

**LOCAL BUILDING
OR
FIRE PREVENTION CODE
BOARDS OF APPEALS
MANUAL**

JULY 2022

VIRGINIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF BUILDING AND FIRE REGULATION



FOREWORD

In Virginia's system of building and fire prevention codes, the local building or fire prevention code appeals board is a quasi-judicial board providing a first tier due process right of adjudication of decisions of local government building or fire officials under the enforcement of either the Virginia Uniform Statewide Building Code (USBC) or the Virginia Statewide Fire Prevention Code (SFPC).

This manual provides guidance to the local building or fire prevention code appeals board members and to the local governments and to the building and fire prevention departments they serve to assure the proper constitution and operation of the local appeals boards.

Many issues and subjects in this manual are somewhat legal in nature. It is always recommended that the local government, the local building and fire prevention department personnel, and the local appeals board members have access to the legal counsel of the locality for consultation and assistance.

Staff of the Division of Building and Fire Regulation, within the Virginia Department of Housing and Community Development (DHCD), are also available to assist with the organization and functions of the local appeals boards. For training opportunities, or to have DHCD staff meet with the members of a local appeals board or with the local building or fire prevention departments, please call (804) 371-7150 or contact Office of the Review Board staff at sbco@dhcd.virginia.gov.

Table of Contents

CHAPTER 1: LEGAL FRAMEWORK	1
LAWS THAT ESTABLISH THE LOCAL BOARDS OF APPEALS	1
<i>Appointment and Arrangement of Boards</i>	1
<i>Fees</i>	2
LAWS THAT GOVERN THE APPEALS PROCESS	2
<i>Basic Laws</i>	2
<i>Appeals to the State Technical Review Board</i>	3
<i>Virginia Freedom of Information Act</i>	3
<i>Virginia State and Local Governments Conflict of Interests Act</i>	4
CHAPTER 2: REGULATORY REQUIREMENTS	4
COMPOSITION OF BOARDS	4
<i>Membership Requirements</i>	4
<i>Bylaws</i>	4
<i>Election of Chair</i>	5
<i>Appointment of Secretary</i>	5
DUTIES OF LOCAL BOARD MEMBERS	5
<i>Meetings</i>	5
CHAPTER 3: BEFORE THE HEARING	5
APPLICATION FORM	6
ROLE OF SECRETARY	6
CHAPTER 4: THE HEARING	6
ROLE OF CHAIR	7
<i>Presiding Officer</i>	7
<i>Continuances</i>	7
<i>Other Powers and Duties</i>	7
ROLE OF BOARD MEMBERS	7
<i>Recusal</i>	7
<i>Questions by Board Members</i>	8
<i>Raising Issues</i>	8
ROLE OF SECRETARY	8
<i>Minutes and Exhibits</i>	8
ORDER OF EVENTS IN HEARINGS	8
<i>Quorum</i>	8
<i>Testimony and Evidence</i>	9

<i>Closing the Hearing and Deliberations</i>	9
<i>Voting and Verbal Decision</i>	10
CHAPTER 5: THE DECISION	10
WRITTEN DECISION	10
<i>Statement of Further Right of Appeal</i>	10
<i>Notification of Decision</i>	11
APPENDIX A: SAMPLE BYLAWS	12
APPENDIX B: SAMPLE APPEAL APPLICATION FORM	14
APPENDIX C: SAMPLE WRITTEN DECISION	15

CHAPTER 1: LEGAL FRAMEWORK

There are a number of laws that influence the establishment and functioning of a local government board of building or fire prevention code appeals. As an appeals board is quasi-judicial in nature, all applicable laws and constitutional guarantees of due process are inherent in the operation of the boards. Some due process considerations are stated specifically in the basic laws and regulations the boards are subject to and others are just general matters of law. In addition, the laws and regulations governing the local appeals boards establish the constitution, powers and duties of the boards. This manual attempts to outline and organize those requirements for easy reference by board members and local government representatives.

As this manual addresses appeals boards established under the both the USBC and SFPC, where there are differences in the laws and regulations affecting one or the other board, such differences will be delineated. Otherwise, this manual applies equally to either board. It should be noted that local appeals boards under the USBC are also charged with hearing appeals under the Virginia Amusement Device Regulations, which for the purposes of this manual, may be treated as appeals under the USBC.

