

CITY OF DOVER ORDINANCE #2016-19

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF DOVER, IN COUNCIL MET:

That Chapter 22 - Buildings and Building Regulations, Article I - In General, Section 22-1 - Construction Code Appeals Committee of the Dover Code be amended to read as follows:

Sec. 22-1. - Construction and property maintenance code board of appeals.

- (a) Established; composition; appointment. There shall be a committee to be referred to as the “construction and property maintenance code board of appeals,” consisting of five (5) members. The council president shall appoint three (3) elected city officials and the mayor shall appoint one (1) city resident generally selected as a representative of homeowners and one (1) representative of the local real estate industry association. Members shall serve one-year terms unless sooner removed. All appointments are subject to confirmation by the city council at its second regular meeting in May. The construction and property maintenance code board of appeals shall elect one of its members as chairperson.
- (b) *Appeals.* Whenever any person is aggrieved by a decision of the building inspector with respect to the provision of this chapter, it is the right of that person to appeal to the construction and property maintenance code board of appeals. Such appeal must be filed, in writing, within 30 days after the determination by the building inspector.
- (c) *Notice; hearing.* Upon receipt of such an appeal, the construction and property maintenance code board of appeals shall set a time and place in not less than ten, nor more than 30 days for the purpose of hearing the appeal. Notice of the time and place of the hearing of the appeal shall be given to all parties, at which time they may appear and be heard. The determination by the construction and property maintenance code board of appeals shall be final in all cases.

(Code 1981, § 5-3; Ord. of 4-25-1994)

BE IT FURTHER ORDAINED:

That Chapter 22 - Buildings and Building Regulations, Article III - Building Code, Section 22-61 - Adopted, Subsection (a) - International Building Code adopted, Section 113 - Board of Appeals of the Dover Code be amended to read as follows:

Section 113 BOARD OF APPEALS. See Chapter 22-Buildings and Building Regulations, Article I-In General, Sec. 22-1 Construction and property maintenance code board of appeals

BE IT FURTHER ORDAINED:

That Chapter 22 - Buildings and Building Regulations, Article III - Building Code, Section 22-61 - Adopted, Subsection (b) - International Residential Code Adopted, Section R112 - Board of Appeals of the Dover Code be amended to read as follows:

SECTION R112 BOARD OF APPEALS See Chapter 22 - Buildings and Building Regulations, Article I - In General, Sec. 22-1 Construction and property maintenance code board of appeals.

BE IT FURTHER ORDAINED:

That Chapter 22 - Buildings and Building Regulations, Article VII - Property Maintenance Code, Section 22-221 - Adopted, Subsection (a), Section 111 - Means of Appeal of the Dover Code be amended to read as follows:

SECTION 111 MEANS OF APPEAL See Chapter 22 - Buildings and Building Regulations, Article I - In General, Sec. 22-1 Construction and property maintenance code board of appeals.

BE IT FURTHER ORDAINED:

That Chapter 22 - Buildings and Building Regulations, Article VII - Property Maintenance Code, Section 22-225 - Property Maintenance Code Board of Appeals of the Dover Code be deleted in its entirety.

BE IT FURTHER ORDAINED:

That Chapter 22 - Buildings and Building Regulations, Article XII - Vacant Buildings, Section 22-406 - Appeals of the Dover Code be amended to read as follows:

Sec. 22-406. - Appeal of the 25 percent over market rate.

An appeal of the 25 percent over market rate (from the actively for sale or lease definition) can be considered through an appraisal using accepted appraisal standards to determine market rate. The owner has the option of asking the city tax assessor to perform the appraisal or having one performed (using accepted appraisal standards) at their own expense.

(Ord. of 6-26-2006; Ord. No. 2013-03, 3-11-2013)

BE IT FURTHER ORDAINED:

That Chapter 46 - Fire Prevention and Protection, Article III - Fire Codes, Section 46-125 - Construction Code Appeals Committee of the Dover Code be amended to read as follows:

Sec. 46-125. - Appeal; hearing.

Appeal; hearing. Whenever any person is aggrieved by a decision of the fire marshal with respect to the provisions of this chapter, it is the right of that person to appeal to the construction and property maintenance code board of appeals, as provided for in Chapter 22 - Buildings and Building Regulations, Article I - In General, Section 22-1 - Construction and property maintenance code board of appeals. Such appeal must be filed, in writing, within 30 days after the determination by the fire marshal. Upon receipt of such appeal, the construction and property maintenance code board of appeals shall set a time and place, in not less than ten or more than 30 days, for the purpose of hearing the appeal. Notice of the time and place of the hearing of the appeal shall be given to all parties, at which time they may appear and be heard. The determination by the construction and property maintenance code board of appeals shall be final in all cases.

