

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Deadra Jefferson, Circuit Court Judge

APPELLATE CASE NO. 2015-002533

TRIAL CASE NO. 2012-CP-26-4852

Jacklyn J. Donevant Respondent

v.

Town of Surfside Beach. Petitioner

PETITIONER'S BRIEF
TO THE SUPREME COURT

Charles F. Thompson, Jr.
Malone, Thompson, Summers & Ott
339 Heyward Street
Columbia, S.C. 29201
803-254-3300

Attorney for Appellant

Other counsel of record:

Henrietta Golding, Esquire
McNair Law Firm
2411 N. Oak Street, Suite 206
Myrtle Beach S.C. 29577
843-444-1107

Attorney for the Respondent

RECEIVED

MAY 12 2017

S.C. SUPREME COURT

TABLE OF CONTENTS

CERTIFICATION BY COUNSEL UNDER S.C. RULE APP. P. 242(d)(1) 5

QUESTIONS PRESENTED FOR REVIEW 5

STATEMENT OF THE CASE..... 6

FACTUAL BACKGROUND..... 7

ARGUMENT..... 11

 The Court of Appeals erred in greatly expanding the public policy exception and creating a class of employees unanswerable to anyone..... 11

 The Court of Appeals Ignored the Requirement that the Employee be Required to Violate a Law Carrying a Penalty 18

 Assuming the public policy exception to at-will employment is to be expanded, the trial court erred in disregarding the rule laid down in *Antley v. Shepherd*, that the public policy exception does not apply to terminations of employees who insist on performing an act that is discretionary, *i.e.*, that the law does not require them to perform. 19

 The Court of Appeals’s Ruling that Stop Work Orders are always Required for Building Code Violations Will Create Economic Chaos in South Carolina 24

CONCLUSION..... 25

TABLE OF AUTHORITIES

Cases

<i>Antley v. Shepherd</i> , 532 S.E.2d 294 (S.C. 2000)	19
<i>Antley v. Shepherd</i> , 532 S.E.2d 294, 297 (S.C. 2000) (aff'd as modified 564 S.E.2d 116 (S.C. 2002))	11
<i>Barron v. Labor Finders of South Carolina</i> , 682 S.E.2d 271 (S.C. Ct. App. 2009)	12, 18
<i>Barth v. Barth</i> , 360 S.E.2d 309, 311 (S.C. 1987)	17
<i>Benat v. State Farm Mut. Ins. Co.</i> , 333 S.E.2d 57, 58 (S.C. Ct. App. 1985).....	17
<i>Gargas v. City of Streetsboro</i> 2001 Westlaw 1077828 (Ohio Ct. App. 2001)	17
<i>Garner v. Morrison Knudsen Corp.</i> , 456 S.E.2d 907 (S.C. 1995)	11
<i>Jellico v. Effingham</i> 221 Ga. App. 252, 471 S.E.2d 36 (1996).	17
<i>Keiger v. Citgo Coastal Petroleum</i> , 482 S.E.2d 792 (S.C. Ct. App. 1997).	12
<i>Kirkland v. Peoples Gas Co.</i> , 237 S.E.2d 772 (S.C. 1977).....	16
<i>Lawson v. South Carolina Dept. of Corrections</i> , 532 S.E.2d 259, 260 (S.C. 2000).....	12, 18
<i>Ludwick v. This Minute of Carolina, Inc.</i> , 337 S.E.2d 213, 214 (S.C. 1985)	12, 18
<i>McNeil v. S. Carolina Dep't of Corr.</i> , 743 S.E.2d 843 (S.C. Ct. App. 2013)	11
<i>Miller v. Fairfield Communities</i> , 382 S.E.2d 16 (S.C. Ct. App. 1989).....	12, 18
<i>Moshtaghi v. The Citadel</i> , 443 S.E.2d 915, 919 (S.C. Ct. App. 1994).....	12, 18
<i>Narruhn v. Alea London Ltd.</i> , 745 S.E.2d 90, 93 (S.C. 2013).....	16
<i>Rauton v. Pullman Co.</i> , 191 S.E. 416, 420 (S.C. 1937).....	16
<i>Rydzewski v. City of Erie</i> , 1990 Westlaw 286975 (Com. Pl.), <i>aff'd</i> , 136 Pa. Cmwlth. 734, 583 A.2d 74 (1990).	17

Statutes

S.C. Code Ann. 44-53-480.....	14
S.C. Code Ann. § 6-9-60.....	20
S.C. Code Ann. 23-1-145.....	14
S.C. Code Ann. 23-13-50.....	15
S.C. Code Ann. 23-3-15.....	15
S.C. Code Ann. 23-7-50.....	15
S.C. Code Ann. 23-9-20.....	15
S.C. Code Ann. 24-21-280.....	14
S.C. Code Ann. 46-23-60.....	15
S.C. Code Ann. 47-13-620.....	14
S.C. Code Ann. 4-9-650.....	14
S.C. Code Ann. 50-5-90.....	15
S.C. Code Ann. 55-11-350.....	15
S.C. Code Ann. 56-5-740.....	15
S.C. Code Ann. 63-7-750.....	15
S.C. Code Ann. 7-13-140.....	14
S.C. Code Reg. 49-301	16

Regulations

S.C. Code Reg. 103-425	15
S.C. Code Reg. 61-120	15
S.C. Code Reg. 61-4-1601	15
S.C. Code Reg. 61-79.265.55	15
S.C. Code Reg. 61-91.202	15

CERTIFICATION BY COUNSEL UNDER S.C. RULE APP. P. 242(d)(1)

The Court of Appeals decision in this matter was filed on August 26, 2015 and counsel certifies that a petition for rehearing and suggestion of rehearing *en banc* was denied on November 19, 2015.

QUESTIONS PRESENTED FOR REVIEW

The Court of Appeals in this case has incorrectly, and greatly, expanded the tort of public policy discharge. The decision is in conflict generally with the Supreme Court's decisions in this area because, before this time, the tort has not expanded beyond situations in which the employer required the employee to violate the law or the termination was itself a violation of law carrying a penalty. The Court of Appeals expanded the tort to include situations where the employee was not asked to violate the law and the Court of Appeals has eliminated the requirement that the law in question impose a sanction on the employee for violation. Now, any employee with a duty or responsibility suggested by law is completely beyond the control of the employer. Every bureaucrat with some legal authority is a power unto himself and unanswerable to anyone.

The decision is also specifically in conflict with the Supreme Court's decision in *Antley v. Shepherd* which established that an employee can be terminated for insisting on performing a discretionary duty. Donevant alleged she was fired for issuing a stop work order on a construction project. The building code only "authorizes" a Building Official to issue stop work orders for violations. The duty was discretionary. The Court of Appeals ignored the plain language of the law in finding the code "required" stop work orders for code violations. In any event, each of the three grounds of the Court of Appeals' rationales for this conclusion are clearly incorrect.

Finally, the Court of Appeals' conclusion that Building Officials must issue stop work orders for building code violations would create economic chaos in the construction industry in South Carolina.

STATEMENT OF THE CASE

This case arises from the employment termination of Jacklyn Donevant. Donevant was the building official for the Town of Surfside Beach (the Town). The only legal issue tried was whether or not the Town fired Donevant, in violation of public policy, because Donevant issued a discretionary "stop work" order on a construction project on the Town pier.

The Town contended at summary judgment, directed verdict, and judgment notwithstanding the verdict, that Donevant's allegations did not meet the requirements of the public policy exception to the at-will employment rule. These contentions were overruled. The case was tried before a Horry County jury from February 10, 2014 through February 14, 2014. The jury returned a verdict of \$500,000 which was reduced by Judge Deadre Jefferson to \$300,000 pursuant to the South Carolina Tort Claims Act. Judgment was dated February 18, 2014 and received by the Town on March 3, 2014. The Town filed a notice of appeal on March 10, 2014.

The Court of Appeals decision in this matter affirming the trial court's judgment was filed on August 26, 2015 and the Petitioner's petition for rehearing and suggestion of rehearing *en banc* was denied on November 19, 2015.

FACTUAL BACKGROUND

Donevant worked for the Town of Surfside Beach as its Building and Zoning Department Director. At the time of her termination, Donevant was the only person in the Town's Building and Zoning Department who was licensed to review plans and conduct construction inspections. The Town utilized the City of Myrtle Beach in Donevant's absence, and has, at other times, employed a second licensed building official. (R. 70).

In 2010, the Town hired Jim Duckett as its new Town Administrator. He was Donevant's immediate superior. Mr. Duckett heard complaints about Donevant when he began his duties, but he resolved to start with a blank slate with all of the Town's employees. (R. 302)

The main problem Mr. Duckett had with Donevant was that she was frequently absent from, or late to, work. Donevant's own co-workers testified she was missing from work approximately 40% of the time. (R. 285). Duckett eventually required Donevant to be at work by 9:00 AM or to let him know where she was. (R. 304-306). Donevant continued to absent herself from work and Duckett escalated pressure to bring her attendance under control by issuing warnings, giving her a negative performance review, and requiring Donevant to report, via email, when she was not going to be in the office during normal operating hours. (R. 304-312). In her trial testimony, Donevant admitted she had attendance issues and she admitted that she disregarded the Town Administrator's instructions to inform him if she would be late or absent. (R. 82, 100-101).

Donevant freely admitted that she did not get along with Duckett, whom she regarded as an "idiot" who was constantly "picking on me," and "trying to do my job." She further admitted that she disregarded his instructions from time to time. In fact, toward the end of her

employment, Donevant informed Duckett, in writing, that she would disregard his instructions. (R. 60, 64-65, 83b, 89, 98, 100, 136).

In December 2012, Donevant took an extended leave due to a medical condition. Sabrina Morris took over as the Interim Director during her absence. Because Morris lacked the necessary building official licensure, she could not approve building plans. The Town made arrangements with the City of Myrtle Beach for it to perform this function. (R. 47-48).

Donevant came back to work on March 13, 2012. On her first day back at work, Duckett informed Donevant that she was not to interfere with any decisions made during her absence. He informed her of this in writing and specifically warned her that termination might result if she did interfere with any decisions made during her leave. Duckett gave this instruction because he wanted her to focus on issues going forward. (R. 313-315). Donevant admitted that she disregarded this instruction almost immediately upon return to work. (R. 98-100).

Duckett also reminded Donevant that she was to report to him and not to the Deputy Administrator Micki Fellner. (R. 92). Duckett felt that Donevant had been avoiding him—preferring to report to Ms. Fellner. Ms. Fellner also testified that she told Donevant that she needed to report to Duckett, and not to her. In her testimony, Donevant admitted she understood she was to report Duckett and not Fellner but admitted that she defied this instruction because she did not feel she “had to report anything to Jim [to do] with my job.” (R. 107-109).

