

## RULES OF PRACTICE AND PROCEDURE



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**Rules of Practice and Procedures  
New York City, Board of Standards and Appeals**

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## §1-01 Purpose and Authority

(a) The Board of Standards and Appeals (hereinafter, the Board) consists of five members who are commissioners appointed by the Mayor each for a term of six years. Pursuant to §659 of the New York City Charter (hereafter, the Charter), one of the members is required to be a planner with professional qualifications and at least ten years' experience, another member is required to be a licensed professional engineer with at least ten years' experience and another member is required to be a registered architect with at least ten years experience. The Mayor designates one of these three members to serve as Chair and also designates one of the members to serve as Vice-chair. Section 666 of the Charter provides that the Board of Standards and Appeals shall have the power:

1. To make, amend and repeal rules and regulations for carrying into effect the provisions of the laws, resolutions, rules and regulations in respect to any subject matter jurisdiction whereof is conferred by law upon the board, and to include in such rules and regulations provisions applying to specific conditions and prescribing means and methods of practice to effectuate such provisions and for carrying into effect the powers of the board.
2. To make, amend and repeal rules and regulations for the enforcement of those provisions of the labor law and other laws which relate to the construction of alteration of, structural changes in, plumbing and drainage of, elevators in, fire escapes on, adequacy and means of exit from, or fire protection in, all buildings within the city, which shall take the place of the industrial code and of any rules and regulations of the department of labor of the state of New York relating to the same subject matter.
3. To make, amend and repeal rules, regulations and directives governing the preparation and presentation by the director of matters before the board.
4. To exercise exclusively with respect to buildings situated within the city, the same powers as are exercised by the department of labor of the state of New York elsewhere in the state.
5. To determine and vary the application of the zoning resolution as may in such resolution and pursuant to section six hundred sixty-eight.
6. To hear and decide appeals from and review:
  - (a) except as otherwise provided by law, any order, requirement, decision or determination of the commissioner of buildings or any borough superintendent of buildings acting under a written delegation of power from the commissioner of buildings filed in accordance with the provisions of subdivision (b) of section six hundred forty-five, or
  - (b) any order, requirement, decision or determination of the fire commissioner or any rule or regulation or amendment or repeal thereof made by the fire commissioner, or
  - (c) any order, requirement, decision or determination of the commissioner of transportation or the commissioner of ports and trade made in relation to the structures or uses on waterfront property under his or her jurisdiction in connection with the application or enforcement of the provisions of the zoning resolution of the city of New York, the labor law and such other laws, rules and

regulations as many govern the construction, alteration, maintenance, use, occupancy, safety, sanitary conditions, mechanical equipment and inspection of structures in the city, under the authority conferred upon them by law, by reversing or affirming in whole or in part, or modifying the order, regulation, decision or determination appealed from, and to make such order, requirement, decision or determination appealed from, and to make such order, requirement, decision or determination as in its opinion ought to be made in the premises, and to that end shall have the power of the officer from whose ruling the appeal is taken, and of any officer under whose written delegation of power such ruling was made.

7. In passing upon appeals, to vary or modify any rule or regulation or the provisions of any law relating to the construction, use, structural changes, equipment, alteration or removal of buildings or structures, or vaults in sidewalks appurtenant thereto, where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of the law, so that the spirit of the law shall be observed, public safety secured and substantial justice done, provided that the provisions of the housing maintenance code and of any regulation or order issued under such code may be varied or modified only to the extent permitted by such code and only in the manner and subject to the conditions therein specified.
8. To review, upon motion of any member of the board, any rule, regulation, amendment or repeal thereof, and any order, requirement, decision or determination from which an appeal may be taken to the board under the provisions of this chapter or any law, or of any rule, regulation or decision of the board; but no such review shall prejudice the rights of any person who has in good faith acted thereon before it is reversed or modified. The provisions of this chapter relating to appeals to the board shall be applicable to such review.
9. To afford an equal right to the city planning commission, community boards, and borough boards and lessees and tenants as well as owners to appear before it for the purpose of proposing arguments or submitting evidence in respect of any matter brought before it pursuant to the zoning resolution of the city of New York.
10. To issue such special permits as the board is authorized to issue under the zoning resolution.
11. To revoke or modify, upon due notice and hearing, variances and special permits previously granted under the zoning resolution if the terms and conditions of such grants have been violated.

(b) Section 72-01 of the Zoning Resolution further delineates the powers conferred upon the Board and additionally provides jurisdiction to the Board to hear applications for administrative determinations and authorizations or appeals pertaining to loft conversions under Article I, Chapter 5 of the Zoning Resolution. Section 11-31, et seq. and Chapter 5 of the Zoning Resolution also give the Board the power to renew building permits lawfully issued prior to the effective date of a zoning amendment, but which have lapsed. In addition, §§35 and 36 of the New York State General City Law, respectively, confer upon the Board the power to hear appeals from objections issued by the Department of Buildings for the denial of a permit for a building in the bed of a mapped street or highway, as well as buildings which are not located on a mapped street which provides access. Sections 277 and 310 of the New York State Multiple Dwelling Law provide that the Board shall have the

power to vary or modify certain provisions and requirements of the Multiple Dwelling Law in accordance with those sections. Section 25-205 of the New York City Administrative Code provides that an order, regulation or ruling of the Commissioner of Housing Preservation and Development that is issued under chapter two of title twenty seven of the Code may be varied or modified by the Board in the manner specified therein. The Board shall also have jurisdiction over such other matters as is provided by law. These rules are intended to fulfill the Board's legal mandate by providing clear and concise notice to applicants and the public at large of the rules and procedures governing the practices of the Board and requirements for filing applications at and appearing before the Board.

### **§1-01.1 Sessions of the Board**

#### (a) Public hearings

Public hearings of the Board shall be held on Tuesday of each week that the Board is not in recess at 10 A.M. for the Special Order Calendar (SOC), immediately followed by the Appeals (A) Calendar and commencing at 1:30 P.M. for the Zoning (BZ) Calendar or on days and times to be set by the Board as may be deemed necessary to facilitate the work of the Board.

