

Ordinance No. 656-17

AN ORDINANCE OF THE TOWN OF FLORENCE, PINAL COUNTY, ARIZONA AMENDING THE TOWN OF FLORENCE CODE OF ORDINANCES BY INSERTING SECTION 150.301; TITLED BOARD OF APPEALS; AND DECLARING AN EMERGENCY.

BE IT ORDAINED by the Mayor and Town Council of the Town of Florence, as follows:

Section 150.301, Board of Appeals.

(A) CREATION, MEMBERSHIP, PURPOSE, FILING DEADLINE.

In order to hear and decide appeals of orders, decisions or determinations made by the Building Official, or Fire Code Official, relative to the application and interpretation of the Town's adopted technical codes, there shall be and is hereby created a Board of Appeals (the "Board"). The Board shall consist of five voting members, who are qualified by experience and training to pass upon matters pertaining to building construction, who are qualified by experience and training to pass on matters pertaining to hazards of fire, explosions, hazardous conditions or fire protections systems and the Town's adopted technical codes. Members shall not be employees of the Town of Florence. Members may include persons who reside outside the boundaries of the Town of Florence. The Building Official and Fire Code Official shall be ex officio members of the Board and shall act as secretary to the Board, but they shall have no vote upon any matter before the Board.

The Board is appointed by the Town Council and shall hold office at the pleasure of the Town Council. The Board shall adopt rules of procedure for conducting its business.

An application for appeal by an aggrieved person shall be based on a claim that the true intent of the relevant technical code or the rules legally adopted by the Town have been incorrectly interpreted, the provisions of the code do not fully apply, an equally good or better form of construction is proposed, or an equivalent method of protection or safety is proposed. The Board shall provide a means by which aggrieved persons, after having proceeded through the administrative appeal process, may have a method by which to appeal said decision or regulations.

The Administrative Appeal is the start of the appeal process to the Town's adopted technical codes. It is a weekly, no fee, informal procedure in which the applicant and

Building Official and/or Fire Code Official meet to resolve the item under consideration.

Appeals to the Administrative Appeal process or Board of Appeals are to be made within twenty (20) calendar days from receiving such notice of a final decision by the Building Official or Fire Code Official, on the form provided by the Building Official.

(B) POWERS.

1. The Board may approve the use of alternate materials or methods of construction; provided the alternate is for the purpose intended and the equivalent of that prescribed in the Town's adopted technical codes in suitability, strength, effectiveness, fire-resistance, durability, safety, and sanitation.
2. The Board on request or on its own motion, may provide reasonable interpretation of the technical provisions of the adopted technical codes in special cases when it appears that the provisions of the code are inadequate and do not cover the point in question. "Technical provisions" shall mean all provisions except the administrative provisions.
3. Any person directly affected by a decision of the Building Official or Fire Code Official applying to the technical provisions of the adopted technical codes or to an alternate material or method of construction may request to appear before the Board.
4. The Board shall have no authority to waive requirements of the technical codes.
5. Any person directly affected by a decision of the Building Official or Fire Code Official or a notice or order issued under the technical codes shall have the right to appeal to the Board of Appeals, provided that a written application to appeal is filed in the Office of the Town Clerk within twenty (20) days after the decision, notice, or order was served. Application for appeal shall be based on a claim that: the true intent of the relevant technical code or the rules legally adopted by the Town have been incorrectly interpreted, the provisions of the code do not fully apply, an equally good or better form of construction is proposed, or an equivalent method of protection or safety is proposed. The Board shall have no authority to waive the requirements of the technical codes.

6. The Board may recommend new legislation to the Town Council, provided such is consistent therewith.

(C) MEETINGS.

1. General. Upon receipt, in proper form, of the notice of appeal, the Board shall proceed to hold a public hearing upon the appeal at which all persons whose property is directly affected and the general public shall be given an opportunity to be heard.

The Town Council will receive and file all minutes of the Board in a public meeting. The Board's minutes will include all Board proceedings, showing the vote of each member and all actions taken shall be kept. Records of its examination, minutes, and other official actions shall be filed in the office of the Town Clerk and shall be open to public inspection except as otherwise specifically provided by law.

2. The Board shall hold one regular meeting a month unless otherwise directed by the Chairman. Special Board meetings may be called by the Building Official, Fire Code Official, Chairman, or two members of the Board.
3. Quorum. Three members of the Board shall constitute a quorum. The affirmative vote of the majority of members present shall be required for the passage of any matter before the Board.
4. Staying of Proceedings. An appeal stays all proceedings in the matter appealed from, unless the Building Official or Fire Code Official certifies to the Board that, in his/her opinion by the facts stated in the certificate, there is reasonable cause that a stay could cause a hazard or is otherwise dangerous to human life or the public welfare. Upon such certification, proceedings shall not be stayed, except by a restraining order granted by a Court of Record on application and notice to the Building Official and Fire Code Official.

(D) APPOINTMENT.

1. General. The Board shall consist of five members appointed by the Town Council. Members may be made up of qualified persons serving on Town boards or commissions or that may be otherwise qualified through their profession. Members may include persons who reside outside the boundaries of the Town of Florence. Those persons who are currently Board members shall continue to hold their positions pursuant to the terms and conditions of this chapter.

