

## 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

### § 1-01.1 Introduction

The Board of Standards and Appeals (the “Board”) derives its authority from the following primary sources: New York City Charter (the “Charter”), New York City Zoning Resolution (“ZR” or the “Zoning Resolution”), New York City Administrative Code, New York State General City Law (“GCL”), and New York State Multiple Dwelling Law (“MDL”).

The following 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. This Section provides a summary of the Board’s authority.

### § 1-01.2 The Board

As set forth in section 659 (*Constitution and appointment*) of Chapter 27 (*Board of Standards and Appeals*) of the Charter, the Board consists of five (5) members, appointed by the Mayor each for a term of six (6) years. The members must include a planner with professional qualifications, a licensed professional engineer, and a registered architect, each with at least ten (10) years of experience. The Mayor designates one (1) of these members to serve as Chair and also designates one (1) of the members to serve as Vice Chair.

### § 1-01.3 The Charter

Chapter 27 § 666 (*Jurisdiction*) of the Charter sets forth the Board’s authority as follows:

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 or 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 be provided 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 of a deputy 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 section six hundred forty-two or section six hundred forty-five of this charter, 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 water front 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 may 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 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 of 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.

#### **§ 1-01.4 Zoning Resolution**

The New York City Zoning Resolution sets forth the Board's authority in: ZR § 72-00 *et seq.* (*Powers of the Board of Standards and Appeals*) and ZR § 73-00 *et seq.* (*Special Permit Uses and Modifications*), which allow the Board to grant variances and special permits; ZR § 11-30 *et seq.* (*Building Permits Issued before the Effective Date of Amendment*), which allow the Board to renew building permits lawfully issued before the effective date of an amendment to the Zoning Resolution; and ZR § 11-40 *et seq.* (*Exceptions, Variances, Authorizations or Permits*), which allow the Board to grant changes to previously approved use variances or special permits granted under provisions of the 1916 Zoning Resolution.

#### **§ 1-01.5 Administrative Code**

The New York City Administrative Code § 28-103.3 (*Duties and Powers of Commissioner of Buildings/Variations*) sets forth the Board's authority to vary the requirements of the Construction Code in accordance with Charter § 666 (*Jurisdiction*). This includes modifications or waivers of certain provisions in the Building and Fire codes.

#### **§ 1-01.6 General City Law**

The New York State General City Law (GCL) § 35 sets forth the Board's authority to hear an appeal regarding objections issued by the Department of Buildings related to a permit for a building located within a mapped street. GCL § 36 sets forth the Board's authority to hear an appeal regarding objections issued by the Department of Buildings related to a permit for a building which is either not located on a mapped street, or is located on a mapped street which does not provide access to such building.

#### **§ 1-01.7 Multiple Dwelling Law**

The New York State Multiple Dwelling Law (MDL) §§ 277 (*Occupancy permitted*) and 310 (*Board of appeals*) set forth the Board's power to vary or modify certain provisions and requirements of the Multiple Dwelling Law.

#### **§ 1-01.8 Additional Authority**

The Board may derive its authority from additional legal and regulatory sources not described above, but contemplated by its general Charter authority.

### **§ 1-02 Definitions**

For the purpose of these Rules the following definitions will apply:

**Affected area:** The affected area is the area within a 400-foot radius from the center of the subject property.

However, if the subject property is 40,000 square feet or larger or contains a frontage greater than 300 feet on any one street, then the affected area is an area within 200 feet of a line

running parallel to the subject property; or if the application involves a single one-, two-, or three-family dwelling, then the affected area is the area within a 200-foot radius from the center of the subject property.

**Affected borough board:** The affected borough board is the borough board that represents the affected community boards if the subject property is located in more than one community district.

**Affected borough president:** The affected borough president is the president of the borough in which the subject property is located.

**Affected city council member:** The affected city council member is the council member who represents the council district in which the subject property is located.

**Affected community board:** The affected community board is the board that represents the community district in which the subject property is located.

**Affected property owner:** An affected property owner is:

- (1) an owner or tenant of record of the subject property; or
- (2) an owner of real property within a 400-foot radius from the center of the subject property.

However, if the subject property is 40,000 square feet or larger or contains a frontage greater than 300 feet on any one street, then the affected property owner will include an owner of real property within 200 feet of a line running parallel to the subject property. A radius of 200 feet will be measured from the corners of a subject property having an interior angle of less than 180 degrees. If the application is for a special permit or involves a single one-, two-, or three-family dwelling, then the affected property owner will include an owner of real property within a 200-foot radius from the center of the subject property.

**Applicant:** An applicant is an individual who serves as the contact for the project and signs the Board's application forms.

The applicant must be the owner of the subject property or an individual authorized to act on the owner's behalf, pursuant to § 1-09.4 of these Rules. For an appeal of an agency final determination, the applicant need not be the owner of the subject property, nor authorized by the owner. However in such instance, the applicant must be an individual or entity with legal standing to bring the appeal or be authorized by such individual or entity.

**Application:** An application is an action, including an appeal, that is under review by the Board and that has been filed pursuant to § 1-09 of these Rules.

**Case:** A case is an application that has been decided by the Board.

**Common law vested rights application:** A common law vested rights application is an application to renew building permits lawfully issued before the effective date of an amendment of the Zoning Resolution, which have lapsed as a result of such amendment, and to establish the right to continue construction, based on the common law doctrine of vested rights.



**Days:** Unless otherwise noted, “days” are calendar days.

**Owner:** An owner is an owner of the subject property and includes a person having legal title to the premises, a mortgagee in possession, a contract vendee, a trustee in bankruptcy, a receiver, or any other person having legal ownership or control of the property in accordance with Building Code Section 202 (*Definitions*).

**Pre-1961 bulk grant:** A pre-1961 bulk grant is a variance or special permit approved by the Board related to bulk regulations granted under the provisions of the 1916 Zoning Resolution and not subject to ZR § 11-41 (*Exceptions, Variances or Permits Previously Authorized Pursuant to the 1916 Zoning Resolution*).

**Pre-1961 use grant:** A pre-1961 use grant is a variance or special permit approved by the Board related to use regulations granted under the provisions of the 1916 Zoning Resolution and subject to ZR § 11-41 (*Exceptions, Variances or Permits Previously Authorized Pursuant to the 1916 Zoning Resolution*).

**Post-1961 special permit:** A post-1961 special permit is a special permit approved by the Board and granted under the provisions of the 1961 Zoning Resolution.

**Post-1961 variance:** A post-1961 variance is a variance granted under the provisions of the 1961 Zoning Resolution.

**Reinstatement:** A reinstatement is an application filed on the zoning (BZ) calendar to reinstate a pre-1961 use grant.

**Statutory vested rights application:** A statutory vested rights application is an application which is filed pursuant to ZR § 11-31 *et seq.* to renew building permits lawfully issued before the effective date of an amendment to the Zoning Resolution, which have lapsed as a result of such amendment. The application to renew the permits and to establish the right to continue construction is based on the statutory findings.

**Subject property:** The subject property is the property which is the subject of the application.

**Transient parking waiver:** A transient parking waiver is an application granted under the provisions of either the 1916 or 1961 Zoning Resolution, and MDL § 60 (*Motor vehicle storage*), permitting transient parking in an accessory residential parking garage.

**Vested rights application:** A vested rights application is an application to renew building permits lawfully issued before the effective date of an amendment of the Zoning Resolution which have lapsed as a result of such amendment. Vested rights applications include common law vested rights applications and statutory vested rights applications.

## § 1-03 Administration

### § 1-03.1 Administrative Authority

Under the direction of the Board, administrative authority is vested in the following individuals:

- (a) Executive Director: Subject to Charter §§ 660 (*Executive director of standards and appeals*) and 661 (*Staff, powers and duties*) and these Rules, the executive director is vested with the administrative authority to manage the functions of the office, including hiring and supervising employees, overseeing the Board's hearing calendar and Bulletin, and performing other duties as directed by the Chair.
- (b) General Counsel: Subject to these Rules, the general counsel will provide legal guidance to the Board, supervise the drafting of all Board resolutions, legal opinions and documents, serve as legal liaison to other city agencies, and perform other duties as directed by the Chair.
- (c) Examiners: Subject to these Rules and under the supervision of the executive director, the examination staff will review all applications, draft and distribute notices of comments to applicants, serve as liaison to the public on specific applications, and perform other duties as directed by the executive director.

