STAFF ANALYSIS OF THE PETITION FOR APPROVAL (ADOPTION) OF MORE RESTRICTIVE LOCAL STANDARDS ENACTED OR ADOPTED BY

Local Law No. 8 of 2020
Amendments to the Town of Fallsburg Town Code-Chapter 310

Located in the

Town of Fallsburg
Sullivan County, New York

September 13, 2020

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New York State Department of State
Division of Building Standards and Codes
Code Development Unit

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Part I: Executive Summary

Introduction

Executive Law § 379 authorizes the legislative body of a local government (city, town, or village) to enact or adopt local laws or ordinances that impose standards for construction that are more restrictive than the standards imposed by the Uniform Code.[1] If a local government enacts or adopts a local law or ordinance establishing such a standard (herein referred to as a More Restrictive Local Standard, or MRLS), the Chief Executive Officer of the local government must, within 30 days of enactment of the local law or adoption of the ordinance, notify the State Fire Prevention and Building Code Council (the Code Council) of the enactment or adoption and petition the Code Council for a determination that (1) the standards imposed by the local law or ordinance are, in fact, higher and more restrictive than the Uniform Code, (2) the standards imposed by the local law or ordinance are reasonably necessary because of special conditions prevailing within the local government, and (3) the standards imposed by the local law or ordinance conform with accepted engineering and fire prevention practices and the purposes of Article 18 of the Executive Law. If the Code Council determines that the local standards for construction satisfy these requirements, the Code Council will approve (or "adopt") the local standards.

The Council has the power to (1) limit the duration of the standard, (2) impose conditions in connection with the adoption, and (3) to terminate the standard at such times that the Council deems necessary.

Town of Fallsburg Petition

The Division of Building Standards and Codes (the Division) has received a petition from the Town of Fallsburg (the Town), asking the Code Council to approve the standards for construction imposed by the Town's Local Law No. 8 of 2020 (hereinafter referred to as "the 2020 Local Law").

The 2020 Local Law amends the following provisions in the Town Code: section 310-4.3 (G); section 310-514 (F)(4), section 310-5.30 (A)(3)(b)(3), section 310-9.3 (F)(1)(a), and section 310-9.3 (G)(1)(a). Each of those Town Code provisions, as amended by the 2020 Local Law, imposes standards for construction.

Town Code sections 310-4.3(G), 310-514 (F)(4), 310-5.30 (A)(3)(b)(3), and 310-9.3 (F)(1)(a) were added or amended by the Town's Local Law 8 of 2014. The construction standards imposed by those Town Code provisions, as added or amended by the 2014 local law, were the subject of a petition that was considered and denied by the Code Council at its December 2019 meeting.

It appears that Town Code section 310-9.3 (G)(1)(a) was originally added by a local law other than the 2020 Local Law. No previous petition relating to the construction standards imposed by Town Code section 310-9.3 (G)(1)(a) has been submitted by the Town.

By itself, the 2020 Local Law adds no new standards for construction, and makes only minor changes to the previously existing Town Code provisions. However, the 2020 Local Law modifies Town Code provisions that contain construction standards. The Town could have adopted a local law that (1) repealed those Town Code provisions and (2) adopted new Town Code provisions that are identical to the Town Code provisions as amended by the 2020 Local Law. Division staff is of the opinion that the fact that the Town took a different route to get to the same result should not disqualify the Town from

[1] Per Executive Law § 379, the legislative body of any local government may not enact or adopt a local law or ordinance imposing higher or more restrictive standards for construction for factory manufactured homes, intended for use as one or two family dwelling units or multiple dwellings of not more than two stories in height. *See* Executive Law § 379 (1).

submitting the Petition now before the Code Council. Therefore, the following analysis was performed on the Town Code provisions, as modified by the 2020 Local Law.

The Town Code provisions, as amended by the 2020 Local Law, provide that when existing bungalow units, and existing buildings at sleepaway or day camps, are replaced in-kind, with a new unit or building on the same building footprint, the replacement unit or building must have exterior walls rated as a two-hour fire assembly, where said walls do not meet all applicable Town Code building separation requirements. Summaries and staff findings are set forth below.

Summary of Town Code Provisions, as amended by the 2020 Local Law (Standards for Construction; refer to Part II B of this Analysis for details)

The Town Code provisions, as amended by the 2020 Local Law, provide as follows (the additions to the Town Code provisions made by the 2020 Local Law are underlined below):

Section 310-4.3G of the Town Code states: *"Cluster, bungalow colony, two-family dwellings on common land, duplex developments, multifamily developments, sleepaway camps, day camps and retreats shall require a minimum separation distance of 31 feet of green space between buildings. The only items permitted within this separation distance are walkways and landings or decks of less than five feet in width and earthwork retaining walls. No porch or similar structure shall protrude or be installed into this required separation. If fire flow calculations can be met, per ISO standards, then the required separation distance between buildings may be reduced to a minimum of 25 feet."*

Section 310-5.14F(4) of the Town Code states: *"No multifamily building shall be located closer than 31 feet to another multifamily building; and said space shall be landscaped. The only improvements permitted within this minimum separation distance are walkways, and landings or decks of less than five feet in width and earthwork retaining walls. No porch or similar structure shall protrude or be installed into this required separation. If fire flow calculations can be met, per ISO standards, then the required separation distance between buildings may be reduced to a minimum of 25 feet."*

