

Sec. 28-38. - Fire code board of appeals ("FCBA").

- (a) *Purpose.* The establishment of the fire code board of appeals ("FCBA") provides another level of review to an individual who wishes to appeal the decision of the fire chief. The purpose of this section is to provide a method to determine the suitability of alternate materials and types of construction and to provide for reasonable interpretations of the provisions of the fire code adopted by the county board of commissioners.
- (b) *Establishment and membership.* To accomplish the foregoing purposes, there is hereby created a FCBA consisting of five members appointed by the county board of commissioners. Each member of the board of commissioners shall have one appointee to the FCBA. Each member, with varying areas of expertise and to ensure balance on the FCBA, must have experience as an architect, fire protection engineer, builder, property manager or construction superintendent, or such other experience as may be useful to consideration of these issues. No county employee can serve as a member of the FCBA. No member of the FCBA can hear an appeal in which that member has any personal, professional or financial interest. Members of the FCBA shall serve with or without compensation, as determined by the board of commissioners.
- (c) *Powers and duties.* The FCBA shall have the power and duty to hear and decide appeals of orders, decisions or determinations made by the fire chief, or his/her designee, relative to the suitability of alternate materials and types of construction and to provide for reasonable interpretations of the fire code. The FCBA shall not have the authority to amend the fire code; neither does the FCBA have the authority to correct what it may consider to be an unwise requirement. The powers and duties of the FCBA are limited to quasi-judicial and administrative matters as set forth in this chapter. In making any interpretation of the fire code or granting any equivalency, the FCBA shall make the following findings:
 - (1) That the interpretation or equivalency is consistent with the purpose of this Code and not in violation with any other applicable state or federal law;
 - (2) That the interpretation or equivalency will not lessen the protection to the people of the county and property situated therein.
- (d) *Term of office.* The terms of office of the members of the FCBA shall run concurrently with the term of the member of the board of commissioners who appointed that particular member. In any event, a term shall not exceed four years in the absence of reappointment.
- (e) *Removal and vacancies.* Members of the FCBA may be removed at any time by the appointing member of the board of commissioners, for cause or for no cause. Members whose terms have expired should continue to serve as members until their successors have been appointed.
- (f) *Fire code board of appeals procedures.* In conducting its business, the FCBA shall comply with the following procedures:
 - (1) *Meetings.* Meetings of the FCBA shall be held at the call of the chair of the FCBA, provided that due notice shall first be given. The chair of the FCBA, or in his/her absence the acting vice-chair of the FCBA, may administer oaths and compel the attendance of witnesses. All meetings of the FCBA shall be open to the public. The FCBA shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the county clerk and shall be a public record.
 - (2) *Quorum.* Three members of the FCBA shall constitute a quorum. The vote of three FCBA members is necessary to render any decision or take any action.
 - (3) *Chairperson.* The FCBA shall elect a chair and vice-chair to serve for a period of one

year.

- (4) *Rules, regulations, and bylaws.* The FCBA shall make and enforce such rules, regulations, and bylaws for the government of itself, the preservation of order, and the transaction of its business as may be necessary. Rules, regulations, and bylaws adopted by the FCBA shall not take effect until they are submitted to and approved by the county board of commissioners.
- (g) *Deciding appeals.* In deciding appeals, the FCBA shall comply with the following procedures:
 - (1) Any person adversely affected by any decision of the fire chief, or his/her designee, made in the course of the administration or enforcement of the fire code may appeal to the FCBA by filing a request in writing with the fire marshal, and by paying a fee, provided such appeal is made within 30 days from the date the decision is rendered by the fire chief, or his/her designee.
 - (2) Upon receipt of the application, the fire marshal shall forthwith transmit to the FCBA all papers constituting the record upon which the action appealed from was taken.
 - (3) The FCBA shall review the application at a public hearing. The purpose of the public hearing is to enable the FCBA to obtain facts surrounding the case which may not be evident, or which may not be shown in the record as submitted to the FCBA. The decision of the FCBA shall be based upon the facts and not upon expressions of support or protest, or lack of support or protest, which may be made at the hearing. Any party may appear at the hearing in person or by agent or by attorney.
 - (4) The FCBA, subject to the provisions and restraints of this chapter, may condition any grant of approval upon the fulfillment of other reasonable conditions or requirements, and may attach a time period during which its grant of approval must be exercised, or expire.
 - (5) The FCBA shall render a decision and findings in writing to the fire chief, with a duplicate copy to the petitioner within 14 days of the public hearing, but may also render its decision immediately following the public hearing, but shall provide its decision and findings in writing to the fire chief with a duplicate copy to the petitioner within 14 days of the public hearing. Decisions and findings in writing shall include signatures of a quorum of FCBA members. Failure of the FCBA to render a decision and findings in writing within 14 days of the public hearing shall constitute approval of the fire chief, or his/her designee's, original decision.
- (h) *Appeal to county board of commissioners.* Any person aggrieved by any decision of the FCBA may petition the Cherokee County Board of Commissioners for review to determine whether the FCBA's decision is arbitrary, capricious, or illegal. The petition is barred unless it is filed within 30 days of the date the FCBA adopts its written decision and findings. The decision of the board of commissioners shall be final.

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