



4. That on April 13, 2020, Mr. Askew appealed the March 20, 2020 formal interpretation from Carl Martin to the NC Building Code Council.

### **FINDINGS OF FACT**

Based on the competent evidence in the record, the arguments of the parties, the documents and drawings introduced by the parties at the hearing, and the record as a whole, the Council makes the following findings of fact:

1. Mr. Askew and Mr. Travis are licensed architects in North Carolina.
2. Mr. Askew and Mr. Travis are the architects of record for the Fountains at Endhaven commercial project involving the construction of Residential Group R-2 apartment buildings in Charlotte, Mecklenburg County, North Carolina (the "Project").
3. On or about March 3, 2020, the Mecklenburg County Building Inspector denied a temporary certificate of occupancy for the Project because the vanity double sinks in Building 2 were less than 30 inches apart, in violation of Section 405.3.1 of the 2012 North Carolina Plumbing Code. Mr. Travis testified that there are a total of approximately 40 to 50 preformed double sink vanity countertops at the Project with sinks that are less than 30 inches apart center-to-center. Mr. Travis testified that the lack of required clearance between the lavatories was not discovered before final inspection by the Mecklenburg County Building Inspector.
4. Section 405.3.1 of the 2012 North Carolina Plumbing Code states, in pertinent part:

**405.3.1 Water closets, urinals, lavatories and bidets.** A water closet, urinal, lavatory or bidet shall not be set closer than 15 inches (381 mm) from its center to any side wall, partition, vanity or other obstruction, or closer than 30 inches (762 mm) center-to-center between adjacent fixtures. ...

Exception: For one- and two-family dwellings and townhouses. see the *North Carolina Residential Code*.

2012 N.C. Bldg. Code, Plumbing Code, § 405.1.3.

5. On or about March 10, 2020, Mr. Askew and Mr. Travis submitted a Request for Alternate Method/Material to Mecklenburg County Code Enforcement seeking an interpretation of Section 405.3.1 of the 2012 North Carolina Plumbing Code that adjacent lavatories at the Project are not subject to the 30 inch spacing requirement. Specifically, Petitioner contended that “a second lavatory, over and above the minimum number required in the space[,] not be required to comply with Section 405.3.1 as long as the primary lavatory does meet this requirement.” A copy of the Request for Alternate Method/Material, dated March 10, 2020, was included in the exhibit introduced at the hearing of this matter as Respondent’s Exhibit 2.

6. The Request for Alternate Method/Material was denied by Mecklenburg County Mechanical/Plumbing Code Administrator Tommy Rowland on March 10, 2020. Among other things, Mr. Rowland noted in his denial that “Section 405.3.1 NCPC requires 30 inches from center line of adjacent fixtures, it does not specify that it applies only to required fixtures. Commentary clarifies the 30 inch spacing is required for adjacent lavatories.” The March 10, 2020 denial was also introduced at the hearing and included in Respondent’s Exhibit 2.

7. Petitioner’s March 12, 2020 appeal of Mecklenburg County’s denial of the Request for Alternate Method/Material to NC DOI stated that Petitioner sought “clarification regarding whether [Section 405.3.1’s 30 inch spacing requirement between adjacent fixtures] should extend to additional, non-required fixtures such as second sinks in a master bathroom, given that the code is silent regarding this specific condition.” The March 12, 2020 appeal of the local inspection decision was introduced at the hearing and included in Respondent’s Exhibit 2.

8. N.C.G.S. § 143-140(a) provides as follows:

(a) Any person desiring to raise any question under this Article or under the North Carolina State Building Code shall be entitled to a technical interpretation from the appropriate enforcement agency, as designated in the preceding section. Upon request in writing by any such person, the enforcement agency through the appropriate official shall within a reasonable time provide a written interpretation, setting forth the facts found, the decision reached, and the reasons therefor. In the event of dissatisfaction with such decision, the person affected shall have the options of:

- (1) Appealing to the Building Code Council or
- (2) Appealing directly to the Superior Court, as provided in G.S. 143-141.

N.C.G.S. § 143-140(a). “Interpretations by the Council and local enforcement officials shall be based on a reasonable construction of the Code provisions.” N.C.G.S. § 143-141(b).

9. In his March 20, 2020 formal interpretation of Section 405.3.1 of the 2012 North Carolina Plumbing Code, OSFM Chief Code Consultant Carl Martin affirmed Mr. Rowland’s interpretation that the rule’s 30 inch clearance requirement applies to all fixtures, reasoning that nothing in the text of the rule indicates that its application is limited to “required” fixtures:

The basis of the appeal appears to be that because the second lavatory is not a required fixture it is not required to comply with Section 405.3.1. Unfortunately, 405.3.1 is not limited to required fixtures; it addresses all fixtures just as the sanitary drain requirement of Chapter 7 apply to all fixtures.

Mr. Martin also rejected Petitioner’s argument that Section 405.3.1’s exception for one- and two-family dwellings and townhouses should extend to Residential Group R-2 apartment buildings, like the Project, that are subject to the requirements of the North Carolina Building Code. “Section 405.3.1. contains no exception that allows use of the [NC Residential Code] fixture clearances for dwelling[s] constructed under the NC Building Code.”

