



# ZONING BOARD OF APPEALS (ZBA) APPLICATION GUIDE

This guide has been prepared by Stonington's Planning Department to assist residents and property owners through the Zoning Board of Appeals (ZBA) process. Applicants are encouraged to familiarize themselves with relevant portions of the Zoning Regulations, particularly Table 5.1.1 (Residential Zone Bulk Requirements) or Table 5.2.1 (Commercial / Industrial Zone Bulk requirements).

## ZBA RESPONSIBILITIES

### THE STONINGTON ZBA HAS TWO FUNCTIONS:

- To provide relief from dimensional or area requirements (bulk requirements) contained in the Zoning Regulations.
- To hear appeals of decisions of the Zoning Official / Zoning Enforcement Officer.

The Zoning Board of Appeals is a quasi-judicial board, and all matters brought before it require a public hearing. As set forth in Chapter 124, Sections 8-5 to 8-7 of the Connecticut General Statutes, the ZBA is empowered to grant Variances to the Zoning Regulations. Applications must be filed with the Planning Department one month before the date of a public hearing. ZBA meets on the second Tuesday of each month in the Police Department meeting room (173 South Broad Street, Pawcatuck). Contact the Planning Department regarding filing deadlines and meeting dates.

## DIMENSIONAL & AREA VARIANCES

A dimensional or area variance is needed when a building application does not comply with setback, height or area requirements of the Zoning Regulations. Dimensional variances provide flexibility in interpretation and enforcement of the regulations and provide landowners with administrative relief from certain provisions of the code. Put another way, a Variance allows property to be used in a manner that does not comply with the literal bulk requirements of the regulations. An approved Variance is granted to a particular piece of property, not just the applicant, and can be used by all subsequent owners.

## USE VARIANCE PROHIBITION

A *use* variance is defined as "a use of the land for a purpose which is otherwise not allowed or is prohibited by the applicable Zoning Regulations." Pursuant to Section

8.10.4 of the Regulations, ZBA has no authority to permit by variance any use in any zoning district in which such use is not allowed. Use variances cannot be granted to accomplish what is, in effect, a substantial change in the uses permitted in a specific zone.

## REVIEW OF ADMINISTRATIVE ORDERS

Should the Zoning Official either approve or deny a Zoning Permit and you do not agree with this decision, you may appeal this administrative action to ZBA. An appeal of the Zoning Official's decision must be filed with the ZBA via the Planning Department, within 15 days of the date on which the Zoning Permit approval / denial was issued.

### TYPES OF DECISIONS THAT MAY BE APPEALED:

- Issuance of a Zoning Permit by the Zoning Official / Zoning Enforcement Officer.
- Denial of a Zoning Permit Application.
- Issuance or lifting of a Cease and Desist Order.
- Interpretations of the Zoning Regulations made by the Zoning Official.

### ITEMS NOT APPEALABLE TO ZBA:

- Issuance of a Zoning Citation (see Town Ordinance for instructions).
- Issuance or denial of a Special Use Permit by the Planning and Zoning Commission (appealable to Connecticut Superior Court).
- Permits issued or denied by the Inland Wetland and Watercourses Commission (appealable to Superior Court).
- Subdivision approvals or denials (appealable to Superior Court).
- Notices of Violation issued by the Zoning Official / Zoning Enforcement Officer (not an order, but a request for voluntary compliance, used to informally resolve an apparent violation).

## PROVING HARDSHIP

The applicant, or his/her agent, must plead a hardship before the ZBA. A hardship is defined as a peculiar or unique feature of a particular piece of property that prevents a landowner from making a reasonable use of their property in conformance with the existing zoning regulations. A hardship has nothing to do with personal circumstances of the landowner. The fact that an owner might be able to make more profitable use of the land if it were not for the Zoning Regulations does not equate to hardship. Proof of a true hardship is a legal requirement for ZBA to grant a variance.

**APPLICANTS MUST DEMONSTRATE:**

- The hardship required for the Variance must be one that originates in the Zoning Regulations.
- Circumstances relating to soil conditions, irregular shape or topography of the property for which the Variance is being sought.
- Such circumstances specifically affect the property but do not affect generally the zoning district in which the land is located.
- Owing to such circumstances, a literal enforcement of the provisions of the Regulations would incur substantial hardship to the property owner.
- The desired relief may be granted without substantial detriment to the public good and without nullifying or substantially detracting from the intent and purpose of the Regulation or from the intent of the district in which the Variance is being sought.

**RECOGNIZED HARDSHIPS DO NOT INCLUDE:**

- Self-created hardship (including a desire to subdivide a property into additional lots).
- Financial / economic benefit or loss to the property owner.
- A personal hardship such as health problems, age, etc.
- A claim of increased tax revenues for the municipality.

**PUBLIC HEARINGS & NOTICE TO ADJOINING PROPERTY OWNERS**

After a Variance or an appeal of an Administrative Decision is scheduled for public hearing, **the applicant must mail notification** of the hearing time, street location, place, and date of the hearing to all property owners located within 200 feet of the subject property (ZR 8.10.6), not less than 15 days prior to the public hearing. Proof of mailing, in the form of an abutter's list and Certified Mail receipts must be delivered to the Planning Department at least five 5 days prior to the public hearing.

At the public hearing, up to five (5) members of ZBA may hear and consider the petition. To grant a Variance or reverse an Administrative Decision of the Zoning Official, the ZBA must have a minimum of four (4) affirmative votes in favor of the petition. Hence the appeal should refer to the specific regulation involved, and describe the grounds for such relief in a clear, concise manner.

