



ORDINANCE NO. 2024-239

An Ordinance of Harborcreek Township, authorizing the participation, with Fairview Township, in an Intergovernmental Cooperation Agreement to process and administer appeals of decisions under the Uniform Construction Code, adopted by both Municipalities.

WHEREAS, in 2004, When Harborcreek Township enacted an adopted the Uniform Construction Code, the composition of the Board of Appeals, responsible for handling and processing appeals of determinations from decisions of the administration and enforcement representatives responsible pursuant to the provisions of the Uniform Construction Code (UCC), included representatives appointed by the three municipalities, Millcreek Township, Fairview Township and Harborcreek Township, participating in the Intergovernmental Cooperation Agreement to handle appeals of Uniform Construction Code decisions; and

WHEREAS, recently, Millcreek Township withdrew from participating in the Intergovernmental Cooperation Agreement set up to handle processing of appeals of decisions under the Uniform Construction Code; and

WHEREAS, the remaining two municipalities, Harborcreek Township and Fairview Township, desire to continue their Intergovernmental Cooperation Agreement to appoint members to the UCC Appeals Board and to process such appeals, in accordance with the authorization contained in Section 3.06 of Ordinance 04-185, with the understanding that the Intergovernmental Cooperation Agreement for processing the UCC appeals will include only Fairview Township and Harborcreek Township, on, and after, the recent withdrawal of Millcreek Township, which amended its own ordinances and now uses the services of the Erie County Association of Township Officials (ECATO) to process UCC appeals; and

WHEREAS, the Board of Supervisors has determined that it is in the best interests of its residents to continue the Intergovernmental Cooperation Agreement with Fairview Township for the administration of the UCC Joint Board of Appeals.

NOW THEREFORE, BE IT ENACTED AND ORDAINED by the Board of Supervisors of Harborcreek Township, Erie County, Pennsylvania, that:

1. The recitations set forth above are incorporated herein as if fully set forth.
2. The Intergovernmental Cooperation Agreement for the Administration of a UCC Joint Appeals Board (the "Agreement") attached hereto as Exhibit A is hereby approved.
3. The duration of the Agreement shall be perpetual, unless the Township elects to withdraw from the Agreement as set forth therein, or terminates the Agreement, as set forth therein.
4. The joint Appeals Board, with members appointed by Harborcreek Township and Fairview Township, is hereby appointed as the UCC Board of Appeals for the Township, and shall have all powers, duties, and obligations set forth in the Act and other applicable law.
5. The administration of the UCC Joint Appeals Board shall be financed as set forth in the Agreement, and the Township Treasurer is hereby authorized to pay sums, costs, and fees as set forth in the Agreement.
6. The Chairperson, attested by the Township Secretary, is hereby authorized to execute the Agreement on behalf of the Township.

BE IT ENACTED THIS 6th DAY OF MARCH, 2024.

HARBORCREEK TOWNSHIP SUPERVISORS



Timothy J. May, Chairperson



Dean S. Pepicello, Supervisor



Stephen S. Oler, Supervisor

ATTEST:



Shelley Hull, Assistant Secretary

I hereby certify that the foregoing ordinance was advertised in the Erie Times on February 26, 2024 a newspaper of general circulation in the municipality and was duly enacted and approved as set forth at a regular meeting of the Harborcreek Township Board of Supervisors held on March 6, 2024.

Resolution #24-64
Adopted March 6, 2024



**RESOLUTION AUTHORIZING CHAIRPERSON TO SIGN THE JOINT UNIFORM
CONSTRUCTION CODE BOARD OF APPEALS BY-LAWS WITH FAIRVIEW
TOWNSHIP AND ASSISTANT SECRETARY TO ATTEST THE SAME**

BE IT RESOLVED, by authority of the Board of Supervisors of the Harborcreek Township, Erie County, at a regular meeting held on March 6, 2024, at the Municipal Complex, 5601 Buffalo Road, Harborcreek, PA being Timothy J. May, Dean S. Pepicello and Stephen S. Oler, and it is hereby resolved by authority of the same, that the Chairman, Timothy J. May, of said Municipality be authorized and directed to sign the attached Joint Uniform Construction Code Board of Appeals By-Laws with Fairview Township and the Assistant Secretary, Shelley Hull be authorized and directed to attest the same.

