



OHIO BOARD OF BUILDING STANDARDS

BOARDS OF BUILDING APPEALS

Have you ever had a set of drawings returned from the building department with a correction letter listing of items that needed to be changed even though you knew the drawings were correct? I'm sure that you have walked onto your job and been told that it had been red tagged. When you found the reason for the tag, you felt that the inspector was being unfair, especially picky, or worse yet, arbitrary. What do you do? Who do you call? What feathers will be ruffled?

Often knowing a few facts can make the difference between a confrontation and a resolution, between being intimidated and getting on with the job. Perhaps the following information will begin to take the mystery out of the system. Believe it or not, there is a system of checks and balances that removes the emotion from very difficult situations. That system includes the building official, plan reviewers, the inspectors, and the appeals process. Knowing these basics is essential for every person involved in building under the Ohio Building Code (OBC).

THE BUILDING DEPARTMENT

There are three important roles in the operation of a building department and each is to be performed within distinct parameters. Operating outside those roles can possibly bring personal liability and decertification of the individual or the department. All the roles are described in Chapter One of the OBC.

The first role is that of the building official. The building official is responsible for the enforcement of the OBC and for making interpretations of the language. This means just that, the individual responsible and authorized to perform these duties is the building official, not the plans examiner or the inspectors. They are the building official's experts and the building official's eyes and ears on the site, but the building official is responsible to enforce the OBC. In larger departments this responsibility is often times delegated to others but ultimately the building official is responsible. The building officials understand that this delegation means that certain information is often passed between the staff and those on the construction site. However, in every discussion we have had with building officials, they do not want the staff to operate independently of them. Ultimately all decisions, correction letters, and orders are the responsibility of the building official. The law (3781.10) and the OBC (Chapter One, Sections 104.1, 104.2, 104.3, 105.3.1, 106.1, and 113.2) indicate clearly that the building official is responsible for making sure these duties are performed.

Next, it is the plan examiner's responsibility, as the building official's expert, to ascertain whether the construction documents are in compliance with the OBC. This duty is spelled out in section 106.3.1 of the OBC. This review covers all the building systems and equipment covered by the OBC. Once compliance or

noncompliance is determined, this information is turned over to the building official for action. This action involves the issuance of a correction letter, which should include a right to appeal, or the issuance of a plan approval certification. If other jurisdictional requirements are met (zoning, engineering, sewage, etc.), then the local jurisdiction usually issues a building permit containing the appropriate signatures and which gives permission to begin the construction shown on the approved construction documents.

The third role is that of the field inspectors. Whether structural, electrical, mechanical, sprinkler, or plumbing, a building department's inspectors do the same thing - make sure that what is built matches the approved construction documents. They are not authorized to direct the work in the field. They are to report any work being done that does not conform to the approved construction documents to the owner (or the owner's representative) and to the building official (Section 109.7 of the OBC). The building official then should make a determination as to whether to issue an order to deal with the non-compliance. If the inspector finds a dangerous condition (serious hazard), a stop work order stopping work on that specific item can be issued but they are usually issued only after contacting and receiving the consent of the building official. Because these orders are documents with legal consequences, their use must be in strict accordance with the law and their issuance therefor must include the building official.

Basic rules:

1. Get it in writing. All direction, orders, etc. should be given to you in some written form. Verbal orders are nonexistent and untraceable. This written information should include what exactly does not comply and citation of the appropriate code section as well as some indication of your a right to appeal.
2. Compliance with the OBC is not a hardship and ignorance is not an excuse (even if "they" never required you to do it anywhere else before).
3. The building official's responsibility to interpret code requirements is not a license to grant variances from clear code requirements.
4. An owner has a right to build according to approved plans if there is no serious hazard created and in the absence of fraud in obtaining the plans approval.

APPEALS

Having said all of the above and after learning the basics, what happens after the order is delivered to the job site or the stop work order is posted? What can be done when the work is correct and it is cited as incorrect or the enforcement

of the OBC is spotty or downright incorrect? What options are there at this point? Well, there are several options.