Section 310-5.30A 3(b) [3] of the Town Code states: *"Side yards and side setback between duplex buildings and internal street. Each duplex building shall have two side yards no less than 15 feet six inches and shall have a minimum building separation of 31 feet. The only items permitted within the separation distance are walkways, and landings or decks of less than five feet in width and earthwork retaining walls. No porch or similar structure shall protrude or be installed into this required separation. If fire flow calculations can be met, per ISO standards, then the required separation distance between buildings can be reduced to a minimum of 25 feet."*

Section 310-9.3F(1)(a) of the Town Code states: *"existing bungalow units may be replaced in kind with a new unit on the same building footprint, provided that all applicable building separation requirements contained in the bulk table of the Zoning Chapter of the zoning district can be provided or Section 310-4.3G, whichever is more strict; regardless of whether they are over the max lot coverage of 15%. Should separation requirements not be met, then the required fire separation of a two-hour fire assembly shall be constructed for the exterior walls that do not meet this requirement."*

Section 310-9.3 G(1)(a) of the Town Code states: *"Existing structures at legally nonconforming sleepaway or day camps may be replaced in kind with a new structure on the same building footprint, provided that all applicable building separation requirements contained in the bulk table of the Zoning Chapter[3] of the zoning district can be provided, or the requirements of § 310-4.3G, whichever is more strict. Should separation requirements not be met, per ISO standards, then the required fire separation of a two-hour fire wall shall be constructed for the exterior walls that do not meet this requirement.*

Special Conditions Summary (Refer to Part II C of this Analysis for details)

Provided below are the special conditions identified by the Town as part of the current petition for the Town Code provisions, as amended by the 2020 Local Law.[2]

- The Town of Fallsburg provided with the Petition diagrams and photographs depicting the fire spread and damage of recent fires, showing the difference in fire spread for communities with 25 feet or more in separation, versus those with less than 25 feet of separation. The Town indicates this potential for increased spread of fire in communities with closely spaced homes coupled with the Town's continued increase in construction and the "second home market," make the additional protections necessary.
- The Town also states that due to the increase in population and construction in the Town, the demand on the Town's water supply infrastructure "far exceeds the intended design" of the system, making the Town concerned that what they deemed as "failing" water supply "infrastructure" cannot maintain adequate fire flow in all situations. Therefore, providing a separation of 25 feet or more or a 2-hour fire wall would allow fire departments additional time to fight a fire and minimize the spread of fire.

Compliance Summary

The following summarizes the Division staff's analysis of the Petition in relation to the requirements of Executive Law §379. Refer to Part II of this analysis for details.

- Part II A. Executive Law §379(1) Submission Requirements: The Town's petition for the Town Code provisions, as amended by the 2020 Local Law, was timely as it was submitted by the Town Supervisor on August 10, 2020, 28 days after the adoption of the 2020 Local Law on July 13, 2020.
- Part II B. Analysis and Comparison to the Uniform Code:
  - The standards imposed by Town Code Section 310-9.3F(1)(a), as amended by the 2020 Local Law, pertaining to the requirement of a two-hour fire assembly where Town zoning separation requirements cannot be met appear to be more restrictive than the Uniform Code.
  - The standards imposed by Town Code Section 310-9.3G(1)(a), as amended by the 2020 Local Law, pertaining to the requirement of a two-hour fire wall (assembly) to be a substitute for fire flow appear to be less restrictive than the Uniform Code.
    - The less restrictive provision of Section 310-9.3G(1)(a) may be mitigated with a condition imposed by the Code Council.
    - Additionally, the buildings addressed by Town Code Section 310-9.3G(1)(a) include "existing structures at legally nonconforming sleepaway ... camps." In some cases, a "sleepaway camp" (as defined in the Town Code) may be a "children's overnight camp" (as defined in Public Health Law § 1392[1]).

[2] The petition for the Town Code provisions as added or amended by Local Law No. 8 of 2014 was denied by the Code Council on December 6, 2019 on the basis of a lack of special conditions. The special conditions noted in this section pertain only to the newly provided special conditions provided with the new petition for the Town Code provisions as amended by Local Law No. 8 of 2020.

Executive Law section 378(1) provides that sleeping quarters in a children's overnight camp shall be governed by Public Health Law § 1394(1). Public Health Law § 1394(1) provides that the Public Health Council shall prescribe standards and establish regulations for children's overnight camps. The regulations adopted by the Public Health Council for children's overnight camps are found in 10 NYCRR Subpart 7-2, which is part of the State Sanitary Code. Therefore, to the extent that (1) any "sleepaway camp" (as defined in the Town Code) is a "children's overnight camp" (as defined in the Public Health Law), and (2) any structure at such camp is a "sleeping quarters," such structure is subject to the Sanitary Code, which, in turn, means it is subject to the Uniform Code only to the extent provided in the Sanitary Code. 10 NYCRR section 7-2.12(b)(1) provides that "all new construction, including alterations, enlargements and improvements, shall be in accordance with the Uniform Code ..." However, 10 NYCRR section 7-2.2(e) provides that for the purposes of Subpart 7-2, the term "Uniform Code" means "19 NYCRR Chapter XXXIII, Subchapter A - State Uniform Fire Prevention and Building Code." A more restrictive local standard for construction adopted by a local government is not part of "19 NYCRR Chapter XXXIII, Subchapter A" and, therefore, is not part of the "Uniform Code" as defined in the State Sanitary Code. Therefore, the Town should be advised that even if the Code Council were to approve the construction standards in Town Code Section 310-9.3G(1)(a), such construction standards would be applicable to "sleeping quarters" in "children's overnight camps" only to the extent that the Public Health Law and the Sanitary Code permit a local government to adopt standards for construction that are stricter than those imposed by the Sanitary Code.[3]