LAWS THAT ESTABLISH THE LOCAL BOARDS OF APPEALS

Appeals boards under both the USBC and SFPC are established by state statute. The specific legislative provisions are set out below.

For appeals boards under the USBC, § 36-105 of the Code of Virginia states:

“There shall be established within each local building department a local Board of Building Code appeals whose composition, duties and responsibilities shall be prescribed in the Building Code. No appeal to the State Building Code Technical Review Board shall lie prior to a final determination by the local board of Building Code appeals. Whenever a county or a municipality does not have such a building department or board of Building Code appeals, the local governing body shall enter into an agreement with the local governing body of another county or municipality or with some other agency, or a state agency approved by the Department for such enforcement and appeals resulting therefrom.”

For appeals boards under the SFPC, § 27-98 of the Code of Virginia states:

“Appeals concerning the application of the Code by the local enforcing agency shall first lie to a local board of appeals and then to the State Building Code Technical Review Board.”

APPOINTMENT AND ARRANGEMENT OF BOARDS

As indicated in the above laws, the local boards of appeals are to be established within the local governments that enforce the USBC and SFPC. The laws do not specify the details of appointment or arrangement of the boards, however, it is generally recognized that the local appeals board members should be appointed by the local governing body, or the local governing body would sanction the use of an already existing board to fulfill the purpose of the local appeals board. For instance, there could be a regional board which the local governing body of several localities

sanctioned for hearing appeals from the local building or fire prevention departments of those localities. In addition, a local governing body could have a single board of appeals to hear appeals concerning the application of both the USBC and the SFPC, or could have a separate board for hearing appeals relative to each code. There could also be multiple boards for varying subject matter under either the USBC or the SFPC, such as a board for hearing appeals of electrical, plumbing or mechanical decisions of a local building department and a separate board for decisions concerning building construction or fire prevention.

Whatever the arrangement decided upon by a local governing body, it is simply recommended that the powers and duties of the boards be clearly delineated in the ordinance or action by the local governing body in establishing the local appeals boards.

In addition, the local governing body should set terms for the board members so there is a clear record of who is appointed to the local appeals board and for how long they will be serving. As the laws governing the local appeals boards permit the USBC and SFPC to also address the composition of the local boards, adherence to any relevant provisions in the appeals sections of both codes should also be given consideration by the local governing bodies in the appointment of the board members (see also Chapter 2 of this manual for an overview of the relevant regulatory provisions).

FEES

The laws establishing the USBC and SFPC appeals boards permit the charging of fees. Both §§ 27-98 and 36-105 of the Code of Virginia state:

“Fees may be levied by the local governing body in order to defray the cost of such enforcement and appeals.”

LAWS THAT GOVERN THE APPEALS PROCESS

BASIC LAWS

For appeals under the USBC, § 36-105 of the Code of Virginia states:

“Any person aggrieved by the local building department’s application of the Building Code or refusal to grant a modification to the provisions of the Building Code may appeal to the local board of Building Code appeals.”

For appeals under the SFPC, § 27-98 of the Code of Virginia states:

“Appeals from the application of the Code by the local enforcing agency shall first lie to a local board of appeals and then to the State Building Code Technical Review Board.”

An additional law addressing appeals concerning the application of local fire prevention regulations, in § 27-98 of the Code of Virginia, states:

“Any local fire code may provide for an appeal to a local board of appeals. If no local board exists, the State Building Code Technical Review Board shall hear appeals of any local fire code violation.”

To elaborate on the issue of local fire prevention regulations, § 27-97 of the Code of Virginia establishes the SFPC, which is a state regulation. However, the law also provides that local governments are empowered to adopt fire prevention regulations that are more restrictive or more extensive in scope than the SFPC provided such regulations do not affect the manner of construction, or materials to be used in the erection, alteration, repair or use of a building or structure. Consequently, enforcement of such more restrictive local fire prevention regulations is not enforcement of the SFPC and prior to the enactment of the law referenced above; the local appeals boards established under the SFPC did not have authority to hear appeals of the application of such local regulations. Under the current law, the appeals boards established under the SFPC may hear such appeals if the local ordinance establishing the SFPC appeals board specifically authorizes the board to hear appeals of the application of local fire prevention regulations. The local ordinance may establish a different appeals board for hearing such appeals, or may be silent on appeals of local fire prevention regulations, in which case the appeal of a local fire prevention regulation would not be appealed to the SFPC appeals board, but would rather be appealed directly to the State Building Code Technical Review Board (see below).

