



City of Philadelphia

LAW DEPARTMENT
One Parkway
1515 Arch Street
17th Floor
Philadelphia, PA 19102

Memorandum

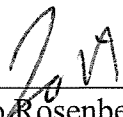
TO: Wayne Miller, Chair, Board of Building Standards

FROM: Jo Rosenberger Altman, Senior Attorney

DATE: March 9, 2020

SUBJECT: Board of Building Standards Rules & Regulations

I have reviewed the Board of Building Standards Rules & Regulations (attached), which I understand the Board of Building Standards voted on and approved on February 27, 2020. I find the regulation to be legal and in proper form. In accordance with Section 8-407(a) of The Philadelphia Home Rule Charter, you may now forward these Regulations to the Department of Records where they will be made available for public inspection.



Jo Rosenberger Altman
Senior Attorney

Attachment

CITY OF PHILADELPHIA
BOARD OF BUILDING STANDARDS

RULES & REGULATIONS

January 30, 2020

**CITY OF PHILADELPHIA
BOARD OF BUILDING STANDARDS**

1. DECLARATION of AUTHORITY

The Board of Building Standards is established by § 3-912 of the Philadelphia Home Rule Charter and has those powers set forth in § 5-1007 of the Philadelphia Home Rule Charter and in accordance with The Philadelphia Code, Title 4, Subcode A, Chapter 8.

2. BOARD OF BUILDING STANDARDS

2.1. Composition and Qualifications

The Board of Building Standards shall be composed of four appointed members and the Commissioner of Licenses and Inspections. The appointed members shall be persons of recognized standing and experience in design and construction, and shall include at least one architect and one professional engineer, each registered under the laws of the Commonwealth of Pennsylvania.

2.2. Officers

The Mayor may designate one member of the Board of Building Standards as Chair. In the absence of a designation by the Mayor, the members of the Board of Building Standards may select from among themselves a Chair.

2.3. Conflict of Interest

Members of the Board of Building Standards shall abide by §20-607 of The Philadelphia Code regarding conflict of interest. A member also shall not cast any vote or participate in any hearing, recommendation or decision in which the member has a personal, professional or financial interest.

3. POWERS and DUTIES

The Board of Building Standards shall:

3.1. Hear requests for variances and requests for extensions of time pertaining to the technical provisions of Title 4 of the Philadelphia Code, excluding those matters relating to accessibility or those provisions of Subcode F (the Philadelphia Fire Code). The Board shall make recommendations of approval to the Commissioner of Licenses & Inspections for final decisions;

- 3.2. Evaluate reasonable accommodation requests submitted under the Fair Housing Amendments Act or Americans with Disabilities Act for recommendation to the Commissioner of Licenses and Inspections;
- 3.3. Advise the Commissioner of Licenses and Inspections, upon his request, on the interpretation of the technical provisions of Title 4 of The Philadelphia Code and of any regulations relating to building safety and sanitation;
- 3.4. Suggest regulations applying standards of good practice in the enforcement of statutes and ordinances dealing with building safety and sanitation;
- 3.5. Upon request of the Commissioner of Licenses and Inspections pass upon the worth of new and substitute materials proposed to be used in building construction and upon new methods of construction;
- 3.6. Consider any suggested changes in standards and regulations, new and substitute materials, or new methods of construction, either with or without holding public hearings;
- 3.7. Make determination of substantial improvement in areas prone to flooding where the assessment of the Code Official is appealed by the applicant.

4. APPEAL PROCEDURES

Appeal procedures are set forth in The Philadelphia Code, Title 4, Subcode A.

4.1. Appeals shall be filed in writing on forms provided by the Board of Building Standards. The appeal shall be accompanied, as applicable, by the required fee, a copy of the violation or permit refusal notice and written authorization from the owner. Electronic media documents may be submitted where approved by the Department.

4.2. The appeal shall be filed within 30 days of the date of the action being appealed, with the exception of appeals of imminently dangerous designations. The latter shall be filed within 5 days of notice of violation.

4.2.1. The postmark date, the date of personal service, or the electronic transmission date will establish the filing date of the appeal and request for variance or extension of time.

5. CONDUCT OF HEARINGS ON APPEALS, REQUESTS FOR VARIANCE, AND REQUESTS FOR EXTENSION OF TIME

5.1. Hearing Calendar

5.1.1. Public hearings of the Board of Building Standards shall be held on days and times to be set by the Board as may be deemed necessary to facilitate the work of the Board.

Special meetings may be held, as needed, upon the call of the Chair.