#### (b) Subject matter

Public hearings shall be devoted to the consideration of applications of such matters coming before the Board which it has jurisdiction to hear as set forth in §1-01 of these rules. Notice of the dates and subject matter of such public hearings shall be published in the Bulletin of the Board of the City Record and posted at the public bulletin board at the Board.

#### (c) Special hearings

Special public hearings and special review sessions may be called by the Chair or at the request of three Commissioners, provided that notice is given to each Commissioner at least twenty-four hours before the time set for such hearing or session. Reasonable notice of the dates and subject matter to be heard shall be provided to the property owners(s) and posted at least twenty-four hours in advance at the public bulletin board at the Board.

#### (d) Review sessions

Sessions for Board review of cases calendared for hearing shall be held on days and times preceding the calendared hearing date as determined by the Board, generally on the Friday and Monday preceding the hearing. The public may attend all review sessions, but may not participate.

#### (e) Quorum and voting

A quorum of the Board shall consist of three Commissioners. No public hearing or review session shall be conducted without a quorum. A concurring vote of at least three Commissioners shall be necessary to a decision to grant an application or an appeal, to revoke or modify a variance, special permit or other decision of the board or to make, amend or repeal a rule or regulation. If an action fails to receive the requisite three votes, it will be deemed a denial.

#### (f) Commissioners

The Commissioners of the Board shall attend sessions in person, except that, during absence or illness, a substitute may act as provided in §25-201 of the New York City Administrative Code.

(g) Conflict of interest

Members of the Board and its staff shall abide by Chapter 68 of the New York City Charter regarding conflicts of interest, as well as any rules promulgated by the Conflicts of Interest Board.

(h) The Chair

The Chair, or in the absence of the Chair, the Vice Chair, shall preside at all sessions. The Chair, or in the absence of the Chair, the Vice chair, may designate another Commissioner of the Board to preside and perform the duties of the Chair at public hearings or review sessions. If the Chair and Vice chair are absent and a quorum is present, the Commissioner shall choose a presiding officer from among their number.

(i) Points of order

The Chair, or in the absence of the Chair, the Vice chair, subject to these rules, shall decide all points of order or procedure at public hearings, unless otherwise directed by a majority of the Board in session at that time.

(j) Orderly conduct

At the public hearing of a case before the Board, the applicant shall first present the argument in support of the case and those in objection shall follow. The Chair shall control the admission of evidence, the order of speakers and the general decorum of the hearing room. Commissioners shall not proceed to question or discuss an issue, put a motion or offer a resolution until they have addressed the Chair and have been recognized. During the progress of a roll call, no Commissioner shall leave the hearing room. Subject to the direction of the Board, the Executive Director shall enforce these rules and maintain order in the hearing room and lobbies during all public hearings.

(k) Presentation of evidence

Testimony at the hearing may be presented by the applicant and the owner of the subject property and by any expert or person with knowledge of the facts whom they may call. In applicable cases, testimony may be presented by any person who resides at, leases or owns real property within the affected area described in §1-06(g) of these rules or by a representative of such person. Subject to the discretion of the Chair, testimony may be limited to one speaker per household or tenancy within the affected area. The Chair may, in its discretion, permit testimony by representatives of any neighborhood, civic, business or industry association whose members have an expertise or interest in the land use aspects of the case. The Chair may require submission of a written authorization from the association stating the speaker's representative capacity.

Testimony may be presented in writing and briefs may be submitted upon terms set by the Chair. All initial submissions from individuals other than the applicant regarding the application shall be made within five business days prior to the first hearing. All subsequent submissions are due no later than 2:00 P.M. on the day of the hearing preceding the applicant's next scheduled hearing date unless otherwise instructed by the Chair. Each submission shall be accompanied by a transmittal letter listing all documents included in the submission to the Board, as well as a transmittal letter listing all documents included in any submission to any other individuals or entities required to be notified.

Oral testimony may be limited as to time by direction of the Chair. All persons coming forward to testify shall state their name, address within the affected area, or representative capacity.



(l) Continued hearing and closing

The Board may continue the hearing to a new date for additional testimony. Upon the motion of the Chair or any Commissioner, the Board may vote to close the hearing and to permit no further testimony. In appropriate cases, the Chair may permit the record to remain open until a given date for submissions of written evidence.

(m) Untimely submissions

The Board may refuse to consider information not submitted within prescribed time periods set by the Board or otherwise required by law.

**§1-02 General Requirements**

(a) Application forms

Every application shall be made to the Board on the forms provided, and shall include the data required in such forms and their accompanying instruction sheet so as to supply all information necessary for a clear understanding by the Board, the Executive Director and the staff. All filings shall be made in person. No incomplete applications shall be accepted. After the case has been calendared for public hearing, the Board shall determine at its public review sessions and public hearing whether additional plans, drawings, exhibits or other information are required to complete the application.

(b) Fees

Before an appeal or application is docketed and a Calendar Number is assigned, the applicant shall pay the prescribed filing fee in the form of a check or money order made payable to the "Board of Standards and Appeals". This fee shall be in accordance with the fee schedule authorized by §25-202 of the New York City Administrative Code. When applicable, the applicant shall also pay the prescribed City Environmental Quality Review (CEQR) fee in accordance with the fee schedule authorized by Mayoral Executive Order No. 91 of 1977, as amended, and Title 62, Chapter 3, Subchapter A, §§3-01 and 3-02 of the Rules of the City of New York. A not-for-profit organization may be entitled to an exemption from Board fees pursuant to §25-202 of the New York City Administrative Code upon satisfactory proof of its not-for-profit status.

