


## STATE BUILDING CODE

Board of Appeals  
&  
Construction Supervisor License Complaints


- **From the Denial Letter or Complaint**
  - **To the Hearing**
  - **To the Decision**

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## State Building Code Board of Appeals

- Whoever is aggrieved by an interpretation, order, requirement, direction, or failure to act by any state or local building official who is responsible for the enforcement of the state building code or any of its rules and regulations, may within 45 days after a service of notice, file an appeal directly to the state building appeals board.




## State Building Code Board Of Appeals

- **M.G.L 143 § 100**  
The Mass. General Law that establishes the State's Appeals Board and governs its power and duties.
- Within the Office of Public Safety, there shall be a building code appeals board comprised of three members appointed by the BBRs chairman.

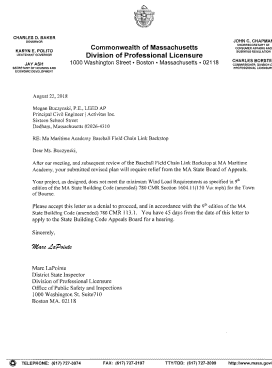


## State Building Code Board of Appeals

- Always insert a statement in any Denial letter notifying the recipient that they have a lawful appeals process through the State Building Board Of Appeals.
- Use the language given in the code book or law.
- Make sure to always state that they have 45 days from the date of the denial letter to appeal to the BCAB.



## State Building Code Board Of Appeals



## State Building Code Board of Appeals

- Once an appeal is filed by an appellant you will receive a copy of the “Service Notice” from them notifying you that they are appealing your decision. Within a few weeks you will receive a “Notice of Hearing” from the BBRS stating the date and time of your scheduled hearing.
- The appeal hearings are typically heard on the First Thursday and Third Tuesday of each Month in the morning.
- Hearing dates for future BCAB hearings can be found on the OPSI website.



## State Building Code Board of Appeals

- The appeal can be for a variance from a specific code section, an interpretation of a code section, lift of an order, direction, or a failure to act by the BO.
- Each case is separate and distinct to that particular property. Any decision by the Board does not “blanket cover” any other. Decisions are not precedent setting.



## State Building Code Board of Appeals

- You will receive a hearing notice from the BBRS stating when and where the hearing will be held.
- The BBRS policy is to forward a copy of the hearing notice to the local Fire Chief, in case their input is required at the hearing.



### State Building Code Board of Appeals

- Your presence at the hearing is required and it is part of your job duty to answer potential questions from the Board. If the case is just a formality, then send a courtesy letter or email to the appeals clerk at least 3 days before the hearing date stating you do not have the power to waive the code, but have no objections to the granting of the requested variance.



### State Building Code Board of Appeals

- The clerk reads into the record the facts of the case including the state building code sections that the appeal is based. Depending of the case, the appeal board may combo multiple code sections into one decision or make a decision on each separate code section. This is determined by the motion stated.



### State Building Code Board of Appeals

#### Hearing

- The hearing is held pursuant to 801 CMR Informal/Fair Hearings Rules and is audio taped.
- The hearing commences with the Board's chairman giving standard statements about the hearing.



### State Building Code Board of Appeals

- The chairman swears in all those providing testimony at the hearing.
- Usually the appellant goes first to state their case with the BO following giving their case and facts. (Depending on the case, the board may ask the FO their input on fire protection systems).



## State Building Code Board of Appeals

- The appeals board wants to hear facts, and not scenarios, so be prepared to answer questions on the building in question. If you are going to present documents at the hearing, PLEASE send them to the clerk at least 10 days before hearing so the documentation is forwarded to the board members for their review.



## State Building Code Board of Appeals

### Decision

- The decision is majority wins and if the two members are split, then the chairman has the deciding vote.
- The written decision usually takes 30 days to be written, but the decision is legal once the hearing is closed.
- Any person aggrieved by a decision of the State Building Code Appeals Board may appeal to Superior Court in accordance with G.L. c.30A, §14 within 30 days of receipt of this decision.
- Any person aggrieved by a decision of the Board may file a "Motion for Reconsideration" within 10 days of said hearing. Any new evidence discovered that was not presented at the hearing that could possibly change the outcome of the hearing may be presented to the board for reconsideration.



## State Building Code Board of Appeals

- The board members do read the cases beforehand, and the more information that have, the easier it is to render a fair, reasonable decision.
- The chairman leads the hearing while the other members can ask questions of those testifying and they are the ones who render a motion (decision).



## Construction Supervisor License Complaints

Massachusetts General Law c 143 §94(i) authorizes the Board of Building Regulations and Standards (BBRS)

(i) To issue licenses to individuals engaged as construction supervisors. Fees for such licenses shall be collected and retained by the commonwealth.



## Construction Supervisor License Complaints

- 780 CMR 110.R5 Prescribes construction supervisor license requirements including:
  - Qualifications;
  - Requisite Exams;
  - Continuing Education; and
  - Complaint Processes



## Construction Supervisor License Complaints

- 110.R5.2.9.1.1 Basis of Complaint.
  - Work related to a specific building permit that is deemed to not comply with 780 CMR (or a consistent pattern of abuse relating to **contractual arrangements** (See the **Office of Consumer Affairs**) between license holder and client) shall be the basis of such complaint.
  - Any work requiring a building permit, which is performed without such permit shall be considered cause for suspension or revocation.



