

MINUTES OF HOUSING BOARD OF APPEALS

DATE: July 21, 2020
TIME: 4:30 p.m.
PLACE: Via Virtual Meeting

Chairperson Gil Spence called the meeting to order at 4:30 p.m.

Board Members Present:	Gil Spence	Mary Gotz	Ron White
	Christoffer Lammer-Heindel		David Young
Housing Staff Present:	Alexis Steger	Ben Pothoff	Tami Ernster
	Alex Rogan	Shane Hoepfer	Christina Schneider
	Tim Griebel	Ted Krapfl	Randy Rosa
Public Present:	Rob Smith	Mike Green	Jeremy Noel

Certification of Minutes of April 21, 2020

Christoffer Lammer-Heindel motioned to accept the minutes. Mary Gotz seconded. Motion passed 5-0.

Action Items

Chairperson Spence asked anyone who may speak to the following cases identify themselves and be placed under oath. Rob Smith, Ben Pothoff and Ted Krapfl were subsequently placed under oath.

CASE #1 APPEAL OF INTERPRETATION OF CODE

Applicant: Robert Smith

Location: 1844 Carter Rd

Appeal: Appellant requests review of code interpretation and reported inconsistency with Building Code

Rental Licensing & Inspections Supervisor, Ben Pothoff provided information to the Board regarding the codes and city ordinances that were used to determine the violation that the property owner, Rob Smith had requested a review of. Ben then reviewed the International Property Maintenance Code (IPMC) section 702.4 Emergency Escape Openings which requires emergency escape openings be maintained in accordance with the code in effect at the time of construction. He also presented an approved interpretation and explained that the interpretation was reviewed and approved as a supplement to the code at the time of the adoption in 2016. He explained that the approved interpretation is referenced when inspectors are unable to determine the code in effect at the time of construction.

Ben explained that the property at 1844 Carter Rd. was built in 1966 and the windows replaced in 1999. He said that the code in effect at the time the windows were replaced would have been the 1988 Uniform Building Code (UBC). Ben pointed out the emergency escape opening requirements in the 1988 UBC which included requirements for a net clear opening of 5.7 square feet with a net clear height of not less than 24" and net clear width of not less than 20" and a sill height of not more than 44". He noted that there are no exceptions related to emergency escape opening sizing in this code.

Ben showed photos of the windows in question that were provided by Mr. Smith and explained that the clear openable area and sill height were both in violation.

Rob Smith stated that the house was built in 1966 with awning style windows that would not have met the egress standards and that the windows installed in 1999 were an improvement on what was previously there because the awning style windows had operating hardware that would have obstructed the opening. Mr. Smith explained that the home had two paths of egress out of the unit where the travel distance would not exceed 35 feet. He said because of that, he felt it would have complied with the past Chapter 26 Housing Code which he said was in effect in 1999 according to his research.

Mr. Smith stated that he had spoken with the Building Department and that they explained that new windows would be approved if they were the largest window that would fit the existing opening. He also mentioned that the Housing Inspector stated that the windows would be acceptable if he could confirm that the window installation was permitted at the time of replacement but went on to say that the inspector could not locate a permit. He explained that he contacted the contractor that installed the windows and they had documentation that the window replacement did not require a building permit in 1999 according to their notes.

Mr. Smith explained how he felt that the Housing Inspectors interpretation of the code was inconsistent with the Building Departments and that he had a petition signed by a number of property owners that were concerned with the inconsistency and furthermore sought action to change the code section in question.

Mike Green, property owner and landlord in Dubuque, spoke to Rob's concern and agreed that the interpretation conflict with the Building Code. He explained that since Dubuque has the oldest housing stock in the state of Iowa, he thought the interpretation was unreasonable.

Board members discussed whether the property had been previously inspected and whether it would matter if it were owner occupied or rental. They inquired if the code in effect at the time of construction was referencing, when the home was built in 1966 or when the windows were replaced in 1999. Ben Pothoff responded that the code in effect at the time of construction would reference when the windows were replaced in 1999. Board member, Ron White asked if the windows had not been replaced in 1999, but instead had the original windows intact, would it have been in violation and Ben explained that had the windows not been replaced, they would have been subject to the approved interpretation language.