The last straw for Donevant had to do with her actions regarding the Town pier. In 2012, the most prominent public issue in the Town of Surfside Beach was the Town’s pier. (R. 230, 276-279). The Town was attempting, with difficulty, to get space on the pier leased. Various stories had been in the local media about the pier. Shortly before Donevant went on medical

leave, the restaurant space on the pier had been leased and the new tenant had received a permit to start demolition in the space. (Id.).

On March 20, 2012, without telling anyone what she was doing, Donevant went to the pier and looked in a window at the jobsite. (R. 52-53). Donevant alleges that she saw new flooring, new plumbing, and new openings for windows. She regarded this as new construction not authorized by a demolition permit and therefore issued a “stop work” order and posted it on the door to the job worksite. (R. 52-55). Sometime later, she told Fellner that she had issued the stop work order. Fellner asked her if she had informed Duckett and Donevant responded that she had not. (R. 106-108).

When Donevant eventually came back to the office, Fellner saw her and again reminded her that she needed to tell Duckett what was going on. (Id.). Donevant admitted she disregarded Duckett’s and Fellner’s instructions because she felt “why would I have to report anything to Jim with my job?” and “I was doing my job, I had nothing to report.” (R. 108, 111). Duckett first learned of the stop work order when one of the Town Councilmen called him asking what was going on at the pier. (R. 318-319). About the same time, Fellner called Duckett to report her conversation with Donevant. (Id.). Duckett immediately went to the pier and, to his surprise, was greeted by a television crew and members of council. (Id.). Donevant denied tipping off the media that something had happened at the pier. (R. 105).

Duckett concluded that Donevant had exercised extremely poor judgment by not telling him what was going on and not reporting to him as instructed. He told Donevant to meet him at the office the next workday. (R. 110). They met, and Duckett first presented Donevant with a written warning. Donevant admits that Duckett told her that the problem was she should have told him what she had done; the problem was not the stop work order. (R. 112). The warning

explicitly stated it was based on Donevant's failure to communicate and that Duckett did not question her authority to issue the stop work order. (R. 406). Donevant, however, refused to sign the warning in acknowledgment that she received it. (Despite the fact that she admitted she had signed prior counseling's with no objections) (R. 83, 84, 86, 116). Duckett therefore informed her that he was suspending her for three days. He presented her with a suspension notice. (R. 115-116). This time, Donevant signed the notice. (Id.). The whole matter could have ended there. Duckett thought that Donevant understood the reason for the discipline and that they could go forward constructively from there. However, upon her return from suspension, Donevant gave Duckett a written note that stated:

My suspension was not right . All I did was follow the law, which you didn't want me to follow. Like I told you the other day, I will follow the law even if that means not following your instructions. You have been picking on me and treating me badly, for a long time, even though I do my work by the book and I am dedicated to the Town

(R. 410). Duckett was very surprised by this note as he had thought they had reached an understanding. The note started with the false assertion that he had directed Donevant to violate the law. It continued with the insubordinate statement that she would not follow his instructions. It ended with a clear disavowal that she had done anything wrong regarding any of the disciplinary actions taken against her.

Even after this note, Duckett still did not fire Donevant. Several weeks later, however, a Town election was held and a new Mayor was elected. Duckett did not want to continue in his position with the changes and decided he would resign. He also decided that, although he was willing to continue to work with Donevant, that he did not think it right to pass along such a problem employee to the next Town Administrator. He therefore decided to terminate

Donevant's employment. (R. 326-330).

ARGUMENT

The Court of Appeals erred in greatly expanding the public policy exception and creating a class of employees unanswerable to anyone

In South Carolina, the rule remains that all employment is “at-will” and employees may be terminated, or may quit, for any reason or no reason at all. This was reaffirmed most recently in *McNeil v. S. Carolina Dep't of Corr.*, 404 S.C. 186, 743 S.E.2d 843 (Ct. App. 2013) and *Taghivand v. Rite Aid Corporation*, 411 S.C. 240, 768 S.E.2d 385 (2015). *McNeil* and *Taghivand* are also the most recent cases dealing with the public policy exception to the at-will employment rule.

South Carolina courts do recognize a (previously very limited) exception for discharge in violation of public policy. However, as the *McNeil* court reaffirmed, it had been applied only to situations in which an employee was forced to choose between his job and committing a criminal act or to cases in which the termination itself was a violation of law containing criminal penalties.¹ *Garner v. Morrison Knudsen Corp.*, 318 S.C. 223, 456 S.E.2d 907 (1995); *Antley v. Shepherd*, 340 S.C. 541, 549, 532 S.E.2d 294, 297 (2000) (aff'd as modified 564 S.E.2d 116 (S.C. 2002)).

It is for the courts to decide what constitutes public policy and “it is a question of law.” It is not a question for the trier of fact. *McNeil*, 743 S.E.2d at 846.

As the exception was originally decided, and in some subsequent cases, the first prong was worded to include only situations in which the employee was required to commit a “criminal act.” *Garner v. Morrison Knudsen Corp.*, 318 S.C. 223, 456 S.E.2d 907 (1995); *Ludwick v. This*

¹ The second prong was first made explicit in *Culler v. Blue Ridge Co-op.*, 422 S.E.2d 91 (S.C. 1992).

Minute of Carolina, Inc., 287 S.C. 213, 221, 337 S.E.2d 213, 214 (1985). However, several cases, when describing the first prong, speak of requiring the employee to “violate a law.” *Barron v. Labor Finders of South Carolina*, 384 S.C. 21, 682 S.E.2d 271 (Ct. App. 2009); *Lawson v. South Carolina Dept. of Corrections*, 340 S.C. 346, 350, 532 S.E.2d 259, 260 (2000); *Moshtaghi v. The Citadel*, 314 S.C. 316, 321, 443 S.E.2d 915, 919 (Ct. App. 1994). This difference in language has never been identified as intent to change the exception. In fact, in *Miller v. Fairfield Communities*, 382 S.E.2d 16 (S.C. Ct. App. 1989), the court ruled that public policy discharge required a criminal sanction and a “civil penalt[y] or sanction” was insufficient. *Miller v. Fairfield Communities, Inc.*, 299 S.C. 23, 26, 382 S.E.2d 16, 19 (Ct. App. 1989) (“the Supreme Court did not consider public policy outside the sphere of criminal sanctions.”). As no reason has been given for the variation in language, *Miller* controls and the first prong requires a criminal sanction. The Court of Appeals’s conclusion that a violation of “any law,” is therefore plainly incorrect.

The *McNeil* court did note that the public policy exception had not been expressly limited to the two situations above but had not been applied beyond them. On this point, the court cited *Garner v. Morrison Knudsen Corp.* 318 S.C. 223, 456 S.E.2d 907 (1995) and *Keiger v. Citgo Coastal Petroleum*, 326 S.C. 369, 482 S.E.2d 792 (Ct. App. 1997). In *Garner*, the plaintiff alleged termination in retaliation for reporting radioactive contamination and, in *Keiger*, the employee alleged termination in retaliation for reporting wage payment concerns to the South Carolina Department of Labor. Neither of these situations fit within the two prongs identified in *Ludwick* and other cases. However, in *Garner* and *Keiger*, the appeal courts reversed dismissals based on S.C. R. Civ. P. 12(b)(6) because the courts felt the issues were novel and required

development through discovery. These courts specifically held, however, that they were not expanding the tort of public policy discharge.²

Now, for the first time, the Court of Appeals in this case is expanding the tort beyond situations in which the employee is required to violate the law.³

Donevant alleges that she was terminated in retaliation for issuing the stop-work order at the pier and this is in violation of public policy. Donevant, claims that she issued the stop-work order because the contractor at the pier only had a demolition permit but was doing some construction work. (R. 401) (R. 52-55, 147). (The construction permit was pending and was, in fact, issued soon after Donevant issued the stop work order). (R. 408).

The basis of Donevant's authority to issue a stop-work order on the pier restaurant project came from the Town's building code.⁴ (R. 58-59, 147) (R. 269). The code section applicable to this case reads:

Whenever the building official finds any work regulated by this code being performed in a manner contrary to the provisions of this code or dangerous or unsafe, the building official **is authorized** to issue a stop work order.

(R. 423) (emphasis added).

The Building Code "authorizing" stop-work orders contains no criminal penalty for failing to issue a stop-work order. It does not contain a civil penalty either. In fact, as discussed

² "Because the facts of this case have not been fully developed, we do not address the ultimate question whether the public policy exception to the employment at-will doctrine is applicable in this case." *Garner v. Morrison Knudsen Corp.*, 318 S.C. 223, 227, 456 S.E.2d 907, 910 (1995)

³ Although Petitioner contends the tort is limited to violations carrying criminal penalties, for purposes of simplicity, Petitioner will, after this point, mainly refer to the exception as "violation of law."

⁴ The Town, like most municipalities, adopts the International Uniform Building Code, as written by a national code commission.

more fully below, according to the plain language of section 115, a building official is not required to issue a stop-work order at all. They are merely “authorized” to do so. This is far from a requirement, subject to a criminal or civil sanction, that a building official issue a stop-work order for construction work done without a permit. Donevant did not have to issue a stop-work order that day and therefore, no one was requiring her to violate any law. The Court of Appeals’s decision in this case is that an employer cannot interfere, in any manner, with an employee exercising a statutory right or duty. This is an extremely broad grant of unfettered discretion to a wide range of employees. There are numerous examples of provisions in state laws that give officials various authority, rights, duties, and responsibilities. Some of these include:

Department of Health Agents and Inspectors have “authority to . . . arrest . . . investigate . . . seize . . .” S.C. Code Ann. 44-53-480(b) (1976).

Solicitor has : “authority to . . . [prosecute]” S.C. Code Ann. 48-1-210 (1976).

County Administrator “has authority to suspend employees and interpret Home Rule Act.” S.C. Code Ann. 4-9-650 (1976).

Parole Officers have “the authority to enforce the criminal laws of the State.” S.C. Code Ann. 24-21-280(B) (1976).

Assessors “shall” “reassess property . . . appeal . . . enter and examine all new nonresidential buildings . . .” S.C. Code Ann. 12-37-90 (1976).

Jail Employees “have the authority to make arrests . . .” “1986 Op. Atty Gen, No. 86-38, p 119. (citing S.C. Code Ann. 23-1-145 (1976)).

Election managers have: “authority to maintain good order at the polls and enforce obedience . . .” S.C. Code Ann. 7-13-140 (1976).

