



Town of Rowley

Massachusetts 01969

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EARTH REMOVAL APPLICATION INSTRUCTIONS

Enclosed please find the following:

- Earth Removal Bylaw, excerpted from the General Bylaws of the Town of Rowley, MA
- Town of Rowley Rules and Regulations of the Board of Selectmen Relating to Special Permits
- Special Permits issued by the Board of Selectmen Application made under Section 5.5.1, including Application Form BOSASP-1
- Application Form BOSASP-2

Please complete: 1) Special Permits issued by the Board of Selectmen Application made under Section 5.5.1, including Application Form BOSASP-1 and 2) Application Form BOSASP-2. Please be sure to indicate where you intend to bring the earth that is being removed. Please submit eight copies of these application forms, including a plan with each copy, to the Board of Selectmen's Office. In lieu of the \$200.00 application fee, the Board prefers that the applicant coordinate and pay for the publication of the public hearing notice in the Newburyport Daily News, and the mailing to abutters.

Once your application is deemed complete, the Board of Selectmen will set a date for the hearing. We will type the hearing notice and give it to you for publication in the Newburyport Daily News, and for the mailing to the abutters. Please see page 9 of the Special Permit Rules and Regulations for details on the publication and abutter mailing.

EARTH REMOVAL BYLAW

Referenced in Section 5.0, Intensity of Land Use, of the Zoning Bylaw of the Town of Rowley

A. PURPOSE

The purpose of this bylaw is to promote the health, safety, welfare and amenities of the community or any neighborhood thereof, and to prevent harmful results from improper excavation.

B. GENERAL

1. This section is adopted under the Authority contained in Paragraph 17, Section 21, Chapter 40 of the General Laws.
2. For the purposes of this bylaw, "earth" shall include soil, loam, sand and gravel, or any combination thereof.
3. The Board of Selectmen referred to in this bylaw shall be the same Board of Selectmen established under Section 1, Chapter 41 of the General Laws or the predecessor thereto.

C. PERMITS REQUIRED

1. No earth shall be removed from any parcel of land not in public use, either above or under water, in the Town without written permit or without conditions from the Board of Selectmen as hereinafter provided.
2. Permit without a public hearing.

The Board of Selectmen may issue permits without a public hearing for:

- a. The removal of not more than seventy-five (75) cubic yards from a lot of record for the following purposes:
 1. Where necessary in the ordinary course of farm, garden or nursery activities.
 2. When incidental to landscaping or similar activities for which a building permit is not required.
 3. When such earth is not needed in connection with the construction of a private road or drive.
 - 4.
3. Permit with public hearing.

The Board of Selectmen may issue a permit for removal after a public hearing for new operations and shall issue a permit for continuance of existing operations, providing:

- a. Owners or operators of existing removal register with the Board of Selectmen, registered mail, postage prepaid, their name and the location of the removal within thirty (30) days of the passage of this Bylaw if they wish to continue operation.
- b. The Board of Selectmen determines that the removal has been conducted legally under a permit issued by the Town of Rowley and has been in continuous operation for a period of six (6) months prior to and continuing to the date of adoption of this bylaw.

D. PROCEDURE

1. Applications - An application for permit required by this bylaw shall be filed with the Board of Selectmen in eight (8) copies. The applicants shall be given

a dated receipt. The Board of Selectmen shall transmit one (1) copy to the Conservation Commission and one (1) copy to the Planning Board within seven (7) days of the filing. The application shall consist of the following:

a. An operation plan indicating:

- 1) The location of the proposed excavation and the zoning district in which it is located.
- 2) The legal name and address of the owner of the property involved.
- 3) The legal name and address of the petitioner, which address shall be used by the Board for all correspondence hereunder.
- 4) Name and address of all abutting owners, including those across any streets and use of all land within two hundred (200) feet of the boundaries of the land covered by the application.
- 5) All property lines of land shown on the plan.
- 6) All adjacent streets, private and public.
- 7) Delineation of the removal area and an estimate of the total material to be removed from the area, said estimate to be used in computation of the filing fee – see paragraph D.1.d
- 8) Topography by five-foot (5') contours of the area to be excavated and up to at least one hundred (100') beyond the perimeter of the area involved and along all property lines, related to the Town of Rowley Datum. Location of at least three (3) permanent benchmarks with elevations marked thereon which must be set so that if one is disturbed those not disturbed can be recognized.
- 9) The excavations, fills or side cuts to be made any closer than five (5) feet from abutter's property lines or public right of way.
- 10) A log of not less than three (3) soil borings taken to the depth of the excavation. (Additional borings depending on the size and geology of the site, as required by the Board of Selectmen).
- 11) All access road, drives, storage areas and trucking routes to be used within the Town.
- 12) The means of control of entrances and exits to public ways.
- 13) The means of disposing of rocks, tree stumps, refuse and waste products.
- 14) Provision for safe and adequate water supply.
- 15) The means of temporary and permanent drainage of the site.

b. A re-use plan showing:

- 1) The proposed use, after completion of removal operations, of all the land of the applicant shown on the plan or contiguous thereto.
- 2) Five foot (5') contours of the site as of the proposed completion of the excavation project.
- 3) The drainage of site and excavation after the removal operation.
- 4) The land in a condition no less valuable for development and use than it was before the commencement of operations.

