

HOUSE No. 2201

The Commonwealth of Massachusetts

PRESENTED BY:

Daniel J. Ryan

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the Zoning Board of Appeal.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|-----------------------|--------------------|------------------|
| <i>Daniel J. Ryan</i> | <i>2nd Suffolk</i> | <i>2/17/2021</i> |

HOUSE No. 2201

By Mr. Ryan of Boston, a petition (accompanied by bill, House, No. 2201) of Daniel J. Ryan (with the approval of the mayor and city council) relative to the Zoning Board of Appeal in the city of Boston. Municipalities and Regional Government. [Local Approval Received.]

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 4954 OF 2019-2020.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act relative to the Zoning Board of Appeal.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Section 1. Chapter 665 of the Acts of 1956, as amended, is further amended by striking
2 Section 8 and replacing it with the following:

3 There is hereby established in the city of Boston a board to be called the board of appeal,
4 and to consist of nine members and nine alternate members appointed by the mayor and
5 confirmed by the city council in the following manner: one member and one alternate member
6 from four candidates with expertise in environmental protection and climate change nominated
7 by the Conservation Law Foundation; one member and one alternate member from four
8 candidates with a background in urban planning and the design of neighborhoods nominated by
9 the Metropolitan Area Planning Council; one member and one alternate member from four
10 candidates nominated by the Greater Boston Real Estate Board; one member and one alternate

11 member nominated by the Boston Society of Architects; one member and one alternate member
12 from eight candidates, two nominated by the Master Builders Association, two by the Building
13 Trades Employers' Association, two by the Associated General Contractors of Massachusetts,
14 and two by The Contractor's Association of Boston, Inc.; one member and one alternate member
15 from four candidates nominated by the Building Trades Council of Greater Boston; one member
16 and one alternate member selected at large by the mayor with expertise in zoning and the general
17 laws; and two members and two alternate members selected by the mayor each of whom has
18 served for at least one year (1) as an officer or member of the board of directors or similar
19 governing body of a residential neighborhood organization which (a) is a non-profit organization
20 consisting primarily of residents of a specific neighborhood; (b) has at least twenty-five
21 members; (c) allows any resident of the neighborhood to join as a member; (d) has as a principal
22 purpose the preservation of the quality of residential life in the neighborhood; and (e) has been in
23 existence for at least two years; or (2) as a member of a residential neighborhood organization
24 which (a) has been established by the mayor; (b) consists primarily of residents of a specific
25 neighborhood; and (c) has as a principal purpose the preservation of the quality of residential life
26 in the neighborhood; provided that any person appointed from a residential neighborhood
27 organization under this section is a resident of the neighborhood represented by the residential
28 neighborhood organization in which she or he has served. The two members from residential
29 neighborhood organizations shall reside at the time of their respective appointments in different
30 city council districts. The two alternate members from residential neighborhood organizations
31 shall reside at the time of their respective appointments in different city council districts. Of the
32 two members and two alternate members from residential neighborhood organizations, one

33 member and alternate member shall be a homeowner in the City of Boston and the other member
34 and alternate member a renter in the City of Boston.

35 All members and all alternate members of said board shall be residents of the city of
36 Boston. Appointments of members and alternate members of said board shall be for terms of
37 three years and shall serve no more than two terms in total, provided, however, that members
38 serving on the Board at the time this provision comes into effect shall serve no more than 1
39 additional term from that date if so appointed by the Mayor and approved by the Council. Any
40 vacancy in the office of a member or alternate member shall be filled for the unexpired term in
41 the same manner in which the original appointment to such term was made.

42 Each member and each alternate member of said board shall be subject to the provisions
43 of chapter two hundred and sixty-eight A of the General Laws. In addition, notwithstanding the
44 provisions of any general or special law to the contrary, no member or alternate member shall
45 participate in hearing or deciding (a) any appeal involving property in which he has held an
46 ownership interest, or received compensation for services rendered, within five years of the date
47 the appeal was filed with the board; and (b) any appeal involving property in the same
48 geographic zoning district and seeking relief from the same provisions of the zoning regulations
49 as any other appeal pending before the board in which the member or alternate member has a
50 financial or legal interest. A violation of the provisions of the preceding sentence shall be
51 punishable in the same manner as a violation of the provisions of section nineteen of said chapter
52 two hundred and sixty-eight A and shall be subject to the provisions of section twenty-one of
53 said chapter two hundred and sixty-eight A.

54 Upon the absence or disqualification from the hearing of any appeal of a member

55 appointed upon nomination or at large under this section, the alternate member appointed
56 in the same manner as such member shall substitute for such member; provided, however, that
57 upon the absence or disqualification from such hearing of such alternate member, the chairperson
58 shall designate one of the remaining alternate members to substitute for such member.

59 Upon the absence or disqualification from the hearing of any appeal of a member
60 appointed from a residential neighborhood organization under this section, the alternate member
61 appointed from a residential neighborhood organization whose term is concurrent with such
62 member shall substitute for such member; provided, however, that upon the absence or
63 disqualification from such hearing of such alternate member, the other alternate member
64 appointed from a residential neighborhood organization shall substitute for such member; and
65 provided, further, that upon the absence or disqualification from such hearing of such other
66 alternate member, the chairperson shall designate one of the remaining alternate members to
67 substitute for such member.

68 Each member and each alternate member of the board of appeal shall receive for every
69 day or part thereof of actual service two hundred dollars or such sum as may from time to time
70 be

71 fixed by the city council with the approval of the mayor; but no member or alternate
72 member shall so receive in any one year more than twenty-four thousand dollars or such other
73 sum as may from time to time be fixed by the city council with the approval of the mayor. The
74 board shall establish rules and regulations for its own procedures not inconsistent with this act.

