



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

September 28, 2022

Mr. Tom DiBenedetto
Operation Manager – Building & Development Services & Code Enforcement
Town of Chapel Hill
405 Martin Luther King Jr. Blvd
Chapel Hill, NC 27514-5705

RE: 2018 NC Administrative Code Section 106.2.2 Additional data and 2018 NC Fire Code Section 104 General Authority and Responsibilities

Mr. DiBenedetto:

This letter is in response to your request for formal interpretation dated September 1 that was received in NCDOT by email on September 12, 2022. Your request for formal interpretation states:

“Question1: What should be the approach when performing inspections? What is the expectation regarding requesting additional documentation when an inspector notices changes have been made onsite that don’t match the approved plans? Follow up question 1: What if the plans do not match what is being constructed in the field? Are there thresholds at which we can determine when additional data can be asked for, or do we only rely on what the plans say? Follow up question 2: How does one approach if a change is made that puts the approved use or classification in doubt and does not match approved plans?”

Remarks:

Code sections noted in this letter are referring to the 2018 edition of the NC Administrative Code and Policies unless otherwise noted.

Attachment A is comprised of the request for formal interpretation as well as all supporting information submitted with the request.

Code Analysis:

The 2018 NC Administrative Code and Policies and North Carolina General Statutes gives the inspection department of the local jurisdiction authority to request additional information if the actual work performed substantially deviates from the permit documents. Of note the 2018 NC Building Codes all contain similar requirements or directly reference the 2018 NC Administrative Code and Policies concerning these requirements.

North Carolina General Statutes 160D-1112. Changes in work.

After a building permit has been issued, no changes or deviations from the terms of the application, plans and specifications, or the permit, except where changes or deviations are clearly permissible under the State Building Code, shall be made until specific written approval of proposed changes or deviations has been obtained from the inspection department. (2019-111, s. 2.4; 2020 G.S. 160D-- 3, s. 4.33(a); 202025, s. 51(a), (b), (d).)

204.3.3 Changes in Work. Work shall not deviate substantially from that described on the permit documents.

Comments: A substantial deviation is not explicitly defined in the code. Examples of substantial deviations include but are not limited to the following changes:

1. *Use and occupancy classification*
2. *Building, space and room heights and areas*
3. *Construction type*
4. *Fire and smoke protection features such as rated assemblies*
5. *Fire protection systems such sprinkler, suppression, and fire alarm systems*
6. *Means of egress*
7. *Accessibility*
8. *Exterior and interior building materials*
9. *Mechanical, fuel gas, plumbing and electrical systems*

Minor items that do not impact life safety or inhibit safe occupancy are generally not considered substantial deviations.

204.5.2 Permit intent. A permit issued shall be construed as permission to proceed with the work and not as authority to violate, cancel, alter or set aside any of the provisions of the technical codes. Issuance of a permit shall not prevent the inspection department from requiring correction of errors in plans, construction or violations of this code. (General Statute 160D-1110)

106.2.2 Additional data. The inspection department may require details, computations, stress diagrams or documentation sealed by a registered design professional and other data necessary to describe the construction or installation of a system.

Exception: Projects using the BIM-IPD process, see Section 106.2.3.

Comments: The inspection department of the local jurisdiction has the authority to request the information they need to verify code compliance.

Conclusions: What constitutes a substantial deviation is at the sole discretion of the code official based on a case-by-case basis, Section 204.3.3 and NCGS 160D-1112. Section 106.2.2 provides the code official the authority to request additional information as a condition of the intent of a permit.

Please call or email if you have comments or questions.

Sincerely,

A handwritten signature in black ink that reads "D.B. Rittlinger". The signature is written in a cursive, flowing style.

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

cc: File
Bridget Herring, Chair - BCC
Mark Matheny, Vice-Chair - BCC
Michael Ali, Chair, Commercial Super Committee - BCC
Gary Embler, Chair, Residential Super Committee - BCC

ATTACHMENT A



TOWN OF CHAPEL HILL
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Plans VS Actual Field Conditions and requesting Additional data / paperwork

Code: Duties and Responsibilities

Date: From 2016 / Recodified Sept 2022

Section: NC General Statute 160D-1104, Fire Code 104., Law & Admin Code 106.2.2

Question1:

What should be the approach when performing inspections? What is the expectation regarding requesting additional documentation when an inspector notices changes have been made onsite that don't match the approved plans?

Answer:

The overall intent of state codes, local ordinance and general reference standards are to provide a minimum level of safety based on the hazard present in a building, structure, space and use thereof for both residents of single-family dwellings, townhomes, as well as areas for commercial use.

All inspection department office and field staff, including state certified and non-state certified, are expected to maintain a level of knowledge and professionalism in providing those services that ensure compliance with those required regulations. Staff may reasonably request any data to meet that end. This would include and not be limited to plans, licenses qualifications for particular scopes of work, sealed designs, letters from design professional, etc. These requests would not be limited to pre permit approvals, but also to any field inspections after permit approvals and during the course of construction.

