

Construction Administrative Appeals

Inevitably construction professionals are going to have disputes with local inspectors and, subsequently, the enforcing agency where a project is located. Those disputes may relate to the sufficiency of a site plan, whether a permit is required for certain services, differing interpretations of how to apply code requirements, and the list goes on-and-on. Ultimately, the enforcing agency has the discretion to grant or deny a certificate of use or occupancy as it relates to their authority in regards to planning, housing, and zoning¹. When you find yourself in one of these situations you typically only have two options on how to proceed: (1) Comply with the requirements from the enforcing agency; or (2) Request a hearing to appeal the decision of the enforcing agency.

Okay, this month let's do a quick case study of the appellate process where a business owner requested a certificate of occupancy and it was denied by the local enforcing agency. More specifically, Michigan Building Code (hereinafter "MBC") Section 903.2.1.2, requires an automatic sprinkler system to be provided for Group A-2 occupancies where one of the following conditions exists: (1) the fire area exceeds 5,000 square feet; (2) the fire area has an occupant load of 100 or more; or (3) the fire area is located on a floor other than a level of exit discharge serving such occupancies. In this instance, the business owner's building met two of the three conditions which would require an automatic fire sprinkler system. The business owner explained that his property is not equipped to maintain an automatic sprinkler system and he offered viable alternatives that met or exceeded the code requirements. Nonetheless, the certificate was denied until an automatic sprinkler system was installed in the building.

The business owner now has two options on how to proceed. First, he can install the automatic sprinkler system – even though he claims it is impractical. Or alternatively, he can file a written request for a public hearing before his local Construction Board of Appeals (hereinafter "CBA")². The CBA would hear the business owner's request for a variance of the code requirements, and then, not more than 30 days after the request for appeal was submitted, the CBA would file a written decision stating whether it affirmed or reversed the decision of the enforcing agency³⁴. Assuming the request for a variance was denied by the CBA, the business owner would then have the right to file a written appeal to the Michigan Construction Code Commission (hereinafter "CCC")⁵. The CCC may affirm, modify, or reverse a decision of the CBA or the enforcing agency; however, an appeal based on the denial of a variance is within the sole discretion of the CCC⁶.

As you can see, the appellate process can get quite complicated. However, due to the nature of your construction project and the costs associated, it may be in your best interest to explore what your rights are. Due to those same complexities, it is advisable to engage experienced, legal counsel to assist with your appeal.

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¹MCL 125.1513

²MCL 125.1514

³MCL 125.1515(1)

⁴MCL 125.1514

⁵MCL 125.1516 (1)

⁶MCL 125.1616(1)

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