

Zoning Board of Appeals

Rules of Order



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ZONING BOARD OF APPEALS
RULES OF ORDER
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**City of Revere, MA
Zoning Board of Appeals (ZBA)
Rules Order**

I. ORGANIZATION

1. Statutory authority.

The board of appeals, established in Chapter 220 of the Acts of 1920, Chapter 361 of the Acts of 1941, and Chapter 280 of the Acts of 1946, as amended, shall constitute the board of appeals as required under Chapter 40A, General Laws, and this title.

2. Associate member of the board of appeals.

Pursuant to Massachusetts General Laws (MGL) c. 40A, Section 12, in addition to the five regular members of the zoning board of appeals, there shall be an associate member of the zoning board of appeals. Such member shall be appointed by the mayor subject to the confirmation by the city council. The chair of the zoning board of appeals may designate such associate member to sit on the board in the event of absence, inability to act or conflict of interest on the part of any regular member of the board. During such times that the associate member serves on the board, and for all decisions heard by such associate member, the associate member shall have all the powers and duties of a regular member of the zoning board of appeals.

3. Power to hear and grant appeals and variances.

The board of appeal shall have the following powers:

- A. Upon appeal or petition, to grant variances from the terms of this title where the board finds that, owing to circumstances relating to soil conditions, shape or topography specifically affecting such land or structures but not the zoning district in general, a literal enforcement of the provisions of this title would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of such an ordinance, and without substantial detriment to the public good;
- B. To hear and decide appeals of decisions or orders made by the inspector of buildings or other administrative official, in accordance with Chapter 40A, Section 7, General Laws. Any appeal of a decision or order made by the building inspector or other administrative official shall be taken within thirty days from the date of such decision or order by filing written notice of appeal, specifying the grounds thereof, with the city clerk, who shall forthwith transmit copies to such person whose decision or order is being appealed and to the board of appeals. Such

person shall forthwith transmit to the board of appeals all documents and papers constituting the record of the case in which the appeal is taken.

4. *Petitions.*

All petitions or appeals for variances shall be filed by the petitioner with the city clerk, who shall forthwith transmit a copy thereof to the board of appeals. Petitions shall specify, as appropriate:

- A. The grounds of the appeal, the specific subsections of this title or the specific decision from which the appeal is made, applied under or to be varied;
- B. The land, buildings or parts thereof for which the variance is sought, and the duration of time for which it is to apply, whether in terms of a stated number of years, the life of the existing building or otherwise; and
- C. Shall be accompanied by such data, plans and specifications as are required by this title or by the board of appeals for the purpose of a clear understanding by the board of the issues, situations or facts of the case.

5. *Hearing deadline.*

The board of appeals shall hold a public hearing on any appeal, application or petition transmitted to it by the city clerk within sixty-five days of the date of transmittal.

6. *Lapse of variance or appeal.*

If the rights authorized by a variance or appeal are not exercised within one year from the date of granting, they shall lapse; provided, however, that the board of appeals in its discretion and upon written application by the grantee of such right may extend the time for exercise of such rights for a period not to exceed six months; and provided further, that the application for such extension is filed with the board of appeals prior to the expiration of such one-year period. If the board of appeals does not grant such extension within thirty days of the date of application thereof, and upon the expiration of the original one-year period, such rights may be reestablished only after notice and a new hearing pursuant to the provisions of this section.

7. *Voting—Variance limitations—Failure to act.*

- A. All decisions of the board of appeal shall be by a four-fifths vote of all members and shall be specific as to the subject granted or denied and the location to which it applies.
- B. Grants of variances shall, in addition, specify any limitations of time and use imposed, and any regulations made or amended, compliance with which is a condition; of the use permitted.
- C. Failure of the board of appeal to act within one hundred days or extended time, if applicable, of filing for an appeal or variance shall be deemed to be granting of the relief, application or petition sought.

8. *Withdrawal*

An application may be withdrawn by notice in writing to the City Clerk at any time prior to the first notice of the hearing being published in the newspaper. After advertisement, a withdrawal request shall be submitted to the City Clerk in writing and shall only be considered by a vote of the board and after the duly advertised public hearing has been held.

9. *Continuance*

An applicant may request a continuance of the hearing which shall only be considered by a vote of the board. However, a continuance shall not extend beyond one hundred days from the date of filing of the appeal, application, or petition. A continuance may be extended by written agreement between the applicant and the board of appeals which shall be filed in the office of the city clerk.

