



# *The Commonwealth of Massachusetts*

## **Division of Occupational Licensure Office of Public Safety and Inspections**

**1 Federal Street, Suite 0600**

**Boston, Massachusetts 02110-2012**

Phone (617) 826-5209

Fax (617) 727-1944

### **STATE BUILDING CODE APPEALS BOARD**

#### **FILING INSTRUCTIONS**

**Appeals are held pursuant to 801 CMR 1.02 Informal/Fair Hearing Rules**

Procedures outlined on the following pages shall be followed when filing an application to appear before the Board of Building Regulations and Standards' (BBRS) Building Code Appeals Board (BCAB). The Appeals Board is comprised of any three (3) members of the BBRS. Appeals hearings are convened twice each month, generally on the first Thursday and fourth Tuesday of the month. Applications are processed on a first come, first served basis. Typically, it takes thirty (30) to ninety (90) days from receipt of an application to be scheduled for a hearing. Please visit our website @ [www.mass.gov/dps](http://www.mass.gov/dps) for exact hearings dates and additional information about **filing an appeal on line**.

Please note that appeals hearings are intended to afford aggrieved parties with an opportunity to seek relief from provisions of the *State Building Code* (780 CMR) in the form of a variance or interpretation of the applicability of a particular code section. Appeals Board members are not allowed to waive code requirements in their entirety, but may consider alternative methods of complying with the intent of the code. Appeals Board members are not arbiters; rather they are professional persons representing a cross section of the building design, construction and regulatory industries who are educated in code matters. Board members will judge testimony and materials presented at a hearing based on technical merits in relation to code requirements.

Appeals Board members do not have any authority to rule on zoning issues (land use issues). Zoning requirements differ in each community. Therefore, appeals relating to land use should be directed to the Zoning Appeals Board in the city or town in which the property is located.

In order to assist with understanding the process, we have provided answers to *Frequently Asked Questions* relative to appeals procedures below.

#### **Frequently Asked Questions about the Appeals Process**

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**Question:** What is the overall intent of the code?

**Answers:** The building code sets **minimum** standards for the design and construction of all buildings and structures in the commonwealth. The intent is to ensure that all citizens are afforded a consistent level of safety in all buildings in which they visit, live or work. A code user may choose to exceed requirements of the code, but may not design or construct to a lesser standard.

**Question:** What if I am not able to abide by the provisions of the code verbatim, are appeals procedures available?

**Answer:** The BBRS maintains an active Building Code Appeals Board (BCAB) which meets at least twice each month. In order to file an appeal with the BCAB, a notice of violation must first be issued by the municipal or state building official charged with the enforcement of the code. This notice identifies the subject matter to be addressed at the appeal.

Once an appeal application is stamped as received by the BBRS, a stay of proceedings is enacted. This stay prevents a building official from taking further action with regard to the subject of the appeal. Also, it allows the applicant to continue to work on the project. However, please be aware that work is continued at the applicant's risk. A stay of proceedings may not be applicable if an inspector has issued a *stop work order*.

Among other things, Appeals Board members may allow variances to provisions of the code or may offer interpretations to clarify disputes relative to a code provision. However, it is not the intent to simply waive code provisions in disregard of its public safety intent. Therefore, an applicant must demonstrate first a need for variance (if this is the intended relief) and then identify how he\she will achieve a comparable level of safety for building occupants. An applicant should always keep in mind that the code is a public safety document and that arguments relating to an appeal case should focus on issues of safety and compliance with the intent of the code; arguments should not focus on monetary savings for a project, at least not entirely.

Generally, it takes about 30 to 90 days after receipt of an application for a case to be heard. Although most cases are decided on the day of the hearing, Board members have 30 days following the hearing to issue a written decision. Technically, the decision is not finalized until the written decision is issued. Depending on complexity, cases may, at times, be continued and\or taken under advisement for determination at a later date.

If an appellant or other party is aggrieved by the Board's determination, he\she may request a reconsideration of the decision. Reconsideration requests must be filed in writing within 10 days of receiving the written decision. It is important to note that a reconsideration may only be considered on the basis of *new evidence*. Reconsiderations are not intended simply as a second chance to review the case. Reconsiderations are reserved for those rare instances where all facts relating to a matter may, for one reason or other, not have been suitably brought forward and examined during the hearing. Reconsideration request are required to be reviewed by Board members who originally heard the case. If a majority of Board members agree that new evidence exists, a new hearing will be scheduled. Otherwise, aggrieved parties may appeal a decision of the Board to a court of law.

