

Council of the City of York, PA  
Session 2015  
Bill No.  
Ordinance No.

INTRODUCED BY: **Renee S. Nelson**

DATE: **October 6, 2015**

**AN ORDINANCE**

Repealing Article 190 “Construction Board of Adjustment and Appeals” of the Codified Ordinances of the City of York, Pennsylvania, in its entirety and establishing a new Article 190 “Consolidated Board of Appeals,” and repealing and amending inconsistent ordinances thereto.

**WHEREAS**, the City of York, Pennsylvania previously adopted Article 190 Construction Board of Adjustment and Appeals establishing the Construction Board of Adjustment and Appeals; and

**WHEREAS**, the City of York has elected to participate in the York County Uniform Construction Code Board of Appeals; and

**WHEREAS**, it is necessary to provide an avenue of appeals for matters relating to nuisance abatement, determination of blight, vacant property registration, the Property Maintenance Code and the Fire Code; and

**WHEREAS**, the City of York desires to establish Article 190 “Consolidated Board of Appeals” for the purpose of hearing said appeals, and to repeal and amend inconsistent ordinances thereto;

**NOW, THEREFORE, BE IT ORDAINED**, that the Council of the City of York, Pennsylvania hereby repeals Article 190 “Construction Board of Adjustment and Appeals” in its entirety and replaces it with Article 190 “Consolidated Board of Appeals,” and repeals and amends inconsistent ordinances thereto as follows:

**SECTION ONE**: That Article 190 “Construction Board of Adjustment and Appeals” be amended in its entirety to establish Article 190 “Consolidated Board of Appeals” as follows:

**ARTICLE 190**  
**Consolidated Board of Appeals**

**190.01** Establishment

**190.02** Members Appointed

**190.03** Quorum

**190.04** Secretary; Records

**190.05** Board Powers

**190.06** Nuisance Abatement Appeals

**190.07** Board Action After Nuisance Abatement  
Appeal

**190.08** Property Maintenance/Fire Code Appeals

**190.09** Board Action After Property

Maintenance/Fire Code Appeal

**190.10** Appeal of Blight Designation

**190.11** Board Action After Blight Designation  
Appeal

**190.12** Time Limit for Variances

**190.13** Notice of Appeal

**190.14** Rules and Regulations; Meetings

**190.15** Decisions of the Board

**190.16** Compensation

**190.17** Other Appeals Boards Abolished

**190.01 ESTABLISHMENT**

There is hereby established a board to be known as the Consolidated Board of Appeals, hereinafter referred to as “the Board,” which shall consist of three members and two alternates to be appointed by the Mayor with the advice and consent of Council. In addition to the appointed members, the code officials or designees of the Department of Economic Development and the Department of Fire/Rescue Services shall both serve as ex-officio members of the Board, but shall have no vote on any matter before the Board.

#### 190.02 MEMBERS APPOINTED

Initial appointments to the Board shall be made as follows: One member shall be appointed for a term of one year; one member shall be appointed for a term of two years; and one member shall be appointed for a term of three years. Subsequent appointments or reappointments shall be made for terms of three years. Alternate members shall serve one-year terms. A vacancy shall be filled for an expired term in the manner in which the original appointment was made. In addition to the appointed members, the code officials or designees of the Department of Economic Development and the Department of Fire/Rescue Services shall both serve as ex-officio members of the Board, but shall have no vote on any matter before the Board.

#### 190.03 QUORUM

A simple majority of the Board shall constitute a quorum. The affirmative vote of the majority present shall be required to vary any provisions of the Property Maintenance or Fire codes or to modify a decision of the code officials or designees of the Department of Economic Development and/or the Department of Fire/Rescue Services. In the event that regular members are unable to attend a meeting of the Board, the alternate members shall vote. Alternate members shall have the right to participate in all other aspects of a Board meeting.

#### 190.04 SECRETARY; RECORDS

The city clerk or designee shall act as the secretary of the Board and shall make a detailed record of all its proceedings, which shall set forth the reasons for its decision, the vote of each member, the absence of any member and the failure of any member to vote.

#### 190.05 BOARD POWERS

The Board shall have the power to hear appeals of decisions of the assignment of nuisance abatement points, determinations of blight and decisions and interpretations of the code officials or designees of the Department of Economic Development and the Department of Fire/Rescue Services and to consider equivalencies to the requirements of the various technical codes as adopted by the City. For the purposes of this article, "technical codes" means the Fire Prevention Code and Property Maintenance Code of the City, their associated reference standards and codes, and any rules and regulations promulgated thereunder.

#### 190.06 NUISANCE ABATEMENT APPEALS

The owner of a building, structure or premises that has been assigned nuisance abatement points or who has had the vacant property registration fee imposed may appeal the assignment of such points or imposition of such fees to the Board.

