

GREENWICH TOWNSHIP

Berks County, Pennsylvania

ORDINANCE No. 2004-2

AN ORDINANCE OF THE TOWNSHIP OF GREENWICH, BERKS COUNTY PENNSYLVANIA, AMENDING THE GREENWICH TOWNSHIP BUILDING CODE SO AS TO ADD A NEW SECTION 3 ENTITLED "APPEALS BOARD", WHICH ESTABLISHES AN APPEALS BOARD FOR THE TOWNSHIP OF GREENWICH AND DESIGNATES THOSE CERTAIN CODES, ORDINANCES AND REGULATIONS OF THE TOWNSHIP OF GREENWICH AND THE UNIFORM CONSTRUCTION CODE, OR PORTIONS THEREOF, AS TO WHICH THE APPEALS BOARD WILL HEAR APPEALS, PROVIDES FOR THE APPOINTMENT OF MEMBERS, POWERS AND PROCEDURES OF SAID APPEALS BOARD, AND AMENDS CERTAIN OF THE CODES, ORDINANCES AND REGULATIONS OF THE TOWNSHIP OF GREENWICH, OR PORTIONS THEREOF, SO AS TO CONFORM THE SAME TO THE PROVISIONS OF SAID NEW SECTION 3.

BE IT ENACTED AND ORDAINED by the Board of Supervisors of the Township of Greenwich, Berks County, Pennsylvania, and it is herein ENACTED and ORDAINED by the authority of the same as follows:

Section 1. The Greenwich Township Building Code, enacted by Ordinance 2004-1 on June 7, 2004, (hereinafter referred to as the "Building Code") is hereby further amended so as to add a new Section 3, entitled "Appeals Board", as follows:

SECTION 3. APPEALS BOARD

§3.1 Creation of Board. An appeals board is hereby established for the purpose of hearing appeals from permits issues, enforcement notices issued, determinations rendered and for the purpose of hearing requests for modifications and waivers permitted to be granted, all pursuant to the authority contained in certain ordinances, codes and regulations of the Township of Greenwich, including the Building Code, and the Uniform Construction Code, as amended from time to

time, and all regulations issued pursuant thereto, as more fully set forth hereinbelow. The aforesaid appeals board shall be known as the Greenwich Township Appeals Board (hereinafter referred to as the "Board").

- §3.2 Membership.** The Board shall consist of three (3) members and one (1) alternate. Board members shall meet the qualifications set forth in §403.121 of the Uniform Construction Code. All references in this section to Board members shall also be deemed to refer to alternate members, unless the context otherwise requires.
- §3.3 Term, vacancies, removal.** The initial term of all members of the Board shall begin with their first appointment and end as follows: one (1) member for four (4) years, one member for three (3) years and one member for two (2) years. Thereafter, the terms of office for members of the Board shall be five (5) years. Vacancies on the Board, resulting from the conclusion of a term of membership, or the resignation, death or removal of a member, shall be filled by the appointment and selection of a new member by the Board of Supervisors. Members of the Board may be reappointed. Any member of the Board may be removed from office for failure to perform the duties of office by majority vote of the Board of Supervisors.
- §3.4 Compensation.** Members of the Board shall serve as such with compensation for each meeting attended as determined by resolution by the Board of Supervisors.
- §3.5 Secretary; record keeping.** The Board shall designate one of its members as the Secretary and that person shall appear at the meetings of the Board and shall keep the minutes of the Board's proceedings, votes, decisions and actions, as well as all dates, records and documents pertaining to the activities of the Board, as directed and authorized by the Board's officers and solicitor. The Board may, when it deems appropriate, provide for a stenographic record to be made at any hearing.
- §3.6 Voting; conflicts of interest; meetings.** A quorum of the Board shall exist when at least two (2) members of the Board are present. The actions of the Board shall be determined by the vote or other affirmative action expression of a majority of its members present at the time of the vote. All actions of the Board shall be certified by the Chairperson, or in the Chairperson's absence, the Vice-Chairperson, and attested to by the Secretary. No member of the Board shall participate in any hearing or vote on any matter on which that member has a direct or indirect personal or financial interest, or is engaged as a contractor, subcontractor, or professional consultant, or is engaged in the preparation of plans and specifications. The Board shall conduct all public hearings and

administrative business, and all votes, at advertised public meetings, in accordance with the "Sunshine Law" of the Commonwealth of Pennsylvania, as amended from time to time, except the deliberations for the purpose of considering an appeal, including the receipt of the advice of the solicitor for the Board, which may occur in executive session. The Board shall meet to hear appeals/applications as they are received.

