

STATE OF NEW YORK DEPARTMENT OF STATE
DIVISION OF CODE ENFORCEMENT AND ADMINISTRATION

CORNELL UNIVERSITY

Petition No. 2013-0250

July 18, 2013
11:19 A.M.

State Office Building
Syracuse, New York

B E F O R E : GEORGE MANEY, Chairman
 RICHARD T. LAFFERTY
 MARK L. DEDRICK
 ROBERT ALMY
 MICHAEL J. HRAB, ESQ.

APPEARANCES:

For the Petitioner:

JONATHAN OCHSHORN
207 Water Street
Ithaca, New York 14850

Also Present: CHARLIE BLISS - Department of State

GARY WILHELM, PRO. MGR PDC
Cornell University
102 Humphreys Services Building
Ithaca, New York 14850

MICHAEL NIECHWIADOWICZ
Plan Review Officer
City of Ithaca Building Department
108 East Greet Street
Ithaca, New York 14850

THOMAS D. HOARD
Holt Architects
217 North Aurora Street
Ithaca, New York 14850

* * *

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MR. MANEY: Good morning. This is the July 18th, 2013, meeting of the Capital Region Board of Review held in Syracuse, New York. The time now is 11:20, and this hearing is officially open.

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Members of the Board are, to my far left, Mr. Richard Lafferty, to my immediate left Mr. Mark Dedrick, to my far right Mr. Michael Hrab and to my immediate right Mr. Robert Almy. My name is George Maney, chairman. From the Department of State is Mr. Charles Bliss.

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We'll now hear the scheduled petition. When you speak, please address the Board, give your name, title and legal address so that our court reporter can have all the information requested. We may have to stop from time to time to consult with our technical staff. In making comments to the Board, please provide a descriptive narrative on matters referring to your exhibits. This enables our court reporter to enter those

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into the record.

 This hearing is in the matter of
Petition Number 2013-0250,
Cornell University, pertains to a B
occupancy and A-3 occupancy, mixed
occupancy, three stories in height,
approximately 99,800 square feet in gross
area of Type V-B construction located at
943 University Avenue, City of Ithaca,
County of Tompkins, State of New York,
and the Petitioner is seeking an appeal
to the decisions of a code enforcement
officer regarding many fire safety
issues. This appeal is based on the 203
code.

 What I would like to do on this
is -- there's eight items, I believe,
and, if we could take each one
individually and start from there, I
think that would be the most effective
way. I could -- well, I'll list them.
Number 1 is inadequate exits from the
Crit room assembly space; noncompliant
protruding objects in egress path;

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2 inadequate fire barriers between Milstein
3 and East Sibley Hall; improper mezzanine
4 designation; Milstein and Sibley,
5 Rand Halls exceed Table 503 floor area
6 limits based on appendix; improper
7 occupancy class designation; inadequate
8 exits from 261 East Sibley Hall; and
9 noncompliant A-3 library occupancy of the
10 Rand Hall third floor.

11 Anybody representing the Petitioner?

12 MR. OCHSHORN: Right here,
13 Jonathan Ochshorn.

14 MR. MANEY: I got to stop you one
15 minute. You had something that you
16 wanted to present to the Board?

17 MR. WILHELM: Yeah.

18 MR. MANEY: What is it?

19 MR. WILHELM: It's -- basically it's
20 information in response from
21 Cornell University to the eight items.

22 MR. MANEY: In regards to these
23 eight items?

24 MR. WILHELM: Correct.

25 MR. MANEY: We got a lot of

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voluminous things there. I hope it's not
a duplicate of what we got to go....

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MR. WILHELM: No, no. It's eight
pages, and I provided some attachments.

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MR. MANEY: I'll let you submit it.

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MR. BLISS: Mr. Chairman, in your
introductory statement, you said

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something about the case involved

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Cornell University, but the Petitioner

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who's filing the appeal is actually

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Jonathan Ochshorn. That -- the record

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should reflect that. Despite what

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Albany wrote, the Petitioner is

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Jonathan Ochshorn. He's the one that

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filed the appeal.

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MR. MANEY: All right. You can

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correct that; right? My statement was

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Petitioner was Cornell University, and

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Charlie says that --

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MR. BLISS: The Petitioner is

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actually Jonathan Ochshorn.

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MR. MANEY: Correct.

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MR. WILHELM: Sir, my name's

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Gary Wilhelm. I'm a project manager,

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Department of Capital Projects and

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Planning, employed by Cornell University.

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I was the project manager for the

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Milstein Hall.

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MR. MANEY: One thing I'd ask is

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speak a little louder.

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MR. WILHELM: Okay.

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MR. MANEY: Does the Board want to

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take time to review this now or...or

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he'll get up and discuss it with us.

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Charles --

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MR. LAFFERTY: Let's ask the

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question. Each one of these pieces

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relate to what has already been submitted

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to us?

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MR. WILHELM: Yes.

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MR. LAFFERTY: Therefore, as the

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Petitioner presents each item, you come

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in with whatever you've got in your item

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related to it; okay?

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MR. WILHELM: Okay.

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MR. MANEY: Absolutely.

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MR. LAFFERTY: I'm saying we'll get

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both sides dealing with the issue.

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MR. WILHELM: Right.

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MR. LAFFERTY: And anybody else that's got a comment to make about the issue. The issue. Okay?

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MR. MANEY: That's the regular operational procedures.

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MR. LAFFERTY: Yes, sir. I'm just explaining it to myself.

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MR. MANEY: Appreciate that. All right. Your turn.

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MR. OCHSHORN: My name is Jonathan Ochshorn. You want an address? 207 Water Street, Ithaca, New York. Do you feel it would be useful for a short background on the -- what the building is and its...or do you feel comfortable going right into the exhibits?

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MR. MANEY: If you think that that's going to be an asset, yes. If you think it's just additional dialogue, no.

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MR. OCHSHORN: Let me spend a few minutes on it then.

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MR. MANEY: All right.

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MR. OCHSHORN: If you have the

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appeal, there's a site plan on Page 9.

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You'll see that Milstein Hall is a

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50,000-square-foot building connecting

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two existing buildings on the Cornell

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campus, Sibley Hall and Rand Hall, so it

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counts as an addition to those two

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buildings as it is not separated from

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them by a fire wall. It was constructed

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between 2009 and 2012.

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A building permit for Milstein Hall

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was filed May 18th 2007 under the 2003

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New York State Building Code, which was

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about to expire and be replaced by the

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2007 code; however, the actual -- the

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first actual permit drawings that I could

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locate in the building department

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pursuant to a Freedom of Information Act

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request were issued a full year and a

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half after the permit was filed.

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The issues I'm going to raise, these

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eight exhibits are not isolated errors

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but, rather, are part of a pattern of

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violations that began almost seven years

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ago when Milstein Hall in its current

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form was first formally unveiled to the public.

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As far as my role in all of this, I have no official access to any of the meetings, drawings or specifications concerning Milstein Hall. I am an architect. I happen to work and teach in these buildings. As a licensed architect, I believe it is my responsibility to bring such code violations to the attention of responsible parties, and that was my motivation for first bringing this to the attention of Cornell officials, City of Ithaca building code officials and then, when my objections were not dealt with, to file this appeal with the DCEA.

And so let's go into Exhibit 1, which is inadequate exits from a so-called Crit room assembly space. Exhibit 1 involves the Crit room space, which is in the lower below-grade level of Milstein Hall. If you have the exhibit, it can be seen in plan on

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Page 59 and 60. It can be seen in

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section on Page 25. Photographs

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published by Cornell showing it in use

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are reproduced on Page 13.

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It has a floor area of

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approximately 4,580 square feet and yet

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has been built with only one code-

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compliant exit. A second potential exit

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stair in the space is only 12 feet from

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the first exit and so is noncompliant

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with Section 1004.2.2.1 of the 2003 code,

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which requires two exits to be separated

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by one-third of the greatest diagonal

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distance. With a diagonal distance of

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over 100 feet, the 12-foot separation is

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clearly inadequate. Furthermore,

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Table 1003.2.2.2 of the code states that

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either five or perhaps seven square feet

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needs to be assigned to each occupant of

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such an assembly space without fixed

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seats. The 15-square-foot option for

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tables and chairs does not apply to this

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space. And Section 1003.2.2 requires

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that the number of exits be determined by

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the number of calculated occupants. Even

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assuming seven square feet per occupant,

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we get 654 occupants in that space.

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Section 1008.2 of the code states

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that, for 350 to 700 occupants, three

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exits are required, which is an even more

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stringent requirement for New York State

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only than is stipulated in Table 1005.2.1

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of the code, which requires three exits

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for 501 to 1,000 occupants. With five

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square feet per occupant and, therefore,

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916 occupants, four exits would be

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required from that space.

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Furthermore, common path of egress

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travel distances per Section 1004.2.5

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limited to 75 feet are exceeded in this

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space. This is demonstrated on the plan

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that I've reproduced on Page 62.

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In summary, three separate code

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requirements are violated in this Crit

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room space. There are not enough exits.

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The two exits provided are not separated

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from each other by the proper distance,

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and common path of egress travel

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distances are exceeded.

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Instead of fixing this egregious code violation by providing additional exits, the architects for Milstein Hall, Cornell officials and staff architects and City of Ithaca code officials have attempted to justify this dangerous and noncompliant room in the most outlandish manner. First, the December 2008 issued-for-construction permit drawings claim that the space qualified as an accessory assembly space under Section 303.1 of the 2003 code, completely misreading the requirements of that section in order to claim that the space had only 49 occupants because it was accessory to a Group B space so that only one exit was needed. I've discussed this in more detail in the appeal.

Second, when I talked to Cornell's project manager in 2011, he claimed that the stair in the Crit room counted as a second exit because the room actually extended down the corridor, which

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increased its distance from the primary exit, thereby making it compliant.

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Third, after I pointed out that this explanation was entirely spirituous, City of Ithaca deputy building commissioner told me on March 7th, 2012, that only one exit was needed in the Crit room because common path of egress travel distances were met in the space and because the other provisions in the code requiring multiple exits were no longer applicable. This latter E-mail was sent to me after I forwarded to the deputy commissioner a notice from the dean of the college of architecture advertising an event that was being planned for this very Crit room space, in which well over 350 people were expected. That's a quote. Neither the dean, Cornell staff and consulting architects for the Milstein Hall project nor the building -- deputy building commissioner of the City of Ithaca found anything wrong in continuing to occupy an assembly space holding hundreds of people

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with only a single compliant exit.

