

BERKS COUNTY UNIFORM CONSTRUCTION CODE BOARD OF APPEALS

RULES AND PROCEDURES

The Berks County Uniform Construction Code Board of Appeals (hereafter referred to as the “Board of Appeals”) established by the Berks County Board of Commissioners under recommendation of the Appeals Board Advisory Committee, is authorized to establish rules and procedures for the conduct of business, and adopts the following:

I. PURPOSE

- A. The Board is established to provide a process for the resolution of all Uniform Construction Code grievances, except for issues on accessibility, derived from the decision of the Building Code Official to insure the health, safety, and general welfare for citizens of the participating municipalities in Berks County.

II. ORGANIZATION

- A. Any resident of Berks County having the qualifications according to the Intergovernmental Agreement shall be eligible for appointment to the Board of Appeals regardless of whether the resident’s home municipality participates in the Commonwealth of Pennsylvania’s Uniform Construction Code program.
- B. The Board shall consist of five (5) members and five (5) designated alternates and shall have an organizational meeting each year to elect a Chairman and Vice-Chairman. The Secretary to the Board shall be the Director of the Berks County Planning Office or the Director’s designee.
- C. The term of office for a member shall be four (4) years or until a successor is appointed, except that the terms of the members first appointed shall be fixed so that no more than three (3) members shall be reappointed or replaced in any calendar year. Members whose terms have expired shall hold office until their successors have been appointed.
- D. All meetings of the Board of Appeals shall be conducted according to the Commonwealth of Pennsylvania “Sunshine Act” of 1986, as amended.
- E. A quorum of the Board to conduct business shall consist of three (3) members of the Board.
- F. The Board may appoint ad-hoc committee(s) for specific purposes.
- G. The Board may request and obtain legal counsel, and architectural, engineering or other professional consultants as may be approved by the Berks County Commissioners.

- H. A Board member may not cast a vote or participate in a hearing in any appeal, request for variance or request for extension of time in which the Board member has a personal, professional, or financial interest, or where such participation may otherwise constitute a conflict of interest within the meaning of the State Ethics Act.
- I. The Board shall, by resolution from time to time, set an annual subscription fee to be paid by each participating municipality upon becoming a participating municipality and thereafter on or before January 31st of each year. Checks shall be made payable to County Treasurer.

III. APPEAL PROCESS

A. FILING OF APPEAL

1. An owner or owner's agent may appeal a decision of the Building Code Official refusing to grant a modification to the provisions of the Uniform Construction Code of the municipalities served by the Board, except for accessibility issues.
2. The appeal shall be made by completing the required information on the Appeal Form including submission of any associated material.
3. The Appeal Form may be secured at the Berks County Planning Office and at the offices of the participating municipalities.
4. The Appeal Form and any associated material shall be accompanied by a copy of the written decision of the Building Code Official upon which the appeal is based.
5. The completed Appeal Form shall be filed with the Board Secretary at the Berks County Planning Commission. Receipt by the Board Secretary of the completed Appeal Form and required filing fee constitutes official acceptance of the appeal. The post-marked date or the date of personal service on the Board Secretary of the complete Appeal Form and required filing fee will establish the filing date of the appeal or request for variance or extension of time.
6. The Secretary shall assign an appeal number and open a file for the keeping of all materials relevant to the appeal. The appeal number shall be affixed to each document and shall consist of five parts separated by hyphens as follows:
 - (a) Part one consists of the last two digits of the year in which the appeal is filed.
 - (b) Part two is the designation of the municipality in which the appeal is submitted.

- (c) Part three represents the consecutive number of appeals filed in the municipal jurisdiction.
- (d) Part four represents the identifying letter of the code being appeals as follows:
 - (1) "B" is for the International Building Code
 - (2) "AE" is for Appendix E for the International Building Code
 - (3) "AH" is for Appendix H for the International Building Code
 - (4) "E" is for the International Electrical Code
 - (5) "M" is for the International Mechanical Code
 - (6) "P" is for the International Plumbing Code
 - (7) "FG" is for the International Fuel Gas Code
 - (8) "F" is for the International Fire Code
 - (9) "EC" is for the International Energy Conservation Code
 - (10) "R" is for the International Residential Code
 - (11) "RG" is for Appendix G of the International Residential Code
 - (12) "RE" is for the Appendix E of the International Residential Code
 - (13) "EB" is for the International Existing Building Code
 - (14) "U" is for the International Urban-Wildland Interface Code
- (e) Part five represents the section of the code of which is being appealed.

- 7. The required filing fee as established by resolution of the Board from time to time shall be made payable to Berks County Treasurer and must accompany the Appeal Form. The appellant is responsible for all additional charges and fees accrued during an appeal that are not covered by the required filing fee. **Included but not limited to the Board's attorney fees and secretarial fees.**
- 8. The Board of Appeals Secretary shall forward a copy of the Appeal Form and accompanying documents to the affected municipality.

B. NOTICE OF HEARING

- 1. The Board shall hold a hearing within sixty (60) days from the date of an applicant's request unless the applicant agrees in writing to an extension of time. The Secretary, in the name of the Chairman, shall forward by first class mail no later than ten (10) days before the date of hearing a "Notice of Hearing", the Appeals Form; and the decision of the Building Code Official, to all Board members, to the municipal officials, to the applicant, and to the Building Code Official.
- 2. If a quorum of the Board cannot be achieved, the Board Secretary shall notify by first class mail all persons as stated in Section III(B)(1) above of the hearing cancellation.

3. If the applicant is unable to attend the scheduled hearing, a request in writing for continuance shall be forwarded to the Board Secretary by the applicant.
 - (a) A request for a continuance by an applicant shall detail the reason why the hearing should not be held as scheduled and when such hearing could be attended. The Board Chairman shall rule on the granting of a continuance. Notification of the re-scheduled hearing will be according to procedures as stated in Section III (B)(1) above.

C. HEARING PROCEDURES

1. All hearings shall be held in accordance with the Local Agency Law.
2. All meetings or hearings shall be open to public.
3. A quorum shall consist of:
 - (a) Three (3) of the five (5) Board members must be present to review or hear an appeal.
 - (b) No Board member having a conflict of interest shall sit to review or hear the appeal. A Board member having a conflict of interest shall declare his or her ineligibility to the Secretary prior to the meeting or hearing.
 - (c) Conflicts on accessibility shall not be within the scope or jurisdiction of the Board.
4. All hearings shall be recorded, whether by court reporter or by tape recording, such that an accurate transcript of the hearing can be made in the event of an appeal.
5. Any party aggrieved by the Building Code Official's decision may be represented by legal counsel at the hearing.
6. The Board shall only consider the following factors when deciding an appeal:
 - (a) The true intent of the Uniform Construction Code was incorrectly interpreted.
 - (b) The provisions of the Uniform Construction Code do not apply.
 - (c) An equivalent or better 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 a 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 comparable to the Uniform Construction Code.

D. DECISION

1. When deciding an appeal, the Board may:
 - (a) Deny the appeal in whole or in part.
 - (b) Grant the appeal in whole or in part.
 - (c) Grant the appeal upon certain conditions being satisfied.
2. The Board shall provide a written notice of its decision to the applicant, to the Building Code Official, the Municipality, and to any other party who has participated in the Appeal. The written notice of the decision shall state thereon the following notation, "Date of Mailing of this Decision-_____."
3. The written decision of the Board shall be accompanied by:
 - (a) Findings of fact;
 - (b) Discussion of the findings;
 - (c) Conclusions of Law.
4. In all cases, the burden of proof shall be on the party filing the Appeal.
5. The decision of the Board in each case shall be by vote at an advertised public meeting.