

**Exhibit 3**

Emails from Kimberly Paarlberg (ICC) and James Harding (DBSC) confirming my Code interpretations for Violation #1 (Unenclosed egress stair in atrium) and Violation #4 (lack of 1-hour horizontal assembly between atrium and roof-top spaces)

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**From:** Kimberly Paarlberg <kpaarlberg@iccsafe.org>  
**Date:** Thursday, February 14, 2019 at 11:17 AM  
**To:** Renee Testroet <rtestroet@iccsafe.org>, Jonathan Ochshorn <jo24@cornell.edu>  
**Subject:** RE: Sections 1006, 1019 - 2015 IBC

Jonathan,

Re: 2015 IBC Sections 404.6, 1005.3.1, 1017.3.1, 1019, 1023.1, 1023.2,

Question 1: Can the path of egress travel to an exit pass through more than one adjacent story in an atrium?

Answer 1: There is nothing saying someone could not follow the stairway in the atrium as a path of egress travel for as many stories as they wanted. However, if the stairway in the atrium is a considered a required exit access stairway, the egress path for the required means of egress (i.e. number of exits off of a floor) can only go down one story till occupants could choose to move to the required exits (1006.3.1, 1017.3.1, 1019). If the stairway in the atrium is considered a required exit stairway, while Section 1023.2 Exception 2 does allow for the atrium to meet the construction requirements for the exit stairway, the atrium must meet all the remaining provisions for and exit stairway in Section 1023, including termination at the exterior, not be used for any other purpose other than exit (e.g. no uses on the ground floor of the atrium) and no paths that go through the atrium to get to the 2<sup>nd</sup> exit.

Question 2: Can an unenclosed interior exit stairway, as permitted in Section 1023.2 Exception 2, terminate in the middle of an atrium floor that is above the level of exit discharge.

Answer 2: No. Exit stairways must discharge directly to the exterior (1023.1) and cannot stop at an upper floor. There are the options for the stairway to discharge through a lobby or vestibule (1028), however, this lobby cannot be within the stairway/atrium enclosure and it cannot be at other than the level of exit discharge.

Question 3: Does an occupied roof (Group A-2 assembly) above an atrium need to be separated from the atrium with a 1-hour horizontal assembly?

Answer 3: Yes, an atrium must be separated from occupied spaces. While a roof is not a story, it is an occupied space, so it must be separated from the atrium where the floor of the occupied roof is over the atrium. Where an occupied roof floor is around the atrium, a separation would not be required.

Code opinions issued by ICC staff are based on ICC-published codes and do not include local, state or federal codes, policies or amendments. This opinion is based on the information which you have provided. We have made no independent effort to verify the accuracy of this information nor have we conducted a review beyond the scope of your question. This opinion does not imply approval of an equivalency, specific product, specific design, or specific installation and cannot be published in any form implying such approval by the International Code Council. As this opinion is only advisory, the final decision is the responsibility of the designated authority charged with the administration and enforcement of this code.

I hope that this answers your question in full. Please feel free to contact me again if you have any additional questions on this issue.

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*Kimberly Paarlberg, RA*  
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**From:** Kevin Clark <Codes@dos.ny.gov>  
**Date:** Wednesday, February 27, 2019 at 2:06 PM  
**To:** Jonathan Ochshorn <jo24@cornell.edu>  
**Cc:** "Harding, James L (DOS)" <James.Harding@dos.ny.gov>  
**Subject:** RE: Code interpretations

Jonathan:

Your questions were forwarded to me to respond to. I discussed the following answers with Kevin and provide them as our consensus opinion on these issues. We reached the same conclusions as did the ICC representative, Kimberly Paarlberg.

**Question 1: Can the path of egress travel to an exit pass through more than one adjacent story in an atrium?**

**No.**

The requirements for exiting from all areas of a building are provided in chapter 10. Any portion of a building that serves as part of the required means of egress system must comply with all applicable provisions of chapter 10. Referring to Section 1006 for exit access, travel through more than one story of the building is prohibited:

**1006.3 Egress from stories or occupied roofs.** The *means of egress* system serving any *story* or occupied roof shall be provided with the number of *exits* or access to *exits* based on the aggregate *occupant load* served in accordance with this section. The *path of egress travel* to an *exit* shall not pass through more than one adjacent *story*.

The following two definitions are provided to clarify the fact that vertical travel within an atrium is considered to be through a story or stories of the building even though the atrium is separated from the building stories.

