

NOVA SCOTIA REGULATORY AND APPEALS BOARD

IN THE MATTER OF THE FIRE SAFETY ACT

- and -

IN THE MATTER OF AN APPEAL by **FUNDY RESTAURANT LIMITED** from an Order to Take Action dated October 22, 2024, issued by the Fire Inspector, about a property in the Town of Digby, Nova Scotia

BEFORE: M. Kathleen McManus, K.C., Ph.D., Member

APPELLANT: **FUNDY RESTAURANT LIMITED**
Gavin Giles, K.C.

RESPONDENTS: **TOWN OF DIGBY**
Jonathan G. Cuming

OFFICE OF THE FIRE MARSHAL
Lorelei Atkinson, Provincial Fire Code Co-ordinator

HEARING DATES: April 28 and 29, 2025

FINAL SUBMISSIONS: July 22, 2025

DECISION DATE: **October 20, 2025**

DECISION: The appeal is dismissed. The Order to Take Action will be varied to allow the Appellant more time to comply with s. 2.7.1.1(1) of the Fire Code.

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I SUMMARY

[1] By letter filed on October 24, 2024, Fundy Restaurant Limited (Fundy) appealed an Order to Take Action (October 2024 Order) for its property located at 38 Water Street (PID 30232524) and 34 Water Street (PID 30232532), Town of Digby, Nova Scotia (subject property). Chris Thibodeau, Fire Inspector, Town of Digby, issued the Order dated October 22, 2024 (October 2024 Order).

[2] The Appellant appealed the Fire Inspector's Order under s. 41(2) of the *Fire Safety Act*, SNS 2002, c 2, (*Fire Safety Act*) within the required period to the Nova Scotia Utility and Review Board. On April 1, 2025, on proclamation of the *Energy and Regulatory Boards Act*, SNS 2024, c 2, Sch A (*Energy and Regulatory Boards Act*), the Nova Scotia Utility and Review Board was succeeded by the Nova Scotia Regulatory and Appeals Board for all appeals under the *Fire Safety Act*.

[3] The Order alleges 12 contraventions of the National Fire Code of Canada 2015 (Fire Code) and includes corrective measures ordered by the Fire Inspector in Schedule "A" of the Order. By the time of the hearing, Fundy completed all corrective measures except for the requirement that the existing sprinkler system in the subject property be inspected and approved by a qualified individual, as compliant with the Fire Code. Further, the sprinkler system installed in the subject property must be designed by a professional engineer.

[4] Fundy argued that if the Fire Inspector had classified the subject property under the correct Assembly occupation (a designation for structures that reflects the anticipated number of people using the building), a sprinkler system would not be required. The Appellant further argued that if even if a sprinkler system is required now,

it is exempt under s. 27 of the *Fire Safety Act* because it satisfied all Fire Code requirements at the time renovations occurred in the property. Finally, Fundy says that it will be forced to go out of business if alternative solutions to installing a new sprinkler system are not permitted. The Appellant stated it cannot afford the estimated cost of \$700,000 to install an engineer designed sprinkler system.

[5] The Board finds that the Appellant has not established that the Fire Inspector's October 2024 Order should be revoked. The Board upholds the Order but extends the time for compliance now that the Order is confirmed.

II PROCEDURE

[6] The Fire Inspector issued the October 2024 Order under s. 25(1)(b) of the *Fire Safety Act* for the subject property. Fundy appealed under s. 38(1), s. 39 and/or s. 41 of the *Act*. The October 2024 Order alleges 12 contraventions of the National Fire Code of Canada 2015, as modified by Part 3 of the *Fire Safety Regulations*, N.S. Reg. 48/2003, as amended, which is adopted as the Fire Code for the province under s. 15(2) of the *Act* and s. 2(1)(d) of the *Fire Safety Regulations*. The violations of the *Act* and associated Fire Code, together with the corrective measures ordered by the Fire Inspector, are outlined in Schedule "A" of the October 2024 Order. Fundy was ordered to complete all the described "Actions Required" by November 21, 2024.

[7] On November 4, 2024, the Board conducted a preliminary hearing to set filing dates and a date for a formal hearing. At the preliminary hearing, Fundy advised that it may seek additional legal counsel and could not commit to a hearing date. Also, at this hearing, the Office of the Fire Marshal stated that it would be participating in the appeal. On November 6, 2024, Gavin Giles, K.C., contacted the Board and advised that

he had joined as additional counsel representing Fundy. After communications with the parties, on December 11, 2024, the Board set down the hearing of the appeal for March 27, 2025. On February 25, 2025, Fundy requested an adjournment of the hearing. After consultation with the parties, the Board set the date of April 28, 2025, for the hearing of the appeal.

[8] Under s. 41(5) of the *Act*, the filing of the appeal acts as a stay of the Order until the Board decides the appeal. The Board may be asked to lift the stay under s. 41(6) of the *Act*, but no request was made at any time during this appeal.

[9] The Board held a hearing on the merits of the appeal at its offices beginning on April 28, 2025, and continuing to April 29, 2025. Fundy was represented by its counsel, Mr. Giles. The Town of Digby was represented by its counsel, Jonathan G. Cuming. The Office of the Fire Marshal, which has standing as a party under s. 43(1) of the *Act*, was represented by Lorelei Atkinson, Provincial Fire Code Co-ordinator.

III BACKGROUND

[10] Fundy operates a bar (Club 98), two restaurants (Fundy Restaurant and the Dockside), a banquet area and overnight accommodations/suites at the subject property. The Town recognizes the subject property as comprising of 34 Water Street (PID 30232532) and 38 Water Street (PID 30232524). The subject property has four civic addresses: PID 30232532 has the civic addresses of 32 and 34 Water Street, and PID 30232524 has the civic addresses of 36 and 38 Water Street. Fundy owns all of these properties. Fundy first purchased civic addresses 32 and 34 Water Street in 1985 which, at that time, comprised of the Fundy Restaurant, a lounge (now Club 98) and an upstairs apartment. In and around 2001, Fundy purchased civic address 36 Water Street and then

in 2019, it purchased 38 Water Street. Over the years, renovations have been made to the various buildings leading to its current configuration.

[11] While the renovations occurred over several decades, there are periods that are notable for understanding the context of this appeal. In and around 1996-1997, the Town announced that it was building a boardwalk on the east side of Water Street, including behind Fundy's subject property. The boardwalk project required cooperation between landowners abutting the proposed boardwalk and the Town, including land transferences and building of municipal infrastructure. As a result of this project, Fundy built its second restaurant, the Dockside, in the bottom level below Fundy Restaurant, which eventually connected to the Town's boardwalk. The design features of the Dockside restaurant included two windows constructed of large, glass panes. In and around 1997, the Town's then Fire Inspector, Rick Sheppard, who was also the Town's deputy fire marshal, directed Fundy to install a low-temperature, quick-response sprinkler head over the top of each of the two windows. Inspector Sheppard advised Fundy that he could instruct Mike Druken, Fundy's plumber during the Dockside construction, on how to install these sprinklers. Ultimately, Mr. Druken installed these two sprinklers under the direction and to the satisfaction of Mr. Sheppard. Also at this time, on its own initiative, Fundy installed additional low-temperature, quick-response sprinkler heads following the method provided by Inspector Sheppard.

