

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas
The Honorable Teasa K. Weaver

Case No. 2023-CP-46-01467
Appellate Case No. 2025-002054

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SC Court of Appeals

Midway Baptist Church of York,

Respondent-Appellant,

v.

County of York,

Appellant-Respondent.

RECORD ON APPEAL
(VOLUME 1 of 2)

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF York
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP4601467

Midway Baptist Church Of York
PLAINTIFF(S)

York County Of
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Pursuant to Rule 53, SCRPC, this case is referred to Teasa K. Weaver, York County Master-in-Equity, to hear and dispose of any and all motions, hearing, trial and administrative matters through to final disposition, it is so ordered.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/24/2024 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



York Common Pleas

Case Caption: Midway Baptist Church Of York VS York County Of

Case Number: 2023CP4601467

Type: Order/Electronic Form 4

So Ordered

s/Daniel D. Hall 2753

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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

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

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2023-CP46-01467

Midway Baptist Church of York
PLAINTIFF(S)

County of York
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional

information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.



York Common Pleas

Case Caption: Midway Baptist Church Of York VS York County Of

Case Number: 2023CP4601467

Type: Master/Order/Other

So Ordered

s/ Teasa K. Weaver 3084

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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**Rules 52(b) and 59(e), SCRPC**

This matter came before me for a hearing on upon motion by the Defendant (“County or Defendant”) to reconsider my order filed on June 25, 2025. (“Order”).

“[O]ur rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party may wish to file such a motion when [he] believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). In addition, “upon motion of a party ... the court may amend its findings or make additional findings and may amend the judgment accordingly. Rule 52(b), SCRPC.

At the heart of this controversy is the County’s decision to change certain classrooms from an Assembly A-3 occupancy to an Educational Group-E occupancy. In my Order, I did not conduct the two-step analysis as set out by our Supreme Court in *Kiawah Dev. Partners, II v. S.C. Dep’t of Health & Envtl. Control*. 411 S.C. 16, 32, 766 S.E.2d 707,717 (2014) (“Interpreting and applying statutes and regulations administered by an agency is a two-step process”). The trial court must first determine if the code’s language speaks directly upon the issue, and if so, the court must apply the clear meaning of the code. *Id.* If the language is ambiguous or silent on the issue, the trial court must defer to the agency’s interpretation, if its decision is worthy of deference. *Id.* at 33. A trial court “will defer to an agency’s interpretation of a statute or regulation unless it is arbitrary, capricious, or manifestly contrary to the [regulation]. *Doe v. Keel*, 440 S.C. 427, 431, 892 S.E.2d 282, 284 (2023).

Based upon the foregoing, I amend my conclusions, and make additional findings. The additional findings of fact include the testimony of the County's Building Official, Jamie Catoe ("Catoe") and Deputy Building Official Jennifer Culver ("Culver") not included in the prior order.

FINDINGS AND CONCLUSIONS

Section 305.1 of the South Carolina Building Code ("code") provides that an 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". This language clearly includes the Academy, which will use classrooms to provide education involving K-12th grade of more than 5 persons.

Following section 305.1 is section 305.1.1, entitled "Accessory to Places of Religious Worship". It provides that "[r]eligious 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). Section 303.1.4 mirrors this language and provides that "[a]ccessory 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). The language of both sections clearly set forth three requirements: (1) religious educational room; (2) accessory to a place of religious worship; with an (3) occupant load of less than 100 persons per room. If the exceptions apply, the occupancy is not considered a separate occupancy and shall be designated as A-3.

My order first addressed whether the subject rooms met the occupant load requirement. Occupant load is defined in the code under section 202 as "[t]he number of persons for which the *means of egress* of a building or portion thereof is designed". (emphasis not added). The evidence presented by Plaintiff is that the Academy would operate within this limit. The Defendant did not contest that this is Plaintiff's intent.

Next, the order addressed whether the subject rooms were "accessory to a place of religious worship". The code defines a place of religious worship as "[a] building or portion thereof intended for the performance of religious services". The building code defines an accessory occupancy in section 508.2 as an occupancy that is "ancillary to the main occupancy of the building or portion thereof". The term ancillary is not defined in the code.

In my order, I used section 508.2 to determine whether the subject rooms were accessory to a place of religious worship. The County proceeded likewise in making its decision. Culver testified that she approved defining accessory to places of religious worship as ancillary to the main building or portion thereof. Culver's testimony also defined an A-3 accessory occupancy as religious education associated with the religious uses of the church and the religious functions of the church in the manner that the code defines place of religious worship. Her testimony also explained that ancillary under an A-3 included a classroom for church purposes. Catoe testified that an A-3 occupancy includes religious education associated with the principle use.

I amend my conclusions in my prior order regarding this requirement, and now defer to the County's interpretation: accessory to a place of religious worship means associated with the principle use of the church, functions of the church, or church purpose. The County decided that the Academy was not an accessory use. I discuss later why I do not defer to this decision.

Last, the exceptions require the space be a religious educational room. This phrase is not defined in the code, and it was not defined or explained by Catoe or Culver. Instead, both repeatedly referred to *religious education*. Catoe testified that A-3 allows for *religious education*. He testified that the current use of the area is an A-3 occupancy because it is *religious education*. Culver likewise testified that an A-3 occupancy allows *religious education*, and confirmed that the current use was A-3. She also testified that County officials considered what constituted *religious education* in this process.

I amend my conclusions in my prior order regarding this requirement, and now defer to the County's interpretation: a religious educational room is synonymous with religious education or a room used for that purpose.

Religious education is not defined in the code. Despite not being able to define religious education, Catoe and Culver were able determine what it included; Sunday school or bible study, but not the Academy. When questioned why the Academy did not constitute religious education, Catoe testified that he did not believe it was, but rather it was education with religious values applied. His testimony also described the Academy's curriculum as educational classes with religion being taught, faith-based, and K-12 with a religious based curriculum. So, Catoe has determined that religious education does not include classes that teach the religion, its values, faith and practices. This makes no sense, and provides no basis for his or Culver's decision to distinguish Plaintiff's Sunday school or bible study from the Academy.

Moreover, Plaintiff has proven that the Academy provides religious education that is accessory to the church. As shown by the testimony of Plaintiff's witnesses and the documentary evidence of its curriculum, students will pray, read scripture, discuss their faith, and participate in religious activities, similar to church services, Sunday school, or bible study. The fact that students will also be educated in secular subjects such as math and English, does not negate that the Academy's curriculum furthers, promotes, supports and is associated with the purpose of the church; the gathering of persons for religious worship. Additionally, the rooms will continue to be used for education (Sunday school and bible study) that Catoe and Culver have determined qualifies as A-3.

Furthermore, the testimony of the County officials demonstrate that because they were unable to develop an understanding of what they meant by religious education, they decided to fall back on section 305.1; thus, ignoring the exceptions. Catoe testified that he decided that Educational was the best fit because the Academy would be a K-12 of 6 or more students. Culver testified that the decision to designate the rooms used by the Academy as Educational was not based upon what the Academy was teaching, but the definition of K-12 in section 305.1. Culver testified that it was not based upon *what* they were teaching, but that they *were* teaching. Yet, she testified that religious education involves teaching. She also testified that if it meets the education requirements, it is a change in occupancy.

Based on the foregoing, I find and conclude that the County's determination that the use of the rooms by the Academy does not qualify as religious education or an accessory use of the church, and its decision that said use does not fall within the exceptions provided by sections 305.1.1 ad 303.1.4, is arbitrary and capricious, and not worthy of deference.

THEREFORE, IT IS ORDERED that Defendant's motion is denied. The matter regarding attorney's fees as raised by Plaintiff will be determined after a separate hearing. My order remains that the rooms shall be classified as an A-3 occupancy while the Academy remains in compliance with the occupant load set out in sections 305.1.1 and 303.1.4.

IT IS SO ORDERED.

Judge's Signature Page to Follow



York Common Pleas

Case Caption: Midway Baptist Church Of York VS York County Of

Case Number: 2023CP4601467

Type: Master/Order/Other

So Ordered

s/ Teasa K. Weaver 3084

Electronically signed on 2025-09-05 18:29:20 page 5 of 5

ELECTRONICALLY FILED - 2025 Sep 08 11:03 AM - YORK - COMMON PLEAS - CASE#2023CP4601467

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	Case Number: 2023-CP-46-_____
Midway Baptist Church of York,	)	
	)	
Plaintiff,	)	
	)	<u>SUMMONS</u>
vs.	)	
	)	DECLARATORY JUDGMENT
County of York,	)	
	)	
Defendant.	)	
_____	)	

TO: THE ABOVE-NAMED DEFENDANT:

YOU ARE SUMMONED and required to answer the complaint that has been filed against you. A copy of the complaint was served upon you. You must file an answer with the York County Clerk of Court and serve a copy of your answer to the complaint within thirty (30) days on the plaintiff's attorney, Emily N. Brown, at the following address:

Emily Brown Law LLC
P.O. Box 38113
Rock Hill, SC 29732.

If you fail to answer this complaint within thirty days, a default judgment will be rendered against you for the relief demanded in the complaint.

Rock Hill, South Carolina
May 11, 2023

s/Emily N. Brown
SC Bar # 101131
Emily Brown Law LLC
P.O. Box 38113
Rock Hill, SC 29732
(803) 973-0490
emily@emilybrownlaw.com
Attorney for Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	Case Number: 2023-CP-46-_____
Midway Baptist Church of York,	)	
	)	
Plaintiff,	)	
	)	<u>COMPLAINT</u>
vs.	)	
	)	DECLARATORY JUDGMENT
County of York,	)	
	)	
Defendant.	)	
	)	
_____	)	

Plaintiff Midway Baptist Church of York (“Midway”) complaining of Defendant County of York alleges the following.

Parties and Jurisdiction

1. Midway is a South Carolina nonprofit church located in the unincorporated area of York County, South Carolina.
2. S.C. Code Ann. § 6-9-5, *et seq.* requires Defendant to adopt building codes as approved by the South Carolina Building Codes Council and enforce those building codes within its jurisdictional boundaries.
3. S.C. Code Ann. § 6-8-10, *et seq.* requires Defendant to appoint and train a building codes enforcement officer whose responsibilities include “administering a building inspection department, enforcement or rendering interpretations of building [codes] ..., performing building plan reviews, or performing inspections on one or more building systems.” S.C. Code Ann. § 6-8-10(1).

4. Defendant adopted the building codes approved by the South Carolina Building Codes Council and established authority for the building codes enforcement officer in York County Code of Ordinances § 150.01, *et seq.*

5. Defendant hired Jamie Catoe as its building codes enforcement officer and empowered him to fulfil the required duties within the York County Planning and Development Services Department (“Planning Department”) and under the supervision of the Planning Director as described in York County Code of Ordinances Chapter 150.

6. The South Carolina Building and Codes Council licensed Catoe as the Building Official for Defendant County. A copy of the online registration is attached as Exhibit A.

7. When Midway began this process, the 2018 SC Building Codes were effective.

8. On December 5, 2022, Defendant, by ordinance, adopted the 2021 SC Building Codes (“the Building Codes”) promulgated by the SC Building Codes Council; the sections at issue in this action did not change from 2018 to 2021.

9. Jurisdiction and venue are appropriate under S.C. Code Ann. § 15-7-30.

Facts

10. Midway, established in 1966, owns a campus that contains three buildings: a chapel and Sunday School building, a fellowship building, and a sanctuary.

11. In fulfilling its mission, Midway uses its facility for a number of activities that provide education and build relationships among its members and with others in the community throughout the week at various times of the day or evening on the Midway campus.

12. In June 2021, Midway decided to extend its ministry to use a portion of the chapel and Sunday School building for a religious school serving no more than 100 school-aged children.

13. Midway contacted Defendant about using the existing church classrooms for a religious school and submitted plans for review.

14. Defendant advised Midway it would need to apply for a change of occupancy under the Building Codes from occupancy classification A-3 to E.

15. A change in classification to E would require Midway to complete costly interior construction to comply with the Building Code for occupancy classification E.

16. Midway hired an architect to draw plans and submitted plans to Defendant for review on three different occasions.

17. Defendant denied Midway's plans on May 10, May 25, and June 8, 2022, for different reasons each time.

18. During this process, Midway contacted Defendant several times asking for more information and potential options for satisfying the Building Code requirements.

19. Each time, Defendant provided Midway different answers and could not or would not answer Midway's questions about which alternatives satisfied the Building Code.

20. As the process continued, Midway examined the Building Code and located § 305.1.1 that states, "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." 2021 SC Building Codes § 305.1.1.

21. According to the Building Codes, "[a]ccessory religious educational rooms and religious auditoriums with occupant loads of less than 100 per room or space are not considered separate occupancies." 2021 SC Building Codes § 303.1.4.

22. “Accessory occupancies are those occupancies that are ancillary to the main occupancy of the building or portion thereof. Accessory occupancies shall comply with the provisions of Sections 508.2.1 through 508.2.4.” 2021 SC Building Codes § 508.2.

23. A plain reading of the Building Codes allows Midway to use its existing accessory classrooms for the ancillary use of religious education and maintain its current A-3 occupancy classification.

24. Midway applied for approval as an A-3 classification.

25. Defendant denied Midway’s application because it determined, “Accessory to places of religious worship, supported by using the definition of accessory spaces, is when those spaces are being used for occupancies that are ancillary to the main occupancy of the building or portion thereof, to include Sunday School, Bible study, etc. and not for academic education.” Letter of Notification for Plan Review dated June 8, 2023.

26. Midway asked Catoe for an official interpretation of the accessory uses and religious education under the Building Codes, and Catoe provided a cursory opinion from an unknown technical staff member from International Code Council, Inc. in Chicago.

27. Planning Director Jonathan Buono followed the email claiming Midway’s religious education use did not qualify as an accessory use because its would satisfy South Carolina educational attendance requirements in SC Code Ann. § 59-65-10, *et seq.*

28. Defendant refused Midway’s additional requests for interpretation or legal basis for its interpretation.

Cause of Action
(Declaratory Judgment)

29. All above paragraphs are incorporated into this cause of action.

30. “Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed.” S.C. Code Ann. § 15-53-20.

31. “Any person ... whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.” S.C. Code Ann. § 15-53-30.

32. Structures are classified into occupancy groups “based on the nature of the hazards and risks to building occupants generally associated with the intended purpose of the building or structure.” 2021 SC Building Codes § 302.1.

33. The Building Codes define accessory uses as ancillary to the main occupancy of the building but do not further define or provide examples of ancillary uses. *See* 2021 SC Building Codes § 508.2.