- 5) The schedule to restore the land which cannot exceed three (3) years from the expiration of an initial permit, or a permit renewed within six (6) months of the expiration of another. The land shall be restored so that it can be used for purposes permitted by the Zoning Bylaw of the Town of Rowley for the district in which the land is located.

c. The form of the bond to be used:

- 1) A bond shall be filed by the applicant before the permit is granted or as a condition to the permit to assure satisfactory operation and performance under the requirements of this bylaw and the conditions of the permit.
- 2) The bond shall be in a form satisfactory to the Town Counsel and the Town Treasurer. The bond shall be in an amount which the Selectmen determine adequate to restore the land at the expiration of the permit or at any time during the life of the permit when operations cease, and adequate to repair damage, if any, to public ways. See paragraph E3.
- 3) The bond shall be issued by an insurance company authorized to do business in Massachusetts or shall be of such surety as will qualify for security under the Subdivision Control Law, Chapter 41, 81U (1).
- 4) The bond shall be in an amount determined by the Selectmen; but in no case shall be less than Two Thousand (\$2000.00) for each acre shown on the plan.

d. Payment of a fee

There shall be a filing fee of thirty (\$30.00) dollars for application for a permit required under paragraph C2. The filing fee for an application under paragraph C3, shall be made in accordance with the Town of Rowley Rules and Regulations of the Board of Selectmen Relating to Special Permits.

Section 'd' amended as per voice unanimous vote of ATM 5/2/05, approved by AG's office July 13, 2005 and posted according to law July 20, 2005.

e. Plan Preparation

The plans required for submission shall be prepared at the expense of applicant by a registered land surveyor or registered professional engineer at a scale of one inch equals one hundred feet (1" = 100'). If more than one sheet is used, a key sheet shall be presented.

2. Granting of Permits

- a. Hearing not required - The Board of Selectmen shall grant a permit subject to the limitations of Section D within sixty (60) days of the receipt by them of the application, or state in writing the reasons for refusal, with a copy sent to the applicant by registered mail. Failure of the Board of Selectmen to act within sixty (60) days will constitute approval.
- b. Hearing required - The Board of Selectmen may grant a permit in compliance with the application and plans as provided in this bylaw after

holding a public hearing and review and after receipt of a report from the Conservation Commission, said report to be received with thirty (30) days of the hearing or thirty (30) days lapse without such a report. When exercising jurisdiction under this paragraph, the Board of Selectmen shall conform to all the requirements of procedure applicable to a hearing and decision on a request for a special permit under Chapter 40A of the General Laws, including the requirement thereof for the public notice and hearing.

- c. Appeal - Any person aggrieved by the decision of the Board of Selectmen may appeal to the Board of Appeals as prescribed by Chapter 40A, Section 13 through 22 of the General Laws. *Note: Chapter 40A is now only Sections 13-17.*

3. Permit Expiration

Any permit issued hereunder shall automatically expire upon the completion of the earth removal project for which it was issued or at such time as may be specified in said permit, and in any event within one (1) year from the date of issue thereof. A permit may be renewed by the Board of Selectmen for a period of one (1) year without a hearing if it finds that all conditions then applicable have been complied with and that the work has been carried on continuously and in good faith. A permit may not be renewed more than once without a hearing, and may not be granted for an area in excess of five (5) acres unless in the opinion of the Board of Selectmen the area of the previous permit is being satisfactorily restored for use in accordance with the reuse plan.

4. Conditions for approval

- a. No permit shall be issued for the removal of earth in any location if in the opinion of the Board of Selectmen such removal will:
 - 1. Endanger the public health or safety or constitute a nuisance.
 - 2. Produce noise, dust or other effects observable at the lot lines in amounts seriously objectionable or detrimental to the normal use of the adjacent property.
 - 3. Result in the transportation over ways which will be injured in any way by loads in excess of the road capability or by means of handling vehicles used to transport earth or of handling materials in transport.
 - 4. Result in a change in topography and cover which will be disadvantageous to the appropriate use of land as shown on reuse plan and permitted by the zoning bylaw.
 - 5. Result in the removal of existing topsoil from the Town of Rowley.
- b. No permit for the removal of earth shall be approved by the Board of Selectmen except upon condition that a cover of topsoil of not less than six (6") inches in depth shall be replaced or allowed to remain, except where, due to construction of roads, buildings or permanent physical features, such provision is impractical. Such topsoil cover shall be seeded with a perennial cover crop to assure uniform growth and surface soil stabilization. (See also paragraph E 1).
- c. No permit for the removal of earth shall be approved by the Board if the work extends within three hundred (300') feet of a way open to public use, whether public or private, or two hundred fifty (250') feet of a building or structure, or

within one hundred (100') feet of a property line, or within fifty (50') feet of a natural stream or a body of water unless the Board is satisfied that such removal will not undermine the way or structure and will not cause damage to the abutting property, stream or body of water.

- d. No permit shall be granted for removal from an area in excess of five (5) acres at any one time. (See paragraph 3 above).
- e. All operations under a permit granted under this bylaw will be subject to the provision of Paragraph E, Specifications and Standards of Operations.
- f. In approving the issuance of a permit, the Board of Selectmen shall impose such other reasonable conditions as it deems necessary, which shall be written upon and shall constitute part of the permit, including but not limited to:
 1. The finished leveling and grading.
 2. The type of topsoil and planting necessary to restore area to usable conditions. (See also paragraph b). The topsoil shall be treated with three (3) tons of lime per acre and one thousand (1,000) pounds of 10-10-10 fertilizer, or such other fertilizer as approved by the Board of Selectmen. The type of seed and trees and shrubs to be planted to restore the natural beauty and to reduce the erosion and the procedure to protect the area from erosion while growth is being establish shall also be conditions of the permit.
 3. The duration of the removal operation.
 4. Temporary structures.
 5. Hours of operation and trucking, while at no time shall be between six (6) P.M. and eight (8) A.M. or on a Sunday or legal holiday.
 6. Cover of material being transported, routes of transportation of material and routes of all vehicles involved.
 7. Control of temporary and permanent drainage. All natural drainage shall leave the property at the original drainage point with no increase in flow.
 8. Disposition of boulders and tree stumps.
 9. Suitable fencing to enclose any excavation or quarry which will tunnel under original ground level or which will have a depth of ten (10) feet or more and create a slope of more than three (3) horizontal to one (1) vertical. Any opening in such fence shall be locked when daily operations have ceased and such openings shall be properly signed describing the possible danger within. Such fence shall be located ten (10') feet or more from the edge of the excavation, shall be at least six (6') feet high and shall be of a type which will screen the operation from view from all public ways.
 10. Lighting that does not shine on adjacent properties or public ways.
 11. Maximum noise levels.
 12. Maintenance of natural vegetation on undisturbed land.