APPEALS TO THE STATE TECHNICAL REVIEW BOARD

As the basic laws under the USBC and the SFPC indicate, appeals under those codes are first heard by the local government boards of appeals, and may be further appealed to the State Building Code Technical Review Board (State Review Board). The State Review Board has its own set of basic laws governing appeal proceedings and further appeals from decisions of the local appeals boards. This manual does not address appeals to the State Review Board or proceedings involving the State Review Board; however, it is worth noting that the State Review Board’s basic laws enable it to hear appeals *de novo*, which is essentially a new evidentiary hearing, so any deficiencies or incompleteness in a local appeals board proceeding may be addressed upon a further appeal to the State Review Board. Questions concerning State Review Board proceedings should be addressed to the Office of the Review Board. Contact information is provided in the preface of this manual.

VIRGINIA FREEDOM OF INFORMATION ACT

The Virginia Freedom of Information Act (Chapter 37 of Title 2.2 of the Code of Virginia) are state laws assuring the free entry to meetings of public bodies to afford every opportunity to citizens to witness the operations of government. This would include meetings of the local appeals boards. While the Freedom of Information Act does include exceptions which permit closed meetings under certain circumstances, in general, the hearings conducted by local appeals boards and the deliberations of the boards should be conducted in open, not closed, meetings. Should the chair of a local appeals board, or any of its members, believe a proceeding should be conducted in closed session, it would be advised to discuss the matter with the board’s legal counsel to assure compliance with the Act.

VIRGINIA CONFLICTS OF INTEREST ACT

The Virginia State and Local Government Conflicts of Interests Act (Chapter 31 of Title 2.2 of the Code of Virginia) are state laws addressing inappropriate conflicts in the actions of public officers and employees so that the standards of conduct for such officers and employees are uniform. Members of local boards of appeals should consider recusal from participating in appeal hearings or proceedings in which they may have a conflict of interest with any of the parties involved. In questions of whether a conflict of interest is present, board members should consult with the locality's legal counsel or other appropriate legal counsel familiar with the provisions of the Act.

CHAPTER 2: REGULATORY REQUIREMENTS

As the laws authorizing the USBC and the SFPC and establishing the appeals process permit the codes to address the composition, duties and responsibilities of the local appeals boards, both the USBC and the SFPC have specific provisions affecting the make-up and operations of a local appeals board. This chapter outlines those specific requirements and practices inherent in the functioning of the local appeals boards.

COMPOSITION OF BOARDS

MEMBERSHIP REQUIREMENTS

Local governing bodies should be made aware of the specific appeal provisions in the USBC and SFPC that affect the appointment of board members. Both the USBC and SFPC require a local appeals board to consist of at least five members and permit the appointment of alternate members. The codes do not prohibit the reappointment of regular or alternate members.

To provide for continuity of the board members serving, the appeal provisions also suggest that the terms of the board members be staggered so that less than half of the terms will expire in any given year.

Guidance is also provided in the appeal provisions of the codes for the qualifications of the board members and there is a prohibition against employees or officials of the locality serving as board members.

BYLAWS

While not required by either state law or the appeal provisions of the codes, general parliamentary procedures would encompass the approval and use of bylaws by a local appeals board to ratify certain aspects of the functioning of the board. Appendix A of this manual contains sample bylaws that may be considered by the appeals board in the formulation of bylaws if determined necessary or appropriate.

ELECTION OF CHAIR

Both the USBC and SFPC appeals provisions specify the election of a chair by the board members annually. The codes do not prohibit the re-election of the chair. The appeals provisions also

provide that if the chair is absent at a meeting, the board members would appoint a chair pro tem to serve as chair for that meeting.

While the appeals provisions are silent on the election of a vice-chair, it would not be prohibited and if a vice-chair is elected, then the vice-chair would serve as chair in the chair's absence.

General parliamentary procedure should be used in electing officers within the appeals board, which typically involves a nomination procedure.

The role of the chair in meetings and appeal hearings is discussed in detail in Chapter 4 of this manual.

APPOINTMENT OF SECRETARY

The wording in the appeals provisions of both the USBC and SFPC indicate that the secretary to the local appeals board is a non-member of the board, appointed by the locality. Due to the role of the secretary, which is fully discussed in Chapter 3 of this manual, it is recommended that the secretary be an employee of the local building or fire prevention department with good organizational skills, competent in computer and word processing capabilities, and possess a general knowledge of the functioning of the local building or fire prevention department.

