



Construction Services & Inspections Division
Planning & Economic Development Department

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BUILDING APPEAL BOARD AGENDA
Wednesday, August 14, 2024 – 3:00 p.m.
City Council Chambers, 3rd Floor of City Hall

1. Call Meeting to Order
2. Roll Call
3. Approve minutes of January 10, 2024
4. New Business: a. Building Appeal Board Bylaws
b. Election of Officers
5. Adjournment

Building Appeal Board
Wednesday, January 10, 2024

MEMBERS PRESENT: Nancy Janzig; John Miller; Bill Scalzo; Justin Hoffman; Rick Wallin; Brian Morse; John Hinzmann; Shawn Krizaj

MEMBERS ABSENT: Rick Wallin, Don O'Connor; Mark Pleml; Jordy Sargent

STAFF PRESENT: Blake Nelson; Paige Orcutt; Steven Robertson; Bonnie Engseth

1. ROLL CALL
2. The Board discussed whether or not to accept or reject the additional documents submitted to the City after the deadline of January 4, 2024.
3. Motion made by Board Member Krizaj, seconded by Board Member Hinzmann to accept the additional documents submitted by the appellant dated January 5, 2025 and by the landowner dated January 8, 2024. Motion passed unanimously.
4. Motion made by Board Member Scalzo, seconded by Board Member Krizaj to approve the October 11, 2023 minutes. Motion passed.
5. NEW BUSINESS

An Appeal of the Issuance of three Building Permits on November 27, 2023 dated December 18, 2023

- a) Board Member Janzig clarified that the appeal is for Buildings 1, 2 and 3 only. No information will be allowed to be presented for Building 4. Janzig also stated that the staff report will be presented first, then the appellant will be allowed 20 minutes to present, the landowner will be allowed 20 minutes to present, then 20 minutes will be allowed for questions by the Board.
- b) Building Official Blake Nelson summarized the staff report. He stated the building permits were not issued in error and all the guidelines were met, the reviews by other departments were approved and accepted before the building permits were issued.
- c) Michael Orman, Attorney for the appellant introduced Jeff Lisakka, JBI Construction Advisor, LLC. Mr. Lisakka presented his opinion regarding the design of the development that will potentially negatively impact the appellants property.
- d) Julie Padilla, Attorney for the landowner, stated that the project is not in violation of any relevant codes and everything was approved by City staff. The information presented from the appellant are only questions and the appellant just doesn't want the project next to their property.
- e) Board Member Morse asked if there are any violations with regards to the utilities/stormwater design. Building Official Nelson stated that the City Engineering Department approved the plans.
- f) David Bolf, Northland Consulting Engineers was hired by the landowner and stated he stands by the design and worked closely with the City Engineering Department on the project. Bolf answered specific questions presented to him by the Board regarding the design.

- g) The Board asked various questions to representatives of both the appellant and landowner regarding the project. The Board also allowed others present to speak regarding the project.
- h) Board Member Janzig asked City Attorney Paige Orcutt how the easement issues affect the appeal. Orcutt stated it is a separate issue from the question to the Board.

Motion made by Board Member Hinzmann, seconded by Board Member Hoffman to deny the appeal. Nancy Janzig abstained. Motion passed.

Motion made by Board Member Krizaj, seconded by Board Member Scalzo to adjourn at 4:05 p.m.
Motion passed.

BUILDING APPEAL BOARD
CITY OF DULUTH
BY LAWS AND RULES OF PROCEDURE

ARTICLE I IDENTITY

- 1.1 This organization shall be known as the Building Appeal Board.
- 1.2 The administrative offices and mailing address shall be Room 210, City Hall, Duluth, Minnesota.

ARTICLE II ORIGIN AND POWERS

- 2.1 The Building Appeal Board was established and created by Ordinance No. 8544 (12 7 80) of the City of Duluth, as amended, pursuant to authority provided by the 1912 Home Rule Charter of the City of Duluth, as amended. This Ordinance is currently codified in Section 10-5 of the Duluth City Code.

