

#### ARTICLE IV. - BOARD OF APPEALS REGARDING TECHNICAL CODE ENFORCEMENT

##### Sec. 10-91. - Application for appeal.

Except for those persons who are charged with ordinance violations in the jurisdiction of the city's municipal court, any person directly affected by a decision of the building official, other code official or the fire chief (generally, the "code official" for purposes of this chapter 10, article IV) shall have the right to appeal to the city's board of appeals for code enforcement (the "appeals board"), provided that a written application for appeal is filed within 20 days after the day the notice or order was served. An application for appeal may be based on grounds that an alleged code violation is based on an erroneous finding of fact, that the true intent of the code or the rules thereunder have been arbitrarily, capriciously, or incorrectly interpreted or applied, the provisions of code do not fully apply to the situation, or that the requirements of the code are adequately satisfied by other means. In such cases the appeals board may hear witnesses, receive evidence, view the premises, receive arguments; thereafter, the appeals board shall make a de novo decision, without being bound in any way by the decision of the code official or any other intermediate appellate official. The decision of the appeals board shall be reduced to writing and delivered to the all parties to the appeal.

( [Ord. No. 4046, 4-21-2011](#) ; Ord. No. [4119](#) , § 1, 5-7-2013; Ord. No. [4324](#) , § 4, 3-13-2018)

##### Sec. 10-92. - Membership of appeals board.

The appeals board shall consist of five members who are qualified by experience and training to pass on matters pertaining to real property, construction or property maintenance and who are not employees of the city. The code official shall not be an ex officio member, and shall not sit with the appeals board either during hearings or during deliberations, and shall have no vote on any matter before the appeals board. The board members shall be appointed by the city council, as the governing body of the city, and shall serve staggered and overlapping terms. So long as such member is qualified, nothing herein shall prohibit the city council from appointing any member of any other board created or established by the city to serve on the appeals board. It is further provided that members of the city's construction board of appeals are qualified and authorized to serve on the appeals board.

( [Ord. No. 4046, 4-21-2011](#) ; Ord. No. [4119](#) , § 1, 5-7-2013)

##### Sec. 10-92.1. - Alternate members.

The city council may appoint two or more alternate members who shall be called by the board chairman to hear appeals during the absence or disqualification of a member. Alternate members shall possess the qualifications required for board membership.

( [Ord. No. 4046, 4-21-2011](#) ; Ord. No. [4119](#) , § 1, 5-7-2013)

##### Sec. 10-92.2. - Chairman.

The appeals board shall annually select one of its members to serve as chairman of the appeals board.

( [Ord. No. 4046, 4-21-2011](#) ; Ord. No. [4119](#) , § 1, 5-7-2013)

##### Sec. 10-92.3. - Disqualification of member.

A member shall not hear an appeal in which that member has a personal, professional or financial interest.

( [Ord. No. 4046, 4-21-2011](#) ; Ord. No. [4119](#) , § 1, 5-7-2013)

##### Sec. 10-92.4. - Secretary.

The appeals board may or, in his or her discretion the city manager may, designate a qualified person to serve as a secretary to the appeals board. The secretary shall file a detailed record of all proceedings in the office of the city clerk.

( [Ord. No. 4046, 4-21-2011](#) ; Ord. No. [4119](#) , § 1, 5-7-2013)

Sec. 10-92.5. - Compensation of members.

Compensation of members shall be determined by law.

( [Ord. No. 4046, 4-21-2011](#) ; Ord. No. [4119](#) , § 1, 5-7-2013)

Sec. 10-93. - Notice of meeting.

The appeals board shall meet upon notice from the chairman, within 20 days of the filing of an appeal, or at stated periodic meetings.

( [Ord. No. 4046, 4-21-2011](#) ; Ord. No. [4119](#) , § 1, 5-7-2013)

Sec. 10-94. - Open hearing.

All hearings before the appeals board shall be open to the public. The appellant, the appellant's representative, the code official, the city attorney, and any person whose interests are affected shall be given an opportunity to be heard. A quorum shall consist of not less than two-thirds of the appeals board's membership.

( [Ord. No. 4046, 4-21-2011](#) ; Ord. No. [4119](#) , § 1, 5-7-2013)

Sec. 10-94.1. - Procedure.

The appeals board shall adopt and make available to the public through the secretary procedures under which a hearing will be conducted. The procedures shall not require strict compliance with the rules of evidence, but shall mandate that only relevant information be received. Hearsay evidence may or may not be received, based on the ruling of the chairman on the reliability and nature of such evidence.

( [Ord. No. 4046, 4-21-2011](#) ; Ord. No. [4119](#) , § 1, 5-7-2013)

Sec. 10-95. - Postponed hearing.

When the full appeals board is 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.

( [Ord. No. 4046, 4-21-2011](#) ; Ord. No. [4119](#) , § 1, 5-7-2013)

Sec. 10-96. - Board decision.

- (a) The appeals board can vote to modify, affirm or reverse the decision of the code official only by a positive vote of a majority of a quorum present.
- (b) In the event of a tie vote, the decision of the code official is affirmed.
- (c) When making a decision, in no event may the appeals board waive the requirements of a technical code.

( [Ord. No. 4046, 4-21-2011](#) ; Ord. No. [4119](#) , § 1, 5-7-2013; Ord. No. [4324](#) , § 5, 3-13-2018)

Sec. 10-97. - Records and copies.

The decision of the appeals board shall be recorded in the office of the city clerk, who shall furnish copies to the appellant and to his counsel, to the code official, and to the city attorney, and to any interested person who requests a copy.

( [Ord. No. 4046, 4-21-2011](#) ; Ord. No. [4119](#), § 1, 5-7-2013)

**Editor's note**— Ord. No. 4119, § 1, adopted May 7, 2013 renumbered §§ 10-96.1—10-98 as 10-97—10-100, as set out herein. The historical notation has been retained with the amended provisions for reference purposes.

Sec. 10-98. - Administration.

The code official shall take immediate action in accordance with the decision of the appeals board, as soon as the time for filing an appeal with the Court of Common Pleas of Darlington has expired without an appeal being filed and served, unless the other party agrees that no appeal will be filed.

( [Ord. No. 4046, 4-21-2011](#) ; Ord. No. [4119](#), § 1, 5-7-2013)

**Editor's note**— See editor's note to § 10-97.

Sec. 10-99. - Court review.

Any person whose interests are directly or materially affected by the decision, whether or not a previous party of the appeal, shall have the right to appeal the appeals board's decision to the Court of Common Pleas for Darlington County. Such court shall first decide if such person has alleged sufficient facts to support a claim of legal standing to pursue the appeal, and if so, shall proceed to hear the appeal then, or at such later time as may be convenient to said court. The filing and service of an application for review shall be made in the manner and time required by law following the filing of the decision in the office of the city clerk.

( [Ord. No. 4046, 4-21-2011](#) ; Ord. No. [4119](#), § 1, 5-7-2013)

**Editor's note**— See editor's note to § 10-97.

Sec. 10-100. - Stays of enforcement.

Appeals of notice and orders (except as otherwise provided by the terms of the IPMC) shall stay the enforcement of the notice and order until the appeal is heard by the appeals board, and by the court, as referenced above, if a proper appeal is filed.

( [Ord. No. 4046, 4-21-2011](#) ; Ord. No. [4119](#), § 1, 5-7-2013)

**Editor's note**— See editor's note to § 10-97.