

Repealed by
Ord. 97-1028
Am

City of Sherwood, Oregon
Ordinance No. 95-1001

AN ORDINANCE ESTABLISHING AN APPEALS BOARD FOR DECISIONS BY THE BUILDING OFFICIAL, TO BE KNOWN AS THE CITY OF SHERWOOD BUILDING OFFICIAL APPEALS BOARD, DESIGNATING THE PURPOSES AND RESPONSIBILITIES OF THE BOARD, PROVIDING FOR APPOINTMENT OF BOARD MEMBERS AND BASIC RULES OF ORDER, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Council of the City of Sherwood, Oregon finds that there is a need to have an Appeals Board to review decisions by the Building Official when requested by a Builder/Developer.

WHEREAS, the City Council recognizes the need to establish a procedure to review decisions by the Building Official.

NOW, THEREFORE, THE CITY ORDAINS AS FOLLOWS:

Section 1. Board Established.

(A) Building Official Appeals Board, hereinafter referred to as the "Board", is hereby established for the purpose of reviewing of appeals presented to the City of decisions made by the Building Official.

Section 2. Membership.

(A) The Board shall consist of seven (7) members who shall be appointed by the Mayor, with the consent of the City Council.

(B) At least three (3) voting Board members shall be, and remain during their terms, residents of the City of Sherwood.

(C) Members of the Board shall serve without compensation except for reimbursement for duly authorized expenses.

(D) The Mayor, with the consent of the City Council, shall appoint a Council representative to the Board, which representative shall be a non-voting member of the Board.

Section 3. Terms of Office.

(A) The terms of office of Board members shall be four years and members may be reappointed to serve two or more consecutive terms.

(B) The nonvoting Council representative to the Board shall be appointed for a term coincident with the length of his or her term on the City Council.

(C) Upon resignation, permanent disqualification or removal of any Board member, a successor shall be appointed by the Mayor, with the consent of the City Council, to fill the remainder of that member's unexpired term. Board members missing three consecutive regular meetings, without the prior consent of the Board, shall be disqualified and removed from office.

Section 4. Rules of Order.

(A) At its first meeting, the Board shall elect a Chairperson and Vice-Chairperson and other officers deemed necessary for the effective conduct of Board business. Thereafter, such officer shall be elected at or before the Board's first meeting in each calendar year.

(B) Three (3) members of the Board shall constitute a quorum for the conduct of business.

(C) The Board shall act by a majority vote of the members present at a meeting, excluding members present but abstaining.

(D) The Board shall hold meetings as are necessary to perform its functions.

(E) Before any meeting of the Board, public notice shall be given as required by law and common practice. Minutes shall be taken of each meeting and filed with the City Recorder.

(F) The Board may adopt rules of procedure to regulate the conduct of meetings. In the absence of such rules, proceedings of the Board shall be conducted in accordance with the current edition of Robert's Rules of Order.

Section 5. Staff Assistance.

The City Engineer and Building Official.

Section 6. Duties and Responsibilities.

The duties and procedures of the Board shall be as outlined in the attached governing directive.

Section 7. Effective Date.

This Ordinance shall become effective upon its passage by the City Council and approval by the Mayor.

Passed by vote of the City Council this 27th day of June 1995.

Approved by the Mayor the 27th Day of June 1995.


Walter Hitchcock, Mayor

ATTEST:


James H. Rapp, City Manager/Recorder

	<u>AYE</u>	<u>NAY</u>
Aamold	<u>X</u>	—
Boyle	<u>X</u>	—
Cottle	<u>absent</u>	—
Hitchcock	<u>X</u>	—
Kennedy	<u>X</u>	—

**BUILDING CODE
APPEALS BOARD
AND
PROCEDURES**

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I. ESTABLISHMENT OF THE BOARD OF APPEALS

A. Board of Appeals

- 1. A Board of Appeals is hereby established, which shall consist of seven members of which three will sit on any given appeal.**
- 2. The Board of Appeals shall have the powers to review decisions of the Building Official and such other duties as Council shall from time to time delegate.**
- 3. In exercising its powers, the Board of Appeals may, so long as such action conforms with the terms therein, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have powers of the official from whom the appeal is taken.**
- 4. The initial term of the board shall be four years.**

B. Higher Appeals

- 1. Any reviewable decision of the Building Official relating to the Building Code may be appealed to the Board of Appeals or to the appropriate State agency. Any decision of the Board of Appeals may be appealed to the appropriate State agency.**

II. MEMBERSHIP

Shall be appointed by the Mayor with the consent of City Council. The period of service shall be four years.