(c) Drawings and other exhibits

All drawings submitted with an application shall be properly titled, numbered, dimensioned, dated, drawn to scale, and shall otherwise conform with the applicable instruction sheet. No drawing shall be accepted unless it bears a legible seal and signature of a registered architect or licensed professional engineer. No drawing shall be accepted if it is illegible or unreadable due to poor drafting quality or excessive reduction or reproduction. All drawings and other exhibits, unless otherwise accepted by the Executive Director, shall be on sheets 8 ½ x 11 inches or on sheets 11 x 17 inches that are folded to 8 ½ x 11 inches.

(d) Board Resolutions

The determination of the Board in each case shall be incorporated in a resolution formally adopted and filed at the office of the Board and shall generally be made available to the public on the day following the date of decision and published in the Bulletin of the Board or the City Record.

(e) Compliance with Board resolutions

Officials who are charged with the enforcement of the laws, ordinances, and rules relating to buildings in the City of New York shall be bound by the resolutions issued by the Board and,

before granting a permit or taking any other action shall see that there are no misstatements as to facts and that the conditions of the resolution are observed. Any administrative official who discovers any misstatement of essential information is required to notify the Board in order that it may take such actions as the circumstances require. Any member of the public who observes a violation of the conditions of any resolution of the Board may write the Chair or Executive Director of the Board in order for the Board to determine if the matter should be calendared for a hearing to determine if there has been non-compliance with the resolution in accordance with §1-10(f) of these rules.

(f) Other communications

Any communication from an applicant purporting to be an application or appeal and submitted in a manner other than as described in these rules shall be regarded as a mere notice of intention to seek relief and shall have no force or effect until it is made in the form required. Upon receipt of any such communication, the Board will supply the applicant with the proper forms for presenting the application. Such communication shall not stay the third (30) day time period for appeal referred to in §§1-05(b), 1-06(b),1-07(b),1-08(b) and 1-09(b) of these rules.

(g) Time Periods

Except as otherwise specifically noted any time periods in these rules shall mean calendar days.

**§1-03 The Calendar**

(a) Calendar number

Each properly filed case with the required data shall be numbered serially in the order received. The calendar numbers shall begin anew on January 1st of each year, and shall be hyphenated with the number of the year and the initials indicating the character of the case. The original calendar number shall be used for an application to reopen or amend a previously decided case for the same premises on the Special Order Calendar.

(b) Examiners' review

As soon as a case is filed and the fee is paid, it shall receive a calendar number, be placed on the docket and referred to the examiner(s) for review and comment, if necessary. When the examiner(s) find that the applicant has substantially completed the application or appeal, the applicant shall be notified of the date on which the case will be set for public hearing.

(c) Publication of hearing calendar

Each case shall be listed by calendar number, applicant, owner and premises in the hearing calendar printed in the Bulletin of the Board, or other designated publication, under the title of the respective proceedings, and the date and time for which such case has been set for public hearing.

(d) Site examinations

In any case in which the Board may deem it necessary, a site examination of the premises in question may be conducted by the Board in accordance with §667 of the Charter. Site examinations of premises shall be made by a committee which includes not less than two (2) Commissioners except as otherwise provided herein, who shall report their findings to the Board at any review session prior to the public hearing at which a vote on a matter concerning such premises will be cast. The committee may include the Executive Director, Counsel and/or staff examiners, as designated by the Chair. Any Commissioner of the Board shall be included in the committee, upon his/her request. The Chair, in specific instances, may permit one

Commissioner, or one Commissioner and an examiner, to constitute a Committee.

(e) Board approved sources for notification

Names of owners entitled to notice of the public hearing pursuant to §§1-06(g) and 1-07(g) of these rules may be obtained from the City Collector's Office or from the City Register. In all cases, the list provided must show the names of the actual property owners with legal title entitled to be notified, rather than mortgagees.

(f) Proof of service for notification

An applicant shall submit proof of service regarding all notifications to the individuals and entities required by these rules. Service of all material required shall be by regular mail, certified mail or personal service upon the individuals or entities required to be notified. Such individuals or entities shall either sign a receipt for such material or the applicant may submit an Affidavit of Service to the Board attesting to proper service. If such service is by regular mail, the applicant shall submit an official Post Office Certificate of Mailing, together with the Affidavit of Service. If such service is by certified mail, the applicant shall submit the Official Post Office Certificate of Mailing or the signed receipt. If such service is by personal service, the applicant shall submit an affidavit attesting to the individuals or entities served. All materials required to be served on the affected Community Board or Borough Board and City Planning Commission shall be served on the respective Chairperson. For the purposes of these rules, "affected community board" shall mean the community board for a community district in which land included in an application pursuant to these rules is located; the term "affected borough president" shall mean the president of a borough in which land included in such application is located; and the term "affected borough board" shall mean a board of a borough if such application includes land within two or more community districts within the borough represented by such borough board. The Community Board or Borough Board shall be deemed to have received an application five (5) calendar days after the mailing of the notice to the Community Board or Borough Board by the applicant. The proof of service and transmittal letter listing all documents included in the submission shall be provided to the Board within five business days prior to the scheduled hearing.

(g) Owner authorization and consent

All owners of record of a zoning lot or other entity or person legally authorized to act for such owner must consent to the filing of an application, except in the case of appeals brought by individuals with legal standing other than the owner. An owner shall include a person having legal title to premises; a mortgagee or vendee in possession; a trustee in bankruptcy; a receiver or any other person having legal ownership or control of premises in accordance with §27-232 of the Administrative Code. If the applicant is not the owner, for example, a licensed architect, engineer, attorney or other authorized representative, a signed and notarized statement or other proof must be submitted with the application showing that the applicant is authorized by the owner to make the application.

**§1-04 City Environmental Quality Review (CEQR)**

(a) Subject matter

Applications for variances and special permits filed at the Board, in accordance with Mayoral Executive Order No 91 of 1977, as amended, the Rules for City Environmental Quality Review, Title 62, Chapter 5, §5-01 et seq. of the Rules of the City of New York (hereafter, CEQR), and the State Environmental Quality Review Act regulations, 6NYCRR Part 617, and any subsequent amendments thereto, shall be subject to CEQR unless it is determined by the Board

that the application is Type 11 and thus not subject to environmental review, or is otherwise exempt from CEQR in accordance with such regulations.

