

SECTION 15.

Section 8 Appeal

Appeal from Zoning Administrator's Decision

Applications for Special Permits and Petitions for Variances Filed with Municipal Clerk

Board of Appeals Hearing Within 65 Days

Appeals Procedure

Any appeal under section eight to a permit granting authority shall be taken within thirty days from the date of the order or decision which is being appealed. The petitioner shall file a notice of appeal specifying the grounds thereof, with the city or town clerk, and a copy of said notice, including the date and time of filing certified by the town clerk, shall be filed forthwith by the petitioner with the officer or board whose order or decision is being appealed, and to the permit granting authority, specifying in the notice grounds for such appeal. Such officer or board shall forthwith transmit to the board of appeals or zoning administrator all documents and papers constituting the record of the case in which the appeal is taken.

Any appeal to a board of appeals from the order or decision of a zoning administrator, if any, appointed in accordance with section thirteen shall be taken within thirty days of the date of such order or decision or within thirty days from the date on which the appeal, application or petition in question shall have been deemed denied in accordance with said section thirteen, as the case may be, by having the petitioner file a notice of appeal, specifying the grounds thereof with the city or town clerk and a copy of said notice including the date and time of filing certified by the city or town clerk shall be filed forthwith in the office of the zoning administrator and in the case of an appeal under section eight with the officer whose decision was the subject of the initial appeal to said zoning administrator. The zoning administrator shall forthwith transmit to the board of appeals all documents and papers constituting the record of the case in which the appeal is taken. An application for a special permit or petition for variance over which the board of appeals or the zoning administrator as the case may be, exercise original jurisdiction shall be filed by the petitioner with the city or town clerk, and a copy of said appeal, application or petition, including the date and time of filing, certified by the city or town clerk, shall be transmitted forthwith by the petitioner to the board of appeals or to said zoning administrator.

Meetings of the board shall be held at the call of the chairman or when called in such other manner as the board shall determine in its rules. The board of appeals shall hold a hearing on any appeal, application or petition within sixty-five days from the receipt of notice by the board of such appeal, application or petition. The board shall cause notice of such hearing to be published and sent to

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parties in interest as provided in section eleven. The chairman, or in his absence the acting chairman, may administer oaths, summon witnesses, and call for the production of papers.

Vote

The concurring vote of all members of the board of appeals consisting of three members, and a concurring vote of four members of a board consisting of five members, shall be necessary to reverse any order or decision of any administrative official under this chapter or to effect any variance in the application of any ordinance or by-law.

Decision of Board on Variances and Appeals Within 100 Days After Date of Filing

All hearings of the board of appeals shall be open to the public. The decision of the board shall be made within one hundred days after the date of the filing of an appeal, application or petition, except in regard to special permits, as provided for in section nine. The required time limits for a public hearing and said action, may be extended by written agreement between the applicant and the board of appeals. A copy of such agreement shall be filed in the office of the city or town clerk. Failure by the board to act within said one hundred days or extended time, if applicable, shall be deemed to be the grant of the appeal, application or petition. The petitioner who seeks such approval by reason of the failure of the board to act within the time prescribed shall notify the city or town clerk, in writing, within fourteen days from the expiration of said one hundred days or extended time, if applicable, of such approval and that notice has been sent by the petitioner to parties in interest.

Mutual Extension of Time

Failure to Act will be Deemed a Constructive Grant of the Variance or Appeal

The petitioner shall send such notice to parties in interest, by mail and each notice shall specify that appeals, if any, shall be made pursuant to section seventeen and shall be filed within twenty days after the date the city or town clerk received such written notice from the petitioner that the board failed to act within the time prescribed. After the expiration of twenty days without notice of appeal pursuant to section seventeen, or, if appeal has been taken, after receipt of certified records of the court in which such appeal is adjudicated, indicating that such approval has become final, the city or town clerk shall issue a certificate stating the date of approval, the fact that the board failed to take final action and that the approval resulting from such failure has become final, and such certificate shall be forwarded to the petitioner. The board shall cause to be made a detailed record of its proceedings, indicating the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and setting forth clearly the reason for its decision and of its official actions, copies of all of which shall be filed within fourteen days in the office of the city or town clerk

Petitioner Must Notify Municipal Clerk and Parties in Interest

Municipal Clerk Must Certify Constructive Grant

Board to Make Detailed Record

Copies of Decisions Filed with Municipal Clerk Within 14 Days

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**Notice of Decision to
Petitioner and Parties in
Interest**

and shall be a public record, and notice of the decision shall be mailed forthwith to the petitioner, applicant or appellant, to the parties in interest designated in section eleven, and to every person present at the hearing who requested that notice be sent to him and stated the address to which such notice was to be sent. Each notice shall specify that appeals, if any, shall be made pursuant to section seventeen and shall be filed within twenty days after the date of filing of such notice in the office of the city or town clerk.

