

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 Select Board, 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, secs. 20-23) 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, lawyers, and/or other appropriate professionals (including financial analyst(s) when a pro forma is required in connection with an application for a comprehensive permit application pursuant to G.L. c. 40B, sec. 20-23) who can assist the Board in reviewing and 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 (3) 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 Select Board. 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. Such appeal must be made in writing and may be taken only within twenty (20) days after the Board has mailed or hand-delivered notice to the applicant of the selection(s). 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 Select Board 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, 760 CMR 56.00, et seq., and G.L. c. 44, sec. 53G.

These Rules alone are not sufficient to describe comprehensive permit procedures before the Zoning Board of Appeals. They must be read in conjunction with and implemented in a manner consistent with G.L. c. 40B, secs. 20-23 (the “Act”) and 760 CMR 56.00, et seq. (the “DHCD Regulations”). In addition, the Board's general rules and policies for conduct of hearings under M.G.L. c. 40A apply to comprehensive permit applications. In case of inconsistency or conflict between those general Rules for conduct and these Rules, these Rules shall govern. Nothing in these Rules shall be deemed to limit the right of the Board to require the Applicant to provide additional relevant information and/or documents or to limit the obligation of the Applicant to provide such additional information and/or documents.

These Rules, as amended, take effect on passage and supersede any other Chapter 40B rules that may have been adopted by the Board.

These Rules supplement various other rules, polices and regulations governing land development in Stoneham. Where in conflict, these Regulations shall apply.

These Rules incorporate by reference the requirements and procedures of the following documents, attached hereto and the requirements stated therein.

1. Comprehensive Permit Performance Standards (Attachment A); and
2. Agreement for Reimbursement of Expenses and Certification of Accuracy of Application (Attachment B).

Sec. 18-31. Definitions.

(a) “Board” means the Zoning Board of Appeal, established by G.L. c. 40A, sec. 12, and Section 7.1 of the Town of Stoneham Zoning Bylaws, and acting in its capacity to issue a comprehensive permit under the powers granted by the Act and DHCD Regulations.

(b) “Local Board” means any local board or official, including but not limited to the Board of Health; Planning Board; Conservation Commission; Historical Commission; Town Administrator (including, but not limited to the authority of the former Board of Public Works); Fire Department, Police Department; Building Inspector or similar official or board; the Select Board; and all boards and commissions performing functions usually performed by locally-created boards and commissions shall be deemed local boards.

(c) “Limited Dividend Organization” means any entity which proposes to sponsor housing under the Act, is not a public agency or a nonprofit, is eligible to receive a subsidy from a state or federal agency after a comprehensive permit has been issued and which, unless otherwise governed by a federal act or regulation, agrees to comply with the requirements of said subsidizing agency relative to a reasonable return for building and operating its proposed housing project.

Sec. 18-32. Complete Application and Documentation.

It is the intent of the Board to have a complete application (“Application”) and full documentation provided with the Application prior to the commencement of public hearing on the proposed project. The Board may deny a comprehensive permit if material information is missing and the Applicant fails or refuses to provide the same. In addition, the Board may in its discretion, require additional information during the review process, as it deems appropriate.

Sec. 18-33. Submittal Requirements.

The Applicant for an original comprehensive permit or for any substantial modification shall be required to submit the following with its Application:

(a) Preliminary Site Development Plan(s) - preliminary site development plan(s) (“Plan”) 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. Said Plan shall include the following information;

- (i) existing wetlands area, including vernal pools, whether certified or not, within 100 feet of the site;
- (ii) existing and proposed topography at two-foot intervals;
- (iii) existing structures on adjacent properties within one hundred feet (100’) of the nearest property line;
- (iv) existing significant environmental features such as ledge outcrops, scenic views and large trees (i.e. greater than 24” dbh);
- (v) proposed stormwater management system;
- (vi) proposed entrance(s) and egress(es) to the property; and

(vii) proposed lighting and a photometric analysis.

