

NEW HAMPSHIRE STATE BUILDING CODE REVIEW BOARD

In-person regular/public hearing meeting November 4, 2022

**Members Present:**

Philip Sherman, P.E., Chair

Med Kopczynski, NH Municipal Association

Jeffrey Trexler, Board of Engineers (Structural Engineer) (term currently expired, nonvoting at this time)

Art Guadano, Board of Architects

Michael Hagan, CFM, NH Building Officials Association

Lee F. Carroll, PE, NH Board of Engineers (Electrical Engineer)

Michael Soucy, NH Department of Energy

Peter Lennon, Fire Marshal - Manchester, NH Association of Fire Chiefs

Arthur Rose, Associated General Contractors of NH, Inc.

Tedd Evans, Mechanical Licensing Board

Beverly Kowalik, P.E. Mechanical Engineer

Roger Maynard, P•FGF•HVAC of NH

**Absent:**

Robert Wentworth (Michael Hagan Alternate), NH Building Officials Association

Michael Hasbrouck, (Roger Maynard Alternate) P•FGF•HVAC of NH

James Grant, Electricians Board

David Mendzela, NH Electrical Contractors Business Ass. Alternate

Dean Sotirakopoulos NH Electrical Contractors Business Association

John Tuttle, Vice-Chair, NH Home Builders Association

**Also Present:**

Erica Webb, Administrative Supervisor, NH State Fire Marshal's Office

Michael Grandy, Assistant Attorney General

**Guests:**

Jerry Tepe

William McKinney

Jennifer Gilbert

Zachary Haithcock

The meeting, held in-person, was called to order at 10:00am by the Chair. The Chair proceeded with roll call. A quorum was declared.

The Chair gave a board member update; Jeffery Trexler is still awaiting his appointment letter from the Engineering Board, which met Oct 28th. The Board of Fire Chiefs is working on filling their position on the board. The Governor's Commission on Disability is also working on

appointing a member. Michael Soucy indicated that his appointing authority has designated an alternate for his board position and will work on getting the letter to Erica with his information. Rob Chebook has been appointed as the alternate to Roger Maynard for the PFGHVAC position. Tedd Evans inquired as to whether or not the board was aware Rob Roy, who is supposed to be the alternate for his board position and will check with his appointing authority to verify if Mr. Roy is still a participating alternate.

The Chair opened the floor for the acceptance of the October 14, 2022 meeting minutes.

Motion to Accept 10/14 Meeting Minutes; Art Guadano

Seconded: Lee Carroll

Abstained: Tedd Evans

All in favor, none opposed. Motion carried, minutes accepted.

The Chair opened the meeting for Public Hearing regarding the 2018 Building Code Amendments at 10:05am.

#### BD-18-14-22 Related to Appendix G in the IBC

The Chair opened the hearing by asking whether he should step aside to offer a personal opinion, and hearing no objection, indicated that he thought that Appendix G may tread into issues that should be addressed by land use and zoning regulations, not the Building Code. He hoped that it would be brought up when the BCRB handles the 2021 Code cycle, however; did not feel it was something that should be handled in regard to the 2018 codes without the chance for detailed discussions with other interested parties. The Chair listed 9 sections already in the building codes addressing flood plains; IBC 1612, IBC 1612.3, IBC 1612.4, and the following sections which would regulate more than what the current state building code is currently authorized to hold jurisdiction over; G103.3, G102.1, G1303.6, G103.7. RSA 674:56 designated the zoning board as the appeals route for zoning issues, whereas Appendix G requires that these issues be brought before the building code board of appeals, which in smaller towns may be the same group, however in larger municipalities it is not. The Chair expressed that his concern comes from the view that as of right now flood plains are presently regulated by zoning, not the building code.

Michael Hagan, who sponsored this amendment, defended the amendment stating that the Appendix G does not create new implementations, but an administrative process by which individual municipalities would be able to create plans to address flood plain issues that conform to FEMA standards. According to Hagan, the Appendix does not give any additional authority other than to require a permit for activities pertaining to a flood plain by local ordinance.

Several board members inquired about the differences between how the flood plain appendix impacts building codes vs zoning codes and whether or not it is appropriate for the BCRB to take.

Michael Hagan continued that the adoption of this Appendix would allow municipalities the ability to show that they have adopted some kind of flood plain regulations when they otherwise may not have had anything on the books.

Phil LaMoreaux of NH DES asked if this would allow towns without zoning to have some level of enforcement.

Hagan replied that this would give no path for zoning, only for permitting of structure in the flood plain.

LaMoreaux pointed out that in communities without zoning boards the permitting process would fall upon the select boards to issue, so there would be an impact on town procedures in municipalities that did not have a zoning board in place.

