

Requested Initial Opinion of the PRBoA Acting Chairman AN Alli on the Various Questions Fielded by Registered and Licensed Architects (RLAs) Pertaining to the Interpretation or Applicability of Certain Provisions of the 2004 Revised Implementing Rules and Regulations (IRR) of P.D. No. 1096 (the 1977 National Building Code of the Philippines/ NBCP) as the Same Pertain to Building Height Limit (BHL), Particularly for a Generic Commercial 2 (C-2) Property/ Site as the Selected Example

A. The Basis for Zoning Ordinances (ZOs) and the Provisions on Building Height Limits (BHL) Under Such ZOs as Promulgated by Local Government Units (LGUs) Before 2006

The **1996 Model Zoning Ordinance** promulgated by the Housing and Land Use Regulatory Board (HLURB) has been the basis for most ZOs passed by LGUs before 2006. Its Section 24 (Height Regulations) states that "Building height must conform to height restrictions and requirements of the Air Transportation Office (ATO, now the Civil Aviation Authority of the Philippines/ CAAP) as well as the requirements of the National Building Code (of the Philippines/ NBCP), xxx as well as as all laws, ordinances, design standards, rules and regulations related to land development and building construction and the various safety codes." (*emphases and underscoring supplied*) Based on the foregoing, the HLURB 1996 Model Zoning Ordinance, which is the basis for many LGU ZOs passed before 2006, defers to the NBCP and its IRR.

Section 24B of the HLURB 1996 Model Zoning Ordinance states:

"B. ALL OTHER ZONES

There is no fixed building height limits except those prescribed by xxx other government regulations. Within these zones, building heights shall be based on the prescribed floor area ratio (FAR). Refer to Annexes B - F for illustration on how FAR is used in a zoning plan." (*emphases and underscoring supplied*)

The example of a Commercial 2 (C-2) building as shown in Annex E of the 1996 HLURB Model Zoning Ordinance clearly shows a six (6)-storey building.

On the issue of the BHL therefore, the NBCP and its IRR are the governing law and regulations respectively for all buildings in all LGUs in the Philippines, particularly if their ZOs are based on the HLURB 1996 Model Zoning Ordinance..

Section 11b of the HLURB 1996 Model Zoning Ordinance also does **NOT** state that residential uses are allowed for a C-2 zone.

B. P.D. No. 1096 (the 1977 NBCP) on Building Height Limits (BHL)

Section **707** of P.D. No. 1096 (the 1977 NBCP) states:

“Maximum Height of Buildings. The maximum height and number of storeys of every building shall be **dependent upon** the character of occupancy and the type of construction **as determined by the Secretary** considering population density, building bulk, widths of streets and car parking requirements. The height shall be measured from the highest adjoining sidewalk or ground surface: xxx (*emphases supplied*)

Since the NBCP and its IRR are specifically considered the governing law and regulations respectively for all buildings under all LGU ZOs based on the HLURB 1996 Model Zoning Ordinance, its prescriptions concerning the relationships among its regulations i.e. the most restrictive/ stringent rule applies, also prevail.

C. 2004 Revised Implementing Rules and Regulations (IRR) of P.D. No. 1096 (the 1977 NBCP) on Building Height Limits (BHL)

The 2004 Revised IRR of the P.D. No. 1096 (1977 NBCP), which were promulgated by the DPWH Secretary in October 2004, published thrice nationally on 01, 08 and 15 April 2005 and which took effect on 01 May 2005, detail the methods of interpretation of the building height provision under the law, including the use of the width of the road right-of-way (RROW or street) and considerations of sustainable design and the carrying capacities of the site and the community, to fully complement the BHL.

The 2004 Revised IRR of the NBCP only sets the minimum standards to be satisfied by all building owners, designers and constructors for the planning and design of all buildings/ structures and their grounds/ sites for subsequent review and approval by the Offices of Building Officials (OBOs) of LGUs. Through separately crafted ordinances, the LGUs can actually enact local laws that are more restrictive/ stringent i.e. stricter than the NBCP or its IRR (but NOT the other way around). Hence, while a LGU may opt to adopt the minimum NBCP IRR provision of a six (6)-storey or eighteen meter (18.0m)

BHL for the example generic Commercial 2 (C-2) property under its ZO, the LGUs could just as easily make three or four (3- or 4-) storeys as the BHL for a generic C-2 property/site.

The 2004 Revised IRR of the NBCP prescribes that the BHL be determined from the established grade line (or elevation) of the sidewalk or ground surface nearest to/ adjoin a building/ structure (or in the case of sloping sites, the established grade elevation at the middle portion of such sites) up to what is considered the topmost portion of such building/ structure.

The 2004 Revised IRR of the NBCP does NOT prescribe limits for the number of basements that an owner/ a developer wants to introduce onsite (below grade/ surface), such that the owner/ developer could build an indefinite number of basements as desired.

Operating under the premise that the NBCP and its IRR are specifically considered the **governing law and regulations** respectively for **all** buildings under **all** LGU ZOs based on the HLURB 1996 Model Zoning Ordinance i.e. ZOs promulgated before 2006, the pertinent/ applicable NBCP IRR provisions on building height limit (BHL) are found in **Section 707.2.b** which states that

“The BHL of **any** proposed building/ structure shall only be as allowed under this Rule (as shown in **Table VII.2 of Rule VII**) or under the duly approved city xxx zoning ordinance, **whichever is more restrictive.**”
(emphases and underscoring supplied)

Table VII.2 of Section 707.2.b, which is the **governing regulation on BHL**, clearly prescribes a 6-storey or **18.0 meter BHL** for a generic Commercial 2 (C-2) property.

Nothing follows.