DUTIES OF LOCAL BOARD MEMBERS

MEETINGS

The local boards of appeals members' primary duty is to participate in appeal hearings when appeals are filed to the local boards and to render decisions on such appeals. Detailed discussions of hearing and deliberation procedures are found in Chapter 4 of this manual.

In addition to outlining the members' roles in appeals proceedings, the USBC appeal provisions require local board members to meet as necessary to assure a duly constituted board, appoint officers as necessary and receive such training as may be appropriate or necessary from staff of the locality. The SFPC appeal provisions require local board members to meet at least once annually to assure a duly constituted board, appoint officers as necessary and receive such training as may be appropriate or necessary from staff of the locality.

CHAPTER 3: BEFORE THE HEARING

APPLICATION FORM

While not required by the USBC or the SFPC, an appeal application form (written or electronic) may and should be used to document the filing of an appeal and the steps taken in acknowledging and processing the appeal. A suggested appeal application form for use by the local appeals boards may be found in Appendix B of this manual.

Note that the parties to an appeal typically include the appealing party and the enforcing agency representative (usually the building official or the fire code official). Owners of the property involved are typically considered parties and should be included in all correspondence.

Once an appeal applicant files an application for appeal, including a verbal request for appeal where written application forms are not utilized, the application must be processed and presented to the local appeals board for consideration. No one person, to included but not limited to the code official, department staff, local appeals board secretary, county administrator or city manager, county attorney, or local governing body member, can decide whether an appeal is to be heard by any local appeals board based on a jurisdictional issue such as timeliness, application of the code, properness before the board, right to appeal, aggrievement, etc.; furthermore, no one person can make a determination related to any merit of any case. Only the local appeals board can render a decision for any matter in an appeal.

ROLE OF SECRETARY

The secretary to the local appeals boards functions as the point of contact for all business relating to the board outside of a meeting of the board. Any persons inquiring about appeals should be put in touch with the secretary, who would provide the appeal application form, if one is used, and explain the appeals process to the potential applicant.

The appeal application form, once completed, would be submitted to the secretary and the secretary would collect any fees required. The secretary would also document the date the appeal was received as the codes have timeframes within which an appeal must be filed.

The secretary would then schedule the board meeting, taking into consideration any time constraints required by the codes. Both the USBC and the SFPC require the local appeals board to meet within **30** days of the receipt of the application for appeal and requires **14** days notice of the meeting to the parties, unless the parties agree to a meeting date with less than **14** days notice.

As mentioned under the Basic Laws section of Chapter 1 of this manual, since the functions of local appeals boards are subject to the Virginia Freedom of Information Act, the secretary should consider any meeting notice requirements of that Act in preparing for the meetings.

The parties should be asked by the secretary to furnish any information they wish the board members to consider in advance of the hearing so that copies can be made and be available for the board members at the hearing. While there is no requirement to do so, if the parties can provide the information in a timely fashion, the secretary may furnish the information to the board members prior to the meeting, however, caution should be taken to treat all parties equally, so in cases where the parties cannot agree to provide the appeal information prior to the hearing, all documents, pictures or exhibits should just be held to be distributed at the hearing.

CHAPTER 4: THE HEARING

Once the secretary has scheduled a meeting to hear an appeal, a hearing is conducted at the meeting to address an appeal. Board members, including the chair, should be cautioned against having any

contact with the parties in an appeal outside of the hearing itself, as ex parte communication may be seen as a violation of due process rights. This is why the secretary fulfills the role of being the board's representative outside of meetings, as the secretary is not a board member and does not have voting power or sway over the outcome of a hearing.

ROLE OF CHAIR

PRESIDING OFFICER

The role of the chair of the local appeals boards is to preside over the hearing and to rule on any procedural matters which are presented. The flow of the hearing is controlled by the chair in accordance with the order of events, as outlined below. The chair is given no authority outside of a meeting of the local appeals board in either state law or in the USBC or SFPC. All administrative functions, such as scheduling hearings, contacting the parties, requesting documents to be submitted (outside of a hearing), are handled by the secretary to avoid the appearance of bias by the chair or any board members.

