

# **BYLAWS OF THE QUAKER VALLEY COUNCIL OF GOVERNMENTS MUNICIPAL APPEALS BOARD**

## **ARTICLE ONE**

### **INTRODUCTION**

**Section 1.01 Definition of Bylaws.** These bylaws constitute the code of rules adopted by the Quaker Valley Council of Governments (hereinafter “QVCOG”), and the Municipal Appeals Board of the QVCOG for the regulation and management of the affairs of the Municipal Appeals Board of the QVCOG.

**Section 1.02 Authority of the QVCOG to Establish a Joint Municipal Appeals Board.** The QVCOG is a nonprofit corporation properly recorded with the Pennsylvania Department of State in compliance with the nonprofit corporation law of the Commonwealth of Pennsylvania, the Act of May 5, 1933, P.L. 289, and June 16, 1969, as amended, and further, meets all requirements of the Pennsylvania Intergovernmental Cooperation Act of 1972, as amended by 53 Pa.C.S. §§ 2301 - 2315 (relating to intergovernmental cooperation). As such, the QVCOG is a voluntary organization of municipal governments and acts as a forum for regional issues to effectuate more effective and efficient local government services through the administration of cooperative projects, programs and activities among its members. Pursuant to 34 Pa.Code § 403.121(d), two or more municipalities may establish a joint board of appeals through an intergovernmental agreement under the Pennsylvania Intergovernmental Cooperation Act.

**Section 1.03 Severability.** If any bylaw or portion of these by-laws is ruled invalid by a Court of competent jurisdiction, such invalidity shall not affect the legal validity of any section of these by-laws or the ability or validity of the Municipal Appeals Board to continue to function in accordance with all applicable state and local laws and ordinances.

## **ARTICLE TWO**

### **PURPOSE AND POWERS OF MUNICIPAL APPEALS BOARD**

**Section 2.01 Purposes and Powers.** The Municipal Appeals Board of the QVCOG shall have the purposes and powers as stated in the Pennsylvania Construction Code Act, 35 P.S. § 7210.501, as amended, as well as the Rules and Regulations of the Department of Labor and Industry, Part XIV, Uniform Construction Code, Title 34, Chapter 403, Administration, Board of Appeals, or any successor legislation or Rules and Regulations.

The Municipal Appeals Board shall hear and rule on appeals, requests for variances and requests for extensions of time under the Uniform Construction Code. An application for appeal to the Municipal Appeals Board shall be based on a claim that the true intent of the Pennsylvania Construction Code Act (35 P.S. §§ 7210.101 - 7210.1103), (hereinafter “the Act”), or the Uniform Construction Code has been incorrectly interpreted, the provisions of the Act or Uniform Construction Code do not fully apply or an equivalent form of construction is to be used.

**Section 2.02 Powers Not Conferred.** The Municipal Appeals Board of the QVCOG may not act upon appeals, requests for variance or requests for extension of time relating to accessibility under the Act. Requests for variances, extensions of time and appeals relating to accessibility shall be filed by an owner with the Accessibility Advisory Board under 34 Pa.Code § 403.142. *Furthermore, the Municipal Appeals Board shall not act upon any appeal filed with respect to Article XV of the Allegheny County Health Department Rules and Regulations which incorporates the International Plumbing Code and Chapters 25 through 32 of the International Residential Code and all such appeals shall be conducted by the Allegheny County Health Department in accordance with Article XI of the Allegheny County Health Department Rules and Regulations.*

### ARTICLE THREE

#### ELECTION TO PARTICIPATE IN THE MUNICIPAL APPEALS BOARD

**Section 3.01 Election to Join the QVCOG Municipal Appeals Board.** Any municipality that is a dues paying member of the QVCOG in good standing may elect to join the QVCOG Municipal Appeal Board by:

- (1) Adopting a Resolution indicating its intent and election to participate in the QVCOG Municipal Appeals Board with the other Member Municipalities; and
- (2) Approving the Bylaws of the QVCOG Municipal Appeals Board; and
- (3) Agreeing to be legally bound by any written decision of the Municipal Appeals Board; and
- (4) Executing an Intergovernmental Cooperation Agreement in a form acceptable to the QVCOG Board pursuant to the Intergovernmental Cooperation Act, No. 180 of 1972, as amended by Act 177 of 1996, 53 P.S. §§ 2301 - 2315.

