



**CITY OF NEW YORK  
BOARD OF STANDARDS AND APPEALS**  
40 Rector Street, 9<sup>th</sup> Floor  
New York, New York 10006-1705  
**Phone: (212) 788-8500 Fax: (212) 788-8769**  
***www.nyc.gov/bsa***

## **INSTRUCTIONS FOR COMPLETING APPEALS APPLICATION**

Applications filed on the Appeals Calendar (A) include the following:

- Appeals to any order, requirement, decision or determination of the Commissioner or Borough Commissioner of the Department of Buildings (DOB), the Commissioner of the Fire Department, or the Commissioner of the Department of Small Business Services (DSBS);
- Appeals from any rules or regulations relating to the construction, alteration, demolition, structural changes, equipment, occupancy or use of any building or structure or premises under the New York City Charter, the New York City Building Code, the State Multiple Dwelling Law, the Labor Law or any other law under which the Board has jurisdiction;
- Modification or Revocation of Certificates of Occupancy;
- Waivers to allow building permits within a mapped City Street pursuant to Section 35 of the General City Law (GCL), and waivers to allow building permits where streets giving access to such proposed structure has not been duly placed on an official map or plan, pursuant to Section 36 of the GCL;
- Extension of Time to complete construction and/or obtain a Certificate of Occupancy under the Common Law Doctrine of Vested Rights. *(Applicant should also refer to the BZY instructions and check list).*

Information regarding the filing of an Appeals (A) application may be obtained by contacting the Application Desk at (212) 788-8500, the Executive Director at (212) 788-8805 or the Appeals examiner at (212) 788-8752.

### **Filing Instructions**

Submit eight (8) legible, typewritten copies of the completed Appeals Application Form and all applicable Attachments as per Appeals Checklist (Items 1 through 17) to the Board office. One original and seven photocopies are acceptable. One application is required for each separate property. However, multiple actions affecting a single property may be requested of the Board in a single application. A total of eleven (11) copies are required for applications to waive the GCL.

Once the entire application has been reviewed by the Appeals examiner, a Notice of Comments will be issued. After the application has been revised in response to the Notice of Comments, submit eight (8) copies of the revised application to the Board.

Pursuant to Section 1-02(a) of the Board's Rules of Practice and Procedure ("Rules"), all filings shall be made in person at the Board office, and incomplete applications shall not be accepted. The applicant, and not Board staff, is responsible for stamping and clocking all copies of the

application at the Board office. The first page of each individual document and the first page of the set of plans must be stamped and clocked.

## **APPEALS APPLICATION FORM**

[http://www.nyc.gov/html/bsa/downloads/pdf/forms/A\\_form.pdf](http://www.nyc.gov/html/bsa/downloads/pdf/forms/A_form.pdf)

### **Section A: Applicant/Owner**

- Provide the applicant's name, address, phone number and email address;
- Provide the name and address of the owner of record;
- If applicable, provide the name and address of the lessee / contract vendee of the property.

### **Section B: Site Data**

- Provide the address (street and house number);
- Provide the exact location of the subject property. For example: "Property is situated on the west side of Fifth Avenue, 100 feet north of the corner formed by the intersection of X street and Fifth Avenue.";
- Provide the block number and lot number(s), the borough and the community board district within which the property is located. If the property is located in the borough of Queens, identify the borough as follows: "Woodside, Queens". If the site is located within the boundaries of two Community Boards, both should be listed. In addition, the applicant should note if the premises are identified by another address (A/K/A);
- Provide the number of the Certificate of Occupancy, if issued, and attach a copy to the application;
- Identify the Zoning District that the property is located within, and Special District, if applicable, with the map section as it appears in the New York City Zoning Resolution;
- Provide the City Councilmember whose district the property is located within;
- Identify if site is located within a NYC Historic District

### **Section C: Application Type**

Check off the appropriate box(es) relating to the Appeals Application. In addition, identify the date of the denial or final determination upon which this Appeal is being made and note the application number under which the plans were originally filed at DOB or the DSBS.

- **Interpretive Appeals** include appeals to final determinations made by the Commissioner or Borough Commissioner of DOB, the Commissioner of the Fire Department, and the Commissioner of DSBS or any other agency head pursuant to the City Charter. Such applications include appeals to the interpretation of zoning, building, fire code, administrative code appeals or other codes under the Board's jurisdiction;
- **Code Variance** applications include waivers to the Building and Fire Codes, Multiple Dwelling Law, Administrative Codes, Labor Laws or any other code under the Board's jurisdiction;
- **Certificate of Occupancy Modification or Revocation** applications include requests from the Department of Buildings or the Fire Department to modify or revoke an existing certificate of occupancy pursuant to City Charter Section 645(b)(3)e and Building Code Section 28-118.17;
- **GCL 35/36 Waivers** include waivers to allow permits for construction within the bed of a mapped city street (GCL 35), or to allow permits for construction without access from a mapped city street (GCL 36).

