

TOWN OF ROCKPORT, MASSACHUSETTS

BOARD OF APPEALS

RULES OF PROCEDURE PART 1

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INSTRUCTIONS

APPLICATION FOR ZONING RELIEF

Section 1.1 – Purpose

The Board of Appeals (hereinafter, Board) requires both a completed application form and a set of plans that clearly show existing property and what is planned to be done. Plans may be submitted as mechanical drawings or computer-generated drawings.

Section 1.2 – Application Form

- A. Every appeal (petition) for relief shall be made on the official Application for Zoning Relief, which is part of these Rules of Procedure and is available along with Article I instructions from the Town Clerk or from the Town of Rockport website (www.townofrockport.com). Any other communication (written or verbal) shall be treated as merely notice of intention to seek relief until such time as an application is submitted on the official form. Upon completion the application shall be filed with the Town Clerk. Any appeal under Section 8 of Massachusetts General Laws Chapter 40A (hereinafter, MGL c.40A) shall also be filed with the Town Clerk and with the person whose action or inaction is being appealed.

All information called for by the official application form shall be furnished by the applicant as indicated on the form. Any application, which does not specify the relief requested (special permit, variance or appeal), shall be deemed a request for a special permit.

- B. Any application relating to property in a **Watershed Protection Overlay District** shall be submitted in seven (7) copies and accompanied by seven (7) copies of a topographic site plan, and such copies shall be collated and fastened in identical sets.
- C. Any application for a **Comprehensive Permit** shall be accompanied by twenty (20) copies of each plan, drawing or other related material, and such copies shall be collated and fastened in identical sets.

D. Plans – Instructions

1. General – Required

- One (1) completed, signed and dated Application Form.
- One (1) full size set of plans, collated in numerical order. Full size to be no smaller than 11 by 17 inches.
- Three (3) reduced size copies of plans (11 x 17 inches), collated in numerical order.
- Labeled photos of existing property. Photographs shall be sufficient to enable thorough evaluation of the proposal.
- One (1) Checklist showing completion of application requirements.

2. General – Optional (These are supplemental aids that might help the Board come to a final decision)

- Renderings of proposed work. Renderings shall be sufficient to enable thorough evaluation of the proposal.
- Letters of Support and/or any other property-related, supplemental material.
- Digital submission in pdf format of all application material (plans, forms, etc.)

Section 1.3 – Applying for Zoning Relief

A. Request for Application

A packet containing an Application Form and Instructions may be obtained at the office of the Town Clerk, 34 Broadway, Rockport or downloaded from the Board of Appeals section of the Town of Rockport Web Site, www.townofrockport.com

B. Deadline for Submission of Application and Fee

The complete, signed and dated Application Form, with the correct number of drawing sets and photos, check list and any supplemental material, must be submitted to the Town Clerk at the Rockport Town Hall no later than 3:00 p.m. on the posted submission date. To cover processing and publishing public announcements, an application fee will be charged at the time of the application submission.

C. Process

- The completed Application may be filed with the Town Clerk. It will receive a case (file) number then be stamped signifying the date of the receipt and the official start of the Appeal process.

- If necessary for a Zoning Relief Appeal, a deficiency letter will be sent to the applicant outlining needed corrections to the application and/or plans (drawings).
- Notice to applicant and public announcements indicating where and when the public Board hearing will take place.
- Board hearing.
- Town Clerk receives fully signed, written decision of the Board
- Applicant receives a copy of the written decision.
- Waiting period to allow for any public appeal - 20 business days from the time of receipt by the Town Clerk of the fully signed, Board decision.

Section 1.4 – Zoning Relief Plan Requirements

There are 3 separate “Plan” documents that are required with each application:

- **Site Plan**
- **Floor Plan**
- **Elevations (Front, Rear and Side Views)**

A – Required Plan Formats

- **Copies.** One (1) complete Full Size Set [**no less than 11 x 17 inches**] of Site, Floor and Elevation drawings. Three (3) sets of Reduced Size drawings (11 x 17 inches).
- **Compass Direction.** A labeled arrow signifying the **NORTH (N)** direction must conspicuously appear on the Site Plan and each Floor Plan drawing, but not on Elevation drawings.
- **Color.** All drawings must be in black on white paper except where proposed changes or construction is drawn. Those proposed changes must be outlined in the color **RED** on all of the following drawings: Site Plan, Floor Plan(s) and Elevation(s).
- **Scales.** All full size Site Plan, Floor Plan and Elevation drawings must be to a specified scale noted in sections below. The scale must conspicuously appear as a labeled line on the drawing.
- **Originator of Drawings.** – Each plan (drawing) must clearly provide the name and address of the person (or persons) who prepared the drawing and the date they were prepared.

B – Site Plan

1. The **full size** Site Plan drawing must have a scale of **1-inch equals 20 feet** with line drawing of scale showing ¼ inch segments.
2. A labeled arrow signifying the **NORTH (N)** compass direction.
3. Changes and/or proposed construction must be outlined in **RED**
4. Lot lines, dimensions and area of the lot, and dimensions and areas of existing structures and proposed changes. (If application is for a subdivision, all lots must be shown with any changes proposed).
5. Only for the lot(s) for which Relief is sought show:
 - a. the locations and dimensions of all buildings, parking areas, etc.,
 - b. the distances from all buildings to lot lines,
 - c. setbacks (Front, Rear and Sides) indicated on the drawing by a dotted (or dashed) black line and
 - d. Names of owners and boundary lines of all adjacent abutting lots.
6. For Adjacent and Lots directly across streets or ways show:
 - a. Distance of the **front setback** for each **immediately adjacent** primary residence.
 - b. Locations and dimensions of all buildings, distances from setbacks, etc.
 - c. Names and widths of streets, locations of sidewalks etc.
7. Large areas and contours (Optional)

C – Floor Plans

1. Drawings must have a scale of **1/4 inch equals 1 foot** with line drawing of scale showing ¼ inch segments.
2. Must have proposed changes and/or proposed construction outlined in **RED**
3. Must have a labeled arrow signifying the **NORTH (N)** compass direction.
4. Must have floor dimensions including rooms with slanting ceilings. For such slanting ceiling cases, an indication or notation for the seven (7) foot floor-to-ceiling point which, by Massachusetts building code, defines the limit of habitable area. In such slanting ceiling instances, indicate a perimeter showing the habitable area that would be projected vertically down to the floor from the seven foot point on the ceiling.