- Part II C. Prevailing Special Conditions: The Code Council must determine if the information provided by the Town substantiates the claim that there are special conditions prevailing in the Town that make the higher or more restrictive construction standards imposed by Town Code Section 310-9.3F(1)(a) and 310-9.3G(1)(a), as amended by the 2020 Local Law, reasonably necessary.
- Part II D. Conformance with Accepted Engineering and Fire Prevention Practices:
  - The standards imposed by the Town Code Section 310-9.3F(1)(a), as amended by the 2020 Local Law, requiring a 2-hour fire separation assembly where Town zoning separation requirements cannot be met, appear to generally conform with accepted engineering and fire prevention practices.
  - The standards imposed by Town Code Section 310-9.3G(1)(a), as amended by the 2020 Local Law, allowing a two-hour fire separation assembly to be a substitute for fire flow, does not appear to conform with accepted engineering and fire prevention practices.

[3] The Town should also be advised that the Sanitary Code defines a special type of sleeping quarters at children's overnight camps, viz. "summer camp cabins." The Sanitary Code provides that summer camp cabins are, in general, subject to the Uniform Code, but are exempt from the Uniform Code's automatic sprinkler system requirements minimum floor area per occupant requirements.

- Part II E Conformance with the Purposes of Article 18:
    - The standards imposed by Town Code Section 310-9.3F(1)(a), as amended by the 2020 Local Law, requiring a 2-hour fire separation assembly where Town Zoning separation requirements cannot be met, appear to conform with the purposes of Article 18.
    - The standards imposed by Town Code Section 310-9.3G(1)(a), as amended by the 2020 Local Law, allowing a two-hour fire separation assembly to be a substitute for fire flow, do not appear to conform to the purposes of Article 18 as they are less restrictive than the Uniform Code by providing the residents with a level of protection from the hazards of fire that is *lower* than the level of protection that would otherwise be provided by the Uniform Code.

Staff's Findings and Recommendation

The Division's staff recommends that the Code Council find and determine that:

- the standards for construction imposed by Section 310-9.3G(1)(a) of the Town Code, as amended by the 2020 Local Law are less restrictive than the Uniform Code and, therefore, cannot be adopted or approved by the Code Council. The Code Council may also find that such standards for construction:
    - do not conform with accepted engineering and fire prevention practices, and
    - do not conform with the purposes of Article 18 of the Executive Law;
- the standards for construction imposed by Section 310-9.3F(1)(a) of the Town Code, as amended by the 2020 Local Law:
    - are ***more*** restrictive than the Uniform Code,
    - conform with accepted engineering and fire prevention practices,
    - conform with the purposes of Article 18 of the Executive Law, and
    - that there are no special conditions prevailing in the Town that make the standards imposed by Sections 310-9.3F(1)(a) reasonably necessary.

If the Code Council makes the aforementioned findings and determinations, then the Code Council should deny the Town's petition with respect to the standards for construction imposed by Section 310-9.3F(1)(a) and Section 310-9.3G(1)(a) of the Town Code, as amended by the 2020 Local Law.

Alternatively, should the Code Council determine that the more restrictive standards imposed by Sections 310-9.3F(1)(a) are reasonably necessary because of special conditions prevailing in the Town, conform with accepted engineering practices, and conform to the purposes of Article 18 of the Executive Law, then the Code Council could:

- approve (adopt) the standards imposed by Section 310.3F(1)(a).[4]

[4] However, the Code Council should still deny the ***less*** restrictive standards imposed by Section 310-9.3G(1)(a) for the reasons set forth above.

Part II: Detailed Analysis of the Petition for a MRLS

A. Submission Requirements

The Division's staff conducted a detailed analysis of the petition for a MRLS. For ease of use, the checklist designations in the following Administrative Completeness Checklist correspond to the remaining sections of this analysis, where applicable.

Administrative Completeness Checklist (S = Submitted, NS = Not Submitted)

S	NS	Analysis Section
☒	☐	A copy of the Local Law or Ordinance.
☒	☐	A detailed description of the standards for construction imposed by the Local Law or Ordinance, the corresponding standards imposed by the Uniform Code, and the reason the Municipality believes the standards for construction imposed by the Local Law or Ordinance are more restrictive than the standards imposed by the Uniform Code. **(Part II B)**
☒	☐	A detailed description of the special conditions prevailing within the Municipality, including documentation verifying its existence, and the reasons why the Petitioner and the Municipality believe that the special conditions make the more restrictive standards imposed by the Local Law or Ordinance reasonably necessary. **(Part II C)**
☒	☐	A detailed description of the reasons why the Petitioner and the Municipality believe that the standards for construction imposed by the Local Law or Ordinance conform with accepted engineering and fire prevention practices. **(Part II D)**
☒	☐	A detailed description of the reasons why the Petitioner and the Municipality believe that such standards for construction conform with the purposes of Article 18. **(Part II E)**
☒	☐	Documentation regarding procedures for an aggrieved party to request a variance at the local level from the construction standards imposed by the Local Law or Ordinance. **(Part II F)**
☐	☒	Additional documentation. **(Part II G)**

Executive Law § 379(1) Submission Requirements

Petition submitted by the Chief Executive Officer (CEO), or if there be none, the Chairman of the Legislative Body? ☒ Yes ☐ No Name: **Steve Vegliante, Supervisor** ☒ **CEO** ☐ **Chairman**

Date of adoption of the Local Law: **July 13, 2020**

Date the Petition was received by the Division of Buildings Standards and Codes: **August 10, 2020**

Petition submitted within 30 days of adoption of the local law? ☒ Yes ☐ No **(28 Days)**

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B. Analysis and Comparison to the Uniform Code (Executive Law §379(1) & §379(2))

As noted above, this analysis and comparison is performed on the combination of local laws (Local Law No. 8 of 2020, Local Law No. 2 of 2018, and Local Law No. 8 of 2014). When combined, Sections 310-9.3 F(1)(a) and 310-9.3 G(1)(a) of the local laws impose construction provisions that are reviewed below in comparison to the Uniform Code. Additionally, Local Law No. 8 of 2020 establishes the Town's approved method of calculating fire flow as ISO in Sections 310-4.3G, 310-5.14F(4), 310-5.30A 3(b) [3], and 310-9.3 G(1)(a), which is compared to the Uniform Code.

