

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

RE: Appeal of the November 15,)
 2022 Notice of Code Violation)
 by the Buncombe County) NCDOI DECISION
 Fire Marshal’s Office)

In accordance with N.C.G.S. § 160D-1127, Jesse Swords, representing Development of the Bluffs of Woodfin has appealed the Buncombe County Fire Marshal’s Office decision regarding remoteness of fire access roads with regards to the 2018 edition of the North Carolina Fire and Building Code Sections 503.1.2, D104.1 and D104.3.

N.C.G.S. § 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: Jesse M. Swords,
 Development of the Bluffs of Woodfin
 20 Town Mountain Road, Suite 100
 Asheville, NC 28801

Appellee: Buncombe County Fire Marshal’s Office
 164 Erwin Hills Rd.
 Asheville, NC 28806

BACKGROUND

On August 9, 2022 appellant submitted a site plan for review by the appellee. The appellee raised a potential fire access issue.

On August 29, 2022 the appellee stated that a revised site plan with a second fir access road complied with ingress/egress requirements of 2018 NC Fire Code Appendix D.

On November 15, 2022, the appellee reversed the August 29, 2022 decision and stated that the revised plan did not comply with 2018 NC Fire Code Appendix D.

On November 22, 2022 the appellant properly filed a request for appeal of the November 15, 2022 appellee decision with the NC Department of Insurance.

ISSUE RAISED IN APPEAL

Appellants' appeal reads, in part, as follows:

"However, we wish to appeal the following statements made by Fire Marshal Tipton in his November 15, 2022, correspondence:

- a. First, that '[b]oth access points are from the same street' is factually incorrect. As shown on the attached site plans, one entrance is located on Richmond Hill Drive, and the other is located on Hornot Circle Drive.
- b. Second, its statement regarding the proximity of the proposed entrance is incorrect. As set forth in Mr. Mannino's November 21, 2022, letter, the proposed entrances conform to the remoteness requirement based on the measure of the 'area to be served' as provided in Section D104.3."

FINDINGS

Based on information submitted by the appellant, the undersigned makes the following findings:

1. A copy of the appellee's August 29, 2022, email indicating compliance with 2018 NC Fire Code Appendix D was provided with the appeal. The email states:

"The revised plan submitted by Thomas Mannino P.E., complies with ingress/egress requirements as set forth in the 2018 NC Fire Prevention Code Appendix-D as adopted."

2. A copy of the appellee's November 15, 2022, email indicating noncompliance with 2018 NC Fire Code Appendix D was provided with the appeal. The email states in part:

"I conducted a 'PRELIMINARY' review at your request on August 25th, 2022. As we discussed, two separate entrances must be provided. A conceptual drawing showing the addition of a second entrance for emergency services was submitted. I have met with Woodfin Town Staff regarding this conceptual drawing. We have discussed this at length and applied the proper code. In the interest of public safety, we are in agreement that the proposed concept submitted would not provide adequate access or evacuation routes due to the location and proximity of the entrance. Both access points are from the same street. During an emergency this blockage would restrict emergency personnel from reaching buildings and place residents and visitors in danger by preventing adequate evacuation. Codes and Standards applying to this development are listed below for your reference."

2018 NC Fire Code Sections 503.1.2 Additional Access, D104.1 Buildings Exceeding Three Stories or 30 Feet in Height, and D104.3 Remoteness were listed in the email from the appellee that is being appealed.

3. 2018 NCFC Section 503.1.2 Additional Access states:

“503.1.2 Additional access. The fire code official is authorized to require more than one fire apparatus access road based on the potential for impairment of a single road by vehicle congestion, condition of terrain, climate conditions or other factors that could limit access.”

4. 2018 NCFC Section D104.1 – Buildings Exceeding Three Stories or 30 Feet in Height states:

“D104.1 Buildings exceeding three stories or 30 feet in height. Buildings or facilities exceeding 30 feet (9144 mm) or three stories in height shall have at least two means of fire apparatus access for each structure.”

5. 2018 NCFC Section D104.3 Remoteness states:

“D104.3 Remoteness. Where two fire apparatus access roads are required, they shall be placed a distance apart equal to not less than one half of the length of the maximum overall diagonal dimension of the lot or area to be served, measured in a straight line between accesses.”

6. Buildings numbered 5, 6, 7, 9, 16, 25, 26, and 33 contain 12 proposed dwelling units in each building. The remaining 25 buildings contain 24 proposed dwelling units in each building. The total number of proposed dwelling units on the site is 696.

7. 2018 NC Fire Code Section D106.2 Projects Having More Than 200 Dwelling Units states:

“D106.2 Projects having more than 200 dwelling units. Multiple-family residential projects having more than 200 dwelling units shall be provided with two separate and approved fire apparatus access roads regardless of whether they are equipped with an approved automatic sprinkler system.”

8. 2018 NC Fire Code Section D106.3 Remoteness states:

“D106.3 Remoteness. Where two fire apparatus access roads are required, they shall be placed a distance apart equal to not less than one half of the length of the maximum overall diagonal dimension of the property or area to be served, measured in a straight line between accesses.”

9. The appellant makes no claims that the buildings on the site are less than 3 stories or less than 30 feet in height.

CONCLUSIONS

Based on the foregoing findings of fact, the undersigned makes the following conclusions:

1. 2018 NC Fire Code Sections D104 and D106 apply.

2. Since the appellant did not refute that the buildings are either three stories or more or 30 feet or more in height 2018 NC Fire Code Sections D104.1 and D104.3 apply.

3. The two proposed fire access roads shown on the proposed site plan sent with the request for appeal do not terminate directly on the same road. They do, however, eventually converge and terminate within a few hundred feet onto Richmond Hill Drive which includes the adjacent property as part of the "area to be served". The result is less than two remote fire apparatus access roads being provided, which is a requirement of 2018 NC Fire Code Sections D104.2, D104.3, D106.2, and D106.3.

4. The two remote fire apparatus access roads for the site as required by 2018 NC Fire Code Sections D104.1 and D106.2 applies to all buildings served by the fire apparatus access and, therefore, the entirety of the site. The diagonal across the site used to determine "remoteness" is measured from point "A" to point "B" as shown on attachment A of this document. The second fire apparatus access road shown on the proposed site plan does not comply with 2018 NC Fire Code Sections D104.3 and D106.3 for remoteness.

5. Buildings 14 through 23 as shown on attachment A of this document contain a total of 228 dwelling units and require two remote fire apparatus access roads as described in 2018 NC Fire Code Section D106.3. The site plan submitted by the appellant does not comply with 2018 NC Fire Code Section D106.3 for Buildings 14 through 23.

APPEAL DECISION

Based on the above findings and conclusions:

The appellee's decision regarding both proposed fire access roads terminating on the same road is UPHELD.

The appellee's decision regarding remoteness of proposed fire access roads is UPHELD.

This 6th day of December 2022.



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 N.C.G.S § 160D-1114 and the NC Administrative Code and Policies Section 202.9.2 for further appeal rights. In accordance with N.C.G.S § 143-141 you have 30 days in which to appeal this decision to the NC Building Code Council.

Cc:

Kevin Tipton, Interim Fire Marshal, Buncombe County
Nathan Childs, Special Deputy Attorney General – NCBC
Erin Gibbs, Assistant General Counsel, NCDOI