Livestock Inspector “shall have authority to enter premises . . . inspect . . .” S.C. Code Ann. 47-13-620 (1976).

Marine Resource Officer “has authority to enter and inspect . . . stop and search . . .arrest . . .” S.C. Code Ann. 50-5-90 (1976).

Airport Police “have authority to issue summonses . . . arrest . . .” S.C. Code Ann. 55-11-350 (1976).

Adult School Crossing Guard has “authority to . . . direct, control or regulate traffic . . .” S.C. Code Ann. 56-5-740 (1976).

Fire Marshall (including local designees) “has authority to confiscate . . .” and authority to enforce code. S.C. Code Ann. 23-36-110; 23-9-30 (1976).

Noxious Weed Inspector “shall have authority to stop and inspect . . .” S.C. Code Ann. 46-23-60 (1976).

Park Ranger has “the authority to issue summonses [and arrest] . . .” S.C. Code Ann. 51-3-147 (1976).

Deputy Sheriff has “authority to perform [duties pertaining to office of his principle.]” S.C. Code Ann. 23-13-50.

Highway Patrolman has “authority to arrest. . .” S.C. Code Ann. 23-5-40 (1976).

Hospital Designee has “sole authority to detain a child . . .” S.C. Code Ann. 63-7-750(A)(3) (1976).

Gas Meter Reader has “authority to visit meters and appurtenances . . .” S.C. Code Reg. 103-425(C) (2008).

DHEC Hospital Inspector has “authority [to] inspect . . . investigate . . .” S.C. Code Reg. 61-91.202 (2015).

DHEC Emergency Coordinator has “authority to commit . . . resources . . .” S.C. Code Reg. 61-79.265.55 (1992).

South Carolina Law Enforcement Division has [various authority involving investigation, arrest, operations of statewide facilities and systems]. S.C. Code Ann. 23-3-15 (1976).

State Constables S.C. Code Ann. 23-7-50 (1976).

Licensed Engineers “shall hold paramount the safety, health, and welfare of the public in the performance of his professional duties.” S.C. Code Reg. 49-301 (2009).

The Court of Appeals, therefore, has created an unworkable situation. Any employee with an authority or duty granted by law becomes untouchable. No one can regulate or control

their decision-making. The Court of Appeals has erased the ability of administrators, mayors, councils, agency heads, and others, to control such employees and prevent them from running amok with their authority. For governments to function and be answerable to the public, this decision must be corrected.

The Court of Appeals reasoned that had Donevant not issued a stop-work order, she would have been failing to enforce the building codes and could have been subject to discipline by the South Carolina Building Codes Council. The Court of Appeals improperly cited testimony by Gary Wiggins, who testified as an expert for Donevant and opined that Donevant was required to issue to order and “could” or would be subject to “possible ramifications” of discipline if she had not done so. (R. 151-156). In contrast, Donevant’s replacement at the Town testified that he uses his discretion in issuing stop work orders and seldom requires the builder to stop all work on a project if they promptly address the issue. (R. 250-252). Donevant testified that she issued stop-work orders for work done without a permit but did not always do so for other violations. (R. 122).

Neither Wiggins, nor any other witness or other evidence, pointed to a criminal penalty. Second, neither Wiggins nor any other evidence identified a civil sanction—only the possibility of discipline. Finally, and most importantly, an expert’s opinion about what a law might require is of no consequence to this court. The court has the obligation to apply the plain meaning of the law which, in this case, gives the building official discretion. *See, e.g., Rauton v. Pullman Co.*, 183 S.C. 495, 191 S.E. 416, 420 (1937) (“any evidence by an expert as to the meaning of these statutes would be incompetent.”); *Kirkland v. Peoples Gas Co.*, 269 S.C. 431, 237 S.E.2d 772 (1977) (an expert is not allowed to interpret regulations of the Department of Transportation); *Narruhn v. Alea London Ltd.*, 404 S.C. 337, 342, 745 S.E.2d 90, 93 (2013) (“court is obligated to

follow and to enforce the stated meaning [of the statute]”); *Barth v. Barth*, 293 S.C. 305, 309, 360 S.E.2d 309, 311 (1987) (It is the right and duty of this court to interpret statutes”); *Benat v. State Farm Mut. Ins. Co.*, 286 S.C. 132, 133, 333 S.E.2d 57, 58 (Ct. App. 1985) (“It is the duty of this court to interpret the [statutory] law.”).

Although there is scant caselaw from other jurisdictions similar to this matter, Georgia has declined to extend “public policy discharge” to situations in which an inspector alleges he was terminated for enforcing code provisions. In *Jellico v. Effingham*, the court, citing the at-will employment law, declined to extend the exception to a code enforcer absent a clear indication from the legislature that his conduct was protected. 221 Ga. App. 252, 471 S.E.2d 36 (1996). Similarly, in *Gargas v. City of Streetsboro*, the Ohio Appeals court declined to extend the public policy exception to an inspector based on the same rationale. 2001 Westlaw 1077828 (Ohio Ct. App. 2001). Finally, Pennsylvania courts have also declined to extend the public policy exception to a plumbing inspector who claimed he was fired for refusing to allow work to proceed on a project. *Rydzewski v. City of Erie*, 1990 Westlaw 286975 (Com. Pl.), *aff’d*, 136 Pa. Cmwlth. 734, 583 A.2d 74 (1990).

In summary, there was no evidence presented to the court that Donevant was subject to a criminal penalty for failing to issue a stop-work order. There was not even evidence she could properly be subject to a civil sanction (even if a civil sanction were sufficient—which it is not). This is because the building code, as a matter of law, gave her discretion to issue, or not issue, a stop work order. Therefore, Donevant’s allegations simply do not meet the established definition of public policy discharge and the judgment should be reversed.

The Court of Appeals Ignored the Requirement that the Employee be Required to Violate a Law Carrying a Penalty

Petitioner argues, as stated above, that the public policy exception covers only situations in which the employee is faced with criminal consequences to violating the law. However, if the exception is broader than that, it at least requires some penalty for violation of the law. As stated above, several wrongful discharge cases speak of requiring the employee to commit a “criminal act.” *Garner v. Morrison Knudsen Corp.*, 318 S.C. 223, 456 S.E.2d 907 (1995); *Ludwick v. This Minute of Carolina, Inc.*, 287 S.C. 219, 221, 337 S.E.2d 213, 214 (1985). Other cases, when describing the first prong, speak of requiring the employee to “violate a law.” *Barron v. Labor Finders of South Carolina*, 682 S.E.2d 271 (S.C. Ct. App. 2009); *Lawson v. South Carolina Dept. of Corrections*, 384 S.C. 21, 22, 532 S.E.2d 259, 260 (S.C. 2000); *Moshtaghi v. The Citadel*, 314 S.C. 316, 319, 443 S.E.2d 915, 919 (Ct. App. 1994). In *Miller v. Fairfield Communities*, 299 S.C. 23, 82 S.E.2d 16 (Ct. App. 1989) the court ruled that public policy discharge required a criminal sanction and a “civil penalt[y] or sanction” was insufficient. *Miller v. Fairfield Communities, Inc.*, 299 S.C. 23, 26, 382 S.E.2d 16, 19 (Ct. App. 1989) (“the Supreme Court did not consider public policy outside the sphere of criminal sanctions.”). Regardless of the leeway that might exist, the law the employer wishes the employee to violate must carry some sanction. There is no reference in this case, in the building codes, or cited by the Court of Appeals, of a criminal or civil sanction if Donevant decided not to issue a stop work order.

Because the Court of Appeals has abandoned the requirement of a criminal or civil sanction, it has opened the public policy exception to situations where the employee alleges an amorphous public policy. This approach was, in fact, rejected by this court in *Taghivand v. Rite*

Aid Corp., 411 S.C. 240, 247, 768 S.E.2d 385, 389 (2015). This court expressly rejected an invitation to expand the public policy exception to circumstances in which the legislature identified a general public policy that the employee thought he was being required to violate.

[W]e decline to create a tort cause of action based *solely* on transcendental notions of that which is in the public interest, particularly when our own legislature has declined to make individual citizens criminally responsible for failing to investigate or report criminal activity.

Taghivand v. Rite Aid Corp., 411 S.C. 240, 247, 768 S.E.2d 385, 389 (2015) (quoting *Wholey v. Sears Roebuck*, 803 A.2d 482, 498 (Md. Ct. App. 2002).

Therefore, the Court of Appeals erred in expanding public policy discharge to include cases where the employee was not subject to a sanction for violating the law.

Assuming the public policy exception to at-will employment is to be expanded, the trial court erred in disregarding the rule laid down in *Antley v. Shepherd*, that the public policy exception does not apply to terminations of employees who insist on performing an act that is discretionary, *i.e.*, that the law does not require them to perform.

This case should have been controlled by this court's decision in *Antley v. Shepherd*, 340 S.C. 541, 532 S.E.2d 294 (2000). The *Antley* court ruled that an employee fired for exercising an act which she had the right to perform, but was not required to perform, did not constitute wrongful discharge.

Exactly like Donevant, Antley claimed she was fired for exercising her legal duty as a public official. In *Antley v. Shepherd*, that duty was Antley's statutory right to appeal tax rulings. Antley was the Aiken County Tax Assessor. As Tax Assessor, she had the "right," under South Carolina law, to appeal rulings made by the assessment appeal board. On this point, South Carolina law states: "The assessor is responsible for the operations of his office and shall . . . have the right of appeal from a disapproval of or modification of an appraisal made by him .

...” S.C. Code Ann. § 12-37-90. The Aiken County Administrator, however, decided that these appeals were a waste of effort and directed Antley not to do them. Much like Donevant, Antley responded:

As a public servant for almost 18 years, I have always taken my legal duties and responsibilities very seriously. I have never relinquished them and I can do no less now.

Antley v. Shepherd, 340 S.C. 541, 545, 532 S.E.2d 294, 296 (Ct. App. 2000), *aff'd as modified*, 349 S.C. 600, 564 S.E.2d 116 (2002).

Given this clear refusal to comply with his directive, the Administrator terminated Antley. Antley sued, claiming her firing was a discharge in violation of public policy to terminate her for exercising her clear statutory “right” to pursue appeals. The South Carolina Supreme Court disagreed and adopted the ruling of the Court of Appeals. The Court of Appeals held that, although Antley had a statutory right to file appeals, and was the only County employee with the power to do so, the statute did not “require” her to file appeals. The statute’s description of her power as a right, the court held, did not give Antley “unfettered” authority. *Id.*

[The law] gave Antley . . . **the right** to file appeals to the ALJD and established her status as a real party in interest in such appeals . . . but [they] **did not require** Antley to appeal adverse board decisions.

