



BOARD OF APPEALS

Tuesday, June 13, 2023 at 4:30 PM
City Council Chambers, 2nd fl., City Hall
3 Washington St.

AGENDA

- I. Introduction of Board Members
- II. Minutes of previous meeting: May 30, 2023
- III. New Business:
BOA 23-01: Petitioner, Toby Tousley of Keene, has filed a petition for an Appeal of Building Code, 2018 IBC Section 202, Chang of Occupancy.
- IV. Unfinished Business:
- V. Adjournment:

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1 **City of Keene**
2 **New Hampshire**

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5 **BOARD OF APPEALS**
6 **MEETING MINUTES**
7

Tuesday, May 30, 2023

6:00 PM

**Room 22,
Recreation Center**

Members Present:

Malcolm Katz, Chair
Steve Walsh
Donald Flibotte
Doug Brown
Corinne Park

Staff Present:

John Rogers, Building & Health
Official/Zoning Administrator
Corinne Marcou, Board Clerk
Tom Mullins, City Attorney
Amanda Palmeira, Assistant City Attorney
Don Farquhar, Fire Chief

Members Not Present:

All Present

8
9
10 **I. Call to Order – Introduction of Board Members**

11
12 Chair Katz called the meeting to order at 6:03 PM. Roll call ensued.

13
14 **II. Non-Public Session**

15
16 A motion by Chair Katz to enter a non-public session per RSA 91-A:3, II(j) was duly seconded
17 by Mr. Flibotte and the motion carried unanimously.

18
19 A motion by Mr. Brown to close the non-public session was duly seconded by Mr. Flibotte and
20 the motion was carried unanimously.

21
22 At 6:12 PM, the public meeting reconvened.

23
24 A motion by Mr. Walsh to seal the minutes of the non-public session was duly seconded by Mr.
25 Brown and the motion carried unanimously.

26
27 **III. Minutes of the Previous Meeting – November 9, 2022**

28
29 A motion by Mr. Brown to approve the November 9, 2022, meeting minutes was duly seconded
30 by Mr. Walsh and the motion carried unanimously.

31
32 **IV. New Business**

33 A) **Continued FBOA 22-01:/ Petitioner, Toby Tousley, of Keene, has filed a**
34 **petition for an Appeal of a Fire Code Notice of Violation for property located**
35 **at 160 Emerald St., TMP 583-034-000-000-000, which is in the Downtown**
36 **Growth District. The Petitioner is appealing the violations from National**
37 **Fire Protection Codes: NFPA 101: 12.2.5.1.3, 12.3.4.3.3, 12.2.5.2, 12.2.3.8,**
38 **7.4.1.2, 12.3.5.2, 12.2.2.2.3, NFPA 10, 7.1.1, NFPA 101, 7.10.1.2, NFPA 25,**
39 **3.3.133.1, NFPA 1: 4.4.3.2.3, 4.4.3.1.1, 4.4.3, 14.5.1.2, and 14.9.1.2.**
40

41 Mr. Walsh recused himself from this hearing.
42

43 Mr. Rogers, the Building & Health Official/Zoning Administrator provided some background on
44 the inspections and meetings that had occurred to date:

- 45 ▪ April 14, 2022
 - 46 ○ First Fire Department (FD) inspection of the building at 160 Emerald Street.
- 47 ▪ July 22, 2022
 - 48 ○ Follow-up inspection.
- 49 ▪ September 19, 2022
 - 50 ○ FD Notice of Violation & Order to Correct was served.
- 51 ▪ September 25, 2022
 - 52 ○ Toby Tousley, the building owner, appealed the Notice of Violation to the Fire
 - 53 Chief, Don Farquhar; the appeal process is outlined in the Fire Code.
- 54 ▪ October 2, 2022
 - 55 ○ The Fire Chief denied Mr. Tousley’s appeal.
- 56 ▪ October 28, 2022
 - 57 ○ Mr. Tousley appealed the Fire Chief’s administrative decision to this Building
 - 58 Board of Appeals (BBOA).
- 59 ▪ November 9, 2022
 - 60 ○ First BBOA hearing of this appeal. The Board’s decision was for the Fire Chief
 - 61 and Mr. Tousley to work together to resolve the violations.
- 62 ▪ November 29, 2022
 - 63 ○ A meeting and brief walk through of 160 Emerald Street.
- 64 ▪ December 8, 2022
 - 65 ○ Partial FD inspection.
- 66 ▪ January 13, 2023
 - 67 ○ Fire Chief sent updated Notice of Violation to this BBOA, requesting a follow-up
 - 68 hearing on the remaining 2 violations and withdrawing the others.
- 69 ▪ February 1, 2023
 - 70 ○ BBOA hearing canceled based on apparent voluntary inspections arranged by the
 - 71 FD and Mr. Tousley.
- 72 ▪ February 16, 21, & 24, 2023
 - 73 ○ Voluntary inspections with representatives from the FD and the applicant.
- 74 ▪ March 23, 2023

- 75 ○ The Fire Chief sent a letter restating the requirement to hire a fire protection
76 engineer and to have a fire alarm system.
- 77 ■ April 7, 2023
- 78 ○ A request to re-open the BBOA hearing on the FD's updated Notice of Violations
79 (from January 13, 2023).
- 80 ■ May 2, 2023
- 81 ○ Mr. Tousley submitted some supplemental materials as a part of the request to re-
82 open the hearing.
- 83 ■ May 22, 2023
- 84 ○ A response by Keene FD to the appellant's request to re-open the hearing was
85 submitted.

86
87 Chair Katz welcomed the City Attorney and Fire Chief Farquhar to speak first, as was agreed
88 upon by both parties' counsels in advance. The City Attorney, Tom Mullins, began by ensuring
89 that all Board members had copies of the materials submitted, including the NH RSA 647:34 that
90 this BOA was operating under and laid out the standards for appeal. The City Attorney said the
91 standard was clear and intentionally narrow from the State of NH and BOA's perspectives. This
92 Statute states that, "*An application for appeal shall be based on a claim that the true intent of the*
93 *Code or the rules adopted thereunder have been incorrectly interpreted, the provisions of the*
94 *Code do not fully apply, or an equally good or better form of construction is proposed. The*
95 *Board shall have no authority to waive requirements of the State Building Code or the State Fire*
96 *Code."* The City Attorney presented that Statute for the Board's consideration because from the
97 City's perspective, the Fire Chief was acting within his Authority Having Jurisdiction (AHJ).
98 The City Attorney said that Mr. Tousley's representative, Attorney Joe Hoppock, had argued in
99 his submissions to the Board that apparently the Fire Chief did not have the authority to act in the
100 way he had. The City Attorney said the City's perspective was clear under the law.

101
102 The City Attorney submitted to the BOA the City of Keene's response to the request to re-open
103 this hearing. He said that response outlined the Fire Chief's legal authority to act in this way and
104 the City Attorney said it was important for the Board to keep that authority in mind. That
105 authority is outlined in the relevant Statutes, including the NH Fire Code under RSA-153. Also,
106 under the National Fire Protection Act (NFPA 1), the Fire Chief has the authority to investigate
107 buildings and determine whether buildings and structures comply with the Fire Code; if not, the
108 Fire Chief has the authority to order certain relief to occur. In this case, the City Attorney said
109 that the fundamental relief the Fire Chief requested was the requirement to retain the services of
110 a fire protection engineer (FPE); this authority was established under NFPA 1, which says, "*The*
111 *authority having jurisdiction shall be permitted to require a review by an independent third party*
112 *with expertise in the matter to be reviewed at the submitter's expense."* The City Attorney said
113 the Chief's authority to require an FPE was also outlined under the rules that implement the NH
114 Fire Code, as demonstrated in his memo to the Board.

115
116 The City Attorney continued addressing the second major question raised by Mr. Tousley and
117 Attorney Hoppock, which was whether the current version of the Fire Code applied to a pre-

118 existing building like this one. The City Attorney said, as outlined in his memo, that the Fire
119 Code very clearly applied to pre-existing buildings based on the NH Statutes, NFPA 1, and the
120 rules of the Department of Safety. To the City Attorney's knowledge, this 95,000 square foot
121 building at 160 Emerald Street was built in 1919; it is a 2-story building with multiple uses in it
122 today. The City Attorney said it would be absurd if the law said that this building could not be
123 subjected to the requirements of the NH Fire Code as it exists now. Fire protection measures that
124 worked in the past were not appropriate today; he used the example of buckets of sand
125 throughout a building that would not be appropriate today. The City Attorney said that part of the
126 City's argument that the Fire Chief would explain in more detail was about what fire protection
127 measures existed in this building. Based upon the FD's inspections and information collected to
128 date, the City Attorney said it was very clear that there was no centralized fire alarm system in
129 this building, which was necessary and required. The City Attorney explained that someone on
130 the second floor of this building (with no direct egress) would likely not know about a fire until it
131 was too late. The City Attorney said that the case law he submitted was also very instructive on
132 so called "grandfathered" uses.

133
134 The City Attorney discussed the last issue raised by Mr. Tousley and Attorney Hoppock, which
135 was that the Fire Chief was improperly singling out or harassing Mr. Tousley. The City Attorney
136 said he could not change how Mr. Tousley felt or reacted to any of this. From the City Attorney's
137 perspective, the Fire Chief was taking the necessary steps to ensure that the building was safe.
138 The City Attorney said it was unfortunate that the dispute between the two parties had
139 deteriorated to some extent, which he said the City admitted. Still, he said that did not change the
140 fact that the Chief has responsibilities under the NH Fire Code and the City believed that the
141 Chief was acting appropriately.

