



MIKE CAUSEY, INSURANCE COMMISSIONER & STATE FIRE MARSHAL  
BRIAN TAYLOR, CHIEF STATE FIRE MARSHAL

February 10, 2023

Mr. Kenneth Michael  
Womble Bond Dickinson (US) LLP  
One West Fourth Street  
Winston-Salem, NC 27101

**RE: Fourth RCCC Request for Formal Interpretation**

Mr. Michael:

This letter is in response to your request for formal interpretation to the Office of State Fire Marshal ("OSFM") dated January 31, 2023, which NCDOI received by email the same day. I am addressing your requests below in the order in which they are posed.

Your letter states in relevant part:

Unless corrected otherwise, RCCC's understanding is that Carl Martin's NCDOI First 01/06/22 Formal Interpretation determined that, based on Chapter 10 – Means of Egress, of the North Carolina Building Code, the following applies:

- For the Stepped Aisle (Steps B through F and J through N), the adjacent riser height uniformity tolerance is 3/16 inch (Code Section 1011.5.4);
- For the Back Exit Access Stairways (Steps A, G, H and I) and Curved Stage Steps (Steps O through W), the allowed maximum tolerance from the smallest to the greatest riser height is 3/8 inch (Code Section 1029.13.2.2.1); and
- Except for Curved Stage Steps O and P, all the as-built Back Exit Access Stairway Steps, Stepped Aisle Steps and Curved Stage Steps Q-W do not comply with Chapter 10 of the NC Building Code.

The NCDOI Second 09/23/22 Formal Interpretation (and subsequent NCDOI Third and Fourth Formal Interpretations) responded to WC Construction's Request for Formal Interpretation dated August 2, 2022, which narrowly asked the hypothetical

‘Whether the steps in the aisles labeled B through F and J through N may be considered landscape steps?’ It is reported that the Rowan County Building Department interprets NCDOI as having expressed an opinion that certain plan revisions might create a path to approval of certain non-compliant items and that NCDOI was offering this ‘alternate’ review standard or option as part of an appeal brought by RCCC’s original contractor.

**Remarks:**

OSFM does not interpret these paragraphs as posing requests for Code interpretation, nor does your letter denominate them as such. Rather, these paragraphs appear to be your personal characterizations of the 01/06/22 Formal Interpretation and the Second 09/23/22 Formal Interpretation (and subsequent NCDOI Third and Fourth Formal Interpretations), plus a statement regarding the Rowan County Inspection Department’s interpretation of which OSFM is unaware. OSFM can only respond to your characterizations of its interpretations by stating that the interpretations speak for themselves.

Additionally, your letter states:

**Request One:** Is it correct that:

- (a) pursuant to NCDOI First 01/06/22 Formal Interpretation, based on the intent of the Project Architect and the Construction Documents as originally submitted for Permit, the as-built Back Exit Access Stairway Steps and Stepped Aisle Steps (and Curved Stage Steps Q through W) do not comply with the NC Building Code;
- (b) pursuant to NCDOI Second 09/23/22 Formal Interpretation (and subsequent NCDOI Third and Fourth Formal Interpretations), if the Architect of Record would be willing to revise and resubmit signed and sealed Construction Documents for Permit with “landscape steps” and the alternative means of egress intent that has been proposed by NCDOI, then the as-built Back Exit Access Stairway Steps and Stepped Aisle Steps could be considered to comply with the NC Building Code; and
- (c) If the Architect of Record were to do what is described in Paragraph (b) above:
  - 1) the Rowan County Inspections Department, as the Authority Having Jurisdiction (AHJ), can still exercise its discretion concerning the steps to not issue a Certificate of Occupancy; and

- 2) the NC State Construction Office can still exercise its discretion concerning the steps to not accept the as-built construction at project closeout?

**Remarks:**

Request 1(a)

In response to the statement in Request 1(a), OSFM is not able to interpret the architect's subjective intent. Additionally, OSFM has never been provided with "construction documents," such as a life-and-safety plan, for the as-built Back Exit Access Stairway Steps and Stepped Aisle Steps that would clarify how these steps may have been originally designated as egress steps.

