

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Midway Baptist Church of York,

PLAINTIFF,

v.

County of York,

DEFENDANT.

IN THE COURT OF COMMON PLEAS

CASE NO. 2023-CP46-01467

ORDER

RECEIVED

OCT 14 2025

SC Court of Appeals

This is an action for a Declaratory Judgment pursuant to Section 15-53-10, *et seq.*, Code of Laws of South Carolina, 1976, as amended. Plaintiff, Midway Baptist Church of York ("Plaintiff or Church") filed this action against Defendant County of York ("Defendant or County") seeking a declaratory judgment that religious education qualifies as an accessory use of a church in the South Carolina Building Code even though the material taught satisfies the educational requirements of South Carolina law, and that the SC Building Code do not place any time restrictions on Midway's use of its classrooms for religious education.

A non-jury trial was held on December 12, 2024. Plaintiff and its attorney, Emily N. Brown appeared. Defendant and its attorneys, Michael K. Kendree and Laura Dover, appeared. Pastor Mark Dellinger and Amy Moss, Director of Midway Christian Academy testified for Plaintiff. Deputy Building Official Jennifer Culver, Planning Director Jonathan Buono, Building Official Jamie Catoe, and Fire Marshal Donnie Helms testified for Defendant.

The issue before the Court is whether the Building Code allows Plaintiff to use its classrooms at the Church for K-12th grade education, without changing its occupancy classification. Based on the testimony and exhibits presented at the December 12, 2024 hearing, I make the following findings of fact and conclusions of law as required by Rule 52(a), SCRPC.

**FINDINGS OF FACT**

I hereby specifically find from the testimony and exhibits presented at trial that:

1. Plaintiff is a Baptist Church located in the unincorporated area of western York County, South Carolina, off of Highway 55.

2. Plaintiff, established in 1966, owns property in York County upon which are situated three buildings: a Sanctuary, a Chapel and Sunday School building, and a fellowship building.

3. Plaintiff is classified as an Assembly Group A occupancy pursuant to § 303 of the South Carolina Building Code (“Assembly” or “Group A”). The parties do not dispute that the site meets the Building and Fire code requirements for a Group A occupancy.

4. Plaintiff operates a private school known as Midway Christian Academy (“Academy”), in neighboring Cherokee County across the York County line.

5. The Academy utilizes a Christian based curriculum serving no more than 100 school-aged children.

6. The Academy is funded by the Church, and its deacons serve as the school board.

7. The Academy provides Kindergarten through 12th grade instruction to Church members and non-Church members. The Academy is accredited through the Grace Christian School Association for K-12th grade. This association and its requirements for accreditation are recognized and approved by South Carolina.

8. The curriculum taught at the Academy combines religious worship through prayer, Bible verses, religious stories, scripture, with K-12th grade instruction.

9. Amy Moss, the Academy’s Director, worked for nineteen years in South Carolina public schools. She has a master's degree in Divergent Education and helped Plaintiff establish the Academy and become accredited. Part of her testimony included:

- a. At the Academy, Moss talks about God and the Bible, prays with children, and shares her faith, which she could not do in a public school.
- b. Moss provided some examples of science and math curriculum used by the Academy. (Plaintiff's Ex. 8 and 9)
- c. Moss provides information and options for curriculum to the school board comprised of Midway's deacons who ultimately selected the curriculum.
- d. Moss pointed out the Academy’s use of Bible verses, religious stories, and the connection to God and Christianity. She also pointed out tests that incorporate knowledge of the scripture and Christian principles taught in the curriculum.
- e. The Academy’s incorporation of religious worship would not be used in public schools.

10. In 2022, Plaintiff contacted York County Planning and Development Services regarding moving the Academy to its York County site, more specifically its Sunday school building.

11. The site plan admitted by Plaintiff, and photos admitted by Defendant, show the Sunday School Building is part of a building that contains classrooms, offices, and a chapel. (Plaintiff's Ex. 1 and Defendant's Ex. 1).

12. Plaintiff uses the building for Sunday School groups, Bible studies, committee meetings, and other religious activities throughout the week, but mostly on Sunday.

13. Plaintiff submitted three different plans for review by the County. (Plaintiff's Ex. 4-6).

14. Members of the Planning, Building Code and Fire Safety Departments of York County toured and evaluated the building(s) and the Church's plans on two separate occasions.

