

**BEFORE THE NORTH CAROLINA BUILDING CODE COUNCIL
RALEIGH, NORTH CAROLINA**

Docket No. 2016-2

IN THE MATTER OF AN APPEAL)	
BY DEE DAVIS AND LINWOOD)	
WEEKS REGARDING DENIAL)	ORDER
OF RESIDENTIAL BUILDING PERMIT)	
BY BEAUFORT COUNTY)	
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THIS MATTER was heard on December 14, 2016 by the North Carolina Building Code Council ("Council") in Raleigh, North Carolina on the appeal by Petitioners Dee Davis and Linwood Weeks ("Petitioners") from the July 18, 2016 decision of Respondent Office of State Fire Marshal ("OSFM Decision") of the North Carolina Department of Insurance affirming the June 27, 2016 denial of a building permit by the Beaufort County Building Inspections Department.

The hearing was properly noticed. A majority of the Residential Super-Committee of the Council was present, and a quorum of the members of the Council was also present. Petitioners represented themselves. The OSFM was represented at the hearing by North Carolina Assistant Attorney General M. Denise Stanford. The Council heard sworn testimony from Petitioner Dee Davis, her brother James Davis, OSFM Chief Code Consultant Barry Gupton, Beaufort County Lead Building Inspector Brandon Hayes and Beaufort County Public Health Department Environmental Health Supervisor Stacey Harris.

Based on the competent evidence in the record, the arguments of the parties and the record as a whole, the Council makes the following:

FINDINGS OF FACT

1. Petitioner Dee Davis owns one of 49 lots in the Hill's Point subdivision ("Hill's Point") in Blounts Creek, NC. There are 43 single-family mobile homes located in Hill's Point. Ms. Davis has a mobile home on her lot.

2. The Hill's Point Homeowner's Association ("HOA") operates a wastewater system for the Hill's Point lots. The wastewater system consists of an underground loop connecting individual septic tanks serving the 43 residences.

3. N.C. Gen. Ch. 130A, Article 11 ("Article 11") governs septic tank systems and other wastewater systems. N.C. Gen. Stat. § 130A-334 contains the definitions applicable to Article 11 and provides in relevant part:

(1c) **'Construction' means any work at the site of placement done for the purpose of preparing a residence, place of business or place of public assembly for initial occupancy, or subsequent additions or modifications which increase sewage flow.**

...

(3) **'Location' means the initial placement for occupancy of a residence, place of business or place of public assembly.**

(Emphasis added).

4. N.C. Gen. Stat. § 130A-335(a) requires in relevant part that the owner of a residence provide a wastewater system for the residence that has been approved under Article 11. In turn, N.C. Gen. Stat. §§ 130A-336 and 130A-337 require in relevant part that any wastewater system serving a residence be inspected and permitted by a local health department. Beaufort County Lead Building Inspector Mr. Hayes testified that, in 1987, the Hill's Point wastewater system received the necessary permit to operate.

5. N.C. Gen. Stat. § 130A-338 of Article 11 states:

Where construction, location or relocation is proposed to be done upon a residence, place of business or place of public assembly, no permit required for electrical, plumbing, heating, air conditioning or other construction, location or relocation activity under any provision of general or special law shall be issued until an authorization for wastewater system construction has been issued under G.S. 130A-336, or authorization has been obtained under G.S. 130A-337(c), or a decision on the completeness of the notice of intent to construct is made by the local health department pursuant to G.S. 130A-336.1(c).

(Emphasis added). Thus, by its terms, N.C. Gen. Stat. § 130A-338 only requires that, where a residential wastewater system is out of compliance with Article 11, counties deny those building permits that involve “construction, location or relocation” upon the residence within the unique meaning of Article 11.

6. On May 25, 2006, Beaufort County Environmental Health Supervisor Mr. Harris issued an Onsite Wastewater Violation Notice (“2006 Violation”) to the HOA. The 2006 Violation states that the Hill’s Point wastewater system is no longer in compliance with all necessary laws, including specifically Article 11.

7. In an original application of April 28, 2016 and later in an amended application of May 8, 2016, Petitioner Ms. Davis sought from the Beaufort County Building Inspections Department a building permit to expand an existing outdoors deck attached to her residence and to add a screen and roof to the deck. The existing deck was nine feet long and 24 feet wide. Ms. Davis sought to add a section to the deck that would be 12 feet long and 24 feet wide.

8. Mr. Harris testified that Ms. Davis’ proposed changes to her outdoors deck would not affect her residence’s septic tank or the Hill’s Point wastewater system.