Additionally, for OSFM's interpretation of 01/06/2022, OSFM had been asked whether the as-built Back Exit Access Stairway Steps and Stepped Aisle Steps complied with the Code's tolerance requirements. For OSFM's later interpretation of 09/23/22, OSFM had been asked whether the same steps had to comply with the Code's tolerance requirements at all. Upon consideration of this different question, OSFM determined that the as-built Back Exit Access Stairway Steps and Stepped Aisle Steps did not have to comply with the Code's tolerance requirements for the reasons stated in the 09/23/22 interpretation.

The Code provisions relevant to this Request are already cited in OSFM's prior interpretations, so OSFM does not repeat them herein.

Request 1(b)

Request 1(b) asks OSFM to speculate about what procedural steps the Rowan County Inspections Department may require in order for that Department to consider whether the as-built Back Exit Access Stairway Steps and Stepped Aisle Steps have to comply with the Code's tolerance requirements at all. OSFM does not control such procedures, however, and so cannot speak to them.

That said, when and if your client completes whatever procedural steps the Rowan County Inspection Department may ask it to complete, then OSFM's interpretation of 09/23/22 will be binding on that Department, which will be required by law to conclude that the as-built Back Exit Access Stairway Steps and Stepped Aisle Steps are not required to comply with the Code's tolerance requirements. See 2018 N.C. Building Code: Admin. Code and Policies 203.2.1.2.

The remaining Code provisions relevant to this Request are already cited in OSFM's prior interpretations, so OSFM does not repeat them herein

Request 1(c)

As stated in response to Request 1(b), when and if your client completes whatever procedural steps the Rowan County Inspection Department may ask it to complete, then OSFM's interpretation of 09/23/22 is binding on that Department, which will be required by law to conclude that the as-built Back Exit Access Stairway Steps and Stepped Aisle Steps are not required to comply with the Code's tolerance requirements See 2018 N.C. Building Code: Admin. Code and Policies 203.2.1.2.

Otherwise, OSFM does not enforce the laws applying to the North Carolina State Construction Office and cannot opine on what that Office can do within its discretion.

The remaining Code provisions relevant to this Request are already cited in OSFM's prior interpretations, so OSFM does not repeat them herein

Your letter further states:

**Request Two:** Is NCDOT First 01/06/22 Formal Interpretation in conflict with NCDOT's Second, Third and Fourth Formal Interpretations? If yes, would the conclusion of possible code compliance in NCDOT Second 09/23/22 Formal Interpretation (and subsequent NCDOT Third and Fourth Formal Interpretations) be applicable if:

- (a) the actual intent of the Project Architect was and without revision will continue to be that the Stepped Aisles (Steps B through F and J through N) and back Stairway (Steps A,G,H & I) are to be used as Means of Egress?
- (b) The Project Architect's Construction Documents as submitted (and not revised) to the Rowan County Inspections Department for review and permitting show that the Stepped Aisles and back Stairways were intended to be used as the primary egress from the stage and seating areas to the Public Way?
- (c) the Project Architect neither intended nor is interested in revising the Construction Documents to depict such intent, for the sloped grassy areas flanking the amphitheater to be used as an Egress Court or Yard for purposes of a Means of Egress Exit Discharge?

**Remarks:**

As explained in response to your Request 1(a) above, the OSFM was asked different questions for its 01/06/2022 interpretation than for its 09/23/22 interpretation, and OSFM answered the questions accordingly. Consequently, OSFM does not consider these two interpretations to be in conflict.

Your letter further states:

**Request Three:** Please explain the use of the term “landscape steps” and where it can be found in the NC Building Code or any published Code commentaries.

**Remarks:**

The OSFM is unaware of the term “landscape steps” appearing in the Code or any of its commentaries. The OSFM considers the term to mean steps that are not required for egress, not inside a building, constructed on grade, and used to provide a comfortable means of traversing a change in grade of an earthen landscape.

Finally, your letter states:

**Request Four:** NCDOT’s conclusions (2) and (3) set forth in NCDOT Fourth 12/01/22 Formal Interpretation essentially determined if the plans were hypothetically revised to depict the back Stairway (Steps A,G,H & I) and Stepped Aisles (Steps B through F and J through N) to be considered “landscape steps”, they would not be required to comply with the Chapter 10 means of egress or Chapter 11 accessibility requirements (incorporating ICC A117.1) of the 2018 NC Building Code. However, since the just-mentioned steps will still in fact be used by the public even if not a means of egress, how great a difference can the risers be with respect to adjacent risers and within a flight of steps and not run afoul with the 2018 NC Building Code?