Additionally, a certified plan of land prepared, by a registered land surveyor or a registered professional engineer shall be submitted by the Applicant, if the above referenced Plan is not prepared by a registered land surveyor or a registered professional engineer;

(b) Report on Existing Site Conditions - 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 Scaled Architectural Drawing(s) - preliminary architectural scaled drawings for building plans including typical floor plans, typical elevations and sections, and identifying construction type and exterior finish of each floor, signed and stamped by the architect;

(d) Tabulation of Proposed Buildings - a tabulation of proposed buildings by type, size (number of bedrooms, floor area), the number of parking spaces (full size and compact, if any), 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) Subdivision Plan - where a subdivision of land is involved, a preliminary or a definitive subdivision plan shall be submitted. If a preliminary plan is submitted, the Board shall have the right to require the Applicant to submit any and all information required on a definitive plan or a definitive subdivision plan, if deemed necessary by the Board;

(f) Utility Plans – a utilities plan showing the proposed location and types of sewage, water (including hydrants) and draining facilities. Adequate supporting information shall be provided to demonstrate that all utilities and related infrastructure shall meet all applicable federal and state laws and regulations (including, but not limited to all Stormwater Management Guidelines promulgated by the Massachusetts Department of Environmental Protection or best management practices, whichever is more stringent), as well as Town regulations and requirements or if a waiver of the Town requirement is being sought by the Applicant, evidenced of the standard that will be met. (See also Section 18-33(m) below.) Additionally, the utility plan or a separate utility plan shall show the location and type of electric, gas utilities and telecommunication(s) facilities.

(g) Project Eligibility - documents specified in 760 CMR 56.04 to show the status of the Applicant and the acceptability of the site, including:

(i) evidence that the Applicant is a public agency, non-profit organization or a limited dividend organization;

- (ii) evidence that the project shall be fundable by a subsidizing agency under a low and moderate income housing subsidy program. The Board may review this documentation to ensure that the applicable subsidizing agency has performed the due diligence required under 760 CMR 56.04; and
 - (iii) evidence that the Applicant shall control the site and the means of access thereto. This documentation must adequately demonstrate that the Applicant possesses the necessary control over the site access to develop the project as proposed in the Application;
- (h) Applicant's Control of Site - Appropriate documentation evidencing the Applicant's control of the site. If the Applicant owns the property, the Applicant shall provide a copy of the deed showing the Registry of Deeds book and page number(s) (and registered land recording information, if applicable). If the property is under a purchase and sale agreement or other agreement regarding ownership and/or control, a copy of said agreement shall also be provided;
- (i) Materials Submitted to Subsidizing Agency – a complete copy of the Application and any materials submitted by the Applicant to the subsidizing agency. Said Application and materials shall allow the Board to periodically confirm that the Applicant continues to fulfill the project eligibility requirements of 760 CMR 56.04(1);
- (j) Project Eligibility Letter – written documentation of project eligibility by a subsidizing agency containing all of the findings required by 760 CMR 56.04(4);
- (k) Appraisal & Pro Forma – a detailed pro forma financial analyses of anticipated expenses and revenues of the Project, documenting site acquisition costs, and setting forth the applicant's proposed profit limitation. The pro forma submitted to the subsidizing agency shall be included with the Application. The submission and review of any further pro forma shall be conducted in conformance with 760 CMR 56.05(6). If the claimed land acquisition value is five percent (5%) or greater than the land's most recent assessed valuation as determined by the Town of Stoneham, the application shall contain an appraisal of the property, prepared by an appraiser certified as a Massachusetts General Appraiser, with a valuation date no greater than six months prior to the application date. The Applicant may also update its pro forma and submit the same at any point to the Board. The pro formas shall be signed and dated by the applicant or its agent, under the pains and penalties of perjury and contain the following statement, "To the best of the applicant's knowledge, the pro forma submitted herein is accurate and complete as of the date executed below." A detailed and accurate pro forma is considered an indispensable document to ensure the Board's ability to review the economic viability of the Project;
- (l) Evidence of Local Housing Need – evidence of local need for the type and number of housing units being proposed by the Applicant.
- (m) a list, stated with particularity, of requested waivers to Stoneham's requirements and regulations, including by-laws, policies or regulations, including these Regulations and a written explanation of why, but for the failure to grant the requested waiver, the Project would be

