

450-RICR-00-00-1

TITLE 450 – FIRE SAFETY CODE BOARD OF APPEAL AND REVIEW

CHAPTER 00 – N/A

SUBCHAPTER 00 – N/A

PART 1 – Fire Safety Code Sections 1 Through 6

1.1 Dedication

The Rhode Island Fire Safety Code, as outlined herein, is hereby dedicated, in loving memory to Fire Board Chairman Rene Coutu, to Fire Alarm Superintendent Martin Ballou, and to the Victims, Survivors and Families of the Station Nightclub Fire. May they be at peace with the knowledge that their sacrifices have significantly contributed to the establishment of Rhode Island as an international model for fire safety guiding not only other States but countries such as Argentina and China in the development of fire safety programs for the protection of their citizens.

1.2 Declaration of Policy

- A. It is the policy of the State of Rhode Island to simplify, clarify and modernize the law governing fires and fire prevention, and to specify reasonable minimum requirements for fire safety. It is the statutory directive and policy of the Fire Safety Code Board of Appeal and Review to adopt Rules and Regulations to safeguard life and property from the hazards of fire and explosives in accordance with safe practice as embodied in widely recognized standards of good practice for fire prevention and fire protection.
- B. The purpose of these Rules and Regulations is to codify the State Fire Safety Code, which applies to all structures, new and existing and outlines the fire safety requirements of all assembly, educational, day-care, health care, ambulatory health care, detention and correctional, lodging or rooming house, hotel and dormitory, apartment, residential board and care, mercantile, business, industrial and storage occupancies in the State. In addition, the Fire Safety Code sets forth the requirements for smoke alarms and carbon monoxide alarms in all one (1), two (2) and three (3) family dwellings in the State. The Fire Safety Code also provides for the regulation of specialized fire protection requirements for hazardous materials & chemicals, flammable & combustible liquids, liquefied petroleum gases, liquefied natural gases, fireworks, model rocketry, heating appliances, spray application of flammable & combustible liquids, welding, use of torches, dust explosion prevention, industrial ovens & furnaces, mechanical refrigeration, combustible fibers and airport refueling operations. Finally, the Fire Safety Code addresses electrical fire safety, smoking, outdoor fires, fire lanes,

commercial cooking equipment, combustible waste, tar kettles, Christmas trees, blasting and explosives.

1.3 Consolidation of Rhode Island Fire Safety Code

The Fire Safety Code, Parts 1 through 10 of this Subchapter, as adopted herein, along with the provisions of R.I. Gen. Laws Chapter 23-28.1 *et seq.* shall be known as the Rhode Island Fire Safety Code.

1.4 Authority

The provisions of the Fire Safety Code, Parts 1 through 10 of this Subchapter (Hereinafter also referred to as "Fire Safety Code" or "This Code"), are adopted pursuant to R.I. Gen. Laws § 23-28.3-3, in an effort to supplement, clarify, and modernize the minimum requirements for fire safety in new and existing buildings and facilities as outlined in R.I. Gen. Laws Chapter 23-28.1 *et seq.* The provisions of this Code shall be interpreted consistently, with all current General Laws and Executive Orders, and all decisions, variances and interpretations issued by the Fire Safety Code Board of Appeal and Review (Hereinafter also referred to as the "Fire Board" or "Board"). The provisions of this Code shall further be enforced consistently, with all current General Laws and Executive Orders, by the Office of the State Fire Marshal and its affiliates.

1.5 Definitions

"Abatement" or to "Abate a condition" means the reduction, decrease, or diminution of a hazardous condition that presents immediate danger to life. The term "immediate" denotes that action is or must be taken either instantly or without any considerable loss of time. The condition may be singular or may be a set of conditions that in combination present an "immediate danger to life". Such conditions, that present an "immediate danger to life", shall include improper management or use of flammable and combustible materials, liquids and gases, pyrotechnics, fireworks or explosives, malfunctioning automatic sprinklers, fire alarms and emergency lighting, malfunctioning heating and electrical systems, blocked or inadequate exits or means of egress, the overcrowding of assembly occupancies and such other conditions as may be established by the Fire Safety Code Board of Appeal and Review.