Applicants will receive a copy of ZBA agendas until a decision on the application has been rendered by the Board.

### **SCHEDULING THE PUBLIC HEARING:**

- The ZBA has statutorily defined timeframes to schedule public hearings and make decisions.
- The Date of Receipt is the day that the application is submitted to the Planning Department.
- The Date of Submission is the day ZBA receives the application at its meeting.
- The ZBA has 65 days from the Date of Submission to schedule a public hearing (ZR 8.9.3).
- Applicants may grant ZBA an extension of time to schedule a public hearing or once opened, its continuation to a future date. The applicant is advised to carefully review timeframes established by state law (See *C.G.S. Section 8-7d*).

During a public hearing, applicants explain their proposal or request, utilizing legal representation if they choose to do so. Town staff present at the meeting may explain or clarify why the request is being made, and may provide comments or recommendations to ZBA. At the hearing, any member of the public who wishes to comment on an application may do so either *in favor*, *against*, or under *general comments*. Members of the public are also permitted to submit comments in writing.

After a public hearing is officially closed, ZBA can receive no more testimony or new information from the public or the applicant regarding an application. To do so is considered “*ex parte*” communication, and is prohibited by state law since it does not afford all sides an equal opportunity to be heard in an open forum.

### **FINAL DECISION & DECISION TIMEFRAME**

Once the public hearing is closed, ZBA will vote on whether to grant the requested Variance or whether to uphold or reverse the Administrative Order being appealed. The ZBA’s decision is not final until a legal notice has been published in the local newspaper, which is required within 15 days after the decision is rendered.

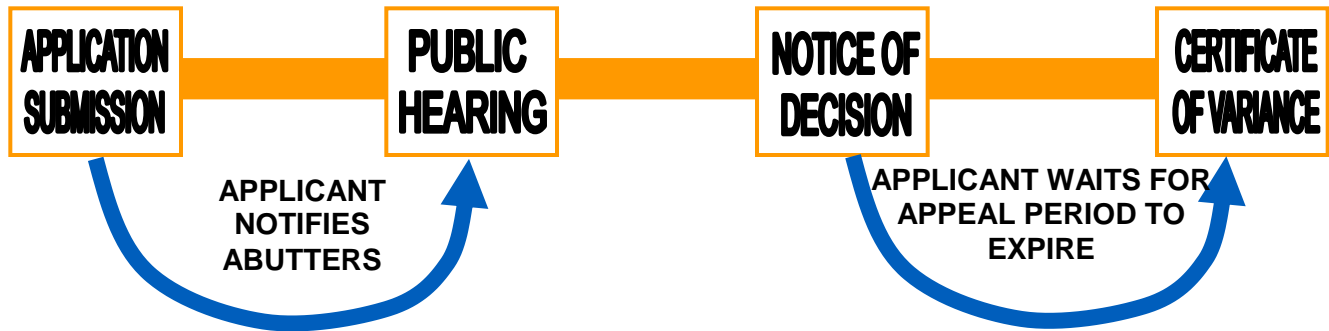
### **APPEAL OF ZBA DECISIONS**

State law provides an appeal timeframe for parties aggrieved by a decision made by ZBA. This timeframe begins on the effective date the legal notice of the Board’s decision is published and lasts for a period of 15 calendar days thereafter. Parties aggrieved by the Board’s decision should hire legal counsel since this appeal must be filed with Connecticut Superior Court. No construction activity will be authorized during this 15-day appeal period. *Certificates of Variance* will be issued only after the appeal period has expired and no appeals have been filed with the Superior Court.

## RECORDING *CERTIFICATE OF VARIANCE* IN TOWN CLERK'S OFFICE

The *Certificate of Variance* is **not valid** until it has been recorded in the Town Clerk's Office. A copy of the recorded certificate must be delivered to the Planning Department and placed in the ZBA application file. A person may then apply for a Zoning Permit as a precursor for filing a Building Permit application.

### ZBA ACTIONS



## NECESSARY ITEMS FOR A COMPLETE APPLICATION

An application to ZBA will only be scheduled for public hearing when all application requirements listed below have been completed. An incomplete application may result in postponing the public hearing or in denial of the application by ZBA.

1. **Nine (9) copies** of completed application form, signed and dated by the property owner and applicant.
2. **Nine (9) copies** site plan or drawing of the property described in the variance application showing precise location of buildings, property lines, proposed improvements, etc.
3. **Nine (9) copies** of a completed Coastal Area Management Review application (only if applicable -- see Zoning Official for additional information).
4. An A-2 Survey may be required by the Zoning Board of Appeals.
5. Copy of the deed or legal description of the property (obtained in the Town Clerk's Office).
6. A copy of the tax assessor's street card for the property.

TOWN OF STONINGTON  
ZBA APPLICATION GUIDE

7. If the applicant is not the property owner, a letter from the owner appointing the applicant as his/her agent.
8. Non-refundable base application fee of \$200, plus \$100 per Bulk Item to be varied, plus a \$60.00 State of Connecticut fee.
9. List of all property owners and their mailing addresses for parcels within 200 feet of all boundaries of the parcel for which a variance is requested (attainable in the Planning Department).
10. Copy of the letter to be mailed to all adjoining property owners stating the time and place of the public hearing, to be mailed 15 days prior to the hearing by Certified Mail (return receipt requested).