



**TOWN OF STOUGHTON
ZONING BOARD OF APPEALS**

GENERAL RULES OF THE ZONING BOARD OF APPEALS

The following rules shall apply to all proceedings before the Zoning Board of Appeals.

1. **Applications**. All applications for any action by the Zoning Board of Appeals shall be on forms approved by the Board. Applicants may attach to the forms, or submit therewith, such additional supporting material as they desire the Board to consider. Applications for comprehensive permits under General Laws chapter 40B shall also comply with the Rules and Regulations Governing Applications for Comprehensive Permits. For an application to be complete, all questions on the application form must be answered and be accompanied by the additional materials required by these rules. Applicants for variances, special permits and comprehensive permits shall submit the following with the completed application form:

a. **Prior History of the Property**. Copies of all prior decisions by the Board, the Planning Board, Conservation Commission, or any other permit-granting authority with respect to use or violation of any condition or permitted use of the property.

b. **Other Applications**. A statement of all other state agencies or Town boards and committees having jurisdiction over the proposed project, if any; the date of the filing or intent to file for approvals therefrom and the approval(s) requested; if to be filed after the application to the Board, a statement of reasons for delaying each such filing; and a description of whether and how the Board's decision would depend on or be affected by the decision(s) thereof.

c. **Reports by Experts and Consultants**. The complete and final report of by any professional experts or consultants (such as but not limited to a traffic engineer, civil engineer, economic analyst, etc.) to support the application. The report shall contain a statement certifying that the expert and any organization with which he/she is associated is not then engaged to perform services for the Town (including any board, committee, or department of the Town) and that the expert shall not perform work for the Town while the case is pending. If the expert has performed services for any department, board, or agency of the Town within 2 years from the filing of the application, the statement shall identify the board, department, or agency and the subject matter of the work. The certification shall be signed under the penalties of perjury by the expert, or if

the expert works for a firm or other organization, by a person duly authorized by the firm or organization.

d. **Requests for Waivers.** A detailed statement of each waiver of each specified provision of the by-law requested and the reasons therefore. General waivers will not be considered, and a request for general waivers may result in an application being deemed incomplete.

2. **Incomplete Applications.** The Board may deny or dismiss an application which is incomplete under these rules, or take other action which it deems appropriate.

3. **Amendments.** A party may amend an application only upon written request and approval by the Board prior to the conclusion of the public hearing. The Board may require additional notice and further public hearing as a condition for permitting the amendment. Amendments shall not be permitted after the public hearing has been closed.

4. **Expedited procedures for residential properties.** At the time of filing the application, the applicant may request the Board to consider the case on an expedited basis if the application concerns a residential property containing no more than two dwelling units (one of which is occupied by the owner) and if it is the first application for a variance or special permit on the property that will have minimal impact. An application seeking a special permit for a temporary in-law apartment may be considered under this rule if the property is otherwise eligible. Minimal impact on the property means that the application shall not seek to change the present use (e.g., no change from single family to multi-family use), to increase the number of bedrooms (other than for a temporary in-law apartment), or to obtain relief of more than ten percent (10 %) from setback requirements or from any height limits. The property shall not be subject to the Watershed By-law, the Wetlands Protection Bylaw, or the Wetlands Protection Act.

If the Zoning Officer certifies that the application qualifies under this rule, then the public hearing shall be scheduled for the first date after the minimum time required by law. All orders of notice and public advertising shall be as for other cases, except they shall also state that any person wishing to be heard on the application should file with the Board at least three (3) business days prior to the public hearing a notice of his/her intent to appear at the public hearing or submit a written opposition to the application. If no one files such a notice or opposition, and if no one but the applicant appears at the public hearing, then the Board may consider the application as unopposed. If any such notice or opposition is received, or if anyone appears for the public hearing and wishes to be heard, then the public hearing may be continued and the applicant shall give notice thereof as required by Rule 10.

5. **Applications for Large or Complex Projects.** For applications involving residential properties of four (4) or more dwelling units and all applications under General Laws chapter 40B, and for commercial properties of 25,000 or more square feet, and otherwise at the discretion of the Board, the application shall also include each of the following:

a. A description of whether and how the proposal furthers the goals set forth in the Town's 2006 Affordable Housing Plan and 2004 Economic and Community

Development Plan, and if not, the reasons the project should not be evaluated under these plans. For residential projects, the applicant shall state how approval of the application would affect the Town's subsidized housing inventory (SHI) under General Laws chapter 40B and describe whether and how the applicant has attempted to make dwelling units eligible to be included in the Town's SHI;

b. A detailed list of each condition, agreement, or other requirement for the project from any state or Town departments, including but not limited to, the Fire, Police, Public Health, Water and Sewer, Public Works, and Engineering Departments. It shall be the applicant's obligation to submit plans and other materials for review and comment by all Town departments affected by the proposed project at the time of filing of any application and to file with the Board all responses from each department as soon as they are received.