D – Elevations (side views)

(Please note that a compass direction is not needed on Elevation drawings.)

1. **External Elevations** must show:
 - a. Dimensions from existing undisturbed grade (that is, prior to site preparation) to the highest point (ridge line) of the roof,
 - b. Eaves to roof ridge line, and,
 - c. Foundation length, width and height above the grade,
2. **Internal Elevations** must show:

- a. floor dimensions and
- b. floor to ceiling dimensions

E – Labeled Photographs

F – Supporting Material Renderings, letters of support and other relevant informational materi

Section 1.5 – Comprehensive Permit Requirements

(pursuant to MGL 40B low income housing)

In addition to materials required in Section 5, an application for a Comprehensive Permit shall also require the following:

1. Architectural drawings for each proposed building, signed by a registered architect, including typical floor plans, typical elevations, and sections, and identifying construction type and exterior finish.
2. A tabulation of proposed buildings by type, number of bedrooms, floor area, and ground coverage, and a summary showing the percentages of the land to be occupied by buildings, by parking and other paved vehicular areas, and by unpaved open area.
3. Where a subdivision of land is involved, a proposed subdivision plan.
4. A proposed utilities plan showing the location and types of sewerage, drainage, and water facilities, including hydrants.
5. A report on existing site conditions and a summary of conditions in the surrounding areas, showing the location and nature of existing buildings, existing street elevations, vehicular and pedestrian traffic patterns and character of open areas, if any, in the neighborhood.
6. Exhibit A: A list of requested exceptions to local requirements and regulations, including local codes, bylaws or regulations.
7. Exhibit B: Documents showing that the applicant fulfills the jurisdictional requirements of 760 CMR 56. For any application, which relies upon The New England Fund as a subsidy program, such documents shall include a *pro forma*.
8. Each application shall be accompanied by twenty (20) collated copies of each plan, drawing or other required material.

Section 1.6 – Examples of Plans and Completed Application

Plans: A sample set of three professionally prepared plans is provided showing a site plan, floor plan, and elevations, illustrated with all required dimensions and legends.

Please note that:

- **The critical dimensions are indicated.**
- **There is an Arrow indicating North.**

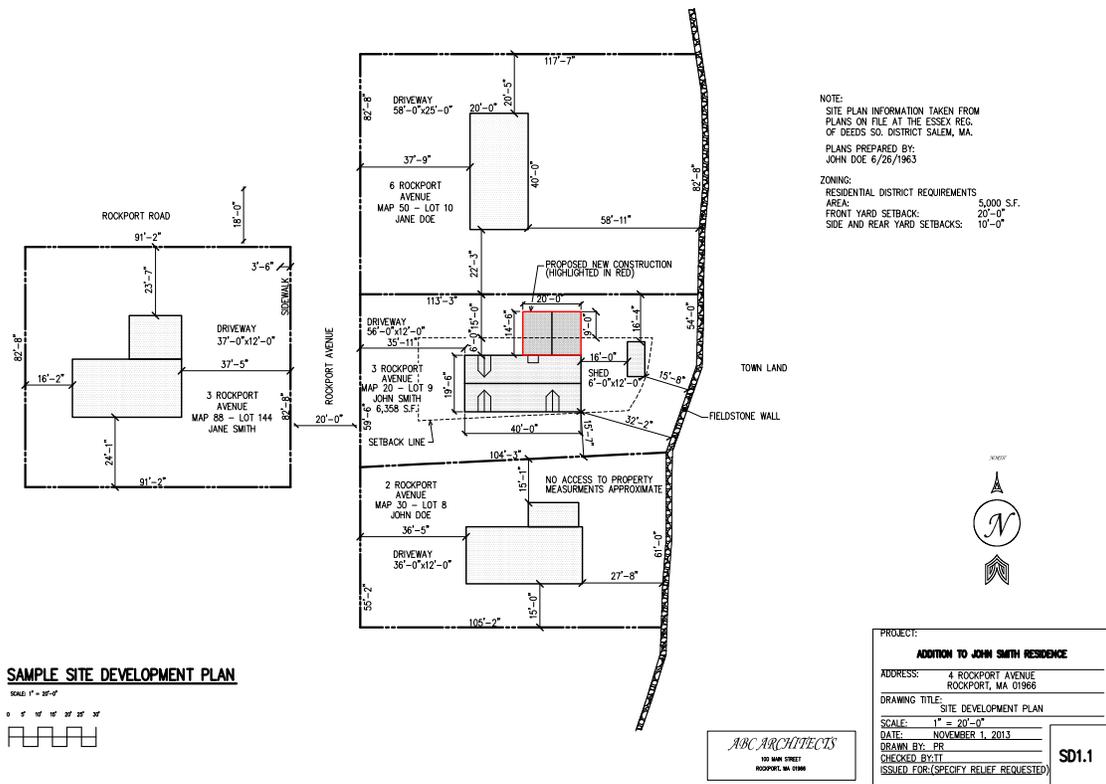
- **The plans are drawn to a scale, which is indicated and illustrated, on each drawing.**
- **Each plan (drawing) is numbered, dated, and signed by its preparer.**
- **Existing features are shown in black; proposed changes are in red.**

Completed Application: An example of a completed application is provided.