34. The same rules of construction for interpreting statutes apply to regulations and ordinances. *See Blackmon v. S.C. Dep't of Health & Env't Control*, 436 S.C. 529, 873 S.E.2d 774 (Ct. App. 2022) and *Helicopter Sols., Inc. v. Hinde*, 414 S.C. 1, 776 S.E.2d 753 (Ct. App. 2015).

35. The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. When interpreting an ordinance, the legislative intent must prevail if it can be reasonably discovered in the language used. Further, where two provisions deal with the same issue, one in a general and the other in a more specific and definite manner, the more specific prevails.

Mikell v. Cty. of Charleston, 386 S.C. 153, 160, 687 S.E.2d 326, 330 (2009).

36. While the Building Codes generally defines accessory uses, the York County Zoning Code specifically defines an accessory use as “[a] subordinate use which is incidental to, separated from,

and customarily associated with the principal building or use and which is located on the same lot with the principal use.” York County Code of Ordinances § 155.1301(A).

37. It defines a church as “[a] building used for public assembly or worship regardless of denomination or religious affiliation, including other ancillary activities, such as parsonages, offices, classrooms, day care, and recreation facilities.” York County Code of Ordinances § 155.1301(C).

38. Clearly, Defendant's non-inclusive list of accessory uses for churches includes classrooms, without regard to the content taught, and other variety of ancillary activities, including day cares.

39. Furthermore, education is customarily associated with churches.

40. Historically, churches provide religious education that fulfills the government educational requirements imposed on all children in South Carolina.

41. The South Carolina Supreme Court “has long recognized that religious schools pursue two goals, religious instruction and secular education.” *Hunt v. McNair*, 258 S.C. 97, 104, 187 S.E.2d 645, 649 (1972).

42. The South Carolina Constitution prohibits the use of any public funds for schools under the direction or control of any church or religious organization of any kind. *See* S.C. Const. Art. XI § 9 and *Hartness vs. Patterson*, 255 S.C. 503, 508, 179 S.E.2d 907, 909 (1971).

43. Teaching religious curriculum transforms education that satisfies legal education requirements into religious education that South Carolina law considers separate and distinct from education provided by the government and an ancillary activity of churches.

44. Defendant cannot arbitrarily interpret accessory use differently in its Zoning Code and the Building Codes.

45. Additionally, Defendant cannot arbitrarily interpret the Building Codes based on unrelated school attendance statutes or the content of Midway's curriculum.

46. Defendant adopted both ordinances defining accessory use and enforces both against Midway's plans and the plans of any other similarly situated applicant.

47. Absent any specific definition in the Building Codes, it must apply the same interpretation to the term when enforcing the Building Codes that it does when enforcing the Zoning Codes to the same structure.

48. Because Midway's religious education program is incidental to, separated from, and customarily associated with a church use; it qualifies as an ancillary use under both the Building Codes and the Zoning Codes.

49. Based on the principles of statutory interpretation, Midway may operate its religious school in the classrooms already approved for accessory uses and retain its A-3 occupancy classification.

50. Yet, Defendant refuses to approve Midway's application to retain its A-3 occupancy classification based on unrelated school attendance statutes and the content of Midway's curriculum, which are not standards or included in the definition of accessory use in the Building Codes or Zoning Code.

51. Therefore, Midway seeks a declaratory judgment from the Court determining that religious education qualifies as an accessory use under the Building Codes, regardless of the material taught or whether it satisfies the educational requirements of South Carolina law, and, as such, Midway may use its classrooms for any type of religious education at any time under the current A-3 occupancy classification.

Prayer for Relief

WHEREFORE, Midway demands a trial by Court and requests that (1) the Court declare that religious education qualifies as an accessory use of a church in the Building Codes, regardless of the material taught or whether it satisfies the educational requirements of South Carolina law; (2) the Court declare that Midway may use the classrooms for any type of religious education at any time under the A-3 occupancy classification; (3) the Court award Midway costs and attorney's fees; and for such other and further relief as the Court deems just and appropriate.

Rock Hill, South Carolina
May 11, 2023

s/Emily N. Brown
SC Bar # 101131
Emily Brown Law LLC
P.O. Box 38113
Rock Hill, SC 29732
(803) 973-0490
emily@emilybrownlaw.com
Attorney for Plaintiff

Exhibit A

James Catoe Building Official Registration

JAMES CATOE

ROCK HILL, SC 29730-9693

Phone: 803-327-9829

Jurisdiction: COUNTY OF YORK

License number: 1111

License type: Building Official

First Issuance: 07/01/2005

Expiration: 06/30/2023

Board Public Action History:

View Orders

View Other License for this Person

No Orders Found

[File a Complaint against this licensee](#)

Exhibit B

2021 SC Building Codes Referenced in Complaint

**SECTION 302
OCCUPANCY CLASSIFICATION
AND USE DESIGNATION****302.1 Occupancy classification.**

Occupancy classification is the formal designation of the primary purpose of the building, structure or portion thereof. Structures shall be classified into one or more of the occupancy groups specified in this section based on the nature of the hazards and risks to building occupants generally associated with the intended purpose of the building or structure. An area, room or space that is intended to be occupied at different times for different purposes shall comply with all applicable requirements associated with such potential multipurpose. Structures containing multiple occupancy groups shall comply with [Section 508](#). Where a structure is proposed for a purpose that is not specified in this section, such structure shall be classified in the occupancy it most nearly resembles based on the fire safety and relative hazard. Occupied roofs shall be classified in the group that the occupancy most nearly resembles, according to the fire safety and relative hazard, and shall comply with [Section 503.1.4](#).

1. Assembly (see [Section 303](#)): Groups A-1, A-2, A-3, A-4 and A-5.
2. Business (see [Section 304](#)): Group B.
3. Educational (see [Section 305](#)): Group E.
4. Factory and Industrial (see [Section 306](#)): Groups F-1 and F-2.
5. High Hazard (see [Section 307](#)): Groups H-1, H-2, H-3, H-4 and H-5.
6. Institutional (see [Section 308](#)): Groups I-1, I-2, I-3 and I-4.
7. Mercantile (see [Section 309](#)): Group M.
8. Residential (see [Section 310](#)): Groups R-1, R-2, R-3 and R-4.
9. Storage (see [Section 311](#)): Groups S-1 and S-2.
10. Utility and Miscellaneous (see [Section 312](#)): Group U.

302.2 Use designation.

Occupancy groups contain subordinate uses having similar hazards and risks to building occupants. Uses include, but are not limited to, those functional designations specified within the occupancy group descriptions in [Section 302.1](#). Certain uses require specific limitations and controls in accordance with the provisions of [Chapter 4](#) and elsewhere in this code.

**SECTION 303
ASSEMBLY GROUP A****303.1 Assembly Group A.**

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.

303.1.1 Small buildings and tenant spaces.

A building or tenant space used for assembly purposes with an *occupant load* of less than 50 persons shall be classified as a Group B occupancy.

303.1.2 Small assembly spaces.

The following rooms and spaces shall not be classified as Assembly occupancies:

1. A room or space used for assembly purposes with an *occupant load* of less than 50 persons and accessory to another occupancy shall be classified as a Group B occupancy or as part of that occupancy.
2. A room or space used for assembly purposes that is less than 750 square feet (70 m²) in area and accessory to another occupancy shall be classified as a Group B occupancy or as part of that occupancy.

303.1.3 Associated with Group E occupancies.

A room or space used for assembly purposes that is associated with a Group E occupancy is not considered a separate occupancy.

303.1.4 Accessory to places of religious worship.

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

303.1.5 Special amusement areas.

Special amusement areas shall comply with Section 411.

303.2 Assembly Group A-1.

Group A-1 occupancy includes assembly uses, usually with fixed seating, intended for the production and viewing of the performing arts or motion pictures including, but not limited to:

- Motion picture theaters
- Symphony and concert halls
- Television and radio studios admitting an audience
- Theaters

303.3 Assembly Group A-2.

Group A-2 occupancy includes assembly uses intended for food and/or drink consumption including, but not limited to:

- Banquet halls
- Casinos (*gaming areas*)
- Nightclubs
- Restaurants, cafeterias and similar dining facilities (including associated commercial kitchens)
- Taverns and bars

303.4 Assembly Group A-3.

Group A-3 occupancy includes assembly uses intended for worship, recreation or amusement and other assembly uses not classified elsewhere in Group A including, but not limited to:

- Amusement arcades
- Art galleries
- Bowling alleys
- Community halls
- Courtrooms
- Dance halls (not including food or drink consumption)
- Exhibition halls
- Funeral parlors
- Greenhouses* for the conservation and exhibition of plants that provide public access
- Gymnasiums (without spectator seating)

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Indoor *swimming pools* (without spectator seating)
Indoor tennis courts (without spectator seating)
Lecture halls
Libraries
Museums
Places of religious worship
Pool and billiard parlors
[Structures, without a commercial kitchen, used in agritourism activity as defined by S.C. Code Ann. 46-53-10\(1\)](#)
Waiting areas in transportation terminals

303.5 Assembly Group A-4.

Group A-4 occupancy includes assembly uses intended for viewing of indoor sporting events and activities with spectator seating including, but not limited to:

Arenas
Skating rinks
Swimming pools
Tennis courts

303.6 Assembly Group A-5.

Group A-5 occupancy includes assembly uses intended for participation in or viewing outdoor activities including, but not limited to:

Amusement park structures
Bleachers
Grandstands
Stadiums

CHAPTER 3 OCCUPANCY CLASSIFICATION AND USE

SECTION 305 EDUCATIONAL GROUP E

305.1 Educational Group E.

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.

305.1.1 Accessory to places of religious worship.

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.

305.2 Group E, day care facilities.

This group includes buildings and structures or portions thereof occupied by more than five children older than $\frac{2}{2}$ years of age who receive educational, supervision or *personal care services* for fewer than 24 hours per day.

305.2.1 Within places of religious worship.

Rooms and spaces within *places of religious worship* providing such day care during religious functions shall be classified as part of the primary occupancy.

305.2.2 Five or fewer children.

A facility having five or fewer children receiving such day care shall be classified as part of the primary occupancy.

305.2.3 Five or fewer children in a dwelling unit.

A facility such as the above within a *dwelling unit* and having five or fewer children receiving such day care shall be classified as a Group R-3 occupancy or shall [comply with the South Carolina Residential Code](#).

305.3 Storm shelters in Group E occupancies.

Storm shelters shall be provided for Group E occupancies where required by [Section 423.5](#).

SECTION 508 MIXED USE AND OCCUPANCY

508.1 General.

Each portion of a building shall be individually classified in accordance with [Section 302.1](#). Where a building contains more than one occupancy group, the building or portion thereof shall comply with the applicable provisions of [Section 508.2](#), [508.3](#), [508.4](#) or [508.5](#), or a combination of these sections.

Exceptions:

1. Occupancies separated in accordance with [Section 510](#).
2. Where required by [Table 415.6.5](#), areas of Group H-1, H-2 and H-3 occupancies shall be located in a detached building or structure.

508.2 Accessory occupancies.

Accessory occupancies are those occupancies that are ancillary to the main occupancy of the building or portion thereof. Accessory occupancies shall comply with the provisions of [Sections 508.2.1](#) through [508.2.4](#).

508.2.1 Occupancy classification.

Accessory occupancies shall be individually classified in accordance with [Section 302.1](#). The requirements of this code shall apply to each portion of the building based on the occupancy classification of that space.

508.2.2 Allowable building height.

The allowable height and number of stories of the building containing accessory occupancies shall be in accordance with [Section 504](#) for the main occupancy of the building.

508.2.3 Allowable building area.

The allowable area of the building shall be based on the applicable provisions of [Section 506](#) for the main occupancy of the building. Aggregate accessory occupancies shall not occupy more than 10 percent of the floor area of the story in which they are located and shall not exceed the tabular values for nonsprinklered buildings in [Table 506.2](#) for each such accessory occupancy.

508.2.4 Separation of occupancies.

No separation is required between accessory occupancies and the main occupancy.

Exceptions:

1. Group H-2, H-3, H-4 and H-5 occupancies shall be separated from all other occupancies in accordance with [Section 508.4](#).
2. Group I-1, R-1, R-2 and R-3 dwelling units and sleeping units shall be separated from other dwelling or sleeping units and from accessory occupancies contiguous to them in accordance with the requirements of [Section 420](#).

508.3 Nonseparated occupancies.

Buildings or portions of buildings that comply with the provisions of this section shall be considered as nonseparated occupancies.

508.3.1 Occupancy classification.

Nonseparated occupancies shall be individually classified in accordance with [Section 302.1](#). The requirements of this code shall apply to each portion of the building based on the occupancy classification of that space. In addition, the most restrictive provisions of [Chapter 9](#) that apply to the nonseparated occupancies shall apply to the total nonseparated occupancy area.

508.3.1.1 High-rise buildings.

Where nonseparated occupancies occur in a high-rise building, the most restrictive requirements of [Section 403](#) that apply to the nonseparated occupancies shall apply throughout the high-rise building.

508.3.1.2 Group I-2, Condition 2 occupancies.

Where one of the nonseparated occupancies is Group I-2, Condition 2, the most restrictive requirements of [Sections 407](#), [509](#) and [712](#) shall apply throughout the fire area containing the Group I-2 occupancy. The most restrictive requirements of [Chapter 10](#) shall apply to the path of egress from the Group I-2, Condition 2 occupancy up to and including the exit discharge.

508.3.2 Allowable building area, height and number of stories.

The allowable building area, height and number of stories of the building or portion thereof shall be based on the most restrictive allowances for the occupancy groups under consideration for the type of construction of the building

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in accordance with [Section 503.1](#).

508.3.3 Separation.

No separation is required between nonseparated occupancies.

Exceptions:

1. Group H-2, H-3, H-4 and H-5 occupancies shall be separated from all other occupancies in accordance with [Section 508.4](#).
2. Group I-1, R-1, R-2 and R-3 *dwelling units* and *sleeping units* shall be separated from other *dwelling* or *sleeping units* and from other occupancies contiguous to them in accordance with the requirements of [Section 420](#).

508.4 Separated occupancies.

Buildings or portions of buildings that comply with the provisions of this section shall be considered as separated occupancies.