ARTICLE III DUTIES AND OBJECTIVES

- 3.1 To hear appeals from decisions by the Code Official in enforcing or interpreting the Duluth Housing Code, Chapter 29A of the Duluth City Code.
- 3.2 To hear appeals from decisions of the Fire Chief which arise under Chapter 21 of the Duluth City Code.
- 3.3 To hear appeals from an order of the building official which applies Article II or III of Chapter 10 Duluth City Code, as amended, or its successor, which includes orders for demolition or other decisions under Article II or III of Chapter 10, Duluth City Code.

ARTICLE IV MEMBERSHIP

- 4.1 Number. The Board shall consist of twelve (12) members who shall be appointed by the Mayor, subject to the approval of the City Council and who shall serve without compensation.
- 4.2 Board. The Duluth Fire Chief and the Building Official shall be ex officio members of the Board. The building official shall have no vote on any matter before the board and shall act as secretary of the board. One member of the Board shall work in the area of finance; one member shall be a registered architect; one member shall be a registered engineer working in the area of building construction design; one member shall be engaged in the business of residential building construction; one member shall be engaged in the business of commercial building construction; one member shall work in the area of building materials supply; one member shall be a member of a building trade union; one member shall be a realtor or real estate manager; and two members shall be appointed from the general citizenry of the City of Duluth.

4.3 Terms. Members shall be appointed for terms of three (3) years. Any vacancy in membership shall be filled by appointment by the Mayor subject to confirmation by the City Council, and such vacancy appointments shall be for the unexpired term of the vacating member.

4.4 Removal. Members shall be subject to removal by the Mayor, for cause, but only after Council approval, after notice and opportunity for a hearing before the Council.

4.5 Absenteeism. If any member fails to attend three consecutive meetings of the Board without satisfactory explanation, notice of such failure shall be forwarded to the Mayor and Council with the request for removal of such member from the Board.

ARTICLE V OFFICERS AND DUTIES

5.1 Titles. The officers of this Board shall be a President, Vice President, and Secretary. Ex Officio members shall not serve as President or Vice President. The Building Official shall act as secretary of the Board.

5.2 Duties of the President. The President shall preside at all meetings, appoint committees, rule on procedural questions, exercise the same voting rights as the other Board members and carry out such other duties as are assigned by the Board.

5.3 Duties of the Vice President. The Vice President shall act in the absence or inability of the President to act and in such instance shall have the powers and functions of the President.

5.4 Duties of the Secretary. The Secretary shall be responsible for notifying all members of meetings, drafting and circulating agendas, perform research work and preparing reports as are necessary to full advise the Board of all facts before the Board, keeping on file all official records and reports of the Board, keeping written records of Board meetings, transactions and actions, maintaining and circulating minutes, reporting on and attending to correspondence of the Board and carrying out such other duties as are assigned by the Board.

ARTICLE VI ELECTION OF OFFICERS

6.1 Terms. Officers shall be elected at the annual meeting of the Board. Terms of office shall be for one year. Officers shall serve until replaced by a duly elected officer in accord with these procedures.

6.2 Majority Required. Candidates for office receiving a majority vote of the members shall be duly elected.

6.3 Date of Office. Newly elected officers shall take office immediately upon election.

6.4 Vacancies. Vacancies occurring in offices of the Board shall be filled forthwith by regular election procedure.

ARTICLE VII MEETINGS

7.1 Annual Meetings. An organizational meeting shall be conducted in April of each year except when no other regular business is scheduled to be heard and in that case the organizational meeting shall be conducted during the next regular meeting following the April meeting at which there is other business to be heard. Election of officers shall be conducted and proposed amendments to by laws may be acted upon.

7.2 Special Meeting. Special meetings may be called at the discretion of the President or any of three (3) members of the Board.

7.3 Notice of Meetings. Notice in writing at least five days in advance of special meetings shall be sent to all Board members stating the time, place and purpose of such meeting.

ARTICLE VIII MEETING PROCEDURE

8.1 Rules of Order. Unless otherwise specifically designated, Roberts Rules of Order, as most recently revised, shall cover meeting procedure. However, deliberative sessions of the Board shall be conducted as informally as possible.