1.6 Fire Safety Code Board of Appeal and Review

- A. The Fire Safety Code Board of Appeal and Review is an agency within the Executive Department administratively assigned to the Department of Business Regulation. The Governor appoints all eleven (11) members with the advice and consent of the Senate. Of the members of the Fire Safety Code Board of Appeal and Review, one (1) shall be a representative of the permanent fire chiefs, one (1) shall be a representative of the building inspectors, one (1) shall represent industry, one (1) shall be a licensed professional engineer, one (1) shall be a

representative of the fire protection industry, one (1) shall represent labor, one (1) shall be a licensed architect, one (1) shall be a representative of the volunteer fire chiefs, and three (3) shall be representatives of the public provided that one (1) shall be an officer, partner or proprietor of a Rhode Island company that is a small business as defined by the United States Small Business Administration. The Governor also designates a chairperson for a two (2) year term.

- B. The Fire Safety Code Board of Appeal and Review is the sole authority having jurisdiction for administration and the State Fire Marshal is the sole authority having jurisdiction for enforcement of the Fire Safety Code.
- C. Except as outlined below, the Fire Safety Code Board of Appeal and Review is the sole authority having jurisdiction to grant variances, waivers and amendments from, or to review and accept any proposed fire safety equivalencies and alternatives to, the strict adherence to the provisions of the Fire Safety Code and all referenced standards therein as previously enacted and/or adopted, herein and hereafter amended. Notwithstanding the above, the State Fire Marshal and his or her designees are hereby authorized to approve dimensional relief within the egress systems of any existing building in accordance with NFPA 101 and its annexes. Such dimensional relief shall be known as "AHJ modifications". All "AHJ modifications" must be in writing and submitted to the State Fire Marshal's Office for recording. Once recorded by the State Fire Marshal's Office, the "AHJ modification" shall remain as permanent relief for the building as long as the use and/or occupancy of the building remains the same. Any change of use and/or occupancy shall subject the building to review under the relevant codes and reconsideration of the "AHJ modification" in light of the new use or occupancy.
- D. The Fire Safety Code Board of Appeal and Review is also the authority having initial jurisdiction to hear all appeals from any action taken by the State Fire Marshal's Office in its capacity as the authority having jurisdiction for the strict enforcement of the provisions of the Fire Safety Code and all referenced standards therein as previously enacted and/or adopted, herein and hereafter amended.

1.7 Administrative Powers of the Fire Safety Code Board of Appeal and Review

1.7.1 Administrative Appeals

- A. Any building or property owner may consult with the authority having enforcement jurisdiction for advice and assistance in complying with the provisions of the State Fire Safety Code. The authority having enforcement jurisdiction may grant an "AHJ modification" covering dimensional relief within the egress system of an existing building as outlined in § 1.6 of this Part. An AHJ modification becomes effective once it is submitted to, and recorded by, the State Fire Marshal. In all other cases of practical difficulty, the authority having

enforcement jurisdiction shall refer all requests for variations, waivers, modifications and amendments from particular provisions of the State Fire Safety Code to the Board of Appeal and Review.

- B. All requests for proposed fire safety equivalencies and alternatives to strict compliance with the State Fire Safety Code shall likewise be referred to the Board of Appeal and Review.
- C. Any person aggrieved by an initial interpretation of any provision of the State Fire Safety Code, by the authority having enforcement jurisdiction of that Code provision, may petition the Board of Appeal and Review for review of the initial interpretation. Review of the initial interpretation may be formal or informal at the sole discretion of the Board. In cases of widespread interest, the Board may choose to publish its interpretation.
- D. The Board of Appeal and Review shall provide for reasonable interpretation of the provisions of the Fire Safety Code, and rule on appeals from decisions of the authority having enforcement jurisdiction as outlined above.
- E. All appeals shall be commenced by the filing of an appeal application form available at the offices of the Board of Appeal and Review and the State Fire Marshal.
- F. The authority having enforcement jurisdiction shall assist the applicant by providing all Code cites and documentation necessary to complete the application form.
- G. When applicable, the authority having enforcement jurisdiction shall verify the approximate total square footage of a subject facility on the application form.
- H. To be considered a completed application, the application form shall be completely filled out and signed by the owner or an authorized representative. The application shall further be accompanied by the required filing fee and any written inspection report, plan review report, interpretation or other related documentation unless this requirement is waived by the Board. Upon the acceptance of a completed application, the Board shall notify the AHJ prior to scheduling a hearing on the matter.
- I. Filing fees for applications involving specific existing or proposed buildings shall be set in accordance with the schedule outlined in R.I. Gen. Laws §§ 23-28.3-5(b)(1) through (2). Filing fees for all other appeals shall be set in accordance with the provisions of R.I. Gen. Laws § 23-28.3-5(b)(3).
- J. The requirement of a written inspection report, plan review report or other related documentation may be waived by the Executive Director and/or the Chairperson, upon consultation with the State Fire Marshal and/or local Fire Marshal, when, in the opinion of the Executive Director and the Chairperson, compliance with this

requirement would impose a hardship on the applicant and/or the authority having enforcement jurisdiction.