TABLE 508.4
REQUIRED SEPARATION OF OCCUPANCIES (HOURS)^f

OCCUPANCY	A, E		I-1 ^a , I-3, I-4		I-2		R ^a		F-2, S-2 ^b , U		B ^e , F-1, M, S-1		H-1		H-2		H-3, H-4		H-5	
	S	NS	S	NS	S	NS	S	NS	S	NS	S	NS	S	NS	S	NS	S	NS	S	NS
A, E	N	N	1	2	2	NP	1	2	N	1	1	2	NP	NP	3	4	2	3	2	NP
I-1 ^a , I-3, I-4	1	2	N	N	2	NP	1	NP	1	2	1	2	NP	NP	3	NP	2	NP	2	NP
I-2	2	NP	2	NP	N	N	2	NP	2	NP	2	NP	NP	NP	3	NP	2	NP	2	NP
R ^a	1	2	1	NP	2	NP	N	N	1 ^c	2 ^c	1	2	NP	NP	3	NP	2	NP	2	NP
F-2, S-2 ^b , U	N	1	1	2	2	NP	1 ^c	2 ^c	N	N	1	2	NP	NP	3	4	2	3	2	NP
B ^e , F-1, M, S-1	1	2	1	2	2	NP	1	2	1	2	N	N	NP	NP	2	3	1	2	1	NP
H-1	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	N	NP	NP	NP	NP	NP	NP	NP
H-2	3	4	3	NP	3	NP	3	NP	3	4	2	3	NP	NP	N	NP	1	NP	1	NP
H-3, H-4	2	3	2	NP	2	NP	2	NP	2	3	1	2	NP	NP	1	NP	1 ^d	NP	1	NP
H-5	2	NP	2	NP	2	NP	2	NP	2	NP	1	NP	NP	NP	1	NP	1	NP	N	NP

S = Buildings equipped throughout with an automatic sprinkler system installed in accordance with [Section 903.3.1.1](#).

NS = Buildings not equipped throughout with an automatic sprinkler system installed in accordance with [Section 903.3.1.1](#).

N = No separation requirement.

NP = Not Permitted.

- a. See [Section 420](#).
- b. The required separation from areas used only for private or pleasure vehicles shall be reduced by 1 hour but not to less than 1 hour.
- c. See [Section 406.3.2](#) and [406.6.4](#).
- d. Separation is not required between occupancies of the same classification.
- e. See [Section 422.2](#) for ambulatory care facilities.
- f. Occupancy separations that serve to define fire area limits established in [Chapter 9](#) for requiring fire protection systems shall also comply with [Section 707.3.10](#) and [Table 707.3.10](#) in accordance with [Section 901.7](#).

508.4.1 Occupancy classification.

Separated occupancies shall be individually classified in accordance with [Section 302.1](#). Each separated space shall comply with this code based on the occupancy classification of that portion of the building. The most restrictive provisions of [Chapter 9](#) that apply to the separate occupancies shall apply to the total nonfire-barrier-separated occupancy areas. Occupancy separations that serve to define *fire area* limits established in [Chapter 9](#) for requiring a *fire protection system* shall also comply with [Section 901.7](#).

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508.4.2 Allowable building area.

In each story, the *building area* shall be such that the sum of the ratios of the actual *building area* of each separated occupancy divided by the allowable *building area* of each separated occupancy shall not exceed 1.

508.4.3 Allowable building height and number of stories.

Each separated occupancy shall comply with the *building height limitations* and *story limitations* based on the type of construction of the building in accordance with [Section 503.1](#).

Exception: Special provisions of [Section 510](#) shall permit occupancies at *building heights* and number of *stories* other than provided in [Section 503.1](#).

508.4.4 Separation.

Individual occupancies shall be separated from adjacent occupancies in accordance with [Table 508.4](#).

508.4.4.1 Construction.

Required separations shall be *fire barriers* constructed in accordance with [Section 707](#) or *horizontal assemblies* constructed in accordance with [Section 711](#), or both, so as to completely separate adjacent occupancies. *Mass timber elements serving as fire barriers or horizontal assemblies* to separate occupancies in Type IV-B or IV-C construction shall be separated from the interior of the building with an *approved* thermal barrier consisting of *gypsum board* that is not less than $\frac{1}{2}$ inch (12.7 mm) in thickness or a material that is tested in accordance with and meets the acceptance criteria of both the Temperature Transmission Fire Test and the Integrity Fire Test of NFPA 275.

Relocated

508.5 Live/work units.

A *live/work unit* shall comply with [Sections 508.5](#) through [508.5.11](#).

Exception: *Dwelling or sleeping units* that include an office that is less than 10 percent of the area of the *dwelling unit* are permitted to be classified as *dwelling units* with accessory occupancies in accordance with [Section 508.2](#).

508.5.1 Limitations.

The following shall apply to live/work areas:

1. The *live/work unit* is permitted to be not greater than 3,000 square feet (279 m²) in area.
2. The nonresidential area is permitted to be not more than 50 percent of the area of each *live/work unit*.
3. The nonresidential area function shall be limited to the first or main floor only of the *live/work unit*.
4. Not more than five nonresidential workers or employees are allowed to occupy the nonresidential area at any one time.

508.5.2 Occupancies.

Live/work units shall be classified as a Group R-2 occupancy. Separation requirements found in [Sections 420](#) and [508](#) shall not apply within the *live/work unit* where the *live/work unit* is in compliance with [Section 508.5](#). Nonresidential uses that would otherwise be classified as either a Group H or S occupancy shall not be permitted in a *live/work unit*.

Exception: Storage shall be permitted in the *live/work unit* provided that the aggregate area of storage in the nonresidential portion of the *live/work unit* shall be limited to 10 percent of the space dedicated to nonresidential activities.

508.5.3 Means of egress.

Except as modified by this section, the *means of egress* components for a *live/work unit* shall be designed in accordance with [Chapter 10](#) for the function served.

508.5.4 Egress capacity.

The egress capacity for each element of the *live/work unit* shall be based on the *occupant load* for the function served in accordance with [Table 1004.5](#).

508.5.5 Spiral stairways.

Spiral stairways that conform to the requirements of [Section 1011.10](#) shall be permitted.

508.5.6 Vertical openings.

Floor openings between floor levels of a *live/work unit* are permitted without enclosure.

[F] 508.5.7 Fire protection.

The *live/work unit* shall be provided with a monitored *fire alarm* system where required by [Section 907.2.9](#) and an *automatic sprinkler system* in accordance with [Section 903.2.8](#).

508.5.8 Structural.

Floors within a *live/work unit* shall be designed for the *live loads* in [Table 1607.1](#), based on the function within the space.

508.5.9 Accessibility.

Accessibility shall be designed in accordance with [Chapter 11](#) for the function served.

508.5.10 Ventilation.

The applicable ventilation [requirements of the South Carolina Mechanical Code](#) shall apply to each area within the *live/work unit* for the function within that space.

508.5.11 Plumbing facilities.

The nonresidential area of the *live/work unit* shall be provided with minimum plumbing facilities as specified by [Chapter 29](#), based on the function of the nonresidential area. Where the nonresidential area of the *live/work unit* is required to be accessible by [Section 1108.6.2.1](#), the plumbing fixtures specified by [Chapter 29](#) shall be accessible.

Exhibit C

York County Ordinances Referenced in Complaint

SUBCHAPTER J: DEFINITIONS AND ACRONYMS

PART 1: DEFINITIONS

§ 155.1300 PURPOSE.

The purpose of this Subpart is to provide a common meaning for terms used in this Chapter.

§ 155.1301 DEFINED TERMS.

For the purpose of this Chapter, the definitions in this Section shall apply unless the context clearly indicates or requires a different meaning.

(A)

A-FRAME SIGN. A temporary, portable, freestanding sign in the shape of the letter "A" with back-to-back sign faces, an easel, or a similar configuration.

ABUTTING ADJOINING, OR ADJACENT. Located immediately next to each other or sharing a common wall or lot line, including properties separated only by land within the public rights-of-way or easements.

ACCESSORY BUILDING. A building subordinate to and separated from the principal building on a lot, which is used for purposes customarily incidental to those of the main building.

ACCESSORY BUILDING, AGRICULTURAL. A building subordinate to and separated from the principal building on a lot in a district in which agricultural use is a principal use and which is used for purposes customarily incidental to agricultural use, including animal shelters, pens, kennels, barns, silos, farm equipment sheds, manure stockpiles, and troughs.

ACCESSORY DWELLING UNIT (ADU). A secondary dwelling established in conjunction with, and clearly subordinate to, a primary dwelling unit on the same lot, whether a part of the same building as the primary dwelling unit or in a detached building.

ACCESSORY STRUCTURE. A structure subordinate to and separated from the principal building on a lot, which is used for purposes customarily incidental to those of the main building. Structures will be considered accessory only when a principal structure has been constructed or permitted on the parcel where the accessory structure is to be located.

ACCESSORY USE. A subordinate use which is incidental to, separated from, and customarily associated with the principal building or use and which is located on the same lot with the principal use. **ACCESSORY USES** are prohibited on vacant lots unless otherwise specified in Subchapter C, Part 4: *Accessory Uses*.

- (5) Graves and graveyards; and
- (6) Abandoned cemeteries.

CHEMICAL MANUFACTURING. A land use category for industrial establishments engaged in the transformation of organic and inorganic raw materials by a chemical process and the formulation of products.

CHURCHES AND RELIGIOUS INSTITUTIONS. A building used for public assembly or worship regardless of denomination or religious affiliation, including other ancillary activities, such as parsonages, offices, classrooms, day care, and recreation facilities.

CLEAR CUTTING. The clearing, cutting, or removal of all or a majority of trees and vegetation from a lot or portion of a lot.

CLUB. Buildings and facilities used for social, educational, or recreational purposes operated by an organization that requires membership for participation, is primarily non-profit, and does not render a service which is customarily carried on as a business.

CLUSTER SUBDIVISION. A form of development that provides reduced lot area while maintaining the same number of lots and overall density. Buildings are clustered on parts of the site, permitting the remaining land area to be devoted to open space, active recreation areas, environmentally-sensitive land preserves, or agriculture.

COLLEGES AND UNIVERSITIES. Academic institutions of higher education that are accredited or recognized by the State Department of Education and that offer a program or series of programs of academic study.

COLLOCATE OR COLLOCATION. A situation in which one or more antennas are placed on a communications tower or pole, or the addition or the replacement of antennas on an existing communications tower or pole. Collocation includes combined antennas but does not include roof- or surface-mounted small wireless facilities, or the placement of any personal wireless service antenna on an amateur radio antenna within a residential district.

COMMERCIAL FILMING AND FILM PRODUCTION ACTIVITIES (OUTDOOR). Outdoor video and audio recording of performers for motion pictures, television, and other media.

COMMERCIAL KITCHEN, CATERERS, AND BANQUET SERVICES. Kitchen facilities for the preparation or catering of food to be served off-site and ancillary offices and other support facilities. This definition includes ghost kitchens, commissary kitchens, and delivery-only restaurants.

COMMISSARY. A permitted retail food establishment that is authorized and permitted by SCDHEC to provide a servicing area for mobile food units or mobile food pushcarts for the purposes of storage of food, supplies, and single-service articles. A commissary supports the following operations:

- (1) Food preparation;

CHAPTER 150: BUILDING REGULATIONS

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GENERAL PROVISIONS

§ 150.01 PURPOSE.

The purpose of this chapter is to establish the minimum requirements to provide a reasonable level of safety, public health, and general welfare to life and property from hazards attributed to the building environment within the county.

(Ord. 822, passed 2-7-22)

§ 150.02 APPLICATION AND JURISDICTION.

The applicability of this chapter shall apply only to unincorporated areas of the county.

(Ord. 822, passed 2-7-22)

§ 150.03 COUNTY BUILDING AND CODES DIVISION CREATED.

Within the York County planning and development services department, there is created a county building and codes division, which shall administer and enforce the provisions of this chapter under the supervision and direction of the planning and development services director. Any property owner may appeal a decision of any representative of the building codes division directly to the building board of appeals within the time and upon the terms and conditions and subject to the limitations contained in § 150.51 and § 150.52 of this chapter.

(Ord. 822, passed 2-7-22)

§ 150.04 BUILDING CODE.

(A) Except as herein amended, the installation, workmanship, construction, maintenance or repair of new non-residential construction, additions, alterations or repairs shall be administered as provided in Chapter 1 of the 2018 Edition of the International Building Code with modifications and Appendix H (signs), as modified by the South Carolina Codes Council is hereby adopted by reference and made an integral part of this chapter.

(B) Except as herein amended, the installation, workmanship, construction, maintenance or repair of new residential construction, additions, alterations or repairs shall be administered as provided in Chapter 1 of the 2018 Edition of the International Residential Code with modifications and Appendices H (patio covers), J (existing buildings), and Q (tiny homes), as modified by the South Carolina Codes Council, is hereby adopted by reference and made an integral part of this chapter.

(Ord. 822, passed 2-7-22)

§ 150.05 ELECTRICAL CODE.

Except as herein amended, the installation, workmanship, construction, maintenance or repair of all electrical work shall conform to the National Electrical Code, 2017 Edition, with modifications, and appendices, as modified by the South Carolina Codes Council, which is hereby adopted by reference and made an integral part of this chapter.

(Ord. 822, passed 2-7-22)

§ 150.06 ELECTRICITY NOT TO BE FURNISHED WITHOUT PERMIT.

It shall be unlawful for any public utility company or rural electric cooperative to make a new connection of electrical energy to a building, manufactured home or structure requiring a permit unless the structure shall have acquired the necessary building or manufactured home permit from the Building Official.

(Ord. 822, passed 2-7-22)

§ 150.07 GAS CODE.

Except as herein amended, the installation, workmanship, construction, maintenance or repair of all new fuel construction, additions, alterations or repairs shall be administered as provided in Chapter 1 of the 2018 Edition of the International Fuel Gas Code with modifications, as modified by the South Carolina Codes Council, which chapter is hereby adopted by reference and made an integral part of this chapter.

(Ord. 822, passed 2-7-22)

§ 150.08 PLUMBING CODE.

Except as herein amended, the installation, workmanship, construction, maintenance or repair of all plumbing work shall be administered as provided in Chapter 1 of the 2018 Edition of the International Plumbing Code, as modified by the South Carolina Codes Council, which chapter is hereby adopted by reference and made an integral part of this chapter.

(Ord. 822, passed 2-7-22)

§ 150.09 MECHANICAL CODE.

Except as herein amended, the installation, workmanship, construction, maintenance and repair of all heating, air conditioning, refrigeration and ventilation equipment shall be administered as provided in Chapter 1 of the 2018 Edition of the International Mechanical Code, as modified by the South Carolina Codes Council, which chapter is hereby adopted by reference and made an integral part of this chapter.

