

BOARD OF COMMISSIONERS,
COUNTY OF YORK,
COMMONWEALTH OF PENNSYLVANIA

ORDINANCE 2004-04

AN ORDINANCE CREATING A COUNTY-WIDE BOARD
OF APPEALS AND AUTHORIZING
INTERGOVERNMENTAL COOPERATION AGREEMENTS TO
IMPLEMENT THE PROVISIONS OF THE
PENNSYLVANIA UNIFORM CONSTRUCTION CODE.

WHEREAS, the Commonwealth of Pennsylvania has adopted the Pennsylvania Construction Code Act, Act 45 of 1999, creating the Uniform Construction Code, as amended from time to time (hereafter referred to as "Act"), and pursuant to the Act, the Pennsylvania Department of Labor and Industry has promulgated regulations contained in 34 Pa. Code Chapters 401-405, as amended from time to time (collectively with the Act hereafter referred to as the "UCC"); and

WHEREAS, municipalities in the County of York have enacted or will enact ordinances adopting the UCC; and

WHEREAS, the UCC requires that a board of appeals be appointed to hear appeals from decisions of the municipal code administrators; and

WHEREAS, municipalities in the County of York have indicated a desire to enter into intergovernmental cooperation agreements as authorized by the Act of December 19, 1996, P.L. 1158, 53 Pa.C.S.A. Section 2301 et seq., known as the Intergovernmental Cooperation Act, and Section 501(c) and 34 Pa. Code Section 403.121(d) of the UCC, for the purposes of participating in a County Board of Appeals, hereafter referred to as "Participating Municipalities".

NOW, THEREFORE, IT IS HEREBY ORDAINED AND ENACTED, by the Board of Commissioners of the County of York, Commonwealth of Pennsylvania, as follows:

1. The foregoing recitations are incorporated by reference.

2. The County shall appoint a County Board of Appeals of five (5) members (hereafter referred to as "County Board"), with no fewer than five (5) alternate members, meeting the following requirements:

A. The initial County Board shall consist of one (1) member appointed for a term of five (5) years, one (1) member appointed for a term of four (4) years, one (1) member appointed for a term of three (3) years, one (1) member appointed for a term of two (2) years, and one (1) member appointed for a term of (1) year. Thereafter, each new member shall serve for five (5) years or until a successor has been appointed. Alternate members shall be appointed for a five (5) year membership or until a successor has been appointed.

B. The County Board shall consist of members and alternate members from each of the following professions or disciplines:

i. Registered design professional who is a registered architect; or a builder or superintendent of building construction with at least ten (10) years of experience, five (5) of which shall have been in responsible charge of work.

ii. Registered design professional with structural engineering or architectural experience.

iii. Registered design professional with mechanical or plumbing engineering experience; or a mechanical or plumbing contractor with at least ten (10) years of experience, five (5) of which shall have been in responsible charge of work.

iv. Registered design professional with electrical engineering experience; or an electrical contractor with at least ten (10) years of experience, five (5) of which shall have been in responsible charge of work.

v. Registered design professional with fire protection engineering experience; or a fire protection contractor with at least ten (10) years of experience, five (5) of which shall have been in responsible charge of work.

C. A member or alternate member of the County Board shall serve at the pleasure of the County Board of Commissioners.

D. Members of the County Board of Commissioners, or members of a Participating Municipality's governing body or its code administrators, may not serve on the County Board.

E. The Building Code Official (hereafter referred to as "BCO") of a Participating Municipality may be an ex officio member of the County Board for any appeal from the Participating Municipality, but shall have no vote on any matter before the County Board.

F. The County may fill a position on the County Board with a qualified person who resides outside of the County when it cannot find a person within the County who satisfies the requirements of this section.

G. A County Board member or alternate member may not cast a vote or participate in any appeal, request for hearing, variance, or extension of time in which the member has a personal, professional or financial interest.

H. The County Board shall schedule meetings and provide for public notice of meetings in accordance with 65 Pa.C.S.A. Sections 701-716, relating to the Sunshine Act.