142
143 The City Attorney explained that the City's principal request was for the BOA to affirm the Fire
144 Chief's decision based on all the investigations and inspections. The City Attorney said he
145 wanted to be clear that the parties could argue back and forth on the various issues (e.g.,
146 appropriate plug use or need for an exit sign), but from the City's perspective, the fundamental
147 issues were how this building was constructed, how it is separated now, and what uses existed.
148 From the City's perspective, there were multiple high hazard uses in the building that require
149 specific fire suppression systems; a use with a heavy fire load would require a heavier duty
150 sprinkler system, for example. The City Attorney said the only real way to know what exists in
151 the building today was to have an FPE perform an engineering study of all the uses and
152 separations. The City Attorney said he was the first to admit that no one in the meeting room was
153 a licensed FPE, including Mr. Tousley's consultant, Norman Skantze. While Chief Farquhar and
154 Mr. Skantze could look at a building and notice violations, that did not mean that they had the
155 expertise to determine the structural needs to correct a violation, whether that be the centralized
156 fire alarm system or an enhanced sprinkler system. The City Attorney repeated his perspective
157 that the Chief had the authority to require the FPE.

158
159 The City Attorney explained that there were proposed uses in this building that the Fire Chief
160 could not permit because one was on the second floor with no direct egress or centralized fire

161 system to warn people there. He said this had nothing to do with people trying to run their
162 businesses on that second floor and that the City would like to work with Mr. Tousley to resolve
163 those issues, which would require the FPE. The City Attorney said that the third party FPE
164 would be advantageous and appropriate because, admittedly, the Fire Chief and Mr. Tousley had
165 been disagreeing. The City Attorney said that Mr. Skantze was not an FPE but was involved with
166 the walkthroughs.

167
168 The City Attorney also wanted to discuss the supplemental request that was submitted and had a
169 lot to do with the casino on the property. He said that a Notice of Violation was issued in January
170 2023 on the casino property. It was the City Attorney's understanding that most of those issues
171 had been resolved with a few still outstanding; there was a temporary Certificate of Occupancy
172 issued and the FD had issued a permit to operate a place of assembly. From the City's
173 perspective, the issues with the casino were moot. The City Attorney said he agreed with
174 Attorney Hoppock's submission that when these notices of violation arise, Mr. Tousley has a
175 right to be notified as the property owner. He said the proposed tenant was provided the notices
176 of violation in January 2023, but Mr. Tousley was not provided with that information at that
177 time, which was an oversight the City was working to correct.

178
179 The City Attorney concluded by ensuring that the Board had the report the Fire Chief submitted
180 on March 23, 2023, the notice of violation on the casino, and the first notice of violation from
181 February 2023, but he said most of those issues were taken off the table at the last hearing by
182 reserving any rights. Fundamentally, the City Attorney said there were only a few issues still
183 outstanding related to the sprinkler system, the centralized fire alarm system, and a few other
184 matters based on the current inspection.

185
186 The Fire Chief spoke next. He said there were 3 things that Board could rule on:
187 1) Whether the rules adopted under the Fire Code had been interpreted incorrectly.
188 a. The Fire Chief was confident the Code was interpreted correctly for this existing
189 building based on the NH laws.
190 2) The provisions of the Fire Code do not fully apply.
191 a. The Fire Chief said there are rarely any exceptions to this, and he did not believe
192 any existed in this case, leaving the FD with the authority and right to assess and
193 cite the building (per NFPA 1 and NH law).
194 3) An equally good or better form of construction is proposed.
195 a. The Fire Chief explained that for the 2 years before he came to Keene he worked
196 for a private industry, bringing some of the most complex buildings that exist in
197 the U.S. from very far out of Code into full compliance. So, he said he had a
198 framework for understanding these things. The Fire Chief found that this building
199 at 160 Emerald Street had been renovated over time with a lack of permitting;
200 walls had moved, occupancies had changed, the demands of the fire sprinkler
201 system had changed, all of which he spoke about at the November 9, 2022,
202 meeting.
203

204 Ultimately, the Fire Chief said that he thought any credible fire search professional would
205 consider this building as dangerous and said it needed to progress toward Code compliance. He
206 said that the strict application of the Code was almost impossible to achieve in a building of this
207 complexity that is so far out of compliance. The Fire Chief was glad that Mr. Tousley contracted
208 with another fire code professional, Mr. Skantze (owner of the consultant business Fire Risk
209 Management), to help because there are alternate pathways to compliance that are much less
210 expensive, much more expedient, and satiate the City’s need for that building to be a safe space
211 and Mr. Tousley’s need to run a profitable business. To this point, the Fire Chief said his
212 Department’s relationship with Mr. Tousley had remained oppositional, fractured, and unhealthy.
213

214 The Fire Chief explained that after the last BOA meeting on November 9, 2022, he thought it
215 was important to maintain a relationship with Mr. Tousley and those who represent him. The
216 Fire Chief said there had been a lot of acrimony and that he could speak at length about some
217 extremely offensive behaviors and posters Mr. Tousley hung in his building that the Fire Chief
218 said were frightening, intimidating, and uncomfortable. The Fire Chief hoped these things would
219 not continue after this meeting. He said those issues slowed down a process that must happen.
220

221 The Fire Chief said the crux of all of this was his requirement for Mr. Tousley to hire an FPE.
222 The Chief thought they were close to an agreement on that, in theory. The Fire Chief cited page
223 37 of this meeting’s agenda packet, under “Appellant’s Grievances,” Section A, “*The 160*
224 *Emerald Street building is an existing structure,*” which the Chief agreed with. He continued
225 quoting, “*The Chief incorrectly applied Code requirements for an existing structure by*
226 *demanding that an FPE and plan completely new alarm systems and sprinkler systems,*” which
227 the Fire Chief said he disagreed with. He said that even in the appellant’s own writing, they
228 stated that a “*consultant and qualified specialists he retains (a qualified specialist will likely*
229 *involve the participation of an FPE).*” The Chief discussed the value of a design professional or
230 FPE; he said anything that is cited needs corrective action, and any corrective action would need
231 to be permitted. Any permit for construction design would require a stamp of approval by a
232 design professional, which would get the appellant one step closer. The Fire Chief said that Mr.
233 Skantze is a knowledgeable person who the Chief respects professionally. Still, the Chief said
234 that the end product in getting this building from dangerous to acceptable and somewhat Code
235 compliant in the future, is through that design professional.
236

237 The Fire Chief said that fire codes are fundamentally based on occupancy (e.g., assembly,
238 storage, etc.). As the Fire Chief, he said he could declare occupancy of this building; he thought
239 that Mr. Tousley might disagree, but the Chief thought he was relatively close. The Chief said
240 this building at 160 Emerald Street was near the top of the list of the most complex buildings he
241 had seen throughout his career. He said the building had changed so much over time that it was
242 difficult to determine the occupancy. The Chief referred to his response in the agenda packet,
243 which described this building as “high hazard,” which is more dangerous than one would expect.
244 He said that within this building there is a carpet store with rugs displayed on a vertical plane. He
245 said that those carpets would burn with such intensity that an FPE or even a sprinkler designer
246 would need to calculate the fire load of those materials and whether a sprinkler system could

247 handle them. He said the same was true for a high rack storage area in the building that was not
248 permitted; the Chief said that storage should not be permitted because the racks are small and do
249 not come close to meeting what the Chief would consider proper Building Code. He added that
250 the commodity classification of those storage racks had not been evaluated for a sprinkler
251 system. He reiterated that this building changed over time. The Fire Chief said that every time an
252 occupancy changes or the commodities in the occupancy change, the fire protective features need
253 to change as well; a change in occupancy could result in a change of fire load. He said this
254 building was so far from compliance that it was difficult to define.
255

256 The Fire Chief recalled that he was asked not to be present at the final, more in-depth
257 inspections. The FD has some excellent and highly trained inspectors who conducted the work,
258 kept the Chief informed, and took a lot of photos. He said the results of the inspections showed
259 that the building was as far from compliance as the Fire Chief expected. He said the building was
260 mixed use by definition with multiple occupancies. The Chief added that the building was
261 unseparated. He explained why “separation” is incredibly important. The Chief said that if a
262 building is properly separated using 1-hour, 2-hour, or 3-hour walls, it can be considered a
263 separate building. He said that if proper separations were in a high hazard area, it would act as
264 and be treated as a completely different building than the main building. The Fire Chief said that
265 there was no way that the building at 160 Emerald Street could be considered a separated
266 building. He said that when a building is unseparated, the rule is that building must be designed
267 to protect people from the highest hazard classification in the building.
268

269 The Fire Chief reiterated that this building had changed dramatically over time. He said the
270 parties could argue about the occupancies, but the Fire Chief said there were at least 3
271 occupancies in that building that he would classify as high hazard. He said that all boiled down
272 to NFPA 1, which says that the building owner is responsible for following the Fire Code and
273 ensuring the building is safe. The Chief said that everyone should have the reasonable
274 expectation that when they go into a building, they should be able to get out of that building
275 alive. He added that there is also an expectation that his firefighters should be able to exit a
276 burning building alive. As a Fire Chief who is also in charge of fire suppression, he believed that
277 if there was smoke coming from the building at 160 Emerald Street, that his firefighters would
278 not make it out alive. He called it a dangerous, complex, maze of a building. He said there are
279 electrical cords everywhere, innumerable materials that would burn rapidly, hazardous materials,
280 and an unending list of things that could cause a fire.
281

282 Next, the Fire Chief discussed the fire alarm system in this building. He said that a section of the
283 NFPA 1 says that if an individual cannot see a fire in a building, they should be warned that there
284 is a fire in the building. In his professional opinion, the Fire Chief thought that what made the
285 building at 160 Emerald Street most dangerous was the lack of a fire alarm system. He cited
286 occupancies that could cause a fire such as an apparent Amazon shipping warehouse and one
287 where an oil truck is parked with bare wires hanging around it. He said that outside of a
288 developing nation, it was unacceptable for improper occupancies on a first floor to kill people on
289 a second floor because of no centralized fire alarm system to warn them.