The Crit room has subsequently been redesigned in a way that makes it even worse. Permanent movable eight-foot-high walls have been added to the space. You can see this in Figure 5 on Page 17. These can be configured in ways which create smaller noncompliant rooms, which themselves have inadequate exits. The only remedy for this space is to either increase the number of compliant exits or to physically reduce the size of the space so that its floor area is consistent with the number of exits provided. The building code does not allow insufficient exits simply by posting an occupancy sign showing some smaller number of occupants than the number determined under Section 1003.2.2. While such a strategy seems to be used in existing buildings, it is explicitly prohibited in new construction.

MR. MANEY: Thank you. Anybody else have any comments about the exiting issue

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of the Crit room? Michael.

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MR. NIECHWIADOWICZ:

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Mike Niechwiadowicz, acting building

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commissioner of the City of Ithaca,

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108 East Green Street, Ithaca, New York

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14850.

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I believe that the exiting is

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compliant in this Crit room. Yes, there

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is a history that evolved for this space,

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and originally it was looked as a B

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occupancy with 100 square feet per

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person. It was to display artwork and

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have students critique that artwork, so,

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therefore, we did look at it as part of

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an educational above-twelfth-grade

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occupancy so B occupancy. Over time that

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evolved, and we went back to the

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architects...show us how you can be an

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assembly occupancy, because a request

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came in to use the space for assembly

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purposes at times.

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So I looked at the definition of

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exit. That point at the base of the

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stairs does not meet the definition of an

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2 exit. There are very specific examples
3 of what an exit can be. The exit is at
4 the end of the corridor leading to the
5 exterior, one of them. And the other
6 exit is up the stairs through the
7 mezzanine, again at the main entrance to
8 the building. By definition those are
9 the exits.

10 As many people are aware, most rooms
11 have -- do not have access to two exits
12 immediately. Even this room doesn't.
13 There is a common path of travel, so the
14 two components do have to be applied.
15 The common path of travel in this Crit
16 space is under the 75-foot limit, 71
17 feet. Both exits are within the 250-foot
18 limit.

19 So, therefore, I concluded that we
20 did have two proper exits per the
21 definition, and I don't apply my
22 opinions. I try to look at the
23 definitions and apply the code very
24 strictly. And I believe we do have the
25 two compliant exits.

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MR. MANEY: Thank you. Board have any questions to either one of the gentlemen?

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(No response.)

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MR. MANEY: Anybody else have any comments?

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MR. WILHELM: Sir, I just want to point out -- my name's Gary Wilhelm, 102-E Humphreys Service Building, Cornell University, Ithaca, New York.

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The handout response I gave you with attachments, it's organized by item, one page per item. It has the architect of record's response, Kendall Heaton Associates of Houston, Texas, and also explanation from Cornell University of our understanding of how this space complies.

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In your attachments, Attachment 1 are floor plans of Sibley, Milstein and Rand per floor. Attachment 1-A is -- as it says on the cover letter, it's a photo of the events in the Crit space and also layouts where -- Layouts A, B and C for

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unconcentrated assembly use of that

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space.

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Just comment to briefly on what I've

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written there, you can read it but

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basically, as Mr. Niechwiadowicz said,

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the use of this space has evolved over

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time. The design architects for this

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space had a conception of its use. The

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new dean when hired had a different

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conception, and at present what we see is

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that this space is used as a B occupancy

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for the critique of student work, at

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which point I believe we have 100 feet of

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common path of travel. I can provide you

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with diagrams of these, of the movable

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wall, as we call it, which indicate that

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within 100 feet one can get from the

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extreme defined areas of the space to the

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point of exit access up the stairs. I

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can hand those out if you'd like to see

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those.

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The photos show events that took

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place on a weekend, which the Petitioner

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included his photo from. So whether or

1
2 not there were more than 350 people in
3 that space I don't know, I didn't attend
4 the event, but I can tell you that the
5 college was aware of the requirement for
6 that, for less than 350 people in that
7 space. These events took place
8 throughout the building, so the
9 likelihood of there being 800 people in
10 one place at one time is just not likely.

11 So thank you.

12 MR. MANEY: Okay. Any questions in
13 regard to that?

14 (No response.)

15 MR. MANEY: Mr. Bliss, you got any
16 comments on Item Number 1?

17 MR. BLISS: No, other than the
18 actual travel distance is shown on the
19 letter from Cornell University. The
20 second page, it shows the distance to the
21 exit and lays out the required -- states
22 that the two exits are 73 feet apart,
23 which is greater than one-third of the
24 total distance of the room. But they are
25 using that corridor as part of the room

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area.

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MR. OCHSHORN: May I address some points of fact here?

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MR. MANEY: Pardon?

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MR. OCHSHORN: May I have a short rebuttal?

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MR. HRAB: Sure.

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MR. MANEY: Absolutely.

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MR. OCHSHORN: First of all --

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MR. MANEY: As soon as -- I want to make sure he's finished before I let you --

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MR. OCHSHORN: Yes. Thank you.

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MR. MANEY: Charles?

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MR. BLISS: I'm done.

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MR. MANEY: He's done.

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MR. OCHSHORN: Couple of points of

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error. First of all, the building was

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never permitted where the space was a B

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occupancy. What happened, if you read

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the code analysis in the submitted

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drawings, it was submitted as an assembly

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space. But, by misreading the code, they

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attempted to call it an accessory space

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2 to the B occupancy that's at a level
3 above in a completely inappropriate and
4 noncompliant manner. In other words,
5 what they did is they said it's an
6 assembly space, but, rather than counting
7 its occupancy as assembly space, in which
8 case it would not have qualified as an
9 accessory space, they somehow counted it
10 as assembly space but counted its
11 occupancy as if it was already a B
12 occupancy and, therefore, got to the 49
13 occupants, when, in fact, there were
14 hundreds of occupants in that space as an
15 assembly use, so that the section that
16 they used to call it an accessory space,
17 which I cite in the appeal, was
18 completely misapplied in this case.

19 So it was never thought of as a B
20 occupancy. It was thought of as an
21 assembly occupancy, and they attempted to
22 make it an accessory space in a
23 completely inappropriate manner, which is
24 code noncompliant.

25 Secondly, this is not a B occupancy,

1
2 and the photographs I've showed you
3 demonstrate that. It's immediately
4 adjacent to the auditorium space. It's
5 designed as a spill-over so that, after
6 the lecture in the auditorium, you can
7 have big gatherings, assembly gatherings,
8 in this exhibition Crit room space.

9 The notion that it is a 49-person B
10 occupancy is absurd on the face of it,
11 and it was never permitted as such. And
12 the -- this notion that the use of the
13 space has evolved over time is not
14 supported by the evidence. It is used
15 for gatherings of a great number of
16 people and always will be. And it would
17 be a travesty to let them designate this
18 thing as a B occupancy and then use it
19 for hundreds of people in the future
20 because nobody will prevent them from
21 doing that unless you do.

22 MR. MANEY: All right. Anything
23 else? Michael.

24 MR. NIECHWIADOWICZ:
25 Mike Niechwiadowicz, acting building

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commissioner.

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It is not our intent to classify

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this as a B occupancy but rather --

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MR. MANEY: Speak up. I can't --

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MR. NIECHWIADOWICZ: I'm sorry. It

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is not our intent to classify this as a B

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occupancy, but, rather, I pointed out

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that it was used -- initially was

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presented as a critique space for the

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students; however, it is an assembly

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occupancy at this time. We consider it

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an assembly occupancy. Our fire

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department has posted it on the basis of

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an assembly occupancy, and we are looking

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at it as an assembly occupancy at this

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time.

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MR. MANEY: Anything else,

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gentlemen/ladies?

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MR. OCHSHORN: One more thing. I

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contacted technical representatives at

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the International Code Commission many --

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a long time ago just to confirm my own

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impression that this notion that you

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could extend a room down a corridor in

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2 order to fabricate this notion that the
3 two exits were separated was completely
4 bogus. The technical representative,
5 code expert, at ICC, while it is, of
6 course, not binding on Ithaca City
7 building code officials, confirmed my
8 impression that no, you can't have two
9 exits converging at a single point and
10 then artificially extend the room down
11 the corridor in order to somehow claim
12 that the two exits are separated.
13 Everybody must go through a single point
14 from that large assembly room.

15 The thing is not legal. It is
16 dangerous. We just had examples in
17 Bangladesh and Pakistan of huge amounts
18 of death caused by fires where there are
19 inadequate exits. I thought we were
20 beyond that in this country. To go back
21 to that kind of situation where you have
22 an assembly space with a single legal
23 exit, to me, is just egregious.

24 MR. MANEY: All right.

25 MR. OCHSHORN: And you cannot -- if

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2 you could extend a room down a corridor,
3 every single room like this could have a
4 single door because you just say well,
5 really there's another door down the
6 corridor and it's part of the room. It's
7 absurd.

8 MR. MANEY: Okay. Thank you.
9 Mr. Bliss.

10 MR. BLISS: This is a question that
11 the Board should be interested in. I
12 guess it would go to Cornell or Mike. Is
13 this truly a corridor? Does it meet the
14 definitions of a corridor? Does it have
15 fire-rated walls, or is it an extension
16 of the room?

17 MR. WILHELM: Gary Wilhelm,
18 Cornell University.

19 There are no doors separating. It
20 is one space. This is an internationally
21 famous architect who has designed the
22 building where the space is. It's all
23 one. It flows. There's not a door.
24 There's no requirement for rated
25 corridors in this building. The width of

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this space at that point is wide enough
for 480 people to exit.

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MR. MANEY: Okay. Michael.

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MR. NIECHWIADOWICZ:

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Mike Niechwiadowicz, acting building
commissioner.

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No, there is no rating to the
corridor.

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MR. DEDRICK: What's the width of
the corridor?

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MR. WILHELM: Six foot.

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MR. DEDRICK: Mr. Bliss, is there a
definition for room or space that
designates it as the end of a corridor or
the beginning of a hallway or the --

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MR. BLISS: There is a definition
for corridor. I don't have it with me.

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I believe it requires fire rated, some
fire ratings on the walls, as part of the
exit path.

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MR. OCHSHORN: May I add something?

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Jonathan Ochshorn.

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MR. MANEY: Yeah.

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MR. OCHSHORN: On the working

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2 drawings, that space is labeled corridor
3 as distinct from the room. There is no
4 requirement that a corridor be separated
5 by a room or space by a door. And in
6 this building, because of its
7 construction type, there is no fire
8 rating required on corridors. So the
9 question of fire rating is irrelevant.
10 It is a corridor.

11 Secondly, it's irrelevant. To have
12 the space converge at a single point is
13 the salient feature of this space, and
14 that's what makes it illegal. Whether
15 you try to kind of gain the system by
16 calling this corridor part of the room is
17 irrelevant. As I said, you could do that
18 gain with any room at all that requires
19 two exits and only have a single exit.
20 It's absurd. And this point of view is
21 confirmed by the code experts at ICC.

