

TOWN OF SMITHTOWN SUFFOLK COUNTY, NY



RULES OF PROCEDURE IN APPEARING BEFORE THE SMITHTOWN BOARD OF ZONING APPEALS

RULE 1 - QUALIFICATIONS

Only the following person or persons may execute an application and appear before the Board:

- Owner of property
- Contract vendee of property
- Lessee or sub-lessee of property
- Attorney for owner, contract vendee, lessee or sub-lessee of property

RULE 2 - FILING OF AN APPLICATION

Applicant is required to submit the following as a complete package at the time of filing an application:

1. **Notice of Appeal** (not applicable to special exception) — Applicant must submit proof of denial of a building permit application (obtainable at the Building Department), or a notice of appeal stating the specific grounds upon which applicant is appealing, whichever is applicable. An appeal to the Board of Zoning Appeals must be made within 60 days from the day of the determination. Upon application by the applicant, the Board of Zoning Appeals reserves the right to waive the 60-day time limit.
2. **Application Forms** – Two (2) “Applications to the Board of Zoning Appeals”.
3. **Environmental Assessment Form [EAF]** – Two (2) copies completely filled out.
4. **Surveys/Site Plans** - Five (5) copies of a recent survey or site plan drawn to 1" = 10', 20', 30', or 40' scale of the subject property which must include the following:
 - a. All property lines and dimensions of the subject property shall be shown on the survey.
 - b. The distance in feet to the nearest intersection and the names of the streets shall be shown on the survey.
 - c. All existing and proposed structures (e.g. decks, sheds, fences, pools, additions, etc.), shall be shown and labeled on the survey including the distance in feet to the nearest property lines.
 - d. All existing structures on neighboring properties shall be shown and labeled on the survey including the distance in feet to the nearest property lines.
 - e. The names of the property owners of the neighboring properties shall be shown on the survey.
 - f. The Suffolk County Tax identification number shall be indicated on the survey. The tax identification number can be found on you Suffolk County tax bill or by calling the Town of Smithtown Assessors office.
 - g. Sanitary Flow Calculations: Existing, Proposed, & Maximum Permitted in accordance with Suffolk County Health Department regulations.
5. **Building Plans & Elevations** - Three (3) copies of the structures including pools and retaining walls - front, rear, and/or side views
6. **Photographs** - Three (3) different view color photos of **EACH subject** of the application. All **photographs must be in color.**
7. **Fees** – (Pursuant to Section 322-81G of the Building Zone Ordinance) Two (2) checks made payable to the “Town of Smithtown” (One check for BZA fee, One check for the EAF fee)
8. **Disclosure Affidavit** - if required, pursuant to Section 322-80A of the Building Zone Ordinance.
9. **Single and Separate Ownership** - (Where applicable for new house or undersize lot). Applicant must produce the following:
 - a. A report from a member of the New York Board of Title Underwriters or an Abstract Company licensed to do business in the State of New York, showing the chain of title, from January 1, 1932 to date, (or from any other date of any ordinance making the subject lot non-conforming), covering the property for which the variance is requested and all adjoining properties.
 - b. At the discretion of the Board of Zoning Appeals, the Board may require any, all, or part of a certified copy of all deeds, contracts, court orders, wills or other papers and documents on file having a date of January 1, 1932 or later, bearing on the ownership of the property for which the variance is requested and all adjoining properties.
 - c. An affidavit of an officer of a title company or abstract company, stating that the certified copies mentioned in Paragraph “B” of this Rule constitute all deeds, etc. on file in the appropriate place.
 - d. If the applicant is a contract vendee, a true copy of the contract must be presented at the hearing.
10. **All of the above** - shall be submitted as a complete package at the time of filling.

RULE 3 - NOTIFICATION

1. **Mailing** - Applicant must notify, at least fourteen (14) days prior to the public hearing, by certified mail, return receipt requested, to the owners of all property within two hundred (200) feet of the exterior limits of the subject property, as shown on the latest assessment roll.
2. **Posting** - Applicant shall erect a sign on the subject property pursuant to Section 322-80B of the Building Zone Ordinance. It shall be erected for full five (5) days prior to and including the day of the public hearing. The sign shall not be set back more than ten (10) feet from the property line and shall not be less than two (2) or more than six (6) feet above the grade at the property line.
3. **Adjournments** - Applicant who wants the public hearing for their application to be adjourned should make the request before noon on Monday the day before the hearing. In case of an emergency, if you need an adjournment after the deadline it will be necessary for you to make the request at the beginning of the public hearing and state valid reasons why you need to adjourn.