Section 310-9.3F(1)(a): Nonconforming bungalow colony

Existing bungalow units (see definition below from the Town Code) may be replaced in kind on the same building footprint, provided the separation distance is a minimum of 31' between bungalow units, unless fire flow calculations can be met per ISO, then the required separation distance can be reduced to a minimum of 25'. When minimum separation distances cannot be met, existing bungalow units that are replaced in-kind with a new unit on the same building footprint must have exterior walls that are two-hour fire assemblies.[5]

Bungalow Unit is defined in the Town Code as *"A one-story dwelling structure having a minimum floor area of 600 square feet intended for seasonal rental occupancy and intended for use on a single premises in groups of three or more*."

A bungalow unit, as defined in the Town Code, could be classified as either a building regulated under 19 NYCRR Part 1220 Residential Construction or a building regulated under 19 NYCRR Part 1221 Building Construction depending on the occupancy. The analysis in the next paragraph is based on the 2020 Residential Code of New York State (2020 RCNYS) for a building regulated under 19 NYCRR Part 1220. The analysis for a building regulated under 19 NYCRR Part 1221 and based on the 2020 Building Code of New York State (2020 BCNYS) is found in the following paragraph.

Below is Table R302.1(1) from the currently adopted 2020 RCNYS outlining fire resistance ratings of exterior wall elements based on fire separation distances. With respect to exterior walls, if the minimum fire separation distance is five feet or more, then there is no minimum requirement for fire-resistance rating; but if the minimum fire separation distance is less than five feet, then the minimum fire-resistance rating is 1 hour – tested in accordance with ASTM E119, or UL 263 with exposure from both sides. In comparing the Table to the Town's required fire resistance rating, a 2-hour rated fire assembly would exceed the Table requirements in all cases. Therefore, a 2-hour rated assembly is *more restrictive* than the Uniform Code for buildings regulated by 19 NYCRR Part 1220 Residential Construction. It should be noted that the Town does not indicate the testing method of the assembly or which side or sides to be tested from. While it is not a requirement to identify this for the MRLS, it should be noted that the Uniform Code provisions would remain in

[5] The combination of local laws does not mention the needed fire flow for those buildings permitted to be less than the minimum separation distance, nor does it mention the fire-resistance and minimum fire separation distance requirements of Section R302. It should be noted that the fire flow for those units and the fire-resistance and minimum fire separation distance requirements would still need to meet the Uniform Code requirements, otherwise, the combination of local laws would be considered less restrictive than the Uniform Code. Section 507 of the currently adopted 2020 Fire Code of New York State and Section R302 of the currently adopted 2020 Residential Code of New York State, contain requirements for fire protection water supplies and fire-resistance construction, respectively. The Town has indicated their public system is inadequate, and therefore, fire flows may not be available.

effect, therefore, for instances where the Uniform Code overlaps Section 310-9.3F(1)(a), the testing method and exposure of Table R302.1(1) would need to be adhered to.

2020 RCNYS Table R302.1(1) Exterior walls[6]

TABLE R302.1(1)
EXTERIOR WALLS

EXTERIOR WALL ELEMENT		MINIMUM FIRE-RESISTANCE RATING	MINIMUM FIRE SEPARATION DISTANCE
Walls	Fire-resistance rated	1 hour—tested in accordance with ASTM E119, UL 263 or Section 703.3 of the *Building Code of New York State* with exposure from both sides	< 5 feet
	Not fire-resistance rated	0 hours	≥ 5 feet
Projections	Not allowed	NA	< 2 feet
	Fire-resistance rated	1 hour on the underside, or heavy timber, or fire-retardant-treated wood [a, b]	≥ 2 feet to < 5 feet
	Not fire-resistance rated	0 hours	≥ 5 feet
Openings in walls	Not allowed	NA	< 3 feet
	25% maximum of wall area	0 hours	3 feet
	Unlimited	0 hours	5 feet
Penetrations	All	Comply with Section R302.4	< 3 feet
		None required	3 feet

For SI: 1 foot = 304.8 mm.
NA = Not Applicable.
a. The fire-resistance rating shall be permitted to be reduced to 0 hours on the underside of the eave overhang if fireblocking is provided from the wall top plate to the underside of the roof sheathing.
b. The fire-resistance rating shall be permitted to be reduced to 0 hours on the underside of the rake overhang where gable vent openings are not installed.

