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Bricks, Mortar and Pushing Past Blocks in Construction

By Alan W. Flenner, J.D., P.E.

The Pennsylvania Construction Code Act (Act 45 of 1999, the "Act") is intended to provide uniform and modern construction standards across Pennsylvania and to eliminate conflicting local building codes. In reality, however, the regulation of construction in Pennsylvania remains a patchwork of laws and regulations that differ between state and local agencies. Understanding the enforcement of construction code regulations and the quasi-judicial and judicial review of enforcement and relief decisions can be a challenge. This article breaks down construction code enforcement and appeal procedures to lay out their intended flowpath.

The Act establishes the Uniform Construct Code ("UCC") as a minimum standard for construction throughout Pennsylvania while allowing additional regulations when the needs of a particular municipality justify the same. Under the Act, the Pennsylvania Department of Labor and Industry ("Department") adopts the International Code Council family of building codes, including the International Building Code and the International Residential Code, as the primary UCC standards. With some specific exceptions, the UCC is applicable to all buildings and structures and regulates their construction, occupancy, repair, and demolition.

The Act and the UCC generally preempt all other construction standards provided by any state or local agency within Pennsylvania, including construction standards contained within deed restrictions and the regulations of homeowners' associations. The Act and the UCC also exempt, or exclude from regulation, certain types of buildings including residential miscellaneous use structures, recreational cabins, manufactured housing, and agriculture

buildings. The homeowners' association preemption and recreational cabin exclusion provisions were both upheld by the Commonwealth Court in Indian Rocks Owners Association, Inc. of Ledgedale v. Glatfelter, 950 A.2d 1093 (Pa. Cmwlth 2008).

There are two methods by which a municipality may assert its own building code regulations to supplement the UCC: (i) a municipality may retain building codes that were in effect on July 1, 1999 and that equal or exceed the minimum requirements of the UCC; and (ii) a municipality may adopt new building codes that equal or exceed the minimum requirements of the UCC if such regulations are justified by local conditions. Consequently, property owners and builders should consult both the UCC and local building codes before proceeding with a construction project.

Over 90% of Pennsylvania municipalities have elected to administer and enforce the UCC by adopting an ordinance to do so. A municipality that has elected to administer and enforce the UCC must employ or retain a building code official to review plans, issue permits, and inspect construction. It must also establish a construction code board of appeals. A municipality that does not adopt the UCC generally cedes the authority to regulate building construction to the Department.

Once construction projects and other work subject to regulation under the UCC are reviewed and receive the proper permits, they must be inspected by the building code official for compliance with the UCC and applicable local regulations. The code official must inspect all construction for which a permit was issued and notify permit holders if the work fails to comply with the UCC. Code officials are obligated to discuss inspection results with permit holders before taking any further enforcement action.

The code official may issue a Notice of Violation if construction fails to comply with the UCC. A Notice of Violation must provide a description of the violation, and an order requiring correction of the violation within a reasonable time period. The code official may exercise discretion in establishing the time period for correction of the violation.

The code official may issue an Order to Show Cause if a permit holder fails to respond to a Notice of Violation. An Order to Show Cause must be issued by the code official before work may be ordered stopped for uncorrected violations. An Order to Show Cause must: (i) state why the action is being taken; (ii) state the alleged violation; (iii) provide notification of the potential order to stop work; and (iv) advise the permit holder to answer the Order in writing within thirty days.

An Answer to an Order to Show Cause must contain specific admissions or denials with respect to the alleged violations. The Answer may request a variance, or an extension of time, as relief from the applicable building code, or the Order to Show Cause may be appealed to the applicable construction code board of appeals.

If construction violates the UCC and goes uncorrected, or if the work is dangerous or unsafe, the code official may issue a Stop Work Order. A Stop Work Order prevents any further work from being performed. The Order must contain justification for being issued and state the conditions for work to resume. A Stop Work Order is not appealable. It may only be challenged when the issuing agency seeks its enforcement through the appropriate magisterial district court or court of common pleas.