rendered uneconomic pursuant to G.L. c.40B, s.20. With particular respect to regulations promulgated by the Stoneham Board of Health and Planning Board, the application shall provide supporting documentation as to why the relevant regulation should be waived, why the Project would be uneconomic without said waiver, if claimed, and how the purpose of the regulation would not be compromised should a waiver be granted. Requests for waivers shall be supported by the documentation required by these Regulations and as submitted by the Applicant. No waiver from a local by-law, policy or regulation shall be granted unless and until a request for a waiver from a local by-law, policy or regulation is requested by the Applicant in writing and with particularity and unless and until the Board issues a written waiver of said local by-law, policy or regulation, approved by a majority of the Board. Waivers granted prior to the issuing of a final comprehensive permit decision may be rescinded based on subsequent information presented during the hearing;

(n) Environmental Impact Analysis (for applications for projects of twenty (20) or more dwelling units or if otherwise required by the Board of Appeals) - an “Environmental Impact Analysis” prepared by a qualified environmental scientist, professional wetland scientist (PWS), certified soil scientist, botanist, hydrogeologist and/or other scientific professional with demonstrated qualifications (e.g. education, training, or demonstrated experience) provided to the Board. The Environmental Impact Analysis shall assess the impact of the development on the environment within the development and adjacent thereto. Such analysis shall include, but shall not be limited to, an evaluation of pre-development conditions and post-development impacts on:

- (i) surface and groundwater quality;
- (ii) groundwater recharge;
- (iii) open space;
- (iv) recreational areas and space;
- (v) wildlife habitats and corridors;
- (vi) wetlands and bodies of water, including streams and rivers, both localized and general;
- (vii). species of special concern in Massachusetts; and
- (viii) historic structures or historic areas.

Such analysis shall include proposed mitigation of any identified post-development impacts. Mitigation measures requiring continuing or periodic maintenance shall be identified and a proposed maintenance plan shall be included with the Environmental Impact Analysis.

(o) Traffic Impact Report (for applications for projects of twenty (20) or more dwelling units or if otherwise required by the Board of Appeals) - a Traffic Impact Report prepared by a registered professional engineer qualified in the field of traffic engineering, analyzing the proposed project’s impact on the congestion, safety and overall convenience of the roadway

system, including the roads providing access to and egress from the proposed project and all roads and areas otherwise impacted in any material way or manner by the proposed project, regardless of the level of additional traffic projected and regardless of whether or not the road is under the jurisdiction of the Town of Stoneham or located in an adjacent municipality. Impacts on both vehicular and pedestrian travel must be addressed.

(p) Statement of Impact on Municipal Facilities and Services – a detailed statement on the impact of the proposed project on municipally facilities and services shall be provided by the Applicant in order to further the understanding of the Town and for planning purposes. This requirement and the provision of information in response hereto shall not affect (either increase or decrease) the Board’s scope of review under applicable law or regulations for comprehensive permits, nor shall this information request or the information provided in response hereto be construed to be a basis of the Board’s decision.

(q) Roster of Development Team Members/List of Prior Developments – (i) a list of all members of the development team, including all contractors and subcontractors to the extent known at the time of the Application; and (ii) a list of all prior development projects (regardless of whether residential or commercial, etc.) over the last ten (10) years;

(r) Twenty-five (25) copies of said Application with attachments and exhibits shall be submitted to the Town Clerk upon filing (to be distributed to the Board Members, the Board Recording Secretary, and to all of the Town departments). Up to ten (10) additional copies shall be provided to the Board upon request. Additionally, 11” x 17” copies of all plans (with match-lines) shall be provided to the Board for copying purposes by the Board or the Town Clerk;

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

Section 18--34. Filing Fee.

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

\$3,000 base fee, plus
\$ 200 per unit proposed

The fees are reflective of the significant and unique administrative expenses required to process an Application that involves approvals that would normally be before multiple boards. Significant staff time and energy is expended on Comprehensive Permit proceedings.

These fees are applicable for both original applications as well as for applications for permit modifications that are deemed to be substantial by the Board, provided however that the Board may waive part of a fee for a project change.

Section 18--35. Outside Consultants.

See Section 18-21 of the Board of Appeals Regulations; as effected by 760 CMR 56.05(5).

