

**CITY OF TAYLOR
CONSTRUCTION BOARD OF APPEALS PROCEDURES**

OFFICE OF THE MAYOR

2009 DEC -9 P 11

The following procedures shall be established in order to administer the official duties in accordance with the Michigan Construction Code Act, Public Act 230, of the Public Acts of 1972, as amended.

- **Number of Board Members**

The Construction Board of Appeals shall consist of five members enforcing each of the following codes: Building, Electrical, Mechanical, Plumbing and Fire.

- **Terms of Office**

Members shall be appointed for 3-year terms.



- **Compensation and Filing Fee**

Compensation shall be established at \$60/meeting for the Chairperson and \$50/meeting for other members.

The filing fee shall be established at \$100. An application for appeal shall be provided by the Building Department.

- **Meetings of the Construction Board of Appeals**

The business of a Construction Board of Appeals shall be conducted at a public meeting held in compliance with the Open Meetings Act, PA 267 of the Public Acts of 1976.

All processing of appeals and requests shall be conducted within 30 days after submission of the appeal.

The foregoing procedures have been established in accordance with City of Taylor Ordinance No. 02-369, Resolution No. 8.657-02 adopted by the City Council on the 20th day of August, 2002.

ORDINANCE NO. 02-369

AN ORDINANCE TO AMEND THE TAYLOR, MICHIGAN CODE OF ORDINANCES, CHAPTER 6, BUILDINGS AND BUILDING REGULATIONS BY REPEALING SECTIONS 6-31, 6-32 AND 6-33 AND REPLACING WITH A NEW SECTION ENTITLED CONSTRUCTION BOARD OF APPEALS

THE CITY OF TAYLOR ORDAINS:

SECTION 1. That Chapter 6, Buildings and Building Regulations be amended to add a new section, as follows:

Section 6-31. CONSTRUCTION BOARD OF APPEALS

The Construction Board of Appeals shall be established pursuant to the regulations as defined in the State of Michigan Construction Code Act, Public Act 230, of the Public Acts of 1972, as amended.

The Construction Board of Appeals shall establish procedures necessary to administer the official duties related to construction code administration and enforcement.

SECTION 2. REPEAL. All ordinances and sections of ordinances in conflict with this ordinance are hereby repealed.

SECTION 3. SAVINGS. Should any phrase, word, sentence, paragraph or section of this ordinance be declared unenforceable, unconstitutional, or illegal by a court of competent jurisdiction, the remainder of this ordinance shall be considered to be in full force and effect. The determination by the court shall have no effect with respect to the validity of the remaining portions of the ordinance, which are not affected by the decision of the Court.

SECTION 4. PUBLICATION AND EFFECTIVE DATE. This ordinance shall become effective upon passage by the City Council and the publication of the ordinance in accordance with the Charter of the City of Taylor and the statutes of the State of Michigan.

I hereby certify that the foregoing constitutes a true and complete copy of an Ordinance duly adopted by the City Council of the City of Taylor, at a Regular Meeting held in the Council Chambers at the Taylor Municipal Building, 23555 Goddard Road, Taylor, Michigan on the 20th day of August, 2002.

I further certify that the following Council Members were present at said meeting: McDermott, Ettore, Kemp, Molner, Geiss, Rilley and that the following Council Members were absent: Bzura.

I further certify that Council Member McDermott moved adoption of said Ordinance, and said motion was supported by Council Member Ettore.


I further certify that the following Council Members voted for adoption of said Ordinance: McDermott, Ettore, Kemp, Molner, Geiss, Rilley and that the following Council Members voted against adoption of said Ordinance: None

ORDINANCE NO. 02-369

RESOLUTION NO. 8.657-02


DOROTHY R. WEST, CITY CLERK

I hereby approve the foregoing Ordinance.


GREGORY E. PITONIAK, MAYOR



Department of Consumer & Industry Services
Bureau of Construction Codes
P. O. Box 30254
Lansing, Michigan 48909
(517) 241-9302

Bureau of Construction Codes Technical Bulletin

Publication Number 9, revision #1

March 27, 2000

Requirements for a Construction Board of Appeals

Serving Michigan . . . Serving You

Technical bulletins are issued to provide clarification on issues which arise regarding code administration and enforcement. The information provided in the bulletin is developed to promote uniform interpretation and enforcement of the state codes by the Bureau of Construction Codes.

