

Offered by Councilor Lydia Edwards

Arroyo, Bok, Breadon, Campbell, Essaibi-George, Flaherty, Flynn, Mejia, O'Malley and Janey

CITY OF BOSTON



IN THE YEAR TWO THOUSAND TWENTY

HOME RULE PETITION

WHEREAS, The Zoning Board of Appeal provides a powerful and critical function in city government and in the development process, granting conditional use permits, variances and other exceptions to the zoning code; and

WHEREAS, Members of the ZBA are dedicated volunteers whose service is authorized by and dependent on statutory guidance established by the City of Boston and the general court; and

WHEREAS, Records and notice policies at the ZBA are out of date and not conducive to fully informing members of the general public; and

WHEREAS, Renters, persons knowledgeable in civil rights and fair housing, experts in environmental protection and other stakeholders are not currently represented on the ZBA; and

WHEREAS, Members of the board deserve timely notification and explanation of changes to city ordinances and changes to zoning; and

WHEREAS, Residents of the city would benefit from legal support and guidance and the ability to access zoning services and records of decisions electronically and at Boston City Hall; and

WHEREAS, Establishing a regular report on variances by neighborhood and zoning district would inform future zoning by clearly indicating where actual development practices and the zoning code differ substantially; and

WHEREAS, The City of Boston has launched a review of practices at the Board of Appeal and is considering a range of operational changes; and

WHEREAS, Legislative action is necessary in addition to such review and as a complement, as the enabling legislation for the ZBA currently requires the appointment of certain real estate and other interests among its members, and does not allow for a change in membership or appointment structure; and

WHEREAS, Improvements to mitigate conflict of interest are necessary to ensure public trust in the continued and substantial work of the board; now *THEREFORE BE IT*

ORDERED, That a petition to the General Court, accompanied by a bill for a special law relating to the City of Boston to be filed with an attested copy of this order be, and hereby is, approved under Clause 1 of Section 8 of Article II, as amended, of the Articles of Amendment to the Constitution of the Commonwealth of Massachusetts, to the end that legislation be adopted precisely as follows, except for clerical or editorial changes of form only:

**PETITION FOR A SPECIAL LAW RE:
AN ACT RELATIVE TO THE ZONING BOARD OF APPEAL**

Section 1. Chapter 665 of the Acts of 1956, as amended, is further amended by striking Section 8 and replacing it with the following:

There is hereby established in the city of Boston a board to be called the board of appeal, and to consist of seven members and seven alternate members appointed by the mayor and confirmed by the city council in the following manner: one member and one alternate member with expertise in affordable housing; one member and one alternate member with expertise in civil rights and furthering fair housing; one member and one alternate member with expertise in environmental protection and climate change; one member and one alternate member with a background in urban planning and the design of neighborhoods; one member and one alternate member who are homeowners in the City of Boston; one member and one alternate member who are renters in the City of Boston; and one member and one alternate member with expertise in zoning and the general laws.

All members and all alternate members of said board shall be residents of the city of Boston and shall not be engaged in the business of real estate construction, development, purchase or sale within the city. Appointments of members and alternate members of said board shall be for terms of three years. Any vacancy in the office of a member or alternate member shall be filled for the unexpired term in the same manner in which the original appointment to such term was made. The City of Boston may require as a condition of appointment that members will not be engaged in the business of real estate construction, development, purchase or sale within the city for up to five years after their term of service concludes, or may otherwise set restrictions on activities following a member's term of service. The board of appeal shall also promulgate and publish rules to further discourage real or apparent conflicts of interest during or after a member's term of service.

Each member and each alternate member of said board shall be subject to the provisions of chapter two hundred and sixty-eight A of the General Laws. In addition, notwithstanding the provisions of any general or special law to the contrary, no member or alternate member shall participate in hearing or deciding (a) any appeal involving property in which he has held an ownership interest, or received compensation for services rendered, within two years of the date the appeal was filed with the board; and (b) any appeal involving property in the same geographic zoning district and seeking relief from the same provisions of the zoning regulations as any other appeal pending before the board in which the member or alternate member has a

financial or legal interest. A violation of the provisions of the preceding sentence shall be punishable in the same manner as a violation of the provisions of section nineteen of said chapter two hundred and sixty-eight A and shall be subject to the provisions of section twenty-one of said chapter two hundred and sixty-eight A.

Upon the absence or disqualification from the hearing of any appeal of a member appointed upon nomination or at large under this section, the alternate member appointed in the same manner as such member shall substitute for such member; provided, however, that upon the absence or disqualification from such hearing of such alternate member, the chairperson shall designate one of the remaining alternate members to substitute for such member.

Each member and each alternate member of the board of appeal shall receive for every day or part thereof of actual service two hundred dollars or such sum as may from time to time be fixed by the city council with the approval of the mayor; but no member or alternate member shall so receive in any one year more than twenty-four thousand dollars or such other sum as may from time to time be fixed by the city council with the approval of the mayor. The board shall establish rules and regulations for its own procedures not inconsistent with this act.