(Ord. 822, passed 2-7-22)

§ 150.10 INTERNATIONAL ENERGY CONSERVATION CODE.

Except as herein amended, the installation, workmanship, construction, maintenance and repair of all heating, air conditioning, refrigeration and ventilation equipment shall be administered as provided in Chapter 1 of the 2009 International Energy Conservation Code, which chapter is hereby adopted by reference and made an integral part of this chapter.

(Ord. 822, passed 2-7-22)

§ 150.11 INTERNATIONAL EXISTING BUILDING CODE.

Except as herein amended, the installation, workmanship, construction, maintenance or repair of existing residential and non-residential construction, additions, alterations or repairs shall be administered as provided in Chapter 1 of the 2018 Edition of the International Existing Building Code, which is hereby adopted by reference and made an integral part of this chapter.

(Ord. 822, passed 2-7-22)

BUILDING PERMITS

§ 150.20 PERMITS REQUIRED.

Any owner or owner's 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 and electrical, gas, mechanical, or plumbing system, the installation of which is regulated by this code, or to cause any such work to be performed, shall first make application to the building and codes division and obtain the required permit.

(Ord. 822, passed 2-7-22)

§ 150.21 APPLICATION.

Application for a permit shall be made on the form provided by the Building and Codes Division. The applicant shall furnish information as may be required to complete the application.

(Ord. 822, passed 2-7-22)

§ 150.22 CONSTRUCTION DOCUMENTS.

When required by the building and codes division, specifications and drawings shall accompany the application for permit. The drawings and specifications shall contain information as to the quality of materials, where quality is essential to conformity with this chapter. The building official may require details, computations, diagrams and other data necessary to describe the construction or installation and basis of calculations. The plans submitted shall apply with all applicable state architecture and engineering licenses and boards.

(Ord. 822, passed 2-7-22)

§ 150.23 ZONING COMPLIANCE.

If proposed construction, for which a building permit is applied, is required to comply with zoning regulations, the zoning division shall also check the application for compliance with the York County Zoning and Land Development codes before the permit shall be issued. Refer to Chapters 154 and 155, of the York County Code of Ordinances for specific requirements. If the application does not comply with these regulations, the permit shall not be issued.

(Ord. 822, passed 2-7-22)

§ 150.24 FLOODPLAIN AREAS.

A permit shall not be issued for any construction on lands that are deemed to be situated within a

floodplain area unless the conditions of Chapter 151, Floodplain Management, of the York County Code of Ordinances have been met. It shall be the responsibility of the applicant to provide ample information to meet these requirements. All final documentation, which maybe required as a result of meeting Chapter 151 stipulations, shall be submitted prior to a certificate of occupancy being issued for the permitted area.

(Ord. 822, passed 2-7-22)

§ 150.25 FEES.

(A) No permit shall be issued until the required fees are paid, nor shall an amendment to a permit be approved until the additional fee, if any, due to an increase in the estimated cost of the building or structure is paid.

(B) Fees for permits, inspections, appeals, amendments and other matters pertaining to this subchapter shall be paid in accordance with the fee schedule in Chapter 31 - County Policies Section 31.01.

(C) *Refunds.* If work has not commenced, a refund may be requested in writing within six months of permit issuance (but not thereafter) by submitting a completed York County Refund Request form. York County will deduct applicable administrative fees from the balance. If a refund is received, the permit is void.

(D) When the county shall review plans for commercial construction, the person or entity submitting the plans or applying for the review shall pay a fee for the review of the plans in an amount equal to 50% of the building permit fee under this code for a building permit for the improvements for which the commercial plans were submitted. Refer to the fee table within Chapter 31, § 31.01(A) of the York County Code of Ordinances.

(Ord. 822, passed 2-7-22)

§ 150.26 ISSUANCE OF PERMIT; SCOPE; REVOCATION; EXPIRATION; TERMINATION OF WORK.

(A) The building and codes division shall act upon an application for a permit without unreasonable or unnecessary delay.

(B) A permit issued shall be construed to be an authorization to proceed with the work and shall not be construed as authority to violate, conceal, alter or set aside any of the provisions of this chapter, nor shall the issuance of a permit prevent the department from thereafter requiring correction of errors in plans or in construction or of violations of this chapter.

(C) The building official is authorized to suspend or revoke a permit issued under the provisions of this chapter 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.

(D) Revoke permits. In case of false statements or misrepresentation as to a material fact in the application or plans on which a permit or approval is based, the building official may revoke the permit or approval issued under the provisions of this chapter. In such cases, no permit fee shall be refunded.

(E) All permits issued shall become invalid unless the work authorized by it is commenced and the initial inspection is made within 180 days after its issuance, or, if following the initial inspection,

the work authorized by the permit is suspended, abandoned or no inspection is performed for a period of 180 days after the time the work is commenced; provided, that for cause, one or more extensions of time periods not exceeding 180 days each may be allowed in writing by the building official.

(F) Should any person to whom a permit is issued quit the construction or installation for any reason, the person shall notify the department and state the reason. If the construction or installation is partially completed, the person to whom the permit was issued, upon quitting the construction or installation, shall notify the department and request an inspection. Acceptance of, violations against, the work shall be recorded by the inspector on the permit record, No refund of the permit shall be granted.

(G) If the holder of a permit quits an installation or construction and fails to notify the department, the owner or the owner's agent may notify the department and request inspection. Upon inspection, the holder of the permit shall be sent a notice of any violation. The owner may then secure another qualified person to proceed with the work.

(Ord. 822, passed 2-7-22)

§ 150.27 POSTING OF PERMIT.

Work requiring a building permit shall not begin until the permit holder or the permit holder's agent shall have the building permit on site of a permitted activity. The permit shall be protected from the weather and in such position as to allow an inspector to conveniently review. The permit, or a copy, shall be kept on the site of work by the permit holder until completion of the permitted work.

(Ord. 822, passed 2-7-22)

INSPECTIONS

§ 150.40 INSPECTIONS; REQUIRED, INTERVALS.

(A) The building official or a representative of the building and codes department shall inspect or cause to be inspected all construction, installations or work for compliance with the provisions of this chapter.

(B) The inspections shall be made at the minimum following specified intervals:

(1) *Footing, slab, and foundation inspection.* This inspection is to be made after trenches are excavated and forms erected and any required reinforcing steel is in place.

(2) *Concrete slab and under-floor inspection.* This inspection shall be made after inslab 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.

(3) *Lowest floor elevation.* In flood hazard areas, upon placement of the lowest floor, including the basement or crawl-space, and prior to further vertical construction, the elevation certification shall be submitted to the floodplain manager.

(4) *Framing inspection.* This inspection is to be made after the roof, all framing, fire-blocking, draft-stopping and bracing are in place and all pipes, chimneys and vents are complete.

(5) *Rough-in inspection.* This inspection is to be made before any framing, electrical, gas, heating, air conditioning, plumbing or other work regulated by this chapter is covered or concealed.

(6) *Other inspections.* In addition to inspections required in this section, the building official shall have the authority to make or require any other inspections to ascertain compliance with this code and other laws enforced by the building official.

(7) *Final inspection.* This inspection is to be made upon completion of all work and prior to occupancy.

(C) *Inspections.* It shall be the duty of the permit holder to give reasonable advance notice to the department when work is ready for inspection and testing. A log of all requests for inspections shall be kept by the department so that a permanent record can be had of the times and dates when the requests for inspections were made.

(Ord. 822, passed 2-7-22)

§ 150.41 CERTIFICATE OF COMPLETION OR OCCUPANCY.

(A) Upon completion of building or installation in accordance with approved plans and after the final inspection herein referred to, the building and codes division shall issue a certificate of completion or occupancy.

(1) No new building shall be lawfully occupied and no change in occupancy of a building or part of a building shall be made until after a certificate of occupancy has been issued.

(B) The building official may issue a temporary certificate of occupancy, which shall only be valid for the period stated on the certificate, for a specified portion or portions of a building, which may safely be occupied prior to final completion of the entire building and/or site. Any conditions that are attached to the temporary certificate of occupancy must be completed prior to the expiration of the certificate. When such conditions have not been completed prior to the expiration date of the conditional certificate, the certificate of occupancy shall immediately expire. Upon receipt of a written application to the building official stating satisfactory reasons for the failure to complete work within the given time period, the building official may renew the certificate for a specified period of time, not to exceed 90 days.

(Ord. 822, passed 2-7-22)

ADMINISTRATION AND ENFORCEMENT

§ 150.50 BUILDING OFFICIAL.

The duties of the building official are expanded to include:

(A) Administering and enforcing the provisions of this chapter through the building and codes division and its personnel; and

(B) Performing any related duties as directed by the planning and development services director.

(Ord. 822, passed 2-7-22)

§ 150.51 POWERS AND AUTHORITY OF BUILDING OFFICIAL AND BUILDING AND CODES DIVISION PERSONNEL.

In the performance of the duties set forth in § 150.26, the Building Official or an authorized agent or representative of the Building and Codes Division shall have and may exercise the following powers:

(A) *Issue building permits.* This division is charged with the responsibility of issuing building permits in accordance with the provisions of this chapter.

(B) *Perform inspections.* This division shall inspect or cause to be inspected all construction, installation or work for compliance with the provisions of this chapter.

(C) *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 on a premises a condition that is contrary to or in violation of this code that 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.

(D) *Issue stop work orders.* Upon notice from the building official that work on any building, structure or installation is being done contrary to the provisions of this chapter or in a dangerous or unsafe manner, the work shall be stopped immediately. Stop notices shall be in writing and shall be given to the owner of the property, to the owner's agent or to the person doing the work and shall state the conditions under which work may be resumed. Where an emergency exists, a written notice shall not be required. Any work that continues in or about the structure 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 § 150.99.

(E) *Approve alternate materials, design, and alternate methods of construction.* Alternate materials, design, and methods of construction not specifically prescribed by this chapter must be approved and authorized by the building official. The building official shall approve any such alternative materials, design, or alternate methods of construction, provided they comply with the intent and purpose of this chapter and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed by this chapter in quality, strength, effectiveness, fire-resistance, durability and safety. The building official shall require that sufficient evidence or proof be submitted to substantiate any claim that may be made regarding its use. Where an alternative material, design or method of construction is not approved, the building official shall respond in writing, stating the reasons why the alternative was not approved.

(F) *Records and reports.* The Building Official shall maintain comprehensive records of building permit applications, of permits issued, of certificates of occupancy or completion of all inspections made, of reports rendered and of notices or orders issued. Written reports covering the activities of the division shall be submitted at the request of the county manager. All records of the building and codes division shall be open to public inspection for good and sufficient reasons during stated office hours, but shall not be removed from the office without the written consent of the building official or planning and development services director. Records are to be maintained in accordance with county retention policies.

(Ord. 822, passed 2-7-22)

§ 150.52 VARIANCES AND APPEALS; CONDITIONS FOR APPEAL.

Whenever the building official shall reject or refuse to approve the mode or manner of construction proposed to be followed or materials to be used, when it is claimed that the provisions of this chapter do not apply or that an equally good or more desirable form of construction can be

employed in any specific case, or when it is claimed that the true intent and meaning of this chapter or any of the regulations thereunder were misconstrued or wrongly interpreted, the owner of the building or structure, or the owner's duly authorized agent, may appeal the decision to the building board of appeals. Notice of appeal shall be in writing and filed within 30 days after the decision is rendered. If an appeal involves the issuance of civil fine pursuant to § 150.99, the building board of appeals may not reduce or waive the fine if the board affirms the building official's determination that the owner or authorized representative violated this chapter.

(Ord. 822, passed 2-7-22)

§ 150.53 APPEALS BOARD.

(A) *Membership; alternates.*

(1) The building codes appeals board is established and shall consist of seven members and three alternates. The board shall consist of one architect, one engineer, one contractor and one member each from the building, electrical, gas and plumbing industry. Two alternates shall be selected from the building industry at large and one alternate shall be selected from the general public. All members and alternates shall be residents of the county and shall be appointed by the County Council to serve without compensation. Of the members first appointed, two shall be appointed for two-year terms; two shall be appointed for three-year terms; and three shall be appointed for four-year terms. Of the alternates first appointed, one shall be appointed for a two-year term; one shall be appointed for a three-year term; and one shall be appointed for a four-year term. Vacancies in the membership of the board and in board alternates shall be filled for the unexpired term in the manner in which the original appointment was required to be made.

(2) Alternate members of the board may attend all meetings of the board, but shall be permitted to vote only in the absence of a member of the board. Alternates shall be entitled to vote on matters coming before the board on a rotating basis.

(3) No member or alternate member shall be appointed to serve more than two full consecutive terms. Previous service for a full term as a member or alternate shall be counted in determining a member's service on the board for purposes of the limitations established by this section, but partial terms of service as a member or alternate member shall not be considered for purposes of the limitation contained in this section. No member or alternate member shall be reappointed to the board after serving two consecutive terms as a member of the board until a minimum of one year has elapsed since the last service of the member or alternate member upon the board.

(B) *Quorum.* Four members of the board shall constitute a quorum. In varying the application of any provision of this chapter or in modifying an order of the Building Official, affirmative votes of the majority present, but not less than three affirmative votes, shall be required. No board member shall act in a case in which the member has a personal interest.

(C) *Secretary, records.* An official from the Planning and Development Services Department, designated by the Building Official or Planning and Development Services Director, shall act as secretary of the Appeals Board and shall make a detailed record of all its proceedings, which shall set forth the reasons for its decisions, the vote of each member participating therein, the absence of a member and any failure of a member to vote.

(D) *Procedures.* The board shall establish rules and regulations for its own procedures not inconsistent with the provisions of this chapter. The board shall meet at regular intervals, to be determined by the chairperson, or in any event, the board shall meet within 15 days after notice of

appeal is received from the department.

(E) *Decisions of the appeals board.* The appeals board, when so appealed to and after a duly advertised hearing, may vary the application of any provision of this chapter to any particular case when, in its opinion, the enforcement thereof would not do manifest injustice and would not be contrary to the spirit and purpose of this chapter or the public interest, or when, in its opinion, the interpretation of the Building Official should be modified or reversed. A decision of the appeals board to vary the application of any provision of this chapter or to modify an order of the building official shall specify in what manner the variation or modification is made, the conditions upon which it is made and the reasons therefor. Every decision of the appeals board shall be final, subject, however, to such remedy as any aggrieved party may have at law or in equity. It shall be in writing and shall indicate the vote upon the decision. Every decision shall be promptly filed in the office of the building and codes division and shall be open to public inspection; a certified copy shall be sent by mail or otherwise to the appellant. The appeals board shall, in every case, reach a decision, without unreasonable or unnecessary delay. If a decision of the appeals board reverses or modifies a refusal, order or disallowance of the department or varies the application of any provision of this chapter, the department shall immediately take action in accordance with the decision.