290 The Fire Chief said he understood that it would be a lengthy and expensive endeavor to bring
291 this building to Code. He said it was a balancing act for him between safety and allowing people
292 to run their businesses. The Chief said he had to make a lot of hard decisions regarding this
293 building. Still, he said that he took an oath to protect the citizens of Keene, which was what he
294 was trying to do. The Chief said he could not overstate how important that was to him. He said it
295 was not lost on him what his decisions meant for the building owner and the people trying to run
296 businesses in that building. However, the Fire Chief said he had a good understanding of and a
297 lot of experience and training to gauge right from wrong. He said this building was just wrong.
298 The Chief thought the building could be in compliance fairly quickly. Still, he said that could not
299 happen until the FD had a good understanding of what the building is. The Chief said the only
300 way to gain that understanding about the building was for an FPE to determine things like
301 separations, the heating system, duct work, and electricity; he said that perhaps Mr. Skantz
302 could initiate that process.

303
304 The Fire Chief discussed the push back, stating that there had been many unfair things said about
305 him and his statement about unpermitted work in that building. The Chief said Mr. Tousley and
306 his representatives were aware of an email the Chief sent the night before this meeting (May 29,
307 2023); the Chief said that upon the earliest inspection cycle in December 2022, he walked into
308 what used to be a gym that was actively under renovation and was recently (in 2023) permitted
309 as a restaurant. He said that those renovations occurred for months before the FD saw the permit.
310 The Fire Chief said it was a fact that while Mr. Tousley was impugning him and challenging The
311 Chief's personal and professional character (e.g., stating that he made things up and fabricated
312 photos), there was ongoing and unpermitted construction of an assembly space occurring in the
313 building at 160 Emerald Street. He said that was what had occurred in the building over time.

314
315 The Fire Chief concluded by stating that the building was dangerous and had a long way to go to
316 be in compliance, and that to get there, he would need cooperation that he had not received yet.
317 The Chief was completely amenable to working something out at this meeting to move forward
318 with a timeline. He said that he was asked to sign an agreement before this meeting that said the
319 building was separated, but he said it was not true and it would have been immoral for him to
320 sign. The Fire Chief said this must begin with getting a fire alarm system in the building, at
321 minimum, so that all people and firefighters could get out; if the building burns down, the Fire
322 Chief said that would be between Mr. Tousley and his insurance company. The Chief said it was
323 as simple as the fact that not everyone in the building would be alerted to get out of the building
324 during a fire.

325
326 The City Attorney had some procedural comments. He noted that Attorney Hoppock had
327 provided the Board with a book of materials. The City Attorney said that the rules of evidence
328 did not strictly apply in this context. The City Attorney did not have any objections to the
329 materials Attorney Hoppock submitted for the Board to consider, but the City Attorney did want
330 the Board to understand that he had no time to review those materials. He said that a cursory
331 glance showed materials on permitting issues and other things the building owner had gone
332 through. The City Attorney wanted to be clear that the City was not saying that individual

333 occupancies in the building had not gone through permitting processes before; some tenants did
334 what they needed to with the Building Code enforcement department. However, the City
335 Attorney was saying that over a period of time (especially given the age of the building), there
336 had been activities in the building that were not permitted; the Chief had pointed out the
337 restaurant example, but the City Attorney thought that occupant was moving forward trying to do
338 the right thing. In particular, the City Attorney said there was a document in Attorney Hoppock’s
339 materials—tab 17—that was apparently a preliminary analysis and report from Mr. Skantze that
340 the City Attorney had not reviewed. Still, the City Attorney had not seen anything that changed
341 his perspective about the Fire Chief’s authority on these matters. The City Attorney added that he
342 had received a copy of the permit to operate the casino as a place of assembly.

343
344 Chair Katz appreciated and commended both sides for working from the 17 original issues to the
345 three issues that remained. He thought everyone on the Board understood that there were
346 nuances because this is a mixed-use structure.

347
348 Chair Katz welcomed comments from Attorney Hoppock, Mr. Tousley, and Mr. Skantze. Mr.
349 Hoppock reviewed what was included in the 18-tab packet of materials he shared with the Board
350 to make his case:

- 351 1. Five-year sprinkler system inspection report dated July 22, 2022
- 352
- 353 2. Annual fire alarm and sprinkler report. Attorney Hoppock said the Chief was given
354 copies of these months ago.
- 355
- 356 3. Fire extinguisher safety report, which Attorney Hoppock said was largely good.
- 357
- 358 4. Notice of Violation from September 19, 2022, which Attorney Hoppock said was derived
359 from inspections on April 14, 2022, and July 22, 2022. He quoted, “*The buildings were*
360 *inspected for compliance with the minimum standard for existing buildings as required*
361 *by the State Fire Code and the State Building Code. The building was inspected for fire*
362 *and life safety concerns. This notice reflects the violations that were observed at the time*
363 *of the inspection.”* Attorney Hoppock said those were important caveats to keep in mind.
364 He said the next page of his materials referenced the NFPA 101-12.2.5.1.3, which states
365 that dead end corridors should not exceed 20 feet. Attorney Hoppock asked what the
366 violation was and where, which he said the Notice of Violation did not indicate. He said
367 the Board could go through every item listed by the NFPA and ask the same two
368 questions: what and where? He said the Board’s answer would be, “We don’t know.” He
369 called the Notice of Violation a “cut and paste job” that Mr. Tousley was supposed to
370 understand and correct—without knowing what or where—within the 60 days allowed
371 according to the Notice. Attorney Hoppock said that was the kind of unprofessionalism
372 Mr. Tousley was dealing with. Attorney Hoppock did not want to belabor this Notice
373 because ultimately those issues were all resolved.
- 374

- 375 5. Mr. Tousley’s reply to the Notice of Violation, which Attorney Hoppock called quite
376 thorough. He said Mr. Tousley described the Code issues accurately.
377
- 378 6. An October 12, 2022, letter from the Fire Chief to Mr. Tousley. Attorney Hoppock said
379 this was important and quoted Chief Farquhar as writing that he “*could respond at great*
380 *length to the other violation appeal responses*” that Mr. Tousley made, but the Chief
381 wrote “*that would only serve to distract from the central point of the Notice of Violation*
382 *and Order to Correct and that is completing an existing building investigation and*
383 *evaluation report by a fire protection engineer.*” Attorney Hoppock said that the Fire
384 Chief went on to suggest an interim step, writing, “*I believe it would be mutually*
385 *beneficial if a more thorough evaluation of the building were allowed. To perform such*
386 *an evaluation, I would need the support of the State Fire Marshall’s office. For a*
387 *competent baseline assessment, the inspection team would need full access to the*
388 *building for 6–8 hours.*” Attorney Hoppock reported that in February and March 2023,
389 the FD Staff had almost 16 hours in that building with the State Fire Marshall’s
390 representatives. He said the Fire Chief concluded his letter by stating that he would not
391 reverse his requirement until Mr. Tousley retained the services of an FPE, which
392 Attorney Hoppock called “overkill” in this situation.
393
- 394 7. The BOA’s November 9, 2022, decision.
395
- 396 8. Attorney Hoppock skipped tab 8.
397
- 398 9. Notice of Violation for the casino on January 11, 2023, following an inspection on
399 January 6, 2023. Attorney Hoppock said Mr. Tousley was not served this notice but
400 found out about it from tenants well after the fact. Attorney Hoppock said there were the
401 same questions about what standards were used to inspect the building. He said this
402 Violation required Mr. Tousley to provide an updated fire alarm test report. Attorney
403 Hoppock said the Fire Chief already had those reports (shown in tabs 1–3). He said that
404 wanting these copies did not warrant Violation. He added that the alarm system and the
405 occupant notification system had been a “bugaboo” for a long time.
406
- 407 10. An updated Notice of Violation & Order to Correct, with some more details that Attorney
408 Hoppock said were missing earlier. He added that this was not an effort to work together
409 after the BOA’s November 9, 2022, order. He said this was the notice in which “all those
410 serious violations” were resolved or withdrawn and the only ones remaining were #2 and
411 #13. He said that most were withdrawn because the Fire Chief could not determine
412 whether there was a violation; Attorney Hoppock said the Fire Chief was using the
413 excuse of lacking an FPE. It struck him as odd that those were violations on September
414 19, 2022, but they were not violations any longer.
415
- 416 11. Summary of Mr. Skantze’s meeting with the Fire Chief on January 30, 2023. Attorney
417 Hoppock quoted the summary as stating that “*through direct observation, the Fire Chief*

418 wanted to rule out any issue or combination of issues that constituted clear and imminent
419 danger to the life or safety of the occupants or other persons anytime and (#2) be allowed
420 to complete a full assessment of the building in its entirety. Despite our good faith efforts,
421 we have been unable to achieve either of these goals. The Fire Chief wants to work with
422 Mr. Skantze to discuss creating a structured plan, with timelines, to achieve these goals
423 and to establish a formal, agreed upon remediation strategy.” Attorney Hoppock said
424 this was what the Fire Chief was saying in January 2023, but that it went nowhere, which
425 was the impetus for this appeal.
426

427 12. Life Safety Report. Attorney Hoppock said that a lot of what was listed was the same as
428 before, such as the inadequate sprinkler system, alarm system, and a claim of unpermitted
429 work. He said that if he understood correctly, over the years as different people owned
430 the building and different tenants occupied it, that various people did things within the
431 building without permits; Attorney Hoppock thought that was to be expected over a 90-
432 year period.
433

434 13. Another Notice of Violation for the casino space dated May 22, 2023. Attorney Hoppock
435 pointed out that this hearing was noticed on May 3, 2023. He challenged the Board to
436 compare the violations listed in the May 22, 2023, notice to the January 11, 2023 notice;
437 he said they were almost verbatim the same (e.g., testing, extension cords, no exit). He
438 referred to the issues with occupant notification and sprinkler testing, stating that those
439 (5) items were in the January 2023 report. Attorney Hoppock said it was fair to ask why
440 the Fire Chief was doing this again, a week before this hearing and almost 3 weeks after
441 this hearing was noticed.
442

443 14. Permit to Operate a Place of Assembly for the casino dated May 23, 2023, which was
444 only one day after the Notice of Violation for the casino (May 22, 2023; tab 13). Attorney
445 Hoppock quoted the permit: “*It appears that the necessary safeguards for the safety of*
446 *life are provided within the described premises in accordance with provisions of RSA*
447 *155. This is to certify that Peninsula Pacific Entertainment, owner and operator of the*
448 *Place of Assembly at 160 Emerald Street is permitted to operate in accordance with the*
449 *provisions of the law for one year.*” Attorney Hoppock recalled that one day before this
450 permit was issued, there were five violations, so he asked how that happened so fast.
451 Attorney Hoppock stated that it happened so fast because “*the Chief is harassing Mr.*
452 *Tousley.*”
453

454 15. A collection of emails that Attorney Hoppock encouraged the Board to read. He said the
455 emails demonstrated Mr. Tousley’s efforts to get the FD to come to the building to
456 address the 16 alleged violations, which the Board ordered both parties to work together
457 to address at the November 9, 2022, BBOA meeting. He noted other emails from tenants
458 trying to get their establishments permitted.
459

460 16. Code citations dealing with “design professionals and responsible charge” provided by
461 Mr. Skantze, who would address this tab. Attorney Hoppock said this was not only
462 dealing with the NFPA, but also the existing International Building Code (IBC) and some
463 others that he said mingle together.

