



OHIO BUILDING OFFICIALS ASSOCIATION



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CHAPTER
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Sen Michael A Rulli
Chair, Senate Small Business & Economic Opportunity Committee
1 Capitol Sq Fl 1
Columbus OH 43215-4274
Via Gabriel Gary e-mail Gabriel.Gary@ohiosenate.gov

SUBJECT: SB 196, Expedited Board of Building Appeals Procedures,
Opposition Testimony

- 1. Introduction.** Chair Rulli, Vice Chair Lang, Ranking Member Sykes, and members of the Senate Small Business and Economic Opportunity Committee. My name is Charles Huber and I serve on the Ohio Building Officials' Association (OBOA) Legislative & By-Laws Committee. Thank you for allowing me to submit this Opposition Testimony on Senate Bill 196 (SB 196). OBOA is a professional organization consisting of over 1,000 members most of whom administer construction and fire rules. Our membership includes private sector architects, professional engineers, other construction designers, and construction contractors. Our members include employees and officials in State government. However, my testimony has been neither specifically coordinated nor endorsed by any State government employee or official.
- 2. Summary.** SB 196 sponsor and proponent testimony have cited real world instances for which a timely remedy in law already exists. SB 196 would have the unintended consequence of removing the convenience of local nonresidential boards of building appeals (BBA) in some jurisdictions. OBOA proposes the Committee and sponsor consider amending SB 196 to apply only to the Ohio BBA, not local nonresidential BBA.
- 3. Existing Remedies in Law.** Sen Roegner's sponsor testimony cites, "... sometimes changes requested by inspectors are incompatible with plans already pre-approved by the local government ..." and shows the building owner and his representatives (design/construction team) may appeal the situation to the local nonresidential BBA (if one exists) or the Ohio BBA (if a local nonresidential BBA doesn't exist and also if a local nonresidential BBA decision wasn't favorable). Associated Builders & Contractors' proponent testimony cites, "... appeal a decision of the inspector ..." Pride One's proponent testimony cites, "... appeal a decision of the inspector ..." and it cites "... discrepancies between Ohio Building Code and a fully Permitted set of drawings ..." This is contrary to existing law on the following points:

a. Ohio Administrative Code (OAC) 4101:1-1 [Ohio Building Code (OBC) Chapter 1] Section 107.2.1 reads in part, “The approval of plans ... is a “license” ...” OBC 105.2 reads in part, “The construction, erection, and alteration of a building, ... shall conform to required plans which have been approved by the building official, except for minor deviations which do not involve a violation of the rules of the board.” [Meaning the Ohio Board of Building Standards (BBS), the construction codes.] “In the absence of fraud or a serious safety or sanitation hazard, any structure built in accordance with approved plans shall be conclusively presumed to comply with Chapters 3781 and 3791 of the Revised Code and the rules of the board. ...” The OAC 4101:1-2 (OBC Chapter 2) Section 202 definition of “serious hazard” is attached. OBC 108.6 et seq. (attached) shows that an inspector doesn’t approve or disapprove anything. He/she is limited to being the eyes of the building official. When the inspector finds the construction doesn’t comply with the approved construction documents (drawings, specifications, etc.) he/she provides a written report to the building owner’s on-site representative with the following options:

- (1) Bring the construction into compliance with the approved drawings.
- (2) Have the drawings revised. (Drawings are prepared by an architect or professional engineer unless they’re exempt under OBC 106.2.1’s exceptions).
- (3) Bring the issue to the building official.
- (4) An option not in law, the building owner’s representative might choose to do none of the above. The building official, if appropriate, would then issue an Adjudication Order addressing the issue which is appealable to the BBA. If the building owner’s representative fails to comply, then the building official then (and only then) has other remedies at law available including seek from the court of common pleas a temporary restraining order, an injunction, and/or a judgement entry.

b. If an inspector violates this law (for instance by stating construction conforming to the approved construction documents isn’t acceptable) the building owner’s representative (construction contractor) could:

- (1) Advise the building official who would take supervisory corrective action. This is a timely solution.
- (2) File a complaint to the BBS. If upon investigation the BBS finds the inspector or building official violated this law, then BBS can impose sanctions. The possible sanctions range from mandating education on the law to permanent revocation of the person’s Ohio certification(s) to perform these code administration functions [OAC 4101:7-3-1(F)(7)]. This solution isn’t timely, but it has the potential of preventing repeat violations in the future.