1. If the work does not in fact comply with the approved construction documents you have two options. Get the change(s) to the construction documents to the building department for approval. These approved changes are then part of the approved construction documents and therefor the work can be approved. The other option is to request an appeal before the Board of Appeals that has jurisdiction.
2. If the construction documents were approved and the work is being done according to those construction documents but an order is issued you have two options. You could make the changes even though the work was done according to the construction documents. This approach happens more times than any other. It is cheaper to make the changes, charge the owner, and not disagree with the building department personnel. Thus the incorrect behavior is reinforced and, if anything, you should expect more of the same in the future. We have, in our training courses, stated that requesting an appeal is a better solution. It creates a legally granted variance, it is a non- adversarial presentation of the facts, and it forces everyone to focus on the technical issues. To use this option, however, it is important to understand the appeals process.

HISTORY

When did local jurisdictions become authorized to have local Boards of Appeals?

House Bill 83, sponsored by Jerome Luebbers of the 33rd House District, became effective on 13 October 1983. It had passed the House on the 10th of May and the Senate on the 22nd of June, both by a large majority. Then Governor Richard Celeste chose a seldom-used option by permitting House Bill 83 to become law without his signature. This legislation allowed municipalities and counties to create local boards of appeals using an application process through the Board of Building Standards. The language included member qualifications, terms of office, and outlined the responsibilities and powers of these local appeals boards.

THE BOARDS

What is the makeup of the local Board of Appeals and how long do members serve?

A certified municipal or county board of building appeals must consist of five members. One member must be an attorney, admitted to the Ohio bar; one must be an architect, registered in Ohio; one must be a structural engineer, registered in Ohio; and one must be a mechanical engineer, registered in Ohio. Each of these four members shall have recognized ability, broad training and experience in problems and practice incidental to the construction and equipment of buildings and structures. The fifth member must be a representative of organized labor, knowledgeable in the construction and equipment of buildings and structures. There is one exception to this requirement for appeals board makeup. Municipal boards may have more than five members and need not have an attorney member if the municipal charter so provided prior to October 13, 1983.

Appeals board members must be appointed for five year terms except that original appointments are for terms of one, two, three, four and five years. The first terms upon becoming a certified local board of appeals follow the usual pattern for first time appointments: member one's term is for one year, member two's term is for two years, member three's term is for three years and so forth for each original member. Each member's second term is then for five years. This assures that, in the future, the terms will not expire on the same date. A member holds office from the date of appointment until the end of the appointed term, however, the member can continue in office following the term expiration date until a successor takes office or until 60 days have elapsed, whichever occurs first. Any member appointed to fill a vacancy occurring before the expiration of a term can hold office for the remainder of that term. Vacancies and new appointments must be reported to the Board of Building Standards within 30 days and this notification of new appointments must include resume, date of appointment, term of office, qualifications and experience necessary for each membership.

How many Boards of Appeals are there today?

Since the effective date of the bill, the Board of Building Standards has certified seven municipal appeals boards in:

Akron; Cincinnati; Cleveland; Dayton; Kent; Springfield; and Toledo;

and three county appeals boards in:

Greene County; Hamilton County; and Medina County.

Several local boards of appeals are certified under contract with the above listed appeals boards and are not listed here since these are the appeals

boards that actually hear the cases. Those jurisdictions which send their appeals to the appeals boards listed above are:

Brunswick (Medina County); Centerville (Dayton); Englewood (Dayton); Kettering (Dayton); Miamisburg (Dayton); Montgomery county (Dayton); Moraine (Dayton); New Lebanon (Dayton); Vandalia (Dayton); West Carrollton (Dayton); Fairborn (Greene county); and Lucas county (Toledo)

AUTHORITY

What is the local Board of Appeals empowered to do?

A Certified municipal and county boards of building appeals can hear and decide the adjudication orders referred to in the OBC (Sections 113.1 and 113.2) for work within the jurisdiction of and arising from orders of the local building official in the enforcement of the OBC and Chapters 3781. and 3791. of the Ohio Revised Code. The orders of the local building official may be reversed or modified by the board if it finds any of the following:

1. The order is contrary to such laws or rules (OBC);
2. The order is contrary to a fair interpretation or application thereof; or
3. That a variance from the provisions of such laws or rules, in a specific case, will not be contrary to the public interest where literal enforcement of such provisions will result in unnecessary hardship.

Remember that a certified local board of appeals may not prohibit the use of materials or assemblages authorized for statewide use by the Board of Building Standards pursuant to Section 3781.12 of the Revised Code.

ADJUDICATION ORDERS

If the local Board of Appeals decides adjudication orders issued by a local certified building department, what should be contained in the adjudication order?