For buildings regulated under 19 NYCRR Part 1221, below is Table 602 from the currently adopted 2020 BCNYS outlining fire resistance ratings of exterior walls based on fire separation distances, construction type, and occupancy groups. Table 602 requires a maximum fire resistance rating of 1 hour for Group R occupancies. The fire-resistant assembly is tested in accordance with ASTM E119, or UL 263 with exposure from both sides. Under the Town Code, a 2-hour rated fire assembly would exceed the Table requirements if such bungalow unit were classified as a Group R occupancy under the 2020 BCNYS. It should be noted that the Town does not indicate the testing method of the assembly or which side or

[6] Throughout New York State communities have buildings with little to no separation from each other. Through Table R302.1(1) of the 2020 RCNYS, the Uniform Code provides fire-resistance ratings for various building separation distances in order to provide the necessary level of fire protection. This fire resistance rating is in addition to other life safety requirements, such as the necessary fire flows, and not a substitution for the other requirements.

sides to be tested from. While it is not a requirement to identify this for the MRLS, it should be noted that the Uniform Code provisions would remain in effect, therefore, for instances where the Uniform Code overlaps Section 310-9.3F(1)(a), the testing method and exposure of Section 602 would need to be adhered to.

2020 BCNYS Table 602 Fire-Resistance Rating Requirements for Exterior walls based on Fire Separation Distance

TABLE 602
FIRE-RESISTANCE RATING REQUIREMENTS FOR EXTERIOR WALLS BASED ON FIRE SEPARATION DISTANCE [a, d, g]

FIRE SEPARATION DISTANCE =X (feet)	TYPE OF CONSTRUCTION	OCCUPANCY GROUP H[e]	OCCUPANCY GROUP F-1, M, S-1[f]	OCCUPANCY GROUP A, B, E, F-2, I, R[i], S-2, U[h]
X < 5[b]	All	3	2	1
5 ≤ X < 10	IA	3	2	1
	Others	2	1	1
10 ≤ X < 30	IA, IB	2	1	1[c]
	IIB, VB	1	0	0
	Others	1	1	1[c]
X ≥ 30	All	0	0	0

For SI: 1 foot = 304.8 mm.
a. Load-bearing exterior walls shall also comply with the fire-resistance rating requirements of Table 601.
b. See Section 706.1.1 for party walls.
c. Open parking garages complying with Section 406 shall not be required to have a fire-resistance rating.
d. The fire-resistance rating of an exterior wall is determined based upon the fire separation distance of the exterior wall and the story in which the wall is located.
e. For special requirements for Group H occupancies, see Section 415.6.
f. For special requirements for Group S aircraft hangars, see Section 412.3.1.
g. Where Table 705.8 permits nonbearing exterior walls with unlimited area of unprotected openings, the required fire-resistance rating for the exterior walls is 0 hours.
h. [NY] Reserved.
i. For a Group R-3 building of Type II-B or Type V-B construction, the exterior wall shall not be required to have a fire-resistance rating where the fire separation distance is 5 feet (1523 mm) or greater.

Section 310-9.3G(1)(a) Nonconforming sleepaway or day camps:

Existing structures at legally nonconforming sleepaway or day camps may be replaced in kind with a new structure on the same building footprint, provided that all applicable building separation requirements contained in the bulk table of the Zoning Chapter[3] of the zoning district can be provided, or the requirements of § 310-4.3G, whichever is more strict. Should separation requirements not be met, per ISO standards, then the required fire separation of a two-hour fire wall shall be constructed for the exterior walls that do not meet this requirement.

Sleepaway camp is defined in the Town Code as *"A site with a group of buildings and structures that may include a cafeteria, and recreational facilities in order to provide for the supervision of children*

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along with overnight accommodations within bunk houses or cabins during the summer period or part of the period from June 1 to September 15 in any year."[7]

The maximum fire resistance rating required by Table 602 is 2-hours or less for most occupancies and construction types, regardless of the fire separation distance, with the exception of some high hazard occupancies. The definition of sleepaway camp does not appear to preclude any specific construction type, but suggests some types of building occupancies, which would typically be classified as a Group A or R; making the maximum fire resistance rating requirement of the Uniform Code for those occupancies to be 1-hour. The fire-resistant assembly is required by the Uniform Code to be tested in accordance with ASTM E119, or UL 263 with exposure from both sides. Therefore, the requirement of a 2-hour separation in the Town's Local Law is more restrictive than the Table requirements in all cases for Group A and R occupancies, and equally as strict for all other occupancies, with the exception of some high hazard occupancies which require 3-hr. It should be noted that the Town does not indicate the testing method of the assembly or which side or sides to be tested from. While it is not a requirement to identify this for the MRLS, it should be noted that the Uniform Code provisions would remain in effect, therefore, for instances where the Uniform Code overlaps Section 310-9.3G(1)(a), the testing method and exposure of Section 602 would need to be adhered to.

The portion of the Local Law adding "*Should separation requirements not be met, per ISO standards*" to Section 310-9.3 G(1)(a) is unclear as written which could result in interpretation and enforcement concerns for the Town. The term "ISO Standard" typically refers to the "Guide for Determination of Needed Fire Flow" as prepared by the Insurance Services Office. It is not a guide on establishing separation requirements, rather a guide for determining needed fire flow. One parameter in this calculation is the separation distances between buildings. By adding "per ISO standards" where the Local Law did, it could be interpreted that if the Town has an established fire flow available to a building, and ISO would recommend a minimum separation based on that available fire flow, a building could be built closer than the recommended separation, provided a 2-hour wall is constructed. If this is the case, the 2-hour wall would appear to be a substitute for adequate fire flow, making this part of the Local Law *less restrictive* than the Uniform Code.

