

RESOLUTION NO. 2010-11

A RESOLUTION OF THE TOWNSHIP OF HOPEWELL, BEAVER COUNTY, PENNSYLVANIA, CREATING THE HOPEWELL TOWNSHIP UNIFORM CONSTRUCTION CODE APPEALS BOARD, APPOINTING IMPARTIAL MEMBERS TO SAID BOARD TO RULE ON APPEALS TAKEN FROM DECISIONS OF THE UCC CODE OFFICIAL AND ESTABLISHING A CORRESPONDING APPELLATE PROCEDURE

WHEREAS, Hopewell Township adopted the Pennsylvania Uniform Construction Code at Ordinance No. 2004-05 and, pursuant thereto, is hereby desirous of establishing and implementing an impartial Appeals Board to rule on appeals taken from decisions of the appointed UCC Code Official and further establishing an appellate procedure to be followed by said Appeals Board.

NOW THEREFORE, BE IT RESOLVED, THAT THE FOLLOWING SHALL GOVERN ALL APPEALS TAKEN FROM DECISIONS OF THE UNIFORM CONSTRUCTION CODE OFFICIAL ACTING ON BEHALF OF HOPEWELL TOWNSHIP IN ADMINISTERING AND ENFORCING THE PENNSYLVANIA UNIFORM CONSTRUCTION CODE:

A. MEANS OF APPEAL

1. Application for appeal: Any person shall have the right to appeal a decision of the Building Code Official to the Board of Appeals. An application for appeal shall be filed with the Building Code Official and the Township Manager.

2. Membership of Board: A Board of Appeals for the administration and enforcement of the PA UCC is hereby established as provided by Chapter 1 of the 1999 BOCA National Building Code, Fourteenth Edition, to hear appeals from decisions of the Building Code Official. Members of the Board of Commissioners may not serve as members of the Board of Appeals. The Board of Appeals shall consist of five members appointed by the Board of Commissioners as follows: one for five years, one for four years, one for three years, one for two years, and one for one year. Thereafter, each new member shall serve for five years or until a successor has been appointed.

3. Qualifications: The Board of Appeals shall consist of five individuals, one from each of the following professions or disciplines.

(a) *Registered design professional* that is a registered architect; or a builder or superintendent of

building construction with at least ten years of experience, five of which shall have been in responsible charge of work.

(b) *Registered design professional* with structural engineering or architectural experience.

(c) *Registered design professional* with mechanical or plumbing engineering experience; or a mechanical or plumbing contractor with at least ten years of experience, five of which shall have been in responsible charge of work.

(d) *Registered design professional* with electrical engineering experience; or an electrical contractor with at least ten years of experience, five of which shall have been in responsible charge of work.

(e) *Registered design professional* with fire protection engineering experience; or a fire protection contractor with at least ten years of experience, five of which shall have been in responsible charge of work.

4. Alternate members: The Board of Commissioners shall appoint two alternate members who shall be called by the Board Chairman to hear appeals during the absence or disqualification of a member. Alternate members shall possess the qualifications required for board membership, and shall be appointed for five years or until a successor has been appointed. When there are no persons to serve on the Board of Appeals who meet the minimum qualifications of Chapter 1 of the BOCA National Building Code, an appointment to the board with a qualified person who resides outside of the municipality is permitted.

5. Chairman: The board shall annually select one of its members to serve as chairman.

6. Disqualification of member: A member shall not hear an appeal in which that member has any personal, professional or financial interest.

7. Secretary: The Township Manager shall designate a qualified clerk to serve as secretary to the board. The secretary shall file a detailed record of all proceedings in the office of the Township Manager.

8. Compensation of members: Compensation of members shall be set by the Board of Commissioners as determined by law.

9. Notice of meeting: The board shall meet upon notice from the chairman, within Ten (10) days of the filing of an appeal, or at stated periodic meetings.

10. Open hearing: All hearings before the board shall be open to the public. The appellant, the appellant's representative, the code official and any person whose interests are affected shall be given an opportunity to be heard.

11. Procedure: The board shall adopt and make available to the public through the secretary procedures under which a hearing will be conducted. The procedures shall not require compliance with strict rules of evidence but shall mandate that only relevant information be received.

12. Postponed hearing: When five members are not present to hear an appeal, either the appellant or the appellant's representative shall have the right to request a postponement of the hearing.

13. Board decision: The board shall modify or reverse the decision of the code official by a concurring vote of three members. The decision of the board shall be by written decision issued no later than Forty-five (45) days following the last hearing. Failure to render a written decision within Forty-five (45) days of the last hearing shall result in a deemed approval of the appeal and reversal of the Code Official's decision. Copies of the written decision shall be promptly furnished to the appellant and to the Code Official.

