



***SAFETY CODES COUNCIL***

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#1000, 10665 Jasper Avenue N.W., Edmonton, Alberta, Canada, T5J 389  
Tel: 780-413-0099 / 1-888-413-0099 • Fax: 780-424-5134 / 1-888-424-5134  
www.safetycodes.ab.ca

**COUNCIL ORDER No. 0015443**

**BEFORE THE BUILDING TECHNICAL COUNCIL  
On December 9, 2014**

**IN THE MATTER OF** the Safety Codes Act, Revised Statutes of Alberta 2000, Chapter S-1.

**AND IN THE MATTER OF** the Refusal to Issue a Building Permit dated November 4, 2014 issued by an Accredited Municipality (the Respondent) against an Architectural Firm. (the Appellant).

UPON REVIEWING the Building Permit Refusal **AND UPON HEARING** the Appellant and the Respondent; **THIS COUNCIL ORDERS THAT** the Building Permit Refusal is **CONFIRMED**.

**Issue:**

1. The Appeal concerns a proposed two-storey, multi-bay warehouse building.
2. The building is designated as a F2 medium-hazard industrial occupancy, with other major occupancies; D and F3, within the building.
3. The issue on appeal is the Appellant's proposal to reduce the fire-resistance rating of the fire separation and second storey floor assembly and loadbearing walls and columns for the second storey from a two-hour fire resistance rating to a forty-five minute fire resistance rating, based on a D and F3 tenant occupancy, not the base building F2 classification.
4. The issue is whether the second storey structure must comply with the base building classification as required by ABC 2006 Division B Article 3.2.2.6. Multiple Major Occupancies that states that in a building of more than one major occupancy, the requirements for the most restricted major occupancy applies to the whole building.

### **Appearances, Preliminary, Evidentiary or Procedural Matters:**

5. Appearing for the Appellants, the Appeal Panel heard from an Architect from the Architectural Firm and from a representative of the client.
6. Appearing for the Respondent, the Appeal Panel heard from a Building Safety Codes Officer and a Fire Safety Codes Officer, both from the Accredited Municipality.
7. At the commencement of the hearing, the Appellant and Respondent confirmed that there were no objections to any members of the hearing panel, and that the Safety Codes Council (Council) in general and the Appeal Panel in particular had jurisdiction to hear and decide the appeal.
8. The Chair then explained the process to be followed in hearing this appeal, and referred to a submission, made at table, by the Safety Codes Council known as "Exhibit 1 Safety Codes Council" consisting of the documents listed below in The Record, paragraph 11 items a) to f). The Appellant and Respondent confirmed that there were no objections to any of the written material submitted to the Appeal Panel prior to the hearing.
9. During the Appellant's presentation, the Appellant provided a drawing of the proposed building at issue. Copies of the drawing were provided to the Respondent and the Appeal Panel and submitted into the record as "Exhibit 1 Appellant".
10. At the beginning of the Respondent's presentation, the Respondent presented "Exhibits 1 through 7 – Respondent" for consideration by the Appeal Panel. After reviewing the submissions the Appellant indicated that there was no objection to providing the documents to the Appeal Panel. The Appeal Panel Chair accepted into the Record the submissions marked as Hearing Exhibits 1 through 7 Respondent.

### **The Record:**

11. The Appeal Panel considered, or had available for reference, the following documentation:
  - a) Copy of Permit Refusal Letter dated November 4, 2014 (pages 1 to 5)
  - b) Copy of Notice of Appeal dated November 7, 2014 (pages 6 to 12)
  - c) Acknowledgment Letter dated November 7, 2014 (pages 13 to 20)
  - d) Appeal Hearing Brief Preparation Guide (page 21)
  - e) Written Notification of Hearing (pages 22 and 23)
  - f) Appeal Hearing Brief submission from the Respondent dated November 25, 2014 (pages 24 to 61)
  - g) Exhibit 1 Safety Codes Council –list of previously submitted documents
  - h) Exhibit 1 Respondent – Summary of the Respondents Appeal Presentation
  - i) Exhibit 2 Respondent – Plans and Drawings of the Subject Building
  - j) Exhibit 3 Respondent – An email dated November 25, 2014 providing opinion on the issue at appeal.
  - k) Exhibit 4 Respondent – An email dated November 28, 2014, providing opinion from the coordinating professional on the issue at appeal.