3. The County Board shall be governed by the following rules.

A. At its first convened meeting in each calendar year, the County Board shall elect

i. a chair, who shall be responsible for running the meetings,

ii. a vice chair, who shall take the place of the chair if he or she is unable to perform his or her duties, and

iii. a secretary, who shall be responsible for keeping minutes of each meeting.

B. The County Board shall publish the date, time and location for the meetings for the following calendar year no later than December 31 of each year.

C. The County Board may not act upon an appeal, request for variance or request for extension of time relating to accessibility under the Act.

D. The County Board shall have no authority to waive requirements of the UCC.

E. The County Board shall consider an appeal, request for hearing, request for variance, or request for extension of time only if it has been filed with a Participating Municipality, on a form provided by the Participating Municipality or its BCO. A fee in an amount to be determined by the Participating Municipality shall be paid by the applicant to the Participating Municipality prior to the scheduling of the appeal, hearing, or request with the County Board. The fee shall be considered an integral part of such appeal or request, and failure to file the fee at the time of filing of the appeal or request shall render the appeal or request for hearing, variance or extension of time incomplete as filed, and it will not be forwarded to the County Board until such fee has been paid. The postmark or date of personal service will establish the filing date of the appeal or request for variance or extension of time. Such appeal shall automatically suspend any action to enforce an order to correct, until the matter is resolved, except that any action relating to an unsafe building, structure, or equipment shall not be stayed by the appeal, request for variance, or request for extension of time.

F. Within sixty (60) days from the date of appeal or request for variance or extension of time, the County Board shall decide an appeal, variance request, or request for extension of time by reviewing documents and written brief or argument, unless the applicant requests a hearing.

G. The County Board shall hold a hearing if requested by the applicant within sixty (60) days from the date of request, unless the applicant agrees in writing to an extension of time.

i. Upon the filing of a written request for a hearing with the payment of any fees, the County Board shall schedule a hearing and notify the applicant and BCO of the date, time and place of the hearing.

ii. The County Board may deny the hearing request in whole or in part, grant the hearing request in whole or in part, or grant the hearing request upon certain conditions being satisfied.

H. The BCO of a Participating Municipality shall be responsible for circulating to all members of the County Board in advance of a meeting or hearing all necessary and appropriate documents for each appeal, request for variance, or request for extension of time filed with a Participating Municipality.

I. The review standards of the County Board are as follows:

i. Appeals. An application for appeal shall be limited to consideration of only

(1) whether the true intent of the Act or the UCC have been incorrectly interpreted,

(2) whether the provision of the Act does not apply, or

(3) whether an equally good or better form of construction is proposed.

ii. Request for Variance or Extension of Time. When considering a request for variance or extension of time, the County Board may consider the following factors:

(1) the reasonableness of the UCC's application in a particular case.

(2) the extent to which granting of a variance or an extension of time will constitute a violation of the UCC or create an unsafe condition.

(3) the availability of professional or technical personnel, or materials and equipment, needed to come into compliance.

(4) the efforts being made to come into compliance as quickly as possible.

(5) compensatory features that will provide an equivalent degree of protection to the UCC.

J. The County Board shall render all decisions by resolution, with written findings. A certified copy of the resolution and written findings shall be provided to the appellant, with a copy to the BCO of the Participating Municipality. It shall be the responsibility of the BCO to forward a copy of each decision to the Participating Municipality.

K. The County Board shall adopt and make available to the public procedures for the conduct of a hearing. The procedures shall not require compliance with strict rules of evidence but shall mandate that only relevant information be received. The County Board may also adopt such other rules, including but not limited to fees, as it shall deem necessary to conduct its business.

L. A quorum of the County Board shall consist of a majority of the then-appointed members or their seated alternates.

i. The County Board shall modify or reverse the decision of a BCO by a concurring vote of at least three (3) members. Failure to achieve such a vote shall result in a denial of the appeal or other action requested.

ii. Any other action by the County Board shall be by majority vote of the quorum at any meeting. Failure to achieve a majority vote shall result in denial of the appeal or other action requested.

iii. When five (5) members of the County Board 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.

M. The Chairman of the County Board shall call an alternate member or members to hear appeals and requests if a quorum cannot be achieved due to absence or disqualification of a member or members.

