Code Interpretation 2008 - 01[1]

Code Effective Date: **January 1, 2008**

Source Document: **19 NYCRR Part 1225 - Fire Code of New York State (the 2007 FCNYS)**

Question: **Is the occupant load of a room or space within a legally existing building constructed prior to January 1, 1984 limited by Section 1028.3 of the 2007 FCNYS?**

Interpretation: **YES**

A Code Enforcement Official responsible for the administration and enforcement of the provisions of the Uniform Fire Prevention and Building Code (the Uniform Code) in the City of Ithaca, New York has submitted a written request for interpretation of Section 1028.3 of the *Fire Code of New York State* the 2007 FCNYS as it applies to the occupant load of a room or space within a legally existing building constructed prior to January 1, 1984. The specific example cited in the Request For Code Interpretation involves three lecture rooms in Myron Taylor Hall, a building which was constructed in 1932 and which is part of Cornell University's Law School. The Request For Code Interpretation indicates that (1) each lecture room has an occupant load of approximately 85 persons, based on the exit width and seating capacity as required under previous editions of the Uniform Code, and (2) each lecture room has only one means of egress from the room to the hallway. The Request For Code Interpretation also indicates that "the City of Ithaca has recognized Myron Taylor Hall as a legally existing building," that "there have been no renovations or modifications of recent record to any of the lecture spaces in question," and that to the best of the knowledge of the Code Enforcement Official, the rooms "have existed in their present floor plan since they were constructed in the early 1930s."

Section 1028.3 of the FCNYS provides that "***(t)he occupant load of buildings or portions of buildings shall not exceed the capacity of the means of egress from the buildings or portions thereof. Occupant load shall be calculated as provided in §F1004.1. Capacity of the means of egress shall be calculated as provided in section 1005.1, section 1018.1 and section 1024.6.***"

In the case of the lecture halls mentioned in the subject Request For Code Interpretation, the principal concern involves the application of Section 1018.1 and Section 1014.1 (one of the sections referenced in Section 1018.1).[2] Section 1018.1 of the 2007 FCNYS provides that all rooms and spaces having an occupant load of 1 to 500 shall be provided with and have access to at least two approved and independent exits, "except as modified in (Sections 1014.1 or 1018.2)." Section 1014.1, in turn, provides that in the case of an A occupancy (such as a lecture hall), two exits or exit access doorways

from any space shall be provided where the maximum occupant load of the space exceeds 50. If Sections 1018.1 and 1014.1 of the 2007 FCNYS are applied in this case, each lecture hall would have to be posted as having a maximum capacity of 50 persons.

Section 1028.3 of the 2007 FCNYS is clearly intended to apply to buildings that were constructed before January 1, 2008 (the date of which the 2007 FCNYS became effective). Section 102.8 of the 2007 FCNYS provides that "(t)he legal occupancy of any structure existing on the date of adoption of (the 2007 FCNYS) shall be permitted to continue without change, *except as is specifically covered in (the 2007 FCNYS)*, the Property Maintenance Code of New York State, or the Existing Building Code of New York State." However, Section 1028 of the 2007 FCNYS provides that "(m)eans of egress in *existing buildings* shall conform with the requirements of this section." Section 1028.3 is part of Section 1028. Therefore, Section 1028 (including Section 1028.3) specifically covers existing buildings, and buildings constructed prior to January 1, 2008 must comply with Section 1028.3.

However, Myron Taylor Hall was constructed in 1932. The Request for Code Interpretation cites section 19 of Chapter 707 of the Laws of 1981 for the proposition that Section 1028 of the 2007 FCNYS is not applicable to buildings constructed prior to 1984.

The New York State Uniform Fire Prevention and Building Code Act (Article 18 of the Executive Law) was added by Chapter 707 of the Laws of 1981. Section 19 of Chapter 707 of the Laws of 1981 ("Section 19") provides that:

> "Notwithstanding any other provisions of this act (L.1981, c. 707), the provisions of article eighteen of the executive law provided for in section one of this act shall not be applicable to any building constructed or under construction prior to the first day of January, nineteen hundred eighty-four, until the legislature by law expressly provides for financial incentives and assistance for the implementation of such provisions and their applicability to such buildings provided, however, that this section shall not apply to any provision of such article eighteen which is substantially similar to any provision of a code, general, special or local law, or ordinance to which an existing building was subject immediately prior to the effective date of such article."

Section 19 was construed in Rabinor V. City of Ithaca Building Code Board of Appeals, 252 A.D.2d 290 (Third Dept., 1998). The Rabinor case involved an ordinance which was adopted by the City of Ithaca in 1995 and which required the installation of a smoke/heat detector system in all structures (including structures constructed prior to 1984) used wholly or partially for residential purposes. The City petitioned the State Fire Prevention and Building Code Council for approval of the ordinance under Executive Law section 379, and such approval was granted. In 1996, the City Building Commissioner ordered Mr. Rabinor to install smoke/heat detection systems as required by the ordinance all residential property which he and his companies owned. Following an unsuccessful administrative appeal to the City, Mr. Rabinor and his companies commenced an Article 78 proceeding to challenge the City's determination. Supreme Court granted the petition, and the Appellate Division affirmed. The Appellate Division recognized the general authority of a local government to adopt a more restrictive local standard pursuant to section 379 of the Executive Law, but held that the ordinance in question could not be applied retroactively "to buildings plainly beyond the reach of the Uniform Building Code, i.e., those buildings constructed or under construction prior to January 1, 1984." (252 A.D.2d at 293.)