HARBORCREEK TOWNSHIP SUPERVISORS



Timothy J. May, Chairperson

Dean S. Pepicello, Supervisor



Stephen S. Oler, Supervisor

ATTEST:



Shelley Hull, Assistant Secretary

**JOINT UNIFORM CONSTRUCTION CODE
BOARD OF APPEALS BY-LAWS**

ARTICLE I – GENERAL PROVISIONS

- 1.1** Uniform Construction Code (“UCC”) Board of Appeals authorized by Harborcreek Township and Fairview Township is hereby created pursuant to the Pa. Construction Code Act, 35 P.S. § 7210.101, et seq. (the “Act”), and the Board shall be governed by the said Act and any applicable rules and regulations promulgated thereunder, including 34 Pa. Code § 401.1, et seq. (the “Code”).
- 1.2** The members of the Board shall be familiar with the UCC, the rules and regulations promulgated thereunder, amendments thereto, local ordinances pertaining thereto, and the policies and practices of the designated Construction Code Official with whom the municipalities have executed a contract to provide for administrative and enforcement services within the respective municipality.
- 1.3** The purpose of the UCC Board of Appeals is to hear and rule on appeals, requests for variances, and requests for extension of time in matters coming before the Board under the UCC, and rules and regulations promulgated thereunder.
- 1.4** The five-member composition of the Board is governed by all of the following:
- a. Each member of the Board shall be qualified by training and experience to pass on matters pertaining to building construction, and shall meet the membership requirements of the UCC as existing, and as hereafter amended. Specifically, membership shall be comprised of the following:
 - i. A registered design professional who is a registered architect of a builder or superintendent with at least ten years of experience, five of which shall have been in charge of work;
 - ii. A registered design professional with structural engineering or architectural experience;
 - iii. A registered design professional with mechanical or plumbing engineering experience, or a mechanical or plumbing contractor with ten years experience, five of which shall have been in charge of work;
 - iv. A registered design professional with electrical engineering experience or an electrical contractor with ten years experience, five of which shall have been in charge of work;
 - v. A registered design professional with fire protection engineering experience or a fire protection contractor with at least ten years of experience, five of which shall have been in charge of work.
 - b. Each township, party to this Intergovernmental Cooperation Agreement shall appoint two individuals to the UCC Board of Appeals and the two municipality members shall jointly select a fifth member for the Board of Appeals.
 - c. A quorum, for purposes of conducting a hearing by the Board of Appeals shall require 3 members to be in attendance or participate by ZOOM, Microsoft Teams,

or other internet communication service that enables the participating member to see the parties, the witnesses, and to be seen by those individuals.

d. Each member of the UCC Board of Appeals holds office at the pleasure of the governing body that appointed them, and may be removed at a time, without cause.

e. The two appointees selected from each township must reside within that township. The fifth appointee jointly selected by each township must reside in either Fairview or Harborcreek Township.

f. When the governing bodies of each participating township cannot find person(s) who satisfy the requirements of Section 1.4 above, it may appoint person(s) who are 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 or experience as an inspector or plan reviewer.

1.5 A UCC Board of Appeals 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.

1.6 Any meeting of the UCC Board of Appeals shall be scheduled and public notice provided of the meeting in accordance with the Pennsylvania Sunshine Act, 65 Pa. C.S. §§ 701-716.

1.7 The Board of Appeals may not act upon appeals, requests for variance, or requests for extension of time relating to accessibility under Chapter 11 of the Uniform Construction Code under the Act.

ARTICLE II – MEMBERS AND DUTIES

2.1 The term of office of a Board of Appeals member shall be one year, renewable at the time of the townships' yearly re-organizational meeting.

2.2 The Board of Appeals shall, as early as possible each year, select a chairperson and a vice-chairperson for the Board.

2.3 The Chairperson shall perform all duties required by law, ordinance, and their By-Laws; shall preside at all meetings and hearings of the Board of Appeals; shall decide on all points of order and procedure, subject to the UCC, and the rules and regulations promulgated thereunder, all other relevant laws, and these By-Laws.

2.4 The vice-chairperson, in the absence, disability, or disqualification of the chairperson, shall perform all the duties and exercise all the powers of the chairperson.

