




MEMORANDUM

TO: Board of Building Appeals (BOBA) Members

FROM: William J. Heniff, AICP, Director of Community Development 

MEETING DATE: August 5, 2020

SUBJECT: **Text Amendment to Chapter 32.025 – Board of Building Appeals Decisions**

As part of our periodical review of selected sections of Village Code and in response to inquiries that have arisen, staff worked with Village Counsel to review the appeals provisions within Section 32.025 of the Village Code. Such reviews are appropriate to be done prior to an actual appeal of a decision or interpretation is made by a Village official. The current provisions read as follows (areas for review are in bold text):

§ 32.025 - *Decisions of board.*

*The Board shall affirm, modify, or reverse the decision of the Community Development Director or Fire Chief or their designees by a majority vote of the three voting members, **and such action shall be by resolution. Certified copies of the resolution shall be furnished to the appellant and to the Community Development Director or Fire Chief or their designees. An applicant may appeal the decision of the Board to the Board of Trustees by a written request for same filed with the Village Clerk within ten days after receiving written notice of the decision appealed from. An appeal from the decision of the Board of Trustees shall be in accordance with the terms of the Administrative Review Act of the state as amended from time to time.***

In this review, the following comments are offered:

1. The Illinois Municipal Code only references the Village Board or City Council as enacting Ordinances and Resolutions. While there is nothing to prevent a Village Committee from approving something in the form of a "resolution," The Village Code section should be amended to provide that BOBA issue a written decision, which includes its findings, relative to the appeal of a decision made by either the Community Development Director or the Fire Chief.

2. As to the appeal process, as the petitioner is challenging the decision of either the Community Development Director or the Fire Chief (or both), it would appear that the Village Code provision was drafted such that if BOBA sides with the petitioner, either in part or in whole, the Community Development Director and the Fire Chief must just accept the decision. As it is only the Community Development Director's or Fire Chief's decision that is being challenged, the recommendation is that "non-petitioner appeal rights" could be provided for to the Community Development Director and the Fire Chief, but not any other party.
3. The existing Village Code indicates that an appeal from the decision of the Village Board is to be processed in court pursuant to the Administrative Review Act. This provision is being removed, as appeals under this Act are only allowed where the State statutes so provide. There are other causes of action to appeal the decision of the Village Board in Court, which do not have to be referenced in the Village Code, as it would be up to the petitioner to research what his/her rights are.

Attached is the draft Ordinance prepared by Village Counsel which incorporates these changes and offer supplemental language for process and clarity purposes.

ACTION REQUESTED

Staff is placing this matter on the August 5, 2020 BOBA agenda for a recommendation of approval of the proposed text amendments. Staff can offer additional commentary regarding these changes at the meeting itself.

ORDINANCE NO. _____

**AN ORDINANCE
AMENDING TITLE III, CHAPTER 32, SECTION 32.025
OF THE LOMBARD VILLAGE CODE IN REGARD TO
DECISIONS OF THE BOARD OF BUILDING APPEALS**

BE IT ORDAINED by the President and Board of Trustees of the Village of Lombard, DuPage County, Illinois, as follows:

SECTION 1: That Title III, Chapter 32, Section 32.025 of the Lombard Village Code is amended to read in its entirety as follows:

“§ 32.025 Decisions of Board.

The Board may affirm, modify or reverse the decision of the Community Development Director or Fire Chief, or their respective designees, by a majority vote of the members of the Board (at least 3 of the 5 members), and such action shall be in the form of a written decision, which includes the Board’s findings. Certified copies of the decision shall be furnished to the appellant and to the Community Development Director and/or the Fire Chief, or their respective designee(s), as the case may be. The appellant, the Community Development Director or the Fire Chief, or the Community Development Director’s or Fire Chief’s respective designee(s), may appeal the decision of the Board to the Board of Trustees by a written request for same, filed with the Village Clerk within ten (10) days after receiving written notice of the decision appealed from.”

SECTION 2: That this Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form, as provided by law.

Passed on first reading this _____ day of _____, 2020.

First reading waived by action of the Board of Trustees this ____ day of _____, 2020.

Passed on second reading this ____ day of _____, 2020, pursuant to a roll call vote as follows:

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED by me this ____ day of _____, 2020.

Keith Giagnorio, Village President

ATTEST:

Sharon Kuderna, Village Clerk

Published by me in pamphlet form this ____ day of _____, 2020.

Sharon Kuderna, Village Clerk