**Section 3.02 Compliance with Intergovernmental Cooperation Act.** All municipalities electing to join the QVCOG Municipal Appeals Board shall comply fully with the Pennsylvania Intergovernmental Cooperation Act.

**Section 3.03 Indemnification and Hold Harmless.** Each participating QVCOG member municipality electing to participate in the QVCOG Municipal Appeals Board shall specifically indemnify and hold harmless the QVCOG, its individual members, its officers, directors, the Board of Directors, its administrators, and their successors and assigns, against any and all actions, claims and demands including any claims for the negligence of QVCOG, its individual members, its officers, directors, the Board of Directors, its administrators, and their successors and assigns, arising out of the QVCOG Municipal Appeals Board.

## ARTICLE FOUR

### COMPOSITION AND MEMBERS OF BOARD OF APPEALS

**Section 4.01 Qualification of Members.** A member of the Municipal Appeals Board shall be qualified by training and experience to pass on matters pertaining to building construction. Training and experience may consist of licensure as an architect or engineer, experience in the construction industry, and training and experience as an inspector or plan reviewer. No member or alternate member may be recommended by a participating municipality to the QVCOG Municipal Appeals Board unless the member or alternate member possesses a minimum of five (5) years combination of education and experience in the building trades.

**Section 4.02 Certain Persons Prohibited from Serving as Members.** Members of a municipality's governing body and its code administrator may not serve on the Municipal Appeals Board.

**Section 4.03 Filling Positions on Appeals Board.** A municipality may recommend a person to fill a position on the Municipal Appeals Board with a qualified person who resides outside of the municipality when the municipality cannot find a person within the municipality who satisfies the requirements of this Article.

**Section 4.04 Members Serve at Pleasure of Municipality's** A member appointed to the Municipal Appeals Board may by his or her municipality's governing body holds office at the pleasure of the municipality's governing body appointing such member. Any member appointed to the Municipal Appeals Board may be removed by the appointing governing body whenever it its judgment the best interests of the municipality will be served.

**Section 4.05 Reimbursement for Expenses for the Appeals Board Members** Each member of the Appeals Board shall receive no compensation for the meeting but members shall be reimbursed for mileage at the stated federal rate.

**Section 4.06 Conflicts of Interest.** A Municipal Appeals Board member may not cast a vote or participate in a hearing in any appeal, request for variance or request for extension of time in which the member has a personal, professional or financial interest. If a question arises concerning whether or not a Municipal Appeals Board member has a personal, professional or financial interest, the board member shall consult with the Appeals Board Solicitor and the Solicitor shall render a legal opinion whether or not the member has a personal, professional or financial conflict of interest.

## ARTICLE FIVE

### APPOINTMENT OF MEMBERS TO THE BOARD OF APPEALS

**Section 5.01 Municipal Recommendation of Members.** Each participating municipality, if it desires, may recommend one member and one alternate member to the Municipal Appeals Board. However, irrespective of whether a participating municipality recommends or declines to recommend a member or an alternate member to the Municipal Appeals Board, all decisions of the Municipal Appeals Board shall be binding upon such participating municipality even though the participating municipality is not represented by a voting member from its own municipality on the Municipal Appeals Board.

**Section 5.02 Method of Appointment.** Each municipality electing to participate in the QVCOG Municipal Appeals Board shall prior to September 1, 2004, execute an intergovernmental cooperation agreement indicating its election to participate in the formation of the QVCOG Municipal Appeals Board. Also, prior to such date, if the participating municipality desires to recommend a member and an alternate member to the Municipal Appeals Board, the municipality shall recommend such member and an alternate member by Resolution of the governing body and shall submit the names and qualifications of the member and the alternate member to the QVCOG.

**Section 5.03 Certification of Members and Alternate Members on Municipal Appeals Board.**

The QVCOG Board of Directors shall certify by Resolution, all members and alternate members to the Municipal Appeals Board recommended by the participating municipalities prior to September 1, 2004.

