

Town of Stoneham



BOARD OF APPEALS

Date of Appeal:.....

The undersigned having been refused a building permit due to a violation of the Town Zoning Bylaw, appeals this decision and request a hearing before the Stoneham Board of Appeals.

1. NATURE OF PERMIT REQUESTED:

2. DATE PERMIT WAS REFUSED:

(APPEAL MUST BE MADE WITHIN 30 DAYS FROM DATE OF REFUSAL)

3. REASON FOR REFUSAL:

4. DESCRIBE ACCURATELY THE LOCATION OF THE LAND IN QUESTION:

.....

(Sufficient detail must be given to identify the particular parcel; e.g. Street and Number lot numbers on an identifiable plan, etc.)

5) NAME AND ADDRESS OF LEGAL OWNER OF PROPERTY.....

.....

6. ON WHAT DATE WAS THE LEGAL OWNER'S DEED RECORDED?..... at
Book..... and Page.....Numbers.

7. STATE APPLICANT'S INTEREST IF OTHER THAN LEGAL OWNER:

.....

8. A PLAN IS ATTACHED AND PART OF THIS APPLICATION THAT MEETS THE FOLLOWING:

(over)

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 plan shall indicate the following:

- a) Size: 8 1/2" X 11" or larger not to exceed 24" X 36" drawn to scale.
- b) North point
- c) Names of streets
- d) Zoning district applicable to the property
- e) Names of owners and abutters
- f) Location and dimensions of all above ground structures including fences, hedges, trees, sidewalks, walkways, driveways, etc.
- g) Lot area and frontage.
- h) Property lines
- i) Dimensions of all property lines
- j) The percentage of the lot covered by existing or proposed structures.
- k) Dimensions from the structures to the lot lines.
- l) **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. (Important)**
- m) 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.

9. FEE.

- a) ~~\$100~~ - for Residential property
 - b) ~~\$150~~ - for Commercial property
- \$150 - \$200*
\$250 per variance

10. COPIES OF APPLICATION-

Three (3) copies of the Application shall be filed with the Clerk of the Board of Appeals. 1 will remain with the Board of Appeals, 1 will be forwarded to the Town Clerk and 1 will be forwarded to the Building Inspector.

11. 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 advertisement.

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 material and labor fees, if applicable. (See legal notice instructions)

I, the undersigned petitioner affirm that the foregoing statements are true statements of fact to the best of my knowledge and belief.

Signed..... Street and No.

Town.....State Phone No.

Appearance and Absence- The applicant shall appear in person in his/ her 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 applicant in order to reschedule the hearing.

HELPFUL HINTS IN APPLYING FOR A ZONING VARIANCE

The Building Inspector's Denial of your permit application was based on a violation of the Town of Stoneham's Zoning Bylaw. As a matter of right under both the Town Zoning Bylaw and State Zoning Act you may seek relief from the Stoneham Board of Appeals in the form of a Variance of the Town's Zoning Bylaw.

You should keep these issues in mind should you pursue a variance:

- A variance is a form of relief that is based on an appointed board's determination of the facts that you present to them. You must receive a vote of 4 out of the 5 members.
- You have a right to seek a variance, but "no person has a legal right to a variance and they are to be granted sparingly."¹
- Variance law in Massachusetts is based on the concept that something is wrong or unusual with the land and not on the desires of the property owner.
- State law and court case decisions are very specific as to what criteria you must meet and present in order to be granted a variance.

Granting a Variance

In order for the Board of Appeals to grant a variance, all three of the following "required findings" must be reached in the affirmative.

1. Soil conditions, shape or topography – This condition is unique to the zoning district where the parcel is located.
2. Hardship – The Board of Appeals must connect the hardship to the soil conditions, shape or topography. Personal hardships do not meet the State Legislature or Courts' perspective of hardship under the State Zoning Act. **The hardship must be based on the land and not personal issues.**
3. Public Good – The Board of Appeals must determine that the action sought by the variance can be granted "without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such bylaw."²

If you cannot make the case that you meet all three of these conditions, it will be extremely difficult for the Board of Appeals to grant a variance.

Conditions of a Variance

The Board of Appeals has the authority to impose conditions and limitations on any variance it grants. These include the following:

1. Conditions and limitations on the use of the property.
2. Conditions that extract a public benefit necessitated by the grant of the variance.
3. Limitations on the time period(s) within which the variance will be valid.

Filing for a variance

An application for a variance is available at the Planning Board/Board of Appeals Office daily from 8 a.m. – 1 p.m. or at the Inspectional Services counter during normal business hours. Should you have any questions regarding the application or variances in general, you may contact the Planning Board/Board of Appeals office at 781-279-2695.