(b) The Environmental Assessment Statement (EAS)

Every application shall be accompanied by either a CEQR Type 11 checklist or an EAS and shall be accompanied by all the data required by the checklist or EAS. Applications shall receive a CEQR number that is different from the calendar number, and all CEQR submissions shall refer to both numbers, where applicable. Applicants may request a pre-application conference with CEQR staff to seek their assistance in determining what data are required and the potential scope of the environmental review of the proposed action, including whether a Type 11 submission may be appropriate.

(c) Notification

Any written information submitted by an applicant including, but not limited to, the Type 11 checklist and the EAS and any subsequent modifications to the EAS, shall be forwarded by the applicant to:

- a. The affected Community Board(s) (or Borough Board);
- b. The affected City Council member; and
- c. The affected Borough President.

Proof of service shall be provided in accordance with §1-03(f) of these rules. In addition, the Executive Director shall send to the Office of Environmental Coordination (OEC) the notification of commencement of environmental review.

(d) Examiners' review

After the application is properly filed and the requisite fees are paid in accordance with §1-02(b) of these rules, the application shall be referred to the CEQR staff for review. In accordance with applicable laws, the CEQR staff shall notify the applicant, in writing, whether the application is complete or whether additional information is required. When the CEQR and zoning examiners have determined that the application is substantially complete, the case shall be calendared for a public hearing. Applicants may then be required by the Board to furnish additional information which it deems necessary to determine whether the action may or will not have a significant effect on the environment. Copies of subsequent modifications to the application or supporting documents filed in connection therewith shall be sent to the Zoning and CEQR examiners.

(e) Determination of significance

Where applicable, concurrent with its issuance of a resolution, the Board shall issue a CEQR determination of significance if such determination is either a negative declaration or a conditional negative declaration. If the CEQR determination is a notice of determination (positive declaration) then the Board shall issue the positive declaration prior to its issuance of a resolution.

(f) Publication and filing

All determinations of significance shall be published by the Board in its Bulletin or other designated publication. Negative declarations shall be filed at the Board and be generally made available to the public on the day following the date of issuance of a resolution. Notices of determination (positive declarations) shall be mailed to the applicant upon issuance by the Board in advance of its resolution regarding the proposed action and shall thereafter be filed at the Board's office. Proposed conditional negative declarations ("CNDs") shall be transmitted to the applicant in advance of the Board's resolution regarding the proposed action. Negative declarations, conditional negative declarations and positive declarations shall also be circulated to the individuals and agencies required by the Rules for City Environmental Quality Review,

Title 62, chapter 6, §6-07© of the Rules of the City of New York. Upon receipt of the applicant's signature and agreement to the prescribed conditions, the CND shall be published by the Board in the City Record and any other required publications followed by a 30 day public comment period prior to the issuance of a final determination by the Board.

## **§1-05 The Special Order (SOC Calendar)**

### (a) Subject matter

The Special Order Calendar (SOC) shall consist of applications for an extension of the term of a use district exception, variance or special permit; an extension of the time to complete work or to obtain a Certificate of Occupancy; for the restoration of a case to the docket by order of the Supreme Court of the State of New York; for minor amendments to a resolution; for restoration of a case to the docket by the Board for purposes of determining whether or not to revoke or modify variances and special permits previously granted if the terms and conditions of such a grant has been violated; for requests for re-hearings and re-argument; for dismissals for lack of prosecution; or for any other action under the Board's jurisdiction not otherwise described by these rules.

### (b) Time to appeal

No application, except those for extensions of time to complete work or to obtain a certificate of occupancy filed in accordance with §1-05(g) and those for cases restored to the calendar by the Board on its own motion, shall be entertained unless the application is filed within thirty (30) days from the date of the issuance of objections from the authorized agency which are the subject of the application.

### (c) The SOC form

Every SOC application shall be made on Form SOC and shall be accompanied by all the data required by such form and its accompanying instruction sheet.

### (d) Extension of term

The Board shall consider applications for extension of the term of any use district exception, variance or special permit that is limited as to term. Applications for extension of the term of a use district exception, variance or special permit shall be filed not more than one(1) year prior to nor more than thirty (30) days subsequent to the expiration date of such use district exception, variance or special permit. Applicants requesting an extension of the term of any use district exception, variance or special permit that is limited as to term under §§11-411, 72-01, 72-22 or 73-03, 73-04 and 73-11 of the Zoning Resolution who have not filed within the time period set forth in this section may, in their application, request a waiver of this section to file on the SOC calendar. After the applicant pays the requisite fee, the Board may grant the waiver provided that such application shall be filed within two years of the expiration of the previous term of the use district exception, variance or special permit and proof is provided that the use has been continuous. Applications filed more than two years after the expiration of such previous term shall be filed as a new case on the zoning calendar unless otherwise permitted by the Chair where substantial prejudice would result without such a waiver for the subject application and other similar applications.

### (e) Amendment of use district exception, zoning variance or special permit

Applications for amendment of variances, use district exceptions, and special permits filed pursuant to §11-412 of the Zoning Resolution, as well as applications for amendment of variances or special permits granted after December 15, 1961 filed pursuant to §§72-01, 72-22, 73-03, 73-04 and 73-11 of the Zoning Resolution, may be considered on the SOC Calendar of

the Board provided the Board determines that the scope of the amendment is minor. If in the course of further review of the application or during public hearings, the Board determines that the scope of the application is not minor, it may request that a new application be filed on the Zoning (BZ calendar and the appropriate fees paid.

(f) Change of use

Applications filed under §11-413 of the Zoning Resolution shall be filed on the BZ calendar, unless the Chair determines that the scope of the proposed change of use is minor. An applicant may make a written request for a determination by the Chair prior to filing regarding whether an application under §11-413 of the Zoning Resolution may be appropriately filed on the SOC calendar.

