

Zoning Board of Appeal

SECTION 3. Section 8 of said chapter 665, as amended by section 66 of chapter 802 of the acts of 1972, is hereby further amended by striking out the first paragraph and inserting in place thereof the following six paragraphs:-

There is hereby established in the city of Boston a board to be called the board of appeal, to consist of seven members and seven alternate members appointed by the mayor and confirmed by the city council in the following manner: one member and one alternate member from four candidates nominated by the greater Boston real estate board; one member and one alternate member from four candidates nominated by the Boston Society of Architects; one member and one alternate member from eight candidates, two nominated by the Master Builders Association, two by the Building Trades Employers' Association, two by the Associated General Contractors of Massachusetts, and two by The Contractor's Association of Boston, Inc.; one member and one alternate member from four candidates nominated by the Building Trades Council of Greater Boston; one member and one alternate member selected at large by the mayor; and two members and two alternate members selected by the mayor each of whom has served for at least one year (1) as an officer or member of the board of directors or similar governing body of a residential neighborhood organization which (a) is a non-profit organization consisting primarily of residents of a specific neighborhood; (b) has at least twenty-five members; (c) allows any resident of the neighborhood to join as a member; (d) has as a principal purpose the preservation of the quality of residential life in the neighborhood; and (e) has been in existence for at least two years; or (2) as a member of a residential neighborhood organization which (a) has been established by the mayor; (b) consists primarily of residents of a specific neighborhood; and 1375 Chap. 461 (c) has as a principal purpose the preservation of the quality of residential life in the neighborhood; provided that any person appointed from a residential neighborhood organization under this section is a resident of the neighborhood represented by the residential neighborhood organization in which she or he has served. The two members from residential neighborhood organizations shall reside at the time of their respective appointments in different city council districts. The two alternate members from residential neighborhood organizations shall reside at the time of their respective appointments in different city council districts.

All members and all alternate members of said board shall be residents of the city of Boston. Appointments of members and alternate members of said board shall be for terms of three years. Any vacancy in the office of a member or alternate member shall be filled for the unexpired term in the same manner in which the original appointment to such term was made.

Each member and each alternate member of said board shall be subject to the provisions of chapter two hundred and sixty-eight A of the General Laws. In addition, notwithstanding the provisions of any general or special law to the contrary, no member or alternate member shall participate in hearing or deciding (a) any appeal involving property in which he has held an ownership interest, or received compensation for services rendered, within two years of the date the appeal was filed with the board; and (b) any appeal involving property in the same geographic zoning district and seeking relief from the same provisions of the zoning regulations as any other appeal pending before the board in which the member or alternate member has a financial or legal interest. A violation of the provisions of the preceding sentence shall be punishable in the same manner as a violation of the provisions of section nineteen of said chapter two hundred and sixty-eight A and shall be subject to the provisions of section twenty-one of said chapter two hundred and sixty-eight A.

Upon the absence or disqualification from the hearing of any appeal of a member appointed upon nomination or at large under this section, the alternate member appointed in the same manner as such member shall substitute for such member; provided, however, that upon the absence or disqualification from such hearing of such alternate member, the chairperson shall designate one of the remaining alternate members to substitute for such member.

Upon the absence or disqualification from the hearing of any appeal of a member appointed from a residential neighborhood organization under this section, the alternate member appointed from a residential neighborhood organization whose term is concurrent with such member shall substitute for such member; provided, however, that upon the absence or disqualification from such hearing of such alternate member, the other alternate member appointed from a residential neighborhood organization shall substitute for such member; and provided, further, that upon the absence or disqualification from such hearing of such other alternate member, the chairperson shall designate one of the remaining alternate members to substitute for such member

Each member and each alternate member of the board of appeal shall receive for every day or part thereof of actual service two hundred dollars or such sum as may from time to time be fixed by the city council with the approval of the mayor; but no member or alternate member shall so receive in any one year more than twenty-four thousand dollars or such other sum as may from time to time be fixed by the city council with the approval of the mayor. The board shall establish rules and regulations for its own procedures not inconsistent with this act.

