

Chapter 18

Board of Appeals

State law references - The Zoning Act, G.L. c. 40A. Board of Appeals, powers, G.L. c. 40A, Sec. 14.

Cross reference - As to zoning generally, see Ch. 15. As to zoning Board of Appeals, see Ch. 15, Secs. 15-96 to 15-102.

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Article I. Organization**Sec. 18-1. Officers.**

At the first regular meeting following the confirmation of annual appointees by the Board of Selectmen, the board shall elect a chairman and a vice-chairman for the ensuing twelve month period. Associate members shall not vote in this regard.

Sec. 18-2. Chairman.

Powers and duties: The chairman shall vote and be recorded on all matters coming before the board. Subject to these rules, the chairman shall decide all points of order unless overruled by a majority of the board in session at the time. The chairman shall appoint such committees as may be found necessary or desirable.

In addition to powers granted by general laws and local ordinances and subject to these rules and further instructions of the board, the chairman shall transact the official business of the

board, supervise the work of the clerk, request necessary help, direct the work of all subordinates, and exercise general supervisory power. The chairman shall at each meeting report all official transactions that have not otherwise come to the attention of the board.

Sec. 18-3. Vice-Chairman.

The vice-chairman shall act as chairman in case the chairman is absent, disabled or otherwise unable to perform his duties.

Sec. 18-4. Clerk.

The clerk-stenographer of the Stoneham Planning Board shall also serve as clerk-stenographer for the Stoneham Board of Appeals. Subject to the direction of the board and its chairman, the clerk shall perform all of the clerical work of the board including all correspondence of the board; send all notices required by law and the rules and orders of the board; receive and scrutinize all applications for compliance with the rules of the board; keep dockets and minutes of the board's proceedings; compile all required records, maintain necessary files and indexes, call the roll at all board meetings and give information to the public about the functions of the board.

Sec. 18-5. Quorum.

A quorum shall consist of five members. No member, not present throughout the entire hearing, shall vote on a matter before the board. In the case of the lack of a quorum at a hearing, the chairman shall reschedule the hearing. The clerk shall notify all abutters and other persons who may have displayed an interest in the matter before the board and who have filed their name and address with the clerk, of the time and place of the rescheduled hearing. There shall be no additional fee charged to the appellant in the case of a rescheduled hearing due to the lack of quorum.

Sec. 18-6. Meetings—Regular.

Unless ordered otherwise by the board, the regular meeting of the board shall be held at 7:00 P.M. on the last Thursday of the month, followed at 7:30 P.M. by the public hearings on matters which have come before the board during the month.

Sec. 18-7. Meetings—Special.

Special meetings may be called by the chairman or any three members of the board as required to effectively carry out the business of the board.

Sec. 18-8. Associate Members.

Associate members shall not participate as members or have any input unless as an ordinary citizen in a hearing or meeting unless they are sitting in lieu of a regular member.

Article II. Applications**Sec. 18-9. Application Form.**

Every application for action by the board shall be made on the official form. These forms shall be furnished by the clerk upon request. Any communication, purporting to be an application, shall be treated as mere notice of intention to seek relief, until such time as it is made on the official application form. All information called for by the form shall be furnished by the applicant in the manner therein prescribed.

Sec. 18-10. Filing Period.

Every appeal from an action by the building inspector or other administrative official or body shall be taken within thirty days from the date of refusal of a permit by, or the date of the order, ruling, decision or determination of, the building inspector or other administrative official or body.

Sec. 18-11. Plan.

A plan of the land shall accompany the petition at the time of filing. No hearings shall be scheduled or advertised until the plan is submitted.

The size of the plan shall be 8 ½" x 11" or larger, not to exceed 24" x 36" drawn to scale. The plan shall indicate the following:

1. North point
2. Names of streets
3. Zoning district applicable to the property
4. Names of owners and abutters
5. Location of all above ground structures including fences, hedges, trees, sidewalks, walkways, driveways, etc.
6. Property lines
7. Dimensions of all property lines

8. The percentage of the lot covered by existing or proposed structures
9. Dimensions from the structures to the lot lines
10. The plan shall be signed and stamped by a professional land surveyor registered in the State of Massachusetts and dated within six months of submitting the plan for this petition. (8-1-96)
11. The petitioner's plan must show any structure, temporary structure, parking, wall or fence any portion of which is within fifty feet of any lot line which is the subject of the requested variance.