The Exhibits, and the figures included in those exhibits, submitted as part of the Petition for Local Law No. 8 of 2020 and as part of the previous Petition for Local Law No. 8 of 2014, suggests that the Town may not have ISO fire flow in all areas of the Town as supplied by the Town's public water system. The only calculation provided indicated that part of the system had an available fire flow of 885 gallons per minute.[8] Proposed replacement buildings on the provided plans had a separation distance of less than 11 feet in multiple instances. For one- and two-family dwellings not exceeding 2 stories in height, the ISO guideline provides the following table of pre-calculated fire flows:

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[7] An exception to the scope of the 2020 BCNYS, as noted in Section 101.2, provides as follows:

> *Standards for construction of sleeping quarters in a children's overnight camp as defined in Public Health Law Section 1392(1) shall be governed by Public Health Law Section 1394(1) and the regulations promulgated by the Public Health Council. See Executive Law Section 378(1). As of the date of this publication, the Public Health Council's regulations for children's overnight camps are found in 10 NYCRR Subpart 7-2 ("Children's Camps").*

Therefore, it is possible that some buildings and structures contained within the defined "sleepaway camp" may be governed by the Public Health Law, and not the Executive Law. The Town should consult their municipal attorney on the impacts of Public Health Law on these buildings and their Town Code.

[8] Provided in Exhibit C of Local Law No. 8 of 2014

DISTANCE BETWEEN BUILDINGS	NEEDED FIRE FLOW
More than 100’	500 gpm
31-100’	750 gpm
11-30’	1,000 gpm
10’ or less	1,500 gpm

The Town has not indicated how the remaining fire flow is provided for in instances where the available flow is less than that prescribed by ISO, or if another approved supply or calculation method, such as the use of NFPA 1142, as permitted in Section 507 of the 2020 Fire Code of New York State (2020 FCNYS), allows the Town to meet the necessary fire flows required by the Uniform Code. Without further justification, it may appear the Town is using the construction of a 2-hour wall/assembly to mitigate the lack of available and reliable fire flow in the Town. If this is the case, it would be considered a *less restrictive* provision and could appear as though the Town is attempting to provide an exemption or grant a variance to Section 507 of the 2020 Fire Code of New York State.

Sections 310-4.3G, 310-5.14F(4), 310-5.30A 3(b) [3], and 310-9.3 G(1)(a): Established ISO as Approved Fire Flow Calculation

The Town has established in Sections 310-4.3G, 310-5.14F(4), 310-5.30A 3(b) [3], and 310-9.3 G(1)(a) that the Town’s approved method of calculating fire flow in order to allow a reduced zoning separation or to trigger additional fire resistant rated construction is ISO. Section 507 of the 2020 FCNYS addresses Fire Protection Water Supplies. Section 507.3 identifies that *“Fire-flow requirements for buildings or portions of buildings and facilities shall be determined by an approved method.”* This allows the Town to approve the method of calculating the fire flow. By establishing ISO, the Town is essentially pre-approving the ISO method, which is in line with what the Uniform Code requires.

Summary:

- **The standards imposed by Town Code Section 310-9.3F(1)(a), as amended by the 2020 Local Law, pertaining to the requirement of a two-hour fire assembly appear to be *more restrictive* than the Uniform Code.**
- **The standards imposed by Town Code Section 310-9.3G(1)(a), as amended by the 2020 Local Law, pertaining to the requirement of a two-hour fire wall (assembly) appear to be *less restrictive* than the Uniform Code.**
- **The Town Code Section 310-9.3G(1)(a) does not appear to take into account the exemption from the Uniform Code for sleeping quarters in children’s overnight camps and instead specifically identifies and defines “Sleepaway Camps.”**

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C. Prevailing Special Conditions (Executive Law §379(1))

Exhibit B of the Petition to the Code Council identified the following as the special conditions prevailing within the Municipality that make the standards for construction reasonably necessary[9]:

> *"The Town of Fallsburg has an increase in population to such an extent that the demand on the utilities and infrastructure far exceeds the intended design. The Town has done extensive studies and changed the zoning in an effort to slow growth in this area in order to catch up with the failing infrastructure. The Town has added a well and a water storage tank this year, we have added generators and VFD's to two wells. All of these upgrades have come directly from Town funds, as we have applied several times for grant funding and not been successful.*
>
> *The correlation between this code change and our infrastructure is that if we have a water main break or a problem with a storage tank then there is a possibility that there will not be water to fight a fire. Fire spread in these tight communities is a major concern. Several communities are rebuilding on the same foundations in close proximity to each other, by maintaining a 25' separation and or a 2-hour fire wall we are preventing the fire spread; preventing loss of the structure and loss of life.*
>
> *The Town continues to be in a booming construction age, families are coming up from New York City in record numbers, to build new homes. The responsible action is to put in preventative measures as done so by Local Law #8."*

Exhibit C of the Petition to the Code Council identified the following as the special conditions prevailing within the Town as well as examples in support of special conditions that make the standards for construction reasonably necessary:

> *"Attached as Exhibit B*[C] *(1) the homes in this community are spaced at least 25' apart as required by Town code. The home circled in the photo burnt down in the middle of the night and the adjacent homes, that were occupied, never knew the home was on fire. The picture of the fire department at the scene is what was left when they showed up. The homes on either side of the burnt unit showed a very small amount of melting on the siding from the heat.*
>
> *Exhibit B*[C] *(2) is a fire in 2 multi-family communities, where the homes are spaced less than 25' apart and they do not have a 2-hour fire rated wall structure. The fire spread from one community to the other with several buildings lost.*
>
> *These are two examples of showing the importance of spacing and construction to prevent fire spread. Not only will the probably of the fire spread decrease the fire department will also be given more time to access the development to put out the fire.*
>
> *Exhibit B*[C] *(3, 4, and 5) are lists of Multi Family homes and camp properties and new Construction that continues to increase as the construction industry and second home market flourish. This law is put into place to allow for the fire department to have more time in an emergency and also to provide the property owners with added security. There are very few Towns in our area much less the state that see this influx in seasonal communities and this*

[9] The petition for Local Law No. 8 of 2014 was denied by the Code Council on December 6, 2019 on the basis of a lack of special conditions. The special conditions noted in this section pertain only to the newly provided special conditions provided with the new petition for Local Law No 8 of 2020.

tremendous amount of construction. The Town of Fallsburg needs these laws in place for these special conditions that are present in the Town."

