

# Code Disagreements

by Quenda Behler Story

If you're involved in construction, sooner or later you're going to disagree with a building inspector. Most of the time, the building inspector will win because he can shut you down if he believes you aren't doing something right. Besides, the inspector usually knows the code better than you ever will.

Sometimes, though, there's honest disagreement about what's necessary to meet the code. While many communities have adopted one of the uniform building codes, most have included some local variations that are often the source of conflict between builders and inspectors. But there's room for disagreement in any building code because the codes are written to achieve a broadly stated outcome — the safety of the public — and there are different ways to meet that goal.

## Begin With the Code

If you disagree with a code ruling, the place to start resolving the conflict is with the code itself. Ask your local inspector to tell you exactly which code section he's using so that you can read it. Be sure you're looking at the correct version — remember, the code that's used in your community may not be the same as the national version. Spend some time reading the appropriate sections, and pay particular attention to their purposes. Ask yourself whether what you're proposing to do meets both the strict letter of the code as well as the inspector's interpretation.

Then talk to the inspector again. Keep in mind that the goal of the code — and of the building inspector enforcing it — is the safety of the public, so frame your arguments accordingly. Most inspectors are open to discussion and negotiation, which will usually move you closer to finishing the project a lot quicker than any appeal process.

## Minimum Standard

Remember also that building codes are intended to set minimum standards. That means you are entitled to use anything that meets or exceeds code standards, even if you can't find the specific materials, methods, or details you intend to use in the code book. It is your responsibility, however, to demonstrate that your approach meets or exceeds those standards. You may have to present supporting evidence — an engineer's stamped drawing or a manufacturer's spec sheet — to bolster your argument, but it's up to you to show the inspector that you're not just trying to beat the code.

## Appealing a Decision

If you can't persuade the building inspector, but you believe that you are right and that the issue is worth fighting for, take your argument to the inspector's supervisor. Again, present any supporting information about the materials, methods, or details you want to use, and explain how they comply with the particular section of code in question.

If you're still not successful in reversing the decision, you can make your case in front of the Board of Appeals. While the board does not have the authority to waive any part of the code, its members can interpret what the code means or intends. This could lead to a decision that will allow the materials or designs you want to use.

In a recent case, for example, a single-family building permit was challenged because the proposed "house" covered 66,000 square feet and had 25 bedrooms and 28 bathrooms. The Board of Appeals couldn't waive the requirement that only single-family houses may be built in a particular zoning category, but it could decide that the structure does

not fit the definition of a single-family house. The board would look at testimony from industry people, such as real estate brokers and appraisers, about the typical size and characteristics of single-family homes. It would also be useful for the board to hear how other buildings of that size and configuration in that area are used.

The board would follow a similar process if you wanted to use, say, fireproof wood in a building that required fireproof materials and your inspector said, "No, wood is not fireproof, period." In this case, the board couldn't waive the requirement for fireproof materials, but it could determine that the wood you want to use meets the standard of fireproof. You might use evidence such as testimony, either from a live expert or from industry and safety publications, that explains that fireproof wood can withstand the same temperatures and exposure to flame as other materials presently approved as fireproof. Examples where the wood had been used in other fireproof applications would also help.

## A Word of Caution

Don't appeal a building permit if you can avoid it. It's complicated and time-consuming, and you could make an enemy out of a building inspector that you might have to do business with in the future. So arrange a meeting with the inspector before construction starts, while you're still putting the project together. Use your arguments and evidence as early on as possible. Make concessions where you can. Save the appeals for big problems, not little ones.

**Quenda Behler Story** has practiced and taught law for 25 years. She and her husband are partners in a remodeling company in Okemos, Mich.