

Introduced: October 12, 2015

Adopted:

Effective:

## **CITY OF CHARLOTTE**

### **ORDINANCE NO. 2015-03**

AN ORDINANCE TO AMEND CHAPTER 14 - BUILDINGS AND BUILDING REGULATIONS - OF THE CODE OF THE CITY OF CHARLOTTE BY REPEALING SECTION 14-30 AND ADDING ARTICLE VI, SECTIONS 14-120 THROUGH SECTION 14-127 TO ESTABLISH A BUILDING BOARD OF APPEALS FOR THE CITY OF CHARLOTTE.

Councilmember \_\_\_\_\_ moved that the following ordinance be passed to a second reading:

THE CITY OF CHARLOTTE ORDAINS:

**SECTION 1. PURPOSE.** The purpose of this ordinance is to establish a board of appeals for the purpose of hearing and deciding appeals related to the City's enforcement of the building code. The board of appeals established hereby replaces the zoning board of appeals that had formerly been assigned responsibilities for hearing such appeals. The building board of appeals will be constituted as a board whose members possess knowledge and experience in the building trades so as to more effectively decide matters brought before it.

**SECTION 2. REPEAL.** Section 14-30 of Chapter 14 - Building and Building Restrictions - of the Code of the City of Charlotte is hereby repealed.

**SECTION 3.** Article VI of Chapter 14 - Buildings and Building Restrictions - of the Code of the City of Charlotte is hereby added to read as follows:

#### **Section 14-120. Creation; membership; rules.**

In order to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of this Code, there shall be, and is hereby created, a board of appeals, consisting of three members who are qualified by experience and training to pass upon matters pertaining to building construction. The building official shall be an ex officio nonvoting member and shall act as secretary of the board. The board of appeals shall be appointed by the mayor at or before the first council meeting of December of each year to serve from and after January 1 of each year. With the first appointments made prior to

December, 2015, one member shall be appointed every year thereafter and each member appointed shall serve for a term of three years. A person may not serve on the board of appeals if he or she serves on a board of appeals of another governmental subdivision. The board shall adopt reasonable rules and regulations for conducting its investigations and may recommend to the city council such new legislation as is consistent therewith. Two members of the board shall constitute a quorum for conducting the business of the board.

#### **Sec. 14-121. Hearings.**

The business which the board of appeals may perform shall be conducted at a public meeting of the board of appeals held in compliance with Act No. 267 of the Public Acts of 1976. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976. A record of decisions made by the board of appeals, properly indexed, and any other writing prepared, owned, used, in the possession of, or retained by the board of appeals in the performance of an official function shall be made available to the public, in compliance with Act No. 442 of the Public Acts of 1976.

#### **Sec. 14-122. Decisions.**

The board of appeals shall hear the appeal within 60 days after submission, and upon the concurring vote of two members, render and file its decision with a written statement of its finding of relevant fact and reasons therefor with the building official not later than 30 days after the hearing of the appeal. Failure of the board to hear an appeal and file its decision within the time limit is deemed a denial. A copy of the decision and statement of the facts and reasons shall be delivered or mailed to the appellant on or before the date of filing.

#### **Sec. 14-123. Specific variance requirements.**

The board of appeals may grant a specific variance to a substantive requirement of this chapter if the literal application of the substantive requirement would result in an exceptional, practical difficulty to the applicant, and if both of the following requirements are satisfied:

- (1) The performance of the particular item or part of the building or structure with respect to which the variance is granted shall not substantially deviate from intended use and shall not substantially deviate from performance required by the code of that particular item or part for the health, safety, and welfare of the people of this state.
- (2) The specific conditions justifying the variance shall be neither so general nor recurrent in nature so as to make an amendment of the code with respect to the conditions reasonable, practical, or desirable.

The board of appeals may attach in writing any condition in connection with the granting of a variance that in its judgment is necessary to protect the health, safety, and welfare of the

people of the state of Michigan. The breach of a condition shall automatically invalidate the variance and any permit, license, and certificate granted on the basis of it. In no case shall more than a minimum variance from the code be granted than is necessary to alleviate the exceptional, practical difficulty.

**Sec. 14-124 Fees.**

A fee established by the City Council by resolution shall be paid at the time of filing each appeal.

**Sec. 14-125. Effect of appeal on orders, determinations, decisions and action.**

An appeal to a board of appeals or to a court of competent jurisdiction pursuant to Act No. 306 of the Public Acts of 1969, as amended, does not stay a stop construction order issued by an enforcing agency or prevent an enforcing agency from seeking an order in a court of competent jurisdiction enjoining the violation of the stop construction order. In other cases, an appeal to a board of appeals to a court of competent jurisdiction pursuant to Act No. 306 of the Public Acts of 1969, as amended, shall act as a stay upon an order, determination, decision, or action appealed from, unless the enforcing agency establishes that immediate enforcement of the order, determination, decision, or action is necessary to avoid substantial peril to life or property.

**Sec. 14-126. Violations of the construction code as civil infractions.**

- (a) Pursuant to the authority given to governmental subdivisions that have the responsibility of administering and enforcing the Stille-DeRossett-Hale single state construction code act by MCL 125.1523, violations described in subsection (1) or (2) thereof are hereby designated as civil infractions and shall be subject to the penalties as set forth in section 1-17 of the Code of the City of Charlotte.
- (b) The chief code official as designated by the city manager to direct and supervise code officials and any city employees or agents of the city that are registered under the building officials and inspectors registration act, 1986 PA 54, MCL 338.2301 to 338.2313, or any subsequent version of that act, are authorized to issue and serve municipal civil infraction citations for violations of the Stille-DeRossett-Hale single state construction code act and the code as defined by Section 4 of the act, being MCL 125.1504.

**Sec. 14-127. Sunset.** The ordinance codified herein will sunset after four years.

**Sec. 14-128 through 14-140 Reserved.**

**SECTION 4. OUTCOMES.** The effectiveness of this ordinance shall be assessed prior to its sunset dates based on the following objectives: 1) Maintenance over the entire period of a fully-constituted board whose members meet the qualifications established herein; 2) All decisions or

orders of the board are rendered within the time limits established herein; and 3) A significant majority of decisions or orders of the board are affirmed by a court of competent jurisdiction if appealed.

**SECTION 5. EFFECTIVE DATE.** This ordinance shall become effective 20 days after adoption.

Second, \_\_\_\_\_. \_\_\_\_\_ ( ) Yeas. ( ) Nays.

Dated: \_\_\_\_\_, 2015

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Carrie Burch, Mayor

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Ginger Terpstra, Clerk