



**State of New York
Department of State
Division of Code Enforcement and Administration**

One Commerce Plaza
99 Washington Avenue, Albany, New York 12231
(518) 474-4073 Fax: (518) 486-4487 www.dos.state.ny.us

Rules and Regulations - Department of State

**TITLE 19 (NYCRR)
CHAPTER XXXII - DIVISION OF CODE ENFORCEMENT AND ADMINISTRATION**

PART 1205 - UNIFORM CODE: VARIANCE PROCEDURES

This information is not the official version of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR). No representation is made as to its accuracy, nor may it be read into evidence in New York State courts. To ensure accuracy and for evidentiary purposes, reference should be made to the official NYCRR. The official NYCRR is published by West, 610 Opperman Drive, Eagan, MN 55123, 1-800-344-5009. This document is made possible through the courtesy of the Secretary of State of the State of New York.

- §1205.1 Introduction.**
- §1205.2 Regional Boards of Review.**
- §1205.3 Membership.**
- §1205.4 Powers and duties.**
- §1205.5 Practice of Boards of Review.**
- §1205.6 Routine cases.**
- §1205.7 Fees.**

§1205.1 Introduction.

Section 381 of the Executive Law directs the Secretary of State to promulgate rules and regulations for the administration of the Uniform Fire Prevention and Building Code (Uniform Code) including the establishment of a procedure whereby any provision or requirement of the code may be varied or modified. Such procedure is the subject of this part.

§1205.2 Regional Boards of Review.

The regional boards of review previously created by the Secretary of State for the Uniform Code are continued. The regions previously designated for each of the boards by the Secretary of State are also continued. The secretary may, from time to time, alter the number of regional boards of review or re-designate the regions within which boards may exercise their powers, or both.

§1205.3 Membership.

(a) Each regional board of review shall be composed of five members, one of whom shall be a registered architect licensed to practice in this State, one of whom shall be a professional engineer licensed to practice in this State, one of whom shall have a background in building code enforcement, one of whom shall have a background in fire prevention, and one of whom shall be a businessman or lawyer. At least one of the five shall, in addition, be a local government official. Each member shall be a resident

of the region of the board to which he is appointed.

(b) The members of a regional board of review shall be appointed by the secretary to serve staggered three-year terms. An appointment to fill a vacancy shall be made in the manner of the original appointment for the unexpired term. A member may be reappointed at the expiration of his term. The members of a regional board of review shall annually choose from among their number a chairman. Any member of a regional board of review may be removed by the secretary for inefficiency, neglect of duty, misconduct, or malfeasance in office. If a member is temporarily unavailable to attend upon his duties, the secretary, or the secretary's designee, may designate a corresponding member of any other regional board to perform those duties during the period of unavailability.

§1205.4 Powers and duties.

(a) Each regional board of review shall have the power to vary or modify, in whole or in part, any provision or requirement of the Uniform Code in cases where strict compliance with such provision or requirement would entail practical difficulties or unnecessary hardship or would otherwise be unwarranted; provided, however, that any such variance or modification shall not substantially adversely affect provisions for health, safety, and security and that equally safe and proper alternatives may be prescribed. Each regional board of review shall also have the power to hear and decide appeals of any order or determination, or the failure within a reasonable time to make an order or determination, of an administrative official charged to enforce or purporting to enforce the Uniform Code.

(b) The board may vary or modify a provision or requirement of the Uniform Code where the party seeking the variance or modification has shown by the weight of the evidence that in the particular case before the board strict compliance with the particular provision or requirement:

(1) would create an excessive and unreasonable economic burden;

(2) would not achieve the code's intended objective;

(3) would inhibit achievement of some other important public policy;

(4) would be physically or legally impracticable,

(5) would be unnecessary in light of alternatives which ensure the achievement of the code's intended objective or in light of alternatives which, without a loss in the level of safety, achieve the code's intended objective more efficiently, effectively, or economically; or

(6) would entail a change so slight as to produce a negligible additional benefit consonant with the purposes of the code.

(c) In cases before a regional board of review on appeal, the board may fashion suitable remedies so as to do justice among the parties, including but not limited to:

(1) where an order or determination has been made, sustaining, reversing, or modifying, in whole or in part, such order or determination; and

(2) where an order or determination has not been made within a reasonable time, making any such order or determination or directing that any orders, determinations, permits, or authorizations be issued.

§1205.5 Practice of Boards of Review.

(a) Any person aggrieved may petition the boards of review for relief under this Part. The petition shall consist of the application prescribed by the Department of State and all information provided by the petitioner in support of it. The petition shall be delivered to the Department of State, together with copies in such number as the department may require, and shall be accompanied by payment of the specified in this Part.

