

521 CMR 4.00: **APPEAL AND VARIANCE**

4.1 VARIANCES

Application: An owner or an owner's representative or tenant who thinks that full compliance with 521 CMR is *impracticable* may apply to the *Board* for a *variance* from 521 CMR. Application for a *variance* shall be made on a form provided by the *Board* for this purpose, shall contain such information as is required by the *Board*, and shall be signed by the applicant.

4.1.1 **Board Action:** Upon receipt of an application for *variance*, the *Board* shall send a copy of the application to the local building inspector, the local disability commission and the independent living center for their input. The *Board* shall also investigate the matter and may:

- a. grant the application with whatever conditions it deems appropriate or deny the application without a hearing. Any person aggrieved by the Board's action under 521 CMR may request an adjudicatory hearing within 30 days of the decision;
- b. schedule a conference to consider the simplification or clarification of the issues and/or the possibility of an agreement disposing of all or any matters as may aid in the disposition of an adjudicatory proceeding. Those matters agreed upon by the parties shall be electronically recorded and/or reduced to writing and shall be signed by the parties, and shall thereafter constitute a part of the record;
- c. commence an adjudicatory hearing in accordance with the provisions of M.G.L. c. 30A and 801 CMR 1.01 or 1.02: *Standard Adjudicatory Rules of Practice and Procedure*, as stated in the hearing notice.

4.2 COMPLAINTS

Initiating a Complaint: Any person who has knowledge or evidence that any other person or entity has not complied or is not complying with 521 CMR, may complain in writing to the *Board* on a special form available from the *Board*.

4.2.1 **Board Action:** Upon receipt of a complaint, the *Board* shall investigate the complaint, and may:

- a. issue a stipulated order indicating the date compliance must be achieved.
- b. schedule a conference to consider the simplification or clarification of the issues, the possibility of obtaining stipulations and agreements, the possibility of an agreement disposing of all or any of the issues in dispute, and any other matters as may aid in the disposition of an adjudicatory proceeding. Those matters agreed upon by the parties shall be electronically recorded and/or included in a written document and shall be signed by the parties, and shall thereafter constitute a part of the record.
- c. commence an adjudicatory hearing in accordance with the provisions of M.G.L. c. 30A and 801 CMR 1.01 or 1.02: *Standard Adjudicatory Rules of Practice and Procedure*, as stated in the hearing notice.
- d. dismiss a complaint at any time after notification to the complainant.

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4.3 HEARINGS

All adjudicatory hearings shall be conducted in accordance with the provisions of M.G.L. c. 30A and 801 CMR 1.01 or 1.02: *Standard Adjudicatory Rules of Practice and Procedure*, as stated in the hearing notice.

4.3.1 Hearings will be scheduled within 60 days of the receipt of a request for an adjudicatory hearing unless the *Board* in its discretion extends such time for good cause shown. The *Board* will schedule hearings on two weeks notice unless it deems a shorter period necessary.

4.3.2 In proceedings under 801 CMR 1.02, the *Board* may provide for mandatory discovery.

4.3.3 The *Board* will issue a decision within 21 days of the hearing unless the *Board* in its discretion extends such time.

4.3.4 When the *Board* deems it necessary and subject to appropriation, the services of an independent expert may be sought.

4.4 REOPENING HEARING, MOTION FOR RECONSIDERATION

The *Board* on its own motion, or on motion of any applicant, complainant or aggrieved person, may reopen the hearing in order to receive additional evidence which was not reasonably available at the time of the hearing. The request for reopening shall summarize such evidence to be presented.

4.4.1 The *Board* shall notify all persons who testified at or received formal notice of an initial hearing of a decision to reopen a hearing to take further testimony or receive further evidence.

4.4.2 Within ten days from the date the *final decision* is received by the applicant or complainant, an applicant, complainant, or aggrieved person may file a motion for reconsideration, setting forth the grounds or statutory provisions relied upon to sustain the motion.

4.5 APPEALS

Any party aggrieved by the *final decision* of the *Board* may appeal such decision to State Superior Court in accordance with the provisions of M.G.L. c. 30A, § 14.

4.6 ADVISORY OPINIONS

Upon the written request, the *Board* may issue advisory opinions concerning the interpretation or applicability of 521 CMR. Advisory opinions issued by the *Board* may be relied upon by the persons requesting them, as well as by any agency, or official of a city, town, or region.

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4.7 PETITION FOR THE ADOPTION OF REGULATIONS

Petition: Any interested person or such person's attorney may at any time petition the *Board* to adopt, amend or repeal any regulation. The petition shall be addressed to the *Board* and sent by mail or delivered in person during normal business hours. All petitions shall be signed by the petitioner or the petitioner's attorney, contain the petitioner's address or the address of the petitioner's attorney, and set forth clearly and concisely the text of the proposed regulation. The petition may be accompanied by any supporting data, views or arguments. A member of the *Board* may make a written recommendation that a regulation be adopted, amended or repealed.

4.7.1 Initial Procedure: Within 60 days of the receipt of a petition or recommendation, the *Board* shall hold a meeting to determine whether or not to schedule the petition or recommendation for further proceedings in accordance with M.G.L. c. 30A. If the regulation has been presented by petition, the *Board* shall notify the petitioner within ten days after making such a determination.

4.7.2 Procedure for the Adoption, Amendment or Repeal of Regulations:

- a. The procedures for the adoption, amendment or repeal of any regulation shall comply with M.G.L. c. 30A.
- b. Where no public hearing is required, the *Board* may afford any interested person or his duly authorized representative, or both, an opportunity to present data, views or arguments orally before the *Board* during the meeting at which the proposed action is to be considered. If the *Board* finds that such oral presentation is unnecessary or impracticable, it may require written presentation.
- c. Where a public hearing is required, the *Board* shall afford any interested person or his duly authorized representative, or both, an opportunity to present statements and arguments orally. In its discretion, the *Board* may limit the length of oral presentation.

4.7.3 Filing of Regulations: Upon the adoption of a regulation, an attested copy shall be filed with the Secretary of the Commonwealth together with a citation of the statutory authority under which the regulation has been promulgated. The regulation shall take effect upon filing unless a later date is required by law or is specified by the *Board* in the Regulation.

NON-TEXT PAGE