

ORDINANCE NO. 2004-3
COUNTY OF DELAWARE
PENNSYLVANIA

AN ORDINANCE OF THE COUNTY OF DELAWARE,
PENNSYLVANIA, TO ESTABLISH A UNIFORM
CONSTRUCTION CODE APPEAL BOARD FOR
PARTICIPATING MUNICIPAL GOVERNMENTS.

IT IS HEREBY ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF
THE COUNTY OF DELAWARE, PENNSYLVANIA, AS FOLLOWS:

Section 1. PURPOSE

The Delaware County Uniform Construction Code Appeal Board (hereafter referred to as the "Board") established by Municipal Resolutions approved by and among the City of Chester, Townships of Delaware County, and Boroughs of Delaware County (hereafter referred to as the "Municipalities") is authorized to establish rules and procedures, pursuant to Act 45 of 1999, for the conduct of business regarding appeals from determinations under Uniform Construction Code (hereafter referred to as the "Code"), adopts the following:

The Board is established to provide a process for the resolution of code grievances derived from the decision of the participating municipal code official in order to insure the health, safety, and general welfare for the citizens of Delaware County. Resolution of code grievances by the Board may be accomplished by either a request for hearing or argument on the matter or upon submittal of evidence and/or documentation to the Board for a determination without a hearing.

Section 2. ORGANIZATION

A. Any resident of Delaware County having the qualifications according to Act 45 of 1999 shall be eligible for appointment to the Board regardless of whether the resident's home municipality participates in the Code Administration program. A member of the Board shall be qualified by training and experience to pass on matters pertaining to building construction. Training and experience may consist of licensure as an architect or engineer, experience in the construction industry, and training or experience as an inspector or plan reviewer.

B. The Board shall consist of five members and shall have an organizational meeting each year in February to elect a Chairman and Vice-Chairman for the term beginning February 16 and ending the succeeding year on February 15. The Secretary to the Board shall be the Director of the Delaware County Code Administration.

C. The stated monthly meeting of the Board shall be conducted according to the Pennsylvania State "Sunshine Act" of 1986, as amended.

D. A quorum of the Board, to conduct business, shall consist of three members of the Board.

E. The Board may appoint advisory ad-hoc committee(s) for specific purposes.

Section 3. APPEAL PROCESS

A. FILING OF APPEAL

1. Any person may appeal a decision of the code official refusing to grant a modification to the provisions of the code of the Municipalities served by the Board.

2. The appeal shall be made by completing required information on the Appeal Form and any relevant material shall be appended to the Appeal Form. The Appellant shall state on Appeal Form whether a hearing or oral argument is requested or whether the issue(s) to be resolved shall be decided upon submittal of evidence, written brief and/or documentation to the Board for a determination without a hearing.

3. The Appeals Form may be secured at the office of the Delaware County Code Administration or at the offices of the participating Municipalities.

4. The Appeals Form and any relevant material shall be accompanied by a copy of the written decision of the code official upon which the appeal is based. If no written decision is provided within 10 days of the code official's decision, the Appellant may proceed to file the Appeal on affidavit that the Appellant served on the code official a request for a written decision which was not provided and that the lack of a written decision shall be deemed as a denial.

5. The completed Appeals Form shall be filed with the Board Secretary in the offices of the Delaware County Code Administration at least fifteen (15) business days prior to the stated monthly meeting of the Board. The Appellant shall also serve a copy of the Appeal upon the municipal code official by certified mail and shall file a proof of service with the Board prior to the Hearing. The proof of service shall contain a copy of the Postal return receipt. Director of the Delaware County Code Administration is authorized by the Board to serve as the Secretary to the Board.

6. The filing fee for the Appeal shall be established by Resolution adopted by County Council of the County of Delaware. All checks shall be made payable to the "County of Delaware" and must accompany the Appeals Form.

7. The Secretary shall assign an appeal number and open a file for the keeping of all materials relevant to the appeal. The Secretary shall note on the Appeal Form the date and time of the filing. The appeal number shall be affixed to each document and shall consist of the following:

a. Part one consists of the last two digits of the year in which the appeal is filed.

b. Part two is the municipal code of the Municipality in which the appeal is brought.

c. Part three represents the consecutive number of appeals filed in the year.

8. All appeals shall be heard or decided within 60 days after the appeal is filed and accepted by Board.

B. SCOPE OF REVIEW BY THE BOARD

1. The Appellant may seek a variance or extension of time or appeal a building code official's decision.

2. The date of personal service or the receipt of the Appeal by the Board will establish the filing date of the Appeal and request for variance or extension of time.

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

4. The Board shall decide an appeal, variance request or request for extension of time by reviewing documents and written brief or argument unless the Appellant requests a hearing.

5. The Board shall hold a hearing within 60 days from the date of an applicant's request unless the applicant agreed in writing to an extension of time.