E. Specifications and Standards of Operation

All earth removal shall be subject to the conditions of the permit and the following specifications and standards:

1. The methods and stages of removal and of restorations to usable condition shall include all conditions of the re-use plan.
2. Roadways used for transportation of material must be swept clean and cleared of material spilled from trucks, at least once each forty-eight (48) hours and more often, if necessary to maintain safety and a clean neat appearance.
3. Damage to pavement, drainage, structures and curbing cause by said trucks or spillage shall be repaired by the applicant.
4. Any repair or cleaning of roadways as outlined in paragraphs 2 and 3 above, if performed by the town, shall be paid for by the applicant.
5. Adequate steps shall be taken during removal operations to abate excessive dust and all access roads and drives on the site shall be oiled at all times.
6. No equipment, except mobile equipment for sorting, washing, crushing, grading drying, processing, and treating or other operation machinery, shall be used closer than one hundred (100') feet from any public right-of-way or any abutting property line.
7. Side slopes in a pit no steeper than a three (3) (horizontal) to one (1) (vertical) ratio.
8. Adequate lateral support for all adjacent properties shall be provided and maintained.
9. No excavation below the existing grade of any tract boundary nearer that fifty (50') feet to abutter's property boundary or public right-of-way, or lower that four (4') feet above maximum high ground water level, except where a pond is approved on the re-use pan. Final elevation of the pit not in excess of three percent (3%) grade from the nearest public way or ways.
10. Entrance to the premises for the Board of Selectmen or their agent to inspect the site shall be allowed at any time.
11. A requirement that within six (6) months after termination of operation, all buildings, structures and equipment shall be removed from the premises.

F. Variation

Strict compliance with the requirements of these rules and regulations may be waived in connection with earth removal operations and in existence on the date of adoption of this bylaw or on a new operations when, in the judgment of the Board, such action is in the public interest and non inconsistent with the intent of this bylaw.

G. Validity

The invalidity of any section of provision of this bylaw shall not invalidate any other section of provision thereof. This bylaw shall take effect upon the date resulting from the procedure provided for Chapter 40 of the General Laws of the Commonwealth of Massachusetts and upon that date the earth removal bylaw for the Town of Rowley, adopted July 28, 1952 and revised March 7, 1970 shall be repealed.

H. Administration and Enforcement

1. The Board of Selectmen or duly authorized representative shall review the progress of the work from time to time to ensure proper conduct.
2. If the Board of Selectmen concluded that there has been a violation of this section, a notice of violation shall be sent to the applicant, by registered or

certified mail, to the address state on the initial application, and if applicable, a notice ordering a cessation of the improper activities.

3. Any person, trust, firm or corporation willfully violating, disobeying, or refusing to comply with the provisions of this bylaw shall be prosecuted under the terms of General Law, Ter.ed., Chapter 40, Section 21, Paragraph 17 and shall be subject to a fine of Fifty Dollars (\$50.00) for the first offense, One Hundred Dollars (\$100.00) for the second offense, and Two Hundred Dollars (\$200.00) for any subsequent offense. Each day of non-compliance shall constitute a separate offense. The Board may revoke or suspend the permit of any person, firm or corporation holding a permit under this bylaw if such person, etc., violates, disobeys, or fails to comply with any of the provisions of this bylaw.

This bylaw was adopted at the Annual Town, by a vote of 123 in favor and 16 opposed. It was approved by the Attorney General on April 2, 1973 and published by posting in five public places in April 19, 1973. Amended at the Annual Town Meeting of May 7, 1979 (Article 16), approved by the Attorney General's office on September 18, 1979, and published by posting.

Amended at the May 2, 2005 Annual Town Meeting, approved by the Attorney General's Office on July 13, 2005, and posted according to law on July 20, 2005.

**TOWN OF ROWLEY
RULES AND REGULATIONS OF THE BOARD OF SELECTMEN
RELATING TO SPECIAL PERMITS**

Section 1.01: Statutory Authorization, Purpose, and Definitions

The Rules and Regulations set forth herein prescribe the procedure for submission, review, and approval of applications for Special Permits from the Board of Selectmen. They are intended to comply with and supplement the requirements of Chapter 40A of the Massachusetts General Laws and the Town of Rowley Protective Zoning Bylaw and, to the extent applicable, the requirements of Chapter 40 of the Massachusetts General Laws and the Town of Rowley General Bylaws. They supersede and replace the existing Rules and Regulations and are effective upon adoption by the Board of Selectmen.

As used herein, "Board" means the Town of Rowley Board of Selectmen, "Planning Board" means the Town of Rowley Planning Board, "Board of Health" means the Town of Rowley Board of Health, "Conservation Commission" means the Town of Rowley Conservation Commission, "Building Inspector" means the Town of Rowley Building Inspector, "Town Clerk" means the Town Clerk of the Town of Rowley and wherever reference to filing a document with the Town Clerk is made includes the office of the Town Clerk of the Town of Rowley, "Zoning Bylaw" means the Town of Rowley Protective Zoning Bylaw, "General Bylaw" means the Town of Rowley General Bylaws, "M.G.L." or "General Laws" mean the Massachusetts General Laws, "Town" means the Town of Rowley, and "Permit Site" means the land described in the application for a Special Permit upon which the proposed use, business, or other activity is to be conducted.

