

## Misty Maza

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**From:** Kone, Carolyn W. <ckone@bswlaw.com>  
**Sent:** Friday, November 10, 2023 4:38 PM  
**To:** Laura E. Brown; 'leslie.radcliffe@sbcglobal.net'  
**Cc:** Robert Dillon; David Milburn; Michael Pinto; Roderick Williams; Helen Rosenberg; Carlos Eyzaguirre; Steve Fontana; Michael Piscitelli; DeLeo, Patricia A.; Esther Rose-Wilen; Anne Benowitz; Misty Maza  
**Subject:** Flood Damage Ordinance and 26 Kendall Street  
**Attachments:** 0061\_001.pdf  
  
**Importance:** High

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Dear Laura and Chair Radcliffe:

I am writing on behalf of my client Harvest Beverage Group LLC, owner of a manufacturing facility located at 26 Kendall Street, to request that the City Plan Commission reconsider its decision set forth in the New Haven City Plan Commission Advisory Report #1638-15. In that Report, the City Plan Commission recommended to the Board of Alders that my request for a clarification of Section 3.5 of the Flood Damage Prevention Ordinance to provide that where an addition to a building constitutes a “substantial Improvement”, only the addition and not the existing building be required to comply with the Flood Damage Prevention Ordinance. I believe that such clarification is required to ensure that the Flood Damage Prevention Ordinance is in compliance with the State Building Code, is internally consistent and is applied in accordance with past practice. This matter is on the agenda of the Board of Alders Legislation Committee for a hearing on Wednesday, November 15, 2023. If my request for reconsideration is granted, I would request that the Board of Alders Legislation Committee reschedule its hearing on this matter so that it would have the benefit of the City Plan Commission’s reconsidered decision.

The Connecticut State Building Code, The 2022 Connecticut State Building Codes does not directly address Flood Resistant provisions for nonresidential buildings, such as my client’s (although it does contain flood resistant provisions for residential buildings)(See also UCONN White Paper referenced in Ann Hartjen’s cover memo to the BOA). Rather, the 2022 State Code incorporates by reference the 2021 International Building Code (page 1 of the 2022 Building Code). (Connecticut has modified some sections of the IBC but not any related to Flood Resistant provisions). The Federal Emergency Management Agency (“FEMA”) has created a FEMA Fact Sheet that contains excerpts of the flood -resistant provisions of the 2021 International Building Code (the “IBC”), which I have attached to this email. The IBC, Section 202 defines “Substantial Improvement” to include an *addition* “of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started.” Section 1612.1 of the IBC is clear that the design and construction requirements for mitigating flood hazards only apply to the construction of the substantial improvement (in this case, the addition) and not to the existing building. Section 1612.3 provides in relevant part the following: Within *flood hazard areas* as established in Section 1612.3, **all new construction of** buildings, structures and **portions**

**of buildings and structures**, including *substantial improvement* and restoration of *substantial damage* to buildings and structures, shall be designed and constructed to resist the effects of flood hazards and *flood loads*.” (bold added). The IBC is consistent with Section 102.6 of the 2022 Connecticut State Building Code which provides that “the legal use and occupancy of any *building* or structure existing on the date of adoption of this code shall be permitted to continue without change, except as otherwise specifically provided in this code, the *2021 International Existing Building Code* portion of the 2022 Connecticut State Building Code or the 2022 Connecticut State fire Safety Code.” None of these Codes provide that an existing building is required to comply with Flood Resistant provisions when an addition that is required to comply with such provisions is added to an existing building. Additionally, the regulations for participation in the National Flood Insurance Program at 44 CFR Section 60.3 require that new construction and substantial improvements comply with its requirements and do not mandate improvements to existing buildings when additions are made. Finally, the title of the recent amendment to the Flood Damage Prevention Ordinance states that the purpose of the amendment is “to bring the Flood Damage Ordinance into Compliance with the Uniform Building Code for the State of Connecticut.” As stated above, the requested clarification that where an addition is added to a building, only the addition must comply with the requirements of the Ordinance, brings the Flood Damage Prevention Ordinance in compliance with the Uniform Building Code for the State of Connecticut.

The Flood Damage Prevention Ordinance – The Flood Damage Prevention Ordinance as recently amended also indicates in numerous provisions that the Ordinance is to apply to the “substantial improvements” and not to an existing building which is not part of the substantial improvements. See Section 5.1.1 (“New construction or substantial improvement of any structure shall have the lowest Finished Living Space elevated at least two feet above the base flood elevation.”); Section 5.3.2 (“New construction or substantial improvements of buildings that include full-enclosed area formed by foundation and other exterior walls below the base flood elevation shall be designed to preclude finished living space and designed to allow for the automatic entry and exit of flood waters to equalize hydrostatic flood forces on exterior walls.”); Section 5.3.5.1(All new construction or substantial improvement shall be located 25 feet landward of the reach of the Connecticut Coastal Jurisdiction Line as defined in Connecticut General Statutes 22a-359 as amended by Public Act 12-101); Section 5.3.2 (“All new construction or substantial improvement shall be elevated so that the bottom of the lowest structural horizontal member excluding pilings or columns) is located no lower than two feet above the base flood level, with all space below the lowest supporting member open so as not to impede the flow of water.”); Section 5.5.3 (“All new construction or substantial improvement shall be securely anchored on pilings or columns.”); Section 6.4.3 (“FDP Variances may be issued for new construction and substantial improvements and other development necessary for the conduct of a functionally dependent use, .. .”)(emphasis added). Accordingly, because “substantial improvement” is defined to include an addition, and the Flood Damage Prevention Ordinance only applies in numerous places to substantial improvements, the Ordinance should be clarified so that there is no uncertainty that its requirements are limited to the addition and are not applicable to the existing building.

Past Practice In 2004, the City Plan Commission approved an addition to the building at 26 Kendall Street (CPC 1346-02) where my client’s manufacturing facility is located, which was never built. The CPC Report indicated that fill would be placed within the addition to bring the finished floor elevation to 13’ (the base flood elevation is 11) and that a flood and that new Flood Development Permit would be required prior to issuance of the building permit for the addition.. There was no requirement that improvements be made to the existing building.

Hardship to Harvest Beverage Group LLC Harvest Beverage Group LLC operates a manufacturing plant at 26 Kendall Street which manufactures healthy food and beverages and employs approximately 25 employees. Harvest Beverage wishes to construct an addition to its facility which will cost approximately \$3-5 million and will allow it to double its workforce. Harvest Beverage intends to comply with all of the requirements of the Flood Damage Prevention Ordinance with respect to the construction of the addition. If it is required to make significant changes to the existing building so that the existing building is compliant with the Ordinance, such expansion may not be feasible.

We appreciate that the City Plan Commission has approved our request to amend Section 5.1 by using our proposed language and request that it reconsider whether to approve our request for a classification of Section 3.5 1 to clarify that the Ordinance Amendment does not apply to existing structures when additions are made to such buildings.

*Respectfully submitted,*

Carolyn W. Kone



**Brenner, Saltzman & Wallman LLP**

271 Whitney Avenue  
New Haven, Connecticut 06511-3714

Telephone: (203) 772-2600

Cellphone: (203) 671-7652

Facsimile: (203) 562-2098

[ckone@bswlaw.com](mailto:ckone@bswlaw.com)  
[www.bswlaw.com](http://www.bswlaw.com)

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Thank you.

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**From:** Canon Ecopy <canon\_ecopy@bswlaw.onmicrosoft.com>

**Sent:** Friday, November 10, 2023 11:32 AM

**To:** Kone, Carolyn W. <ckone@bswlaw.com>

**Subject:** Attached Image