Id. at 549, 298 (emphasis added).

Donevant’s situation is indistinguishable from Antley’s circumstances. Indeed, Donevant’s authority to issue stop work orders is even less established than Antley’s clear statutory “right” to pursue appeals.

An official’s authority to issue stop work orders flows from statute, to ordinance, to adopted building codes. South Carolina statutory law requires municipalities to utilize a licensed

building official to enforce building codes. It further requires municipalities to establish building codes which they may do so by adopting codes. As allowed by state law, most municipalities adopt the standard “International Building Codes.” S.C. Code Ann. § 6-9-60. By Ordinance, the Town of Surfside Beach utilizes the International Building Code.⁵ Section 115 of that code covers stop work orders and provides:

Whenever the building official finds any work regulated by this code being performed in a manner contrary to the provisions of this code or dangerous or unsafe, the building official **is authorized** to issue a stop work order.

Donevant agreed that this was the provision from which she derived authority to issue a stop work order. (R. 58-59, 147) (R. 269) (emphasis added).

Like the law in *Antley*, this provision does not require the issuance of a stop work order and does not say the building official’s authority regarding such orders is unfettered. In fact, it is less emphatic than the grant of the “right” of appeal in section 12-37-90. Even Judge Jefferson agreed that the stop-work order was discretionary and Donevant “wasn’t mandated to do it.” (R. 366). Judge Jefferson nevertheless (and incorrectly) felt that it was for the jury to decide if the Town required Donevant to violate the law. (R. 367).

The Court of Appeals Improperly Disregarded the Plain Meaning of the Law: The Court of Appeals went to great lengths to change a stop work order being “authorized” into a stop work order being “required” by law. The Court of Appeals cited various other statutory provisions that require that the building codes be enforced and that violations be corrected. What the Court of Appeals improperly ignored was the plain language of the provision regarding work orders that only provides they are “authorized.” The code deliberately does not make stop work

⁵ Relevant provisions of the 2012 Building Code are reproduced as an addendum to this brief consistent with Fed. R. App. 26(f). The South Carolina Appellate Rules do not appear to address the situation of reproduction of regulations that may otherwise be difficult for the Court to reference.

orders the only, and mandatory, way to address building code violations. In morphing “is authorized” into “is required,” the Court of Appeals disregarded the plain meaning of the law.

Section 115 plainly states that stop work orders “are authorized.” This meaning is clear. In completely flipping this phrase into a commandment to issue stop work orders, the Court of Appeals violated the well-established rule to apply the plain meaning of the law. That rule requires the court to “apply the plain meaning of regulations without resort to subtle or forced construction to limit or expand the regulation's operation.” *Doe v. S. Carolina Dep't of Health & Human Servs.*, 398 S.C. 62, 76, 727 S.E.2d 605, 612 (2011) (quoting *Byerly v. Connor*, 307 S.C. 441, 444, 415 S.E.2d 796, 799 (1992)).

a court must abide by the plain meaning of the words of a statute. When interpreting the plain meaning of a statute, courts should not resort to subtle or forced construction to limit or expand the statute's operation. “Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and **the court has no right to impose another meaning.**”

State v. Jacobs, 393 S.C. 584, 584, 713 S.E.2d 621, 622 (2011) (emphasis added) (internal citations omitted).

In reaching to other parts of the code and underlying statute, the Court of Appeals violated this rule. Furthermore, the other law cited by the Court of Appeals is not inconsistent with the plain meaning. The Court of Appeals cited S.C. Code 6-9-10(A) which requires that municipalities “shall enforce” building codes and building code 104.1 which “direct[s]” building officials to enforce the code and 104.3 which states building officials “shall” issue “all necessary notices or orders to ensure compliance.” None of the provisions is inconsistent with the idea that a building official could enforce the code by using lesser means than a stop work order. In fact, Donevant herself admitted she did not always issue stop work orders for violations (R. 122) and her replacement, Kevin Otte, testified he did so only if he could not get a contractor to comply

voluntarily. (R. 250-252). As Otte explained, it is very disruptive and expensive to stop entire construction jobs for most code issues. Building officials try to give the contractor a chance to solve the problem without stopping the job. *Id.* The point is, a stop work order is simply not required to enforce the code most of the time. That is likely why the code does not make a stop work order mandatory.

The Court of Appeals Was Clearly Incorrect in Each of the Three Ways it Sought to Distinguish *Antley*: The Court of Appeals concluded that this case is different from the situation in *Antley* in three ways: (1) *Antley* had the right to file appeals whereas Donevant was required to issue a stop-work order; (2) *Antley* did not have sole discretion to pick which cases to appeal, and (3) *Antley*'s right to appeal was not unfettered. Each of these distinctions is clearly wrong.

Regarding the first question of whether Donevant was required to issue a stop work order, for the reasons previously discussed, she did not. The relevant code clearly is discretionary and the Court of Appeals should not have resorted to ambiguous language elsewhere to change the plain meaning. Furthermore, the other language cited by the Court of Appeals in no way constituted a command that stop work orders always be issued. In any event, the building official clearly did have discretion and even Donevant admitted she had discretion.

Regarding the second and third factors, the Court of Appeals reasoned that *Antley*, unlike Donevant, did not have sole discretion because either *Antley*, or an aggrieved taxpayer, could appeal a tax assessment. First, this is a distinction without merit. *Antley* was the sole official who could appeal a tax assessment unfavorable to the county. Likewise, Donevant is the sole official with power to issue stop work orders. It really is irrelevant, in evaluating an official's discretion, to examine whether an aggrieved citizen may or may not challenge that action. In any

event, an aggrieved contractor or property owner, just like an aggrieved taxpayer in a tax case, also can appeal a stop work order. Section 113.1⁶ of the building code provides:

In order to hear and decide appeals of orders, decisions or determinations made by the *building official* relative to the application and interpretation of this code, there shall be and is hereby created a board of appeals. The board of appeals shall be appointed by the applicable governing authority and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business.⁷

The board of appeals could decide that Donevant was simply wrong in issuing a stop work order and overturn that decision. Therefore, by the Court of Appeals's own reasoning, Donevant did not have sole discretion and her right to issue stop work orders was not unfettered and this case is indistinguishable from *Antley*.

The Court of Appeals's Ruling that Stop Work Orders are always Required for Building Code Violations Will Create Economic Chaos in South Carolina

As stated above, an essential conclusion of the Court of Appeals was that Donevant "issued a stop-work order as she was required to do by law." *Donevant v. Town of Surfside Beach*, 414 S.C. 396, 413, 778 S.E.2d 320, 329 (Ct. App. 2015), *reh'g denied* (Nov. 19, 2015)". The Court of Appeals clearly has not considered the effect of eliminating a building official's discretion regarding stop work orders. If the decision is allowed to stand as written, the court has directed building officials that they are required by law to issue stop work orders on construction projects when code violations are found. There is no discretion. The effect of this decision disregards the tremendous economic impact that stopping an entire construction project might have. A stop work order requires all work to stop. Even on a single-home projects, the relative cost to a contractor who is paying workers, leasing equipment, and potentially spoiling

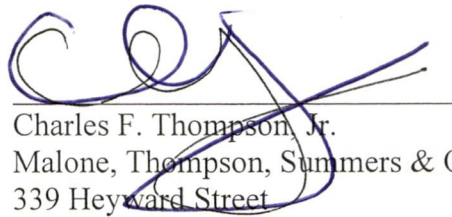
⁶ The Court of Appeals attributed a quotation concerning "unlawful acts" to section 113.1 (414 S.C. 396, 412; 778 S.E.2d 320, 329) however, the court's reference was incorrect and, in fact, the court was quoting section 114.1. See Addendum to this brief and fn. 5 *infra*.

⁷ See Addendum to this brief and fn. 5 *infra*.

materials, could be relatively devastating. The effect could be multiplied by tens of thousands of dollars for a large commercial project. A number of multi-billion construction projects necessary for the economic development of the state are underway at any given time. The Court of Appeals clearly has not considered the potential chaos to this development that would ensue by eliminating the building officials' discretion to deal with violations in a way that does not force a project to a grinding halt. This court should reconsider this decision and hold that the building official does have discretion on how to deal with violations. If it does so, as it must, then *Antley* is indistinguishable from this case and the trial court judgment must be reversed.

CONCLUSION

For the foregoing reasons, the decision of the Court of Appeals on Donevant's claim that she was terminated in violation of public policy should be reversed.

A handwritten signature in blue ink, appearing to read 'Charles F. Thompson, Jr.', is written over a horizontal line. The signature is stylized with loops and a long horizontal stroke extending to the right.

Charles F. Thompson, Jr.
Malone, Thompson, Summers & Ott, LLC
339 Heyward Street
Columbia, SC 29201
Telephone: (803) 254-3300
Facsimile: (803) 254-0309

April 25, 2017

ADDENDUM

CHAPTER 1

SCOPE AND ADMINISTRATION

PART 1—SCOPE AND APPLICATION

SECTION 101 GENERAL

[A] 101.1 **Title.** These regulations shall be known as the *Building Code* of [NAME OF JURISDICTION], hereinafter referred to as “this code.”

[A] 101.2 **Scope.** The provisions of this code shall apply to the construction, *alteration*, relocation, enlargement, replacement, *repair*, equipment, use and occupancy, location, maintenance, removal and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures.

Exception: Detached one- and two-family *dwelling*s and multiple single-family *dwelling*s (*townhouses*) not more than three *stories* above *grade plane* in height with a separate *means of egress* and their accessory structures shall comply with the *International Residential Code*.

[A] 101.2.1 **Appendices.** Provisions in the appendices shall not apply unless specifically adopted.

[A] 101.3 **Intent.** The purpose of this code is to establish the minimum requirements to safeguard the public health, safety and general welfare through structural strength, *means of egress* facilities, stability, sanitation, adequate light and ventilation, energy conservation, and safety to life and property from fire and other hazards attributed to the built environment and to provide safety to fire fighters and emergency responders during emergency operations.

[A] 101.4 **Referenced codes.** The other codes listed in Sections 101.4.1 through 101.4.6 and referenced elsewhere in this code shall be considered part of the requirements of this code to the prescribed extent of each such reference.

[A] 101.4.1 **Gas.** The provisions of the *International Fuel Gas Code* shall apply to the installation of gas piping from the point of delivery, gas appliances and related accessories as covered in this code. These requirements apply to gas piping systems extending from the point of delivery to the inlet connections of appliances and the installation and operation of residential and commercial gas appliances and related accessories.