- l) Exhibit 5 Respondent – An article about building classification from the Ontario Association of Architects.
- m) Exhibit 6 Respondent – An appeal tribunal decision from the Ontario Building Code Commission ruling No. 01-59-852.
- n) Exhibit 7 Respondent – An appeal tribunal decision from the Safety Codes Council order No. 0015432.

**Provisions of the Safety Codes Act:**

- 12. The *Safety Codes Act* (S-1, RSA 2000), as amended provides, *inter alia*:

Part 3 Standards

Permit issues

44(1) On receipt of any application, a safety codes officer or other person designated by an administrator may issue a permit to a person who complies with the requirements of this Act or issue a permit with respect to a thing, process or activity if it complies with the requirements of this Act.

44(3) If a safety codes officer or other person designated by an Administrator refuses to issue a permit, the safety codes officer or other person designated by an Administrator shall serve the application with a written notice of the refusal.

Part 5 Orders, Appeals

Council considers appeal

52(2) The Council may by order

- (b) confirm a refusal or direct that a designation, certificate or permit be issued and direct that inclusion of terms and conditions in the designation, certificate or permit, or

**Provisions of the Safety Codes Act Building Code Regulation 177/2007, as amended**

- 13. Code in Force

1. The *Alberta Building Code 2006*, as established by the Safety Codes Council and published by the National Research Council of Canada, is declared in force with respect to buildings, with the variations set out in the Schedule.

**Provisions of the Alberta Building Code 2006 (ABC 2006):**

- 14. The Alberta Building Code 2006 provides, *inter alia*:

Division A

Part 1 Compliance

1.4.1.2. Defined Terms

*Building* means any structure used or intended for supporting or sheltering any use or occupancy.

*Major occupancy* means the principal occupancy for which a *building* or part thereof is used or intended to be used, and shall be deemed to include the subsidiary occupancies that are an integral part of the principal occupancy. The *major occupancy* classifications used in this Code are as follows:

D-*Business and personal services occupancies*

F2 –*Medium-hazard industrial occupancies*

F3 –*Low-hazard industrial occupancies*

*Occupancy* means the use or intended use of a *building* or part thereof for the shelter or support of persons, animals, or property.

## **Division B**

### **Part 3 Fire Protection, Occupant Safety and Accessibility**

#### **3.1.2. Classification of buildings or Parts of Buildings by Major Occupancy**

##### **3.1.2.1. Classification of Buildings**

1) Except as permitted by Articles 3.1.2.3. to 3.1.2.7., every building or part thereof shall be classified according to its major occupancy as belonging to one of the Groups or Divisions described in Table 3.1.2.1. (See Appendix A.)

2) A building intended for use by more than one major occupancy shall be classified according to all major occupancies for which it is used or intended to be used.

## **Division B**

### **Part 3 Fire Protection, Occupant Safety and Accessibility**

#### **3.1.3. Multiple Occupancy Requirements**

##### **3.1.3.1. Separation of Major Occupancies**

1) Except as permitted by Sentences (2) and (3), *major occupancies* shall be separated from adjoining *major occupancies* by *fire separations having fire-resistance ratings* conforming to Table 3.1.3.1.

**Table 3.1.3.1.**  
**Major Occupancy Fire Separations <sup>(1)</sup>**  
 Forming Part of Sentence 3.1.3.1.(1)

Major Occupancy	Minimum Fire-Resistance Rating of Fire Separation, h											
	Adjoining Major Occupancy											
	A-1	A-2	A-3	A-4	B-1	B-2	C	D	E	F-1	F-2	F-3
A-1	-	1	1	1	2	2	1	1	2	<sup>(1)</sup>	2	1
A-2	1	-	1	1	2	2	1	1	2	<sup>(2)</sup>	2	1
A-3	1	1	-	1	2	2	1	1	2	<sup>(2)</sup>	2	1
A-4	1	1	1	-	2	2	1	1	2	<sup>(2)</sup>	2	1
B-1	2	2	2	2	-	2	2	2	2	<sup>(2)</sup>	2	2
B-2	2	2	2	2	2	-	2	2	2	<sup>(2)</sup>	2	2
C	1	1	1	1	2	2	-	1	2 <sup>(3)</sup>	<sup>(2)</sup>	2 <sup>(4)</sup>	1
D E	1	1	1	1	2	2	1	-	-	3	-	-
F-1	2	2	2	2	2	2	2 <sup>(3)</sup>	-	-	3	-	-
F-2	<sup>(2)</sup>	<sup>(2)</sup>	<sup>(2)</sup>	<sup>(2)</sup>	<sup>(2)</sup>	<sup>(2)</sup>	<sup>(2)</sup>	3	3	-	2	2
F-3	2	2	2	2	2	2	2 <sup>(4)</sup>	-	-	2	-	-
	1	1	1	1	2	2	1	-	-	2	-	-