**Section 5.04 Subsequent Recommendation of Members by Participating Municipalities.**

Irrespective of whether a participating municipality recommends a member for the Municipal Appeals Board prior to September 1, 2004, any participating municipality may thereafter, if it desires, recommend a member for the Municipal Appeals Board by Resolution, and the QVCOG Executive Committee shall certify by Resolution such member as eligible to serve, if qualified, at the next scheduled Board Meeting.

## ARTICLE SIX

### TERMS AND TYPES OF MEMBER APPOINTMENTS

**Section 6.01 Number of Members on Municipal Appeals Board.** The Municipal Appeals Board of the QVCOG shall consist of three members comprised of both standing members and alternate members.

**Section 6.02 Appointment of Standing Members.** The QVCOG Executive Board, after receipt and review of the Resolutions submitted by the participating municipalities recommending members to the Municipal Appeals Board, shall appoint a total of three (3) standing members for initial terms beginning September 1, 2004 of three (3) years, two (2) years and a one (1) year. Thereafter, all appointments shall be for a period of three (3) years in order to achieve one expiring vacancy per year.

**Section 6.03 Appointment of Members.** Also, after receipt and review of the Resolutions submitted by the participating municipalities recommending members and alternate members for the Municipal Appeals Board, the QVCOG Board of Directors shall also appoint alternate members. The Executive Board shall appoint the alternate members initially for not more than a two (2) year term, with the term expiring on September 1 in each even-number year.

**Section 6.04 Replacement of a Standing Member by an Alternate Member.** An alternate member may replace a standing member if the standing member is not available or has a conflict of interest.

## ARTICLE SEVEN

### APPEALS, VARIANCES AND EXTENSIONS OF TIME

**Section 7.01 Petitions by Owners or Owner's Agent.** An owner or owner's agent may seek a variance or extension of time or appeal a building code official's decision by filing a petition with the building code official or other person designated by the Municipal Appeals Board on a form provided by the municipality and approved by the Municipal Appeals Board. All requests for variances, extension of time or appeals shall be filed no later than thirty (30) days of the determination.

**Section 7.02 Filing Date.** The postmark date or the date of personal service shall establish the filing date of the appeal and request for variance or extension of time.

**Section 7.03 Automatic Suspension of Order to Correct.** An appeal or request for variance or extension of time to the Municipal Appeals Board will automatically suspend an action to enforce an order to correct until the matter is resolved.

**Section 7.04 No Stay of Unsafe Building, Structure or Equipment.** An action under 34 Pa.Code § 403.84 (relating to unsafe building, structure or equipment) may not be stayed.

**Section 7.05 Appeals Without a Request for a Hearing.** The Municipal Appeals Board shall decide an appeal, variance request or request for extension of time by reviewing documents and written brief or argument, unless the owner or owner's agent requests a hearing.

**Section 7.06 Appeals With a Request for a Hearing.** If the owner or owner's agent requests a hearing, the Municipal Appeals Board shall schedule a hearing and notify the owner or owner's agent and building code official of the date, time and place of the hearing.

**Section 7.07 Written Materials, Plans and Maps.** Appellant shall submit to the QVCOG Municipal Appeals Board all written materials, drawings, plot plans and maps not less than fourteen (14) days prior to scheduled date of the Municipal Appeal Hearing in such format as requested by the Board.

## ARTICLE EIGHT

### HEARINGS AND MEETINGS

**Section 8.01 Notice.** The QVCOG Municipal Appeals Board shall schedule meetings and hearings as well as provide notice of the meetings and hearings in accordance with the Pennsylvania Sunshine Act, 65 P.S. §§ 701 - 716.

**Sections 8.02 Hearings on Appeals Within Sixty Days.** The Municipal Appeals Board shall render a decision hold a hearing within sixty (60) days from the date of an applicant's request unless the applicant agrees in writing to an extension of time.