Sec. 18-12. Sketch of Sign.

If the petition is filed under the sign bylaw or involves the location of a sign, a scale sketch of the display surface of the sign as defined in the sign bylaw shall be filed with the petition, in color together with a site plan indicating the exact location of the sign if it's not attached to the building.

Sec. 18-13. Errors in Filings.

When in its opinion its ability to reach a decision on the basis of all material facts has not been substantially impaired, the board may waive any failure to comply with the exact technical requirements for filing. Whenever an affirmative decision is rendered on a petition, any such failure to comply shall be deemed to have been waived.

Sec. 18-14. Fee.

All applications shall be accompanied by a check payable to the Town of Stoneham in the amount of one hundred dollars (\$100) for residential property or one hundred and fifty dollars (\$150) for non-residential property. Such fee shall be used to defray administrative costs relative to this appeal.

Sec. 18-15. Legal Notice.

It shall be the responsibility of the petitioner to deliver the notice of appeal to the local paper and pay any cost for the ad.

The petitioner must obtain a certified list of abutters from the office of the Board of Assessors and shall pay the appropriate fee. The petitioner will pay first class postage for copy of legal notice to be forwarded to each abutter in addition to a processing fee of \$6.00.

The board of Appeals clerk is responsible for mailing notice.

Article III. Hearings**Sec. 18-16. Notice.**

Notice of hearings shall be given as required by the provisions of General Laws, Chapter 40A.

The petitioner is responsible for obtaining a certified list of abutters from the office of the board of assessors and shall pay the appropriate fee. The certified list will be stamped and dated and shall be conclusive for all purposes.

The petitioner is responsible for providing envelopes with prepaid postage at the certified rate addressed to each abutter on the list.

Board of Appeals clerk will be responsible for processing this certified mailing. (Adopted February 27, 1997, Amended April 17, 1997).

Sec. 18-17. Hearings to be Public.

All hearings and meetings of the board shall be open to the public in accordance with Massachusetts General Laws, Chapter 39.

Sec. 18-18. Appearance and Absence.

The applicant shall appear in person in his own behalf or be represented in person by an agent or attorney. In the absence of any appearance on behalf of the applicant as to the cause of such absence, the board shall define the procedure to be followed and the fee, if any, to be paid by the appellant in order to reschedule the hearing.

Sec. 18-19. General Order of Business.

- (a) Introduction of the board and outline of hearings scheduled.
- (b) Reading of legal notice by the chairman.
- (c) Applicant's presentation.
- (d) Other remarks favorable to applicant.
- (e) Comments and presentation in opposition to applicant.
- (f) Additional comments by all parties until all relevant issues have been clarified.

Questions from members of the board may be raised at any time during the hearing and shall take precedence over comments or questions by other parties.

Sec. 18-20. Presentation to the Board.

It is recommended that every appeal and every application for a variance, exception, or special permit be supported by a statement setting forth in detail all facts relied upon by the applicant in support of his petition.

(a) In the case of an appeal or petition for a variance, the following points, based on General Laws, Chapter 40A, Section 10, should be clearly identified and factually supported:

- (1) Facts which demonstrate that owing to circumstances relating to the soil conditions, shape, or topography 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 the ordinance or bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant.
- (2) Facts relied upon to support a finding that the relief sought will be desirable and without substantial detriment to the public good.
- (3) Facts relied upon to support a finding that the relief sought may be given without nullifying or substantially derogating from the intent or purpose of the zoning ordinance.

(b) In the case of an appeal for a permit or exception requested under the provisions of the town zoning bylaw, the town sign bylaw, or other bylaw; facts shall be presented to support the findings required under the town zoning bylaw, the town sign bylaw, or other bylaw for granting the permit or exception

Sec. 18-21. Review fees for Outside Consultants

Pursuant to G.L. c.44, sec.53G, G.L. c. 40A, sec.12, and G.L. c.40B, sec.21, the Board of Appeals, through this regulation, provides for an applicant's payment of the fees for outside consultants as set forth below:

(a) When conducting any hearing, including those for variances, special permits, and comprehensive permits (pursuant to G.L. c. 40B) or deciding any issue raised by an application, petition or appeal, (the subject of which is hereinafter referred to as a "proposal"), the Board of Appeals may determine that the assistance of outside consultants is warranted due to the size, scale or complexity of the proposal or because of its potential impact. The Board may require that applicant(s) pay a review fee consisting of the reasonable costs incurred by the Board for the employment of outside consultants engaged by the Board to assist in the review of an application.