SECTION 4. Said section 8 of said chapter 665, as most recently amended by section 4 of chapter 296 of the acts of 1973, is hereby further amended by striking out the last three paragraphs and inserting in place thereof the following three paragraphs:-

Said board of appeal shall fix a reasonable time for the hearing of any appeal and give at least twenty days public notice thereof in a newspaper of general circulation in the city. Said board of appeal shall also send notice, by mail, postage prepaid, at least twenty days prior to the hearing, to the appellant and to the owners of all property deemed by said board of appeal to be affected thereby, as they appear on the then most recent local tax list, and to any person filing written request for notice of hearings, such request to be renewed yearly in December, and to the Boston Redevelopment Authority. The board shall schedule the hearing in the evening, if the board receives from the mayor or any city councillor and from fifty residents of the neighborhood in which the project is located, prior to the submission of the notice for publication and the mailing of the notice, a written request that the hearing be scheduled in the evening. The notice sent by mail shall identify the specific variance, exception, or other zoning relief which the appellant is seeking. At the hearing any party whether or not entitled to notice thereof may appear in person or by agent or attorney. The board of appeal may in its discretion administer oaths to all persons testifying at said hearing. No such hearing shall be held any day on which a state or municipal election, preliminary election or primary is held in said city.

In acting upon such appeal, said board of appeal may, in conformity with the provisions of this act, reverse or affirm in whole or in part, or may modify, any order or decision, and may make such order or decision as ought to be made, and to that end shall have all the powers of the board or officers from who the appeal is taken and may direct the issue of a permit. The board may in its discretion continue the hearing in order that the appellant may meet with any residential neighborhood organization specified by the board to discuss the appeal, and the board may in its discretion deny the appeal without prejudice in the event the appellant fails to do so. The concurring vote of five members of said board of appeal shall be necessary to reverse any order or decision of any administrative official under this act, or to decide in favor of the appellant on any matter upon which it is required to pass under any zoning regulation or amendment thereof, or to grant any variance in, or exception to, the application of any such regulation or amendment.

Said board of appeal shall cause to be made a detailed record of all its proceedings, which record shall set forth: the reasons for its decision; the vote of each member participating therein; the absence of a member or her or his failure to vote; and any conditions or provisos to which the granting of any variance or exception was made subject 1377 Chap. 461 by vote of said board of appeal at the hearing. Such record shall be filed in the office of the building commissioner of the city within ninety days of the hearing and shall be open to public inspection; provided, however, that the board may for good cause extend the time for such filing. Notice of such decision shall be mailed forthwith to each party in interest as aforesaid, to the Boston Redevelopment Authority, to every person receiving notice of the hearing, and to every person present at the hearing who requests that notice be sent to her or him and states the address to which such notice is to be sent.

SECTION 5. Section 11 of said chapter 665, as amended by section 1 of chapter 669 of the acts of 1974, is hereby further amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

Any person aggrieved by a decision of said board of appeal, whether or not previously a party to the proceeding, or any municipal board or officer, may appeal to the superior court department of the trial court sitting in equity for the county of Suffolk or, in the event that such decision is concerned with any building or place used, or intended or permitted for use, as a place of human habitation, to the housing court of the city of Boston; provided, however, that such appeal is filed in either of said courts within twenty days after such decision is filed with the building commissioner. The court may in its discretion require the person or persons so appealing to file a bond with sufficient surety, for such a sum as shall be fixed by the court, to indemnify and save harmless the person or persons in whose favor the decision was rendered from damages and costs which he or they may sustain in case the decision of said board is affirmed; provided, however, that the court shall not require the filing of such bond in an amount exceeding twenty-five thousand dollars in any appeal of a decision of said board granting a variance, exception, or other zoning relief with respect to any zoning regulation or amendment thereof, if the project for which such variance, exception, or other zoning relief was granted involves the construction, renovation, rehabilitation, or change in use of less than fifty thousand square feet of space. Upon an appeal under this section, the court shall hear all pertinent evidence and determine the facts, and upon the facts as so determined, annul such decision if found to exceed the authority of such board or make such other decree as justice and equity may require. The foregoing remedy shall be exclusive; but the parties shall have all rights of appeal as in other civil actions.