(Code 1981, § 7-60; Ord. of 5-10-1982; Ord. of 11-22-1993)

BE IT FURTHER ORDAINED:

That Chapter 50 - Floods, Article IV - Variances, Section 50-46 - Variances of the Dover Code be amended to read as follows:

Sec. 50-46. - Variances.

The City of Dover construction and property maintenance code board of appeals, as provided for in Chapter 22 - Buildings and Building Regulations, Article I - In General, Section 22-1 - Construction and property maintenance code board of appeals, shall have the power to authorize, in specific cases, such variances from the requirements of these regulations and the flood load and flood load and flood-resistant construction of the building code, not inconsistent with federal regulations, as will not be contrary to the public interest where, owing to special conditions of the lot or parcel, a literal enforcement of the provisions of these regulations would result in unnecessary hardship.

(1) *Application for a variance.*

- a. Any owner, or agent thereof, of property for which a variance is sought shall submit an application for a variance to the floodplain administrator.
- b. At a minimum, such application shall contain the following information: Name, address, and telephone number of the applicant; legal description of the property; parcel map; description of the existing use; description of the proposed use; location of the floodplain; description of the variance sought; and reason for the variance request. Each variance application shall specifically address each of the considerations in section 50-46(2) and the limitations and conditions of section 50-46(3).

(2) *Considerations for variances.* In considering variance applications, the City of Dover construction and property maintenance code board of appeals shall consider and make findings of fact on all evaluations, all relevant factors, requirements specified in other sections of these regulations, and the following factors:

- a. The danger that materials may be swept onto other lands to the injury of others.
- b. The danger to life and property due to flooding or erosion damage.
- c. The susceptibility of the proposed development and its contents (if applicable) to flood damage and the effect of such damage on the individual owner.
- d. The importance of the services provided by the proposed development to the community.
- e. The availability of alternative locations for the proposed use which are not subject to, or are subject to less, flooding or erosion damage.
- f. The necessity to the facility of a waterfront location, where applicable, or if the facility is a functionally dependent use.
- g. The compatibility of the proposed use with existing and anticipated development.
- h. The relationship of the proposed use to the comprehensive plan for that area.
- i. The safety of access to the property in times of flood for ordinary and emergency vehicles.
- j. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site.
- k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(3) *Limitations for variances.*

- a. An affirmative decision on a variance request shall only be issued upon:
 1. A showing of good and sufficient cause. A "good and sufficient" cause is one that deals solely with the physical characteristics of the property and cannot be based on the character of the planned construction or substantial improvement, the personal characteristics of the owner or inhabitants, or local provisions that regulate standards other than health and public safety standards.

2. A determination that failure to grant the variance would result in exceptional hardship due to the physical characteristics of the property.
 3. Increased cost or inconvenience of meeting the requirements of these regulations does not constitute an exceptional hardship to the applicant.
 4. A determination that the granting of a variance for development within any designated floodway, or special flood hazard area with base flood elevations but no floodway, will not result in increased flood heights beyond that which is allowed in these regulations.
 5. A determination that the granting of a variance will not result in additional threats to public safety; extraordinary public expense, nuisances, fraud on or victimization of the public, or conflict with existing local laws.
 6. A determination that the structure or other development is protected by methods to minimize flood damages.
 7. A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- b. Upon consideration of the individual circumstances, the limitations and conditions, and the purposes of these regulations, the City of Dover construction and property maintenance code board of appeals may attach such conditions to variances as it deems necessary to further the purposes of these regulations.
- c. The City of Dover construction and property maintenance code board of appeals shall notify any applicant in writing to whom a variance is granted for a building or structure with a lowest floor elevation below the base flood elevation that the variance is to the floodplain management requirements only, and that the cost of federal flood insurance will be commensurate with the increased risk.

(Ord. No. 2014-09, 6-9-2014)

ADOPTED: AUGUST 22, 2016

S:\ORDINANCES\2016\ADOPTED\Ordinance #2016-19 Amending Ch 22; Ch 46; and Ch 50 with CCW-LF&A#1-ADOPTED 08-22-2016.wpd

SYNOPSIS

The proposed ordinance would consolidate the Construction Code Appeals Committee and the Property Maintenance Code Board of Appeals. This consolidation will put appeals related to Chapters 22, 46, and 50 under one committee consisting of five members instead of three and change the composition of the members by replacing the City Manager with an elected City official. The plan is to create the Construction and Property Maintenance Code Board of Appeals with the sitting members of the existing groups. The appointments will continued to be shared by the Mayor and Council President.

(SPONSORS: COLE, HUTCHISON, AND NEIL)

Actions History

08/22/2016 - Final Reading - City Council

08/08/2016 - First Reading - City Council

07/26/2016 - Introduction - Council Committee of the Whole/Legislative, Finance, and Administration Committee