REQUIREMENTS FOR A CONSTRUCTION BOARD OF APPEALS

Issue

Many governmental subdivisions fail to establish a Construction Board of Appeals to provide local administrative recourse for matters relating to construction code administration and enforcement, and to handle highly technical issues related to construction code compliance. Enforcing agencies which have a Construction Board of Appeals often have no procedures in place for conducting business. Decisions, therefore, may be legally challenged.

Law

This technical bulletin will provide information on establishing a Construction Board of Appeals and qualifications of members; procedures for official notifications; conducting hearings; and preparing decisions. These procedures are based on contested case procedures pursuant to the Administrative Procedures Act of 1969.

Governmental subdivisions may establish their own procedures as long as they are consistent with the Michigan Construction Code Act, PA 230 of 1972, as amended (Act).

Every governmental subdivision enforcing a code(s) must establish a Construction Board of Appeals. The provisions relating to qualifications for membership discussed in the Act, apply to all governmental subdivisions.

Establishment of a Construction Board of Appeals

A board shall consist of not less than 3 nor more than 7 members. Governmental subdivisions may establish terms of office or comply with those set forth in the Act, which requires that members be appointed for 2-year terms. Appointments are made by the chief executive officer of a city, village, or township, and the chairperson of the county board of commissioners.

The Act states, "A member of the board of appeals shall be qualified by experience or training to perform the duties of members of the board of appeals." Members must have background in construction and a working knowledge of the codes being enforced by the governmental subdivision in order to process appeals and consider variances.

When appointing members, the functions of a Construction Board of Appeals should be reviewed. If an enforcing agency denies an application for permit, or if the enforcing agency makes any other decision related to enforcement of construction codes, an interested party, or the person's agent, may appeal in writing to the Construction Board of Appeals.

Further, after public hearing, a Construction Board of Appeals may grant a specific variance to a substantive requirement of the code(s) under certain conditions. Members of the Construction Board of Appeals, therefore, must be knowledgeable of the code(s) and familiar with construction practices.

A separate Construction Board of Appeals is not required for each part of the code, although it is permissible. If an enforcing agency enforces all four codes, it is recommended that there be at least one member as an expert in each of the codes if only one board is to be established.

A person may serve on the Construction Board of Appeals of more than 1 governmental subdivision. Governmental subdivisions may join together and establish one board to serve several enforcing agencies.

Procedures

A Construction Board of Appeals should establish procedures for processing appeals and requests for variances. Applicants for permits should be made aware of their recourse and the steps to be taken to have their appeals or requests for variances heard. Following are some recommended guidelines. When guidelines include specific statutory requirements, those are identified.

Period of Time in Which an Appeal May be Filed

Failure to grant, in whole or in part, or deny an application for permit within a maximum of 15 days, is deemed a denial of the application for purposes of authorizing the institution of an appeal.

Open Meetings Act

The business of a Construction Board of Appeals must be conducted at a public meeting held in compliance with the Open Meetings Act, PA 267 of the Public Acts of 1976.

Notice of meetings shall be posted at the principal office of the public body. Notice shall contain the name, address, and telephone number of the public body to which the notice applies, and where the official minutes of the public body are maintained and available for inspection.

If a board holds regular meetings, notice must be posted within 10 days after the first meeting of the public body in each calendar or fiscal year and shall include the dates, times, and places of its regular meetings. If this schedule is altered, notice of the change must be posted within three days after the meeting at which the change was made.

Notice of rescheduled regular or special meetings, which normally would be the case for a Construction Board of Appeals, must be posted 18 hours before the meeting.

Minutes must be kept of all meetings of a public body and must contain the date, time, and place of the meeting, members present and absent, any decisions made, and a reference to the substance and disposition of all roll call votes, including how each member voted.

Minutes are public records and open to public inspection. Copies are to be made available to the public at a reasonable estimated cost for printing and copying.

Draft or proposed minutes are to be available for public inspection not more than 8 business days after the meeting to which the minutes refer. Approved minutes shall be available for public inspection not later than 5 business days after the meeting at which the minutes are approved by the public body.

Notice to Interested Parties

A Construction Board of Appeals is to hear appeals and requests for variance without undue delay. The act requires the Construction Board of Appeals to hear the appeal and render and file its decision with a statement of reasons for the decision with the enforcing agency from whom the appeal was taken **not more than 30 days after submission of the appeal**. Proper notice must be distributed, a hearing held, and a decision delivered within those 30 days.

Interested parties in an appeal or variance proceeding must be properly notified of the hearing and given reasonable notice of the hearing. The notice should include:

- a. A statement of the date, hour, place, and nature of the hearing.
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held.
- c. A reference to the particular section(s) of statutes, rules, or codes involved.
- d. A short statement of the matters asserted.

