

**NC Department of Insurance
Office of State Fire Marshal, Engineering Division**

RE: Appeal of the April 21, 2023)
 Requirement to Provide an)
 Engineering Letter Confirming)
 Safe Condition of Existing Fire) NCDOI DECISION
 Escape Ladder by City of)
 Washington Inspections)
 Department)

In accordance with N.C.G.S. § 160D-1127, Sean Sprouse, representing Lady Louise LLC, has appealed Chief Building Official of the City of Washington decision requiring an engineer evaluate and certify that an existing fire escape will not collapse, detach from the building, have any dislodgement of any portion, member appurtenance or ornamentation of the building or structure under all service loads.

N.C.G.S. § 160D-1127 allows appeals to the Commissioner of Insurance or his designee from any order, decision, or determination by a member of a local inspection department pertaining to the State Building Code or other State building laws.

PARTIES

Appellant: Sean Sprouse representing Lady Louise, LLC
 163 W. Main St.
 Washington, NC 27889

Appellee: Mike Weldin – Chief Building Official
 City of Washington
 Inspection Department
 102 E. 2nd Street
 PO Box 1988
 Washington, NC 27889

BACKGROUND

On May 18, 2022, North Carolina registered engineer Greg Riley, PE, license number 034568, issued a letter to the appellant indicating that personnel from his engineering firm, Schaefer, had visited Hotel Louise at 163 W. Main Street, Washington, North Carolina on May 5, 2021, and observed the

existing condition of the fire escape in question. The signed engineer seal on the letter is dated May 19, 2022. The report indicates “Safe with Maintenance” and lists the following three explanations for the project that must to be completed for maintenance: (1) “The existing stair structure displays a lot of peeling paint and surface rust across the entire structure. Scape, prime, and paint all steel with rust preventive paint. If there is more than 10% material loss after scraping element, contact Schaefer for review.”, (2) “We recommend any loose or bent balusters on the railing be replaced and repaired in kind.”, and (3) “Lubricate hinged ladder for ease of operation.”

On April 12, 2023, the appellant sent an email to the appellee explaining that he believed the engineer’s May 18, 2022, letter indicated that the existing fire escape ladder was safe.

On April 19, 2023, the appellee sent email to the appellant specifying that he would require a signed sealed letter from Mr. Riley certifying that the fire escape would support “all service loads without risk of collapse, detachment or dislodgement of any portion, member, appurtenance or ornamentation of the building or structure”.

On April 21, 2023, the appellee followed up his April 19, 2023 email with a letter indicating the same need and specifying code sections from the North Carolina Existing Building Code (NCEBC) 2018 edition that warranted such need.

On May 1, 2023, the North Carolina Department of Insurance (NCDOI) received an appeal from the appellant dated April 27, 2023.

ISSUE RAISED IN APPEAL

Appellant’s appeal reads as follows:

“Local official is requiring current building code for an existing fire escape after we had an engineer certify it is safe. We feel existing building code should apply and the structural engineer letter meets code definitions required. The statement in his conclusion is not consistent with existing building code or engineer report.”

FINDINGS

Based on information submitted by the appellant, the undersigned makes the following findings:

1. The appellee’s opening paragraph and then the conclusion paragraph in the April 21, 2023, letter to the appellant states:

“This letter is the City of Washington’s Building Inspections Department interpretation of the requirements needed for the fire escape located on the west side of the building located at 163 W. Main St. I have stated that the fire escape is in dangerous condition due to the fact that the fire escape has need on the exterior of this building, exposed to the elements of brackish water which is approximately 250 feet from the fire escape, for

approximately 50 years, or more, without any records of maintenance. I feel this justifies my reasoning for considering the fire escape dangerous.”

“In conclusion, I stand firm with the decision made in the letter to have an engineer evaluate the fire escape and certify that the fire escape will not collapse, detach from the building, have any dislodgement of any portion, member, appurtenance or ornamentation of the building or structure under all service loads.”