**Notes to Table 3.1.3.1:**

- <sup>1)</sup> Section 3.3 contains requirements for the separation of *occupancies* and tenancies that are in addition to the requirements for the separation of *major occupancies*.
- <sup>2)</sup> See Sentence 3.1.3.2.(1).
- <sup>3)</sup> See Sentence 3.1.3.1.(2).
- <sup>4)</sup> See Sentence 3.1.3.2.(2).

**3.2 Building Fire Safety**

**3.2.2.4. Buildings with Multiple Major Occupancies**

- 1) The requirements restricting fire spread and collapse for a *building* of a single *major occupancy* classification are provided in the Subsection according to its *building height* and *building area*.
- 2) If a *building* contains more than one *major occupancy*, classified in more than one Group or Division, the requirements of this Subsection concerning *building* size and construction relative to *major occupancy* shall apply according to Articles 3.2.2.5. to 3.2.2.8.

**3.2.2.5. Applicable Building Height and Area**

- 1) In determining the fire safety requirements of a *building* in relation to each of the *major occupancies* contained therein, the *building height* and *building area* or the entire *building* shall be used.

**3.2.2.6. Multiple Major Occupancies**

- 1) Except as permitted by Articles 3.2.2.7. and 3.2.2.8., in a *building* containing more than one *major occupancy*, the requirements of this Subsection for the most restricted *major occupancy* contained shall apply to the whole *building*.

### **3.2.2.7. Superimposed Major Occupancies**

- 1) Except as permitted by Article 3.2.2.8. and as required by Sentence 3.2.2.18.(2), in a *building* in which one major occupancy is located entirely above another *major occupancy*, the requirements in this Subsection for each portion of the *building* containing a *major occupancy* shall apply to that portion as if the entire *building* was of that *major occupancy*.
- 2) If one *major occupancy* is located above another *major occupancy*, the *fire-resistance rating* of the floor assembly between the *major occupancies* shall be determined on the basis of the requirements of this Subsection for the lower *major occupancy*. (See also Article 3.1.3.1.)

### **3.2.2.8. Exceptions for Major Occupancies**

- 1) In a *building* in which the aggregate area of all *major occupancies* in a particular Group or Division is not more than 10% of the *floor area* of the *storey* in which they are located, these *major occupancies* need not be considered as *major occupancies* for the purposes of this Subsection, provided they are not classified as Group F, Division 1 or 2 *occupancies*.

### **3.2.2.54. Group D, up to 3 Storeys, Sprinklered**

- 1) A *building* classified as Group D is permitted to conform to Sentence (2) provided
  - a) except as permitted by Sentences 3.2.2.7.(1) and 3.2.2.18.(2), the *building* is *sprinklered* throughout,
  - b) it is not more than 3 *storeys* in *building height*, and
  - c) it has a *building area* not more than
    - i) 14 400 m<sup>2</sup> if 1 *storey* in *building height*,
    - ii) 7 200 m<sup>2</sup> if 2 *storeys* in *building height*, or
    - iii) 4 800 m<sup>2</sup> if 3 *storeys* in *building height*.
- 2) The *building* referred to in Sentence (1) is permitted to be of *combustible construction* or *non-combustible construction* used singly or in combination, and
  - a) Floor assemblies shall *before separations* and, if of *combustible construction*, shall have *afire-resistance rating* not less than 45 min,
  - b) *Mezzanines* shall have, if of *combustible construction*, *afire-resistance rating* not less than 45 min, and
  - c) *Loadbearing walls*, columns and arches supporting an assembly required to have a *fire-resistance rating* shall
    - i) have a *fire-resistance rating* not less than 45 min, or
    - ii) be of *noncombustible construction*.