[A] 101.4.2 **Mechanical.** The provisions of the *International Mechanical Code* shall apply to the installation, alterations, repairs and replacement of mechanical systems, including equipment, appliances, fixtures, fittings and/or appurtenances, including ventilating, heating, cooling, air-conditioning and refrigeration systems, incinerators and other energy-related systems.

[A] 101.4.3 **Plumbing.** The provisions of the *International Plumbing Code* shall apply to the installation, *alteration*, repair and replacement of plumbing systems,

including equipment, appliances, fixtures, fittings and appurtenances, and where connected to a water or sewage system and all aspects of a medical gas system. The provisions of the *International Private Sewage Disposal Code* shall apply to private sewage disposal systems.

[A] 101.4.4 **Property maintenance.** The provisions of the *International Property Maintenance Code* shall apply to existing structures and premises; equipment and facilities; light, ventilation, space heating, sanitation, life and fire safety hazards; responsibilities of owners, operators and occupants; and occupancy of existing premises and structures.

[A] 101.4.5 **Fire prevention.** The provisions of the *International Fire Code* shall apply to matters affecting or relating to structures, processes and premises from the hazard of fire and explosion arising from the storage, handling or use of structures, materials or devices; from conditions hazardous to life, property or public welfare in the occupancy of structures or premises; and from the construction, extension, *repair*, *alteration* or removal of fire suppression, *automatic sprinkler systems* and alarm systems or fire hazards in the structure or on the premises from occupancy or operation.

[A] 101.4.6 **Energy.** The provisions of the *International Energy Conservation Code* shall apply to all matters governing the design and construction of buildings for energy efficiency.

SECTION 102 APPLICABILITY

[A] 102.1 **General.** Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable. Where, in any specific case, different sections of this code specify different materials, methods of construction or other requirements, the most restrictive shall govern.

[A] 102.2 **Other laws.** The provisions of this code shall not be deemed to nullify any provisions of local, state or federal law.

[A] 102.3 **Application of references.** References to chapter or section numbers, or to provisions not specifically identified by number, shall be construed to refer to such chapter, section or provision of this code.

[A] 102.4 **Referenced codes and standards.** The codes and standards referenced in this code shall be considered part of the requirements of this code to the prescribed extent of each such reference and as further regulated in Sections 102.4.1 and 102.4.2.

[A] 102.4.1 **Conflicts.** Where conflicts occur between provisions of this code and referenced codes and standards, the provisions of this code shall apply.

[A] **102.4.2 Provisions in referenced codes and standards.** Where the extent of the reference to a referenced code or standard includes subject matter that is within the scope of this code or the International Codes listed in Section 101.4, the provisions of this code or the International Codes listed in Section 101.4, as applicable, shall take precedence over the provisions in the referenced code or standard.

[A] **102.5 Partial invalidity.** In the event that any part or provision of this code is held to be illegal or void, this shall not have the effect of making void or illegal any of the other parts or provisions.

[A] **102.6 Existing structures.** The legal occupancy of any structure existing on the date of adoption of this code shall be permitted to continue without change, except as is specifically covered in this code, the *International Property Maintenance Code* or the *International Fire Code*, or as is deemed necessary by the *building official* for the general safety and welfare of the occupants and the public.

PART 2—ADMINISTRATION AND ENFORCEMENT

SECTION 103 DEPARTMENT OF BUILDING SAFETY

[A] **103.1 Creation of enforcement agency.** The Department of Building Safety is hereby created and the official in charge thereof shall be known as the *building official*.

[A] **103.2 Appointment.** The *building official* shall be appointed by the chief appointing authority of the jurisdiction.

[A] **103.3 Deputies.** In accordance with the prescribed procedures of this jurisdiction and with the concurrence of the appointing authority, the *building official* shall have the authority to appoint a deputy building official, the related technical officers, inspectors, plan examiners and other employees. Such employees shall have powers as delegated by the *building official*. For the maintenance of existing properties, see the *International Property Maintenance Code*.

SECTION 104 DUTIES AND POWERS OF BUILDING OFFICIAL

[A] **104.1 General.** The *building official* is hereby authorized and directed to enforce the provisions of this code. The *building official* shall have the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of this code. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this code.

[A] **104.2 Applications and permits.** The *building official* shall receive applications, review *construction documents* and issue *permits* for the erection, and *alteration*, demolition and moving of buildings and structures, inspect the premises

for which such *permits* have been issued and enforce compliance with the provisions of this code.

[A] **104.3 Notices and orders.** The *building official* shall issue all necessary notices or orders to ensure compliance with this code.

[A] **104.4 Inspections.** The *building official* shall make all of the required inspections, or the *building official* shall have the authority to accept reports of inspection by *approved agencies* or individuals. Reports of such inspections shall be in writing and be certified by a responsible officer of such *approved agency* or by the responsible individual. The *building official* is authorized to engage such expert opinion as deemed necessary to report upon unusual technical issues that arise, subject to the approval of the appointing authority.

[A] **104.5 Identification.** The *building official* shall carry proper identification when inspecting structures or premises in the performance of duties under this code.

[A] **104.6 Right of entry.** Where it is necessary to make an inspection to enforce the provisions of this code, or where the *building official* has reasonable cause to believe that there exists in a structure or upon a premises a condition which is contrary to or in violation of this code which makes the structure or premises unsafe, dangerous or hazardous, the *building official* is authorized to enter the structure or premises at reasonable times to inspect or to perform the duties imposed by this code, provided that if such structure or premises be occupied that credentials be presented to the occupant and entry requested. If such structure or premises is unoccupied, the *building official* shall first make a reasonable effort to locate the owner or other person having charge or control of the structure or premises and request entry. If entry is refused, the *building official* shall have recourse to the remedies provided by law to secure entry.

[A] **104.7 Department records.** The *building official* shall keep official records of applications received, *permits* and certificates issued, fees collected, reports of inspections, and notices and orders issued. Such records shall be retained in the official records for the period required for retention of public records.

[A] **104.8 Liability.** The *building official*, member of the board of appeals or employee charged with the enforcement of this code, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be rendered liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties. Any suit instituted against an officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be defended by legal representative of the jurisdiction until the final termination of the proceedings. The *building official* or any subordinate shall not be liable for cost in any action, suit or proceeding that is instituted in pursuance of the provisions of this code.

[A] **104.9 Approved materials and equipment.** Materials, equipment and devices *approved* by the *building official* shall

be constructed and installed in accordance with such approval.

[A] 104.9.1 **Used materials and equipment.** The use of used materials which meet the requirements of this code for new materials is permitted. Used equipment and devices shall not be reused unless *approved* by the *building official*.

[A] 104.10 **Modifications.** Whenever there are practical difficulties involved in carrying out the provisions of this code, the *building official* shall have the authority to grant modifications for individual cases, upon application of the owner or owner's representative, provided the *building official* shall first find that special individual reason makes the strict letter of this code impractical and the modification is in compliance with the intent and purpose of this code and that such modification does not lessen health, accessibility, life and fire safety, or structural requirements. The details of action granting modifications shall be recorded and entered in the files of the department of building safety.

[A] 104.10.1 **Flood hazard areas.** The building official shall not grant modifications to any provision required in *flood hazard areas* as established by Section 1612.3 unless a determination has been made that:

1. A showing of good and sufficient cause that the unique characteristics of the size, configuration or topography of the site render the elevation standards of Section 1612 inappropriate.
2. A determination that failure to grant the variance would result in exceptional hardship by rendering the lot undevelopable.
3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, cause fraud on or victimization of the public, or conflict with existing laws or ordinances.
4. A determination that the variance is the minimum necessary to afford relief, considering the flood hazard.
5. Submission to the applicant of written notice specifying the difference between the *design flood elevation* and the elevation to which the building is to be built, stating that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced floor elevation, and stating that construction below the *design flood elevation* increases risks to life and property.

[A] 104.11 **Alternative materials, design and methods of construction and equipment.** The provisions of this code are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by this code, provided that any such alternative has been *approved*. An alternative material, design or method of construction shall be *approved* where the *building official* finds that the proposed design is satisfactory and complies with the intent of the provisions of this code, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code

in quality, strength, effectiveness, *fire resistance*, durability and safety.

[A] 104.11.1 **Research reports.** Supporting data, where necessary to assist in the approval of materials or assemblies not specifically provided for in this code, shall consist of valid research reports from *approved* sources.

[A] 104.11.2 **Tests.** Whenever there is insufficient evidence of compliance with the provisions of this code, or evidence that a material or method does not conform to the requirements of this code, or in order to substantiate claims for alternative materials or methods, the *building official* shall have the authority to require tests as evidence of compliance to be made at no expense to the jurisdiction. Test methods shall be as specified in this code or by other recognized test standards. In the absence of recognized and accepted test methods, the *building official* shall approve the testing procedures. Tests shall be performed by an *approved agency*. Reports of such tests shall be retained by the *building official* for the period required for retention of public records.

SECTION 105 PERMITS

[A] 105.1 **Required.** Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the *building official* and obtain the required *permit*.

[A] 105.1.1 **Annual permit.** In lieu of an individual *permit* for each *alteration* to an already *approved* electrical, gas, mechanical or plumbing installation, the *building official* is authorized to issue an annual *permit* upon application therefor to any person, firm or corporation regularly employing one or more qualified tradespersons in the building, structure or on the premises owned or operated by the applicant for the *permit*.

[A] 105.1.2 **Annual permit records.** The person to whom an annual *permit* is issued shall keep a detailed record of *alterations* made under such annual *permit*. The *building official* shall have access to such records at all times or such records shall be filed with the *building official* as designated.

[A] 105.2 **Work exempt from permit.** Exemptions from *permit* requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction. *Permits* shall not be required for the following:

Building:

1. One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided the floor area is not greater than 120 square feet (11 m²).

2. Fences not over 7 feet (2134 mm) high.
3. Oil derricks.
4. Retaining walls that are not over 4 feet (1219 mm) in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge or impounding Class I, II or IIIA liquids.
5. Water tanks supported directly on grade if the capacity is not greater than 5,000 gallons (18 925 L) and the ratio of height to diameter or width is not greater than 2:1.
6. Sidewalks and driveways not more than 30 inches (762 mm) above adjacent grade, and not over any basement or *story* below and are not part of an *accessible route*.
7. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.
8. Temporary motion picture, television and theater stage sets and scenery.
9. Prefabricated swimming pools accessory to a Group R-3 occupancy that are less than 24 inches (610 mm) deep, are not greater than 5,000 gallons (18 925 L) and are installed entirely above ground.
10. Shade cloth structures constructed for nursery or agricultural purposes, not including service systems.
11. Swings and other playground equipment accessory to detached one- and two-family *dwellings*.
12. Window awnings in Group R-3 and U occupancies, supported by an exterior wall that do not project more than 54 inches (1372 mm) from the exterior wall and do not require additional support.
13. Nonfixed and movable fixtures, cases, racks, counters and partitions not over 5 feet 9 inches (1753 mm) in height.