¹ Dion v. Board of Appeals of Waltham, 344 Mass 547 (1962)

² Mass. General Law Chapter 40A, Section 10

**All abutters' mailings must be mailed to the 7 surrounding Cities and Towns
and must have a return label:**

Planning Board/Board of Appeals
35 Central Street
Stoneham, Ma, 02180

Wakefield Planning Board
1 Lafayette Street
Wakefield, MA 01880

Malden Planning Board
200 Pleasant Street
Malden, MA 02148

Medford Planning Board
Office of Community Development
City Hall, 85 George P. Hassett Dr.
Medford, MA 02155

Reading Planning Board
Office of Community Development
16 Lowell Street
Reading, MA 01867

Melrose Planning Board
City Hall
562 Main Street
Melrose, MA 02176

Winchester Planning Board
71 Mount Vernon Street
Winchester, MA 01890

Woburn Planning Board
City Hall
10 Common Street
Woburn, MA 01801

TOWN OF STONEHAM

Affidavit of Notice of Mailing to Abutter and Others

Date_____20_____

To the Planning Board/Board of Appeals
For the Town of Stoneham

I, _____, hereby certify that the following is a true list of the persons shown upon the Assessor's most recent valuation list as the owners of the property abutting the subject property at_____.

I also certify that the notices of this application/petition concerning the above property were returned to the Planning Board/Board of Appeals in properly addressed envelopes, first class postage affixed within three (3) business days after the first publication of same. A copy of the advertisement is attached.

Signed and subscribed to under penalties of perjuries this _____day of _____, 20_____.

Signature:_____

Printed Name:_____

ATTACH ADVERTISEMENT
HERE

Address:_____

City, State, Zip:_____

OR

Typed copy attached

Notary Public:_____

My Commission Expires:_____

INSTRUCTIONS – LEGAL NOTICES
Planning Board & Board of Appeals

Contact Assessor's Office to request Abutter's list and labels, (10 day lead time required) The Abutter's list will be forwarded to the Board of Appeal / Planning Board Office for pick up by the applicant. Applicant's Attorney will write Legal Notice and have approved by Board of Appeal's / Planning Board Office. In rare cases the legal notice will be written by the PB/BoA after receipt of plan & application. Abutter's List is not required for Sub-divisions.

1. Upon approval, Applicant is responsible for bringing the Legal Notice to Stoneham Independent Newspaper Office, located in Woburn MA., (Woburn Daily Times) phone # 781-438-1660, fax # 781-738-6762. The ad must be published for two consecutive weeks as specified at bottom of the legal notice. The petitioner pays for publication.
2. Make appropriate number of copies of Legal Notices for mailing to abutters and the seven (7) surrounding cities/towns
Accessory Dwelling applications do not require notices to the 7 surrounding town.
3. Place mailing labels from Assessor's Office on envelopes, list Planning Board/BoA Office as return address, 35 Central Street, Stoneham, MA 02180; place copied Legal Notice inside each envelope, seal envelopes, and affix proper postage.
DO NOT MAIL.
4. Also mail a copy of Legal Notice to surrounding cities and towns
From the list that Clerk provided you with.
5. Please leave envelopes in the same order as they appear in the Certified Abutters List.
6. Complete *Affidavit of Notice of Mailing to Abutter and Others* form. Attach a copy of Legal Notice to the Affidavit and have notarized.
7. Return properly stuffed envelopes with return address and postage affixed to the Board of Appeals/Planning Board Office, together with completed notarized Affidavit and copy of Legal Notice.
8. Envelopes should be returned to PB/ BoA within three business days after the ad (first publication) appears in newspaper

Fee Schedule

Zoning Board of Appeals (voted September 28, 2023)

Single and Two Family Dwellings	\$150 plus fees associated with notice requirements under G.L. c. 40A §11
Multi-Family (3 or more units) requested	\$200 x number of variances plus fees associated with notice requirements under G.L. c. 40A §11
Commercial requested	\$250 x number of variances plus fees associated with notice requirements under G.L. c. 40A §11
Comprehensive Permit	\$3,000 base fee plus \$200 per unit proposed plus fees associated with notice requirements under G.L. c. 40A §11
Extension	\$100.00

Planning Board (voted September 13, 2023)

Approval Not Required (ANR)	\$100
Preliminary and Definitive Subdivisions	\$1,000 base fee plus \$250 per lot \$200 per waiver
Special Permit	\$200 plus fees associated with notice requirements under G.L. c. 40A §11
Extension of a Special Permit	\$100.00 plus fees associated with notice requirements under G.L. c. 40A §11

Zoning Bylaw Text Amendment

\$200 plus fees associated
with notice requirements
under G.L. c. 40A §5

Zoning Bylaw Map Amendment

\$200 plus fees associated with notice
requirements under G.L. c. 40A §5

All public hearings require the petitioner to request a certified abutter's list from the Assessor's Office. The fee is \$25.