464
465 17. Mr. Skantze would address this tab.

466
467 18. Copies of various inspections that the City had performed in the building, some from the
468 Code Department and some in the FD, many of which were approved as final. Attorney
469 Hoppock referred to the restaurant that was unpermitted and operating for an unknown
470 time period. However, he said that since April 22, 2022, Fire Inspectors had been in and
471 out of the building and they never said a word about the restaurant; if there was concern,
472 he said the inspectors should have said something.

473
474 Attorney Hoppock said that he was asking the BOA to rule and find that the Fire Chief, as the
475 AHJ, did not have lawful authority to require a property owner to retain an FPE for the reasons
476 stated by the Chief. Attorney Hoppock quoted the Fire Chief as stating “*to perform a*
477 *comprehensive inspection of the building and analysis of same, and report same to Fire Chief.*”
478 In effect, Attorney Hoppock stated that the Fire Chief was “*collecting a salary of \$100,000 a*
479 *year and having someone else do his job for him at [Mr. Tousley’s] expense.*” Attorney Hoppock
480 called that “*obscene.*”

481 Attorney Hoppock referred to [NFPA 1.151] that the City Attorney discussed, and he said it
482 should be read carefully. Attorney Hoppock said this fell within one of the three things presented
483 [that the Board was deciding]: 1) the true intent of the Code, 2) the wrong interpretation of the
484 Code, or 3) a better interpretation of the Code. Attorney Hoppock thought that Mr. Tousley’s
485 interpretation of the Code was better and that the Fire Chief’s interpretation did not meet the true
486 intent of the Code. Attorney Hoppock read: “*The AHJ shall be permitted to require a review by*
487 *an approved independent third party with expertise in the matter to be reviewed at the submitters*
488 *expense.*” Attorney Hoppock pointed out that this quote did not say anything about an FPE. He
489 said that Mr. Skantze had the necessary expertise and there was no reason that he could not fill
490 that role. Attorney Hoppock said the Fire Chief originally requested 6–8 hours in the building but
491 took approximately 16 hours, from which he said the Chief brought forward four major issues
492 with: the alarm system, the sprinkler system, unseparated walls, and high hazard materials.
493 Attorney Hoppock said an FPE was not needed to deal with those things; he said a company
494 could be hired to prescribe what to do and that eventually, once the plans are finalized, an
495 engineer could review and stamp them (which would be a part of the cost of the company doing
496 the work). He said an independent engineer (at \$250/hour or more) was not needed to do this
497 study that Attorney Hoppock believed was overkill, and he did not think the Fire Chief had the
498 authority to demand it. Thus, Attorney Hoppock believed that Mr. Tousley’s interpretation of the
499 Code made more sense.

500 Attorney Hoppock referred back to Mr. Skantze’s recommendations listed in tab 16, which not
501 only dealt with the NFPA, but also the existing IBC, and some others that he said mingle

502 together. Mr. Skantze wrote: *“Chief Farquhar is using his authority to require a licensed fire*
503 *protection engineer to act as the design professional in responsible charge. The Life Safety Code*
504 *criteria for this role does not necessarily require an engineer for this purpose. Rather, it states*
505 *that it must be someone with expertise in the matter. When the matter of designing elements of a*
506 *building and the submittal of certain design work would require the stamp of a licensed*
507 *engineer, then the engineer would review it and stamp it,”* which Attorney Hoppock said would
508 cost far less money.

509 Attorney Hoppock asked Mr. Skantze to talk about the existing alarm and sprinkler systems in
510 the building, as well as his qualifications. Mr. Skantze said he got involved with this case in
511 January 2023, when Mr. Tousley contacted him because of this standstill. Mr. Skantze said his
512 credentials were similar to the Fire Chief’s. Mr. Skantze had a 40-year fire service career,
513 working as a firefighter, fire inspector, and a fire chief in several NH communities; he was
514 certified by the NFPA as a Fire Inspector 1 & 2 (the same as the Fire Marshall and the FD Staff).
515 He said that the NFPA gives out fire inspector certifications and a fire protection specialist
516 rating, both of which he said the NFPA would not offer if it was not possible to work outside the
517 scope of engineering. Mr. Skantze explained that when he got involved, he did what he always
518 does, which is to meet with the local Fire Chief. Mr. Skantze said he respected what the FD was
519 trying to do in the City to get buildings into compliance and enforce the NH Fire Code. He said
520 he knew that work was not easy due to his many years as the AHJ in several communities and on
521 similar buildings, so he understood the Fire Chief’s burden as the AHJ to ensure residents, the
522 property owner, and firefighters are safe. Still, Mr. Skantze said he must also represent his
523 client’s best interests and look on this as a third party. When he met with Chief Farquhar, Mr.
524 Skantze asked if they could work together to resolve this for Mr. Tousley, with Mr. Skantze as
525 the intermediary. He said the Fire Chief agreed and was very enthusiastic about it. At that time,
526 he said there was discussion of closing the building under the dangerous building statute, getting
527 administrative search warrants to go into the building, and the various violations found. Mr.
528 Skantze said he offered to get the FD access to the building and to walk through with them. He
529 said that due to the contention, the Fire Chief offered not to be present for that inspection if Mr.
530 Tousley was also not present.

531 Mr. Skantze toured the building with FD Staff and one member of the NH Fire Marshall’s office
532 for four hours, after which he said [they] did not come back or write a report. He said that he
533 asked the Fire Chief if they could forgo the previous reports, which Mr. Skantze said were
534 confusing, complex, and some things had been corrected. He wanted to walk through the
535 building and come up with the list of things needing work, and if engineering was required—
536 which he said would be needed for major changes (e.g., new fire alarm, constructing anything
537 structural) — then they would bring in the appropriate professionals. However, he said an FPE
538 would not be specifically needed; there could be structural and electrical engineers, etc.,
539 depending on the need. For this building, Mr. Skantze felt his role was to coordinate the
540 inspections and any other professionals needed to do this work.

541 Mr. Skantze continued, explaining that there was a fire alarm in the building at 160 Emerald
542 Street, although the Fire Chief was reporting that there was not a fire alarm. Mr. Skantze said he

543 had seen the fire alarm, adding that there was a remote panel in the casino. He said that sprinkler
544 heads were allowed as detection per NFPA 13. He said there were other requirements for smoke
545 detection in certain locations. Still, he said there was detection throughout the building in
546 addition to a fully functioning sprinkler system, which he said was inspected and approved by a
547 qualified sprinkler company; Mr. Skantze said the Fire Chief stated his confidence in that
548 company and worked with them closely. Mr. Skantze agreed that the company was competent
549 and added that he also brought in his third-party sprinkler consultant to look at things
550 forensically. Mr. Skantze said the sprinkler consultant reported that it was an old mill, some
551 sprinkler heads needed updating, the diameter of some branches could be improved, and there
552 were some missing connections to the risers—there are three different risers and no way to
553 supply pressurized water to the outside of the building, so he said this should be a priority. He
554 said he spent a lot of time talking to Mr. Tousley about these things, including the fire alarm. He
555 noted that Mr. Tousley spent a lot of money to add a fire alarm panel for the casino. Mr. Skantze
556 said the FD claimed there were no “pull stations” but he said there were some, just not at all the
557 exits, which could be improved. He asked if that was maintenance or if a new panel would be
558 required, noting that the current panel was only two years old. Mr. Skantze believed it was
559 possible to resolve the issues in the building. He hoped to be able to sit with FD Staff so they
560 could explain the sprinkler violations they saw, so the owner could address those issues with the
561 relevant vendors (whether for maintenance or a new system). Of course, he said that if a new
562 system were needed, an engineer would be required, which he said Mr. Tousley understood. Mr.
563 Tousley had an architect on retainer for his business.

564 Mr. Skantze discussed the inspections that he was present for with FD Captain Steven Dumont
565 and FD Lieutenant Meghan Manke, and a representative (Jessica) from the NH Fire Marshall’s
566 office. He said they all toured the building 3–4 times and reviewed every space diligently. Mr.
567 Skantze said he had a sidebar discussion with Captain Dumont, in which they agreed to sit down
568 together, discuss the various violations, and develop a timeline for compliance because work on
569 a 90,000 square foot building could not be completed overnight. Mr. Skantze said one year had
570 passed and Mr. Tousley could have had things underway if they were not stuck in this process.
571 Mr. Skantze said that Captain Dumont was willing to work with him at that time, but said that
572 nothing happened, and Mr. Skantze had been waiting to see a report identifying the violations
573 and to meet with the Captain. Mr. Skantze thought it was a communication breakdown while all
574 parties were trying to do the right things. He said that if the FD clearly explained that they
575 wanted the fire alarm system improved, then Mr. Tousley could start addressing those things, but
576 he said they were stuck on this FPE issue. Mr. Skantze agreed that he is not an FPE, and while he
577 said he was not qualified to design anything, he could coordinate all the right parties. He
578 reiterated that he was a third party and had no animosity toward anyone, but said that after
579 meeting with FD Staff, he never heard anything more about working together toward a
580 resolution.