**Section 8.03 Pre-Scheduled Meetings and Hearings.** All meetings and hearings of the Municipal Appeals Board shall be pre-scheduled and advertised annually by the staff of the QVCOG with the advice and consent of the Municipal Appeals Board unless posted as cancelled at the meeting site. Meetings and hearings shall be scheduled on a yearly basis and shall be held not less than every sixty (60) days.

**Section 8.04 Quorum to Convene a Meeting or Hearing.** A quorum of the Municipal Appeals Board shall consist of any combination of two (2) members, whether standing members or alternate members. However, only a standing member may convene and chair a meeting or hearing of the Municipal Appeals Board. Meetings and hearings shall be chaired by the standing member

with the most building trades experience, which shall be determined, by the members prior to the meeting or hearing. Three voting members shall be the maximum number of members permitted to hear any appeal hearing. The affirmative vote of a majority of the members of the Municipal Appeals Board shall rule.

**Section 8.05 Composition of Municipal Appeal Board for Appeal Hearings.** An alternate member from the participating municipality in which the variance, extension of time or appeal arose shall be appointed, if one is available, to the Municipals Appeal Board by the Executive Director of the QVCOG if the participating municipality is not represented by a standing member on such Municipal Appeals Board. The alternate member shall replace the member with the least tenure left at that hearing.

**Section 8.06 Representation of Municipality.** The municipality in which the variance, extension of time or appeal arose may be represented by its municipal solicitor or other designated legal counsel and the in-house or third party codes official(s) whose decision has been appealed.

**Section 8.07 Stenographic Record.** A stenographic record shall be made of hearing. The appearance fee for a stenographer shall be shared equally by the owner or the owner's agent and the Board. The cost of the original transcript shall be paid by the Board if the transcript is ordered by the Board or shall be paid by the person appealing from the decision of the Board if such appeal is made, and in either event the cost of additional copies shall be paid by the person requesting such copy or copies. In other cases the party requesting the original transcript shall bear the cost thereof.

**Section 8.08 Factors to Be Considering in Deciding an Appeal.** The Municipal Appeals Board shall only consider the following factors when deciding an appeal under Section 501(c)(2) of the Act:

- (1) The true intent of the Act of Uniform Construction Code was incorrectly interpreted.
- (2) The provisions of the Act do not apply.
- (3) An equivalent form of construction is to be used.

**Section 8.09 Factors to Be Considered When Ruling upon a Request for Extension of Time or Request for Variance.** The Municipal Appeals Board may consider the following factors when ruling upon a request for extension of time or a request for a variance:

- (1) The reasonableness of the Uniform Construction Code's application in a particular case.
- (2) The extent to which the granting of a variance or an extension of time will pose a violation of the Uniform Construction Code or an unsafe condition.

- (3) The availability of professional or technical personnel needed to come into compliance.
- (4) The availability of materials and equipment needed to come into compliance.
- (5) The efforts being made to come into compliance as quickly as possible.
- (6) Compensatory features that will provide an equivalent degree of protection to the Uniform Construction Code.

**Section 8.10 Decisions by the Municipal Board of Appeals.** The Municipal Appeals Board may:

- (1) Deny the request in whole or in part.
- (2) Grant the request in whole or in part.
- (3) Grant the request upon certain conditions being satisfied.

**Section 8.11 Written Notice of Decisions.** The Municipal Appeals Board shall render a decision within thirty (30) days of the hearing and shall provide written notice of its decision to the owner and to the building code official.

## ARTICLE NINE

### APPEALS BOARD SOLICITOR

**Section 9.01 Appointment.** A majority of the standing members of the QVCOG Municipal Appeals Board, with the advice and consent of the QVCOG Executive of Directors, shall retain an Appeals Board Solicitor who possesses significant experience with the former pertinent National Code. The Appeals Board Solicitor shall be appointed annually and the solicitor's compensation shall be fixed according to his or her assigned responsibilities.

**Section 9.02 Duties of Appeals Board Solicitor.** It shall be the duty of the Appeals Board Solicitor to provide continuity and advice to appointed appeals board members, municipal codes officers and designated municipal solicitors or other municipal legal counsel required to be present at convened meetings of the QVCOG Municipal Appeals Board.

