



**Michigan Department of Energy, Labor & Economic Growth
Bureau of Construction Codes
P.O. Box 30254
Lansing, Michigan 48909
(517) 241-9302**

Bureau of Construction Codes Technical Bulletin

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Requirements for a Construction Board of Appeals

“Providing for Michigan’s Safety in the Built Environment”

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

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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 Stille-DeRossett-Hale Single State Construction Code Act, 1972 PA 230.

Every governmental subdivision enforcing a state 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. It is recommended that there be at least one member as an expert in each of the codes if only one board is 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 necessary steps to have their appeal or request 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 the purpose 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 statement of the date, hour, place, and nature of the hearing.
- A statement of the legal authority and jurisdiction under which the hearing is to be held.
- A reference to the particular section(s) of statutes, rules, or codes involved.
- 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.

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:

- Administer oaths and affirmations.
- Regulate the course of the hearings.
- 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.

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:

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

Appeal to the Construction Code Commission

Section 16 of the Act provides 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 . . .”

Conclusion

Every governmental subdivision enforcing a code(s) must establish a Construction Board of Appeals and may establish their own procedures as long as they are consistent with the Stille-DeRossett-Hale Single State Construction Code Act 1972 PA 230.

The provisions relating to qualifications for membership discussed in the Act, apply to all governmental subdivisions. 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.

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.

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