- K. Any person, other than an attorney at law, who signs an application form or appears before the Board at an appeal hearing as an authorized representative, shall provide the Board of Appeal and Review with a letter of authorization signed by the owner of the subject facility unless this requirement is waived by the Board.
- L. Any of the above application procedures may be modified, by formal vote of the Fire Safety Code Board of Appeal and Review where such modification would allow for the streamlining or upgrading of the application process. This would include, but not be limited to, allowing for the electronic filing of applications and/or the payment of fees, participating in departmental or multi-agency expedited construction programs, and/or participating in programs established for the purpose of coordinating "one stop shopping" multi-agency services for the public.

1.7.2 Hearings and Court Appeals

- A. The Board of Appeal and Review shall make a good faith effort to schedule all hearings within thirty (30) days of the receipt and filing of a completed application sent to the Board by registered mail, regular mail, electronically or hand delivered. The filing of a Fire Board administrative appeal shall automatically stay further enforcement action by the AHJ and the building and/or process under appeal shall be considered in compliance with the Code while on appeal, until the case is heard or abatement procedures are implemented. However, where the AHJ advises that such an automatic stay would endanger the public and/or the owner's tenants or employees, the chairman of the board, or his or her designee may, for such good cause shown, suspend the automatic stay pending review by the full board at the next scheduled hearing date.
- B. Completed applications shall be scheduled, as far as practicable, in the order they were received by the Board of Appeal and Review. Multiple hearings from the same jurisdiction may be consolidated on a single hearing date in an effort to promote the efficient use of State and municipal resources. Requests for expedited hearings, as outlined in § 1.7.2(C) of this Part, shall be given priority.
- C. For good cause shown, a completed application may be scheduled for an expedited hearing by the Executive Director and/or the Chairman, upon the request of the applicant and/or the AHJ, any State or municipal official and/or a court of competent jurisdiction.
- D. For the purposes of § 1.7.2(C) of this Part, some examples of good cause would be hearings which may directly or indirectly result in the issuance or denial of a building permit, a certificate of occupancy, a license, major funding, and hearings

which, if delayed, would significantly interfere with a set construction schedule or a real estate closing.

- E. The Chairman may delegate a subcommittee of the Board of Appeal and Review to conduct a hearing and take testimony from the petitioner.
- F. A subcommittee shall consist of three (3) or more Board of Appeal and Review members accompanied by the Executive Director.
- G. A subcommittee meeting may be administrative or onsite in nature. An administrative subcommittee meeting may involve the scheduling of cases, drafting of Rules and Regulations and/or the day-to-day administration of the office. An onsite subcommittee meeting involves a physical tour of the subject facility with notice to both the applicant and the authority having enforcement jurisdiction. The notes of the Executive Director, along with any audio recordings, shall serve as the record of the subcommittee meeting.
- H. When appropriate for an administrative subcommittee, and in each case where an onsite subcommittee is assigned, the subcommittee shall make a good faith effort to submit its recommendations to the Board of Appeal and Review as to their findings within ten (10) days.
- I. If the applicant is aggrieved by the subcommittee's recommendations, as accepted, modified and/or rejected by the decision rendered by the Board of Appeal and Review, the applicant shall have the right to petition the Board of Appeal and Review, within thirty (30) days of the mailing date of the rendered decision. The applicant shall thereupon be scheduled for *de novo* hearing before the full Board of Appeal and Review.
- J. All full Board of Appeal and Review hearings shall be conducted in accordance with the provisions of R.I. Gen. Laws § 42-35-9 of the Administrative Procedures Act. Failure of the Applicant to either attend a scheduled hearing, or send an authorized representative in his or her place, shall result in automatic dismissal of the variance application, unless the Board determines that there is good cause to reschedule the hearing.
- K. If during a hearing, it becomes apparent to the Board that there may be personality or other non-fire-code issues between the applicant and the AHJ, the Board shall have the discretion to table the case and request that the State Fire Marshal's Office conduct an investigation as to these non-fire-code issues, prior to the re-commencement of the hearing.
- L. A draft Decision shall be prepared by the Executive Director and submitted to the person who chaired the particular hearing (either the Chairperson, or the Vice Chairperson, or the Board Member chairing the particular hearing as Acting Chairperson) for review and approval.

