

**AN ORDINANCE TO AMEND CHAPTER 7, BUILDINGS & CONSTRUCTION, OF THE CODE OF THE CITY OF
BROOKHAVEN**

WHEREAS, Section 1.03(b)(18) of the Charter of the City of Brookhaven grants the City of Brookhaven the power to create, alter, or abolish departments, boards, and commissions and to confer upon such boards the necessary and appropriate authority for carrying out all the powers conferred upon or delegated to the same; and

WHEREAS, the Mayor and City Council find that it is necessary to alter the City construction board of appeals and the City zoning board of appeals by combining the boards into the City board of appeals.

BE IT ORDAINED by the Mayor and Council of the City of Brookhaven, Georgia and it is hereby ordained by the authority of same:

SECTION I:

The identified sections of Chapter 7, Buildings & Construction, are amended to read as shown in the attached mark-up.

SECTION II:

Severability: Should any section of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of the Ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

SECTION III:

Repeal of Conflicting Provisions: All ordinances, part of ordinances, maps, or regulations in conflict herewith are repealed.

SECTION IV:

Effective Date: This ordinance shall be effective immediately upon adoption.

SO ORDAINED, this _____ day of _____, 2019.

Approved by:

Approved as to Form and Content

John Arthur Ernst Jr., Mayor

Diane LaRoss, Assistant City Attorney

Attest:

Susan Hiott, City Clerk

SEAL

Chapter 7 - BUILDINGS AND CONSTRUCTION

ARTICLE I. - IN GENERAL

Sec. 7-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adopted state codes means all codes and standards adopted by reference in this chapter.

Approved means approved by the Building Official.

Board means the ~~construction~~ board of appeals.

Building official means the officer or other person designated by the director with the authority charged with the administration and enforcement of this Code.

Director means the director of the community development department or designee.

Emergency means any situation resulting in imminent danger to the public health or safety or the loss of an essential governmental service.

End user means the ultimate consumer of a product, especially the one for whom a product has been designed.

Independent means not affiliated in any way with the applicant for the variance or any city or county official or employee.

Justifiable cause means a reason given by the applicant or permit holder that in the opinion of the director is valid and sufficient. Justifiable cause does not include delay that is created by the applicant or permit holder or delay that reasonably could have been avoided by the applicant or permit holder.

Ordinary repairs mean nonstructural repairs to a building or structure or repairs to a mechanical system, gas system, plumbing system, electrical system, and energy conservation system for which the codes specify no minimum requirements or standards or do not address the repair. The term "ordinary repairs" does not include additions, alterations, relocations, or replacements to buildings or structures, water supplies, sewers, drains, drain leaders, gas, soil waste, vent or other similar piping, electrical systems or wiring, mechanical systems, or other work for which a permit is required by the Code or the building official.

Portable equipment means equipment not permanently install or fixed in place.

Pre-qualified alternate registered engineer means a registered design professional recommended by the city council or its designee, or the ~~construction~~ board of appeals and approved by the city council for compliance with O.C.G.A. § 8-2-26 et seq.

Protective means a method or material that provides the same or greater protection of health, safety, life or property as provided by the construction requirements set forth in this Code.

Registered design professional means architects, civil, structural, mechanical, electrical, and plumbing engineers, and others whose services require licensing by the state.

Technical codes means collectively the International Building Code, International Residential Code, International Plumbing Code, International Mechanical Code, International Fuel Gas Code, National Electrical Code, International Energy Conservation Code, International Fire Code, and International Swimming Pool and Spa Code as adopted, amended, and mandated by the State of Georgia along with amendments; the International Property Maintenance Code, Rules of Office of Insurance and Fire Safety Commissioner Chapter 120-3-20; National Fire Protection Code 101; and local supplemental codes as adopted by the city.

(Ord. No. O2013-03-11, § 7-1, 4-9-2013; Ord. No. 2017-08-06, § I, 8-22-2017)

Sec. 7-2. - Building numbering.

- (a) *Assigning numbers; size; installation; inspections.* Street numbers will be assigned for all buildings and structures. Numbers must be erected and displayed in front of the project on a board with permanent numbers not smaller than two inches. Numbers must be in place at the beginning of the job before the footing inspection is made and be continuously displayed thereafter until the job is complete and all final inspections have been made. No inspection will be made where street numbers are not in place as required in this section. Contractors and others shall always refer to the street number when calling the community development department for an inspection request or information.
- (b) *Designation of street numbers.* Street numbers for dwelling units and places of business on all public streets and street numbers or building numbers for dwelling units and places of business within apartment projects and nonresidential developments located on private streets shall be assigned by the department in accordance with its administrative procedures.
- (c) *Posting.* All buildings, including, but not limited to, one- and two-family dwelling units, multifamily dwelling units, and each place of business, shall have approved address numbers placed in a position to be plainly legible and visible from the public or private street or road frontage. These numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet letters. Numbers shall be a minimum of four inches (102 mm) high with a minimum stroke width of 0.5 inch (12.7 mm).