8.2 Quorum. Five members shall constitute a quorum for meeting purposes.

8.3 Appeals. No appeal shall be placed on the Board's agenda for hearing, discussion or action at any meeting unless a properly executed appeal form in the proper format has been filed in the office of the City's Building Official on or before the last Monday of the month preceding the month in which the appeal is to be heard and unless all other reasonably necessary documentation have been filed in the office of the City's Building Official not less than seven (7) days prior to the date of the meeting. Any appeal filed after that date or with regard to which necessary supporting documentation has not been filed within that time frame shall be deferred for hearing, discussion and/or action at the Board's next meeting; except that, upon a showing of good cause as determined in the exercise of the sole discretion of the Board and by unanimous vote of those members present, the Board may agree to hear, discuss or act upon an appeal which would not otherwise comply with these requirements. In the event that an appeal has been properly filed but reasonably required documentation has not been provided in time to meet the minimum filing dates for such documentation for the next three (3) meetings of the Board, the Building Official shall send written notice to the appellant at the address provided on the Appeal form informing the appellant of what additional supporting documentation is required in order to allow the appeal to be presented to the Board, informing the appellant of the date by which such documentation must be submitted to the Building Official's office in order to meet the requirements of this section for the next meeting of the Board and informing appellant that if such documentation is not received in the Building Official's Office by that date, the appeal will be denied as being without substance or grounds. If such supporting documentation is not submitted within the time frames specified in said notice, the board may deny the appellant's appeal.

8.4 Agenda. Only matters appearing on the Board's agenda, as distributed to board members by staff prior to regular, special or annual meetings, shall be eligible to be heard, discussed or acted upon at such meetings; except that, upon a showing of good cause as determined in the exercise of the sole discretion of the Board and by unanimous vote of those

members present, the Board may agree to hear, discuss or act upon matters not on their agenda.

8.5 Documentary Information. Documentary information to be provided to the Board for its consideration shall not be presented to the Board for such consideration at any meeting unless it has been filed in the office of the City's Building Official not less than six (6) days prior to meeting at which such documentary information is to be considered. The Board will not consider documentary information presented to it by any party at Board meetings; except that, by unanimous vote of those members present, the Board may agree to consider documentary information which would not otherwise comply with these requirements.

ARTICLE IX AMENDMENT OF BY LAWS

9.1 Procedure. These by laws and rules of procedure may be amended by two thirds vote of Board members in attendance.

ARTICLE X EFFECTIVE DATE

10.1 These by laws shall take effect April 9, 2014 and shall supersede all by laws which might have been earlier established.

BUILDING APPEAL BOARD
CITY OF DULUTH
BY-LAWS AND RULES OF PROCEDURE

ARTICLE I IDENTITY

- 1.1 This organization shall be known as the Building Appeal Board.
- 1.2 The administrative offices and mailing address shall be Room ~~240~~ 100, City Hall, Duluth, Minnesota.

ARTICLE II ORIGIN AND POWERS

- 2.1 The Building Appeal Board, hereinafter referred to as the "Board", was established and created by Ordinance No. 8544 (12 7 80) of the City of Duluth, as amended, pursuant to authority provided by the 1912 Home Rule Charter of the City of Duluth, as amended. This Ordinance is currently codified in Section 10-5 of the Duluth City Code.

ARTICLE III DUTIES AND OBJECTIVES

- 3.1 To hear appeals from decisions by the Code Official in enforcing or interpreting the Duluth Housing Code, Chapter 29A of the Duluth City Code.
- 3.2 To hear appeals from decisions of the Fire Chief which arise under Chapter 21 of the Duluth City Code.
- 3.3 To hear appeals from an order of the ~~Building~~ Official which applies Article II or III of Chapter 10 Duluth City Code, as amended, or its successor, which includes orders for demolition or other decisions under Article II or III of Chapter 10, Duluth City Code.

ARTICLE IV MEMBERSHIP

- 4.1 Number. The Board shall consist of ~~twelve (12)~~ nine (9) members who shall be appointed by the Mayor, subject to the approval of the City Council and who shall serve without compensation.
- 4.2 Board. The Duluth Fire Chief and the Building Official shall be ex officio members of the Board. The Duluth Fire Chief shall have full voting rights. The ~~Building~~ Official shall have no vote on any matter before the ~~Board~~ and shall act as secretary of the ~~Board~~.