SECTION 6. Said chapter 665 is hereby further amended by striking out section 12, as amended by section 2 of said chapter 669, and inserting in place thereof the following section:

- Section 12. The superior court department of the trial court or, in the event that the premises involved are used or intended or permitted for use as a place of human habitation, the housing court of the city of Boston sitting as aforesaid, shall have jurisdiction to enforce the provisions of this act, the provisions of the state building code, any zoning regulation or amendment adopted under this act, and any decision of the board of appeal under any zoning regulation or amendment adopted under this act, including any condition or proviso in such decision, and may restrain by injunction violation thereof.

SECTION 7. Notwithstanding any provisions to the contrary of section one of chapter six hundred and sixty-five of the acts of nineteen hundred and fifty-six, as amended by the provisions of this act, the zoning commissioners initially appointed upon nomination under said section one, as amended by the provisions of this act, shall serve, in the case of the commissioners appointed upon nomination of the Greater Boston Labor Council AFL-CIO and the Greater Boston Real Estate Board, for a term expiring three years, in the case of the commissioners appointed upon nomination of the Boston Society of Architects and the Greater Boston Chamber of Commerce, for a term expiring two years, and in the case of the commissioner appointed upon nomination of the Building Trades Employers' Association or The Contractor's Association of Boston, Inc., for a term expiring one year, from May first, nineteen hundred and ninety-four. The zoning commissioners initially appointed at large under said section one, as

amended by the provisions of this act, shall serve, according to the provisions of their respective appointments, for terms expiring, in the case of one commissioner, three years, in the case of another commissioner, two years, and in the case of the other commissioner, one year, from said May first. The zoning commissioners initially appointed from residential neighborhood organizations under section one, as amended by the provisions of this act, shall serve, according to the provisions of their respective appointments, for terms expiring, in the case of one commissioner, three years, in the case of another commissioner, two years, and in the case of the other commissioner, one year, from said May first. As the term of any zoning commissioner initially appointed under said section one, as amended by the provisions of this act, or of any subsequent zoning commissioner, expires, her or his successor shall be appointed in the same manner as such commissioner for a term of three years in accordance with the provisions of said section one.

SECTION 8. Notwithstanding any provisions to the contrary of section eight of chapter six hundred and sixty-five of the acts of nineteen hundred and fifty-six, as amended by the provisions of this act, the members and alternate members initially appointed upon nomination under said section eight, as amended by the provisions of this act, shall serve, in the case of the members and alternate members appointed upon nomination of the Greater Boston Real Estate Board and the Boston Society of Architects, for a term expiring three years, in the case of the member and alternate member appointed upon nomination of the Master Builders Association, the Building Trades Employers' Association, the Associated General Contractors of Massachusetts, or The Contractor's Association of Boston, Inc. for a term expiring two years, and in the case of the Building Trades Council of Greater Boston, for a term expiring one year, from May first nineteen hundred and ninety-four. The member and alternate member initially appointed at large under said section eight, as amended by the provisions of this act, shall serve for a term expiring three years from said May first. The members and alternate members initially appointed from residential neighborhood organizations under said section eight, as amended by the provisions of this act, shall serve, according to the provisions of their respective appointments, for terms expiring, in the case of one member and one alternate member, two years, and in the case of the other member and other alternate member, one year, from said May first. As the term of any member or alternate member initially appointed under said section eight, as amended by the provisions 1379 Chap. 461 of this act, or of any subsequent member or alternate member, expires, her or his successor shall be appointed in the same manner as such member or alternate member for a term of three years in accordance with provisions of said section eight. Notwithstanding any provision to the contrary of said section eight, any member of the board of appeal as of May first, nineteen hundred and ninety-three, who was not a resident of the city of Boston as of that date, may be initially appointed to said board under the provisions of said section eight, as amended by the provisions of this act, and be reappointed to additional consecutive terms without changing her or his residency. SECTION 9. This act shall take effect on March thirty-first, nineteen hundred and ninety-four. Approved January 13, 1994. Chapter 462.