Adjudication orders are issued by the local building department's building official pursuant to sections 119.06 and 119.13 of the Ohio Revised Code. Local building officials should be aware of the required content of an adjudication order. BBS continuing education has directed them and the OBC requires that these orders must contain the following information:

1. Every adjudication order must include a specific cite or cites of the law (ORC) or the rules (OBC) directly involved with each violation being listed. It is these items that will be identified as being appealed.
2. It shall specify what appliances, site preparations, additions, or alterations to structures, plans, materials, assemblages or procedures are necessary for the same to comply with the OBC. General all-inclusive statements such as "All electrical systems shall comply with NFPA-70 the national electric code and provision of the OBC." are not specific and are too vague.
3. The order must include a notice to the party of the procedure for appeal and right to a hearing if requested within 30 days of the mailing of the notice.
4. The notice shall also inform the party that at the hearing he may be represented by counsel, present his arguments or contentions orally or in writing, and present evidence and examine witnesses appearing for or against him.

Local appeals boards should expect that the person receiving such order issued by the local building official shall cease work on the site preparations or structure to be constructed or shall cease using the appliance, materials, assemblages, or manufactured product identified in the order until such time as the appeal and all appeals from such hearing have been completed, or the order has been released.

What happens if orders are issued by building officials in jurisdictions that have never applied to have a local Board of Appeals?

The Ohio Board of Building Appeals shall conduct the adjudication hearings in political subdivisions without certified boards or without contracts with certified boards. Requests for an appeal hearing should be sent to:

Ms. Susan Steer
Ohio Board of Building Appeals
6606 Tussing Road
P.O. Box 4009
Reynoldsburg, Ohio 43068-9009

For information on times and places of Ohio Board of Building Appeals hearings call the Board office at:

(614) 644-2616

What should an owner who receives an adjudication order do?

The procedure is relatively simple; an adjudication order should include specific code cites which accompany the violations and other information described above including a statement describing the owner's right to appeal within thirty days of the mailing of the order and the address to which to send the fee and request for an appeal hearing. Once on the agenda for a hearing, the owner should be notified of the time, place, and date of the hearing. The owner may be represented by counsel, present arguments or contentions orally or in writing, and present evidence and examine witnesses appearing for or against him.

What is the owner's next step if the decision of the local Board of Appeals is not acceptable?

If an owner disagrees with the decision of the local Board of Appeals and chooses not to comply but decides to appeal further, the owner must choose one of two options available within thirty days of the decision of the local Board of Appeals. Either the appeal moves directly to the local Court of Common Pleas for presentation as a civil court case or the owner may request a de novo hearing before the state Board of Building Appeals. An owner does **not** have the option of bypassing the local Board of Appeals and proceeding directly to the state Board of Building Appeals. The case **must** be heard locally first and then proceed either to court or to the state Board of Building Appeals.

HEARINGS

How must the local Board of Appeals conduct its hearings?

Adjudication hearings shall be conducted in accordance with Sections 119.09 to 119.13 of the Revised Code, as required by Section 3781.031 of the Revised Code. It is important that the local appeals board operate as follows:

1. Requests for hearing must be made within 30 days of the mailing date of an adjudication order from the local building official to the owner. The local board shall schedule hearings and give timely notification to the parties involved of the time, date, and location of appeals hearings.
2. If the hearing concerns accessibility issues (Chapter 11 of the OBC and Section 3781.111 of the Revised Code or rules adopted thereunder) reasonable notice of time, date, place, and subject of the hearing shall be given to any local organization composed of or representing handicapped persons, as defined in Section 3781.111 of the Revised Code, or if there is no local organization, then to any statewide organization composed of or representing handicapped persons. Failure to notify these organizations would be a violation of the Ohio Revised Code and, if a complaint is filed with the Board of Building Standards,

would be grounds for an investigation which could lead to decertification of the local appeals board.

3. For purposes of conducting adjudication hearings, the local board may require attendance of witnesses, production of records and papers, and may take depositions of witnesses in accordance with Section 119.09 of the Revised Code. Testimony shall be under oath. The local board of appeals must therefor swear in each witness before taking testimony.
4. A stenographic or mechanical record of testimony and other evidence submitted shall be taken at the expense of the local board of building appeals. This information becomes the official record that is essential if the case proceeds to court. This record must be kept as a full and complete record of all proceedings that must be open to public inspection. The members of the appeals board may wish to be briefed by their jurisdiction's legal counsel or a representative of the Ohio Attorney General's office on public record laws in Ohio.
5. The local board may postpone or continue any adjudication hearing on its own motion or upon the application of any party.
6. The board must render its decision within 30 days after the hearing.
7. Following the hearing, an order shall be entered on the journal that the appeals board keeps, and the local board shall serve by certified mail, return receipt requested, to the party affected by the decision, a certified copy of the order and a statement of the time and method by which an appeal may be made. A copy of the order shall be mailed to the attorney or other representatives of record representing the party.

