

New York State Building Standards and Codes Application for Appeal of Determinations Concerning the
Rand Hall Fine Arts Library at Cornell University
Petitioner: Jonathan Ochshorn

Exhibit 1

Determinations and comments regarding Jonathan Ochshorn’s April 1, 2019, complaint about Building
Code violations in the Rand Hall Fine Arts Library project at Cornell University

a) May 3, 2019 determination letter (email) from Michael Niechwiadowicz, Director of Code
Enforcement, City of Ithaca Building Division..... 2

b) Petitioner comments on May 3, 2019 determination letter from Michael Niechwiadowicz, Director of
Code Enforcement, City of Ithaca Building Division..... 4

c) Sept. 26, 2019 determination letter from Gary Traver, Assistant Director, Oversight Unit, DBSC..... 7

d) Email correspondence concerning the DBSC determination letter between petitioner, Gary Traver,
and Brian Tollisen of the DBSC..... 9

Exhibit 1(a)

May 3, 2019 determination letter (email) from Michael Niechwiadowicz, Director of Code Enforcement,
City of Ithaca Building Division

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

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.

Sincerely,

Michael Niechwiadowicz^[L]_[SEP]Director of Code Enforcement

City of Ithaca Building Division^[L]_[SEP]City Hall 4th Floor

108 East Green Street^[L]_[SEP]Ithaca, New York 14850^[L]_[SEP]Phone: (607) 274-6508

Exhibit 1(b)

City of Ithaca determination letter with petitioner comments 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.” In fact, Niechwiadowicz supported Cornell’s contention that a “temporary” library on the third-floor of Rand Hall was compliant. His ruling 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, and 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

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DEPARTMENT OF STATE
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Exhibit 1(c)

Sept. 26, 2019 determination letter from
Gary Traver, Assistant Director, Oversight
Unit, DBSC

ANDREW M. CUOMO
GOVERNOR

ROSSANA ROSADO
SECRETARY OF STATE

Case Closed

September 26, 2019

Mr. Jonathan Ochshorn
207 Water Street
Ithaca, NY 14850
Jo24@cornell.edu
Complaint # 4660

Dear Mr. Ochshorn,

Thank you for contacting the NYS, Department of State, Division of Building Standards and Codes (DBSC), Oversight Unit. The DBSC is authorized by Part 1208, Section 1208-6 of Title 19 NYCRR to investigate complaints against a Code Enforcement Official (CEO) or Building Safety Inspector (BSI), alleging a *failure to uphold his or her code enforcement duties* as described in Section 1208-6.2 (b)(c).

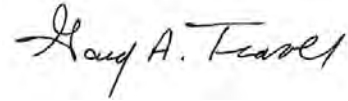
After review of the complaint and a preliminary investigation of the allegations stated against Mr. Michael Niechwiadowicz, it has been determined that Complaint Case Number 4660 is closed with prejudice.

This determination is based on the review of the information you provided, documentation submitted by the City of Ithaca Building Department as well as reviews of plans and correspondence provided by the City of Ithaca Building Department, interviews and correspondence with Mr. Niechwiadowicz, the Designers of Record and site visits by the Division of Building Standards and Codes Staff.

After considering all the information provided, it has been determined that the allegations against Mr. Niechwiadowicz "*not upholding his code enforcement duties*" are not supported by the evidence. It does appear, for all intents and purposes, that there is a disagreement between you and Mr. Niechwiadowicz regarding the "intent" of certain technical aspects of the ICC Building Code. Mr. Niechwiadowicz is the representative of the City of Ithaca who is the "Authority Having Jurisdiction" (AHJ) for the enforcement of the Uniform Code as it applies to this project.

The Uniform Code provides for the process to Appeal a determination by the AHJ through Regional Review Boards located throughout the state. If you choose to appeal the City of Ithaca's determination, please contact James King at our Syracuse Regional Office at 315-428-4434. Further, if you have any questions or concerns regarding this determination, please do not hesitate to contact the DBSC Oversight Unit. oversight@dos.ny.gov.

Sincerely,

A handwritten signature in black ink that reads "Gary A. Traver". The signature is written in a cursive style with a large initial "G".

