

BASED ON THE RECORD MADE BEFORE THE AGENCY AND SUBJECT TO THE FOLLOWING PROVISIONS:

(1) THE FILING OF THE APPEAL DOES NOT ITSELF STAY ENFORCEMENT OF THE AGENCY DECISION. EXCEPT AS OTHERWISE PROVIDED BY LAW, THE AGENCY MAY GRANT, OR THE BOARD MAY ORDER, WITH OR WITHOUT A HEARING, A STAY UPON APPROPRIATE TERMS.

(2) IF, BEFORE THE DATE SET FOR HEARING, APPLICATION IS MADE TO THE BOARD FOR LEAVE TO PRESENT ADDITIONAL EVIDENCE ON THE ISSUES IN THE CASE, AND IT IS SHOWN TO THE SATISFACTION OF THE BOARD THAT THE ADDITIONAL EVIDENCE IS MATERIAL AND THAT THERE WERE GOOD REASONS FOR FAILURE TO PRESENT IT IN THE PROCEEDING BEFORE THE AGENCY, THE BOARD MAY ORDER THAT THE ADDITIONAL EVIDENCE BE TAKEN BEFORE THE BOARD OR BEFORE THE AGENCY UPON SUCH CONDITIONS AS THE BOARD DEEMS PROPER. IN CASES IN WHICH THE ADDITIONAL EVIDENCE IS TAKEN BEFORE THE AGENCY, IT MAY MODIFY ITS FINDINGS AND DECISION BY REASON OF THE ADDITIONAL EVIDENCE AND SHALL FILE WITH THE BOARD, TO BECOME A PART OF THE RECORD, THE ADDITIONAL EVIDENCE, TOGETHER WITH ANY MODIFICATIONS OR NEW FINDINGS OR DECISION.

(3) IN CASES OF ALLEGED IRREGULARITIES IN PROCEDURE BEFORE THE AGENCY, NOT SHOWN IN THE RECORD, TESTIMONY THEREON MAY BE TAKEN BEFORE THE BOARD. THE BOARD MAY, UPON REQUEST, HEAR ORAL ARGUMENT AND RECEIVE WRITTEN BRIEFS.

(4) (I) THE BOARD SHALL AFFIRM THE DECISION OF THE AGENCY UNLESS IT DETERMINES THAT SUBSTANTIAL RIGHTS OF THE APPELLANT HAVE BEEN PREJUDICED BECAUSE THE PROCEDURES FOLLOWED BY THE AGENCY IN RENDERING THE DECISION WERE UNLAWFUL OR UNAUTHORIZED OR BECAUSE THE DECISION IS:

1. UNCONSTITUTIONAL;
2. BEYOND THE STATUTORY AUTHORITY OF THE AGENCY;
3. BASED UPON AN ERROR OF LAW;
4. NOT SUPPORTED, BASED UPON THE ENTIRE RECORD, BY COMPETENT, MATERIAL, AND SUBSTANTIAL EVIDENCE; OR
5. ARBITRARY OR CAPRICIOUS.

(II) IF THE DECISION IS NOT AFFIRMED PURSUANT TO SUBPARAGRAPH (I), THE BOARD SHALL REVERSE OR MODIFY THE DECISION AND, IF APPROPRIATE, REMAND THE CASE FOR FURTHER PROCEEDINGS.

(D) IN CASES OTHER THAN CONTESTED CASES, CONCERNING ACTIONS OR FAILURES TO ACT BY UNITS OR OFFICIALS, FOR WHICH APPEALS HAVE BEEN AUTHORIZED BY THE SECRETARY BY REGULATION, APPEALS SHALL BE HEARD BY THE BOARD PURSUANT TO SUCH PROVISIONS FOR REVIEW AS THE SECRETARY MAY ESTABLISH BY REGULATIONS.