Please note that:

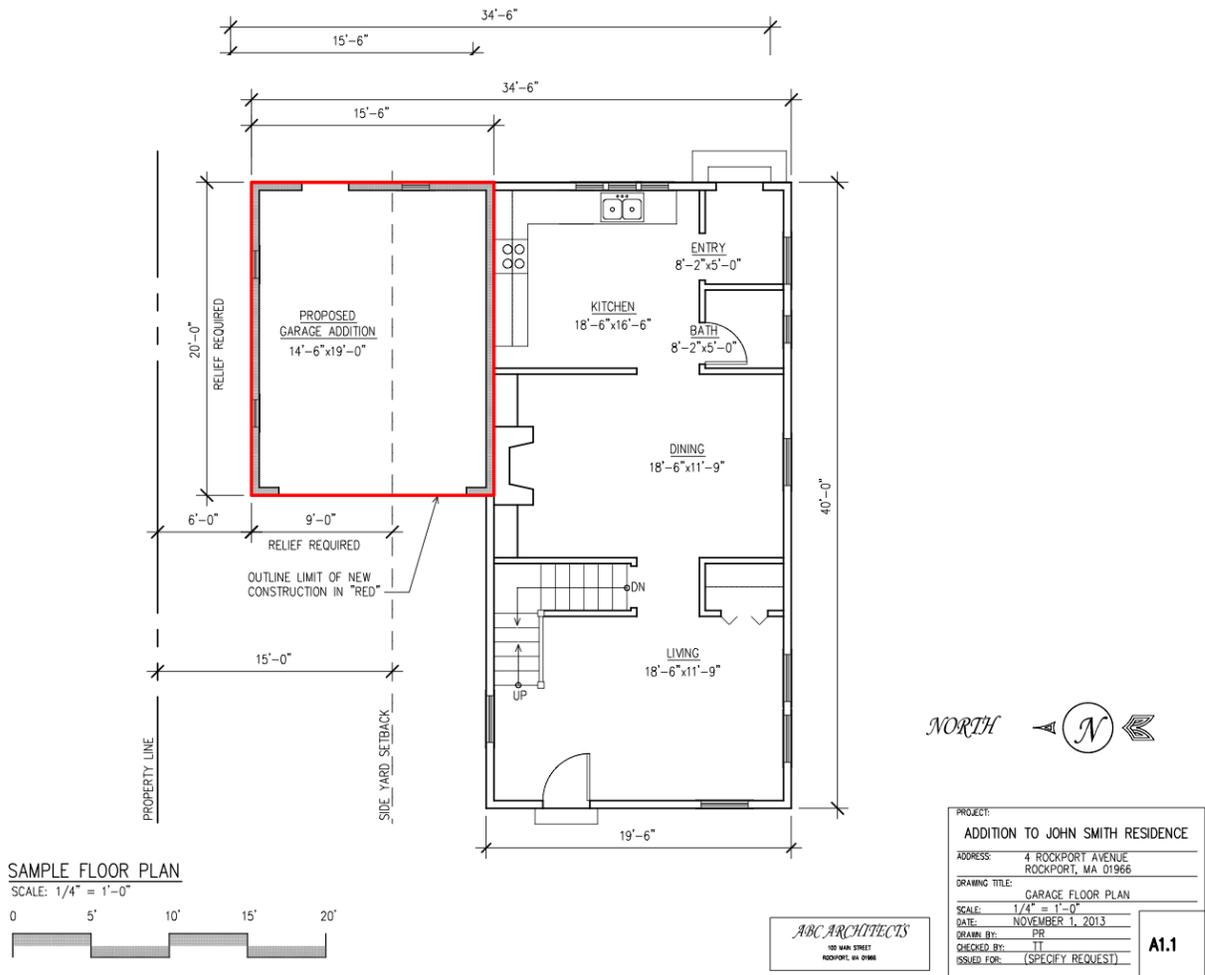
- **The cover page has two sections to be filled by the applicant.**
- **Step 1 – requires only the street address.**
- **Step 2 – if more than one applicant, all names are required.**
- **Step 3 – if an attorney, contractor etc. will be representing the applicant, the name and address of the representative are required.**
- **Step 4 – if the legal owner is not the applicant, the name and address of the owner are required.**
- **Step 5 – if not known, the map and lot number of the property may be obtained at the Assessors Office at Town Hall.**
- **Step 6 – Required Lot and Building Dimension information can be obtained by consulting the table shown in the Bylaws, Section IV.B.**
- **Step 7 – if exact dimensions are not known, reasonable estimates must be provided.**
- **Steps 8 and 9 – are self-explanatory.**
- **Steps 10 and 11 – should be brief, but accurately provide all information to allow the Board to make appropriate decision.**
- **Step 12 – self-explanatory.**
- **Step 13 – hearings before the Conservation Commission, Historic District Commission and/or Site Plan review before the Planning Board must be completed prior to the applicant's appearance before the Zoning Board.**
- **Step 14 – self-explanatory.**
- **Steps 15 – if more than one applicant, print or type all names and each must sign and date. At least one means of contact is required.**
- **Step 16 – all required line items must be checked off with an X or check mark.**