10. *Information incorporated in decisions.*

Decisions of the board of appeal shall be interpreted as follows: All data, plans and specifications presented by the applicant, appellant or petitioner shall be considered to be incorporated as part of the board's decision unless specifically excluded therein.

11. *Records of Proceedings.*

Every decision of the board of appeal shall contain a full record of the findings of the board pertaining to the particular case. The board shall keep a record of its proceedings showing the vote of each member, or associate member, upon every question or, if absent or failing to vote, indicating such fact, and clearly setting forth the reason(s) for its decision and/or action, copies of which shall be filed with the city clerk within fourteen days of the hearing.

12. *Planning board recommendations.*

The planning board may submit recommendations on matters before the board of appeal at least two working days prior to the board of appeal's public hearing. The recommendation shall be in the form of a written report, shall be read aloud at the public hearing by a duly authorized person representing the planning board, and shall become part of the recorded minutes of that public hearing.

13. Notice to planning board.

The board of appeal's public hearing agenda and site plans for each petition or application on the agenda shall be received by the planning board from the board of appeal a minimum of seven days prior to the scheduled public hearing, failing which the public hearing shall be postponed.

14. Reconsideration.

Once a petition has been voted upon and the meeting adjourned, there shall be no reconsideration of a decision by the ZBA. No appeal or petition for a variance from the terms of this title with respect to a particular parcel of land or the building thereon, and no application for a special exception to the terms of this title, which has been unfavorably acted upon by the board of appeal, shall be considered on its merits within two years after the date of such unfavorable action unless the board, by a vote of at least four to one, finds there are specific and material changes in the conditions upon which the previous unfavorable action was based, and unless, after serving notice to the parties of interest of the time and place of proceedings, eight of the nine members of the planning board consent thereto.

15. Amendments

The ZBA may, by majority vote, alter or amend any provision of these rules, provided that such amendment shall not be inconsistent with any provisions of the Revised Ordinances of the City of Revere or the Massachusetts General Laws. A ZBA member shall provide the Chair with a proposed amendment at least fourteen (14) days prior to the date of a scheduled public hearing.

II. APPLICATION TO THE BOARD

1. Application Form

Every application for action by the Board of Appeals shall be made on an official form, one hard copy and one electronic copy shall be filed with the City Clerk. This form shall be furnished by the City Clerk upon request. Any communication, purporting to be an application shall be treated as mere notice of intention to seek relief, until such time as it is made on the official application form. All information called for by the form shall be furnished by the applicant in the manner prescribed. **INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED NOR SCHEDULED FOR A HEARING.**

2. Filing Period

Every application shall be filed and every appeal taken within thirty (30) days from the date of refusal of a permit by, or the date of the order, ruling, decision or determination of, the Building Inspector or other administrative official.

3. Required Plans and/or Drawings to be Filed

- i. Applications to the Zoning Board of Appeals must include a plot plan illustrated in black ink preferably 8½' x 14, but no larger than 24" x 36"; suitable for recording in the Suffolk Country Registry of Deeds in accordance with Suffolk Country Registry of Deeds' standards. The plot plan shall be stamped by a registered land surveyor or professional engineer.
- ii. The plot plan must illustrate lot or lots for which application is submitted. Multiple lots assembled to form a buildable lot must be illustrated with hash lines between lots to indicate location of multiple lots. Applications for variances for subdivision purposes must include existing lot lines illustrated with hash lines as well as proposed new lot lines illustrated by bold lines. Plot plans submitted for variance for subdivision purposes must include existing as well as proposed lot numbers.
- iii. The plot plan must illustrate lot dimensions, i.e., lot frontage and lot size. Plan must also illustrate yard dimensions, i.e., front, side and rear yard setbacks.
- iv. Plot plan must include calculations of percentage of principal building coverage on the lot, usable open space and current and proposed building and/or structure height. (See section 17.24.010 of Revere Zoning Ordinances for reference.)
- v. Plot plan must illustrate parking spaces. (See Section 17.28.020 of Revere Zoning Ordinances for requirements.)
- vi. Plot plan must indicate current zoning designation of lot as well as street address of lot.
- vii. Plan must illustrate all existing structure, stairs, decks, chimney foundations, swimming pools, sheds, patios, etc.
- viii. Plan must illustrate the exact distance of structures on direct abutting properties in proximity to the applicant's property.
- ix. Plan must indicate the names of direct abutters illustrated on their adjoining properties.
- x. Plan must illustrate the amount of new increased square footage being requested by this application.
- xi. Plan must illustrate the proposed number of stories and height of the proposed structure.
- xii. Plan must illustrate, in a table, the required dimensional controls and the proposed/existing dimensional controls of the variances being requested.