4. Conflicting Enforcement: Pride One’s testimony cites, “... Discrepancies in how the Local Building Department inspector, the Local fire Department, the State Fire Marshal, ... interpret the Code ...” Existing statute at Ohio Revised Code (ORC) 3781.11(B) (attached and at OAC 4101:1-1, OBC 102.3) shows the construction codes, which are administered by the building official, supersede orders of the local fire official and State Fire Marshal except for buildings with fireworks.

5. Three Types of BBA Appeal. ORC 3781.19 (extract attached) reflected at OAC 4101:1-1 (OBC Chapter 1) Section 104.3.1 (attached) provide three situations when a BBA can modify a building officials’ adjudication order. They are when the BBA finds either:

- a. The adjudication order’s contrary to such laws (ORC 3781 & 3791) or rules (the construction codes); or

- b. The adjudication order's contrary to a fair interpretation of application thereof; or
- c. That a variance from the provisions of such laws or rules, in a specific case, will not be contrary to the public interest where literal enforcement of such provisions will result in unnecessary hardship.

During my career of over 30 years as a building official at four jurisdictions over 90% of the appeals to my adjudication orders were to obtain variances to obtain plan approvals before construction had commenced. The building owner's design/construction team argued (and the local BBA often agreed) that the design met the legal criteria for a variance. I ask the Senate Small Business and Economic Opportunity Committee to consider that when some of the local nonresidential BBA are dissolved, all of this workload will fall to the Ohio BBA.

6. Removing Local Nonresidential BBA. A list of the existing local nonresidential BBA is attached showing 12 BBA serving 20 jurisdictions. Three BBA's serving 11 jurisdictions have stated they'd request their BBA be decertified if SB 196 becomes statute in its present form. Therefore, all appeals in those 11 jurisdictions would have to be heard by the Ohio BBA.

7. Conclusion: OBOA proposes this Committee and the sponsor consider amending SB 196 to apply only to the Ohio BBA, not local nonresidential BBA. My contact information's e-mail chuber@fboa.org (M) 330-389-2954. I'm happy to address any questions.

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1. OAC 4101:1-1, OBC 108.6 et seq. & OAC 4101:1-2, OBC 202
2. ORC 3781.11(B)
3. ORC 3781.19 Extract & OAC 4101:1-1, OBC 104.3.1
4. Local Nonresidential BBA

OHIO ADMINISTRATIVE CODE 4101:1-1, OHIO BUILDING CODE CHAPTER 1

108.6 Inspections, observations of violations, unsafe conditions, or serious hazards. When an inspector from the department having jurisdiction finds that any work in connection with the location, erections, construction, repair, alteration, moving, or equipment of a building is contrary to the approved construction documents for the same, the building inspector shall proceed as required in either Section 108.6.1 or 108.7.

108.6.1 Communication process for work contrary to approved construction documents.

1. Communicate the nature of the differences to the owner or the owner's on-site representative and offer the following options:
 - 1.1 The owner will bring the item of noncompliance into compliance,
 - 1.2 The owner will revise the drawings and resubmit to the department,
 - 1.3 The items of noncompliance will not be brought into compliance and will be referred to the building official as indicated in item 4 below.
2. The owner or the owner's on-site representative shall indicate which option (item 1 above) will be exercised.
3. Notations on the on-site inspection record and in the inspector's log shall be made. The notations shall include the inspector's name, the date of the inspection, the type of inspection, the observed items of noncompliance, the option chosen by the owner or the owner's on-site representative, the name of the person communicated with, and the estimated dates of compliance and follow-up inspections, if applicable.
4. If the owner or the owner's on-site representative indicates that the work will not be brought into compliance with the approved construction documents, the inspector shall submit a report to the building official for the final determination of noncompliance in accordance with Section 108.7.

108.6.2 Observation of violations not shown on plans. If an inspector, in the course of performing the assigned or requested inspections, observes a code violation that was either shown incorrectly or not adequately addressed or detailed in the approved construction documents, the inspector shall communicate the finding to the building official so that the building official can make a determination of whether the code violation is of such significance to warrant communicating the finding to the owner or the owner's representative as a notice of recommended change.

