CONSTRUCTION CODE APPEALS COMMITTEE

The Construction Code Appeals Committee meeting was held on March 31, 2015 at 9:01 a.m. with Chairman Perza presiding. Members present were Mr. Anderson and Mr. Koenig. Staff members present were Mrs. Townshend, Mr. Akers, Mr. Scott, Mr. Hudson, and Ms. Devine.

AGENDA ADDITIONS/DELETIONS

Mr. Anderson moved for approval of the agenda, seconded by Mr. Koenig and unanimously carried.

Appeal of Requirement for a Commercial Kitchen Hood - 147 S. Governors Avenue *(Tiffanee Lee-Scott)*

Chairman Perza advised members that an appeal of the requirement for a commercial kitchen hood at 147 South Governors Avenue had been received from Ms. Tiffanee Lee-Scott and asked Ms. Lee-Scott to explain the reasons for her appeal.

Ms. Tiffanee Lee-Scott, owner of a business at 147 South Governors Avenue, stated that she had opened a bakery at this location. She stated that when she turned in her building permit at the end of May 2014, it included an approval to construct from the Division of Public Health, which also included a full list of all the equipment she was going to use. Ms. Lee-Scott advised members that she did not hear anything about a hood system until the end of September 2014. She felt that if this was a code requirement, it should have been stated long ago when she originally turned in her building permit application, rather than three (3) months later. Ms. Lee-Scott indicated that the need for a hood became an issue when she was ready for her grand opening and after she had gone through the inspections.

Ms. Lee-Scott stated that she called the manufacturer of the oven to get their opinion, because it did not state in the manufacturer's book that she needed a hood. She provided an email received from Mr. Bob Petrie dated September 26, 2014, Subject: Ventilation for An Electric Convention Oven ***(Attachment #1)***. Ms. Lee-Scott explained that Mr. Petrie provides technical support for Baker's Pride, which is the type of oven that she has. She stated that Mr. Petrie indicated that Baker's Pride did not require a hood above their oven, indicating that this was not necessary because it was an electric oven and it did not produce any combustible gas; therefore, there would really be no reason for it. Ms. Lee-Scott advised members that she forwarded this email to Mrs. Ann Marie Townshend, Director of Planning and Community Development, and Mr. Tim Mullaney, Fire Marshal, who asked that it be put on letterhead. Mr. Petrie could not do this; however, he spoke directly by phone with Mrs. Townshend and Mr. Mullaney while Ms. Lee-Scott was present and advised them personally that it was not a requirement for the hood to be installed. Ms. Lee-Scott stated that after this conversation, Mrs. Townshend and Mr. Mullaney informed her that this had become a legal issue and they had to speak to an attorney in reference to the hood.

Ms. Lee-Scott stated her understanding that staff had a job to do; however, she did not understand where this issue was coming from and thought that the timing of the issue was very awkward. She advised members that she had business insurance and, hypothetically, if her oven blew up, it would be covered, as would the building.

Ms. Lee-Scott indicated that she had researched the code reference that staff provided her and did not see anything in the code she was sent that showed that she was required to have a hood. She had been shown the definition of a light-duty cooking appliance, which she assumed was how staff was classifying her oven, which she stated was fine. Referencing Sec. 507.2.1 of the 2009 International Mechanical Code, Ms. Lee-Scott quoted the statement that "Type I hoods shall be installed where cooking *appliances* produce grease or smoke." She advised members that her oven does not produce grease or smoke. Responding, Mrs. Townshend explained that the code provisions that require a Type II hood applied to Ms. Lee-Scott's oven.

Referring to Sec. 507.2 of the 2009 International Mechanical Code, Ms. Lee-Scott quoted the statement that "A Type I or Type II hood shall be installed at or above all *commercial cooking appliances* in accordance with Sections 507.2.1 and 507.2.2." She reiterated that Sec. 507.2.1 indicates that "Type I hoods should be installed where cooking appliances produce grease or smoke." Ms. Lee-Scott advised members that Sec. 507.2.2 states that "Type II hoods shall be installed above dishwashers and *light-duty* appliances," not cooking appliances. She expressed her assumption that staff sent her the definition of a light-duty cooking appliance because this is what they were going from; however, this was not what the referenced section said. She reiterated that it referenced dishwashers and light duty appliances, not cooking appliances.

