

September 10, 2003

**Honorable Mayor and Members of the
Hermosa Beach City Council**

**Regular Meeting of
September 23, 2003**

SUBJECT: DISCUSSION OF BOARD OF APPEALS

Recommendation:

That the City Council receive and file this report.

Background:

The City Council has requested that staff provide a description of the role of the City's Board of Appeals generally and specifically in connection with a property wall between 627 and 633 2nd Street.

Analysis:

The City's Building Code is adopted every three years and is based on the uniform model codes adopted by the California Building Standards Commission. The City is required to enforce the codes adopted by the State with any amendments required for administration and local conditions. On October 22, 2002, the City approved amendments to Chapter 15.40 of the Municipal Code adopting the California Building Code, 2001 Edition (Part 2 of Title 24 of the California Code of Regulations) ("CBC"), which incorporates and amends the Uniform Building Code, 1997 Edition, published by the International Conference of Building Officials, including appendices, excepting Chapters 3, Division III and IV, 4, Division II, 11, 13, 21, 23, and 31 of said appendices. These codes comprise the Building Code of the City of Hermosa Beach.

The Board of Appeals is a board established in the City's Building Code to hear appeals of notices and orders of the building official relative to the application and interpretation of the code. Section 105.1 of the Building Code, set forth in Section 15.04.020 of the City's Municipal Code, establishes the Board of Appeals, describes the composition of the Board and sets out the general procedures for conducting business. The current membership of the Board is as follows: Dave Garrett, Larry Peha, Mike Ludwig, Bill Lininger and Bud Murray. Four members are contractors and one is a design professional. The board meets on an as-needed basis relative to applications for interpretations.

According to Section 105.1, the purpose of the Board of Appeals is to render decisions on interpretive code matters exclusive of the administrative provisions found in Chapter 1. The Board may also hear appeals relative to practical difficulties associated with underground utilities as provided in Sections 15.32.100 and 15.32.040.

Section 105.2 sets out the limitations of the jurisdiction and authority of the Board of Appeals as follows:

The Board of Appeals shall have no authority relative to interpretation of the administrative provisions of this code nor shall the board be empowered to waive requirements of this code.

The administrative provisions of the code (which are outside the purview of the Board) are contained in Chapter 1, Administration, which sets forth the purpose of the code, authority, permitting, plan requirements, inspections and enforcement. Further, the Board is only empowered to act on Building

Code related issues. If a matter is not subject to the requirement for a building permit and is not regulated by the Code, then the matter does not fall within the jurisdiction of the Board.

The Handbook of the Uniform Building Code, prepared by the International Conference of Building Officials, provides commentary on the intent of this Code section:

“ The Uniform Building Code intends that the board of appeals have very limited authority. This is to hear and decide appeals of orders and decisions of the building official relative to application and interpretations of the code. Moreover, the code specifically limits the authority of the board relative to the administrative provisions of the code and does not permit waivers of code requirements. Any broader interpretation must be granted in the adoption ordinance by modification to this section.”

Therefore, in the absence of any broader provisions adopted in the Code, the Board is granted only the authority to act on those interpretive matters expressly within its jurisdiction. These interpretive code items include “exceptions,” code sections that are not declarative (may vs. shall) and design issues subject to interpretation such as what components may make up an egress system or whether one design load factor may take precedence over another because of environmental issues.

Generally, appeals are taken to the Board by an architect or builder experiencing difficulties complying with the building official’s interpretation of the code in the design or construction of a structure. The Board has no authority to engage in enforcement of the code, which is specifically delegated to the building official in Chapter 1. (See Attachment No. 1).

Authority to Review Requirement for Building Permit for Property Line Wall

Chapter 1, administrative provisions of the code, includes requirements for issuance of permits and lists work exempt from permits (Sections 106.1 and 106.2, respectively). Section 106.2 of the CBC establishes when a building permit is and is not required prior to construction. Section 106.2 - Work Exempt from Permit- provides that a building permit shall not be required for:

Retaining walls that are not over 4 feet in height measured from the bottom of the footing to the top of the wall unless supporting a surcharge or impounding Class I, II or III liquids.

The subject wall is less than 4 feet in height from any point and is not supporting a surcharge (the condition where a wall is holding back an additional load beyond the soil being retained). The area immediately behind the wall is an unbuilt rear yard and there is no structure or load creating a surcharge condition adjacent the wall. Since the small wood wall is less than 4 feet in height, it is exempt from the requirement for a building permit pursuant to Section 106 of the UBC. Furthermore, no grading permit is required because of the small quantity of soil placed against the wall to level the area behind it and because of the location of the wall pursuant to Section 3306, which exempts work from a grading permit where there is no danger to private or public property.¹ A grading plan is not required because the work is exempt from the requirements of a building permit and a grading permit.