5.1.2 Public notice of the Board of Building Standards annual, regular meeting schedule must be given not less than 3 days in advance of the first meeting of the calendar or fiscal year.

Public notice of each special or rescheduled meeting must be given at least 24 hours in advance of meeting.

5.1.3. Public notice of meeting schedule shall be provided annually through advertisement in a newspaper of general circulation and the Legal Intelligencer, and posting in the Municipal Services Building. Notice must also be provided to other media, upon request.

5.1.4. A hearing calendar indicating the day, hour, subject and place of hearings shall be posted on the City of Philadelphia website.

5.2 Conduct of Business

5.2.1. A majority of the appointed Board of Building Standards members shall constitute a quorum for any hearing. Members may be physically present or connected via phone or web. Hearings may be conducted in the absence of a quorum; provided that any decision or recommendation must be deferred until a quorum is present.

5.2.2. The Board of Building Standards may determine the order in which evidence shall be presented. Unless otherwise directed by the Board, the appellant's evidence shall be presented first.

All exhibits introduced into evidence at the hearing shall be marked to identify the person or entity.

5.2.3. An owner may represent him- or herself or may be represented by an attorney, design professional, expediter, or contractor.

5.2.4. Pursuant to Section A-802.2.1.4.1 of the Code, the Board hereby delegates its authority to the Plumbing Advisory Board to hear appeals from requirements of the Plumbing Code, and to provide recommendations as authorized by Section A-203.3 on alternative material, design or method of construction related to plumbing.

5.2.4.1. The Plumbing Advisory Board shall follow the same procedures as set forth in these Regulations with respect to such applications as are applicable to the Board of Building Standards.

5.2.4.2. In the event that the Plumbing Advisory Board recommends that an application be granted, that recommendation shall be transmitted directly to the Commissioner of Licenses and Inspections, who shall act upon it in the same manner as the Commissioner would act upon a recommendation of the Board of Building Standards.

5.2.4.3. In the event that the Plumbing Advisory Board recommends that an application be denied, the applicant may request, within 30 days of such decision, a hearing on the application before the Board of Building Standards. The Board of Building Standards shall act upon such request pursuant to these Regulations.

5.2.4.3.1. The Board of Building Standards may consider, but shall not be bound by, the recommendation of the Plumbing Advisory Board in the matter.

5.2.5. The Board of Building Standards may require the submission of additional information and such submissions shall be filed with the Board within 10 days of the date of request, unless otherwise stated by the Board.

5.2.6. No information may be exchanged between the Board (or Board member) and any representative of the Department of Licenses and Inspections, the Fire Department, or any interested person, without the participation of all interested persons.

5.2.6.1. An “interested person” includes the appellant and any person or entity that has registered with the Board in writing, on a form provided by the Board.

5.2.7. Testimony shall be stenographically recorded. A full and complete record shall be provided by the court reporting agency to any party agreeing to pay the costs of transcription.

5.2.8. The Board of Building Standards may establish forms of required documents and presentation of documents by policy.

5.3. Record of Official Vote

The Board of Building Standards shall keep records of its decisions showing the vote of each member upon each appeal or each member's absence or failure to vote. Records of hearings and other official action shall be a public record.

6. DECISIONS AND RECOMMENDATIONS OF THE BOARD OF BUILDING STANDARDS

6.1. Criteria

6.1.1. Appeals The Board of Building Standards shall only consider the following factors when deciding an appeal of the Code Official's Decision: (1) The true intent of The Philadelphia Code was incorrectly interpreted; (2) The provisions of the Philadelphia Code do not apply; (3) An equivalent form of construction is to be used.

6.1.2. Variance and Extension of Time The Board may consider the following factors when ruling upon a request for a variance or extension of time: (1) The reasonableness of the Code's application in a particular case. (2) The extent to which the granting of a variance or an extension of time will pose a violation of The Philadelphia Code or an unsafe condition. (3) The availability of professional or technical personnel needed to come into compliance. (4) The availability of materials and equipment needed to come into compliance. (5) The efforts being made to come into compliance as quickly as possible. (6) Compensatory features that will provide an equivalent degree of protection to the Philadelphia Code.

6.1.3. Reasonable Accommodation The Board shall evaluate a request for a reasonable accommodation in accordance with the Fair Housing Amendments Act or Americans with Disabilities Act.

6.1.4. Determination of Substantial Improvement The Board shall decide on substantial improvement for construction in floodplain in accordance with The Philadelphia Code, Title 4, Subcode A, Chapter 8.

