

§ 223-54. Board of Appeals. [Amended 5-2-2016 by L.L. No. 7-2016¹]

- A. A Board of Appeals, as heretofore established by City Council, is hereby maintained. The Board of Appeals shall consist of five members appointed by the Mayor, each to serve for a term of three years, except that the members of the first Board shall be appointed for the following terms: one member for one year, two members for two years and two members for three years. Vacancies for the unexpired terms of any members shall be filled for such unexpired period only.
- B. The Mayor shall designate a Chairman, or upon the Mayor's failure to do so, the Board of Appeals shall choose its own Chairman and, in his absence, an Acting Chairman. Such Chairman or, in his absence, the Acting Chairman may administer oaths and compel the attendance of witnesses.
- C. All meetings of such Board shall be open to the public. Such Board shall keep minutes of its proceedings, showing the vote of each member on every question. If any member is absent or fails to vote, the minutes shall indicate such fact. The concurring vote of four members of the Board shall be necessary to decide in favor of the applicant on any matter upon which such Board is required to pass under the provisions of this chapter.

§ 223-55. Powers and duties of Board of Appeals.

- A. General. The Board of Appeals shall have all the powers and duties prescribed by the General City Law and by this chapter, which powers and duties are summarized and more particularly specified as follows, provided that none of the following sections shall be deemed to limit any of the power of the Board of Appeals that is conferred to the General City Law. The Board of Appeals shall adopt such rules and regulations as may be necessary or proper to the performance of its powers and duties hereunder and may amend or repeal the same. All provisions of this chapter relating to the Board of Appeals shall be strictly construed. The Board, as a body of limited jurisdiction, shall act in full conformity with all provisions of law and of this chapter and in strict compliance with all limitations contained therein.
- B. Interpretation. On appeal from an order, requirement, decision or determination made by an administrative official charged with the enforcement of this chapter or on request from any official or agency of the City, the Board of Appeals shall have authority to decide any question involving the interpretation of any provision of this chapter, including determination of the exact application of the rules specified in § 223-4.
- C. Variances. On appeal from an order, requirement, decision or determination made by an administrative official charged with the enforcement of this chapter, the Board of Appeals shall have the power to vary or adjust the strict application of

1. Editor's Note: This local law also provided that the changes to Subsection A, below, would not take effect until 12-31-2016.

the regulations or provisions of this chapter relating to the use, construction or alteration of buildings or structures or the use of the land, so that the spirit of this chapter shall be observed, public safety and welfare secured and substantial justice done in accordance with the standards set forth herein as such standards may be amended from time to time by the New York State Legislature. [**Amended 5-2-2016 by L.L. No. 7-2016**]

(1) Use variances.

- (a) The Board of Appeals, upon appeal from the decision or determination of the administrative official charged with the enforcement of such ordinance or local law, shall have the power to grant use variances.
- (b) No such use variance shall be granted by a Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located:
 - [1] The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
 - [2] The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
 - [3] The requested use variance, if granted, will not alter the essential character of the neighborhood; and
 - [4] The alleged hardship has not been self-created.
- (c) The Board of Appeals, in granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

(2) Area variances.

- (a) The Board of Appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances.
- (b) In making a determination, the Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the

neighborhood or community by such grant. In making such a determination the board shall also consider:

- [1] Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting the area variance;
- [2] Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;
- [3] Whether the requested area variance is substantial;
- [4] Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
- [5] Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.

- (c) The Board of Appeals, in granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

D. ²Conditions and safeguards. In all cases where the Board of Appeals authorizes the issuance of a building permit or occupancy permit under any of the above powers, it shall be the duty of said board to attach such conditions and safeguards as may be required to protect the public health, safety, morals and general welfare.

§ 223-56. Appeal procedure. [Amended 7-18-2011 by L.L. No. 11-2011; 10-3-2011 by L.L. No. 12-2011; 4-21-2014 by L.L. No. 1-2014; 5-2-2016 by L.L. No. 7-2016]

All appeals and applications to the Board of Appeals shall be taken in the manner prescribed by law and within such time as shall be prescribed by the Board of Appeals by general rule. All such appeals and applications to the Board shall be made by the owner or agent duly authorized, in writing, and shall be on forms prescribed by the Board. All application materials, including plans, shall be submitted in electronic file format acceptable to the Building Department, in addition to at least five paper copies (or such other format or amount as determined by the Building Department), at least three weeks prior to the regular Board of Appeals meeting at which it will be considered. Each appeal or application shall fully set forth the circumstances of the case, shall refer to the specific provision of the chapter involved and shall exactly set forth, as the case may be, the interpretation that is claimed, the details of the adjustment that is applied for and the

2. Editor's Note: Former Subsection D, Exceptions, was repealed 5-2-2016 by L.L. No. 7-2016. This local law also provided for the redesignation of former Subsection E as Subsection D.

grounds for which it is claimed that the same should be granted or the use for which a permit is sought.

