Brooklyn Industry Meeting

March 21, 2019

1. For a two-family home that is three stories plus a penthouse, should the building comply with the residential energy code or the commercial energy code? The penthouse is not considered a story because it and other rooftop structures are less than 33.3% of the entire roof area. However, the space is occupied.

If the roof top structure is 33.3% (or less) of the entire roof, the two-family home is three stories. If it is detached or attached three or more townhouses not more than three stories, the residential energy code will apply.

Pursuant to BC 504.3 Rooftop structures. "*Rooftop structures including but not limited to roof tanks and their supports, ventilating, air conditioning, combined heat and power systems and similar building service equipment, bulkheads, penthouses, greenhouses, chimneys, and parapet walls 4 feet (1219 mm) or less in height shall not be included in the building height of the building or considered an additional story unless the aggregate area of all such structures, exclusive of any solar thermal and solar (photovoltaic) collectors and/or panels and their supporting equipment, exceeds 331/3 percent of the area of the roof of the building upon which they are erected. Rooftop structures shall be constructed in accordance with Section 1509"*

Pursuant to NYCECC 202 RESIDENTIAL BUILDING. The term "residential building" includes:

(1) Detached one-family dwellings having not more than three stories above grade plane;

(2) Detached two-family dwellings having not more than three stories above grade plane;

(3) Buildings that (i) consist of three or more attached townhouse units and (ii) have not more than three stories above grade plane;

(4) Buildings that (i) are classified in accordance with Chapter 3 of the 2010 edition of the Building Code of New York State in Group R-2, R-3 or R-4 and (ii) have not more than three stories above grade plane;

(5) Factory manufactured homes (as defined in section 372(8) of the Executive Law); and

(6) Mobile homes (as defined in section 372(13) of the Executive Law).

COMMERCIAL BUILDING. The term "commercial building" shall include all buildings not included in the definition of "residential building."

2. When I filed DOB NOW TPA the website would only take a max of 999 people.
What are we to do if the TPA is for more than 1000 people? (which they often are.)

We will be making a number of fixes to the TPA form in DOB NOW in a couple months, including expanding the number of digits for Max Occupancy.

In the meantime, for filings having a higher number, enter 999 and then the actual number in the Job Description.

3. Examiners are raising the objection that roof decks are required to have a wire fence at least 10' as per BC section 27-334. I have not seen any roof decks used in conjunction with the occupancy of a building with 10' high fencing but rather railings and or parapets that are 3'-6" high. Is this regulation applicable to roof decks filed pursuant to BB 2018-002?

Building code require that 42 inches railing be provided for raised decking more than 30 inches above adjacent floor level where ever installed. If roof is use for recreation, 10 feet high fence is required around the roof area.

Pursuant to BC 1013.1 Where required. *"Guards shall be located along open-sided walking surfaces, including mezzanines, equipment platforms, stairs, ramps and landings that are located more than 30 inches (762 mm) measured vertically to the floor or grade below at any point within 36 inches (914 mm) horizontally to the edge of the open side. Guards shall be adequate in strength and attachment in accordance with Section 1607.7"*

Pursuant to BC 1013.2 Height. *"Required guards shall be not less than 42 inches (1067 mm) high, measured vertically above the adjacent walking surfaces, adjacent fixed seating or the line connecting the leading edges of the treads…"*

Pursuant to 1509.8.1 *"Rooftops used for recreational purposes shall be provided with wire fencing at least 10 feet (3048 mm) in height. Openings in the fence shall not permit the passage of a 4-inch diameter (102 mm) sphere. Where ball games are played on rooftops the wire fencing shall be extended to provide an overhead closure."*

4. We propose to construct a 5-story mixed-use building new building that will cantilever over an adjacent building. The buildings will be on separate tax lots. The existing structure over which the new building will be cantilevered is proposed to have no changes. Under Administrative Code 118.3 there seem to be no reason that the existing building would be required to file an application with the Department of Building or to make any change to its Certificate of Occupancy. Can this interpretation be confirmed?

