

Appendix A

City of Ithaca response to my April 1, 2019 "Title 19" complaint
My comments have been inserted in red font

From: Mike Niechwiadowicz <MNiechwiadowicz@cityofithaca.org>
Date: Friday, May 3, 2019 at 3:37 PM
To: Jonathan Ochshorn <jo24@cornell.edu>
Cc: "Harding, James L (DOS)" <James.Harding@dos.ny.gov>, "Duerr-Clark, Kevin (DOS)" <Kevin.Duerr-Clark@dos.ny.gov>, "Gary.Traver@dos.ny.gov" <Gary.Traver@dos.ny.gov>
Subject: RE: Title 19 complaint about the construction of the Mui Ho Fine Arts Library at Cornell University

Dear Mr. Ochshorn,

It is obvious that you disagree with my code review of the Rand Hall Fine Arts Library project. The Fine Arts Library project team has demonstrated that the proposed work is in compliance with applicable provisions of the code. I did not blindly accept the architects drawings, months of code review went into this project and substantial adjustments were made to the design in order to make it comply with applicable codes.

What made this project code compliant, at least through 2017, were three code variances granted by the State of New York, not "months of code review." Niechwiadowicz had previously supported Cornell's contention that a "temporary" library on the third-floor of Rand Hall was compliant. His determination was overturned by the Syracuse Board of Review in 2013 and led to the first of Cornell's three code variance petitions. I believe that the project, as it stands now, has nine significant fire- and life-safety code violations.

The Syracuse Board of Review has reviewed the project several times, granted variances for it and, after the original variances were granted, ruled that they applied to the revised project.

Three variances were granted for the Rand Hall library project, in 2013, 2015, and 2016. The Syracuse Board of Review reaffirmed that the 2016 variance was still valid in emails dated April 17, 2017 and June 15, 2017. At that time, the Rand Hall "conformed set" (Dec. 15, 2017) and "bid set" (August 4, 2017) had not yet been issued. These later documents changed the library proposal by eliminating a roof-top "lantern" that had been present in the 2015 and 2016 variances, while providing an add-alternate for a roof-top enclosure with bathrooms, elevator, and corridor to access a new uncovered art gallery located on a new roof deck. Whereas the eliminated roof-top "lantern" level was primarily for library bookstacks and had an occupancy load of just 36, the unenclosed roof-top art gallery in the add-alternate has an occupancy load of 263. Because the add-alternate has now been implemented, the project being built is significantly different from the project and variances that were reaffirmed by the Hearing Board in July, 2017. For this reason, Niechwiadowicz's statement that the Syracuse Board of Review rulings apply to the "revised project" is false: the last ruling of the Board of Review did not review the current project, but rather reaffirmed an earlier version of the project with significant differences and a much lower occupancy load.

The project team included a third party code consultant, GHD Consulting Services Inc. in particular Timothy DeRuyscher who was on the technical committee for the 2010 NYS Building Code.

DeRuyscher may be knowledgeable about the 2010 NYS Building Code, but was apparently not aware of significant changes in the 2015 NYS Building Code that govern the design of the current project. Specifically, he advised Cornell to label an unenclosed atrium stair as an *exit access stairway*, which might have been compliant in 2010, but was not compliant in 2015. It was only after I pointed out Section 1006.3 in the 2015 Code (which prevents exit access stairways from "passing" through more than one adjacent story) that this "code expert" changed his argument: Cornell now claims that the unenclosed atrium stair is an *interior exit stairway* (which is also noncompliant since it does not terminate at the level of discharge within the atrium). Niechwiadowicz also fails to mention that code opinions from both the ICC and the New York State Division of Building Standards and Codes support my contention that this unenclosed atrium stair cannot be considered as either an exit access stairway or an interior exit stair.

A code summary dated March 18, 2018 was submitted by the project team, you have a copy of that report.

I do not have a copy of any code summary from March 2018. I have been able to examine Cornell's copy of a "Code Summary" drawing (LSP-100) issued on Feb. 14, 2018, but have not been permitted to have my own copy.

Through email we discussed the exit access through the atrium and I provided you with 2015 ICC BC commentary excerpts that confirmed that the exit access met applicable codes.

The email correspondence between Niechwiadowicz and myself did not confirm any such thing, nor does the 2015 ICC Commentary. In an email dated Feb. 1, 2018, Niechwiadowicz wrote: "Please take a look at the commentary for 1023.2 Exception #2. It suggests that the enclosure is not required, in particular the line 'The natural configuration of an atrium affords building occupants immediate views of the entire egress to the bottom of the atrium.'" That same day, I challenged his interpretation, writing back: "It sounds like the atrium exception (allowing *unenclosed* interior exit stairways) was intended for situations where the termination of the stair was at the level of exit discharge. It still seems difficult to imagine how that particular Code section would allow such a stair to terminate on the *second floor* atrium level, and then require people to travel horizontally — not to a point of exit discharge, which is at the ground level below — but to another interior exit stairway (also labeled Stair 'B') at the east end of the atrium. Such a plan seems to violate the continuity requirement for exits (Section 1022.1 states that 'Exits shall be continuous from the point of entry into the exit to the exit discharge'). It doesn't seem possible to literally connect the enclosed interior exit stairway at the east end of Rand Hall with the portion of 'Stair B' that is now being re-imagined as an *unenclosed* interior exit stairway, a connection that would be required to maintain that necessary continuity."

I reviewed the code summary and, after my questions were answered, determined that the proposed work met applicable codes. I also discussed the project with City of Ithaca Fire Chief Thomas Parsons who is chair of the Syracuse Board of Review.

This is not relevant to the specific complaints I have made, but only confirms that Niechwiadowicz, possibly with the help of City of Ithaca Fire Chief Thomas Parsons, reached erroneous conclusions about Rand Hall's code compliance *before* I filed my complaint.

The project team also submitted an Atrium Smoke Control report dated August 2017 that included smoke modeling for the atrium, I provided you with a copy of the report. Based on that report I have concluded that the atrium smoke control system meets the applicable code requirements.

In fact, the Atrium Smoke Control report has many deficiencies, the most glaring of which is that it takes no account of the add-alternate that was ultimately adopted, which places a new roof-top assembly space

with 263 occupants directly over the library atrium, immediately adjacent to the atrium's smoke hatches. No fire scenarios are modeled in this Smoke Control report that take this assembly space into account.

I understand that you disagree with me but I have done due diligence with my code review including all the issues you have brought up and have concluded that the project team has demonstrated that the proposed work is in compliance with applicable codes.

My code complaint, filed in accordance with TITLE 19 (NYCRR) of the "Rules And Regulations, Department of State," included nine separate code violations. Niechwiadowicz has not "demonstrated that the proposed work is in compliance with applicable codes"; in fact, he hasn't even listed the nine complaints in order to address the arguments contained within them.

Sincerely,

Michael Niechwiadowicz
Director of Code Enforcement
City of Ithaca Building Division
City Hall 4th Floor
108 East Green Street
Ithaca, New York 14850
Phone: (607) 274-6508