

**CITY OF NEW YORK
BOARD OF STANDARDS AND APPEALS
NOTICE OF ADOPTION OF FINAL RULES**

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE BOARD OF STANDARDS AND APPEALS by Sections 666 and 1043 of the New York City Charter that the Board of Standards and Appeals has adopted Board rules that enable its digital operations.

The proposed Rule was published in the City Record on July 19, 2021. A public hearing was held on August 24, 2021, and the Board completed its review on September 13, 2021. The Board of Standards and Appeals now adopts the following Rule.

STATEMENT OF BASIS AND PURPOSE

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 must 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

Despite the rapid transition to remote work during the onset of the pandemic in March 2020, the Board rolled out numerous digital systems to prevent its operations from shuttering. Some (like its digital filing system) had been in the works for years; others were immediately envisioned

and put into place. The Board has since witnessed that this transition to fully digital applications reduces its ongoing storage needs for the maintenance of paper records and improves efficiency by providing more immediate public access to materials that otherwise would be stored in an off-site location.

Despite the Board's implementation of this robust digital filing system that allows it to maintain application documents in a digital format, the Board's rules do not yet reflect this new digital reality, which was only enabled by executive order.

Accordingly, the proposed rule is necessary to accommodate this digital-application initiative by removing references to paper documents and other modifications to modernize and better reflect the Board's current operations.

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 matter is in brackets]

Section 1. Section 1-09.1 of Chapter 1 of Title 2 of the Rules of the City of New York is amended to read as follows:

§ 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] accordance with the applicable instructions on the Board's website, 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 2 RCNY §§ 1- 05.3, 1-06.3, and 1-07.3(a).

§ 2. Section 1-09.3 of Chapter 1 of Title 2 of the Rules of the City of New York is amended to read as follows:

§ 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 1/2 x 14 inch sheets or on 11 x 17 inch sheets that are folded to 8 1/2 x 11 inches.]

§ 3. Section 1-10.4 of Chapter 1 of Title 2 of the Rules of the City of New York is amended to read as follows:

§ 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. -

§ 4. Section 1-10.6 of Chapter 1 of Title 2 of the Rules of the City of New York is amended to read as follows:

§ 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, or by another means acceptable to the Board as indicated by the applicable instructions on the Board's website.

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.

§ 5. Section 1-10.7 of Chapter 1 of Title 2 of the Rules of the City of New York is amended to read as follows:

§ 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 2 RCNY § 1-10.6, by submitting to the Board: (1) the completed form of Proof of Notification of Hearing; and (2) a U.S. Postal Service receipt if by regular mail, a signed U.S. Postal Service receipt if by certified mail, a receipt if by express delivery service, [or] an affidavit of service if by personal delivery, or such evidence required by the applicable instructions on the Board's website if by another means.

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.

§ 6. Section 1-11.1 of Chapter 1 of Title 2 of the Rules of the City of New York is amended to read as follows:

§ 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 2:00 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 2 RCNY § 1-01.

§ 7. Section 1-11.3 of Chapter 1 of Title 2 of the Rules of the City of New York is amended to read as follows:

§ 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.

§ 8. Section 1-11.9 of Chapter 1 of Title 2 of the Rules of the City of New York is amended to read as follows:

§ 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] submitted to the Board [office with the requisite number of copies] in accordance with the applicable instructions on the Board's website.

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.

§ 9. Section 1-13.3 of Chapter 1 of Title 2 of the Rules of the City of New York is amended to read as follows:

§ 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] by 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.

§ 10. Section 1-13.4 of Chapter 1 of Title 2 of the Rules of the City of New York is amended to read as follows:

§ 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] digitally or 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 2 RCNY § 1-09.2.

STATEMENT OF SUBSTANTIAL NEED FOR EARLIER IMPLEMENTATION

I hereby find, pursuant to § 1043 of the New York City Charter, and hereby represent to the Mayor, that there is a substantial need for the earlier implementation of amendments to Title 2 of the Rules of the City of New York to enable the Board of Standards and Appeals to continue its digital operations.

During the onset of the pandemic in March 2020, the Board implemented a robust digital filing system during its rapid transition to remote work that reduces its ongoing storage needs for the maintenance of paper records and improves efficiency. These digital systems were enabled by executive orders, which have since lapsed.

The Board wishes to continue its digital operations as soon as possible to address ongoing health concerns and space limitations and to minimize disruption to members of the public caused by the rapid re-implementation of paper-based application materials. These rules facilitate the Board's digital-application initiative and enhance the public's ability to participate in the Board's public hearing process. It is therefore urgent for these rules to take effect as soon as possible.

Therefore, there is a substantial need for the earlier implementation of the proposed rules to enable the Board to continue its digital operations. Consequently, the attached rules shall be effective upon final publication in the City Record, and the requirement that thirty days first elapse after such publication shall not apply.

Margery Perlmutter, R.A., Esq.
Chair, Board of Standards and Appeals

Approved:

Bill de Blasio
Mayor

Dated: _____