

TOWN OF McCLELLANVILLE, SOUTH CAROLINA

AN ORDINANCE ESTABLISHING A BOARD OF CONSTRUCTION APPEALS TO HEAR APPEALS FROM THE TOWN BUILDING OFFICIAL'S DETERMINATIONS; PROVIDING FOR MEMBERSHIP, PROCEDURES, AND JUDICIAL REVIEW; AND ADDRESSING RELATED MATTERS.

WHEREAS, the Town Council of the Town of McClellanville (the **Town**) is authorized to enact ordinances not inconsistent with the Constitution and general law of South Carolina that are necessary and proper for the security, general welfare, convenience, health, peace, order, and good government of the Town;

WHEREAS, each municipality must appoint or contract with a building official within its municipal limits, and the municipal governing body may adopt the administrative provisions of the State-adopted construction codes governing the duties, responsibilities, and administrative procedures of building officials;

WHEREAS, Town Council finds that a separate, technically qualified Board of Construction Appeals will provide a fair, local administrative process for reviewing building-official determinations under the construction codes enforced by the Town;

WHEREAS, Town Council intends that the Board's organization and procedures parallel, where appropriate, the Town's Board of Zoning Appeals, while preserving the distinct and limited subject-matter jurisdiction of each board;

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of McClellanville, South Carolina, in duly assembled meeting:

Section 1. Adoption of Article.

The Town Code is amended by adding a new article, to be codified by the Town Clerk, as follows:

ARTICLE __. BOARD OF CONSTRUCTION APPEALS

Sec. __-1. Establishment; purpose; jurisdiction.

1.- A **Town of McClellanville Board of Construction Appeals** (the **Board**) is established.

2.- The Board shall timely hear and decide appeals alleging an error in an order, requirement, decision, interpretation, or determination of the Town Building Official in the administration and enforcement of the Town's adopted and enforced construction codes, including a denial, suspension, or revocation of a construction permit or certificate when the asserted error concerns those codes.

3.- The Board shall have the authority to interpret the adopted construction codes and to determine whether the Building Official applied them correctly to the facts before the Board. The Board shall not:

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- a. Waive, amend, or disregard a requirement of a construction code or other applicable law.
- b. Grant a variance, special exception, zoning interpretation, or other relief within the jurisdiction of the Board of Zoning Appeals or another Town body; or
- c. Consider a matter outside the Town's authority to enforce construction codes.

4.- Nothing in this Article limits the Building Official's authority to issue emergency orders or to take other action authorized by applicable law to address an imminent danger to life or property.

Sec. __-2. Membership; appointment; terms; vacancies; removal.

1.- The Board shall consist of **five (5) members** appointed by the Town Council. Members should, to the extent practicable, be qualified by experience or training in building design, construction, structural engineering, architecture, fire protection, mechanical systems, plumbing, electrical systems, construction-code administration, or a related field.

2.- The initial appointments shall be staggered: two (2) members for three (3) years, two (2) members for two (2) years, and one (1) member for one (1) year. Thereafter, appointments shall be for overlapping terms of three (3) years.

3.- A vacancy shall be filled by the Town Council for the unexpired portion of the term. A member may be removed by the Town Council for cause after notice and an opportunity to be heard.

4.- No member may hold another public office or position in the Town. Members shall serve without compensation, but may be reimbursed for authorized and documented expenses.

5.- A member shall disqualify himself or herself from participating in a matter in which the member has a direct or indirect personal or financial interest, or any other conflict that requires recusal under state law.

Sec. __-3. Officers; meetings; rules; records.

1.- The Board shall elect a chair from among its members, who shall serve for one (1) year or until a successor is elected. The Board may also elect a vice chair and appoint a secretary.

2.- The Board shall adopt rules and bylaws consistent with this Article and applicable law. The rules may establish filing forms, hearing procedures, reasonable application fees, and procedures for maintaining and transmitting the record.

3.- Three (3) members constitute a quorum. A concurring vote of three (3) members is required for any action of the Board.

4.- Meetings and hearings shall comply with the South Carolina Freedom of Information Act. The Board shall keep minutes and a record of its proceedings, including its written decisions, and file them with the Town Clerk as public records.