- **Vested Rights** applications include renewals of building permits to complete construction of a building or enlargement and/or to obtain a certificate of occupancy under the Common Law Doctrine of Vested Rights.

**Section D: Description**

Provide a brief description of the appeal, and check off whether the proposal is a legalization of an existing condition.

**Section E: BSA History and Related Actions**

Identify any previous Board cases, other pending applications before any government agency or any court action regarding the premises. A list of such actions, copies of all previous Board Resolutions, or relevant court orders or opinions should be attached and explained in the statement of facts and findings.

**Section F: Signature**

Appeals Application Form must be signed by the Applicant, Corporate Officer or Other Authorized Representative affirming that all statements contained within the Application Form and attached materials are true. The Application Form must also be notarized by a notary public, pursuant to all applicable notary laws.

**ATTACHMENTS TO APPLICATION FORM**

In order to process an application efficiently, applicants should submit the following attachments at the time of filing an application.

**Item 1: Statement of Facts and Applicable Findings**

Attach a typewritten Statement of Facts and Findings (if applicable) which discusses the application's principal points and arguments. This statement should include, but is not limited to, the following items:

- Property's address, neighborhood, zoning district and general surrounding area;
- The proposal, including use, size (square feet), height, number of stories, and other relevant features;
- Action requested or type of application;
- Procedural and permit history including explanation of DOB filings and approvals; issuance of permits and any post approval amendments, audits, reconsiderations, stop-work orders, letters of intent to revoke, revocations or rescissions;
- Description of any previous Board approval;
- Discussion of any pending violations and summonses, and all pending court actions.

**Item 2: Affidavit of Owner**

Per Section 1-03(g) of the Board's Rules, the owner of record or other entity or person legally authorized to act for such owner must consent to the filing of the application. The Board's Affidavit of Ownership form must be completed, signed and notarized. If the property is part of a larger zoning lot, the declaration of zoning lot restrictions and certification of parties-in-interest must be attached.

<http://www.nyc.gov/html/bsa/downloads/pdf/forms/affidavit-of-ownership2.pdf>

**Item 3: Department of Buildings or other Agency Final Determinations**

Attach a copy of the DOB final determination or objection/denials. For Interpretive Appeals, the determination must be stamped with the Commissioner or the Borough Commissioner's signature. The same applies to an appeal of the Fire Department or Small Business Services. With the exception of a vested rights application, the date of the denial stamped on the face of the objection must be no more than 30 days prior to the date the application is filed with the Board; otherwise, the application will not be accepted.

**Item 4: Previous Board Resolutions and/or Court Actions**

Attach copies of all Board Resolutions, and/ or court actions related to the subject site, that are relevant to the action before the Board.

**Item 5: Permit Information (Interpretive Appeal and Vested Rights)**

Attach copies or printouts of all relevant material associated with permits that are the subject of the appeal (if applicable). Please note that the requested information may be available from DOB's website. These include but are not limited to the following:

- DOB stop work order and/or DOB objections
- New building or alteration permits
- DOB Audits and considerations
- Certificates of Occupancy
- DOB correspondence
- Proof of any previous vesting actions by DOB or the Board.

**Item 6: Zoning, Building or Other applicable Code Sections (Interpretive Appeal and Code Variance)**

Attach copies of all relevant zoning, building or other code sections that are being appealed or referred to in the applicant's statement of facts.

**Item 7: Relevant Case Law (Interpretive Appeal and Vested Rights)**

Attach copies of all case law identified or referred to in the applicant's statement of facts.

**Item 8: Zoning Map**

Clearly identify the subject site on a copy of the NYC zoning map.

[http://nyc.gov/html/dcp/html/zone/zh\\_zmactable.shtml](http://nyc.gov/html/dcp/html/zone/zh_zmactable.shtml)

**Item 9: Tax Map (GCL)**

Provide a copy of the tax map with the location of the subject block and lot from the NYC Department of Finance

[http://nyc.gov/html/dof/html/property/property\\_info\\_taxmaps.shtml](http://nyc.gov/html/dof/html/property/property_info_taxmaps.shtml)

**Item 10: Survey Map (GCL)**

Provide a survey of the subject property and surrounding area by a licensed surveyor. The survey should be signed, sealed and dated.

**Item 11: BSA Zoning Analysis Form (GCL)**

Complete the Zoning Analysis Form of applicable zoning computations for the existing, permitted/legal, and proposed conditions. All Zoning Analyses must be signed and sealed by a registered architect or a professional engineer.