Ms. Lee-Scott read Section 507.2.2 - Type II hoods, of the 2009 International Mechanical Code as follows:

> **507.2.2 Type II hoods.** Type II hoods shall be installed above dishwashers and *light-duty appliances* that produce heat or moisture and do not produce grease or smoke, except where the heat and moisture loads from such appliances are incorporated into the HVAC system design or into the design of a separate removal system. Type II hoods shall be installed above all *light-duty appliances* that produce products of *combustion* and do not produce grease or smoke. Spaces containing cooking appliances that do not require Type II hoods shall be ventilated in accordance with Section 403.3. For the purpose of determining the floor area required to be ventilated, each individual *appliance* that is not required to be installed under a Type II hood shall be considered as occupying not less than 100 square feet ($9.3 m^2$).

In regard to the reference to "*light-duty appliances* that produce heat or moisture and do not produce grease or smoke, except where the heat and moisture loads from such appliances are incorporated into the HVAC system," Ms. Lee-Scott stated that she did not see how an oven would produce heat and moisture, except heat to cook, and noted that her oven does not produce products of combustion. In regard to the 100 square foot reference, she advised members that her oven was approximately 4 feet by 4 feet and approximately 4½ feet tall, the ceilings were 12 feet tall and there were no walls blocking ventilation.

In response to Mr. Anderson regarding Mr. Petrie's opinion, Ms. Lee-Scott read from Mr. Petrie's email, as follows: "As we've discussed today, Baker's Pride does not say that you have to use a hood or a direct vent for the electric ovens. Since the ovens do not emit products of combustion, the only thing a hood would do on an electric oven is remove some of the residual heat and the smell of the product that you are cooking. The one thing that you do have to do is comply with the local codes where the oven is being operated. I hope this has answered your question. Bob Petrie."

Mr. Koenig inquired if this email was submitted to the City. Responding, Ms. Lee-Scott indicated that it was.

Mrs. Townshend stated that the email was not submitted as part of the appeal.

Chairman Perza explained that the appellant would speak first, staff would then speak, and there would then be follow-up with the appellant.

In response to Mr. Perza, Ms. Lee-Scott stated that her permit application was filed at the end of May 2014, and the permit was granted. She indicated that the business opened October 3, 2014 and the nature of the scope of the business was baking. There were no fryers or grills and the one (1) oven was used only to bake cupcakes, cookies, and muffins. She indicated that this was a commercial oven rather than a house oven.

Responding to Mr. Perza, Ms. Lee-Scott stated that the City had sent notification that the application was approved based upon what had been submitted and this was received sometime prior to opening, perhaps in late summer, maybe July. The application stated the type of oven, brand name, serial number, etc. that would be installed. When the building permit came, there were no instructions with it saying that a hood, hole through the wall, or anything special was required.

In response to Mr. Perza, Ms. Lee-Scott indicated that she was advised that she needed to get a hood in late September, which was right before she opened. This was brought up to her when she was going through her inspections.

Mrs. Townshend explained that the permit for Ms. Lee-Scott's business was filed in May 2014 and did not include the required drawings. She reminded members that, during their meeting of August 1, 2014, the Construction Code Appeals Committee considered a request from Ms. Lee-Scott to waive the requirement for sealed construction documents and an accessible restroom for the property at 147 South Governors Avenue. Mrs. Townshend stated that the Committee waived both requirements; however, the Committee specified that an acceptable substitute for the sealed plans would be for a plan to be drafted by a qualified professional and that the plans include sufficient detail to determine that all proposed improvements were code compliant. She indicated that this requirement was never attained. She advised members that between May and August, the City was trying to get information from the applicant that was needed to evaluate the permit for code compliance. Mrs. Townshend explained that before and following the August appeal meeting, staff worked with Ms. Scott and had several meetings to review code requirements, noting that there were several points in the discussion where the requirement for hood ventilation was stated.