§ 223-57. Notice of hearing before Board of Appeals. [Amended 12-18-2000 by L.L. No. 22-2000; 5-2-2016 by L.L. No. 7-2016]

Notice of hearing shall be provided by the applicant in accordance with § 223-61.3 of this chapter.

§ 223-58. Referral of appeal to Planning Board. [Amended 5-2-2016 by L.L. No. 7-2016]

Upon receipt of an application or appeal to the Board of Appeals, the Secretary of said Board shall transmit to the Secretary of the Planning Board for distribution to the Planning Board Members a copy of said application or appeal, together with a copy of the notice of the aforesaid hearing, and the Planning Board may, prior to the date of said hearing, submit to the Board of Appeals an advisory opinion on said application or appeal.

§ 223-59. Decision by Board of Appeals. [Amended 10-3-2011 by L.L. No. 12-2011; 5-2-2016 by L.L. No. 7-2016]

Every decision of the Board of Appeals shall be by resolution, shall be recorded in accordance with standard forms adopted by the Board and shall fully set forth the circumstances of the case and the findings on which the decision was based. Prior to any final decision of the Board of Appeals, the applicant shall submit a current certificate of inspection issued pursuant to § 179-6 of this Code. Timely notice of all decisions shall be given to all parties to the proceedings. The Board shall file a copy of each such with the City Clerk, Planning Board and the Building Inspector. The Board of Appeals shall report to the City Council periodically, at intervals of not greater than 12 months, summarizing all applications and appeals made to it since its last previous report and summarizing its decisions on such applications and appeals. A copy of such report shall be filed with the Planning Board and the Building Inspector at the same time that it is filed with the City Council.

§ 223-60. Judicial review.

Any person or persons jointly or severally aggrieved by any decision of the Board of Appeals or any Commissioner, officer, department, board or bureau of the City may apply to the Supreme Court of the State of New York for relief in the manner provided for by law.

§ 223-61. Fees. [Amended 1-21-1985; 5-15-1989; 6-15-1992 by L.L. No. 5-1992; 3-1-1993 by L.L. No. 1-1993; 4-18-1994 by L.L. No. 4-1994; 8-16-1999 by L.L. No. 15-1999; 10-16-2000 by L.L. No. 14-2000; 5-19-2003 by L.L. No. 5-2003;

10-17-2005 by L.L. No. 13-2005; 4-7-2008 by L.L. No. 4-2008; 1-26-2009 by L.L. No. 1-2009; 1-26-2009 by Res. No. 25-2009; 7-6-2010 by Res. No. 10-2010]

- A. The City Council shall establish a schedule of fees in connection with the administration and enforcement of this chapter for the following:
- (1) Building permit fees as set forth in the City of Beacon fee schedule.³
 - (2) Application for certificate of occupancy as set forth in the City of Beacon fee schedule.
 - (3) Application for site plan as set forth in the City of Beacon fee schedule.
 - (4) Application for special use permit as set forth in the City of Beacon fee schedule.
 - (5) Application taken to the Zoning Board of Appeals in accordance with § 223-56 of this chapter as set forth in the City of Beacon fee schedule.
 - (6) Application for zoning amendment, supplement, change, modification or repeal of the zoning regulations or district boundaries, in accordance with Article VII of this chapter as set forth in the City of Beacon fee schedule.
 - (7) Recreation fees as set forth in the City of Beacon fee schedule.
 - (8) Rental permit fee as set forth in the City of Beacon fee schedule.
- B. The schedule of fees is in addition to any and all other fees required by this or any other section of this chapter or any other City ordinance or regulations.