### **§ 1-03.2 Committees**

The Chair, or in the absence of the Chair, the Vice Chair, will when deemed necessary designate committees composed of commissioners, or commissioners and staff, including site inspection committees, subject to § 1-10.3 of these Rules.

### **§ 1-03.3 Reports**

The Chair, the Vice Chair, commissioners, the executive director, and general counsel will report at executive or business sessions all pertinent information that would not otherwise come to the attention of the Board.

### **§ 1-03.4 Correspondence**

The Chair, executive director, or general counsel will sign official correspondence relating to administrative matters or previous Board decisions. The executive director, general counsel, or staff designated by the Chair will sign official correspondence relating to any application.

## **§ 1-04 The Calendar**

### **§ 1-04.1 Subject Matter**

The Board reviews applications on the separate Zoning (BZ), Appeals (A), and Special Order (SOC) calendars, and the Board provides forms and specific instructions for each type of application on these three calendars. The subject matter for applications on each calendar is provided in §§ 1-05 *et seq.* through 1-07 *et seq.* of these Rules and summarized as follows:

- (a) Zoning Calendar (BZ): The Zoning Calendar (see § 1-05, *et seq.* of these Rules) includes variance and special permit applications, reinstatements, and major amendments of previously approved variances and special permits.
- (b) Appeals Calendar (A): The Appeals Calendar (see § 1-06, *et seq.* of these Rules) includes appeals of certain agency final determinations including final determinations of the Department of Buildings and the Fire Department, waivers pursuant to the General City Law, modifications of certain provisions or requirements of the Multiple Dwelling Law, vested rights applications, and modifications or revocations of certificates of occupancy.

- (c) Special Order Calendar (SOC): The Special Order Calendar (see § 1-07, *et seq.* of these Rules) includes applications, such as amendments, extensions of term, extensions of time to complete construction, and extensions of time to obtain a certificate of occupancy, that affect previous grants, including pre-1961 use grants, pre-1961 bulk grants, post-1961 variances, post-1961 special permits, and transient parking waivers.

## § 1-05 Zoning Calendar (BZ)

### § 1-05.1 Subject Matter

The BZ Calendar consists of the following types of applications:

- (a) Variance: applications pursuant to ZR § 72-21 for zoning variances;
- (b) Special Permit: applications pursuant to ZR § 73-00 *et seq.* for special permits;
- (c) Reinstatement: applications pursuant to ZR § 11-41 *et seq.* (*Exceptions, Variances or Permits Previously Authorized Pursuant to the 1916 Zoning Resolution*), to reinstate pre-1961 use grants in accordance with § 1-07.3(b)(3)(i) and (b)(4)(i) of these Rules; and
- (d) Major Amendment: amendments to previously approved variances or special permits which the Board deems major in accordance with § 1-07.1(a)(1) of these Rules.

No application for a variance or special permit will be accepted by the Board except from an order, requirement, decision, or determination made in a specific case by the Commissioner of Buildings, any borough commissioner of the Department of Buildings or authorized representative, or the Commissioner of the Department of Business Services or authorized representative.

### § 1-05.2 BZ Form

All applications must be made on the BZ Form and must be accompanied by all the information required by such form and related instructions.

### § 1-05.3 Filing Period

All applications must be filed within thirty (30) days from the date of the determination by the Commissioner of Buildings, any borough commissioner of the Department of Buildings or authorized representative, or the Commissioner of the Department of Small Business Services or authorized representative.

### § 1-05.4 Application Referral

In accordance with § 1-10.6 of these Rules and within three (3) business days after filing the application with the Board, the applicant must forward a copy of all application material to:

- (a) the affected community board(s) (and borough board, if applicable);
- (b) the affected borough president;
- (c) the affected city council member;
- (d) the administrative official who issued the determination; and
- (e) the City Planning Commission.

After forwarding all application material, the applicant must provide proof of service to the Board in accordance with § 1-10.7 of these Rules.

*See Appendix A for a summary of all application referral requirements.*

#### **§ 1-05.5 Community Board Review**

Within sixty (60) days after receipt of an application, the affected community board may hold a public hearing and submit a written recommendation on 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 submission of a recommendation or waiver by every community board in which the subject property 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. In accordance with § 1-10.6 of these Rules, the community board(s) (and borough board, if applicable), will be deemed to have received an application on the day of personal delivery or five (5) calendar days after the date of the mailing of the application.

Following receipt of a recommendation or waiver from the affected community board(s) (and borough board, if applicable), or following the expiration of the time period for their review, the Board will hold a public hearing on the application and make a decision. The Board may, in its discretion, include in the record the recommendations of the affected community board(s) and borough board even if the recommendations are received after the applicable time period has expired.

#### **§ 1-05.6 Hearing Notice**

After the examiners have determined that the application is substantially complete, the Board will provide the applicant with the hearing notice and related forms, at least thirty (30) days before the first scheduled hearing date. In accordance with § 1-10.6 of these Rules, and at least twenty (20) days before the first scheduled hearing date, the applicant must forward a copy of the hearing notice and related forms to:

- (a) the affected community board(s) (and borough board, if applicable);
- (b) the affected borough president;
- (c) the affected city council member;
- (d) the City Planning Commission; and
- (e) affected property owners as defined in § 1-02 of these Rules.

The applicant must submit the hearing notice to affected property owners with instructions that if the property is a cooperative or condominium, all tenants should be notified in the manner customarily employed by the cooperative or condominium.

If the subject property is occupied by multiple tenants, the applicant must submit the hearing notice to the owner or management office of the property with instruction to either post the hearing notice in the lobby of the property, or to notify all tenants and/or owners in the manner customarily employed by such owner or manager for giving notices to tenants or unit owners in the building in question.

After forwarding the hearing notice and forms to the proper entities, the applicant must provide proof of service to the Board in accordance with § 1-10.7 of these Rules.

*See Appendix A for a summary of all hearing notice requirements.*

**§ 1-05.7 Source for List of Affected Property Owners**

The applicant must obtain names of affected property owners entitled to the hearing notice pursuant to §§ 1-05.6 or 1-06.5(a)(2) of these Rules from the City Register. In all cases, the applicant must submit the list to the Board, and the list must show the names of the actual property owners with legal title, rather than mortgagees.

**§ 1-05.8 Newspaper Notice**

The applicant must, in addition to providing notice pursuant to §§ 1-05.6 or 1-06.5(a)(2) of these Rules, publish the contents of the hearing notice form provided by the Board in a newspaper, at the applicant's expense. Newspaper notice will not be required for applications involving bulk variances for a single one-, two-, or three-family dwelling, or for special permit applications.

The requirements for newspaper notice are as follows:

- (a) The notice must be published in one (1) newspaper of local circulation, or one (1) newspaper of general circulation, as identified by the Board in its hearing notice;
- (b) The notice must be published in such newspaper on one (1) day of each week for two (2) of the three (3) weeks before the public hearing; and
- (c) Before the hearing date, the applicant must provide the Board with an affidavit of publication or a copy of the published notice.

**§ 1-05.9 Revised Application and Additional Submissions**

If, at any time, an applicant provides the Board with a revised application and/or additional submissions, within three (3) days of providing such materials to the Board, the applicant must submit a copy of the revised application and/or additional submissions to the affected community board(s) (and borough board, if applicable), affected borough president, affected city council member, and the City Planning Commission. The applicant must submit a cover letter to the Board identifying the contents of the revisions and/or additional submissions and note the entities which have been forwarded a copy of such materials, as required by this Section.

If, after the community board's sixty (60) day review period, the applicant makes a substantial revision to the application, the Board, in its discretion, may consider any additional recommendations by the affected community board(s) (and borough board, if applicable), affected borough president, affected city council member, and the City Planning Commission, provided that the recommendations are related to the subject revisions and are submitted to the Board before the hearing is closed.

