

**BEFORE THE NORTH CAROLINA BUILDING CODE COUNCIL
RALEIGH, NORTH CAROLINA**

Docket No. 2015-02

IN THE MATTER OF AN APPEAL)	
BY ELIZABETH LETENDRE)	ORDER
REGARDING THE NORTH CAROLINA)	
BUILDING CODE OCCUPANCY)	
CLASSIFICATIONS)	

This matter came on for hearing before a quorum of the North Carolina Building Code Council ("Council") on August 11, 2015 in Raleigh, North Carolina pursuant to an appeal noted by Elizabeth Letendre ("owner") from the formal interpretation of Chief Code Consultant of the North Carolina Department of Insurance ("NCDOI") Barry Gupton and Chris Noles, also of the NCDOI, regarding the construction of a 24 bedroom home at 1441 Ocean Pearl Road, Currituck County, North Carolina ("project"). Appearing on behalf of the Appellant-Plaintiff was attorney Gregory E. Wills. Appearing on behalf of NCDOI was attorney Daniel Johnson from the North Carolina Department of Justice. Said attorneys stipulated to the admissibility of exhibits identified as DOI-1 through DOI-62 and a packet of photographs and documents identified as Plaintiff's Exhibit 1. Said exhibits were received into evidence, distributed to all Council members and used by the witnesses. The Council heard sworn testimony from the owner's general contractor, Bernard Mancuso, Jr., Currituck County Chief Building Inspector Bill Newns and Mr. Gupton. After listening to the testimony from witnesses, reviewing the stipulated documents admitted into evidence, and listening to the arguments from the attorneys, the Council hereby makes the following:

FINDINGS OF FACT

1. On behalf of the owner, Mr. Mancuso submitted building plans to the Currituck County Planning Department for the construction of a 24 bedroom home, three stories or less, that was designed to serve as a "single family" detached dwelling for the owner within the meaning of the Currituck County Unified Development Ordinance ("UDO") and a one family dwelling within the meaning of the North Carolina Residential Code ("NCRC").
2. The stipulated documents show that the owner's neighbors objected to the plans and petitioned the County Planning Director to issue a formal opinion as whether the plans met the requirements for Single Family Residential Zoning under the UDO. Litigation before the Currituck County zoning authority ensued, culminating in an order from a Superior Court Judge that the project constituted a single family detached dwelling within the meaning of the UDO.
3. As Chief Building Inspector, Mr. Newns would normally have issued a building permit for the project as a single family detached dwelling and mandated construction methods and standards for the project under the NCRC.

4. After entry of the Superior Court order but prior to issuance of a building permit, Mr. News solicited the opinion of Mr. Gupton on the occupancy classification of the project. On January 22, 2015, Mr. News received an email from Mr. Gupton stating that his review of the building plans, coupled with his review of the Coastal Area Management Agency ("CAMA") permit application for the project, led him to conclude that the proposed occupancy more closely resembles a "hotel" and should be constructed in compliance with R-1 type occupancy as mandated in the North Carolina Building Code ("NCBC").
5. Mr. Mancuso, Mr. News and other members of the County's staff met and discussed Mr. Gupton's opinion and an agreement was reached wherein Mr. News issued a residential building permit for the project with various modifications to construction standards and methods normally called for only in projects meeting R-3 occupancy standards found in the NCBC, but not in the NCRC. The additional requirements included sprinkler systems, handicap access, increased fire protection, emergency exits and the like. Said additional items were referred to as "tweaks" to the NCRC by some of the witnesses at the hearing of this matter. The additional requirements would add approximately \$150,000 to the cost of the project.
6. Mr. Mancuso, on behalf of the owners, accepted the permit with the mandated "tweaks" and began construction with the express understanding that the owners would solicit a formal interpretation from NCDOTI regarding the occupancy classification and petition the County to remove all additional requirements not expressly mandated by the NCRC in the event that Mr. Gupton's e-mail opinion on occupancy classification was reversed.
7. By letter dated April 2, 2015, Mr. Gupton provided a formal interpretation confirming his earlier email and noting that, if the property is "used as a house," it can be built according to NCRC standards, but if it were rented out as a "vacation rental," as shown in the CAMA application, it most closely resembles a Group R-1 occupancy and must be constructed in accordance with the NCBC. As stipulated by NCDOTI's attorney, the subsequent NCDOTI Decision issued by Deputy Commissioner Noles, dated May 28, 2015, approved and agreed with the opinion of Mr. Gupton.
8. The testimony established that the standard term for a vacation rental of a residential home in Currituck County is one week and that the entire home is typically rented. There is no evidence that individual rooms within residential dwellings are being rented.
9. The Council finds as a fact that the NCDOTI opinion issued by Mr. Gupton and Mr. Noles to the effect that the occupancy classification for this project most closely resembles R-1 under the NCBC is not warranted or supported by the evidence presented at the hearing. To the contrary, the Council finds as a fact that nothing in the record before this body warrants an occupancy classification for this project beyond that of a one and two family dwelling, as defined in R101.2 of the NCRC.