[12] Fundy continued to install these sprinkler heads, voluntarily, for the next 20 years, in civic addresses 32, 34 and 36 Water Street. In 2005, after purchasing 36 Water Street, Fundy built a banquet facility at the back of the building and constructed four accommodations/suites. These renovations included installing a doorway from the back

of the Fundy Restaurant into the back of 36 Water Street to connect it to the banquet facility. Fundy also installed sprinkler heads in the suites, the banquet area and other parts of the building. Other renovations included: converting an apartment above the Fundy Restaurant into short-term, overnight suites in 2015; adding another suite over the back portion of 34 Water Street in 2017; and a storage area in 38 Water Street in 2019. In September 2020, Fundy expanded its work at 38 Water Street to include building suites at its back. At the time of the hearing, it was estimated there was sprinkler coverage of 60 to 70% of these buildings. All the sprinkler heads installed in Fundy's subject property followed the design directed by the Fire Inspector in 1997.

[13] The *Act* requires a fire inspection every three years for assembly buildings, i.e., structures in which numbers of people would gather. In April 2023, Fire Inspector Thibodeau conducted a fire inspection of the Fundy subject property, during which he observed the sprinklers on the premises. He requested Fundy provide him with the annual inspection report of the sprinkler system conducted by a qualified individual. Fundy did not immediately provide a report. Over the next 18 months, there were communications between Fire Inspector Thibodeau and Dean Kenley, President of Fundy, to secure this annual inspection report. No report was provided. Ultimately, the Fire Inspector issued an Order to Take Action (October 2024 Order) under s. 25(1)(b) of the *Fire Safety Act*.

[14] The Fire Inspector's October 2024 Order identified 12 contraventions of the National Fire Code of Canada 2015 and includes corrective measures ordered by the Fire Inspector in Schedule "A" of the Order. By the time of the hearing, Fundy completed the corrective measures for 11 of the contraventions to the satisfaction of the Fire Inspector. The only outstanding contravention arises from the owner installed sprinkler system not

being compliant with the National Fire Code 2015. The action required by the October 2024 Order directed that the installed sprinkler system be inspected for compliance with the Fire Code and that the installed system in the building be designed by an engineer, as required by the *Nova Scotia Building Code Regulations*:

Schedule “A”

Contravention(s)

ID Contravention

1 At the time of this inspection, it was noted that the sprinkler system that has been installed in the building has been installed by the owner of the building and does not comply with the 2015 National Fire Code of Canada 2.1.3.1.(1) & (2), 6.1.1.

...

Schedule “A”

Action(s) Required

ID Action Required

1 This Sprinkler system shall be inspected, and tested in conformance with NFPA 25 Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems. As per the 2015 National Fire Code of Canada 6.4.1.1.(1).
The sprinkler system that is installed in this building shall be designed by a professional engineer, and provide all of the appropriate forms as required under the Nova Scotia Building Code Regulations, section 33.

[Exhibit F-2, pp. 3-4]

IV ISSUE

[15] The only issue in this appeal is whether the Appellant has established that the Fire Inspector’s October 2024 Order, requiring the inspection of the existing sprinkler system in the subject property and that the installed sprinkler system be designed by a professional engineer, should be revoked or varied.

V WITNESSES AND EVIDENCE

[16] Under s. 19 of the *Utility and Review Board Act*, SNS 1992, c 11, the Nova Scotia Utility and Review Board operated under relaxed rules of evidence (and this continues to be true for this Board under s. 27 of the *Energy and Regulatory Boards Act*).

All witnesses, to some degree, relied on hearsay and offered opinions beyond their qualifications. There were generally no objections to the admissibility of these statements, and the Board was able to weigh the evidentiary value in the normal course. The Board found the evidence of the witnesses to be helpful and credible, unless stated otherwise.

Witnesses

[17] The Appellant called one witness, Mr. Kenley, President of Fundy.

[18] The Town's only witness was Fire Inspector Chris Thibodeau, who issued the October 2024 Order. He is employed by the Municipality of Digby as a fire inspector and provides his services to the Town under contract. Mr. Thibodeau was appointed as the Town's Fire Inspector in February 2023 and is certified as a Level 1 Fire Inspector.

[19] Lorelie Atkinson, Provincial Fire Code Co-ordinator, testified on behalf of the Office of the Fire Marshall about the changes to the Fire Code and related regulations from 1985 to the time when the Fire Inspector's October 2024 Order was issued.

Supplementary Evidence Post-Hearing

[20] On May 22, 2025, Fundy requested permission to file additional evidence about the Town's inspections of Fundy. After the hearing, the Appellant discovered this evidence, which it said was relevant to the appeal, and should have been in the Town's record so that Fundy could have cross-examined Mr. Thibodeau about it at the hearing. After considering submissions from the Town about this request, the Board issued its decision by letter dated on May 30, 2025, allowing the evidence to be filed:

The Board notes that Mr. Thibodeau, in his examination, admitted that the Municipality's filed appeal record was not complete for various inspections of the Appellant relevant to this appeal. Mr. Thibodeau further testified, that it was not uncommon to have missing documents in the Municipality's files, particularly for periods going back to the 1990s. While the Board has not reviewed the new documents in question, the Town does not dispute the contents as described by the Appellant. The Board accepts that the documents may

be relevant to the matter. The Board also notes that the parties do not dispute that the authors and recipients of these emails were either the Town or the Appellant. Considering the Municipality's admission that its record was incomplete, that the documents were either sent or received by the Town or the Appellant, and the questions raised during cross-examination, the Board finds that these special circumstances require that these documents become part of the evidential record. The Board will assess the weight of the evidence at the appropriate time.

[21] In that decision, the Board stated that Fundy could cross-examine Mr. Thibodeau on these additional documents, and the Town could conduct a re-direct. Fundy waived the right to cross-examine Mr. Thibodeau. As a result of the Board receiving this new evidence, new dates were set for the parties' post-hearing submissions.

Site Visit

[22] The Board conducted a site visit of Fundy's subject property on May 8, 2025. Representatives from Fundy, including Mr. Kenley and its counsel, and the Town's counsel participated in the site visit, along with the Board. The Board was taken through all levels of the subject property, including both restaurants, Club 98, the various accommodations/ suites, the basement of the subject property and a walk of its perimeter, including the boardwalk. The Board advised the parties at the conclusion of the hearing, when arrangements for the site visit were discussed, that the time for taking evidence had concluded.

