

Questions for Virtual AIA Brooklyn Industry Meeting – March 11th, 2021

1. Under the BIS system you were able to file with LPC or OER simultaneously and were required to submit approvals from such agencies prior to DOB approval. Under the DOB NOW Build system the approvals from these agencies are required to file the application. Can this be reverted to required prior to approval and not at time of initial filing? Filing these applications simultaneously saves a great deal of time rather than waiting for LPC or OER approval before being able to submit the application to DOB.

It is DOB Now policy to have other agencies' approvals prior to filing.

2. Obtaining certified tax maps from TOPO has been delayed and as such is delaying the process of obtaining a final CO. Is it possible to submit the tax map from the DOF website and submit it with an AII from the applicant certifying that the tax map is correct?

DOF does not allow such process.

3. I submitted required documents for an Alt1 application and received the following rejection,

The Electronically Submitted Required Item, CERTIFICATE OF OCCUPANCY/LOC: REQUEST, for Job #321383622 has been Rejected by DOB for the following reason(s).

Rejection Reason: Data Missing

Rejection Reason: Other: All Required Items/Forms will be updated on the filing only as part of the review of a permit or LOC/CO submission.

If I submitted documents that can be received at an earlier time, then why can't they be entered as received? By accepting required items earlier, it will reduce the review time at a later date by the CO clerk. In addition, specifically for TR1 items such as final sprinkler must be received to obtain sprinkler sign off or to obtain gas authorization why is this acceptable and other documents are not?

The Sprinkler item will be processed. All other requirements are processed part of the review due to the overwhelming amount of documents submitted via e-submit. If they have a job # were the TR's for sprinkler are not received, ask and we will process those ASAP.

4. TPPN #4/03 states that "an open porch, veranda, portico or deck shall be considered acceptable for projection into a required rear yard if the following is provided:

- There shall be no useable building or storage space underneath.
- Projection does not exceed eight feet beyond the face of the building except that steps leading from a porch or deck may be located beyond this limit."

a. I have had examiners limit the depth of a proposed deck to 8 feet even when it does not extend into the "required rear yard". My understanding is that the 8-foot limitation is the portion within the required portion of the rear yard. For example: The actual

rear yard is 32 feet deep. The required rear yard is 30 feet. Can a 10 ft. deep deck be proposed? 8 feet is in the required rear yard, 2 ft is not. How about if none of the deck is in the required rear yard, such as a 45 ft deep actual rear yard (30 ft required rear yard) with a 10 ft deep deck proposed?

b. How does the depth of a deck conforming with TPPN 4/03 impact the light and air of the habitable rooms at the floor below (basement level in the case of a deck on the first floor). Again, I've had differing opinions about this from plan examiners over the years.

c. In a three-story R-3 townhouse with no cellar and no basement (1st, 2nd, 3rd stories only), how is TPPN 4/03 interpreted if the proposed (or existing) deck is at the 2nd floor (primary living floor similar to a parlor floor). Is a stair to the rear yard permitted or is it considered a balcony (Zoning district R6) per ZR 23-132? If it's considered a balcony, do the limitations of ZR 23-132 only apply if the "balcony" is projecting in to "required" open space? Do these apply if the balcony is projecting into a 45 ft rear yard where the required rear yard is only 30 ft?

TPPN #04/03 was issued to explain construction of Decks, porches, terraces and breezeways in the required yards. Per TPPN, Decks may project maximum 8 feet from the face of the building into the required yards.

Deck or porch may project more than 8 feet from the face of the building when it is not located in the required yards.

b) For required light and ventilation the depth of the room shall be measured from the exterior face of the deck/porch.

c) Deck/porch is not permitted at 2nd floor level when the building is without basement. It may be located at or below the first story level above cellar or basement.

Stair is not a permitted obstruction in the required yards but steps from the deck/porch are permitted obstruction in the required yards.

Stairs are not permitted to construct within the required yards from a balcony to the ground per ZR23-44. Construction of steps from a deck/porch to the ground/yard are permitted per TPPN#04/03.

Steps/stairs are not permitted to be constructed from a balcony.

When a balcony is located within the required yards, required open space or required setback area, the zoning section ZR23-13 and ZR23-12, and ZR23-44 applicable shall be applicable.

For construction of balcony, zoning section ZR23-13 will be applicable when the balcony is located within the specific area mentioned on the section ZR23-13.

5. What is the proper filing procedure in the following example:

A project scope of work begins as renovating two floors of an existing three-story building. Asbestos testing is conducted in the area of proposed work, comes back negative and an ACP5 is issued. The job is filed as "not an asbestos project" and a permit is issued. During the course of work, the owner decides to expand the scope of work to include the third floor. New asbestos samples are taken and some come back positive. No physical work has yet been performed on the third floor.

