

FIRE SAFETY CODE

Board of Appeal and Review

GUIDANCE DOCUMENT 23-01

Conduct at Variance / Appeal Hearings

1. All documentary materials and exhibits intended to be used at the hearing by either party must be submitted to the Board at least seven (7) calendar days prior to the hearing date [see RIFC section 1.10.4.3]. *Exhibits will not be accepted at the time of the hearing that have not been previously submitted.* In special circumstances, the Board can waive this requirement at the discretion of the chairperson.
2. AUTHORITY HAVING JURISDICTION [AHJ]: The Deputy State Fire Marshal (DSFM) or Assistant Deputy State Fire Marshal (ADSFM) that conducted the inspection or plan review of the property in question must appear at the hearing. An authorized alternate representative of the AHJ may appear in lieu of the actual inspector – this include a representative of the State Fire Marshal’s Office appearing for a municipal city, town or fire district inspector when requested.
3. APPELLANT: The owner of the property, an authorized representative for the owner (with a letter of authorization) or an attorney for the owner must appear at the hearing [see 450-RICR-00-00-1.7.1(K)].
 - a. The Appellant shall present their case to the Board first, indicating what relief is being requested as it relates to the appropriate Inspection Report, Violation Notice or Plan Review Rejection Notice.
 - b. The general rule for presenting a case shall be to start with the first item of the document listed in (a), above and to proceed chronologically through the report until all items are addressed.
 - c. If there are numerous items on a report and a number of them have already been corrected and/or relief is not being sought, it is acceptable to begin the request with a statement to that effect, listing the items that have been corrected and will not be addressed.

- d. In the event that the Applicant does not wish to make an oral presentation and rely on their written application only, or at the discretion of the chairperson, the AHJ may be requested to provide their input on the matter first.
- e. Types of relief requests include:
 - i. **Time for Compliance** – the typical relief for each case varies, but often times a period of one hundred eighty (180) days is granted which is broken down into thirty (30) days to develop and submit a plan of action to the AHJ and an additional one hundred fifty (150) days to implement the plan. Depending on the circumstances and the nature of the issues, this time can range from days to years on an item-by-item basis.
 - ii. **Alternate Compliance** – the relief requested is for a plan of action that does not meet the prescriptive requirements of the Code but offer an alternate set of safeguards to mitigate any fire or life safety issues.
 - iii. **Outright Relief** – an outright variance from the Code requirements is sought based upon unique circumstances such as structural hardship, extreme difficulty in compliance, statutory or regulatory restrictions by other agencies preventing compliance, etc.
- 4. Once the Applicant has made their presentation, the AHJ shall be requested to respond and provide additional information, explanation or argument. If necessary, the chairperson may request input during the Applicant’s presentation at the request of any Commissioner.
- 5. If during the course of a hearing it becomes apparent that a mutually agreeable outcome will not be attained, it may be beneficial to continue the hearing to another date to allow the parties to have further discussions and return with a modified plan of action.
- 6. Note that while a simple majority vote of the Commissioners present at the hearing is required for a Decision to be issued, there must be at least five (5) votes in accord for any relief to be granted [see RIFC section 1.10.5.7].
- 7. **Any of these guidelines may be waived or modified by the Board at the time of the hearing.**