(Ord. 822, passed 2-7-22)

§ 150.99 PENALTY.

(A) Any person found to be in violation of any provision of this chapter shall be issued a civil fine in an amount not exceeding \$200. If the building official or other authorized code enforcement officer determines a second violation has occurred, the person found in violation of this chapter shall be provided seven calendar days to remedy the violation or submit a plan to correct the violation. If the violation has not been remedied or the plan has not been submitted within the seven calendar days, the building official or other authorized code enforcement officer must issue a civil fine in an amount not to exceed \$2,000. Each day a violation continues is a separate offense.

(B) In the event of any violation or proposed violation of this chapter, the county manager, or other appropriate county representative or any adjacent or neighboring property owner who would be damaged by the violation, in addition to other remedies, may apply to a court of competent jurisdiction for injunctive relief, mandamus or other appropriate proceeding to prevent, correct, or abate the violation or threatened violation.

(Ord. 822, passed 2-7-22)

ELECTRONICALLY FILED - 2023 May 11 2:01 PM - YORK - COMMON PLEAS - CASE#2023CP4601467

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	
Midway Baptist Church of York,	)	
	)	C/A No.: 2023CP4601467
Plaintiff,	)	
Vs.	)	ANSWER OF
	)	COUNTY OF YORK
County of York,	)	
Defendant.	)	
_____	)	

County of York (hereinafter, collectively “County”), by way of Answer to the Complaint of Midway Baptist Church of York, would respectfully show unto the Court:

GENERAL DENIAL

1. The Defendant County denies each and every allegation of the Complaint not specifically admitted, qualified or denied.

FOR A FIRST RESPONSE

2. Responding to the allegations of Paragraph 1 of the Complaint, the Defendant County does not have sufficient information to either admit or deny the allegations contained therein and therefore denies the same and demands strict and absolute proof thereof.
3. Paragraphs 2, 3, 4, 5 and 6 do not require a responsive pleading.
4. Responding to the allegations of Paragraphs 7 through 28 of the Complaint, the Defendant County does not have sufficient information to either admit or deny the allegations contained therein and therefore denies the same and demands strict and absolute proof thereof.
5. Paragraph 29 does not require a responsive pleading.
6. Responding to the allegations of Paragraphs 30 and 31 of the Complaint, the Defendant County admits that the paragraphs accurately recite portions of the South Carolina Code.

7. Responding to Paragraphs 32 through 42 of the Complaint, the Defendant County does not have sufficient information to either admit or deny the allegations contained therein and therefore denies the same and demands strict and absolute proof thereof.
8. Responding to Paragraphs 43, through 51 of the Complaint, the Defendant County denies the allegations; moreover, the allegations are argumentative and/or conclusory and should be stricken.

FOR A SECOND RESPONSE AND FIRST AFFIRMATIVE DEFENSE

9. Plaintiff failed to exhaust its administrative remedies, as it declined to timely challenge the occupancy classification E as determined by the Planning Department.

FOR A THIRD RESPONSE AND SECOND AFFIRMATIVE DEFENSE

10. Plaintiff's claims are res judicata and barred to the determination of occupancy classification E for failure to timely appeal the decision of the Building Official informing the Plaintiff of this designation.

WHEREFORE, having fully answered, the Defendant County prays that the Court inquire as to the matters alleged and issue an appropriate Order dismissing Plaintiffs' action and denying the relief, determinations, and awards sought, directing the parties as the facts may dictate as pertain to the Defendant County of York; and award such costs and other and further relief as the Court deems just and proper.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

Respectfully submitted,

County of York

By: s/ Michael K. Kendree
Michael K. Kendree (#65308)
County Attorney
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(803) 684-4851

July 3, 2023

York, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	
	)	Case Number: 2023-CP-46-01467
Midway Baptist Church of York,	)	
	)	
Plaintiffs,	)	
	)	NOTICE AND MOTION TO ALTER
vs.	)	OR AMEND THE ORDER OF THE
	)	COURT PURSUANT TO RULE 59 (E),
County of York,	)	SCRCP.
	)	
Defendant.	)	
_____	)	

TO: THE PLAINTIFF MIDWAY BAPTIST CHURCH OF YORK AND ITS ATTORNEY EMILY BROWN:

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for York County, will move before the Circuit Court Judge presiding over the Court of Common Pleas for the Sixteenth Judicial Circuit within ten (10) days after service of this Motion, or at such other time and place as may be designated by the Court, for an amended or alternatively clarified Order dated June 25, 2025, pursuant to Rule 59 (e), SCRCP.

INTRODUCTION

This case centers on two primary provisions of the South Carolina Building Code: 303.1 Assembly Group A and 305.1 Education Group E.

The Summons and Complaint (the “Complaint”) initially filed in this case sought to have this Court issue a declaratory judgment that “religious education qualifies as an accessory use under the Building Codes... regardless of whether it satisfies the educational requirements of South Carolina law[.]. Compl., para. 51, Order, p. 1. However, that request belies what Plaintiff actually requested of the Court in this case, by necessity. What Plaintiff actually requested, and the Court ultimately ruled, was to allow the operation of a K-12 educational facility as a subordinate purpose to the function of a structure or building as a place for religious worship.

LEGAL STANDARD**S.C.R.C.P. Rule 59**

The purpose of a motion filed pursuant to Rule 59(e) of the SCRCP is to “request the trial judge to reconsider matters properly encompassed in a decision on the merits.” Rule 59(e), SCRCP. Rule 59 motions should only be granted where the court finds that there has been an intervening change of controlling law, that new evidence has become available, or that there is a need to correct a clear error or prevent manifest injustice. *Robinson v. Wix Filtration Corp., LLC*, 599 F.3d 403, 411 (4th Cir. 2010).¹ The purpose of this Motion is to address clear errors of law and/or fact, to prevent manifest injustice as articulated in Rule 59 and also to preserve issues raised but not ruled upon by the Court. See, e.g. *Talley v. South Carolina Higher Educ. Tuition Grants Committee*, 289 S.C. 483, 347 S.E.2d 99 (1986), and *Skinner v. Elrod*, 308 S.C. 239, 417 S.E.2d 599 (Ct. App. 1992)(need to preserve matters raised but not addressed).

Specifically, York County seeks an Amended or Altered Order addressing the following:

**THE COURT’S RULING IS CLEARLY ERRONEOUS UNDER BOTH A PLAIN READING
OF THE APPLICABLE PROVISIONS OF THE BUILDING CODE, AS WELL AS THE
RULES OF STATUTORY CONSTRUCTION**

The court’s ruling that the school occupancy qualifies as an exception to the 305.1 Educational Group classification and should be considered accessory to the Assembly Group classification of the church is in error pursuant to the plain language of the applicable codes, as well as the rules of statutory construction, which indicate the legislative intent to provide for the uniform and orderly classification of buildings and structures based on their intended use and the associated risks to occupants, influencing design, fire protection, means of egress, and other safety features.

¹ SCRCP Rule 59 is substantially the same as the Federal Rule. See *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 779 (2004) (“Rule 59(e) in South Carolina and federal rules of civil procedure is practically identical.”); “A party’s mere disagreement with the court’s ruling [does not] . . . warrant a Rule 59(e) motion.” *In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig.*, 269 F.Supp. 3d 685, 691 (D.S.C. 2017)

I. The language in Section 305.1 is specific by design, and the corresponding specificity of language utilized in 305.1.1 and 303.1, .4, and 303.1.4 reflects two primary, distinct purposes, neither of which are considered ancillary or incidental to the other, but either of which might have ancillary uses that are consistent with the primary purpose of their respective classifications.

Chapter 3 of the South Carolina Building Codes (the “Building Code” or “Building Codes”) provides the criteria by which buildings and structures are classified, stating: “[d]ifferent classifications of occupancy and use represent varying levels of hazard and risk to building occupants and adjacent properties.” Section 301.1, S.C. Building Code. Because the basis for classification of a building or structure is determined based on the hazards and risks unique to the primary purpose use for each, the Court’s interpretation, which relies on phrases construed in isolation, is at odds with the purpose or an orderly analysis of the Building Code.

The portions of the Building Code in question in this action are Sections 303 and 305 of the Classification and Use Designation Chapter of the South Carolina Building Codes.

Section 303.1 Assembly Group A, states:

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.

Section 303.4 Assembly Group A-3 (which is the classification for Midway Baptist Church), states:

Group A-3 occupancy includes assembly uses intended for worship, recreation or amusement and other assembly uses not classified elsewhere in Group A[.]

The primary function of Group A classifications involves the assembly of persons for a variety of purposes, including religious worship. However, because religious worship has and does encompass more than worship, the Code accounts for other, but subordinate and related uses that occur in churches and other religious structures across the county such as smaller rooms for religious

teachings, counseling, and fellowship. That understanding is embodied in the language in Section 303.1.4, Accessory to places of religious worship, which states:

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

Separate and distinct from a place which has a primary purpose of assembly, is the Educational Group classification, which has as its primary purpose, the education of students. Specifically, Section 305.1 states:

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.

This language, together with the language in Section 305.1.1, avoids the potential that rooms or auditoriums under the Assembly Group might have to comply with the standards for a school by explicitly describing the purpose underlying an E classification and the characteristics that a room or auditorium qualifies as an A-3 occupancy. The straightforward application of this wording of the Code protects both the existing religious places of worship until such time as they seek to operate a school.

II. The Court erred in determining that an Educational Group classification, which has as its purpose, “[education]... through the 12th grade[,] can be subordinate to a separate primary use of a gathering place for purposes of religious worship because the Code squarely addresses the occupation of areas, rooms, or spaces at different times for different purposes.

At issue in this case is a private school which has a religious curriculum. At the hearing, Plaintiff admitted that the school qualifies for the primary function under the Educational Group classification because its use would include “occupancy. . . by six or more persons at any one time for educational purposes through the 12th grade.” Section 305.1. While there is an exception to the classification, that exception is narrow and clearly intended to exclude religious educational rooms that are “accessory to places of religious worship” from being improperly classified under the Educational

Occupancy portion of the Building Code. This interpretation fits squarely with the specificity used to describe that Educational Classifications belong to those buildings or portions thereof that have as their purpose education of students through the 12th grade. Further, and critically, this interpretation is affirmed by a full reading of the exception, 305.1.1, which states:

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.

Section 303.1.4 states:

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

The Court utilizes a tortured reading of the building code to determine that the operation of an educational facility which squarely fits the purpose of educating students through the 12th grade to fit within the purpose of operating a place of worship. Rather, these are two separate purposes, and the Building Code provides the mechanism by which to address multiple types of occupancies. Rather, the Court found that “the use of the rooms by the [school] is subordinate to the main occupancy and primary purpose of the rooms: assembly for religious worship and services.” Order, p. 6, para. 2. This is a misplaced reading of the Building Code and the exceptions noted under the occupancies in question. It is clear error for the Court to determine that a primary purpose can be transformed to fit as a subordinate use to a different and distinct primary purpose. The exception allowed for educational occupancy is not intended to allow a school which has the education of students through the 12th grade as its primary purpose to qualify as subordinate to the primary purpose of assembling for religious worship. The testimony of witnesses by both parties indicates that the school is intended to educate students to the standards set under South Carolina law. That the legislature intended students to have a

different set of safety standards for students attending a school which happens to have a religious-based curriculum does not fit with a reading of the Building Code as a whole.

III. The Court erred in its interpretation of the Building Code by manufacturing an exception which does not exist in the plain language of the applicable provisions.

In reaching its conclusion that the school Plaintiff seeks to operate falls within the Assembly occupancy despite finding that the school is a K-12 educational operation, the Court improperly manufactured an exception to Section 305.1 which does not equate to the language of 305.1.1 by disregarding the overarching purpose and scheme of the Code, by scrutinizing certain phrases in isolation, and by reorganizing the literal wording in the relevant provisions.

The court-created exception to an Educational Group classification involved three criteria: (1) the occupant load of a room purported to be ancillary to a place of religious worship must be less than 100 persons per room or space (Order, p. 5); (2) the room in question must be “accessory to a place of religious worship[;]” (Order, p. 6); and (3) the space in question must be a religious educational room or religious auditorium (Order, p. 6).

In analyzing the first prong of the court’s “exception”, that the occupant load must be less than 100 persons per room or space for that space to qualify as ancillary to a place of religious worship, the Order notes that “[t]here is no dispute that the Academy meets this requirement.” Order, p. 6. The County vigorously disputes this statement. To the extent that an occupant load is considered a criteria for transposing the primary use of a building or portion thereof from one occupancy classification to a different one, the County entirely disagrees.

In the second prong of the court’s criteria, the Order emphasizes the definition of “a place of religious worship” and “accessory occupancy” found in Sections 202 and 508 of the Building Code, respectively. However, the Court also includes Section 302.1, which states “[o]ccupancy classification is the formal designation of the primary purpose of a building or its portions thereof.” Rather than examine the two primary designations at issue in this case, Educational Occupancy and Assembly

Group Occupancy, in the context of the full language of 302.1, the Court summarily concludes that “[t]he Academy meets this second requirement. . . [because it] will share use of the building and rooms with the Church.”

A critical component of statutory construction is that statutes “must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect.” S.C. State Ports Auth. v. Jasper County, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). “[Courts] therefore should not concentrate on isolated phrases within the statute.” Id. “Instead, [courts] read the statute as a whole and in a manner consonant and in harmony with its purpose.” State v. Sweat, 379 S.C. 367, 376, 665 S.E.2d 645, 650 (Ct. App. 2008), aff’d, 386 S.C. 339, 688 S.E.2d 569 (2010).

In quoting Section 302.1, the Court stops short of reading the language as a whole. Section 302.1 subsequently states

[s]tructures shall be classified into one or more of the occupancy groups specified in this section based on the nature of the hazards and risks to building occupants generally associated with the intended purpose of the building or structure. An area, room, or space that is intended to be occupied at different times for different purposes shall comply with all applicable requirements associated with such potential multipurpose. Structures containing multiple occupancy groups shall comply with Section 508.

Section 302.1 Occupancy classification (emphasis added).

In other words, the Building Code contemplates a building or structure which has more than one occupancy group, and critically, it mandates the appropriate action for addressing those circumstances. The remedies provided elucidate that where there are two occupancy groups with two distinct primary purposes, one group is not absorbed into another as a subordinate, incidental use as the court improperly concluded.