2.5 The Board of Appeals may be compensated and / or reimbursed for expenses, as determined by the resolution of the township participating in the Joint Board of Appeals.

2.6 The Board of Appeals shall be represented by a solicitor, appointed by the township members of the Board of Appeals.

2.7 The Board of Appeals may appoint a Secretary who shall provide administrative support for the host municipality including, but not limited to, advertising hearings, notifying the parties, the building code officials, the UCC Board of Appeals members, and the solicitor of hearing dates and times, and providing hearing materials to the solicitor.

ARTICLE III – VACANCIES

3.1 The chairperson shall promptly notify the townships of any vacancies.

ARTICLE IV – APPEALS, VARIANCES AND EXTENSIONS OF TIME

4.1 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 particular township's building code official or other person designated by the member township on a form provided by the township.

4.2 The postmark date or the date of personal service will establish the filing date of a complete appeal application or request for variance or extension of time. Any application that does not include the minimal filing fee as set by the townships shall not be considered complete.

4.3 An appeal or request for variance or extension of time to the Board of Appeals will automatically suspend an action to enforce an order to correct until the matter is resolved. An action under § 403,84 of the Code (relating to unsafe building, structure, or equipment) may not be stayed.

4.4 The Board of Appeals shall decide an appeal, variance request, or request for extension of time by reviewing documents and written briefs or argument, unless the owner or owner's agent specifically requests a hearing.

4.5 The Board of Appeals shall convene a hearing or review session within thirty (30) days from the date of an applicant's request unless, in the case of an appeal or request for a variance or extension of time involving the construction of a one-family or two-family residential dwelling, the applicant agrees in writing to an extension of time.

4.6 Three (3) members, consisting of any combination of seated members and alternate(s), shall constitute a quorum for hearing/review session purposes. The actions of at least three members present at a hearing/review session shall be the actions of the Board of Appeals.

4.7 The Board of Appeals shall only consider the following factors when deciding an appeal under Section 501 (c)(2) of the Act:

- a. The true intent of the Act of the Uniform Construction Code was incorrectly interpreted.
- b. The provisions of the Act do not apply.
- c. An equivalent form of construction is to be used.

4.8 The Board of Appeals may consider the following factors when ruling upon a request for variance:

- a. The reasonableness of the UCC's application in a particular case.
- b. The extent to which the granting of a variance or an extension of time will pose a violation of the UCC or an unsafe condition.
- c. The availability of professional or technical personnel needed to come into compliance.
- d. The availability of materials and equipment needed to come into compliance.
- e. The efforts being made to come into compliance as quickly as possible.
- f. Compensatory features that will provide an equivalent degree of protection to the UCC.

4.9 If the owner or owner's agent requests a hearing, the Board of Appeals shall schedule a hearing and notify the owner or owner's agent, the building code official, and the township in which the appeal arose of the date, time, and place of the hearing.

4.10 The Board of Appeals may take one of the following actions:

- a. deny the request in whole or in part; or
- b. grant the request in whole or in part; or
- c. grant the request upon certain conditions being satisfied.

4.11 The Board of Appeals shall render a written decision, including any conditions, to the owner, the building code official, and the township within which the appeal arose within five (5) days of the last hearing/review session.

4.12 An owner shall file an appeal, request for variances, and/or request for extension of time relating to accessibility with the Accessibility Advisory Board under Section 403.142 of the Code (relating to Accessibility Advisory Board).

ARTICLE V – AMENDMENTS

5.1 These By-Laws may be amended by the townships participating in the joint Board of Appeals and/or at the request of a majority of the seated members of the Board of Appeals, which request shall not be unreasonably denied.

All Resolutions or parts thereof conflicting herewith shall be repealed.
Adopted this 6th day of March, 2024.

IN WITNESS WHEREOF, the duly appointed representatives of the parties hereto have set their hands and seals on the dates set forth below.