4. If no appeal, request for hearing, request for variance, or request for extension of time has been filed with the County Board, a Participating Municipality may terminate its participation in the County Board by adopting an Ordinance and notifying the County in writing. If an appeal, request for hearing, request for variance, or request for extension of time has been filed with the County Board pursuant to the requirements of this Ordinance, a Participating Municipality may terminate its participation by adopting an ordinance and notifying the County in writing not less than ninety (90) days' prior to the date of the termination.

5. A Participating Municipality shall be responsible for the costs of any services provided by the County Board, and that the fees charged will cover the costs. If fees do not cover the costs, a Participating Municipality will increase those fees to an amount that will do so.

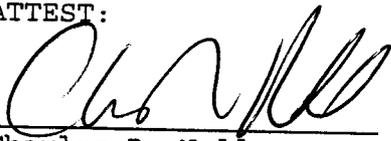
6. The County of York is authorized by resolution to enter into and amend intergovernmental cooperation agreements with any municipality in the Commonwealth of Pennsylvania to participate in the County Board. Any such agreement shall be effective upon the adoption of an ordinance authorizing the municipality to enter an intergovernmental cooperation agreement and the execution of that agreement by the municipality and County.

7. The County and Participating Municipality shall indemnify and hold harmless each other, and their respective officers, employees, agents affiliates (and their officers, partners, directors, employees and agents) and their respective successors and assigns from and against any and all claims, losses, costs and expenses (including but not limited to personal injury, death, illness, or loss of or damage to property, and attorneys' fees and expenses) which arise out of or are related to the existence of this Agreement or duties and responsibilities hereunder.

8. The York County Planning Commission shall be responsible for providing administrative and other necessary support to the County Board.

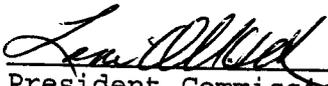
Ordained and enacted this 30th day of June, 2004.

ATTEST:



Charles R. Noli
Administrator/Chief Clerk

COUNTY OF YORK



President Commissioner

(SEAL)

The above Ordinance was ordained, enacted, and adopted this 30th day of June, 2004, at a regular meeting of the Board of Commissioners of the County of York duly advertised and assembled upon motion of Commissioner Kilgore and seconded by Commissioner Chronister and passed with a vote of 3 yes and 0 no.

COUNTY COPY
DO NOT REMOVE
DC 6/17/04

LEGAL NOTICE

Notice is hereby given that the Commissioners of the County of York, Commonwealth of Pennsylvania, will consider Ordinance 2004-04 to create a County-wide Board of Appeals and authorizing intergovernmental cooperation agreements to implement the provisions of the Pennsylvania Uniform Construction Code at their regularly scheduled meeting on June 30, 2004 at 10:00 a.m., in the Commissioners' Meeting Room, 1 West Marketway, 4th Floor, York, Pennsylvania, or at another public meeting at said location not less than seven (7) nor more than 60 days following publication of this notice.

In summary, the proposed Ordinance establishes the Board membership, terms, and qualifications, appeal and review procedures and fees, and authorizes the County to enter into agreements with municipalities who wish to utilize the County Board to implement the Uniform Construction Code.

A certified copy of Ordinance 2004-04 may be examined at the York County Commissioners' Office, 1 West Marketway, 4th Floor, York, PA during normal office hours, or at the Law Library, York County Courthouse, 28 East Market Street, York, PA.

It is the policy of the County of York to ensure services are meaningfully accessible to qualified individuals with disabilities in accordance with the Americans with Disability Act. Upon request, auxiliary aids and accommodations are available to individuals with disabilities. Persons seeking accommodations should call the County at 717.771.9099. Individuals with a hearing impairment should contact the Deaf Center at 717.845.7022, or 717.848.6765 (TDD).

ADMINISTRATOR/CHIEF CLERK

Charles R. Noll

Legal ad, one (1) time by June 22, 2004.

I certify the attached to be a true and correct copy of Ordinance 2004-04.



Charles R. Noll
Administrator/Chief Clerk

Date: 6/17/04