10. In his April 13, 2020 appeal to this body, Petitioner noted that certain adjacent lavatories at the Project have spacing “of 25 [inches] to 27 [inches]” and again requested

“confirmation on appeal that this 30” requirement should NOT extend to additional, non-required fixtures such as second sinks in a master bathroom, given that the 2012 NC Plumbing Code Section 405.3.1 is silent regarding this specific condition.” Petitioner’s April 13, 2020 written notice of appeal was introduced at the hearing as Respondent’s Exhibit 1.

11. Mr. Martin testified that the design intent behind Section 405.3.1’s 30 inch center-to-center clearance requirement between fixtures is two-fold: (1) prevention of the transmission of pathogens and (2) the ergonomics and accessibility of the fixtures for use. According to Mr. Martin, Section 405 of the 2012 North Carolina Plumbing Code does not distinguish between “required” and “non-required” fixtures for the purposes of the 30 inch clearance requisite for adjacent fixtures.

11. Mr. Travis testified that, in his opinion as an architect, 27 inch center-to-center spacing between lavatories provides adequate space for usability of the fixtures, particularly in an apartment setting. Mr. Travis noted that the North Carolina Residential Code only requires a 15 inch minimum distance from an obstruction, not 30 inches between fixtures.

12. Mr. Travis also testified that on July 14, 2020, the Council granted a new petition for rulemaking at its quarterly meeting that, if ultimately approved and promulgated, would exclude “private side by side lavatories” from the 30 inch clearance requirement of Section 405.3.1 of the 2018 North Carolina Plumbing Code. The Council’s July 14, 2020 action allows the petition to proceed and the petition is expected to be subject to public hearing and comment at the Council’s next quarterly meeting. Mr. Travis testified that Mecklenburg County Code Enforcement has granted a temporary certificate of occupancy and that certain buildings at the Project are already occupied by the public. The June 2, 2020 agenda of the July 14, 2020

Council meeting describing the subject new petition for rulemaking was introduced at the hearing as Petitioner's Exhibit G.

### **CONCLUSIONS OF LAW**

Based on the foregoing findings of fact, the Council hereby makes the following conclusions of law:

1. As stipulated by the parties, the Council finds that this matter was timely appealed, and that the Council has jurisdiction over the parties and the subject matter.
2. Because it involves the construction of Residential Group R-2 apartment buildings, the Council finds that the Project is governed by the requirements of the North Carolina Building Code, not the North Carolina Residential Code.
3. Because Section 405.3.1 of the 2012 North Carolina Plumbing Code does not contain language distinguishing between "required" and "non-required" fixtures, but rather by its plain language applies to all "adjacent fixtures," the Council finds that Petitioner's contention that "additional, non-required fixtures" are exempt from Section 405.3.1's 30 inch center-to-center clearance requirement is unreasonable and lacks substantial legal basis.
4. For these reasons and because Section 405.3.1 of the 2012 North Carolina Plumbing Code does not include an express exception applicable to the lavatories at issue here, the Council finds that the March 20, 2020 formal interpretation by OSFM Chief Code Consultant Carl Martin is based on a reasonable construction of the applicable Code provision.

### **ORDER**

Based on the foregoing findings of fact and conclusions of law, the Council hereby ORDERS that OSFM Chief Code Officer Carl Martin's March 20, 2020 formal interpretation of

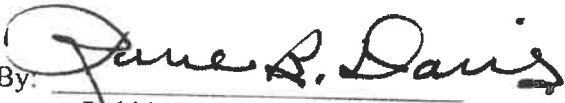
Section 405.3.1 of the 2012 North Carolina Plumbing Code, introduced and admitted at the July 29, 2020 hearing as Respondent's Exhibit 2, is AFFIRMED.

This affirmance is accompanied by the Council's unanimous recommendation to Mecklenburg County Code Enforcement suggesting that it extend the existing temporary certificate of occupancy issued for the Project through July 1, 2021 to allow the pending petition for rulemaking seeking to amend Section 405.3.1 of the 2018 North Carolina Plumbing Code to be considered by the Council.

The Council instructs NC DOI to transmit a copy of this Order immediately upon its issuance to Mecklenburg County Code Enforcement.

SO ORDERED, this the 6<sup>th</sup> day of August 2020.

North Carolina Building Code Council

By:   
Robbie B. Davis, Chair

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day served the foregoing ORDER upon the Petitioner via email and United States certified mail, return receipt requested, addressed as follows:

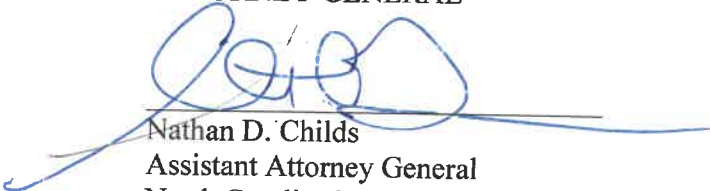
Chad Askew, AIA  
Housing Studio, P.A.  
333 West Trade Street, Suite 300  
Charlotte, N.C. 28202  
**Email: caskew@housingstudio.com**  
*Petitioner*

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

Daniel S. Johnson, Esq.  
Special Deputy Attorney General  
Thomas J. Felling, Esq.  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629  
*Attorneys for Respondent North Carolina Department of Insurance*

This 10<sup>th</sup> day of August 2020.

JOSHUA H. STEIN  
ATTORNEY GENERAL



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