The first sentence of your Request 4 does not contain a question to OSFM but rather your personal characterization of the 12/01/22 interpretation. OSFM can only respond to your characterization of this interpretation by stating that the interpretation speaks for itself.

Otherwise, for the reasons expressed in the OSFM’s 09/23/22 interpretation, the steps at issue in this Request 4 are not subject to the Code. Consequently, there is no limitation on any difference between the risers with respect to adjacent risers and within a flight of steps.

The Code provisions relevant to this Request are already cited in OSFM’s prior interpretations, so OSFM does not repeat them herein.

Sincerely,



David B. Rittlinger, PE, LEED AP  
Chief Code Consultant  
NCDOI-OSFM Engineering & Codes Division

cc:     Bridget Herring, Chair – BCC  
          Mark Matheny, Vice-Chair – BCC  
          Michael Ali, Chair, Commercial Super Committee - BCC  
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## ATTACHMENT A

womblebonddickinson.com

January 31, 2023

*Via Electronic Mail*  
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Re: **Fourth RCCC Request for Formal Interpretation (N.C. Gen. Stats. § 160D-1127)**  
Rowan Cabarrus Community College Outdoor Classroom Phase II (the "Project")  
1333 S. Jake Alexander Blvd., Salisbury, NC

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Commissioner Causey,

Womble Bond Dickinson is counsel for Rowan Cabarrus Community College ("RCCC"), submitting this Fourth RCCC Request for Formal Interpretation concerning the referenced Project to which RCCC is the owner. For location purposes, find attached Exhibit "A" Location Key for Stair Runs, that identifies the runs of stairs on the Project with the letters A-W (used for reference on all five Requests for Formal Interpretations concerning this Project).

This Fourth RCCC Request for Formal Interpretation is the overall Fifth Request for Formal Interpretation concerning the referenced Project, which follows the four Formal Interpretations listed below, which are in NCDOT's files and referenced and incorporated herein but are not physically attached:

- On January 6, 2022, NCDOT provided its First Formal Interpretation to RCCC's Request for Formal Interpretation dated December 16, 2021 ("NCDOT First 01/06/22 Formal Interpretation").
- On September 23, 2022, NCDOT provided its Second Formal Interpretation to WC Construction's Request for Formal Interpretation dated August 2, 2022 ("NCDOT Second 09/23/22 Formal Interpretation").
- On October 17, 2022, NCDOT provided its Third Formal Interpretation to RCCC's Request for Formal Interpretation dated September 28, 2022 ("NCDOT Third 10/17/22 Formal Interpretation").
- On December 1, 2022, NCDOT provided its Fourth Formal Interpretation to RCCC's Request for Formal Interpretation dated November 3, 2022 ("NCDOT Fourth 12/01/22 Formal Interpretation").

Unless corrected otherwise, RCCC's understanding is that Carl Martin's NCDOT First 01/06/22 Formal Interpretation determined that, based on Chapter 10 – Means of Egress, of the North Carolina Building Code, the following applies:

- For the Stepped Aisle (Steps B through F and J through N), the adjacent riser height uniformity tolerance is 3/16 inch (Code Section 1011.5.4);

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- For the Back Exit Access Stairways (Steps A, G, H and I) and Curved Stage Steps (Steps O through W), the allowed maximum tolerance from the smallest to the greatest riser height is 3/8 inch (Code Section 1029.13.2.2.1); and
- Except for Curved Stage Steps O and P, all the as-built Back Exit Access Stairway Steps, Stepped Aisle Steps and Curved Stage Steps Q-W do not comply with Chapter 10 of the NC Building Code.

The NCDOT Second 09/23/22 Formal Interpretation (and subsequent NCDOT Third and Fourth Formal Interpretations) responded to WC Construction's Request for Formal Interpretation dated August 2, 2022, which narrowly asked the hypothetical "Whether the steps in the aisles labeled B through F and J through N *may be considered* landscape steps?" It is reported that the Rowan County Building Department interprets NCDOT as having expressed an opinion that certain plan revisions might create a path to approval of certain non-compliant items and that NCDOT was offering this "alternate" review standard or option as part of an appeal brought by RCCC's original contractor.