SAMPLE



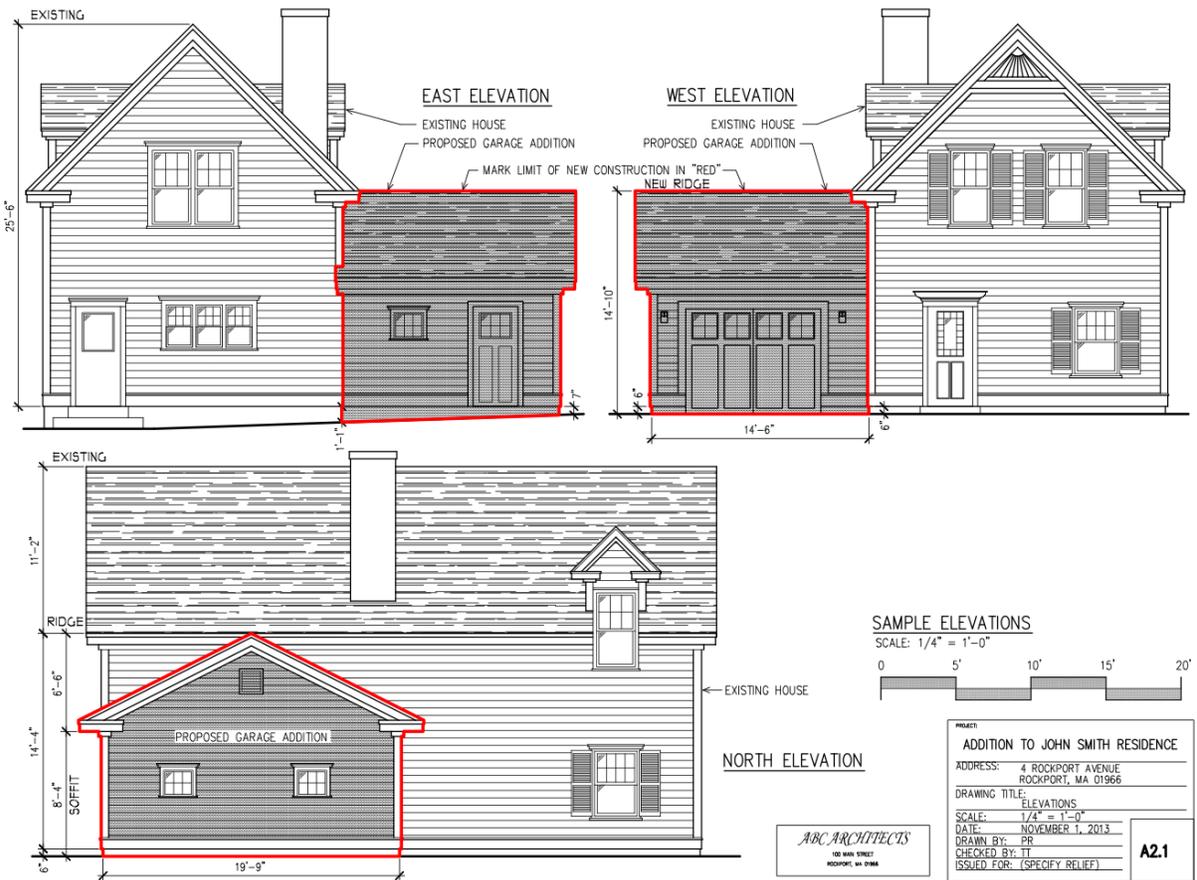
SITE DEVELOPMENT PLAN (SITE PLAN)

SAMPLE



FLOOR PLAN

SAMPLE



ELEVATIONS

APPLICATION FOR ZONING RELIEF

6 Lot and Building Dimensions*

PROPERTY (in feet and inches)	PRIMARY (At Address Location)	SECONDARY (If on more than one street or way)
Required Frontage (in feet and inches)	50	N/A
Existing Frontage (in feet and inches)	59' 6"	
Proposed Frontage (in feet and inches)	59' 6"	

SETBACKS (in feet and inches)	FRONT		SIDE		REAR
	left	right	left	right	
Required Setbacks	20	10	15	15	10
Existing Setbacks	35' 11"		15	15	32' 2"
Proposed Setbacks	35' 11"		6	15	32' 2"

PROPERTY LOT	AREA (in square feet)	COVERAGE (in square feet)	MAXIMUM COVERAGE (As %)
Required	10,000 (MINIMUM)	5,000 (MAXIMUM)	20 (MAXIMUM)
Existing	6,200	852	13.7
Proposed	6,200	1,162	18.7

DWELLING OR STRUCTURE	HEIGHT (in feet and inches)	NUMBER of STORIES
Required (all zones)	Not to exceed 30 feet	Not to exceed 2½
Existing	25' 6"	2
Proposed	25' 6"	2

(*) To obtain the Required Frontage, Setbacks and Property Lot Dimensions for Specific Zoning Districts, see Table in Bylaw Subsection IV.B.

7 Adjacent Property

Does the Legal Owner Own the Adjacent Land?		YES	NO
If Yes, Provide Address, Longest Property Dimensions and Property Area			X
Address	N/A		
Length (Feet & Inches)	N/A	Width (Feet & Inches)	N/A
		Area (Square Feet)	N/A

APPLICATION FOR ZONING RELIEF

8 Applicant is (check one):

Individual or Couple	X
Trust or Estate	
Business Trust or Corporation	
Partnership, LLC or Corporation	

9 Land Deed (Select One)

Essex South District Registry of Deeds	Book #	000
	Page #	0000
OR		
Essex South Registry District of the Land Court	Certificate #	N/A

10 If Existing Property, Structures or uses DO NOT conform to the current Zoning Bylaw (s), BRIEFLY EXPLAIN WHY (Setback infringement, Lot Size or Coverage, Change of Venue etc.) (Attach extra sheet if needed)

The 6,200 square foot lot size is non-conforming because 10,000 square feet is required.

11 Describe what is being proposed, planned or appealed.

(Attach extra sheet if needed)

We want to attach a 15' 6" x 20' one story, garage to the rear (north) side of the house.