Based on the foregoing FINDINGS OF FACT, the Council hereby makes the following:

CONCLUSIONS OF LAW

1. This matter is properly before the Council, and the Council has jurisdiction over the parties and the subject matter pursuant to Article 9 of Chapter 143 of the North Carolina General Statutes and Article 3A of Chapter 150B.
2. This project meets the definition of a one family dwelling not more than three stories above grade plane in height with a separate means of egress, as required in NCRC section R101.2. Accordingly, the NCRC applies to this project.
3. This project is exempted from the standards set forth in the NCBC by virtue of the language contained in 101.3.2.1 of the Administrative Code regarding one family dwellings.
4. The alternative methods set forth in Section 105.1 of the Administrative Code do not apply to the facts in this case specifically because the construction methods to be utilized for this project are those set forth in the NCRC and not those for Residential Group R found in the NCBC. Accordingly, any reference in the formal interpretation of Mr. Gupton or the NCDOI Decision issued by Mr. Noles that suggest or require additional requirements beyond those of the NCRC are not justified for the project.
5. The occupancy classification for a structure is not changed from that of a one and two family dwelling under section 101.2 of the NCRC because of the size or square footage of the structure proposed.
6. The occupancy classification for a structure is not changed from that of a one and two family dwelling under section 101.2 of the NCRC because of the number of bedrooms for the structure proposed.
7. The occupancy classification for a structure is not changed from that of a one and two family dwelling under section 101.2 of the NCRC because of the proposed use of the home as a vacation rental in which the entire house, and not individual rooms, is rented.

Based on the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the Council hereby enters the following:

ORDER

The formal interpretation of Mr. Gupton as set forth in his email of January 22, 2015 (DOI-54, Page 70) and in his formal interpretation of April 2, 2015 (DOI-54, Page 64) and as subsequently affirmed by the NCDOI Decision of Mr. Noles dated May 28, 2015 (DOI-54, Page 53-56), are hereby overturned, reversed and rescinded.

The Council affirms the assertions made by the owner that the NCRC must be applied to this project. The Council specifically finds that the proper occupancy classification for the project is that of "one and two family dwelling" as defined in Section 101.2 of NCRC.

The Council instructs the NCDOI to transmit a copy of this Order immediately upon its issuance to the Chief Building Inspector for Currituck County.

Additionally, the Council instructs the NCDOI to post this Order prominently on its website(s) within 10 days by following the standards of 2015 N.C. Sess. Law 145 (effective October 1, 2015), which reads in pertinent part:

SECTION 6.1. G.S. 143-141 is amended by adding a new subsection to read:


"(c1) Posting on Department Web Site. – The Department of Insurance shall post and maintain on that portion of its Web site devoted to the Building Code Council all appeal decisions, interpretations, and variations of the Code issued by the Council within 10 business days of issuance."

SECTION 6.2. G.S. 143-138.1(b) reads as rewritten:

"(b) The Department of Insurance shall post and maintain on its Web site that portion of its Web site devoted to the Building Code Council written commentaries and written interpretations made and given by staff to the Council and the Department for each section of the North Carolina Building Code within 10 business days of issuance."

Finally, the Council instructs the NCDOI to remove its interpretation underlying this appeal from its website(s) within 10 days.

This the 21st day of August, 2015.

By: 
Dan Tingen, Chairman
NORTH CAROLINA BUILDING CODE COUNCIL

NOTICE OF APPEAL RIGHTS

This Order may be appealed to Superior Court within 30 days of receipt of the same as set out in Chapter 150B of the North Carolina General Statutes.

CERTIFICATE OF SERVICE


The undersigned hereby certify that the foregoing pleading or paper was served upon the following parties via certified mail, return receipt requested, first class postage prepaid, addressed as follows:

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This the 05th day of August, 2015.

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