RULE 4 - APPEARANCE BEFORE THE BOARD

1. **Swearing In** - All persons, other than the applicant's attorney must approach the Board, state their name and address and be sworn in.
2. **Proof of ownership** - Applicant MUST produce a deed or contract to the property that is the subject of the application.
3. **Affidavit of Posting** - Applicant must have the affidavit of posting signed by the owner or individual who placed the sign on the property and notarized on the same day of the meeting.
4. **Affidavit of Mailing** - Applicant to submit return receipts and the notarized Affidavit of Compliance signed by the applicant, indicating compliance with the mailing requirements of Section 322-80B(3) of the Building Zone Ordinance. The material should be submitted in a 9" x 12" envelope.
5. **Disorderly Conduct** - Any person who becomes unruly may be removed at the discretion of the Chairman or Acting Chairman of the Board of Appeals.

RULE 5 - PROCEDURE BY THE BOARD

Cases shall be heard in their advertised order. After the applicant has presented their case, the Chairman shall give adequate opportunity for the Board to hear comments from other interested parties.

After all the advertised matters have been heard, the Board shall then hear any adjourned matters.

RULE 6 - PERMITS: TIME TO APPLY FOR

Permits for Variances and special exceptions granted by the Board of Zoning Appeals MUST be obtained within six (6) months after the date of the rendering of the decision. Extensions of this period may be granted by the Board upon receipt of a written request by applicant.

RULE 7 - REHEARINGS

Reapplications for the same request shall not be accepted for at least one (1) year after the decision unless the Board grants permission for a rehearing.

An application for a rehearing must be based upon one of the following grounds:

1. Applicant has new evidence that must be shown to have been unavailable at the time of the original hearing.
2. Show that the Board has overlooked some controlling decision, a controlling principle of law or misapprehended the facts as originally presented.

Any person making application for a rehearing shall deposit with the Secretary to the Board a new fee for each case upon which a rehearing is applied for.