2. Officers. The Board shall elect a Chairman and Vice-Chairman from among its members, neither of whom shall be an ex officio member. The Chairman (or the acting Chairman in the Chairman's absence or disqualification) shall have the power to administer oaths and take evidence.
3. Membership of Board. The Board of Appeals shall consist of five members who are qualified by experience and training to pass on matters pertaining to building construction and property maintenance and who are not employees of the Town of Florence. The Building Official and Fire Code Official shall be ex-officio members but shall not vote on any matters before the Board.
4. Term. The term of office of a member shall be staggered and overlapping four years. The Chairman and Vice-Chairman shall serve for a one-year period or until their successors are elected.

(E) ADMINISTRATIVE APPEAL. Whenever an applicant wishes to appeal the decision of the Building Official or Fire Code Official because of code interpretation, unreasonable hardship, special circumstances/conditions that are not self-imposed, or other acceptable reasons prior to the issuance of a final Certificate of Occupancy, such no fee appeal may be made to be heard by the Building Official or Fire Code Official as follows:

1. The applicant shall file a written appeal fully describing the situation, on or before 12:00 p.m. Friday of each week. The application shall bear the name, address, and signature of the applicant, along with a description of the matter in sufficient detail to provide reasonable notice to the Building Official or Fire Code Official of the issues to be presented.
2. The appeal will be heard at a regular time to be specified by the Building Official.
3. The Building Official or Fire Code Official may use a nonvoting hearing committee consisting of such staff or other technical persons as she/he deems appropriate.
4. If an appeal is disapproved, the applicant shall comply with the final decision of the Building Official or Fire Code Official or make application and pay the applicable fee to appear before the Board of Appeals. Such application shall be made within twenty (20) days after the Building Official's, or Fire Code Official's final decision.

(F) BOARD CALENDAR. The Board shall decide on any matter within twenty (20) calendar days after the date of the hearing thereon and such decisions shall be final.

(G) COURT REVIEW. Any person aggrieved by a decision of the Board may at any time within thirty (30) days after the Board's decision file an appeal with the Pinal County Superior Court by the various methods of procedure as set forth by the applicable State Statues.

(H) REAPPLICATION. In the event that an appeal is denied or technically denied by the Board, the Board shall reserve the right to refuse to consider another appeal on the same subject matter under like circumstances within one year from the date of hearing of the previous appeal.

(I) EXECUTIVE SESSIONS. Executive Sessions of the Board of Appeals may be held for only those reasons and pursuant to those conditions authorized by State Law, including the Town's adopted technical codes. No executive sessions may be held for the purpose of taking any final action or making any final decision.

(J) FINANCIAL. The Board of Appeals shall not incur debts nor make any purchases or enter into any contracts binding the Town.

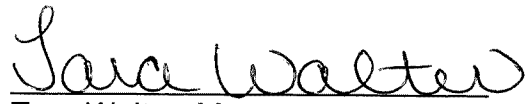
(K) CONFLICT OF INTEREST. Any member of this Board of Appeals who has a conflict of interest in any matter brought before this Board of Appeals, shall make known such interest in the minutes of the Board of Appeals and shall refrain from voting upon or otherwise participating in any manner in such matter. The existence of conflict of interest shall be determined by reference to the State Law and Town Codes.

(L) FEES. An Application to appear before the Board shall be accompanied by the necessary documents along with the prescribed nonrefundable application fee.

If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of these amendments to the Town Code adopted herein is for any reason held to be invalid or unconstitutional by the decisions of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

The immediate operation of the Ordinance is necessary for preservation of the public peace, health, and safety of the Town of Florence, and an emergency is hereby declared to exist; and this ordinance shall be in full force and effect from the offer of its passage and approval by the Mayor and Council of the Town of Florence and publication as required by the laws of the State of Arizona, and is hereby exempt from the referendum provisions of the constitution and laws of the State of Arizona.

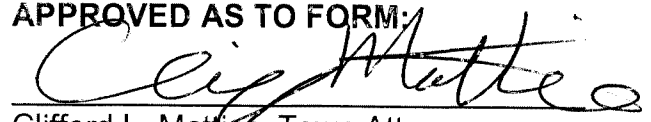
PASSED AND ADOPTED in open meeting by the Town Council, Town of Florence, Arizona, on the 27th day of March 2017, by the affirmative vote of three fourth (3/4) of the member of the Town Council of the Town of Florence.


Tara Walter, Mayor

ATTEST:


Lisa Garcia, Town Clerk

APPROVED AS TO FORM:


Clifford L. Mattice, Town Attorney

Certification

I, the undersigned, being the duly appointed and qualified Town Clerk of the Town of Florence, certify that the foregoing Ordinance No. 656-17 is a true, correct and accurate copy as passed and adopted at a regular meeting of the Florence Town Council, held on the 27th day of March, 2017 at which a quorum was present and voted in favor of said Ordinance No. 656-17.



Lisa Garcia, Town Clerk