CONTINUANCES

Any party may ask for a continuance at the hearing and the chair may rule on the continuance request, or may defer to a vote of the board itself on the continuance request. The chair or the board members should take into consideration the timeframes established in the USBC or the SFPC for postponements where continuance requests are not agreed to by all parties and, in deciding whether to grant a continuance, consideration should be given to whether the refusal to grant the continuance request will substantially inhibit the ability of a party to properly present its case.

OTHER POWERS AND DUTIES

The chair may rule on the submittal of evidence at the hearing and may consider the objections of any party as to the relevance of the evidence. As is typical with administrative appeals, hearsay or other unsubstantiated evidence is generally permitted with the understanding that the board members may determine the appropriate deference to afford such evidence.

ROLE OF BOARD MEMBERS

The board members' role is to listen to the testimony and review the evidence presented by the parties in an appeal and to ultimately decide on the outcome of the case.

RECUSAL

As previously outlined concerning conflicts of interest, at the outset of an appeal hearing, should any board members determine their recusal is warranted due to a conflict of interest, then that member should inform the chair and state for the record that they will not be participating in the hearing or deliberations in the appeal. It is typical for that board member to then remove themselves physically from the meeting and the secretary would let them know when they may return to the meeting for other business of the board. Should a board member wish to stay in the

meeting, but not participate in the proceedings, then it would be advisable to discuss the issue with legal counsel to assure no components of conflict of interest are present.

QUESTIONS BY BOARD MEMBERS

Board members may ask questions of the parties as the appeal proceedings progress. It is advisable for the chair to control such questioning and for the board members to direct questions through the chair. There may be established procedures for such questioning within the flow of events outlined in the Order of Events in Hearings section of this chapter.

RAISING ISSUES

The chair, or any board member, has the right to raise issues in the course of a hearing, and to determine the issues, which are, or are not, properly before the board in an appeal. Issues which, if decided upon, may have the effect of dismissing an appeal without a hearing upon the substantive issues in an appeal, such as whether a party is a proper party to bring an appeal, whether the timeframes have been met for a proper appeal to exist, or whether the nature of the appeal is improper for other reasons, should be raised at the beginning of an appeal hearing and a decision should be made on any such issues raised prior to hearing the full appeal. Suggested procedures for handling such issues are outlined in the Order of Events in Hearings section of this chapter.

ROLE OF SECRETARY

MINUTES AND EXHIBITS

The secretary should take sufficient notes to enable minutes to be developed of appeal hearings. Recording the proceedings is permissible as a method to later develop minutes. There is no requirement in state law, or in the USBC or the SFPC for the hearings to be recorded, or for a transcript of the hearings to be made. The minutes of the meeting in which the hearing was held, and the written decision of the local appeals board, is sufficient to document the action of the board and to enable a further appeal of a local appeals board decision.

If exhibits are introduced at a hearing, typical procedure would be for the secretary to give a copy of the exhibit to the chair and to the other party or parties. The chair would then ask the other parties if they objected to the submittal of the exhibit. If there is an objection, then the chair would rule on the objection. If there are no objections, then the chair would rule on the admissibility of the exhibit. The chair could exclude the exhibit as not relevant or accept the exhibit into evidence. The secretary should then mark the exhibit for identification purposes and if it was accepted into evidence, pass it into circulation to the other board members.

ORDER OF EVENTS IN HEARINGS

QUORUM

General parliamentary procedure requires a quorum of the members of a board to be present for official action to be taken. However, both the USBC and the SFPC, in the appeal provisions, state that if a quorum is not present, a party may request that the hearing be rescheduled. In addition, the appeal provisions in both codes state that a decision may be made by an appeals board by a

concurring vote of a majority of those board members present. Taken together, those provisions indicate that a local appeals board may hear an appeal with less than a quorum of the board members present. Irrespective of the above, it is generally advisable to make every attempt to have a quorum of the board members present at hearings to avoid any allegations of impropriety.

TESTIMONY AND EVIDENCE

The chair should have an established order of events for the presentation of testimony in an appeal hearing. The order of events used by the State Review Board, which may be used by the local appeals boards, is generally as follows:

- Appellant’s Opening Statement/Testimony by the Appellant/ Witnesses for the Appellant:

The Appellant gives direct testimony and presents their case. A summary or opening statement may be offered but is to be followed by the complete testimony, except for any witnesses. Witnesses are called one at a time and may present direct testimony or testimony by direct questioning. If testimony is to be given by direct questioning, then an opening statement may be offered, with direct questioning testimony of the Appellant or witness to follow.

