# SENATE . . . . . No. 3038

## The Commonwealth of Massachusetts

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

by inserting the following section;-

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

There is hereby established in the city of Boston a board to be called the board of appeal, and to consist of nine members and nine alternate members appointed by the mayor and confirmed by the city council in the following manner: one member and one alternate member from four candidates with expertise in environmental protection and climate change nominated by the Conservation Law Foundation; one member and one alternate member from four candidates with a background in urban planning and the design of neighborhoods nominated by the Metropolitan Area Planning Council; one member and one alternate member from four candidates nominated by the Greater Boston Real Estate Board; one member and one alternate member nominated by the Boston Society of Architects; one member and one alternate member from eight candidates, two nominated by the Master Builders Association, two by the Building Trades Employers' Association, two by the Associated General Contractors of Massachusetts, and two by The Contractor's Association of Boston, Inc.; one member and one alternate member from four candidates nominated by the Building Trades Council of Greater Boston; one member

and one alternate member selected at large by the mayor with expertise in zoning and the general laws; and two members and two alternate members selected by the mayor each of whom has served for at least one year (1) as an officer or member of the board of directors or similar governing body of a residential neighborhood organization which (a) is a non-profit organization consisting primarily of residents of a specific neighborhood; (b) has at least twenty-five members; (c) allows any resident of the neighborhood to join as a member; (d) has as a principal purpose the preservation of the quality of residential life in the neighborhood; and (e) has been in existence for at least two years; or (2) as a member of a residential neighborhood organization which (a) has been established by the mayor; (b) consists primarily of residents of a specific neighborhood; and (c) has as a principal purpose the preservation of the quality of residential life in the neighborhood; provided that any person appointed from a residential neighborhood organization under this section is a resident of the neighborhood represented by the residential neighborhood organization in which she or he has served. The two members from residential neighborhood organizations shall reside at the time of their respective appointments in different city council districts. The two alternate members from residential neighborhood organizations shall reside at the time of their respective appointments in different city council districts. Of the two members and two alternate members from residential neighborhood organizations, one member and alternate member shall be a homeowner in the City of Boston and the other member and alternate member a renter in the City of Boston.

All members and all alternate members of said board shall be residents of the city of Boston. Appointments of members and alternate members of said board shall be for terms of three years and shall serve no more than two terms in total, provided, however, that members serving on the Board at the time this provision comes into effect shall serve no more than 1

additional term from that date if so appointed by the Mayor and approved by the Council. Any vacancy in the office of a member or alternate member shall be filled for the unexpired term in the same manner in which the original appointment to such term was made.

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

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

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

Upon the absence or disqualification from the hearing of any appeal of a member appointed from a residential neighborhood organization under this section, the alternate member

appointed from a residential neighborhood organization whose term is concurrent with such member shall substitute for such member; provided, however, that upon the absence or disqualification from such hearing of such alternate member, the other alternate member appointed from a residential neighborhood organization shall substitute for such member; and provided, further, that upon the absence or disqualification from such hearing of such other alternate member, the chairperson shall designate one of the remaining alternate members to substitute for such member.

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

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

Any board or officer of the city or any person aggrieved by reason of being refused a permit by any administrative official under the provisions of the state building code or by reason of any order or decision of the building commissioner or other administrative official in violation of any provision of the state building code or any zoning regulation or amendment thereof adopted under the state building code may appeal to said board of appeal within forty-five days after such refusal, order or decision by paying to the building commissioner a fee of twenty- five dollars* or such other sum as the city council with the approval of the mayor may from time to time prescribe, and by filing with the board or officer from whose refusal, order or decision the

appeal is taken a notice of appeal specifying the grounds thereof. Such board or officer shall forthwith transmit to said board of appeal such notice of appeal and all documents and papers constituting the record of the case in which the appeal is taken. Such appeal may be filed

electronically or in person at the office of the building commissioner or at Boston City Hall.

Said board of appeal shall fix a reasonable time for the hearing of any appeal and give at least twenty days public notice thereof in a newspaper of general circulation in the city and give at least twenty days public notice electronically through relevant city mailing lists and informational portals. Said board of appeal shall also send notice, by mail, postage prepaid, at least twenty days prior to the hearing, to the appellant and to the owners of all property deemed by said board of appeal to be affected thereby, as they appear on the then most recent local tax list, and to any person filing written request for notice of hearings, such request to be renewed yearly in December, and to the Boston Redevelopment Authority. The board shall schedule the hearing in the evening, if the board receives from the mayor or any city councilor and from fifty residents of the neighborhood in which the project is located, prior to the submission of the notice for publication and the mailing of the notice, a written request that the hearing be scheduled in the evening. The notice shall identify the specific variance, exception, or other zoning relief which the appellant is seeking. At the hearing any party whether or not entitled to notice thereof may appear in person or by agent or attorney. The board of appeal may in its discretion administer oaths to all persons testifying at said hearing. No such hearing shall be held any day on which a state or municipal election, preliminary election or primary is held in said city.

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

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

Said board of appeal shall cause to be made available contact information for the board, including electronic contact information, an electronic subscription list for notice and advertisement of board hearings, and a detailed record of all its proceedings, which record shall set forth: the reasons for its decision; the vote of each member participating therein; the absence of a member or her or his failure to vote; and any conditions or provisos to which the granting of any variance or exception was made subject by vote of said board of appeal at the hearing. The board shall also produce and publish a report each quarter on the number of variances, exceptions and conditional use permits granted by neighborhood and zoning district.

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

Said board of appeal shall be supported by one or more employees of the city of Boston

who shall not be otherwise engaged in real estate, permitting, planning or development within or on behalf of the city, except as to report findings or recommendations of the board to other boards, offices, departments or agencies and to the general public. Such staff shall also educate and update members of the board on updates to the municipal code, zoning code, or other

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

The commissioner of inspectional services, also known as the building commissioner, shall ensure that an employee within that office, or an individual provided by a non-profit organization under contract with that office, provide neutral advice and guidance explaining to members of the public the standards, procedures, appeal process and all other matters relevant to the Board of Appeal. Such employee or individual shall be present and clearly identifiable at each meeting of the board of appeal and shall be located either at city hall or at the office of the building commissioner.

Section 2. To ensure continuity in development and prevent a lack of quorum for the Board of Appeal, members of the Board serving under a prior nomination and legislative authorization shall serve until such time as their term of service expires, until replacement members are appointed or until members currently serving are re-appointed under new legislative authorization.

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