Jennifer Gilbert, NH State Flood Plain Management Coordinator gave her testimony on the amendment;

Ms. Gilbert testified that there are zoning ordinances which deal with land use and building codes which deal with buildings. Appendix G does dip into the zoning aspect a little but the number one disaster is flooding. Right now the flood plain requirements in the state are haphazard. Ms. Gilbert indicated that 219 municipalities in NH have already adopted regulations similar to Appendix G, as permitted, but not required. The current NH State Building Code already includes about 75% of FEMA National Flood Insurance Requirement Program. Appendix G would cover the remaining 25%. Ms. Gilbert stated that without a building inspector there is no requirement to follow the state building code and there are many small communities that do not have enforcement or another permitting process requirements. When building designers want to build in the flood plain people are able to point them to the state building code for most of the regulation, but not to Appendix G. Not only are municipalities missing out on necessary components, but also the University System, for example, has no requirements. There is also a government exemption which allows government projects to exempt themselves from local zoning regulations, however; they are still subject to the State Building Code. There have been instances where towns have built a fire station in a flood plain, which in some cases may be ok, but in other cases not and use government exemption to do so.

The Chair made one correction to Ms. Gilbert's statement regarding the requirement to following the State Building Code; towns without a building inspector are required to following the State Building Code, they do not lack a code, but lack an enforcement mechanism.

The Chair continued to add a personal comment that the zoning RSA at the moment makes flood plain management optional and this seems like a back door way to make the requirements state wide without going through the process of revising the RSA and this is a dangerous road to take as we will be picking fights with other entities that it impacts. The Chair reiterated that this is his personal view.

Tedd Evans read an excerpt from Appendix G that states that the adoption of the IBC building code along with Appendix G would ensure that the requirements of the National Flood

Insurance Plan are met, which is in line with what Hagan and the public testimony of Ms. Gilbert are claiming.

Bill McKinney, speaking as the building official from Nashua, NH, not as the NHBOA, brought up concerns regarding the verbiage and definitions such as “development,” and would dictate what building officials would be allowed or disallowed to do with land. McKinney listed four more points of Appendix G which would regulate items not currently regulated by Building Officials or the Building Code; G106.1, G104.2, G105, and G801.6. McKinney is concerned that Appendix G would extend the building code official into the area of land use, which is reserved for zoning and would be better suited for the zoning boards. McKinney concurred with the Chair that the adoption of Appendix G would conflict with the current zoning RSA and become a real issue is the amendment should make it to the legislature. McKinney continued to caution the board to consider and review the appendix and whether or not the board is ready to recommend that building officials should be engaging in land use issues, where they have never engaged before.

Med Kopczynski stated that there is a need to do something with the flood plain concerns, but he is not sure what should be done. He went on to say that in Keene, they did not include flood plain processes in the zoning rules intentionally so there is no appeals process unless an individual wants to go to court. Furthermore, Keene has used their local ordinances to require state agencies follow the flood plain ordinances. He stated he is not sure how to piece this all together.

Roger Maynard suggested a committee because there are too many points to discuss right now.

Art Rose agrees with Maynard, but at the end of the day this is a land use issues and we would be amending land use, not the building code.

Motion to not approve this amendment; Art Rose

2<sup>nd</sup>: Mike Soucy

Discussion on the motion:

Hagan repeated for the record that this appendix does not get into land use regulations, its administrative for things that get built on a flood plain. The building code does get into things like patios or swimming pools already.

McKinney responded that from a Nashua stand point G101.3 states “all development” brings it into land use and this is something that planning boards should look at and discuss adopting Appendix G in addition to the building code so that it could be a land use ordinance or at least an amendment to their own local building code.

Ms. Gilbert asked to clarify that the permits required in special areas and the word “development” is defined in Appendix G and is in all the flood plain ordinances adopted by the 219 communities in the state including Nashua and Keene, so the building inspectors should already be enforcing these regulations due to their local building code/municipal flood plain ordinances.. This is not something new and is already going on.

The Chair asked for a vote on the motion of the floor; to not approve this amendment.

7 votes in favor of the motion to not approve the amendment

3 votes against the motion to not approve the amendment.

The motion carried, the amendment will not be approved or carried forward.

The Chair advised that he would like to see this amendment back in the 2021 Amendments cycle in order to give the board more time to talk about it in depth.

Med Kopczynski requested that at some point the BCRB appoint a committee to dive into the Flood Plain Appendix prior to the 2021 amendment cycle. The Chair agreed this would be a good idea.

#### EN-18-07-22

No Public Comment

Motion to Approve; Med Kopczynski

2<sup>nd</sup>: Lee Carroll

No one opposed. Motion carries.

#### EN-18-08-22

No Public Comment

Motion to Approve; Lee Carroll

2<sup>nd</sup>: Med Kopczynski

No one opposed. Motion carries.

#### PL-18-16-22

No Public Comment

Motion to Approve; Lee Carroll

2<sup>nd</sup>: Art Guadano

No one opposed. Motion carries.