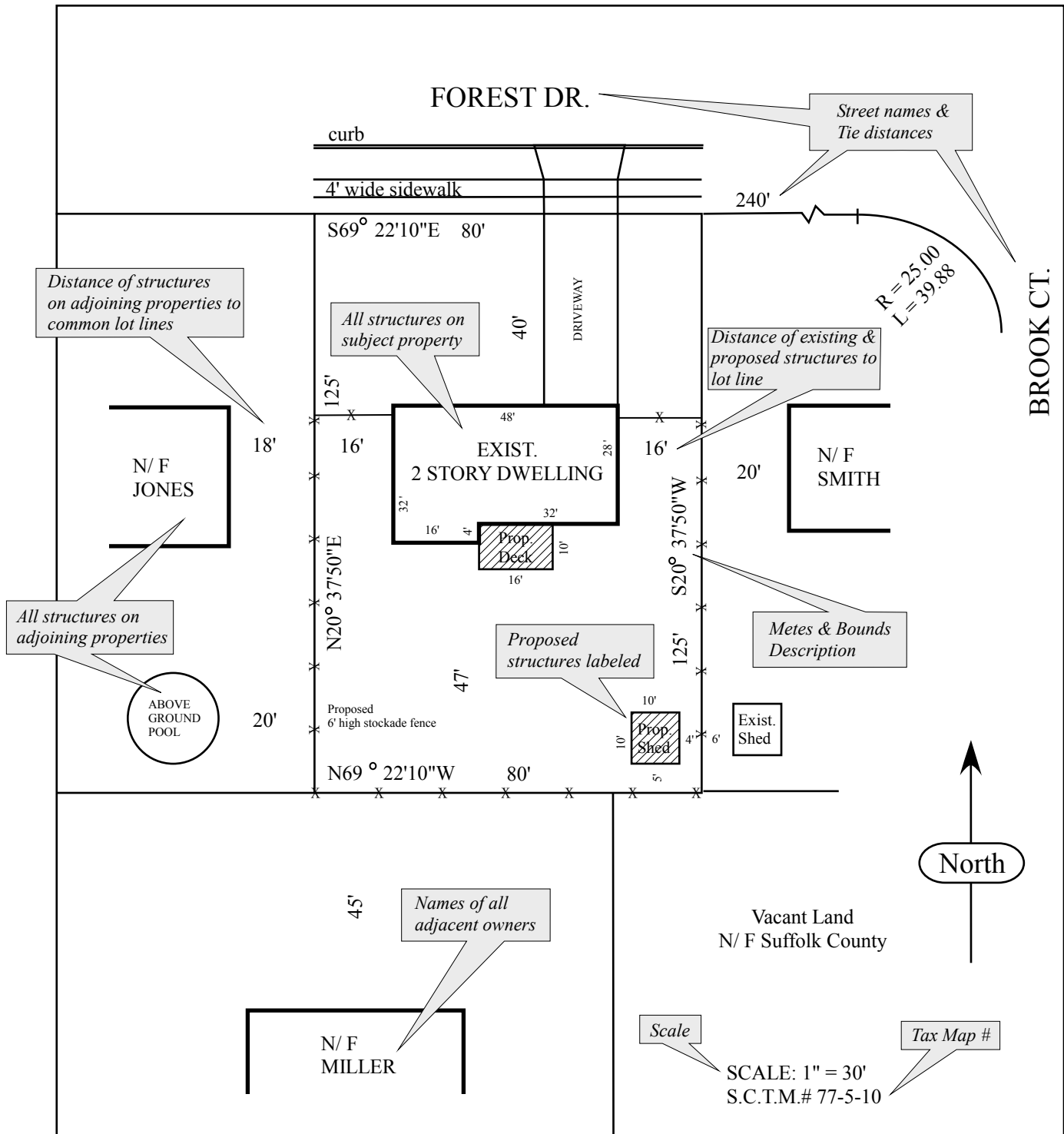
RULE 8 - RECORD KEEPING

The Planning Department shall be the receiving and record-keeping agency for the Board of Zoning Appeals. Minutes of the Board's proceedings are maintained at the Town Clerk's office, and are public record.

REMINDER TO ALL BOARD OF APPEALS APPLICANTS
IMPORTANT -- PLEASE READ

1. Please read all instructions carefully. If you have any questions, call the Planning Department at 631-360-7540 [or email to smithtownplanning@smithtownny.gov] Monday- Friday, 9am to 5pm (July-August 9am to 4pm).
2. Please make sure that all forms are fully and accurately completed.
3. Please make sure that the plans are complete, accurate, and to scale (For specifics see Item #2 on checklist).
4. Please remember to complete the appropriate **short** Environmental Assessment Form.
5. Please remember to send notice via **CERTIFIED MAIL RETURN RECEIPT REQUESTED** to all owners within 200 feet of your land at least **14 days before your hearing** and bring to the hearing the signed, notarized Affidavit of Compliance along with all receipts from the certified mailing.
6. Please remember to post your property for **five (5) full consecutive days before and including the hearing** and bring to the hearing the signed, notarized Affidavit of Posting.
7. For variance applicants, do not take it for granted that your application will be approved. You must prove to the Board that adherence to the zoning ordinance would result in a practical difficulty. Even if you prove practical difficulty, the Board would deny the request if it determines that denial is necessary to protect the public health, safety, or welfare.

EXAMPLE OF PLAN FOR BOARD OF ZONING APPEALS APPLICATIONS





**TOWN OF SMITHTOWN
BOARD OF ZONING APPEALS
APPLICATION CHECKLIST**

BZA

Office Use Only:

Case#:		Planner:		Date:		YES	NO
SCTM #800-	- -	Clerk:		Date:		YES	NO
Applicant:							

1. REQUIRED ITEMS – INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

- ☐ **Denial from Building Department of Building Permit** (for variances & Interpretation. N/A for Spec. Ex., Site Plans)
- ☐ **Two (2) copies of the application**
- ☐ **Two (2) checks made payable to the Town of Smithtown** (One for the variance fee/One for the EAF fee).
- ☐ **Disclosure Affidavit** (owners, lessees, contract vendees, contract lessees (not including res. Area variances).
- ☐ **Affidavit of Applicant** (Applies to temporary living quarters and the ownership of horses only).
- ☐ **Five (5) copies of recent survey or site plan** (to include all information listed under item 2).
- ☐ **Three (3) copies of floor plans** (if applicable).
- ☐ **Three (3) copies of elevation plans-** front, rear, side views (if applicable).
- ☐ **Three (3) different view, color photographs of EACH subject area (NOT 3 sets)**
- ☐ **Two (2) Environmental Assessment Forms (EAF- Short Form).**
- ☐ **Electronic Copy of Plans (optional)** can be submitted via email, flash drive, CD, etc.