- §3.7 Authority and jurisdiction of Appeals Board.** The Board shall have authority and jurisdiction to hear and decide appeals from notices of violations, determinations, orders or permits issued by the Code Enforcement Officer, or such person's assistants or designees (hereinafter individually and collectively referred to as the "Code Enforcement Officer) and may hear and decide appeals from any notices of violations, determinations, orders and permits issued, and from the effects of any rule or regulation adopted, pursuant to the authority of any codes, ordinances and regulations of the Uniform Construction Code (other than provisions thereof, if any, governed by the Pennsylvania Municipalities Planning Code), and may hear and decide requests for modifications and waivers specifically permitted to be granted by the Board pursuant to the authority of any of the codes, ordinances and regulations of the Uniform Construction Code.

All of the foregoing Uniform Construction Codes codes, ordinances and regulations shall be deemed to include any regulations, amendments, supplements, substitutions and revisions hereafter adopted as pertains to any of the above-described codes, ordinances and regulations (hereinafter all of the foregoing codes, ordinances, regulations, amendments, supplements, substitutions and revisions, individually and collectively referred to as the "Jurisdictional Laws").

- §3.8 Appeals, hearings and procedures.** The Board shall utilize the procedures and rules set forth in §403.121 and §403.122 of the Uniform Construction Code in the course of considering and deciding upon the various appeals and requests for modifications and waivers brought before the Board for a decision:

- A. Any person or entity being affected by the enforcement and application of any of the Jurisdictional Laws and having the right to file an appeal under the authority of any of the Jurisdictional Laws may appeal to the Board any permit, notice, determination or order issued, or rule or regulation promulgated, under the authority of the Jurisdictional Laws. Any such appeal must be filed in writing to the Building Code Office:

1. Within twenty (20) days of receipt by the appellant of such notice, permit, determination or order;
2. If the time period for compliance with a notice, determination or order is less than twenty (20) days, then such appeal must be filed within the compliance period required by the Jurisdictional Laws; or
3. Within thirty (30) days after any such rule or regulation is issued.

Requests for appeals may be filed at any time, but shall, in all other respects, be subject to the same procedures and rules as appeals. Any such written appeal must be filed, in complete and proper form, with the Building Code Officer of the municipality, as provided in §3.12 of this Chapter. Such forms shall require the appellant to state: (1) the precise notices, permits, determinations, orders, rules or regulations from which the appellant appeals, or the precise modification or waiver, and legal authority therefore,, which appellant requests; (2) the reasons for such appeal or request, including any legal and/or technical authority which appellant believes supports the appellant's appeal or request (without prejudice to the appellant's right to present further supporting authority at the time of the hearing); (3) the provisions of the Jurisdictional Laws which appellant contends are applicable to such appeal; and (4) the nature of the relief which the appellant desires the Board to grant the appellant. At the time of filing of such appeal or request, the Appellant shall pay a fee ("Appeal Fee"), in the amount which shall, from time to time, be established by Resolution by the Township to defray costs of such appeal. Upon the filing of an appeal to Board, the Code Officer shall transmit a copy of such appeal to the Secretary of the Board.

- B. The Board shall commence a public hearing on each appeal as required by Section 403.122 of the Uniform Construction Code. An owner shall file an appeal for request of variance and request for extension of time relating to accessibility with the Accessibility Advisory Board under Section 403.142 of the Uniform Construction Code (relating to the Accessibility Advisory Board).
- C. The Secretary of the Board shall cause written notice of the initial public hearing on any appeal or request for modification or waiver to be given not less than fifteen (15) days prior to the date of the hearing. Such notice shall be issued by certified first-class United States mail, postage pre-paid, addressed to the Appellant at the

address of the Appellant set forth in the written appeal filed by the Appellant, and addressed to any other person or entity who has requested (in writing) notice of such appeal or request for modification or waiver.

D. Public Hearing

(1) At the public hearing, the Board shall review the notices, determinations, orders, permits, regulations, or rules, which are the subject of the appeal, or the nature of and legal support for the modification or waiver requested, and take such testimony, hear such witnesses (including members of the public), admit such evidence and make such findings as it shall deem appropriate.

(2) In any appeal hearing, in which the appellant has appealed from an enforcement notice or stop work order issued by the Code Enforcement Officer, the Township shall have the burden of proceeding and the burden of proof by a preponderance of the evidence, with respect to such enforcement notice or stop work order. In all other instances, the Appellant shall have the burden of proceeding and the burden of proof by a preponderance of the evidence.

(3) The Board may, if it shall deem it appropriate, order the party having such burden to proceed and burden of proof to present relevant expert testimony in support of such party's case and shall dismiss the appeal or request for modification or waiver if the party so ordered fails to present such expert testimony at the time ordered by the Board. Notwithstanding the foregoing, any party may choose to present expert testimony at a hearing and, for this purpose, qualified representative of duly appointed engineering firm shall be permitted to testify as an expert witness on behalf of the Township.

(4) The Code Enforcement Officer or his designee shall be present at all meetings of the Board, unless excused by the Board.

(5) The procedure of the Board shall comply with the Uniform Construction Code. The Board may admit into evidence in any hearing documentary evidence consisting of public or governmental records and reports, and reports of codes, standards,

licensing or testing organizations and records and reports of materials manufacturers.