My assumption would be that the owner would hire an abatement company who would file the work with DEP, conduct the abatement and issue an ACP21. We would then have to amend our application with DOB to include the third floor work and to change Section 22 of the PW1 to an "asbestos project" and submit the ACP21. Is that correct? **Correct, except for the order. Applicant should first file a PAA amending: 1) scope of work to include 3rd floor and 2) Section 22 to indicate "the scope of work requires related asbestos abatement as defined in the regulations of the NYC Department of Environmental Protection". The "Required Items" list in BIS should also be modified to require an ACP-21. Applicant should cease all work under the current permit until 1) An abatement project filed at DEP is approved and completed and 2) the project is closed out at DEP with an ACP-21. This form should be submitted to DOB, to fulfill the modified "required items" asbestos certification. The applicant may then commence with DOB permitted work, including the fully abated 3rd floor.**

The only variation to this operating procedure would be if upon filing the Abatement project at DEP, the abatement contractor filing the project additionally filed for a 1-22b variance allowing abatement and DOB permitted alteration work to be performed simultaneously. The abatement contractor would submit all required documents most importantly a phasing schedule verifying the required separation of DOB permitted work and abatement work areas, in this case, DOB permitted work on the 1st and 2nd floors and abatement work on the 3rd floor. Upon approval of the V5 variance, the applicant would be able to resume DOB permitted 1st and 2nd-floor work, while scheduled abatement of the 3rd floor is also underway. Upon completion of the abatement, DEP-issued ACP-21 would then be required to sign off the corresponding DOB application.

6. Additional parking spot in existing accessory parking at cellar of mixed-use building. Existing mixed-use condo building, Medical Offices and 32 dwelling units, located in R6 district, not in flood zone, completed in 2008 per BC-1968. Building has 30 accessory parking spots in cellar. In fact, in cellar there is an unoccupied area ~15'x20' which may be used for one additional parking spot. This bonus space seemingly has only one restrictive factor – it is accessible only through an existing parking spot, which is indicated on the approved Condo Plan as Unit P30.

I seek concurrence with my assumption that we can amend Certificate of Occupancy to create additional parking spot. I further assume that the proposed space (P30-A) must have a restriction indicated on plans that it has to be used together with exiting parking unit P30 or otherwise stated as the Commissioner deems suitable.

Attached are existing Cellar Condo Plan with highlighted open area and parking unit P30,

as well as fragment of Cellar Plan demonstrating how this open area can provide one more parking space.

1. The applicant has not indicated what the adjacent accessible rooms are used for.
2. In the event, one of them is leading to an egress stair, we would have to put in restrictions to maintain an obstructed passageway to that stair. For example, no storage of any kind, will be permitted in the width of the exit / accessible passageway.
3. Likewise, there should be no storage of any kind around the vehicle or proposed parking spot that will endanger egress to the exit stair.
4. In order to ensure the exit passageway width is maintained, I will have the applicant paint it, like the hatch shown on the provided drawing hatch, see highlighted area on the marked-up drawing. Painting it will define it and prohibit any encroachments.

Regarding the approval of such a parking space:

5. The parking space must be approved by the Commissioner via a determination.
6. I agree with the applicant that a restriction must be indicated on the plans. But I will go further to have the applicant provide a restrictive declaration to be:
 - a. Approved by the DOB's legal team if it defers from the language of the declarations provided under Buildings Bulletin 2015 -008.
 - b. Recorded on the Certificate of Occupancy, and
 - c. Noted on the drawings.

7. BC 1021.2 STORIES WITH ONE EXIT.

Section 502.1, Definitions, describes Basement as *"A story partly below the grade plane and having less than one-half its clear height (measured from finished floor to finished ceiling) below the grade plane (see "Story" in Section 202 and "Story above grade plane" in this section). A basement shall be considered a story above grade plane,"* and Cellar as *"That portion of a building that is partly or wholly underground, and having one-half or more of its clear height (measured from finished floor to finished ceiling) below the grade plane. Cellars shall not be counted as stories in measuring the height of the buildings."*

Table 1021.2, Single Exits, allows single exit from Basement for Use Group "B", limiting occupancy and travel distance.

Note "g" under this table provides that – "Basements with a single exit shall not be located more than **one story below** grade plane."

Does note "g" by mentioning "one story below grade plane", imply that the word "basement" in this section covers Basement AND Cellar, excluding subcellars?

SECTION BC 202

STORY is that portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above (also see "Basement" and "Mezzanine"). It is measured as the vertical distance from top to top of two successive tiers of beams or finished floor surfaces and, for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters.

SECTION BC 502

BASEMENT. A story partly below the grade plane and having less than one-half its clear height (measured from finished floor to finished ceiling) below the grade plane (see “Story” in Section 202 and “Story above grade plane” in this section). A basement shall be considered a story above grade plane.

CELLAR. That portion of a building that is partly or wholly underground, and having one-half or more of its clear height (measured from finished floor to finished ceiling) below the grade plane. Cellars shall not be counted as stories in measuring the height of the buildings.

As per the noted definitions, a cellar is not considered a story. Therefore, note “g” of Table 1021.2 will not apply to cellars.

8. BC 1021.2 STORIES WITH ONE EXIT.

Small four-story mixed-use building was completed in 2016 per BC-2008 in C2-4 overlay at R6A zone, not in flood area. It has ~900 sq.ft Commercial Retail Store at first floor with Accessory to 1st floor area at Cellar, plus two residential units on top.

In case if we propose to convert 1st floor and Cellar into a Dental Office, can we waive ADA requirements for the Cellar, stating in C/O that 1st Floor and Cellar to be under one management, thus providing that all services are covered at 1st floor?

This is possible if common services and amenities are provided at the 1st Floor and the Cellar. But this would have to be verified during plan review.

9. Does the BPP5 application require the professional's seal? Some examiners are requesting that the application is to be sealed when that was not the case in the past.
Yes, the applicants sign and seal the form.