15. Jamie Catoe is York County's Building Official hired and empowered to fulfil the requirements imposed by law in York County, including the enforcement and administration of the Building Code and its interpretation.

16. The County, through Catoe, determined that the Academy required an Educational a Group E occupancy classification.

17. The County also determined that the subject building was non-compliant for use as Group E occupancy. The issues with Group E noncompliance largely relate to fire requirements. These issues include: lack of a fire alarm system; hallways incorporating paneling, as opposed to fire rated materials such as sheetrock; the hallways lacking a sufficient fire barrier; the use of hollow wood doors that were not fire rated; materials with low ignition point or that spread a fire faster; issues with the stairwell; and existing fire extinguishers being mounted too high on the wall.

18. None of the aforementioned issues prevent the Church's continued operation under a Group A occupancy.

19. After the County's decision, the Church's pastor, Dellinger, questioned county officials about the exceptions stated within the Building Code under §§ 303.1.4 and 305.1.1. (Plaintiff's Ex. 7).

20. The County maintained its decision that the Academy be classified as a Group E occupancy. The County's opinion is that the exceptions are limited to religious educational classes such as Sunday school and Bible study, and that any school providing K-12th grade education is

a Group E occupancy, wherein the fire and safety standards for a building for educating minor students are the same regardless if a school is religious or secular.

### CONCLUSIONS OF LAW

The South Carolina Building Codes Council is responsible for adopting the building code that applies throughout the state. See S.C. Code Ann. §§ 6-9-40(A), 6-9-50(A). The Council is an agency within the South Carolina Department of Labor, Licensing, and Regulation. S.C. Code Ann. § 1-30-65; 1 S.C. Code Ann. Regs. 8-236. The Council has adopted the International Building Code. See 1 S.C. Code Ann. Regs. 8-800. Each County is responsible for enforcing this building code in its jurisdiction. *See* S.C. Code Ann. § 6-9-10(A) (requiring all Counties to enforce the building code adopted by the South Carolina Building Code Council).

Each County is required to hire a Building Official. S.C. Code Ann. § 6-9-30(A). The building official's responsibilities are defined in the State regulations. *See* 1 S.C. Code Ann. Regs. 8-105 (defining “building official” as “the officer designated by a local jurisdiction, who is charged with the administration and enforcement of Building Codes”).

The South Carolina Legislature established the general public policy of enforcing the Building Code in subsection 6-9-5(A) of the South Carolina Code, which provides, “The public policy of South Carolina is to maintain reasonable standards of construction in buildings and other structures in the State consistent with the public health, safety, and welfare of its citizens.” The Legislature set forth the specific requirements of that policy by requiring every County to enforce the building Code § 6-9-10(A), through its Building Official who, in this case, has found that the Educational Occupancy Classification under the Building Code applies to Plaintiff’s plan for the Academy.

Though great deference is accorded to the officials charged with interpreting and applying ordinances; the courts are permitted to conduct a more broad and independent review when the matter concerns the construction of an ordinance. *Mikell v. County of Charleston*, 386 S.C. 153, 687 S.E.2d 326, *citing Eagle Container LLC v. County of Newberry*, 379 S.C. 564, 666 S.E.2d 892 (2008). “The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature”. *Id.*, *citing Mid-State Auto Auction of Lexington, Inc. v. Altman*, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). The legislative intent must prevail if it can be reasonably discovered

within the language of the ordinance. *Id.*, citing *Charleston County Parks & Recreation Comm'n v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995).

Plaintiff is classified as a Group A Occupancy. Section 303.1 of the South Carolina Building Code defines Group A as follows:

Assembly Group A occupancy includes, among others, the use of a building or structure, or a portion thereof, for the gathering of persons for purposes such as civic, social, or religious functions; recreation, food or drink consumption or awaiting transportation.

The County, through Catoe, has determined that operation of the Academy at the York County site necessitates a change in occupancy classification from Group A to a Group E. Section 305.1 of the South Carolina Building Code defines Group E as follows:

Educational Group E occupancy includes, among others, the use of a building or structure, or a portion thereof, by six or more persons at any one time for educational purposes through the 12th grade.