Added by St. 1975, c. 808, s. 3; Amended by St. 1987, c. 498, s. 3; St. 1989, c. 341, s. 23.

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SECTION 17.

Appeal

Any person aggrieved by a decision of the board of appeals or any special permit granting authority or by the failure of the board of appeals to take final action concerning any appeal, application or petition within the required time or by the failure of any special permit granting authority to take final action concerning any application for a special permit within the required time, whether or not previously a party to the proceeding, or any municipal officer or board may appeal to the land court department, the superior-court department in which the land concerned is situated or, if the land is situated in Hampden county, either to said land court or superior court department or to the division of the housing court department for said county, or if the land is situated in a county, region or area served by a division of the housing court department either to said land court or superior court department or to the division of said housing court department for said county, region or area, or to the division of the district court department within whose jurisdiction the land is situated except in Hampden county, by bringing an action within twenty days after the decision has been filed in the office of the city or town clerk. If said appeal is made to said division of the district court department, any party shall have the right to file a claim for trial of said appeal in the superior court department within twenty-five days after service on the appeal is completed, subject to such rules as the supreme judicial court may prescribe. Notice of the action with a copy of the complaint shall be given to such city or town clerk so as to be received within such twenty days. The complaint shall allege that the decision exceeds the authority of the board or authority, and any facts pertinent to the issue, and shall contain a prayer that the decision be annulled. There shall be attached to the complaint a copy of the decision appealed from, bearing the date of filing thereof, certified by the city or town clerk with whom the decision was filed.

20 Day Appeal Period

Complaint

If the complaint is filed by someone other than the original applicant, appellant or petitioner, such original applicant, appellant, or petitioner and all members of the board of appeals or special permit granting authority shall be named as parties defendant with their addresses. To avoid delay in the proceedings, instead of the usual service of process, the plaintiff shall within fourteen days after the filing of the complaint, send written notice thereof, with a copy of the complaint, by delivery or certified mail to all defendants, including the members of the board of appeals or

special permit granting authority and shall within twenty-one days after the entry of the complaint file with the clerk of the court an affidavit that such notice has been given. If no such affidavit is filed within such time the complaint shall be dismissed. No answer shall be required but an answer may be filed and notice of such filing with a copy of the answer and an affidavit of such notice given to all parties as provided above within seven days after the filing of the answer. Other persons may be permitted to intervene, upon motion. The clerk of the court shall give notice of the hearing as in other cases without jury, to all parties whether or not they have appeared. The court shall hear all evidence pertinent to the authority of the board or special permit granting authority and determine the facts, and, upon the facts as so determined, annul such decision if found to exceed the authority of such board or special permit-granting authority or make such other decree as justice and equity may require. The foregoing remedy shall be exclusive, notwithstanding any defect of procedure or of notice other than notice by publication, mailing or posting as required by this chapter, and the validity of any action shall not be questioned for matters relating to defects in procedure or of notice in any other proceedings except with respect to such publication, mailing or posting and then only by a proceeding commenced within ninety days after the decision has been filed in the office of the city or town clerk, but the parties shall have all rights of appeal and exception as in other equity cases.

**90 Day Statute of Limitation
on Procedural Defects**

**Legal Counsel for Officer or
Board**

A city or town may provide any officer or board of such city or town with independent legal counsel for appealing, as provided in this section, a decision of a board of appeals or special permit granting authority and for taking such other subsequent action as parties are authorized to take.

Costs Against Board

Costs shall not be allowed against the board or special permit granting authority unless it shall appear to the court that the board or special permit granting authority in making the decision appealed from acted with gross negligence, in bad faith or with malice.

Costs Against Appellant

Costs shall not be allowed against the party appealing from the decision of the board or special permit granting authority unless it shall appear to the court that said appellant or appellants acted in bad faith or with malice in making the appeal to the court.

Posting Surety or Cash Bond The court shall require nonmunicipal plaintiffs to post a surety or cash bond in a sum of not less than two thousand nor more than fifteen thousand dollars to secure the payment of such costs in appeals of decisions approving subdivision plans. All issues in any proceeding under this section shall have precedence over all other civil actions and proceedings.

Added by St. 1975, c. 808, s. 3; Amended by St. 1978, c. 478, s. 32; St. 1982, c. 533, s. 1; St. 1985, c. 492, s. 1; St. 1987, c. 498, s. 4; St. 1989, c. 649, s. 2; St. 2002, c 393, s. 2.