**§ 1-06 Appeals Calendar (A)**

**§ 1-06.1 Subject Matter**

The A calendar consists of the following types of applications:

- (a) Appeal of Agency Final Determination: (1) appeals of agency final determinations (including orders, requirements, and decisions) by the Department of Buildings, Fire Department, and Department of Transportation, including interpretations of the Zoning Resolution; and (2) appeals of final determinations by the Commissioner of the Department of Small Business Services (SBS), when made in relation to certain types of

construction or land uses, including construction on waterfront property under the jurisdiction of SBS;

- (b) Waiver pursuant to the General City Law: (1) applications for a waiver to allow a permit for a building located within a mapped street, in response to an objection issued by the Department of Buildings pursuant to GCL § 35; and (2) applications for a waiver to allow a permit for a building which is either not located on a mapped street, or is located on a mapped street that does not provide access to such building, in response to an objection issued by the Department of Buildings pursuant to GCL § 36;
- (c) Modification pursuant to the Multiple Dwelling Law: applications to modify the requirements of the MDL, pursuant to the Board's authority set forth in MDL §§ 277 and 310, in response to an objection issued by the Department of Buildings pursuant to the MDL;
- (d) Vested Rights: vested rights applications to allow for the renewal of building permits lawfully issued before the effective date of an amendment to the Zoning Resolution;
- (e) Modification or Revocation of a Certificate of Occupancy: applications filed by the Department of Buildings or the Fire Department to permit modification or revocation of a certificate of occupancy;
- (f) Amendment: applications to amend or extend the term of previous grants of any of the above appeals calendar applications; and
- (g) Other Waivers or Appeals: other requests to waive statutory non-compliance under the Board's authority, other appeals based on an objection from the Department of Buildings, or appeals of any other matter within the Board's jurisdiction not otherwise described by these Rules.

#### **§ 1-06.2 A Form and BZY Form**

All applications must be made on the A Form, except for vested rights applications pursuant to ZR § 11-31 *et seq.*, which must be made on the BZY Form. Applications must be accompanied by all information required by such forms and related instructions.

#### **§ 1-06.3 Filing Period**

The application procedure is as follows:

- (a) Appeal of Agency Final Determination: Applications to appeal an agency final determination set forth at § 1-06.1(a) must be filed within thirty (30) days from the date of the determination. Such final determinations must be signed by the agency commissioner. However, in accordance with the provisions of Charter § 642 (*Deputies*) and § 645 (*Offices of the Department; powers and duties*), final determinations by the Department of Buildings may also be signed by the Deputy Commissioner or, acting under a written delegation of power from the Commissioner, any Borough Commissioner of the Department of Buildings.
- (b) Waivers pursuant to the General City Law or Modifications pursuant to the Multiple Dwelling Law: Applications to waive the requirements of GCL §§ 35 or 36 or to modify the requirements of the MDL must be filed within thirty (30) days of the date of issuance of the Department of Buildings objection(s).

- (c) Vested Rights: Statutory vested rights applications are subject to the filing requirements set forth in ZR § 11-31 *et seq.* Common law vested rights applications are not subject to the filing requirements set forth in ZR § 11-31 *et seq.*
- (d) Amendment: Applications to amend or extend the term of previous grants are subject to the filing period requirements set forth in § 1-07.3 of these Rules.
- (e) All Other Applications: All other applications on the appeals calendar not otherwise identified in subdivisions (a) through (d) of § 1-06.3 must follow the filing procedures set forth in § 1-06.3 (a), except that applications to modify or revoke a certificate of occupancy filed by the Department of Buildings or the Fire Department will not be subject to such filing deadlines.

**§ 1-06.4 Application Referral**

In accordance with § 1-10.6 of these Rules and within three (3) business days after filing the application with the Board, the applicant must forward a copy of all application materials to the required individuals and entities as follows:

- (a) Appeal of Agency Final Determination: (1) Except as provided in paragraph (2) of this subdivision, applicants appealing agency final determinations must forward a copy of all application material to the administrative official who signed the determination which is the subject of the appeal. In addition, for applications that involve the interpretation of the Zoning Resolution, the applicant must forward all application material to the legal counsels of the Department of Buildings and the City Planning Commission.

Any person or agency filing an appeal who is not the owner of the subject property must forward a copy of all application material to the owner of the subject property.

(2) For appeals involving facilities for manufacturing, handling, or storage of hazardous materials governed by the Fire Code sections listed in Appendix B, the applicant must forward a copy of all application material to:

- (i) the affected community board(s) (and borough board, if applicable);
- (ii) the affected borough president;
- (iii) the affected city council member;
- (iv) the Commissioner of Buildings; and
- (v) the Fire Commissioner.

- (b) Waiver pursuant to the General City Law: The applicant must forward a copy of all application material to the Department of Buildings, the affected community board(s) (and borough board, if applicable), and the affected borough president.

In addition, upon the applicant's filing of an application pursuant to GCL § 35, the executive director will forward a copy of the application to the Department of Transportation, the Department of Environmental Protection, and the Fire Department for review. Upon the applicant's filing of an application pursuant to GCL § 36, the executive director will forward a copy of the application to the Fire Department for review.

- (c) Vested Rights: The applicant must forward a copy of all application material to the Department of Buildings, the affected community board(s) (and borough board, if applicable), the affected borough president, the affected city council member, and the City Planning Commission. Applications to renew building permits associated with vested rights applications previously granted by the Board are not subject to this requirement.
- (d) Modification or Revocation of a Certificate of Occupancy: The applicant must forward a copy of all application material to the owner of the subject property.
- (e) All Other Applications: All other applications on the A calendar not otherwise described in subdivisions (a) through (d) of § 1-06.4 must follow the application referral procedures set forth in § 1-06.4(a)(1) of these Rules.

After forwarding all application material, the applicant must provide proof of service to the Board in accordance with § 1-10.7 of these Rules.

*See Appendix A for a summary of all application referral requirements.*

### **§ 1-06.5 Hearing Notice**

After the examiners have determined that the application is substantially complete, the Board will provide the applicant with the hearing notice and related forms at least thirty (30) days before the first scheduled hearing date. In accordance with § 1-10.6, the applicant must forward a copy of the hearing notice and related forms at least twenty (20) days before the first scheduled hearing date, as follows:

- (a) Appeal of Agency Final Determination: (1) Except as provided in paragraph (2) of this subdivision, the applicant must provide the hearing notice to the applicable administrative agency that signed the determination which is the subject of the appeal and, if applicable, the owner of the subject property.  
  
(2) For appeals involving facilities for manufacturing, handling or storage of hazardous materials governed by the Fire Code sections listed in Appendix B, the applicant must forward a copy of the hearing notice and related forms to:
  - (i) the affected community board(s) (and borough board, if applicable);
  - (ii) the affected borough president;
  - (iii) the affected city council member;
  - (iv) the Fire Department; and
  - (v) affected property owners as defined in § 1-02 of these Rules.

The applicant must submit the hearing notice to affected property owners with instructions that if the property is a cooperative or condominium, all tenants should be notified in the manner customarily employed by the cooperative or condominium.

If the subject property is occupied by multiple tenants, the applicant must submit the hearing notice to the owner or management office of the property with instructions to either post the hearing notice in the lobby of the property, or to notify all tenants and/or owners in the manner customarily employed by such owner or manager for giving notices to tenants or unit owners in the building in question. The applicant must also comply with the procedures set forth in §§ 1-05.7 and 1-05.8 of these Rules.



- (b) Waiver pursuant to the General City Law: The applicant must provide the hearing notice to the Department of Buildings, the affected community board(s) (and borough board, if applicable), and the affected borough president.
- (c) Vested Rights: The applicant must provide the hearing notice to the Department of Buildings, the affected community board(s) (and borough board, if applicable), the affected borough president, the affected council member, and the City Planning Commission. Applications to renew building permits associated with vested rights applications previously granted by the Board are not subject to this requirement.
- (d) All Other Applications: All other applications on the A calendar not otherwise described in § 1-06.5(a) through (c) must follow the notice procedures set forth in § 1-06.5(a)(1) of these Rules, except for applications for the modification or revocation of a certificate of occupancy.

After forwarding the hearing notice and forms to the proper entities, the applicant must provide proof of service to the Board in accordance with § 1-10.7 of these Rules.

*See Appendix A for a summary of all hearing notice requirements.*

## **§ 1-07 Special Order Calendar (SOC)**

### **§ 1-07.1 Subject Matter**

The Special Order Calendar (SOC) consists of the following types of applications:

(a) Applications related to previous grants:

- (1) Amendment: Applications may be filed on the SOC calendar for amendments to: (1) a pre-1961 use grant pursuant to ZR §§ 11-412 or 11-413, (2) a pre-1961 bulk grant, (3) a post-1961 variance pursuant to ZR §§ 72-01 or 72-22, (4) a post-1961 special permit pursuant to ZR §§ 73-01 or 73-04, or (5) a transient parking waiver. Amendments may include but are not limited to changes to the Board-approved plans or resolution.

