



**SOUTHBOROUGH ZONING BOARD OF APPEALS
REGULATIONS GOVERNING FEES
AND
FEE SCHEDULES**

**Adopted January 24, 2007
Effective January 26, 2007**

SECTION 1. INTRODUCTION.

1.1 Procedural History. On January 24, 2007, the Southborough Zoning Board of Appeals (the "Board") held a public hearing, pursuant to G.L. c. 41, s. 81Q and G.L. c. 40A, s. 9, to consider proposed regulations governing fees. At the close of the public hearing, the Board voted to adopt regulations governing fees and a new schedule of fees for matters heard by the Board and its consultants on the various types of applications which come before it. This document, subject to revision from time to time in a manner spelled out herein, constitutes the Board's rules governing the imposition of fees and its current fee schedules.

1.2 Purpose. These regulations and fee schedules have been adopted to produce a more equitable schedule of fees which more accurately reflects the costs of technical and legal review of applications to the Board; to take advantage of the procedures offered by G.L. c. 44, s. 53G; to establish a review procedure in the selection of consultants; and to promote more informed decision-making by the Board.

SECTION 2. FEE STRUCTURES AND REGULATIONS.

2.1 General. The Board shall impose reasonable fees for the review of applications which come before it. The Board shall impose Administrative Fees and may impose Project Review Fees as may be applicable to the types of applications set forth below.

SECTION 3. ADMINISTRATIVE FEES.

3.1 Applicability. An Administrative Fee shall be assessed to offset a portion of the expense of review by the Board and its office with regard to all applications set forth in Section 3.3, below.

3.2 Submittal. Administrative Fees shall be submitted at the time of the submittal of the application. Any application filed without this fee shall be deemed incomplete and no review work shall commence until the fee has been paid in full.

3.3 Schedule of Administrative Fees. The following schedule applies to the types of applications to the Board set forth below. This schedule supersedes all previous schedules as they may have appeared in the Zoning By-Laws, the Rules and Regulations of the Board, and any listings which may have been compiled from time to time for the benefit of applicants.

- A. Variance (one-family or two-family residential use) - \$150.00.
Modification or extension of such a variance application shall also require a Fee of \$150.00.
- B. Variance (other than one-family or two-family residential use) - \$300.00
Modification or extension of such a variance application shall also require a fee of \$300.00.
- C. Special Permit (one-family or two-family residential use) - \$150.00.
Modification or extension of such a special permit application shall also require a fee of \$150.00.



- D. Special Permit (other than one-family or two-family residential use) – \$300.00
Modification or extension of such a special permit application related shall also require a fee of \$300.00.
- E. Appeal - \$300.00.
- F. Comprehensive Permit – Fees as specified in the Comprehensive Permit Regulations.

3.4. Fee Waivers. The Board may waive or reduce any Administrative Fee, if, in the opinion of the Board, unusual circumstances exist regarding the subject property or the applicant.

3.5 Refund. Once the review process has been commenced, the Board shall not refund Administrative Fees, including the case of withdrawal of the application by the applicant.

SECTION 4. PROJECT REVIEW FEES.

4.1 Applicability. In addition to the Administrative Fee, the Board may, by majority vote, impose a Project Review Fee on those applications which require, in the judgment of the Board, review by outside consultants due to the size, scale or complexity of a proposed project, the project's potential impacts, or because the Town lacks the necessary expertise to perform the review work related to the permit or approval. In hiring outside consultants, the Board may engage engineers, planners, lawyers, designers, or other appropriate professionals able to assist the Board and to ensure compliance with all relevant laws, ordinances, by-laws and regulations. Such assistance may include, but shall not be limited to, analyzing an application, monitoring or inspecting a project or site for compliance with the Board's decisions or regulations, or inspecting a project during construction or implementation.

4.2 Submittal. Any required Project Review Fees shall be submitted, for deposit in an account established pursuant to G.L. c. 44, s. 53G (a “53G Account”), within ten (10) days of the Board’s vote requiring such fees. Failure to deposit such fees in a timely manner may be considered by the Board to constitute a constructive request by the applicant for a continuation of additional public hearings relative to the application until the required Project Review Fees are paid.

4.3 Schedule of Project Review Fees. The following schedule applies to the types of applications to the Board set forth below. This schedule supersedes all previous schedules as they may have appeared in the Zoning By-Laws, the Rules and Regulations of the Board, and any listings which may have been compiled from time to time for the benefit of applicants. Where more than one type of application has been submitted for Board action, only the largest of the applicable Project Review Fees shall be collected for deposit into the 53G Account, and not the sum of those fees. The following fees are established as guidelines, and the Board may, by a majority vote, determine the required Project Review Fee, depending on, among other factors, the scope and complexity of the project:

- A. Variance or a Special Permit:

<u>Project Size</u>	<u>Fee</u>
1 Lot/Unit	\$ 1,000
2 - 5 Lots/Units	\$ 3,000
6 - 25 Lots/Units	\$ 5,000
More than 25 Lots/Units	\$10,000

- B. Special Permit for Wireless Communications Facilities - \$1,000
- C. Comprehensive Permit – As Specified in the Comprehensive Permit Regulations

4.4 Replenishment. When the balance in an applicant's 53G Account falls below twenty-five percent (25%) of the initial Project Review Fee, as imposed above, the Board shall consider whether to require a supplemental Project Review Fee to cover the cost of the remaining project review.