Any board or officer of the city or any person aggrieved by reason of being refused a permit by any administrative official under the provisions of the state building code or by reason of any order or decision of the building commissioner or other administrative official in violation of any provision of the state building code or any zoning regulation or amendment thereof adopted under the state building code may appeal to said board of appeal within forty-five days after such refusal, order or decision by paying to the building commissioner a fee of twenty-five dollars* or such other sum as the city council with the approval of the mayor may from time to time prescribe, and by filing with the board or officer from whose refusal, order or decision the appeal is taken a notice of appeal specifying the grounds thereof. Such board or officer shall forthwith transmit to said board of appeal such notice of appeal and all documents and papers constituting the record of the case in which the appeal is taken. Such appeal may be filed electronically or in person at the office of the building commissioner or at Boston City Hall.

Said board of appeal shall fix a reasonable time for the hearing of any appeal and give at least twenty days public notice thereof in a newspaper of general circulation in the city and give at least twenty days public notice electronically through relevant city mailing lists and informational portals. Said board of appeal shall also send notice, by mail, postage prepaid, at least twenty days prior to the hearing, to the appellant and to the owners of all property deemed by said board of appeal to be affected thereby, as they appear on the then most recent local tax list, and to any person filing written request for notice of hearings, such request to be renewed yearly in December, and to the Boston Redevelopment Authority. The board shall schedule the hearing in the evening, if the board receives from the mayor or any city councillor and from fifty residents of the neighborhood in which the project is located, prior to the submission of the notice for publication and the mailing of the notice, a written request that the hearing be scheduled in the evening. The notice shall identify the specific variance, exception, or other zoning relief which the appellant is seeking. At the hearing any party whether or not entitled to notice thereof may appear in person or by agent or attorney. The board of appeal may in its discretion administer oaths to all persons testifying at said hearing. No such hearing shall be held any day on which a state or municipal election, preliminary election or primary is held in said city.

In acting upon such appeal, said board of appeal may, in conformity with the provisions of this act, reverse or affirm in whole or in part, or may modify, any order or decision, and may make such order or decision as ought to be made, and to that end shall have all the powers of the board or officers from who the appeal is taken and may direct the issue of a permit. The board shall require any appellant submit, and shall make public and electronically available, a statement of financial interest. The board may further require an appellant to submit financial interest or ownership information regarding any other properties in the city of Boston in which the appellant has a stake. If the structure or property for which a variance, exception, or other zoning relief is sought is currently or recently occupied, the board shall require an appellant to submit plans to mitigate displacement and eviction, and to provide information on any eviction which may have occurred in the past six months. The board may in its discretion continue the hearing in order that the appellant may meet with any residential neighborhood organization, civic group or community organization specified by the board to discuss the appeal, and the board may in its discretion deny the appeal without prejudice in the event the appellant fails to do so. The concurring vote of five members of said board of appeal shall be necessary to reverse any order or decision of any administrative official under this act, or to decide in favor of the appellant on any matter upon which it is required to pass under any zoning regulation or amendment thereof, or to grant any variance in, or exception to, the application of any such regulation or amendment.

Standards of review for said board of appeal shall be promulgated in the Boston Zoning Code. Such standards shall include but not be limited to whether benefits of granting a use permit, variance or exception to the zoning code exceed the burdens; whether granting a use permit, variance or exception will allow for general consistency with neighborhood planning; whether granting a use permit, variance or exception would impact the city's goals of generating income-restricted housing, furthering fair housing, preventing eviction and displacement and addressing climate change mitigation and resilience; whether specific physical conditions applicable to an individual parcel, section of land or structure but not to a neighborhood in its entirety or in significant portion warrant consideration for variance or exception; and whether any potential hardship for a property user or developer may warrant variance or exception.

Said board of appeal shall cause to be made available contact information for the board, including electronic contact information, an electronic subscription list for notice and advertisement of board hearings, and a detailed record of all its proceedings, which record shall set forth: the reasons for its decision; the vote of each member participating therein; the absence of a member or her or his failure to vote; and any conditions or provisos to which the granting of any variance or exception was made subject by vote of said board of appeal at the hearing. The board shall also produce and publish a report each quarter on the number of variances, exceptions and conditional use permits granted by neighborhood and zoning district.

Such record shall be filed electronically within seven days of the hearing and a print copy shall be made available for any member of the public making such request at Boston City Hall or the office of the building commissioner of the city; provided, however, that the board may for good cause extend the time for such filing.

Said board of appeal shall be supported by one or more employees of the city of Boston who shall not be otherwise engaged in real estate, permitting, planning or development within or on behalf of the city, except as to report findings or recommendations of the board to other boards, offices, departments or agencies and to the general public. Such staff shall also educate

and update members of the board on updates to the municipal code, zoning code, or other regulations which may impact matters before the board. The mayor of Boston and director of the Boston Redevelopment Authority, or their designees, shall convey such updates to the municipal code, zoning code, or other regulations which may impact matters before the board to the staff of the board of appeal.

There shall be established an Office of Community Counsel within the office of the building commissioner. Said office shall provide, in the office of the building commissioner, at Boston City Hall and in other locations or through other forums as directed by the commissioner, neutral advice and guidance explaining standards, votes, procedures, the appeal process and other matters relevant to the board of appeal. Said office may be staffed by employees of the city or services may be provided in kind through legal partnerships or through assistance by non-profit charitable organizations.

Section 2. To ensure continuity in development and prevent a lack of quorum for the Board of Appeal, members of the Board serving under a prior nomination and legislative authorization shall serve until such time as their term of service expires, until replacement members are appointed or until members currently serving are re-appointed under new legislative authorization.

Section 3. This act shall take effect upon its passage.

Filed in Council: January 15, 2020