9. N.C. Gen. Stat. § 153A-357 provides in relevant part:

(a) Except as provided in subsection (a2) of this section, no person may commence or proceed with any of the following without first securing from the inspection

department with jurisdiction over the site of the work **each permit required by the State Building Code and any other State or local law or local ordinance or regulation applicable to the work:**

- (1) The construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any building.

...

(Emphasis added).

10. Mr. Hayes denied Ms. Davis' application for a building permit based on the determination in the 2006 Violation that the Hill's Point wastewater system was no longer in compliance with Article 11. Mr. Hayes testified that, in denying the permit, he believed that the 2006 Violation Notice prohibited any new construction in Hill's Point that added to a residence's square footage, including Ms. Davis' proposed increase in the square footage of her deck.

11. Environmental Health Supervisor Mr. Harris, however, testified that the 2006 Violation itself did not create a moratorium on all such construction in Hill's Point, and that Beaufort County never otherwise moved to place a moratorium on development in Hill's Point or to condemn the residences there pursuant to N.C. Gen. Stat. § 153A-366.

12. On June 22, 2016, the County Attorney of Beaufort County, David C. Francisco, summarized the County's position on Ms. Davis' proposed deck project as being that, "unless [Ms. Davis] has a functioning (operating properly) sewage disposal system to her dwelling, a building permit will not be issued as required by the North Carolina State Building Code and NCGS 130A-337."

13. Section 106.2.2 of the 2012 NC State Building Code: Administrative Code and Policies permits a local inspection department to require "details, computations, stress diagrams or documentation sealed by a registered design professional and other data necessary to

describe” a proposed construction project. Ms. Davis’ contractor began work on the deck expansion before the County ruled on her permit application. As a result, in addition to conditioning the County’s issuance of a building permit on the Hill’s Point wastewater system being brought into compliance with Article 11, Mr. Hayes informed Ms. Davis she would have to obtain an engineer’s seal certifying that those parts of the deck expansion the contractor had already constructed were done in accordance with the North Carolina Building Code.

14. Petitioners appealed Beaufort County’s decision to the OSFM. On July 18, 2016, the OSFM Decision was issued, stating that, pursuant to N.C. Gen. Stat. §§ 130A-336 through 338, 153A-357 and 153A-366, Beaufort County was entitled to deny Ms. Davis’ building permit, even though “the new construction will not increase the demands on the existing septic system.”

CONCLUSIONS OF LAW

1. As noted, in relevant part, N.C. Gen. Stat. § 153A-357(a) provides that, to receive the building permit she seeks, Ms. Davis must secure from Beaufort County officials with “jurisdiction over the site of the work each permit required by the State Building Code and any other State or local law . . . applicable to the work.” (Emphasis added). Here, Beaufort County denied Ms. Davis a building permit for her deck project on the basis that the Hill’s Point wastewater system was out of compliance with Article 11. For the reasons below, however, Article 11 is not applicable to the specific “work” encompassed in the building permit Ms. Davis seeks.

2. As noted, N.C. Gen. Stat. § 130A-338 only prohibits the issuance of a building permit where “construction, location or relocation” within the meaning of Article 11 “is proposed to be done upon a residence.” N.C. Gen. Stat. § 130A-334(1c) limits the meaning of

“construction” under Article 11 to “any work at the site of placement done for the purpose of preparing a residence” for “initial occupancy” or “subsequent additions or modifications” to the residence “which increase sewage flow.” Further, N.C. Gen. Stat. § 130A-334(3) limits the meaning of “location” under Article 11 to “initial placement for occupancy of a residence.” Although it is not otherwise defined, by logical inference based on this definition of “location,” “relocation” within the meaning of N.C. Gen. Stat. § 130A-338 would mean any placement for occupancy of a residence which occurs after the original or initial placement for occupancy of the residence, such as when a mobile home owner might relocate his or her mobile home.

3. It was undisputed at the hearing of this matter that: (a) Ms. Davis’ proposed additions to her deck do not involve work done at her property for the purpose of preparing her mobile home for initial occupancy; (b) Ms. Davis’ proposed additions to her deck do not increase sewage flow; and (c) Ms. Davis’ proposed additions to her deck do not involve the initial or subsequent placement of her mobile home for occupancy. Consequently, N.C. Gen. Stat. § 130A-338 does not prohibit the issuance of the building permit that Ms. Davis seeks. Likewise, under N.C. Gen. Stat. § 153A-357(a), Article 11 – the “other State law” at issue besides the Building Code – does not require a permit for “the work” Ms. Davis has proposed.