The purpose of this exemption provision is to avoid undue regulation of a matter that has no bearing on life-safety. The code recognizes that failure of such a wall is unlikely to cause death or injury and so the code specifically exempts it from the requirements from permit regulations. This exemption

provision also stipulates that exempted work is not authorization for work to be done in a manner in violation of the provisions of the code or any other laws and ordinances. This means that an owner is still responsible for proper and safe construction for all work being done even when such work is exempt from a permit according to the Handbook to the Uniform Building Code.² In this case, the owner has safely constructed his wall and complied with all other applicable laws and ordinances. (See Attachment No. 2).

The conditions of the wall have been examined by a civil and two structural engineers, a contract building official, and all of the City’s inspection staff, who uniformly believe that the small wall satisfies its intended purpose of retaining a small area approximately 2 ½ feet in height by nine feet in length and to control erosion. The wall affords an adequate check on erosion of the property at 633 2nd Street, and controls run-off. (See Attachment No. 3).

Therefore, the wall is not subject to permit regulations pursuant to Chapter 1 of the Building Code. Staff did not give consideration to whether this issue should have been appealed to the Board of Appeals, because that body has no jurisdiction over matters that are not regulated by the Building Code. Because the wall is unequivocally exempt from permit requirements, the Code does not regulate the wall in question. The board is only empowered to hear appeals of interpretations of the code related to those items under its jurisdiction.

Meetings of the City’s Board of Appeals

The City’s Board of Appeals meets infrequently. Over the last ten years, the Board has generally met to hear matters related to practical difficulties related to undergrounding utilities pursuant to Section 15.32.040. From 1989 to 1993 it met once and from 1993 to present it met nine times whenever an appeal was made by a builder or owner. The waiver request was typically related to extraordinary circumstances such as the difficulty of connecting to a distant lateral line or problems related to encountering subterranean structures which complicate installing utilities underground. The frequency of the City’s Board meetings is similar to the experience in other cities. The table below compares the interval between meetings of the Board of Appeal in adjacent cities and illustrates that the frequency of meetings in Hermosa Beach is not highly unusual relative to other adjacent cities:

Comparison of Meeting Intervals of Other Board of Appeals in Adjacent Cities in Last 10 Years	
City	Number of Meetings
City of Redondo Beach	0
City of El Segundo	0
City of Manhattan Beach	1
City of Torrance	0
City of Hermosa Beach	9

*Board of Appeals deleted from Torrance Code.

Conclusion:

The Board of Appeals plays an important but limited role in the design and building process when the building official's interpretation of the substantive provisions of the Code pertaining to construction requirements present design professionals and builders with practical difficulties. The Board does not play a role with respect to construction that is exempt from the requirements of the code, nor with respect to enforcement of the code against as-built structures. The role of the Board in this City is consistent with its role in other jurisdictions.

Sol Blumenfeld, Director
Community Development Department

Concur:

Stephen R. Burrell,
City Manager

Notes:

1. **15.04.020 Board of Appeals , City of Hermosa Beach Municipal Code.**
105.1 General : In order to hear and decide appeals of orders, decisions or determinations made by the Director of the Community Development Department relative to the application and interpretation of this code, there shall be and is hereby created a Board of Appeals consisting of five (5) members who are qualified by experience and training to pass upon matters pertaining to building construction and who are not employees of the jurisdiction. The Director of the Community Development Department shall be an ex officio member of and shall act as secretary to said board but shall have no vote upon any matter before the board. The Board of Appeals shall be appointed by the governing body and shall hold office at its pleasure. The board shall adopt rules procedure for conducting its business and shall render all decisions and findings in writing to the appellant with a duplicate copy to the Director of the Community Development Department.
105.2 Limitations of authority . The Board of Appeals shall have no authority relative to interpretation of the administrative provisions of this code nor shall the board be empowered to waive requirements of this code.
105.3 Quorum meetings . Three (3) members of said board shall constitute a quorum. The board shall elect one of its members to act as chairman.
Not less than three (3) days prior to a meeting of said board, written notice shall be given to each member personally, or by registered mail, provided, however, that any meeting of said board shall be legal for any purpose if the written consent of all members of said board to such meeting is executed and filed in the records of such board. Such board shall have the right, subject to such limits as the Council may prescribe by resolution, to employ at the cost and expense of said city such practicing architects, competent builders, attorneys and structural engineers as said board in its discretion may deem reasonable and necessary to assist in its investigation and in making its findings and decisions. (Ord. 99-1192 §1 (part), 06/22/99; Ord. 95-1142 §1 (part), 1995: prior code § 7-2.1)
2. Section 3306.2 – Exempted Work. “A grading permit is not required for the following: Grading in an isolated self-contained area if there is no danger to private or public property.”
3. Handbook to the Uniform Building Code, International Conference of Building Officials, 1997 Edition, Pg. 2.

Attachments:

1. Chapter 1 CBC- Administration
2. Memorandum from City Attorney to City Council
3. Correspondence