Electrical:

Repairs and maintenance: Minor repair work, including the replacement of lamps or the connection of *approved* portable electrical equipment to *approved* permanently installed receptacles.

Radio and television transmitting stations: The provisions of this code shall not apply to electrical equipment used for radio and television transmissions, but do apply to equipment and wiring for a power supply and the installations of towers and antennas.

Temporary testing systems: A *permit* shall not be required for the installation of any temporary system required for the testing or servicing of electrical equipment or apparatus.

Gas:

1. Portable heating appliance.
2. Replacement of any minor part that does not alter approval of equipment or make such equipment unsafe.

Mechanical:

1. Portable heating appliance.
2. Portable ventilation equipment.
3. Portable cooling unit.
4. Steam, hot or chilled water piping within any heating or cooling equipment regulated by this code.
5. Replacement of any part that does not alter its approval or make it unsafe.
6. Portable evaporative cooler.
7. Self-contained refrigeration system containing 10 pounds (5 kg) or less of refrigerant and actuated by motors of 1 horsepower (746 W) or less.

Plumbing:

1. The stopping of leaks in drains, water, soil, waste or vent pipe, provided, however, that if any concealed trap, drain pipe, water, soil, waste or vent pipe becomes defective and it becomes necessary to remove and replace the same with new material, such work shall be considered as new work and a *permit* shall be obtained and inspection made as provided in this code.
2. The clearing of stoppages or the repairing of leaks in pipes, valves or fixtures and the removal and reinstallation of water closets, provided such repairs do not involve or require the replacement or rearrangement of valves, pipes or fixtures.

[A] **105.2.1 Emergency repairs.** Where equipment replacements and repairs must be performed in an emergency situation, the *permit* application shall be submitted within the next working business day to the *building official*.

[A] **105.2.2 Repairs.** Application or notice to the *building official* is not required for ordinary repairs to structures, replacement of lamps or the connection of *approved* portable electrical equipment to *approved* permanently installed receptacles. Such repairs shall not include the cutting away of any wall, partition or portion thereof, the removal or cutting of any structural beam or load-bearing support, or the removal or change of any required *means of egress*, or rearrangement of parts of a structure affecting the egress requirements; nor shall ordinary repairs include *addition* to, *alteration* of, replacement or relocation of any standpipe, water supply, sewer, drainage, drain leader, gas, soil, waste, vent or similar piping, electric wiring or mechanical or other work affecting public health or general safety.

[A] **105.2.3 Public service agencies.** A *permit* shall not be required for the installation, *alteration* or repair of generation, transmission, distribution or metering or other related equipment that is under the ownership and control of public service agencies by established right.

[A] **105.3 Application for permit.** To obtain a *permit*, the applicant shall first file an application therefor in writing on a

form furnished by the department of building safety for that purpose. Such application shall:

1. Identify and describe the work to be covered by the *permit* for which application is made.
2. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.
3. Indicate the use and occupancy for which the proposed work is intended.
4. Be accompanied by *construction documents* and other information as required in Section 107.
5. State the valuation of the proposed work.
6. Be signed by the applicant, or the applicant's authorized agent.
7. Give such other data and information as required by the *building official*.

[A] 105.3.1 Action on application. The *building official* shall examine or cause to be examined applications for *permits* and amendments thereto within a reasonable time after filing. If the application or the *construction documents* do not conform to the requirements of pertinent laws, the *building official* shall reject such application in writing, stating the reasons therefor. If the *building official* is satisfied that the proposed work conforms to the requirements of this code and laws and ordinances applicable thereto, the *building official* shall issue a *permit* therefor as soon as practicable.

[A] 105.3.2 Time limitation of application. An application for a *permit* for any proposed work shall be deemed to have been abandoned 180 days after the date of filing, unless such application has been pursued in good faith or a *permit* has been issued; except that the *building official* is authorized to grant one or more extensions of time for additional periods not exceeding 90 days each. The extension shall be requested in writing and justifiable cause demonstrated.

[A] 105.4 Validity of permit. The issuance or granting of a *permit* shall not be construed to be a *permit* for, or an approval of, any violation of any of the provisions of this code or of any other ordinance of the jurisdiction. *Permits* presuming to give authority to violate or cancel the provisions of this code or other ordinances of the jurisdiction shall not be valid. The issuance of a *permit* based on *construction documents* and other data shall not prevent the *building official* from requiring the correction of errors in the *construction documents* and other data. The *building official* is also authorized to prevent occupancy or use of a structure where in violation of this code or of any other ordinances of this jurisdiction.

[A] 105.5 Expiration. Every *permit* issued shall become invalid unless the work on the site authorized by such *permit* is commenced within 180 days after its issuance, or if the work authorized on the site by such *permit* is suspended or abandoned for a period of 180 days after the time the work is commenced. The *building official* is authorized to grant, in

writing, one or more extensions of time, for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.

[A] 105.6 Suspension or revocation. The *building official* is authorized to suspend or revoke a *permit* issued under the provisions of this code wherever the *permit* is issued in error or on the basis of incorrect, inaccurate or incomplete information, or in violation of any ordinance or regulation or any of the provisions of this code.

[A] 105.7 Placement of permit. The building *permit* or copy shall be kept on the site of the work until the completion of the project.

SECTION 106 FLOOR AND ROOF DESIGN LOADS

[A] 106.1 Live loads posted. Where the live loads for which each floor or portion thereof of a commercial or industrial building is or has been designed to exceed 50 psf (2.40 kN/m²), such design live loads shall be conspicuously posted by the owner in that part of each *story* in which they apply, using durable signs. It shall be unlawful to remove or deface such notices

[A] 106.2 Issuance of certificate of occupancy. A certificate of occupancy required by Section 111 shall not be issued until the floor load signs, required by Section 106.1, have been installed.

[A] 106.3 Restrictions on loading. It shall be unlawful to place, or cause or permit to be placed, on any floor or roof of a building, structure or portion thereof, a load greater than is permitted by this code.

SECTION 107 SUBMITTAL DOCUMENTS

[A] 107.1 General. Submittal documents consisting of *construction documents*, statement of *special inspections*, geotechnical report and other data shall be submitted in two or more sets with each *permit* application. The *construction documents* shall be prepared by a *registered design professional* where required by the statutes of the jurisdiction in which the project is to be constructed. Where special conditions exist, the *building official* is authorized to require additional *construction documents* to be prepared by a *registered design professional*.

Exception: The *building official* is authorized to waive the submission of *construction documents* and other data not required to be prepared by a *registered design professional* if it is found that the nature of the work applied for is such that review of *construction documents* is not necessary to obtain compliance with this code.

[A] 107.2 Construction documents. *Construction documents* shall be in accordance with Sections 107.2.1 through 107.2.5.

[A] 107.2.1 Information on construction documents. *Construction documents* shall be dimensioned and drawn upon suitable material. Electronic media documents are

permitted to be submitted when *approved* by the *building official*. *Construction documents* shall be of sufficient clarity to indicate the location, nature and extent of the work proposed and show in detail that it will conform to the provisions of this code and relevant laws, ordinances, rules and regulations, as determined by the *building official*.

[A] 107.2.2 Fire protection system shop drawings. Shop drawings for the *fire protection system(s)* shall be submitted to indicate conformance to this code and the *construction documents* and shall be *approved* prior to the start of system installation. Shop drawings shall contain all information as required by the referenced installation standards in Chapter 9.

[A] 107.2.3 Means of egress. The *construction documents* shall show in sufficient detail the location, construction, size and character of all portions of the *means of egress* including the path of the *exit discharge* to the *public way* in compliance with the provisions of this code. In other than occupancies in Groups R-2, R-3, and I-1, the *construction documents* shall designate the number of occupants to be accommodated on every floor, and in all rooms and spaces.

[A] 107.2.4 Exterior wall envelope. *Construction documents* for all buildings shall describe the *exterior wall envelope* in sufficient detail to determine compliance with this code. The *construction documents* shall provide details of the *exterior wall envelope* as required, including flashing, intersections with dissimilar materials, corners, end details, control joints, intersections at roof, eaves or parapets, means of drainage, water-resistive membrane and details around openings.

The *construction documents* shall include manufacturer's installation instructions that provide supporting documentation that the proposed penetration and opening details described in the *construction documents* maintain the weather resistance of the *exterior wall envelope*. The supporting documentation shall fully describe the *exterior wall* system which was tested, where applicable, as well as the test procedure used.

[A] 107.2.5 Site plan. The *construction documents* submitted with the application for *permit* shall be accompanied by a site plan showing to scale the size and location of new construction and existing structures on the site, distances from *lot lines*, the established street grades and the proposed finished grades and, as applicable, flood hazard areas, floodways, and *design flood* elevations; and it shall be drawn in accordance with an accurate boundary line survey. In the case of demolition, the site plan shall show construction to be demolished and the location and size of existing structures and construction that are to remain on the site or plot. The *building official* is authorized to waive or modify the requirement for a site plan when the application for *permit* is for *alteration* or repair or when otherwise warranted.

[A] 107.2.5.1 Design flood elevations. Where *design flood* elevations are not specified, they shall be established in accordance with Section 1612.3.1.

[A] 107.3 Examination of documents. The *building official* shall examine or cause to be examined the accompanying submittal documents and shall ascertain by such examinations whether the construction indicated and described is in accordance with the requirements of this code and other pertinent laws or ordinances.

[A] 107.3.1 Approval of construction documents. When the *building official* issues a *permit*, the *construction documents* shall be *approved*, in writing or by stamp, as "Reviewed for Code Compliance." One set of *construction documents* so reviewed shall be retained by the *building official*. The other set shall be returned to the applicant, shall be kept at the site of work and shall be open to inspection by the *building official* or a duly authorized representative.

[A] 107.3.2 Previous approvals. This code shall not require changes in the *construction documents*, construction or designated occupancy of a structure for which a lawful *permit* has been heretofore issued or otherwise lawfully authorized, and the construction of which has been pursued in good faith within 180 days after the effective date of this code and has not been abandoned.