### **3.2.2.67. Group F, Division 2, Any Height, Any Area, Sprinklered**

- 1) Except as permitted by Articles 3.2.2.68. to 3.2.2.72., a *building* classified as Group F, Division 2 shall conform to Sentence (2).
- 2) Except as permitted by Article 3.2.2.16., the *building* referred to in Sentence (1) shall be of *noncombustible construction*, and

- a) except as permitted by Sentences 3.2.2.7.(1) and 3.2.2.18.(2), the *building* shall be *sprinklered* throughout,
- b) floor assemblies shall be *fire separations* with *fire-resistance rating* not less than 2 h,
- c) *mezzanines* shall have *fire-resistance rating* not less than 1 h, and
- d) *loadbearing* walls, columns and arches shall have *fire-resistance rating* not less than that required for the supported assembly.

**3.2.2.77. Group F, Division 3, up to 4 Storeys, Sprinklered**

- 1) A building classified as Group F, Division 3 is permitted to conform to Sentence (2) provided
  - a) except as permitted by Sentences 3.2.2.7.(1) and 3.2.2.18.(2), the building is sprinklered throughout,
  - b) it is not more than 4 storeys in building height, and
  - c) it has a building area not more than
    - i) 14400 m<sup>2</sup> if 1 storey in building height,
    - ii) 7200m<sup>2</sup> if 2 storeys in building height,
    - iii) 4800 m<sup>2</sup> if 3 storeys in building height, or
    - iv) 3600 m<sup>2</sup> if 4 storeys in building height.
  
- 2) The building referred to in Sentence (1) is permitted to be of combustible construction or non-combustible construction used singly or in combination, and
  - a) floor assemblies shall be fire separations and, if of combustible construction, shall have fire-resistance rating not less than 45 min,
  - b) mezzanines shall have, if of combustible construction, a fire-resistance rating not less than 45 min, and
  - c) loadbearing walls, columns and arches supporting an assembly required to have a fire-resistance rating shall
    - i) have a fire-resistance rating not less than 45 min,
    - or ii) be of non-combustible construction.

**Position of the Parties**

*Appellants*

*From the Appellants' submissions and testimony the Appellants' position may be summarized as follows:*

15. The position of the Appellants is that the most restrictive occupancy applies to the building, but not necessarily to the occupancies within it. Individual permitted occupancies may have a rating or occupancy that is different from the rating or occupancy of the building.
  
16. The lesser restrictive occupancy of that tenant space would apply to the floor assembly construction within that tenant space.

17. The Appellants are of the opinion that as per 3.1.3. and chart 3.1.3.1 of Division B of the ABC 2006, the required ratings for the Group D and/ or F3 occupancy requirements of the tenant area of the building are 45 minute fire-resistance rating for floors, supporting columns and arches and one hour fire-resistance rating for the exits.
18. The Appellants' opinion is that building and tenant occupancy are different entities in the ABC 2006. The building is the 'shell' – the walls, floors, elevators, service shafts, and exits, are built as part of the shell. The occupancies are those tenants that fit inside the building. As long as they are compatible according to the ABC 2006, Division B, 3.1.3.1. Major Occupancy Separations chart, and separated with the appropriate fire separation then within the tenant occupancy they need to meet their own minimum ratings.
19. A tenant can have a lesser rating as long as the minimum separation between suites is in place.
20. The Appellant stated that other municipalities have accepted multiple occupancies and the associated different ratings within a building.
21. The Appellants request a definitive ruling on the matter of multiple occupancies within a building as it pertains to the ABC 2006.

*Respondent*

*From the Safety Codes Officer's submissions and testimony, the Respondent's position may be summarized as follows:*

22. The classification of the base building requires that the storey within the building be constructed to the standards of the building classification of F2, ABC 2006 Division B Article 3.2.2.67 Group F, Division 2, Any Height, any Area, Sprinklered.
23. Loadbearing walls, columns and arches shall have a fire resistance rating not less than that required for the supporting assembly.
24. In determining the fire safety requirements of a building in relation to each of the major occupancies contained therein, the ABC 2006 requires that the building height and building area of the entire building shall be used.
25. In a building containing more than one major occupancy the requirements for the most restricted major occupancy apply to the whole building.
26. If each bay of the building is classified as a separate entity there is not control over the fire load or amount of risk that the building could be subject to.
27. A lesser occupancy classification may cause a reduction in the fire protection and the intent of the code fire and structural objectives may not be met.