If, in the course of further review of the application or during a hearing, the Board determines that the scope of the application is major, it may request that a new application be filed on the BZ calendar with additional information and analyses provided.

Before filing the application, an applicant may request, in writing, a determination by the Chair regarding whether the application may be appropriately filed on the SOC calendar.

- (2) Extension of Term: Applications may be filed on the SOC calendar for extensions of term related to previous grants where the term is specified in the Zoning Resolution or specified as a condition in the Board's resolution, with respect to applications involving: (1) a pre-1961 use grant pursuant to ZR § 11-411, (2) a pre-1961 bulk grant, (3) a post-1961 variance pursuant to ZR §§ 72-01 and 72-22, (4) a post-1961 special permit pursuant to ZR §§ 73-01 and 73-04, or (5) a transient parking waiver.

- (3) Extension of Time: Applications may be filed on the SOC calendar for extensions of time to complete construction or obtain a certificate of occupancy related to previous grants, where the time is specified in ZR §§ 72-23 or 73-70 or specified as a condition in the Board's resolution with respect to applications involving: (1) a pre-1961 use grant, (2) a pre-1961 bulk grant, (3) post-1961 variance, (4) a post-1961 special permit, or (5) a transient parking waiver.

Notwithstanding paragraphs (1) through (3) above, applications related to previous grants may also be filed as a new variance or special permit on the BZ calendar.

- (b) Other actions related to applications or cases: The following actions will be heard on the SOC calendar but are not subject to the regulations of this section. For more information regarding these actions, see § 1-12 of these Rules.

- (1) Dismissal: applications by the Board for the purpose of dismissal for lack of prosecution or jurisdiction, or if moot.
- (2) Reargument: requests for reargument of a previous case which was denied, dismissed, or approved.
- (3) Rehearing: requests for rehearing of a previous case which was denied, dismissed, or withdrawn.
- (4) Board Review of Decision: cases the Board restores to the calendar for the purpose of reviewing or reconsidering previous Board decisions.
- (5) Compliance: cases the Board restores to the calendar for the purpose of determining whether to revoke or modify a previous grant if the terms and conditions of such grant have been violated.
- (6) Court Remand: cases that a court orders to be restored to the calendar. In its discretion, the Board may elect to hear such cases on the BZ or Appeals calendars, as appropriate.

- (c) Other: all other actions under the Board's jurisdiction not otherwise described by these Rules.

### **§ 1-07.2 SOC Form**

All applications must be made on the SOC Form and must be accompanied by all the information required by such form and related instructions.

### **§ 1-07.3 Filing Period**

The application filing procedure is as follows:

- (a) Amendment: All applications for amendments filed pursuant to § 1-07.1(a)(1) of these Rules must be filed within thirty (30) days from the date of the agency determination which is the subject of the application.
- (b) Extension of Term: All applications for extensions of term filed pursuant to § 1-07.1(a)(2) of these Rules may be filed on the SOC calendar as follows:

- (1) Within one (1) year before or thirty (30) days after the expiration of term: All applications filed within one (1) year before or thirty (30) days after the expiration of term may be filed on the SOC calendar.
- (2) More than one (1) year before or less than two (2) years after the expiration of term: All applications filed more than one (1) year before or less than two (2) years after the expiration of term may be filed on the SOC calendar, provided that the applicant requests a waiver under this paragraph in the application. In the request for a waiver, the applicant must demonstrate that the use has been continuous since the expiration of term, and substantial prejudice would result without such a waiver.
- (3) More than two (2) years after but less than ten (10) years after the expiration of term: All applications filed more than two (2) years after but less than ten (10) years after the expiration of term may be filed on the SOC calendar or BZ calendar, as follows:
  - (i) Applications for pre-1961 use grants, filed pursuant to ZR § 11-411 may be filed on the SOC calendar, or on the BZ calendar as a reinstatement, provided that in either case the applicant requests a waiver under this subparagraph in the application. In the request for a waiver, the applicant must demonstrate that the use has been continuous since the expiration of term, and substantial prejudice would result without such a waiver.

Before filing, an applicant may request, in writing, a determination by the Chair of whether an application may be filed on the SOC calendar or on the BZ calendar as a reinstatement. If the application is filed as a reinstatement, the application will be subject to § 1-05 *et seq.* of these Rules.
  - (ii) Applications for pre-1961 bulk grants or post-1961 variances and special permits, where the grant is limited to a term that is specified only as a condition in the Board's resolution, may be filed on the SOC calendar as an amendment to modify such term or condition provided that the applicant requests a waiver under this subparagraph in the application.
  - (iii) Applications for an extension of term of a transient parking waiver may be filed on the SOC calendar provided that the applicant requests a waiver under this subparagraph in the application.
  - (iv) Applications for post-1961 special permits where the grant is limited to term as specified in the Zoning Resolution, must be filed as a new special permit on the BZ calendar.
- (4) More than ten (10) years after the expiration of term: All applications filed more than ten (10) years after the expiration of term must be filed as a new variance or special permit on the BZ calendar, with the following exceptions:
  - (i) Applications for pre-1961 use grants filed pursuant to ZR § 11-411 may be filed on the BZ calendar as a reinstatement in accordance with § 1-05 *et seq.* of these Rules provided that the applicant requests a waiver under this subparagraph in the application. In the request for a waiver, the applicant must demonstrate that the use has been continuous since the expiration of term, that substantial prejudice would result without such a waiver, and that the use

permitted by the grant does not substantially impair the appropriate use and development of adjacent properties.

(ii) Applications for pre-1961 bulk grants that are not filed pursuant to ZR § 11-411 or post-1961 variances and special permits, where the grant is limited to a term that is specified only as a condition in the Board's resolution may be filed on the SOC calendar as an amendment to modify such term or condition provided that the applicant requests a waiver under this subparagraph in the application.

(iii) Applications for an extension of term of a transient parking waiver may be filed on the SOC calendar provided that the applicant requests a waiver under this subparagraph in the application.

*See Appendix C for a summary of the filing period and calendar for extension of term applications.*

- (c) Extensions of Time to Complete Construction: All applications for an extension of time to complete construction filed pursuant to § 1-07.1(a)(3) may be filed on the SOC calendar as follows:
- (1) Within one (1) year before or within thirty (30) days after the expiration of the time to complete construction: All applications filed within one (1) year before or within thirty (30) days after the expiration of the time to complete construction may be filed on the SOC calendar.
  - (2) More than one (1) year before or less than two (2) years after the expiration of the time to complete construction: All applications for an extension of time to complete construction which are filed more than one (1) year before or less than two (2) years after the expiration of time may be filed on the SOC calendar provided that the applicant requests a waiver under this paragraph in the application.
  - (3) More than two (2) years after but less than four (4) years after the expiration of the time to complete construction: Applications filed more than two (2) years after but less than four (4) years after the expiration of time for pre-1961 use and bulk grants or transient parking waivers, where the time is specified only as a condition in the Board's resolution, may be filed on the SOC calendar as an amendment to modify such time period provided that the applicant requests a waiver under this paragraph in the application.  
  
Applications for an extension of time to complete construction for post-1961 variances or special permits may be filed on the SOC calendar provided that the applicant requests a waiver under this paragraph in the application.
  - (4) More than four (4) years after the expiration of the time to complete construction: Applications filed more than four (4) years after the expiration of time for pre-1961 use and bulk grants or transient parking waivers, where the time is specified only as a condition in the Board's resolution, may be filed on the SOC calendar as an amendment to modify such time period provided that the applicant requests a waiver under this paragraph in the application.

Applications for an extension of time to complete construction for post-1961 variances or post-1961 special permits must be filed as a new variance or special permit on the BZ calendar.

(d) Extensions of Time to Obtain a Certificate of Occupancy: All applications for extensions of time to obtain a certificate of occupancy pursuant to § 1-07.1(a)(3) may be filed on the SOC calendar as follows:

- (1) Within one (1) year before or thirty (30) days after the expiration of the time to obtain a certificate of occupancy: All applications filed within one (1) year before or thirty (30) days after the expiration of the time to obtain a certificate of occupancy may be filed on the SOC calendar.
- (2) More than one (1) year before or more than thirty (30) days after the expiration of the time to obtain a certificate of occupancy: Applications filed more than one (1) year before or more than thirty (30) days after the expiration of time may be filed on the SOC calendar, provided that the applicant requests a waiver under this paragraph in the application.

