

EAST GOSHEN TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA

RESOLUTION NO. 2012 - ~~0667~~

A RESOLUTION OF THE BOARD OF SUPERVISORS OF EAST GOSHEN TOWNSHIP, CHESTER COUNTY, PENNSYLVANIA, TO ESTABLISH THE EAST GOSHEN TOWNSHIP BOARD OF APPEALS AND TO DELEGATE TO SUCH BOARD THE AUTHORITY TO HEAR AND RENDER DECISIONS ON APPEALS FILED PURSUANT TO THE EAST GOSHEN TOWNSHIP BUILDING CODE AND CODES ADOPTED BY THE TOWNSHIP AS PART OF THE PENNSYLVANIA CONSTRUCTION CODE, ACT 45 OF 1999.

BACKGROUND:

WHEREAS, on May 4, 2004, the Township enacted Ordinance No. 129-E-04 and elected to administer and enforce the Pennsylvania Construction Code, Act 45 of 1999 (the "Act") and the regulations promulgated thereto as the same are amended from time to time, as the Township's Building Code; and

WHEREAS, on March 4, 2003, the Township enacted Ordinance No. 129-C-03 whereby the Township elected to enter an intergovernmental agreement with five other municipalities in Chester County to form a council of governments known as the West Chester Area Council of Governments ("WCACOG"); and

WHEREAS, one of the stated purposes of the WCACOG was to establish a regional board of appeals to hear and render decisions on appeals filed in the respective member's municipality pursuant to the Building Code; and

WHEREAS, pursuant to Section 501(c) of the Act, 35 P.S. § 7210.501(c), the WCACOG formed the West Chester Area Council of Governments ("WCACOG") Appeals Board of the Pennsylvania Uniform Construction Code (the "WCACOG Board of Appeals"); and

WHEREAS, on April 20, 2012, the Commonwealth Court of Pennsylvania decided in *Middletown Township v. County of Delaware Uniform Construction Code Board of Appeals*, No. 1094 C.D. 2011, that a municipality may not designate a regional Construction Code board of appeals to preside over appeals unless the municipality also delegated to the regional board of appeals the authority to administrate and enforce the Act and the municipal building codes; and

WHEREAS, the Township does not wish to delegate to the WCACOG Board of Appeals the authority to administer and enforce the Township's Building Code and therefore has elected to establish the East Goshen Township Board of Appeals and to appoint qualified individuals to serve on said Board;

NOW THEREFORE, BE IT RESOLVED by the Board of Supervisors of East Goshen Township as follows:

SECTION 1. Creation of East Goshen Township Board of Appeals;
Purpose. Pursuant to the authority in Section 501(c) of the Act, 35 P.S. § 7210.501(c), there is hereby created the East Goshen Township Board of Appeals (the "Board of Appeals"). The Board of Appeals shall hear appeals from decisions of the East Goshen Township Building Official which are filed pursuant to the Act and the Township's Building Codes. The Township shall no longer participate in the WCACOG Board of Appeals.

SECTION 2. Appointment of Board of Appeals. The following individuals are appointed to serve on the East Goshen Township Board of Appeals and shall serve until such time as until a successor member is appointed by the Board of Supervisors pursuant to a Resolution of the Board of Supervisors:

John W. Lister

A. Steven Krug

James T Horn

Jeffrey C. Balch

Denis E. Forrest.

SECTION 3. Terms of Office. Any member of the Board who is hereafter appointed shall serve a five year term or until a successor member is appointed by the Board of Supervisors. An appointment to fill a vacancy shall be only for the unexpired portion of the term.

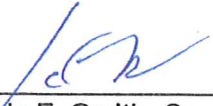
SECTION 3. Qualifications. The qualifications of the Board of Appeals shall be as designated in the Act and the regulations promulgated thereto, 34 Pa Code §403.121.

SECTION 4. Rules and procedures. The Board of Appeals shall adhere to the Rules and Procedures which are attached hereto as Exhibit "A".

SECTION 5. Effective Date. This Resolution shall be effective as of the date of enactment.

RESOLVED this 7th day of August, 2012.

ATTEST:

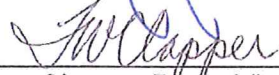


Louis F. Smith, Secretary

**BOARD OF SUPERVISORS
EAST GOSHEN TOWNSHIP**




Senya D. Isayeff, Chairman



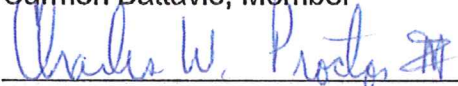
Thom Clapper Ph.D, Vice-Chairman



E. Martin Shane, Member



Carmen Battavio, Member



Charles W. Proctor, III, Esquire, Member

Rules and Procedures
East Goshen Township Board of Appeals
7/11/12

Name

The name of this organization shall be the East Goshen Township Board of Appeals (the “Board of Appeals”).