Any municipal or county officer, official municipal or county board, or person who was a party to the hearing before the municipal or county board of building appeals, may apply to the state board of building appeals for a de novo hearing, or may appeal to the court of common pleas of the county in which he is a resident or in which the premises affected by such order is located. In addition, when the adjudication hearing concerns accessibility issues (Chapter 11 of the OBC and Section 3781.111 of the Revised Code or rules adopted thereunder) any local organization composed of or representing handicapped persons, or if no local organization exists, then any statewide organization representing handicapped persons may apply to the state board of building appeals for a de novo hearing, or may appeal to the court of common pleas of the county in which the premises affected by such order is located.

Application for a de novo hearing before the Ohio Board of Appeals shall be made no later than 30 days after the municipal or county board renders its decision. (A "de novo" hearing is simply the legal name for a new, fresh, or second hearing dealing with the entire case in the same manner as the original hearing as well as a review of the original hearing.)

OVERSIGHT

What is the authority of the Board of Building Standards?

The Board of Building Standards on its own motion or on written complaint of any person affected by the local board of building appeals must conduct an investigation to determine whether any of the following occurred:

1. The presence of fraud;
2. Failure to adhere to applicable procedures set forth in Chapters 119. and 3781. of the Revised Code or rules made thereunder;
3. Failure to render decisions within 30 days of the hearing;
4. Granting of variances to provisions of OBC not adopted pursuant to Chapters 3781. and 3791. of the Revised Code but mandated by other chapters of the Revised Code;
5. Failure to notify handicapped organizations pursuant to Section 3781.19 of the Revised Code;
6. Failure to permit an appeal for a de novo hearing before the state board of appeals or a direct appeal to the court of common pleas pursuant to Section 3781.19 of the Revised Code.

How does the Board of Building Standards handle a complaint against a local Board of Appeals?

When a complaint against a local board of appeals has been investigated by the Board of Building Standards and found justified the Board shall take the following steps:

1. The Board of Building Standards shall schedule an adjudication hearing pursuant to Section 119.09 of the Revised Code. The local appeals board shall be notified of the charges by certified mail, return receipt requested, at least 30 days prior to the hearing, informed of their right to be represented by counsel and to present witnesses in their behalf;
2. Following the adjudication hearing, the Board of Building Standards may adopt an order dismissing the complaint or schedule a public hearing pursuant to Section 119.03 of the Revised Code for the purpose of revoking the certification of the local appeals board;
3. Following the public hearing, the Board of Building Standards may, in accordance with Chapter 119. of the Revised Code, adopt an order dismissing the complaint or adopt a rule revoking the certification of the local board;

4. Any party to the adjudication or public hearing shall be notified of the board's action by certified mail, return receipt requested, and informed of their right to appeal the order, within 15 days after the mailing of the notice, to the Court of Common Pleas in Franklin County pursuant to Section 3781.20 and Chapter 119. of the Revised Code.

If the Board of Building Standards does find the complaint substantiated it may move to revoke the certification of a local Board of Appeals following the above procedure. After the effective date of the rule of decertification, all appeals of adjudication orders are heard before the state Board of Building Appeals. The local Board of Appeals certification ends and cannot hear OBC appeals.

CONCLUSION

The appeals process preserves the right of citizens of the State of Ohio to due process under the law and helps reduce arbitrary or inconsistent enforcement of the Ohio Administrative Code. It also serves as a safeguard for enforcement officials in that it provides a mechanism for obtaining legal variances from the OBC and a body to assume the responsibility for determining the conditions of that variance. Because the pertinent issues can be debated before a neutral third party, the appeals process is different from the adversarial environment found in the court system. By resolving appeals administratively the appeals system precludes the necessity of costly litigation and disposes of these cases in a more timely manner.

If the roles of the building department personnel are understood and the appeals process is used properly, the citizen's right to be heard, the resolution of undue hardships, and the need to protect the general public's interests by providing a built environment that is safe and sanitary are preserved.