ATTEST:

By Fairview Township:

Secretary

Chairperson, Board of Supervisors (date)

ATTEST:

By Harborcreek Township:

Shelley Hill
Secretary

[Signature] 3/11/04
Chairperson, Board of Supervisors (date)

EXHIBIT A

**INTERGOVERNMENTAL AGREEMENT FOR THE ADMINISTRATION
OF A UNIFORM CONSTRUCTION CODE JOINT BOARD OF APPEALS**

THIS AGREEMENT, dated as set forth below, is by, among, and between:

HARBORCREEK TOWNSHIP (hereinafter "Harborcreek")

-AND-

FAIRVIEW TOWNSHIP (hereinafter "Fairview")

WITNESSETH:

WHEREAS, pursuant to the Pennsylvania Construction Code Act, 35 P.S. § 7201.101, et seq., as amended, (the "Act"), Harborcreek Township ("Harborcreek") and Fairview Township ("Fairview") have elected to administer and enforce the Uniform Construction Code (the "UCC") within their respective municipalities, jointly; and

WHEREAS, under Section 501(c) of the Act, Harborcreek and Fairview are required to establish a Board of Appeals to hear appeals from decisions of the Code Administrator; and

WHEREAS, under Section 501 (b)(3) of the Act, Harborcreek and Fairview are empowered to jointly create an Appeals Board to review decisions of the Code Administrator; and

WHEREAS, the governing body of each municipality has determined that it is in their best interests of its residents to enter into this Agreement for the administration of a UCC Joint Board of Appeals, and has enacted a Resolution to that effect, duly appointing the undersigned to execute this Agreement on behalf of the municipality.

NOW THEREFORE, intending to be legally bound hereby, Harborcreek and Fairview agree as follows:

1. The recitations above are incorporated herein as if fully set forth.
2. This Agreement shall be effective as to Harborcreek and Fairview upon execution of the Agreement, and its terms shall be perpetual, unless the Township elects to withdraw, or cancel, the Agreement, as set forth herein.
3. Either township may withdraw from this Agreement upon sixty (60) days written notice delivered to the other township.
4. The Joint UCC Board, composed of two (2) members appointed by each township, and a fifth member appointed by agreement of both townships, by Resolution, shall have all powers, duties, and obligations set forth in the Act and other applicable law.

5. The Board shall be organized and operated according to a certain set of by-laws adopted by, or to be adopted by, resolution of each municipality/township. A copy of the by-laws is attached hereto as Exhibit B.

6. The townships/municipalities shall appoint a solicitor to advise the Board on all matters that may come before it, at rates of compensation and reimbursement for expenses to be established by the townships and revised from time to time.

7. The townships shall, by resolution, establish minimal appeal filing fees, from which all administrative fees and expenses shall be paid, including, but not limited to, township's costs, solicitor's fees and expenses, court reporter appearance fees, legal advertising fees, and other administrative expenses. Any administrative fees not used shall be retained by the township in which the appeal originated.

8. The township in which the appeal arose shall, within 48 hours of receipt thereof, fax or email the complete appeal application received to the Board of Appeals. An application shall not be considered complete unless the township in which the appeal arose has received with the appeal application the appropriate filing fee as set by the township.

9. Each township may, but is not required to, participate at its own expense in its hearings before the UCC Board of Appeals.

10. If any decision of the UCC Board of Appeals is appealed to the Court of Common Pleas, or any other court of competent jurisdiction, the township wherein the appeal arose shall be responsible for the prosecution or defense of the appeal(s), and the costs thereof, including, but not limited to, attorney fees, including the fees of the UCC Board of Appeals solicitor.

11. This Agreement shall be governed by, and interpreted under, the laws of the Commonwealth of Pennsylvania, and the forum for any dispute arising from this Agreement shall be Erie County, Pennsylvania.

12. This Agreement may be signed in counterparts, and such signing shall not affect the validity hereof.

IN WITNESS WHEREOF, the duly appointed representatives of the parties hereto have set their hands and seals on the dates set forth below.

ATTEST:

By Fairview Township:

Secretary

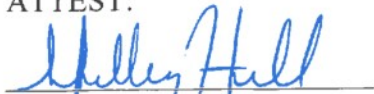
Chairperson, Board of Supervisors (date)

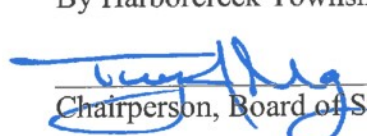
ATTEST:

By Harborcreek Township:

Secretary

Chairperson, Board of Supervisors (date)



 3/11/24
(date)