

Minutes of the NYS Fire Prevention and Building Code Council meeting on Friday, September 25, 2020, commencing at 10:06 a.m. and held by videoconference call (WebEx).

Council members and designees present:

Matthew Tebo, Presiding
Benjamin Keller
Michael Weber
Vincent Rapacciuolo
Keith Wen
David Seeley
Claudia Braymer

Joseph Toomey
Timothy DeRuyscher
Robert Hughes
William Tuyn
Patrick Dolan
Dominic Marinelli

Staff present: John Addario, Panagiota Hyde, Kevin Duerr-Clark, Emma Gonzalez-Laders, China Clarke, Chad Sievers, and Gregory Benton.

Agenda Item 1. Welcome.

Mr. Tebo opened the meeting and welcomed everyone.

Mr. Duerr-Clark called the roll and announced that 13 Council members were present. Mr. Tebo noted that there was quorum, called the meeting to order, and asked Mr. Duerr-Clark to explain the meeting procedures.

Mr. Duerr-Clark explained the general rules and procedures for the videoconference and asked Council members and staff to remain on mute, to unmute themselves before speaking, and to state their name before speaking.

Agenda Item 2. Minutes of the meeting of July 10th, 2020. Consideration of motion to approve.

Mr. Tebo asked if anyone wished to make changes to the minutes of the July 10th, 2020 meeting. Hearing none, Mr. Tebo made a motion to adopt the minutes, seconded by Mr. Marinelli. The motion was approved unanimously by voice vote.

Agenda Item 3. More Restrictive Local Standards, Uniform Code (Executive Law §379) Petition

Mr. Sievers first noted that the Village of New Paltz had submitted a More Restrictive Local Standard petition but subsequently withdrew it.

Town of Fallsburg LL No. 8 of 2020

Mr. Sievers provided a summary of the petition from the Town of Fallsburg and a summary of the staff's analysis, which had been sent to the Code Council members and the Town, as well as posted on the Division's public website. Division staff recommended denial of the Petition based on no special conditions prevailing making the more restrictive standards reasonably necessary and denying the less restrictive standards for construction.

Mollie Messenger, the Town's code enforcement officer, addressed the Council on behalf of the Town. She indicated that over 3,000 new houses were proposed in the Town and noted the challenges experienced by the fire department to quickly access all buildings due to the limits of the existing infrastructure, zoning, and traffic.

Ms. Braymer thanked Ms. Messenger for presenting and asked her to respond to the staff's analysis indicating that the 2-hour separation is a substitution for fire flow, and therefore, a less restrictive standard.

Ms. Messenger indicated that the 2-hour separation was not intended as a substitute, but as an additional measure to allow firefighters more time to get to fires and bring water where needed.

Mr. DeRuyscher stated that the Code requirements for fire flow were based on occupancy and construction classification, firewalls, and other criteria and that using that criteria isn't necessarily a substitution. Additionally, Mr. DeRuyscher noted the code contained multiple options available to the applicant to deal with fire flow such as Appendix B of the Fire Code and NFPA 1142.

Mr. Duerr-Clark responded that according to the language of the Local Law establishing ISO as the approved method to calculate fire flow and that, where separation distances cannot be met in accordance with ISO, the local law indicates that the Town would allow a lesser separation than allowed by ISO. Mr. Duerr-Clark also read a portion of the letter filed by the Town with the previous application where the applicant stated that for bungalow units being re-built in the original footprint, where fire flow could not be met, a 2-hour fire separation would be required. He additionally noted that the previous Petition, which was denied by the Council, had identified that the growth of the community had surpassed the available water distribution system.

Mr. DeRuyscher noted that fire separation is one of several factors used to determine fire flow and that many jurisdictions throughout the State do not have any water supply.

Ms. Hyde reminded everyone that the Code Council can only approve more restrictive standards and that alternatives considered where code provisions cannot be met, were the subject of a variance as provided under Executive Law §381(1)(f) and 19 NYCRR Part 1205, and that the Council is not the appropriate forum to address variances to the Uniform Code.

Mr. Tuyn noted that the same petition had already been presented to the Council and subsequently denied. He further noted that the second attempt failed to prove that special conditions existed within the Town and that if the existing infrastructure could not handle the rate of development, then the municipality needs to find solutions without circumventing the Uniform Code. Mr. Tebo echoed Mr. Tuyn's statements, emphasizing that we have a "Uniform" Code for a reason and that issues affecting multiple communities must be addressed within the code itself.