VI ANALYSIS AND FINDINGS

The Board's Jurisdiction and Scope of Review

[23] In an appeal under the *Fire Safety Act*, the burden of proof is on the Appellant to show, on the balance of probabilities, that the Fire Inspector's Order should be revoked or varied (see, *Happy Tots Preschool and Nursery Incorporated (Re)*, 2024 NSUARB 168, para.33; *Llewellyn (Re)*, 2009 NSUARB 24, para. 20). As noted by the Board in

Happy Tots Preschool and Nursery, “the Board’s decision is case-specific and depends on the issues and facts” (para. 33).

[24] In an appeal under the *Act*, the Board may make any decision or order that a fire safety officer could make in the first instance. The Board may confirm, vary or revoke an order and it may allow additional time for an appellant to comply with the order. The Board’s remedial powers are outlined in s. 41(8) of the *Act*, which states:

- (8) On an appeal made pursuant to subsection (2), the Board may
 - (a) confirm, vary or revoke the order or decision appealed;
 - (b) allow additional time for the person to whom the order is directed, or who is subject to the order or decision, and may attach conditions to such compliance; or
 - (c) make any order or decision that the fire official making the original order or decision could have made.

[25] Section 42 of the *Act* confers on the Board the following jurisdiction:

- 42 The Board has exclusive jurisdiction to determine all questions of:
 - (a) law respecting this *Act*, the regulations and the Fire Code;
 - (b) fact; and
 - (c) mixed law and fact,that may arise in any matter before it, and an order or decision of the Board is final and binding and not open to review except for an error of law or jurisdiction.

[26] As the Board is not a court, it only has the authority granted to it under legislation, in this case, the *Fire Safety Act*. In determining its jurisdiction, the Board must read the *Act* as a whole and give it a broad and liberal interpretation to ensure its objectives are attained.

[27] The purpose of the *Act* is set out in Section 2:

- 2 The purpose of this Act is to educate and encourage persons and communities to apply the principles of fire safety so as to prevent fires, preserve human life and avoid unwarranted property loss due to the destructive forces of fire.

[28] In Nova Scotia, every property owner, which includes a person in control of land or premises, is required under s. 17 of the *Act*, to take every precaution to carry out the requirements of the *Act* and Fire Code and achieve fire safety:

Duty to take fire safety precautions

17 Unless this Act or the regulations otherwise prescribe, every owner of land or premises, or a part thereof, and every person shall take every precaution that is reasonable in the circumstances to achieve fire safety and to carry out the provisions of this Act, the regulations and the Fire Code.

[29] Section 25(1) of the *Act* authorized Fire Inspector Thibodeau to issue an Order to Take Action when he believed that there was a contravention of the *Act*, the regulations, or the Fire Code. Under s. 25(1) of the *Act*, if an official like Fire Inspector Thibodeau believes that there is a contravention, then they may order the owner to take any of the actions outlined in s. 25(1)(b) that the official determines is necessary to remedy the non-compliance.

[30] Section 25(1) states:

Orders

25 (1) Where the Fire Marshal, a deputy fire marshal, a local assistant or a municipal fire inspector believes that there is a contravention on land or premises of this Act, the regulations, the Fire Code or an order made pursuant to this Act, the regulations or the Fire Code, the fire official may issue to an owner of the land or premises an order that

(a) is substantially in the form set out in subsections 26(1)

and (2);

(b) may direct the owner to do one or more of the following within the time limit set out in the order:

(i) remedy the contravention, including do anything in relation to the land or premises that the fire official considers necessary to remedy the non-compliance.

(ii) carry out repairs or alterations,

(iii) remove or demolish buildings or things on the land or premises, or parts of the land or premises,

(iv) replace materials used in the construction of buildings or things,

(v) remove any combustible or explosive material or anything that poses a fire hazard or compromises fire safety,

(vi) discontinue the manufacturing, production or fabrication of a material, device or thing that creates or poses an undue risk of fire or explosion,

(vii) discontinue a use or occupancy of the land or premises, or an activity or practice that creates or poses a fire hazard or compromises fire safety,

(viii) repair or replace faulty fire-protection systems, or parts thereof, or install fire-protection systems, or parts thereof,

(ix) maintain, inspect or obtain certification for a fire-protection system, or part thereof,

(x) obtain a report or assessment from a person who possesses the expert or professional knowledge or qualifications specified by the fire official in respect of fire safety,

(xi) prepare, communicate and practise an emergency-response plan for the protection of persons in the event of a fire that includes alerting the fire brigade or fire department, as the case may be, orderly evacuation of occupants and protection of those occupants who cannot easily be evacuated,

(xii) do anything respecting arrangements for fire safety, including but not limited to, fire prevention, the containment of a possible fire, egress, the operation of a fire-protection system, containment of, and adequate protection from, hazardous materials in the event of a fire, and the behaviour, training and informing of persons in relation to any of these matters,

(xiii) provide information respecting those matters referred to in subclause (xii). [Emphasis added]

[31] If a fire official determines there is a significant risk that a fire will occur, or a likelihood that a person will be killed or injured if a fire does occur, then s. 25(2) of the *Act* authorizes a fire official like Fire Inspector Thibodeau to order the premises be closed.

Section 25(2) states:

(2) Where a fire official referred to in subsection (1) determines that there is a significant risk that a fire will occur, or a likelihood that a person will be killed or injured if a fire does occur, the fire official, with the approval of the Fire Marshal, and upon such terms and conditions as the Fire Marshal considers proper, may

(a) order that an owner of the land or premises close the land or premises and prevent persons from entering until the corrective actions ordered pursuant to subsection (1) or (3) are completed;

or

(b) where the fire official is of the opinion that it is necessary for the immediate protection of persons and property that the lands or premises be closed immediately,

(i) cause the land or premises to be closed immediately,

(ii) cause persons to be removed from the land or premises, and

(iii) order that the land or premises remain closed and be vacated until the corrective actions ordered pursuant to subsection (1) or (3) are completed.

[Emphasis added]

National Fire Code 2015 and National Building Code 2015

[32] The Fire Inspector's October 2024 Order said that Fundy's contravention occurred under the 2015 Fire Code and the *Nova Scotia Building Code Regulations*. The Appellant has not suggested that the 2015 Fire Code is not the applicable Code. The Board notes that the record before it establishes that the Fire Inspector also relied on the National Building Code 2015 (2015 Building Code) in making his October 2024 Order.

[33] As acknowledged by the Town, the 2015 Building Code did not come into force until June 28, 2022. Accordingly, some aspects of the 2015 Building Code may not be applicable to this appeal. For instance, any alterations or repairs to a premises after June 28, 2022, would come under the 2015 Building Code. Any alterations or repairs prior to this date would be assessed by the governing Building Code on the dates of those alterations or repairs.