c. A complete list of names, addresses and qualifications of each consultant or expert on whose opinion the applicant relies followed by summaries of each opinion of each such expert or consultant in the order listed, including the basis thereof, not to exceed two pages for each opinion. This summary shall include references to applicable portions of all reports filed with the application.

d. Complete, final reports of each consultant or expert on whose opinion the applicant relies.

e. A detailed economic impact statement for the project, describing the municipal services required by the project and estimated costs thereof; the impact on roads and other infrastructure, and an estimate of the costs of each; and anticipated Town revenues. This statement shall specifically include public safety aspects of the project such as, but not limited to, a complete review of accessibility by public safety vehicles and communications equipment within the project.

f. A list of each person who the applicant expects to speak at the public hearing, the subject matter to be addressed, and the expected length of each speaker's presentation in the expected order of presentation.

The applicant may request a scheduling conference with the Chairman, or such member of the Board as the Chairman may designate, provided that the request includes an agreement to postpone the public hearing by thirty (30) days from the latest date otherwise required by law. The scheduling conference will be held within ten (10) days from the filing of the application. Within five (5) days from the scheduling conference, the applicant may file a request for the Board to approve the proposed schedule from the scheduling conference, or request a different proposed schedule, but any such request shall include agreements and waivers of time limits for any hearing or other action by the Board imposed by law or regulation as may be necessary to accommodate the proposed schedule. Any such proposed schedule shall require that the Board vote to continue the public hearing at the close of each iteration of the public hearing to a date and time certain. A request for a proposed schedule will be considered by the Board at its next regular meeting, and notice of the public hearing shall issue accordingly.

6. Impact of State and/or Federal Laws. Any applicant claiming that the Board is required to vary the application of either the use or the dimensional requirements of the By-law by one or more State or Federal statute or regulation, and any court decision including but not limited to:

- a. General Laws chapter 40A, section 3 for religious and educational uses;
- b. General Laws chapter 40A, section 3 for disabled persons;
- c. General Laws chapter 19D;
- d. Fair Housing Act, 42 U.S.C. section 3601 et seq.;
- e. Americans with Disabilities Act, 42 U.S.C. section 12101 et seq.; and
- f. Federal Telecommunications Act of 1996, 47 U.S.C. section 332 et seq.;

shall file a copy thereof with the application with a memorandum setting forth (i) the basis upon which the applicant believes each such statute or court decision is relevant to the application and (ii) the relief the applicant believes the Board is required to grant to the applicant.

7. Notice of the Public Hearing. The clerk shall issue a notice of public hearing in or within ten (10) days from the filing of the application, unless the applicant requests a scheduling conference under Rule 5. The notice shall contain the case number; the name and address of the applicant; a description of the area or premises, street address, if any, or other adequate identification of the location of the area or premises which is the subject of the petition; the date, time and place of the public hearing; the subject matter of the hearing; and the nature of action or relief requested if any; and such other information as may be required by law. The notice shall also state that persons interested in the case may notify the Board and the applicant in writing, stating their names, place of residence or business in the Town, and mailing address.

8. Interested Persons. Interested persons are those who file a request to receive notice concerning the application, and thereafter they shall be given notice in the same manner as persons entitled to receive notice by law.

9. Additional Filings by the Applicant. An applicant may submit additional materials after the filing the application only upon approval of the Board. Any request for supplemental filings shall include a statement of reasons why the materials could not have been filed with the application and shall be considered only if accompanied by a request, agreement, or waiver (as appropriate) extending the time that applies to the commencement of any hearing or the issuance of a decision by the Board under any applicable rule, regulation, or law by sixty (60) days. The Board need not consider any materials first submitted fewer than seven (7) days prior to the initial or any continued public hearing. The applicant may also file a request with any such filing to reduce the time set out in this rule which explains why a shorter time would be reasonable, including fairness to the public.

To ensure that persons entitled to notice by law or under these rules shall be able to review additional papers filed by the applicant and have meaningful participation in public

hearings, the applicant shall send notice to all persons entitled to notice by law and to interested persons under Rule 8 by first class mail stating that the applicant is requesting permission to file additional materials, describing the materials sought to be filed, and stating the date of the next public hearing. Unless otherwise decided by the Board, no public hearing shall be closed sooner than fourteen (14) days after the Board has voted to approve any request under this rule.