- (a) At the hearing, the Board shall determine whether the nuisance abatement points were properly assessed to the property and whether the property constitutes a public nuisance as defined herein or in the case of vacant property registration fees that said fees were appropriately imposed.
- (b) If the Board concludes that the property constitutes a public nuisance, the Board may make a recommendation to the City as to whether the City should invoke the remedies available to it under Section 1751.05 of this article or enter into a Nuisance Abatement Agreement with the property owner as provided by Section 1751.12 hereof. Although not binding, the City may take the Board's recommendation into consideration when determining the proper remedy so as to promptly abate the public nuisance.

#### 190.07 BOARD ACTION AFTER NUISANCE ABATEMENT APPEAL

The Board shall reach a decision at the hearing, and said decision shall be set forth in writing within thirty (30) days of the hearing. Every decision of the Board shall be final, subject, however, to such remedy as any party may have at law.

#### 190.08 PROPERTY MAINTENANCE/FIRE CODE APPEALS

The owner of a building, structure or service system, or his duly authorized agent, or a person who has been issued an order or directive pursuant to the technical codes may appeal a decision of the code officials or designees of the Department of Economic Development and/or the Department of Fire/Rescue Services to the Board whenever any one or more of the following conditions is claimed to exist:

- (a) The code officials or designees of the Department of Economic Development and/or the Department of Fire/Rescue Services have rejected or refused to approve the mode or manner of construction proposed to be followed or materials to be used in the installation or alteration of a building, structure or service system.
- (b) The provisions of the technical codes do not apply in the specific case.
- (c) That an equally good or more desirable form of installation, also known as an equivalency, can be employed in any specific case.
- (d) The true intent and meaning of the technical codes or regulations thereunder have been misconstrued or incorrectly interpreted.

#### 190.09 BOARD ACTION AFTER PROPERTY MAINTENANCE/FIRE CODE APPEAL

The Board when so appealed to and after a hearing, may alter the application or any provision of the technical codes to any particular case when, in its opinion, the enforcement thereof would do manifest injustice or would be contrary to the spirit and purpose of these or the technical codes or public interest, and also finds the following:

- (a) That special conditions and circumstances exist which are peculiar to the building, structure or service system involved which are not generally applicable to other buildings, structures, or service systems.
- (b) That the special conditions and/or circumstances do not result from the willful action or inaction of the applicant.
- (c) That granting a request will be based upon a decision that the true intent and scope of the codes in question is met, and that alternate materials, methods, or means of construction provide an equivalent level of protection.
- (d) That the request granted is the minimum action that will make possible the reasonable use of the building, structure or service system.
- (e) That the grant of the request will be in harmony with the general intent and purpose of the technical codes and will not be detrimental to the public health, safety and general welfare.

#### 190.10 APPEAL OF BLIGHT DESIGNATION

The owner of a building, structure or premises that has been determined to be blighted may appeal such determination to the Board.

- (a) At the hearing, the Board shall determine whether the property is blighted under 35PS §1712.1 or 26 Pa. C.S.A. §205 or whether the property constitutes a public nuisance.

**190.11 BOARD ACTION AFTER BLIGHT DESIGNATION APPEAL**

The Board shall reach a decision at the hearing, and said decision shall be set forth in writing within thirty (30) days of the hearing. Every decision of the Board shall be final, subject, however, to such remedy as any party may have at law.

**190.12 TIME LIMIT FOR VARIANCES**

In granting a request for a variance to the technical codes, the Board may prescribe a reasonable time limit within which the action for which the variance is required shall be commenced or completed or both and such time limits may not be extended. In addition, the Board may prescribe appropriate conditions and safeguards in conformity with the technical codes. Violation of the conditions and/or safeguards shall be deemed a violation of the technical codes.

**190.13 NOTICE OF APPEAL**

The notice of appeal shall be in writing and filed within thirty calendar days after the decision is rendered by the code officials or designees of the Department of Economic Development and/or the Department of Fire/Rescue Services. The notice of appeal shall be filed in a form acceptable to the Board and shall be accompanied by the appropriate fee as is otherwise set forth by resolution of the Council.

**190.14 RULES AND REGULATIONS; MEETINGS.**

The Board shall establish such rules and regulations for its own procedure not inconsistent with the provisions of this article. The Board shall meet on the call of the chairman, or shall meet within thirty days after notice of an appeal has been received, or at such regularly scheduled periodic meetings as the Board shall annually set. Notice of the annual schedule of meetings or other meetings of the Board shall be published in a newspaper of general circulation one time.

**190.15 DECISIONS OF THE BOARD.**

The Board shall, in every case, reach a decision without unreasonable or unnecessary delay. Each decision of the Board shall also include the reasons for the decision. If a decision of the Board reverses or modifies a refusal, order, or disallowance of the code officials or designees of the Department of Economic Development and/or the Department of Fire/Rescue Services, the code official or designee shall immediately take action in accordance with such decision. Every decision shall be promptly filed in writing with the office of the City Clerk and the code officials or designees of the Department of Economic Development and the Department of Fire/Rescue Services and shall be open to public inspection. A certified copy of the decision shall be sent by mail or otherwise delivered to the appellant and a copy shall be kept publicly posted in the office of the code officials or designees of the Department of Economic Development and the Department of Fire/Rescue Services for two weeks after filing. Every decision of the Board shall be final; subject however, to such remedy as any party may have at law.