However, notwithstanding the sweeping language of the Rabinor decision, the exception for pre-1984 buildings in Section 19 has been construed and applied very narrowly by other courts, including the Court of Appeals. In Tarquini v. Town of Aurora, 77 N.Y.2d 354 (1991), the plaintiff maintained that a

provision in the Uniform Code requiring construction of a fence around swimming pools was inapplicable to his pool, which had been constructed prior to January 1, 1984. The Court of Appeals disagreed, holding that the statutory exemption (Section 19) applied only to "buildings" constructed prior to 1984, but not "structures and premises." Therefore, the swimming pool, a1though constructed before 1984, was not exempted from the Uniform Code.

In an opinion issued 2 ½ years after Rabinor, the Third Department also adopted a more narrow construction of Section 19. In Town of Conklin v. Ritter, 285 A.D. 2d 855 (Third Dept., 2001), the Third Department indicates that Section 19 does not preclude the application of Uniform Code provisions related to *condition, occupancy, maintenance, conservation, rehabilitation and renewal of existing buildings, structures and premises and to the safeguarding of life and property therein and thereabout* to buildings that were constructed prior to 1984. See Town of Conklin v. Ritter (Supreme Court, Broome County, Index No. 98-2690, November 5, 1999 Motion Term, Decision and Order dated November 12, 1999).[3] In Town of Conklin, the owner of a four-family residential building sought a declaration that Subchapter F (the "Housing Maintenance" provisions of the Uniform Code then in effect) did not apply to his building since it was constructed prior to 1984, citing Section 19. The Supreme Court noted that

> "(The Uniform Code) is intended to address, *inter alia*, standards for the construction of new buildings [*Section 378 (1)*], and standards for the condition, occupancy, maintenance, conservation, rehabilitation and renewal of 'existing buildings, structures and premises' and for the 'safeguarding of life and property therein and thereabout' [*Section 387 (2)*]. . . .
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> "Defendant asserts that his building was constructed prior to 1984 and therefore is exempted from the code. That statutory exemption has been construed and applied very narrowly (citing Tarquini v. Town of Aurora) . . . .
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> "The statute itself makes a distinction between construction of buildings [section 378 (1)] and condition, occupancy and maintenance of existing buildings, structures and premises. If the intent was to exempt any building under construction at the time of enactment from all aspects of the code, then inclusion of the language 'existing' with respect to maintenance and safety provisions would have been meaningless. . . .
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> "Similarly this court recognized a distinction between those aspects of the code regulating building construction and those designed as safety measures aimed at the premises in general and the persons thereon. The purpose of Subchapter F, titled 'Housing Maintenance,' is to establish 'standards governing the facilities and the condition, use, occupancy and maintenance of residential premises, [and] to safeguard the safety, health and welfare of the occupants and users thereof' [*Section 1240.1*]. The nature of the violations asserted by (the Town) in this action include bat infestation, obstructed exits, deteriorated steps, water leaks, exposed electrical wires, and garbage and debris in the basement. These conditions are covered by and in violation of subchapter F, 'Housing Maintenance.' They do not relate to the construction of the building; they are incident to the maintenance of the premises.
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> "A property owner must be deemed to have purchased a building with a consciousness of the possibility that new technological developments may require installation of newly perfected means of protecting life and limb [12 NY Jur 2d, Buildings, Section 31. Accordingly, a state or municipality may require reasonable changes even in buildings previously erected in order to meet new health and safety standards [Ibid.]. This is particularly true in the case of multi-tenant

dwellings [Ibid.]." (November 5, 1999 Motion Term, Decision and Order dated November 12, 1999, at pages 3-5, emphasis in original.)

In an appeal of a subsequent order made in the same case, the Appellate Division expressly adopted the Broome County Supreme Court's reading of Section 19, stating that "(p)reliminarily, we reject defendant's contention that the maintenance provisions of the Building Code would not be applicable to the subject building since it was in existence prior to the enactment thereof (see, L. 1981, ch. 707, § 19) *for all of the reasons detailed by Supreme Court in its decision and order dated November 5, 1999."* (Town of Conklin v. Ritter, 285 A.D. 2d 855 [Third Dept., 2001], at 855-856, emphasis added.) Thus, the Appellate Division, Third Department, which decided Rabinor in 1998, affirmatively adopted the Broome County Supreme Court's narrow construction of Section 19 in 2001.

The Court of Appeals affirmed, stating that "(t)he courts below correctly concluded that the State Uniform Fire Prevention and Building Code applies to defendant's building." (Town of Conklin v. Ritter, 97 N.Y.2d 712 [2002], at 713.)