4. Beaufort County has not identified any state law other than Article 11 or any local law that would otherwise prohibit the issuance of the building permit Ms. Davis seeks. Beaufort County is, however, entitled under Section 106.2.2 of the 2012 NC State Building Code: Administrative Code and Policies to condition the issuance of Ms. Davis’ building permit on her procurement of a seal from a registered design professional, including an engineer, certifying that those parts of the deck expansion Ms. Davis’ contractor has already constructed were done in accordance with the North Carolina Building Code.

5. In this Order, the Council makes no finding or conclusion regarding the effect or lack of effect of Article 11 or N.C. Gen. Stat. § 153A-357(a) on any project other than the one proposed in Ms. Davis' amended application of May 8, 2016. Nor does the Council make any determination about what does or does not constitute a wastewater system compliant with Article 11.

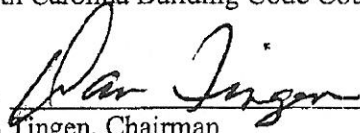
ORDER

Based on the foregoing Findings of Fact and Conclusions of Law:

1. The OSFM's July 18, 2016 decision in this matter is REVERSED;
2. Beaufort County should grant Ms. Davis the building permit she seeks in her amended application of May 8, 2016.
3. In its discretion, Beaufort County may condition the issuance of Ms. Davis' building permit on her procurement of a seal from a registered design professional, including an engineer, certifying that those parts of the deck expansion Ms. Davis' contractor has already constructed were done in accordance with the North Carolina Building Code.
4. The Council instructs the OSFM to transmit a copy of this Order immediately upon its issuance to the Lead Building Inspector for Beaufort County.
5. Additionally, the Council instructs the OSFM to post this Order prominently on its website(s) within 10 days by following the standards of N.C. Gen. Stat. §§ 143-138.1(b) and 143-141.
6. Finally, the Council instructs the OSFM to remove any interpretations underlying this appeal from its website(s) within 10 days.

SO ORDERED, this the 27 day of January 2017.

North Carolina Building Code Council

By: 
Dan Tingen, Chairman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing ORDER upon Petitioners via certified mail, return receipt requested, addressed as follows:

Dee Davis
6610 Colleen Rd.
Rocky Mount, NC 27803

Linwood Weeks
6610 Colleen Rd.
Rocky Mount, NC 27803

I HEREBY CERTIFY that I have this day served the foregoing ORDER upon counsel for Respondent via State interoffice mail, addressed as follows:

M. Denise Stanford
North Carolina Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001

This 27th day of January 2017.

JOSH STEIN
ATTORNEY GENERAL



Terence D. Friedman
Assistant Attorney General
North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602-0629
Telephone: (919) 716-6610
Attorney for the Building Code Council

July 18, 2016

Dee Anne Davis
(& Linwood Weeks)
6610 Colleen Road
Rocky Mount, NC 27803

**RE: GS 130A-336-338, Improvement Permits
GS 153A-357, Permits
GS 153A-366-371, Condemnation
Deck/Screen Porch Addition, 710 Hollis Drive, Blounts Creek, NC**

Ms. Davis:

This letter is in response your request for appeal of local decision (153A-374) dated 5/27/2016. I have reviewed the Keith Johnson, Attorney letter dated 6/14/2016 and the David Francisco, Attorney letter dated 6/22/2016.

I understand the following about this permit application:

- The permit application is for a new deck/screen porch addition to an existing dwelling.
- Construction was begun on this deck/screen porch addition without a building permit.
- There is a failed or failing septic system that serves this dwelling with notices of violations issued back to 2006.
- Construction may encroach within 5-feet of the septic system.
- The existing dwelling may be subject to condemnation due to a failed septic system.

The specific question raised in the request letter (in my words) is
Can Beaufort County deny a Building Permit for a deck/screen porch addition, when the new construction will not increase the demands on the existing septic system?

GS 130A-336-338 restricts the construction of a new residence that is not served by an approved wastewater system.
GS 153A-357 restricts construction until a permit is secured and all other local ordinances are met.
GS 153A-366 requires condemnation of unsafe buildings.

The new deck/screen porch addition to the existing dwelling does not affect the operation of the existing septic system; however, the existing dwelling may be condemned as unsafe due to a failed septic system. Beaufort County may deny the building permit for this addition until a septic system is approved by Environmental Health. Please contact us if you have comments or questions.

Sincerely,

Barry Gunton, PE
Chief Code Consultant

cc: File
Brian Alligood, Beaufort County
Brandon Hayes, Beaufort County
Stacey Harris, Beaufort County
Chris Noles, NCDOI