The Chair paused the meeting to allow Tedd Evans to discuss some additional wording to the previous amendment, PL-18-16-55. Evans received a comment at some point that it may be difficult enforcing an amendment that amend definitions. In order to circumvent any conflicts, Evans updated the amendment language so that 701.2 building drain and building sewer definition do not conflict with DES language, and thereby more easily enforceable.

#### PL-18-16-22 REVISED

Motion to Approve as amended; Tedd Evans

2<sup>nd</sup>: Art Guadano

No one opposed. Motion carries.

PL-18-17-22

No Public Comment

Motion to Approve; Tedd Evans

2<sup>nd</sup>: Roger Maynard

No one opposed. Motion carries.

After vote Hagan inquired whether the Food Code requires indirect drains for food washing? Evans responded that a member of the DHHS was consulted on this amendment. The current plumbing code requires that the sanitize bay be an indirect drain. The food service people advised Evans that if there are circumstances due to space shortage they do allow the sanitize bay to be used for food prep so this amendment is not inconsistent with that the food service inspectors would be allowing. The goal is to minimize issues when the wash and rinse sink banks are required to be indirectly connected with a required flow restrictor, which will cause discharge water to spill on the floor. The Amendment is going back to language in the 2009 code. During the amendment process no one could discern or recall any reason why the change was made to go to strictly indirect as opposed to direct or indirect.

PL-18-18-22

No Public Comment

Motion to Approve; Tedd Evans

2<sup>nd</sup>: Roger Maynard

No one opposed. Motion carries.

RE-18-24-22

The Chair gave a brief overview. In the commercial code the solar regulations are in the International Fire Code, amended to reference the State Fire Code. In the residential code the IRC has brought IFC solar requirements into the IRC. This amendment references the State Fire Code for solar requirements, as the industry has worked with the Board of Fire Control to determine acceptable setbacks for roof top solar arrays.

The Chair invited Zach Haithcock of 603 Solar to add anything to the amendment as he is the one who submitted the amendment. Mr. Haithcock introduced himself and indicated that they are only intending on addressing the conflict between the state fire code and the building code so that there would be less confusion between the two codes.

Bill McKinney stated that the NHBOA worked with the solar industry and the Board of Fire Control during their amendment process and would continue to support this amendment.

Motion to Approve; Mike Hagan

2<sup>nd</sup>: Art Guadano

No one opposed. Motion carries.

RE-18-25-22

No Public Comment

Motion to Approve; Med Kopczynski

2<sup>nd</sup>: Tedd Evans

No one opposed. Motion carries.

RE-18-26-22

No Public Comment

Motion to Approve as amended; Tedd Evans

2<sup>nd</sup>: Mike Hagan

No one opposed. Motion carries.

This is the Residential code amendment equal to the Plumbing code amendment PL-18-16-22.

The Chair advised that this was the conclusion of the proposed amendments. If the amendment was approved to move forward they would be packaged up and submitted to the legislature for ratification sometime around June of 2023.

### **LEGISLATIVE STATUS**

The Chair updated the board on 4 LSR (Legislative Service Request) which means that someone is submitting a Bill. The NHBOA and NHMA do a good job scanning upcoming legislation for pertinent bills. These will be coming up in 2023;

0003 Electrical charging provisions for renters.

0081 Towns and Schools cannot spend money to influence legislature.

0183 Religious use of land and structures.

0207 Electro microgrids.

Bills need to be submitted by November 22, 2022, so once that is done the board can start to see language on whether or not these are things that need to be address by the BCRB.

### **WEBSITE UPDATE**

No real changes to report. Even the general court website has not been updated since last June.

### **BCRs**

The Chair asked the board to consider how the board assess “cost.” The language over all is fuzzy and does not match in either the RSA or BCR. The Chair is of the opinion that it would be best to use the language out of the RSA in updating the BCRs in order to obtain some sense of consistency. Jeff Trexler asked if it would be possible to add the work “impact” to the BCR as that is essentially what the board is attempting to do. Evans supported this addition. The Chair has had no input from the board, except for reviews by Jerry Tepe, Mike Hagan and Michael Grandy. The board agreed that the Chair should finalize the outstanding issues and Michael Grandy will begin the approval process.

### **Municipal Amendments**

The Chair led an exercise in courtesy reviews the municipal amendments for both Nashua and Newbury for the board to prepare and discuss what they may be asked to review come January 1, 2023. Jerry Tepe asked what happens when municipal amendments are technically null and void as of January 1, 2023 due to the new legislation. There is nothing for the board to do as far as that is concerned other than start working on the municipal amendments as they are submitted to the board for review.

### **IRC Report**

Mike Hagan gave an update on the IRC Report that John Tuttle had completed last month following the committee’s brief meeting to vote to adopt the appendixes Q and J.

The Chair closed the public hearing/regular meeting at 11:30.

### **MEETING ADJOURNED**

The next meeting is scheduled for **December 9** and is expected to be held at 33 Hazen Drive, Concord NH 03305 in the second floor conference room.