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5.- The chair, or another member designated by the Board, may administer oaths. The Board may request the attendance of witnesses and the production of relevant documents to the extent permitted by law.

Sec. __-4. Appeals from determinations of the Building Official.

1.- **Standing and time for appeal.** An appeal may be taken by a person aggrieved by a determination of the Building Official, or by a Town officer, department, board, or bureau affected by that determination. The appeal must be filed within fifteen (15) days after the date of the written determination being appealed.

2.- **Notice of appeal.** The appellant shall file a written notice of appeal with both the Building Official and the Board on a form approved by the Board or the Town Clerk. The notice shall identify the determination appealed from, state the grounds for appeal with specificity, identify the requested relief, and include the information and materials required by the Board's rules.

3.- **Record and hearing.** The Building Official shall promptly transmit to the Board the record upon which the appealed determination was based. The Board shall conduct a public hearing after providing reasonable notice to the appellant and the Building Official. The Board may hear relevant testimony and receive relevant evidence, but shall base its decision on the record and evidence received at the hearing.

4.- **Stay.** A timely appeal stays further proceedings to enforce the appealed determination unless the Building Official certifies in writing to the Board that a stay would cause imminent peril to life or property. If such certification is made, proceedings shall not be stayed except by order of a court of competent jurisdiction for due cause shown.

5.- **Decision.** The Board may affirm, reverse, modify, or remand the appealed determination, but only to the extent permitted by Section __-1. The Board shall issue a written decision stating its findings and conclusions and promptly mail or otherwise provide it to the appellant and the Building Official.

Sec. __-5. Judicial review.

1.- A person with a substantial interest in a final Board decision, or a Town officer or agent, may seek judicial review in the Court of Common Pleas for Charleston County by filing a petition for a writ of certiorari within thirty (30) days after the Board's written decision is mailed or otherwise served. The petition shall state the grounds on which the Board's decision is alleged to be contrary to law.

2.- The filing of a petition does not stay the Board's decision or construction-code enforcement proceedings unless a court of competent jurisdiction issues a stay.

3.- This Section recognizes and preserves judicial review available under South Carolina law. It does not purport to expand the Court of Common Pleas' jurisdiction, alter the applicable standard of review, or create a right to pre-litigation mediation under statutes governing zoning appeals.

Sec. __-6. Relationship to other Town boards and codes.

1.- The Board of Construction Appeals is separate from the Town's Board of Zoning Appeals. An appeal involving zoning, land development, use, setback, dimensional, or variance issues

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shall be processed under the Town's zoning and land-development ordinance, even if the matter also involves a construction permit.

2.- If a matter involves both construction-code and zoning issues, the Building Official shall identify the separate determinations and the applicable appeal routes. The respective boards may coordinate scheduling and records as appropriate, but each shall act only within its own jurisdiction.

3.- This Article shall be construed consistently with the construction codes currently adopted and enforced by the Town, state law, and, if any, the Town's contractual arrangement for building-official services.

Section 2. Severability.

If any section, subsection, sentence, clause, phrase, or provision of this Ordinance is held invalid or unconstitutional by a court of competent jurisdiction, the validity of the remaining portions of this Ordinance shall not be affected.

Section 3. Conflicts.

All ordinances, resolutions, or parts thereof that conflict with this Ordinance are repealed to the extent of the conflict.

Section 4. Effective date.

This Ordinance shall take effect upon final reading and adoption by the Town Council.

ENACTED AND ORDAINED TOWN OF MCCLELLANVILLE, SOUTH CAROLINA

RATIFIED IN TOWN COUNCIL THIS 8TH DAY
OF SEPTEMBER, 2026, IN THE 250TH
YEAR OF THE INDEPENDENCE OF THE
UNITED STATES OF AMERICA.

Rutledge B. Leland, III, Mayor

ATTEST:

Michelle McClellan, Clerk of Council

First reading: August 3, 2026
Public hearing: September 8, 2026
Final reading: September 8, 2026

Approved as to form:

W. Andrew Gowder, Jr.,
Town Attorney