- Time limit twenty (20) minutes for appeals hearings.
- Time limit eight (8) minutes for preliminary hearings.

- Cross-examination of Appellant and Witnesses

The Appellee is permitted to direct cross-examination questions to the Appellant and all witnesses for the Appellant.

- Time limit ten (10) minutes for appeals hearings.
- Time limit five (5) minutes for preliminary hearings.

- Appellee’s Opening Statement/Testimony by Appellee/Witnesses for the Appellee

The Appellee gives direct testimony and presents their case. A summary or opening statement may be offered but is to be followed by the complete testimony, except for any witnesses. Witnesses are called one at a time and may present direct testimony or testimony by direct questioning. If testimony is to be given by direct questioning, then an opening statement may be offered, with direct questioning testimony of the Appellee or witness to follow.

- Time limit twenty (20) minutes for appeals hearings.
- Time limit eight (8) minutes for preliminary hearings.

- Cross-examination of Appellee and Witnesses

The Appellant is permitted to direct cross-examination questions to the Appellee and all witnesses for the Appellee.

- Time limit ten (10) minutes for appeals hearings.
- Time limit five (5) minutes for preliminary hearings.

- Questioning by Review Board Members

Review Board members may question any party or witness after testimony is complete.

- Time limit thirty (30) minutes for appeals hearings.
- Time limit thirteen (13) minutes for preliminary hearings.

- Closing Statements and Closing of Hearing

All parties are permitted to present closing statements, after which the presiding officer closes the hearing.

- Time limit five (5) minutes for appeals hearings.
- Time limit two (2) minutes for preliminary hearings.

NOTE: When needed, testimony and cross-examination by any other party to the appeal, such as the owner, etc., will take place prior to #5 Questioning by Review Board Members.

Any additional evidence submitted by the parties at an appeal hearing is subject to consideration and ruling by the chair as to relevance and should be marked into evidence by the secretary. See the Role of the Secretary section in this chapter for additional information and procedures for submitting evidence.

CLOSING THE HEARING AND DELIBERATIONS

Once testimony is completed and the board members have asked any questions, the hearing should be concluded with a statement such as *“The hearing of this matter is now concluded. The board will deliberate the matter and the parties may be present for the deliberations, however, no further testimony will be taken.”*

The board may then hear additional appeals if there are any others on the docket for the day, or may decide to deliberate the appeal they have just heard prior to conducting another hearing. The Virginia Freedom of Information Act provides limited exceptions for going into closed session (legal advice from counsel on pending or potential litigation, etc.) for deliberations and there are procedural requirements which must be met in exercising that option, so if deliberations are not to be conducted in open session, it is advisable to discuss going into closed session with a legal representative prior to any such action.

VOTING AND VERBAL DECISION

In deliberations, it is permissible for discussions to ensue prior to a motion to resolve the case, or for any board member to move to resolve the case. The chair would yield the floor to any board member wishing to speak while controlling the overall debate. Board members may state their position and reasons for such position as a means to illicit all perspectives to assure complete and thorough deliberations. If there is a motion and a second to the motion to resolve the appeal, the chair may ask for discussion on the motion prior to calling for a vote. The motion should be made in a form similar to “I move to uphold (or overturn or amend) the decision of the code official for the following reasons ...” If the code official’s decision is to be amended, the amendments should be clearly stated in the motion.

Once deliberations are complete and a motion to resolve the appeal has been made and seconded, the vote is taken. The chair may exercise the option of abstaining from the vote unless it is necessary to break a tie vote. If the motion passes, it then becomes the verbal decision of the board for the appeal case. The decision is to be reflected in the minutes for the meeting, which should be prepared by the secretary and held for ratification at the next meeting of the board. The verbal decision shall be explained in writing and signed by the chair.

CHAPTER 5: THE DECISION

WRITTEN DECISION

As discussed in Chapter 4 of this manual, the verbal decision of the board in an appeal shall be explained in writing and signed by the Chair. It is the chair's responsibility, to assure that the written decision matches the minutes and accurately conveys the verbal decision voted upon by the board.

STATEMENT OF FURTHER RIGHT OF APPEAL

The appeals provisions of both the USBC and the SFPC require a statement of further right of appeal to be contained in the written decision. See Appendix C of this manual for the wording to be used.