Section 1.02: Application

- A. An application for a Special Permit from the Board may be obtained without charge from the office of the Board during normal business hours. An application may also be obtained by calling the office of the Board and making arrangements for delivery of an application by mail or other means, the cost of which shall be borne by the addressee at the Board's discretion. The current telephone number of the office of the Board is 978 948-2372.
- B. An application for a Special Permit consists of the Application Form (Form BOSASP-1), the Special Permit Information Summary (BOSASP-2), and the plans, documents and materials described in Section 1.03. An application shall not be considered complete unless an application fee is paid to the Board as provided in Section 1.04(A) below. The application

*Special Permit Rules and Regulations
Rowley Board of Selectmen
Adopted October 20, 2003
Amended March 14, 2005*

fee is Two Hundred Dollars (\$200.00) unless the Zoning Bylaw or General Bylaws provide otherwise, in which case the Bylaw provision or provisions shall apply. For example, the application fee for a Special Permit required under Section C(2) of the Earth Removal General Bylaw is stipulated in the general bylaw.

A copy of these Rules And Regulations Relating To Special Permits, as amended, shall accompany the Application Form and, together with the Zoning Bylaw, the General Bylaws, Chapter 40A of the General Laws, and other applicable law, should be reviewed by the applicant prior to submitting an application.

Section 1.03: Application Requirements

- A. An applicant for a Special Permit shall file in accordance with the requirements of Section 1.04(A) below:
1. one (1) original and ten (10) copies of the Application Form (Form BOSASP-1), signed and dated by the applicant:
 - a. identifying the name and address of the person to whom all notifications and communications from the Board or its agent shall be sent;
 - b. identifying the name and address of the owner of the applicant's land if other than the applicant; and
 - c. providing such further information as the Board may reasonably require relating to the applicant, the applicant's land, the right of the applicant if other than the owner to occupy and use the applicant's land, and the capability of the applicant with respect to the proposed use, business, or other activity to be conducted on the applicant's land;
 2. one (1) original and ten (10) copies of the Special Permit Information Summary (BOSASP-2) containing the information specified in Section 1.03(B) below;
 3. if the application is for a Special Permit required under § 4.2.5 of the Zoning Bylaw for certain uses in the Central District or for any other Special Permit that also requires Planning Board approval of a Site Plan in accordance with § 7.6 of the Zoning Bylaw, ten (10) copies of the Site Plan approved by the Planning Board and ten (10) copies of the Planning Board decision approving the Site Plan, including all conditions, in compliance with the requirements of

*Special Permit Rules and Regulations
Rowley Board of Selectmen
Adopted October 20, 2003
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§ 7.6 of the Zoning Bylaw;

4. if the application is for a Special Permit required under § 4.10.2 of the Zoning Bylaw for certain buildings or structures to be erected or placed in the Flood Plain and Watershed Protection District, two (2) copies of plans showing the proposed buildings or structures, the proposed septic system, the proposed surface drainage, the proposed changes in the contours of the applicant's land including those involved in the construction of any access way by filling or otherwise, and disclosing such other information as the Board may reasonably require to assure that the applicable permitting standards have been met, except that if any portion of the site falls within an area described in Chapter 130 or Chapter 131 of the General Laws, three (3) copies of such plans shall be submitted with the application;
5. if the application is for a Special Permit required under § 8.1.1 of the Zoning Bylaw for certain buildings, structures, or paved parking areas to be constructed or placed on land comprised of one or more of the types of soils identified in § 8.1.1, or for a determination that no such Special Permit is required, two (2) copies of plans showing the proposed buildings, structures, or paved parking areas, the proposed septic system, the proposed surface drainage, the proposed changes in the contours of the applicant's land including those involved in the construction of any access way by filling or otherwise, and disclosing such other information as the Board may reasonably require to assure that the applicable permitting standards have been met, except that:
 - a. if any portion of the site falls within an area described in Chapter 130 or Chapter 131 of the General Laws, three (3) copies of such plans shall be submitted with the application, and
 - b. if a permit is required from the Conservation Commission under Chapter 131 of the General Laws, three (3) copies of the permit granted by the Conservation Commission shall be submitted with the application;
6. if the application is for a Special Permit required under § 8.3 of the Zoning Bylaw and the Earth Removal General Bylaw for extraction and removal activities, including the removal of rocks, minerals, clay, sod, soil, loam, sand and gravel, or any combination thereof, eight (8) copies of an operation plan setting forth the

*Special Permit Rules and Regulations
Rowley Board of Selectmen
Adopted October 20, 2003
Amended March 14, 2005*

information identified in Section D(1)(a) of the Earth Removal General Bylaw and, in addition, eight (8) copies of a re-use plan disclosing the information identified in Section D(1)(b) of the Earth Removal General Bylaw; and

7. A list of the names and addresses of all Parties In Interest as they appear on the most recent tax list certified by the Board of Assessors of the Town of Rowley and, if any portion of the land of a Party In Interest lies outside the Town of Rowley, certified by the assessors of the city or town within which such land lies. For all purposes of these Rules and Regulations, Parties In Interest mean the following:

- a. the applicant,
- b. the owners of land that abut the applicant's land,
- c. the owners of land directly opposite the applicant's land and situated on any public or private street or way,
- d. the owners of land that abut land which abuts the applicant's land and which lies within three hundred feet of the property line of the applicant's land,
- e. the Planning Board of the Town of Rowley, and
- f. the planning board of each town or city that abuts the applicant's land.