One member of the Board shall work in the area of finance; one member shall be a registered architect; one member shall be a registered engineer working in the area of building construction design; one member shall be engaged in the business of residential ~~building construction~~; ~~one member shall be engaged in the business of~~ or commercial building construction; one member shall work in the area of building materials supply; ~~one member shall be a member of a building trade union; one member shall be a realtor or real estate manager;~~ and two members shall be appointed from the general citizenry of the City of Duluth.

4.3 Terms. Members shall be appointed for terms of three (3) years. Any vacancy in membership shall be filled by appointment by the Mayor subject to confirmation by the City Council, and such vacancy appointments shall be for the unexpired term of the vacating member.

4.4 Removal. Members shall be subject to removal by the Mayor, for cause, but only after Council approval, after notice and opportunity for a hearing before the Council.

4.5 Absenteeism. If any member fails to attend three consecutive meetings of the Board without satisfactory explanation, notice of such failure shall be forwarded to the Mayor and Council with the request for removal of such member from the Board.

ARTICLE V OFFICERS AND DUTIES

5.1 Titles. The officers of this Board shall be a President, Vice President, and Secretary. Ex Officio members shall not serve as President or Vice President. The Building Official shall act as secretary of the Board.

5.2 Duties of the President. The President shall preside at all meetings, appoint committees, rule on procedural questions, exercise the same voting rights as the other Board members and carry out such other duties as are assigned by the Board.

5.3 Duties of the Vice President. The Vice President shall act in the absence or inability of the President to act and in such instance shall have the powers and functions of the President.

5.4 Duties of the Secretary. The Secretary shall be responsible for notifying all members of meetings, drafting and circulating agendas, perform research work and preparing reports as are necessary to full advise the Board of all facts before the Board, keeping on file all official records and reports of the Board, keeping written records of Board meetings, transactions and actions, maintaining and circulating minutes, reporting on and attending to correspondence of the Board and carrying out such other duties as are assigned by the Board.

ARTICLE VI ELECTION OF OFFICERS

6.1 Terms. Officers shall be elected at the annual meeting of the Board. Terms of office shall be for one year. Officers shall serve until replaced by a duly elected officer in accord with these procedures.

6.2 Majority Required. Candidates for office receiving a majority vote of the members shall be duly elected.

6.3 Date of Office. Newly elected officers shall take office immediately upon election.

6.4 Vacancies. Vacancies occurring in offices of the Board shall be filled forthwith by regular election procedure.

ARTICLE VII MEETINGS

7.1 Annual Meetings. An organizational meeting shall be conducted in April of each year except when no other regular business is scheduled to be heard and in that case the organizational meeting shall be conducted during the next regular meeting following the April meeting at which there is other business to be heard. Election of officers shall be conducted and proposed amendments to by-laws may be acted upon.

7.2 Special Meeting. Special meetings may be called at the discretion of the President or any of three (3) members of the Board.

7.3 Notice of Meetings. Notice in writing at least five calendar days in advance of special meetings shall be sent to all Board members stating the time, place and purpose of such meeting.

ARTICLE VIII MEETING PROCEDURE

8.1 Rules of Order. Unless otherwise specifically designated, Roberts Rules of Order, as most recently revised, shall cover meeting procedure. However, deliberative sessions of the Board shall be conducted as informally as possible.

