Ruling No. 01-39-832
Application # 2001-46

BUILDING CODE COMMISSION


AND IN THE MATTER OF Articles 3.3.1.1 and 3.3.1.4. of Regulation 403, as amended by O. Reg. 22/ 98, 102/ 98, 122/ 98, 152/ 99, 278/ 99, 593/ 99, 597/ 99 and 205/ 00 (the “Ontario Building Code”).

AND IN THE MATTER OF an application by Mr. Andrew Volgyesi, Principal, Volgyesi and Propst Inc. Architects and Planners, Toronto, Ontario, for the resolution of a dispute with Mr. Agris Robeznieks, Chief Building Official, City of Mississauga, Ontario, to determine whether the proposed metal screen cubicles intended for tenant storage and located in the basement level of a retail mall establishment provide sufficiency of compliance with Articles 3.3.1.1 and 3.3.1.4. of the Ontario Building Code at the Dixie Value Mall, 1250 South Service Road, Mississauga, Ontario.

APPLICANT
Mr. Andrew Volgyesi, Principal
Volgyesi and Propst Inc. Architects and Planners
Toronto, Ontario

RESPONDENT
Mr. Agris Robeznieks
Chief Building Official
City of Mississauga

PANEL
Dr. Kenneth Peaker, Chair
Mr. Robert De Berardis
Mr. Fred Barkhouse

PLACE
Toronto, Ontario

DATE OF HEARING
August 16th, 2001

DATE OF RULING
August 16th, 2001

APPEARANCES
Mr. Allan Larden, Principal
Larden Muniak Consulting Inc.
Toronto, Ontario
Agent for the Applicant

Mr. Frank Spagnolo
Chief Building Official
Mississauga, Ontario
Agent for the Respondent
RULING

1. The Applicant

Mr. Andrew Volgyesi, Principal, Volgyesi and Propst Inc. Architects and Planners, Toronto, Ontario, has received a building permit under the Building Code Act, 1992 and has undertaken renovations to the Dixie Value Mall, 1250 South Service Road, Mississauga, Ontario.

2. Description of Construction

The Applicant has recently completed renovations to the Dixie Value Mall, a one story, 48,000 m$^2$ building, containing a Group E Mercantile occupancy. The building is of noncombustible construction and is equipped with a sprinkler system, a standpipe and hose system, and a fire alarm system.

In addition to the main floor, the building also contains a basement level having an area of approximately 2252 m$^2$. This basement level is directly below the food court area of the mall. The basement serves as a storage area for the mall tenants and metal screen storage cubicles have been provided for that purpose. The average cubicle size is approximately 2.28 m by 6.7 m and when completed, the storage area may contain roughly 80 units. The storage area is fire separated from the ground floor level and is served by two exits.

The construction in dispute involves the metal screen storage cubicles which are similar to lockers and/or storage areas of the type found in buildings of residential occupancy. The individual cubicles are not fire separated from one another nor has a public corridor been provided. The cubicles are comprised of open web metal screening secured to metal studs. They are leased by the tenants and accessed by isles throughout the storage area.

3. Dispute

The issue at dispute between the Applicant and Respondent is whether the proposed metal screen cubicles within a retail mall establishment provide sufficiency of compliance with Articles 3.3.1.1 and 3.3.1.4. of the Ontario Building Code.

Article 3.3.1.1. requires that each suite in a mercantile occupancy shall be separated from adjoining suites by a fire separation having a resistance rating of not less than 1 hour. This rating is permitted to be less than one hour, but not less than 45 minutes in certain circumstances. The Article also provides that occupancies that are served by public corridors in a building that is sprinklered are not required to be fire separated from one another provided that they are suites of business and personal service occupancies, fast food vending operations that do not provide seating or suites of mercantile occupancies.