2. Survey/ Site Plan requirements:

- ☐ **Legible (Clear and neat)**
- ☐ **Drawn to Architectural or Engineering Scale**
- ☐ **Metes and Bounds Description**
- ☐ **Street Names and Tie Distances**
- ☐ **All Existing and proposed structures on subject property labeled and dimensioned**
- ☐ **Existing and proposed structures labeled**
- ☐ **Dimensions of all setbacks**
- ☐ **Distances of adjoining structures to common lot lines**
- ☐ **Adjoining neighbor's names and existing structures including the distance in feet to the nearest property lines must be shown and labeled.**
- ☐ **Sanitary Flow Calculations: Existing, Proposed & Maximum permitted flow (Evidence of compliance with Suffolk County Department of Health requirements).**

3. Related Planning Matters:

- ☐ **Environmentally sensitive lands**
- ☐ **Paper Street- Planning Board**
- ☐ **Adjoining substandard lots**
- ☐ **Coastal Assessment Form (LWRP)**



TOWN OF SMITHTOWN

SUFFOLK COUNTY, NY

APPLICATION TO THE BOARD OF ZONING APPEALS

Please see separate sheet for instructions. If you have questions, please call Planning Dept. (360-7540). Original copies only. Faxed or photocopies are not acceptable.

Applicant: _____

BZA CASE # _____

Applicant Address: _____

Tax Map No. _____

Contact Person: _____

Property Owner: _____

Contact Address: _____

P.O. Address: _____

Telephone No.: _____

Telephone No.: _____

Email Address: _____

Applicant's standing:

☐ Owner

☐ Contract Vendee

☐ Lessee

☐ Contract Lessee

☐ of the subject parcel

☐ of an affected parcel (for interpretations only)

1. Location of property (including distance to nearest intersection) _____

2. Zoning District(s) as shown on the Zoning Map _____

3. When was the subject structure constructed? _____

4. What are you proposing to build or maintain? _____

5. Is the property in separate ownership from all adjoining properties?

(a) If yes, since what date _____

(b) If no, what adjoining property is held by the same owner? _____

6. Type of Application (check all that apply):

☐ Area Variance (e.g., setback, height, frontage, etc.)

☐ Special Exception

☐ Use Variance (e.g., retail in a residence district)

☐ Certificate of Existing Use

☐ Interpretation of Zoning Ordinance

☐ Variance of §280A requirements

☐ Interpretation of District Boundary

☐ Variance of §239K requirements

7. Reason for Application (complete relevant sections):

(a) A VARIANCE of Section _____ Subsection _____ of the Building Zone Ordinance is requested to _____

(b) A SPECIAL EXCEPTION under the Zoning Ordinance is requested pursuant to §322-8B of the Zoning Ordinance to

(circle one) operate/expand/modify the following land use: _____

(c) INTERPRETATION: I believe that under the Zoning Ordinance, the Town was in error in (circle one) denying/issuing a permit because:

8. Area Variance Considerations. (All questions must be answered. Attach additional sheets if necessary).

1. The variance (circle one) would/would not produce an impact on adjacent properties or the neighborhood because:

2. The request (circle one) is/is not substantial because:

3. The benefit (circle one) can/cannot be achieved by an alternative because:

4. The variance (circle one) would/would not cause an adverse effect on the environment because:

5. The difficulty (circle one) was/was not created by the applicant or a former owner because:

9. Special exception standards: Attach on separate sheets of paper, explaining in detail how the special exception meets (or does not meet) each of the general standards required for all special exception uses pursuant to §322-94G of the Building Zoning Ordinance and how the special exception meets (or does not meet) each of the specific standards (if any) required for this special exception pursuant to §322-82 of the Building Zoning Ordinance.

