

**TOWN OF ORLEANS
BUILDING CODE APPEALS BOARD
19 SCHOOL ROAD
ORLEANS, MA 02653**

**BUILDING CODE APPEALS BOARD
APPEAL FILING INSTRUCTIONS**

Appeals are held pursuant to 801 CMR 1.02 Informal/Fair Hearing Rules

Procedures outlined on the following pages shall be followed when filing an application to appear before the Town of Orleans Building Code Appeals Board. The Appeals Board is comprised of five (5) members. Appeals hearings are convened as needed. Applications are processed on a first come, first served basis. Typically, it takes thirty days from receipt of an application to be scheduled for a hearing.

Please note that appeals hearings are intended to afford aggrieved parties with the opportunity to seek relief from the provisions of the State Building Code in the form of a variance or interpretation of the applicability of a particular code section. Appeals Board members are not allowed to waive code requirements in their entirety, but may consider alternative methods of complying with the intent of the code. Appeals Board members are not arbiters; rather they are professional persons representing a cross section of the building design, construction, and regulatory industries who are educated in code matters. Board members will judge testimony and materials presented at a hearing based on technical merits in relation to code requirements.

Appeals Board members do not have any authority to rule on zoning issues (land use issues). Appeals relating to land use should be directed to the Zoning Appeals Board.

In order to assist with understanding the process, we have provided answers to Frequently Asked Questions relative to appeals procedures below.

Frequently Asked Questions About the Appeals Process

Question: What is the overall intent of the code?

Answer: The building code sets **minimum** standards for the design and construction of all buildings and structures in the Commonwealth. The intent is to ensure that all citizens are afforded a consistent level of safety in all buildings in which they visit, live, or work. A code user may choose to exceed requirements of the code, but may not design or construct to a lesser standard.

Question: What if I am not able to abide by the provisions of the code verbatim, are appeals procedures available?

Answer: The Town of Orleans maintains an active Building Code Appeals Board which meets as needed. In order to file an appeal with the Appeals Board, a notice of violation must first be issued by the

municipal or state building official charged with the enforcement of the code. This notice identifies the subject matter to be addressed at the appeal.

Once an appeal application is stamped as received by the Building Department, a stay of proceedings is enacted. This stay prevents a building official from taking further action with regard to the subject of the appeal. Also, it allows the applicant to continue to work on the project. *However, please be aware that the work is continued at the applicant's risk.* A stay of proceeding may not be applicable if an inspector has issued a **stop work order**.

Among other things, Appeals Board members may allow variances to provisions of the code or may offer interpretations to clarify disputes relative to a code provision. However, it is not the intent to simply waive code provisions in disregard of its public safety intent. Therefore, an applicant must demonstrate first a need for variance (if this is the intended relief) and then identify how he/she will achieve a comparable level of safety for building occupants. An applicant should always keep in mind that the code is a public safety document and that arguments relating to an appeal case should focus on issues of safety and compliance with the intent of the code; arguments should not focus on monetary saving for a project, at least not entirely.

Generally, it takes about thirty days after receipt of an application for a case to be heard. Although most cases are decided on the day of the hearing, Board members have 30 days following the hearing to issue a written decision. The Board may continue the hearing for additional information. Technically, the decision is not finalized until the written decision is issued. Depending on complexity, cases may at times be continued and/or taken under advisement for determination at a later date.

If the appellant or other party is aggrieved by the Board's determination, he/she may request a reconsideration of the decision. Reconsideration requests must be filed in writing within ten days of receiving the written decision. It is important to note that a reconsideration may only be considered on the basis of **new evidence**. Reconsiderations are not intended simply as a second chance to review the case. Reconsiderations are reserved for those rare instances where all facts relating to a matter may, for reason or other, not have been suitable brought forward and examined during the hearing. Reconsideration requests are required to be reviewed by Board members who originally heard the case. If a majority of Board members agree that new evidence exists, a new hearing will be scheduled. Otherwise, aggrieved parties may appeal a decision to the State Building Code Appeals Board or to a court of law.

Appeals procedures follow the informal/fair hearings procedures as defined in 801 CMR 1.02. Interested parties may retrieve this document by visiting www.state.ma.us/dala/801cmr/htm.