It is recommended that the notice be hand delivered or mailed by certified or registered mail so there is a proof of service. A "Proof of Delivery" accompanying the notice provides excellent proof of service. A "Certification of Mailing" completed by the person distributing hearing notices provides documentation that notices were mailed. Samples are provided at the conclusion of this document.

Hearing

Hearings shall be conducted in an impartial manner.

If a party fails to appear after proper service of notice, the board may proceed with the hearing and make its decision in the absence of the party, or may postpone the hearing, keeping in mind a decision must be rendered within 30 days from the date of request. If a quorum of the Construction Board of Appeals is not present, the appellant should be given the right to request a postponement of the hearing.

Interested parties served with a notice of hearing may file written answers before the date set for the

hearing. Parties shall be given an opportunity to present oral and written arguments on issues of law and policy and an opportunity to present evidence and argument on issues of fact. A party may cross-examine a witness, including the author of a document prepared by, on behalf of, or for use of the enforcing agency and offered in evidence. A party may submit rebuttal evidence.

An officer of a Construction Board of Appeals may administer an oath or affirmation to a witness in a matter before the board. The chairperson or a designated person should act as the presiding officer and may do all of the following:

- a. Administer oaths and affirmations
- b. Regulate the course of the hearings.
- c. Direct parties to confer to consider simplification of the issues by consent of the parties.

Variance from the Code(s)

Section 15 of the Act is applicable throughout the state and prevails over provisions in nationally recognized codes.

Section 15(1) provides, in part:

“...a board of appeals may grant a specific variance to a substantive requirement of the code if the literal application of the substantive requirement would result in an exceptional, practical difficulty to the applicant, and if both of the following requirements are satisfied:

- (a) The performance of the particular item or part of the building or structure with respect to which the variance is granted shall be adequate for its intended use and shall not substantially deviate from performance required by the code of that particular item or part for the health, safety, and welfare of the people of this state.
- (b) The specific condition justifying the variance shall be neither so general nor recurrent in nature as to make an amendment of the code with respect to the condition reasonably practical or desirable.”

Section 15(2) states:

“A board of appeals may attach in writing any condition in connection with the granting of a variance that in its judgment is necessary to protect the health, safety and welfare of the people of this state. The breach of a condition shall automatically invalidate the variance and any permit, license and certificate granted on the basis of it. In no case shall more than minimum variance from the code be granted than is necessary to alleviate the exceptional, practical difficulty.”

Decisions

Official records of all hearings should be prepared and include the following:

- (a) Notices, pleadings, motions, and intermediate rulings.
- (b) Questions and offers of proof, objections, and rulings thereon.
- (c) Evidence presented.
- (d) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose, i.e., Lansing is in Michigan.
- (e) Findings and exceptions.
- (f) Decision and reasons for the decision.

Appeal to the Construction Code Commission

Section 16 of the Act provides provisions for appealing a decision of a board of appeals to the Construction Code Commission (Commission).

An enforcing agency which has assumed responsibility for administration and enforcement of the state code(s), or an interested party aggrieved by a decision of a Construction Board of Appeals may appeal to the Commission.

Section 16(1) states, in part:

“An interested person . . . may appeal a decision of a board of appeals to the commission within 10 business days after filing of the decision with the enforcing agency or, in case of an appeal because of failure of board of appeals to act within the prescribed time, at any time before filing of the decision . . .”

Questions regarding this technical bulletin may be directed to the Michigan Department of Consumer and Industries Services, Bureau of Construction Codes, Office of Local Government and Consumer Services, P.O. Box 30254, Lansing MI 48909 or by calling (517) 241-9347.

PROOF OF DELIVERY

Date: _____

I, _____, have received the Notice of Hearing in regard to an appeal from the decision of the City of _____'s Construction Board of Appeals, in response to the request of _____ to appeal the decision of the City of _____'s Construction Board of Appeals, dated _____.

Received by: _____

Date: _____

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CERTIFICATE OF MAILING

RE: Appeals Docket No.: CBA-_____

I hereby certify that on the _____ day of _____, A.D., _____, I personally deposited in the United States mail, sealed envelopes, on each one of which was affixed sufficient prepaid postage, properly addressed to each of the parties at their respective address as is listed on the address form, in each of which envelopes were enclosed a true copy of the NOTICE OF HEARING dates _____.

Signed: _____