22 MR. MANEY: All right. Any
23 additional information on this particular
24 subject?

25 (No response.)

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MR. MANEY: Does the Board have any additional questions on this subject?

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(No response.)

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MR. MANEY: Staff?

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MR. BLISS: (Nodding in the negative.)

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MR. MANEY: All right. Let's move on to the noncompliant objects in the egress path.

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MR. OCHSHORN: Jonathan Ochshorn again.

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Exhibit 2 concerns protruding objects in the egress path in Milstein Hall's upper level. In fact, most of the sloping structural elements I document in my complaint as noncompliant with the requirements of Section 1003.2.5.1 were actually supposed to have so-called cane detection barriers, at least according to the December 5th, 2008, permit drawings, but those barriers were not fully provided. And the protruding guardrail at the sloped seating area on that same floor,

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2 which shows up in Figure 8 on Page 21,
3 also presents a hazard for people with
4 visual disabilities or just distracted
5 students and is clearly noncompliant with
6 requirements of Section 1003.2.5.3, which
7 states unambiguously that "structural
8 elements, fixtures or furnishings shall
9 not project horizontally from either side
10 more than 4 inches over any walking
11 surface between the heights of 27 and 80
12 inches above the walking surface."

13 MR. MANEY: Any questions for the
14 Petitioner?

15 (No response.)

16 MR. MANEY: Anybody else have
17 comments on this? Michael.

18 MR. NIECHWIADOWICZ:
19 Mike Niechwiadowicz, acting building
20 commissioner.

21 Actually, if the protrusion starts
22 at below 27 inches...and I use the ICC
23 commentary on the ICC ANSI A117.1
24 code...it states that that protrusion can
25 be any amount. So per Jonathan's diagram

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actually that is compliant.

And, indeed, there were a number of questions regarding protrusions and other aspects of compliance with the ICC ANSI A117.1 code, so we brought in -- actually the architect hired Dominic Marinelli, who is the -- actually the code consultant that teaches the courses for accessibility on behalf of the state, and had him go through the building. And I do have a copy of his report, and he did cite certain problems with the building that were corrected during the construction. He identified areas that did require the cane detection. Those areas were taken care of. And they were solving glass in certain areas that was taken care of. He did not consider the perimeter of the studio space where we have sloping columns to be on the egress path, and this was discussed specifically with Mr. Marinelli. And, indeed, this particular case was also discussed.

1

2

There were many other things that he did

3

indicate needed additional work for

4

compliance and those were taken care of.

5

So I believe we have met the requirements

6

of the ICC ANSI A117.1 code.

7

MR. WILHELM: Gary Wilhelm,

8

Cornell University.

9

Our response, Page 2 response to

10

this, also included as Attachment 2 is a

11

copy of the report that

12

Mr. Niechwiadowicz just referenced. The

13

architect of record retained

14

accessibility responses from the United

15

Spinal Association, and he's correct that

16

there were a number of items which were

17

problematic. Options were discussed

18

about how to solve them, and ultimately

19

construction was put in place, actually

20

can detection, to address these areas.

21

I also have a photo of the exterior of

22

the building.

23

MR. MANEY: Submit the photo, we own

24

it.

25

MR. WILHELM: Yeah. I've got two of

1

2

them for you. This is a view of the

3

exterior of the building showing the

4

desks where students work and the fact

5

that path --

6

MR. MANEY: We'll note that as

7

Photo 1.

8

MR. WILHELM: This is another

9

intermediate area showing what cane

10

detection had been provided.

11

(Photographs marked for

12

identification as Exhibits 1 and 2, this

13

date.)

14

MR. DEDRICK: So this attachment to

15

them as submitted today by Mr. Wilhelm is

16

the report from Dominic Marinelli --

17

MR. WILHELM: Yes, with comments --

18

MR. DEDRICK: -- with photographs,

19

the comments, the issues that are

20

noncompliant. Now, the proposed

21

remedies, was that his recommendation as

22

well?

23

MR. WILHELM: The proposed remedies,

24

basically the architect and design

25

architect looked at...as they did on

1
2 everything in the building, looked at
3 multiple solutions to every issue. One
4 was selected and put in place, so the --
5 basically what's illustrated there, is
6 sketched out, is what was put in place,
7 cane detection under the stair, other
8 locations, corrections to the toilet
9 rooms.

10 MR. DEDRICK: So these photographs
11 that were submitted today indicate that
12 the positioning of furniture delineates
13 the aisle widths and the path of travel?

14 MR. WILHELM: I'd say yeah. The
15 other point I'd make is that if you're
16 walking along moving between sections
17 of -- basically this is a studio space.
18 There's 17 studios. These trusses are at
19 the exterior wall, are parallel to path.

20 MR. OCHSHORN: May I respond?

21 MR. HRAB: Mm-hmm.

22 MR. MANEY: If you have information,
23 yes. I don't want to get into a verbal
24 argument here.

25 MR. OCHSHORN: No. Just to point

1
2 out that it's very easy to see these nice
3 little paths of egress between the two
4 columns if you are sighted. Not so hard
5 (sic) if you're blind. If you look at my
6 Figure 8 on Page 21, you'll see that the
7 particular sloping column I'm showing is
8 right next to a door into Sibley Hall,
9 perfectly part of the egress path. You
10 can't know where these boundaries are if
11 you don't have -- if you are vision
12 impaired. That's the whole point. Okay.
13 That's all I'll say about that.

14 MR. MANEY: Anything else?

15 (No response.)

16 MR. MANEY: Board have any questions
17 on this item?

18 (No response.)

19 MR. MANEY: All right. I think we
20 got enough information there.

21 Inadequate fire barrier.

22 MR. OCHSHORN: Jonathan Ochshorn
23 again.

24 Exhibit 3 concerns the fire barrier
25 put in place between Milstein and

1
2 Sibley Halls. According to
3 Section 706.6, openings and such barriers
4 are limited to 25 percent of the length
5 of the wall. The openings in this fire
6 barrier exceed 25 percent of the wall
7 length as shown in my Figure 9 on
8 Page 22. When I pointed this out to
9 representatives at Cornell, they
10 responded by providing a special
11 sprinkler system for just enough of the
12 openings so that the 25 percent limit
13 would not be exceeded. However, the
14 sprinkler system provided does not meet
15 the standards of Exception 3 in Code
16 Section 706.6, which permits openings
17 tested per ASTM E119 to be treated as
18 walls rather than as openings.

19 This noncompliance is clearly shown
20 in documentation provided by the
21 manufacturer of the sprinkler system,
22 which I have included in this exhibit,
23 Figures 10 and 11 on Page 23. I have
24 also confirmed this by speaking with a
25 technical representative of the sprinkler

1

2

company on March 9th, 2012, who stated

3

without equivocation that the

4

installation, as I described it, would

5

not satisfy the requirements of

6

ASTM E119.

7

MR. LAFFERTY: These openings are

8

existing?

9

MR. OCHSHORN: They were existing

10

openings and then --

11

MR. LAFFERTY: From the beginning?

12

MR. OCHSHORN: From the beginning.

13

And then fire-rated fixed glazing was

14

installed on all of them.

15

MR. LAFFERTY: These were existing

16

openings.

17

MR. OCHSHORN: Existing openings in

18

Sibley Hall.

19

MR. LAFFERTY: Unprotected at one

20

time?

21

MR. OCHSHORN: Yes, yes. Before

22

Milstein Hall, they were simply windows.

23

MR. LAFFERTY: Now, Milstein was

24

added when?

25

MR. OCHSHORN: Between 2009 and

1

2

2012.

3

MR. LAFFERTY: So it's a new
addition to it?

5

MR. OCHSHORN: Yes.

6

MR. LAFFERTY: Thank you.

7

MR. MANEY: Michael.

8

MR. NIECHWIADOWICZ:

9

Mike Neichwiadowicz, acting building
commissioner.

10

11

I apologize. There was a history

12

again with this. Initially what was

13

called for was E119 glass on all the

14

openings with a number of them being

15

one-hour-rated E119 glass so that they

16

would meet the one-hour fire barrier

17

wall. And, indeed, they wouldn't be an

18

opening because it meets the wall test.

19

What -- somehow through the process

20

someone realized oh, an opening

21

protective only has to be 45 minutes.

22

They ordered all 45-minute E119 glass

23

instead of some of it being the one hour.

24

So we had to figure out a fix. And these

25

are custom panels, and the E119 glass is

1

2

even more expensive than the FireLite

3

because it actually meets the wall test

4

as opposed to just the opening protective

5

test. It was less expensive to install

6

the sprinklers, and we do have the Legacy

7

report that says that sprinkler

8

installation does meet the ASTM E119

9

test.

10

That's all.

11

MR. WILHELM: Gary Wilhelm,

12

Cornell University.

13

Our Page 3 and the attachment, the

14

attachment is the sealed and signed

15

change document proposal request for

16

adding the sprinklers designed by the

17

architect of record and the mechanical

18

engineer of record stating that this is

19

an appropriate application.

20

Mike is right that there was an

21

error made and we needed to correct that

22

error. Providing the sprinklers was the

23

most cost-effective- and time-effective

24

solution to the problem.

25

MR. DEDRICK: So the proposal is to

1

2

comply with the code for that particular
item by altering the components?

3

4

MR. WILHELM: Well, we, yeah,

5

complied with the code by providing the
additional sprinklers.

6

7

MR. DEDRICK: Right, altering the

8

existing components that were installed
incorrectly?

9

10

MR. NIECHWIADOWICZ: Yes.

11

MR. MANEY: Anything else on that

12

particular item?

13

(No response.)

14

MR. MANEY: Moving on to the

15

mezzanine.

16

MR. OCHSHORN: Exhibit 4 -- this is

17

Jonathan Ochshorn.

18

It's best if you're following along

19

in the appeal to look at Addendum 1

20

beginning on Page 56. Exhibit 4 concerns

21

improper designation of the ground-floor

22

lobby and bridge in Milstein Hall as a

23

mezzanine within the Crit room space. A

24

mezzanine must meet two requirements

25

according to Section 505.2 of the 2003

1

2

code. First and fundamentally, a

3

mezzanine cannot exceed one-third the

4

floor area of the space it is in.

5

However, the area of the mezzanine space

6

in Milstein Hall greatly exceeds

7

one-third of the maximum allowable Crit

8

room area.