**ATRIUM.** An opening connecting two or more *stories* other than enclosed *stairways*, elevators, hoistways, escalators, plumbing, electrical, air-conditioning or other equipment, which is closed at the top and not defined as a mall. *Stories*, as used in this definition, do not include balconies within assembly groups or *mezzanines* that comply with Section 505.

**STORY.** That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above (see "*Basement*," "*Building height*," "*Grade plane*" and "*Mezzanine*"). A story is measured as the vertical distance from top to top of two successive tiers of beams or

finished floor surfaces and, for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters.

Also note that travel within an *enclosed* exit stairway or ramp, even if such stairway or ramp was entirely within the atrium, would not be considered travel within the atrium. This would be considered travel within the stairway or ramp enclosure.

**Question 2:** Can an unenclosed interior exit stairway, as permitted in Section 1023.2 exception 2, terminate in the middle of an atrium floor that is above the level of discharge?

**NO.**

Section 1023 addresses *interior exit stairways and ramps*. Although exception 2 of section 1023.2 permits an “*interior exit stairways* within an *atrium* enclosed in accordance with Section 404.6,” section 1023.3 requires the termination to be as follows:

**1023.3 Termination.** *Interior exit stairways and ramps* shall terminate at an *exit discharge* or a *public way*.

**Exception:** A combination of *interior exit stairways, interior exit ramps* and *exit passageways*, constructed in accordance with Sections 1023.2, 1023.3.1 and 1024, respectively, and forming a continuous protected enclosure, shall be permitted to extend an *interior exit stairway* or *ramp* to the *exit discharge* or a *public way*.

Thus, unless the stairway ends at an exit discharge or a public way, it must end at an enclosed exit element as described in the exception. This guarantees that the level of protection for occupants is not diminished along the exit path, which is required for all exits by Section 1022.

There are two exceptions provided in section 1028 to the requirement that the exit discharge be to the exterior of the building, a lobby and a vestibule. Since both of these exceptions are for such areas at the level of exit discharge, they may not be applied to the situation described.

A final consideration regarding this question is whether the atrium might also be classified as an enclosed exit element (stairway, ramp or passageway). No. Section 1022 also provides that an exit, “shall not be used for any purpose that interferes with its function as a means of egress.” An atrium is provided to for ambiance and other purposes as needed and would not be considered exclusively for use for exiting.

**Question 3: Does an occupied roof (Group A-3 assembly) above an atrium need to be separated from the atrium with a 1-hour horizontal assembly?**

Yes.

Section 406. provides that the atrium be separated from adjacent spaces, with two exceptions, as follows:

404.6 Enclosure of atriums. Atrium spaces shall be separated from adjacent spaces by a 1-hour fire barrier constructed in accordance with Section 707 or a horizontal assembly constructed in accordance with Section 711, or both.

Though not explicitly stated, space in this context includes any area that may be occupied including the roof as described.

**Please respond to this e mail to confirm that the above information satisfies your request for a code interpretation and a formal response other than this e mail is no longer requested.**

Thank you,  
James L. Harding, PE, CEO  
Division of Building Standards and Codes

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**From:** "Duerr-Clark, Kevin (DOS)" <Kevin.Duerr-Clark@dos.ny.gov>  
**Date:** Thursday, March 7, 2019 at 8:07 AM  
**To:** Jonathan Ochshorn <jo24@cornell.edu>, "MNiechwiadowicz@cityofithaca.org" <MNiechwiadowicz@cityofithaca.org>  
**Cc:** "Harding, James L (DOS)" <James.Harding@dos.ny.gov>  
**Subject:** RE: Code interpretations

All:

Please be advised the responses below and those provided in the original email are not project specific and have not taken into account any specific design, arrangement, approvals, variances, etc. nor were they intended to overrule or nullify any determinations previously made on a particular project by a local building department, authority having jurisdiction (AHJ), or Board of Review. The specific building being discussed was not evaluated in this response, nor will it be. Additionally, it should be noted the questions answered were done so with the assumption that we were discussing new construction. Existing buildings and modifications to existing buildings would need to be evaluated based on their original construction or compliance path through the NYS adopted 2015 International Existing Building Code as applicable.

The questions were asked and answered in a simple yes/no format with very little additional details (as is requested by this office). Each building and scenario will need to be evaluated individually for compliance. The local building department/AHJ has jurisdiction over specific buildings and projects. Where any aggrieved person feels as though a determination has been rendered incorrectly by the local department, that individual may appeal the determination to a Board of Review (please see our website [here](#)).