APPLICATION FOR ZONING RELIEF

12 Structures on Property		Existing	Proposed
Number of Buildings (Primary Residence, Accessory including sheds)		2	2
Number of Dwelling Units (including Primary Residence)		1	1
For Zoning Relief Sought – Number of Dwelling Units		1	1
Floor Area Used for Residential Purposes		100 %	100 %

13 Property Is:	YES	NO
• served by a Town Sewer Line?	X	
• in a Coastal Flood Plain Zone?	X	
• bordering (or under) wetlands subject to Wetlands Protection Act? (Requirements, see Rules of Procedure, Section 1.2.B)		X
Conservation Commission Hearing and decision completed?	N/A	
• within a Watershed Protection Overlay District? (Requirements, see Rules of Procedure, Section 1.2.B) If Yes, which watershed?		X
Conservation Commission Hearing and decision completed?	N/A	
• within an Historic District?		X
Historic District Commission Hearing and decision completed?		N/A
• requiring Planning Board Site Plan Review? If required, Site Plan Review must be final before Zoning Hearing.		N/A
• for a Comprehensive Permit? (Requirements, see Rules of Procedure, Section 1.2.C)		N/A

14 Prior Zoning decision(s) if any. (List All File Numbers and Dates)	
File No. or Date	N/A

APPLICATION FOR ZONING RELIEF

15 Contact Information		Date
Applicant Name	John Smith	Feb 3, 2014
Applicant Signature		
Applicant Name (if applicable)		
Applicant Signature (if applicable)		
Representative Name (if applicable)	ABC Architects	
Representative Signature (if applicable)		
Applicant Telephone, Fax, E-mail		
Home	(978) 546-0000	
Business	N/A	
Mobile (Cellular)	(598) 000-0000	
Fax	N/A	
E-mail	jsmith01@main.com	
(if applicable) Representative Telephone, Fax, E-mail		
Home		
Business	(978) 546-0001	
Mobile (Cellular)	(978) 546-0002	
Fax	(978) 546-0003	
E-mail	jrep@abc.com	

Submit completed application (including application check list, site plan, floor plans, elevations, photos and any supporting information) to the Building Inspector for review.

16 **CHECKLIST for ZONING RELIEF**
(To Be Completed Before Submitting Application)

REQUIRED (Indicate by placing a ✓ mark or X in box provided)

- APPLICATION
 - APPLICATION FORM - Completed, Signed and Dated
 - DATE and NAME of person who prepared drawings indicated on ALL drawings
 - ONE (1) Complete Set of Full Size Drawings that are not less than 11 x 17 inches
 - THREE (3) Complete, collated sets of REDUCED SIZE (11 x 17 inches) drawings
- SITE PLAN DRAWING
 - SCALE at One (1) Inch equals Twenty (20) feet
 - ALL SETBACKS as DASHED or DOTTED LINES
 - NORTH ARROW
 - PROPOSED WORK In COLOR RED (Existing structures etc. In the color black)
- FLOOR PLANS and ELEVATION DRAWINGS
 - SCALE at One Quarter (¼) Inch equals One (1) foot on all full size drawings
 - NORTH ARROW on all FLOOR PLANS but NOT on Elevations
 - PROPOSED WORK In COLOR RED (all other features in color black)
- PHOTOGRAPHS
 - LABELED PHOTOS

OPTIONAL (Indicate by placing a ✓ mark or X in box provided)

- Labeled Renderings
- Letters of support and any other supporting materials
- Electronic files in pdf Format

Section 1.7 –Filing Fee

Each application shall be accompanied by a filing fee. Checks should be made payable to the Town of Rockport. Any application not accompanied by a filing fee may be refused filing.

Except when otherwise specified by these rules or by the Board the filing fee shall be three hundred dollars (\$300.00).

One-half of the filing fee may be waived for individuals if all of the following conditions are met:

- a) the property was affected by an amendment to the Zoning Bylaw within one calendar year before the filing of the application,
- b) the proposal which is the subject of the application would have been permitted as of right prior to such amendment, and
- c) the use of the property is and is proposed to be exclusively single-family or two-family residential.

The filing fee for an application for a comprehensive permit shall be one thousand dollars (\$1,000.00) plus fifty dollars (\$50.00) per dwelling unit in excess of ten (10) units.

Section 1.8 –Outside Consultants and Experts

If, when reviewing an application, the Board determines that the assistance of outside consultants and experts is warranted because of the size, scale, or complexity of the proposal, the Board may require that the applicant pay a review fee. The amount of the review fee shall be set and may be increased by the Board and shall be sufficient to pay reasonable costs that may be incurred.

Failure of the applicant to pay a review fee promptly upon request by the Board shall be grounds for denial of the application.

All written results and reports of the outside consultants shall be made part of the record of proceedings before the Board.

Any applicant may take an administrative appeal from the selection of an outside consultant to the Board of Selectmen on either of two grounds: (1) conflict of interest or (2) lack of the minimum qualifications. The time limit for action by the Board shall be extended by the duration of the administrative appeal. In the event that the Board of Selectmen makes no decision within one month following the filing of the appeal, the selection made by this Board shall stand.

Section 1.9 –Docket Number

Each application will be assigned a file or docket number comprised of the last two digits of the year and two digits indicating the month in which it is first scheduled to be heard and the serial number (in two digits) of the particular application for that month. Thus the second petition filed for hearing in April 2013 was numbered "130402". Whenever an application gives rise to more than one proceeding, the different proceedings are identified by suffixes to the docket number.

Section 1.10 –Noncomplying Applications

In the event that, upon preliminary review, the chair of the Board deems an application inadequate to a proper understanding of the matter or otherwise incomplete or not properly filed, the applicant may be notified in writing and given the opportunity before a specified date not later than seven (7) days before the date of the hearing to bring the application into compliance. An application that is the subject of such notice but is not brought into compliance before the date specified may be denied for failure to comply with these rules.

