



# BURLINGTON COUNTY CONSTRUCTION BOARD OF APPEALS



The Burlington County Construction Board of Appeals (CBA) was formed to allow appeals from decisions made by municipal construction officials and municipal fire officials. The New Jersey State Uniform Construction Code Act mandated that each County should create a Construction Board of Appeals to hear any appeals from within that County. Although there is a provision in the Act for municipalities to form municipal level boards, presently there are not any in Burlington County, so the County Board hears all appeals within this County.

The Board was created by resolution of the Burlington County Board of Commissioners, and the Board members are appointed for four year terms by the Commissioners. At any time, the Board includes both a regular member and at least one alternate member in five categories: plumbing, electrical, building, fire protection and fire official. In addition, there is an alternate to sit on the Board for any appeal concerning the Elevator Safety Subcode and two special members who sit on the Board to hear appeals concerning charges to municipal plan review and inspection escrow accounts.

## **What can be appealed to the Board**

The regulation states that “any ruling, action, notice, order or decision of a local enforcing agency that enforces either the State Uniform Construction Code or the Uniform Fire Code, including, without limitation, any refusal to grant an application or any failure or refusal to act upon an application, but not including any order requiring the taking of emergency measures pursuant to N.J.A.C. 5:23-2.32(b).” Most appeals to the Board are concerning Notices of Violation and Order of Penalty issued by the municipal Construction Official or Fire Official. For instance, if a Construction Official issued a Notice of Violation for some construction that he stated was not in conformance with the Construction Code, but you believe it was in conformance, you may appeal to the Board.

In addition, in 1995, another area of appeal was added to the jurisdiction of the County Board. When a developer is applying to a municipality for a subdivision or site plan development, they are required to post with that municipality an amount to be held in escrow for the municipality to draw against to pay vouchers from professionals who provide plan review and inspections for the municipality. If the developer believes that one or more charges were made incorrectly against that escrow account, he may appeal the charge to the Board.

## **What cannot be appealed to the Board**

The most common items that the Board receives requests for appeals that cannot be accepted are:

- Any issue concerning Municipal Zoning.
- Complaints concerning *how* an official performs his or her job.
- Appeals concerning the fee schedule adopted by a municipality for plan review and inspection.
- Appeals of citations or notices issued under a municipal ordinance (e.g. Municipal Property Maintenance Ordinance or local (non-UCC) Certificates of Continuing Occupancy).
- Appeals of emergency measures pursuant to N.J.A.C. 5:23-2.32(b) (e.g. a Notice of Unsafe Structure that requires the building be immediately vacated or demolished).

## Procedure for application for appeal to the Board

- The application can be made by a lawyer representing the applicant, but it does not have to be.
- Generally, an application must be filed by the 15<sup>th</sup> day after receipt of the written notice being appealed. If you spend three weeks trying to work out the discrepancy directly with the Construction Official or Fire Official before you send in the appeal, it cannot be accepted at that point.
- Submit a letter stating exactly what you wish to appeal and a statement as to why you believe the official's decision or notice is incorrect. Include a phone number and e-mail address where you can be reached.
- Submit a copy of the Notice or Order you are wanting to appeal
- Submit a \$100 check made out to "Burlington County Treasurer". The check is non-refundable at that point, notwithstanding whether you win or lose the appeal hearing or withdraw the appeal before a hearing.
- **The appeal package and check shall be mailed to "Construction Board of Appeals, P.O. Box 6000, Mount Holly, NJ 08060"; or for overnight or hand-delivery, the address is "1900 Briggs Road, Mount Laurel, NJ 08054."**
- Simultaneously, submit a copy of the appeal to the official who issued the order being appealed. Do this by registered mail or hand delivery so a receipt signed by the official is available for you to submit to us as proof of delivery. **Please note that per N.J.A.C. 5:23A-2.1(d) proof of compliance with this requirement shall be filed with the Board Secretary.**

## Procedure for the appeal hearing

When the appeal is received, all pertinent information will be forwarded to the attorneys who handle CBA, Malamut Associates with offices at 457 Haddonfield Road, Suite 500 in Cherry Hill. There are some Code imposed restraints on postponements, but in general the Board is very lenient on delays if both sides agree. The Board has regularly scheduled hearing dates of the first and third Tuesdays of each month at 1:00 p.m. in the Engineering building in Mount Laurel on Highway 38. When it is determined that a hearing is required, it will be scheduled for the Board. All testimony before the Board is under oath or affirmation. At the hearing, the applicant can have legal representation or can represent themselves. A corporation must be represented by legal counsel or a corporate officer. The Board will first have the municipal official tell why the decision or notice was issued. Often the Board members ask questions as the official is testifying. Then, the Board will have the applicant state why they believe the Notice or decision is not correct. Other people having knowledge of the dispute may be brought in by the applicant in order to also testify. Both sides will be afforded the opportunity to cross-examine witnesses. Usually, when both sides have stated their case, the Board closes testimony and discusses the case. After a motion and vote, the hearing is adjourned with both sides knowing the outcome before they leave the room. A written decision is issued within ten days.

## Possible outcomes from the Board

The Board may uphold the Notice exactly as issued by the official, it may overturn the entire Notice and attached penalty, or it may modify the Notice. The Board may uphold the Notice but modify the penalty, but due to restrictions in the Code, this is rare. If the Board upholds the Notice and Penalty, the applicant is usually given 30 days to comply with the Notice before the Penalty would become effective.

## Further Appeals

Either side can appeal the Board decision to the Law Division of Superior Court within the time allowed by the rules of the Court.

## Un-answered Questions

For additional questions or updates on the appeal status, please contact Amanda Minnes c/o Malamut & Associates, LLC via telephone at 856-424-1808 or via e-mail at [aminnes@malamutlaw.com](mailto:aminnes@malamutlaw.com).