Mrs. Townshend confirmed that Ms. Lee-Scott provided the email from Mr. Petrie and staff talked to Mr. Petrie. She explained that the specifications for the oven stated that ventilation was not necessary unless required by local code. Mrs. Townshend noted that there was discussion about this. She indicated that the fire code talked more about hood suppression, which was not required here because there was no grease vapor. She explained that the mechanical code refers to ventilation where grease vapor is not involved.

Mrs. Townshend informed members that no drawings of the commercial kitchen were ever provided that would allow staff to evaluate the code compliance of the improvements. When the oven specifications were provided, it was determined that hood ventilation was required. Mrs. Townshend stated that, according to Sec. 507.2.2, "Type II hoods shall be installed above dishwashers and *light-duty appliances* that produce heat or moisture and do not produce grease or smoke, except where the heat and moisture loads from such appliances are incorporated into the HVAC system design or into the design of a separate removal system." She stated that, in this case, the heat and moisture loads were not incorporated in the HVAC system and there was a commercial oven that produced heat. Mrs. Townshend advised that the mechanical code stated that a light-duty appliance that produces heat or moisture needs ventilation and that light-duty cooking appliances are defined as including gas and electric ovens, including standard, bake, roasting, revolving, etc. She stated that the only definition included in the mechanical code under light appliance is for a light-duty cooking appliance. This was the definition used, because a light-duty cooking appliance was in the bakery.

In response to Mr. Koenig, Mrs. Townshend confirmed that there was a definition for heavy-duty cooking appliance in the code. She explained that the appliance in question was a commercial cooking appliance, did not meet the more intense heavy-duty definition, and would be considered light-duty.

In response to Mr. Koenig, Ms. Lee-Scott agreed that it was a light-duty cooking appliance, but reiterated that the code referenced a light-duty appliance.

Mrs. Townshend indicated that, based on the two (2) code citations and on the definition of a light-duty appliance in Sec. 507.2.2, staff concluded that a Type II hood was required. The purpose of a Type II hood was to provide ventilation to avoid heat buildup. Mrs. Townshend explained that discussions about the need for a hood began earlier than September. She indicated that typically with a commercial kitchen, an architect submits drawings that demonstrate code compliance, as required by code. As a part of that drawing set, there are mechanical drawings that show the hood system; however, those were not provided. Mrs. Townshend stated that when Ms. Lee-Scott ultimately provided staff with the specifications on the oven, staff went back and forth about the need for a hood. Ms. Lee-Scott then determined the wiring for the oven that had been purchased did not work with the wiring of the building and looked at other oven options. Mrs. Townshend advised members that Ms. Lee-Scott then indicated that she would be purchasing a small counter top oven, which was not determined to be a commercial oven that would require a hood. Based on this change, she was told that the hood was not required.

Mrs. Townshend informed members that the business was permitted to open with a temporary certificate of occupancy. Baking was occurring off premises at another commercial kitchen while Ms. Lee-Scott addressed the issue of what type of oven would be provided. The business then closed in late fall for a couple months. When it reopened, inspections were scheduled for the final certificate of occupancy. Mr. Christopher Scott, Inspector II, performed the inspection on February 25, 2015, and determined that the oven being used was the initial oven that had been determined to need a hood, not the counter top oven that had been subsequently discussed. Mrs. Townshend said that apparently there had been improvements to either the building wiring or changes to the oven.

Reiterating that plans prepared by a qualified professional were never received, Mrs. Townshend indicated that staff would accept responsibility for this. She explained that staff ended up trying to work with Ms. Lee-Scott to issue the permit. Mrs. Townshend advised members that if she were able to go back and do this again, staff would have been more stringent on requiring certain things, since trying to guide Ms. Lee-Scott through the process had resulted in the current hearing. She stated that when the hood was discussed, staff stated that a qualified contractor needed to submit drawings of the hood system to determine what type of system was required; however, when the counter top oven was being used instead, that discussion ended.