*See Appendix D for a summary of the filing period and calendar for extension of time applications.*

#### **§ 1-07.4 Application Referral**

In accordance with § 1-10.6 of these Rules and within three (3) business days after filing the application with the Board to be heard on the SOC calendar, the applicant must forward a copy of all application material to:

- (a) the affected community board(s) (and borough board, if applicable);
- (b) the affected borough president;
- (c) the affected city council member;
- (d) the administrative official who issued the determination; and
- (e) the City Planning Commission.

After forwarding all application material, the applicant must provide proof of service to the Board in accordance with § 1-10.7 of these Rules.

Applications for an extension of time are not subject to the requirements set forth in this subsection.

*See Appendix A for a summary of all application referral requirements.*

#### **§ 1-07.5 Community Board Review**

Within sixty (60) days after receipt of an application filed on the SOC calendar, the affected community board may hold a public hearing and submit a written recommendation on 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 submission of a recommendation or waiver by every community board in which the subject property 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. In accordance with § 1-10.6 of these Rules, the community board(s) or borough board will be deemed to have

received an application on the day of personal delivery or five (5) calendar days after the date of the mailing of the application.

Following receipt of a recommendation or waiver from the affected community board(s) (and borough board, if applicable), or following the expiration of the time period for their review, the Board will hold a public hearing on the application and make a decision. The Board may, in its discretion, include in the record the recommendations of the affected community board(s) (or borough board) even if the recommendations are received after the applicable time period has expired.

**§ 1-07.6 Hearing Notice**

After the examiners have determined the application to be substantially complete, the Board will provide the applicant with the hearing notice and related forms at least thirty (30) days before the first scheduled hearing date. In accordance with § 1-10.6 of these Rules, the applicant must forward a copy of the hearing notice and related forms at least twenty (20) days before the first scheduled hearing date to:

- (a) the affected community board(s) (and borough board, if applicable);
- (b) the affected borough president;
- (c) the affected city council member; and
- (d) the City Planning Commission.

After forwarding the hearing notice and forms to the proper entities, the applicant must provide proof of service to the Board in accordance with § 1-10.7 of these Rules.

Applications for an extension of time are not subject to the requirements set forth in this subsection.

*See Appendix A for a summary of all hearing notice requirements.*

**§ 1-07.7 Revised Application and Additional Submissions**

If, at any time, an applicant for an Amendment or an Extension of Term filed on the SOC calendar provides the Board with a revised application and/or additional submissions, the applicant must within three (3) days submit a copy of the revised application and additional submissions to the affected community board(s) (and borough board, if applicable), affected borough president, affected city council member, and the City Planning Commission. The applicant must submit a cover letter to the Board identifying the contents of the submission and note the entities which have been forwarded copies of the submission required by this subsection.

If, after the community board's sixty (60) day review period, the applicant makes a substantial revision to the application, the Board, in its discretion, may consider any additional recommendations by the affected community board(s) (and borough board, if applicable), affected borough president, affected city council member, and the City Planning Commission, provided that the recommendations are related to the subject revisions and are submitted to the Board before the hearing is closed.

## **§ 1-08 City Environmental Quality Review (CEQR)**

### **§ 1-08.1 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 (“CEQR”), and the State Environmental Quality Review Act regulations, 6 NYCRR Part 617, and any subsequent amendments thereto, will be subject to CEQR unless the Board determines that the application is for a Type II action and thus not subject to environmental review, or is otherwise exempt from CEQR in accordance with such regulations.

### **§ 1-08.2 Environmental Assessment Statement (EAS)**

Applicants must complete the CEQR checklist provided by the Board. Pursuant to the checklist, if the application is for an action identified as a Type I or Unlisted Action, the application must be accompanied by an EAS. Applications will receive a CEQR number that is different from the calendar number, and all CEQR submissions will refer to both numbers, where applicable. Applicants may request a pre-application conference with the Board to seek their assistance in determining what information is required and the potential scope of the environmental review of the proposed action, including whether a Type II submission may be appropriate.

### **§ 1-08.3 Application Referral**

In accordance with § 1-10.6 of these Rules, the applicant must forward a copy of any written information including, but not limited to, the Type II checklist and the EAS and any subsequent modifications to the EAS to:

- (a) the affected community board(s) (and borough board, if applicable);
- (b) the affected city council member; and
- (c) the affected borough president.

In addition, the Board will send to the Office of Environmental Coordination (OEC) the notification of commencement of environmental review.

After forwarding all material, the applicant must provide proof of service to the Board in accordance with § 1-10.7 of these Rules.

### **§ 1-08.4 Examiners’ Review**

After the applicant files the application on the appropriate calendar, the Board will review the application and will notify the applicant, in writing, whether the application is complete or whether additional information is required. The Board may require additional information from the applicant that it deems necessary to determine whether or not the action will have a significant effect on the environment.

### **§ 1-08.5 Determination of Significance and Publication of Determination**

- (a) Negative Declaration: If the CEQR determination of significance is a negative declaration, the Board will issue the declaration at the time the resolution regarding the proposed action is issued, and such negative declaration will be stated in the Board’s resolution.
- (b) Conditional Negative Declaration: Proposed conditional negative declarations will be transmitted to the applicant in advance of the Board’s resolution regarding the proposed

action. Upon receipt of the applicant's signature and agreement to the prescribed conditions, the Board will publish the conditional negative declaration and the EAS in the City Record and any other required publications, followed by a thirty (30) day public comment period. If, after the comment period, the Board determines that a draft Environmental Impact Statement (EIS) is not required, the Board will issue its CEQR determination concurrently with the resolution on the proposed action, and the conditional negative declaration will be stated in the resolution. If the Board determines that a draft EIS is required, the Board will issue a positive declaration, and a draft EIS will be required.

- (c) Positive Declaration: If the CEQR determination is a positive declaration then the Board will issue such determination prior to its issuance of a resolution on the proposed action. Positive declarations will be transmitted to the applicant along with a request that the applicant prepare a draft EIS, 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 ("CEQR"), and the State Environmental Quality Review Act regulations, 6 NYCRR Part 617, and any subsequent amendments thereto.

The Board's negative declarations, conditional negative declarations, and positive declarations will be circulated to the individuals and agencies required by the Rules for City Environmental Quality Review, Title 62, Chapter 6, § 6-07 (*City Planning Commission Review*) of the Rules of the City of New York.

## § 1-09 Application Requirements

### § 1-09.1 Application Form

All applications must be on the applicable form, and must include information required in the forms and the accompanying instructions. All applications must be filed in person, and the Board will only accept complete applications. After the application is calendared for public hearing, the Board will determine at its review session and public hearing whether additional plans, drawings, exhibits, or other information are required.

Any communication from an applicant submitted in a manner other than as described in these Rules will be regarded as a mere notice of intention to seek relief and will have no force or effect until it is made in the form required. Upon receipt of any such communication, the Board will direct the applicant to the proper forms and instructions for completing an application. Such communication will not stay the thirty (30) day time period for filing an application referred to in §§ 1-05.3, 1-06.3, and 1-07.3(a) of these Rules.

### § 1-09.2 Fees

Before an application is docketed and a calendar number is assigned, the applicant must pay the prescribed filing fee in accordance with the fee schedule authorized by § 25-202 of the New York City Administrative Code. The fee must be paid in the form of a check or money order or in another form acceptable to the Board. When applicable, the applicant must 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 (*Fee for CEQR applications*) and 3-02 (*Schedule of charges*) of the Rules of the City of New York. A municipal department or agency of the City may be entitled to



an exemption from Board fees pursuant to § 25-202 (*Fees*) of the New York City Administrative Code.

**§ 1-09.3 Drawings and Other Exhibits**

All drawings submitted with an application must be properly titled, numbered, dimensioned, dated, drawn to scale, and must otherwise conform to the applicable instructions. All drawings must be clear and bear a legible seal and signature of a registered architect or licensed professional engineer. All drawings and other exhibits, unless otherwise accepted by the executive director, must be on 8 ½ x 14 inch sheets or on 11 x 17 inch sheets that are folded to 8 ½ x 11 inches.