Yes, the applicant needs alteration jobs to address changes on existing building for CO, fire protection and merging of zoning lots.

If cantilever portion of new building and the roof of the existing building "Jogged" together then both buildings shall be considered as a single building (ZRD1 #53990A by DOB Technical Affair) and CO of the existing building has to be changed.

If there is a vertical separation between existing building's roof and the cantilever portion of new building (at least for one story) then both building shall be considered as separated buildings on separate tax lots.

Per BC705.12 and BB#2017-014, Fire Engineering analysis is needed for cantilever portion of the building which may require upgrading the construction (fire rating) of roof or any opening (side or rear, roof) of the existing building.

Any opening within 60 feet (side or rear, roof) of the existing and proposed building has to be protected per BC table 705.8 and BB#2017-014. Construction materials of existing windows and opening on perimeter walls of existing building may need to be changed.

If two zoning lots are merged together to do cantilever projection, it must reflects on meets and bounds of the existing building.

5. With reference to the DHCR Document, Can DOB issue a list of items that would not require this document, such as: If doing exterior work such as a retaining wall; roof work; boiler replacement; brick pointing; etc. OER and DEP have lists of exemptions

Owner must check "Yes" on any application on any site which contains such occupied housing accommodations subject to rent control or rent stabilization. There is not an exemption.

The required Item "DHCR Document" is auto-populated if an owner checks "No" on PW1 section 26 for the item *"The site of the building to be altered or demolished, or the site of the new building to be constructed, contains occupied housing accommodations subject to rent control or rent stabilization under Chapters 3 and 4 of Title 26 of the New York City Administrative Code.",* **and this "No" answer contradicts the data transmitted by DHCR privately to DOB.**

The only time a "DHCR Document" is needed is when the owner disagrees with the DHCR designation, so they must provide a *document which proves the site contains no occupied DHCR-regulated units*. Otherwise, a post-approval amendment must be filed which changes the "No" to "Yes". That PAA's approval will automatically waive the required item, upon its correction of the false answer.

Please note that once the "Yes" answer is chosen, no "DHCR Document" is required. If the answer that site contains DHCR-regulated units is "Yes", then the owner must check one of the two boxes beneath for record. Whether DHCR is required to be notified is not a DOB matter, per DOB General Counsel. The notification requirement is under NYS DHCR jurisdiction, and is a matter of NYS DHCR enforcement.

It's easier to say what require DHCR notification:

DHCR notification in the form RC-50 is required only when building occupied with Rent Controlled (RC) unit(s), and only when application filed as Alt-1, and/or cause removal of the RC unit(s).
DHCR doesn't accept or require any other form of notification as related to question in PW-1.

6. What is being done to make the BIS system more accessible? It is impossible to get into the system to check the status of filings, etc. This issue has been going on for some time and appears to be getting worse. In the BIS system, when a search is entered it goes to an error screen and does not proceed to the property profile overview screen or the job overview screen. It takes 3-5 attempts to get to those screens.
In recent weeks, there has been a greater demand by scripted searches that are continuously extracting data from the Building Information System (BIS). The system is operational but these searches have caused BIS users to experience more delays and error messages. We have identified a solution that will help alleviate this problem and will be implementing it in the coming weeks. We are dedicated to ensuring the system's reliability and apologize for the inconvenience this is causing. Please try accessing the system again.

7. If my application is to only install a bathroom with an exhaust fan, do I need to file an MH work type? As per the PW1 Guideline, since an exhaust fan is not plumbing, heating or refrigeration then an MH work type would not be required. (Excerpt from the guideline is on the last page)
In summary, can I file an application for a bathroom with an OT and PL work type only? I would still file a special inspection for mechanical systems since section 1704.16 requires a certificate of compliance as per section 28-116.4.1 for exhaust systems.
We do not require a MH work type for a standalone/detached exhaust fan for a bathroom renovation project; however, it will require an electrical permit for the work. We can accept the Special Inspection Agency report from applicant.