The Supreme Court's decision in Town of Conklin distinguishes between construction related provisions, which are included in the Uniform Code pursuant to subdivision 1 of section 378 of the Executive Law, and provisions related to the condition, occupancy, maintenance, conservation, rehabilitation and renewal of existing buildings, structures and premises and for the safeguarding of life and property therein and thereabout, which are included in the Uniform Code pursuant to subdivision 2 of section 378. The Supreme Court held, in effect, that a literal application of Section 19 would render subdivision 2, and its reference to "existing" buildings, meaningless, and concluded that Section 19 did not preclude the application of subdivision 2 provisions to pre-1984 buildings.[4]

The distinction between provisions related to the construction of new buildings and provisions related to the condition, occupancy, maintenance, conservation, rehabilitation and renewal of existing buildings can be traced to the State Building Construction Code, promulgated under former Article 18 of the Executive Law, and the State Building Conservation and Fire Prevention Code, promulgated under former Article 18-A of the Executive Law. The State Building Construction Code was intended "to provide reasonably uniform standards and requirements for construction and construction materials . . . ." (See former section 375 (1) of the Executive Law.) The State Building Conservation and Fire Prevention Code was intended to be a set of "rules and regulations relating to the condition, occupancy, maintenance, conservation, rehabilitation and renewal of certain existing buildings, structures and premises and to the safeguarding of life and property therein and thereabout . . . ." (See former section 391 (1) of the Executive Law.)

When it enacted the current version of Article 18 in 1981, the Legislature determined that there should be a single code in effect in all parts of the State, and that the single code should include "standards for the construction of all buildings or classes of buildings . . ." (subdivision 1 of current section 378 of the Executive Law) and "standards for the condition, occupancy, maintenance, conservation, rehabilitation and renewal of certain existing buildings, structures and premises and for the safeguarding of life and property therein and thereabout . . ." (subdivision 2 of current section 378 of the Executive Law, mirroring, verbatim, former section 391 (1) of the Executive Law).

To bridge the gap between the enactment of new Article 18 in 1981 and the effective date of the new Uniform Code to be adopted pursuant to new Article 18 (January 1, 1984), the Legislature provided that the State Building Construction Code and the State Building Conservation and Fire Prevention Code

". . . shall be applicable from and after (March 1, 1982) in every local government that does not on such date have in effect a building or fire protection code. Said state building construction code and state building conservation and fire prevention code shall also be applicable in every local government that on the first day of March, nineteen hundred eighty-two has a building or fire prevention code in effect but which prior to the first day of January, nineteen hundred eighty-four, repeals such code . . . ." (Executive Law section 373.)

It appears from the foregoing that the Legislature intended that on and after March 1, 1982, a code providing rules and regulations relating to the *condition, occupancy, maintenance, conservation, rehabilitation and renewal of certain existing buildings, structures and premises and to the safeguarding of life and property therein and thereabout* should be applicable in all areas of the State. Between March 1, 1982 and December 31, 1983, that code was the State Building Conservation and Fire Prevention Code, and that code applied to all existing buildings, including those constructed prior to March 1, 1982. On and after January 1, 1984, that code has been the portion of the Uniform Code included pursuant to subdivision 2 of Executive Law section 378, and that portion of the Uniform Code applies to all existing buildings, including those constructed prior to January 1, 1984.

Section 1028.3 of the 2007 FCNYS limits the occupant load of buildings and portions of buildings. Compliance with section 1028.3 does not require construction or alteration of a building or any part of a building. The Department of State concludes that section 1028.3 is not a *construction-related* provision, but is a provision relating to the condition, *occupancy*, maintenance and/or conservation of existing buildings, and to the *safeguarding of life and property therein and thereabout*. Therefore, the Department of State concludes that section 1028.3 of the 2007 FCNYS applies to all buildings, including those constructed prior to 1984.

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Director, Division of Code Enforcement and Administration
October 17, 2008

Endnotes

1. The prior version of Code Interpretation 2008-01, dated July 11, 2008, is withdrawn. This Code Interpretation 2008-01 supercedes the July 11, 2008 version of Code Interpretation 2008-01.

2. Section 1004.1 of the 2007 FCNYS specifies the manner in which the number of occupants for whom means of egress must be provided (the occupant load) is to be determined. Section 1005.1 of the 2007 FCNYS specifies the manner in which the minimum egress width is to be determined. Section 1024.6 of the 2007 FCNYS specifies additional requirements for egress width in Group A occupancies which contain seats, tables, displays, equipment or other material. The Request For Code Interpretation did not provide the information necessary to verify the calculation of the occupant load or egress width; however, calculation of occupancy load and egress width is not an issue raised in the Request For Code Interpretation now under consideration.

3. The Supreme Court Decision and Order in Town of Conklin v. Ritter is not officially reported, but is available on-line at http://decisions.courts.state.ny.us/fcas/FCAS_docs/2001SEP/0300026901998104SCIV.PDF.

4. "The courts may in a proper case indulge in a departure from literal construction and will sustain the legislative intention although it is contrary to the literal letter of the statute." (McKinney's Statutes § 111.) "Generally, statutes will be given a reasonable construction, it being presumed that a reasonable result was intended by the Legislature." (Id. § 143.) "A construction which would make a statute absurd will be rejected. (Id. § 145.)