The letter also references 2018 edition of North Carolina Existing Building Code (NCEBC) Sections 101.4, 101.4.2, 401.2, 401.2.1, 401.3, 1201.2 and 2018 edition of North Carolina Administrative Code and Policies (NCAC&P) Section 101.3.6.

2. 2018 NCEBC Section 101.4 “Applicability” states as follows:

“This code shall apply to the repair, alteration, change of occupancy, addition and relocation of existing buildings, regardless of occupancy, subject to the criteria of Section 101.4.1 and 101.4.2.”

3. 2018 NCEBC Section 101.4.2 “Buildings previously legally occupied” states as follows:

“The legal occupancy of any building existing on the date of adoption of this code shall be permitted to continue without change, except as is specifically covered in this code, the International Fire Code, or as is deemed necessary by the code official for the general safety and welfare of the occupants and the public.”

4. 2018 NCEBC Section 401.2 “Existing materials” states as follows:

“Building materials and systems shall comply with the requirements of this section.”

5. 2018 NCEBC Section 401.2.1 “Building materials and systems” states as follows:

“Materials already in use in a building in compliance with requirements or approvals in effect at the time of their erection or installation shall be permitted to remain in use unless determined by the building official to be unsafe per the North Carolina Administrative Code and Policies.”

6. 2018 NCEBC Section 401.3 “Dangerous conditions” states as follows:

“The building official shall have authority to require the elimination of conditions deemed dangerous.”

7. 2018 NCEBC Section 1201.2 “Report” states as follows:

“A historic building undergoing repair, alteration, or change of occupancy shall be investigated and evaluated. If it is intended that the building meet requirements of this

chapter, a written report shall be prepared and filed with the code official by a registered design professional when such a report is necessary in the opinion of the code official. Such report shall be in accordance with Chapter 1 and shall identify each required safety feature that is in compliance with this chapter and where compliance with other chapters of these provisions would be damaging to the contributing historic features. For buildings assigned to Seismic Design Category D, E or F, a structural evaluation describing, at a minimum, the vertical and horizontal elements of the lateral force-resisting system and any strengths or weaknesses therein shall be prepared. Additionally, the report shall describe each feature that is not in compliance with these provisions and shall demonstrate how the intent of these provisions is complied with in providing an equivalent level of safety.”

8. 2018 NCEBC Section 202 “General Definitions” defines the word “Repair” as follows:

“The restoration or renewal of any part of an existing building for the purpose of its maintenance or to correct damage.”

9. 2018 NCEBC Section 601.1 “Scope” states as follows:

“Repairs as described in Section 502 shall comply with the requirements of this chapter. Repairs to historic buildings need only comply with Chapter 12.”

10. 2018 NCEBC Section 1202.1 “General” states as follows:

“Repairs to any portion of an historic building or structure shall be permitted with original or like materials and original methods of construction, subject to the provisions of this chapter. Hazardous materials, such as asbestos and lead-based paint, shall not be used where the code for new construction would not permit their use in buildings of similar occupancy, purpose and location.”

11. 2018 NCEBC Section 1202.2 “Unsafe condition” states as follows:

“Conditions determined by the code official to be unsafe shall be remedied. No work shall be required beyond what is required to remedy the unsafe condition.”

12. 2018 NCEBC Section 202 “General Definitions” defines the word “Unsafe” as follows:

“See the North Carolina Administrative Code and Policies.”

The applicable section of the North Carolina Administrative Code, Chapter 8 of Title 11, does not specifically define “unsafe.” See 11 N.C.A.C. 8 .0200 *et seq.* Likewise, the North Carolina Building Code Council has not specifically defined “unsafe” in its codes and policies, and the NCDOT has not specifically defined “unsafe” in its policies.

Accordingly, and in the absence of a specific definition of “unsafe” in this context, we employ the common and ordinary meaning of the word “unsafe,” which Merriam-Webster defines as “able or likely to cause harm, damage, or loss” and as “not giving protection from danger, harm, or loss.”