Classifying the Occupancy/Occupancies in the Fundy Subject Property

[34] The first step in reviewing the Fire Inspector's October 2024 Order begins with the classification of the occupancy/occupancies of Fundy's subject property in the 2015 Building Code. It is this classification which determines the applicable requirements of the 2015 Fire Code.

[35] As discussed above, the Town recognizes Fundy's subject property as having two separate PIDs and two civic addresses, 34 and 38 Water Street, Digby. In his testimony, Mr. Kenley acknowledged the Town's approach and testified that there are two buildings, each having a civic address for each PID for a total of 4 civic addresses, which are 32, 34, 36 and 38 Water Street. Fundy purchased the properties over the years beginning in 1985 with 32 and 34 Water Street, then 36 Water Street around 2001 and ending in 2019 with the purchase of 38 Water Street. Mr. Kenley testified that there have been renovations over the years in these buildings. The most recent renovations to 38 Water Street, as identified in the Town's building permit, began in 2019 and continued until about 2022-23.

[36] The Appellant's submissions and the testimony of Mr. Kenley referred to the Fundy property by referencing one of the civic addresses, which the Board regarded as

a suggestion that the Appellant regards each as a separate building. Mr. Kenley's testimony suggested that there was some connection between the civic addresses. For example, during the construction of the banquet facility in 36 Water Street when a doorway was built to connect it to the Fundy Restaurant in 34 Water Street. Mr. Kenley testified that there are fire doors in this connection.

[37] In contrast, the Town's submissions and Fire Inspector Thibodeau referred to the Fundy property as the "Fundy Complex" and regards all the buildings to be "one big building". At the hearing, the Board asked the Fire Inspector if he could see Fundy's buildings as separate from each other. He responded "No" and explained that on his inspection he never knew when he left one building and entered the next one:

Q. Okay. So, and, and the way you regard this complex is these throughways I haven't been, as I said, I haven't been to the site, but these connecting doors or passageways, however they may describe, that connects all these buildings...

A. Mm-hmm.

Q. There is no way that you see these as separate buildings anymore?

A. No. There's, there's multiple places where you can just walk right through, and you don't even realise that you're walking through, at least from my perspective, you don't even realise that you're actually entering from one building to the other. And it's like I explained yesterday, when I was asked a question about the complexity of the building, and a fire inspector, it's, makes it very hard when you're going through the building and you're, okay, you're now, okay, you're told, "Now you're in this section, now you're in that section." It's like, when did I enter this section? 'Cause I had no idea that I just left what you determine as a different building. 'Cause, to me, it feels like I'm all in the same building, and according to the building code and fire code, it determines it all as a same building as well.

Q. Okay.

A. It's hard to tell where, it's hard to tell where you're at, at any given time, for anybody that's unfamiliar with that building, to, of where you actually are.

Q. So, these closing doors, these fire doors, did you see those? Those...

A. I, I did see some doors in the fire separation, yes.

Q. Yeah. But that didn't give you a sense of separation between the buildings if those had been shut?

A. No, it's, and it gets complicated, because there, there's a, a big difference in the codes when it comes to a firewall and a fire separation. The fire separations are required for different suites or perhaps if you had a storage garage. You need to keep that separated from the rest of the building. A firewall is what is built and is generally engineered and constructed of non-combustible construction that literally divides the two buildings in two places so that if there was a fire on this side, the building on this side would not be affected at all. It's, they're two very, they're, they're terms that get misused a lot, and they're two very different things, I guess.

[Transcript, April 29, 2025, pp. 60-61]

[38] Based upon the record before it, the Board finds that the Fire Inspector had a reasonable basis to determine that the buildings in the Fundy subject property should be regarded as “one big building” or one complex, which comprises of a bar (Club 98), two restaurants (Fundy Restaurant and the Dockside), a banquet area and overnight accommodations/suites.

[39] In the appeal record, a document signed by the Fire Inspector described the Fundy subject property as one building and explained his determination that this building should be classified as an A-2, three-storey under the Fire Code:

Fundy restaurant

This building located at 34 Water Street and 38 Water Street Digby. Has undergone many renovations over that last 20 years or so. I can not find building permits for most of these renovations. This building as an A-2 occupancy has had group C occupancies added within the A-2 occupancy, this building was also joined together to the adjacent building, thus creating civic# 34 and Civic# 38 into one big building that extends across the property line. The building# 38 consists mainly of group C occupancy with an A-2 section as well.

The building is classified as an A-2, 3 storeys building that is around 10,000 sqft. under the National Fire Code of Canada, Classification of Buildings section 2.1.2.1.(1) that sends you to the National Building Code of Canada for major occupancy classification. The National Building Code of Canada, Classification of Buildings 3.1.2.1.(1) classifies this building as an A-2. Then when we go to The National Building Code of Canada Building Size and Construction Relative to Occupancy, 3.2.2., Application 3.2.2.1.(1) according to this section this building would fit in section 3.2.2.24 for the building classification. Witch [sic]requires it to be sprinklered.

[Exhibit F-3, p. 73]

[40] The Fire Inspector describes the uses of the Fundy subject property as having two classifications, A-2 and C, under the Building Code. Article 1.4.1.2 of the 2015 Building Code defines the “A” designation as “Assembly occupancy” and “C” as “Residential occupancy”:

1.4.1.2. Defined Terms

1) The words and terms in italics in this Code shall have the following meanings:

...

Assembly occupancy (Group A) means the *occupancy* or the use of a *building*, or part thereof, by a gathering of persons for civic, political, travel, religious, social, educational, recreational or like purposes, or for the consumption of food and drink.

...

Residential occupancy (Group C) means the *occupancy* or use of a *building* or part thereof by persons for whom sleeping accommodation is provided but who are not harboured for the purpose of receiving *care* or *treatment* and are not involuntarily detained.

[Exhibit F-3, pp. 56-57]

[41] Article 1.4.1.2 also defines “Major occupancy” as:

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:

A1 – *Assembly occupancies* intended for the production and viewing of the performing arts

A2 – *Assembly occupancies* not elsewhere classified in Group A

A3 – *Assembly occupancies* of the arena type

A4 – *Assembly occupancies* in which the occupants are gathered in the open air

B1 – *Detention occupancies* in which persons are under restraint or are incapable of self-preservation because of security measures not under their control

B2 – *Treatment occupancies*

B3 – *Care occupancies*

C – *Residential occupancies*

D – *Business and personal services occupancies*

E – *Mercantile occupancies*

F1 – *High-hazard industrial occupancies*

F2 – *Medium-hazard industrial occupancies*

F3 – *Low-hazard industrial occupancies*. [Emphasis added]

[2015 National Building Code, Division A, Definitions, pp. 1-9]

[42] Based upon the record before it, the Board finds that the Fire Inspector had a reasonable basis for determining that the major occupancy of Fundy’s subject property is Assembly occupancy and that it comes under the A-2 classification.