B. The following information, using Form BOSASP-2:

1. A brief description of the use, business, or other activity proposed for the site, including the specific nature and scope of the operations to be conducted on site;
2. The noise level at each boundary with an abutting property, at the time of application and as anticipated after the activity on site proposed by the applicant is in operation;
3. the expected hours of operation of the business or other activity;
4. the anticipated number of residents, employees, workers, volunteers, or others who will occupy or visit the site on a daily basis;
5. the anticipated number and type of heavy equipment vehicles and trucks entering and leaving the site on a daily basis, and the anticipated schedule of their entry, operation on site, and departure;
6. the anticipated number and types of large trash disposal receptacles, such as dumpsters, their location, and the pick-up and removal schedule of all trash, garbage, and other waste disposal containers;

*Special Permit Rules and Regulations
Rowley Board of Selectmen
Adopted October 20, 2003
Amended March 14, 2005*

7. a schematic of each sign, including its size, lettering, graphics, illustrations, location, and nature and extent of illumination;
8. a traffic study, including the anticipated number of vehicles entering the site and leaving the site (including vehicles included under Section 1.03(B)(5) above) on a daily basis, during peak hours of operation and during off-peak hours of operation;
9. an environmental impact statement;
10. the number, location, dimensions and surface cover material (type of pavement, gravel, grass, other) of all parking spaces designated for visitors, for customers, for employees, for residents, for handicapped, for trucks, and for all others;
11. a list of all toxic or hazardous waste to be generated, used, stored temporarily or permanently, or otherwise located on the site;
12. a description of the nature and extent of external lighting proposed for the site, including the location, number, and height of light poles, the type of lighting and extent and direction of illumination proposed for the lights affixed to the poles and other structures, and the extent to which such external lighting will illuminate off-site properties and ways; and
13. a copy of all approvals and permits issued by any federal, state, and Town agency, department, board, commission, or official for the proposed use or structure, and a description of the nature and status of all approvals and permits required by any federal, state, and local agency, department, board, commission, or official for the proposed use or structure that have not been issued.

C. Unless the General Laws, the Zoning Bylaw, or the General Bylaws provide otherwise, the Board may for good cause waive all or a portion of the application fee or may for good cause waive any application requirement set forth in Section 1.03(A) or Section 1.03(B) above on its own motion or upon a written request by the applicant which:

1. designates the particular requirement and corresponding page and section number in the application document where such requirement appears, and
2. details the reason or reasons for the requested waiver of the requirement. An example of "good cause" sufficient to warrant waiver of an application requirement is a showing satisfactory to the Board that:
 - a. the requirement doesn't apply to the use, business, or activity proposed in the application; or

*Special Permit Rules and Regulations
Rowley Board of Selectmen
Adopted October 20, 2003
Amended March 14, 2005*

- b. compliance with the requirement would impose an unreasonable burden or expense upon the applicant, taking into account the scope or other feature of the use, business, or activity proposed in the application and the information reasonably required by the Board to assure that the applicable permitting standards have been met.

Section 1.04: Procedure for Filing Application, Determining Completeness, and Scheduling Board Action

- A. An applicant for a Special Permit shall file the original of the Application Form (Form BOSASP-1) and the original of the Special Permit Information Summary (BOSASP-2) with the Town Clerk. No later than one (1) business day thereafter the applicant shall file in the office of the Board the required number of copies of the application, the certified tax list or lists in accordance with the requirements of Section 1.03(A) above, and the application fee. At least one copy of the application filed with the Board shall bear the certification of the Town Clerk showing the date and time the application was filed with the Town Clerk.
- B. Upon compliance with the filing requirements set forth in Section 1.04(A) above, an agent of the Board may review the application, advise the applicant if it appears to be incomplete, and further advise the applicant with regard to information, plans, documents, or modifications that may render the application complete. In no event shall an application be considered complete until the Board has determined that it is complete. In no event shall an application be deemed "filed" for purposes of any deadline prescribed by state or local law for holding a public hearing on the application or for otherwise acting on an application until the Board has determined the application is complete.
- C. At any time after compliance with the filing requirements set forth in Section 1.04(A) above, an applicant may request the Board to determine that an application is complete by filing in the office of the Board a request on such form as the Board may prescribe. Within seven (7) days after the filing of such form, the Board or an agent of the Board shall notify the applicant in writing of the date, time, and location of a public meeting of the Board at which the Board shall consider the applicant's request. Such meeting shall be held within fourteen (14) days after the date of such notification.
- D. If the applicant or a duly authorized agent or representative of the applicant without good cause fails to appear at any meeting of the Board to determine whether an application is complete, no action shall be taken by the Board on the application until the applicant refiles the request in accordance with and subject to the requirements and procedure set forth in Section 1.04(C) above.
- E. At any meeting of the Board to determine whether an application is complete, the Board by majority vote:

*Special Permit Rules and Regulations
Rowley Board of Selectmen
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1. may request the applicant or a duly authorized agent or representative of the applicant to clarify and supplement any information provided with the application, including clarification of the reason or reasons and information in support of any waiver request;
 2. may determine that the application is incomplete, may identify the changes or additions that may render the application complete, and, if requested by the applicant in writing, shall schedule a date, time, and location of a subsequent public meeting of the Board at which it shall determine whether the application is complete;
 3. may deny the application for incompleteness, if the application remains incomplete six (6) months after the application is filed with the Town Clerk pursuant to Section 1.04(A) above, unless the Board for good cause waives this deadline; or
 4. may determine that the application is complete.
- F. At any meeting of the Board during which it determines that an application is complete, the Board shall also by majority vote,
1. if the application is for a Special Permit required under Section C(2) of the Earth Removal General Bylaw or any other Special Permit that does not require a public hearing on the application:
 - a. schedule a date, time, and location of a public meeting to be held within 30 days; and
 - b. cause notice of the public meeting containing the information required by Section 1.04(G) below to be filed with the Town Clerk, accompanied by a request that the notice or a copy of the notice be posted on the principal official bulletin board of the Town of Rowley within Town Hall for a period of not less than forty-eight (48) hours prior to the meeting. In computing compliance with this requirement of notice, Saturdays shall be included and Sundays and legal holidays shall be excluded.
 2. if the application is for a Special Permit that requires a public hearing on the application:
 - a. schedule a date, time, and location of a public hearing to be held within 65 days; and
 - b. cause notice of the public hearing containing the

information required by Section 1.04(G) below to be provided as follows:

