



CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

MIKE KENNEALY
SECRETARY OF HOUSING AND
ECONOMIC DEVELOPMENT

Commonwealth of Massachusetts
Division of Professional Licensure
Office of Public Safety and Inspections
1000 Washington Street • Boston • Massachusetts • 02118

EDWARD A. PALLESCHI
UNDERSECRETARY OF CONSUMER
AFFAIRS AND BUSINESS
REGULATION

LAYLA D'EMILIA
COMMISSIONER, DIVISION OF
PROFESSIONAL LICENSURE

July 14, 2020 Meeting
Via Teleconference

Board of Building Regulations and Standards (BBRS)

Chairman Crowley took roll call as follows:

John Couture, Second V. Chair	✓ present <input type="checkbox"/> absent	Peter Ostroskey**	✓ present <input type="checkbox"/> absent
Kerry Dietz	✓ present <input type="checkbox"/> absent	Michael McDowell	✓ present <input type="checkbox"/> absent
Richard Crowley, Chair	✓ present <input type="checkbox"/> absent	Susan Gleason	✓ present <input type="checkbox"/> absent
Kevin Gallagher	✓ present <input type="checkbox"/> absent	Lisa Davey, Vice Chair	✓ present <input type="checkbox"/> absent
Cheryl Lavalley	✓ present <input type="checkbox"/> absent	Steve Frederickson	✓ present <input type="checkbox"/> absent
Layla D'Emilia *	✓ present <input type="checkbox"/> absent		

* David Sullivan participated as the designee for DPL Commissioner, Layla D'Emilia.

** Jen Hoyt participated as the designee for State Fire Marshal, Peter Ostroskey.

General notes on format of these minutes

- These minutes represent general points of discussion by members and audience participants during the regular meeting session. The minutes are not intended to be a verbatim account of discussions.
- Votes are noted as **MOTION** by, seconded by, and whether it was a unanimous or split vote.
- Agenda topics as numbered may be in the same order as they appear on the meeting agenda.
- The meeting agenda is listed as **EXHIBIT A**; others are listed sequentially as addresses during the meeting.

Regular Meeting Portion

1. **Roll Call.** Chairman Crowley opened the meeting about 10:09 AM, by taking roll call. Each board member noted as present above, responded as to his or her in attendance.
2. **BBRS Minutes.** On a **MOTION** by John Couture seconded by Kerry Dietz it was a unanimous vote to approve, the draft meeting minutes for the June 9, 2020 Board of Building Regulations and Standards (BBRS) meeting (**EXHIBIT B**). Roll call: Lisa Davey, John Couture, Cheryl Lavalley, David Sullivan, Jen Hoyt, Kevin Gallagher, Susan Gleason, Steve Frederickson, Michael McDowell, Kerry Dietz, and Chairman Crowley all responded in the affirmative.

3. **BCAB Minutes Review\Vote.** The draft meeting minutes from May 26, 2020 and June 4, 2020 were introduced and voted together. Kerry Dietz asked Chairman Crowley about whether the board has jurisdiction over the matter decided in Case Number 20-0053. Chairman Crowley recognized Counsel Charles Kilb who explained the Board does have the authority to grant a variance involving flood elevation situations. However, when granting, the board must consider whether the relief will affect the community's participation in the Flood Insurance Program. On a MOTION by Kerry Dietz and seconded by Jen Hoyt, it was a unanimous vote to approve the May 26, 2020, and the June 4, 2020, BCAB draft meeting minutes (**EXHIBIT C**). Roll call: Lisa Davey, John Couture, Cheryl Lavalley, David Sullivan, Jen Hoyt, Kevin Gallagher, Susan Gleason, Steve Frederickson, Michael McDowell, Kerry Dietz, and Chairman Crowley all responded in the affirmative.
4. **Review\Vote** swimming pool license, staff report. Dan Walsh explained that state-building inspectors Gordon Bailey and Bill Horrocks reviewed the Pool and Hot Tub Alliance certification program, and considered it for the Construction Supervisor Licensing (CSL) program requirements in 780 CMR. This done to identify an approach for the BBRS to consider as it has decided to adopt a pool installer's license. Some history was given and this included the board was presented a code change proposal to create a swimming pool installers license during its May 2018 public hearing. The Board voted to pursue having the building code licensing provisions include swimming pools. The history provided also included the Pool and Hot Tub Association presenting their certification program before the board. This certification program, among other things, intends to help pool installers promote business integrity, professionalism, and sustainable business operations and promote positive engagement that excites customers about pools.