(g) Extension of time to complete

Applications for extension of time in which to obtain a permit, complete the work and/or obtain a Certificate of Occupancy shall be filed not more than one hundred and eighty (180) days prior to, nor more than thirty (30) days subsequent to the expiration date. Such applications shall not be subject to the notification requirements set forth in subdivision (h) of this section. The Board may hear an application on the SOC calendar for an extension of time to complete which is filed beyond the time period set forth in this section provided such application is filed within two years of the expiration of the date previously given to complete work and a waiver of this section is requested in the application. The Board may also hear an application for an extension of time to obtain a certificate of occupancy that is filed beyond the time period set forth in this section provided that a waiver of this section is requested in the application.

(h) Notification

The applicant, within three (3) business days after an application has been filed with the Board, shall forward a copy of the application and all supporting documents filed, together with a copy of the original variance or special permit and any relevant amendments to:

- a. The affected Community Board(s) or (Borough Board);
- b. The affected City Councilmember;
- c. The affected Borough President; and
- d. The City Planning Commission;

The applicant shall submit proof of service on the above listed individuals or entities to the Board within ten (10) days of the initial filing in accordance with §1-03(f) of these Rules.

(i) Community Board Review

Within sixty (60) days after receipt, the Community Board, or in an appropriate case, the two or more Community Boards and Borough Board, may hold a public hearing on the application and submit their recommendation to the Board, or may waive a public hearing. Upon receipt of a recommendation or a waiver from each of the concerned Community Boards or Borough Board or upon expiration of the time limit for their review, the Board may review the application, hold a public hearing and make a decision. The Board may, in its discretion, choose to review and receive Community Board and Borough Board recommendations as evidence in the record even if received after the applicable time period has expired.

(j) Notice of hearing

After the SOC Examiner has determined the application to be substantially complete, the applicant shall be notified by the Executive Director on the appropriate form, of the date set for the public hearing, which shall be at least thirty (30) days after the mailing of the notice. Not less than twenty (20) days prior to the date of a hearing by the Board, the applicant shall send notice of such hearing to the individuals and entities required to be notified pursuant to

subdivision (h) of this section. Not less than (5) business days prior to such hearing date, the applicant shall file proof of service that each individual or entity listed above has been notified in accordance with §1-03(f) of these rules.

## **§ 1-06 The Zoning (BZ) Calendar**

### (a) Subject matter

No application for a variance or special permit shall be entertained by the Board except from an order, requirement, decision, or determination made in a specific case by the Commissioner of Buildings, any Borough Superintendent of the Department of Buildings or their authorized representative, or the Commissioner of the Department of Business Services pursuant to the Board's jurisdiction as set forth in the New York City Charter.

### (b) Time to file

Applications shall be filed within thirty (30) days from the date of the action of the Commissioner of Buildings, any Borough Superintendent of the Department of Buildings, or their authorized representative, or the Commissioner of the Department of Business Services which is the subject of the application.

### (c) The BZ form

Every application shall be made on Form BZ and shall be accompanied by all the data required by such form and by its accompanying instruction sheets.

### (d) Notification

The applicant, within three (3) business days after the application has been filed with the Board, shall forward a copy of all case material to:

- a. The affected Community Board(s) (or Borough Board);
- b. The affected City Councilmember;
- c. The affected Borough President;
- d. The administrative official from whose order or determination the appeal is being made;  
and
- e. The City Planning Commission.

### (e) Proof of service

The applicant shall submit proof of service on the individuals or entities listed in this section to the Board within ten (10) days of the initial filing, in accordance with §1-03(f) of these rules.

### (f) Community Board review

Within sixty (60) days after receipt of notification, the Community Board may hold a public hearing and submit a written recommendation concerning such application to the Board, or may waive in writing the holding of a public hearing. If a borough board is involved, within thirty (30) days after the filing of a recommendation or waiver with it by every community board in which the land involved is located or after expiration of the time allowed for such community boards to act, the borough board may hold a public hearing and submit a written recommendation to this Board or may waive a public hearing.

Upon receipt of a waiver or recommendation from the affected Community Board(s) or Borough Board, or upon the expiration of the time period for their review, the Board may review the application, hold a public hearing, and make a decision. The Board may, in its discretion, choose to receive and review Community Board and Borough Board recommendations as

evidence in the record even if received after the applicable time period has expired.

(g) Notice of hearing

After the examiner(s) have determined the application to be substantially complete, the applicant shall be notified by the Executive Director, on the appropriate form, of the date set for the public hearing, which shall be at least thirty (30) days after the mailing of said notice. With this notice, the applicant shall be supplied with an official copy of the appropriate forms, which he or she is required to send not less than twenty (20) days prior to the date of such hearing to:

- a. The affected Community Board(s) (or Borough Board);
- b. The affected City Councilmember;
- c. The affected Borough President;
- d. The City Planning Commission; and
- e. Affected property owners;

“Affected property owners” shall be defined to include all owners and residential, commercial and industrial tenants of record in the building or premises which is the subject of the application as well as all owners of property within a radius of 400 feet from the center of the lot which is the subject matter of the application, except that for subject lots of 40,000 square feet or more in area or having a frontage of more than 300 feet on any one street, the affected area shall be within a line running parallel to and 200 feet from all site property lines. A radius of 200 feet shall be taken from corners of the site property having an interior angle of less than 180 degrees.

Where property within the area of notification other than the affected building is owned cooperatively or as a high rise condominium, then notice of the public hearing shall be posted in the common areas of the building and given to the business office of the cooperative or the condominium which should then be requested to notify all residents in its customary manner. On all applications for lots containing separately owned one, two or three family dwellings, and on applications for special permits for lots of less than 40,000 square feet, the area of notification to the affected property owners shall be defined as a radius of 200 feet from the center of the lot.

Not less than five (5) business days prior to such hearing date, the applicant shall file proof of service that each of the individuals or entities listed in this section has been notified in accordance with §1-03(f) of these rules.