In the third and final prong of the criteria set forth in the Order, the Court noted that the space in question must be a religious educational room or religious auditorium to transform it from an

Educational Group primary use to an Assembly Group classification. Rather than adhere to the plain language of the two phrases, “religious educational room” and “religious auditorium”, The Court offers no explanation beyond its conclusion that because the terms are not defined in the Building Code, and because Section 201.4 indicates that undefined terms “have ordinarily accepted meanings **such as the context implies**” (emphasis added), the terms “simply limit application of the exceptions to classrooms or auditoriums associated with a place of religious worship.” Order, p. 6. The Court’s conclusion is erroneous on its face for two reasons. First, it fails to consider the context of the phrases, erring from the well-established plain meaning rule. Second, the Court rewrites the plain language of the codified exception to 305.1 by removing the descriptors which aid in providing the context called for by Section 201.4. In changing “religious educational rooms” and “religious auditoriums” to “classrooms or auditoriums associated with a place of religious worship” the Court has changed the clear intent of the Code, to ensure that those religious rooms and/or religious areas “which are accessory to places of worship in accordance with Section 303.1.4... shall be classified as Group A-3 occupancies.” Section 305.1.1 Accessory to places of religious worship; Order, p. 6. Under the Court’s rewording of the Building Code, any classroom or auditorium that is **associated with** a place of religious worship would qualify as an Assembly Group occupancy – it lacks even the requirement that the classroom or auditorium be accessory to/incidental to the place of religious worship. Order, p. 6. The only insight the Court offers as a basis for its conclusion is that this reworking of the exception alleviates the need for “county officials or the courts to delve into whether the curriculum, activity or function sufficiently includes religious teachings, worship, service or practices.” Order, p. 6. The Court’s concern is misplaced, as the court’s own interpretation is the one which would require analysis of whether a school’s curriculum is religious in nature². An appropriate reading of the Building Code necessitates no such analysis. The Building Code contains to occupancy groups which address two

² The Court acknowledges this fact to some extent by noting “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.” Order, p. 6.

distinct primary occupancies. The clear language of Section 305.1.1 reflects the intent to exclude religious educational rooms that are ancillary to a place of worship, such as bible study rooms, to fall within the requirements applicable to the primary use of a place of worship, which is an Assembly Group and avoid having those secondary uses be classified under the distinct primary use of Educational Groups.

IV. The Court erred in utilizing the standard recited under *Mikell v. County of Charleston*, 386 S.C.153, 687 S.E.2d 326 (2009)(Order, p. 4)

The County contends that the broader latitude in construing an ordinance, as articulated in *Mikell* is not applicable to a Building Code. The appropriate standard is deference should be given to an agency's interpretation of a statute or regulation unless it is arbitrary or capricious. See, e.g., *Doe v. Keel*, 440 S.C. 427, 892 S.E.2d 282 (2023). South Carolina law is clear: "If the statute or regulation 'is silent or ambiguous with respect to the specific issue,' the court then must give deference to the agency's interpretation or the statute or regulation" *Kiawah Dev. Partners II v. S.C. Dep't of Health & Env't Control*, 411 S.C. 16, 33, 766 S.E.2d 707, 17 (2014). South Carolina's "deference doctrine provides that courts defer to an administrative agency's interpretations with respect to the statutes entrusted to its administration or its own regulations "unless there is a compelling reason to differ." *S.C. Coastal Conservation League*, 363 S.C. 67, 75, 610 S.E.2d 482, 486 (2005). Here, as the court aptly points out in findings 15, 16, 17 and 20, the Building Official determined that a class E occupancy classification applied. Yet, the Court ignored the determination of the Building Official in fashioning its own reading of the Building Code. Under the applicable caselaw, the Court should have concluded the interpretation of the Building Official was correct, and found that the interpretation was correct under the controlling Building Code provisions. See, e.g., *Barton v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 404 S.C. 395, 415, 745 S.E.2d 110, 121 (2013)(stating that an agency's interpretation "will not be overruled absent compelling reasons."). Failure of the Court to ignore the determination of the

Building Official and its failure to provide compelling reasons why it should not defer to the Official's interpretation is error.

V. Whether the Court erred in finding that the Midway's intended use of existing religious classrooms for purposes of running a school constituted an Accessory Occupancy without considering and ruling upon the conditions required to be an accessory occupancy and without addressing Mixed-Use Occupancy.

In determining an Accessory Occupancy under Section 508 of the Building Code, specifically, Section 508.2, the Court placed the proposed application squarely in the Mixed Use and Occupancy Section of the Building Code. The Court's analysis failed to address any of the specific called out conditions required for the intended school to be deemed Accessory. In error, and contrary to the general tenets of statutory construction, the Court utilized one phrase in isolation and ignored the remaining requirements of the Code section it cites. See, e.g., *S.C. State Ports Auth. V. Jasper County*, 368 S.C. 388, 629 S.E.2d 624 (2006)(Court should not concentrate on isolated phrases). The Order did not thereafter address 508.2.1 through 508.2.4 as required in finding an Accessory Use. In error, the Order is silent on these points. The requirements are appended to Plaintiff's Complaint. Had the Court analyzed the requirements, it would have utilized 508.2.1 and found that Section 302 of the Building Code requires all applicable requirements of mixed uses are to be met. In this case, that would be Class A requirements of a Church Assembly and the Class E requirements of a school K through 12, with 6 or more students must be independently met. The Deputy Building Official testified as to Accessory Occupancy requirements under 508.2. The Building Official testified as to the requirements of mixed-use classifications, specifically K through 12 education. The Court committed error by ignoring the testimony of these officials and by failing to address Mixed-Use occupancy, an occupancy in which the Court placed the proposed school by finding it an accessory occupancy to the Church. Moreover, the committed error by fashioning a ruling under 508.2 while ignoring the Code requirements thereunder.

VI. The Court narrowly focused on one sentence in Section 302.1, while ignoring the totality of the Building Code Section's Requirements, including a Mixed or Shared Use Designation.

The Court committed error by reciting the first sentence in Occupancy classification section of the Building Code but then failed to address the remaining portions of the Code Provision. Had the Court addressed the totality of the Code Section it would have addressed the portions of the provision that states: “[a]n area, room or space that is intended to be occupied at different times for different purposes shall comply with all applicable requirements associated with such potential multipurpose.” Building Code, Section 302.1. In this case, the Mixed Use as used in 508.2 and multipurpose as used in 302.1 address the same thing: the mix of “1. Assembly” and “3. Educational” as called out in 302.1. The order states: “The Academy will share use of the building and rooms with the Church. See, order, p. 6. The shared or mixed use as specified by the order, requires the Mixed Use and/or multipurpose analysis requiring meeting the requirements of both occupancies. Yet, the Court commits error by ignoring the necessary analysis of mixed-use of shared occupancies, while myopically focusing on one sentence in 302.1.

VII. The County takes issue with and rejects a number of findings and conclusions that it contends are made in error and unnecessarily confuse the order, and thereby preserve its position(s) in opposition to the findings/conclusions and in order not to be bound by them.

These findings and/or conclusions are as follows:

- a. Finding 17, p. 3: While the issues relative to the Fire Code as called out by the Order are significant and pose life-safety concerns, the Occupancy classification in issue is, in large part, found in the Building Code which states that the “use of a building or structure, or a portion thereof, by six or more persons at one time for educational purposes through the 12th grade.” Building Code 305.1 of the Building Code (emphasis added).
- b. Finding 18, p. 3: The County takes exception to the finding in that a new occupancy would not be able to operate under the specified concerns articulated in Finding 17.

- c. The County takes issue/exception with the whole final/carryover paragraph, pp 5-6. There is a dispute that the Academy meets the occupancy loads required under the Building Code. The Order confuses it's defined term Academy this finding. The proposed academy does not meet occupancy load requirements for a school.
- d. The County takes issue/exception to the finding in the second full Paragraph, page 6 of the Order that finds that the Academy meets the second requirement. Again, the Order confuses its defined term Academy, making this reading confusing. Not only is the Academy not an accessory occupancy, it is not ancillary to the Church. These are critical findings in error.
- e. The County takes issue/exception to the finding/conclusion appearing in the second full paragraph, page 6, that the Academy is subordinate to the primary purpose of the rooms: assembly for religious worship and services. This finding confuses primary purpose of the Church, not the classrooms. This incorrect analysis constitutes error.
- f. The County takes issue/exception to the conclusion set out in the third full paragraph, page 6 that the terms "religious educational rooms or religious auditorium" limit exceptions to classrooms or auditoriums "associated" with a place of religious worship. Not only does the Court not provide any context in order to obtain an "ordinarily accepted meaning" but also it rewrites the code to suit a specific end and imports the term "associated" to carry weight for an otherwise inapplicable exception. This is plain error.
- g. The County takes issue/exception with the finding and conclusion found in the third full paragraph, page 6 which states/suggests that each case should be "analyzed by solely occupancy load and site location." There is no expression of such a requirement in the Code, it is an occupancy and use classification, not a load and site analysis. The Court is erroneously creating code provision outside of its authority to do so.

- h. The County takes issue/exception with the finding and conclusion found in the third full paragraph, page 6 which states/suggests that there is a requirement under the Building Code that “religious educational room” requires proof that the educational program in question be ‘religious,’ I find and conclude that the Plaintiff has met this burden. Again, the Court is erroneously creating Building Code provisions requirements where none exist.
- i. The County takes issue/exception with the totality of the last full paragraph on Page 6. Without any evidentiary support, the Court supplies its own conclusion as to the purpose of Building Code Provision 305.1.1. In so doing, the Court commits error by misapplying totality of the subsection and completely ignoring the “accessory” requirement to places of worship. The logical conclusion to draw is that the exception is there so that classrooms accessory to places of worship do not have to meet stricter Building Code requirements unless and until, the religious place of worship wants to run a school through the twelfth grade, at which time it does.

VIII. The Court erred by Failing to Consider the only reported case addressing the Educational E Occupancy question, as it relates to a church seeking to begin using its Buildings for Educational Purposes.

The Court failed to address the only reported case addressing the question of E Educational Occupancy classification under the Building Code when a church wants to be using its buildings for educational purposes. In a rather axiomatic way, the Court in *Christian Academy of Abilene v. City of Abilene*, 62 SW.3d 217 (2001) recited in footnote 2, that:

[t]he Academy asserts that, because its building complies with the Code's requirements and is, therefore, safe for purposes of church and Sunday school, the building is also safe for use as a school. However, a building being used for church and Sunday school is classified differently than one being used as a school. In determining that a school must comply with stricter safety requirements, the drafters of the Building Code may have considered the extended amount of time a child spends at school, the use of various appliances to cook lunch, and the increased use of electrical equipment. *Id.* at 221, fn 2. (emphasis added).

The *City of Abilene* case correctly perceives the distinction that the Court's Order fails to encompass. That is, a Church's Sunday School classrooms and the form of education conducted therein are not reviewed under the code in the same way as a Kindergarten through Twelfth Grade School or Academy would be reviewed under the Building Code. The greater weight of responsibility in running a school, that takes in private families unaffiliated with the Church as well as children of members of the Church, has heightened Fire Safety and Building Code requirements than a Sunday School class.

Conclusion

For the foregoing reasons, the County requests the Court to modify, alter, and/or amend its Order, account for an appropriate interpretation of the Code by applying the plain meaning rule, the applicable rules of statutory construction without strained reasoning, and to recognize the two separate primary occupancies of Educational Group and Assembly Group proposed for the subject site, and the appropriate remedy for addressing multiple/mixed occupancy types at a single site or within a single structure pursuant to relevant Building Code Sections including, but not limited to, Sections 302, 503, and 508, including the stricter standards for multiple/mixed occupancy classifications, to appropriately defer to the Building Official's interpretation, and to otherwise reform the order so that the Academy is correctly treated under a Group E Educational Classification.

Plaintiff's Motion will be based upon the pleadings of Plaintiff and Defendant Midway Baptist Church, the statutes, rules of court and laws applicable hereto, the provisions and grounds which are incorporated into and made part of this Motion by reference, and upon any Memorandum of Law which may be submitted in Support of Plaintiff's Motion and such other argument or evidence as the court may allow at the time of the hearing of this Motion.

Respectfully submitted,

By: s/ Michael K. Kendree
Michael K. Kendree
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Attorney for Plaintiff

York, South Carolina

July 7, 2025

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Midway Baptist Church of York,

Plaintiff,

vs.

County of York,

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Case Number: 2023-CP-46-01467

**Plaintiff's Reply to Defendant's
Notice and Motion to Alter or Amend the
Order of the Court Pursuant to
Rule 59(E), SCRCP**

Plaintiff moves for an order denying Defendant's Motion to Alter or Amend the Order of Court and holding (1) the Building Official's determination that Plaintiff's religious school did not qualify as religious education under § 305.1.1 of the South Carolina Building Codes ("Codes") was arbitrary and capricious; (2) the plain language of the Codes provides an exemption for religious education; (3) applying the educational occupancy classification to Plaintiff substantially burdens Plaintiff's free exercise of religion without a compelling government interest thereby violating the South Carolina Religious Freedom Act and awarding Plaintiff costs and attorney's fees under the Act.

Standard of Review

A party must file a motion under Rule 59(e), SCRCP, "when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Elam v. S.C. DOT*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). The prevailing party may raise all arguments related to additional sustaining grounds. *See id.* (citing *I'On, L.L.C. v. Town of Mt. Pleasant*).

While the current rules do not require the respondent to present an issue to the lower court in order to raise it as an additional sustaining ground, an appellate court is less likely to rely on such a ground when the respondent has failed to present it to the lower court.

I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 421, 526 S.E.2d 716, 724 (2000).

Argument

I. The Court should find Building Official's determination that Plaintiff's religious school did not qualify as religious education under § 305.1.1 was arbitrary and capricious.

During the trial, Building Official Jamie Catoe testified Plaintiff did not qualify for the exemption because Plaintiff taught educational class with religion. So, he decided to apply the educational occupancy requirement without allowing Plaintiff to claim the religious education exemption. However, § 305.1.1 states, "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" ("Exemption"). Both the Building Official and the Deputy Building Official concluded Plaintiff did not qualify for the Exemption because Plaintiff's curriculum qualified for state educational requirements, and both admitted Defendant did not restrict the use of Plaintiff's building for any activities other than those meeting state education requirements. Neither analyzed the occupancy load or whether those rooms were accessory to places of religious worship. They did not provide any legal basis to support their determination. In fact, they provided no other analysis other than delving into the content of Plaintiff's instruction, which both admitted intertwined religious and secular instruction. And both admitted the Codes do not define religious education. As a result, they created their own definition of religious education that excluded any content that met the state education requirements.