Question: Are there other reasons for filing an appeal?

Answer: An appeal may also be filed for a building official's **failure to act** on a matter. The code allows a period of thirty days for a building official to review and act on an application for permit. Technically, if a response is not received within this period and appeal may be filed on the thirty-first day. However, such quick action is not recommended. Like most people, building officials can get behind on

their workload. If the thirty day period passes without a response, call the building official, documenting the day and time, to see if a response is forthcoming. If a response is not received via phone, try corresponding in writing, by certified mail if so desired. If these methods fail, an appeal may be filed to address the issue of the inspector's failure to act.

Procedures for Filing an Appeals Application

Please follow the instructions below when completing an Appeals Application.

1. Unless filing for a *failure to act*, the appellant must be in receipt of a denial from the building official as required in Chapter 1 of the State Building Code. An appeal must be filed *within forty-five (45) days* of the date of the denial. An appeal may be filed either with the Orleans Building Code Appeals Board or directly with the State Building Code Appeals Board. Also, an appellant may file an appeal relative to a building official's failure to act on his/her permit application as provided for in Chapter 1 of the State Building Code. (A denial is not required when filing for a failure to act).

2. Two documents are required to be completed by the appellant or his/her representative when filing an appeal: (Each is part of this document.)

- *the Appeal Application Form (two pages)*; and
- *the applicable Building Permit Application.*

The application fee is \$50.00 for a 1-2 family residence, \$100.00 for all other uses.

The *Appeal Application Form (two pages) must be completed in total*. The application will be reviewed for completeness prior to a hearing being scheduled. Applications determined to be incomplete will be returned to the applicant for correction. Questions relating to completing the application should be directed to your Town of Orleans Building Department. Questions relating to the process may be directed to the Chairman of the Orleans Building Code Appeals Board.

3. Six complete copies of the appeal filing, including the original must be submitted to the Building Department.

ALL CASES WILL BE HEARD ON THE SCHEDULED DATE. POSTPONEMENTS WILL ONLY BE CONSIDERED IN EXTREME SITUATIONS WHERE SUFFICIENT NOTICE HAS BEEN PROVIDED.

TOWN OF ORLEANS

**BUILDING CODE APPEALS BOARD
APPEAL APPLICATION FORM**

Date: _____

The undersigned hereby appeals to the Town of Orleans Building Code Appeals Board from the decision of the following person. (Please fill in the name of the appropriate municipal building inspector or other authority.)

Building Official from the Town of Orleans: _____

Other: _____

Please mark the appropriate box indicating the requested action to be considered by the Appeals Board members:

Variance _____ Order _____ Direction _____

Interpretation _____ Failure to Act _____ Other _____

(This section must be completed or the application will be returned.)

Has the building or structure been the subject of an appeal by this or any other appeals board previous to this filing?

No _____ Yes _____ If yes, please indicate the date of the previous appeal, whether the matter was heard before a local appeals board, the code section that was at issue, and the specifics of the decision, i.e. a variance was granted/not granted.

Are there unresolved issues with local zoning ordinances? Yes _____ No _____

If yes, please explain briefly why this zoning issue is not a factor in the appeal: _____

Please take care to submit all applications and relevant plans and supporting material with this application to allow time for review. If necessary material is not filed, the Board has the right to deny this appeal. Board members reserve the right to continue proceedings if such material warrant extensive review.

Please provide a brief description of the desired relief below. Additional information may be attached if space is not sufficient. **All appropriate code sections that are subject to appeal must be identified in the description.**

Approval of this appeal as listed above does not relieve the owner of the subject property responsibility for meeting all of the requirements of all other applicable statutes and regulations.

Name of Appellant (property owner): _____

Name of Agent (if any): _____

Address of Subject Property: _____

Address for Service: _____

Telephone Number: _____ Alternate phone: _____

E-mail: _____ Fax number: _____

Errors and Omissions: If the Board finds it feasible to do so, do you wish to be contacted in an attempt to resolve apparent errors or omissions in this application? Yes _____ No _____

Submitted by:

Signature of Appellant and/or Representative

Please Print Name Legibly