Mrs. Townshend informed members that there are a number of commercial kitchens in the City that either predate the requirement for a Type II hood or had operated for many years without it. In many cases, the Fire Marshal was now requiring they be retrofitted because heat buildup from these ovens was causing discoloration of the walls, and there was concern that heat buildup was actually a safety concern. In regard to Ms. Lee-Scott's statement that there was business insurance, Mrs. Townshend stated that potential heat buildup and fire could affect not only the subject building but multiple tenant spaces, indicating that it was staff's responsibility to enforce the code.

Mr. Perza asked why the City gave a green light to this project and issued an occupancy permit, noting that Mrs. Townshend had stated that the temporary permit required all the cooking to be done off site because the drawings were not provided to evaluate whether the oven was acceptable. In response, Mrs. Townshend stated that staff did not want to hold up the opening of the business since Ms. Lee-Scott had another alternative for baking while this issue was resolved. She advised members that Ms. Lee-Scott wanted to open the retail component of the bakery and was baking at Simaron Pizza and Sub Shop, which has a full commercial kitchen with a hood.

Mr. Greg Akers, Chief Building Inspector, stated that, as early as June when staff first met on the site, there was discussion about the option of being permitted to use the bakery at Delaware State University and then selling bakery items at the Governors Avenue location.

Ms. Lee-Scott indicated that this was correct; however, she expressed her belief that this occurred way before June.

Mr. Akers advised members that initially, there was to be no change in occupancy classification and the classification was going to be mercantile to mercantile, noting that Ms. Lee-Scott was going to be selling cupcakes and the previous tenant was Emmanuel's.

Ms. Lee-Scott stated that the building had been an antique's store.

Mrs. Townshend stated that Ms. Lee-Scott's business was going to have no baking on site; it was simply the retail component of the bakery.

Mr. Akers felt it important to note that initially the City was going to handle permitting through an administrative permit without a change of occupancy classification, with the understanding that Ms. Lee-Scott going to be selling cupcakes, with no baking at all on site. Mr. Akers stated that Ms. Lee-Scott then indicated that she had spoken with the Division of Public Health who said that Ms. Lee-Scott would be required to put in a three (3) bowl sink and several other items that were required for a commercial kitchen, such as a grease trap, noting that in the Division of Public Health's view, there was a change. Members were provided an email from Mr. Akers dated June 16, 2014, Subject: Tiffanie and Company- Bakery, 147 South Governors Ave, ADMIN PERMIT 14-709 ***(Attachment #2)***. He noted that this email advised staff that the administrative permit was no longer to be processed, a commercial oven was being proposed, and plumbing, mechanical, and possibly a fire permit would be required, as well as an asbestos report.

In response to Mr. Perza, Mrs. Townshend confirmed that the drawings requested last year had not been submitted.

Ms. Lee-Scott disagreed, stating that the drawings had been approved and were a part of her building permit.

Mrs. Townshend stated that the permit was approved based on a set of drawings that was below the bar of what had been approved by the Committee. She indicate that the Committee had previously agreed that Ms. Lee-Scott did not need sealed drawings, but that the drawings needed to be prepared by a qualified professional to demonstrate code compliance, and the City never got them. The drawings that were accepted did not comply with the requirements set forth by the Construction Code Appeals Committee when they granted the appeal.

Mr. Perza clarified that the City did not require sealed drawings by an engineer, which are very expensive. Basically, the drawings could be done by a contractor as long as they conformed with what the code required, such as schematic details.

Mrs. Townshend noted that the City received a very rough drawing that Ms. Lee-Scott had taken to the Division of Public Health. Responding, Ms. Lee-Scott stated that she had submitted a drawing that was competed by a contractor.