9

Assuming that the Crit room had two

10

legal exits, which it doesn't, the

11

mezzanine's allowable area per my

12

discussion about Exhibit 1 would be

13

computed as follows. First, multiply the

14

349-person two-exit capacity of the Crit

15

room by five square feet per standing

16

occupant. Then divide this allowable

17

area by 3 to get the maximum allowable

18

mezzanine area, which turns out to be 582

19

square feet. The actual lobby bridge

20

area is over a thousand square feet,

21

which exceeds the allowable area. In

22

other words, this mezzanine is

23

noncompliant even if the Crit room were

24

reconfigured with two exits. With one

25

actual legal exit in the Crit room, it's

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not even close.

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I'm presuming here that the Crit room is an assembly space, which it really is. In other words, the question of the mezzanine, Exhibit 4, is tied to the question of the Crit room occupancy and exiting, Exhibit 1. You can't look at one without the other.

Since the mezzanine maximum area is related to the maximum area or the allowable area of the Crit room, depending on your judgment about what that allowable area of the Crit room is, it may turn out that the mezzanine is noncompliant for that reason.

Second, a mezzanine must be in a room or space. The lobby of Milstein Hall is not within any other space. In fact, if you stand in the lobby, you are actually standing above the reinforced concrete ceiling of the Crit room. You can see this in section -- on the section on Page 25. The Crit room is a complex space with a

1

2

domed concrete ceiling. What they're calling the mezzanine actually or part of the mezzanine actually rests on the top of that ceiling, then comes into the Crit room through an opening punched into this concrete wall, which is called a bridge.

8

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11

So the lobby is on the ceiling of the Crit room. The bridge comes into the Crit room. The bridge is a true mezzanine. The lobby is not.

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Documents in the building department file from April 2007 show that the architects for Milstein Hall were designing the building as if a large noncontinuous area on the below-grade floor level could be considered as the space or room in which the so-called mezzanines were located even though some of the designated mezzanine spaces had no relationship at all to some of the spaces they were supposed to be in.

23

24

25

This is reproduced as -- in E-mails on Page 65 and 66 and on plans produced by the architects on Page 67. I have no

1
2 idea what the legal status of these
3 things are. They were found in the
4 building department files and indicate a
5 kind of misreading of the code as to what
6 a mezzanine was. That is, they have
7 mezzanines, they have a ground-floor
8 level and didn't seem to bother them that
9 the mezzanine had no particular
10 relationship to the ground-floor levels
11 that they were designating as area. So I
12 think they misread this question of the
13 idea that a mezzanine must be in a space.

14 Secondly, at least part of that
15 mezzanine is simply not in the space.
16 It's outside the space, connected to the
17 space through a hole punched in this
18 reinforced concrete ceiling. This
19 becomes important because the whole
20 design of Milstein Hall relies on this
21 designation as a mezzanine. This turns
22 the building into a two-story building,
23 which allows all of the spaces to be
24 interconnected without shaft enclosures
25 or atrium designations.

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If it's a three-story building, that is if the lobby really is a lobby on its own level, the whole premise of this building becomes -- calls into question. So it's a serious question of whether it is a mezzanine or not. Okay.

MR. MANEY: Any other comments?
Michael.

MR. NIECHWIADOWICZ:
Mike Niechwiadowicz, acting building commissioner, City of Ithaca.

The bridge and lobby area are continuous. There's no break between them. Indeed, a portion of that mezzanine is on the ceiling roof of the Crit space; however, it meets the definition based on being less than one-third of the area of the space that contains that. And we looked at the Crit room only in making that determination of one-third, and it is clearly open to it.

We had our state representative, Charlie Bliss, look at this also and he saw the space as well. I believe it does

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2

meet the definition in the code of
mezzanine.

3

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MR. MANEY: Charlie, you got a
comment.

5

6

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MR. BLISS: Well, I just wanted to
point out that the actual way of
calculating the size is to use the actual
size. In this case, the Petitioner is
calculating a size based on the maximum
allowable exit capacity, and it's not
proper to calculate it that way. You
have to use what the existing conditions
are. I just wanted to point that out to
the Board.

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MR. MANEY: So we got all the
information we need for the mezzanine?

18

19

MR. OCHSHORN: I have one more
comment if I may.

20

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22

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25

MR. OCHSHORN: We heard just now
that the -- that indeed the mezzanine,
so-called mezzanine, is on the ceiling of
the Crit room at least partly. The
definition of a mezzanine requires that

1

2

the mezzanine be between the ceiling and

3

the floor. You can't be above the

4

ceiling and be a mezzanine.

5

Secondly, it is true that the

6

mezzanine is based on whatever actually

7

is the existing condition of the space it

8

is in. However, it is important to point

9

out that if that space proves to be

10

noncompliant, as I believe it is because

11

there are inadequate exits, it may be

12

necessary to reduce physically the size

13

of that space, in which case what is now

14

being called a mezzanine would not meet

15

the one-third area requirement.

16

MR. MANEY: Okay.

17

MR. WILHELM: I have a couple

18

pictures if you'd like to --

19

Gary Wilhelm, Cornell University.

20

I have three photos.

21

MR. MANEY: That's 3 and 4 and 5.

22

MR. WILHELM: View from the

23

entrance, the bridge, view on the bridge

24

and a view back up the stairs.

25

(Photographs marked for

1

2

identification as Exhibits 3, 4 and 5,
this date.)

3

4

MR. MANEY: Anything else?

5

MR. OCHSHORN: May I see the photos?

6

MR. MANEY: Absolutely.

7

8

MR. OCHSHORN: This bridge is being
called a mezzanine. It is a mezzanine.

9

The question is...see this little hole

10

through the mezzanine --

11

MR. MANEY: What photo are you

12

alluding to?

13

MR. OCHSHORN: Photo 5 shows a hole

14

punched in the reinforced concrete

15

ceiling of the Crit room. The problem is

16

that they're calling the space through

17

that hole, which is on the ceiling of

18

this reinforced concrete ceiling, a

19

mezzanine.

20

I have no problem with the bridge

21

being designated as a mezzanine. The

22

problem is the lobby, which they're

23

clearly not featuring. If the lobby is

24

not a mezzanine, because it's on the

25

ceiling of the Crit room, then the --

1

2

then there are three distinct stories
interconnected without shaft enclosures.

3

4

And this relationship shows clearly
in the section that I referenced on
Page 25, which shows the lobby on the
ceiling of the Crit room.

5

6

7

8

MR. MANEY: Any comments, Charles?

9

MR. BLISS: No.

10

MR. MANEY: Okay. Everybody see the
photos?

11

12

MR. DEDRICK: The photo which we've
labeled Number 3, where is the -- is
someone standing in the lobby to take
that photograph?

13

14

15

16

MR. WILHELM: Gary Wilhelm, Cornell.

17

Yes. I took that photo standing at
the front door to the space.

18

19

As I included in our response there,
Number 4, the mezzanine needs to be part
of the space, room or space. This area
entry, the lobby, the bridge, is part of
the space that includes the Crit room.
That's how we see it as qualifying as a
mezzanine.

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MR. MANEY: Other questions?

3

Charles?

4

MR. BLISS: Just -- and this is

5

going back to the previous item

6

submitted. There are two submissions

7

from Cornell --

8

MR. MANEY: You're going to have to

9

speak up, Charlie. Sorry.

10

MR. BLISS: Okay. There are two

11

submittals from Cornell regarding the

12

sprinklers and the horizontal portions of

13

windows, whether or not they're mullions

14

or something else. But one talks about

15

five-sixteenths of an inch projection;

16

the other one talks about five-eighths.

17

And there's a letter from the architect

18

of record saying that everything is okay.

19

And my question is: Which is the proper

20

distance and do you have anything from

21

the sprinkler company itself that says --

22

that states that these sprinklers are

23

okay in this application?

24

MR. MANEY: I believe, Michael, you

25

got documentation. Have you got

1

2

documentation?

3

MR. NIECHWIADOWICZ: We got the
Legacy report.

4

5

Mike Niechwiadowicz, acting building
commissioner.

6

7

MR. MANEY: Would that do it?

8

MR. BLISS: Okay.

9

MR. MANEY: On the sprinklers? The
report?

10

11

MR. BLISS: That they'll work on
those windows with the horizontal....

12

13

MR. NIECHWIADOWICZ: My discussion
with the folks that prepared this report
was -- and the point actually was brought
to my attention by the architect, the
difference between a mullion and muntin.
And a mullion separates window units, so
generally they're larger. What we have
here is a muntin that separates the panes
of glass. And it was not the intent that
muntins would be excluded, that mullions
would, because that would interfere with
the flow of the water down the glass.

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MR. BLISS: Okay. That report

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should be in the record then.

3

MR. MANEY: Yeah.

4

5

MR. NIECHWIADOWICZ: I can get
copies.

6

7

MR. LAFFERTY: Got a number for
that, don't you?

8

9

MR. NIECHWIADOWICZ: Yes. It's
NER516.

10

MR. BLISS: Okay.

11

12

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14

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MR. OCHSHORN: Can I just note for
the record that there are three
objections to using those sprinkler
systems to comply with E119. You have
addressed one of them, but they didn't
mention the other two objections. I'll
just leave that for the record.

MR. MANEY: Back to the mezzanine,
are we done with the mezzanine?

20

21

MR. OCHSHORN: (Nodding in the
affirmative.)

22

23

24

MR. MANEY: So we're going to
Milstein, Sibley, Rand Halls, exceeds
Table 503 floor area based on appendix.

25

MR. OCHSHORN: Jonathan Ochshorn

1

2

again.

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Exhibit 5 challenges the idea that Appendix K in the 2003 code allows Milstein Hall to use fire barriers as a substitute for fire walls so that it counts as a separate building with its own construction type. I assume that Milstein Hall is being considered as a separate building since the building permit filed on May 18th, 2007, which is reproduced on Page 73, classifies it as new building rather than as an addition.

Since only a fire wall can create separate buildings where an addition is physically connected to existing construction, this assumption that Milstein Hall is being considered as a separate building is the only plausible assumption I can make. I believe that this assumption has no basis in the building code and that, therefore, Milstein code exceeds the allowable floor areas permitted for a single building.

The calculations for allowable area

1
2 based on Table 503 in the 2003 code can
3 be found on Page 28 of my exhibit. In
4 summary, the total allowable per-floor
5 area based on Type V-B construction and
6 Group B occupancy is at most 33,750
7 square feet, while the actual total area
8 per floor is approximately 41,600 square
9 feet as can be seen in Figure 14 on
10 Page 28.

11 Although there is absolutely no code
12 analysis anywhere in the drawings or
13 specifications for Milstein Hall that
14 explains how an addition can be
15 considered as a separate building without
16 being separated by a fire wall, I have
17 been told by City of Ithaca code
18 officials that such an assumption is
19 justified based on Appendix K of the 2003
20 building code.

21 Specifically, Section K902.2 of the
22 2003 code states, "No addition shall
23 increase the area of an existing building
24 beyond that permitted under the
25 applicable provisions of Chapter 5 of the

1
2 building code for new buildings unless a
3 fire barrier in accordance with
4 Section 706 of the building code is
5 provided."

