

CITY OF NEW YORK
BOARD OF STANDARDS AND APPEALS
NOTICE OF PUBLIC HEARING AND OPPORTUNITY TO COMMENT ON
PROPOSED RULES

What are we proposing? The Board of Standards and Appeals (the Board) is proposing a rule to promote transparency by codifying existing, longstanding policies that the Board has set in place and setting forth procedures to ensure adherence to such policies.

When and where is the hearing? The Board of Standards and Appeals will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 a.m. on Thursday, April 11, 2019. The hearing will be in the Board of Standards and Appeals hearing room at 22 Reade Street, New York, New York.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the Board of Standards and Appeals through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to submit@bsa.nyc.gov.
- **Mail.** You can mail comments to the Board of Standards and Appeals, 250 Broadway, New York, New York.
- **Fax.** You can fax comments to the Board of Standards and Appeals, (646) 500-6271.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling Toni Matias at (212) 386-0085. You can also sign up in the hearing room before the hearing begins on Thursday, April 11, 2019. You can speak for up to three minutes.

Is there a deadline to submit comments? April 11, 2019

What if I need assistance to participate in the hearing? You must tell the Office of Legal Affairs if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (212) 386-0085. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by Thursday, March 28, 2019.

This location has the following accessibility option(s) available: Ramp for entry to 22 Reade Street, New York, New York. Other reasonable accommodations are available upon request.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days

after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public at 250 Broadway, 29th Floor, New York, New York. A video of the hearing will also be available through the Board's website, <http://www.nyc.gov/bsa>.

What authorizes the Board of Standards and Appeals to make this rule? Sections 1043 and 666 of the City Charter authorize the Board of Standards and Appeals to make this proposed rule. This proposed rule was not included in the Board of Standards and Appeals' regulatory agenda for this Fiscal Year because it was not contemplated when the Board of Standards and Appeals published the agenda.

Where can I find the Board of Standards and Appeals' rules? The Board of Standards and Appeals' rules are in title 2 of the Rules of the City of New York.

What laws govern the rulemaking process? The Board of Standards and Appeals must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

STATEMENT OF BASIS AND PURPOSE OF PROPOSED RULE

Background About the Board of Standards and Appeals

Since 1916 the Board of Standards and Appeals (the "Board") has worked to administer zoning, building, and housing regulations in a fair and just manner to protect the City's interest in safeguarding the general welfare while balancing private property interests.

Under the New York City Charter, the Board is an independent agency that consists of five full-time commissioners. Three commissioners are required to have experience in architecture, urban planning, and engineering, and at the present time the Board's two other commissioners have knowledge of real-property feasibility analysis and applicable law. Using their technical expertise and independent judgment, each commissioner scrutinizes every land use application with the utmost of care.

For each application, the Board holds hearings that are open to the general public where applicants and their team of design professionals present proposals to the Board. Other stakeholders, including tenants, members of the community, other government agencies, and elected officials, are also welcome to present additional information that the Board should consider before voting on an application. Commissioners' reviews frequently require analyzing intricate construction documents, financial statements, testimony from other government agencies, and site conditions observed through visits to the properties and neighborhoods at issue. After considering the record

in its entirety and deliberating, the Board votes on an application. A majority of the Board must affirmatively approve an application; otherwise, the application is denied.

Purpose of Proposed Rule

In recent public hearings, it has come to light that many stakeholders are not aware of how the Board’s commissioners review applications, what evidence commissioners consider, and the specific policies the Board has had in place for years to promote the transparency, integrity, and independence of the Board’s rigorous review process.

Accordingly, this rule aims to promote transparency by codifying existing, longstanding policies and practices that the Board has set in place and establishing procedures to ensure adherence to such policies.

To this end, once an application has been filed, the Board’s commissioners do not communicate with applicants, opposing parties or their counsel, elected officials, or other stakeholders regarding the pending application. Moreover, in rendering their decisions, the commissioners do not consider testimony or communications that do not appear in the application record. Because the Board is dedicated to maintaining the transparency of its processes, anyone wishing to view or obtain a copy of the application record—that is, the specific evidence the Board is considering when deliberating on an application and upon which its decision is based—is welcome to do so by contacting the Board’s office or visiting the Board’s website for further instructions.

Finally, the Board is cognizant that its commissioners serve as impartial arbiters, and thus this rule sets forth standards to preserve the integrity of the Board’s decision-making process and to avoid any appearance of impropriety.

The Board of Standards and Appeals’ authority for these rules is found in sections 666 and 1043 of the New York City Charter.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Section 1-01.1 of § 1-01 of Chapter 1 of Title 2 of the Rules of the City of New York is amended to read as follows:

§ 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 (1) the rules and procedures governing the practices of the Board; [and] (2) requirements for filing applications at and appearing before the Board; and (3) the Board’s commitment to ensuring the independence of the Board, which is crucial to the fair exercise of its authority and discretion regarding zoning and land use in the City of New York. This Section provides a summary of the Board’s authority.

§ 2. Section 1-03 of Chapter 1 of Title 1 of the Rules of the City of New York is amended by adding a new § 1-03.5 to read as follows:

§ 1-03.5 Conduct of Commissioners

Commissioners will observe exemplary standards of conduct to ensure that the integrity and independence of the Board will be preserved and, in so doing, will act in a manner that promotes public confidence.

- (a) Commissioners will not initiate, permit, or consider communications concerning a pending application that are made outside a public hearing or review session or otherwise not included in the record without prior authorization of the general counsel, except that:
 - (1) Communications that are made for scheduling or administrative purposes and that do not affect a substantial right of any party are authorized;
 - (2) Commissioners may consult with the executive director, the general counsel, examiners, other staff, and other Board commissioners to the extent permitted by the New York State Public Officers Law § 100 et seq. (Open Meetings Law); and
 - (3) Commissioners may initiate or consider any other communications when directed by the general counsel or required by law to do so.
- (b) Commissioners will not accept any award, plaque, gift, benefit or thing of value that would result in or create the appearance of:
 - (1) giving preferential treatment to any person or entity;

(2) losing or affecting their independence or impartiality; or

(3) accepting or having accepted such item in exchange for being considered when rendering a decision.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Preventing Conflicts of Interest Among Board Members

REFERENCE NUMBER: 2019 RG 012

RULEMAKING AGENCY: Board of Standards and Appeals

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: March 8, 2019

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Preventing Conflicts of Interest Among Board Members

REFERENCE NUMBER: BSA-2

RULEMAKING AGENCY: Board of Standards and Appeals

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro
Mayor's Office of Operations

March 8, 2019
Date