III. PREAMBLE

The objective of establishing a Board of Appeals is to create a body to hear appeals relating to the building codes as they are being interpreted and enforced by the Building Official and render decisions solely on the merits of the questions, without the influence of any perceived political considerations.

The Board of Appeals is neither empowered to make law nor to grant exceptions to existing law. It should conduct a fair, impartial hearing, render findings, and base its decision upon the provisions of the code from which appeal is taken.

Members should keep in mind that the appeal process substitutes their professional discretion for that of the Building Official however, authority of the Board is limited to dealing with the following matters:

1. Determining the suitability of alternate materials.
2. Determining the suitability of methods of construction.
3. Providing for reasonable interpretations of the codes.

The building codes are complex and diverse documents. Much of their content is written to be performance oriented. It is inconceivable that they can be continuously administered without challenge by impacted parties or without a request for professional evaluation and advice sought by the enforcing officials. Consequently, members of the Board of Appeals serve an important community role by assuring a process for consistent, unbiased administration of the codes as enacted by the legislative body.

As with any such deliberative body, it is imperative that all members understand and adhere strictly to those rules and procedures which have been devised to assure legality, impartiality, reasonableness, appropriate notice and due process. This manual is dedicated to assisting all parties to accomplish those ends.

IV. PURPOSE

The Board of Appeals provides an official forum to hear and decide appeals of orders, decisions, or determinations made by the Building Official relative to the application and interpretation of the Building Codes.

SCOPE

The Board of Appeals shall be limited to matters falling under the authority of the Building Official in his/her administration and enforcement of the building codes, and to such other duties as are specifically delegated to them by the Council.

POWERS

The Board of Appeals shall have the power of that official from whom an appeal is taken in making proper determinations and decisions and issuing orders or requirements regarding suitability of alternate materials and methods.

The Board shall provide reasonable interpretations of the provisions of the building.

All actions of the Board must conform with the terms of ordinances, codes and policies as adopted by the Council and administered by the Building Official .

The Board of Appeals shall have no authority relative to interpretation of the administrative provisions of this code nor shall the Board be empowered to waive requirements of this code.

AUTHORITY

The Board of Appeals derives its authority from the City of Sherwood. Further authority is conferred by the State of Oregon Structural Specialty Code.

V. RESPONSIBILITIES

A. Appellant Responsibilities

- 1. Review the City of Sherwood Appeal Procedures in order to become familiar with requirements relating to appeals.**
- 2. File appeal with City Recorder within ten (10) calendar days from the date of the written decision of the Building Official.**
- 3. The written appeal shall include the following:**
 - The name and address of the appellant;**
 - The address of the parcel that is the subject of the decision;**
 - The date the decision;**
 - The nature of the decision of the Building Official;**
 - A statement of the applicable code section and the specific grounds for the appeal.**
- 4. Pay the appropriate fee.**

B. Staff Responsibilities

City Engineer

1. Select three members for the Board from the list of members approved by City Council
2. Select a Chairperson.

Building Official

1. Notify chairperson of receipt of appeal.
2. Review with chairperson potential dates and locations of meeting.
3. Prepare staff report (see format in appendix).
4. Prepare packets containing the following for all board members, the appellant, and relevant staff.
 - Chairperson's letter of meeting notice
 - Copy of appeal
 - Copy of rules of procedures
 - Copy of public notice
 - Written staff report
 - Written appellant report
5. Cause a public meeting notice to be published in a newspaper of general circulation in the City after authorization by chairperson.
6. Prepare meeting room.
 - Notice of hearing for door of hearing room.
 - Table and chairs for board members
 - Chairs for staff
 - Chairs for witnesses
 - Seating for public
 - Tape recorder
 - Roll call sheets for voting
7. Secure meeting room for hearing.
8. Provide written minutes.
9. Distribute minutes to all interested parties.

C. Board Chairperson Responsibilities

1. Notify members of the board in writing of the meeting scheduled by the Building Official.
2. Notify the appellant in writing of the meeting scheduled by the Building Official.
3. Authorize Building Official to publish a public meeting notice.
4. Establish an agenda for the meeting.
5. Review rules of procedure prior to meeting.
6. Conduct meeting within rules of procedures.