(h) Newspaper notice

The applicant shall, in addition to providing notice pursuant to subdivision (g) of this section, publish the contents of the notice of hearing form provided by the Board at his or her own expense in one newspaper of local circulation specified by the Board, or one newspaper of general circulation, except that publication shall not be required for applications involving bulk variances on separately owned one, two and three family dwellings and for applications involving special permits. The publication of the hearing notice shall take place in such newspaper on one day of each week for two (2) of the three (3) weeks prior to the public hearing. The applicant shall be notified by the Board in which newspapers Newspaper notice. The applicant shall, in addition to providing notice pursuant to subdivision (g) of this section, publish the contents of the notice of hearing form provided by the Board at his or her own expense in one newspaper of local circulation specified by the Board, or one newspaper of general circulation, except that publication shall not be required for applications involving bulk variances on separately owned one, two and three family dwellings and for applications involving special permits. The publication of the hearing notice shall take place in such newspaper on one day of each week for two (2) of the three (3) weeks prior to the public



hearing. The applicant shall be notified by the Board in which newspapers the applicant may place the requisite notice to be published. The applicant shall file with the Board, prior to the hearing date, a copy of the published notice with appropriate proof of publication.

(i) Board publication

Not less than twenty (20) days before the date of the hearing, the Board shall publish notice of the hearing in its bulletin or the City Record.

(j) Additional submissions

If, during the course of review by the Community Board, or Community Boards and Borough Board when applicable, the applicant provides to the Community Board(s) or Borough Board or any other individual or entity required to be notified under these rules any documents in addition to those provided as part of the application to this Board, the applicant shall within three (3) business days submit copies to this Board, to the City Council Member in whose district the site is located, to the affected Borough President and to the City Planning Commission.

If, at any time during or after the 60 day review period, the applicant submits additional documents to this Board or modifies or amends the application, the applicant shall within three (3) days submit a copy of the amended or modified application and supporting documents to the City Planning Commission, to the affected City Council Member, to the Community Board(s) (and Borough Board, if applicable), and to the affected Borough President.

All submissions to the Community Board(s), Borough Board, if applicable, City Council Member, and City Planning Commission, as specified above, shall be accompanied by a transmittal letter listing all the documents provided. A copy of this transmittal letter shall be submitted to the Board. Proof of service shall be provided to the Board in accordance with §1-03(f) within ten days of the initial filing.

If, subsequent to the 60 day review period the applicant makes a substantial modification of the application, the Board, in its discretion, may return the case to the Community Board, and Borough Board, if applicable, the City Council Member and the affected Borough President for their review.

**§1-07 The Administrative Appeals (A) Calendar.**

(a) Subject matter

The administrative Appeals Calendar shall consist of appeals from any order, requirement, decision or determination of the Commission of Buildings, or any Borough Superintendent of the Department of Buildings, the Fire Commissioner or the Commissioner of the Department of Business Services or from any rule or regulation relating to the construction, alteration, demolition, structural changes, equipment, occupancy or use of any building or structure or premises under the New York City Charter, the General City Law, the Labor Law, the Multiple Dwelling Law or any other law under which the Board has jurisdiction and shall include appeals involving the interpretation of the Zoning Resolution. Interpretations of the Zoning Resolution shall have general application and be binding on all affected agencies unless specifically limited by the Board.

(b) Time to Appeal

No application for an appeal shall be entertained unless it is filed within thirty (30) days from the date of a final determination of the Commissioner of Buildings, any Borough Commissioner of

the Department of Buildings, the Fire Commissioner or the Commissioner of the Department of Business Services.

(c) The A form

Every application for an appeal shall be made on Form A and shall be accompanied by all the data required by such form. The Board shall determine what, if any, additional plans and exhibits are required to be filed for appeals.

(d) Notification

A copy of each administrative appeal application, including all supporting materials, shall be forwarded by the applicant, immediately upon filing with this Board, to the administrative official from whose determination the appeal is made. A copy of each administrative appeal application involving the interpretation of the Zoning Resolution, including all supporting documents, shall be forwarded by the applicant, within three days of filing, to the legal counsel of the Department of Buildings and the City Planning Commission. Proof of service shall be provided to this Board within ten (10) days of the initial filing in accordance with §1-03(f) of those rules.

Any person or agency authorized to make an Appeal by §666(6) of the New York City Charter or other applicable law, who is not the owner of the property subject to the determination from which the appeal is made, shall immediately upon filing such appeal with the Board, forward a copy of the appeal form and all supporting documents to the owner of the subject property. The applicant shall submit proof of service to the Board within ten (10) days of the initial filing, in accordance with §1-03(f) of these rules.

(e) Notification for appeals filed pursuant to General City Law (GCL) §35

Within three (3) business days after an application pursuant to GCL §35 has been filed with the Board, the applicant shall forward a copy of all case material to:

- (a) The applicable administrative official; and
- (b) The affected Borough President.

The applicant shall submit proof of service on the individuals or entities listed in this section within ten (10) days of the initial filing in accordance with §1-03(f) of these rules. Upon filing the Executive Director shall also forward to the Department of Transportation, Department of Environmental Protection and the affected Community Board(s) or Borough Board a copy of each administrative appeal filed pursuant to GCL §35.

After completion of the review of the application by the examiner, the applicant shall be notified by the Executive Director on the appropriate form of the date set for the public hearing, which shall be at least thirty (30) days after the mailing of the Notice.

(f) Notification for appeals filed pursuant to General City Law (GCL) §36

At any time after an application has been filed pursuant to §36 of the General City Law, the Board may require notification of the filing of such application to such individuals or entities as it deems affected, if the Board believes notification will assist in its review of the application.