Gary A. Traver
Assistant Director
Oversight Unit, DBSC
cv

Exhibit 1(d)

Email correspondence concerning the DBSC determination letter between petitioner, Gary Traver, and Brian Tollisen of the DBSC

From: "Traver, Gary (DOS)" <Gary.Traver@dos.ny.gov>
Date: Tuesday, February 11, 2020 at 10:10 AM
To: Jonathan Ochshorn <jo24@cornell.edu>
Cc: Brian Tollisen <Brian.Tollisen@dos.ny.gov>
Subject: Complaint update

Mr. Ochshorn, I am responding to your email addressed to Brian Tollisen on February 3, 2020. I am responding because Brian and the other staff members that were reviewing the technical aspects of your complaint have been deployed to Puerto Rico to assist with damage assessments since February 2, 2020. I know that there has been a request by DBSC for additional information from the consultants that provided the smoke control modeling for the project. I contacted the Building Inspector to see if there was any response from the consultant and he told me that there had not been a response yet and that he would let me know as soon as he heard anything. Brian will not be back in the office until midweek next week. I have not had any direct input on the technical and compliance aspect of the complaint so I do not have any additional information to forward to you at this time. If there are any further developments I will forward the information to you. Brian will be contacting you when he returns next week. If you have any additional questions or concerns please do not hesitate to contact me. Gary

Gary A. Traver

Assistant Director of Oversight
Division of Building Standards and Codes
New York Department of State
99 Washington Avenue, Suite 1160
Albany, NY 12231
(518) 474-4073 | gary.traver@dos.ny.gov
www.dos.ny.gov



The U.S. Constitution requires that everyone living in the United States is counted every 10 years - *we all count.*
<https://2020census.gov/en/who-to-count.html>

.....

From: Jonathan Ochshorn <jo24@cornell.edu>
Date: Tuesday, February 11, 2020 at 12:35 PM
To: "Traver, Gary (DOS)" <Gary.Traver@dos.ny.gov>
Cc: Brian Tollisen <Brian.Tollisen@dos.ny.gov>
Subject: Re: Complaint update

Dear Gary (and Brian),

My code complaint enumerates nine separate code violations in the Mui Ho Fine Arts Library at Cornell. I believe that the DBSC is charged with addressing the substance of my complaint, which involves the City of Ithaca's granting of a building permit based on information supplied by the building's architects. I do not think it is appropriate for the DBSC to request additional information from the architects or their consultants that was *not available when the permit was granted* or when I filed my complaint. My complaint should be adjudicated on the basis of how the City responded to the drawings and specifications they were given at the time.

Certainly, the inadequate smoke modeling that served as a basis for the building permit needs to be addressed, but this is a separate question from the one I raised in my complaint to the City of Ithaca and to the DBSC. Again, I request a ruling on the complaint that I brought, based on the actual behavior of the City of Ithaca Building Division when they were presented with the drawings, specifications, and reports that were submitted for a building permit, and *not* on how this noncompliant building might ultimately be fixed or reinterpreted after the fact.

Best,

Jonathan Ochshorn
Registered Architect, NYS License No. #14264
Member, International Code Council, Membership Number: 8069560

This email is not confidential and may be distributed to other parties. Jonathan Ochshorn's Cornell email address is not intended to suggest that this email contains views sanctioned by Cornell or any of its representatives. The views expressed are Jonathan Ochshorn's alone.



From: "Traver, Gary (DOS)" <Gary.Traver@dos.ny.gov>
Date: Wednesday, August 19, 2020 at 9:38 AM
To: Jonathan Ochshorn <jo24@cornell.edu>
Cc: Brian Tollisen <Brian.Tollisen@dos.ny.gov>
Subject: Status/Summary for Case # 4660

Mr. Ochshorn,

Current Status and Summary for Complaint #4660:

19 NYCRR Subpart 1208-6 authorizes investigations of complaints alleging that a code enforcement official has materially failed to uphold his or her code enforcement duties. In June of last year, the Oversight Unit in the Department's Division of Building Standards and Code (DBSC) received a Complaint dated June 5, 2019 against the City of Ithaca's Director of Code Enforcement. The complaint against the City's Director of Code Enforcement related to a construction project involving Rand Hall at Cornell University (the Project).

Based on (1) review of the information provided by the Complaining Party, (2) review of documentation submitted to the City of Ithaca Building Department, (3) review of plans and correspondence provided by the City of Ithaca Building Department, (4) interviews of and correspondence with the City's Director of Code Enforcement, (5) interviews of and correspondence with the Project's Designers of Record, and (6) site visits by DBSC Staff, the Department determined that the allegations that the City's Director of Code Enforcement "materially failing to uphold his code enforcement duties" were not supported by the evidence. Therefore, by letter dated September 26, 2019, the complaint against the City's Director of Code Enforcement was discontinued, with prejudice, pursuant to Subpart 1208-6.