10. Additional notices: If a public hearing is continued or postponed for thirty (30) days or longer, the applicant for a variance, comprehensive or special permit shall give notice of the next scheduled hearing to all persons entitled to notice of the initial public hearing and to all interested persons. The notice shall state the name of the applicant, the case number, the date of the initial public hearing, the date of the continued or postponed hearing, and the next hearing date. The notice shall be sent by certified mail unless otherwise ordered by the Board. In its discretion, the Board may require the applicant to advertise a continued or postponed hearing, to give other or additional notices, and it may modify the applicant's obligations hereunder to prevent undue hardship.

11. Proof of Publication and Notice. Not less than three (3) business days prior to any continued or postponed hearing (as appropriate), or upon the filing of any materials to which Rule 9 applies, the applicant shall file a certificate stating that notice has been given as required by these rules, the date of publication, if any (with a copy of the legal notice as published); a listing of each person who has been given notice and the manner thereof (e.g., by certified or first-class mail) and, if by certified mail, file the return receipt cards arranged by parcel number on the certified list of abutters and alphabetically for all others.

12. Report of the Zoning Officer. The Zoning Officer shall prepare a written report for each application stating the nature, date, and status of any and all prior variances, permits, or other zoning relief issued, and any and all prior or current zoning enforcement actions pertaining to the property (including case numbers). The Zoning Officer's report shall state either (a) that there are no outstanding violations of the Zoning or Sign Bylaws or decisions of the Board of Appeal pertaining to the property and the date of the most recent inspection; or (b) any and all violations and the status of all enforcement activity thereon.

13. Wetlands and Conservation. The clerk shall immediately forward a copy of all applications for property that is subject to the Wetlands Protection Act, the Wetlands Protection By-law, or the Watershed District By-law to the Conservation Commission and request that, prior to the public hearing, the Commission advise whether the Commission wishes to be heard or hold its own proceedings concerning the application; whether the property is the subject of any Orders of Condition or enforcement activity; and, if so, request that the Commission provide the Board with a copy of any such Orders of Condition together with a description of the nature and status of any enforcement activity.

14. Telecommunications Applications. Any application for special permit or variance relief for a telecommunications use shall be accompanied by evidence provided by a proper telecommunications expert that establishes and documents in detail whether a new telecommunications facility or new telecommunications array proposed for an existing facility is necessary and shall do so by providing evidence to the Board as to any asserted existing gap in the delivery of telecommunications services that is being experienced by the provider(s) seeking

the relief and, in addition, this evidence shall detail and document the various heights at which any such gap is said to exist. In other words, if a facility with 150 feet of height is proposed, then proper documentation shall be provided to establish that the 150 feet of height is necessary to close the gap and that a lower height could not be used to close the gap. The Board shall have the right to engage an outside consultant and use the escrowed funds, under G.L. c.44, § 53G, to review the documentation submitted by a telecommunications applicant and provide a report to the Board.

15. **Project Review Fees.** The Board may require an applicant for relief to pay reasonable funds into escrow to allow the Board to engage an outside consultant, as provided for under G.L. c.44, § 53G. The Board shall give notice to an applicant of its selection of a consultant and an applicant may take an administrative appeal from the Board's selection, as provided for under G.L. c.44, § 53G. Any such funds received into escrow shall be expended and administered as provided for under G.L. c.44, § 53G. No consultant shall be engaged by the Board unless and until the necessary funds have been paid by the applicant into escrow and have been confirmed to be available for use by the Town Treasurer. In the event that an applicant refuses to provide reasonable funds into escrow under G.L. c.44, § 53G, as requested by the Board, so as to allow the Board to engage an outside consultant to assist the Board's review and consideration of the application, then the Board may deny the relief sought by the applicant for that sole reason. If an applicant refuses to pay the necessary funds into escrow, then the Board shall give 7 days written notice to the applicant that the Board has the right to deny the application at the next or any subsequent session of the public hearing for that reason and that the Board may condition the final effect of any such relief upon the payment of the necessary funds.

16. **Violations, Pending Enforcement Actions, and Outstanding Taxes.** If a zoning violation exists at property for which new or revised zoning relief is sought, said relief, if granted, shall include a condition that the relief shall become effective and no building or other permit shall issue in reliance thereon until the violation has been cured and any outstanding non-criminal disposition fines have been fully paid. In addition, no zoning relief shall be granted for property except in conformance with the requirements of G.L. c. 40, § 57 and provisions of the Stoughton General By-Laws with respect to payment of outstanding local taxes, fees, assessments, betterments or other municipal charges owed in connection with the property.

17. **Continuances.** Continuances will not ordinarily be granted if requested at the time of a public hearing or for the purpose of delaying proceedings before this Board due to proceedings before any other permit-granting authority. The applicant will ordinarily be requested to pay any costs or professional fees incurred by the Board, the Town (such as overtime), or any member of the public incurred as a result of a postponement at the applicant's request at the time of the public hearing.

