



APPENDIX C
CODE CHANGE PROPOSAL
NORTH CAROLINA
BUILDING CODE COUNCIL

325 North Salisbury Street, Room 5\_44
Raleigh, North Carolina 27603
(919) 647-0009
carl.martin@ncdoi.gov

Granted by BCC \_\_\_\_\_ Adopted by BCC \_\_\_\_\_ Item Number \_\_\_\_\_
Denied by BCC \_\_\_\_\_ Disapproved by BCC \_\_\_\_\_ Approved by RRC \_\_\_\_\_
Objection by RRC \_\_\_\_\_

PROPONENT: Cheryl K. Dean and Timothy W. Maloney PHONE: (704) 277 -6862
REPRESENTING: North Carolina Registered Landscape Architects
ADDRESS: 13611 Alston Forest Drive
CITY: Huntersville STATE: NC ZIP: 28078
E-MAIL: cheryl@deanif.com FAX: ( ) -

North Carolina State Building Code, Volume Administrative Code and Polices - Section 204.3.5 and 204.3.5.1

CHECK ONE: [X] Revise section to read as follows: [ ] Delete section and substitute the following:
[ ] Add new section to read as follows: [ ] Delete section without substitution:

LINE THROUGH MATERIAL TO BE DELETED UNDERLINE MATERIAL TO BE ADDED

Please type. Continue proposal or reason on plain paper attached to this form. See reverse side for instructions.

Refer to second page

Will this proposal change the cost of construction? Decrease [ ] Increase [ ] No [X]
Will this proposal increase to the cost of a dwelling by \$80 or more? Yes [ ] No [X]
Will this proposal affect the Local or State funds? Local [ ] State [ ] No [X]
Will this proposal cause a substantial economic impact (>=\$1,000,000)? Yes [ ] No [X]

- Non-Substantial - Provide an economic analysis including benefit/cost estimates.
• Substantial - The economic analysis must also include 2-alternatives, time value of money and risk analysis.
• Pursuant to §143-138(a1)(2) a cost-benefit analysis is required for all proposed amendments to the NC Energy Conservation Code. The Building Code Council shall also require same for the NC Residential Code, Chapter 11.

REASON:

Refer to second page

BCC CODE CHANGES

Signature: \_\_\_\_\_
Timothy W. Maloney - #773

Date: Apr. 11, 2023 FORM 11/26/19
Cheryl K. Dean - #942

## PROPOSED CODE CHANGE:

204.3.5 Design professional seal required.

Where the General Statutes require, no permit shall be issued unless the construction documents (drawings and specifications), bear the North Carolina seal of a registered design professional. Construction documents shall include the name and address of the business entity (individual, corporation or partnership) with whom the registered design professional is affiliated. Question concerning this section should be directed to the North Carolina Board of Architecture, ~~or~~ the North Carolina Board of Examiners for Engineers and Land Surveyors or the North Carolina Board of Landscape Architects.

204.3.5.1 Registered design professional.

The registered design professional shall be a registered architect, licensed professional engineer, registered landscape architect or NICET Level III sprinkler designer legally registered or licensed under the laws of this state.

## REASON:

This change proposed to the declared definition of a registered design professional would resolve any conflicts when a system, structure, or element, defined by the NC State Building Code is appropriately designed and certified by a Registered Landscape Architect practicing within their expertise. Currently when the NCBC specifies certain systems, structures, and elements, be designed, or certified by a “registered design professional” that precludes a qualified Registered Landscape Architect from providing design services for things like, but not limited to, retaining walls, decks, soils, or foundation analysis.

A Registered Landscape Architect is a professional who has demonstrated knowledge acquired through professional education, experience, testing and continuing education and is deemed eligible to perform the services in connection with the development of land areas. This practice shall include the preparation of plans and specifications and supervising the execution of projects involving the arranging of land and construction elements in accordance with the accepted professional standards of public health, safety, and welfare. Further, the scope of this practice, as defined by G.S. 89A-1(3) and G.S. 89A-2(b) shall be limited only by the licensee possessing the requisite knowledge and experience to provide the service. These services can include the design and certification of systems, structures, or elements such as retaining walls and decks, among others.

