

**North Carolina Office of the State Fire Marshal  
Engineering and Building Codes Division in the Department of Insurance**

---

RE: Appeal of the October 21, 2024, )  
Decision by Davie County )  
Planning and Development )  
Services to deny a reduction of ) OSFM DECISION  
the required bathrooms to a )  
single unisex bathroom for )  
teachers and a single unisex )  
bathroom for students. )

---

In accordance with N.C.G.S. § 160D-1127, Frankie Vaughn, of Westwood Village Learning Center has appealed the Davie County Planning and Development Services decision to deny a reduction of the required bathrooms to a single unisex bathroom for teachers and a single unisex bathroom for students at the Westwood Village Learning Center, 135 Medical Drive, Bermuda Run, NC 27006.

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 State Fire Marshal or his designee.

**PARTIES**

Appellant: Frankie Vaughn  
Westwood Village Learning Center  
135 Medical Drive  
Bermuda Run, NC 27006.

Appellee: Davie County Planning and Development Services  
298 E. Depot Street, Suite 100  
Mocksville, NC 27028

**BACKGROUND**

On October 21, 2024, the appellant submitted an appeal to OSFM on behalf of the Westwood Village Learning Center, a “small private micro-school with a max of 20 students” located in Bermuda Run, North Carolina, requesting that occupancy of the school building “be lowered” such that the building’s existing two restrooms would be sufficient to comply with Section 403.1 of the 2018 North Carolina Plumbing Code (“2018 NCPD”). Prior to submission of the appeal, the appellant submitted architectural

plans to the appellee showing a building occupant load of 40 with two unisex toilets. The appellee provided approval for an adjusted occupant count of 29 and an adjusted plumbing fixture calculation of one unisex teacher's bathroom and two students' bathrooms separated by sex; however, the appellant took the position that a third bathroom is not required by the 2018 NCPC and appealed that decision to OSFM. In support of their position, the appellant argues that Section 403.6 of the 2018 NCPC – which authorizes the appellee to adjust the occupant content for “manufacturing, workshops, loft building, foundries, storage, aircraft hangars, garages and similar establishments” – applies to the school building and that the appellee should have exercised the discretion granted by that section to approve the provision of only two unisex bathrooms.

On November 4, 2024, OSFM's Chief Building Code Consultant and Chief Plumbing Code Consultant issued an informal response to the appellant pending formal review of the appeal. The informal response explained that the 2018 NCPC requires four separate bathrooms in the building – two bathrooms separated by sex for the students and two bathrooms separated by sex for the teachers. The informal response further explains that the authority to adjust occupant content lies with the appellee, who has already denied the occupant content adjustment requested by the appellant.

#### **ISSUE RAISED IN APPEAL**

The appellant is appealing the appellee's decision to deny a reduction of the required bathrooms to a single unisex bathroom for teachers and a single unisex bathroom for students for the Westwood Village Learning Center, 135 Medical Drive, Bermuda Run, NC 27006.

The appellants' appeal reads in most relevant part as follows:

'We are a small private micro-school with a max of 20 students and 4 staff members. We have 2 restroom each with 1 toilet and 1 sink. I am requesting occupancy be lowered to which 2 restrooms would adequate. I am requesting a TCO until decision from the state has been received.

I have appealed to our planning board and they agreed to lower occupancy to 29 but are requiring a 3<sup>rd</sup> restroom which is not needed. 1 unisex for 20 students is enough. 1 unisex for staff. Our students have lost their opportunity scholarship and endanger of losing all their esa and esa plus grants. All our students in-house have IEP's and we are K-8 in house'

#### **FINDINGS**

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

Code sections noted in this letter are referring to the 2018 edition of the NC Plumbing Code (NCPC) unless otherwise noted.

**403.1 Minimum number of fixtures.** In new construction or building additions and in changes of occupancy as defined in the *North Carolina Building Code*, plumbing fixtures shall be provided for the type of occupancy and in the minimum number shown in Table 403.1 based on the actual use of the building or space. Uses not shown in Table 403.1 shall be considered individually by the code official. The number of occupants shall be determined by the *International Building Code*. Occupancy classification shall be determined in accordance with the *International Building Code*.

.....

**TABLE 403.1**  
**MINIMUM NUMBER OF REQUIRED PLUMBING FIXTURES<sup>a, p</sup> (See Sections 403.1.1 and 403.2)**

NO.	CLASSIFICATION	OCCUPANCY	DESCRIPTION	WATER CLOSETS (URINALS: SEE SECTION 419.2)		LAVATORIES		BATHTUBS/ SHOWERS	DRINKING FOUNTAIN (SEE SECTION 410)	OTHER
				MALE	FEMALE	MALE	FEMALE			
2	Business (see sections 403.2, 403.3 and 403.3.3.1)	B	Buildings for the transaction of business, professional services, other services involving merchandise, office buildings, banks, light industrial and similar uses	1 per 30 for the first 30 and 1 per 50 for the remainder exceeding 30		1 per 40 for the first 80 and 1 per 80 for the remainder exceeding 80		—	1 per 100	1 service sink <sup>o</sup>
3	Educational	E <sup>b, i</sup>	K-8 9-12 Teacher/staff	1 per 25 1 per 30 1 per 30	1 per 25 1 per 25 1 per 25	1 per 60 1 per 100 1 per 100	—	1 per 100	—	

.....

a. The fixtures shown are based on one fixture being the minimum required for the number of persons indicated or any fraction of the number of persons indicated. The number of occupants shall be determined by this code.

b. Toilet facilities for employees shall be separate from facilities for inmates, students or care recipients.

