RESOLUTION NO. 2010-19

A RESOLUTION OF THE CITY OF COATESVILLE, CHESTER COUNTY, PENNSYLVANIA CREATING THE CITY OF COATESVILLE INTERNATIONAL PROPERTY MAINTENANCE CODE APPEALS BOARD TO ADDRESS APPEALS IN ACCORDANCE WITH THE INTERNATIONAL PROPERTY MAINTENANCE CODE, AS ADOPTED IN CHAPTER 180, "PROPERTY MAINTENANCE" OF THE GENERAL LAWS OF THE CITY OF COATESVILLE, AND REGULATIONS THERETO AND PROVIDING FOR THE APPOINTMENT OF A BOARD OF APPEALS, AND THE MANNER OF CONDUCTING ITS REVIEW OF MATTERS PRESENTED ON APPEAL AND REPEALING ALL OTHER RESOLUTIONS AND/OR ORDINANCES AND PARTS OF THE RESOLUTIONS AND/OR ORDINANCES IN CONFLICT THEREWITH.

BE IT RESOLVED, by the Council of the City of Coatesville, and it is hereby ordained by the authority of the same as follows:

SECTION 1. Purpose

The City of Coatesville, a Third Class City and Home Rule Municipality located in Chester County, Pennsylvania (hereinafter the "City"), authorized to establish rules and procedures in conformity with the requirements of the Pennsylvania Construction Code Act, Act 4 of 1999, 35 P.S. §§ 7210-101-7210.1103 and Title 34 Pa. Code, Section 403.102, and having adopted a Property Maintenance code set forth in Chapter 180 of the General Laws of the City of Coatesville (hereinafter referred to as the "Code") in order to assure the health, safety and general welfare of the citizens of the City, hereby resolves to establish a Property Maintenance Appeals Board (hereinafter the "Appeals Board") to provide a process for the solution of Code grievances derived from the decisions of the City's Code Official/s (hereinafter "CO"). A resolution of appeals of the decision of a CO by the Appeals Board may be accomplished by either a request for a hearing or argument on the matter or upon submittal of evidence and/or documentation to the Appeals Board for a determination without a hearing.

SECTION 2. Organization

A. Qualifications of Members.

The members of the Appeals Board shall be qualified by training and experience to pass on matters pertaining to property maintenance and who are not employees of the City. Members of the Appeals Board shall serve at the pleasure of City Council which shall appoint them. If a qualified person cannot be found within the City, the City Council may fill a position on the Appeals Board with a qualified person from outside the City.

B. Term of Membership

The Appeals Board shall consist of a minimum of three members appointed by the City Council (and who shall serve at the pleasure of City Council) as follows: one member shall be appointed to serve a three year term; one member shall serve a two year term; and one member shall serve a one year term. After the initial appointments, each new member shall serve for three years or until a successor has been appointed.

C. Alternate Members

The City Council shall appoint two alternate members who shall be called by the Appeals Board Chairperson to hear appeals in the event of the absence or disqualification of a member. Alternate members shall possess the qualifications required for membership on the Appeals Board, and shall be appointed for three years or until a successor has been appointed. Upon the resignation of an Appeals Board member, the alternate members shall be eligible to assume the remaining term of the resigning member and shall be chosen by the remaining Board members by vote (with a coin toss used to resolve any ties).

D. Chairperson and Secretary

1. Chairperson: The Appeals Board shall annually select from its members an individual to serve as Chairperson.
2. Secretary: The City Manager shall designate a qualified clerk to serve as secretary to the board. The secretary shall file a detailed record of all proceedings in the City Code Office.

E. Quorum and Compliance with Sunshine Act

Meetings of the Appeals Board shall be conducted in accordance with the Pennsylvania State "Sunshine Act" of 1986 as amended and a quorum of the Appeals Board to conduct business shall consist of two (2) members of the Appeals Board.

F. Disqualification of Member

A member of the Appeals Board shall not hear an appeal in which that member has any personal, professional or financial interest.

SECTION 3. Appeal Process.

A. Filing of an Appeal

1. Any person receiving a decision of the City CO denying approval to that person regarding approval of plans or issuance of any permit may appeal such decision on a form created by the City Codes Department.

2. The appeal shall be made by completing required information on the Appeal Form and any relevant material shall be appended to the Appeal Form. The Appellant shall state on Appeal Form whether a hearing or oral argument is requested or whether the issue(s) to be resolved shall be decided upon submittal of evidence, written brief and/or documentation to the Appeals Board for a determination without a hearing.
3. The Appeals Form may be secured at City Hall from the Codes Department during regular business hours.
4. The Appeals Form, and any relevant materials, shall be accompanied by a copy of the written decision of the CO in opposition to which the appeal is based. If no written decision is provided within 10 days of the Code Official's decision, the Appellant may proceed to file the Appeal on affidavit that the Appellant served on the CO a request for a written decision which was not provided and that the lack of a written response shall be deemed as a denial.
5. The completed Appeals Form shall be filed with the Secretary to the Appeals Board in City Hall. The Appellant shall also serve a copy of the Appeal upon the City Codes Department by certified mail or hand delivery and shall file a proof of service with the Appeals Board prior to the Hearing. The proof of service shall contain a copy of the Postal return receipt or a hand written notation of acceptance of service signed for by the City Codes Department.
6. The filing fee for the Appeal shall be established by Resolution adopted by City Council of the City of Coatesville. All checks shall be made payable to the "City of Coatesville" and payment in full must accompany the Appeals Form.
7. The Secretary shall assign an appeal number and open a file for the keeping of all materials relevant to the appeal. The Secretary shall note on the Appeal Form the date and time of the filing. The appeal number shall be affixed to each document and shall consist of the following:
    a. Part one consists of the last two digits of the year in which the appeal is filed.
    b. Part two is the section of the Code of the City under which the appeal is brought.
    c. Part three represents the consecutive number of appeals filed in the year.
8. All appeals shall be heard or decided within 20 days after the appeal is filed and accepted by the Appeals Board.