6.1.5. Determination of Worth of New and Substitute Materials The Board shall determine if an alternative material or method is equivalent to that required by Code based upon sufficient technical data, test reports, and documentation. Any approval of an alternative material or method shall not have the effect of waiving the requirements of the Code.

6.2. Decisions

6.2.1. A decision of the Board of Building Standards shall relate only to the technical provisions of Title 4 of the Philadelphia Code, excluding those matters relating to accessibility or Subcode F (the Philadelphia Fire Code), unless otherwise authorized by statute or ordinance.

6.2.1.1. The Board of Building Standards shall consider advice from the Plumbing Advisory Board when hearing appeals from the Plumbing Code where such advice is submitted.

6.2.1.2. Accessibility Advisory Board: Pursuant to the Act (35 P.S. § 7210.301(a) (3)), the Secretary of the Pennsylvania Department of Labor and Industry (Secretary) has the exclusive power to grant modifications and extensions of time and decide issues of technical infeasibility under Chapter 11 (Accessibility) of the Philadelphia Building Code and other accessibility requirements contained in or referenced by the Philadelphia Building Construction and Occupancy Code for individual projects.

6.2.2. No action shall be taken by the Board of Building Standards in the absence of a quorum. All actions of the Board must be supported by a majority of those voting. If a member was absent from the hearing, the member must review transcripts and application materials before casting a vote.

6.2.3. The Board may 1) Deny the request in whole or in part; 2) Recommend the grant of the request in whole or in part; or 3) Recommend the grant of the request upon certain conditions being satisfied.

6.2.4. Recommendations and decisions of the Board of Building Standards shall be in writing in a manner designated by the Board.

6.2.6. The Board shall provide a written notice of its decision to the appellant, the owner or owner's agent, and the code official.

6.2.7. A variance shall remain in effect for the life of the building, provided that there are no significant changes to the conditions of the building with a direct impact on the variance or a proviso and there are no conflicting provisions triggered under a future permit application.

6.2.7.1. A decision shall only apply to the scope of work presented under the permit application.

6.2.7.2. A decision shall be rendered invalid if the associated permit application is abandoned or expired.

6.2.7.3. An approval granted as part of a preliminary plan review application may only be applied to the Code in effect at the time of application.

6.3. Reconsiderations

6.3.1. A request for reconsideration of a final determination by the Board of Building Standards may be permitted by the Chair under special circumstances that were not known by the requestor at the time of the hearing.

6.3.2. If reconsideration is granted, the underlying final determination will be vacated and a public hearing will be scheduled on the matter. All involved parties shall be notified in writing of new hearing date.

6.3.3. A request for reconsideration must be submitted within 30 days of decision date.

6.3.4. The final determination of the Board of Building Standards issued after reconsideration shall be appealable in accordance with Section 7.

6.4. Administrative Review

6.4.1 The applicant of a case previously approved may request an administrative adjustment to the approval through the submission of an amended permit application or a written request to the Boards Administrator.

6.4.2. The Board of Building Standards shall only consider requests which do not significantly deviate from the original appeal and do not generate any additional refusals. The Board may consider minor changes to conditions, scope, or intensity of the refusal.

6.4.3. The Board shall make recommendations of approval to the Commissioner of Licenses and Inspections for final decision.

6.4.3. If any adjustment requested is approved, notice in writing shall be mailed to all interested persons. See para. 5.2.7.1. Within 14 days of the date of such notice, any such person may request in writing a hearing on the adjustment. An approved adjustment does not become effective until the expiration of the 14-day period or, if a hearing is requested, the conclusion of the hearing.

7. APPEALS FROM THE BOARD OF BUILDING STANDARDS

7.1 A decision of the Board of Building Standards may be appealed to the Court of Common Pleas within 30 days of the date of the notice of decision.

7.1.1. The date on which a decision of the Board of Building Standards is mailed shall be stated on the decision document and shall be conclusively presumed to be the date of adjudication, and the time for appeal shall run from that date.

7.1.2. A request for reconsideration shall not stay the time for taking an appeal from the Board of Building Standards.

7.1.3. In all appeals from the Board of Building Standards, the person/ entity taking the appeal shall serve notice of appeal on all involved parties within the time limits specified in Philadelphia Civil Rule 320 or such other local rule or court order as governs appeals from administrative agencies.

7.1.4. The appellant is responsible for ordering and paying for a transcript of the hearing from the court reporter, as required by Philadelphia Civil Rule 320.

7.2. Right of appeal: Any person who has been denied a hearing before a technical board shall have the right to appeal to the Board of License and Inspection Review.