If an existing building is unsafe, the code official may issue an Order to Vacate the building. Such an order prevents the continued occupancy of the building. The Order must state

the unsafe conditions for which the building is being closed. An Order to Vacate may not be rescinded until the unsafe conditions for which it was issued are corrected.

Appeals of code official decisions and requests for variances and extensions of time as relief from building code regulations are made to the construction code board of appeals. A board of appeals may be unique to its establishing municipality or it may be a joint board formed by two or more municipalities under the Intergovernmental Cooperation Act. Much like a zoning hearing board, a board of appeals is a quasi-judicial body that is independent from its establishing municipality.

A board of appeals must consist of five regular members and two alternate members appointed by the municipal governing body. Both regular and alternate members serve a term of five years. However, the terms of the regular members must be staggered such that one member's term expires each year. Members of a board of appeals must be residents of the municipality who possess training and experience pertaining to building construction. A position on the board may be filled by a qualified non-resident if no qualified persons can be found within the municipality. All members hold office at the pleasure of the governing body.

Petitioners to a board of appeals must file appeals and applications for variances and extensions of time on a form provided by the municipality and include any applicable fee. An appeal of a corrective order such as a Notice of Violation will stay further enforcement.

To consider appeals and applications for variances and extension of time, a board of appeals must review documents and written briefs at a public meeting unless the petitioner requests a public hearing. If a hearing is requested, the board of appeals will consider an appeal or application through testimony and presentation of evidence by the petitioner, the municipality

within which the work is situated, and any aggrieved parties recognized by the board. Technical rules of evidence do not apply and all relevant and reasonably probative evidence may be received by the board. A stenographic record of the hearing must be made.

A public meeting or hearing by a board of appeals on an appeal or application must be conducted within thirty days of the application date in the case of one and two-family residential buildings and within sixty days of the application date in the case of all other buildings unless the petitioner agrees otherwise. Public notice of a meeting or hearing is required as well as notice to the petitioner. The notice must include the date, time, and place of the meeting or hearing.

When considering an appeal from a code official decision, a board of appeals must consider whether the true intent of the UCC was incorrectly interpreted, the provisions of the UCC do not apply, or an equivalent form of construction may be used.

With respect to applications for variances and extensions of time, a board of appeals must consider the reasonableness of the UCC, the extent that a variance or time extension will violate the UCC or create an unsafe condition, the availability of expertise and materials required to comply with the UCC, the extent of effort by the petitioner to comply with the UCC, and any compensatory features or actions offered by the petitioner to provide an equivalent degree of protection. The determination of what amounts to an equivalent degree of protection is a subjective process by a board of appeals.

When deciding an appeal or application, the board of appeals has discretion to either deny the appeal or application in whole or in part, to grant the appeal or application in whole or in part, or to grant the appeal or application with conditions. All decisions of the board of appeals must be in writing, and must contain findings of fact and justification for the decision.

Written decisions must be served upon all parties and their counsel. Decisions must be served within five business days of a meeting or hearing with respect to one and two-family residential buildings unless the petitioner agrees otherwise.

With respect to all other buildings, there is no specified time within which a decision must be issued. However, it is advisable that a board of appeals issue a decision within a reasonable period of time. The failure of a board of appeals to comply with the one and two-family residential dwelling time constraints results in a deemed approval of an appeal or application.

A board of appeals decision may be appealed to the appropriate court of common pleas within thirty days of the date of the decision. Judicial review of a board of appeals decision is governed by the Local Agency Law. If a board of appeals record is incomplete, the court of common pleas may hear the appeal de novo, or remand the appeal for the purpose of making a full and complete record. If the board of appeals record is complete, the court of common pleas must hear the appeal on the certified record. The court must affirm the adjudication unless it finds a violation of constitutional rights, an error of law, or that the board's findings are not supported by substantial evidence.

Construction regulation and enforcement across Pennsylvania effectively remains a matter of local jurisdiction despite establishment of the UCC. Successful construction projects require close contact with local building code officials. More restrictive local building codes that equal or exceed the requirements of the UCC must be identified and followed to avoid compliance issues. However, enforcement and appeal procedures, although locally administered, are fairly uniform throughout the Commonwealth.