- M. The draft Decision shall be reviewed by the person who chaired the particular hearing and then either be returned to the Executive Director with proposed modifications or with that person's approval and signature.
- N. A copy of any non-emergency Decision signed by the person who chaired the hearing and the Executive Director shall then be available for review by the members of the Fire Board for a period of not less than twenty-four (24) hours prior to the Decision being mailed. Any emergency Decision, as designated by the Chairperson and/or Executive Director may be issued and mailed immediately and corrected, if necessary, pursuant to § 1.7.2(O) of this Part.
- O. Any time after the Board hearing, but before a final decision is mailed, the Board of Appeal and Review may reopen a case at the request of either a Board Member, the applicant or the authority having enforcement jurisdiction, for purpose of taking additional previously unavailable testimony and/or evidence and uphold, modify and/or reverse its original decision.
- P. Any time after the final decision is mailed, the Board may, at the request of either a Board Member, the applicant or the authority having enforcement jurisdiction, and upon review of the record of the case, correct any administrative, clerical or other mistakes in the written decision to accurately reflect the record of the case. The resulting decision shall be entitled "Amended Decision."
- Q. In matters regarding plan review and/or ongoing construction, the Applicant may request that the file be subject to future review in the event that unforeseen conditions require additional relief. In that case a supplemental decision shall be issued designated as #####A – a new filing fee shall not be required.
- R. Unless otherwise specified in the Decision, all listed timeframes shall be deemed to commence upon the listed mailing date of the Decision also identified therein as "the date of this Decision."
- S. Any Applicant aggrieved by any decision, modified decision or amended decision of the Board of Appeal and Review may, within thirty (30) days after the mailing date of the decision, modified decision or amended decision, commence an action in the Sixth Division of the District Court, as outlined in R.I. Gen. Laws § 23-28.3-6, for review of the decision. Upon formal notification by the State Fire Marshal's Office that this case has been appealed, the Board shall take no action on any case that is currently pending before the Rhode Island District Court, until such time as a decision has been rendered by the court, or the case has been remanded back to the Board from the District Court for additional action by the Board.
- T. The findings of the Board of Appeal and Review shall be conclusive unless clearly erroneous.

- U. A party aggrieved by a final order of the Court may seek review thereof in the Supreme Court by petition for *certiorari* in accordance with the procedures contained in R.I. Gen. Laws § 42-35-16.
- V. Commencement of a Court appeal of the Board of Appeal and Review's decision does not operate as an automatic stay of the decision. (R.I. Gen. Laws § 42-35-15(c))
- W. The decisions of the Board of Appeal and Review covering specific facilities shall be considered comprehensive, integrated plans of fire safety for the subject facilities under the current use or occupancy. Accordingly, every variance granted is conditioned upon the applicant's timely and continued compliance with all of the directives of the Board of Appeal and Review. Every variance is further conditioned upon the continued use or occupancy of the subject facility under the occupancy classification reviewed by the Board in rendering its decision.
- X. In granting time relief, the Board may authorize the AHJ to issue, in writing, one (1) or more extensions of time of not more than thirty (30) days each, for a period not to exceed ninety (90) days. This additional AHJ authority shall be determined on a case-by-case basis and reflected in the final decision issued by the Board. Any time extension shall be requested in writing with good faith compliance efforts and/or justifiable cause being demonstrated by the Applicant. Any AHJ-authorized time extension or denial thereof shall be documented in writing and provided to the Applicant, the Board, the State Fire Marshal's Office and the local Fire Marshal's Office.
- Y. Failure of the applicant to initially comply with the full decision of the Board of Appeal and Review within the stated time frame shall void all variances granted in the Decision. If the Board, in its sole discretion, determines that there is good cause shown to rehear a case in which the time frame has been exceeded, the Board, after rehearing the case, may reinstate any variances it deems to be appropriate.
- Z. In the event of complete, timely and continued compliance with the full decision of the Board of Appeal and Review, all variances shall be deemed vested in the facility as long as the facility remains within the occupancy classification reviewed by the Board of Appeal and Review. If the use or occupancy of the facility changes, or the General Assembly adopts new standards covering all existing occupancies, the variances shall then be considered voided unless preserved by statute and/or Board directive.
- AA. In the event the use or occupancy classification of the subject facility is changed, as outlined in R.I. Gen. Laws § 23-28.1-6, all variances granted under the original use or occupancy are void and the facility shall be reviewed under the provisions of the State Fire Safety Code, Part [7](#) of this Subchapter and/or the Rehabilitation Building and Fire Code for Existing Buildings and Structures (Rehabilitation Code), Part [9](#) of this Subchapter, covering the newly created use or occupancy.