§ 223-61.1. Escrow accounts. [Added 3-1-1993 by L.L. No. 1-1993; amended 5-19-2003 by L.L. No. 5-2003; 10-4-2004 by L.L. No. 36-2004; 3-21-2011 by L.L. No. 2-2011]

In addition to the collection of the fees specified in § 223-61 above, the applicant is responsible for reimbursing the City for the cost of professional review fees in connection with an application submitted to the City. For this purpose, the permitting authority shall establish an escrow account funded by the applicant in accordance with the procedure set forth in this chapter.

- A. The escrow account shall be established in accordance with the City of Beacon fee schedule.⁴
- B. The applicant shall deposit additional funds into such account to bring its balance up to 100% of the amount of the full escrow deposit by the last day of each month. If such account is not fully replenished by the last day of the month, the approving agency shall suspend its review of the application. In the case of post-approval

3. Editor's Note: The fee schedule is on file in the City offices.

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inspections and reviews involving construction, the City may issue a stop-work order. No subdivision plat or site development plan shall be endorsed or filed until all professional review fees charged in connection with the review of the project have been reimbursed to the City. No building permit shall be issued unless all professional review fees charged in connection with the review of the applicant's project have been reimbursed to the City and a new escrow account has been established to cover all post-approval review costs, including but not limited to inspection of construction of roads and driveways. No certificate of occupancy shall be issued unless all professional review fees charged in connection with the post-approval inspection and review of the project have been reimbursed to the City. No refunds of any funds remaining on deposit in escrow shall be issued until after all pertinent professional review charges have been paid and the final certificate of occupancy has been issued to the project or, where applicable, the road has been accepted by the City and the one-year maintenance period has expired. The applicant shall be required by the permitting authority from time to time to deliver additional funds to the City for deposit in the escrow account if such additional funds are required to pay for professional consultation services rendered to the City or anticipated to be rendered. Such additional funds shall be delivered to the City before any further consideration of the applicant's project takes place.

- C. The permitting authority shall not make any preliminary, conceptual, project-specific or final determination on an application until all application review fees imposed on the applicant have been paid to the City.
- D. Escrow funds may be refunded to the applicant only when the applicant formally withdraws the application from consideration by the permitting authority, or when the applicant receives a final determination from the permitting authority; in either case, all reimbursable charges incurred by the City shall first be deducted from the escrow account, leaving an unencumbered balance that is not required by the permitting authority to pay consulting costs attributable to the application fees collected in accordance with § 223-61 above, which shall not be refunded.
- E. The imposition of escrow account fees are in addition to and not in place of other fee schedules currently in force.

§ 223-61.2. Environmental quality review. [Added 3-1-1993 by L.L. No. 1-1993]

If the permitting authority is the lead agency in the environmental review of an application in accordance with the State Environmental Quality Review (SEQR) Act, the permitting authority shall impose the fees authorized by Part 617 of Title 6 of the New York Codes, Rules and Regulation (the implementing regulations pertaining to Article 8 of the Environmental Conservation Law) in connection with the environmental review of the application. The permitting authority shall utilize an escrow account in accordance with the procedures in § 223-61.1 above for this purpose.

§ 223-61.3. Hearing notice requirements. [Added 5-2-2016 by L.L. No. 7-2016]

Prior to any public hearing required for applications for approval of a site development plan, special permit, subdivision, or any public hearing before the Board of Appeals, the applicant shall comply with the following notice requirements at its sole cost and expense:

- A. Notice of hearing shall be timely submitted to the official City newspaper for publication in said newspaper at least five days before such hearing. Prior to the public hearing, the applicant shall submit to the City a signed affidavit of publication setting forth the details of the publication, including the date of publication, name of the newspaper and a copy of the notice of hearing published.
- B. Notice of hearing shall be sent by the applicant, by certified mail to all property owners within a distance of 250 feet of the subject property on both sides of the street on which the subject property fronts, to the adjoining property owner or owners to the rear of the property affected, and to all non-owner occupants of the property affected. For purposes of notice, a property shall be deemed to have non-owner occupants when the primary owner mailing address on file with the City of Beacon Tax Assessor, is different than the property address. In such case, a notice shall be mailed to the property addressed to the occupant, and if a multifamily dwelling, then to all individual dwelling units on the property. Prior to the public hearing, the applicant shall submit to the City a signed affidavit of mailing setting forth details of the mailing, including date of mailing, names and addresses to whom the mailing was sent, a copy of the notice of hearing, and the certified mail receipts.