

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

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RE:    Appeal of the January 18, 2022            )  
      Appeal Response by                        )                        NCDOI DECISION  
      Town of Newport                            )  
      Inspection Department.                 )

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In accordance with GS 160D-1127, Michelle Benton, PE, representing Life Church, has appealed the Town of Newport Inspection Department decision regarding issuance of a permit for a project named “Tenant Alteration/Addition Plan” located at Bldg-1, 6923 A-J Hwy 70E, Newport, NC.

GS 160D-1127 allows appeals from any order, decision, or determination by a member of a local inspection department pertaining to the State Building Code or other State building laws to the Commissioner of Insurance or his designee.

**PARTIES**

Appellant:    Michelle Benton, PE  
                  Project Manager  
                  Boulia Construction & Restoration  
                  6931A Hwy 70  
                  Newport, NC 28570

Appellee:     Town of Newport  
                  200 Howard Blvd.  
                  Newport, NC 28570

**BACKGROUND**

On January 6, 2022 the appellant made appeal to the appellee to accept a floor plan dated December 2, 2021, known henceforth as plan #2, for property located at Building 1, 6923 A-J Hwy 70, Newport, NC.

On January 6, 2022 the appellee questioned the changing of the name of a space from “Welcome Areas” to “Exit Access” and “Exit Access Corridor”. The appellee indicated that doing so was an effort to keep the calculated occupant load below 300 so that NFPA 13 sprinklers would not be required.

On January 12, 2022 the appellant asked the appellee if an appeal to the State was necessary.

On January 18, 2022 the appellee, after conversation with NCDOI, did not accept plan #2 because the proposed calculated occupant load did not match the calculated occupant load of plan #1.

On January 18, 2022 the appellant again questioned the appellee's determination. No response was issued.

On January 19, 2022 the appellant made a properly formatted request for formal interpretation to the NC Department of Insurance.

On January 20, 2022 I informed the appellant that the request was an "appeal" instead of a request for "formal interpretation" because the request is jobsite specific and not a general interpretation of code.

### **ISSUE RAISED IN APPEAL**

The appellant questioned the enforcement of occupant loading from plan #1, that was revised by plan #2. Plan #2 changed a previously listed "welcome/waiting area" with a calculated occupant load of 49 to an "exit access corridor" with no calculated occupant load.

The following issue is raised in Appellants' appeal:

"Specifically we seek clarification of the administrative and existing building codes which provide for previously approved drawings to be used as a basis to deny current applications for revised tenant uses and floor plans."

### **FINDINGS**

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

1. A copy of the June 18, 2022 appeal made to the appellee by the appellant was included. The appeal indicates that the appellant believes that plan #2 supersedes plan #1 and that the designated exit access corridor is not required to have a designated calculated occupant load.
2. A copy of the email string between the appellant and the appellee that ended on January 18, 2022 was provided. The email indicated that appellee had sought the opinion of NC DOI and that opinion supported the appellee's position that plan #2 did not supersede the calculated occupant loads shown in plan #1. The appellee also indicated in the email string that the calculated occupant load was manipulated to avoid installation of a fire sprinkler system that would be required if the fire area exceeded a calculated occupant load of 300 per 2018 NC Fire Code and Building Code, section 903.2.1.3 unless the sanctuary (worship) area was 2-hour separated into a separate fire area.
3. The request for appeal is based on the 2018 edition of the NC State Building Code for both plan #1 and plan #2.
4. A copy of plan #1 was included. Plan #1 indicated a total calculated occupant load of 417.
5. A copy of plan #2 was included. Plan #2 indicated a total calculated occupant load including added floor area of 285. This was done by not loading exit access corridors and reducing calculated occupant loads in various other areas.
6. 2018 NC Building, Section 202, Definitions, defines "gross floor area" as follows:

**FLOOR AREA, GROSS.** The floor area within the inside perimeter of the *exterior walls* of the building under consideration, exclusive of vent *shafts* and *courts*, without deduction for *corridors*, *stairways*, *ramps*, closets, the thickness of interior walls, columns or other features. The floor area of a building, or portion thereof, not provided with surrounding *exterior walls* shall be the usable area under the horizontal projection of the roof or floor above. The *gross floor area* shall not include *shafts* with no openings or interior *courts*.

7. 2018 NC Building, Section 202, Definitions, defines “net floor area” as follows:

**FLOOR AREA, NET.** The actual occupied area not including unoccupied accessory areas such as *corridors*, *stairways*, *ramps*, toilet rooms, mechanical rooms and closets.

8. 2018 NC Building Code, Table 1004.1.2 indicates that occupant load for “business areas” is calculated based on “gross” square footage.

9. 2018 NC Building Code, Table 1004.1.2 indicates that occupant load for “assembly without fixed seating” is calculated based on “net” square footage.

