



## Code Outreach Program – Appeals and Variances

This edition of the Code Outreach Program is intended to inform users about the variance and appeal procedures for the New York State Uniform Fire Prevention and Building Code (Uniform Code). Executive Law § 381 directs the Secretary of State (the ‘Secretary’) to establish a procedure whereby any provision or requirement of the Uniform Code may be varied or modified. Pursuant to Executive Law, the procedures for variances and appeals are found in [19 NYCRR Part 1205](#).

If an applicant believes that strict compliance with a section of the Uniform Code would entail practical difficulties or unnecessary hardship or would otherwise be unwarranted, then the applicant may seek a variance provided that such variance or modification shall not substantially adversely affect provisions for health, safety, and security and provides for equally safe and proper alternatives. If an applicant believes that a code section is being improperly interpreted or enforced by an Authority Having Jurisdiction (AHJ), then the applicant has the option to appeal the determination of AHJ.

Per Part 1205, only The Department of State and the [Regional Boards of Review](#) can grant variances to the Uniform Code. When the Department of State staff determines it is appropriate because the matter involves a *de minimus* variance or modification that does not substantially affect the Uniform Code’s provisions for health, safety, and security, then variance requests can be resolved through an administrative process. The administrative process (called a ‘routine’ variance) is outlined in [19 NYCRR Part 1205.6](#). All non-routine variances require a hearing before a Regional Board of Review.

Appeals of an order or determination of an administrative official charged to enforce or purporting to enforce the Uniform Code can be heard by the Regional Boards of Review or any other entity granted such authority by local law, ordinance, regulation, etc. **Please note:** although other entities can hear appeals of orders and determinations of the Uniform Code, they cannot grant variances to the Uniform Code. In contrast, the Regional Boards, which are comprised of a registered architect, a professional engineer, a person with a background in building code enforcement, and a person with a background in fire prevention pursuant to [19 NYCRR Part 1205.3](#), have the authority to sustain, reverse, or modify, in whole or in part, such order or determination and to vary or modify a provision or requirement of the Uniform Code.

AHJs are given the opportunity to confirm, comment, or add information regarding a project under consideration by submitting a [Code Enforcement Official Variance Questionnaire](#). A completed form along with any relevant additional information or documentation should be sent to the Regional Office with the application. If the Department of State does not receive the questionnaire with the application, staff will send one to the AHJ directly. It will be assumed that the AHJ does not take exception to the potential granting of a variance if a response is not received.

### **Procedure for applying for a variance or appeal to the Uniform Code**

Applicants should contact their [Regional Office](#) for a preliminary review of the variance or appeal. Regional staff will determine the complexity of the case and will recommend the application be either a board case or routine variance, and/or an appeal. Regional staff will also direct applicants where to send in the application, fee, and supporting documentation such as a narrative or questionnaire. Additional helpful information is available at the links below:

- [Application for Variance or Appeal](#)
- [Hearing Schedule](#)
- [Fee Schedule](#)

### **Variance to the New York State Energy Conservation Construction Code**

Energy Law §11-106 provides that an application for a variance or modification of any standard or requirement of the Energy Code shall be made to the Secretary of State. Variance applications to the Energy Code shall provide for alternative energy conservation measures which achieve, to the extent possible, the purposes of Article 11 of the Energy Law. All Energy Code variances are processed administratively by the Director of the Division of Building Standards and Codes, as the Secretary of State’s designee, and there is no fee. Click here for the [Application for Energy Variance](#).

Please look for our next edition of the Code Outreach Program at the beginning of next month.