Chairman Crowley recognized State Building Inspector Bill Horrocks to talk about the process that he and inspector Bailey went through. Inspector Horrocks talked about the certification program used by the Pool and Hot Tub Association and pointed out that it has more requirements than the unrestricted CSL requirements. The recommendation today is to strike "construction of swimming pools" in the license exemptions portion of section 110.R5.1.3.2. This would allow unrestricted and 1&2 family dwelling licensees to construct swimming pools. He explained that pool projects in today's times include work, which the base code and the residential code regulate. This is important because, in many instances, swimming pool contractors leave property owners with incomplete projects (with respect to the code) and these situations have strained the property owner's finances in order to resolve the incomplete work. These situations also strain local and state resources. Many projects today include pool houses, retaining walls, decks, and barricades utilizing a principal structure on the property. The work associated with constructing a swimming pool must capture the code requirements for the ancillary work for a swimming pool project to conform to the minimum code requirements.

Chairman Crowley recognized Grason Wiggins, from the Pool & Hot Tub Alliance, Government Relations department who spoke about their interest to have the board adopt a specialty license. He expressed concern that the general license testing requirements are more than what pool installers need in his opinion.

Chairman Crowley recognized Ted Rosbeck, Owner of Island Pools and Spas in Edgartown Massachusetts who spoke about supporting the board licensing pool installers and that the CSL not being a common credential for those working in the pool building industry. He thinks a specialty license would be a better approach. He also spoke about not being in favor of grandfathering existing pool installers should the board adopt a pool installer-licensing requirement. In reply to Chairman Crowley, asking him about the ancillary work associated with pool construction he said that that work would usually be subcontracted to professionals with a CSL.

Inspector Horrocks spoke about the building code licensing provisions and the code offering a specialty license, which encompasses more chapters, has the effects of segmenting the work than the oversight that licensing intends to provide. The working together on construction projects that get code compliant projects, which licensing requirements intend to achieve, is getting lost and the results leaving property owners with incomplete projects.

Jen Hoyt asked if the recommendation to the board is to create a specialty license. She voiced concern that creating a specialty license is a whole lot of work for staff. She expressed interest in creating a subcommittee to explore the issues and provide a report to the board, which could include other changes that might need to happen.

Kevin Gallagher spoke in favor of needing a swimming pool license to construct pools and about the board supporting creating a specialty license and the need for input from the Pool & Hot Tub Alliance.

Charles Stefanini, representing the Pool & Hot Tub Alliance spoke about the Baker administration adopting the 2018 International Swimming Pool and Spa Code.

Chairman Crowley called for a straw poll to understand how the board would like to move on this topic; postpone further action, and/or create a specialty license. Lisa Davey would like to explore creating a specialty license, John Couture would like to postpone, Steve Frederickson in favor of postponing, and he is not comfortable with creating a specialty license, Kevin Gallagher in favor of postponing and creating a specialty license, Cheryl Lavalley in favor of postponing and creating a specialty license. At this point, Chairman Crowley stopped polling board members. No other board action taken.

Discuss\Vote extending the concurrency period for the 2018 energy code concurrency period. Board Counsel Charles Kilb explained the 9th edition energy code amended by the Board, which includes the 2018 IECC was in effect before the Governor declared the public health state of emergency. He talked about the board receiving a request from the industry to extend the concurrency period until January 1, 2021. Because the six-month concurrency period is part of the regulation and is due to end August 7, 2020, the only real option is to deal with this through the emergency code process. This would achieve extending it three months while the board works through the public hearing process to try to extend it further. The board has a general discussion supporting extending the concurrency period. Dave Sullivan motioned that in light of the existing state of emergency, this Board immediately amend the end date of the energy code concurrency period, from August 7th, 2020 to a date not earlier than November 7th, 2020, as is necessary for the preservation of the public health, safety or general welfare and that observance of the requirements of notice and a public hearing pursuant to Section 2 of chapter 30A of the general laws prior to the expiration of that concurrency period would be contrary to the public interest. And further that staff is hereby authorized and instructed to file an emergency regulation to 780 CMR 13.00, in a form acceptable to board counsel, to extend the end of the concurrency period to November 7, 2020; and staff is also hereby authorized and instructed to take such steps as are required for the Board to hold a public hearing after the emergency regulation is filed to receive public comment on whether or not the concurrency period should be extended to a date after November 7, 2020. No one seconded the motion.