Section 18-36. 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 18-37. Public Hearing and Decision

(a) Public Hearing - the Board shall hold a public hearing on the Application within thirty (30) days of its receipt, unless such time period is extended by written agreement of the Board and the Applicant. It may request the appearance at the hearing of such representatives or local officials as it considers necessary or helpful in reviewing the Application. In making its decision, the Board shall take into consideration the recommendations of local officials. A Board may stay the commencement of a hearing if three or more Comprehensive Permit applications are concurrently undergoing hearings before the Board, and the total number of housing units in those pending Projects exceeds the numerical threshold for a large project within that municipality, as set forth in 760 CMR 56.03(6).

(b) Decision - the Board shall render a decision, based on a majority vote of the Board as provided in G.L. c. 40B, sec. 21. The Board may dispose of the Application in the following manner:

- (i) approve a comprehensive permit on the terms and conditions set forth in the Application,
- (ii) deny a comprehensive permit in the event that the proposed project presents adverse impacts to local concerns that outweigh the community's housing needs, or
- (iii) approve a comprehensive permit with conditions, including but not limited to the number of permitted housing units, the height, size, shape or general appearance of the proposed buildings, the configuration of the site plan, and any other reasonable condition that is necessary to address issues arising under zoning,

wetlands, planning or other local concerns while not rendering the construction or operation of such housing uneconomic. The scope of conditions may include any matter that would normally be addressed by a Local Board in review of a conventionally proposed project. In order to assist the Board with determining the permissible extent of final conditions, in accordance with 760 CMR 56.05(6) the Board may require that the applicant provide a revised or updated pro-forma at the Board's request after consultant review has been completed, the Applicant has had an opportunity to modify its original proposal to address issues raised, the Board has had an opportunity to propose conditions to mitigate the proposed project's impact and to consider waivers, and the applicant has indicated that it does not agree with the proposed conditions or waiver denials because they would render the project Uneconomic. The revised pro forma may be subjected to the same consultant review as any other technical information submitted to the Board, in accordance with 760 CMR 56.05(5) and the Board's rules. The Board may then use this information to decide whether to adopt or modify its originally proposed conditions and/or denials; ; and

(iv) It shall be the applicant's burden to demonstrate that the waiver of any particular local bylaw, regulation or other requirement is necessary in order to maintain the project's economic viability or is otherwise in conflict with applicable laws or regulations. There shall be a presumption that the waiver of any local by-law, regulation or requirement will adversely affect local concerns.

(c) Changes in Application

(i) In the event that, that, during the public hearing, the applicant proposes any changes in its Application or project plans that, in the Board's determination constitutes a material or substantial change to the project, the Applicant shall use reasonable efforts to provide a new project eligibility letter or letter from the designated subsidizing agency or otherwise reaffirm, amend or deny its prior determination of project eligibility;

(ii) In the event of material or substantial changes, the Board may request, and the Applicant shall provide, any and all information specified in Sec. 18-33 above that is deemed by the Board to be necessary to evaluate such changes; and

(iii) In the event of a material or substantial change, any and all plans and supporting information shall be provided to the Board in the same manner and numbers as for the original Application, unless otherwise waived in writing by the Board.

(iv) If the applicant submits a revised plan for the Board's consideration and said plan is the plan that is then the subject of the Board's hearing and deliberation, then the Application shall be deemed to be revised, subject to the foregoing provisions of this Section 18-37(c).

Section 18-38. Changes after Issuance of a Permit.

If after a Comprehensive Permit is granted by the Board, including by order of the Committee pursuant to 760 CMR 56.07(5), an Applicant desires to change the details of its project as approved by the Board or the Committee, it shall promptly notify the Board in writing, describing such change and the proposed changes to the project shall be considered by the Board in accordance with 760 CMR 56.05(11).

(Adopted 8-3-2023, replacing earlier Comprehensive Permit Rules.)