6 However, if you examine the code
7 language, you will notice that this
8 section of Appendix K says nothing about
9 using a fire barrier to take the place of
10 a fire wall, nor does it say anything
11 about using a fire barrier to create a
12 separate building. It simply says that
13 the total floor area of existing
14 buildings and their additions must
15 conform to Chapter 5 area limits, unless
16 fire barriers are provided.

17 Fire barriers create fire areas but
18 do not create separate buildings with
19 their own construction type. Only fire
20 walls do that.

21 Even so, fire barriers do allow
22 potentially greater building area than
23 would otherwise be the case. This occurs
24 when one adds together the allowable area
25 of separated uses according to the

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formula outlined in the building code.

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Now, if it were impossible for an addition to increase the area of an existing building beyond that permitted under the applicable provisions of Chapter 5 by using fire barriers, one might have reason to assume that something else was intended by this code section in Appendix K. For example, if code provisions that allow fire barriers to create fire areas with separated uses were contained in Chapter 5, as they are in the 2007 and 2010 building codes, then one could reasonably assume that Appendix K was written in error or that something else was intended since the additional floor area allowed in Appendix K cannot be based on allowances in Chapter 5.

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However, the section on separated uses and fire barriers currently found in Chapter 5 was actually placed within Chapter 3 of the 2003 building code. Therefore, the use of fire barriers,

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according to Appendix K and according to the instructions for separated uses in Chapter 3, is perfectly consistent.

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In other words, one can increase the area of the building with a fire barrier by referring to the provisions of Section 706 that are referenced in Section K902.2, and there is absolutely no need to invoke some imaginary fire wall substitution.

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Section 706.3.5 states that, "A fire barrier separating mixed occupancies or a single occupancy into different fire areas shall have a fire resistance rating of not less than that indicated in Section 302.3.3 based on the occupancies being separated."

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Section 302.3.3 describes how fire barriers can be used to create separate fire areas and describes how the fire areas thus created can exceed the area limits in Chapter 5 of the code. It states, "In each story the building area shall be such that the sum of the ratios

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of the floor area of each use divided by
the allowable area for each use shall not
exceed one."

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25

By using fire barriers according to
Section 302.3.3, it is possible to
increase the area of an existing building
with an addition beyond that permitted
under the applicable provisions of
Chapter 5 just as promised in Appendix K.

Unfortunately, using this provision
in Appendix K still does not make
Milstein Hall compliant. Its combined
floor area, even separated into distinct
fire areas with fire barriers, is still
too great. In any case, the desire to
make Milstein Hall compliant cannot be in
itself a reason to make assumptions about
the building code that have no basis in
the actual wording of the code and,
furthermore, have no precedence in any
other known code ever written, including
the model codes that were used as a basis
for Appendix K in the first place.

The architects for Milstein Hall and

1
2 Ithaca code officials have attempted to
3 combine Milstein Hall with Sibley Hall,
4 which has a V-B construction type, by
5 claiming that Milstein Hall is a separate
6 building. But fire areas do not create
7 separate buildings, and the construction
8 type for all such fire areas is
9 determined by the weakest link in the
10 connected buildings, which is
11 Sibley Hall's V-B rating.

12 Only fire walls create separate
13 buildings with their own construction
14 types, and Appendix K says nothing about
15 using fire barriers to substitute for
16 fire walls.

17 It is true that there are special
18 instances in the code where separate
19 construction types are permitted without
20 fire walls. The architects for
21 Milstein Hall make reference to the
22 special provisions for parking garages
23 found in Chapter 5 of the building code.

24 I've shown their correspondence on
25 Page 74 and 75 of my appeal. They've

1
2 made reference to these provisions in
3 order to demonstrate that it is possible
4 for a fire barrier to create two separate
5 buildings. And while it is true that
6 three-hour fire-resistant-rated
7 horizontal assemblies, which by the way
8 are not fire barriers, can be used for
9 this purpose, the code makes it
10 absolutely clear that these are, quote,
11 special conditions and that portions of
12 such a building can, to cite but one
13 example, "be considered as a separate and
14 distinct building for the purpose of
15 determining area limitations."

16 In other words, when the code
17 describes such an exception or special
18 condition that modifies the specific
19 content of other code sections, it is
20 explicit about what the conditions are
21 and how they are to be satisfied. In
22 contrast to such special code sections,
23 Section K902.2 of Appendix K in the 2003
24 code does not say anything about using a
25 fire barrier to create a separate

1

2

building or using a fire barrier in lieu
of a fire wall.

3

4

5

6

7

I still believe that this section of
Appendix K makes no sense as there are no
precedents in any other codes for the use
of fire barriers in this context.

8

9

10

11

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13

However, it makes even less sense to
assume with no evidence that such fire
barriers should be allowed to substitute
for fire walls or be allowed to create
fire areas with their own construction
types.

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Reading this code section literally,
that is assuming that fire barrier means
fire barrier, is at least internally
consistent and will result in a safe
building, whereas allowing the fire areas
created with such fire barriers to be
considered as separate buildings is
unprecedented, unsafe and unsupported by
any code language.

23

24

MR. MANEY: Thank you for your
information.

25

MR. NIECHWIADOWICZ:

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Mike Niechwiadowicz, acting building commissioner, City of Ithaca.

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Indeed, the application when it was received, we put a quick note not to classify the building or the addition but type of work as new building. At that time, there was no review done. There was no analysis done. It was the time of submitting the application, and we quickly make a note of what type of work would occur.

13

14

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We subsequently reviewed this, and it was always treated as an addition under Appendix K, and, indeed, the section that Jonathan refers to, the K902.2, allows a fire barrier to be used to separate an addition when it is beyond the fire area permitted for the Type V building.

21

22

23

MR. MANEY: All right. Anybody else? Comments on this particular issue?

24

(No response.)

25

MR. MANEY: Charlie?

MR. BLISS: Appendix K does state

1

2

that additions are allowed to exceed the

3

values in Chapter 5 if a fire barrier is

4

constructed. And there is no limitation

5

found in Appendix K regarding the size of

6

that addition. And in talking years ago

7

with the author of Appendix K that was

8

what they intended.

9

The Petitioner is correct in saying

10

that, even though a fire barrier is

11

there, a fire barrier does not separate

12

the building into two different

13

construction types -- or two different

14

buildings, which would allow two

15

different construction types. So, under

16

the code, the entire building would be

17

classified whatever the lowest rating

18

would be, which would be Type V-B.

19

MR. MANEY: Thank you. All right.

20

Anything else with this issue?

21

MR. OCHSHORN: Yes. I just want to

22

just say, because it's hugely important,

23

to note for the record that if, in fact,

24

the entire building is V-B, as I believe

25

it should be, then it is not nearly

1

2

compliant with the area limits in 503.

3

4

MR. MANEY: Thank you. Anything else?

5

6

MR. WILHELM: Gary Wilhelm, Cornell.

7

8

I just wanted to mention that we have -- on Page Number 5 we outline our understanding of the code compliance using K90 --

9

10

11

MR. MANEY: You're going to have to speak a little louder. I'm sorry.

12

13

14

15

16

17

MR. WILHELM: Sorry. Apologize. I'm just saying that in our Item 5 we outline our understanding of how the building or Milstein addition complies with Code K902.2. That's what I wanted to say.

18

19

20

MR. MANEY: All right. So what do we do with Number 5? We still do it; right?

21

22

23

24

MR. HRAB: Right.

MR. MANEY: All Right. Let's go to Number 5, the Milstein and Sibley, Rand Halls --

25

MR. HRAB: 6.

1

2

MR. DEDRICK: We're on Item 6.

3

4

MR. MANEY: I'm sorry. We're on 6,
improper occupancy class designation.

5

MR. OCHSHORN: Okay.

6

Jonathan Ochshorn again.

7

Exhibit 6 concerns improper

8

occupancy class designations in

9

Milstein Hall. The second floor of

10

Milstein Hall may have been

11

inappropriately classified as both an A-3

12

and B occupancy apparently based on

13

Section 302.4, spaces used for different

14

purposes of the 2003 building code.

15

This section is meant to apply to

16

spaces where different uses actually

17

occur within the same space at different

18

times, not to a situation where only a

19

single occupancy occurs in the space but

20

where a hypothetical future occupancy

21

noncompliant under current building codes

22

would, therefore, be grandfathered under

23

the old code.

24

Only a single Group B occupancy

25

occurs on the upper level of

1

2

Milstein Hall. This is clear from a

3

January 28th, 2009, E-mail from KHA

4

Architects to Andrew Magre at Cornell,

5

which concludes, "Floor 2 occupancy is

6

Type B, business, for educational

7

occupancies above the twelfth grade."

8

That Ithaca code officials suggest

9

that future changes in that space to a

10

higher hazard occupancy will be permitted

11

without having to meet the requirements

12

of the current existing building code is

13

clear from this January 22nd, 2009,

14

E-mail from Ithaca Senior Code Inspector

15

John Shipe to me, which states, "This

16

space is required to be flexible in order

17

to accommodate many programs and

18

situations and so they permitted it as

19

the most restrictive occupancy so that

20

they would not have to worry about

21

changes in occupancy every time their

22

needs change for that space. Even if

23

they were to call the second floor area a

24

B occupancy and in the future wanted to

25

change it to an A-3 space, it would still

1

2

be allowed since Milstein is being

3

constructed with a separation of use and

4

fire areas from Sibley Hall by the

5

required fire barrier."

6

The 2003 code does not support the

7

idea that a space can be assigned an

8

occupancy designation that does not

9

correspond to its actual use. In fact,

10

both Sections 302.3.2 and 302.3.3 state

11

clearly that, "Each portion of a building

12

shall be individually classified as to

13

use."

14

Furthermore, Section 302.1 states,

15

"Where a structure is proposed for a

16

purpose which is not specifically

17

provided for in this code, such structure

18

shall be classified in the group which

19

the occupancy most nearly resembles." It

20

is also clear that a change in occupancy

21

to a higher hazard, according to

22

Section 912.5.1 of the 2010 existing

23

building code, must comply with the

24

height and area requirements of Chapter 5

25

of the building code. That is, any

1
2 nonconforming conditions such as the use
3 of fire barriers to effectively create a
4 new building do not apply and are not
5 grandfathered. By allowing changes to
6 equal or lesser hazard occupancies
7 without having to meet these more
8 stringent requirements, the code clearly
9 is attempting to prevent occupancy
10 changes in existing buildings that
11 increase the level of hazard unless the
12 building is upgraded according to current
13 standards.