.....

**403.2 Separate facilities.** Where plumbing fixtures are required, separate facilities shall be provided for each sex.

**Exceptions:**

1. Separate facilities shall not be required for dwelling units and sleeping units.
2. Separate facilities shall not be required in business occupancies with a total occupant load, including both employees and customers, of 30 or fewer. Separate facilities shall not be required in all other structures or tenant spaces with a total occupant load, including employees and customers, of 25 or fewer.
3. Separate facilities shall not be required in mercantile occupancies in which the maximum occupant load is 100 or fewer.
4. Except as provided in Section 405.3.2.
5. Where the code requires only one toilet facility for each sex, two unisex facilities may be substituted for separate facilities.

.....

**403.6 Adjustments in occupant content.** If an owner or tenant requests, the plumbing official shall make adjustments in the occupant content established by Table 403.1 for manufacturing, workshops, loft building, foundries, storage, aircraft hangars, garages and similar establishments. The owner or occupant shall provide written data accompanied by plans that substantiates a claim that the occupant content of a particular building or tenancy will, at all times, be less than provided for in the above table. Approval of such data and accompanying claims shall not prevent the plumbing official from requiring additional facilities based on the above table, should changes be made affecting the floor plan upon which the original approval was based whether such changes be made by the original or ultimate owner or building occupant or occupants. The remainder of the facilities requirements of Section 403.2 are not affected by this paragraph.

.....

### CONCLUSIONS

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

1. To achieve compliance with the 2018 NCPC, the Westwood Village Learning Center at its current floor area and configuration must provide a total of four bathrooms, with two bathrooms separated by sex for students and two bathrooms separated by sex for teachers. The designer used Section 1004 of the 2018 NCBC to calculate this occupant load for means of egress and other life safety provisions. The occupant load of 40 for egress determined is applicable per the designers' calculations contained within the Appendix B and life safety plans and that number is required to be used in applying 2018 NCPC 403.1 for calculating the number of fixtures from Table 403.1.
2. The occupant reduction provisions of 2018 NCPC 403.6 are applicable to manufacturing, workshops, loft buildings, foundries, storage, aircraft hangars, garages and similar establishments only and are not applicable to business and educational occupancies.
3. The exceptions to using unisex toilets in 2018 NCPC 403.2 are not applicable because the occupant load of 40 in this intermixed business/education occupancy is higher than 25. The primary occupancy is education for this intermixed floorplan because it is the more stringent occupancy within the floor area and is also the largest percentage of the floor area so the entire occupant load of 40 is applied to Table 403.1 for educational occupancy. Also, note b in Table 403.1 requires toilet facilities for employees shall be separate from students.
4. The current floor plan considered in this appeal is open with pieces of business and educational occupancies intermixed including teachers and students using the same unisex bathrooms. If the appellant can revise the architectural plans to isolate the business side from the educational side (i.e. limit access of students from the business side except for specific business-related activities associated with the reception areas and teacher offices) by consolidating the business and

educational pieces and reduce the area dedicated to the educational occupancy to 24 students from 27, then the provision to use one unisex toilet for teachers and another students may be considered as code-compliant by the appellant in applying 2018 NCPC 403.2. The fact that the tenant space has two sets of egress doors is beneficial in consolidation of the business and educational pieces.

5. The NC Office of State Fire Marshal has no authority to issue a Certificate of Occupancy (CO). The county issues the CO once all applicable laws, codes and local ordinances are met and the space is deemed safe for public occupancy (N.C.G.S. § 160D-1127).

#### **APPEAL DECISION**

Based on the above findings and conclusions for the architectural plans considered in this appeal, the appellee's decision to deny a reduction of the required bathrooms to a single unisex bathroom for teachers and a single unisex bathroom for students for the Westwood Village Learning Center, 135 Medical Drive, Bermuda Run, NC 27006. is UPHeld.



This 9th day of February 2025.

---

David Rittlinger, PE, LEED AP  
Division Chief – Codes & Interpretations  
North Carolina Office of State Fire Marshal

#### **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:

Johnny E. Easter, Director, Planning and Development Services, Davie County Planning and Development Services, [jeaster@daviemountync.gov](mailto:jeaster@daviemountync.gov)

Kelly R. Jordan, Inspections Supervisor, Chief building Code Official, Davie County Planning and Development Services, [kjordan@daviemountync.gov](mailto:kjordan@daviemountync.gov)

Nathan Childs, NCDOJ, counsel for NC Building Code Council, [nchilds@ncdoj.gov](mailto:nchilds@ncdoj.gov)

Nicki Shaffer, NCDOJ, counsel for NC Residential Code Council, [wshaffer@ncdoj.gov](mailto:wshaffer@ncdoj.gov)