The underlying issue involved in this dispute is whether the storage cubicles are considered suites within the meaning of the OBC and, thereby required to comply with the provisions of Article 3.3.1.1. The storage cubicles in the basement level of the mall are leased by individual tenants leading the Respondent to take the position that the units are individual suites. The Applicant argues however, that because retail storage cubicles are not specifically addressed in the Code, sufficiency of compliance with the OBC requirements can be achieved in this area. In this regard, the basement level is restricted to tenants only and, generally, no more than 2-3 persons would be in the area at any given time. The cubicles themselves are open to one another such that an individual could view the entire area through...
the metal screening. However, no fire separation has been provided between the cubicles nor is the area served by a public corridor. Only aisles providing access to the storage cubicles have been provided.

Article 3.3.1.4. of the Code requires that, with a few exceptions, public corridors must also be fire separated from the remainder of the floor area. One of those exceptions to the fire separation of public corridors would be the sprinklering of the area. In this instance, as previously noted, no public corridor is being provided, however the area is fully sprinklered.


3.3.1.1. Separation of Suites

(1) Except as permitted by Sentences (2) and (3), each suite in other than business and personal services occupancies shall be separated from adjoining suites by a fire separation having a fire-resistance rating not less than 1 h. (See also Subsection 3.3.3. for care or detention occupancies, Article 3.3.4.2. for residential occupancies and Article 3.1.8.7. for fire dampers.)

(2) The fire-resistance rating of the fire separation required by Sentence (1) is permitted to be less than 1 h but not less than 45 min provided the fire-resistance rating required by Subsection 3.2.2. is permitted to be less than 1 h for
(a) the floor assembly above the floor area, or
(b) the floor assembly below the floor area, if there is no floor assembly above.

(3) Occupancies that are served by public corridors conforming to Sentence 3.3.1.4.(5) in a building that is sprinklered, are not required to be separated from one another by fire separations provided the occupancies are
(a) suites of business and personal services occupancy,
(b) fast food vending operations that do not provide seating for customers, and
(c) suites of mercantile occupancy.

3.3.1.4. Public Corridor Separations

(1) Except as otherwise required by this Part or permitted by Sentences (2) to (7), a public corridor shall be separated from the remainder of the building by a fire separation having a fire-resistance rating not less than 1 h. (See Appendix A.)

(2) The fire-resistance rating of a fire separation between a public corridor and the remainder of a floor area is permitted to be less than 1 h but not less than 45 min provided the fire-resistance rating required by Subsection 3.2.2. is permitted to be less than 1 h for
(a) the floor assembly above the floor area, or
(b) the floor assembly below the floor area, if there is no floor assembly above.

(3) If a floor area is sprinklered, no fire-resistance rating is required for a fire separation between a public corridor and the remainder of the floor area provided the corridor does not serve a care or detention occupancy or a residential occupancy. (See A-3.1.8.1.(1)(b) in Appendix A.)

(4) If a floor area is sprinklered, no fire separation is required between a public corridor and the
remainder of the floor area provided the public corridor
(a) is more than 5 m (16 ft 5 in) in unobstructed width, and
(b) does not serve
   (i) a care or detention occupancy, or
   (ii) a residential occupancy.

(5) If a floor area is sprinklered, no fire separation is required between a room or a suite and a
public corridor that serves it provided the public corridor complies with Sentence 3.3.1.9.(6).

(6) A floor assembly of a public corridor above a crawl space that conforms to Sentence
3.2.2.9.(2) is not required to be a fire separation.

(7) If a floor area is sprinklered, no fire separation is required between a public corridor and a room
containing water closets and lavatories provided the room and the public corridor are
separated from the remainder of the floor area by a fire separation that has a fire-resistance
rating not less than that required between the public corridor and the remainder of the floor
area.

(8) The sprinkler system in Sentences (3), (4), (5) and (7) shall be electrically supervised in
conformance with Sentence 3.2.4.9.(2) and, upon operation, shall cause a signal to be
transmitted to the fire department in conformance with Sentence 3.2.4.7.(4) when the
corridor serves a Group E or Group F, Division 1 or 2 occupancy.