581 Mr. Skantze hoped that whatever decision came from this meeting, that the FD would focus
582 clearly on what the inspection results were, which indicated issues with the sprinkler system, fire
583 alarm, and fire separation. He said that Mr. Tousley disputed some of the fire separation issues
584 because the building’s sprinkler system meant that some walls could be one hour less than what

585 the NFPA requires. While he was not an engineer, Mr. Skantze believed that the walls between
586 the Quonset Huts in the building were 3-hour separations with parapets. He said those were
587 substantial fire walls but there was a weak point at the door, which he said would be an easy fix.

588 Mr. Skantze continued by discussing his report, in which he referenced Codes, and showed that
589 the NFPA and IBC allow a person that the Fire Chief determines to be qualified. At his first
590 meeting with the Fire Chief, Mr. Skantze said the Fire Chief agreed to work with him. He did not
591 understand why the Chief would not work with him now, and then Mr. Skantze could arrange the
592 relevant engineers needed. He agreed with the Fire Chief about sprinkler clearance and the need
593 for 18 inches from a sprinkler head. Mr. Skantze mentioned the carpet store in the building, part
594 of which includes tall, rolled carpets, and Mr. Tousley told them they had to keep those clear of
595 the sprinklers. Mr. Skantze said it was an ongoing issue with tenants to ensure they maintain
596 those clearances. He said there were other parts of the building that could benefit from added
597 sprinkler heads, like an area under a stairway that leads to an office.

598 Mr. Skantze referred to the classifications of the occupancies and fire separations, noting that it
599 was the AHJ's role to determine occupancies under the Code. On use and designation, Mr.
600 Skantze quoted (document unknown): "*The occupancy is typically established by a design*
601 *professional during the Code analysis phase. Most of the time, the designer's determination is*
602 *consistent with that of the building department. However, where there is a disagreement as to the*
603 *proper classification of the various uses within the building, it is the building official's*
604 *responsibility to make the final decision (IBC 302.1)."* After meeting with the Fire Chief, Mr.
605 Skantze also met with the Building Inspector and Community Development Director; Mr.
606 Skantze reviewed the file on this building and took photos of everything in the file. He said that
607 innumerable building permits had been issued, as well as Certificates of Occupancy, and
608 building plans that showed fire wall locations. He asked the Community Development Director
609 what this building's designation and use group was, and he offered to work with the Director to
610 get those in the file, so the use groups are clearer in the future.

611 Mr. Skantze said there were fire walls in the building as well as separations and floor-ceiling
612 assemblies separating the 2 floors. He is not an engineer and could not determine whether a wall
613 was a 1 or 2-hour separation. Still, Mr. Skantze said it was a heavy mill construction, with good
614 separations, tongue-and-groove floors, and sheet rock below that he thought was likely at least a
615 1-hour fire separation. He said that during the inspection with FD Staff, they discovered a
616 storage room with no sheet rock on the inside wall of the egress, which all parties agreed needed
617 5/8-inch sheet rock to be in compliance.

618 Mr. Skantze referred back to occupancies. He said that mixed occupancy means that occupancies
619 are intermingled but said the occupancies in this building were separated. So, he said it was a
620 multiple occupancy building, which could get confusing, but means it is, "*A building or structure*
621 *in which 2 or more classes of occupancy exist and they are separated.*" Mr. Skantze said that Mr.
622 Tousley believed that the building was separated based on the existing nature of the building. He
623 said that if the FD pointed out areas of separation that could be improved, Mr. Tousley could
624 consider that. Mr. Skantze mentioned means of egress, noting that there are four stairways from
625 the 2nd floor to the building exterior, which he thought was adequate egress. He said the building

626 corridors are long and were previously divided; Mr. Skantze thought it could be valuable to add
627 fire doors back in those locations. He said the existing egresses could be enhanced with
628 improved doors, closers, separations. Still, he did not see those as major issues because two of
629 the exits are to the exterior of the building; the main egress from the 2nd floor in the “160
630 division” is to the exterior of the building, but it had no sprinkler head. Mr. Skantze said no one
631 denied that improvements were needed.

632 Mr. Skantze continued by discussing existing buildings and said the NFPA (1.2) “*avoids*
633 *requirements that might involve unreasonable hardship or unnecessary inconvenience or*
634 *interference with the normal use and occupancy of the building but provide for fire safety*
635 *consistent with public interest.*” He said this building has a sprinkler system that was tested and
636 certified to work and would go a long way toward suppressing any fire in the building. Mr.
637 Skantze stated that he did not think the Fire Chief was wrong for wanting an improved fire alarm
638 system but said the two parties still could not seem to get there. Mr. Skantze quoted again: “*It is*
639 *not always practical to strictly apply the provisions of this Code. Physical limitations ... the*
640 *building can cause the need for disproportionate effort or expense with little increase in life*
641 *safety. In such cases, the Authority Having Jurisdiction needs to be satisfied that reasonable life*
642 *safety is ensured. In existing buildings, it is intended that any condition that represents a serious*
643 *threat to life be mitigated by the application of appropriate safeguards. It is not intended to*
644 *require modifications for conditions that do not represent a significant threat to life, even though*
645 *such conditions are not in compliance with the Code.*” Mr. Skantze said that both the IBC and
646 Life Safety Code indicate that existing buildings would not be in compliance. He said the NH
647 Code changes every three years and is adopted by the NH Board of Fire Control and the NH
648 Legislature; the State was operating with the 2018 codes and was getting ready to move up to the
649 next level, 2021, in the next year.

650 Mr. Tousley asked Mr. Skantze whether he agreed with the Fire Chief and believed the building
651 was unseparated and mixed occupancy. Mr. Skantze replied that he believed the building was
652 multiple use and separated based on the age of the building. The City Attorney objected to Mr.
653 Tousley leading Mr. Skantze. Chair Katz recalled that the rules of court did not apply to this
654 Board, but he appreciated the City Attorney’s concern; the Chair allowed Mr. Skantze to reply to
655 Mr. Tousley. Mr. Skantze said that the collective parties needed to work together to look closely
656 at this building. He said the building had multiple occupancies and was intended to be separated;
657 he said there were fire separations between occupancies and between use groups. He thought
658 more investigation was needed to determine whether the separations were up to current
659 standards. He knew the FD looked during the inspection, but he said they did not discuss the
660 issues, which would have made it more reasonable to make needed improvements.

661 Mr. Tousley stated that “*the Fire Chief has categorically said the entire building is*
662 *unseparated,*” yet the Chief did not provide any proof or specify locations of the issues. Chair
663 Katz asked Mr. Tousley whether there was any plan in existence that showed the fire separations.
664 Mr. Tousley said he thought there was and said that Mr. Skantze testified to reviewing those
665 plans at City Hall. In response to the Chair, Mr. Skantze said he saw plans with fire wall
666 designations. The Chair asked if those plans showed the entire building and Mr. Skantze replied

667 in the affirmative. The City Attorney thought the question was whether the plans Mr. Skantze
668 saw showed the current separations. Mr. Skantze said he did not know whether they were the
669 current separations; he said, “*There is no ‘as built’ in the file showing the current separations.*”
670 Without “as built,” Chair Katz said it was difficult to determine where the fire zones and
671 separations were. The Chair asked Mr. Skantze whether it was possible to determine the
672 occupancy load of and length of egress allowed out of a room with an undetermined size. Mr.
673 Skantze stated that he did not know whether any of that information was available. Mr. Tousley
674 said it was important to note that this was an existing building, and that the FD thoroughly
675 inspected every single space in the building and saw the floor-to-ceiling sheet rock on both sides
676 of the walls. Mr. Tousley stated that the building was completely separated, and that the FD
677 knew that; they took photos of the parapet walls with brick above the roof. He said the doors
678 were also solid with closers (not hydraulic), that the whole space was separated, and had been
679 that way for decades. Mr. Tousley said the Codes (e.g., fire walls) were very similar to today
680 when the building was constructed in the 1980s. Mr. Skantze quoted the IBC, “*Buildings*
681 *previously occupied – legal occupancy of any building existing on the date of adoption of the*
682 *Code shall be permitted to continue without change, except as explicitly covered in this Code,*
683 *the International Fire Code [which is not applicable in NH], or the International Property*
684 *Maintenance Code [which the Building Review Board exempts].” While there were a lot of*
685 *Codes protecting existing buildings, Mr. Skantze said that did not mean improvements could not*
686 *be made. Mr. Tousley said that if the FD pointed out the specific violations, he would make the*
687 *improvements, but he said the FD just told him everything was unseparated.*

688 Attorney Hoppock provided the Board with a proposed order that they could use as an outline of
689 what he hoped the Board would do. He quoted paragraph 5, “*The parties shall work together to*
690 *agree upon a remediation plan for the sprinkler and alarm systems for the building.*” He said the
691 Board could add to that regarding fire protection walls or other issues. Attorney Hoppock said
692 the problem was that Mr. Tousley did not have a partner to work with from the FD and that the
693 Fire Chief was not interested in working with them. Attorney Hoppock stated that the way the
694 Fire Chief behaved toward Mr. Tousley and the timing of some of these violations demonstrated
695 that. Attorney Hoppock said the Fire Chief was working with Mr. Skantze on January 30, 2023,
696 and then something happened, and they did not hear from the Chief anymore other than receiving
697 Notices of Violations. Attorney Hoppock asked the Board to consider these things and rule,
698 accordingly, keeping in mind the extraordinary cost of some of these things and that Mr. Tousley
699 was willing to develop a remediation plan with Mr. Skantze’s help. Attorney Hoppock said he
700 included a provision: “*The parties shall have 60 days to develop and file with this Board an*
701 *agreed upon remediation plan with specific timelines for completion.*” He said he included that
702 provision in part because on November 9, 2022, the BOA asked the parties to work together
703 without any guidance and that did not turn out well, so he hoped the Board would keep control of
704 this situation. Chair Katz said things did work out to a degree in that what started as 17 violations
705 was now only three. Mr. Tousley said that was because most of the 17 violations were
706 misinterpreted to begin with. Attorney Hoppock said most of those 17 were not really violations,
707 so he said he the Board should not have too much hope in that.