Upon further review of the questions and answers provided, I believe the responses initially rendered by Jim Harding to be correct. Question No. 1 is clearly addressed in Section 1006.3 of the 2015 IBC where it is indicated that “The path of egress travel to an *exit* shall not pass through more than one adjacent *story*.” Per this section, if using the atrium as part of the path of egress travel as the question stated, it can only pass through one adjacent story or once the traveler as reached an *exit*. Per the definition in the 2015 IBC, an exit is “That portion of a *means of egress* system between the *exit access* and the *exit discharge* or *public way*. Exit components include exterior exit doors at the *level of exit discharge*, *interior exit stairways* and *ramps*, *exit passageways*, *exterior exit stairways* and *ramps* and *horizontal exits*.”. Whether or not this portion of the specific building discussed in subsequent emails is the path to an exit, part of the exit, etc. and therefore potentially allowed to pass through more than one story, was not a part of the answered provided and will need to be evaluated by the local building department for compliance.

One of the arguments made that is building specific is that the atrium for the building in question is to be considered part of the *interior exit stairway*, making it part of the *exit* by definition, and that it terminates at an exit passageway (addressing question No. 2). Please note, the stairways would need to meet all of the code requirements for the applicable sections. Some of which are Sections 1023.1 and 1023.3 which state in part that “An *interior exit stairway* or *ramp* shall not be used for any purpose other than as a *means of egress* and a circulation path” and “*Interior exit stairways* and *ramps* shall terminate at an *exit discharge* or a *public way*”. Again it is not clear what the proposed use of the atrium is in your specific building, but these provision would need to be met.

As you can see, formatting questions as originally noted below may not encompass each and every scenario for each and every building in a simple yes/no format. A detailed review of how these questions and code sections apply to a specific building is the responsibility of the applicant and their design professional to show to the satisfaction of the local building department/AHJ.

Please reach out to me directly with any additional questions.

Thank you

Kevin Clark

**Kevin Duerr-Clark, P.E., CEO**

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**From:** Jonathan Ochshorn <jo24@cornell.edu>  
**Date:** Thursday, March 7, 2019 at 11:15 AM  
**To:** "Duerr-Clark, Kevin (DOS)" <Kevin.Duerr-Clark@dos.ny.gov>  
**Cc:** "Harding, James L (DOS)" <James.Harding@dos.ny.gov>, "MNiechwiadowicz@cityofithaca.org" <MNiechwiadowicz@cityofithaca.org>  
**Subject:** Re: Code interpretations

Dear Kevin,

Thank you for the clarification/disclaimer. I will be first submitting a "Title 19 (NYCRR) of the Rules And Regulations, Department of State" complaint to the City of Ithaca Building Division as soon as I obtain information about the latest iteration of this project (I have been basing my concerns on working drawing sheet numbers LSP-100 – LSP-103 prepared by STV Architects that were submitted on Feb. 14, 2018, and I have not yet been able to confirm whether these drawings have been superseded by later drawings). If I am not satisfied with the outcome of the Title 19 complaint, I will proceed with a complaint at the New York State level, per your website instructions.

However, there are three issues mentioned in your email which can be addressed immediately:

First, this project counts not just as an "alteration," but primarily as an "addition" since, per the definition in Chapter 2, it is "an extension or increase in floor area, *number of stories, or height of a building* or structure." As such, it "shall comply with the International Codes as adopted for new construction" (Section 1101.1 of the 2015 Existing Building Code). This much is not contentious: all the construction documents for this project reference the Building Code for new construction, and not the Existing Building Code, in any case.

Second, none of the three code variances granted for prior iterations of this project are valid for the current proposal. This is because the current proposal for a Rand Hall library is substantially different from prior proposals for which these code variances were granted. Specifically, the new proposal contains—for the first time—a roof-top art gallery (A-3 assembly occupancy) that greatly increases the building's occupant load compared to all prior proposals. Code variances only apply to the *specific building proposal for which the variances were granted*—and cannot be interpreted to give implied approval to a different proposal. All three prior Rand Hall variances (Petition Nos. 2013-0456, 2015-0432, and 2016-0269) contain the following written disclaimer: "Furthermore, it should be noted that *the decision of the Board is limited to the specific building and application before it, as contained within the petition*, and should not be interpreted to give implied approval of any general plans or specifications presented in support of this application." Since the current proposal is substantially different from all prior schemes, the code variances that supported those prior schemes cannot be applied to the current proposal.

Third, the use and occupancy of the atrium floor is clearly indicated on the construction documents: it is a library reading room (occupancy group A-3), with an area of 4,928 square feet and, per Table 1004.1.2, an occupant load factor of 50. In other words, it functions as an assembly space with 99 occupants.

Best,

Jonathan Ochshorn, R.A.  
Registered Architect, New York State, since 1979 (#14264)  
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