Plaintiff argues that Plaintiff is allowed to retain its Assembly classification based upon sections 303.1.4 and 305.1.1 (“exceptions”). The Defendant argues that the exceptions are not applicable, and all K-12th grade education is required to be classified as Educational Group E.

Subsection 303.1.4 is entitled “Accessory to Places of Religious Worship”. It is found within the section regarding Assembly Group A occupancies. It provides:

Accessory religious educational rooms and religious auditoriums with *occupant loads* of less than 100 per room or space are not considered separate occupancies. (emphasis not added).

Subsection 305.1.1 is also entitled “Accessory to Places of Religious Worship”. It is found within the section regarding Educational Group E occupancies. It reads as follows:

Religious educational rooms and religious auditoriums, which are accessory to *places of religious worship* in accordance with Section 303.1.4 and have *occupant loads* of less than 100 per room or space, shall be classified as Group A-3 occupancies”. (emphasis not added).

Notably, the Code sets apart in italics the phrases, “*occupant load*” and “*places of religious worship*”. These are the key characteristics in determining whether the exceptions apply.

First, occupant loads must be less than 100 persons per room or space. Section 202 of the Building Code defines occupant load as “[t]he number of persons for which the *means of egress* of

a building or portion thereof is designed”. (emphasis not added). There is no dispute that the Academy meets this requirement.

Second, the room must be “accessory to a *place of religious worship*”. Section 202 defines a place of religious worship as “[a] building or portion thereof intended for the performance of religious services”. Section 508.2 defines an “accessory occupancy” as “those occupancies that are ancillary to the main occupancy of the building or portion thereof”. Section 302.1 states that “[o]ccupancy classification is the formal designation of the primary purpose of a building or its portions thereof”. (emphasis added).

The Academy meets this second requirement. The Academy will share use of the building and rooms with the Church. The Church will continue to use the rooms for religious worship and religious functions. Further, the use of the rooms by the Academy is subordinate to the main occupancy and primary purpose of the rooms: assembly for religious worship and services.

Last, the exceptions’ state that the space in question be “religious educational rooms or religious auditoriums”. These terms are not defined in the Building Code. Pursuant to section 201.4, terms not defined “shall have ordinarily accepted meanings such as the context implies”. I conclude these terms simply limit application of the exceptions to classrooms or auditoriums associated with a place of religious worship. They do not require county officials or the courts delve into whether the curriculum, activity or function sufficiently includes religious teachings, worship, service or practices. Instead, each case should be analyzed by the straightforward approach emphasized by the Code regardless of the religion: occupant load and site location. Nonetheless, if the phrase “religious educational room” requires proof that the educational program in question be “religious”, I find and conclude that Plaintiff has met this burden.

It is understandable that the County seeks to enforce the higher safety standards of a Group E occupancy, but it is not required by the Building Code in this case. Section 305.1 states that Group E occupancies apply “for educational purposes through the 12th grade”. If the intent was to require that all K-12th grade instruction of more than 6 students be classified as Group E, there would be no subsection 305.1.1. Instead, this subsection was placed there to provide an exception to section 305.1 and circumstances involving K-12th grade education. Thus, the Building Code, through the exceptions, allow Plaintiff to retain an Assembly occupancy despite offering a K-12th grade program.

**ORDER**

THEREFORE, IT IS HEREBY ORDERED:

1. Plaintiff may operate Midway Christian Academy in its buildings on its church campus as an accessory use to its place of worship.
2. Defendant shall classify the classrooms used by Midway Christian Academy as A-3 as long as Midway complies with SC Building Code § 305.1.1.

AND IT IS SO ORDERED.

*Judge's Signature Page to Follow*

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October 9, 2025

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

**RECEIVED**

**OCT 14 2025**

**SC Court of Appeals**

Re: *Midway Baptist Church of York v. County of York*, Case No. 2023-CP-46-01467  
Appellate Case No. 2025-002054

Dear Ms. Kitchings:

Enclosed for filing is a Notice of Appeal for the cross-appeal in the above case. Also enclosed are the following:

- 1) Proof of service for the notice of appeal on Appellant-Respondent.
- 2) A copy of the orders that are to be challenged on appeal.
- 3) A filing fee of \$250.00, which was mailed by United States Postal Service first-class mail on the date of this letter.

Sincerely,

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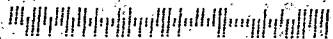
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