(b) The department shall serve or cause the petitioner to serve copies of the petition received upon such other parties and persons as the department may determine. The department shall also cause notice of the receipt of any petition to be published in the *State Register* together with a summary of the petition. A petition shall be deemed received only after the department has determined that the information contained within it is minimally sufficient to state matters within the jurisdiction of the regional boards of review. In addition to any information required by other law, such notice shall also state where the petition may be reviewed and that interested persons may request actual notice of any hearing proposed to be held on the petition.

(c) The department shall review the filed petition to determine that it is complete. To be complete the petition shall state the nature of the grievance and the relief sought in sufficient detail as would permit the board to make a determination on the basis of the information contained within the petition. Such detail shall include as appropriate architectural drawings, site plans, descriptions of buildings and their histories, and an explanation of the facts supporting the criteria upon which petitioner relies as a basis for relief. If complete, the department shall transmit the petition, and any materials responsive to the petition, to the appropriate board for a decision on the written record or for a decision after a hearing. If incomplete, the department shall notify the applicant of the information required for completeness. If, after notice that the petition is incomplete, no additional information is forthcoming and the file has remained inactive for a period exceeding 90 days, the department may dismiss the matter for neglect to proceed, but without prejudice to any subsequent petition.

(d) In determining to which board of review a particular petition shall be transmitted, the department shall consider the region wherein the petition arises, the convenience of parties or witnesses, and whether the buildings and/or activities which are the subject of the petition are also subject to the provisions of subdivision (d) of section 1201.2 of this Title. The department may upon the request of a party, upon the request of a member of a board, or upon its own initiative transfer a petition to another board. The department may effect such transfer to correct a mistake in the choice of the forum, to avoid conflicts of interest or the appearance of impropriety, for the convenience of parties or witnesses, or for other good cause shown.

(e) A hearing under this Part shall be at the discretion of the department and the board. If a hearing is to be held, the department shall provide notice thereof to the parties, such interested persons as the department shall have been able to determine, and any other persons who have requested the same. The board may regulate the course of the hearing, and require the presentation of evidence in such manner and order as may be most beneficial to the board. To the extent not inconsistent with this regulation and to the extent it advances the purposes of this Part, practice before the boards of review shall be guided by the Civil Practice Law and Rules.

(f) Whether or not a hearing is held and regardless of the form of the evidence and the manner of its presentation, the burden of proof shall be on the petitioner to show that he is entitled to any relief. The petitioner shall provide the board with facts which demonstrate the burden imposed by strict compliance and with facts as to the safety and propriety of any alternative to strict compliance.

(g) The board may state its decision in the record at any meeting of the board. The decision of the board shall be reduced to writing, subscribed to by the chairman, and shall set out the board's findings and conclusions and the relief granted, if any. Petitions shall be decided within 60 days of completeness unless a longer period is required for good cause shown. Copies of the written decision shall be provided to the parties within a reasonable time after the determination. A copy shall be provided to the Commissioner of the Division of Housing and Community Renewal and a copy shall be filed in and be available for public inspection and copying, at the Department of State, which shall keep a record of all

decisions properly indexed.

§1205.6 Routine cases.

(a) A routine case is one determined by the department to involve *de minimus* variance or modification that does not substantially affect the code's provisions for the health, safety and security.

(b) If the department determines to treat a case as a routine case under this section, it shall make the decision rather than a board of review and shall consider the evidence offered, make findings of fact and conclusions of law, and render its decision in writing. Unless objected to by the petitioner or respondent in a writing received by the department, the decision shall become final after 15 days of receipt of the decision by the parties. A decision shall be filed, indexed, and distributed in the same manner as a decision of the boards of review. A decision timely objected to shall be without force and effect, and the matter to which it pertains shall be transmitted to a board of review for proceedings de novo in accordance with the preceding section.

§1205.7 Fees.

Applications for routine variances to the department shall be accompanied by a \$50 fee, and petitions to a regional board of review shall be accompanied by the following fees:

(a) Petitions related to construction, alteration, or renovation of residential or agricultural occupancies involving no more than one structure with no more than two dwelling units.....\$50

(b) Petitions related to construction, alteration, or renovation of other buildings and structures:

(1) not more than 8,000 square feet.....\$100

(2) more than 8,000 square feet but not more than 25,000 square feet.....\$300

(3) more than 25,000 square feet but not more than 50,000 square feet.....\$500

(4) more than 50,000 square feet.....\$1,000

(c) Petitions related to maintenance or use of buildings or materials and any petition not otherwise provided for above.....\$100