8.2 Quorum. Five members shall constitute a quorum for meeting purposes.

8.3 Appeals. The Board shall hear appeals timely filed in accordance with Duluth City Code. No appeal shall be placed on the Board's agenda for hearing, discussion or action at any meeting unless a properly executed appeal form in the proper format has been filed in the office of the City's Building Official on or before the last Monday of the month preceding the month in which the appeal is to be heard and unless all other reasonably necessary documentation have been filed in the office of the City's Building Official not less than seven (7) calendar days prior to the date of the meeting. Any appeal filed after that date or with regard to which necessary supporting documentation has not been filed within that time frame shall be deferred for hearing, discussion and/or action at the Board's next meeting; except that, upon a showing of good cause as determined in the exercise of the sole discretion of the Board and by unanimous vote of those members present, the Board may agree to hear, discuss or act upon an appeal which would not otherwise comply with these requirements. In the event that an appeal has been properly filed but reasonably required documentation has not been provided in time to meet the minimum filing dates for such documentation for the next three (3) meetings of the Board, the Building Official shall send written notice to the appellant at the address provided on the Appeal form informing the appellant of what additional supporting documentation is required in order to allow the appeal to be presented to the Board, informing the appellant of the date by which such documentation must be submitted to the Building Official's office in order to meet the requirements of this section for the next meeting of the Board and informing appellant that if such documentation is not received in the Building Official's Office by that date, the appeal will be denied as being without substance or grounds. If such supporting documentation is not submitted within the time frames specified in said notice, the ~~h~~Board may deny the appellant's appeal.

8.4 Agenda. Only matters appearing on the Board's agenda, as distributed to ~~h~~Board members by staff prior to regular, special or annual meetings, shall be eligible to be heard, discussed or acted upon at such meetings; except that, upon a showing of good cause as

determined in the exercise of the sole discretion of the Board and by unanimous vote of those members present, the Board may agree to hear, discuss or act upon matters not on their agenda.

8.5 Documentary Information. Documentary information to be provided to the Board for its consideration shall not be presented to the Board for such consideration at any meeting unless it has been filed in the office of the City's Building Official not less than ~~six (6)~~ seven (7) calendar days prior to meeting at which such documentary information is to be considered. The Board will not consider documentary information presented to it by any party at Board meetings; except that, by unanimous vote of those members present, the Board may agree to consider documentary information which would not otherwise comply with these requirements.

ARTICLE IX AMENDMENT OF BY-LAWS

9.1 Procedure. These by-laws and rules of procedure may be amended by two thirds vote of Board members in attendance.

ARTICLE X EFFECTIVE DATE

10.1 These by-laws shall take effect ~~April 9, 2014~~ August 14, 2024, and shall supersede all by laws which might have been earlier established.



Legislation Details (With Text)

File #: 24-024-O **Name:**
Type: Ordinance **Status:** Passed
File created: 6/14/2024 **In control:** Planning and Economic Development
On agenda: 6/24/2024 **Final action:** 7/15/2024

Title: AN ORDINANCE AMENDING SECTION 10-5, OF CHAPTER 10 OF THE DULUTH CITY CODE TO REDUCE THE MEMBERSHIP OF THE BUILDING APPEAL BOARD TO NINE MEMBERS.

Sponsors:

Indexes:

Code sections:

Attachments:

Date	Ver.	Action By	Action	Result
7/15/2024	1	City Council	adopted	
6/24/2024	1	City Council	read for the first time	

AN ORDINANCE AMENDING SECTION 10-5, OF CHAPTER 10 OF THE DULUTH CITY CODE TO REDUCE THE MEMBERSHIP OF THE BUILDING APPEAL BOARD TO NINE MEMBERS.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That Article VI, Sections 10-5, of Chapter 10 of the Duluth City Code is hereby amended as follows:

Sec. 10 5. Building appeal board.

(a) There is hereby established a building appeal board, which shall hear and determine appeals under the State Fire Code and Duluth Housing Code. Such board shall consist of ~~12~~ nine members who shall be appointed by the mayor, subject to the approval of the city council and who shall serve without compensation. The Duluth fire chief shall be an ex officio member of the board with full voting rights. ~~and The building official shall be appointed as ex officio members of the board. The building official and shall have no vote on any matter before the board and shall act as secretary of the board.~~ One member of the board shall work in the area of finance; one member shall be a registered architect; one member shall be a registered engineer working in the area of building construction design; one member shall be engaged in the business of residential ~~building construction;~~ ~~one member shall be engaged in the business of~~ or commercial building construction; one member shall work in the area of building materials supply; ~~one member shall be a member of a building trade union; one member shall be a realtor or real estate manager;~~ and two members shall be appointed from the general citizenry of the city of Duluth. Of the first persons appointed for membership on the board, four shall be appointed for three years, four shall be appointed for two years, and three shall be appointed for one year. Thereafter, all appointments shall be for a term of three years, except that vacancies caused by death, resignation or otherwise may be filled for the remaining unexpired term;