Furthermore, this proposed change aligns the state’s building codes with the 1989 opinion from the Attorney General of NC (copy attached) which states that a town cannot exclude a qualified licensed design professional --- and specifically mentions “landscape architect” – from designing and sealing something the licensee is qualified to design. There is no legal distinction between a town and the State as a unit of government, and the Attorney General’s opinion should be equally applicable.

 **FILE A CONSUMER COMPLAINT**

 **SEARCH NCDOJ**

 **REPORT A ROBOCALL**



## Authority of Municipality to exclude Architects from Preparing Plans

**October 10, 1989** Municipalities; Architects and Engineers; Authority of Municipality to exclude Architects from preparing plans submitted under Land Use Ordinance

**Subject:**

**Requested By: Michael B. Brough Carrboro Town Attorney**

**Question: Can the Town of Carrboro, under its Land Use Ordinance, require that all construction drawings submitted for approval be prepared and sealed by a licensed professional engineer, to the exclusion of licensed professional architects?**

**Conclusion: No.**

Article IV, Part III of the Carrboro Land Use Ordinance contains the following provision:

1. "All construction drawings submitted shall be signed by and carry the seal of the professional engineer responsible for their preparation, who shall be licensed to practice in the State of North Carolina."

The Town has interpreted this provision to exclude the submission of drawings by anyone other than a professional engineer licensed in North Carolina, including licensed professional architects.

The question presented is whether Article IV, Part III of the Carrboro Land Use Ordinance, as interpreted by the Town of Carrboro, is a valid ordinance if applied in a manner which requires that all construction drawings submitted for approval be prepared and sealed by a licensed professional engineer, to the exclusion of licensed professional architects. It is our opinion that the ordinance, if interpreted and applied in this manner, constitutes the establishment by the Town of a distinction between the practices of Engineering, Architecture and Landscape Architecture, which is outside the scope of the authority granted to the Town by the North Carolina General Statutes.

The practice and licensing of Engineers is governed by Chapter 89C of the General Statutes. The practice and licensing of Architects is governed by Chapter 83A of the General Statutes, and the practice and licensing of Landscape Architects is governed by Chapter 89A of the General Statutes. Within these statutory provisions, the Legislature has set forth the services which may be legally performed by professionals practicing under each license. Additionally, these statutory provisions, as well as the majority of courts which have addressed the subject, recognize the existence of an overlap between the practices of Architecture and Engineering. For instance,

N.C.G.S. § 89C-25 specifically states:

"This Chapter shall not be construed to prevent or affect...The practice of architecture,

landscape architecture or contracting or any other legally recognized profession or

 **English**

trade...."

Conversely, N.C.G.S. § 83A-12 states:

"Nothing in this Chapter shall be construed to prevent the practice of general contracting under the provisions of Article 1 of Chapter 87, or the practice by any person who is qualified under law as a "Registered Professional Engineer" of such architectural work as is incidental to Engineering projects or utilities, or the practice of any other profession under the applicable licensure provision of the General Statutes."

Because of the overlapping between the two professions, the courts in the majority of jurisdictions considering the issue have generally concluded that where either a licensed architect or a licensed engineer performs services which could properly be regarded as falling within the statute licensing his profession, as well as within the statute licensing the other profession, he performs the services under the statute under which he is licensed. See 82 ALR 2d, Architect or Engineer-License, Section 4, page 1026. As such, the critical inquiry is whether the service performed falls within the scope of the license held by the person performing the service. As defined under individual licensing provisions, certain architectural functions cannot be performed by engineers, and vice versa.

It is our assumption that the land use ordinance was adopted by the Town pursuant to the powers granted by Chapter 160A of the General Statutes. Under Chapter 160A the Town has been granted the power to adopt reasonable land use ordinances for the purpose of promoting the health, safety, and general welfare of the community. We find nothing in Chapter 160A which permits a town to administratively encroach upon the authority of the Legislature to define and regulate the respective practices of engineering and architecture. Nor are we aware of any provision in the General Statutes, other than the specific licensing provisions referred to above, that recognizes or approves the distinction made in the Carrboro Land Use Ordinance. It therefore appears that the restriction imposed by Section 15-87(a) of the ordinance is not a reasonable restriction and is in excess of the powers granted to the Town.

Lacy H. Thornburg Attorney General

Grayson G. Kelley Assistant Attorney General

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 English