(b) In hiring outside consultants, the Board may engage engineers, planners, traffic consultants and/or other appropriate professionals who can assist the Board in reviewing

analyzing a proposal to ensure compliance with all relevant laws, bylaws and regulations. The minimum qualifications shall consist either of an educational degree in, or related to, the field at issue or three or more years of practice in the field at issue or a related field.

(c) Funds received by the Board pursuant to this section may be deposited with the Town Treasurer who shall establish a special account for this purpose in accordance with the provisions of Chapter 44, Section 53G of the General Laws. Expenditures from this special account may be made at the direction of the Board in connection with the hearing of a specific proposal for which a review fee has been collected from the applicant without further appropriation. Failure of the applicant to pay a review fee shall be grounds for the denial of the variance, special permit or comprehensive permit at issue.

(d) Review fees may only be spent for services rendered in connection with the specific proposal from which they were collected. Accrued interest may also be spent for this purpose. At the completion of the Board's review of a proposal, any excess amount in the account, including interest, attributable to a specific project, shall be repaid to the applicant or the applicant's successor in interest. A final report of said account shall be made available to the applicant or the applicant's successor in interest. For the purpose of this regulation, any person or entity claiming to be an applicant's successor in interest shall provide the Board with documentation establishing such succession in interest.

(e) Any applicant may take an administrative appeal from the selection of an outside consultant(s) to the Board of Selectmen. The grounds for such an appeal shall be limited to claims that the consultant(s) selected has a conflict of interest or does not possess the minimum, required qualifications. The time limit for the Board's action on the proposal shall be extended by the duration of any such administrative appeal. In the event that no decision regarding the appeal is made by the Board of Selectmen within one month following the filing of such appeal, then the selection of the Board of Appeals shall stand.

Article IV. Disposition By The Board

Sec. 18-22. Voting Requirement.

The concurring vote of at least four members of the board shall be necessary to effect the granting of a variance, permit or exception. A majority vote of the board shall be necessary with regard to internal administrative matters of the board.

The record shall show the vote of each member upon each question or, if absent or failing to vote, indicate such fact. It shall, in addition, set forth clearly the reason or reasons for the board's decisions.

Sec. 18-23. Withdrawal.

An application may be withdrawn by notice in writing to the clerk at any time prior to the hearing by the board or by verbal statement to the board immediately following the reading of the legal notice. Any motion for withdrawal after this point shall require the concurrence of four members of the board.

Sec. 18-24. Reconsideration.

No vote will be reconsidered after adjournment of the meeting at which such vote was passed unless the petitioner files in writing with the chairman within two business days a statement indicating the reasons why the board should reconsider their initial voting. Such statement should indicate either mistake, inadvertence or misunderstanding on the part of the board members as grounds for reconsideration. The reconsideration will be taken up at the next regularly scheduled meeting and the reconsideration of the vote shall be approved only upon the concurrence of four members. Any board member may move the board to vote to reconsider its vote and said motion shall be allowed only upon the concurrence of four members. A reconsideration shall not be granted based upon the introduction of new evidence or information. Once the decision has been filed with the town clerk a request for reconsideration cannot be heard.

Sec. 18-25. Reapplication.

No petition shall be reheard within two years from the date of final unfavorable action by the board except in accordance with General Laws, Chapter 40A, Section 16.

Sec. 18-26. Limitation on Grants.

If the rights authorized by a variance are not exercised within one year from the date of grant of such variance, they shall lapse, and should they lapse, may be re-established only after notice and a new hearing subject to extensions provided by Massachusetts General Laws, Chapter 40A.

All special permits shall lapse within a specified period of time, not more than two years, as provided in General Laws, Chapter 40A, Section 9. All grants or variances and special permits shall be written to include these restrictions.

Sec.18-27. Variances for Use.

No variance may authorize a use or activity not otherwise permitted in the district in which the land or structure is located unless the zoning bylaw expressly authorizes such a variance.

Article V. Policies**Sec. 18-28. Opinions and Recommendations.**

Any advice, opinion, or information given by any board member or the clerk, or any other official or employee of the Town of Stoneham shall not be binding on the board. Because of the annoyance caused by individuals appealing personally to members of the board, it is declared to be the policy of the board to discourage any such personal appeals. When deemed necessary by the chairman or by a majority of the board, the legal opinion of town counsel may be solicited and presented to the board on matters under its consideration.