Administration

The Township Building Code Official shall be responsible for and be custodian of the records for appeals filed with the Board of Appeals.

Agents

The Board of Appeals may appoint a solicitor to represent it during the appeal hearings.

Purpose

The Board of Appeals shall hear and rule on appeals, requests for variances and requests for extensions of time. An application for appeal shall be based on a claim that the true intent of the Pennsylvania Uniform Construction Code, 35 P.S. § 7210.101 et seq., (the “Act”) has been incorrectly interpreted, the provisions of the Act do not fully apply or an equivalent form of construction is to be used.

Composition of the Board

1. A member of the Board of Appeals 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.
2. A member of the Board of Appeals holds office at the pleasure of the Board of Supervisors.
3. Elected officials and Building Code Officials of the Township may not serve on the Board of Appeals.
4. A Board of Appeals 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 member has a personal, professional or financial interest.
5. The Board of Appeals shall schedule meetings and provide public notice of meetings in accordance with 65 Pa.C.S. § 701-706 (relating to the Sunshine Act).

6. The Board of Appeals may not act upon appeals, request for variance or requests for extension of time relating to accessibility under the Act.

Appeals, Variances and Extensions of Time

1. Any owner or owner's agent may file an appeal with the Board of Appeals seeking the following relief:
 - (a) An appeal of the Building Code Official's decision or interpretation of the Township Building Code and all Codes adopted by the Township as part of the Act;
 - (b) A request for an extension of time to perform an act required by the Township Building Code and all Codes adopted by the Township as part of the Act; or
 - (c) A request for a variance from a specific provision of the Township Building Code and all Codes adopted by the Township as part of the Act.
2. The date received by the Building Code Official or the date of personal service along with the application fee will establish the filing date of the appeal and the request for variance or extension of time.
3. All appeals should be filed on a form provided by the Township and shall be accompanied with the filing fee as established by Resolution of the Board of Supervisors.
4. The Township Building Code Official shall notify the Board of Appeals of an appeal after it is filed, coordinate and staff the hearing, provide notices, documents and files as necessary and ensure production of the required record.
5. An appeal or request for variance or extension of time to the Board of Appeals will automatically stay an action to enforce an order until the matter is resolved. An action under § 403.84 (relating to unsafe building, structure or equipment) may not be stayed.
6. The Board of Appeals may decide an appeal, variance request or request for extension of time by reviewing documents and written brief or argument unless the owner or owner's agent requests a hearing.
7. In the case of an appeal or request for extension of time involving the construction of a one or two family residential building, the Board of Appeals shall hold a hearing within thirty (30) days from the date of the applicant's request unless the applicant agreed in writing to an extension of time. In all other appeals, the Board of Appeals shall hold a hearing within sixty (60) days from the date of the applicant's request unless the applicant agreed in

writing to an extension of time.

8. When an appeal is filed on the basis of a decision or interpretation made by the Township's Building Code Official, the appellant shall bear the burden of proving that the Building Official's decision was wrong or that he or she incorrectly interpreted the Township Building Code or any Code adopted by the Township as part of the Act. The Board of Appeals shall consider the following factors in making such decision:
 - (a) The true intent of the Act was incorrectly interpreted.
 - (b) The provisions of the Act do not apply.
 - (c) An equivalent form of construction is to be used.
9. The Board of Appeals may consider the following factors when ruling upon a request for extension of time or the request for variance:
 - (a) The reasonableness of the Act's application in a particular case.
 - (b) The extent to which the granting of a variance or extension of time will pose a violation of the Act 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 for an equivalent degree of protection to the Act.
10. The appellant shall bear the burden of proving one or more of the above factors when requesting an extension of time or a variance from the terms of the Township Building Code or any Code adopted by the Township as part of the Act.
11. If the owner or owner's agent requests a hearing, the Board of Appeals shall schedule a hearing and notify the owner or owner's agent and Township Building Code Official of the date time and place of the hearing. The Board of Appeals may:
 - (a) Deny the request in whole or in part.
 - (b) Grant the request in whole or in part.

- (c) Grant the request upon certain conditions being satisfied.
- 12. The Board of Appeals shall render a written decision and provide it to the parties within five business days of the close of the hearing.
- 13. An owner shall file an appeal, request for variances and request for extensions of time relating to accessibility with the Accessibility Advisory Board under § 403.142 of the Act (relating to Accessibility Advisory Board).

Appeals of a Board of Appeals Decision

An appellant or any party aggrieved by a decision of Board of Appeals may file an appeal from the Board's decision within thirty (30) days of the date of decision by filing an appeal with the Court of Common Pleas of Chester County.

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