**Request One:** Is it correct that:<sup>1</sup>

- (a) pursuant to NCDOT First 01/06/22 Formal Interpretation, based on the intent of the Project Architect and the Construction Documents *as originally submitted for Permit*, the as-built Back Exit Access Stairway Steps and Stepped Aisle Steps (and Curved Stage Steps Q through W) *do not comply* with the NC Building Code;
- (b) pursuant to NCDOT Second 09/23/22 Formal Interpretation (and subsequent NCDOT Third and Fourth Formal Interpretations), *if* the Architect of Record would be willing to *revise and resubmit* signed and sealed Construction Documents for Permit with "landscape steps" and the alternative means of egress intent that has been proposed by NCDOT, *then* the as-built Back Exit Access Stairway Steps and Stepped Aisle Steps *could be considered to comply* with the NC Building Code; and
- (c) If the Architect of Record were to do what is described in Paragraph (b) above:
  - 1) the Rowan County Inspections Department, as the Authority Having Jurisdiction (AHJ), can still exercise its discretion concerning the steps to *not* issue a Certificate of Occupancy; and
  - 2) the NC State Construction Office can still exercise its discretion concerning the steps to *not* accept the as-built construction at project closeout?

**Request Two:** Is NCDOT First 01/06/22 Formal Interpretation in conflict with NCDOT's Second, Third and Fourth Formal Interpretations?<sup>2</sup> If yes, would the conclusion of possible code compliance in NCDOT Second 09/23/22 Formal Interpretation (and subsequent NCDOT Third and Fourth Formal Interpretations) be applicable if:<sup>3</sup>

- (a) the actual intent of the Project Architect was *and without revision will continue to be* that the Stepped Aisles (Steps B through F and J through N) and back Stairway (Steps A,G,H & I) are to be used as Means of Egress?
- (b) The Project Architect's Construction Documents as submitted (*and not revised*) to the Rowan County Inspections Department for review and permitting show that the Stepped Aisles and back

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<sup>1</sup> RCCC's current understanding is the answers to all the sub-queries in Request One will be "yes", and is therefore seeking confirmation.

<sup>2</sup> RCCC's current understanding is the answer to the predicate query in Request Two will be "no", and is therefore seeking confirmation that they are not in conflict.

<sup>3</sup> RCCC's current understanding is the answers to the three sub-queries in Request Two will be "no", and is therefore seeking confirmation.



Stairways were intended to be used as the primary egress from the stage and seating areas to the Public Way?<sup>4</sup>

- (c) the Project Architect neither intended *nor is interested in revising the Construction Documents to depict such intent*, for the sloped grassy areas flanking the amphitheater to be used as an Egress Court or Yard for purposes of a Means of Egress Exit Discharge?<sup>5</sup>

**Request Three:** Please explain the use of the term “landscape steps” and where it can be found in the NC Building Code or any published Code commentaries.

**Request Four:** NCDOT’s conclusions (2) and (3) set forth in NCDOT Fourth 12/01/22 Formal Interpretation essentially determined if the plans were hypothetically revised to depict the back Stairway (Steps A, G, H & I) and Stepped Aisles (Steps B through F and J through N) to be considered “landscape steps”, they would *not* be required to comply with the Chapter 10 means of egress or Chapter 11 accessibility requirements (incorporating ICC A117.1) of the 2018 NC Building Code. However, since the just-mentioned steps will still in fact be used by the public even if not a means of egress, how great a difference can the risers be with respect to adjacent risers and within a flight of steps and not run afoul with the 2018 NC Building Code?<sup>6</sup>

RCCC appreciates your consideration of the foregoing four Requests and thanks you in advance for your assistance. We respectfully request that anything NCDOT can do to expedite the processing of this Fourth RCCC Request for Formal Interpretation would be greatly appreciated.

Please do not hesitate to let us know if you need any additional documents or information. Thank you for your prompt attention to this matter.