Should any board member offer his/her opinion or advice on any matter regarding appeal board business, it shall be incumbent on him/her to make it known that the opinion is a personal one and not an opinion of the Board of Appeal.

Sec. 18-29. View of Locus.

If the majority of the board sitting on an appeal so requests, the chairman shall order a view of the premises and shall set a definite time for such view, and no decision shall be voted on until after such view. As a general rule, all board members shall be expected to view the site of each appeal which is advertised for a public hearing prior to the date of such hearing.

Article VI. Comprehensive Permits Rules**Sec. 18-30. Authorization.**

These Rules are authorized by G.L. c.40B, sec. 21 and G.L. c. 44, sec. 53G.

Sec. 18-31. Complete Application and Documentation.

It is the intent of the Board to have a complete application and full documentation provided with the application. The Board may deny a comprehensive permit if material

information is missing. In addition, the Board may require additional information during the review process, as it deems appropriate.

Sec. 18-32. Submittal Requirements.

The applicant shall be required to submit the following information:

(a) Preliminary site development plans showing the locations and outlines of proposed buildings; the proposed locations, general dimensions and materials for streets, drives, parking area, walks and paved areas; and proposed landscaping improvements and open areas within the site. All structures of five or more units must have site development plans signed and stamped by a registered architect. Structures of less than five units may submit a sketch of the matters referenced herein and in Subparagraph (c) below, which need not have an architect's signature and stamp, subject, however, to the Board's right to require architectural plans, at any time prior to or during the hearing, if deemed necessary by the Board;

(b) A report, together with a plan(s) if applicable, regarding existing site conditions and a summary of conditions in the surrounding areas, showing the location and nature of existing buildings, existing street elevations, traffic patterns and character of open areas, if any, in the neighborhood. The zoning district or districts, if more than one (1) district is involved, shall also be shown on the plan. (If the abutting land is in another district or town, this shall also be shown.);

(c) Preliminary architectural scaled drawings for building plans including typical floor plans, typical elevations and sections, and identifying construction type and exterior finish, signed and stamped by the architect;

(d) A tabulation of proposed buildings by type, size (number of bedrooms, floor area), and ground coverage, and summary showing the percentage of the tract to be occupied by buildings, parking and other paved vehicular areas, and by open areas;

(e) Where a subdivision of land is involved, a preliminary or a definitive subdivision plan. If a preliminary plan is submitted, the Board shall have the right to require the applicant to submit any and all information typically required on a definitive plan, if deemed necessary by the Board;

(f) A preliminary utilities plan showing the proposed location and types of sewage, water and draining facilities including hydrants;

(g) Documents specified in 760 CMR 31.01 to show the status of the applicant and the acceptability of the site;

(h) Appropriate documentation evidencing the applicant's control of the site;

(i) A list of requested exemptions to local requirements and regulations, including local codes, bylaws and/or regulations;

(j) Certified plan of land prepared, by a registered land surveyor or a registered professional engineer;

(k) Twenty-five (25) copies of said application/petition with attachments and exhibits shall be submitted to the Town Clerk upon filing (to be distributed to the ZBA Members, the ZBA Recording Secretary, and to all of the Town departments). Up to ten (10) additional copies shall be provided to the ZBA upon request;

(l) Projects shall contain a statement of the impact of project in terms of traffic, public safety, municipal, school and public facilities, recreation, and the effect on open space and the natural environment;

(m) A copy of the deed to the applicant’s property showing the Registry of Deeds Book and Page number(s). If the property is under a Purchase and Sale Agreement, a copy of said agreement shall also be provided;

(n) An abutters list certified by the Town’s Assessor’s Office listing all “abutters” as defined in GL.c. 40A, sec. 11.

Section 18-33. Filing Fee.

The application shall be accompanied by a filing fee, based on a flat fee and the number of housing units proposed:

- \$1,000 base fee, plus
- \$ 100 per unit proposed.

Section 18-34. Written Authorization.

(a) If the applicant is not the owner of the property, the owner(s) shall provide written authorization for the subject application by the applicant on the application.

(b) If the individual signing the application is unable to attend any hearing on the application, the Board shall require written authorization from the applicant that the designated representative has consent to represent the applicant or to withdraw the application.

Section 18-35. Outside Consultants.

See Section 18-21 of the Board of Appeals Regulations. (2-15-01, Art. 4)