Number of Stories in the Complex

[43] Fire Inspector Thibodeau testified that an A-2 three-storey is required to have a sprinkler system under the Fire Code. The Fire Inspector testified that since the Fundy subject property is one large building, it meant that if any portion of it had three storeys, then the requirement for a sprinkler system would apply to the entire building. He testified that the Fundy subject property, facing the Town boardwalk, has a portion which is three-storeys. The Appellant's counsel asked the Fire Inspector if Fundy's buildings were two-storey, then a sprinkler system would not be required. Fire Inspector Thibodeau testified that he was unable to answer this question without examining more details of these buildings and the Fire Code. Ms. Atkinson testified that some A-2 two-storey buildings require the installation of a sprinkler system but stated she had not visited the Fundy subject property.

[44] Division A – Article 1.4.1.2 of the 2015 Building Code defines “storey” and defines “basement” as “storey located below the first storey”.

Basement means a storey or storeys of a building located below the first storey.

...

Storey means that proportion of a *building* situated between the top of any floor and the top of the floor next above it, and if there is no floor above it, that portion between the top of such floor and the ceiling above it.

[45] The Appellant submits that an A-2 two-storey building does not require an installed sprinkler system. The Appellant asserts that Fire Inspector Thibodeau erred in determining that a portion of the Fundy complex is three-storey. Counsel for the Appellant cross-examined the Fire Inspector about the grade of the finished ground surrounding that portion of Fundy's subject property that the Fire Inspector considered as three-storey. Despite questions suggesting that the grade meant that the basement did not qualify as

a storey, the Board found that the Fire Inspector maintained his finding that this was a three-storey portion of the Fundy building.

[46] Mr. Kenley's testimony also provided support for the Fire Inspector's determination. While trying to obtain an annual inspection report for the sprinkler system, Mr. Kenley testified that he reached out to several people, including Ben Reinhart, P. Eng. As will be discussed in more detail below, Mr. Reinhart visited the Fundy subject property and provided the results of his visit in a letter to Fundy dated September 11, 2023. In his letter, he stated his opinion that the Fundy subject property was two-storey. Subsequently, Mr. Reinhart advised Fundy that the subject property was three-storey. Mr. Kenley testified how Mr. Reinhart advised him about his new finding that the Fundy subject property was three-storey:

Q. Okay. So, understanding, as you understand this letter from, from Mr., from the Reinhart Engineering, so, he then, that's why he, you understand he's saying that this actually, the group being the designation of this building is different?

A. Exactly. He, he classified our building based on what I told him, and looking from the street side, he classified it as two storeys, but then Daniel come back to him and refuted this letter. And Daniel used the three storeys, including the boardwalk, and said to Ben, "This is a three-storey building." And the way Daniel explained it to Ben, Ben said to me, he said, "Dean, he's right, it's a three-storey building." But I didn't know, at the time, Madam Chair, that the code had changed and they can't classify me as a three-storey building, because they built the boardwalk. That's not the way my building was designed or built. They, they made it that way. So, Ben basically told me, he said, "Dean, I don't think I can do anything for you."

[Transcript, April 28, 2025, p. 142]

[47] The Appellant did not provide any other evidence to establish that the Fire Inspector was not reasonable in his determination about the number of storeys. The Board finds that the Fire Inspector had a reasonable basis for determining that the Fundy subject property should be classified as A-2 three-storey and therefore was required to have a sprinkler system which was designed by a professional engineer as required by the *Nova Scotia Building Code Regulations*, s. 33.

2022 Nova Scotia Building Code Regulations

[48] Section 33 of the *Nova Scotia Building Code Regulations*, Reg 116/200 (in effect from October 18, 2022, until April 1, 2025) provided that any sprinkler system, required or intended, had to be designed by a professional engineer. It was not intended to apply to alterations of an existing system if certain conditions are met such as there being no new branches or mains to the existing system:

Professional design and review for sprinklered buildings

- 33 (1)** Except as provided in subsection (2), an owner must do all of the following for a building that is required or intended to be sprinklered:
- (a) ensure that a professional engineer is appointed to undertake the design of the sprinkler system;
 - (b) ensure that the professional engineer completes and submits the commitment certificate in Form 7 of Schedule A for the field review of construction for the fire suppression system design.
- (2)** Clauses (1)(a) and (b) do not apply to an alteration of an existing building that requires changes to an existing sprinkler system, if a building official determines that all of the following conditions are met:
- (a) there is no change in occupancy for the existing building;
 - (b) there is no change to the branch pipe sizing for the sprinkler system;
 - (c) there are no new branches or mains for the sprinkler system;
 - (d) the total number of individual sprinkler devices to be added, removed or relocated is 10 or fewer.
- (3)** If clauses (1)(a) and (b) are determined not to apply under subsection (2), any design documents and test results of tests conducted on the system that are required under the *Fire Safety Regulations* made under the *Fire Safety Act* must be filed with a building official. [Emphasis added]

[49] The predecessor section, in *Nova Scotia Building Code Regulations*, Reg 26/117 (in effect from April 1, 2017, until October 17, 2022), was quite similar in content:

2.1.1.8. Design Regulations for Sprinklered Building

- (1)** Where a *building* is required or intended to be sprinklered, the *owner* shall

- (a) ensure that a *professional engineer* is appointed to undertake the design of the sprinkler system, and
 - (b) complete and submit a Letter of Undertaking in the form specified in Schedule "A" of the *Field Review of Construction*.
- (2) Where the *alteration* of an existing *building* requires changes to an existing sprinkler system, the *authority having jurisdiction* may waive compliance with Clauses 2.1.1.8.(1)(a) and (b).
- (3) Where Clauses 2.1.1.8.(1) (a) and (b) are waived, the design documents and test results conducted on the system, required under the provincial maintenance regulations made under the *Fire Safety Act* must be filed with the *authority having jurisdiction*.

[50] The legislative history of the *Nova Scotia Building Code Regulations* shows similar language found in the regulations from 2017-2022 existed in each version of the regulations dating back to Reg 38/97 which came into force in April 8, 1997.

[51] The Town submits, and the Board concurs, that all the installations and/or extensions of the sprinkler system at the Fundy subject property, from 1997 onward, except for two sprinkler heads installed under the direction of the then Fire Inspector Sheppard, had to be designed by a professional engineer. The Board recognizes that the regulation permitted a recognized authority to waive compliance with this requirement and accepts the Town's admission that the two sprinkler heads installed in 1997 under Fire Inspector's direction constitutes such a waiver for those two sprinkler heads only.