(g) Notification for appeals regarding hazardous materials

An applicant who files an application for an appeal involving new construction or the expansion of facilities for manufacturing, handling, or storage of hazardous materials affected by the following sections of the New York City Fire Prevention Code: §§27-4031, 27-4033, 27-4052, 27-4053, 27-4054, 27-4058, 27-4063, 27-4067, 27-4099, 27-4100 and 27-4104, shall, within

three (3) days after the application has been filed with the Board, forward a copy of all case material to:

- a. The affected Community Board(s) (or Borough Board);
- b. The affected City Council Member;
- c. The affected Borough President;
- d. The Fire Commissioner; and
- e. The Commissioner of Buildings.

The applicant shall submit proof of service on the individuals and entities listed in this section to the Board within ten (10) days of the initial filing in accordance with §1-03(f) of these rules.

After review by the examiner of an appeal regarding hazardous materials, the applicant shall be notified on the appropriate form, of the date set for the public hearing, which shall be at the least thirty (30) days after the mailing of said notice. With this notice, the applicant shall be supplied with an official copy of the appropriate form which he or she is required to send not less than twenty (20) days prior to the date of such hearing to:

- a. The affected Community Board(s) (or Borough Board);
- b. The affected City Council Member;
- c. The affected Borough President;
- d. The Fire Commissioner; and
- e. The Commissioner of Buildings.

Affected property owners shall be defined to include all owners and tenants specified in §1-06(g) of these rules within a radius of 400 feet from the center of the lot which is the subject matter of the appeal, except that for lots of 40,000 square feet or more in area or having a frontage of more than 300 feet on any one street, the affected area shall be within a line running parallel to and 200 feet from all site property lines. A radius of 200 feet shall be taken from corners of the site property having an interior angle of less than 180 degrees. If there are less than ten (10) affected property owners within said affected area, then the area of notification shall be a radius of 800 feet. Within five (5) business days prior to such hearing date, the applicant shall file proof of service that each of the individuals and entities listed in this section has been notified in accordance with § 1-03(f) of these rules.

The applicant shall also publish the contents of the notice form provided by the Board at his or own expense in one newspaper of local circulation specified by the Board or one newspaper of general circulation. The publication of this notice shall take place in such newspaper on one day of each week for two (2) of the three (3) weeks prior to the public hearing. The applicant shall be notified in which newspaper the applicant shall place the notice to be published. The applicant shall file with the Board within five (5) business days prior to the hearing, a copy of the published notice with the appropriate proof of publication.

#### (h) Notice of hearing

After review by the examiner of an appeal, the applicant shall be notified by a designated staff person of the date set for the public hearing, which shall be at least thirty (30) days after the mailing of said notice. Not less than five (5) business days prior to such hearing date, the applicant shall file proof of service that such property owners and the Community Board or Borough Board has been notified in accordance with §1-03(f) of these rules.

When an applicant who is not the owner of the property has received from the Board notice of the date and time for public hearing on the appeal, the applicant shall immediately forward a copy of such notice form to the owner of the subject property. Proof of such service shall be

submitted to the Board not less than five (5) business days before such hearing date in accordance with §1-03(f) of these rules.

(i) Board publication

Not less than (20) days before the date of the hearing, the Board shall publish notice of the hearing in its Bulletin or the City Record.

**§1-08 Administrative Loft Conversion (ALC) Calendar.**

(a) Subject matter

The Administrative Loft Conversion (ALC) Calendar shall consist of applications for administrative determinations and findings pursuant to §§15-021 and 15-50 et seq. of the Zoning Resolution.

(b) Time to Appeal

No such application shall be entertained unless the application is filed within thirty (30) days from the date of a determination of the Commissioner of Buildings or the Borough Commissioner of the Department of Buildings or their duly authorized representative.

(c) The ALC form

Every application shall be made on Form ALC and shall be accompanied by all the data required by such form and its accompanying instruction sheet.

**§1-09 Building Permit Renewal (BZY & BZL) Calendar**

(a) Subject matter

The building shall consist of applications filed under §11-31 et. Seq. and Chapter 5 of the Zoning Resolution to renew a lapsed building permit which was lawfully issued before the effective date of the applicable amendment to the Zoning Resolution.

(b) Time to appeal

No such application shall be entertained unless the application is filed within thirty (30) days from the date such permit has lapsed.

(c) The BZY& BZL form

Every application shall be made on Form BZY or BZL, depending on the relief sought, and shall be accompanied by all the data required by such form, and its accompanying sheet.

**§1-10 Disposition of Cases.**

(a) Final Determination

Final determinations of the Board shall be in the form of a written resolution. Such resolution shall state the rule, regulation, order, requirements, decision or determination upon which the appeal or application has been made, and shall set forth the Board's findings and conclusion. The Board may reverse, affirm, in whole or in part, or modify such rule, regulation, order, requirement, decision or determination, or it may dismiss the application or appeal for lack of jurisdiction, for lack of prosecution, or as moot.

Any appeal or application must receive three affirmative votes to be granted. If an application fails to receive three affirmative votes, the action will be deemed denied. A resolution denying or granting any application or appeal shall be formally entered on the record. If, however, there is a Commissioner or Commissioner absent at the roll call and the absentee Commissioner or Commissioners is eligible to vote, the matter may be laid over for consideration and final determination upon vote of the Board.

(b) Withdrawal

The Board shall consider a request to withdraw an application or appeal made at any time prior to final determination, but if a motion has been made and is pending, such motion shall have precedence.

If the request to withdraw is made before the case has been calendared for hearing, the Board may permit withdrawal without prejudice upon request.

If the request to withdraw is made after the case has been calendared or during the hearing, the Board may inquire into the reason for withdrawal and may permit withdrawal without prejudice for good cause only. If it determines that proper enforcement or public policy would thereby be served, the Board may refuse the withdrawal or it may condition the withdrawal with prejudice to the refiling of a subsequent application or appeal for the same relief.

If the request to withdraw is made after the public hearing has been closed and the matter has been laid over for decision, the Board at its discretion may refuse or permit withdrawal with or without prejudice depending on the circumstances of the application.

(c) Dismissal

The Board may, at its discretion, dismiss a case for failure to prosecute or for lack of good faith effort to provide information upon request with or without prejudice depending on the circumstances of the application. The Board may, at its discretion, dismiss a case in which a defective or incomplete application has not been corrected or completed. Such dismissal shall be at a public hearing after notice to the applicant.