Several Board members expressed concern with the ordinance and code as adopted but they were reminded by Board Chair, Gil Spence that the prevue of the board was to determine if the adopted code was interpreted correctly, not to agree or disagree with the codes or ordinances since the board did not have the authority to change or override the codes or ordinances.

Further discussion occurred regarding the language of the approved interpretation and whether the two paths of egress from the dwelling met the intent of the emergency escape opening requirement. Code Official, Alexis Steger pointed out that the approved interpretation was only to be used if the code at the time of construction could not be determined and in this case staff was able to determine that code was the 1988 UBC so the approved interpretation was not relevant.

Christopher Lammer-Heindel motioned to reject the appeal, noting that he felt staff had correctly interpreted the code. Gil Spence seconded. The motion failed, 3-2 with board members Gotz, White, & Young voting against the motion and Spence & Lammer-Heindel voting in favor.

Board member White then made a motion to approve the appeal because staff had incorrectly interpreted the code. Alexis requested clarification regarding the motion and asked Mr. White to identify the code section that was interpreted incorrectly. Board members discussed the Boards authority and what options they had if they could not identify what specifically was incorrectly interpreted. Board member, Gotz requested clarification that a vote to deny this appeal would not result in the immediate issuance of a municipal infraction and asked if Mr. Smith could seek a resolution by requesting a modification through the Code Official and that code could be changed to correct the perceived issue. She stated that she would change her vote to reject the appeal.

Chris Lammer-Heindel restated his previous motion to reject the appeal on the grounds that the inspector correctly interpreted the code. The motion passed 3-2 with Board members Spence, Gotz, and Lammer-Heindel voting in for and Board members White and Young voting against the motion.

CASE #2 APPEAL OF INTERPRETATION OF CODE

Applicant: Robert Smith

Location: 1925 Pierce St

Appeal: Appellant requests review of code interpretation and reported inconsistency with Building Code

Rental Licensing & Inspections Supervisor, Ben Pothoff stated the building was built in 1962. The windows were replaced at some time, but there is no indication as to when they were replaced and there is no permit on file. Ben stated that because the date of the window installation was not able to be determined the approved interpretation was used in the determination of this violation. He said that because of the similarity of the two cases, many of the facts relevant to this case were discussed in the prior case.

Property owner, Rob Smith stated he purchased the property in 2000. He indicated that the property had passed inspection many times for Assisted Housing inspections that occurred annually. Rob reasserted his points regarding the language included in the City's Housing Code in a handout that was given to landlords in 1996. He stated that he feels the existing exits meet the codes requirements because there is less than 35' of travel to the main door from any point in the unit.

Ron White asked if the sill height was acceptable in this unit and Ben confirmed that it was. Ron asked if the window sashes were removed, would the clear area of the window opening meet the code and it was agreed that it would. Then it was discussed whether the removal of the window sashes was an appropriate way to achieve the net clear opening. Ron White suggested that since it could be done without tools it should be considered as meeting the code.

Board member, David Young indicated that he agreed and made a motion to grant the appeal base on the interpretation of IPMC 702.4 which states emergency escape and rescue opening shall be operated from inside without use of keys or tools, Ron White seconded. Discussion continued and it was pointed out that the opening must be achieved without force greater than that which is required for normal operation of the the code section also requires that there was more to that code section and that the whole statement should be included. Gil Spence called for a vote. Motion passed 3-2 with Board members White, Gotz, and Young voting in favor and Board members Spence and Lammer-Heindel voting against.

Public Input

There was no public input.

Items from the Board

There were no items from the Board.

Items from Staff

Ben updated the Board that inspections are being performed again. Staff are wearing masks and gloves and owners and residents are also being asked to wear masks in the presence of the inspector.

Ben did not have an update on past appeals and priority category inspections.

Gil asked what will be done now regarding the decisions from the Board. Ben responded that Code will be reviewed, and an update will need to be developed. Alexis added that there will be a comprehensive review and update to the code language to make all related building and property maintenance codes adopted more explicit in their intent to ensure that building safety is not compromised.

Adjournment

David Young moved to adjourn the meeting. Mary Gotz seconded. Motion passed 5-0. The meeting was adjourned at 6:13 p.m.

Minutes prepared by:

Tami Ernster
Permit Clerk

Respectfully submitted:

Alexis Steger

Housing and Community Development Department Director