Existing Installed Sprinkler System

[52] In his testimony, Mr. Kenley explained the circumstances that led to the initial installation of two sprinkler heads and the extension of the sprinkler system over the years. Mr. Kenley testified that in and around 1997, Fundy was constructing the Dockside restaurant. He stated that the Town's then Fire Inspector, Rick Sheppard, who was also the Town's deputy fire marshal, directed Fundy to install low-temperature, quick-response

sprinkler heads over the two large glass windows in the new restaurant. Each window was to have a sprinkler head. Fire Inspector Sheppard provided direction to Mike Druken, Fundy's plumber during the Dockside construction, on how to install these sprinklers. Mr. Kenley stated that Fire Inspection Sheppard was satisfied with the sprinkler installation. Mr. Kenley also stated that he was impressed with the idea of providing more safety in what seemed a fairly easy manner. He testified that subsequently on its own initiative, Fundy installed additional low-temperature, quick-response sprinkler heads following the method provided by Fire Inspector Sheppard.

[53] Mr. Kenley testified that Fundy, voluntarily, continued to extend the sprinkler system for the next 20 years by installing these sprinkler heads in civic addresses 32, 34, 36 and 38 Water Street. The extension of the sprinkler system included the installation of sprinkler heads in the suites, the banquet area and other parts of the building, and the storage space and area in 38 Water Street. Mr. Kenley estimated that, as of the date of the hearing, there was sprinkler coverage for 60 to 70% of the building. Mr. Kenley said that in the early years, Mr. Druken installed the new sprinkler heads, but in time the work was done by Fundy's in-house maintenance team. He testified that all the installed sprinkler heads at the Fundy complex followed the design directed by the Fire Inspector in 1997. Mr. Kenley testified that parts of the sprinkler system are more than 25 years old. He said that based on his reading, while some sprinkler heads can function for 30 or 40 years, manufacturers recommend replacing them after 25 years.

[54] Division B, Clause 6.1.1.2(1) of the 2015 Fire Code provides that "Fire protection installations shall be maintained in operation conditions". The Clause also refers to Note A-6.1.1.2(1), Notes to Part 6 - Fire Protection Equipment which states:

A-6.1.1.2.(1) Both the NBC and the NFC assume that all fire protection systems in a building, whether required by Code or voluntarily installed, will be designed in conformance with good fire protection engineering practice and will meet the appropriate installation requirements in relevant standards. Such good design is necessary to ensure that the level of safety established by the Code requirements is not reduced by a voluntary installation. Thus, a voluntarily installed system should be maintained in operating condition, at least to the extent that it was originally intended to function, in conformance with the applicable installation standards.

[55] As noted above, Mr. Kenley testified that he unsuccessfully attempted to find qualified individuals to conduct the annual inspection and provide the report required under the Fire Inspector's October 2024 Order. Ben Reinhart, P. Eng, of Reinhart Engineering visited Fundy's subject property to carry out the sprinkler system inspection. In a subsequent reporting letter dated September 11, 2023, Mr. Reinhart advised Fundy that the existing sprinkler system was not compliant with the Fire Code, and he could not, therefore, provide an annual inspection report. He wrote, in part, that:

Sprinkler System Inspection and Findings:

Reinhart Engineering arrived on site Friday August 25th, 2023 to carry out the sprinkler system inspection. During the site visit, it was discovered that the existing sprinkler system was being fed with all 3/4-inch copper piping {branches and mains} and was taken off two separate domestic water systems after the water meter in each case. Both systems had disconnected flow switches with unsupervised isolation valves. Currently this arrangement does not meet the code requirements of NFPA 13 and cannot be signed off by a professional engineer.

The presence of the sprinkler heads gives first responders a false hope that there is a fully operational fire protection system installed on the premises, when the system is not code compliant and will not perform as the NFPA 13 - "Standard for Installation of Sprinkler Systems" intends. To provide enough water for a NFPA 13 compliant sprinkler system, the underground would need to be brought in 4" from Water Street and the system would have to be designed with a sprinkler design area of 1,500sqft for light and ordinary hazard occupancies.

Due to the cost restrictive nature of tendering and installing a brand new NFPA 13 wet/dry sprinkler systems as is currently required, an alternate compliance solution (ACS) is being proposed which would be carried out over the next number of years to the satisfaction of the Fire Marshal's Office. [Emphasis added]

[Exhibit F-3, p. 58]

[56] Mr. Kenley testified that Mr. Reinhart did not stay with the project as he found that he could not work effectively with Town officials.

[57] Mr. Reinhart was not called as a witness, nor did he submit an expert report. The Appellant's submissions seem to suggest that it was the Town's responsibility to call Mr. Reinhart as a witness or secure an expert report about alternative compliance solutions. As the oft-quoted saying goes, there is no property in a witness. The Appellant could have called Mr. Reinhart, or if there was a concern about his attendance, they could have undertaken the process to have the Board issue a subpoena for his attendance. Each party must decide what evidence it wants to place before the Board and then take the necessary steps to ensure the tendering of such evidence.

[58] The Appellant also asked that the Board draw an adverse inference from the failure of the Town to call its employee Daniel Gaudet, who works in building by-law compliance and fire safety compliance, as a witness. The Appellant argues that Fire Inspector Thibodeau testified that, while Mr. Gaudet attended with him for an inspection of the Appellant's new rental suites in 2024, Mr. Gaudet had no role in the fire safety issues. The Appellant relies on an email sent by Mr. Gaudet to Mr. Kenley dated January 3, 2024, which discussed issues about the installations of a fire alarm in all parts of Fundy's subject property as a requirement for the occupancy permit. This email was filed as part of the supplementary evidence after the hearing. The Appellant says that the Board should draw that adverse inference that the failure of the Town to call Mr. Gaudet was because "Mr. Gaudet did not support" the Fire Inspector's October 2024 Order.

[59] The Board does not draw an adverse inference from the Town's decision not to call Mr. Gaudet as a witness. As noted above, the Appellant could have called Mr. Gaudet as a witness or had a subpoena issued for his attendance. Mr. Gaudet's email was sent to Mr. Kenley, so it was within the Appellant's knowledge at the time of the

hearing. Also, in direct examination, Mr. Kenley discussed the communications he exchanged with Mr. Gaudet about the need for a fire alarm system in late 2023. The Appellant could have questioned Fire Inspector Thibodeau on Mr. Gaudet's role in fire issues, such as the fire alarm system, at the hearing. Finally, as noted above, when the Board allowed the supplementary evidence to be filed after the hearing, the Board also gave the Appellant the opportunity to cross-examine the Fire Inspector on this new evidence, and specifically on Mr. Gaudet's role in fire issues. The Appellant declined to cross-examine Fire Inspector Thibodeau. There is no evidential basis for the Board to find that Mr. Gaudet did not support the Fire Inspector's October 2024 Order.

[60] Based on the record before it, the Board finds that Fundy has been unable to provide an annual inspection report confirming that its system is compliant with the Fire Code, as required under Article 6.4.1.1(1) of the Code.