(b) Within 30 days after the initial appointments, the board shall meet and elect a chairman and vice chairman. Thereafter, the board shall meet at stated intervals fixed by resolution of the board, or at the call of the chairman or of any three members of the board. The board may adopt reasonable rules and regulations for conducting its investigations and hearings;

(c) The board shall have jurisdiction to perform the following functions:

(1) To hear appeals from decisions made by the building official or their designee in

enforcing or interpreting the Duluth Housing Code, Chapter 29A, of the Duluth City Code;

(2) To hear appeals from decisions of the fire chief which arise under Chapter 21 of the Duluth City Code;

(3) To hear appeals from an order of the building official which applies Article II or III of Chapter 10 of Duluth City Code, as amended, or its successor, which includes orders for demolition or other decisions under Article II or III of Chapter 10, Duluth City Code;

(d) Any owner or occupant who wishes to appeal a decision of the building official or fire marshal shall serve written notice of appeal upon the building official within 15 days after receiving notice of such decision and pay the appeal fee. The appeal fee shall be set in accordance with Section 31-6(a) of this Code. The notice of appeal shall contain a complete statement of the matter in controversy and relief requested. If the appeal is from a decision of the fire chief or their designee, the building official shall forward a copy of the notice of appeal to the fire chief. The building official shall notify the appellant of the time and place of the hearing. If the appellant withdraws ~~his or her~~ their appeal in writing prior to the date and time set therefore, the building official shall refund the aforesaid fee. At the hearing, the board shall hear all relevant evidence and arguments. After due deliberation, the board shall render its decision in writing and notify the appellant of its decision by U.S. mail, electronic means or personal service. The building official shall keep an indexed record of decisions of the board. If the board grants an appellant an extension of time to do an act, then, at the next meeting after expiration of that period of time, the matter shall be set on the meeting agenda for the board's review and action;

(e) In making its decisions, the board shall use the following criteria:

(1) Housing code appeals and appeals of demolition or other orders. The board may remedy any error it has found the building official or their designee has made in the interpretation of the housing code or of Article II or III of Chapter 10, Duluth City Code, or their successors. The board may also grant such relief as it deems reasonable from strict compliance with each provision of these parts of Duluth City Code, but no relief shall be granted unless it is found that:

- (A) There is substantial compliance with the provisions of the Code,
- (B) No detriment to public health or safety will result from granting such relief,
- (C) The intent of the Code is not compromised, and;
- (D) The relief granted will not result in increased cost expense to the city;_

(2) Variances from the minimum requirements of the fire code may be recommended to the state fire marshal only if:

- (A) There is substantial compliance with the provisions of the fire code;
- (B) The safety of the building occupants and general public will not be jeopardized,

and;

- (C) Undue hardship will result to the applicant if relief is not granted;

(f) Any owner or occupant aggrieved by a decision of the board which involves a housing code matter, except a demolition matter under Section 10-3 of this Code, or its successor, may appeal such decision to the city council by filing a notice of appeal with the building official within 15 days after receiving notice of the board's decision. Such notice of appeal shall be addressed to the city council and shall state the grounds upon which the appeal is taken. The filing of a notice of appeal shall stay all proceedings in furtherance of the decision appealed from. The building official shall file all appeal notices with the city council. The city council shall hear the appeal within 30 days after the notice of appeal is filed and shall affirm, modify or reverse the decision of the board. The board's decision on demolition orders or any matter arising under Section 10-3 of this Code, or its successor, shall be appealed to the appellate courts pursuant to Minnesota Statutes Section 606.01.

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication.

STATEMENT OF PURPOSE: This ordinance amends Chapter 10, Article IV, of the City Code, related to the Building Appeal Board. The ordinance changes the size and composition of the building appeal board. These changes would reduce the number of members of the Building Appeal Board from twelve members to nine members (seven citizen members and two ex officio city staff members), eliminating membership positions

reserved for a member of the building trade union and a realtor or real estate manager, and combining the positions held by persons engaged in residential and commercial construction. This amending language was shared with the members of the Building Appeal Board at their October 11, 2023, meeting, and they supported the proposed text changes.