustices, the Planning Board may vary or modify such requirements so that the subdivider is allowed to develop his property in a reasonable manner, but so at the same time the public welfare and interests of the Town are protected and that the intent and spirit of these regulations, Chapter 225, Zoning, and the Comprehensive Plan are preserved.~~

Replace all of the above sections with the following:

A. Purpose. To allow context sensitive flexibility in the review and application of certain land use performance standards for the protection of the environment, public health, safety, and general welfare. The Planning Board may grant a waiver from literal compliance with the mandatory provisions of this chapter if the applicant can demonstrate that:

1. The deviation is unavoidable and represents the minimum feasible under the particular circumstances surrounding the proposal, and the grant of relief is reasonable, necessary and supports the general purpose and intent of the applicable provisions; or
2. The literal enforcement of the provision(s) of the applicable provisions at issue is impracticable or will exact undue hardship because of peculiar conditions pertaining to the property in question; or
3. that an alternative proposal will allow for equal or better results than those stated in the applicable provisions.

B. The approval of a waiver shall not have the effect of making null and void the intent and purpose of this chapter. In the approval of a waiver, the Planning Board may impose such conditions as will, in its judgment, secure substantially the objectives of the applicable provisions of this chapter.

C. Procedure for waiver. All requests for waivers shall be processed in accordance with the following: The approval of a waiver must be accompanied by a completed application form provided by the Topsham Planning Office, including at a minimum an explanation of how and to what extent the following conditions are addressed:

1. The exception addresses subsections A.1, A.2 or A.3 above;
2. The exception provides relief only to the minimum extent necessary;
3. Other environmental features are not damaged in the process of protecting the regulated resources; and

4. No alternative exists that will allow for at least a minimum practical use of the property (if applicable).

i. The Planning staff shall

a) schedule the request for consideration by the Planning Board to take action upon the request

b) provide adequate notice to the applicant and any other involved parties of the meeting to which consideration of the request is scheduled.

ii. The Planning staff or Planning Board at their discretion shall refer the matter to the Town Peer Review Engineer for recommendations.

iii. The Planning Board shall, following the consideration of the request, take such public action as it shall deem advisable.

iv. All waivers shall be included in the final signed and recorded plan.

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