Section 1.11 –Withdrawal

An application for special permit or variance may be withdrawn without prejudice by notice in writing filed with the Town Clerk at any time, prior to advertisement of a public hearing and at least three weeks before the next regular meeting of the Board. Upon notice so filed, fifty percent (50%) of the filing fee shall be refunded.

Except as provided in the preceding paragraph, withdrawal shall require the Board's approval and shall be upon such conditions as the Board may specify.

Section 1.12 Schedule of Area and Dimensions

B. SCHEDULE OF AREA AND DIMENSIONS – ACCESSORY BUILDINGS OR STRUCTURES (amended ATM 4/9/2012)

Zone	SRAA Single Res. AA*	SR Single Res.	RA Residential A	R Residential	SMR Semi- Residential	G General	D Downtown ***
Minimum Lot Dimensions							
Area square feet- 1 family	40,000	20,000	12,000	10,000	10,000	7,500	5,000
Area square feet- Two family	40,000	20,000	20,000	15,000	15,000	7,500	7,500
Area square feet – other uses***	40,000	20,000	20,000	15,000	15,000	7,500 (10,000 (5))	7,500
Frontage on street Or way	150	75	75	50	50	50	30
Minimum Required Yard Dimensions/Setbacks (1,7)							
Front Yard (2)	20	20	20	20	20	15	10 (2A)
Side Yard	15	15	15	10	10	10	10
Rear Yard	15	15	15	10	10	10	10
Max. Bldg. Height (3)							
Stories	2.5	2.5	2.5	2.5	2.5	2.5	2.5
Feet	30	30	30	30	30	30	30
Coverage (7) **							
Bldg Coverage % of square feet	10%	15%	20%	25%	25%	50%	50%
Accessory Buildings or Structures (4) (5) (amended ATM 4/9/2012)							
Min. Bldg. Separation	15	15	15	15	15	10	10
Side/rear setbacks	10	10	10	10	10	10	10

TOWN OF ROCKPORT, MASSACHUSETTS

BOARD OF APPEALS

RULES OF PROCEDURE PART 2

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ARTICLE II ORGANIZATION

Section 2.1 – Elections

The officers of the Board shall include, but need not be limited to, a chair, a vice chair, and a clerk. The chair and vice chair shall be chosen from among the members of the Board, and the clerk shall be a member or an associate member.

At the first meeting following the qualification of the annual appointees, the Board shall elect all its officers for the ensuing year. In the event of a vacancy in any office, at the first meeting thereafter at which the Board is at full strength such vacancy shall be filled. Associate members may participate in such election with voice but without vote.

Section 2.2 – Chair

The chair shall be the primary point of contact for the Board with the Board of Selectmen, the Town Administrator, and Town Counsel. The chair shall represent the Board or appoint a representative from among the members and associate members as may be necessary or desirable for liaison with other Town agencies. In addition to powers granted by the General Laws and Town bylaws, and subject to these rules and further instructions of the Board, the chair shall transact all official business of the Board, assign the writing of the Board's decisions, supervise and direct the work of all Board employees, request necessary help, and exercise general supervisory powers. The chair shall at each meeting report on all correspondence and other transactions that have not otherwise been brought to the attention of the Board.

Section 2.3 - Vice Chair

The vice chair shall act as chair and shall have all of the powers and duties of the chair whenever the chair is absent, disabled, or otherwise unable to perform his or her duties.

Section 2.4 – Clerk

Subject to the direction of the Board and its chair, the clerk shall have charge of records of the Board, shall ensure that the roll is taken at all Board hearings and other meetings, that minutes of the Board's proceedings are kept, and that other necessary files and indexes are compiled and maintained. Any or all of the foregoing duties may be delegated to an assistant clerk or secretary, who need not be a member or associate member.

The clerk shall act as chair and shall have all of the powers and duties of the chair whenever both the chair and the vice chair are absent, disabled, or otherwise unable to perform their duties.

Section 2.5 - Associate Members

The chair shall designate one of the associate members to sit on the Board in case of absence, unavailability to act, or conflict of interest of any Board member. In the event of a vacancy on the Board, the chair may designate one of the associate members as an acting member until a

replacement member is duly appointed by the Board of Selectmen to fill the unexpired portion of the vacated member's term.

Section 2.6 – Zoning Administrator

The Board may appoint up to two Zoning Administrators from either the Active or Associate Members. The Board has delegated to each of the Zoning Administrators the following powers:

1. to grant a special permit for an accessory dwelling pursuant to subsection III.B.I.E of the Zoning Bylaw;
2. to grant a special permit for conversion of any existing building into a two-family dwelling or an apartment house pursuant to subsection III.C.3.a; III.B.I D and F of the Zoning Bylaw;
3. to grant a special permit pursuant to footnote (7) [of subsection IV.B of the Zoning Bylaw, relating to building coverage;
4. to grant a special permit for modification of parking and greenbelt requirements pursuant to subsection V.H of the Zoning Bylaw;
5. to grant a special permit for reduced accessory building setbacks;
6. to grant a special permit for enlargements, change or alteration of any existing building pursuant to subsection I.D.2 and I.D.3 of the Zoning Bylaw.

Applications under these delegated powers may be heard by a Zoning Administrator or these applications may be referred directly to the full Board for hearing at the discretion of a Zoning Administrator and/or the chair.

Section 2.7 Address

All communications and submissions shall be addressed to the Board in care of the Town Clerk. Any material submitted to the residential address of any board member will not be considered.

ARTICLE III NOTICE OF HEARING AND OF DECISION

Section 3.1- Notice of Hearing

Notice of hearings shall be advertised in the Gloucester Daily Times as required by the provisions of Chapter 40A of the Massachusetts General Laws or simply (MGL c40A). Copies of that notice shall, at least fourteen (14) days prior to the date of the hearing, be posted in a conspicuous place in the Town Office Building and be sent by mail, postage prepaid, to the applicant, to all "parties in interest" as defined in Section 11 of Chapter 40A, to any nonresident property owner who has duly filed a relevant request with the Town Clerk pursuant to Section 5

of Chapter 40A, to the owners of all other property deemed by the Board to be affected thereby as they appear on the most recent local tax list and to all other persons specified by law.