Mr. Akers stated that, to his knowledge, the only drawing that the City had was a drawing with the specifications of the oven itself that was presented by Ms. Lee-Scott and a staff member from the Division of Public Health.

Ms. Lee-Scott requested that her building permit be looked up, noting that she definitely turned in a drawing.

Responding to Mr. Perza, Ms. Lee-Scott stated that she did not know who prepared the drawing but it was a contractor. She indicated that she had a copy emailed to the City because she had turned in a paper copy, and a staff member from the Licensing and Permitting Division advised her that she needed a digital copy as well, and that was turned in.

Mrs. Townshend explained that when someone applies for a building permit to take a space that was not previously a commercial kitchen and turn it into a commercial kitchen, an architect prepares the drawings and will typically work with the mechanical engineers on hood specifications and any type of HVAC improvements. This did not happen because a different standard was accepted for the drawings. Staff never got to the point of having full drawings of a commercial kitchen that met all of the commercial kitchen code requirements.

Mr. Koenig stated his understanding that the only current question was whether a hood system was needed. In response, Mrs. Townshend stated that the question was whether a Type II hood system was needed.

Mr. Koenig recalled Mrs. Townshend stating that there were different hood systems depending on the amount of heat that would be generated. He stated his understanding that the hood system was not required because of fumes or grease that would be generated; it was simply in the category of heat.

In response to Mr. Koenig, Mrs. Townshend confirmed that the practical objective of the hood system was simply to dissipate heat.

Responding to Mr. Koenig, Mr. Akers confirmed that this was a one (1) one way system that simply pulls heat outside the building and ventilates to the air outside.

In response to Mr. Koenig as to whether there were any other acceptable alternatives to a hood system in the code, Mr. Akers stated that there were; however, this would probably create more havoc because this would require getting into a designed system that would handle both the space itself as well as the cooking systems.

Mr. Koenig noted that it had been said that the Fire Marshals had seen evidence of heat buildup around ovens in other locations. He asked what evidence had been seen of too much heat buildup and whether there had been deterioration on walls. Responding, Mrs. Townshend stated that she had been on inspections with Fire Marshal Tim Mullaney and seen discoloration and deterioration.

Mr. Koenig questioned if flashing on the wall was a remedy to heat damage or if some type of overlay could be put on a wall to prevent heat damage. In response, Mr. Akers stated that this could be done if it were designed properly, potentially with layers of glass, sheet metal, stainless steel, etc. However, he stated this would come back to the issue of a design set.

Responding to Mr. Koenig, Ms. Lee-Scott stated that the oven is operated approximately three (3) hours per day.

In response to Mr. Perza, Ms. Lee-Scott stated that the oven operates now without the hood.

Mr. Koenig questioned how many hours per day those businesses that had evidence of heat buildup were cooking. Responding, Mrs. Townshend stated that one (1) of these businesses was a school, expressing her belief that this school had started the process of applying for permits and was working with the Fire Marshal's Office to get the system in place. She was unsure how many hours per day they were using their oven.

Mr. Koenig asked if the building in question had any type of fire alarm system or signal that heat was too high. In response, Mr. Akers stated that, to his recollection, there was no sprinkler or fire alarm system.

Mr. Anderson questioned if any of the other businesses had the same type of oven and electric outlet. In response, Mr. Akers stated that he would guess that they were all different. He indicated that similar or identical systems are typically found in franchised businesses.

Mr. Anderson asked if any of these businesses had light-duty commercial ovens in the same classification. Responding, Mrs. Townshend stated that she was unsure, noting that the City was using the 2009 building code and there had not been anything to reduce the requirement in the code since that time.

Mr. Akers stated that the way the code reads in regard to manufacturer's specifications, the intent is to meet or exceed the minimum required. He explained that the discussion was in regard to this minimum. If the manufacturer proposed specifications that exceeded the minimum required by code, the manufacturer's specifications would prevail. The requirement was to meet or exceed and not be below code.

