

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

RE: Appeal of the September 9,)
2019 Order to Abate and) NCDOI DECISION
Immediately Vacate issued by)
the Davidson County Fire
Marshal's office.

In accordance with GS 153A-361, Morningstar Law Group representing Cory Albright, owner of 24/7/365, Inc., has appealed the Davidson County Fire Marshal's decision regarding the Order to Abate and Immediately Vacate the business located at 1744 Old US Highway 52, Lexington, NC 27295.

GS 153A-361 allows general appeals from any order, decision, or determination by a member of a local inspection department pertaining to the State Building Code or other State laws to the NC Department of Insurance, Office of State Fire Marshal, Engineering Division.

PARTIES

Appellants: Morningstar Law Group, representing
Cory Albright, owner of 24/7/365, Inc.
112 West Main Street, Second Floor
Durham, NC 27701

Appellee: Davidson County Fire Marshal
935 North Main Street
Lexington, NC 27292

BACKGROUND

The business located at 1744 Old Highway 52 in Lexington is being used as an internet café, where customers purchase time to use computers. The business also offers copying and fax services and has been in service for 10 years. On February 22, 2019, the Fire Marshal issued a Notice of Violation in which included code violations and raised the issue of a potential change of use. Following the Notice, the Fire Marshal gave the property owner of the building and 24/7/365, Inc. 90 days to address the violations including the change of use. Both the property owner and business were not able to address all the issues within the 90-day period. The Fire Marshal issued the Order to Abate and Immediately Vacate on September 9, 2019 determining the building was unsafe.

ISSUE RAISED IN APPEAL

The following issue is raised in Appellants' appeal:

"...the Fire Marshal does not provide a factual basis to explain why the building is now so unsafe that it must be immediately vacated, but that it was not in the condition for the past six months. Finally, the Fire Marshal does not provide a factual basis to explain why it is necessary, reasonable or proportionate to the alleged harm to immediately close the business entirely rather than issue a less restrictive order restricting the occupancy of the building if in fact the occupancy of the building is the primary concern."

FINDINGS

Based on information submitted by the appellant, the following findings are made:

1. The Order to Abate and Immediately Vacate was included in the appeal.
2. The Department of Insurance has received a sketch of the space from the Davidson County Fire Marshal's office showing a layout of the rooms, doorways, exits, restrooms, computers and furniture.
3. The Department of Insurance has received a drawing of the space from the Appellant's Architect showing a dimensional layout of the rooms, doorways, exits, restrooms, computers and furniture.
4. "Internet Sweepstakes Café Occupancy Classifications" interpretation is posted here: www.ncdoi.com/OSFM/Engineering_and_Codes/Documents/Interpretations5/2018%20Building/0303%20-%20Internet%20Sweepstakes%20Cafe%20Occupancy%20Classification.pdf
5. For Internet sweepstakes cafes, NCDOL's interpretation details occupancy calculations. The drawing from the Appellant's architect does not meet the requirements for Item 1 (Group B) of the interpretation due to the following:
 - i. The gaming stations are not restricted by a receptionist similar to a doctor's office. This would be through a waiting area in which customers would be granted access through a door or area by the receptionist.
 - ii. There is no waiting area shown on the drawings.

For this building to meet the NCDOL's interpretation, a separate waiting and receptionist area would be required that would limit access to the gaming areas. The number of machines could then be used to calculate the number of occupants based upon the number of machines. The number of machines and seating shown on the drawing is 67; therefore, the occupancy would be between 70-80 depending on the layout of the waiting and receptionist areas.

The interpretation is based on the ability for a person to limit the number of occupants to the maximum occupant load posted. Without meeting the interpretation, the number of occupants shall be calculated by the NC Building Code Table 1004.1.2.

6. For Internet sweepstakes cafes, NCDOL's interpretation details occupancy calculations. The drawing from the Appellant's architect does not meet the requirements for Item 2 (Group B) of the interpretation because the total occupant load is more than 50 based upon 11 square feet per person for "gaming floors" from table 1004.1.2.

7. For Internet sweepstakes cafes, NCDOL's interpretation details occupancy calculations. The drawing from the Appellant's architect does meet the requirements for Item 3 (Group A-3) of the interpretation because the total occupant load is more than 50 based upon 11 square feet per person for "gaming floors" from table 1004.1.2.

8. The occupancy of this building based upon the interpretation (Item 3 – Group A-3) and code are as follows (estimated from the architect's drawing):

- i. Business Area: $340/100 =$ 3 occupants
- ii. Gaming Area: $\text{approx. } 1800/11 =$ = 163 occupants
166 occupants

9. To the knowledge of the Davidson County Fire Marshal's office, this building originally contained a lawnmower sales and repair shop, which would most likely have been a Business (B) occupancy given the size and limited quality of hazardous liquids.

10. A change of occupancy would require that all NC Codes are met including the number of plumbing fixtures, exits, etc.

11. Regardless of any type of occupancy, the number of occupants is over 49 is required to have a minimum of two exits.

12. At the time of the Order, the Davidson County Fire Marshal's office indicated that in Notice of Violation on February 22, 2019 about the change of occupancy and through a letter on April 25, 2019. Within this documentation sent, the Fire Marshal's office quoted the NC Fire Prevention Code which states the following:

***"110.1.1 Unsafe conditions.** Structures or existing equipment that are or hereafter become unsafe or deficient because of inadequate means of egress or which constitute a fire hazard or are otherwise dangerous to human life or the public welfare, or which involved illegal or improper occupancy or inadequate maintenance, shall be deemed an unsafe condition."*

13. The Davidson County Fire Marshal's office emailed pictures and documentation concerning the means of egress shown on the drawing from the Appellant's Architect. Those concerns are as follows:

- i. The left side door does not swing out as shown, but into the building. Egress doors must swing in the direction of travel per Section 1010.1.2.1 of the NC Building Code.
- ii. The left side door hardware does not meet Section 1010.1.9.1 of the NC Building Code shown below:

“1010.1.9.1 Hardware. Door handles, pulls, latches, locks and other operating devices on doors required to be accessible by Chapter 11 shall not require tight grasping, tight pinching or twisting of the wrist to operate.”

- iii. The front doors are electromagnetic locked from the pictures received in an email from the Davidson County Fire Marshal’s office. It appears that a sensor is located to the left-hand side of the doors. Because there is no sensor located directly in front of the doors that would automatically open when an occupant approached, then Section 1010.1.9.8 of the NC Building Code is not met.

CONCLUSIONS

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

Pursuant to G.S. 153A-361, the appellee is correct that the building is unsafe based upon the NC Fire Prevention Code Section 110.1.1 stating that the space did not have adequate means of egress. Further, the space did have a change of occupancy from business to assembly. The number of occupants is based on 1 occupant per 11 sf and not based on the number of machines given that there is no waiting area or receptionist in which would restrict access to the machines. The interpretation is based on the ability for a person (receptionist) to limit the number of occupants to the maximum occupant load posted.

APPEAL DECISION

Based on the above findings and conclusions:

The decision to issue an Order to Abate and Immediately Vacate issued by the Davidson County Fire Marshal’s office is upheld because the lack of adequate means of egress in which creates an unsafe condition.



North Carolina Department of Insurance

This 4th day of November 2019.

FURTHER APPEAL RIGHTS

You have the right to appeal this decision to the NC Building Code Council. Please refer to GS 153A-361 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:
Danny Ward, Davidson County Fire Marshal