In addition, a copy of that notice shall, at least fourteen (14) days prior to the date of the hearing, be delivered by hand or sent by mail, postage prepaid, to each member and associate member of the Board and to each of the following officials and agencies of the Town: Town Clerk; Planning Board; Building Inspector; and the Planning Board of the City of Gloucester.

Section 3.2- Request for Notice

Any request for notice of decision pursuant to Section 15 of Chapter 40A must be submitted in person to the person presiding at the hearing. Such request shall be in writing and shall include the name of the applicant, the hearing date, and the full name and complete address of the person requesting notice.

Section 3.3 – Notice of Decision

Each memorandum of decision shall be filed with the Town Clerk and a copy thereof, together with a copy of all plans referred to therein, shall be forthwith delivered by hand or mailed, postage prepaid, to the Planning Board of the Town. A copy of each memorandum of decision shall be forthwith mailed, postage prepaid, both to the owner and to the applicant together with notice of filing with the Town Clerk and notice that copies of the decision and all plans referred to are on file with the Planning Board and the Town Clerk. Notice of each decision shall be sent to those listed in the second paragraph of Section 3.1.

Section 3.4 -Approval of Plans

Whenever a decision requires plans to be approved by the Board, the sole purpose of such approval is to ensure that the applicant understands and will properly implement the Board's decision. Accordingly, unless the Board otherwise determines, neither such approval nor approval of a deviation from plans submitted and approved shall require notice or public hearing, and the Board's approval may be evidenced by the signature of any officer of the Board on its behalf.

Section 3.5 - Modification of Decision

Any decision may be modified by its author without reapplication or public hearing in order to correct typographical or other clerical error.

A reasonable extension of the one-year deadline imposed by Section 10 of MGL c.40A or by Subsection XII.C.6 of the Zoning Bylaw may be granted by the Board upon informal application in the form of a letter and without public hearing in the case of an appeal to the Trial Court pursuant to Section 17 MGL c.40A or for other good cause shown.

ARTICLE IV PROCEDURE BEFORE ZONING ADMINISTRATOR

Section 4.1- Submission of Application

Any applicant for relief of a kind described in Section 2.6 of these Rules of Procedure may request that the Application be heard by a Zoning Administrator. Unless the Chair determines that the relief sought by the Application may be beyond the scope of the delegation in Section 2.6, the Chair shall assign the Application to a Zoning Administrator for hearing and decision.

The Zoning Administrator assigned, upon determining in his or her discretion that the particular application is not appropriate for decision by a Zoning Administrator, may refer the Application to the Board. Any Application which is not assigned to a Zoning Administrator or which is referred to the Board by a Zoning Administrator shall be promptly scheduled for hearing pursuant to Section 5.1 of these Rules.

Section 4.2 - Applicability of Other Rules

All provisions of Article I and III of these rules shall apply to proceedings before the Zoning Administrator. In that context, references in those rules to the Board shall be deemed to refer to the Zoning Administrator, who may exercise for purposes of such proceedings the powers and discretions of the Board or its chair provided by those rules.

Section 4.3 - Decision

In each case a signed memorandum shall be filed setting forth the Zoning Administrator's findings and conclusions and the reason(s) therefor. No decision shall be effective until the signed memorandum thereof has been filed with the Town Clerk.

Section 4.4 - Recording

It shall be a condition precedent to the exercise of any right pursuant to any decision of the Zoning Administrator that notice of the decision and of the absence of any appeal within thirty (30) days (including a copy of the signed memorandum) be recorded, at the applicant's expense, in the Essex South District Registry of Deeds. The official Application Form for Zoning Relief, a copy of which is attached, may be used for that purpose.

Section 4.5 - Appeal

An appeal to the Board from a decision of the Zoning Administrator shall be claimed by filing a notice of appeal with the Town Clerk a notice of appeal on the official Application Form for Zoning Relief. Copies of the official form shall be available from the Town Clerk and the

Zoning Administrator. All information called for by that form shall be furnished by the appellant, and it shall be accompanied by a filing fee of three hundred dollars (\$300.00).

The appeal shall bear the same docket number as the original application, but with a different suffix (Article I, Section 1.9), and the entire file before the Zoning Administrator shall automatically become part of the record before the Board.

ARTICLE V

PROCEDURE BEFORE BOARD

Section 5.1- Meetings of Board

Five members (including associate members designated to sit) shall constitute a quorum.

A regular meeting shall be held by the Board the last Tuesday evening of each month or, if that Tuesday is a holiday or election day, the next Tuesday which is a business day. However, the regular meeting may be canceled or postponed whenever in the opinion of the chair no meeting is required by business then pending. A public hearing will not normally be scheduled unless and until there are at least two cases to be heard.

Special meetings or hearings may be called by the chair or by any three members. Actual notice thereof shall be given to each member at least 48 hours before the time set, and public notice shall be posted as required by law.

The chair shall preside or designate another member or an associate member to preside at each meeting and each hearing. The member or associate member presiding shall also vote and be recorded on matters coming before the Board. Subject to the General Laws, the Zoning Bylaw and these rules, and unless and until overruled by a majority of the Board sitting at the time, the person presiding shall decide all points of order and matters of procedure.

Section 5.2 - Additional Written Materials

Any written material, including but not limited to a statement or legal brief, filed with the Town Clerk not later than the day of the hearing or submitted to the Board at the hearing will be received and considered. Such written statements shall be public records open to examination

and may, but need not, be read publicly at the hearing.