John Couture talked about Ian Finlayson contacting him about an issue with the residential energy code and that the different software used by HERS Raters produces different results, which can put projects in jeopardy in complying with the code.

Ian Finlayson was recognized by Chairman Crowley to speak about this issue. He spoke about the need for some code changes to the 2018 energy code. He also spoke about the ERI has different meanings due to an interpretation of the 2018 IECC by a software company (for purposes of these meeting minutes: *The Energy Rating Index (ERI) is a numerical value based on a linear scale constructed such that the ERI reference design has an Index value of 100. A residential building that uses no net purchased energy has an Index value of 0*). He went on to talk about this issue mentioned by John Couture and it does not need to be connected to the extending the concurrency period topic. He thinks developing a code interpretation will fix the issue. Chairman Crowley spoke about the issue appears too complex for resolving by way of a code interpretation.

The Board discussed the importance of this issue because without extending the concurrency period some projects will be subject to additional challenges to conform to the minimum code requirements.

John Couture spoke about the motion does not include the residential code and he believes that the concurrency extension needs to include the entire energy code. He also spoke about extending the time will give opportunity to fixing the HRES software glitch.

Jen Hoyt asked if the motion would result in staff reviewing each project that chooses to utilize the prior energy code. Board Counsel Charles Kilb clarified his communication on this agenda item and that the intent would be to have the industry utilizing the code as they are utilizing it today for another 90 days after August 7, 2020.

Chairman Crowley spoke about the need to extend the concurrency period for the entire updated energy code so that chapter 11 in the residential code and the stretch energy code are included. John Couture agreed and stated that this action would not result in a down side. Jen Hoyt clarified that the action today would be limited to extending the concurrency period. Kevin Gallagher spoke about supporting the inclusion of the residential code in the action to extend the concurrency period.

Tamara Small, CEO of the Commercial Real Estate Development Association and John Nunnari, Executive Director AIA Massachusetts both spoke in support of extending the concurrency period explaining that the state of emergency has delayed projects that are working through local permitting processes, which introduce risks.

Kerry Dietz asked for a rereading of the motion. Dave Sullivan offered a **MOTION** that in light of the existing state of emergency, this Board immediately amend the end date of the energy code concurrency period, from August 7th, 2020 to a date not earlier than November 7th, 2020, as is necessary for the preservation of the public health, safety or general welfare and that observance of the requirements of notice and a public hearing pursuant to Section 2 of chapter 30A of the general laws prior to the expiration of that concurrency period would be contrary to the public interest. And further that staff is hereby authorized and instructed to file an emergency regulation to 780 CMR 13.00, in a form acceptable to board counsel, to extend the end of the concurrency period to November 7, 2020; and staff is also hereby authorized and instructed to take such steps as are required for the Board to hold a public hearing after the emergency regulation is filed to receive public comment on whether or not the concurrency period should be extended to a date after November 7, 2020. Kerry Dietz seconded. John Couture offered an amendment to the motion to include the entirety of the energy code as revised February 7, 2020; Chapter 11 and the Stretch Energy Code. Kerry Dietz seconded the amendment. The **MOTION** as amended it was

unanimously voted. Roll call vote, Lisa Davey, Susan Gleason, David Sullivan, Jen Hoyt, Kevin Gallagher, Cheryl Lavalley, Richard Crowley, Kerry Dietz, Michael McDowell, John Couture, and Chairman Richard Crowley voted in the affirmative.

5. **Adjourn.** On a **MOTION** by Michael McDowell, seconded by Lisa Davey it was unanimously voted to adjourn the regular meeting at about 12:05 p.m. The board discussed postponing its August meeting. Roll call vote: Lisa Davey, Susan Gleason, David Sullivan, Jen Hoyt, Kevin Gallagher, Cheryl Lavalley, Richard Crowley, Kerry Dietz, Michael McDowell, Chairman Richard Crowley voted in the affirmative. John Couture left the meeting about 12:00 pm.

EXHIBITS:

- A. Meeting Agenda July 14, 2020.
- B. June 9, 2020 meeting minutes.
- C. May 26, 2020 and June 4, 2020 BCAB draft meeting minutes.