"If the statute or regulation is silent or ambiguous with respect to the specific issue, the court must give deference to the agency's interpretation of the statute or regulation, *assuming the interpretation is worthy of deference.*" *Doe v. Keel*, 440 S.C. 427, 431, 892 S.E.2d 282, 284

(2023)(emphasis added). "Accordingly, the Court will defer to an agency's interpretation of a statute or regulation unless it is arbitrary, capricious, or manifestly contrary to the statute [or regulation]." *Id.* "A decision is arbitrary if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards." *Blackmon v. S.C. Dep't of Health & Env't Control*, 441 S.C. 342, 353, 893 S.E.2d 578 (Ct. App. 2022).

Here, the Building Official's determination that Plaintiff's religious school did not qualify as religious education was arbitrary because he based the definition on his own will and not upon any determining principles or fixed standards. In its motion, Defendant asks the Court to accept the Building Official's determination without question. Yet, Defendant provides no basis for his determination other than the Building Official's personal opinion.

However, under South Carolina law, religious education includes secular education intertwined with religious instruction. "[R]eligious schools pursue two goals, religious instruction and secular education." *Hunt v. McNair*, 258 S.C. 97, 104, 187 S.E.2d 645, 649 (1972). Religious schools are "wholly or in part under the direction or control of any church or of any religious or sectarian denomination, society or organization." *Hartness v. Patterson*, 255 S.C. 503, 506, 179 S.E.2d 907, 908 (1971)(quoting SC Const. Art. XI § 9). Rather than follow South Carolina law in formulating a definition, the Building Official constructed his own definition that does not comply with South Carolina. Therefore, the Court should hold his determination that Plaintiff's teaching did not qualify as religious education was arbitrary and capricious.

II. The Court should deny Defendant's motion because the plain language of the regulation provides an exemption for religious education.

Defendant claims the Court erred by apply the standard for statutory construction articulated in *Mikell vs. County of Charleston*, and asks the Court to use the standard described in *Doe vs. Keel*. However, the standard articulated in *Doe* does not differ from *Mikell*. "The plain language of a statute is the best evidence of legislative intent. Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." *Doe* at 431, 892 S.E.2d at 284. "[W]here the plain language of the statute is contrary to the agency's interpretation, the Court will reject the agency's interpretation." *Id.* In *Doe*, the Court analyzes the clear standards of the South Carolina Sex Offender Registry and the written regulations promulgated by SLED in compliance with that law.

Here, the Codes do not clearly define religious education, and the Building Official provided no analysis or clear reasoning for determining that the Exception did not apply to Plaintiff's school. Therefore, the Court was obligated to analyze the clear meaning of the Codes because "[t]he determination of legislative intent is a matter of law." *Mikell v. Cty. of Charleston*, 386 S.C. 153, 158, 687 S.E.2d 326, 329 (2009). In its order, the Court thoroughly analyzed this issue and, using the ordinary meaning or religious education, determined Plaintiff's school qualified as religious education.

Additionally, Defendant asks the Court to change its determination of the plain meaning of the Codes based on the hazards and risks the Codes guard against for different uses. However, neither the Building Official nor the Deputy Building Official testified to any risk analysis in their determination of the definition of religious education and stated Plaintiff could use its building for any purpose, including classes that did not meet the state education requirements. Defendant cannot now ask the Court to reevaluate its determination based on new facts it did not introduce at trial. Therefore, Plaintiff requests that the Court deny Defendant's motion and affirm because the

Court used the process described in South Carolina law to determine the plain language of the Codes applied the Exemption to Plaintiff.

III. By applying the educational occupancy classification to Midway Christian Academy, Defendant substantially burdens Plaintiff's free exercise of religion and violates the South Carolina Religious Freedom Act.

At trial, Plaintiff raised the issue of Defendant infringing on Plaintiff's First Amendment rights. The First Amendment to the United States Constitution and Article I § 2 of the South Carolina Constitution guarantee free exercise of religion. Decades of United States Supreme Court precedent required governments to refrain from substantially burdening the free exercise of religion. In *Employment Division, Department of Human Resources of Oregon v. Smith*, the United States Supreme Court changed decades of precedent when it declined to apply the compelling interest test described in *Wisconsin v. Yoder* and *Sherbert v. Verner*. In response, Congress enacted the Religious Freedom Restoration Act of 1993. After subsequent holdings that it applied only to federal government action, South Carolina, Texas, and other states enacted similar laws prohibiting substantially burdening a person's free exercise of religion. See *Barr v. City of Sinton*, 295 SW.3d 287, 294 (TX 2007) and S.C. Code Ann. § 1-32-20. Defendant urges the Court to adopt the holding of *Christian Academy of Abilene v. City of Abilene*. However, the holdings in that case were overruled by the Texas Religious Freedom Restoration Act ("TRFRA") as described in *Barr*.

According to the South Carolina Religious Freedom Act ("Act"),

The State may not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, unless the State demonstrates that application of the burden to the person is:

- (1) in furtherance of a compelling state interest; and
- (2) the least restrictive means of furthering that compelling state interest.

S.C. Code Ann. § 1-32-40. In the Act, State "means ... any political subdivision of the State" or any "officer, employee, official of ... a political subdivision of the State." S.C. Code Ann. § 1-32-20(4). "Person includes [an] association or organization," such as Plaintiff. *Id* at (3). "Demonstrates means meets the burden of going forward with the evidence and of persuasion." *Id.* at (2). The Act allows persons burdened by the Act a private right of action. S.C. Code Ann. § 1-32-30.

The Act does not define a substantial burden. However, other cases provide guidance on this issue. In *Yoder*, the U.S. Supreme Court held that requiring Amish children to attend school beyond the eighth grade substantially burdened their free exercise of religion. *Wisconsin v. Yoder*, 406 U.S. 205 (1972). In *Barr*, the Texas Supreme Court held an ordinance prohibiting a religious halfway house ministry from relocating substantially burdened the free exercise of religion under the TRFRA. *Barr* at 296-297. And the United States District Court for the District of Colorado held that requiring a church to apply for a special use permit to conduct a religious school in its church building substantially burdened the free exercise of religion. *Alpine Christian Fellowship v. County Comm'rs*, 870 F.Supp. 991 (1994). The Texas Supreme Court stated, "The burden must be measured, of course, from the person's perspective, not from the government's." *Barr* at 301. "A regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement for governmental neutrality if it unduly burdens the free exercise of religion." *Yoder* at 220. "The first question under *Sherbert* is whether the County has placed a burden on conduct which is motivated by a sincerely held religious belief." *Alpine Christian Fellowship* at 994.

Applying these examples and guidelines to Plaintiff, Defendant's application of the educational occupancy classification substantially burdens Plaintiff's free exercise of religion. As described in the order, Plaintiff's witnesses testified a length about Plaintiff's calling and mission to provide Christian education and the curriculum and school activities that integrated religion in

all subjects. Plaintiff also testified that Defendant's occupancy application required it to operate in the neighboring county, which excluded some potential students, and the cost of compliance with Defendant's requirements would prohibit Plaintiff from operating its school in its church building and prevent it from accomplishing its calling to provide children a Christian education.

To justify substantially burdening a person's free exercise of religion, Defendant must provide evidence "that the application of the burden to the person is in furtherance of a compelling state interest." S.C. Code Ann. § 1-32-40. Here, Defendant fails to describe any interest, much less a compelling state interest to justify its burden on Plaintiff's free exercise of religion. Both the Building Official and the Deputy Building Official failed to describe any reasons related to health or safety to justify applying the educational occupancy classification and denying the Exemption. Both justified the decision based on a general applicability and their own definition of religious education. Neither stated any governmental interest that justified denying Plaintiff the exemption. In fact, they testified Plaintiff's building was safe for use by Plaintiff without any restrictions as long as Plaintiff did not teach material that qualified for state education requirements.

The Fire Marshall articulated some potential concerns under the Fire Code. But as Defendant admits in its motion, the Building Codes determine the occupancy classification, and the Fire Marshall testified Plaintiff's building was safe for use without restrictions as it exists.

The County claims the Court's order requires it to delve into religion. But the Religious Freedom Act and Fourth Circuit precedent disagree. "Granting ... exemptions, to the extent permissible under the [Establishment Clause], does not constitute a violation of this chapter." S.C. Code Ann. § 1-32-60(D). The Fourth Circuit Court of Appeals addressed this issue in regard to a land use regulation and found the exemption prevented the government from scrutinizing a person's religion. "Because the exemption applies to any private school located on land owned by

a religious organization, religion is the defining aspect of the exemption, and we therefore believe that the exemption plausibly aims to alleviate government interference with religion." *Ehlers-Renzi v. Connelly Sch. of the Holy Child, Inc.*, 224 F.3d 283, 290 (4th Cir. 2000). "The State does not engage in any of these establishment activities when it exempts religious institutions from land-use regulations. Rather, such an exemption removes the State from forums in which religious conflict might otherwise require improper State action." *Id* at 292. Therefore, the Exemption does not require Defendant to interfere with Plaintiff's religion or inquire into religion. It protects Defendant from unnecessary inquiry and improper action and is permissible under the Establishment Clause.

Because Defendant's application of educational occupancy to Plaintiff's religious school substantially burdens Plaintiff's free exercise of religion, Defendant must demonstrate a compelling government interest justifying the educational occupancy classification by providing evidence and persuasion of the compelling government interest. Defendant failed to provide any evidence of a compelling government interest. Therefore, the Court should find Defendant violated Plaintiff's right to free exercise of religion under the South Carolina Religious Freedom Act and order Defendant to pay Plaintiff's costs and attorney's fees as required by the Act.

Conclusion

Based on the reasons above, Plaintiff seeks an order from the Court denying Defendant's motion to alter or amend the Court's order and asks the Court to hold (1) the Building Official's determination that Plaintiff's school did not qualify as religious education was arbitrary and capricious; (2) the plain language of the Codes provides Plaintiff an exemption for religious education; and (3) by applying the educational occupancy classification to Plaintiff's school, Defendant substantially burdened Plaintiff's free exercise of religion without a compelling

governmental interest thereby violating the South Carolina Religious Freedom Act. Additionally, Plaintiff asks the Court to award it costs and attorney's fees under the Act.

Rock Hill, South Carolina
July 23, 2025

s/Emily N. Brown
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Attorney for Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	
	)	Case Number: 2023-CP-46-01467
Midway Baptist Church of York,	)	
	)	
Plaintiffs,	)	
	)	MEMORANDUM IN SUPPORT OF
vs.	)	COUNTY'S MOTION TO ALTER OR
	)	AMEND THE ORDER OF THE
County of York,	)	COURT PURSUANT TO RULE 59 (E),
	)	SCRPC.
Defendant.	)	
	)	

In addition to its arguments submitted in its Motion to Alter or Amend the Order of the Court ("Motion"), Defendant York County provides this memorandum in further support of its Motion and also to rebut arguments submitted by Plaintiff in its Reply to the County's Motion.

S.C.R.C.P. Rule 59 Statndard

As stated in the Motion, the purpose of a motion filed pursuant to Rule 59(e) of the SCRPC is to "request the trial judge to reconsider matters properly encompassed in a decision on the merits." Rule 59(e), SCRPC. Rule 59 motions should only be granted where the court finds that there has been an intervening change of controlling law, that new evidence has become available, or that there is a need to correct a clear error or prevent manifest injustice. *Robinson v. Wix Filtration Corp., LLC*, 599 F.3d 403, 411 (4th Cir. 2010). The purpose of this Motion is to address clear errors of law and/or fact, to prevent manifest injustice as articulated in Rule 59 and also to preserve issues raised but not ruled upon by the Court. See, e.g. *Talley v. South Carolina Higher Educ. Tuition Grants Committee*, 289 S.C. 483, 347 S.E.2d 99 (1986), and *Skinner v. Elrod*, 308 S.C. 239, 417 S.E.2d 599 (Ct. App. 1992)(need to preserve matters raised but not addressed). In the present case, while the Court Order presents errors of law in both interpretation and application in reaching an Assembly-3 classification for a private school, by not otherwise altering or amending its Order of June 25, 2025, the Order would also exact manifest injustice as it allows for children to attend a private Kindergarten through Twelfth

Grade school without correspondingly safeguarding the structure in which they are intended to be housed on a daily, weekly, and monthly basis.

Accordingly, in addition to the arguments presented with the filing of its Motion, York County invites the Court to consider the following:

Building Codes are a Clear Guide to Classifying Uses within the State Supporting a Decision of the Court to Require Midway to Comply with the Educational Use Classification Requirements within the Building Code

- I. Buildings or structures in South Carolina are assigned a formal Classification and Use Designation for purposes of compliance with the South Carolina Building Code. A building is classified into **one or more occupancy groups** based on the primary purpose or purposes of the building, or portions thereof.
 - a. An incredible amount of work from a diverse group of professionals formulates the Classification and Use Designations, AND the basis for those classifications encompasses determining the hazards and risks unique to the primary purpose for each group. At issue in this case were two primary use types – Assembly and Education, each of which inherently reflects a different risk level
 - b. Each Classification is titled in a way reflective of the intended purpose→ for example, Assembly involves the gathering of persons for purposes such as civic, social or religious functions, etc;
 - c. Education involves the use of a building or portion thereof for educational purposes through the 12th grade. This use conveys an image of routine daily situations where the ratio of children to adults is heavily skewed in favor of the number of children, and for purposes of assessing risk in the type of materials used, proper ingress and egress, and a plethora of fire safety mechanisms, that ratio is critical
 - d. There is nothing in the Building Code indicating that one of these two primary uses can or should be relegated to a subordinate position to the other primary use. That is clear because the Building Code already accounts for situations where there is more than one

primary use in a building. And in this case, the Court found that both primary uses are applicable to the building in question. However, the court erred by reworking a limited exception under the Education Use in a manner that results in the Education Group being subordinate to the Assembly Group. The error is clear because the Building Code already accounts for buildings where more than one primary use is intended for a building, but it is an error which can and should be corrected in conformity with the plain reading of the Building Code.