**190.16 COMPENSATION.**

The members of the Board may be compensated as otherwise provided for by resolution of Council.

**190.17 OTHER APPEALS BOARDS ABOLISHED.**

Any and all boards heretofore created by the City for the hearing of appeals of declaration of nuisance, blight or the technical codes as described herein are hereby abolished and replaced with the Consolidated Board of Appeals.

**SECTION TWO:** That Article 1501 “Standard Adopted” of the Fire Prevention Code, Subsection 1501.04(10) “Board of Appeals” be repealed as follows:

~~(10) Section 108. Board of Appeals. Means of Appeal. Any person shall have the right to appeal a decision by the Fire Code Official to the Construction Board of Adjustment and Appeals or as is otherwise established by the ordinances of the City of York, Pennsylvania.~~

**SECTION THREE:** That Article 1701 “BOCA National Building Code,” Subsection 1701.02(8) “Means of Appeal” be amended as follows:

(8) Section 121.0 Means of Appeal is hereby amended by deleting all existing text and adding the following section to read:

Section 121.0 Means of Appeal. Any person shall have the right to appeal a decision by the ~~Code Official to the Construction Board of Adjustment and Appeals~~ **York County Uniform Construction Code Board of Appeals** as is otherwise established by the ordinances of the City of York, Pennsylvania.

**SECTION FOUR:** That Article 1711 “Uniform Construction Code,” Subsection 1711.01(d) be amended as follows:

~~(d) A Board of Appeals shall be established by resolution of the governing body of the City in conformity with the requirements of the relevant provisions of the Code, as amended from time to time, and for the purposes set forth therein. If at any time enforcement and administration is undertaken jointly with one or more other municipalities, the Board of Appeals shall be established by joint action of the participating municipalities.~~

**(d) Appeals related to the administration and enforcement of the Uniform Construction Code as adopted by the City of York, Pennsylvania shall be heard by the York County Uniform Construction Code Board of Appeals.**

**SECTION FIVE:** That Article 1729 “Vacant Property Registration,” Subsection 1729.06 “Appeal Rights,” be repealed as follows:

~~1729.06 APPEAL RIGHTS.~~

~~The owner shall have the right to appeal the imposition of the registration fees to the Nuisance Abatement Board of Appeals upon filing an application in writing to the Bureau of Permits Planning and Zoning no later than 15 calendar days after the date of the billing statement. On appeal, the owner shall bear the burden of providing satisfactory objective proof of occupancy as defined in Section 1729.02(d).~~

**SECTION SIX:** That Article 1751 “Nuisance Abatement,” Subsection 1751.11 “Nuisance Abatement Board of Appeals” be repealed as follows:

~~1751.11 NUISANCE ABATEMENT BOARD OF APPEALS.~~

~~(a) The Board shall consist of three members and two alternates to be appointed by the Mayor with the advice and consent of Council. Initial appointments to the Board shall be made as follows: One member shall be appointed for a term of one year; one member shall be appointed for a term of two years; and one member shall be appointed for a term of three years. Subsequent appointments or reappointments shall be made for terms of three years. Alternate members shall serve one year terms. A vacancy shall be filled for an expired term in the manner in which the original appointment was made. A simple majority of the Board shall constitute a quorum.~~

~~(b) The Board shall establish such rules and regulations for its own procedure not inconsistent with the provisions of this article.~~

~~(c) At the hearing, the Board shall determine whether the points were properly assessed to the property and whether the property constitutes a public nuisance as defined herein.~~

~~(d) If the Board concludes that the property constitutes a public nuisance, the Board may make a recommendation to the City as to whether the City should invoke the remedies available to it under Section 1751.05 of this article or enter into a Nuisance Abatement Agreement with the property owner as provided by Section 1751.12 hereof. Although not binding, the City may take the Board's recommendation into consideration when determining the proper remedy so as to promptly abate the public nuisance.~~

~~(e) The Board shall reach a decision at the hearing, and said decision shall be set forth in writing within thirty (30) days of the hearing. Every decision of the Board shall be final, subject, however, to such remedy as any party may have at law.~~

**SECTION SEVEN:** This ordinance shall become effective twenty-days after approval by the Mayor.

PASSED FINALLY:

BY THE FOLLOWING VOTE:

YEAS: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

NAYS: \_\_\_\_\_.

\_\_\_\_\_  
Carol Hill-Evans, President of Council

ATTEST:

\_\_\_\_\_  
Dianna L. Thompson-Mitchell, City Clerk

Presented to the Mayor for approval this \_\_\_\_\_ day of \_\_\_\_\_ 2015.

APPROVED: \_\_\_\_\_  
Mayor Date

VETOED: \_\_\_\_\_  
Mayor Date