**§ 1-09.4 Owner's Authorization**

Every owner of record on a zoning lot which is the subject of an application must execute and submit the Board's Affidavit of Ownership and Authorization form. The form may be completed by the owner or any other entity or person legally authorized to act for such owner.

If the applicant is not the owner, the applicant must submit the Affidavit of Ownership and Authorization form signed by the owner(s) of record authorizing the applicant to file the application. However, an applicant appealing a final agency determination who is not the owner of the subject property is not required to submit an Affidavit of Ownership and Authorization form.

**§ 1-10 Application Pre-Hearing Review**

**§ 1-10.1 Calendar Number**

Each properly filed complete application will be numbered serially in the order received. The calendar numbers will begin anew on January 1st of each year, and will be hyphenated with the number of the year and the corresponding suffix (BZ, A, or BZY) indicating the type of application. The original calendar number will be used for an application to reopen or amend a previous case for the same property on the SOC or A calendar. In certain instances, a new calendar number may be required in lieu of the original calendar number for reinstatement applications.

**§ 1-10.2 Examiner's Review**

After the application receives a calendar number, the designated examiner will review the application and issue a notice of comments to the applicant, and the applicant must respond with the necessary revisions to the application in a timely manner. When the examiner finds that the application is substantially complete, the applicant will be notified of the date on which the application is scheduled for public hearing.

**§ 1-10.3 Site Inspection**

Commissioners may visit sites that are the subject of an application. The Chair may create committees of commissioners or commissioners and staff for specific site visits. Any committee appointed by the Chair will report its findings to the Board. In any application in which the Chair deems it necessary, a member of the Board may enter, inspect, and examine the premises which is the subject of the application, in accordance with Charter § 667 (*Inspections*).

**§ 1-10.4 Hearing Calendar**

The Board will issue a hearing calendar at least five (5) days before the date of the scheduled hearing. The hearing calendar will identify the date and time of the hearing and list each application to be heard by calendar number, applicant, and property address. Such calendar will be posted at the Board office, in the Bulletin, and on the Board's website.

**§ 1-10.5 Board Publication of Hearing Notice**

The Board will publish a hearing notice, including the hearing date and subject matter, for applications filed on the BZ, A, and SOC calendars in the City Record at least twenty (20) days before the hearing date.

**§ 1-10.6 Application Referral and Hearing Notice**

The applicant must forward copies of a filed application and hearing notice to individuals and entities required by these Rules by regular mail, certified mail, express delivery service, or personal delivery.

All materials required to be provided to the affected community board(s) (and borough board, if applicable), and the City Planning Commission must be addressed to the respective chairperson. Individuals or entities, including the affected community board(s) (and borough board, if applicable), will be deemed to have received a referred application on the day of personal delivery or five (5) calendar days after the date of the mailing of the application to such individuals or entities.

*See Appendix A for a summary of application referral and hearing notice requirements.*

**§ 1-10.7 Proof of Service for Application Referral and Hearing Notice**

The applicant must demonstrate proof of service of an application referral or hearing notice, in accordance with § 1-10.6, by submitting to the Board: (1) the completed form of Proof of Notification of Hearing; and (2) a US Postal Service receipt if by regular mail, a signed US Postal Service receipt if by certified mail, a receipt if by express delivery service, or an affidavit of service if by personal delivery.

The applicant must submit to the Board proof of service of the application referral within ten (10) days of the initial filing. The applicant must submit to the Board proof of service of the hearing notice within ten (10) days of the date of the mailing or personal delivery.

*See Appendix A for a summary of proof of service requirements.*

**§ 1-11 Sessions of the Board**

**§ 1-11.1 Public Hearings**

Public hearings of the Board will be held on Tuesdays at 10 A.M. for the SOC and the A calendars, and at 1:30 P.M. for the BZ calendar or on days and times to be scheduled by the Board as may be deemed necessary. Hearings will be devoted to the consideration of applications which the Board has jurisdiction to hear as referenced in § 1-01 of these Rules.

**§ 1-11.2 Special Hearings**

Special public hearings and special review sessions may be called by the Chair or at the request of three (3) commissioners, provided that notice is given to each commissioner at least

twenty-four (24) hours before the time set for such hearing or session. Reasonable notice of the dates and subject matter to be heard will be provided to the applicants and posted at least twenty-four (24) hours in advance on the Board's website.

**§ 1-11.3 Review Sessions**

Sessions for Board review of cases calendared for hearing will be held on the Monday preceding the calendared hearing date or as determined by the Board. The public may attend all review sessions, but may not participate.

**§ 1-11.4 Chair and Commissioners**

The Chair, or in the absence of the Chair, the Vice Chair, will preside at all hearing and review 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 hearings or review sessions. If the Chair and Vice Chair are absent and a quorum is present, the commissioners will choose a presiding officer from among their number.

Commissioners will attend review sessions and hearings in person, except that, during absence or illness a substitute may act as provided in § 25-201 (*Temporary Vacancies; Filling of*) of the New York City Administrative Code. Commissioners will 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, commissioners will not leave the hearing room.

**§ 1-11.5 Quorum and Voting**

Public hearing or review sessions will only be conducted with a quorum. A quorum of the Board will consist of three (3) commissioners. A concurring vote of at least three (3) commissioners will be necessary for 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 (3) votes, it will be deemed a denial. If a commissioner or commissioners are absent at the roll call and the absentee commissioner or commissioners are eligible to vote, the Chair may defer the decision to a later time.

**§ 1-11.6 Conflict of Interest**

Commissioners and staff will 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.

**§ 1-11.7 Hearing Procedure**

The Chair, or in the absence of the Chair, the Vice Chair, subject to these Rules, will decide all points of order or procedure at public hearings, unless otherwise directed by a majority of the Board in session at that time. The Chair will control the order of speakers, the admission of evidence, the time permitted for each speaker, and the general decorum of the hearing room. Generally, at the hearing, the applicant will present the argument in support of the application and respond to issues raised at the review session. The Chair may then permit testimony from elected officials, community board representatives, and the general public, in accordance with § 1-11.8. The Chair may limit speakers to one (1) individual per household or tenancy within the affected area. Subject to the direction of the Board, the executive director, or his or her designee, will enforce these Rules and maintain order in the hearing room during all public hearings.

**§ 1-11.8 Testimony**

The applicant and any individual called by the applicant may present testimony at the hearing. In applicable cases, any person who resides at, leases, or owns real property within the affected

area described in § 1-02 of these Rules, or a representative of such person, may present testimony. The Chair may 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 application. The Chair may require submission of a written authorization from the organization stating the speaker's representative capacity. Any person coming forward to testify must state his or her name, address within the affected area, and/or representative capacity. Subject to the discretion of the Chair, testimony from the public may be limited to individuals or representatives of groups from the affected area.

**§ 1-11.9 Continued and Closed Hearings**

The Board may continue the hearing to a new date for additional testimony. All scheduled submissions from all parties must be delivered to and stamped in at the Board office with the requisite number of copies.

Upon 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. The Chair may also permit technical and other minor revisions to be accepted after the hearing is closed but before the vote. Factors the Board will consider in determining whether the revision is technical or minor include: whether the revision would have any material impact on the Board's findings, whether the revisions were discussed at a public session by the Board, or whether the revision is essentially an administrative correction.

**§ 1-11.10 Late Submissions**

In order to ensure a predictable and timely review of an application, submissions may not be accepted after the date established by the Chair.

**§ 1-12 Disposition of Applications**

**§ 1-12.1 Final Determination**

A final determination of the Board will be in the form of a written resolution. Such resolution will state the rule, regulation, order, requirement, decision, or determination upon which the application has been made, and will set forth the Board's findings and conclusion.

The Board may reverse, affirm, in whole or in part, or modify a rule, regulation, order, requirement, decision, or determination, or it may dismiss an application for lack of jurisdiction or prosecution, or as moot.

An application must receive three (3) affirmative votes to be granted. If an application fails to receive three (3) affirmative votes, the action will be deemed denied. A resolution denying or granting any application will be formally entered on the record. If, however, a Commissioner or Commissioners are absent at the roll call and the absentee Commissioner(s) is eligible to vote, the Chair may defer the vote to a future hearing.