4. Fees.

All applications for appeals and petitions for variances shall, as required by the General Laws, be accompanied by fees as established from time to time by city ordinance, if the appellant, applicant or petitioner is not an officer or board of the city, plus cost of notices.

5. Abutter Requirements

Applicant is required to secure a certified list of abutters, also known as "Parties in Interest" as defined by Chapter 40A, Section 11 of the Massachusetts General Laws. "Parties in Interest" shall mean the petitioner, abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred feet of the property line of the petitioner as they appear on the most recent applicable tax list, notwithstanding that the land of any such owner is located in another city or town, the planning board of the city or town, and the planning board of every abutting city or town. The assessors maintaining any applicable tax list shall certify to the Zoning Board of Appeals the names and addresses of parties in interest and such certification shall be conclusive for all purposes.

The Board of Assessors shall provide a hard copy of the certified list(s) and two (2) sets of mailing labels to facilitate the mailing of first notices and decision notices. The cost of the abutter's list is paid for separately to the Assessor's Office and is not included in the fees paid to the City Clerk's Office.

The applicant shall submit said certified list(s) to the City Clerk's Office with the completed application.

6. Supplemental Application Documents

Applicants shall submit any supplemental application documents to the ZBA no later than seven (7) days prior to the hearing date to allow for reasonable review of the materials being submitted.

III. PUBLIC HEARINGS

1. Notice

Notice of hearings shall be advertised in accordance with the provisions of Chapter 40A of the Massachusetts General Laws.

2. Hearings to be Public

All hearings shall be open to the public.

3. Representation and Absence

An applicant may appear on their own behalf, or be represented by an agent or attorney. An agent or attorney for the applicant shall submit their authority to represent the applicant to the ZBA in writing. If the applicant, their agent, or their attorney shall fail to appear at the scheduled hearing without due cause and without prior notice to the ZBA, the ZBA may decide on the matter using the information it has before it, and proceed accordingly if applicant, agent, or attorney is not present.

4. Order of Business

- i. Reading of petition by the ZBA Clerk.
- ii. Applicant's presentation
- iii. Proponent(s) presentation
- iv. Opponent(s) presentation
- v. Applicant's rebuttal, restricted to matters raised by opponent(s) presentation.
- vi. ZBA membership discussion.

5. Conduct During Public Hearings

- i. To address the ZBA during public hearings, all persons shall approach the podium and provide the ZBA with their full name and full address for the record prior to giving testimony. All testimony shall be addressed through the Chair of the ZBA and will not be accepted until full name and full address have been provided.
- ii. The applicant shall be allotted five (5) minutes to conduct an initial presentation. Proponents and opponents shall be allotted two (2) minutes per person. Assignment of time to others who have already provided testimony nor extensions of time shall be permitted.
- iii. Persons who require accommodations on the basis of a speech-related disability or who require language interpretation services shall be allotted five (5) minutes to present their testimony. Spanish interpretation can be requested at least 48 business hours prior to the public hearing by emailing translation@revere.org. La interpretación en español puede solicitarse al menos 48 horas hábiles antes de la reunión pública enviando un correo electrónico translation@revere.org.
- iv. Time allotted for the applicant's rebuttal shall be determined by the Chair.
- v. No ZBA member shall interrupt any person who has been granted permission to address the ZBA except that the Chair reserves the right to terminate speech which is not Constitutionally protected because it constitutes true threats, incitement to

imminent lawless conduct, comments that were found by a court of law to be defamatory, and/ or sexually explicit comments made to appeal to prurient interests.

vi. There shall be no speaking by any ZBA member for or against any application which requires a public hearing during the testimony of a proponent or opponent, except that any ZBA member may direct questions to a proponent or opponent at the conclusion of said proponent's or opponent's testimony. Questions by ZBA members to proponents or opponents shall be limited to two (2) minutes or at the discretion of the Chair.

6. Written Testimony

Testimony for public hearings may be submitted in writing instead of, or in addition to, in-person testimony. To submit written testimony, please email your testimony to amelnik@revere.org as an attached Word or PDF document or as text within the body of the email with the application number in the subject line. All written testimony must include full name and complete residential address. Individuals who are unable to submit testimony by email should mail or hand-deliver written testimony to Zoning Board of Appeals, c/o Ashley E. Melnik, City Clerk, 281 Broadway, Revere, MA 02151. Written testimony shall be submitted no later than seven (7) days prior to the date of the public hearing. Written testimony submitted after the due date will not be accepted and will not be considered by the ZBA.