

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

RE: Appeal of the June 15, 2018)
 Requirement to separate the)
 enclosed bay area from the)
 existing with a fire rated wall.) NCDOI DECISION

In accordance with GS 160A-434, Morningstar Law Group representing Elite Waste Services, LLC and Raleigh Reclamation, LLC has appealed the Town of Apex's decision regarding the commercial building located at 520 Pristine Water Drive, Apex, NC 27502.

GS 160A-434 allows appeals of a code enforcement official pertaining to the code or any state building law to be addressed to the Chief Engineer for the NC Department of Insurance, Office of State Fire Marshal, Engineering Division.

PARTIES

Appellants: Morningstar Law Group, representing
 Elite Waste Services, LLC and Raleigh Reclamation, LLC

Appellee: Town of Apex
 73 Hunter Street
 Apex, NC 27502

BACKGROUND

The building located at 520 Pristine Water Drive, Apex is used for commercial purposes in the business of reclamation and waste services. The building has a business office section separated from a warehouse area less than 12,000 sf. An eight-inch block wall separates the business portion from the warehouse area. The warehouse area was used in the past to manufacture concrete products but now is used to manufacture containers used for waste. The warehouse area has recently undergone construction modifications that included the addition of block and steel panel walls that enclose this area. Elite Waste periodically has vehicles in the warehouse area to perform routine maintenance.

To close out the permit for the construction modifications, the Town of Apex is requiring the owner to obtain a permit to separate the enclosed bay area surrounding where the vehicles reside from the existing building with a fire rated wall.

ISSUE RAISED IN APPEAL

The following issues have been raised in Appellants' appeal:

1. That Elite Waste is not operating a "repair garage" and that from time to time, a vehicle will be pulled into the shelter [building] for maintenance and not be stored for any considerable length of time; and,
2. That any area for maintenance use would not require Elite Waste to separate the area with fire walls or install a ventilation system, sprinklers, or any other feature because the area in question is less than ten percent and would be considered an "accessory occupancy". In addition, the Building Code lists incidental accessory occupancies and "repair garage" is not included in NC Building Code Section 508.2.5.

FINDINGS

Based on information submitted by both the appellants and the appellee, a site visit on July 9, 2018, and discussions with both parties; the following findings were made:

Upon a site visit, a large commercial vehicle was present in one bay of the warehouse area of the building where maintenance was to be performed. The warehouse area appears to be less than 12,000 square foot in area, separated by an eight-inch block wall from the business office portion. The area where vehicles were to be serviced consists of two bays each with roll up garage doors. The approximate square footage of these two bays would be under 5,000 sf.

CONCLUSIONS

Based on the forgoing findings of fact, the following conclusions are made:

Section 302.1 of the NC Building Code requires a space used for multiple uses must comply with the requirements for all uses.

Within Section 903.2.9 of the 2012 NC Building Code, a Group S-1 occupancy requires an automatic sprinkler system be provided throughout all buildings containing a Group S-1 occupancy where one of the following conditions exists:

- 1 A Group S-1 fire area exceed 12,000 square feet.
- 2 A Group S-1 fire area is located more than three stories above grade plane.
- 3 The combined area of all Group S-1 fire area on all floors, including any mezzanines, exceeds 24,000 square feet.
- 4 A Group S-1 fire area used for the storage of commercial trucks or buses where the fire area exceeds 5,000 square feet.

Commercial vehicles are not to be left unattended in an Group S-1 fire area where the area exceeds 5,000 square feet. It was observed that a commercial vehicle was unattended.

Within Section 903.2.9.1 of the 2012 NC Building Code, repair garages require an automatic sprinkler system be provided throughout all buildings used as repair garages in accordance with Section 406, as shown:

1. Buildings having two or more stories above grade plane, including basements, with a fire area containing a repair garage exceeding 10,000 square feet.
2. Buildings no more than one story above grade plane, with a fire area containing a repair garage exceeding 12,000 square feet.
3. Buildings with repair garages servicing vehicles parked in basements.
4. A Group S-1 fire area used for the repair for commercial trucks or buses where the fire area exceeds 5,000 square feet.

Within Section 406.6 of the 2009 International Building Code Commentary (in which the 2012 NC Building Code is based), states the following about repair garages in part:

“Repair garages are those in which provisions are made for the care, repair and painting of vehicles. Repair garages have an inherently higher fire hazard represented by numerous vehicles in some state of repair, with possible spray painting. As such, these building or structures are classified as Group S-1. Repair garages must also meet the applicable required of Chapter 22 of the IFC and Section 416 if there are paint-spraying operations. All motor vehicle work that involves repairs or reconstruction of damaged or nonfunctioning vehicles is considered a high hazard. These types of facilities provide a variety of services, including tune-ups, oil changes, engine or transmission overhauls and body work, and are all considered as repair garages. Additional protection and detection systems are required to match the increased hazards.”

Performing maintenance on a commercial vehicle as described above would define the area as a repair garage and thus, be subject to Section 903.2.9.1 of the 2012 NC Building Code.

Within Section 508.2 of the 2012 NC Building Code, accessory occupancies are those occupancies that are ancillary to the main occupancy of the building or portion thereof. Accessory occupancies shall not occupy more than 10 percent of the building area of the story and accessory occupancies shall be individually classified in accordance with Section 302.1. The requirements of the NC Building Code shall apply to each portion of the building based on the occupancy classification of that space.

Even if the repair garage area is less than 10 percent of the total area, it must meet the requirements that apply to the occupancy classification of the space. Therefore, the space in question is under S-1 Storage, then Section 903.2.9 and 903.2.9.1 would apply. Under Section 903.2.9.1, buildings and structures that contain a repair garage in which the fire area exceeds 5,000 square feet must be equipped with an automatic sprinkler system. To remove the requirement for an automatic sprinkler system, the area in which maintenance is being performed on vehicles must be separated and not more the 5,000 square feet.

APPEAL DECISION

Based on the above findings and conclusions:

Pursuant to G.S. 143-138, the jurisdiction was valid in requiring the owner obtain a permit to separate the enclosed bay area from the existing building with a fire rated wall.

This 10th day of July 2018.

North Carolina Department of Insurance

A handwritten signature in blue ink, appearing to be 'C. J. ...', is written over a faint circular stamp.

FURTHER APPEAL RIGHTS

You have the right to appeal this decision to the NC Building Code Council. Please refer to GS 160A-434 and the NC Administrative Code and Policies, Section 202.9.2 for further appeal rights. You have 30 days in which to appeal this decision.

Cc:

Rudy Baker, Town of Apex

Brian Meyer, Town of Apex