Sincerely,

WOMBLE BOND DICKINSON (US) LLP



Kenneth R. Michael

KRM: kwb

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<sup>4</sup> The Architect of Record submitted signed and sealed plans for the referenced Project that were the local building officials’ basis for issuing a Building Permit on April 16, 2020, depicting the intent of the Project Architect regarding NC Building Code issues. This includes but is not limited to Sheet G-102, Life Safety Plan, that expressly shows a means of egress path through Stair Runs A – F and Q indicative of the designer’s intent.

<sup>5</sup> It is reported that McAdams, the Project Architect, is not interested in revising the Construction Documents pursuant to NCDOT’s offered alternate review standard or option based on “landscape steps” to depict a possible code-compliant means of egress system being provided via each end of the seating rows to a yard at grade level as assumed in NCDOT’s Second, Third and Fourth Formal Interpretations.

<sup>6</sup> For a hypothetical example, to find in the NC Building Code where adjacent risers not in a means of egress that varied by as much as 1 1/16 inch would be deemed unacceptable and in violation.

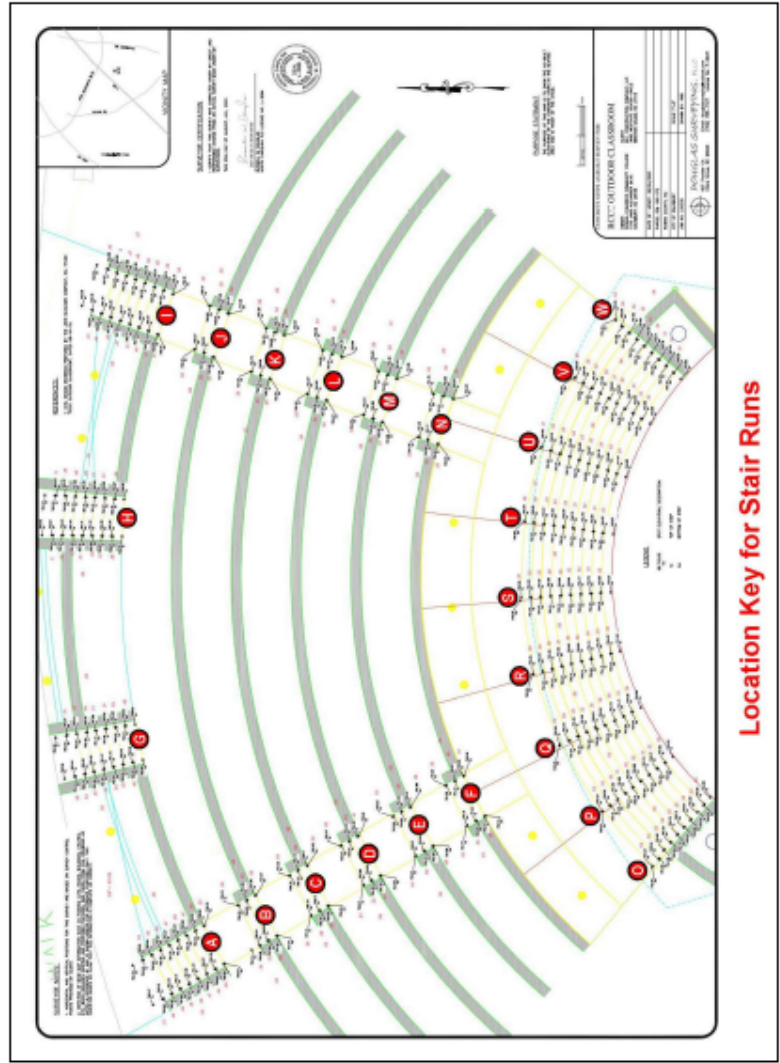
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Attachments:

Exhibit A      Location Key for Stair Runs labeling on the as-built spot elevation survey all the runs of stairs on the project with letters A-W (*Was Exhibit D to RCCC's First Request for Formal Interpretation dated December 16, 2021*)

**Exhibit A**  
**Location Key for Stair Runs labeling on as-built spot elevation survey all  
the runs of stairs on the project with letters A-W**  
*(Was Exhibit D to RCCC's First Request for Formal Interpretation dated December 16, 2021)*



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