## ARTICLE TEN



## **EXPENSES AND FEES OF THE MUNICIPAL APPEALS BOARD**

**Section 10.01 Expenses of the Municipal Appeals Board.** The QVCOG shall budget and pay initially the necessary expenses of the Municipal Appeals Board. Certain expenses shall thereafter be reimbursed to the QVCOG by the owner or owner's agent seeking a variance or extension of time or appealing a building code official's decision and certain expenses shall be reimbursed to the QVCOG by those participating municipalities.

**Section 10.02 Applicant Fees and Charges.** The owner or owner's agent seeking a variance or extension of time or appealing a building code official's decision to the QVCOG Municipal Appeals Board shall pay applicable Board expenses and costs incurred as a result of the request for a variance, extension of time or appeal a building code official's decision and associated with the hearing. These expenses and costs shall include but not be limited to legal notices and advertisements, stenographer fees as here in set forth, meeting room rental and QVCOG staff administrative fees.

**Section 10.03 Deposit Required by Appellant** In order to offset these expenses and costs, the owner or the owner's agent seeking a variance, extension of time or appealing a building code official's decision, shall at the time of submission of the appeal to the board, submit a cashier's check, certified check, or money order payable to the QVCOG, in an amount to be set annually by the QVCOG Executive Board to offset the necessary expenses and costs to be incurred by the Municipal Appeals Board.

**Section 10.04 Non covered expenses of the Municipal Appeals Board**

All expenses of the Municipal Appeals Board that are not recovered directly from the appellant shall be charged to the pertinent member municipality or municipalities involved in the appeal and shall be promptly paid without delay to the QVCOG by those participating municipalities.

**Section 10.05 Payment of Expenses by Participating Municipalities**

The QVCOG shall invoice those participating municipalities on a pro-rated basis for all expenses not covered by the appellant's escrow account revenue, for all non-Board expenses and costs including Appeals Board member's mileage, solicitor fees and such other necessary expenses as well as an additional amount of ten percent (10%) of each participating Municipality's costs

**Section 10.06 Establishment of an Escrow Account.** The QVCOG shall establish and maintain an escrow account for payments received from owners or owners' agents seeking variances, extensions of time or appealing a building code official's decision.

**Section 10.07 Costs to Be Itemized.** All costs and expenses will be pro-rated and itemized by QVCOG staff. If the escrow payment paid by the appellant exceeds the necessary expenses and related costs, the QVCOG shall refund to appellant all excessive payments. Conversely, if the

escrow payment is insufficient to pay all necessary and related costs, the owner or owner's agent shall be invoiced such additional costs and expenses and shall pay to the QVCOG such additional escrow payment before any additional proceeding of the Municipal Appeals Board may continue.

**Section 10.08 Costs and Withdrawal of Appeals.** If an owner or owner's agent appealing to the QVCOG Municipal Appeal Board withdraws an appeal after the review or appeal process has begun, the QVCOG shall only refund to the owner or the owner's agent those excessive payments exceeding the necessary costs and expenses incurred prior to the withdraw of the appeal.

## ARTICLE ELEVEN

### ADMINISTRATIVE SUPPORT FOR THE MUNICIPAL APPEALS BOARD

**Section 11.01 Administration Support for the Municipal Appeals Board.** The Executive Director of the QVCOG and the QVCOG staff shall provide all necessary administrative support required to effectuate the purposes of the Municipal Appeals Board.

## ARTICLE TWELVE

### TERMINATION OF PARTICIPATION IN MUNICIPAL APPEALS BOARD

Election to participate in the QVCOG Municipal Appeals Board may be terminated as set forth in the Intergovernmental Cooperation Agreement between the member municipalities.

## ARTICLE THIRTEEN

### AMENDMENT

**Section 13.01 Modification of Bylaws.** These Bylaws may be altered, amended or repealed by the affirmative vote of two-thirds of all municipalities approving the Bylaws as well as the affirmative vote of two-thirds of the **Board of Directors**.

**Section 13.02 Adoption of Bylaws.** These Bylaws have been adopted by the participating member municipalities and the **Board of Directors** of the QVCOG on the 18<sup>th</sup> day of August 2004.

Revised 8/18/04