In addition to Subpart 1208-6, which authorizes complaints against a code enforcement official, 19 NYCRR Part 1205 authorizes a person aggrieved by a determination of an administrative official enforcing the Uniform Code to appeal that determination to one of the Department's Regional Boards of Review. Please note that the Subpart 1208-6 complaint process as against a code enforcement official relates solely to whether the case should be referred to a hearing to determine whether the code enforcement official materially failed to uphold his code enforcement duties, which could potentially result in suspension or revocation of the code enforcement official's certification by an Administrative Law Judge. In contrast, the Part 1205 appeal process can be used to request a Board of Review to reverse or modify a determination made by an AHJ.

In the Department's September 26, 2019 letter closing Subpart 1208-6 complaint against the City's Director of Code Enforcement, the Department included information relating to Part 1205 appeals. Specifically, the September 26, 2019 letter noted that there appeared to be a disagreement between the Complaining Party and the City's Director of Code Enforcement regarding the "intent" of certain technical aspects of the Uniform Code; noted that the City's Director of Code Enforcement was a representative of the City; noted that the City is the "Authority Having Jurisdiction" (AHJ) responsible for the enforcement of the Uniform Code as it applies to the Project; further explained the Part 1205 appeal process; and provided the names

and contact information of DBSC staff who could be contacted if the Complaining Party decides to appeal the City of Ithaca’s determination.

On September 30, 2019, the Complaining Party requested a waiver of the fee to file a Part 1205 appeal of the City of Ithaca’s code enforcement official’s determinations relating to the Project. Thereafter, in light of the Complaining Party’s apparent interest in submitting a Part 1205 appeal, there were several conference calls involving the Complaining Party and DBSC staff regarding the specific technical items raised by the Complaining Party and, although the Subpart 1208-6 Complaint against the City’s Director of Code Enforcement had been discontinued, DBSC staff indicated that they would look further into the Complaining Party’s specific technical items. As part of such review, members of DBSC staff met with the City’s Director of Code Enforcement on November 26, 2019 to discuss the plans and drawings relating to the Project. Thereafter, the City’s Director of Code Enforcement advised DBSC that he followed up with Cornell University and the Project’s Designers of Record to request additional information relating to the Project.

On August 17, 2020, DBSC staff followed up with the City of Ithaca’s Building Department. DBSC was advised that the City now has a new Director of Code Enforcement. The City’s new Director of Code Enforcement advised DBSC staff that the City has not received the additional information from Cornell University and/or from the project’s Designers of Record relating to the Rand Hall project, but indicated that the City will be following up regarding the same.

With respect to the request to waive the \$100 filing fee for a Part 1205 appeal, the Department cannot grant such request. Pursuant to 19 NYCRR §1205.7(c), petitions related to the maintenance or use of buildings or materials and petitions not otherwise provided for in §1205.7 shall be \$100. The regulations set forth in 19 NYCRR Part 1205 do not allow the Department to grant a waiver of such fee. The Application for Variance or Appeal can be found on the Department’s website at: <https://www.dos.ny.gov/DCEA/pdf/2078-a-f.pdf>.

Gary A. Traver

Assistant Director of Oversight
Division of Building Standards and Codes
New York Department of State
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Albany, NY 12231
(518) 474-4073 | gary.traver@dos.ny.gov
www.dos.ny.gov



From: Brian Tollisen <Brian.Tollisen@dos.ny.gov>
Date: Wednesday, August 19, 2020 at 10:22 AM
To: Jonathan Ochshorn <jo24@cornell.edu>, "Traver, Gary (DOS)" <Gary.Traver@dos.ny.gov>
Cc: "omara@nysenate.gov" <omara@nysenate.gov>, "King, James A (DOS)" <James.King@dos.ny.gov>, "Krieger, Erika (DOS)" <Erika.Krieger@dos.ny.gov>, "Collier, Neil (DOS)" <Neil.Collier@dos.ny.gov>, "dos.sm.Oversight.Codes" <Oversight.Codes@dos.ny.gov>
Subject: RE: Status/Summary for Case # 4660

Mr. Ochshorn,

I hope to provide a clarification to your questions.

The complaint investigation regarding NYCRR 1208 was not reopened. The Division was looking closely at all of the code related sections associated with your complaint to make sure we fully understood the technical matters and the methodology employed by the City of Ithaca. I asked you to wait on your appeal in the event that we found a technical matter that would need to be addressed and, possibly, same you some effort. We have not discovered any technical matters that should be addressed and you should proceed with your appeal if you intend to do so.

Brian