708 Attorney Hoppock continued discussing some of the costs associated with these violations. He
709 questioned whether a new sprinkler system was needed or just a renovation of the current one;
710 Attorney Hoppock stated that it was the latter. If Mr. Skantze could work with responsible FD
711 officials, then Attorney Hoppock thought the work could get done. He reiterated that an FPE was
712 not needed at \$250–\$300/hour. He asked the Board to be reasonable. He said the reason that
713 problems were not being fixed was because they could not make headway with the FD, which
714 was why he suggested the 60-day time limit. Mr. Tousley pointed out that this Board requested
715 that he specifically work with the new FD personnel—Captain Dumont and Lieutenant Manke—
716 who Mr. Tousley said he reached out to immediately and they discussed some items together.
717 Still, he said the FD refused to make any determinations. He believed that the Fire Chief was
718 micromanaging and not allowing progress, which Mr. Tousley believed was a part of the
719 problem. He said he received no communication from the Fire Chief and Mr. Tousley’s requests
720 to work with the FD had fallen on deaf ears. He said the Fire Chief refused to let his employees
721 do their jobs. Mr. Tousley said that the Fire Chief also kept adding new items, like the separation
722 issues.

723 Chair Katz recalled that the first issue was about the FPE, but he said Mr. Skantze seemed like a
724 qualified fire code official. Chair Katz said the second issue the Board needed to determine was
725 whether the Fire Chief interpreted the Code correctly. The Chair gave each party a final chance
726 for rebuttal.

727 Attorney Hoppock thought Mr. Tousley/Mr. Skantze should work with the FD to try to agree on
728 the classifications of occupancies. Attorney Hoppock thought he had otherwise covered the other
729 issues the Board needed to consider: the FPE, the sprinkler system, the alarm system, and the fire
730 separations.

731 The City Attorney referred to the sprinkler system and the reports in the file, stating that the City
732 did not dispute that the sprinkler system was inspected by [this] entity. However, the City
733 Attorney said that if looking at those reports closely, they only state that the sprinkler system
734 works (e.g., sprinkler flow, all valves are working, etc.), but do not indicate if it works for the
735 purposes intended (e.g., obstructions, fire load, etc.). The City Attorney said it was important to
736 keep in mind that those reports did not indicate what was necessary; he said an FPE was really
737 important to make those determinations. The City Attorney said the point was that despite Mr.
738 Skantze’s certifications, he is not an FPE. Regarding the withdrawal of Notices of Violations, the
739 City Attorney reminded the Board that those were withdrawn without prejudice, which was not
740 the City saying those were resolved or no longer existed. The City Attorney said those violations
741 were withdrawn without prejudice because an FPE was needed to determine if each violation
742 existed. The City Attorney said that both the Fire Chief and Mr. Skantze admitted that they are
743 not design professionals.

744 The City Attorney continued, stating that it was important to read NFPA 1.15 in its entirety,
745 because each subparagraph indicates that, “*The AHJ is allowed to require review by an*
746 *approved, independent third party. The independent reviewer shall provide an evaluation of the*
747 *proposed design ... The AHJ shall be authorized to require that individual or entity to bear the*
748 *stamp of a registered design professional.*” The City Attorney said that was talking about a

749 registered engineer, not a structural engineer or an electrical engineer, but one with expertise in
750 fire protection. Regarding the fire separations, the City Attorney said it struck him that Mr.
751 Tousley seemed to be implying that because there were walls in the building, that it was
752 separated. The City Attorney said that was not the point and as Chair Katz pointed out, there was
753 no adequate information about the fire ratings, and the appellant could not tell the Board they
754 knew the fire ratings. He said that even someone with expertise in fire inspection would not
755 know what is within or on the other side of a wall to make that determination. The City Attorney
756 reiterated that the Fire Chief did not say the entire building was unseparated. Some aspects of the
757 building were separated, which was why the Public Occupancy Permit for the casino was
758 granted, for example. The City Attorney referred to the proposed salon location on the 2nd floor
759 that the FD did not believe was fire separated. As the Fire Chief pointed out, the City Attorney
760 said it was important to remember that each use stands alone in its own building, unless or until
761 it could be shown that there is no separation between the high hazard uses and the other uses.
762 That was the issue the FD was unable to determine. The City Attorney agreed with Mr. Skantze
763 that it would be good to work together to sort these things out. The City Attorney provided an
764 objection to Attorney Hoppock's proposed order, which he said a court might be able to issue,
765 but that was not the Board's jurisdiction. The Board's jurisdiction was narrow under the statute
766 for how to review this appeal and whether the Code was interpreted correctly.

767 Attorney Hoppock agreed that the Code should be read as a whole. Still, he said the Code did not
768 preclude an expert, Mr. Skantze, from retaining a firm with an engineer on staff. Attorney
769 Hoppock did not believe the Fire Chief was interpreting the Code properly and the Attorney
770 thought his interpretation was better and more cost effective for Mr. Tousley. Attorney Hoppock
771 reiterated that this was a multi-occupant, separated building. He thought the Board could order
772 the parties to work together and develop a remediation plan as the Board did in November 2022,
773 which nobody objected to. He thought a remediation plan was reasonable and that there should
774 be a time limit to accomplish that. Attorney Hoppock and Mr. Tousley had no objection to
775 recessing for a few weeks, so the Board had ample time to review materials. Chair Katz thought
776 the Board was trying to avoid that.

777 The Assistant City Attorney, Amanda Palmeira, advised the Board that this was their time to ask
778 any questions based on the scope of their review under RSA 674-34. There were no questions
779 from the Board.

780 A motion by Mr. Brown to close the public hearing was duly seconded by Mr. Flibotte and the
781 motion was carried unanimously. The Board began deliberating.

782 Chair Katz reviewed the issues the Board was considering: 1) whether the Fire Chief had
783 authority to request the FPE, and 2) whether the Codes had been applied correctly. Chair Katz
784 asked if that was correct, and the Assistant City Attorney referred the Board to the testimony
785 they heard and reminded the Board that RSA 674-34 was the scope of their review.

786 Mr. Brown said that after hearing both sides, he did not want to get hung-up on the FPE issue.
787 He said there could be a need for one down the line, but he thought that was the issue preventing
788 a resolution. His inclination was to not require an FPE and to see where the rest of the process

789 leads; if they need that professional help down the line, they could seek that, but he did not think
790 it needed to be step one. He said the importance of the FPE seemed to be outsized compared to
791 its real worth moving forward.

792 Mr. Flibotte agreed with Mr. Brown. Mr. Flibotte thought that spending \$20,000–\$40,000 on an
793 engineer, who would not provide anything additional, when Mr. Tousley and Mr. Skantze had
794 already decided to work together to get this done now. Mr. Flibotte said that both the Fire Chief
795 and Mr. Tousley/Mr. Skantze had some good ideas. Still, Mr. Flibotte said that both sides needed
796 to work together. He recalled hearing this case in November 2022 and said the Board expected
797 this to be done by now. Mr. Flibotte told both parties to work together.

798 Chair Katz said he generally agreed. He said that [Mr. Tousley] should use his professional
799 engineer to determine square footage, occupancy loads, and the egress requirements. Once they
800 have all those details, the Chair said they should ensure the building works. Chair Katz recalled
801 that it was an existing building and over time, there had been understandable changes, but
802 someone should put all of that together in a legible plan. He said part of the problem was the
803 building was not well understood. Ms. Park agreed that an existing building survey would be
804 helpful. Chair Katz said that when looking at a wall, he would have no idea how thick it is, what
805 is inside it, or how it was assembled. The Chair said that the documentation existed somewhere
806 in City Hall (“because Mr. Bradshaw would probably do it correctly too”) and needed to be
807 coordinated. The Chair said it was fine, in his opinion, if Mr. Skantze did that coordinating.
808 Chair Katz agreed with Mr. Flibotte that an FPE was not needed at this time, despite their utility.
809 However, Chair Katz said he was convinced that the sprinkler system needs to work; the purpose
810 of a sprinkler system is to not necessarily save the building, but to get all the people out. The
811 Chair agreed that the [fire alarm system] should alert people on the second floor to what is
812 happening on the first floor. He said that if he was renting a space to an individual, it was his
813 responsibility to make sure they could get their people out safely. Thus, the Chair had no issue
814 with the process to improve the sprinkler and alarm systems.