Mrs. Townshend provided an excerpt from Section 507.2.2 of the 2009 International Mechanical Code Commentary, ***(Attachment #3)*** and read from the commentary as follows: "Type II hoods are required above dishwashers and light-duty cooking appliances that produce heat or moisture and do not produce grease or smoke, except where the heat or moisture loads are incorporated into the HVAC system. . . . Where light-duty cooking appliances produce products of combustion and do not produce grease or smoke they must be located under a Type II hood."

Mr. Koenig asked if Section 507.2.2 said cooking appliance. Responding, Mrs. Townshend continued reading from the Commentary excerpt as follows:

> Any light-duty cooking appliance that produces grease or smoke must be located under a Type I hood. . . . In previous editions of the code, there were a number of exceptions that did not require a Type II hood over light-duty electric cooking appliances, such as convection, bread and microwave ovens; toasters; steam tables; popcorn poppers. . . as long as additional heat and moisture loads were accounted for in the design of the HVAC system. This laundry list of exceptions kept growing with every code change cycle until the list of appliances that did not require a hood nearly exceeded the list that required a hood. With this edition of the code, the

> exceptions are gone and replaced with criteria that are twofold; (1) is heat or moisture produced? (2) are the heat and moisture loads accounted for in the design of the HVAC system? If heat and moisture are produced and the loads are incorporated into the HVAC system design, then no Type II hood is required. If heat and moisture is produced and the loads are not incorporated into the HVAC design, then a Type II hood would be required.

Noting that Sec. 507.2.3 of the Mechanical Code addressed domestic cooking appliances, Mr. Perza inquired whether a Type I or Type II hood system would be required if someone moved an oven from their home and installed it in their business. Responding, Mr. Akers stated that if a non-commercial oven or stove were put in a commercial environment, it would be used not once or twice a day but maybe three (3) to five (5) times and perhaps into the night. He stated that the use of this oven would be considered in terms of how the provisions would be applied and determining whether additional systems would need to be installed with it.

In response to Mrs. Townshend, Mr. Akers stated that he did not believe that the Division of Public Health would allow the use of domestic appliances in commercial kitchens, except perhaps in a soup kitchen or similar environment.

Ms. Lee-Scott stated that she had provided her equipment list to the Division of Public Health, and she felt that the Division of Public Health would have added the hood to this list if they deemed it necessary. She indicated that Mrs. Townshend was reading excerpts from the 2009 International Mechanical Code Commentary, which Ms. Lee-Scott was not provided. Responding, Mrs. Townshend offered to make copies.

Ms. Lee-Scott stated, in regard to appliances that "produce heat or moisture," that anything that can be used for cooking is going to produce heat. She noted that a toaster oven produces heat. She indicated that she has a double oven in her residence that does not have a hood above it.

Mr. Perza noted that the commercial use triggered a hood requirement, noting that commercial use transforms something without much risk to a greater risk.

Mr. Koenig stated his understanding that a hood would not be needed if the requirements were afforded for in the HVAC system and questioned whether this would be demonstrated through a calculation or a practical test, such as whether a facility was able to maintain room temperature while an oven was on. Responding, Mr. Akers stated that this is applied to a submitted design. He advised members that for a commercial kitchen, the contractor, as part of his contract with the owner, would owe the owner a demonstration that the individual pieces of the system or the system as a whole functioned as intended.

Mrs. Townshend stated that part of the challenge was demonstrating the heat loads that the HVAC system was designed for without having design documents on the system. She indicated that there were no alterations to the HVAC system in changing the space from retail to a commercial kitchen.

Ms. Lee-Scott reiterated that the Section 507.2.2 of the Code stated "light-duty appliance," not "light-duty cooking appliance," and this was included right along side of "dishwashers." She did not think they were talking about the same thing, noting that a dishwasher, of course, produces heat and moisture. She stated her belief that the other locations where the Fire Marshal had been requiring changes had more than one (1) oven. She reiterated that she was cooking solely with an oven and did not have a grill or fryer.