(Ord. No. O2013-03-11, §§ 7-500—7-502, 4-9-2013; Ord. No. 2017-08-06, § I, 8-22-2017)

Secs. 7-3—7-22. - Reserved.

ARTICLE III. - ADMINISTRATION AND ENFORCEMENT

DIVISION 2. - ~~CONSTRUCTION BOARD OF VARIANCES AND~~ APPEALS

Sec. 7-87. - ~~Membership; variances, terms of office~~Application procedures; decision-making powers.

- (a) ~~Appointment.~~ There is established a construction board of appeals, which shall consist of five members, appointed by the mayor and subject to confirmation by city council. Applicability. All requests for relief from strict compliance with the regulations of this chapter require review and approval by the board of appeals in accordance with the variance procedures of Chapter 27, Zoning.
- ~~(b) Qualifications of members.~~ All members of the board shall be residents and homeowners in the city. All members of the board shall have experience in the building industry. The members of the board shall have applicable experience in drainage and structural issues in residential home design or construction, heating ventilation and air conditioning, electrical installations, and plumbing. Members of the board shall hold no other city office, appointed position within the city or any other city compensated position.
- ~~(c) Filling board vacancies generally.~~ Any vacancy on the board shall be filled in accordance with the original appointing procedure for the vacant position. Any newly appointed member shall serve for the remainder of the unexpired term.
- ~~(d) Initial terms of members.~~ The five board members who are appointed by virtue hereof shall hold initial terms of office which shall be staggered as follows: two initial board members shall be designated to serve a term of two years and three initial board members shall be designated to serve a term of four years. After expiration of any term thereafter, each board member shall serve a term of four years.

- ~~(e) *Terms of board members.* Terms of each board member shall absolutely expire on the last day of the actual term in office of the appointing official or on December 31 of the board member's four-year term, whichever comes first, regardless whether a successor has been appointed to the board member's position.~~
- ~~(f) *Successive terms.* Members of the board may be reappointed to successive terms, but in no event shall a member be permitted to serve more than eight consecutive years.~~
- ~~(g) *Organization, officers, and rules.* The board shall elect a chair, vice chair and secretary. The persons so elected shall serve in these capacities for a term of one year. No person may serve in any of these capacities for more than three consecutive years. The vice chair will preside at the meetings of the board in the chair's absence. The board shall determine its procedural rules and regulations and otherwise take such action as is appropriate for the management of the affairs committed to its supervision. The board's rules and regulations shall be consistent with this chapter and necessary to carry out the provisions of this chapter.~~
- ~~(h) *Quorum.* Three members of the board shall constitute a quorum at any meeting and a vote of three voting members shall be required to enable the board to act.~~
- ~~(i) *Meeting accommodations and staff support.* The city shall provide the board with suitable office space, meeting accommodations, and clerical support, as the city shall deem appropriate and necessary.~~
- ~~(j) *Compensation for board members.* The board members shall be volunteers and shall not be compensated, except that the city may reimburse the board members for necessary expenses incurred by the board members in the performances of their official duties.~~
- ~~(k) *Removal at will.* The mayor and city council shall have authority to remove any member of the construction board of appeals, at will, without cause.~~
- (l) *Powers and duties.* The board shall have the following powers:
 - (1) To hear appeals of decisions and interpretations of the building official;
 - (2) To hear appeals of the building official's decision related to the use of alternative materials, designs, methods of construction, equipment, and appliances pursuant to section 7-119(m);
 - (3) To hear appeals of the building official's decision related to unsafe conditions as regulated in section 7-63;
 - (4) To hear and grant variances from the provisions of division 3 of this article;
 - (5) To hear and grant applications for pre-qualification of alternate-registered engineers as referenced in section 7-170(i) as well as remove pre-qualification status from alternate registered engineers as the board deems appropriate in its sole discretion; and
 - (6) To review proposed amendments to the land development and technical codes and to provide recommendations on such amendments to the governing authority.
- (m) *Application forms; filing of applications; application fees.* Applications for appeals, variances, and alternate-registered engineers shall be filed on forms provided by the city and shall not be considered authorized or accepted unless complete in all respects, including the payment of any application fees. Application fees shall be established by the city council.
- (n) *Appeals of the building official's decisions.*
 - (1) Notice of appeal of a building official decision to the board shall be in writing and filed with the director within 30 calendar days after the building official's decision is rendered. Appeals shall be on a form provided by the director.
 - (2) An appeal shall be sustained only upon an express written finding by the board that the building official's action was based on an erroneous finding of a material fact or that the building official acted in an arbitrary manner. In exercising its powers, the board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and to that end shall have all the powers of the director from whom the

appeal was taken and may issue or direct the issuance of a permit, provided all requirements imposed by all applicable laws are met. The board may also remand any appeal for the receipt of additional information.