Additionally, the Town provided a table showing that the Town of Fallsburg accounted for 17% of the structure fires in Sullivan county for 2019. The 2010 census indicated the Town of Fallsburg had a population of 12,870 and Sullivan County had a population of 77,547. The population of the Town is 16.6% of the Sullivan County population, therefore, the percentage of structure fires does not appear to be disproportionally high.

In the opinion of Division staff, the increase in construction, the popularity of the "second-home market," and the migration of families out of New York City do not appear to be "special conditions" making increased fire resistance ratings "reasonably necessary" in the Town of Fallsburg. Similar factors are experienced by other communities in the vicinity of New York City such as other municipalities in Sullivan County, as well as Rockland and Orange Counties. The Uniform Code already considers how a building's proximity to other structures in these instances impacts fire spread, and mitigates that concern by already requiring fire resistance ratings and fire flow, among other provisions, to protect against it.

Refer to Exhibits B and C of the Petition for a more detailed description and the reasons why the Town believes that there are special conditions prevailing in the Town that make the higher or more restrictive construction standards reasonably necessary.

- **The Code Council must determine if the information provided substantiates the claim that there are special conditions prevailing in the Town that make the higher or more restrictive construction standards imposed by Town Code Section 310-9.3F(1)(a), as amended by the 2020 Local Law, reasonably necessary.**

D. <u>Conformance to Accepted Engineering and Fire Prevention Practices (Executive Law § 379(2))</u>

The standards imposed by the combination of the local laws contain provisions to resist the spread of fire from one structure to another through the use of a two-hour fire rated exterior wall or assembly. The use of fire-rated construction to resist the spread of fire from one structure to another is a method of fire protection commonly used in the design and construction industry and throughout the Uniform Code. However, the petition did not provide the basis or justification for selecting a two-hour fire assembly as opposed to other rated fire assemblies (i.e. 1-hr or 3-hr).

The standard imposed by Town Code Section 310-9.3G(1)(a), as added by the combination of local laws, allowing a two-hour fire separation wall to be a substitute for fire flow, does not appear to conform with accepted engineering and fire prevention practices. Accepted engineering and fire prevention practice, as evidenced by the requirements of the Uniform Code, requires both adequate fire flow and fire resistance rated construction, not allowing one to mitigate the absence of the other.

- **The standards imposed by Town Code Section 310-9.3F(1)(a), as amended by the 2020 Local Law, requiring a 2-hour fire separation assembly where Town zoning separation requirements cannot be met, appear to generally conform with accepted engineering and fire prevention practices. However, the Code Council may wish to request the Town justify the need for a 2-hour wall/assembly versus any other rated assembly.**

- **The standard imposed by Town Code Section 310-9.3G(1)(a), as amended by the 2020 Local Law, allowing a two-hour fire separation assembly to be a substitute for fire flow, does not appear to conform with accepted engineering and fire prevention practice.**

E. Conformance with the Purposes of Article 18 (Executive Law § 379(2))

When it enacted Article 18, the New York State Legislature declared that it shall be the public policy of the State of New York to provide for a minimum level of protection from the hazards of fire in every part of the state; and to provide for the promulgation of a uniform code addressing building construction and fire prevention in order to provide a basic minimum level of protection to all people of the state from hazards of fire and inadequate building construction (see Executive Law § 371(2)). By including provisions allowing a local government to enact or adopt more restrictive local standards, it appears that the Legislature recognized that the statewide Uniform Code needed to be adjusted, and made more restrictive, in a local government where, because of special conditions prevailing within the local government, the minimum standards imposed by the Uniform Code may not be sufficient to provide a sufficient level of protection to people in that local government.

The standards imposed by Town Code Section 310-9.3F(1)(a), as added by the combination of the local laws, are clearly intended to provide the people in the Town with a level of protection from the hazards of fire that is higher than the level of protection that would otherwise be provided by the Uniform Code.

The standards imposed by Town Code Section 310-9.3G(1)(a), as amended by the 2020 Local Law, and described by the Town's additional Exhibits, were intended to provide the Town residents with a level of protection from hazards of fire higher than the level of protection that would otherwise be provided by the Uniform Code. However, the addition of "per ISO standards" in this code section may inadvertently be creating a condition where the Town is actually creating a *less restrictive* provision or attempting to grant a variance to the Uniform Code, therefore, providing the residents with a level of protection from the hazards of fire that is *lower* than the level of protection that would otherwise be provided by the Uniform Code.

Provided by the Town in Exhibit E of the Petition, as evidence of conformance with the Purposes of Article 18, were: an excerpt from an NFPA document, correlating the increase in fire preventive measures with the reduction of the number of structure fires; graphs indicating a correlation between structure fires and increase usage of seasonal housing; and graphs of fire incidents indicating a high percentage of structure fires in the Town.

Refer to Exhibit E of the Petition for a more detailed description and the reasons the Town believes make such standards for construction conform with the purposes of Article 18.