Ms. Scott stated that she originally wanted to locate her business on Loockerman Street next to Bayard Pharmacy and had met years ago in this regard with Mr. Akers. She stated that she had architectural sealed drawings for that space and a hood was not required because the landlord specifically stated he did not want to put a hood through all of his apartments. Ms. Lee-Scott noted that these drawings did not include a hood and noted that they included the exact same oven. Responding, Mrs. Townshend stated, not having reviewed these drawings, that staff did not know if there was a design in the HVAC system that would remove the heat.

Mr. Akers stated his recollection of meeting with Ms. Lee-Scott regarding this other location, which unfortunately did not work out. He indicated his belief that staff did not have the opportunity to review those plans at the time, noting that it was possible that he could have missed this.

Ms. Lee-Scott stated that the plans were sealed, and that staff had indicated that if this was done by an architect, the current issue would not be taking place. She reiterated that she had sealed drawings and a hood was not required.

Mr. Akers stated that the purpose was not to have the seal itself. Along with a seal, plans show in the script, design, and code summary that the drawings flow with the code. The sealed plans typically make statements that match and refer to the code.

Ms. Lee-Scott reiterated that Mrs. Townshend stated that the current issue would not be occurring if Ms. Lee-Scott had sealed drawings.

Mrs. Townshend explained that the way the City system works, an architect completes and submits plans which are reviewed. In many cases, staff responds to the architect or contractor that additional information or corrections are needed. The building official reviews the plans and confirms that what is submitted complies with codes. She stated that the information provided prior to the meeting and the commentary specifically referenced light-duty cooking appliances. Mrs. Townshend stated that this would be a judgment call on the part of the Committee. She indicated there was no question that a hood was required, and the question was whether members wished to waive the requirement.

In response to Mr. Koenig, Mrs. Townshend stated that she did not believe that Ms. Lee-Scott's business was required to have an annual inspection by the Fire Marshal's Office because there was no fire alarm system or fire suppression.

Mr. Koenig noted that staff had gone into several businesses where there was no hood suppression and there was evidence of heat buildup, and these businesses were being told to retrofit these facilities. He inquired if staff had been to any other businesses where there was no hood and no evidence of heat buildup, and where hoods were not being required. Responding, Mrs. Townshend stated that this had come up and, in one (1) case, this was found during a public occupancy inspection of the school that was previously mentioned. She stated that another was a commercial kitchen where the oven did not have a hood but there was a hood system on another side of the kitchen.

Mr. Koenig inquired what the practical danger would be to the public if no hood suppression were installed. In response, Mrs. Townshend stated that the issue was not hood suppression but ventilation, which was a big difference.

Mr. Koenig inquired what the potential damage to the public would be and if staff was saying that the heat buildup could cause an instantaneous flash. Responding, Mr. Akers stated that this was a judgment call. He advised members that the school site that Mrs. Townshend referenced had a gas line involved with Wardflex-type gas piping that was insulated and there was also black iron. He stated that this situation had existed for a long time and there were obvious signs on the wall where burn-off from the gas from the oven had collected over time. Mr. Akers indicated that, looking at this, one would want to say that there was an obvious hazard. He felt that it would be erring on the side of caution to say that a hood system should be installed, and to ask if that exposed gas line was subject to repeat heat occurring day in and day out for years. Mr. Akers stated that it depends on the situation. In this same scenario, when looking at a dishwasher, a judgment call could be made to put stainless steel sheet goods behind it so that water gathers, sheds, and rolls down on a stainless steel counter top. Mr. Akers advised members that staff was not going throughout the City and requiring everyone with this situation to retrofit; this would depend on the hazard perceived when an inspection is done.

Mrs. Townshend stated her understanding that Mr. Koenig was asking what the perceived risk to public safety was if a hood were not installed. Responding, Mr. Akers stated that this could not be forecast with any degree of confidence. He stated that it would be dismissive to say that he did not think there was any real hazard, although there may not be any. He stated that if anything did happen, the City would be addressing why the hood was not required.

