

**AN ORDINANCE TO AMEND PROVISIONS CONCERNING APPEALS
TO THE BUILDING BOARD OF APPEALS BY AMENDING SECTIONS 15.04.120
AND 15.04.130 OF THE RAPID CITY MUNICIPAL CODE**

WHEREAS, the City has adopted provisions in Chapter 15.04 of the Rapid City Municipal Code to administer the various building codes adopted within R.C.M.C. Title 15; and

WHEREAS, R.C.M.C. 15.04.110 establishes the Building Board of Appeals to oversee administration of the building codes; and

WHEREAS, R.C.M.C. 15.04.130 governs appeals to the Building Board of Appeals of decisions made by the Building Official related to the codes in Title 15; and

WHEREAS, the Common Council wishes to clarify the ordinance related to those aggrieved individuals who may bring an appeal to the Building Board of Appeals; and

WHEREAS, the City wishes to remove duplicative language in Section 15.04.120 concerning appeals to the Building Board of Appeals that overlaps with the provisions in Section 15.04.130; and

WHEREAS, the City wishes to make additional small adjustments to the ordinance's language to clarify the applicability and effect of an appeal to the Building Board of Appeals; and

WHEREAS, the Common Council believes it to be in the best interests of the health, safety, and welfare of the City and its citizens to amend Sections 15.04.120 and 15.04.130 of the Rapid City Municipal Code concerning appeals to the Building Board of Appeals.

NOW THEREFORE, BE IT ORDAINED by the City of Rapid City, that Section 15.04.120 of the Rapid City Municipal Code be and is hereby amended to read in its entirety as follows:

15.04.120 Building Board of Appeals—Authority.

The Building Board of Appeals shall have the following powers and authorizations:

A. The Board may adopt and enforce rules and regulations as may be thought proper and necessary for the performance of its work.

~~B. The Building Board of Appeals shall have the authority to review and, by affirmative vote of a majority of the members present at any public hearing, sustain, reverse, change or modify any decision of the Building Official relating to questions concerning methods of building, use of processes and devices, strength and character of construction, and such other questions of like~~

~~kind and character as may arise between the Building Official and the individual(s) aggrieved by the decision of the Building Official, except as otherwise provided in this section.~~

~~CB.~~ The Building Board of Appeals shall have the authority to review decisions of the Building Official concerning modifications to the code and the suitability of alternate materials, design, and methods of construction and equipment concerning all Adopted Construction Codes except the Plumbing Code and the Electrical Code. City amendments to the Plumbing and Electrical Code can be appealed to the Building Board of Appeals.

1. The Building Board of Appeals is empowered to authorize a modification from the strict application of this code when:

- a. A special individual reason makes the strict letter of this code impractical (“strict application of this title will result in unnecessary hardship”); and
- b. Modification is in compliance with the intent and purpose of this code;
- c. Modification does not lessen any health, accessibility, life and fire safety, or structural requirements;

2. The Building Board of Appeals is empowered to authorize alternate materials, design, and methods of construction when:

- a. The proposed design is satisfactory and complies with the provisions of this code;
- b. The material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code in suitability, strength, effectiveness, fire resistance, durability, safety and sanitation; and
- c. Sufficient evidence or proof has been submitted to substantiate claims related to the application.

~~DC.~~ Appeals of decisions made by the Building Official within the Plumbing Code concerning modifications to the code and the suitability of alternate materials, design, and methods of construction and equipment shall be made to the South Dakota Plumbing Commission. Appeals of decisions made by the Building Official within the Electrical Code concerning modifications to the code and the suitability of alternate materials, design, and methods of construction and equipment shall be made to the South Dakota Electrical Commission. City amendments to the Plumbing and Electrical Code can be appealed to the Building Board of Appeals.

~~ED.~~ The Board is hereby authorized and empowered to review from time to time all provisions of the building, electrical, mechanical, plumbing, and housing codes adopted by the city; to conduct public hearings thereon, and to recommend to the Common Council modifications, revisions, changes, and new proposals pertaining thereto for their consideration and legislative action.

NOW THEREFORE, BE IT ORDAINED by the City of Rapid City, that Section 15.04.130 of the Rapid City Municipal Code be and is hereby amended to read in its entirety as follows:

15.04.130 Building Board of Appeals–Appeals.

A. Any ~~individual~~ license holder, applicant for a license, or homeowner or landlord ~~exempted under 15.04.140.H who is~~ aggrieved by ~~any~~ decision of the Building Official related to a license or a building permit sought or obtained by the aggrieved individual, or a decision concerning methods of building, use of processes and devices, strength and character of construction, and such other questions of like kind and character may appeal to the Building Board of Appeals. Such appeal shall be taken within 22 calendar days from the date of said decision by filing with the Building Official a notice of appeal specifying all grounds for objections and if a hearing is not conducted or continued within the 22 calendar day time frame, the ~~applicant~~appellant will be deemed to have won approval of the appeal. Health and safety issues as determined by the Building Official are not deemed approved in this instance. ~~Applicants~~Appellants shall pay a filing fee established by resolution of the City Council. The individual filing the appeal has the burden of establishing that the decision of the Building Official should be reversed, changed, or modified.

B. The Building Board of Appeals shall schedule a hearing within 22 calendar days from the date of appeal for the hearing of the appeal, giving public notice in the local newspaper 7 days prior to the hearing. The ~~applicant~~appellant and other persons interested in the case shall be notified as to the time and date of the hearing.

C. The Board shall hear all arguments and review all evidence submitted by the ~~applicant~~appellant, the Building Official, and any other person(s) interested in the case, and shall render its opinion. The Board shall electronically record the hearing, keep minutes of its proceedings, maintain all documents reviewed or introduced as evidence at meetings, and keep a record of the proceeding on file at Building Services.

D. If an appeal before the Board concerns a particular trade, and if neither the Board member nor the alternate from this particular trade is in attendance at the meeting at which the ~~application~~appeal is considered, then an ~~applicant~~appellant can elect to continue the ~~application~~appeal until the next Board meeting.

E. The Board may affirm, modify or reverse the decision upon which an appeal was filed; may approve or disapprove requests for consideration of alternate materials and methods of construction; and may grant modifications to this eCode as discussed in this eChapter. The Board shall act only upon the concurring vote of a majority of its members present and voting. **MAJORITY** shall mean more than 50% of the members present and voting. The decision of the Board shall be final except that an appeal regarding a determination on a license may be appealed to the City Council. Every decision of the Building Board of Appeals shall indicate the vote upon the decision and be recorded in the minutes, which shall be kept on file in the office of the Building Official.

F. A decision of the Building Board of Appeals, which in effect may modify the provisions of the applicable code, shall not be considered a precedent for future decisions of the Building Official. ~~The Building Board of Appeals shall act in each individual instance in which the granting of a permit would change the application or provisions of any of the above designated codes.~~

G. All decisions of the Board are final with the following exceptions:

1. ~~that a~~ An appeal regarding a determination on a license may be appealed to the City Council.

H2. A decision of the Board that concerns the Plumbing Code may be appealed to the South Dakota Plumbing Commission.

I3. A decision of the Board that concerns the Electrical Code may be appealed to the South Dakota Electrical Commission.

H. The details of any action granting modifications and use of alternative materials, design, and methods of construction shall be recorded and entered in the files of the permits and inspection division of the Community Planning and Development Department.

CITY OF RAPID CITY

Mayor

Attest

Finance Officer

(seal)