(d) Request for re-argument.

No application or appeal which has been dismissed or denied or granted may be re-argued except on a motion adopted to restore the case to the Calendar for re-argument. A request for re-argument shall not be granted unless a showing is made that the Board misapprehended the relevant facts or misapplied any controlling principles of law, including the Zoning Resolution.

(e) Request for rehearing

A request for a rehearing shall not be granted unless substantial new evidence is submitted that was not available at the time of the initial hearing, or there is a material change in plans or circumstances or an application is filed under a different jurisdictional provision of the law.

In all cases, the request for rehearing shall be made in writing on a Special Order Calendar application form reciting the reasons for the request, and shall be accompanied by the necessary supporting documents and plans. Such request shall be filed with the Chair and the Executive Director who shall set a date when the request for restoration to the Calendar shall be submitted to the Board. If, on motion of the Chair or a Commissioner, adopted by three affirmative votes, the request for a rehearing is granted, the case shall be placed on the appropriate docket and calendared for rehearing. All rules of notice as required by these rules for the original hearing of the case must again be complied with.

(f) Review of decisions

In accordance with §666(8) of the Charter, the Board may, for good cause, on its own motion at a public hearing, review any decision that it has made and may reverse or modify such decision, but no such review shall prejudice the rights of any person who has in good faith acted thereon before it is reversed or modified. The motion to review will be heard on the SOC calendar after notice by the Board to the applicant and the owner of the subject property. In accordance with §666(11) of the Charter, the Board may, at its discretion, revoke or modify upon due notice and hearing, variances and special permits previously granted under the Zoning Resolution when it finds that the terms or conditions of such grants have been violated.

(g) Court review of decisions

Pursuant to §25-207 of the New York City Administrative Code, any person or persons jointly or severally aggrieved by any decision of the Board upon appeal or review made pursuant to §666 of the Charter, may present to the Supreme Court of the State of New York a petition duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition must be presented to a justice of the Supreme Court of the State of New York or at a special term of the Supreme Court within thirty (30) days after the date of filing of the decision in the office of the Board.

**§1-11 Records**

(a) Freedom of Information

Requests for information pursuant to Section 87 et seq. of the New York State Public Officers Law (Freedom of Information) shall be submitted to the designated Freedom of Information Officer on the form prescribed. A decision granting or denying access to the requested documents(s) shall be made in writing in accordance with the law. Appeals from a denial of a request for information shall be made to the counsel of the Board within (30) days from the date of the determination. A decision explaining in writing the reasons for further denial or providing access to the record(s) sought shall be made in accordance with the law.

(b) Hearing records

A complete recording of the transaction at public hearings shall be made for the files. Requests for verbatim tapes or typewritten transcripts of the record shall be made to the designated Freedom of Information Officer and may be ordered by the public for a prescribed fee. After final disposition, the entire application shall be suitable filed. All applications, except materials otherwise exempt, shall, upon request to the Freedom of Information officer, be accessible to the public during normal business hours.

**§ 1-12 The Bulletin**

(a) Publication

A record of the Board's proceedings shall be maintained in the Bulletin of the Board (Bulletin) or the City Record. The Bulletin is the official publication of the Board. This record shall, whenever practical, be published each week except during recess. It may contain:

Docket of cases filed since the last publication of the Bulletin.

- (1) The Hearing Calendar.
- (2) Notice of Hearing on proposed rules or the amendments of rules.

- (3) An abstract of the minutes of each hearing, including a brief statement of the action in each case, with the roll call thereon and the full text of the resolution adopted.
- (4) Index of rules adopted.
- (5) Such other information as may be of value to the public and within the scope of the work of the Board.

## **§1-13 Administration**

### (a) Administrative Authority

Under the direction of the Board, administrative authority is vested in the Executive Director, who shall be subject to these rules, transact all administrative business of the Board, engage the necessary employees and direct the work of the office. Official correspondence relating to administrative matters shall be signed by the Chair or by the Executive Director. All official correspondence relating to any matter pending before the Board on the Hearing Calendar shall be signed by the Chair by the Counsel or by a member of the Board or staff designated by the Chair. Incoming official correspondence may be sent to the Chair, the Counsel and/or the Executive Director. The Executive Director shall supervise the preparation and editing of the Bulletin.

### (b) Examination staff

Subject to these rules and under the supervision of the Executive Director, the Examination staff shall examine and review all applications and appeals. In the course of any review, the Examination staff may require applicants to supply additional information.

### (c) Appointment of committees

The Chair, or in the absence of the Chair, the Vice Chair, subject to §1-03(d) of these rules, shall designate the Commissioners of the Board to make site examinations and, unless otherwise directed by the vote of three (3) Commissioners of the Board, shall appoint any other committee that may be deemed necessary.

### (d) Reports

The Chair, the Vice Chair, any Commissioner and the Executive Director shall report at executive or business sessions all pertinent information that would not otherwise come to the attention of the Board.

## **§1-14 Rules of Procedure and General Rules and Regulations.**

### (a) Adoption, Amendment, Repeal

The Board may adopt, amend or repeal any rule or regulation. When authorized by the Board, notice of such proposed rule or regulation shall be published in accordance with the notice requirement of §1043 of the Charter and shall also be published in the Board's Bulletin not less than twenty (20) days prior to the hearing date. Following public hearing, the Board may adopt, amend or repeal any rule and regulation and thereafter shall publish such rule or regulation in the City Record in accordance with the provisions of the §1043 of the Charter and in the Board's Bulletin. The rule or regulation shall become effective thirty (30) days after publication in the City Record.

(b) Waiver

Any section or subdivision of these Rules of Practice and Procedure may be waived in an individual matter at any public hearing by vote of the Board in conformance with §1-01(e) of these rules. However, the requirements set forth in this section for the adoption of rules and regulations may not be waived.