(6) The proceedings of the Board shall be governed and regulated by the Chairperson, or in the Chairperson's absence, the Vice-Chairperson, in consultation with the other members of the Board or its solicitor.

- E. Any public hearing may be continued or rescheduled, prior to the scheduled time of the hearing, with the written agreement of the Chairperson (or in the Chairperson's absence, the Vice-Chairperson), the Appellant and the Code Enforcement Officer, or their respective legal counsel, or may be rescheduled or continued by the Board at the time that the hearing is convened, to one or more subsequent dates as deemed appropriate by the Board. All continued or rescheduled hearings shall be continued or rescheduled to a regularly scheduled public meeting date of the Board, unless all parties agree upon another date. No further written notice by mail to the parties of any such continuance or rescheduling shall be required. The Appellant shall pay, in advance, a fee in the amount which shall, from time to time, be established by resolution of the Board of Supervisors pursuant to the authority of this Chapter, to defray the cost of advertising the public notice of any agreed upon hearing date which is not a regularly scheduled meeting date of the Board and additional cost of the solicitor.
- F. Within forty-five (45) days after the conclusion of the public hearing concerning an appeal or request for modification or waiver, the Board shall advise the Appellant, and all parties appearing in the appeal or request for modification or waiver, in writing, by certified first-class United States mail, postage pre-paid, of its decision and a copy of said decision shall be filed with the Township. Such written decision shall set forth the evidentiary and legal findings of the Board and shall contain an order entirely disposing of the appeal or request for modification or waiver in question. The decisions and orders of the Board shall be in accordance with all applicable codes, ordinances and regulations of the Uniform Construction Code, as well as the statutes, laws, judicial decisions and regulations of the Commonwealth of Pennsylvania and the United States of America.

ATTORNEYS AT LAW

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G. The Board shall have the authority to interpret the Uniform Construction Code as stated in §403.122.

§3.9 Further appeal. The decisions and orders of the Board may be further appealed to the Court of Common Pleas of Berks County, Pennsylvania, by any party within thirty (30) days after the date of mailing to the Appellant and all other parties of the decision and order of the Board.

§3.10 Emergencies. Whenever the Code Enforcement Officer determines that an emergency condition exists which requires immediate action to protect public health and/or safety, he may, if authorized by any of the Jurisdictional Laws, issue an order declaring the existence of such emergency and requiring action to be taken (or requiring that persons refrain from taking certain actions) to remedy such emergency. Such emergency order shall be effective immediately upon issuance. Any person to whom such order is directed shall comply therewith immediately. Said person may file an appeal or request for modification or waiver to the Board regarding such order, but such appeal or request for modification or waiver shall not serve as a supersedeas to the Code Enforcement Officer's emergency order.

§3.11 Citations and other Enforcement. Nothing contained herein shall be deemed to alter or affect the power and authority of the Code Enforcement Officer or other enforcement authority to issue or file summary citations and to prosecute such summary citations and/or to file and pursue civil proceedings, whether at law and/or in equity, before a district justice, the Court of Common Pleas of Berks County and/or other permitted authority, regarding violations of the Jurisdictional Laws and the abatement of such violations; provided, however, that summary citations may be issued or filed and prosecuted during the pendency of proceedings before the Board only if a violation of Section 3.10 of this Chapter is alleged.

§3.12 Regulations. The Township may from time to time, by resolution, adopt regulations to provide for the forms and procedures to be utilized in the filing and processing of appeals and requests for modifications or waivers before the Board.

§3.13 Enforcement. The Code Enforcement Officer and the Appellant shall take prompt action in accordance with the final decisions and orders of the Board, from which no appeal has been or may properly be filed.

Section 2. All other sections, parts and provisions of the Ordinances of the Township shall remain in full force and effect as previously enacted and amended.

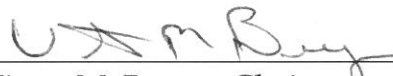
Section 3. In the event any provision, section, sentence, clause, or part of this


Ordinance shall be held to be invalid, illegal, or unconstitutional by a court of competent jurisdiction, such invalidity, illegality, or unconstitutionality shall not affect or impair the remaining provisions, sections, sentences, clauses, or parts of this Ordinance, it being the intent of the Board of Supervisors that the remainder of the Ordinance shall be and shall remain in full force and effect.

Section 4. This Ordinance shall take effect and be in force five (5) days after its enactment by the Board of Supervisors.

ORDAINED and ENACTED as an Ordinance by the Board of Supervisors of the Township of Greenwich, Berks County, Pennsylvania, in lawful session duly assembled this 4th day of OCTOBER, 2004.

BOARD OF SUPERVISORS OF GREENWICH
TOWNSHIP, BERKS COUNTY, PA


Victor M. Berger, Chairman


Oscar E. Kleinsmith, Supervisor


Laurie Ann Baker, Supervisor

Attest:


Township Secretary

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