815 Chair Katz led the Board in considering the issues within their scope. The Chair said that as an
816 architect, he did believe that the Fire Department had authority, but he also thought that Codes
817 change, and things need periodic updates. He called it a toss-up. He thought Mr. Tousley’s
818 architect could provide the sizes of spaces in the building and more. Mr. Brown thought the
819 Board should not require the FPE and he encouraged the Board to rule on that matter and move
820 on to the others. Ms. Park questioned what [they] meant by “hire,” noting that the appellant
821 seemed amiable to having someone review what [they] come up with, which she thought was
822 different than hiring someone to do all the work. Mr. Brown thought the City was proposing the
823 latter, which he did not think needed to be a first step. Ms. Park thought it was important to have
824 a stamp on the final plan and the Chair agreed; Ms. Park thought that was different than requiring
825 an engineer to do all of the work. Mr. Brown added that he was unclear about what work they
826 would be requiring an FPE to do. Chair Katz said that someone stamping their seal on a plan was
827 important. Mr. Brown said there were sprinkler, separation, and fire alarm issues, which could be
828 reviewed by architects or fire protection professionals. Mr. Brown did not care who the
829 professionals were, but when he is presented with a fire alarm design or sprinkler survey and

830 possible design, he said there were various professionals available in those fields, but all might
831 not be FPEs. Mr. Brown thought that Mr. Tousley should have that flexibility as he works on
832 improvements. Chair Katz said these plans would be submitted to the City, which Mr. Brown
833 thought could be when this issue is fleshed out. Chair Katz noted that when he had submitted
834 plans to the City they always had to be reviewed by the FD, so he said the cross information was
835 available, which he thought was missing in this case. Mr. Flibotte agreed with Mr. Brown about
836 spending \$30,000 on one engineer when several professionals could be hired for that cost. Mr.
837 Brown also did not think this ruling precluded hiring an FPE at some point in the process.

838 Chair Katz asked the Board if they thought the true intent of the Code was properly interpreted.
839 The Chair thought it was. Mr. Brown was not sure it was properly interpreted after hearing the
840 testimony. Mr. Flibotte said an engineer would need to look at the sprinkler system and advise,
841 and the same would be true for fire protection; they would submit the plans to the City and get
842 them approved. The Board agreed that the approved independent third party did not need to be
843 an FPE. Mr. Brown thought there would be professionals of multiple disciplines involved
844 throughout the process. He also thought there should be a timeline to develop the plan and report
845 back to the Board.

846 The Assistant City Attorney advised that the Board was tasked with upholding or reversing the
847 Fire Chief's decisions; asking the building owner to report back to the Board would require a
848 continuance of this hearing. The Board agreed that they needed to rule on each of the two
849 violations based on the intent of the Code. The Chair said it boiled down to the parties working
850 together on these two violations, and he called it a convoluted issue. Mr. Brown questioned
851 whether an FPE would look at sprinkler heads and things like that, noting that he had worked
852 with some bad engineers. The Board members agreed that an FPE should do all of that, but Mr.
853 Brown questioned if they would do it all, and the Chair mentioned that an architect or regular
854 engineer could do a lot of that. The Chair said a design professional would work with all parties
855 involved to develop a decent program. He said it was up to Mr. Tousley as the building owner to
856 determine who he wants to hire to consult. Mr. Brown said that Mr. Tousley would have to hire
857 someone, no matter what, and Ms. Park agreed. However, Mr. Brown said that hiring one
858 engineer to do one thing was a waste of money. Mr. Brown said Mr. Tousley needed a plan to fix
859 the sprinkler and fire alarm systems that is stamped by a professional.

860 Chair Katz noted that the Board did not have authority to waive requirements from the NH
861 Building or Fire Codes. The Board agreed about not requiring an FPE. Still, Chair Katz thought
862 that the Board should include, "*someone who is willing to work to hire one if necessary for parts
863 of the building that require them.*" Mr. Brown rephrased the intent for the building owner to hire
864 an engineer could do it all or multiple engineers capable of doing their portion of the work. The
865 Board reiterated the three issues: sprinklers, fire alarms, separations. Chair Katz said that the
866 professional working on the fire separations would also be responsible for room classifications,
867 occupancy, distance of egress (i.e., could people on the 2nd floor get out within 250 feet?), and
868 whether the fire egress goes to the outside (he said it was clear for one but not the other). Chair
869 Katz said the egresses were an important issue. He suggested hiring an engineer or multiple
870 professionals for different projects who would provide plans to be approved by the City. Mr.

871 Brown agreed with the FD that all of this was for the safety of those in the building; however, he
872 also thought [the FD] could overdo it. He wanted a prioritized plan, with a timeline. Discussion
873 ensued about how to word the motions. The Assistant City Attorney reiterated that the Board
874 cannot stipulate what the building owner must do and return with. The Board could only rule on
875 what the FD brought forward; if the FD did not provide a plan, the Board could not create one.
876 The Board needed to proceed just based on what was presented to them. Ms. Park suggested
877 upholding the need for modifications to the sprinkler system, alarm system, and separations,
878 while disagreeing with the need for that all to be performed by an FPE; the work could be by
879 other competent professionals licensed in NH. Chair Katz thought that was appropriate.

880 Mr. Brown made the following motion, which was duly seconded by Mr. Flibotte. On a vote of
881 4–0, the Building Board of Appeals found an inappropriate interpretation of the Fire Code and
882 did not uphold the Fire Chief's requirement for a fire protection engineer (FPE).

883 The Board deliberated on the remaining issues. Mr. Rogers quoted the City Attorney's materials
884 that stated, "*The requirement to clear obstructions located at or below sprinkler heads within the*
885 *building.*" It was Chair Katz's impression that whoever does the building review for the client
886 would figure that out, and he thought the requirement was an appropriate interpretation of the
887 Code. Mr. Brown and Chair Katz agreed that Mr. Tousley was amenable to changing what was
888 necessary and knew what needed to be done now.

889 Mr. Flibotte made the following motion, which was duly seconded by Mr. Brown. On a vote of
890 4-0, the Building Board of Appeals found an appropriate interpretation of the Fire Code and
891 upheld the Fire Chief's requirements to clear obstructions.

892 **V. Adjournment**

893

894 Hearing no further business, Chair Katz adjourned the meeting at 8:20 PM.

895

896 Respectfully submitted by,
897 Katryna Kibler, Minute Taker
898 June 2, 2023

899

900 Reviewed and edited by,
901 Corinne Marcou, Board Clerk

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NOTICE OF HEARING

BOA 23-01

A meeting of the Board of Appeals will be held on Tuesday, June 13, 2023, at 4:30 PM in Council Chambers, 2nd floor of City Hall, 3 Washington St, Keene, New Hampshire to consider the following petition. Petitioner, Toby Tousley, of Keene, has filed a petition for an Appeal of the Building Code for property located at 160 Emerald St., TMP 583-034-000-000-000, which is in the Downtown Growth District. The Petitioner is appealing the interpretation from the 2018 International Building Code, Section 202.

This application is available for public review in the Community Development Department at City Hall, 3 Washington Street, Keene, NH 03431 between the hours of 8:00 am and 4:30 pm.

Corinne Marcou, Board Clerk

Notice issuance date June 6, 2023

Toby Tousley
PO Box 626
Keene, NH 03431
603-352-9071

6-1-2023

John,

I am withdrawing my application for a fire appeal referencing NFPA 1 section 1.7.14 & section 4.5.4.

I am also modifying the second application to remove the fire aspect so as to make it strictly a building code appeal, as discussed on the phone earlier.

Please remove the email from farquhar that was supplied in the packet.

My commentary regarding NFPA is strictly to show reference as to how a change of use is interpreted in that code as a comparison.

Thank you,

Toby

Board of Appeals Appeal of Administrative Decision



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email: communitydevelopment@keenenh.gov

APPEAL OF CITY OF KEENE ADMINISTRATIVE DECISION

Building Code: Section 18-206: Any person aggrieved by an order of the building inspector interpreting the building code may, within 15 days of the date of the order, appeal to the board of appeal established under City Code section 2-741. The board of appeal may affirm such an order or they may modify such order or the application of the building code when in the opinion of the board, enforcement of the provision to the appellant's proposal would do manifest injustice and would be contrary to the spirit and purpose of the building code and the public interest.

Property & Housing Safety Standards: Section 18-316: With the exception of section 18-300, any person aggrieved by an order, decision or requirement of the housing standards enforcement officer, under article III, may appeal to the housing standards board of appeals established by City Code section 2-1098 to 2-1100 which may grant relief from the order for actions taken on properties for noncompliance with article III. Any such appeal shall be filed within 15 days of the date of the action aggrieved from. The board of appeals may affirm, reverse or modify such order, decision or requirement when in the opinion of the board, the enforcement of the order, decision or requirement would do manifest injustice and would be contrary to the spirit and purpose of the ordinance and the public interest. The board may waive the requirements of subsection 18-241 (10) and (11), when it has been shown that the requirements create a hardship due to the unique characteristics of the site.

Fire Code: NH RSA 674:34: Powers of the Building Code of Appeals: I. The building code board of appeals shall hear and decide appeals of orders, decisions, or determinations made by the building official or fire official relative to the application and interpretation of the state building code or state fire code as defined in RSA 155-A:1. An application for appeal shall be based on a claim that the true intent of the code or the rules adopted thereunder have been incorrectly interpreted, the provisions of the code do not fully apply, or an equally good or better form of construction is proposed. The board shall have no authority to waive requirements of the state building code or the state fire code.

APPLICATION REQUIREMENTS

A complete application must include the following items and submitted by one of the options below:

- **Email:** communitydevelopment@keenenh.gov, with **"BOA APPLICATION"** in the subject line
- **Mail / Hand Deliver:** Community Development (4th Floor), Keene City Hall, 3 Washington St, Keene, NH 03431
- **Attach** the decision of the City of Keene Administrator to be reviewed.

Board of Appeals Appeal of Administrative Decision



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SECTION 1: CONTACT INFORMATION

I hereby certify that I am the owner, applicant, or the authorized agent of the owner of the property upon which this appeal is sought and that all information provided by me is true under penalty of law. If applicant or authorized agent, a signed notification from the property owner is required.