6. The Board shall only consider the following factors when deciding an appeal under section 501 (c) (2) of the act:

(a) The true intent of the act or Uniform Construction Code was incorrectly interpreted.

(b) The provisions of the act do not apply.

(c) An equivalent form of construction is to be used.

7. The Board may consider the following factors when ruling upon a request for extension of time or the request for variance:

(a) The reasonableness of the Uniform Construction Code's application in a particular case.

(b) 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.

(c) The availability of professional or technical personnel needed to come into compliance.

(d) The availability of materials and equipment needed to come into compliance.

(e) The efforts being made to come into compliance as quickly as possible.

(f) Compensatory features that will provide an equivalent degree of protection to the Uniform Construction Code.

8. If the Appellant requests a hearing, the Board shall schedule a hearing and notify the Appellant and building code official of the date, time and place of the hearing.

C. NOTICE OF HEARING

1. The Secretary shall forward by first class mail no later than ten (10) business days before the date of hearing a "Notice of Hearing"; the Appeals Form; and the decision of the municipal Code official to all Board Members, to the municipal Code enforcement official and to the municipal Secretary.

2. If a quorum of the Board cannot be achieved, the Board Secretary shall notify by first class mail all persons as stated in B-1 of the meeting cancellation.

D. HEARING PROCEDURES

1. All hearings shall be open to the public.

2. The Chairman shall preside; and is authorized to administer oaths; and to rule upon the admissibility of presentation to the Board subject to challenge by a majority of the Board. Formal rules of evidence shall not apply but irrelevant, immaterial, or unduly repetitious evidence may be excluded

3. The Secretary shall take, date, certify, and maintain as part of the record a voice tape recording of the hearings as well as the record of the hearing including all exhibits admitted.

4. Upon request by a Party and upon full and prior payment of the cost, the Secretary shall prepare and certify a written transcription of the recording.

5. A Party may be represented by legal counsel.

6. The Order of Hearing shall be as follows:

a. The Appeals Form and all required documents shall be accepted or rejected by the Board; (forms in order, timely submission, fees paid, and other)

b. The Chairman shall state the issue as presented;

c. The appellant shall proceed initially in presenting the appeal to the board and the code official shall be offered the opportunity to comment on the presentation of the issue;

d. The appellant shall present the basis for the appeal and the manner in which the code official erred in the decision

rendered. The appellant may present relevant documents, evidence or witnesses in support;

e. The Board may question the appellant and any witnesses presented;

f. The code official may question the appellant and any witnesses presented;

g. The Board may ask additional questions of the appellant;

h. The code official shall present the law as written and the decision rendered. The code official may present relevant documents or witnesses in support of his/her decision;

i. The Board may question the code official and any witnesses presented

j. The appellant may question the code official and any witnesses presented;

k. The Board may ask additional questions of the code official;

l. The appellant shall make a summation;

m. The code official shall make a summation; and

n. At the conclusion of the code official's summation, the Chairman shall entertain a motion on a decision followed by a roll call vote of the members of the Board. A majority of the Board shall be required to sustain a decision. A tie vote on the Appeal shall be deemed a denial of the Appeal.

7. The Board of its own volition or at the request of a Party may continue the hearing at any stage. A simple majority of voting Board members shall be required for this action.

E. DECISION

1. The decision of the Board shall be formulated by the Chairman or Vice-Chairman in writing to the Secretary on a form which shall state the reasons for the Board's decision. If a hearing is held, the following format shall be employed:

a. Finding of fact;

b. Discussion on the findings;

c. Opinion and order;

d. Right of the aggrieved Party in Interest to appeal to the Court of Common Pleas of Delaware County;

e. Attesting signatures of the Chairman or Vice-Chairman and the Secretary.

2. The decision shall apply only to the Parties, and shall not be presumed to apply to any other situation.

3. The decision shall be circulated by the Secretary among the members of the Board for review and/or comments. Written decision shall be issued within fifteen (15) working days after close of evidence.

4. The Secretary shall forward by certified mail a copy of the decision to the Parties in Interest and by first class mail to all Board members, Code enforcement officials and to the municipal managers.

Section 4. EFFECTIVE DATE

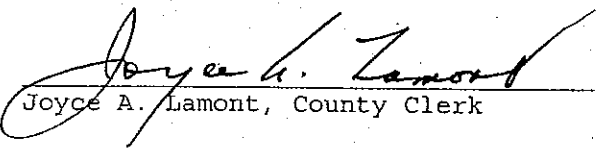
This Ordinance shall be effective *November 4th*, 2004.

ENACTED AND ORDAINED by the County Council of the County of Delaware, Pennsylvania, this *26th* day of *October*, 2004.



Tim Murtaugh, Chairman

Attest:



Joyce A. Lamont, County Clerk