18. **Conduct of Public Hearings.** The public hearing will be limited to the relief requested in the application as filed, or any amendment thereto. The applicant and persons speaking on behalf of the applicant (including experts and consultants) will be permitted to make an initial presentation of not more than one (1) hour. The public shall then be invited to offer comments and ask questions of the applicant, but only through the Chairman. The applicant may offer rebuttal to public comments only after all members of the public have

spoken, for not longer than twenty (20) minutes. These time limits may reduced or extended as the Board deems appropriate for each case.

19. Presentations. The applicant may use audio/visual aids in the discretion of the Board, including but not limited to charts, graphs, blow-ups, and PowerPoint presentations. These shall be limited to presentation of information that was filed in a timely manner with the Board, and the applicant shall clearly identify where such materials appear in the record during the presentation. Any other person may use audio/visual aids during a public hearing as the Board may allow. *Prior to the commencement of any hearing* at which audio-visual aids are to be used, the presenter shall file with the clerk sufficient paper copies for each Board member and two copies for the record in the exact form of the presentation.

20. Final submissions. Before the public hearing has been closed, unless otherwise directed by the Board:

a. The applicant shall file with the Board two (2) sets of address labels (Avery # 5162 or similar) containing names and addresses of each abutter entitled to notice by law and each interested person requesting notice under these rules.

b. The applicant and any other person may submit a proposed decision for the Board's consideration limited to the relief requested in the application and the reasons supporting the position stated. These submissions shall not include or refer to any facts that were not presented during the public hearings, and any submissions which do so may be disregarded entirely.

21. Scope of Decisions by the Board. No final decision by the Board shall be interpreted to grant relief that was not specifically requested in the application. Any request for relief in an application that is not specifically granted in a final decision shall be deemed to be denied.

22. Modification and Reconsideration. Any request for modification or reconsideration of any decision by the Board shall be submitted in writing, and identify the information from the public hearing that supports the request in sufficient detail to determine the speaker(s) or document(s) from the public hearing on which the request relies. A copy of the underlying decision shall be attached to the request. If the request is based on information that was not presented at the public hearing, the request shall clearly state why it was not presented. The applicant shall mail a copy of a request made by the applicant to each person entitled to notice under Rule 9. If a request is sought by any other party, the clerk shall mail a copy to the applicant, and the Board shall determine what additional notice, if any, is appropriate. Unless a shorter time is provided by law, a request for reconsideration shall be filed within thirty (30) days and a request for modification shall be filed within one (1) year from the date of the decision. In its discretion, the Board may apply the rules governing applications to any request for modification or reconsideration, and it shall hold a public hearing in its discretion or as required by law.

23. Recording of Board Decisions. No building, occupancy or other permit shall issue based on any decision of the Board unless and until the applicant has filed proof of recording the decision at the Registry of Deeds, which shall include the date of recording with the book and page references thereof.

24. Expiration of permits and variances. If, in order to be eligible for a variance or special permit, the applicable law or by-law states conditions or circumstances that must exist at the time of the application, then the permit or variance shall expire when those conditions or circumstances no longer exist and without further action by the Board.

25. Duties of the Zoning Officer. The Zoning Officer shall review all applications for building permits to determine that the property complies with all rules, regulations, by-laws and laws within the jurisdiction of the Zoning Board of Appeal at the time of application and would also comply after improvements thereon should the building permit be issued. Questions concerning compliance or enforcement from other than the owner of the property shall be referred to the Zoning Board of Appeal for decision.

Adopted August 2, 2007

Amended August 9, 2007 (rule 15)

Amended September 16, 2010 (insert new rules 14 & 15 and renumber rules)



**TOWN OF STOUGHTON
ZONING BOARD OF APPEAL**

Case No.

Application of: _____

Date of Filing: _____

Property Address: _____

REQUEST FOR NOTICE AS AN INTERESTED PERSON UNDER RULE 8

The undersigned requests to be given notice in this case as provided by Rule 8 of the General Rules of the Zoning Board of Appeal.

Signature

Date

Printed Name

Street Address

Mailing Address (if different):

Copy mailed to the Applicant on _____



**TOWN OF STOUGHTON
ZONING BOARD OF APPEAL**

Case No.

Application of: _____

Date of Filing: _____

Property Address: _____

REQUEST FOR EXPEDITED PROCEDURE UNDER RULE 4

I request that my Application be considered under the expedited procedures for residential properties in Rule 4 of the General Rules of the Zoning Board of Appeal.

Signature of Applicant Date

Printed Name

Signature of Applicant Date

Printed Name

DETERMINATION BY THE ZONING OFFICER

I find that the Application qualifies for the expedited procedures for residential properties under Rule 4 of the General Rules of the Zoning Board of Appeal.

Zoning Officer Date