
BBS MEMO

Ohio Board of Building Standards

December 11, 1998

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ADDENDUM LETTERS CORRECTION LETTERS & ADJUDICATION ORDERS PART 2

Since the release of the November 2, 1998 BBS Memo, board staff has received several comments regarding the Memo's content. It is apparent from the concerns expressed that a follow-up is necessary to reduce the confusion and provide additional detail on the areas we are attempting to clarify.

Why the Memo?

This memo was prompted by BBS staff observations during visits to and investigations of building departments and numerous phone calls we've received identifying inconsistency and problems with the plan review/approval process over the past several years. This memo was intended to provide an explanation of the technical and legal problems associated with the practice of building departments issuing addendum letters and to suggest alternative methods for building departments to use in the process.

Also, we've been asked by building departments to provide guidance in this area. Because of the scope of the problem, the various methods used by building departments and comments made recently, we will be providing additional information and working deliberately with the code official organizations to assure we are dealing with these issues effectively.

Since addendum letters are needed to speed up the process of plan approval, what other tools do we have?

The OBBC gives the building official several options if full approval cannot be granted:

Section 4101:2-1-23(B) allows the building official to approve the construction documents if information is missing for items that are not considered to be a serious hazard "provided that the owner or representative submits revised plans, addenda, or other data to show compliance" with the OBBC (note that the only time the term "addenda" is used, it applies to information submitted by the owner or the owner's representative). Using this approval option allows construction to begin and any corrected or missing information can be submitted within the thirty-day timeframe. There is a maximum thirty days time period for the submission of this additional data. The term "addendum" means addition, augmentation, or supplement. If a building department is adding to or supplementing construction documents because the documents are not complete and making it a condition of the approval, it is involved in design rather than ascertaining compliance with the OBBC.

Section 4101:2-1-23(C) allows the building official, upon request of the owner, to issue a conditional approval. Whenever there is an objection to any portion of the plans or specifications which results from a conflicting interpretation of the code, this objection can await a decision of the Board of Building Appeals and construction can proceed up to the point before the construction or materials objected to are incorporated into the building.

Section 4101:2-1-23(D) allows the work to begin through the issuance of a partial plan approval. This allows construction to begin immediately and documentation to be submitted later for work missing from the plans or for which partial information has been submitted. With each of these options, construction can be commenced without delay, missing information can be specified and later received, the building department does not become involved in the design of projects they are reviewing, notice of the owner's right to appeal can be given, and inspectors can ultimately have the documentation needed to perform inspections. Given the tools already available to the building official in section 4101:2-1-23 OBBC, there is very little reason to use an addendum letter.

In addition to allowing construction to proceed, the building official may also allow early occupancy per Section 4101:2-1-27(E) where he or she, upon request of the permit holder, may issue a temporary certificate of occupancy for a building or part thereof before the work is completed.

Does this mean that plans must now be 100 % perfect before they can be approved?

Section 4101:2-1-19(A) requires that construction documents shall "*be to scale and shall be sufficiently clear, comprehensive, detailed, and legible when submitted to the building official*" so that the plans examiner "*can determine whether or not the proposed building, addition, or alteration, and all proposed building equipment will conform in safety and sanitation to all applicable provisions of the OBBC.*" Further, in subsection (B) this same rule states "*If substantive changes to the building are contemplated after first document submission, or during construction, those changes must be submitted to the building official for review and approval prior to those changes being executed.*" Issuing an addendum short-circuits this process and results in changes that are not covered by the construction documents.

It is the expectation that the plans examiner and building official perform a reasonable plan review given the available amount of time. Construction documents should be processed expeditiously but if information is not complete, the missing information must be submitted for review before the building official can issue a full plan approval. Building departments should never approve work that has not been described in some form. The use of addendum letters can lead to a department designing components of the work as well as not providing the inspector with any approved document with which to compare the work. Statements such as "*Heating, ventilation, and cooling and refrigeration shall conform to the Mechanical Code of the Ohio Basic Building Code*" are impossible to field verify when there are no approved construction documents on site that can reflect this type of broad statement.

Protective statements, stamps, or notices are unnecessary to cover some perceived need for protection when the building official administers the OBBC according to the rules. This does not mean that the construction documents have to be 100 % perfect before any approval is given. It does mean, however, that construction documents, at a minimum, have to describe a building in a manner sufficient to construct it in compliance with the building code. The building official and plans examiner are required to perform their functions as thoroughly and accurately as possible.

If there is a concern that something might be missed during the plan review, the building official and plans examiner should keep in mind that section 4101:2-1-25 states "*In the absence of fraud or a serious safety or sanitation hazard, any structure built in accordance with approved plans shall be conclusively presumed to comply with Chapters 3781 and 3791 of the Revised Code and OBBC.*" This means that, even if mistakes were made during the approval process, a building constructed into accordance with the approved plans becomes a legally existing building.

How do we notify the owner what is or is not included in the approval?

Section 4101:2-1-26 OBBC requires the building official to issue a certificate of approval whenever plans are approved under section 4101:2-1-23 OBBC. You also follow these requirements when you issue a certificate of partial approval or certificate of conditional approval. When either of these two types of certificates are used, the building official should be able to describe what is approved or not approved on them.

Additional Issues

As indicated in the BBS memo, there is a concern that many departments are subjecting themselves to undue responsibility, or even exposing themselves to liability by issuing addendum letters as substitutes for correction letter/adjudication orders. There is also a concern with the fact that addendum letters are being used in ways that force compliance with the building code and illegally deny the owner access to the appeals process.

For example, we have a copy of an addendum letter issued recently by a major building department that contains over 100 items. Many of these items cover work that should have been included in the construction documents. It should not be assumed that a full approval can be given to a set of construction documents while missing information on important building components such as fire-ratings of shaftwalls, fire dampers, smoke detectors, and electrical equipment. In this case, a full approval was issued and this addendum letter contained these items as a condition of the approval.

In addition, many addendum letters contain statements such as "*The following addendum is a listing of the principle requirements of the OBBC applicable to this Use Group. This list is not necessarily the only, or all of the provisions with which compliance is required. Omissions of reference to any provisions shall not nullify any requirement, nor exempt any structure from such requirement of the OBBC.*" In light of the provisions of section 4101:2-1-25 OBBC, this statement has no legal authority. For the same reason, statements like "*Electric wiring shall conform to the National Electric Code, NFPA-70-96*" or "*Heating, ventilation, and cooling and refrigeration shall conform to the Mechanical Code of the Ohio Basic Building Code*" hold very little legal weight.

Board staff will be working in the near future with members of OBOA and others to devise alternative means and methods that will address the concerns of building departments and their personnel on these issues. Some of these solutions will include examples of tools building departments may use to achieve compliance and, at the same time, will deal with issues regarding timeliness in the construction process. This will be an ongoing process and it will take a collective effort to reach the common understanding necessary to provide fair and consistent application of the code.