[61] Further, as noted above, the Board finds that, apart from the initial installation of the two sprinkler heads under the direction of the then Fire Inspector Sheppard, all the installations and/or extensions of the fire system at the Fundy subject property, from 1997 onward, were required to be designed by a professional engineer under the *Nova Scotia Building Code Regulations*. There is no evidence before the Board that Fundy's existing fire system, as it was extended, ever followed a design by a professional engineer. Further, there is no evidence before the Board that the appropriate official ever exercised his or her authority to waive compliance with this requirement.

Applicability of Exemptions under the s. 27 of the *Fire Safety Act*

[62] The Appellant submits that Mr. Kenley testified that over the years Fundy sought all necessary building permits for its renovations and, upon completion of the work,

received occupancy permits. The Appellant says these occupancy permits would not have been issued if it had not satisfied all requirements, including its sprinkler system. The Appellant relies on these facts to assert that s. 27 of the *Fire Safety Act* exempts it from the Fire Inspector's October 2024 Order.

[63] The Town says that only the original two sprinklers installed under the direction of the then Fire Inspector Sheppard in 1997 are exempted under s. 27 of the *Act*. The Town says that the remaining voluntary extensions/alterations of the sprinkler system by Fundy, through the years, attracted the *Nova Scotia Building Code Regulations'* requirement that the system be designed by an engineer unless a waiver was granted.

[64] Section 27 of the *Act* specifically limits an Order to Take Action, made under s. 25 of the *Act*, from requiring alterations to a building that, at the time an occupancy permit was issued for the building, complied with the Building Code in effect at the time. It does not, however, exempt an owner from complying with the provisions of the *Fire Safety Act* or the Fire Code if they are subject to those requirements. Section 27 provides:

Building Code Act

27 (1) No order made pursuant to Section 25 shall require that alterations be made to a building that, at the time an occupancy permit was issued for the building, complied with

(a) the Building Code then established under the *Building Code Act*;

(b) a municipal by-law then in force that adopted an edition of the *National Building Code of Canada* issued by the National Research Council of Canada; or

(c) where no municipal by-law or *Building Code Act* was then in force, an edition of the *National Building Code of Canada* issued by the National Research Council of Canada that was current at the time of construction, and is in compliance with that code, unless the order is necessary to

(d) respond to a requirement of the Fire Code; or

(e) ensure compliance with regulations made pursuant to this or any enactment relating to the retrofitting of existing buildings for fire safety.

(2) Notwithstanding subsection (1), where a building, at the time of its construction or occupancy, was constructed or occupied in violation of a regulation made pursuant to this Act or the former Act, an order may be made pursuant to Section 25 requiring alterations to the building.

(3) Where an order concerning a matter that is also regulated by the *Building Code Act* or the *Nova Scotia Building Code Regulations* is issued pursuant to Section 25, and a building inspector identifies a likelihood that an unsafe condition will result from an alteration or other work for which a building permit is required to implement the order,

(a) the building inspector shall promptly contact the fire official who issued the order and those persons shall consult and review the information supplied by the owner describing the specifics of the construction; and

(b) the building inspector and the fire official shall determine whether the order can be implemented so as to address both the potential unsafe condition and fire-safety concerns.

(4) Where

(a) a building inspector and a fire official determine that the order can be implemented so as to address both the potential unsafe condition and fire-safety concerns;

(b) upon consultation by a building inspector and a fire official with the Fire Marshal, the Fire Marshal determines that it is in the interest of safety that the order or an amended version of the order be implemented; or

(c) the Board makes or confirms an order respecting an alteration or other work for which a building permit is required under the *Building Code Act*,

a building inspector shall issue a building permit upon payment of the applicable fee under the *Building Code Act* and regulations and the permit shall indicate on its face that it is issued for the purpose of this Act and is sufficient to meet the requirement under the *Building Code Act* and regulations that a building permit be obtained. [Emphasis added]

[65] The Board finds that s. 27 of the *Fire Safety Act* does not exempt or limit the scope of the Fire Inspector's October 2024 Order requiring the sprinkler system be designed by a professional engineer under the *Nova Scotia Building Code Regulations*. This requirement has been in place since 1997. Accordingly, each time the Appellant extended its sprinkler system, in the absence of a professional engineering design, and

without a waiver, it was in violation of the *Nova Scotia Building Code Regulations*. As noted above, there was no evidence that a waiver was ever granted, except for the two sprinklers under the direction of Fire Inspector Sheppard.

[66] It is useful to refer to s. 7 of the *Act*, which states that the issuance of a building permit or occupancy permit, or the failure of a previous official to identify a breach of the Fire Code, does not prevent a future fire inspector from addressing the contravention. Just because the issues were not identified in past inspections does not change the application and of the requirements of the Fire Code or prevent their enforcement:

Effect of failure to identify violation or of permits

7 For greater certainty,
(a) the failure of a fire official to identify or communicate a violation of this Act, the regulations, the Fire Code, or any other Act or regulations that the Fire Marshal has the power and authority to enforce; or
(b) the issuance of a building permit or an occupancy permit pursuant to the *Building Code Act*,
with respect to land or premises, or a part thereof, does not derogate from the application to the land or premises, or part thereof, of this Act, the regulations, the Fire Code, or any other Act or regulations that the Fire Marshal has the power and authority to enforce.

Alternative Solution for Compliance

[67] The Appellant asks the Board to consider an alternative solution for compliance, if the Board determines that a sprinkler system must be installed in the Fundy complex under the Fire Inspector's October 2024 Order. The Appellant relies on Division A, Section 1.2 – Clause 1.2.1.1 of the 2015 Fire Code for this request. Clause 1.2.1.1 states that:

1.2.1.1. Compliance with this Code

1) Compliance with this Code shall be achieved by
a) complying with the applicable acceptable solutions in Division B (see Note A-1.2.1.1.(1)(a)), or
b) using alternative solutions that will achieve at least the minimum level of performance required by Division B in the areas defined by the

objectives and functional statements attributed to the applicable acceptable solutions (see Note A-1.2.1.1.(1)(b)).

2) For the purposes of compliance with this Code as required in Clause 1.2.1.1.(1)(b), the objectives and functional statements attributed to the acceptable solutions in Division B shall be the objectives and functional statements referred to in Subsection 1.1.2. of Division B.

[68] The Appellant also referred the Board to the Fire Code's Notes for Article

1.2.1.1 found at A-1.2.1.1 which state, in part:

A-1.2.1.1.(1)(a) Code Compliance via Acceptable Solutions. If a building design (e.g. material, component, assembly or system) can be shown to meet all provisions of the applicable acceptable solutions in Division B (e.g. it complies with the applicable provisions of a referenced standard), it is deemed to have satisfied the objectives and functional statements linked to those provisions and thus to have complied with that part of the Code. In fact, if it can be determined that a design meets all the applicable acceptable solutions in Division B, there is no need to consult the objectives and functional statements in Division A to determine its compliance.