## Construction Supervisor License Complaints

- <http://www.mass.gov/eopss/docs/dps/8th-edition/110-special-regulations-r1-through-r7.pdf>
- 110.R5.2.9.1 Complaints. All complaints relative to a license must be in writing using the **Construction Supervisor License Complaint Application** form provided by the BBRS.
- Any person, including a *building official or the BBRS itself*, may file a complaint. Complaints **must** contain a violation notice written by the local Building Inspector who performed the inspection. Reports citing code sections from a registered Architect and/or Engineer are also accepted.
- Complaints must be received by the BBRS within **three years** of the date the parties entered into an agreement to perform the work requiring licensure pursuant to 780 CMR 110.R5.2.9.1 "Statute of Limitations on filing complaints".



## Construction Supervisor License Complaints

- 110.R5.2.9.1.2 Review and Investigation of Complaints.
  - The BBRS or its designee shall review every complaint filed.
  - If the reviewer determines that the complaint alleges plausible potential violations of 780 CMR by the licensee, a hearing shall be convened.
  - The BBRS may, if it elects, investigate a complaint prior to scheduling a hearing.
  - Failure of a complainant to cooperate in the investigation shall be grounds for dismissal of a complaint.





## Construction Supervisor License Complaints

- 110.R5.2.9.1.2 Review and Investigation of Complaints – Continued
- Upon receipt of a complaint, the BBRS or its designee shall send a letter acknowledging receipt to the complainant, the licensee being complained of, and the appropriate municipal building official.
- A copy of the complaint and all attachments shall be mailed to the licensee and the building official along with the acknowledgment letter.
- Building Officials must provide a complete copy of relevant building jacket documents/materials to the hearings officer either prior to or on the day of the hearing.



## Construction Supervisor License Complaints

- 110.R5.2.9.4 Hearings. Hearings convened pursuant to 780 CMR 110.R5 shall be conducted pursuant to 801 CMR 1.02: Informal/Fair Hearing Rules.
- Any party may be represented by legal counsel.
- All parties shall be permitted to present an opening statement, testify on their own behalf, cross-examine all witnesses, present any relevant witness testimony, present any relevant documentary evidence, and offer a closing argument.
- The hearings officer may question any witness and include any records kept by the BBRS as exhibits.
- The hearings officer may conclude the hearing at any time and issue a decision based on the evidence presented.
- If a licensee does not appear for the hearing, the hearings officer may conduct a hearing in their absence and render a decision based upon the evidence presented, but only after making a finding that the licensee was provided notice as required by 780 CMR 110.R5.2.9.3.



## Construction Supervisor License Complaints

- **110.R5.2.9.3 Notice of Hearing.**
- If the hearings officer or the BBRS determined that a hearing shall be held to resolve a complaint, reasonable notice shall be provided to the complainant and the license holder.
- Mailing of the notice to the address on record with BBRS shall be deemed satisfactory notice to the license holder.
- The notice of hearing shall contain.
  1. The name of the complainant.
  2. The location of the incident giving rise to the complaint.
  3. The date, time and location of said hearing.
- Any person can request copies of all documents of said complaint by filing a formal "Public Records Request" which can be found on the DPS website. <https://www.mass.gov/orgs/office-of-public-safety-and-inspections>



## Construction Supervisor License Complaints

- 110.R5.2.9.5 Decisions and Discipline of License Holders.
- The hearings officer shall issue a written decision after the hearing.
- Decisions shall be issued within 45 to 60 days.
- The hearings officer may suspend a license for a fixed period of time, revoke a license permanently, or reprimand the licensee.
- In conjunction with these disciplinary measures, the hearings officer may order the license holder to retake the CSL examination.
- Any license that is suspended or revoked shall be forwarded to the BBRS immediately.
- A person whose license is revoked may apply in writing to the BBRS for reinstatement no sooner than two years from the date of the revocation.



## Construction Supervisor License Complaints

- 110.R5.2.10 Appeal.
- Any person aggrieved by a decision of the *hearings officer* may, *in writing, request* review of the decision by the BBRS within 30 days of receipt of the written decision.
- The filing of such a petition shall not serve to stay any disciplinary action taken by the *hearings officer*.
- The BBRS may review such decision at its discretion. Such review is an administrative review that shall be based solely on the administrative record and is not to be construed as a second Hearing on the same complaint(s).
- After review, the BBRS may either deny the petition or remand the matter to the *hearings officer* for *further proceedings as directed*.



## Construction Supervisor License Complaints

- *The filing of an appeal with the BBRS shall serve to toll the timing provisions of M.G.L. c. 30A, § 14 until such time as a final decision is rendered by the BBRS.*
- 110.R5.2.10.1 Appeal to a Court.
- Any person aggrieved by this decision may appeal to the Superior Court within 30 days after receipt of this decision in accordance with M.G.L. c. 30A, § 14.