Ms. Messenger indicated that compliance with the Uniform Code was not an issue for new buildings, but that challenges remained for existing buildings replaced over the existing footprint.

Mr. Tebo made a motion to deny based on no special conditions prevailing making the more restrictive standards reasonably necessary and denying the less restrictive standards for construction, as read by Ms. Hyde, and seconded by Mr. Tuyn.

Mr. DeRuyscher indicated that, in years past, the Council would have agreed that there were special conditions in similar rural communities and that he would be voting no.

Ms. Braymer agreed with Mr. DeRuyscher and noted that the Lake George region faced similar challenges due to seasonal population increases. She asked why that would not constitute a special condition.

Mr. Tebo responded that the fact that similar challenges were faced by other communities, including those in the vicinity of New York City, made the case for no special conditions.

Mr. Hughes noted that the Uniform Code already takes the rural nature of some communities into account and that he didn't see the proof that special conditions had been identified by the applicant.

The motion to deny carried with a vote of 10 to 3.

Agenda Item 4. NYC More Restrictive Energy Code Filing LL No. 48 of 2020 (Energy Law §11-109)

Ms. Gonzalez-Laders presented a summary of the staff's review of the 2020 NYC Energy Conservation Code (2020 NYC ECC), as amended by Local Law No. 48 of 2020, which is based on the 2020 NY Stretch Code with modifications. Ms. Gonzalez-Laders relayed the recommendation of the Division that the Council find that the 2020 NYC ECC, as adopted by the City of New York, is more restrictive than the 2020 State Energy Conservation Construction Code (2020 State Energy Code).

Mr. Wen recused himself from voting and discussion on this item.

Mr. Duerr-Clark indicated that Gina Bocra and Emily Hoffman from NYC DOB were in attendance in case questions came up for them.

Hearing neither questions nor discussion, Mr. Tebo made a motion, as read by Ms. Hyde, to determine that the 2020 NYC ECC, as amended by Local Law No. 48 of 2020, is more restrictive than the 2020 State Energy Code. The motion was seconded by Mr. Tuyn and Mr. Hughes. The motion carried with 12 votes (Mr. Wen abstained).

Agenda Item 5. Workgroup Update

Mr. Duerr-Clark presented a summary update of the workgroup. The group has met six times and has drafted technical summaries for 9 of the topics. The topics discussed to date are: 45-minute fire separation in garages, fire partitions errata in Section 420.2 of the Building Code, new bed and breakfast buildings, 10-year sealed batteries in smoke detectors, wireless interconnection for existing smoke detectors, UL 217, sprinkler height in section 903.2.11.3 of the Building Code, emergency responder radio coverage in existing buildings, mobile fueling operations, and reference standard updates. Future topics for the workgroup are to continue discussion on mobile fueling operations for October, new townhouse sprinklers for November, and the Performance Code for December.

Agenda Item 6. Public Comment Period

None

Agenda Item 7. Future Meetings

Mr. Duerr-Clark announced that the next meeting will take place on December 4th of 2020 and that tentative dates for 2021 had been shared with Code Council members and are as follows: March 5, 2021, June 11, 2021, September 17, 2021, December 3, 2021.

Mr. Tebo asked that council members indicate their availability as soon as possible.

Agenda Item 8. Other Business.

Mr. Duerr-Clark mentioned that a notice of rule in development was posted on the Division's website updating 19 NYCRR Part 1203 pertaining to the Minimum Standards for Administration and

Enforcement of the Uniform Code and Energy Code, and asked that, while no action was required from the Council, that any comments be submitted to Code Development staff. Ms. Hyde noted that the Division has not filed a Notice of Proposed Rule Making yet and that this notice of rule in development was posted in order to engage interested parties and the public in the rule development process.

Mr. Marinelli thanked Mr. Duerr-Clark, Ms. Gonzalez-Laders, Mr. McAndrew, Mr. Carroll, and Mr. Reed for their recent work on the bulletin and training courses regarding the reopening of business considering accessibility requirements.

Mr. Tebo thanked everyone for their time and exhorted all to stay safe and healthy.

Hearing no other business, Mr. Tebo made a motion to adjourn, the motion passed unanimously by voice vote.

The meeting adjourned at approximately 11:18 a.m.