Attachment A

Comprehensive Permit Performance Standards

Stoneham's land use plans and regulations reflect the development goals and desires of Stoneham Town Meeting and the Town's many land use boards, departments and committees, as well as the informed input of the Town's professional staff. These plans and regulations articulate the town's land use vision as expressed in density, setback, design and environmental performance standards. With the exception of requests for variances from the Board of Appeals pursuant to G.L. c.40A, s.10, the ability to petition Town Meeting for a change to the Zoning Map and/or the text of the Zoning Bylaws, and requests for waivers to Local Boards' regulations in accordance with the standards set forth within the applicable regulations and applicable law, the land use regulations adopted by Town Meeting and the Town's various land use boards and commissions are enforced as written.

With the possible exception of some comprehensive permits issued pursuant to the Local Initiative Program, the comprehensive permit process (G.L. c.40B, s.20-23) upsets this normative standard of land use regulation by enabling a qualified applicant to request waivers from any or all local land use regulations according to an "economic" standard. Due to the likelihood that a comprehensive permit applicant will request waivers from Stoneham's land use regulations, but precisely because the Town cannot predict which waivers will be asked for in advance, the Board of Appeals has developed the following performance standards for comprehensive permit projects. These performance standards are intended to assist comprehensive permit applicants by providing guidance to identify project characteristics that the Board will generally support, and also to assist the Board to ensure that comprehensive permit projects will be reviewed in a manner consistent with the review of non-comprehensive permit projects.

General Performance Standards

A. Introduction:

All land development projects in Stoneham shall, as applicable, conform to current zoning and land use regulatory standards, including, but not limited to, the Subdivision Rules and Regulations, Rules and Regulations Regarding Use of Storm Drains, Stoneham's Tree Policy and the Wetlands Bylaws and Regulations adopted by Town Meeting and the Conservation Commission (collectively, "Land Use Standards"). Comprehensive Permit applications should conform to the greatest extent feasible to such Land Use Standards. In keeping with over 200 years of development history in Stoneham, new development should be consistent with the immediate neighborhood, make a concerted effort not to detract from existing homes and land development patterns, and assure that development will not adversely impact the environment.

Safe and convenient entrance and exit from the proposed development to public streets is required. There should be appropriate street access for the size of the development, and an adequate vegetative buffer should be provided to minimize the visual impact of the development from existing roadways, from protected open space, and from existing and future housing development.

B. Developments should minimize:

1. Alteration of ground water, septic water levels or chemical constituents;
2. Alteration or relocation of water ways and drainage patterns;
3. Disruption, reduction of capacity, contamination, and other adverse effects on water resources;
4. Any use of groundwater for irrigation of landscaping;
5. Alteration of existing, natural grades, and overall volume of cut and fill;
6. Area over which existing vegetation will be disturbed, especially if within 200 feet of a river, pond or stream, or having a slope of more than 15%;
7. Removal of mature trees;
8. Soil loss or instability during and after construction;
9. Alteration or disturbance of land within any flood plain or wetlands area;
10. Blockage of trails or potential trails;
11. Disturbance of important wildlife habitats or corridors, outstanding botanical features or scenic or historic environment;
12. Removal of existing stone walls;
13. Visual prominence of man-made elements which are not necessary for safety or orientation including visibility of building sites from existing streets and existing protected open space;
14. Blockage of vistas through new development; and
15. Number of driveways exiting onto existing streets.

C. Developments should maximize:

1. Recharge of groundwater;
2. Visual prominence of natural features of the landscape;
3. Legal and physical protection of views from public ways and existing protected open space;
4. Connections via publicly accessed trails to and between protected open space and other trails;
5. Buffers for and connections among existing protected open spaces;
6. Wildlife corridors;

7. Preservation of: (a) stone walls and (b) scenic points as identified in the Massachusetts Landscape Inventory and historic sites as identified by the Massachusetts Historical Commission, by incorporating them within public open space or easements as provided by the relevant regulation(s); and
8. Curvilinear street patterns;

D. Units per acre:

As noted above, all land development projects in Stoneham shall, as applicable, conform to current zoning—including density—requirements. Comprehensive permit applications should conform to current zoning—including density—requirements, to the greatest extent feasible.

E. Architecture:

Detached and attached housing units should be designed to reduce overall visual massing and to blend compatibly with the landscape and with surrounding single-family residential neighborhoods. Building design, including exterior materials, should be in harmony with and enhance the town's existing and historic architectural traditions. The appearance of a gated community is discouraged. The architecture should also provide visual and acoustical screening of HVAC units.