Follow up question1:

What if the plans do not match what is being constructed in the field? Are there thresholds at which we can determine when additional data can be asked for, or do we only rely on what the plans say?

Answer: All projects and associated scopes of work are different from inspection to inspection. Not all jobs are built to the plans due to certain conditions including but not limited to, unforeseen site conditions uncovered during work, owner requested changes or availability of materials. It will be up to the individual field inspector of record based on their knowledge and experience to determine what added data they will need.

The expectation is that all work performed and to be performed will meet minimum code. The expectation is that the field inspector will ensure code compliance as to what is constructed in the field. If construction in the field does not match what the approved plans show, the applicant would have two choices. 1) Supply additional data (*example:* change the plans or supply engineering) to reflect what was built in the field is compliant *OR* 2) change what was built to match the approved plans.



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Follow up question 2:

How does one approach if a change is made that puts the approved use or classification in doubt and does not match approved plans?

Answer:

If the purpose or use of a building, structure or space is not clearly classified or identifiable the field inspector shall decide based on the group or subcategory that closely resembles it (Building Code Section 302, ICC Commentary). The field inspector can rely on internal and external resources to assist with that decision. The expectation is for the inspector to gather all data they feel may be necessary to help in that determination. Data including but not limited to adjusted plans, definitions, written statements from the applicant or reference standards.

Example of some situations could be a building, or a space being occupied for different purposes at different times such as a church hall being used as a daycare center during the week and then as a space to hold events at other times. A restaurant that serves alcohol and then installs a stage area and sound system while removing fixed table and chairs for a dance hall. In cases such as these, all code provisions for each occupancy must be in place and verified. In the end the field inspector is expected to judge the events and situations in the field and be able to request any reasonable data to make a determination and to ensure all code requirements are met to ensure life safety.

RE: [External] PLEASE READ REVIEW & COMMENT. Request for an official interpretation

 Tom DiBenedetto <tdibenedetto@townofchapelhill.org>
To: Rittlinger, David B

 Reply  Reply All  Forward  ...
Fri 9/16/2022 10:31 AM

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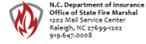
Thank you David. Please feel free to give me a call on my cell if you need more clarity or background. (915) 636-0946

From: Rittlinger, David B <david.rittlinger@ncdoi.gov>
Sent: Wednesday, September 14, 2022 1:10 PM
To: Tom DiBenedetto <tdibenedetto@townofchapelhill.org>; Martin, Carl <Carl.Martin@ncdoi.gov>
Cc: Morrison, Tim <Tim.Morrison@ncdoi.gov>; Yip, Pak <pak.yip@ncdoi.gov>; Chelsea Laws <claws@townofchapelhill.org>
Subject: RE: [External] PLEASE READ REVIEW & COMMENT. Request for an official interpretation

External email: Don't click links or attachments from unknown senders. To check or report forward to reportspam@townofchapelhill.org

Tom,
Good afternoon.
I am receipt of your requests for formal interpretations. Our office will provide formal interpretations letters to you as soon as possible.
Thank you.

David B. Rittlinger, PE, LEED AP
Code Interpretation Supervisor
Chief Code Consultant
Chief Mechanical & Fuel Gas Code Consultant
Engineering Division



david.rittlinger@ncdoi.gov

Link to free view of 2018 NC Codes
<https://codes.iccsafe.org/codes/north-carolina>

[External] PLEASE READ REVIEW & COMMENT. Request for an official interpretation

 Tom DiBenedetto <tdibenedetto@townofchapelhill.org>
To: Martin, Carl; Rittlinger, David B
Cc: Morrison, Tim; Yip, Pak; Chelsea Laws

 Reply  Reply All  Forward  ...
Mon 9/12/2022 4:03 PM

 This replied to this message on 9/14/2022 1:09 PM.
This message was sent with High importance.

 Commercial Kitchen Interpretation and approach.pdf .pdf File
 Asking for addition data.pdf .pdf File

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Carl and David,

I am sorry we missed you during our visit to Raleigh. Tim and Pak were gracious enough to adjust their schedules to meet with us. As an agreed follow up to that conversation with me, Chelsea, Tim, and Pak, we concluded the best approach is to request an official NCDIO interpretation on two items: 1) Definition a commercial kitchen 2) Duties and Responsibilities when asking for additional data in the field. As per our process we presented them to our internal review committee for discussion and determination. Our interpretations are attached that lays out a detailed thought process. We are asking for NCDIO to provide an official interpretation based on those determinations.

Our overall intent is to ensure consistent customer service by providing concise, well thought out clarity when making code decisions.



Tom DiBenedetto
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