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**FIRE PREVENTION AND BUILDING SAFETY COMMISSION**  
**Department of Homeland Security**

**Written Interpretation of the State Building Commissioner**

**Interpretation #:** CEB-2020-41-IC 22-12-1-5

**Building or Fire Safety Laws Interpreted**

**[IC 22-12-1-5](#) "Class 2 structure"**

Sec. 5. (a) "Class 2 structure" means any part of the following:

- (1) A townhouse or a building or structure that is intended to contain or contains only one (1) dwelling unit or two (2) dwelling units unless any part of the building or structure is regularly used as a Class 1 structure.
- (2) An outbuilding for a structure described in subdivision (1), such as a garage, barn, or family swimming pool, including an above ground swimming pool, unless any part of the outbuilding is regularly used as a Class 1 structure.

(b) Subsection (a) does not include a vehicular bridge.

(c) For purposes of subsection (a)(1), "townhouse" means a single-family dwelling unit constructed in a group of three (3) or more attached units in which each unit:

- (1) extends from foundation to roof;
- (2) is not more than three (3) stories in height;**
- (3) is separated from each adjoining unit by:
  - (A) two (2) one (1) hour fire-resistance rated walls with exposure from both sides; or
  - (B) a common two (2) hour fire-resistance rated wall; and
- (4) has open space on at least two (2) sides.

(Emphasis added).

**Issue**

Whether, on a structure that otherwise conforms to the criteria provided in [IC 22-12-1-5](#), an occupied rooftop deck or enclosed rooftop penthouse structure are considered stories, to be counted against the limit of three that are allowed within the statute's definition of "townhouse."

**Interpretation of the State Building Commissioner**

On a structure that otherwise conforms to the criteria provided in [IC 22-12-1-5](#), neither an occupied rooftop deck, nor an enclosed rooftop penthouse structure are considered stories to be counted against the statutory limit of three, provided the deck has no overhead structure, and the penthouse complies with Sections 1509.2.1 through 1509.2.5 of the *2014 Indiana Building Code*.

**Rationale**

As the circumstances of the project have been described to us, the local building official is stating that because of the presence of an occupied roof deck atop a third story, and/or the presence of a rooftop penthouse for access to that deck, the structure in question is considered more than three stories in height, and therefore it fails to meet the statutory definition of *townhouse*. This would make the structure Class 1, which requires a Construction Design Release (CDR) from state Plan Review prior to construction, and for which the local official is calling. While the request that was submitted asked only for an interpretation of the rule requiring a CDR on Class 1 structures ([675 IAC 12-6-3](#)), it is clear that the issues reach deeper than that requirement. Consequently, we have focused this interpretation instead on the statute and rules that affect those underlying issues, in the hope that the interpretation will prove useful not only for this project, but also for others statewide that feature similar design characteristics.

As seen in the citation provided above, [IC 22-12-1-5\(a\)](#) includes *townhouses* among Class 2 structures, if no part of the building is regularly used as a Class 1 structure. As also seen above, [IC 22-12-1-5\(c\)](#) provides the several design criteria that constitute the definition of *townhouse*. At the center of this dispute is Section 5(c)(2), which limits the height of the structure to no more than three *stories*. To determine whether this, or any such, structure meets that criterion, we must first understand what constitutes a *story*. That term is not defined in statute, so we must turn to the rules of the Fire Prevention and Building Safety Commission. And since this dispute turns on the question of whether the structure is Class 1 or Class 2, which are regulated by the *2014 Indiana Building Code* (IBC) and the *2020 Indiana Residential Code* (IRC) respectively, it is important to look at the applicable rules in both documents.

Both the IBC and the IRC provide definitions for the term *story*, and they begin with identical sentences: "That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next

above." The IRC definition is complete with that single statement, but the IBC goes on to state: "[A story] is measured as the vertical distance from top to top of two successive tiers of beams or finished floor surfaces and, for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the rafters."

The definitions in both codes indicate that for any vertical portion of a structure to be considered a *story*, that space must have a constructed assembly overhead. As we see, the only difference in the text of the two codes is the IBC's inclusion of instructions for proper measurement of the vertical dimension of a story, a consideration that is irrelevant to this case. The critical fact is that both codes rule out a roof deck as a story unless it has an overhead structure. This leaves the penthouse as the only outstanding issue.

Penthouses do not exist as a defined entity in the IRC, and as such, one can only look to the IBC, where the definition of the term states: "An enclosed, unoccupied rooftop structure used for sheltering mechanical and electrical equipment, tanks, elevators and related machinery, and vertical *shaft* openings." Since the opening in the roof structure is considered by the code to be a *shaft*, a rooftop enclosure that serves no purpose other than providing shelter for that shaft meets the definition of the term *penthouse*.

Once it is understood that under the IBC the sheltering structure is a penthouse, one must then consider the IBC's rules regulating such penthouses, contained in Section 1509.2, which states, "Penthouses in compliance with Sections 1509.2.1 through 1509.2.5 shall be considered as a portion of the story directly below the roof deck on which such penthouses are located." In other words, if a rooftop shelter structure meets the definition of *penthouse*, and also meets all the qualifying criteria of 1509.2.1 through 1509.2.5, that shelter structure is not considered an additional story at all, but part of the story below it. When such a penthouse is constructed atop a three-story structure, the structure remains three-story, and if that structure's design conforms to the remaining criteria of [IC 22-12-1-5\(c\)](#), it meets the statute's definition of *townhouse*. As we've seen above, that places the structure within Class 2, which is immune from the CDR requirement of [675 IAC 12-6-3](#).

A final note – as we see, definitions do sometimes vary from one code document to another, and when they do, utilization of such definitions should be limited to the application of the code in which the specific definition is found. A definition in "Code A" should be applied only to issues regulated by "Code A," and a definition found in "Code B" should be applied only to issues regulated by "Code B." However, in the case of one term critical to this case – *penthouse* – the IBC and IRC differ only in that the term is absent entirely from the latter code. This results in a lack of persuasive evidence that a penthouse should be considered differently in a Class 2 structure than it is in a Class 1 structure. Consequently, a rooftop design element that qualifies as a no-additional-story penthouse under the IBC does not lose that distinction when viewed under the IRC. If it did, a three-story townhouse with a qualifying rooftop penthouse would forever be considered a four-story Class 1 structure by the IRC and simultaneously be considered a three-story Class 2 structure by the IBC. It would be passed back and forth from one code to the other, never to settle on one applicable set of regulations.

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