- BB. Any of the above administrative procedures may be modified, by formal vote of the Fire Safety Code Board of Appeal and Review, where such modification would allow for the implementation of any statutory revision to either the Administrative Procedures Act (R.I. Gen. Laws §§ 42-35-1 *et seq.*), the Comprehensive Fire Safety Act (R.I. Gen. Laws §§ 23-28.1-1 *et seq.*) and/or any other provision of the Rhode Island General Laws.

1.7.3 Rules and Regulations

- A. The State Fire Safety Code Board of Appeal and Review shall have the power to promulgate, amend, and repeal Rules and Regulations to safeguard life and property from hazards of fire and explosives, consistent with the standards outlined in R.I. Gen. Laws §§ 23-28.3-3 and 42-35-1 through 8.
- B. There shall be established a standing subcommittee of the Board to review all proposed rules and regulations, amendments and deletions to the State Fire Safety Code, Part [7](#) of this Subchapter.
- C. The standing Rules and Regulations subcommittee shall be chaired by the Vice Chairperson of the Board of Appeal and Review.
- D. The Chairperson and Executive Director shall be permanent members of the Rules and Regulations subcommittee along with any additional board members appointed by the Chairperson.
- E. The Rules and Regulations subcommittee shall report its findings, recommendations and Proposed Rules to the Board of Appeal and Review.

1.7.4 Code Interpretations by The Board

- A. The Board of Appeal and Review, at the request of any party, may provide interpretations of both the statutory provisions and the Rules and Regulations which comprise the State Fire Safety Code, Part [7](#) of this Subchapter.
- B. Any party requesting an interpretation shall outline the specific request, along with all supporting documentation, in a letter addressed to the Chairperson of the Fire Safety Code Board of Appeal and Review.
- C. Any request for clarification of enforcement of the Code from a local AHJ shall first be submitted to the State Fire Marshal's Office for review and if the issue cannot be resolved at that level, then forwarded to the Board for a formal interpretation.
- D. The review of a request for interpretation may be formal or informal at the sole discretion of the Board. If the Board determines that a formal interpretation is appropriate, the Chairperson, upon consultation with the Executive Director, shall produce a draft interpretation to be presented to the full Board of Appeal and Review.

- E. The full Board may adopt, amend, or reject the proposed formal interpretation. The final formal interpretation, agreed upon by the full Board, shall be issued and numbered under a separate filing system for Board Interpretations.
- F. Within forty-eight (48) hours, exclusive of weekends and holidays, of the Chairperson's execution of every written blanket variance and/or formal interpretation issued thereafter, copies of the blanket variance and/or formal interpretation shall be placed on the Fire Safety Code Board's website and the State Fire Marshal shall take all steps necessary to immediately disseminate the blanket variance and/or formal interpretation to all Deputy and Assistant Deputy State Fire Marshals.
- G. There shall be no filing fee charged for Board Interpretations.

1.7.5 Abatement

- A. The State Fire Marshal, or his or her designee within the division, or a non-salaried Assistant Deputy State Fire Marshal in accordance with guidelines established by the State Fire Marshal, has the authority to summarily abate any condition which presents immediate danger to life, which conditions shall include improper management or use of flammable and combustible materials, liquids and gases, pyrotechnics, fireworks or explosives, malfunctioning automatic sprinklers, fire alarms and emergency lighting, malfunctioning heating and electrical systems, and blocked or inadequate exits or means of egress, and such other conditions as may be established by the Fire Safety Code Board of Appeal and Review. A failure to abate a condition that presents a clear and immediate danger to life shall be grounds for the person issuing the order to abate, to require that the premises be vacated. Any such order to vacate the premises shall be either pre-approved in writing by the State Fire Marshal or a designee of the State Fire Marshal who has been given advanced written authority by the State Fire Marshal to approve such actions.
- B. Upon the request of a building owner, or other party in interest, any abatement action, taken under the provisions of § 1.7.5(A) of this Part, shall be subject to review by the Board of Appeal and Review on an expedited basis at the next scheduled hearing or considered on an emergency basis by the Chairperson or his or her designee, with appeal to the Fire Board.
- C. The Chairperson, on an emergency basis, or the Fire Board, on an expedited basis, may uphold, modify or vacate any order issued pursuant to § 1.7.5(A) of this Part. Any such action by the Chairperson may be appealed to the Fire Board. Any such action by the board may be appealed to the District Court.

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