F. Site planning, Height, Set-Backs, Screening, Landscaping, and Lighting:

All developments including comprehensive permit developments should provide visual screening consistent with the density and setback requirements included within the Zoning Bylaws and incorporated into the engineering design standards of the Stoneham Subdivision Rules and Regulations. Similarly, consistent with the requirements applied to all development in Stoneham, comprehensive permit projects should rely on and protect the natural features of the site such as open meadow, woodland, hillsides, rock outcroppings, water bodies, open vistas, valuable habitat and wildlife corridors, existing and potential trail connections which can provide public accessibility to open space, and buffers for and connections among existing protected open spaces through careful siting of roadways and structures. Exterior lighting should not impact adjacent residential areas or degrade wildlife habitat. The project design should to the extent possible preserve the existing and natural landscaping, and additional landscaping should be provided using water efficient plantings of a variety of native species to minimize and if possible eliminate irrigation and to provide visual and noise screening of the development from the street, abutting properties and protected open space. Building height should conform to the requirements of the Zoning Bylaws.

G. Open Space:

All developments including comprehensive permit projects should to the extent possible set aside, for perpetual protection, sufficient open space to serve the needs of the project residents and ensure that the proposed project is integrated within the existing neighborhood. Open Space is defined as land that is not covered with buildings, roadways, parking or any other structure or impervious surface. Open Space should be selected to maximize the value of wildlife habitat, should be contiguous to the extent required to preserve significant habitat, should be configured to maximize and preserve large blocks of undisturbed land and should encourage passive recreational opportunities for residents and the public where possible. Open Space should predominantly be left in a natural, undisturbed state. Landscaping of Open Space areas should utilize native vegetation to the extent practical, and should complement the values and functions of the natural resources on the site.

H. Green Development Practices:

All developments including comprehensive permit projects should, to the greatest extent practicable, include strategies for environmentally responsible design as formalized in Leadership in Energy and Environmental Design (LEED) gold standards, which minimize the depletion of natural resources; control erosion and minimize impact on natural areas; use native and water efficient plants in landscaping; increase energy efficiency in construction and operations; conserve water through use of efficient fixtures and appliances and irrigation systems; and use environmentally “friendly” materials.

(Adopted 6-26-14, replacing earlier Comprehensive Permit Rules.)

Attachment B

**Agreement for Reimbursement of Expenses
and Certification of Accuracy of Application**

Whereas the undersigned applicant has petitioned the Conservation Commission/Board of Appeals/Planning Board/Board of Health (**circle all that are applicable**) of the Town of Stoneham for approval of a permit and whereas the Town of Stoneham has authorized the Town Clerk / Treasurer to charge for reimbursement of legal, consulting and incidental expenses incurred on behalf of and/or for the benefit of third parties for services rendered by the Town of Stoneham;

And whereas the undersigned has requested services and/or authorizations of the Town of Stoneham that will result in the necessity to incur legal, consulting or incidental expenses on behalf of the undersigned or in consideration of the request submitted by the undersigned;

And whereas the applicant’s petition contains affirmative statements upon which the Town is asked to rely;

Now, therefore, it is agreed that the undersigned will make payment to the Town of Stoneham by providing payment to the Stoneham Town Clerk / Treasurer within fourteen (14) days of receiving a written request for payment by the Town or its appointed designee for all legal, consulting and incidental expenses incurred by the Town for the benefit of the undersigned or for the consideration of the request submitted by the undersigned, all as authorized by these Regulations and G.L. c.44, s.53G.

This Agreement shall be signed prior to the initiation of any action by the Conservation Commission/Board of Appeals/Planning Board/Board of Health (**circle all that are applicable**), including the opening of a public hearing, where relevant.

I, as the Applicant/Agent for a permit before the Stoneham Conservation Commission/Board of Appeals/Planning Board/Board of Health (**circle all that are applicable**), hereby consent to the terms of this Agreement and verify, under the pains and penalties of perjury that the application and its content are accurate and complete as of the date executed below.

Signature of Petitioner(s) Date

Signature of Agent(s) Date