B. Scope of Review by the Appeals Board

1. The Appellant must file an appeal based upon one or more of the three bases for appeal identified in subparagraph B.6 below.

2. The date of personal service or the receipt of the Appeal by the Appeals Board will establish the filing date of the Appeal.
3. An appeal to the Appeals Board will automatically suspend an action to enforce an order to correct until the matter is resolved EXCEPT in a case of declaration of Imminent Danger by the CO.
4. The Appeals Board shall decide an appeal, by reviewing documents and written brief or argument unless the Appellant requests a hearing.
5. The Appeals Board shall hold a hearing within 20 days from the date of an Appellant's request unless the Appellant agreed in writing to an extension of time for the appeal.
6. The Appeals Board shall only consider the following factors when deciding an appeal to a decision of a CO under the Code:
    (a) The true intent of the Code or the rules adopted thereunder have been incorrectly interpreted.
    (b) The provisions of the Code do not fully apply.
    (c) The requirements of the Code are adequately satisfied by other means.
7. If the Appellant requests a hearing, the Appeals Board shall schedule a hearing and notify the Appellant and CO of the date, time and place of the hearing.

C. Notice of Hearing

1. The Secretary shall forward by first class mail no later than ten (10) business days before the date of the hearing a "Notice of Hearing"; the Appeals Form; and the decision of the CO of the City of Coatesville to all Board Members and the City of Coatesville Codes Office.
2. If a quorum of the Appeals Board cannot be achieved, the Appeals Board Secretary shall notify by first class mail all persons identified in Section 3.B.7 above, of the meeting cancellation.

D. Hearing Procedures

1. All hearings shall be open to the public.
2. The Chairperson shall preside; and is authorized to administer oaths; and to rule upon the admissibility of presentation to the Appeals Board subject to challenge by a majority of the Appeals Board. Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.
3. The Secretary shall take, date, certify and maintain as part of the record a voice tape recording of the hearings as well as the written record of the hearing including all exhibits admitted.
4. Upon request by a Party and upon full and prior payment of the cost, the Secretary shall prepare and certify a written transcription of the recording.
5. A Party may be represented by legal counsel.

6. The Order of Hearing shall be as follows:
    a. The Appeals Form an all required documents shall be accepted or rejected by the Appeals Board; (forms in order, timely submission, fees paid and other);
    b. The Chairperson shall state the issue presented;
    c. The Appellant shall proceed initially in presenting the appeal to the Appeals Board and the CO shall be offered an opportunity to comment on the presentation of the issue:
    d. The Appellant shall present the basis for the appeal and the manner in which the CO erred in the decision rendered. The Appellant may present relevant documents, evidence or witnesses in support;
    e. The Appeals Board may question the Appellant and any witnesses presented;
    f. The CO may question the Appellant and any witnesses presented;
    g. The Appeals Board may ask additional questions of the Appellant;
    h. The CO shall present the law as written and the decision rendered. The CO may present relevant documents or witnesses in support of his/her decision.
    i. The Appeals Board may question the CO and any witnesses it presented;
    j. The Appellant may question the CO and any witnesses presented;
    k. The Appeals Board may ask additional questions of the CO;
    l. The Appellant shall make a summation;
    m. The CO shall make a summation; and,
    n. At the conclusion of the CO's summation, theChairperson shall entertain a motion on a decision followed by a roll call vote of the members of the Appeals Board. A majority of the Appeals Board shall be required to sustain a decision. A tie vote on the Appeal shall be deemed a denial of the appeal.
7. The Appeals Board of its own volition or at the request of a Party may continue the hearing at any stage. A simple majority of voting Appeals Board members shall be required for this action.

E. Decision

1. The Decision of the Appeals Board shall be formulated by the Chairperson in writing to the Secretary on a form which shall state the reasons for the Appeals Board's decision. If a hearing is held, the following format shall be employed:
    a. Findings of fact;
    b. Discussion in the findings;
    c. Opinion and order;

d. Right of the aggrieved Party in Interest to appeal to the Court of Common Pleas of Chester County;
e. Attesting signatures of the Chairman and Secretary.

2. The decision shall apply only to the Parties, and shall not be presumed to apply to any other situation.
3. The Decision shall be circulated by the Secretary among the members of the Appeals Board for review and/or comments. Written decision shall be issued within fifteen (15) working days after close of evidence.
3. The Secretary shall forward by certified mail a copy of the decision to the Parties in Interest and by first class mail to all Appeals Board Members, CO and to the City Manager.

SECTION 4. Effective date

That this Resolution and the rules, regulations, provisions, requirements, orders and matters established and adopted hereby shall take effect and be in full force and effect immediately from and after the date of its final passage and adoption.

SECTION 5. Severability

If any portion of this Resolution, rules, regulations, provisions, requirements, orders and matters established and adopted hereby should be determined to be unconstitutional, illegal or unenforceable, then that portion and only that portion of this Resolution which is deemed to be unconstitutional, illegal or unenforceable shall be severed from the remainder of this Resolution and all other terms thereof shall remain in full force and effect.

IN WITNESS WHEREOF, the Council of the City of Coatesville has adopted and enacted this Resolution this 11TH day of October, 2010.

Edward Simpson, Council President

ATTEST:

Wayne G. Reed, Interim City Manager