75 Any board or officer of the city or any person aggrieved by reason of being refused a
76 permit by any administrative official under the provisions of the state building code or by reason

77 of any order or decision of the building commissioner or other administrative official in violation
78 of any provision of the state building code or any zoning regulation or amendment thereof
79 adopted under the state building code may appeal to said board of appeal within forty-five days
80 after such refusal, order or decision by paying to the building commissioner a fee of twenty- five
81 dollars* or such other sum as the city council with the approval of the mayor may from time to
82 time prescribe, and by filing with the board or officer from whose refusal, order or decision the
83 appeal is taken a notice of appeal specifying the grounds thereof. Such board or officer shall
84 forthwith transmit to said board of appeal such notice of appeal and all documents and papers
85 constituting the record of the case in which the appeal is taken. Such appeal may be filed
86 electronically or in person at the office of the building commissioner or at Boston City
87 Hall.

88 Said board of appeal shall fix a reasonable time for the hearing of any appeal and give at
89 least twenty days public notice thereof in a newspaper of general circulation in the city and give
90 at least twenty days public notice electronically through relevant city mailing lists and
91 informational portals. Said board of appeal shall also send notice, by mail, postage prepaid, at
92 least twenty days prior to the hearing, to the appellant and to the owners of all property deemed
93 by said board of appeal to be affected thereby, as they appear on the then most recent local tax
94 list, and to any person filing written request for notice of hearings, such request to be renewed
95 yearly in December, and to the Boston Redevelopment Authority. The board shall schedule the
96 hearing in the evening, if the board receives from the mayor or any city councilor and from fifty
97 residents of the neighborhood in which the project is located, prior to the submission of the
98 notice for publication and the mailing of the notice, a written request that the hearing be
99 scheduled in the evening. The notice shall identify the specific variance, exception, or other

100 zoning relief which the appellant is seeking. At the hearing any party whether or not entitled to
101 notice thereof may appear in person or by agent or attorney. The board of appeal may in its
102 discretion administer oaths to all persons testifying at said hearing. No such hearing shall be held
103 any day on which a state or municipal election, preliminary election or primary is held in said
104 city.

105 In acting upon such appeal, said board of appeal may, in conformity with the provisions
106 of this act, reverse or affirm in whole or in part, or may modify, any order or decision, and may
107 make such order or decision as ought to be made, and to that end shall have all the powers of the
108 board or officers from who the appeal is taken and may direct the issue of a permit. The board
109 may in its discretion continue the hearing in order that the appellant may meet with any
110 residential neighborhood organization specified by the board to discuss the appeal, and the board
111 may in its discretion deny the appeal without prejudice in the event the appellant fails to do so.
112 The concurring vote of five members of said board of appeal shall be necessary to reverse any
113 order or decision of any administrative official under this act, or to decide in favor of the
114 appellant on any matter upon which it is required to pass under any zoning regulation or
115 amendment thereof, or to grant any variance in, or exception to, the application of any such
116 regulation or amendment.

117 Standards of review for said board of appeal shall be promulgated in the Boston Zoning
118 Code.

119 Said board of appeal shall cause to be made available contact information for the board,
120 including electronic contact information, an electronic subscription list for notice and
121 advertisement of board hearings, and a detailed record of all its proceedings, which record shall

122 set forth: the reasons for its decision; the vote of each member participating therein; the absence
123 of a member or her or his failure to vote; and any conditions or provisos to which the granting of
124 any variance or exception was made subject by vote of said board of appeal at the hearing. The
125 board shall also produce and publish a report each quarter on the number of variances,
126 exceptions and conditional use permits granted by neighborhood and zoning district.

127 Such record of the vote shall be filed electronically within 10 business days of the
128 hearing, and full report of the hearing withing 60 days, and a print copy shall be made available
129 for any member of the public making such request at Boston City Hall or the office of the
130 building commissioner of the city; provided, however, that the board may for good cause extend
131 the time for such filing.

132 Said board of appeal shall be supported by one or more employees of the city of Boston
133 who shall not be otherwise engaged in real estate, permitting, planning or development
134 within or on behalf of the city, except as to report findings or recommendations of the board to
135 other boards, offices, departments or agencies and to the general public. Such staff shall also
136 educate and update members of the board on updates to the municipal code, zoning code, or
137 other

138 regulations which may impact matters before the board. The mayor of Boston and
139 director of the Boston Redevelopment Authority, or their designees, shall convey such updates to
140 the municipal code, zoning code, or other regulations which may impact matters before the board
141 to the staff of the board of appeal.

142 The commissioner of inspectional services, also known as the building commissioner,
143 shall ensure that an employee within that office, or an individual provided by a non-profit

144 organization under contract with that office, provide neutral advice and guidance explaining to
145 members of the public the standards, procedures, appeal process and all other matters relevant to
146 the Board of Appeal. Such employee or individual shall be present and clearly identifiable at
147 each meeting of the board of appeal and shall be located either at city hall or at the office of the
148 building commissioner.

149 Section 2. To ensure continuity in development and prevent a lack of quorum for the
150 Board of Appeal, members of the Board serving under a prior nomination and legislative
151 authorization shall serve until such time as their term of service expires, until replacement
152 members are

153 appointed or until members currently serving are re-appointed under new legislative
154 authorization.

155 Section 3. This act shall take effect upon its passage.