10. 2018 NC Existing Building Code, Section 101.4.2 reads as follows:

**101.4.2 Buildings previously legally occupied.**

The legal occupancy of any building existing on the date of adoption of this code shall be permitted to continue without change, except as is specifically covered in this code, the *International Fire Code*, or as is deemed necessary by the *code official* for the general safety and welfare of the occupants and the public.

11. 2018 NC Existing Building Code, Section 1001.2.3 reads as follows:

**1001.2.3 Change or partial change of occupancy classification or group.**

Where the occupancy classification changes, the provisions of Sections 1002 through 1012 shall apply. This includes a *change of occupancy* classification within a group as well as a *change of occupancy* classification from one group to a different group.

12. 2018 NC Existing Building Code, Table 1012.4 reads as follows:

**TABLE 1012.4  
MEANS OF EGRESS HAZARD CATEGORIES**

ELATIVE HAZARD	OCCUPANCY CLASSIFICATIONS
1 (Highest Hazard)	H
2	I-2, I-3, I-4
3	A, E, I-1, M, R-1, R-2, R-4
4	B, F-1, R-3 <sup>a</sup> , S-1
5 (Lowest Hazard)	F-2, S-2, U

13. 2018 NC Existing Building Code, Section 1012.4.2 reads as follows:

**1012.4.2 Means of egress for change of use to equal or lower hazard category.** When a change of occupancy classification is made to an equal or lesser hazard category (higher number) as shown in Table 1012.4, existing elements of the means of egress shall comply with the requirements of Section 905 for the new occupancy classification. Newly constructed or configured means of egress shall comply with the requirements of Chapter 10 of the *International Building Code*.

14. 2018 NC Administrative Code and Policies, Section 204.11.2 reads as follows:

**Occupant load posted.** When required by the code enforcement official, signs stating the occupant load determined in accordance with occupant load specified in the technical codes shall be posted by the owner of the building in each assembly room, auditorium or room used for a similar purpose where fixed seats are not installed. The seating capacity shall be determined in accordance with the technical codes and signs posted at locations approved by the code enforcement official. It shall be unlawful to remove or deface such notice or to permit more than this legal number of people within such space. The signs shall read as follows:

“Occupancy by more than \_\_\_\_\_ persons is  
dangerous and unlawful  
  
\_\_\_\_\_, CEO”

### CONCLUSIONS

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

The occupancy classification of what was Kid’s Rm 2, Kid’s Rm 3, and Kid’s Rm 4 in plan #1 changed to Group B office spaces. NC Existing Building Code, Table 1012.4 indicates that the new Group B is a lesser hazard than the previous Group E and Section 1012.4.2 allows egress to remain as existing because the change is to a lesser hazard.

The NC Existing Building Code, Section 101.4.2 allows occupant loading already in existence to be used where there is no change in occupancy classification or construction work being performed. The sanctuary occupant load can remain as shown on plan #1. Any changes to that load will require compliance with 2018 NC Building Code, Table 1004.1.2, which would be calculated at 7 square feet per person.

Since the sanctuary area has adequate egress without egressing through the proposed exit access corridor, the exit access corridor (that was previously named “welcome waiting area”) can then be considered as part of the office area only which includes an office area and a coffee/café area. This results in slight increase in calculated occupant load of 6 occupants based on the 619 square foot floor area given for the exit access corridor in plan #2 and the requirement of 2018 NC Building Code, Table 1004.1.2 to calculate business occupancies for “gross floor area”.

The codes do not address allowance of previous drawings to be used as basis for determining calculated occupant loading; however, with a slight calculated occupant load increase of 6 occupants as noted in the previous paragraph, plan #2 is the correct method for calculating occupant loads for this project.

#### **APPEAL DECISION**

Based on the above findings and conclusions:

The decision to issue use plan #2 instead of plan #1 for the proposed project by the appellant is upheld.

To alleviate future concerns about the allowed occupant load of the sanctuary the occupant load of the sanctuary must be posted as required by 2018 NC Administrative Code, Section 204.11.2.

This 9<sup>th</sup> day of February 2022.



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Carl Martin, RA  
Deputy Commissioner  
Division Chief of Engineering  
North Carolina Department of Insurance

#### **FURTHER APPEAL RIGHTS**

The appellant and appellee have the right to appeal this decision to the NC Building Code Council. Please refer to GS 160D-1114 and the NC Administrative Code and Policies, Section 202.9.2 for further appeal rights. In accordance with GS 143-141 you have 30 days in which to appeal this decision to the NC Building Code Council.

Cc:

Kyle Burger, Building Inspector, Town of Newport  
Nathan Childs, Special Deputy Attorney General – NCBCC  
Dan Johnson, Special Deputy Attorney General, NCDOI