



ASSOCIATION
FOR A BETTER
LONG ISLAND, INC.

LEGISLATION TO AMEND TITLE 19, CHAPTER XXXII, SEC. 1203 TO PERMIT MUNICIPALITIES TO RELY ON “PROFESSIONAL CERTIFICATION” OF APPLICATIONS AND PLANS FOR THE PURPOSE OF ISSUING BUILDING PERMITS IN CERTAIN SITUATIONS

Overview

Several municipalities in Nassau & Suffolk Counties have expressed an interest in allowing, under certain circumstances, a Professional Engineer (PE) or Registered Architect (RA) to certify compliance with applicable building and zoning laws and codes on applications filed by him/her with the municipality for the purpose of the municipality issuing a building permit with regard to the application. (“Professional Certification”) However, state law needs to be amended in order for municipalities to adopt such a time and labor-saving program.

Background

Professional Certification programs are currently in existence in New York City (since 1995) as well as other jurisdictions across the United States. Such programs are typically used to make the permitting process more efficient for projects that involve alterations to existing structures where such alterations do not alter load bearing walls, do not alter existing ADA-compliant accessibility, do not change fire egress, and maintain at least the same fire rating. Such programs save municipal resources and applicant time because municipalities no longer need to review project plans to determine whether an application meets code. As a result, building permits can be issued on the same day as a complete application is submitted.

In 2012, the Suffolk County Planning Commission (SCPC) in conjunction with the Association for a Better Long Island (ABLI) explored with several large Suffolk County municipalities the possibility of adopting a Professional Certification system similar to that in effect in New York City. The Towns of Brookhaven and Huntington, in particular, were eager to adopt such a program.

As part of this effort, the SCPC created a draft municipal procedure for implementing a Professional Certification program substantially based on the New York City program. The draft procedure would require that 20% of certified projects be audited and includes a process for correcting errors and gives the municipality the authority to exclude from participation PEs or RAs who violate professional standards.

During the course of this effort, the ABLI, SCPC and the Town of Brookhaven consulted with the New York Department of State for advice in establishing a Professional Certification program. The General Counsel's Office of the Department of State opined that because of the differences between the uniform building codes in New York City and New York State, such a program would not be allowed in places where the State building code applied. The General Counsel's office specifically noted that Section 1203 of the NYS Uniform Code (Minimum Standards for Administration and Enforcement) seems to require that the municipality itself make a determination as to whether an application meets the requirements of the Uniform Code. [Secs. 1203.3(a)(2) and (a)(4); also Executive Law Sec. 381(2)].

While this interpretation can be debated, the surest way to allow municipalities that wish to allow Professional Certification for permit applications is to adopt legislation clarifying Sec. 1203.

Proposal

The Legislature should adopt legislation that would amend Sec. 1203 to add Sec. 1203.3(a)(8) which would allow municipalities in the State to establish policies and procedures whereby they would be allowed to issue a building permit in certain circumstances by relying on the certification of a PE or RA that the application and plans meet all applicable laws and codes.

Draft Language – New Sec. 1203.3(a)(8)

“A municipality may meet the requirements of Sec. 1203.3(a) by establishing a procedure whereby a licensed professional engineer or a registered architect certifies to the municipality that the proposed construction is in conformance with the requirements of the Uniform Building Code. A municipality may only accept such a certification relating to permit applications for alterations to existing commercial buildings where such alterations do not alter load bearing walls, do not alter existing ADA-compliant accessibility, do not change fire egress, and maintain at least the same fire rating as before the proposed construction.”