NOTIFICATION OF DECISION

In addition, the appeals provisions of both the USBC and the SFPC call for the written decision of the local appeals boards to be sent to the parties by certified mail. This ensures that there is a record of when the decision was received by the parties, which then is used to determine whether any further appeal is filed within the timeframes required by the codes.

APPENDIX A: SAMPLE BYLAWS

Local Board of Appeals (Substitute actual name of board)

Article 1. Officers

- 1-1. The local board of appeals shall organize; and annually elect a chair and vice-chair and appoint a secretary in the month of _____.
- 1-2. The chair shall preside at meetings and hearings and shall decide points of order or procedure.
- 1-3. The vice-chair shall assume the duties of the chair in the chair's absence.
- 1-4. The secretary shall handle correspondence subject to these rules at the direction of the board; shall send out notices required by these rules; shall keep the minutes of the board's proceedings; and shall keep a file on each appeal which comes before the board.

Article 2. Meetings

- 2-1. Regular meetings of the local board of appeals for the hearing of cases shall be held on the _____ of each month at a designated time, unless there are no pending appeals before the board.
- 2-2. Special meetings may be called by the chair, provided at least five (5) days written notice of such meeting is given each member.
- 2-3. A majority of the board shall constitute a quorum.
- 2-4. Business conducted at meetings of the board shall follow Roberts' Rules of Order or other parliamentary procedure.
- 2-5. The board may adjourn a meeting if all applications or appeals cannot be disposed of on the meeting day, and no further notice shall be necessary for a continuation of such meeting.

Article 3. Procedure for Hearing Appeals

- 3-1. Appeals to the local board of appeals shall be filed with the code official on a form provided by the board and any applicable fees paid. The code official shall transmit the appeal application form to the secretary of the board along with all papers constituting the record of action upon which the appeal is based.

- 3-2. The applicant shall provide the secretary with all information requested on the form provided by the board and any such additional information or evidence as may be reasonably required consideration of the matter.
- 3-3. An application for appeal filed accordingly to the above shall be assigned an appeal number within five (5) days. Applications for appeals will be heard in the order they are received.
- 3-4. The secretary of the board shall schedule the appeal, notify all interested parties of the hearing and give notice including the time, date and place of the meeting to anyone requesting such information.
- 3-5. The applicant may appear in his own behalf at the hearing or may be represented by legal counsel or an agent.

Both the applicant and the code official may speak to the appeal and any person whose interests are affected may speak for or against the issue. The applicant shall be given an opportunity for final rebuttal.

- 3-6. The final decision on any appeal to the local board of appeals shall be in the form of a written decision that matches the minutes and accurately conveys the verbal decision voted upon by the board.
- 3-7. The board shall notify the interested parties and the code official of the decision within seven (7) days after the signing of the written decision by the chair, and in any event, within fourteen (14) days after the meeting in which the decision is made and within sixty (60) days of the date on which the application for appeal was filed.

Article 4. Records

- 4-1. A complete file on each appeal shall be kept by the secretary as part of the records of the local board of appeals.
- 4-2. All records of the board shall be public records.

Attest: _____
Chair

Secretary

APPENDIX B: SAMPLE APPEAL APPLICATION FORM

Appeal No. _____

Application for Appeal

Locality

I (we) _____ of _____
(Name) (Mailing address)

respectfully request that the Local Board of Appeals review the decision made on _____, 20__ by the code official.

Description of Decision Being Appealed: _____

Location of Property Involved: _____

What is the applicant's interest in the property?

- Owner
- Contractor
- Owner's agent
- Other (explain) _____

Relief Sought: _____

Attach the Decision of the Code Official and Any Other Pertinent Documents.

Signature of Applicant

Filed at _____, Virginia, the _____ day of _____, 20__

APPENDIX C: SAMPLE WRITTEN DECISION

Written Decision

Appeal No. _____

IN RE: _____ v. _____

The appeal is hereby _____, for the reasons set out below:

Date: _____

Signature _____
Chair of Local Board of Appeals

Note: Any person who was a party to the appeal my appeal to the State Building Code Technical Review Board by submitting an application to such board within 21 calendar days upon receipt by certified mail of this resolution. Application forms are available from the Office of the State Review Board, 600 East Main Street, Richmond, VA 23219, (804) 371-7150, or <https://www.dhcd.virginia.gov/sites/default/files/Docx/sbctrb/file-appeal/appeal-application-may-19.pdf>.