- (1) by publication in the Newburyport Daily News once in each of two successive weeks, the first publication to be not less than fourteen (14) days before the day of the hearing;
 - (2) by posting notice on the principal official bulletin board of the Town of Rowley within Town Hall for a period of not less than fourteen (14) days before the day of the hearing; and
 - (3) by mail, postage prepaid, reasonably in advance of the hearing to all Parties In Interest as they appear on the certified tax list or lists provided by the applicant in accordance with the requirements of Section 1.03(A)(7) above.
3. cause one (1) copy of the application to be transmitted within seventy-two (72) hours to the Planning Board, the Board of Health, the Conservation Commission, and the Building Inspector, accompanied by a request for a written report to be submitted to the Board and to the applicant within thirty (30) days after receipt of the transmitted application. The report shall include such comments and recommendations regarding the application as deemed appropriate, including a recommendation that the application be granted, granted with conditions, or denied.

The failure of the Planning Board, the Board of Health, the Conservation Commission, or the Building Inspector to submit a written report to the Board within thirty (30) days after receipt of the transmitted application shall be deemed to be lack of opposition to the application, except in the case of an application for a Special Permit required under § 4.10.2 or § 8.1.1 of the Zoning Bylaw, in which case such failure by the Board of Health or the Conservation Commission shall be deemed to be a recommendation for granting the Special Permit without conditions. For purposes of this Section 1.04(F)(3), the date the report is transmitted shall be considered the date the report is submitted.

- G. The notice of public meeting required by Section 1.04(F)(1)(b) above and the notice of public hearing required by Section 1.04(F)(2)(b) above shall contain at a minimum:

*Special Permit Rules and Regulations
Rowley Board of Selectmen
Adopted October 20, 2003
Amended March 14, 2005*

1. the name of the applicant,
 2. the location of the applicant's land by street address or other adequate identification,
 3. a description of the area or premises comprising the applicant's land,
 4. the Special Permit that is sought and the subject matter of the public meeting or the public hearing,
 5. the date, time and place of the public meeting or the public hearing, and
 6. a description of the proposed use, business, or other activity for which the Special Permit is sought.
- H. No public meeting or public hearing on a Special Permit application shall be held on any day on which a state or municipal election, caucus or primary is held in the Town of Rowley.
- I. The Board shall refund or return the application fee paid by an applicant if it denies the application for incompleteness or if the applicant withdraws its application by filing in the office of the Board a written notice of withdrawal prior to a Board determination that the application is complete. An application may be withdrawn without prejudice by the applicant prior to a determination by the Board that the application is complete, but thereafter may be withdrawn without prejudice only if the applicant files in the office of the Board a written request to withdraw its application and the Board approves the request. An applicant shall not be entitled to a refund or return of the application fee after the Board determines the application is complete.

Section 1.05: Procedure For Board Action on Completed Application

- A. Public meeting and action on application that does not require a public hearing
1. The public meeting shall be held within thirty (30) days after the date the Board determines the application is complete.
 2. The Board shall act on the application within sixty (60) days after it determines the application is complete. The failure of the Board to act within such sixty (60) days, or extended time if applicable, shall constitute a grant of the application. For purposes of this Section 1.05(A)(2), "act" means a Board decision to grant, grant with conditions, or deny the application.

*Special Permit Rules and Regulations
Rowley Board of Selectmen
Adopted October 20, 2003
Amended March 14, 2005*

3. A majority vote of the Board is required to grant or grant with conditions the application.
4. A decision of the Board to grant an application with conditions or deny an application shall be reduced to writing, including the conditions or reasons for denial, as the case may be, within fourteen (14) days after the decision.
5. A decision of the Board to grant an application with or without conditions shall take effect upon issuance of the decision in written form, a copy of which shall be sent to the applicant by registered mail and to the owner of the site if other than the applicant. If an application is granted on account of the failure of the Board to act on the application within the time prescribed, the grant of the application shall take effect upon expiration of such prescribed time.

B. Public hearing and final action on application that requires a public hearing

1. The public hearing shall be held within sixty-five (65) days after the date the Board determines the application is complete. Subject to the provisions of Section 1.05(B)(7) below, the failure of the Board to hold a public hearing on an application for a Special Permit required under § 4.10.2 or under § 8.1.1 of the Zoning Bylaw within such sixty-five (65) days, or extended time if applicable, shall be deemed to be a grant of the application.
2. The Board shall take final action on the application within ninety (90) days following the date of the public hearing. Subject to the provisions of Section 1.05(B)(7) below, the failure of the Board to take final action within such ninety (90) days, or extended time if applicable, shall be deemed to be a grant of the application. For purposes of this Section 1.05(B)(2), "final action" means a decision by the Board following the close of the public hearing and in a meeting open to the public under the Open Meeting Law, M.G.L. c. 39, §§ 23A through 23C, to grant, grant with conditions, or deny the application, and the filing by the Board of a document reporting the results of the Board's vote on the decision with the Town Clerk. The written form of the decision required to be filed with the Town Clerk by Section 1.05(B)(4) below constitutes a document reporting the results of the Board's vote on the decision for

*Special Permit Rules and Regulations
Rowley Board of Selectmen
Adopted October 20, 2003
Amended March 14, 2005*

purposes of this Section 1.05(B)(2).

