

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 appeals from. Upon application by the applicant, the Board of Zoning Appeals reserves the right to waive the 60-day time limit.
2. **Application Forms** - 2 "Applications to the Board of Zoning Appeals."
3. **Environmental Assessment Form** - 2 copies completely filled out.
4. **Surveys** - Eight (8) copies of a 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.
5. **Building Plans & Elevations** - Three (3) copies of the structures - front, rear, and/or side views
6. **Photographs** - Three photos of the subject of the application showing different views. All photographs will be on glossy photographic paper, attached to an 8 ½ x 11 sheet of paper.
7. **Fees** – (Pursuant to Section 322-81G of the Building Zone Ordinance)
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. **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 a full five (5) days prior to 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.
2. **Mailing** - Applicant must notify, at least fourteen 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.
3. **Adjournments** - Applicant who wants the public hearing for his or her 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 notated 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 his 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.