14. Administration: The Code Official shall take immediate action in accordance with the decision of the board.

15. Court review: Any person, whether or not a previous party to the appeal, shall have the right to apply to the appropriate Court for a writ of certiorari to correct errors of law. Application for review shall be made in the manner and time required by law following the filing of the decision in the office of the Township Manager.

16. Appeals, variances and extensions of time.

(a) An owner or owner's agent may seek a variance or extension of time or appeal a Building Code Official's decision by filing an application with the Building Code Official and the Township Manager.

(b) The postmark date or the date of personal service will establish the filing date of the appeal and request for variance or extension of time.

(c) An appeal or request for variance or extension of time to a Board of Appeals will automatically suspend an action to enforce an order to correct until the matter is resolved. An action under § 403.84 of the PA Code (relating to unsafe building, structure or equipment) may not be stayed.

(d) A Board of Appeals shall decide an appeal, variance request or request for extension of time by reviewing documents and written brief or argument unless the owner or owner's agent specifically requests a hearing.

(e) A Board of Appeals shall hold a hearing within Forty-five (45) days from the date of an applicant's request unless the applicant agrees in writing to an extension of time. A Board of Appeals shall convene a hearing within 30 days of receipt of an appeal or request for variance or extension of time involving the construction of a one- or two-family residential building.

(f) A Board of Appeals shall only consider the following factors when deciding an appeal under section 501(c)(2) of the act:

- (1) The true intent of the act or Uniform Construction Code was incorrectly interpreted.
- (2) The provisions of the act do not apply.
- (3) An equivalent form of construction is to be used.

(g) A Board of Appeals may consider the following factors when ruling upon a request for extension of time or the request for variance:

- (1) The reasonableness of the Uniform Construction Code's application in a particular case.
- (2) The extent to which the granting of a variance or an extension of time will pose a violation of the Uniform Construction Code or an unsafe condition.
- (3) The availability of professional or technical personnel needed to come into compliance.
- (4) The availability of materials and equipment needed to come into compliance.
- (5) The efforts being made to come into compliance as quickly as possible.
- (6) Compensatory features that will provide an equivalent degree of protection to the Uniform Construction Code.

(h) If the owner or owner's agent requests a hearing, the Board of Appeals shall schedule a hearing and notify the owner or owner's agent and Building Code Official of the date, time and place of the hearing.

(i) The Board of Appeals may:

- (1) Deny the request in whole or in part.
- (2) Grant the request in whole or in part.
- (3) Grant the request upon certain conditions being satisfied.

(j) The Board of Appeals shall provide a written notice of its decision to the owner/appellant and to the Building Code Official. A Board of Appeals shall render a written decision regarding an appeal or request for variance or extension of time involving the construction of a one- or two-family residential building within 5 business days of the latest hearing. The appeal shall be deemed granted if a Board of Appeals fails to act within this time period.

(k) An owner/applicant shall file an appeal, request for variances and request for extension of time relating to accessibility with the Accessibility Advisory Board under § 403.142 of the PA Code (relating to Accessibility Advisory Board).

17. Fees: The fee for an appeal to the Board of Appeals for administering and enforcing this act shall not exceed actual costs of the public notice of the hearing, appearance fee for the stenographer and administrative fees as necessary.

18. Interpretation of Uniform Construction Code: In interpreting a provision of a code adopted by regulation of the department as part of the Uniform Construction Code, the Building Code Official, Board of Appeals and/or the Court shall consider and may rely upon relevant written interpretations of the ICC or any organization whose referenced standard is relevant and listed in the Uniform Construction Code, or the regulations promulgated under this act or any municipal construction code ordinance.

Source

The provisions of this § 403.122 amended December 24, 2009, effective December 31, 2009, 39 Pa.B. 7196.

Cross References

This section cited in 34 Pa. Code § 401.1 (relating to definitions); 34 Pa. Code § 403.43 (relating to grant, denial and effects of permits); 34 Pa. Code § 403.46 (relating to certificate of occupancy); 34 Pa. Code § 403.63 (relating to grant, denial and effect of permits); 34 Pa. Code § 403.65 (relating to certificate of occupancy); 34 Pa. Code § 403.141 (relating to enforcement by the Department); 34 Pa. Code § 405.3 (relating to permit application); Chapter 1 of the 1999 BOCA National Building Code, Fourteenth Edition; and Title 35 P.S. 7210.501 of the Uniform Construction Code.

RESOLVED and **ADOPTED** to become immediately effective this 12th day of APRIL, 2010.

ATTEST:

TOWNSHIP OF HOPEWELL

BY: Andy Brunette
Andy Brunette, Manager
Hopewell Township

Board of Commissioners

BY: Richard Bufalini
Richard Bufalini, President