28. Multiple major occupancies are permitted that are equivalent or less restrictive of the base building classification provided structural components comply with the base building classification. If the base building specifies non-combustible or two hour fire resistance rating for all floor assemblies they shall comply. Article 3.1.3.1., Separation of Major Occupancies, of the ABC 2006 is used in conjunction with Section 3.2. of Division B, Building Fire Safety, not as an exemption to it.
29. The Respondents request a definitive ruling on multiple occupancies before they change their policies and reduce the level of building fire safety the City has established over the last two code cycles and as required under Section 3.2. of the 2006 ABC.

**Reasons for Decision (Findings of Fact and Law):**

The Appeal Panel makes the following findings:

30. The base building is a medium-hazard industrial occupancy under ABC 2006 Division B, 3.2.2.67. Group F, Division 2, Any Height, Any Area, Sprinklered.
31. Within a tenant space in the base building the appellant is proposing for the main floor tenant space as F3 / D, and is proposing to introduce a superimposed 3.2.2.54 Group D, up to 3 Storeys, Sprinklered for a second floor within the tenant space. The tenant occupancy has both F3 and D occupancies on the main floor. As the main floor D occupancy area and main floor F3 occupancy area are less than 10% of the total building main floor area, they may be deemed to be minor occupancies and the main floor treated entirely as a group F2 per the base building classification. Article 3.2.2.8. of Division B of the ABC 2006 provides that if the aggregate area of all major occupancies in a particular Group or Division is not more than 10% of the floor area of the storey in which they are located, these occupancies need not be considered as major occupancies provided they are not classified as Group F, Division 1 or 2 occupancies.
32. The tenant occupancy has a proposed D occupancy on the second floor. As the D occupancy area on the second storey is more than 10% of the total building second storey floor area then it is a superimposed major D occupancy on top of the main floor F2 occupancy.
33. The requirements of sentence 3.2.2.7.(2) of Division B of the ABC 2006 provides that if one major occupancy is located above another major occupancy, the fire-resistance rating of the floor assembly between the major occupancies is determined on the basis of the requirements of the lower occupancy.

The fire resistance rating of the second floor, as provided in article 3.2.2.67.(2)(b) base building classification, shall be a two hour fire-resistance rating and clause 3.2.2.67(2)( d) provides that the loadbearing walls, columns and arches supporting the two hour second floor shall have a fire-resistant rating not less than that required for the supporting assembly of two hours.

34. The Appeal Panel finds that the fire and structural objectives of the code would not be met if the tenant space is treated as a separate entity independent of the more restrictive building classification and potential occupancies to that classification.
35. While the Appeal Panel acknowledges that a lesser restrictive occupancy may exist within a more restrictive building occupancy classification it does not supersede the building fire safety requirements of Section 3.2, Division B of the ABC 2006.
36. The Appeal Panel finds that the structure must be built to code requirements to the base building classification requirements. There are no guarantees that a tenant will remain in a lease space for the duration of the building life span. Depending on occupancy type, future tenants could be discouraged from leasing or at a disadvantage moving into a lease space that was constructed to less than required governing major classification for floor and supporting fire separations, requiring major upgrades before occupying the space.
37. The Appeal Panel did not find the evidence referenced by the parties regarding other hearing decisions or interpretations from other jurisdictions of assistance in their deliberations. The Appeal Panel finds that the issues at appeal for their consideration apply to this building only. What may have occurred in other jurisdictions or with other buildings is not precedent setting.
38. On the request from the parties that the Appeal Panel provide provincial guidance on multiple occupancies, the Appeal Panel finds that the *Safety Codes Act* does not provide the Appeal Panel with the authority to make precedent-setting decisions affecting all areas of the province, that rather the Act provides this Appeal Panel with authority to confirm the permit refusal or direct that a permit be issued for the building that is the subject of this appeal only.

Dated at Edmonton, Alberta this 30th day of January 2015

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Chair, Building Technical Council Appeal Panel