14 The reason for designating the
15 second floor Milstein Hall spaces as both
16 a A-3 and group B is clear. By doing so,
17 in apparent violation of the code, the
18 building owner and architects are hoping
19 that any hypothetical future alteration
20 involving an A-3 lecture hall or library
21 will be considered as a change to an
22 equal or lesser hazard category, which it
23 really isn't, rather than a change to a
24 higher hazard category, which it really
25 is. Otherwise, such changes to higher

1
2 hazard uses would not be possible in
3 Milstein Hall unless a fire wall were
4 constructed to replace the current fire
5 barrier.

6 MR. MANEY: Michael, any comments?

7 MR. NIECHWIADOWICZ: Yes. There
8 exists currently a tiered seating area on
9 the second floor of this space. There is
10 a large area for gathering groups of
11 students on this level as well. And both
12 Tom Parsons and I tend to apply the most
13 restrictive occupancy classification
14 because typically a B occupancy doesn't
15 require sprinklers nor fire and smoke
16 detection. And both of us admittedly
17 like that requirement so that a required
18 sprinkler system would have to be put in,
19 and in this case we have it, and
20 detection.

21 So, therefore, yes, we did classify
22 it as an A-3/B space, and there exists
23 right now tiered seating in that space
24 and an area for the groups of students to
25 gather and assemble in.

1

2

MR. WILHELM: Gary Wilhelm,
Cornell University.

3

4

5

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10

I'll refer you to our Page 6 and going to point out actually there's one typo that I didn't catch under the explanation just above the illustration. It mentions Section 303.3.2, and it's intended to be 302.3.2. A lot of 3's, a lot of 2's. I got them mixed up.

11

12

13

14

15

Cornell University does, I'm sure always will, actively work to comply with all requirements on our buildings. If something comes up and we understand it's not, we haven't complied, we act on it.

16

17

18

19

20

21

22

23

24

25

As Mike pointed out, there's a bleacher area that, if one calculates the seating capacity of that area per the code, 60 persons could be sitting in that bleacher area. He mentioned -- that is shown in blue. It's the center -- in the center of the floor there. Looks like a set of stairs. Actually that's about what it is. The other blue area is that meeting area that Mike referred to. This

1
2 is a mixed occupancy. There's assembly
3 occupancies. There is business
4 occupancy, 17 architectural studios with
5 17 occupants, 16 students and an
6 instructor. You add up all these numbers
7 and it's over 500 people. We complied
8 with the requirements for an assembly --
9 A-3 assembly space on this floor as
10 required by the City of Ithaca.

11 MR. OCHSHORN: May I correct a
12 couple of factual errors?
13 Jonathan Ochshorn.

14 MR. MANEY: Yeah.

15 MR. OCHSHORN: I have no problem
16 with having A-3 occupancies on the second
17 floor of Milstein Hall. Specifically,
18 these are nonseparated occupancies. In
19 fact, maybe this one would qualify as an
20 accessory occupancy for the B occupancies
21 that are on the rest of the floor. The
22 point is that even with nonseparated
23 occupancies you are required to designate
24 each specific occupancy on that floor
25 individually. So, if that's an A-3 area,

1

2

fine. The rest of the floor is a B area.

3

That's the point.

4

MR. MANEY: Are you talking to him

5

or me?

6

MR. OCHSHORN: Both.

7

MR. MANEY: No.

8

MR. OCHSHORN: Okay. Apologize.

9

I'm going to address this to you.

10

So it would be perfectly proper to

11

designate those stepped seating areas and

12

the little floor area as A areas whether

13

they're accessory or not. The rest of

14

the floor, which is the majority of the

15

floor, is still a B occupancy and needs

16

to be classified as such.

17

There's no place in the code which

18

allows you to give the whole thing a

19

B/A-3 occupancy. You need to

20

individually classify each space

21

according to its use. The code says that

22

unambiguously. My point is that, if any

23

of those B-occupancy spaces are converted

24

in the future to lecture halls or library

25

uses, what Cornell is trying to do is

1

2

avoid having that considered a change to

3

a higher hazard occupancy in order to

4

avoid meeting the requirements of the

5

current code.

6

I believe that this is entirely

7

improper and is not supported by the

8

code, which specifically wants you to

9

bring changes to a higher hazard back to

10

the building department under the current

11

code. That's the whole point.

12

MR. MANEY: All right. Mr. Bliss.

13

MR. BLISS: It is up to the code

14

official and the design professional and

15

the owner to properly classify a

16

building. And a building can have

17

different uses, but the building has to

18

be designed for the most restrictive use.

19

There's nothing improper about

20

designating an area to be -- that's a B

21

occupancy but designing it to meet the

22

requirements of an A occupancy because

23

future use may dictate that that area

24

becomes an A-3 occupancy. They're just

25

building it to a higher standard. And

1

2

again the --

3

MR. MANEY: So this is classified
now as a B occupancy?

5

MR. NIECHWIADOWICZ: A-3/B.

6

MR. MANEY: With subuse of a B?

7

MR. BLISS: B/A-3, I believe.

8

MR. NIECHWIADOWICZ: No, no, no.

9

10

Combination A-3/B occupancy. A portion
of it is clearly an A-3 occupancy
already.

11

12

MR. MANEY: Okay.

13

14

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MR. BLISS: Each occupancy, it would
be like a very large supermarket. They
may have an A occupancy that has a
restaurant that will seat a hundred
people, but the rest of it is mercantile.
And that section would be classified as
an M occupancy, but the assembly
restaurant area would be classified as an
A occupancy. But the entire building,
because it's not separated, has to be
designed to the requirements of the A
occupancy.

And the other question, I believe,

1
2 that was raised in the appeal was can
3 this exist because it's on the second
4 floor of a building if you determine that
5 this is Type IV -- or Type V-B
6 construction, can it even exist there.
7 And that's what the appeal actually
8 was --

9 MR. OCHSHORN: No, no. That was for
10 Exhibit 8, not for Exhibit 6.

11 MR. BLISS: Okay.

12 MR. OCHSHORN: May I clarify things,
13 with all due respect? The code requires
14 that every space be individually
15 classified per use. If you have
16 nonseparated uses where you're designing,
17 for example, the whole space according to
18 A-3, the code asks you to design for area
19 and height limits. It doesn't ask you to
20 consider all of the egress requirements
21 for example. All of those other
22 requirements in Chapter 10 are for the
23 specific uses. So it's completely untrue
24 that somehow by having nonseparated uses
25 including A-3 and B that somehow the

1
2 whole building would, therefore, satisfy
3 A-3 requirements. The code does not
4 require that, and that's the reason that
5 any change to a higher hazard occupancy
6 still needs to be brought to the building
7 department.

8 And I believe it is entirely
9 improper to kind of try to -- to kind of
10 guarantee that this thing will work in
11 the future. That's precisely what the
12 code doesn't want you to do. This
13 building is nonconforming currently.
14 They knew it was nonconforming, and they
15 want to somehow lock in this flexibility
16 for future codes, which the code
17 specifically doesn't want you to do. The
18 code says if you're upgrading to a higher
19 hazard occupancy you need to conform to
20 the current conditions. And they want to
21 by this subterfuge get around that very
22 clear requirement of the code.

23 MR. BLISS: Okay. Maybe I
24 misunderstood what the appeal was for, do
25 you agree with the current classification

1

2

that it is both a B -- some areas are B

3

and some areas are an A occupancy, and I

4

guess I'm just -- I'll state this to the

5

Board. If that's the case, then what it

6

appears the Petitioner is appealing is

7

something that may take place in the

8

future, that it would be changed without

9

going through the proper plan review.

10

And if an individual area is changed

11

from, like a classroom setting, a B

12

occupancy to an A occupancy, of course,

13

it would have to go through the code and

14

change-of-occupancy process.

15

MR. MANEY: Change of use.

16

MR. HRAB: Yeah.

17

MR. BLISS: Right.

18

MR. MANEY: But that's not the case

19

now.

20

MR. BLISS: Well, I'm stating that

21

to you, you know, 'cause --

22

MR. MANEY: But we can't make

23

determinations about what's going to

24

happen in the future, can we?

25

MR. BLISS: I understand that. I

1

2

guess I'm making that statement to you

3

because I'm addressing you, and the

4

Petitioner can respond to --

5

MR. MANEY: Me.

6

MR. BLISS: -- to you.

7

MR. DEDRICK: City of Ithaca, with

8

regard to the classification of this

9

particular floor, you stated previously

10

that it's an A occupancy. Was there --

11

MR. OCHSHORN: No, no, no. B. In

12

an E-mail.

13

MR. LAFFERTY: He's asking the code

14

official, not you.

15

MR. OCHSHORN: Oh, I'm sorry.

16

MR. DEDRICK: City of Ithaca.

17

MR. OCHSHORN: Sorry.

18

MR. DEDRICK: You stated earlier it

19

was an A occupancy in your opinion.

20

MR. NIECHWIADOWICZ: Correct.

21

MR. DEDRICK: With regard to the

22

design for exiting, occupant load,

23

anything else that may be involved with

24

an A occupancy, were there certain

25

numbers that were used or were there

1

2

certain areas that were designated as an A and the others designated as B and that occupant total came to light during the review to determine those other issues?

3

4

5

6

MR. NIECHWIADOWICZ:

7

Mike Niechwiadowicz, acting building commissioner.

8

9

10

The latter of what you said, Mark, exactly that. We started looking at the areas. We pushed back at the architect that we believed certain areas appeared to be A-3 occupancy, certain areas appeared to be B occupancies. We totaled the numbers and they exceeded the numbers for a B occupancy, and, indeed, we look at certain areas there as B occupancies and certain areas as A-3 occupancies.

11

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MR. DEDRICK: So in the future, if there's a change that Cornell decides to do with a B occupancy that you've established, they would need to contact you for --

20

21

22

23

24

MR. NIECHWIADOWICZ: That's correct.

25

MR. DEDRICK: -- code review and

1

2

permits for changing that occupancy?

3

MR. NIECHWIADOWICZ: That's correct.

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MR. OCHSHORN: May I ask for some clarification because this is not what I was told by Ithaca Code Officer John Shipe, who said that, in fact, if something was changed from B to A-3 there would be no need to consider it a change to a higher hazard. And that's what I'm challenging, and that's what the code Ithaca -- City of Ithaca code officer told me in an E-mail, which I can show you but the point is are you agreeing with that or disagreeing with that? My concern is that I want changes to a higher hazard --

MR. MANEY: That's for us to determine, whether we agree with them or we don't.

MR. OCHSHORN: Or could we establish what it is that the City of Ithaca is saying? Are they saying --

MR. LAFFERTY: He just said it to us. That's what we know.

1

2

MR. OCHSHORN: That --

3

4

MR. LAFFERTY: He changed his tune,
I think. No more discussion, please, on
it.