OWNER'S ENDORSEMENT

COUNTY OF SUFFOLK
STATE OF NEW YORK

_____ being duly sworn, deposes and says that he/she resides at _____
and State of _____ and that he/she is (the owner in fee) (_____ of the _____
Corporation which is the owner in fee) of the premises described in the foregoing application and that he has authorized _____
_____ to make the foregoing application approval as described herein.

Sworn to me this
_____ day of _____ 20____

Signature

Notary Public, Suffolk County

Print or Type Name

APPLICANT'S AFFIDAVIT

STATE OF NEW YORK
COUNTY OF SUFFOLK

_____ being duly sworn, deposed and says I am the owner, attorney for owner, contract vendee, lessee of the property above described. I understand that if this is a special exception application the acceptance of this application by the town does not imply that it meets the special exception standards, that also it is my responsibility to demonstrate to the Board of Appeals that the proposal meets the standards, and further if I need any variances of the standard in order for the special exception to be approved it is my responsibility to apply for those variances as part of this application. That all statements made in this application are true to the best of my knowledge and belief, except as to the matter therein stated to be alleged on information and belief and as to the matters I believe the same to be true. I hereby grant the Zoning Board members and municipal staff to enter onto my property for purposes of site inspection prior to public hearing.

Sworn to before me this
_____ day of _____ 20____

Signature

Notary Public, Suffolk County

Print or Type Name



TOWN OF SMITHTOWN

SUFFOLK COUNTY, NY

APPLICATION TO THE BOARD OF ZONING APPEALS

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Tax Map No. _____

Contact Person: _____

Property Owner: _____

Contact Address: _____

P.O. Address: _____

Telephone No.: _____

Telephone No.: _____

Email Address: _____

Applicant's standing:

☐ Owner

☐ Contract Vendee

☐ Lessee

☐ Contract Lessee

☐ of the subject parcel

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STATE OF NEW YORK

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and State of _____ and that he/she is (the owner in fee) (_____ of the _____
Corporation which is the owner in fee) of the premises described in the foregoing application and that he has authorized _____
_____ to make the foregoing application approval as described herein.

Sworn to me this
_____ day of _____ 20____

Signature

Notary Public, Suffolk County

Print or Type Name

APPLICANT'S AFFIDAVIT

STATE OF NEW YORK
COUNTY OF SUFFOLK

_____ being duly sworn, deposed and says I am the owner, attorney for owner, contract vendee, lessee of the property above described. I understand that if this is a special exception application the acceptance of this application by the town does not imply that it meets the special exception standards, that also it is my responsibility to demonstrate to the Board of Appeals that the proposal meets the standards, and further if I need any variances of the standard in order for the special exception to be approved it is my responsibility to apply for those variances as part of this application. That all statements made in this application are true to the best of my knowledge and belief, except as to the matter therein stated to be alleged on information and belief and as to the matters I believe the same to be true. I hereby grant the Zoning Board members and municipal staff to enter onto my property for purposes of site inspection prior to public hearing.

Sworn to before me this
_____ day of _____ 20____

Signature

Notary Public, Suffolk County

Print or Type Name

Appendix C**State Environmental Quality Review****SHORT ENVIRONMENTAL ASSESSMENT FORM****For UNLISTED ACTIONS Only****PART I - PROJECT INFORMATION (To be completed by Applicant or Project Sponsor)**

1. APPLICANT/SPONSOR	2. PROJECT NAME
3. PROJECT LOCATION: Municipality _____ County _____	
4. PRECISE LOCATION (Street address and road intersections, prominent landmarks, etc., or provide map)	
5. PROPOSED ACTION IS: ☐ New ☐ Expansion ☐ Modification/alteration	
6. DESCRIBE PROJECT BRIEFLY:	
7. AMOUNT OF LAND AFFECTED: Initially _____ acres Ultimately _____ acres	
8. WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER EXISTING LAND USE RESTRICTIONS? ☐ Yes ☐ No If No, describe briefly _____	
9. WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT? ☐ Residential ☐ Industrial ☐ Commercial ☐ Agriculture ☐ Park/Forest/Open Space ☐ Other Describe: _____	
10. DOES ACTION INVOLVE A PERMIT APPROVAL, OR FUNDING, NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (FEDERAL, STATE OR LOCAL)? ☐ Yes ☐ No If Yes, list agency(s) name and permit/approvals: _____	
11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL? ☐ Yes ☐ No If Yes, list agency(s) name and permit/approvals: _____	
12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT/APPROVAL REQUIRE MODIFICATION? ☐ Yes ☐ No	
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor name: _____ Date: _____ Signature: _____	