[A] 107.3.3 Phased approval. The *building official* is authorized to issue a *permit* for the construction of foundations or any other part of a building or structure before the *construction documents* for the whole building or structure have been submitted, provided that adequate information and detailed statements have been filed complying with pertinent requirements of this code. The holder of such *permit* for the foundation or other parts of a building or structure shall proceed at the holder's own risk with the building operation and without assurance that a *permit* for the entire structure will be granted.

[A] 107.3.4 Design professional in responsible charge. When it is required that documents be prepared by a *registered design professional*, the *building official* shall be authorized to require the owner to engage and designate on the building *permit* application a *registered design professional* who shall act as the *registered design professional in responsible charge*. If the circumstances require, the owner shall designate a substitute *registered design professional in responsible charge* who shall perform the duties required of the original *registered design professional in responsible charge*. The *building official* shall be notified in writing by the owner if the *registered design professional in responsible charge* is changed or is unable to continue to perform the duties.

The *registered design professional in responsible charge* shall be responsible for reviewing and coordinating submittal documents prepared by others, including phased and deferred submittal items, for compatibility with the design of the building.

[A] 107.3.4.1 Deferred submittals. For the purposes of this section, deferred submittals are defined as those portions of the design that are not submitted at the time of the application and that are to be submitted to the *building official* within a specified period.

Deferral of any submittal items shall have the prior approval of the *building official*. The *registered design professional in responsible charge* shall list the deferred submittals on the *construction documents* for review by the *building official*.

Documents for deferred submittal items shall be submitted to the *registered design professional in responsible charge* who shall review them and forward them to the *building official* with a notation indicating that the deferred submittal documents have been reviewed and found to be in general conformance to the design of the building. The deferred submittal items shall not be installed until the deferred submittal documents have been *approved* by the *building official*.

[A] 107.4 **Amended construction documents.** Work shall be installed in accordance with the *approved construction documents*, and any changes made during construction that are not in compliance with the *approved construction documents* shall be resubmitted for approval as an amended set of *construction documents*.

[A] 107.5 **Retention of construction documents.** One set of *approved construction documents* shall be retained by the *building official* for a period of not less than 180 days from date of completion of the permitted work, or as required by state or local laws.

SECTION 108 TEMPORARY STRUCTURES AND USES

[A] 108.1 **General.** The *building official* is authorized to issue a *permit* for temporary structures and temporary uses. Such *permits* shall be limited as to time of service, but shall not be permitted for more than 180 days. The *building official* is authorized to grant extensions for demonstrated cause.

[A] 108.2 **Conformance.** Temporary structures and uses shall conform to the structural strength, fire safety, *means of egress*, accessibility, light, ventilation and sanitary requirements of this code as necessary to ensure public health, safety and general welfare.

[A] 108.3 **Temporary power.** The *building official* is authorized to give permission to temporarily supply and use power in part of an electric installation before such installation has been fully completed and the final certificate of completion has been issued. The part covered by the temporary certificate shall comply with the requirements specified for temporary lighting, heat or power in NFPA 70.

[A] 108.4 **Termination of approval.** The *building official* is authorized to terminate such *permit* for a temporary structure or use and to order the temporary structure or use to be discontinued.

SECTION 109 FEES

[A] 109.1 **Payment of fees.** A *permit* shall not be valid until the fees prescribed by law have been paid, nor shall an amendment to a *permit* be released until the additional fee, if any, has been paid.

[A] 109.2 **Schedule of permit fees.** On buildings, structures, electrical, gas, mechanical, and plumbing systems or *alterations* requiring a *permit*, a fee for each *permit* shall be paid as required, in accordance with the schedule as established by the applicable governing authority.

[A] 109.3 **Building permit valuations.** The applicant for a *permit* shall provide an estimated *permit* value at time of application. *Permit* valuations shall include total value of work, including materials and labor, for which the *permit* is being issued, such as electrical, gas, mechanical, plumbing equipment and permanent systems. If, in the opinion of the *building official*, the valuation is underestimated on the application, the *permit* shall be denied, unless the applicant can show detailed estimates to meet the approval of the *building official*. Final building *permit* valuation shall be set by the *building official*.

[A] 109.4 **Work commencing before permit issuance.** Any person who commences any work on a building, structure, electrical, gas, mechanical or plumbing system before obtaining the necessary *permits* shall be subject to a fee established by the *building official* that shall be in addition to the required *permit* fees.

[A] 109.5 **Related fees.** The payment of the fee for the construction, *alteration*, removal or demolition for work done in connection to or concurrently with the work authorized by a building *permit* shall not relieve the applicant or holder of the *permit* from the payment of other fees that are prescribed by law.

[A] 109.6 **Refunds.** The *building official* is authorized to establish a refund policy.

SECTION 110 INSPECTIONS

[A] 110.1 **General.** Construction or work for which a *permit* is required shall be subject to inspection by the *building official* and such construction or work shall remain accessible and exposed for inspection purposes until *approved*. Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction. Inspections presuming to give authority to violate or cancel the provisions of this code or of other ordinances of the jurisdiction shall not be valid. It shall be the duty of the *permit* applicant to cause the work to remain accessible and exposed for inspection purposes. Neither the *building official* nor the jurisdiction shall be liable for expense entailed in the removal or replacement of any material required to allow inspection.

[A] 110.2 **Preliminary inspection.** Before issuing a *permit*, the *building official* is authorized to examine or cause to be examined buildings, structures and sites for which an application has been filed.

[A] 110.3 **Required inspections.** The *building official*, upon notification, shall make the inspections set forth in Sections 110.3.1 through 110.3.10.

[A] 110.3.1 **Footing and foundation inspection.** Footing and foundation inspections shall be made after excavations for footings are complete and any required reinforcing

steel is in place. For concrete foundations, any required forms shall be in place prior to inspection. Materials for the foundation shall be on the job, except where concrete is ready mixed in accordance with ASTM C 94, the concrete need not be on the job.

[A] 110.3.2 Concrete slab and under-floor inspection. Concrete slab and under-floor inspections shall be made after in-slab or under-floor reinforcing steel and building service equipment, conduit, piping accessories and other ancillary equipment items are in place, but before any concrete is placed or floor sheathing installed, including the subfloor.

[A] 110.3.3 Lowest floor elevation. In flood hazard areas, upon placement of the lowest floor, including the basement, and prior to further vertical construction, the elevation certification required in Section 1612.5 shall be submitted to the *building official*.

[A] 110.3.4 Frame inspection. Framing inspections shall be made after the roof deck or sheathing, all framing, *fire-blocking* and bracing are in place and pipes, chimneys and vents to be concealed are complete and the rough electrical, plumbing, heating wires, pipes and ducts are *approved*.

[A] 110.3.5 Lath and gypsum board inspection. Lath and gypsum board inspections shall be made after lathing and gypsum board, interior and exterior, is in place, but before any plastering is applied or gypsum board joints and fasteners are taped and finished.

Exception: Gypsum board that is not part of a fire-resistance-rated assembly or a shear assembly.

[A] 110.3.6 Fire- and smoke-resistant penetrations. Protection of joints and penetrations in fire-resistance-rated assemblies, *smoke barriers* and smoke partitions shall not be concealed from view until inspected and *approved*.

[A] 110.3.7 Energy efficiency inspections. Inspections shall be made to determine compliance with Chapter 13 and shall include, but not be limited to, inspections for: envelope insulation *R*- and *U*-values, fenestration *U*-value, duct system *R*-value, and HVAC and water-heating equipment efficiency.

[A] 110.3.8 Other inspections. In addition to the inspections specified in Sections 110.3.1 through 110.3.7, the *building official* is authorized to make or require other inspections of any construction work to ascertain compliance with the provisions of this code and other laws that are enforced by the department of building safety.

[A] 110.3.9 Special inspections. For *special inspections*, see Chapter 17.

[A] 110.3.10 Final inspection. The final inspection shall be made after all work required by the *building permit* is completed.

[A] 110.3.10.1 Flood hazard documentation. If located in a *flood hazard area*, documentation of the elevation of the lowest floor as required in Section

1612.5 shall be submitted to the *building official* prior to the final inspection.

[A] 110.4 Inspection agencies. The *building official* is authorized to accept reports of *approved* inspection agencies, provided such agencies satisfy the requirements as to qualifications and reliability.

[A] 110.5 Inspection requests. It shall be the duty of the holder of the *building permit* or their duly authorized agent to notify the *building official* when work is ready for inspection. It shall be the duty of the *permit* holder to provide access to and means for inspections of such work that are required by this code.

[A] 110.6 Approval required. Work shall not be done beyond the point indicated in each successive inspection without first obtaining the approval of the *building official*. The *building official*, upon notification, shall make the requested inspections and shall either indicate the portion of the construction that is satisfactory as completed, or notify the *permit* holder or his or her agent wherein the same fails to comply with this code. Any portions that do not comply shall be corrected and such portion shall not be covered or concealed until authorized by the *building official*.

SECTION 111 CERTIFICATE OF OCCUPANCY

[A] 111.1 Use and occupancy. No building or structure shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof shall be made, until the *building official* has issued a certificate of occupancy therefor as provided herein. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction.

Exception: Certificates of occupancy are not required for work exempt from *permits* under Section 105.2.

[A] 111.2 Certificate issued. After the *building official* inspects the building or structure and finds no violations of the provisions of this code or other laws that are enforced by the department of building safety, the *building official* shall issue a certificate of occupancy that contains the following:

1. The *building permit* number.
2. The address of the structure.
3. The name and address of the owner.
4. A description of that portion of the structure for which the certificate is issued.
5. A statement that the described portion of the structure has been inspected for compliance with the requirements of this code for the occupancy and division of occupancy and the use for which the proposed occupancy is classified.
6. The name of the *building official*.
7. The edition of the code under which the *permit* was issued.

8. The use and occupancy, in accordance with the provisions of Chapter 3.
9. The type of construction as defined in Chapter 6.
10. The design *occupant load*.
11. If an *automatic sprinkler system* is provided, whether the sprinkler system is required.
12. Any special stipulations and conditions of the building *permit*.

[A] **111.3 Temporary occupancy.** The *building official* is authorized to issue a temporary certificate of occupancy before the completion of the entire work covered by the *permit*, provided that such portion or portions shall be occupied safely. The *building official* shall set a time period during which the temporary certificate of occupancy is valid.

[A] **111.4 Revocation.** The *building official* is authorized to, in writing, suspend or revoke a certificate of occupancy or completion issued under the provisions of this code wherever the certificate is issued in error, or on the basis of incorrect information supplied, or where it is determined that the building or structure or portion thereof is in violation of any ordinance or regulation or any of the provisions of this code.