5

6

7

You've got another one down here to
face again. I don't want to hear the
same argument. Sorry.

8

9

10

11

MR. DEDRICK: To me, he stated that
a B occupancy being changed would require
a review by the City of Ithaca.

12

MR. OCHSHORN: Okay. Thank you.

13

MR. MANEY: That's my understanding.

14

Moving right along....

15

MR. OCHSHORN: Exhibit 7?

16

17

MR. MANEY: Yeah, inadequate exits
from 261 East Sibley Hall.

18

19

MR. OCHSHORN: Jonathan Ochshorn
again.

20

21

22

23

24

Exhibit 7 is similar to Exhibit 1
but involves a space in Sibley Hall whose
occupancy was changed after Milstein Hall
was built and after the fine arts library
was moved from Sibley Hall to Rand Hall.

25

Room 261 and Sibley Hall has a

1

2

posted occupancy limit of 112 or 240

3

people. Therefore, two exits are

4

required, but only one exit is provided.

5

A second so-called secondary exit is

6

noncompliant as it is not separated from

7

the primary exit by any measurable

8

distance. Whether this room with only

9

one compliant exit can be grandfathered

10

is addressed by code interpretation

11

2008-01, which was written at the request

12

of Cornell University regarding other

13

large rooms on campus with only one exit.

14

A court ruling that supported the code

15

interpretation states that in requiring

16

the second exit or reduced occupancy in

17

such spaces, "The state is not imposing a

18

retroactive construction mandate. It is

19

merely interpreting the law to give

20

Cornell a choice, to wit either continue

21

to use the lecture hall with an occupancy

22

limit of 50 or install a second exit."

23

I believe that --

24

MR. MANEY: Now, I'll bet you one

25

thing: At the end of that whole thing,

1

2

it says that that particular issue was

3

dealing with one building separate from

4

anything else and not to be considered as

5

a --

6

MR. HRAB: Precedent.

7

MR. MANEY: -- precedent.

8

MR. OCHSHORN: As a precedent.

9

Well, it involved multiple buildings on

10

Cornell's campus.

11

MR. MANEY: Was this building

12

involved in that?

13

MR. OCHSHORN: Yes, Sibley Hall, the

14

space immediately below.

15

MR. MANEY: Charlie.

16

MR. BLISS: Okay. That was -- I

17

believe he's referring to a court

18

decision that basically upheld the code,

19

that you could not have more than 49

20

people in a room that only had one exit.

21

MR. MANEY: Yeah.

22

MR. BLISS: That was a court

23

decision. I was not aware that that

24

involved this building, but that's a

25

court decision so, whether or not they

1

2

stated it only concerned that building, I

3

do not know. That's different than the

4

Board of Review cases. May be different.

5

MR. HRAB: Do you have the citation,

6

the court citation?

7

MR. OCHSHORN: I have everything.

8

The code interpretation is in the

9

appendix. The New York State code ruling

10

I have on-line, but I don't think it's in

11

the appendix.

12

MR. HRAB: I'm just saying the court

13

case name.

14

MR. MANEY: Michael.

15

MR. NIECHWIADOWICZ:

16

Mike Niechwiadowicz, acting building

17

commissioner, City of Ithaca.

18

Currently the space is unoccupied

19

other than the offices shown on the

20

southern side of that room, one of which

21

is Mr. Ochshorn's office. The posting

22

was from the previous occupancy. Once

23

that space will be used, we have...I

24

don't know...is it three or four --

25

MR. WILHELM: Three.

1

2

3

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MR. NIECHWIADOWICZ: -- three doors that are in addition to that stairway. One of those that are reasonably remote, should we want to go over the 49 people, will be used as second exit. Currently the space is not being occupied other than the offices. As soon as it will be occupied, it will be used properly and occupied properly. We're not arguing that.

MR. HRAB: Okay.

MR. MANEY: All right. Anything else about the exits?

(No response.)

MR. MANEY: Oh, here's the one we're looking for.

MR. OCHSHORN: The last one? Jonathan Ochshorn again.

On Exhibit 8, which begins on Page 39 of the appeal, Exhibit 8 involves a change on the third floor of Rand Hall to a higher-hazard A-3 library occupancy. This change was made just after Milstein Hall was built under the 2010

1
2 existing building code. Because
3 Rand Hall is connected through
4 Milstein Hall to Sibley Hall, its
5 construction type, according to the 2010
6 building code, is determined by the wood
7 frame construction in Sibley Hall, that
8 is, it is V-B construction.

9 Any fire barriers employed under
10 Appendix K of the 2003 code have no
11 impact on this designation or the ability
12 of those fire barriers to create separate
13 buildings or to permit separate
14 construction types, assuming it was even
15 permissible at the time. It cannot be
16 grandfathered when the space is converted
17 to a higher hazard occupancy as this was.

18 This is clearly stated in
19 Section 912.5.1 of the 2010 existing
20 building code, "When a change of
21 occupancy classification is made to a
22 higher hazard category as shown in
23 Table 912.5, heights and areas of
24 buildings and structures shall comply
25 with the requirements of Chapter 5 of the

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2010 building code of New York State for
the new occupancy classification."

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Now, there is a fire barrier
exception to this code section, but it
does not apply for two reasons. First, a
fire-resistive rating of at least two
hours and possibly three hours, if we
consider the F-1 wood shop in Rand Hall,
is required, whereas the existing
one-hour fire-rated door on the second
floor of Rand Hall is not compliant with
such a requirement. Secondly, and more
important, this exception for fire
barriers only applies to area limits but
not to height limits. And an A-3 library
occupancy is not permitted above the
second floor of any building with a V-B
construction type.

20

MR. MANEY: Any comments? Michael.

21

MR. NIECHWIADOWICZ:

22

Mike Niechwiadowicz, acting building
commissioner, City of Ithaca. Yes.

23

24

25

Admittedly, this building is a type
V-B building based on Sibley Hall. Then

1
2 we have a fire barrier and we have a
3 Type II building, Milstein Hall, another
4 fire barrier and Rand Hall, which is a
5 Type II building -- portion of the
6 building, I should say, rather than
7 entire building...I apologize for that
8 misstatement...because it is all one
9 building and the construction
10 classification is Type V.

11 Previously what the university
12 buildings were was C-5.5, which is a
13 level of assembly occupancy. When
14 discussing this project with the fire
15 marshal and trying to make a
16 determination what would be the best
17 thing to do in this situation...it is up
18 to the local official to determine
19 occupancy...it was a gray area whether or
20 not to call that a B occupancy or an A-3
21 occupancy.

22 We determined that we preferred to
23 have the library in a fully sprinklered
24 Type II portion of the building rather
25 than in the Type V portion of the

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building where it existed. We did class that level as an A-3 and chose to look at it as a change of use within the A occupancies and the intensity of use.

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So we meet all the assembly requirements in that portion of the building. The building itself is a Type V building, which, if we had looked at it as a B occupancy changed to an A occupancy, it would have never happened, because the highest level of an A occupancy in a Type V building, even though this is a Type II portion of that building, would be the second story, only allowed because it's fully sprinklered. So, yes, we did make a judgment call, we looked at this and what we felt was the safest approach and to have an A-3 moved to a Type II portion of the building that is fully sprinklered and has all the compliant exiting rather than in the Type V portion, that being Sibley Hall.

23

MR. MANEY: Yes, sir.

24

MR. HOLT: My name is Thomas Hoard.

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I'm with Holt Architects. We are the architect of record for the conversion to the library for this space.

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I went back and looked at this whole thing again after all this controversy about fire separations came up, and I boiled it down to this space was used as more than 50 people/students in there. It was a studio space. And it was -- under the old codes it was a C-5.5, which is assembly. So -- and then I went to look at, well, what's equivalent in the building code, and it's A-3.

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So, in A-3 in the building code, this didn't fall in an obvious place in the A category but it says -- the A-3 has a catchall for all types of assembly that aren't listed as A-1, A-2, so on. So I have concluded it is not a change of use. I sent a letter to Mr. Wilhelm in October of 2011, which I will give you copies.

23

MR. HRAB: We have it.

24

MR. HOARD: Oh, you have it. Okay.

25

MR. DEDRICK: This is an earlier

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one.

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MR. HOARD: This one supersedes that copy.

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MR. HOARD: It ends up being very straightforward. It's just a straight-across no conversion, no change of occupancy classification. And I have our drawings for the library.

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MR. MANEY: Are you submitting them?

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MR. HOARD: I can. I have plenty of copies.

12

13

MR. HRAB: Do we need it I? I think we got -- all that stuff's in our thing, isn't it?

14

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MR. DEDRICK: I don't think we have that information.

17

18

MR. MANEY: You want it?

19

MR. DEDRICK: I think we'd like it, yes.

20

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MR. LAFFERTY: You need to record this as an exhibit. You might as well add that as an exhibit.

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MR. MANEY: All right. Give Charlie a copy of both --

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MR. BLISS: Is that in this?

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MR. HOARD: No.

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MR. BLISS: Okay. Then I need a copy of everything you....

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MR. MANEY: That's it. You got a letter and you got a....

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MR. HOARD: Letter and the plans.

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MR. MANEY: Would you be gracious enough to give me time to read this?

11

MR. HOARD: Oh, yes. Yes sir.

12

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MR. MANEY: It started out pretty interesting so I'd like to finish it.

14

Thank you for your information.

15

Everybody read the letter? Proceed. Go ahead.

16

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MR. HOARD: Well, actually with this

18

conversion, the number of occupants in

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the space calculated goes down from what

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it was. So this is all stack space. And

21

under the -- under both the old uniform

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code or the state building construction

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code or the current code, if we consider

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this a classroom, which it was being

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considered at one time, you can have 349

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2 people if that space, or if you had loose
3 seating...and that's a question because
4 there are tables and building tables and
5 loose seats...it could be 465 people and,
6 an office, 69 people divided by 100. So
7 we actually reduced the number of people
8 there, and it's still A-3 because it
9 falls into that catchall. The old use
10 falls into the catchall. The new use is
11 clearly A-3 library.

12 MR. MANEY: Does the Board have any
13 questions.

14 (No response.)

15 MR. MANEY: Staff, any comments?

16 MR. BLISS: The only comment is you
17 might consider it irrelevant what the use
18 was previous up there because I believe
19 the question is whether or not this
20 building was degraded to a Type V-B
21 building because of the addition of the
22 addition which connects it to the
23 Type V-B building without a fire wall,
24 which would degrade the whole building
25 and whether or not that occupancy can

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remain on that floor. So the decision

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about the occupancy depends on your

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determination regarding whether it's one

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building or --

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MR. MANEY: That's correct.