[http://www.nyc.gov/html/bsa/downloads/pdf/forms/zoning\\_analysis\\_revised\\_march\\_2005.pdf](http://www.nyc.gov/html/bsa/downloads/pdf/forms/zoning_analysis_revised_march_2005.pdf)

**Item 12: Area Map (GCL)**

Provide an area map (e.g., 400-foot radius diagram or land use map) drawn to a scale of 100 feet to 1 inch on sheets not to exceed 11" by 17" in size which clearly shows the subject site, block/ lot, surrounding street system and surrounding developments and land uses.

**Item 13: Plans**

- For Interpretative appeals and vested rights applications, submit one (1) full set of plans for the entire building and seven (7) reduced sets of plans as submitted to, and approved by, the Department of Buildings for permits subject to the application. Plans of any post approval amendments should be provided in consultation with the Appeals Examiner.
- For Code Variance applications, submit a reduced set of plans, including sections and elevations (11" X 17") that depict: (1) the existing (or legal) conditions; (2) the conforming or complying conditions; and (3) the proposed conditions.
- For GCL 35 and 36 waivers, submit a site plan showing the existing conditions and the proposed conditions.

**Item 14: Photographs (Interpretive Appeals, GCL Waivers and Vested Rights)**

Submit a set of 8 ½" x 11" color photographs of the subject site.

- The back of the photograph must indicate the name and address of the photographer and the date the photograph was taken. The address of the subject site should be included.
- Attach an 8" x 10" sketch to each set of photographs and identify the point at which each photograph was taken. Show compass points and indicate the point at which each photograph was taken by means of a number within a circle and an arrow showing the direction in which the camera faced when each photograph was taken.
- For vested rights applications, photographs must show and document the amount and extent of construction completed at the site. It should include multiple views and cover the entire site from each corner.

**Item 15: Construction Information (Vested Rights)**

This attachment should include information and evidence that establishes the amount and time of construction on the site. This may include but is not limited to:

- Table comparing items of construction work performed/amount completed to the total amount of work necessary to complete the scope of work;
- Chronology of construction including dates of filing, approval, issuance and amendments of permits, any stop work orders and lifts, the lapse date (effective date of zoning amendment), excavation, underpinning, pouring of foundations, completion of foundations, super-structure work, infrastructure, etc.;
- Evidence of time when work was performed including dated photographs, contractors construction logs, carting invoices, concrete pour tickets, on-site construction survey, and affidavits from professionals establishing time and date of work;
- Illustrative color-coded plans (foundation, cellar, and/or floor plans) and sections indicating amount of construction lawfully completed versus amount of work remaining to complete.

**Item 16: Financial Information (Vested Rights)**

This attachment should include information and evidence that establishes the costs and expenditures undertaken after the issuance of the permit. This may include but is not limited to:

- Expenditure table comparing costs expended for items of work, to costs remaining to be expended and total for each item of work. Items of work may include excavation, shoring, underpinning, piles, foundation walls, above grade construction, electricals, and finishes
- Construction cost schedule
- Contracts for items of work performed
- Invoices/ Payments receipts
- Cancelled Checks
- Signed and notarized lien waivers
- Affidavits

**Item 17: Appeals Checklist**

At the time of filing at the Board office, complete the Appeals checklist with Board staff to ensure that all applicable items are included in your application.

[http://www.nyc.gov/html/bsa/downloads/pdf/forms/appeals\\_checklist\\_august\\_2010.pdf](http://www.nyc.gov/html/bsa/downloads/pdf/forms/appeals_checklist_august_2010.pdf)

**Item 18: Notification of Filing**

The Board's Rules of Practice and Procedure (Sec 1-07(d)) require the applicant to immediately forward a copy of each Appeal application, including all supporting materials, to the administrative official from whose determination the appeal is made. The Rules also provide that applicants must forward, within three days of filing, a copy of the application and supporting material to the following entities:

- Interpretive Appeals: Legal counsel of the Department of Building and the City Planning Commission.
- GCL 35: Borough President

In addition, where the owner of the property that is the subject of the appeal is not the applicant, the applicant shall provide a copy of the application and all supporting documentation to the property owner. The Board reserves the right to require the applicant to provide copies of the application and all supporting materials to additional individuals or entities not listed above.

The applicant shall submit proof of service on the above individuals or entities within ten (10) days of the initial filing in accordance with Sec 1-3(f) of these rules.

[http://www.nyc.gov/html/bsa/downloads/pdf/2006/rules\\_and\\_banner/rules.pdf](http://www.nyc.gov/html/bsa/downloads/pdf/2006/rules_and_banner/rules.pdf)

Disclaimer: While applicants should follow the above instructions, the Board recognizes that some applications may result in deviations from the instructions; for example, some of the attachment items may not be applicable and therefore not required for certain applications, while additional attachment items not identified in the instructions may be required upon the Board's request.

September 23, 2010