8. Alt.1 job was approved in 2010 to vertically enlarge two duplexes at upper floors of existing mixed-use Condo building (medical office and 10 dwelling units). Job was partially permitted, however OT permit expired in 2011. In fact, no physical work was done. What is the procedure to withdraw the job because one of the owners is selling their unit?
Applicant of Record must inspect the site and request a withdrawal due to no work. DOB will then send an inspector to verify.

9. Violation was issued to the owner of mixed-use building (one commercial and three residential units, BC-1938) "because the report was filed more than 45 days after the date of inspection" (annual boiler inspection).
In response to owner's complaint DOB NOW explained "an inspection is not considered filed until your licensed inspector selects the file button. Plumber did not provide the seal for his report until 11/20/18. Late fees are calculated from the date of your inspection 9/27/2018 until the date the report is filed - 11/20/2018 (54 days)."
In reply to the obvious question of why the owner has been punished for the Plumbers failure DOB NOW responded that "The responsibility for ensuring that an inspection report is filed has always rested with the owner. One of the benefits of filing an inspection report through DOB NOW is that the filing status of a Boiler Inspection Report can be viewed at any time by all parties associated with the filing." How is this the owner's fault if owner took ALL the necessary steps to get an inspection report duly filed? – timely hired and paid a professional THE CITY has LICENSED to properly do this work.
Is there a way to dismiss this unreasonable punishment without the City Council involvement?
1539 Bath Ave., Brooklyn
There is a $50.00 late filing penalty due on that address in DOB NOW because the licensee did not submit the report until 11/20/18. (Based on a 9/27/18 inspection date, the filing was due by 11/11/18.) Therefore, the filing is considered to be one month late and the system correctly assessed

a $50.00 penalty. This is standard practice in accordance with the annual boiler compliance filing rules.
Also, please note that DOB NOW: Safety allows either the applicant (licensed professional) or the owner to pay for the civil penalties. So even though, yes, technically under the law the owner does bear the ultimate responsibility for the filing, he or she does not necessarily have to be the one to pay the civil penalties. The owner has every right to hold the licensee accountable for missing the filing deadline by having the licensee make the late filing payment directly. The system has that flexibility built in for that reason, among many.

10. Existing one-story Public Spa building (Physical Culture Establishment) underwent minor alteration. It created "ACCESSORY EXTERIOR RECREATION AREA" to be used in conjunction with eating and drinking facility, which is part of the establishment. On January 3, 2019, the building had Final inspections for Alt.1 and PA jobs – both were passed. However, a day prior, on January 2, 2019, a violation was issued for tables and chairs being positioned exactly per approved drawings as required for the next day inspection.
Violation specifically accuses: "…C of O states the lot will not be used in conjunction with the physical culture establishment. No activities to take place outside the premised observed during inspection outside lounge area with approximately 15 lounge chairs, 2 tables with umbrellas, and a few arm chairs approximately 7/8."
Existing and amended C/O states in the Comments section "… THE ADJOINING VACANT PROPERTY WILL BE SEPARATED FROM SUBJECT ZONING LOT BY A FENCE AND NOT USED IN CONJUNCTION WITH THE PHYSICAL CULTURE ESTABLISHMENT, THAT NO EXERCISE ACTIVITIES, SUNBATHING OR LOITERING TAKE PLACE OUTSIDE THE PREMISES, THAT NO ALCOHOLIC BEVERAGES PERMITTED OUTSIDE GROUNDS OF SITE."
These restrictions obviously don't prevent the Back Yard from being used in conjunction with the eating and drinking facility which is NOT serving alcoholic beverages. This is what the Examiner approved, and two inspectors witnessed with opposite results just a day apart.
Also note that the violation wasn't activated on BIS and inaccessible on ECB search for two (2) months and became active only a month before the Court hearing – see attached PDF printouts.
Considering that the conditions of the violation successfully passed Final C/O and PA inspection, can this violation be reversed without lengthy Administrative Court hearings?
3703 Mermaid Ave., Brooklyn
Violation cannot be reversed as "Written in Error" at this juncture. Owner must attend ECB court to dismiss the violation.