- **The standards imposed by Town Code Section 310-9.3F(1)(a), as amended by the 2020 Local Law, requiring a 2-hour fire separation assembly where Town zoning separation requirements cannot be met appear to conform to the purpose of Article 18.**
- **The standards imposed by Town Code Section 310-9.3G(1)(a), as amended by the 2020 Local Law, allowing a two-hour fire separation assembly to be a substitute for fire flow do not appear to conform to the purpose of Article 18 as they are less restrictive so they provide the residents with a level of protection from the hazards of fire that is lower than the level of protection that would otherwise be provided by the Uniform Code.**

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F. Variance Process

The Town attached a copy of an excerpt of the Town Code as Exhibit F to the Petition. Specifically, the Town provided §310-10.2 (Powers and Duties) from Article X, Zoning Board of Appeals, of Chapter 310, Zoning. It does appear that the Town has established a process whereby an aggrieved party may request a variance from some of the requirements imposed by Local Law No. 8 of 2020. The Division would like to note that those variance provisions are understood to be applicable only to zoning provisions, not to construction provisions and that a local government cannot waive or vary any provision of the Uniform Code, nor shall it in any manner substitute for the Regional Boards of Review with respect to Uniform Code provisions. *See* Executive Law §381(1)(f) and 19 NYCRR Part 1205.

- **The petition appears to include a process whereby an aggrieved party may request a variance from the standards imposed by Town Code Section 310-9.3F(1)(a) and Section310-9.3G(1)(a), as amended by the 2020 Local Law.**

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APPENDIX A
SUBMITTED DOCUMENTS

The following documents were received by the Division of Building Standards and Codes:

1. Completed "Notice and Petition Relating to More Restrictive Construction Standards" Received August 10, 2020.
2. Exhibit A – "Notice of Filing: Local Law #8 -2020", "Local Law Filing",
3. Exhibit B – Narrative of law and description of special conditions, Diagram of Town's water supply system, Section 302 of 2020 RCNYS, Examples of Fire Assembly Diagrams,
4. Sullivan County, Fire Dispatch Report for 2019
5. Exhibit C – Narrative of recent Fires in Sullivan County with associated maps and pictures, list of recent and pending construction projects in the Town of Fallsburg.
6. Exhibit D –Affirmation that the enhanced standards comply with accepted engineering practices
7. Exhibit E – Justification for the conformance of the purpose of Article 18, Selected research from NFPA, Associated graphs of fire incidents
8. Exhibit F – § 310-10.2. of Article X of the Town of Fallsburg
9. Exhibit G – Town of Fallsburg June 22, 2020 Town Board Meeting minutes
10. Exhibit H – Town of Fallsburg July 13, 2020 Town Board Meeting minutes
11. Exhibit I – Legal notice of the Town of Fallsburg Town Board
12. Exhibit J– Sullivan County legal review letter: February 24, 2020

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APPENDIX B
EXECUTIVE LAW ARTICLE 18 §379

§-379. Incorporation of higher standards by council upon recommendation of local government; local building regulations.

1. Except in the case of factory manufactured homes, intended for use as one or two family dwelling units or multiple dwellings of not more than two stories in height, the legislative body of any local government may duly enact or adopt local laws or ordinances imposing higher or more restrictive standards for construction within the jurisdiction of such local government than are applicable generally to such local government in the uniform code. Within thirty days of such enactment or adoption, the chief executive officer, or if there be none, the chairman of the legislative body of such local government, shall so notify the council, and shall petition the council for a determination of whether such local laws or ordinances are more stringent than the standards for construction applicable generally to such local government in the uniform code. Such local laws or ordinances shall take full force and effect upon an affirmative determination by the council as provided herein.

2. If the council finds that such higher or more restrictive standards are reasonably necessary because of special conditions prevailing within the local government and that such standards conform with accepted engineering and fire prevention practices and the purposes of this article, the council shall adopt such standards, in whole or part. The council shall have the power to limit the term or duration of such standards, impose conditions in connection with the adoption thereof, and to terminate such standards at such times, and in such manner as the council may deem necessary, desirable or proper.

3. Nothing in this article shall be construed to prohibit any municipality from adopting or enacting any building regulations relating to any matter as to which the uniform fire prevention and building code does not provide, but no municipality shall have the power to supersede, void, repeal or make more or less restrictive any provisions of this article or of rules or regulations made pursuant hereto.

4. Within one hundred twenty days after the effective date of the uniform code, a local government may by resolution duly enacted petition the council for a determination as to whether an existing building and/or fire code in force in said local government is more stringent than the uniform code. During the period in which the council is considering such petition such local code shall remain in full force and effect. If, after review, the council determines that such local code is less stringent than the uniform code the council shall notify the chief executive officer or, if there be none, the chairman of the legislative body of such local government and the uniform code shall, thirty days after the date of notification, apply in such local government. If the council finds that such local code is not less stringent than the uniform code such local code shall continue in full force and effect until the council, upon its own initiative, reviews such local code and determines that it is no longer more stringent, whereupon the council shall notify the chief executive officer or chairman of the legislative body of such local government and thirty days after the date of notification the uniform code shall apply in such local government.

5. Notwithstanding the provisions of subdivision one of this section, the legislative body of Nassau county may have duly enacted or adopted or may duly enact or adopt local laws or ordinances imposing higher or more restrictive standards for construction within the jurisdiction of the county than are applicable generally to the county in the uniform code. The chief executive officer, or if there be none, the chairman of the legislative body of the county, shall notify the council, and shall petition the council for a determination of whether such preexisting local laws or ordinances, or within thirty days of such enactment or adoption of such local laws or ordinances, are more stringent than the standards for construction applicable generally to such county in the uniform code. During the period in which the council is considering such petition, such local laws or ordinances shall remain in full force and effect.

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