SECTION 112 SERVICE UTILITIES

[A] **112.1 Connection of service utilities.** No person shall make connections from a utility, source of energy, fuel or power to any building or system that is regulated by this code for which a *permit* is required, until released by the *building official*.

[A] **112.2 Temporary connection.** The *building official* shall have the authority to authorize the temporary connection of the building or system to the utility source of energy, fuel or power.

[A] **112.3 Authority to disconnect service utilities.** The *building official* shall have the authority to authorize disconnection of utility service to the building, structure or system regulated by this code and the referenced codes and standards set forth in Section 101.4 in case of emergency where necessary to eliminate an immediate hazard to life or property or when such utility connection has been made without the approval required by Section 112.1 or 112.2. The *building official* shall notify the serving utility, and wherever possible the owner and occupant of the building, structure or service system of the decision to disconnect prior to taking such action. If not notified prior to disconnecting, the owner or occupant of the building, structure or service system shall be notified in writing, as soon as practical thereafter.

SECTION 113 BOARD OF APPEALS

[A] **113.1 General.** In order to hear and decide appeals of orders, decisions or determinations made by the *building official* relative to the application and interpretation of this code, there shall be and is hereby created a board of appeals. The board of appeals shall be appointed by the applicable govern-

ing authority and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business.

[A] **113.2 Limitations on authority.** An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply or an equally good or better form of construction is proposed. The board shall have no authority to waive requirements of this code.

[A] **113.3 Qualifications.** The board of appeals shall consist of members who are qualified by experience and training to pass on matters pertaining to building construction and are not employees of the jurisdiction.

SECTION 114 VIOLATIONS

[A] **114.1 Unlawful acts.** It shall be unlawful for any person, firm or corporation to erect, construct, alter, extend, repair, move, remove, demolish or occupy any building, structure or equipment regulated by this code, or cause same to be done, in conflict with or in violation of any of the provisions of this code.

[A] **114.2 Notice of violation.** The *building official* is authorized to serve a notice of violation or order on the person responsible for the erection, construction, *alteration*, extension, repair, moving, removal, demolition or occupancy of a building or structure in violation of the provisions of this code, or in violation of a *permit* or certificate issued under the provisions of this code. Such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.

[A] **114.3 Prosecution of violation.** If the notice of violation is not complied with promptly, the *building official* is authorized to request the legal counsel of the jurisdiction to institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the building or structure in violation of the provisions of this code or of the order or direction made pursuant thereto.

[A] **114.4 Violation penalties.** Any person who violates a provision of this code or fails to comply with any of the requirements thereof or who erects, constructs, alters or repairs a building or structure in violation of the *approved construction documents* or directive of the *building official*, or of a *permit* or certificate issued under the provisions of this code, shall be subject to penalties as prescribed by law.

SECTION 115 STOP WORK ORDER

[A] **115.1 Authority.** Whenever the *building official* finds any work regulated by this code being performed in a manner either contrary to the provisions of this code or dangerous or unsafe, the *building official* is authorized to issue a stop work order.

[A] **115.2 Issuance.** The stop work order shall be in writing and shall be given to the owner of the property involved, or to

SCOPE AND ADMINISTRATION

the owner's agent, or to the person doing the work. Upon issuance of a stop work order, the cited work shall immediately cease. The stop work order shall state the reason for the order, and the conditions under which the cited work will be permitted to resume.

[A] **115.3 Unlawful continuance.** Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to penalties as prescribed by law.

SECTION 116 UNSAFE STRUCTURES AND EQUIPMENT

[A] **116.1 Conditions.** Structures or existing equipment that are or hereafter become unsafe, insanitary or deficient because of inadequate *means of egress* facilities, inadequate light and ventilation, or which constitute a fire hazard, or are otherwise dangerous to human life or the public welfare, or that involve illegal or improper occupancy or inadequate maintenance, shall be deemed an unsafe condition. Unsafe structures shall be taken down and removed or made safe, as the *building official* deems necessary and as provided for in this section. A vacant structure that is not secured against entry shall be deemed unsafe.

[A] **116.2 Record.** The *building official* shall cause a report to be filed on an unsafe condition. The report shall state the occupancy of the structure and the nature of the unsafe condition.

[A] **116.3 Notice.** If an unsafe condition is found, the *building official* shall serve on the owner, agent or person in control of the structure, a written notice that describes the condition deemed unsafe and specifies the required repairs or improvements to be made to abate the unsafe condition, or that requires the unsafe structure to be demolished within a stipulated time. Such notice shall require the person thus notified to declare immediately to the *building official* acceptance or rejection of the terms of the order.

[A] **116.4 Method of service.** Such notice shall be deemed properly served if a copy thereof is (a) delivered to the owner personally; (b) sent by certified or registered mail addressed to the owner at the last known address with the return receipt requested; or (c) delivered in any other manner as prescribed by local law. If the certified or registered letter is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure affected by such notice. Service of such notice in the foregoing manner upon the owner's agent or upon the person responsible for the structure shall constitute service of notice upon the owner.

[A] **116.5 Restoration.** The structure or equipment determined to be unsafe by the *building official* is permitted to be restored to a safe condition. To the extent that repairs, *alterations* or *additions* are made or a change of occupancy occurs during the restoration of the structure, such repairs, *alterations*, *additions* or change of occupancy shall comply with the requirements of Section 105.2.2 and Chapter 34.

CHAPTER 2

DEFINITIONS

SECTION 201 GENERAL

201.1 Scope. Unless otherwise expressly stated, the following words and terms shall, for the purposes of this code, have the meanings shown in this chapter.

201.2 Interchangeability. Words used in the present tense include the future; words stated in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural, the singular.

201.3 Terms defined in other codes. Where terms are not defined in this code and are defined in the *International Energy Conservation Code*, *International Fuel Gas Code*, *International Fire Code*, *International Mechanical Code* or *International Plumbing Code*, such terms shall have the meanings ascribed to them as in those codes.

201.4 Terms not defined. Where terms are not defined through the methods authorized by this section, such terms shall have ordinarily accepted meanings such as the context implies.

SECTION 202 DEFINITIONS

24-HOUR CARE. The actual time that a person is an occupant within a facility for the purpose of receiving care. It shall not include a facility that is open for 24 hours and is capable of providing care to someone visiting the facility during any segment of the 24 hours.

AAC MASONRY. *Masonry* made of autoclaved aerated concrete (AAC) units, manufactured without internal reinforcement and bonded together using thin- or thick-bed mortar.

ACCESSIBLE. A *site*, *building*, *facility* or portion thereof that complies with Chapter 11.

ACCESSIBLE MEANS OF EGRESS. A continuous and unobstructed way of egress travel from any *accessible* point in a *building* or *facility* to a *public way*.

ACCESSIBLE ROUTE. A continuous, unobstructed path that complies with Chapter 11.

ACCESSIBLE UNIT. A *dwelling unit* or *sleeping unit* that complies with this code and the provisions for Accessible units in ICC A117.1.

ACCREDITATION BODY. An *approved*, third-party organization that is independent of the grading and inspection agencies, and the lumber mills, and that initially accredits and subsequently monitors, on a continuing basis, the competency and performance of a grading or inspection agency related to carrying out specific tasks.

[A] ADDITION. An extension or increase in floor area or height of a building or structure.

ADHERED MASONRY VENEER. *Veneer* secured and supported through the adhesion of an *approved* bonding material applied to an *approved backing*.

ADOBE CONSTRUCTION. Construction in which the exterior *load-bearing* and *nonload-bearing walls* and partitions are of unfired clay *masonry units*, and floors, roofs and interior framing are wholly or partly of wood or other *approved materials*.

Adobe, stabilized. Unfired clay *masonry units* to which admixtures, such as emulsified asphalt, are added during the manufacturing process to limit the units' water absorption so as to increase their durability.

Adobe, unstabilized. Unfired clay *masonry units* that do not meet the definition of "Adobe, stabilized."

[F] AEROSOL. A product that is dispensed from an *aerosol container* by a propellant. Aerosol products shall be classified by means of the calculation of their chemical heats of combustion and shall be designated Level 1, Level 2 or Level 3.

Level 1 aerosol products. Those with a total chemical heat of combustion that is less than or equal to 8,600 British thermal units per pound (Btu/lb) (20 kJ/g).

Level 2 aerosol products. Those with a total chemical heat of combustion that is greater than 8,600 Btu/lb (20 kJ/g), but less than or equal to 13,000 Btu/lb (30 kJ/g).

Level 3 aerosol products. Those with a total chemical heat of combustion that is greater than 13,000 Btu/lb (30 kJ/g).

[F] AEROSOL CONTAINER. A metal can or a glass or plastic bottle designed to dispense an *aerosol*. Metal cans shall be limited to a maximum size of 33.8 fluid ounces (1000 ml). Glass or plastic bottles shall be limited to a maximum size of 4 fluid ounces (118 ml).

AGGREGATE. In roofing, crushed stone, crushed slag or water-worn gravel used for surfacing for *roof coverings*.

AGRICULTURAL BUILDING. A structure designed and constructed to house farm implements, hay, grain, poultry, livestock or other horticultural products. This structure shall not be a place of human habitation or a place of employment where agricultural products are processed, treated or packaged, nor shall it be a place used by the public.

AIR-INFLATED STRUCTURE. A structure that uses air-pressurized membrane beams, arches or other elements to enclose space. Occupants of such a structure do not occupy the pressurized area used to support the structure.

AIR-SUPPORTED STRUCTURE. A structure wherein the shape of the structure is attained by air pressure and occupants of the structure are within the elevated pressure area. Air-supported structures are of two basic types:

Double skin. Similar to a single skin, but with an attached liner that is separated from the outer skin and provides an

**STATE OF SOUTH CAROLINA
In the Supreme Court**

**APPEAL FROM HORRY COUNTY
Court of Common Pleas**

Deadra Jefferson, Circuit Court Judge

APPELLATE CASE NO. 2015-002533

TRIAL CASE NO. 2012-CP-26-4852

Jacklyn J. Donevant Respondent


v.

Town of Surfside Beach. Petitioner

PROOF OF SERVICE

The foregoing Petitioner's brief was served on Respondent, via first class mail, postage prepaid and addressed to Plaintiff's counsel of record:

Henrietta Golding, Esquire
McNair Law Firm
2411 N. Oak Street, Suite 206
Myrtle Beach S.C. 29577



Charles F. Thompson, Jr.
Malone, Thompson, Summers & Ott
339 Heyward Street
Columbia, S.C. 29201
Attorney for the Respondent

RECEIVED
MAY 12 2017
S.C. SUPREME COURT

May 11, 2016