**§ 1-12.2 Withdrawal**

The Board may consider a request to withdraw an application made by the applicant at any time before the Board's final determination.

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

If the request to withdraw is made after the hearing is closed, the Board 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 on the refile of a future application for the same relief.

If the request to withdraw the application is made, and a motion to vote is pending, such motion will have precedence.

### **§ 1-12.3 Dismissal**

The Board may, in its discretion, dismiss an application for failure to prosecute, with or without prejudice, depending on the circumstances of the application. Further, the Board may, at its discretion, dismiss an application where a defect in the application has not been corrected or where an incomplete application has not been completed in a timely manner. The executive director will send out a dismissal letter informing the applicant that the application will be dismissed if the requisite correction or information is not forthcoming within thirty (30) days of receipt of such letter. The Board may grant an extension to the thirty (30) day period upon request in writing for additional time to correct or complete an application, provided that the applicant presents reasonable circumstances for delay and provides a timetable for a subsequent submission. The applicant will be deemed to have received the letter five (5) business days after the date of transmittal of such letter.

Dismissals will be in the form of a letter signed by the Chair or the executive director. However, any dismissal action to be taken within one (1) year after the date of mailing of the Board's notice of comments will be by a vote of the Board at a public hearing after proper notice to the applicant.

### **§ 1-12.4 Reargument**

The Board will not grant a request to reargue a case which was denied, dismissed, or approved unless the applicant shows that the Board misapprehended the relevant facts or misapplied any controlling principles of law, including the Zoning Resolution.

In all cases, the request for reargument must be made on the SOC Form stating the reasons for the request, and must be accompanied by necessary supporting documents and/or plans. The Chair and executive director will schedule a hearing date when the Board will review the request for restoration to the calendar. The executive director will inform the applicant and, if different from the applicant, the owner of the subject property, of the hearing date at least twenty (20) days in advance of the public hearing. If, on a motion of the Chair adopted by three (3) affirmative votes, the Board grants a request for a reargument, the case will be placed on the appropriate calendar and scheduled for reargument.

### **§ 1-12.5 Rehearing**

The Board will not grant a request to rehear a case which was denied, dismissed, or withdrawn with prejudice unless: (1) substantial new evidence is submitted that was not available at the time of the initial hearing, (2) there is a material change in plans or circumstances, or (3) an application is filed under a different jurisdictional provision of the law.

In all cases, the request for rehearing must be made on the SOC Form, must state the reasons for the request, and must be accompanied by necessary supporting documents and plans. The Chair and the executive director will schedule a hearing date when the Board will review the request for restoration to the calendar. The executive director will inform the applicant and, if different from the applicant, the owner of the subject property, of the hearing date at least twenty

(20) days in advance of the public hearing. If, on motion of the Chair, adopted by three (3) affirmative votes, the request for a rehearing is granted, the case will be placed on the appropriate calendar and scheduled for a rehearing. The Board, if appropriate, may direct the applicant to file a new application with the requisite application forms and fees. All rules of notice as required by these Rules for the original hearing of the case must be followed.

**§ 1-12.6 Board Review of Decision**

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 will prejudice the rights of any person who has in good faith acted thereon before it is reversed or modified. The Board will hear the motion to review on the SOC calendar after notice by the Board to the applicant and the owner of the subject property. The Board at its discretion may elect to review such decision on the case's original calendar if deemed appropriate.

**§ 1-12.7 Court Review of Decision**

Pursuant to § 25-207 (*Certiorari*) 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, and 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 the Board has filed a signed decision in its office.

**§ 1-12.8 Compliance**

In accordance with § 666(11) of the Charter, the Board may, at its discretion, and upon due notice of the hearing, revoke or modify variances or special permits previously granted under the Zoning Resolution when it finds that the terms or conditions of such grants have been violated. The Board will notify the property owner or the owner's representative of a hearing at least twenty (20) calendar days before the hearing.

**§ 1-12.9 Board Resolution**

The determination of the Board in each case will be incorporated in a resolution formally adopted and filed at the Board office. The resolution will generally be made available to the public on the day following the date of decision, and will be posted on the Board's website and published in the Bulletin.

**§ 1-12.10 Enforcement of Board Resolution**

Officials who are charged with the enforcement of the laws, ordinances, and rules relating to buildings in the City of New York, will be bound by the resolutions issued by the Board and, before granting a permit or taking any other action, must 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 to the Chair or executive director 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 § 1-12.8 of these Rules.

### **§ 1-12.11 Minor Amendment of Previous Approvals**

After staff review, the Chair may deem minor certain amendments or corrections of previously approved applications, including changes to an approved plan or resolution, provided that such amendments, changes, or corrections substantially comply with the Board's previous approval, and the findings under which such approval was made are not affected by such amendments or corrections. Such amendments or corrections may be approved by the Chair by letter. A request for a letter approval must be made in writing explaining the changes or corrections and accompanied by all relevant information including previously approved drawings and resolution(s) and proposed drawings and resolution changes.

## **§ 1-13 Records**

### **§ 1-13.1 Bulletin**

A record of the Board's proceedings will be maintained in the Board's Bulletin. The Bulletin is the official publication of the Board. The Bulletin will, whenever practical, be published each week. It will contain:

- (a) the hearing calendar;
- (b) the docket of applications filed at the Board since the last Bulletin;
- (c) an abstract of the minutes of each hearing, including a brief statement of the action in each case, the votes, and the adopted resolution;
- (d) notices of hearing on proposed rules or the amendment of rules;
- (e) an index of rules adopted; and
- (f) such other information as may be of value to the public and within the scope of the work of the Board.

### **§ 1-13.2 Freedom of Information**

Requests for information pursuant to § 87 (*Access to Agency Records*) *et seq.* of the New York State Public Officers Law (Freedom of Information) must be submitted to the designated Freedom of Information Officer. A decision granting or denying access to the requested document(s) will be made in writing by the Board in accordance with the law.

Appeals from a denial of a request for information must be submitted to the counsel of the Board within thirty (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 will be made in accordance with the law.

### **§ 1-13.3 Hearing Records**

A complete record of the public hearings will be maintained by the Board. Requests for typewritten transcripts of the record may 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 will be retained in the Board office. All applications, except materials otherwise exempt, will, upon request to the Freedom of Information officer, be accessible to the public during normal business hours.

**§ 1-13.4 Archival Files**

The Board will retain within its office files for all completed (i.e., approved, withdrawn, or denied) applications for approximately five (5) years. After five (5) years, the files will be stored off-site. The public may request that the Board obtain the files from the off-site location. Such request will be subject to the requisite fee requirement, in accordance with § 1-09.2 of these Rules.

**§ 1-13.5 Agency Website**

The Board will maintain an agency website that will provide the public with current information relating to its activities and responsibilities, including information on upcoming public hearings, filed applications, Board resolutions, application forms and instructions, and announcements of any changes of agency practices and procedures.

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

**§ 1-14.1 Adoption, Amendment, or Repeal of Rules**

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

**§ 1-14.2 Waiver of the Rules of Practice and Procedures**

Upon written submission, an applicant may request a waiver of any section or subdivision of these Rules. To the extent authorized by law, the Board may waive rule provisions in an individual matter at any public hearing by vote of the Board in conformance with § 1-11.5 of these Rules either by addressing the request at the hearing or by adopting or denying a waiver through its written resolution.



**APPENDIX A: Summary of Application Referral, Hearing Notice, and Proof of Service Requirements**

	Zoning Calendar (BZ)		Appeals Calendar (A)			Special Order Calendar (SOC)	
	Variance Reinstatement Major Amendment	Special Permit	Agency Final Determination	GCL § 35 GCL § 36	Vested Rights	Amendment	Extension of Term
<b>Application Referral</b>							
<b>Applicant</b> Within three (3) business days of filing must send copies to:	CB*, BP, CC, AO, and CPC	CB*, BP, CC, AO, and CPC	AO, and the subject property owner (if not the applicant); for applications to interpret the ZR, also send to DOB and CPC legal counsel	DOB, CB*, and BP	DOB, CB*, BP, CC, and CPC	CB*, BP, CC, AO, and CPC	CB*, BP, CC, AO, and CPC
<b>Applicant</b> Must submit Proof of Service of Referral:	Within 10 days of filing	Within 10 days of filing	Within 10 days of filing	Within 10 days of filing	Within 10 days of filing	Within 10 days of filing	Within 10 days of filing
<b>Hearing Notice</b>							
<b>Applicant</b> At least twenty (20) days before hearing must:	Notify CB*, BP, CC, CPC, and affected property owners  Publish in newspaper, one day of each week for 2 of the 3 weeks before hearing	Notify CB*, BP, CC, CPC, and affected property owners	Notify administrative agency and subject property owner (if not applicant)	Notify DOB, CB*, and BP	Notify DOB, CB*, BP, CC, and CPC	Notify CB*, BP, CC, and CPC	Notify CB*, BP, CC, and CPC
<b>Applicant</b> Must submit Proof of Service of Hearing Notice:	Within 10 days of sending notice	Within 10 days of sending notice	Within 10 days of sending notice	Within 10 days of sending notice	Within 10 days of sending notice	Within 10 days of sending notice	Within 10 days of sending notice

CB = Community Board; BP = Borough President; CC = City Council Member; CPC = City Planning Commission; DOB = Department of Buildings; and AO = Administrative Official who issued the determination.