11. We have been told lately at plumbing / gas inspections that we can't have a direct-vent, sealed gas fireplace in a room that could be slept in (whether it is a bedroom or not). The fireplace installer has added a separate CO interlock on the unit but the code currently states that the CO interlock needs to be 'factory installed'. There aren't currently ANY models of direct vent gas fireplaces that exist with this feature. Does this mean there is no way to have a gas fireplace in a room that could potentially be slept in?
Please refer to 2014 Fuel and Gas Code, Section FGC 303

12. I reviewed the zoning text and called the zoning desk at city planning as was told that the ZFA of a 20' high double-height space in a residential dwelling is calculated only from the bottom level (i.e. once for the size of the footprint that is double-height). I have had Brooklyn plan examiners tell me that a double height space can't be more than 16' high or each 'level' of it counts as ZFA (i.e. the footprint is counted twice).
This interpretation is not in the code or in the zoning text as far as I can tell. Is this an attempt to prevent future homeowners from illegally adding a floor plate at mid-height to create another room? If

so, I don't understand the rationale- if the homeowner was prepared to break the law to add the floor plate (I assume un-filed if they don't have extra ZFA to add) what would prevent them from still illegally adding the floor plate and having two substandard height spaces? There is no way the DOB can possibly prevent all potential future illegal building activity by adding extra restrictions to existing zoning rules. For example- Couldn't any homeowner divide any house *illegally* into several SROs without filing?

Floor area with double height or with higher ceiling height shall be calculated only once at floor plate/floor footprint level unless any mezzanine or storage floor plate is placed in between. There is no height limitation for a story in NYC zoning. If applicants propose higher ceiling height/ double height, we may ask them to mention the amount of floor area with ceiling height on schedule "A" for the job (NB or Alt-I jobs). If too questionable, we may ask them to make it Ok by any Commissioners.

ZR12-10,Floor area (3/22/16)

"Floor area" is the sum of the gross areas of the several floors of a #building# or #buildings#, measured from the exterior faces of exterior walls or from the center lines of walls separating two #buildings#.

ZR12-10:

Story (2/2/11)

A "story" is that part of a #building# between the surface of a floor (whether or not counted for purposes of computing #floor area ratio#) and the ceiling immediately above. However, a #cellar# shall not be considered a #story#. Furthermore, attic space that is not #floor area# pursuant to Section 12-10 (DEFINITIONS) shall not be considered a #story#.

13. The DOB has been asking for fresh air intake for boiler rooms that contain direct-vent high efficiency boilers as if the units need combustion air, even though they do not. If the DOB requires dilution air there does not seem to be any code text stipulating the area or means of supply for that. Please clarify.

The portion of the code we have been directed to contains language asking for a set area (1" I think) of combustion air per 2,000 BTU's, but it also states, "Direct-vent appliances, gas appliances of other than natural draft design and vented gas appliances other than Category I shall be provided with combustion, ventilation and dilution air in accordance with the appliance manufacturer's instructions."

If we are to follow manufacturer's specifications for these units, a 3" fresh air intake line is required but nothing else.

A truly "sealed-combustion" direct vent boiler will not require any additional combustion air from the outside (unless required by the manufacturer); but enforcement of the following code may trigger the need for additional air (depending on other mechanical systems/appliances/equipment in the room)

Section MC 1012

Maximum Temperature

1012.1 Maximum temperature. Maximum indoor temperature in spaces surrounding boilers, water heaters, and pressure vessels
shall not exceed the operational temperature of the installed equipment or 104°F (40°C).