In response to Mr. Koenig, Mrs. Townshend stated that this was not a stand-alone building but was connected with another retail space and there were apartments above it.

Mr. Perza stated that his philosophy on these kinds of things was to bend over backward to help the business owner; however, he did not want the business owner to hurt themselves, burn the building down, or for anyone to be hurt on the premises. He did not want the neighbors' businesses to suffer damage because the City should have required a hood. Mr. Perza asked if there was a way to accommodate the use by taking an intermediate step, such as putting in flashing or something to make it safer. He stated that an inspection could be done every six (6) months to make sure there was no frayed wiring or the oven was not mis-operating.

Mr. Perza asked how much the hood would cost. Responding, Ms. Lee-Scott stated that it could cost approximately $10,000.

Mr. Akers felt that Ms. Lee-Scott's estimate was pretty accurate, noting that this would be a stainless steel hood suspended above the oven that transfers exhaust to the roof through a fan system that exits through the roof. This would be a detailed installation that would not be cheap. Mr. Akers stated that there had been previous discussion about exhausting through a window; however, this was not permitted in the code.

Mr. Akers questioned whether there were any statements in the Division of Public Health conditions approval sheet that addressed the requirement of hoods. In response, Ms. Lee-Scott stated her belief that there was a related statement in this document, or in approval papers that she received from the Division of Public Health.

Ms. Lee-Scott advised members that City staff came to the premises and did not know that the oven was on. She stated that the oven can be touched and noted that, as far as heat being let out, it was built to shut off when the oven doors are opened.

Mr. Koenig expressed reservations that the business was currently operating and stated his wish that this issue could have been resolved before any permits were granted.

Mr. Koenig moved to waive the requirement for a commercial kitchen hood, but to require an inspection by the City of Dover Fire Marshal every six (6) months for the first two (2) years and every year thereafter to determine if there is any heat buildup. If there is evidence of heat buildup, the ventilation system shall be required at that time. The motion was seconded by Mr. Anderson.

Mr. Perza inquired if the present or future business owner could appeal if the ventilation system were required by the Fire Marshal, or if this would be a unilateral requirement. Responding, Mr. Koenig stated that it should not be appealed at that point because the Fire Marshal would be saying there was evidence of heat buildup. If the Fire Marshal determined that there was evidence of heat buildup at any of the inspections, the owner would be required to have a ventilation system designed and installed.

Ms. Lee-Scott stated that the Fire Marshal did have to do a final inspection. She did not feel that one (1) person should be able to say that she was required to pay $10,000 for the ventilation.

Mr. Perza explained that the purpose of the inspection in the future was to determine if there was actual damage to the building that did not exist at the time the final inspection was done. This would be done to make sure that the owner was not causing any risk to herself or the public. He stated his belief that this was a reasonable application that would allow Ms. Lee-Scott to get rolling and questioned if approval would start now.

Responding, Mr. Koenig stated that the six (6) month inspection would have to be scheduled, but assumed that it would be six (6) months from the time of a favorable vote.

In response to Mr. Perza, Mr. Koenig stated that the inspection was part of the services provided by the City and there would be no fee.

The motion to waive the requirement for a commercial kitchen hood, but to require an inspection by the City of Dover Fire Marshal every six (6) months for the first two (2) years and every year thereafter to determine if there is any heat buildup and, if there is evidence of heat buildup, the ventilation system shall be required at that time was unanimously carried.

Mr. Anderson moved for adjournment, seconded by Mr. Koenig and unanimously carried.

Meeting adjourned at 9:59 a.m.

Adam M. Perza
Chairman

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Attachment
Attachment #1 - Email from Mr. Bob Petrie dated September 26, 2014, Subject: Ventilation for An Electric Convention Oven
Attachment #2 - Email from Mr. Greg Akers dated June 16, 2014, Subject: Tiffanie and Company- Bakery, 147 South Governors Ave., ADMIN PERMIT 14-709
Attachment #3 - Excerpt from Sec. 507.2.2 of the 2009 International Mechanical Code Commentary