4.5 Inspection Phase. After the granting of a Special Permit or a Variance, the Board may require a Supplemental Project Review Fee for the purpose of ensuring the availability of funds during the inspection phase of the review process.

4.6 Handling of Project Review Fees. The Project Review Fee is to be deposited into a special account as set forth in G.L. c. 44, s. 53G.

- A. Outside consultants retained by the Board to assist in the review of an application shall be paid from this account.
- B. Project Review Fees shall be turned over to the Town Treasurer by the Board for deposit into a 53G Account.
- C. A copy of the latest statement from the banking institution handling the 53G Account shall be forwarded from the office of the Town Treasurer to the Board office as soon as it is received for timely and accurate accounting.
- D. The Town Accountant shall prepare a report on activity in the 53G Account on an annual basis.
 1. This report shall be submitted to the Selectmen for their review.
 2. This report shall be printed in the Annual Report for the Town.
- E. An accounting of an applicant's funds held in the 53G Account may be requested by the applicant at any time.
 1. The Board shall respond to the request in a timely fashion.
 2. This accounting shall include the following information:
 - a. The latest statement from the banking institution handling the account, which should include an accurate accumulated interest portion to the closing date of the statement if such statements are subdivided into individual applicants' accounts. Otherwise, a statement of principal and interest, prepared by the Board office, based on the latest statement from the banking institution, as well as a listing of any outstanding payable amounts.
 - b. A report of all checks authorized for issuance since that last banking statement.
- F. An applicant may request an estimate of bills pending from consultants for work completed, or in progress, but not yet invoiced.
- G. Excess fees in the 53G Account, including accumulated interest, shall be returned to the applicant or the applicant's successor in interest, at the conclusion of the review process, as defined below. For the purpose of this section, any person or entity claiming to be an applicant's successor in interest shall provide the Board with documentation establishing such succession in interest.
 1. With the filing of a decision with the Town Clerk denying or awarding a Special Permit, a Variance, or a Comprehensive Permit.
 2. With the filing of a decision with the Town Clerk regarding an Appeal.

4.7. Appeal. The choice of a consultant selected by the Board for the review of an application may be appealed in writing to the Board of Selectman by the applicant, providing such appeal is initiated within two weeks of the initial selection.

- A. The Selectmen shall convene a formal hearing within twenty days of receiving a written appeal by an applicant.



- B. Two circumstances may disqualify the selected consultant. These conditions of constitute the only grounds for an appeal.
 - 1. Conflict of interest: A consultant shall not have a financial interest in the project under review, or be in a position to financially benefit in some way from the outcome of the pending review process. Consultants must be in compliance with the Massachusetts Conflict of Interest Law, G.L. c. 268A.
 - 2. Lack of appropriate qualifications: A consultant shall possess the minimum required qualifications. The minimum qualifications shall consist of either an educational degree in, or related to, the field at issue or three or more years of practice in the field at issue or a related field.
- C. The required time limits for action upon an application by the Board shall be extended by duration of the appeal.
- D. If no decision is rendered by the Board of Selectmen within one month following the filing of the appeal, the selection made by the Board shall stand.
- E. This appeal shall not preclude further judicial review, if otherwise permitted by law, on the grounds provided for in this section.

SECTION 5. DELINQUENT ACCOUNTS. The following rules apply to fees owed to the Board by applicants:

5.1 Monthly Interest Charge. All fees past due by one month from the date of invoice shall be subject to a monthly interest charge based upon an annual interest rate of 14%.

5.2 Costs of Collection. All costs of collection associate with past due accounts shall be borne by the applicant.

5.3. Current Delinquents. All applicants owing fees to the Board at the time of any amendment to these provisions of the regulations shall be sent the following:

- A. A duplicate notice of the amount past due.
- B. A copy of the applicable sections of these regulations with all amendments clearly indicated.
- C. Notice of a 30 day grace period before the commencement of any changes in interest rates or charges.

SECTION 6. REVISION OF FEE SCHEDULES AND REGULATIONS GOVERNING FEES.

6.1 Amendment. The Board may, by a majority vote, review and revise its regulations and fee schedules, from time to time, as it sees fit.

- A. Amendments shall be preceded by a public hearing.
- B. Any new regulations or alterations to the fee schedule shall take affect upon filing a copy of the amendments with the Town Clerk.
- C. The Board will review its regulations and fee schedule on an annual basis, provided that the Board may waive this provision in any year with a motion carried by a majority of the then-sitting Board members.

Attested

Board of Appeals

Full Members:

Salvatore M. Giorlandino, Chairman
Regina McAuliffe



Peter C. Norden
Sam R. Stivers
Alternate Members:
Edward D. Estella
Justin E. Lundberg