OWNER / APPLICANT

NAME/COMPANY: Toby Tousley

MAILING ADDRESS: PO BOX 626 Keene, NH 03431

PHONE: 603-352-9071

EMAIL: tousley11@earthlink.net

SIGNATURE:

PRINTED NAME: Toby Tousley

APPLICANT (if different than Owner/Applicant)

NAME/COMPANY:

MAILING ADDRESS:

PHONE:

EMAIL:

SIGNATURE:

PRINTED NAME:

AUTHORIZED AGENT (if different than Owner/Applicant)

NAME/COMPANY:

MAILING ADDRESS:

PHONE:

EMAIL:

SIGNATURE:

PRINTED NAME:

SECTION 1: ZONING REFERENCE

Section (s) of the Regulation/Code/Ordinance in question:

2018 IBC section 202

NFPA 1: 1.10.9.1 Means of Appeal: Any person shall be permitted to appeal a decision of the authority having jurisdiction to the Board of Appeals when it is claimed that any one or more of the following conditions exist:

1. Describe how the true intent of the codes or ordinances described in NFPA 1 has been incorrectly interpreted:
(Attached additional sheets if needed)

See Attached

2. Describe how the provisions of the codes or ordinances do not fully apply. (Attach additional sheets if needed)

See Attached

3. Describe how the decision is unreasonable or arbitrary as it applies to alternatives or new materials.
(Attach additional sheets if needed)

Board of Appeals Appeal of Administrative Decision



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I hereby certify that I am the owner, applicant, or the authorized agent of the owner of the property upon which this appeal is sought and that all information provided by me is true under penalty of law. If applicant or authorized agent, a signed notification from the property owner is required.

OWNER / APPLICANT

NAME/COMPANY: Toby Tousley

MAILING ADDRESS: PO BOX 626, Keene, Nh 03431

PHONE: 603-352-9071

EMAIL: tousley11@earthlink.net

SIGNATURE:

PRINTED NAME: Toby Tousley

APPLICANT (if different than Owner/Applicant)

NAME/COMPANY:

MAILING ADDRESS:

PHONE:

EMAIL:

SIGNATURE:

PRINTED NAME:

AUTHORIZED AGENT (if different than Owner/Applicant)

NAME/COMPANY:

MAILING ADDRESS:

PHONE:

EMAIL:

SIGNATURE:

PRINTED NAME:

SECTION 1: ZONING REFERENCE

Section (s) of the Regulation/Code/Ordinance in question:

2018 IBC section 202, 2018 NFPA 1 section 4.5.7.1

NFPA 1: 1.10.9.1 Means of Appeal: Any person shall be permitted to appeal a decision of the authority having jurisdiction to the Board of Appeals when it is claimed that any one or more of the following conditions exist:

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See attached

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See attached

3. Describe how the decision is unreasonable or arbitrary as it applies to alternatives or new materials.
(Attach additional sheets if needed)

Mike,

Sorry to drag this out, but before we sit down to talk about this I want to be prepared. Could you please give me the Code book and section that I can find the paragraph you reference.

-----Original Message-----

From: Michael Hagan <MHAGAN@keenenh.gov>

Sent: May 17, 2023 8:59 AM

To: Toby Tousley <tousley11@earthlink.net>

Cc: Steven J. Dumont Sr. <stdumont@keenenh.gov>, Donald Farquhar <dfarquhar@keenenh.gov>, John Rogers <jrogers@keenenh.gov>

Subject: RE: Plan Review 160 Emerald St. Hair Salon

Good morning Toby, you are correct but you only describe one path of a change of use in your argument, there are actually three paths of a change of use. I have attached the definition right out of the building code commentary and ironically enough it gives an example of exactly what we are talking about. This application is a change of use within a use group classification.

I am more than happy to sit down and go over the plan review questions with you in person like we did on the downstairs space.

[A] CHANGE OF OCCUPANCY. A change in the use of a building or a portion a building which results in one of the following:

1. A change of occupancy classification.
 2. A change from one group to another group within an occupancy classification.
 3. Any change in use within a group for which there is a change in application of the requirements of this code.
- ❖ This term describes the condition where an existing building or structure is used for a different use or the same use with an increase in the level of activity (see Section 101.4.7 for a reference to the IEBC). This term is only applicable to existing buildings, never new ones. For example, Group B includes both beauty parlors and post offices. Where a beauty shop moved into an old post office, while remaining a Group B building, it would be a change in the level of activity; therefore, this would be considered a change of occupancy.

From: Toby Tousley <tousley11@earthlink.net>

Sent: Wednesday, May 17, 2023 6:20 AM

To: Michael Hagan <MHAGAN@keenenh.gov>

Cc: Steven J. Dumont Sr. <stdumont@keenenh.gov>; Donald Farquhar <dfarquhar@keenenh.gov>; John Rogers <jrogers@keenenh.gov>

Subject: RE: Plan Review 160 Emerald St. Hair Salon

Mike,

I believe you are mistaken on change of use.

IBC 302.1 Occupancy Classification lists the following classifications:

- 1) Assembly Groups A-1, A-2, A-3, A-4, A-5
- 2) Business Group B

Fwd: Rock Paper Scissors Hair Salon

From: Heather Fish <heathrfish@gmail.com>
To: Toby Tousley <tousley11@earthlink.net>
Subject: Fwd: Rock Paper Scissors Hair Salon
Date: May 29, 2023 8:40 PM

----- Forwarded message -----

From: Donald Farquhar <dfarquhar@keenenh.gov>

Date: Mon, May 29, 2023 at 8:17 PM

Subject: RE: Rock Paper Scissors Hair Salon

To: heathRfish@gmail.com <heathRfish@gmail.com>, Steven J. Dumont Sr. <stdumont@keenenh.gov>

CC: Michael Hagan <MHAGAN@keenenh.gov>, Elizabeth A. Dragon <edragon@keenenh.gov>, John Rogers <jrogers@keenenh.gov>, Thomas Mullins <tmullins@keenenh.gov>

Heather,

Captain Dumont consistently briefed me on the progress of your permit during the week. I am solely responsible for delaying the permit's approval. At this time, I will not be approving the permit, nor will I approve any future certificate of occupancy for the subject occupancy.

I am confident that I could not write anything in this correspondence that would ameliorate your level of upset or lessen the financial impact my decision will have on you and your family. I will, however, provide an explanation for my decision and offer you an in-person meeting to further discuss the relevant factors and potential solutions. I apologize for my explanation being a little technical. Again, I would be very happy to discuss this over the phone, in person or in any other format of your choosing.

As you stated the permit applied for was a plumbing permit, however, the scope of work constitutes a change of use. As such, a change of use review requires a more in-depth evaluation of both building and fire /life safety code(s). Mr. Tousley challenged the change of use determination via an email and an in-person meeting on Wednesday 5/17/2023. The outcome of that meeting confirmed the permit was indeed a change of use.

On Monday 5/22/2023, Mr. Tousley sent an email to Captain Dumont questioning the requirements for an exit sign, fire alarm and emergency lighting. Mr. Tousley cited NFPA 101 Chapter 38 New Business Occupancies. Under this Chapter, the size of the occupancy is below the threshold of these requirements. Technically, Chapter 38 New Business isn't accurate because the building is mixed use/unseparated. However, in almost all cases, I would readily accept that interpretation, approve the permit and resultant certificate of occupancy upon work completion. Infuriately, this case is very far from the norm due to the building in which the proposed occupancy is located.

Mr. Tousley, the owner of the real property located at 160 Emerald Street, was formally cited for significant fire code violations on September 19th, 2022. Held together, the violations notified Mr. Tousley that his property is unable to provide an environment for the occupants that is reasonably safe during the normal use of the building. He has invoked his right to appeal those citations and that process is ongoing.

Fire code is an interconnected set of codes that start in a certain place and move through other sections of code; this is often referred to as code flow. In this case, you start with a change of use and regardless of any

2018 IBC section 202 Change of occupancy

1 & 2 are not applicable

"3. Any change in use within a group for which there is a change in application of the requirements of this code."

The previous tenant was office. The proposed tenant is hair salon. There is no change in the application of the requirements. Both uses would have the exact same requirements to occupy. Neither is more restrictive than the other.

The commentary provided by Hagan states a somewhat similar change from Post office to hair salon.

The commentary specifies a change in level of activity. A post office might have a small one window lobby for clients. Additionally it would have a distinct separate area with a loading dock and sorting area that would not be open to the public. The exit requirements might be different from a room open to the public.

Consequently, if a hair salon moved into the entire Post office it would require removal of walls and open the loading dock to the public, which might require additional level of safety.

The proposed change in tenants does not constitute a change in level of activity.

The proposed space is 1 open room. There is no physical change to the room. The only reason I even need a permit is the salon needs the addition of lavatories.

Previously there was an office that might have one or two clients per hour. The proposed tenant will likewise have one or two clients per hour.

The occupancy load for office and hair salon is calculated exactly the same for both uses.

There are no additional requirements between office and hair salon.

2018 NFPA 1 section 4.5.7.1

"In any building or structure, whether or not a physical alteration is needed, a change from one occupancy classification to another shall be permitted only where such a structure, building, or portion thereof conforms with the requirements of this Code that apply to new construction for the proposed new use, except as follows":

" (1) Where, in the opinion of the AHJ, the proposed occupancy or change in use is not more hazardous than the existing use, based on life safety and fire risk, the AHJ shall be permitted to

approve such change of occupancy provided compliance with the requirements of this Code for buildings of like occupancy or use are specifically incorporated to safeguard the life, health, and welfare of persons".

"(2) Change of tenants or ownership shall not be construed to be a change of occupancy classification where the nature of use and assigned occupancy classification remain the same".

A hair salon is no more hazardous than an office. The nature and use are the same. The assigned occupancy classification has not changed.

2018 NFPA 1 comentary A.4.5.7

"Examples of changes from one occupancy subclassification to another subclassification of the same occupancy could include a change from a Class B to a Class A mercantile occupancy. Hospitals and nursing homes are both health care occupancies and are defined separately, but they are not established as separate suboccupancies; thus, a change from one to the other does not constitute a change of occupancy subclassification".

"For example, a building was used as a hospital but has been closed for 4 years. It is again to be used as a hospital. As long as the building was not used as another occupancy during the time it was closed, it would be considered an existing hospital".

"Hotels and apartments, although both residential occupancies, are treated separately, and a change from one to the other constitutes a change of occupancy".

There are no sub classifications in Business. Office space and Hair salon are treated the same.