The Board may also receive and consider written material filed with the Town Clerk within such time after the hearing as may be fixed by the Board in its discretion.

All materials exhibited to the Board (or true copies thereof) shall be retained as part of the Board's files concerning the matter being heard.

Section 5.3 - Procedure at Hearings

All hearings shall be open to the public. No person shall be excluded unless he or she is ruled out of order or determined by the Board to be a "serious hindrance" to its work.

All statements at the hearing shall be made to the Board, and all questions shall be posed to the Board. No dialogue between persons attending the hearing shall be permitted.

A – Stenographer

The applicant for (a) a special permit or variance in connection with a project involving seven or more dwelling units, (b) a special use permit or (c) a comprehensive permit for a project involving eleven or more dwelling units shall arrange and pay for a stenographer to be present at and record all hearings on such application. A copy of the transcripts of all hearings shall be furnished to the Board at the applicant's expense

B – Appearance

Any person may appear in his or her own behalf or be represented by an agent or attorney-in-fact who may (but need not) be an attorney at law. The unexcused absence of any appearance on behalf of an applicant shall be cause for denial of the application for want of prosecution. However, the Board may in its discretion decide the matter on the basis of such information as is available to the Board.

Each person, before commenting, shall state his or her name and address and, if any, representative capacity.

C – Order of Recognition

1. principle statement by applicant
2. when appropriate, statement by the owner(s) of the property or other parties
3. statements by Town agencies
4. statements from other persons
5. if necessary and appropriate, rebuttal from applicant

The members of the Board sitting may ask questions at any time during the hearing.

Except to answer a specific question at the request of the Board, no person will be recognized more than once until everyone who desires to be heard has had the opportunity to speak. Every

speaker is encouraged to be concise and to avoid repetition; a speaker may join in or incorporate by reference any statement previously made.

D – Continuation of Hearing

Whenever the Board deems postponement or continuation to be desirable for orderly administration of the Zoning Bylaw, the Board may continue the hearing to a date and time certain. A continuation must be accompanied by a form submitted and signed by the applicant and signed by the Chairman of the board or his representative. If the date and time of continuation is announced during the originally scheduled hearing, such continued hearing may be held without further notice or advertisement.

Upon request of the applicant, the Board may postpone the hearing indefinitely.

Any postponement or continuation shall be on such terms as the Board may deem fair, including but not limited to a requirement that resulting expenses be reimbursed.

Section 5.4 - Decision

In each case the Board shall file a formal, written memorandum signed by the members sitting and setting forth the Board's findings and conclusions and the reason(s) for the Board's decisions and actions. Any vote or decision in the absence of such a memorandum is only preliminary and tentative.

The Board's decision may require the applicant to post a cash or surety bond sufficient in the Board's opinion to secure performance of conditions imposed therein.

Except as otherwise provided in these rules with respect to procedural matters, the concurring vote of at least four members of the Board shall be necessary for the Board to grant relief in any case. The Board's memorandum of decision shall show the vote of each member of the quorum sitting on that case or, in case of a member failing to vote, indicate that fact.

The Board's decision shall be effective as of the date and time the signed memorandum thereof has been filed with the Town Clerk.

Section 5.5 - Recording

Before taking any action based on a Board of Appeals decision, notice of the decision and the absence of any appeal within 20 days, must be recorded at the applicant's expense, in the Essex South District Registry of Deeds.

Section 5.6 - Other Requirements

The decision of this Board relates only to requirements of the Zoning Bylaw and does not excuse the applicant from compliance with the building code and all other applicable laws and bylaws. Despite favorable action of this Board, each applicant must secure a building permit and all other

necessary approvals and permits from other Town agencies, including but not limited to the Board of Health, the Historical Commission, and the Conservation Commission.

Section 5.7 - Reapplication

A – Denial Without Prejudice. Denial of an application without prejudice shall be deemed not to be unfavorable and final action within the meaning of Section 16 MGL c.40A . Accordingly, a new application presented in accordance with the terms and conditions, if any, specified by the Board's decision denying without prejudice shall not be subject to the finding and consent required by Section 16.

B – Denial. In order to have an application heard within two years after final denial of a request for the same relief (unless such denial was without prejudice), the applicant must request permission from both the Planning Board and this Board, showing by new evidence substantial and specific changes of relevant conditions. This Board will not consider the merits of a repetitive application unless and until at least all but one of the members of the Planning Board have agreed, after a hearing on notice, that this condition has been met. Proceedings for such permission from this Board may, in the discretion of this Board, be joined either with such proceedings before the Planning Board or with proceedings on the merits of the request for relief.

ARTICLE VI GENERAL

Section 6.1 - Effective Date

These rules took effect on April 25, 1979.

No amendment shall be applicable with respect to any application filed before such amendment is filed with the Town Clerk. The rules in effect at the time an application is filed shall, despite any amendment, govern all proceedings with respect to that application. .

Section 6.2 - Amendment

These rules may be amended at any time by the affirmative votes of four members of the Board. Associate members may participate in consideration of such amendments with voice but without vote.

These rules have been amended Oct. 21, 1981; Jan. 17, 1983; March 29, 1983; March 1, 1984; Sept. 24, 1985; Sept. 8, 1986; Oct. 27, 1987; Sept. 30, 1988; May 30, 1989; Feb. 26, 1991; Feb. 28, 1995; March 30, 1998; Feb. 23, 1999; April 15, 2003; Aug. 26, 2003; Jan. 30, 2004; April 1, 2004, and Dec. 31, 2005, Feb. 2014.

Section 6.3- Waiver

The Board may, by majority vote, waive any provision of these rules in a particular case for good cause shown, provided that such waiver shall not be inconsistent with any provision of the Zoning Bylaw or the General Laws.