3. A unanimous vote of the Board is required to grant or grant with conditions the application, except that if the Board is comprised of five members a vote of four members is required to grant or grant with conditions the application.
4. The decision of the Board shall be reduced to writing, which shall include a detailed record of the proceedings, the vote of each member upon each question, the name of each member absent or failing to vote, the reason for the decision and for all official actions taken by the Board, and the conditions or reasons for denial as the case may be. Within fourteen (14) days after the decision the Board shall:
 - a. file such written form of the decision with the Town Clerk; and
 - b. mail to the applicant, to the owner of the site described in the application if other than the applicant, to the Parties In Interest, and to every person present at the public hearing who prior to closure of the hearing has provided the Board with a written request for notice of the decision along with the person's name and address to which such notice is to be sent:
 - (1) if the decision is to deny the application, a copy of such written form of the decision;
 - (2) if the decision is to grant or grant with conditions the application, a copy of such written form of the decision certified by the Board, along with a certification by the Board that a copy of such written form of the decision and all plans referred to in the decision have been filed with the Planning Board and with the Town Clerk; and
 - (3) a written notice that appeals, if any, shall be made pursuant to M.G.L. c. 40A, § 17, and shall be filed within twenty (20) days after the date the written form of the decision is filed with the Town Clerk.
5. Subject to the provisions of Section 1.05(B)(7) below, the failure of the Board to file such written form of the decision with the Town Clerk or the failure of the Board to mail a copy of the written form of the decision on an application for a Special Permit required

*Special Permit Rules and Regulations
Rowley Board of Selectmen
Adopted October 20, 2003
Amended March 14, 2005*

under § 4.10.2 or under § 8.1.1 of the Zoning Bylaw to the applicant within such fourteen (14) days, or extended time if applicable, shall be deemed to be a grant of the application.

6. A decision of the Board to grant an application with or without conditions shall take effect upon the applicant's recording in the Essex County Registry of Deeds, and indexing in the grantor index of such Registry of Deeds under the name of the owner of record, of a copy of the written form of the decision that was filed with the Town Clerk, which copy bears the certification of the Town Clerk that twenty (20) days have elapsed after such filing with the Town Clerk and no appeal was filed, or that if such appeal was filed, that it has been dismissed or denied.

7. An application that is approved by reason of the Board's failure to act or take final action within the time prescribed shall take effect only if the applicant claims such approval and such approval has become final, as follows:

a. Within fourteen (14) days after expiration of such prescribed time the applicant:

(1) notifies the Town Clerk in writing that the application has been approved by reason of the Board's failure to act or take final action within the time prescribed, and that notice of such approval has been sent by the applicant to all Parties In Interest;

(2) sends by mail notice of approval of the application to all Parties In Interest. Such notice shall identify the date the applicant notified the Town Clerk in writing that the Board failed to act or take final action within the time prescribed and shall identify the act or final action the Board failed to take. The notice shall also specify that appeals, if any, are to be made pursuant to M.G.L. c. 40A, § 17, and filed within twenty (20) days after the date the Town Clerk received such written notification from the applicant.

b. If no notice of appeal has been filed pursuant to M.G.L. c. 40A, § 17, or, if such appeal was taken and the Town Clerk has received certified records of the court in which the

*Special Permit Rules and Regulations
Rowley Board of Selectmen
Adopted October 20, 2003
Amended March 14, 2005*

appeal was adjudicated indicating that such grant or deemed approval has become final, the applicant shall record in the Essex County Registry of Deeds, and index in the grantor index of such Registry of Deeds under the name of the owner of record, the following:

- (1) a copy of the application that was filed with the Town Clerk; and
- (2) the certification of the Town Clerk stating either that:
 - (A) the Board failed to act or take final action within the time prescribed, no appeal has been filed, and the grant of the application resulting from such failure to act or take final action has become final, or
 - (B) if an appeal was filed, that it has been dismissed or denied.

C. Standards for approval of an application for a Special Permit

A Special Permit, with or without conditions, may be issued by the Board only after the applicant has:

1. satisfied the Board that the use, business, or other activity proposed for the site is in harmony with the general purpose and intent of the Zoning Bylaw;
2. provided the Board with all approvals and permits required by any federal, state, and Town agency, department, board, commission, or official for the proposed use or structure;
3. satisfied the Board that the use, business, or other activity, as developed and operated, shall not adversely affect the neighborhood and abutting properties and districts, taking into consideration the factors set forth in Section 1.03(B) above;
4. satisfied the Board that all other requirements of the Zoning Bylaw, General Bylaw, and the General Laws for issuance of the Special Permit, with or without conditions, have been met.

D. Burden of Proof and Conduct of Proceedings.

- a. An applicant for a Special Permit has the burden of proof and must

*Special Permit Rules and Regulations
Rowley Board of Selectmen
Adopted October 20, 2003
Amended March 14, 2005*

demonstrate to the Board that approval is warranted.

- b. At the public meeting or public hearing on an application, the Board shall conduct the proceeding in such manner as it deems conducive to the efficient discharge of its responsibilities consistent with the rights of the applicant and other Parties In Interest. At the public hearing on an application, the Board shall ordinarily hear or accept presentations in the following order: the applicant, its agents and consultants; other proponents of the application, their agents and consultants; Town officials, boards, and consultants; opponents of the application, their agents and consultants; and interested parties.
- c. The Board shall permit the applicant a reasonable opportunity to address questions or points raised by the Board or others during the course of the public hearing and shall permit any opponent a reasonable opportunity to address any written or illustrative materials submitted by the applicant to the Board after commencement of the public hearing.
- d. No such materials received by the Board after the close of the public hearing may be considered by the Board in reaching its decision.