D. Board Members Responsibilities

1. Review limits of authority as specified in the Appeal Procedures.
2. Review rules of procedure.
3. Declare conflicts of interest.
4. Thoroughly review the appeal and reports prior to the meeting.
5. Be aware of the need to support conclusions with logical reasoning (findings based on fact).

VI. ORDER OF PROCEDURE--PUBLIC HEARING AND DECISION

I. Actions Preliminary to Hearing

- a. Chairperson directs secretary to circulate attendance record.
- b. Chairperson directs that all persons presenting testimony give their name and address for the record.
- c. Chairperson explains to all parties that the appeal will be read and that no other issues will be heard except as addressed by the appeal.
- d. Chairperson asks for declaration of conflicts of interest of board members.

II. Announcement of the Public Hearing

- a. Chairperson announces:
 1. Hearing shall come to order.
 2. This is the time and place set for a hearing of an appeal by _____ regarding _____.
 3. Read the appeal into the record.
- b. Chairperson requests that the appellant come forward.

III. Staff Presentation

- a. Chairperson directs staff to present report(s).
- b. Chairperson notes for the record the reports and supporting documents received as testimony.
- c. Chairperson and board given opportunity to question staff and discuss submitted reports and documents.

IV. Appellant Presentation

- a. Chairperson directs appellant to present report.
- b. Chairperson notes for the record the reports and supporting documents received as testimony.
- c. Chairperson and board may question appellant and discuss submitted reports and documents.

V. Public Testimony

- a. Chairperson calls for testimony from the public.
 - 1. Proponents
 - 2. Opponents
- b. Chairperson notes for the record the comments and supporting documents received as testimony from public.
- c. Chairperson and board may question public and discuss submitted comments and documents (may wish to do so after each individual has testified).

VI. Rebuttal

- a. Chairperson requests rebuttal from staff.
- b. Chairperson requests rebuttal from appellant.
- c. Chairperson and board may question all parties and discuss rebuttal testimony.

VII. Board Deliberation and Decision

- a. Chairperson announces closure of the public hearing.

- b. Chairperson gives instructions to board members.
 - 1. Consider only those issues raised in the appeal.
 - 2. Official actions will be through motions and voting.
 - 3. Discussion of motions, prior to a vote, should include the reasoning for the motion and the reasoning for each member's vote.
 - 4. Action of the board must not be arbitrary and capricious.
- c. Chairperson calls for deliberative discussions and motions.
- d. Chairperson takes appropriate action on motions.
- e. Chairperson summarizes board decisions.
- f. Chairperson directs secretary to prepare and distribute board's decision to all interested parties.

VII. APPENDIX

A. Procedure for Public Notice

I. Public Notice:

- a. An ad shall be placed in the Tigard Times to appear 10 days prior to the hearing.
- b. The ad shall include the following information:
 1. The date, time, and place.
 2. A statement of the purpose of the hearing.
 3. Addresses of the properties involved.
 4. A statement that all interested persons and the public will be given the opportunity to be heard.
- c. The ad shall appear one time.

II. Appellant Notices:

- a. A letter shall be sent to the appellant by certified mail at least 10 days prior to the hearing.
- b. The letter shall include the following information:
 1. The date, time, and place.
 2. A statement of the type of hearing.
 3. The names and/or addresses of the properties involved.
 4. A statement advising the appellant of his right to be heard and his right to be represented by an attorney.

B. Sample Letter to Board Members

(DATE)

Board of Appeals

REF: Notice of Appeal

A Board of Appeals meeting is scheduled for (Day), (Date) at (Time) in (Room, Building, and Address). The purpose of the meeting is to consider an appeal of an (Interpretation, Alternate Method/Material) of the State Building Code requirements as they relate to (General Subject of Appeal) at (Address of Structure Involved in Appeal).

A staff report will be forwarded for your review prior to the meeting. Additional information will be provided at your request.

Please contact me prior to the meeting to confirm your attendance.

(Signature of Board Chair Person)

pc: Appellant

C. Sample Agenda

- I. Roll call**
- II. Identification of chairperson.**
- III. Discussion of appeal with regard to established criteria.**
- IV. Decision by board to grant a hearing or to dismiss the appeal (If appeal is dismissed, Items V and VI will be omitted)**
- V. Public hearing (see Order of Procedure)**
- VI. Decision (see Order of Procedure)**
- VII. Unfinished business**
- VIII. Adjournment**