\*If the subject property is located within more than one community board, the applicant must also refer the application and provide notice to the affected borough board.

*This table is intended to serve as a summary. Please see the full text of the associated rule for all requirements.*

**APPENDIX B: Fire Code Sections\* for Appeals Involving Hazardous Materials**

102.3	3304.5.2.2	3406.4.5.2
104.8	3304.7.3	3406.4.5.4
104.8.2	3304.7.2	3406.4.5.5
105.1.1	3304.7.6	3406.4.5.6(1)
105.2	3304.7.7	3406.4.5.7
105.3.5	3304.8.1	3406.4.5.8
105.6	3304.8.2	3406.4.5.9
106.3	3304.8.3	3406.4.5.10
2206.2.1.1	3304.5.2.2	3406.4.5.11
2703.3	3304.7.2.1	3406.4.6
2704.5	3304.7.8	3406.4.6.1
2707.4	3401.7(1)	3406.4.10.5
2707.6	3401.7(4)	3406.4.10.5.1
2707.6.2	3403.1.4	3406.4.10.6
2707.7	3403.6	3406.4.11
2707.7.4	3403.6.3	3406.4.12
3001.1(2)	3403.6.8	3406.4.13
3001.1(3)	3404.2.7	3406.4.14
3001.4.3	3404.2.7.3.6	3406.4.15
3003.1	3404.2.7.4	3406.4.16
3003.2.2	3404.2.9.2	3406.4.17
3301.2.3	3404.2.10	3406.4.17(1)
3301.3.1(6)(6.1)	3404.2.10.6	3406.4.17(2)
3301.5.1.2	3404.3	3406.5.1.7
3303.8	3406.2	3406.5.1.15.1
3304	3406.4.1.1	3406.9(2)
3304.2(3)	3406.4.5.1	3501.1(4)
3404.2.2	3406.4.5.1.1	3503.3
3304.3	3406.4.5.1.2	3701.5
3304.4	3406.4.5.1.3	3701.6
3304.3.1.2	3406.4.5.1.4	3704.2
3304.5.2.1	3406.4.5.3	3704.3

\*The Fire Code Sections are found in the New York City Administrative Code Title 29, Chapter 2.

**APPENDIX C: Summary of Filing Period and Calendar for Extension of Term Applications**

	File on SOC for Extension of Term	File on SOC for Extension of Term and Request Waiver <sup>1</sup>	File on SOC <sup>2</sup> for Amendment and Request Waiver <sup>1</sup>	File on BZ for Reinstatement and Request Waiver <sup>1</sup>	File on BZ as New Application
<b>Filing Period</b>					
<b>Within one (1) year before or thirty (30) days after the expiration of term</b>					
(a) Pre-1961 Use Grant	✓				
(b) Pre-1961 Bulk Grant	✓				
(c) Post-1961 Variance	✓				
(d) Post-1961 Special Permit	✓				
(e) Transient Parking Waiver	✓				
<b>More than one (1) year before or less than two (2) years after the expiration of term</b>					
(a) Pre-1961 Use Grant		✓			✓
(b) Pre-1961 Bulk Grant		✓			✓
(c) Post-1961 Variance		✓			✓
(d) Post-1961 Special Permit		✓			✓
(e) Transient Parking Waiver		✓			
<b>More than two (2) years after but less than ten (10) years after the term expiration</b>					
(a) Pre-1961 Use Grant		✓		✓	✓
(b) Pre-1961 Bulk Grant			✓		✓
(c) Post 1961 Variance			✓		✓
(d) Post-1961 Special Permit					✓
(e) Transient Parking Waiver		✓			
<b>More than ten (10) years after the expiration of term</b>					
(a) Pre-1961 Use Grant				✓	✓
(b) Pre-1961 Bulk Grant			✓		✓
(c) Post-1961 Variance			✓		✓
(d) Post-1961 Special Permit					✓
(e) Transient Parking Waiver		✓			

<sup>1</sup> Any request for a waiver may require the Chair’s approval. If denied, the application may be filed on the BZ as a new application, except for transient parking waiver applications.

<sup>2</sup> Applications for pre-1961 bulk grants that are not filed pursuant to ZR § 11-411 or post 1961 variances and special permits, where the grant is limited to a term that is only specified as a condition in the Board’s resolution, may be filed on the SOC calendar as an amendment to modify such term or condition provided that the applicant requests a waiver.

*This table is intended to serve as a summary. Please see the full text of the associated rule for all requirements.*

**APPENDIX D: Summary of Filing Period and Calendar for Extension of Time Applications**

	File on SOC for Extension of Time	File on SOC for Extension of Time and Request Waiver <sup>1</sup>	File on SOC <sup>2</sup> for Amendment and Request Waiver <sup>1</sup>	File on BZ as New Application
<b>Filing Period</b>				
<b>Within one (1) year before or within thirty (30) days after the expiration of time to complete construction</b>				
(a)	Pre-1961 Use Grant	✓		
(b)	Pre-1961 Bulk Grant	✓		
(c)	Post-1961 Variance	✓		
(d)	Post-1961 Special Permit	✓		
(e)	Transient Parking Waiver	✓		
<b>More than one (1) year before or less than two (2) years after the expiration of time to complete construction</b>				
(a)	Pre-1961 Use Grant		✓	✓
(b)	Pre-1961 Bulk Grant		✓	✓
(c)	Post-1961 Variance		✓	✓
(d)	Post-1961 Special Permit		✓	✓
(e)	Transient Parking Waiver		✓	
<b>More than two (2) years after but less than four (4) after the expiration of time to complete construction</b>				
(a)	Pre-1961 Use Grant		✓	
(b)	Pre-1961 Bulk Grant		✓	
(c)	Post-1961 Variance	✓		✓
(d)	Post-1961 Special Permit	✓		✓
(e)	Transient Parking Waiver		✓	
<b>More than four (4) years after the expiration of time to complete construction</b>				
(a)	Pre-1961 Use Grant		✓	✓
(b)	Pre-1961 Bulk Grant		✓	✓
(c)	Post-1961 Variance			✓
(d)	Post-1961 Special Permit			✓
(e)	Transient Parking Waiver		✓	
<b>Within one (1) year before or thirty (30) days after the expiration of time to obtain a certificate of occupancy</b>				
(a)	Pre-1961 Use Grant	✓		
(b)	Pre-1961 Bulk Grant	✓		
(c)	Post-1961 Variance	✓		
(d)	Post-1961 Special Permit	✓		
(e)	Transient Parking Waiver	✓		
<b>More than one (1) year before or more than thirty (30) days after the expiration of time to obtain a certificate of occupancy</b>				
(a)	Pre-1961 Use Grant		✓	✓
(b)	Pre-1961 Bulk Grant		✓	✓
(c)	Post-1961 Variance		✓	✓
(d)	Post-1961 Special Permit		✓	✓
(e)	Transient Parking Waiver		✓	

<sup>1</sup> Any request for a waiver may require the Chair's approval. If denied, the application may be filed on the BZ as a new application, except for transient parking waiver applications.

<sup>2</sup> Applications for pre-1961 use and bulk grants or transient parking waivers, where the time is specified only as a condition in the Board's resolution, may be filed on the SOC calendar as an amendment to modify such time period provided that the applicant requests a waiver.

*This table is intended to serve as a summary. Please see the full text of the associated rule for all requirements.*