E. Extensions, Continuances

- 1. The required time limit for a public meeting, public hearing, act or final action of the Board, filing the written form of the Board's decision with the Town Clerk, or mailing a copy of the written form of the decision to the applicant, may be extended by written agreement between the applicant and the Board. A copy of such agreement or agreements, if any, shall be filed with the Town Clerk.
- 2. The Board may continue a public meeting or public hearing to a subsequent date, time, and location at the request of the applicant.
- 3. The Board may on its own motion continue a public meeting or public hearing to a subsequent date, time, and location if all members required to vote on the application are not in attendance, to receive additional information or written or illustrative materials from the applicant or any interested party.

4. The Board shall not continue a public meeting or public hearing for a period exceeding thirty (30) days nor for more than two (2) consecutive such periods.

F. Compliance, Enforcement, Appeal, Lapse

1. No site preparation, construction, or work or activity of any kind related to the use, business, or activity authorized by a Special Permit may commence or continue until the date the Special Permit takes effect under Section 1.05(A) above or Section 1.05(B) above.
2. The Board may require the posting of a bond to assure compliance with any condition of a Special Permit, and, in the event of a violation or failure to comply with any condition of a Special Permit, the Board may call the bond, suspend or revoke the Special Permit, or take any other enforcement action authorized by the Zoning Bylaw, General Bylaw, or General Laws.
3. An appeal of the decision of the Board to deny, grant, or grant with conditions a Special Permit shall be made pursuant to M.G.L. c. 40A, § 17.
4. A Special Permit, with or without conditions, shall lapse within two (2) years after its issuance, which period shall not include such time required to pursue or await the determination of an appeal from the issuance of the Special Permit, if a substantial use thereof has not sooner commenced, except that the Board may permit an enlargement of time for good cause.

Special Permits issued by the Rowley Board of Selectmen
Application made under Section 5.5.1.

Earth Removal 8.3.1

Date: _____

Name of Applicant: _____

Address of Applicant: _____

Phone Number of Applicant: _____

Contact Person, Address, and Phone Number if different than above:

Engineering Firm, if any, used by Applicant, Address, Phone Number:

Assessors' Map _____ Parcel _____ Lot _____

Deed Book _____ Page _____

Street Address of Property _____

Size of Parcel _____

Zoning District _____

Amount of Earth to be removed _____ (approximately)

Application judged complete: _____

Permit fee: _____

First legal notice appeared (date and newspaper): _____

Second legal notice appeared (date and newspaper): _____

Hearing date: _____

Board made a decision on (date): _____

Date and time of filing with Town Clerk: _____

Town Clerk's signature: _____

**TOWN OF ROWLEY
RULES AND REGULATIONS OF THE BOARD OF SELECTMEN
RELATING TO SPECIAL PERMITS**

**APPLICATION FORM
BOSASP-1**

1. Name and address of the person to whom all notifications and communications from the Board or its agent shall be sent:

2. Name and address of the owner(s) of the applicant's land (Required only if other than the applicant): ☐ Check here if the APPLICANT is the OWNER

3. Any other information the Board may reasonably require relating to the applicant, the applicant's land, the right of the applicant if other than the owner to occupy and use the applicant's land, and the capability of the applicant with respect to the proposed use, business, or other activity to be conducted on the applicant's land: ☐ Check here if NONE.

Signature of Applicant

Date

**NOTICE TO ALL APPLICANTS
YOU MUST SIGN, DATE, AND SUBMIT THIS ORIGINAL APPLICATION FORM
WITH 10 (TEN) COPIES**

**TOWN OF ROWLEY
RULES AND REGULATIONS OF THE BOARD OF SELECTMEN
RELATING TO SPECIAL PERMITS**

**SPECIAL PERMIT INFORMATION SUMMARY FORM
BOSASP-2**

1. Provide a brief description of the use, business, or other activity proposed for the site, including the specific nature and scope of the operations to be conducted on site.

☐ **Waiver Requested**

2. Describe the noise level at each boundary with an abutting property, at the time of application and as anticipated after the activity on site proposed by the applicant is in operation.

☐ **Waiver Requested**

3. Describe the expected hours of operation of the business or other activity.

☐ **Waiver Requested**

4. Describe the anticipated number of residents, employees, workers, volunteers, or other individuals occupying or visiting the site on a daily basis.

☐ **Waiver Requested**

5. Describe the anticipated number and type of heavy equipment vehicles and trucks entering and leaving the site on a daily basis, as well as the anticipated schedule of their entry, operation on site, and departure.

☐ **Waiver Requested**

6. Describe the anticipated number and types of large trash disposal receptacles, such as dumpsters, their location, and the pick-up and removal schedule of all trash, garbage, and other waste disposal containers.

☐ Waiver Requested

7. Describe the nature / status of all approvals and permits required by any federal, state, and local agency, department, board, commission, or official for the proposed use or structure that have not been issued.

☐ Waiver Requested

8. List and provide a copy of all approvals and permits issued by any federal, state, and Town agency, department, board, commission, or official for the proposed use or structure.

☐ Waiver Requested

9. Describe the number, location, dimensions and surface cover material (type of pavement, gravel, grass, other) of all parking spaces designated for visitors, for customers, for employees, for residents, for handicapped, for trucks, and for all others.

☐ Waiver Requested

10. List of all toxic or hazardous waste to be generated, used, stored temporarily or permanently, or otherwise located on the site.

☐ Waiver Requested

11. In addition to a written explanation, illustrate in the area below, a basic schematic of each sign, including its size, lettering, graphics, illustrations, location, and nature and extent of illumination.

☐ Waiver Requested

↑
Illustration required in space above

12. Provide a description of the nature and extent of external lighting proposed for the site, including the location, number, and height of light poles, the type of lighting and extent and direction of illumination proposed for the lights affixed to the poles and other structures, and the extent to which such external lighting will illuminate off-site properties and ways.

☐ Waiver Requested



Illustration required in space above

☐ Waiver Requested

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

☐ Waiver Requested

Date _____

6