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MR. BLISS: -- whatever.

8

Yes, sir.

9

MR. OCHSHORN: The whole argument --

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this is Jonathan Ochshorn -- hinges on

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the notion that this is not a change to a

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higher hazard but rather a change to an

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equal or a lesser hazard. I challenge

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that interpretation. First of all, as

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you can see --

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MR. MANEY: Well, that's not our

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interpretation.

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MR. OCHSHORN: I said "that

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interpretation."

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MR. MANEY: I know that. I just

21

want you to understand that I don't --

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MR. OCHSHORN: Got it.

23

I would like to point to Figure 17

24

on Page 39, which is an inspection report

25

found in the City of Ithaca building

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department, which clearly shows Rand Hall classified as a B occupancy. Secondly -- if you're looking, it's on the -- sort of in the middle on the right, occupancy type, B business.

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Secondly, the Type C-5.5 is very much analogous to the B occupancy in that it supports schools and just as the group B occupancy supports schools above the Grade 12 level. It makes no difference whether in the past it would have been possible to convert the -- what we now call Group B into an A-3 use under the old code. That is not relevant. What's relevant is what is the current use, which is by all acknowledgment equivalent to a Group B use, and even under the old code C-5.5 was equivalent to university space just like the B is. It makes no difference that it might have been able to be converted under the old code. That's precisely the point of the new code. You look at the existing use, not the potential of what might have happened

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under the old code.

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If that use is changing to a higher hazard, which it is by all admission, you must comply with the current Chapter 5 limitations on height and area. It's as simple as that. So the argument made that somehow because in the old code you might have been able to convert it to a library under the same use designation is irrelevant.

12

MR. HOARD: May I respond?

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MR. MANEY: Yes, sir.

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MR. HOARD: Thomas Hoard.

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It was not a question of what was allowed under the old code. It was a continuum.

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MR. MANEY: You're talking to me; right?

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MR. HOARD: Yes. Sorry, sir.

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It was a continuum. It was a C-5.5 up until it was changed. It has those grandfather rights. It isn't taken away. You go in there and it's -- well, even if you want to not take away the grandfather

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2 rights, it was an A-3. We just changed
3 the label from C-5.5 to A-3 under the new
4 code. I don't think there was ever any
5 intention of the new code by relabeling
6 spaces that somehow you lose the rights
7 to what you have. That was never the
8 intention.

9 MR. OCHSHORN: May I respond because
10 that is so completely missing the point.
11 This is simply not a relabeling. This is
12 a change of use from classroom to
13 library. It's a real change of use, not
14 some paper change of designation.

15 MR. MANEY: I guess you're going to
16 tune in later and find out what this
17 Board decides about that --

18 MR. OCHSHORN: I'm curious.

19 MR. MANEY: -- whether you're right
20 or he's right.

21 MR. OCHSHORN: Thank you.

22 MR. HOARD: I might add to that that
23 the code says that a classroom is for K
24 through twelve, and that's for
25 universities. Specifically says that.

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MR. OCHSHORN: Exactly.

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MR. WILHELM: So we can't label it
classroom, but we can label it A-3
because of the number of people.

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MR. MANEY: All right. We're going
to go into recess so, when you guys get
back in here, whoever survives, let me
know what the story is. But if nobody
else has any more information to give on
this, I'm going to declare a recess and
ask that everybody not involved with the
decision to please leave the room. We'll
call you back when we reach a decision,
hopefully.

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(Whereupon, a brief recess was
taken.)

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MR. MANEY: All right. I'd like to
reopen the hearing in the matter of
Petition Number 2013-0250, and at this
time I'd entertain a motion.

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Mr. Dedrick.

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MR. DEDRICK: Well, with respect to
the petition of Jonathan Ochshorn,
Petition Number 2013-0250 requesting an

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appeal to the code enforcement official's

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determination that the following

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violations exist to the uniform code,

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there are numerous of them and the Board

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makes the following findings.

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The petition pertains to a B

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occupancy and an A-3 occupancy, mixed

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occupancy, three stories in height of

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square footage numbers as noted in the

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submittal of Type V-B construction

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located at 943 University Avenue, City of

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Ithaca, county of Tompkins, State of

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New York. The Petitioner is seeking an

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appeal to decisions of the code official

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regarding many fire safety issues. This

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appeal is based upon 2002 code of

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New York State.

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Due to the fact that the submittals

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from both parties is extensive and

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appears to be clear to this Board due to

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the submittals and testimony, the

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potential findings of facts will be

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reduced from being verbose to being

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enumerated and referred to as in the

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exhibits to make it clear and easy for future readers.

As stated previously, the petition pertains to the noted occupancies of Sibley, Milstein and Rand Halls. The Petitioner is appealing eight separate decisions of the City of Ithaca code official. The issues will be noted as 1 through 8 and correspond to the submittals from the petition: Number 1, inadequate exits from a Crit room assembly space; Number 2, noncompliant protruding objects in egress path; Number 3, inadequate fire barrier between Milstein and East Sibley Hall; Number 4, improper mezzanine designation; Number 5, Milstein, Sibley, Rand Halls exceed Table 503 floor area limits based upon Appendix K of the code; Number 6, improper occupancy class designation; Number 7, inadequate exits from 261 East Sibley Hall; Number 8, noncompliant A-3 library occupancy of Rand Hall third floor.

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Number 1, inadequate exits from Crit room assembly space, there is testimony and submittals that the hall has two exits and the exits may not be remote, in addition to other comments from the Petitioner in the submittal.

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Item Number 2, noncompliant protruding objects in egress path pertain to numerous instances in Milstein Hall where sloping structural elements and sloping guards may create protruding objects within the path of egress and on walking surfaces.

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Item Number 3, inadequate fire barrier between Milstein and East Sibley Hall, the fire area or the fire barrier is more than 25 percent of openings in the wall. And there is a question regarding adequacy of installed equipment to meet the requirements of the code.

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Number 6 (sic), improper mezzanine designation, the argument is that the mezzanine interpretation is flawed

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because of a calculation and location of

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the noted mezzanine. Number 7 -- or

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excuse me. Number 4 is improper

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mezzanine designation.

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Item 5 is Milstein/Sibley/Rand Hall

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exceeds Table 503 floor area limits based

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on Appendix K. In Appendix K there is a

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statement that additions are allowed to

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exceed values greater than noted in

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Chapter 5 if a fire barrier is

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constructed.

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Item Number 6, improper occupancy

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class designation at the second floor of

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Milstein Hall classifying the area as an

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A-3 and B occupancy.

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Item 7, inadequate exits from

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261 East Sibley Hall, drawings submitted

19

seem to indicate that there is only one

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exit from the Sibley Hall Room Number 261

21

and the posting of the -- the existing

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posting of the room is greater than

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allowed under the code.

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Item Number 8, noncompliant A-3

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library occupancy of Rand Hall at the

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third floor, this appeal concerns the

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construction type of Rand, Sibley and

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Milstein Halls and the table noted, 503,

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in allowing or disallowing a Type V-B

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constructed building to have an assembly

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space on the third floor.

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The details of these specific issues

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are noted in the submittals and clarified

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in testimony and in other submittals from

11

Cornell University as of today.

12

With regard to my motion, it

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includes items in favor of the Petitioner

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and items in favor of the code official.

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In light of the above findings, testimony

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and submitted information, I move that

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the Board act as follows.

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For Item Number 1, inadequate exits

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from Crit room assembly space, the Board

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sustains the appeal for the Petitioner

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and, therefore, reverses the

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determination of the code enforcement

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official.

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For Number 2, noncompliant

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protruding objects in egress path, the

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2 Board sustains the appeal for the
3 Petitioner and, therefore, reverses the
4 determination of the code enforcement
5 official; however, it has been testified
6 today and submitted with information from
7 an expert in the field of handicapped
8 accessibility that these items are being
9 corrected or have been corrected and,
10 although in favor of the Petitioner, the
11 building will be in compliance with the
12 code.

13 For Item Number 3, inadequate fire
14 barrier between Milstein and East
15 Sibley Hall, the Board upholds the
16 decision of the code enforcement official
17 in light of information submitted and
18 testimony given today that adequate
19 code-compliant fire separation does
20 exist, and the Board of Review will
21 expect a submittal from the City of
22 Ithaca on the testified approvals from
23 the compliance testing lab.

24 And Item Number 4, improper
25 mezzanine designation, the Board upholds

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the decision of the code enforcement
official.

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For Number 5, Milstein/Sibley/

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Rand Halls exceeding Table 503 floor area

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limits, the Board upholds the decision of

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the code enforcement official.

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Number 6, improper occupancy

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classifications, the Board upholds the

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decision of the code enforcement official

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and notes that there was testimony today

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that there is specific requirement from

13

the City of Ithaca Building Department

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for any changes in occupancy

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classification or use of this space.

16

Number 7, inadequate exits from

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261 East Sibley Hall, the Board upholds

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the decision of the code enforcement

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official, and testimony today seemed to

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confirm that currently there is a

21

business occupancy in this area and

22

changes in the future will require proper

23

review and permission from the City of

24

Ithaca Building Department. The Board

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notes that the posting of the occupant

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load as stated today needs to be

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immediately reviewed for the current use

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and altered as required.

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Number 8, the Board sustains the

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appeal for the Petitioner and, therefore,

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reverses the determination of the code

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enforcement official for Number 8.

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It should be noted that the decision

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of this Board is limited to the specific

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building and application before it as

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contained within the petition and should

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not be interpreted to give implied

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approval of any general plans or

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specifications in support of the

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application.

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I so move.

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MR. MANEY: Second?

19

MR. LAFFERTY: Second.

20

MR. MANEY: Seconded by

21

Mr. Lafferty. I'll poll the Board.

22

Mr. Hrab?

23

MR. HRAB: Aye.

24

MR. MANEY: Mr. Almy?

25

MR. ALMY: Aye.

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MR. MANEY: Mr. Lafferty?

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MR. LAFFERTY: Aye.

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MR. MANEY: Mr. Dedrick?

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MR. DEDRICK: Aye.

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MR. MANEY: Mr. Maney votes aye.

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Five aye's, no nay's. Hearing closed.

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REPORTER'S CERTIFICATE

I, MARY REGINA BUTWIN, Court Reporter and
Notary Public, certify:

That the foregoing proceedings were taken
before me at the time and place therein set forth, at
which time the witness was put under oath by me;

That the testimony of the witness and all
objections made at the time of the examination were
recorded stenographically by me and were thereafter
transcribed;

That the foregoing is a true and correct
transcript of my shorthand notes so taken;

I further certify that I am not a relative
or employee of any attorney or of any of the parties,
nor financially interested in the action.

MARY REGINA BUTWIN,
Notary Public