- (3) In the case of a building, structure, or service system which, in the opinion of the building official, constitutes an unsafe condition as that term is used in section 7-63, the building official may, in the decision or order, limit the time for the filing of such appeals to not less than two days and the director may request expedited review by the board of the appeal.
 - (4) If the building official's decisions results in a revocation or denial of the issuance of any permit or certificate authorized by this chapter, the affected applicant or permittee may request, and shall be allowed, to meet with the director within two business days after the initial issuance of such order or decision. At such meeting the affected applicant or permittee shall be allowed to present any evidence or testimony to the director that the applicant deems appropriate. If such a meeting is not requested or the director does not alter the decision to revoke or deny the issuance of any permit or certificate, then the building official's decision becomes final. During the pendency of any subsequent appeal to the board, the notice of appeal shall not stay enforcement of the director's decision and the applicant or permittee may not take any action, perform any act or occupy any structure that contradicts the director's revocation or denial decision in this regard.
- (o) *Variances.*
- (1) The owner of a building, structure, or service system, or duly authorized representative, may file a request to the board to vary any provision of the technical codes in accordance with the provisions of this section on forms promulgated by the city or the director.
 - (2) In granting a variance, the board may prescribe appropriate conditions and safeguards in conformity with this Code. Violation of the conditions of a variance shall be deemed a violation of this Code.
 - (3) No variance may be granted unless such variance can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of this chapter. No variance shall be granted by the board to:
 - a. Allow any variance which conflicts with or changes any requirement established as a condition by the city council;
 - b. Reduce, waive, or modify in any manner any minimum standards set forth in the adopted codes generally identified in section 7-23, as amended; and
 - c. Reduce, waive, or modify any environmental protection measures such as tree protection and/or soil erosion and sedimentation control.
 - (4) The board shall grant variances from the provisions or requirements of this chapter only upon making written findings of the following:
 - a. The strict application of the requirements of this chapter would deprive the building, structure, or service system owner of rights and privileges enjoyed by other building, structure, or service system owners within the city;
 - b. The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other building, structure, or service system property owners within the city;
 - c. The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or any improvements;
 - d. The liberal interpretation and strict application of the applicable provisions or requirements of this chapter would cause undue and unnecessary hardship;
 - e. The method or material requested is at least as protective as the method or materials required by this chapter; and

- f. The applicant has supplied the city with an independent study or analysis by a registered design professional that shows that the method or material meets or exceeds the methods or materials required by this Code.

~~(p) — Procedures of the board.~~

- ~~(1) — Hearings open to public. All hearings of the board shall be open to the public and the agenda shall be made available at least two business days prior to the meeting of the board. Matters not placed on the agenda in compliance with this section shall not be heard by the board, except for appeals involving a structure or service system that, in the opinion of the director, is unsafe, unsanitary, or uninhabitable. The board shall meet at least once a year and whenever an action is requested before the board, though not more often than every 30 days.~~
- ~~(2) — Decisions. The board shall, in every case of an appeal of a decision or interpretation of the director or a variance request, reach a final decision within 30 calendar days from the date of the final hearing. Each decision of the board shall be in writing and shall include the basis for the decision. Every decision shall be promptly file-stamped in the office of the community development department and shall be available for public inspection. A copy of the decision shall be delivered by mail at the address in the notice of appeal or application for variance to the person who filed the appeal or request for a variance.~~

~~(q) — Appeals from decisions of the construction board of appeals.~~

- ~~(1) — Method of appeal. Any person aggrieved by a final decision of the board may seek review of such decision by petitioning the superior court of the county for a writ of certiorari in accordance with state law.~~
- ~~(2) — Notice to board. In any such petition, the board shall be designated the respondent in certiorari and the city, along with any other party required by law to be named, shall be named as the defendants in certiorari. The city clerk and the secretary of the board shall be authorized to acknowledge service of a copy of the petition and writ for the board as respondent. Service upon the city as defendant shall be as otherwise provided by state law.~~

(Ord. No. O2013-03-11, § 7-16, 4-9-2013; Ord. No. 2013-05-05, §1(7-16(a)), 6-11-2013; Ord. No. 2014-05-03, § 1, 5-13-2014; Ord. No. 2017-08-06, § I, 8-22-2017)