If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment

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11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL? ☐ Yes ☐ No If Yes, list agency(s) name and permit/approvals: _____	
12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT/APPROVAL REQUIRE MODIFICATION? ☐ Yes ☐ No	
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor name: _____ Date: _____ Signature: _____	

If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment

TOWN OF SMITHTOWN
SUFFOLK COUNTY, N.Y.



DISCLOSURE AFFIDAVIT
(See Instructions Below)

In the Matter of the Application

Case # _____

Of

FULL DISCLOSURE
AFFIDAVIT

P. O. Address _____

STATE OF NEW YORK

SS.:

COUNTY OF SUFFOLK

(name), being duly sworn, deposes and says:

1. This affidavit is made by your deponent and intent to be filed with The Town Board - Board of Zoning Appeals of the Town of Smithtown (cross out one) to fulfill requirements of the Building Zone Ordinance with respect to the above entitled Application made or intended to be made affecting property located and described as follows:

(Continue on the back of this page.)

Instructions:

This affidavit must be signed by all owners of record, contract vendees, lessors, lessees, sub-lessees, contract lessors, contract lessees, contract sub-lessors, contract sub-lessees, holders of beneficial interest, contract holders of beneficial interest, holders of encumbrances and contract holders of encumbrances. The purpose of this affidavit is to insure disclosure of any interest of any nature or form whether oral or written held by any individual, partnership, firm, or corporation. (Exception: Lending institutions licensed or franchised by the State of New York, public corporations and lessees, contract lessees, sub-lessees and contract sub-lessees of less than a whole interest in land are not required to execute this affidavit. Individual applicant or applicants who are husband and wife need not file this affidavit in connection with applications for an area variance or an interpretation of any provision of this ordinance with respect to residential property, unless directed to do so by the Board of Zoning Appeals.)

2. Signatures of this Affidavit as specified above under Instructions shall fill out the following applicable items:
(If necessary, attach additional information on separate sheet.)

a. If signator is an individual, state full name and street address;

b. If signator is a partnership, state the name, street address and the nature of interest of each partner;

c. If signator is a corporation, state name and street address of each officer, director and stockholder;

d. If signator is a corporation and stock has been pledged or agreement made to pledge stock, state name and street address of all persons to whom stock has been pledged or with whom any agreement has been made to pledge the stock. If none, so state;

e. State name and address of all persons, individuals, partnerships and/or corporations who are holders of any instrument creating an encumbrance upon the property; state the nature of such encumbrance; and if the holder of such encumbrance is a corporation (See Exception) state the names of all officers, directors and stockholders of such corporation;

f. State whether any person whose name is contained herein either as a signator or as a party having any interest in the property as defined herein is an officer or employee of the Town of Smithtown or is related thereto either by blood or by marriage and if so, state name and relationship;

g. If the signator is the owner of the property, contract vendee, or other, so state;

h. State whether any person, partnership, firm or corporation has any interest, as defined in the Instructions in respect to the subject property. If none, so state; if otherwise, set forth names, addresses, and nature of interest;

i. All signators hereby agree that in the event there is any change in any matter set forth herein after the execution hereof and prior to the issuance of a Certificate of Occupancy for the property affected hereby, they shall file with the Planning Department a Supplemental Affidavit containing the details of such change within forty-eight hours of such change.

APPLICANT'S AFFIDAVIT

Deponent makes this Affidavit to induce the Town Board - Board of Zoning Appeals (cross out one) to act favorably upon deponent's concomitant Application, with full knowledge that the Town Board - Board of Zoning Appeals will rely upon the statements made herein.

_____ being duly sworn deposes and says that deponent is the signator of the above Affidavit; that deponent has read the foregoing Affidavit and knows the content thereof; that the same is true to deponent's own knowledge.

Signed _____
(Individual)

Signed _____
(Partner or Corporate Officer)

(Title)

Sworn to before me this
_____ Day of _____, 20____

(Notary Public)