13. 2018 NCAC&P Section 101.3.6 “Existing buildings” states as follows:

“Additions, alterations, repairs, replacement, rehabilitations or changes of occupancy shall be permitted to any existing structure or service system without requiring the existing systems to comply with all the requirements of the current building codes. All new work shall conform to the requirements of the technical codes for new construction except as modified by either the existing buildings code or the rehabilitation code. For any portion of an existing building or service system that creates a hazard or unsafe condition, the code enforcement official shall determine the extent to which that portion of the existing building or service system is to be upgraded to conform to the requirements of either the Existing Building Code, the Rehabilitation Code or the technical codes.”

14. The May 18, 2022 letter from NC registered engineer Greg Riley, PE, states in the “Limitations” paragraph as follows:

“The conclusions and recommendations of this report represent our opinion of the existing conditions reviewed in this report, and there is no claim, either started or implied, that all conditions were observed. Schaefer is not responsible for hidden conditions. Shaefer has not analyzed any portion of the fire escape and is not responsible for the conclusions, options, or recommendations made by others based on the information included in this report or for future changes in conditions. This report is not to be considered a guarantee of condition, nor a Certification, and no warranty is implied.”

The letter has a paragraph describing the fire escape and has a Heading labelled “SAFE WITH MAINTENANCE”. However, neither said section nor the remainder of the letter describe with specificity what portions of the fire escape were actually evaluated.

CONCLUSIONS

Based on the foregoing findings of fact, the undersigned makes the following conclusions:

1. NCEBC Section 601.1 references NCEBC Chapter 12. NCEBC Section 1202.2 authorizes the local code official to identify unsafe conditions and to require those unsafe conditions to be corrected. It is within the authority of this section for the local code official to request an evaluation to determine the extent of an unsafe condition and how it is to be remedied. Compliant with NCEBC Section 1202.2 “Unsafe condition” and NCAC&P Section 101.3.6 “Existing buildings”, the local code official, based on his visual observation of the existing fire escaped, determined the fire escape needed to be evaluated by an engineer to determine its structural safety.

2. The May 18, 2022, letter issued by NC registered engineer Greg Riley, PE, indicates that the engineering firm made an onsite visual evaluation of the fire escape on May 5, 2021, nearly two years prior to the date of this appeal. While the letter has a heading labelled "SAFE WITH MAINTENANCE," it does not provide sufficient detail to determine what structural aspects of the fire escape were evaluated. In addition, the closing paragraph of the letter labelled "Limitations" indicates that the evaluation did not include all conditions but fails to indicate what conditions the evaluation did include. The closing paragraph of the letter also indicates that the engineering firm "has not analyzed any portion of the fire escape." I conclude from that statement that the fire escape was not analyzed for structural strength or capability of attachments to the building to support required loads.

3. If Shaefer cannot provide certification that the fire escape will not collapse, detach from the building, have any dislodgement of any portion, member, appurtenance, or ornamentation of the building or structure under all live and dead loads, the fire escape must be evaluated for such by a North Carolina registered engineer. If the fire escape and its supporting structure and fasteners are not able to support such loads, an engineer must provide the necessary design information to make the fire escape and its supporting structure and fasteners code compliant for imposed live and dead loads.

APPEAL DECISION

Based on the above findings of fact and conclusions of law:

The appellee's decision regarding requirement of an additional letter from a North Carolina registered engineer certifying that the fire escape will not collapse, detach from the building, have any dislodgement of any portion, member, appurtenance or ornamentation of the building or structure under all service loads is UPHELD.

This 9th day of May 2023.



Carl Martin, RA
Deputy Commissioner
Division Chief of Engineering
North Carolina Department of Insurance

FURTHER APPEAL RIGHTS

The appellant and appellee have the right to appeal this decision to the NC Building Code Council. Please refer to N.C.G.S § 160D-1114 and the NC Administrative Code and Policies Section 202.9.2 for further appeal rights. In accordance with N.C.G.S § 143-141 you have 30 days in which to appeal this decision to the NC Building Code Council.

Cc:

Mike Weldin, Chief Building Official, City of Washington

Nathan Childs, Special Deputy Attorney General, NCBC

Erin Gibbs, Assistant General Counsel, NCDO