A-1.2.1.1.(1)(b) Code Compliance via Alternative Solutions. Where a design differs from the acceptable solutions in Division B, then it should be treated as an "alternative solution." A proponent of an alternative solution must demonstrate that the alternative solution addresses the same issues as the applicable acceptable solutions in Division B and their attributed objectives and functional statements. However, because the objectives and functional statements are entirely qualitative, demonstrating compliance with them in isolation is not possible. Therefore, Clause 1.2.1.1.(1)(b) identifies the principle that Division B establishes the quantitative performance targets that alternative solutions must meet. In many cases, these targets are not defined very precisely by the acceptable solutions—certainly far less precisely than would be the case with a true performance code, which would have quantitative performance targets and prescribed methods of performance measurement for all aspects of building performance. Nevertheless, Clause 1.2.1.1.(1)(b) makes it clear that an effort must be made to demonstrate that an alternative solution will perform as well as a design that would satisfy the applicable acceptable solutions in Division B—not "well enough" but "as well as."

...

Level of Performance

Where Division B offers a choice between several possible designs, it is likely that these designs may not all provide exactly the same level of performance. Among a number of possible designs satisfying acceptable solutions in Division B, the design providing the lowest level of performance should generally be considered to establish the minimum acceptable level of performance to be used in evaluating alternative solutions for compliance with the Code.

Sometimes a single design will be used as an alternative solution to several sets of acceptable solutions in Division B. In this case, the level of performance required of the alternative solution should be at least equivalent to the overall level of performance established by all the applicable sets of acceptable solutions taken as a whole. [Emphasis added]

[69] In response, the Town says that the Appellant has failed to provide evidence that demonstrates that there is an alternative solution that complies with the Code. The Town states that the only evidence before the Board was the letter from Ben Reinhart dated September 11, 2023, which suggested there might be an alternative solution, but lacks specific information on what the alternative could be. The Town also states that the Fire Code requires documentation under Clause 2.3.1.1 and no such documentation was presented. Clause 2.3.1.1 provides:

2.3.1.1. Documentation

1) Documentation conforming to this Subsection shall be provided by the person requesting the use of an alternative solution to demonstrate that the proposed alternative solution complies with this Code.

2) The documentation referred to in Sentence (1) shall include

- a) a Code analysis outlining the analytical methods and rationales used to determine that the proposed alternative solution will achieve at least the level of performance required by Clause 1.2.1.1.(1)(b) of Division A, and
- b) information concerning any special maintenance or operational requirements, including any component commissioning requirements, that are necessary for the alternative solution to achieve compliance with the Code after the *building* or facility is constructed.

3) The Code analysis referred to in Clause (2)(a) shall identify the applicable objectives, functional statements and acceptable solutions, and any assumptions, limiting or restricting factors, testing procedures, engineering studies or performance parameters that will support a Code compliance assessment.

4) The Code analysis referred to in Clause (2)(a) shall include information about the qualifications, experience and background of the person or persons taking responsibility for the design.

5) The information provided under Sentence (3) shall be in sufficient detail to convey the design intent and to support the validity, accuracy, relevance and precision of the Code analysis.

6) Where the design of a *building* or facility includes proposed alternative solutions that involve more than one person taking responsibility for different aspects of the design, the applicant for the permit shall identify a single person to coordinate the preparation of the design, Code analysis and documentation referred to in this Subsection.

[70] The Board finds that these provisions, particularly the Fire Code's Notes for Clause 1.2.1.1, they require the proposed alternative solution for compliance to be in a

more formal document. Further, the alternative solution must be assessed by those with the appropriate expertise to determine if the alternative solution would comply with the Fire Code. Apart from Mr. Reinhart's letter in the record, the only other evidence before the Board was a video showing Mr. Kenley testing the pressure of a sprinkler head at the Fundy complex before and after the sprinkler head is activated.

[71] Due to the lack of evidence in the record, the Board finds that the Appellant has not demonstrated that there is an alternative solution which complies with the requirements of the Fire Code.

VII CONCLUSION

[72] For the reasons provided above, the Board finds that the Appellant did not meet the burden of proof required for the revocation or variance of the Fire inspector's October 2024 Order.

[73] The Board was impressed by the care and attention that Fundy took, as expressed in the testimony of Mr. Kenley, took in renovating and maintaining the subject properties. The Board does not doubt Fundy's good intentions, and particularly those of Mr. Kenley, when voluntarily extending the sprinkler system beginning in 1997 and continuing this work over the next three decades. Mr. Kenley was not qualified as an expert, nor did he suggest that he was anything but self-taught in matters involving a sprinkler system. The Fire Code requires, however, that when there is a sprinkler system in a building, even one that was installed voluntarily, this sprinkler system must have an annual inspection report completed to confirm that the system is compliant with the Fire Code. Fundy could not provide the Fire Inspector with an annual inspection report as requested in April 2023, or even after the Fire Inspector allowed Fundy additional time,

over 18 months, to comply with this requirement. There was no annual inspection report meeting this requirement in the record before the Board.

[74] The Board finds that:

- The Fire Inspector had a reasonable basis for determining the premises might pose a risk of fire because of the existing sprinkler system in the subject property, which had no annual inspection report confirming its compliance with the Fire Code.
- The Fire Inspector acted within the scope of his authority when he issued his October 2024 Order requiring that Fundy's sprinkler system be inspected and tested for compliance with the Fire Code.
- The Fire Inspector acted within his scope of authority when he determined that the classification of occupancy for the Fundy complex was A-2, three-storey and must have an installed sprinkler system.
- The Fire Inspector correctly required the installed sprinkler system shall be designed by a professional engineer and all appropriate forms provided under *Nova Scotia Building Code Regulations*, s. 33.
- Section 27 of the *Fire Safety Act* does not exempt the Appellant from these requirements.
- There was insufficient evidence before the Board to support a finding that there was an alternative solution to achieve compliance available to the Appellant.

Accordingly, the Board finds no grounds to revoke the Order or to vary the Actions Required to remedy Contravention 1 in Schedule A to the October 2024 Order.

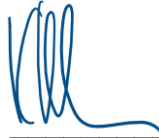
[75] The Board accepts the Town's recommendation that a new date for completion of the corrective measures under the October 2024 Order be set for October 22, 2026. The Town says it believes that the lack of a proper sprinkler system in the subject property poses a significant fire risk but also understands that it will take some time to install the system. The Town states that it is prepared to work with Fundy to ensure the installation of a Fire Code compliant sprinkler system by October 2026.

[76] While the date for compliance in the October 2024 Order will be varied by the Board's Order, the Board notes that it remains open to the Fire Inspector, in his sole discretion, to vary his own order, for example, to grant a further extension for compliance.

[77] The October 2024 Order to Take Action remains in full force and effect, except for this variance to the date of compliance. The Board directs that the required actions as outlined in Schedule A of the October 2024 Order must be completed by October 22, 2026.

[78] An Order will be issued accordingly.

DATED at Halifax, Nova Scotia, this 20th day of October 2025.



M. Kathleen McManus