108.6.3 Observation of unsafe conditions or serious hazards. In an inspector, in the course of performing the assigned or requested inspections, observes an unsafe condition or a serious hazard, the inspector shall communicate that condition to the owner or the owner's on-site representative and shall report the findings immediately to the building official so that the building official can make a final determination of whether the violation constitutes a serious hazard which requires the issuance of an adjudication order as required in Section 109.

OHIO ADMINISTRATIVE CODE 4101:1-2 OHIO BUILDING CODE CHAPTER 2

202 Definitions. ...

SERIOUS HAZARD. A hazard of considerable consequence to safety or health through the design, location, construction, or equipment of a building, or the condition thereof, which hazard has been established through experience to be of certain or probable consequence, or which can be determined to be, or which is obviously such a hazard.

OHIO REVISED CODE 3781.11(B)
(REFLECTED AT OHIO ADMINISTRATIVE CODE 4101:1-1, OHIO BUILDING CODE
CHAPTER 1 SECTION 102.3)

The rules of the board...” meaning the Ohio Board of Building Standards “... shall supersede and govern any order, standard, or rule of the division of industrial compliance in the department of commerce, division of the state fire marshal, the department of health, and of counties and townships, in all cases where such orders, standards, or rules are in conflict of the board, except that rules adopted and orders issued by the state fire marshal pursuant to Chapter 3743 of the Revised Code prevail in event of a conflict.

OHIO REVISED CODE 3781.19 EXTRACT

“... the municipal, county, or state board of building appeals, as the agency conducting the adjudication hearing, may reverse or modify the order of the enforcing agency if it finds that the order is contrary to this chapter and Chapters 3791 and 4101, and ... any rule made thereunder or to a fair interpretation or application of such laws or any rule made thereunder, or that a variance from the provisions of such laws or any rule made thereunder, in the specific case, will not be contrary to the public interest where a literal enforcement of such provisions will result in unnecessary hardship. ...”

OHIO ADMINISTRATIVE CODE 4101:1-1, OHIO BUILDING CODE 104.3.1

Powers, local boards of building appeals. Certified municipal and county boards of building appeals shall hear and decide the adjudication hearings referred to in section 109.1 within the jurisdiction of and arising from orders of the local building official in the enforcement of Chapters 3781 and 3791 of the Revised Code and rules adopted thereunder. The orders may be reversed or modified by the board if it finds:

1. The order contrary to such laws or rules;
2. The order contrary to a fair interpretation of application thereof; or
3. That a variance from the provisions of such laws or rules, in a specific case, will not be contrary to the public interest where literal enforcement of such provisions will result in unnecessary hardship.

LOCAL NONRESIDENTIAL BOARDS OF BUILDING APPEALS

Cities

Cincinnati

Cleveland Tom Vanover tvanover@city.cleveland.oh.us e-mail 10/19/21 shows, "I am working with our Mayors office for a response."

Dayton (Also serving Centerville, Kettering, Miamisburg, Moraine, New Lebanon, Vandalia, West Carrollton, & Montgomery County) Scott Adams scott.adams@daytonohio.gov e-mail 10/12/21 shows, "... I would ask the BBS to decertify the local ... Board of Building Appeals ..."

Mariemont

Springfield Brandon Gill bgill@springfieldohio.gov e-mail 10/20/21 shows, "I am working with my Law Department and City Manager's Office on a reply to this."

Toledo (Also serving Lucas County)

Counties

Greene

Hamilton Michael Stehlin AIA Michael.Stehlin@hamilton-co.org e-mail 10/4/21 shows they, "... will have no choice but to dismantle our local Board of Building Appeals."

Medina Richard Nelson rnelson@medinaco.org e-mail 10/21/21 shows, "... doubt I'll ask our board to be decertified, ..."

Stark Angela Cavanaugh leah309ang@yahoo.com e-mail 10/4/21 shows they, "... would ... request Ohio Board of Building Standards decertify their local BBA."

Summit

Summary

Three (Dayton, Hamilton Co, & Stark Co) would decertify. Two (Cleveland & Springfield) are working with their jurisdictions to develop position. One (Medina Co) wouldn't decertify. Four (Cincinnati, Mariemont, Toledo, Green Co, & Summit Co) no response.