Appeals procedures follow the informal\fair hearings procedures as defined in 801 CMR 1.02. Interested parties may retrieve this document by visiting <https://www.mass.gov/regulations/801-CMR-100-standard-adjudicatory-rules-of-practice-and-procedure>.

**Question:** Are there other reasons for filing an appeal?

**Answer:** An appeal may also be filed for a building official's *failure to act* on a matter. The code allows a period of 30 days for a building official to review and act on an application for permit. Technically, if a response is not received within this period an appeal may be filed on the 31<sup>st</sup> day. However, such quick action is not recommended. Like most people, building officials can get behind on their workload. If the thirty day period passes without a response, call the building official, documenting the day and time, to see if a response is forthcoming. If a response is not received via

phone, try corresponding in writing, by certified mail if so desired. If these methods fail, an appeal may be filed to address the issue of the inspector's failure to act.

### **Procedures for Filing an Appeals Application**

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Please follow the instructions below when completing an Appeals Application.

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1. Unless filing for a *failure to act*, the appellant must be in receipt of a denial letter from the municipal or state building official as required in Chapter 1 of the State Building Code. An appeal must be filed *within forty-five (45) days* of the date of the letter of denial. An appeal may be filed either with the local **Building Code Appeals Board**, if one has been established, or directly with the State Building Code Appeals Board. Also, an appellant may file an appeal relative to a building official's *failure to act* on his\her permit application as provided for in Chapter 1 of the State Building Code (A letter of denial is not required when filing for *failure to act*).

2. Two documents are required to be completed by the appellant or his/her representative when filing an appeal. (Each is part of this document.)

- the **Appeal Application Form** (2 pages)
- and the **Service Notice** (1 page).

The **Service Notice**, which gives notice to the building official that an appeal is being filed, should include the date appearing and the name and address of the building official under the section titled, "PERSON/AGENCY SERVED". The **Method of Service** should list one of the following procedures as set forth in Chapter 1 of the State Building Code for serving notice to the appropriate building inspector.

- A. Personally; or
- B. Registered or Certified Mail, return receipt requested; or
- C. By any person authorized to serve civil process.

The **Date of Service** is the date when a copy of the appeal is delivered or mailed to the building official or other party entitled on the application.

The **Service Notice** must be signed by the appellant or his/her representative and the signature must be notarized.

The **Appeal Application Form** (2 pages) *must be completed in total*. The application will be reviewed for completeness prior to a hearing being scheduled. Applications determined to be incomplete will be returned to the applicant for correction. Questions relating to completing the application should be directed to your local building department or this office. Questions relating to the process may be directed to the Appeals Board Hearings Coordinator @ (617) 826-5209.

3. **One** complete copy of the appeal filing, including the **original Service Notice**, must be delivered to the noted Building Official or the official entitled. **Four** complete copies of the appeal filing, including the original plus three copies of the **Appeal Application** form, **four copies** of the **Service Notice** and **four copies** of the denial letter, together with a check for **\$150.00** (filing fee) payable to the Commonwealth of Massachusetts must be submitted to this office, if the appeal is made directly to the State Building Code Appeals Board. (Fee requirements for filing before a local Building Code Appeals Board may differ from the fees prescribed for submission to the State Building Code Appeals Board. Please check with municipal building official for these fees.).

**ALL CASES WILL BE HEARD ON THE SCHEDULED DATE. POSTPONEMENTS MAY ONLY BE CONSIDERED IN EXTREME SITUATIONS WHERE SUFFICIENT NOTICE HAS BEEN PROVIDED.**



# The Commonwealth of Massachusetts

## Division of Occupational Licensure Office of Public Safety and Inspections

1 Federal Street. Suite 600

Boston, Massachusetts 02110-2012

Phone (617) 727-3200

Fax (617) 727-1944

### STATE BUILDING CODE APPEALS BOARD APPEAL APPLICATION FORM

<b>DOCKET NUMBER</b> (State Use Only)		<b>DATE</b>	
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The undersigned hereby appeals to the State Board of Building Regulations and Standards from the decision of the following person. (Please fill-in the name of the appropriate municipal or state building inspector or other authority. Also, indicate if this is a request for a *hearing de novo* (new hearing) relative to a decision of a municipal appeals board.)

Building Official from the City/Town of:	
Board of Appeals from the City/Town of: (Request for <i>hearing de novo</i> )	
State Building Official:	
Other:	

Please mark the appropriate box indicating the requested action to be considered by Appeals Board members.

<b>Variance</b>		<b>Order</b>		<b>Direction</b>	
<b>Interpretation</b>		<b>Failure to Act</b>		<b>Other</b>	
<b>STATE USE ONLY</b>					
<b>Fee Received</b>					
<b>Check Number</b>					
<b>Received By</b>					

(This section must be completed or the application will be returned.)