5. Applicant’s Position

The Agent for the Applicant took the position that the metal storage cubicles being considered here
could not be considered “suites” in the traditional sense of the word. In essence, he suggested, they are
metal storage lockers similar to what would be found in residential occupancies. In addition, he
submitted, “(t)he Code addresses tenant storage areas only in a residential context even though such
storage areas are necessary in other occupancies such as retail. Article 3.1.5.13 of the OBC permits
lockers in Residential occupancies. Article 3.3.4.3. of the OBC states that Residential storage rooms
shall be separated from the remainder of the floor area by an adequate fire separation. The OBC does
not address Mercantile storage areas, however the area in question is similar to Residential storage areas
and the design of the retail tenant storage area provides adequate life safety.” In addition, the Agent
argued that because the storage cubicles should not be considered traditional suites, a public corridor
should not be required. There is no public access to the storage cubicles and, like in residential
occupancies, the units are not fire separated from one another.

The Agent emphasized that access to this area is restricted and suggested that the occupant load would
not exceed 2 to 3 people at any given time. When comparing this situation with the storage area in a
residential occupancy, he suggested that there was no significant difference. In the case of a residential
occupancy, the OBC permits this open design in storage areas on condition that sprinklering is
provided. In this case, the basement area is sprinklered and, in addition, the Applicant has offered to
provide smoke alarms or smoke detectors to provide an early warning signal should a fire erupt in the
storage area. He noted that smoke alarms or detectors are not required in residential storage areas.

The Agent stated that there are many examples of this type of storage area in use in other retail
establishments and suggested that, if these cubicles were to be subject to the OBC requirements of a
“suite” there could be greater implications for the industry as a whole. The purpose of the Articles in
dispute, he argued, is to protect occupants from fires in an adjacent suite. In the case of a retail store
type unit, the separation between suites and the provision of a public corridor would be important
features in this regard. In those instances, typically, one would not be able to see into adjacent suites
to identify any hazards that may occur. In this situation individuals have a view between the cubicles
through the metal screening of which they are composed. This eliminates the potential problems that
would occur if these units were typical of the “suites” anticipated by the OBC.

In summation the Agent argued that, by convention, these cubicles are not “suites” but are
acknowledged to be under the control of the individual tenant through a leasing agreement. In this
instance he stated that he was relying on the argument with regards to the nature and use of the space
in question. He concluded by reiterating that this type of storage area is not specifically addressed in
the Building Code and, because of the similarity to a residential type storage facility, should be treated
in a like manner.

6. **Respondent’s Position**

The Designate for the Respondent advised that the storage spaces in question are under the control of
the individual tenants. Because they are under tenant control they must be considered suites when
applying the provisions of the OBC. Therefore, he argued, the cubicles must be separated by a 1 hour
fire separation and provided with a public corridor that leads to two exits.

The Designate noted that, while the Code does exempt residential storage areas, it provides no guidance
in reference to commercial uses. He therefore had no choice but to identify these units as being
“suites”. The storage area is separated into leasable spaces and as such, there is no control by the owner
as to what might be stored in these areas. Despite the limited, controlled access to the basement level,
the Designate expressed concern with tenant safety in this area. Safety for tenants he argued, could best
be provided by fire separating the units and the provision of a public corridor.

7. **Commission Ruling**

It is the decision of the Building Code Commission that the proposed metal screen cubicles intended
for tenant storage and located in the basement level of a retail mall establishment provide sufficiency
of compliance with Articles 3.3.1.1. and 3.3.1.4. of the Ontario Building Code at the Dixie Value Mall,
1250 South Service Road, Mississauga, Ontario, on condition that:

(a) Smoke detectors, connected to the fire alarm system, will be installed throughout the
storage area.
(b) Adequate sprinkler protection will be provided for the anticipated combustible storage
loading in the area.
8. **Reasons**

i) The Building Code does not address the issue of storage areas in retail occupancies nor does it specifically prohibit this type of use.

ii) There is limited, controlled access to the area by tenants only. There is no public area or public access permitted to the basement level.

iii) The construction of the building is noncombustible reinforced concrete and the cubicles themselves are metal in composition.

iv) With the compensating measures required in this decision, the area is adequately provided with both fire and life safety protection.
Dated at Toronto this 16th, day in the month of August, in the year 2001 for application number 2001-46.

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Dr. Kenneth Peaker, Chair

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Mr. Robert De Berardis

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Mr. Fred Barkhouse