Has the building or structure been the subject of an appeal by this or any other appeals board previous to this filing?

No ☐ Yes ☐ If, yes, please indicate the date of the previous appeal, whether the matter was heard before a local or state appeals board, the code section that was at issue, and the specifics of the decision (i.e. a variance was granted\ not granted).

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Please take care to submit all written supporting documentation with this application to allow time for review. However, Board members reserve the right to continue proceedings if such material warrant extensive review.

Please provide a brief description of the desired relief below. Additional information may be attached if space is not sufficient. All appropriate code sections that are subject to appeal must be identified in the description.

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Please complete the following section completely and accurately.

Name of Appellant:		Representing:	Owner-
Address For Service			
	Email: _____		
Telephone Number:		Fax Number:	
Address of Subject Property (if different from service address):			
What is appellant's connection to subject property?			

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Signature of Appellant and/or Representative

Please Print Name Legibly

Please return applications to:  
Program Manager, Board of Appeals  
Office of Public Safety and Inspections – One Federal Street, Suite 600  
Boston, MA 02110 - 2012

**DESCRIPTION OF BUILDING OR STRUCTURE RELATIVE TO THE MASSACHUSETTS STATE BUILDING CODE (9th EDITION):** (Check as appropriate)

**Do not complete the tables below for one and two family dwellings. Proceed to section entitled "Brief Description of the Proposed Work".**

DESCRIPTION OF PROPOSED WORK (check all applicable)				
New Construction	Existing Building	Repair(s)	Alteration(s)	Addition
Accessory Bldg.	Demolition	Other Specify: _____		
Brief Description of Proposed Work:				
_____				
_____				

USE GROUP AND CONSTRUCTION TYPE					
USE GROUP (Circle appropriate Use Group)				CONSTRUCTION TYPE	
A Assembly	A-1	A-2	A-3	1A	
	A-4	A-5		1B	
B Business				2A	
E Educational				2B	
F Factory	F-1	F-2		2C	
H High Hazard				3A	
I Institutional	I-1	I-2	I-3	3B	
M Mercantile				4	
R Residential	R-1	R-2	R-3	5A	
S Storage	S-1	S-2		5B	
U Utility	Specify: _____				
M Mixed Use	Specify: _____				
S Special Use	Specify: _____				

COMPLETE THIS SECTION IF EXISTING BUILDING UNDERGOING RENOVATIONS, ADDITIONS AND/OR CHANGE IN USE	
Existing Use Group: _____	Proposed Use Group: _____
Existing Hazard Index (780 CMR 34): _____	Proposed Hazard Index (780 CMR 34): _____

BUILDING HEIGHT AND AREA		
BUILDING AREA	Existing (if applicable)	Proposed
Number of Floors or stories include basement levels		
Floor Area per Floor (sf)		
Total Area (sf)		
Total Height (ft)		

Brief Description of the Proposed Work:

\_\_\_\_\_

\_\_\_\_\_

**STATE BUILDING CODE APPEALS BOARD**  
**Service Notice**

I, \_\_\_\_\_, as \_\_\_\_\_ for the

Appellant/Petitioner \_\_\_\_\_ filed an appeal with the State

Building Code Appeals Board on \_\_\_\_\_ 20 \_\_\_\_\_

AND DO HEREBY SWEAR, UNDER THE PAINS AND PENALTIES OF PERJURY, THAT IN ACCORDANCE WITH THE PROCEDURES ADOPTED BY THE STATE BOARD OF BUILDING REGULATIONS AND STANDARDS AND SECTIONS 113 AND\OR 113R OF THE STATE BUILDING CODE, I SERVED OR CAUSED TO BE SERVED, A COPY OF THIS APPEAL APPLICATION ON THE FOLLOWING PERSON(S) IN THE FOLLOWING MANNER:

NAME AND ADDRESS OF PERSON OR AGENCY SERVED		METHOD OF SERVICE	DATE OF SERVICE
1			
2			
3			

\_\_\_\_\_  
Signature: Appellant or Petitioner

On the \_\_\_\_\_ Day of \_\_\_\_\_ 20 \_\_\_\_\_ PERSONALLY APPEARED

**BEFORE ME THE ABOVE NAMED** \_\_\_\_\_

(Type or Print the Name of the Appellant)

**AND ACKNOWLEDGED AND SWORE THE ABOVE STATEMENTS TO BE TRUE.**

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
MY COMMISSION EXPIRES