1. where a building is intended for multiple purposes at different times, or when a building has distinct areas used for different purposes →
“Structures containing multiple occupancy groups shall comply with Section 508.” See *Section 302.1*.
2. the exception under the Education Group reflects the same language that is under Assembly Group, further bolstering the County’s position → the point of that exception is that the ancillary use is an offshoot of the actual primary use of Religious Worship, not to exclude children attending a religious school from the standards applicable to a different hazard level that exists in a school (of any type) setting

II. The County has no issue with the operation of a religious school, and welcomes that use → however, the Plaintiff’s notion, as suggested in its Reply, that requiring a school to comply with the appropriate fire and safety building codes is a burden is a non-sensical position to take; compliance with the Codes is a critical health and safety factor that is intended to ensure minor children are protected to a reasonable degree in a school setting where there are six or more students. That is the only logical conclusion for the Court to reach in its decree. The Court should amend its decision to provide for the safety requirements called for by the Building Code in a Group E, Educational Classification.

III. Applicable Arguments¹ Presented by Plaintiff in Error and in Part Support the position of the County.

- a. Plaintiff and the Court create and adopt a term “religious education” not in the Building Code and thereby, the Court, erroneously fashions an Order based on a false premise.
 - i. The term is not defined in Building Code because the phrase is not used, rather Plaintiff invented it as a means to creating an exception that does not exist by connoting “education” with “school” rather than the specific terms used in the Code
 - ii. “Religious educational rooms and religious auditoriums” are the consistently used and intentionally specific phrases within the Code and the distinction is critical
 - iii. “Education” is a purpose regardless of whether it is religious because the health and safety hazards to a group of minors remains the same regardless of whether the school is secular or religious
- b. *Alpine Christian Fellowship v. County Commissioners of Pitkin County*, 870 F.Supp. 991 (1994), supports the position of the County as it plainly resolves the question of multiple occupancies and the governmental interests in applying the applicable codes to the School sought to be operated in that case.
 - i. To the extent this case is analogous to the present one, it serves to bolster the county’s argument→ in that case, the parties specifically stipulated that “[t]he several county departments’ approval included compliance with all requirements of their building codes for fire protection and safety, sanitation, and health.” Further, they stipulated “[t]he building is safe

¹ Some arguments presented by Plaintiff in its Response attempts to raise issues not addressed in the Court Order, such as its South Carolina Religious Freedom Act argument. As a result, such argument is not appropriately before the Court. See, e.g., *Talley v. South Carolina Higher Educ. Tuition Grants Comm’n*, 289 S.C. 483, 347 S.E.2d 99 (1986). Therefore, the County objects to all such arguments not properly preserved by Plaintiff.

under the fire code and building code for the occupancies contemplated.”
(emphasis added). The stipulations conceded multiple occupancies.

- ii. In *Alpine*, the record before the court indicated that the county commissioners were influenced by the negative reaction of the residents in the neighborhood, which did not constitute a compelling governmental interest.
- iii. The court went on to not that “all of the safety and other legitimate government interests have been satisfied.”
- iv. Certainly the South Carolina Building Code makes clear that the health and safety standards therein are a compelling government interest, and are required to be adopted by local governments throughout this State.

Conclusion

For the foregoing reasons and in addition to the arguments submitted at the time of the filing of its Motion, the County requests the Court to modify, alter, and/or amend its Order, account for an appropriate interpretation of the Code requiring an Educational use classification under the Building Code, thereby correcting its erroneous reliance on manufactured, non-existent terms that are not present in the Building Code, and preventing a manifest injustice by recognizing the need safeguard the health, safety and welfare of all students and thereby require a Group E Educational Classification for Midway Academy seeking to operate a school with an enrollment of more than six students through the twelfth grade.

Respectfully submitted,

By: s/ Michael K. Kendree
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Laura Dover
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Attorney for Plaintiff

York, South Carolina

July 24, 2025

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Master-in-Equity

Teasa K. Weaver, Judge

Case No. 2023-CP-46-01467

Midway Baptist Church of York,

Respondent,

v.

County of York,

Appellant.

NOTICE OF APPEAL

York County appeals the orders of the Honorable Teasa K. Weaver in the above-captioned matter. The original order was dated June 25, 2025, and the order denying Appellant's Motion for Reconsideration was dated September 8, 2025. Appellant received written notice of entry of order denying its Motion for Reconsideration on September 5, 2025.

October 6, 2025

s/ Michael K. Kendree

Michael K. Kendree

s/ Laura Dover

Laura Dover

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York, South Carolina 29745

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Oct 06 2025

SC Court of Appeals

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Oct 06 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Teasa K. Weaver, Judge

Case No. 2023-CP-46-01467

Midway Baptist Church of York,

Respondent,

v.

County of York,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal via electronic mail on Midway Baptist Church of York by email on October 6, 2025, addressed to its attorney of record, Emily N. Brown, emily@emilybrownlaw.com, and the Clerk of Court for York County, Angie Bryant (angie.bryant@yorkcountysc.gov).

October 6, 2025

s/ Michael K. Kendree

Michael K. Kendree

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County Attorney

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October 6, 2025

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

RECEIVED

Oct 06 2025

SC Court of Appeals

RE: Midway Baptist Church of York, Respondent, v. County of York, Appellant,
Case No. 2023-CP-46-01467

Dear Ms. Kitchings:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

- (1) Proof of service of the notice of appeal on the respondent(s).
- (2) A copy of the orders which are to be challenged on appeal.
- (3) A filing fee of \$250 was requested from the York County Finance Office on October 6, 2025. If additional information regarding this request is needed, please contact the undersigned attorney.

By copy of this letter, Appellant is notifying the Clerk of Court for York County that the Notice of Appeal in this matter has also been filed with her office.

Sincerely,
s/ Michael K. Kendree
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York County Clerk of Court

MIDWAY BAPTIST CHURCH OF YORK vs COUNTY OF YORK
Trial

1 16TH JUDICIAL CIRCUIT COURT OF SOUTH CAROLINA
2 YORK COUNTY MASTER IN EQUITY

3 Midway Baptist Church of
4 York,

5 Plaintiff,

CASE NO.
2023-CP-461467

6 vs.

7 County of York,

8 Defendant.
9 ~~~~~

10
11 TRIAL

12
13 DATE TAKEN: THURSDAY, DECEMBER 12, 2024

14 PLACE: Master in Equity

15 2 South Congress Street

16 York, South Carolina 29745

17 BEFORE: HONORABLE TEASA KAY WEAVER

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22
23
24
25 Job No. 105446

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1 (On the record)

2 THE COURT: Okay. This is case number 2023-
3 CP-461467. Midway Baptist Church of York v. County of
4 York. Present on behalf of Plaintiff is Ms. Emily
5 Brown, and present on behalf of the defendant is Mr.
6 Michael Kendree.

7 And anything we need to take up before we
8 begin?

9 MS. BROWN: Yes, Your Honor. I believe that
10 we have stipulated to some of the exhibits in the case
11 today, so ready to present those to the Court.

12 THE COURT: Okay.

13 MR. KENDREE: Yes, Your Honor.

14 MS. BROWN: Here are -- these are cases,
15 four of which were cited in my complaint, and two
16 additional ones, I'd like the Court to take judicial
17 notice of. And then we also have a copy here of the
18 site plan and then building codes, and some county
19 codes that were attached to the complaint as well that
20 we have agreed upon.

21 THE COURT: Okay. Would you like me to just
22 receive these as Plaintiff's Exhibit 1?

23 MS. BROWN: Yes.

24 THE COURT: Okay.

25 MS. BROWN: Well, actually, maybe 1, 2, and

1 3, Your Honor, because there are three -- there'll be
2 three separate exhibits.

3 THE COURT: Okay.

4 Any objection to that, Mr. Kendree?

5 MR. KENDREE: No objection, Your Honor.

6 THE COURT: They're received as Plaintiff's
7 1, 2, and 3.

8 (PLAINTIFF'S EXHIBIT 1 WAS RECEIVED INTO
9 EVIDENCE)

10 (PLAINTIFF'S EXHIBIT 2 WAS RECEIVED INTO
11 EVIDENCE)

12 (PLAINTIFF'S EXHIBIT 3 WAS RECEIVED INTO
13 EVIDENCE)

14 THE COURT: Anything else before we begin?

15 MR. KENDREE: Yes. Defense Counsel has
16 exhibits that were stipulated to as well, Your Honor.
17 Do you include the site plan in your submission?

18 MS. BROWN: I -- I do.

19 MR. KENDREE: These documents and two cases.
20 All right. Sorry, Your Honor. Thank you.

21 THE COURT: That's fine. Take your time.
22 There's no rush.

23 MR. KENDREE: I -- I'll show them to you
24 just in case you have an issue. We -- we went over
25 these as I believe what I agreed -- we agreed to go in.

1 That's the initial application of the church to York
2 County, various sections of the International Fire Code
3 and Building Code, Your Honor. Provision of the -- an
4 additional, I'm sorry, an additional provision from the
5 Building Code -- Code of -- South Carolina regulations,
6 a series of photographs of the site, county ordinance
7 that implemented the fire codes locally, and -- and two
8 cases. I -- I beg your pardon, this is another code
9 provision. This is the fire code of York County.

10 Okay. Just [inaudible 00:03:33], Your
11 Honor. And then two cases. And one is -- one is a
12 Texas case, and one is a South Carolina case, Donevant
13 v. Town of Surfside Beach.

14 Do you have this -- can you see that?

15 THE COURT: Do you need to review any of
16 these --

17 MS. BROWN: No. I'm -- I'm good with all
18 that. I just want to know how they are number -- how
19 they're going to be numbered.

20 MR. KENDREE: Yeah. I can -- can we hold
21 those in a pile of stipulated documents, so we can add
22 them in sequence as they -- they appear, Your Honor?

23 THE COURT: Yes. Yes.

24 MR. KENDREE: And then -- yeah. That's the
25 state fire code. So I'll keep these independent.

1 THE COURT: Okay. Well, that sounds good to
2 me.

3 MR. KENDREE: Thank you.

4 THE COURT: Anything further?

5 MS. BROWN: No, Your Honor. I think we're
6 ready to get started.

7 THE COURT: Okay. Would Counsel like to
8 make a brief opening statement? You do not -- you do
9 not have to, but you may do so if you wish.

10 MS. BROWN: I would -- I would like to, Your
11 Honor.

12 THE COURT: Okay.

13 MS. BROWN: This case is about whether
14 Midway Baptist Church can apply the plain language of
15 the International Building Code that provides that, for
16 religious education, classrooms that accommodate fewer
17 than 100 people are an accessory use of a church.
18 Midway Baptist has sought to provide religious
19 education through its ministry, Midway Christian
20 Academy. It approached York County about what it
21 needed to do to establish that on its campus.

22 It followed York County's guidance, hiring
23 an architect, submitting plans, which, after the second
24 rejection, Midway began looking closer at the building
25 codes. And then found that there is this accessory use

1 exemption that allows churches to have classrooms for
2 religious education and religious assembly. I provided
3 that they do not exceed 100 per space or room. York
4 County then informed Midway that what it was doing did
5 not qualify as religious education, because it also met
6 academic standards for the State of South Carolina.

7 And so now then the issue is, you know, what
8 is religious education? And does the academy qualifies
9 religious education, and thereby qualify for the
10 exemption under the plain language of the building
11 codes? I have provided four cases I cited in my
12 complaint. In Hunt v. McNair, the South Carolina
13 Supreme Court, citing the U.S. Supreme Court, stated
14 that religious schools pursue two goals, religion and -
15 - religious instruction and secular education. And
16 that -- it -- there is a long history in this country
17 of, you know, churches providing religious education
18 that also meets secular education requirements.

19 And then in Hartness v. Patterson, the South
20 Carolina Supreme Court was looking at an issue of -- of
21 church property. Actually, excuse me. It was a
22 religious education institution property, and it did
23 cite there is a -- the South Carolina Constitution
24 prohibits the public expenditure of funds for any kind
25 of religious education. And then in that case, this

1 court said, you can't separate religion from the
2 school. And so the issue in the case was whether the
3 school qualified for particular grants. And any
4 property on the school, even though it was used for
5 academic purposes, if it was also used for, you know,
6 religious education or religious services, it would not
7 qualify for those grants.

8 And then going to the issue of
9 interpretation of regulations. In Blackmon v. South
10 Carolina Department of Health -- excuse me, DHEC. The
11 regulation interpreted -- regulation must be
12 interpreted using the same rules of construction as
13 statutes. It cannot be interpreted arbitrarily by any
14 agency. And then in Mikell v. Charleston County, the
15 Court also gave us some additional guidance that we
16 must give effect to the legislative intent, which must
17 prevail if it can be reasonably discovered in the plain
18 language used in the regulation. And a more specific
19 provision is going to trump a more general provision.

20 And so I think those are two issues in this
21 case is that the legislative intent clearly is to allow
22 churches to provide religious instruction for small-
23 sized programs where the classrooms don't exceed the
24 capacity of 100 students. And then also, there is a --
25 a very specific designation in the building codes that

1 that is an accessory use. So therefore, the more
2 general accessory use terms within the building codes
3 would not apply in this situation.

4 And so what we're asking the Court to find
5 is that the Midway Christian Academy is religious
6 education, and that Midway Baptist Church can avail
7 itself of that accessory use provision under the plain
8 language of the International Building Codes.

9 THE COURT: Mr. Kendree.

10 MR. KENDREE: May it please the Court, Your
11 Honor. Mike Kendree for York County. It is a case of
12 interpretation, Your Honor. And the building code
13 clearly provides that education has a set of
14 requirements. And this interesting aspect about the
15 building codes and the fire codes, they're an
16 integrated system. So you cannot look at one provision
17 in isolation, and -- and conclude that it applies to a
18 certain set of facts. You have to read the totality of
19 the code. Building code references the fire code and
20 vice versa.

21 But in this case, Sunday school classes are
22 being sought to be transformed to a school, to a
23 private Christian academy for which they will teach
24 grades K through 12 or 1 through 12 and transform a --
25 a room that's adjacent to a sanctuary into a school

1 setting, into a private academy. And that's how they
2 hold themselves out.

3 But the code is clear in that situation.
4 That educational building code requirements apply. For
5 purposes of interpretation, South Carolina regulations
6 clearly established that the lone interpreter of the
7 building codes is the building official. He's charged
8 with that enforcement, responsibility, and interpreting
9 the code. The two cases that we provided, the local
10 case, the South Carolina case spells out a number of
11 duties of the building official. It's simply
12 illustrative for the charges that are given a building
13 official.

14 The Texas case, by analogy, is very similar
15 to the facts that will be gleaned in this case. It is
16 a Sunday school being sought to be transformed to a
17 private school. And it talks about the -- the health
18 and safety issues that are attendant to the expansion
19 of a -- a program and the use, and the transformation
20 of a use into a school. It spells out the distinction
21 of the two and the overriding public safety issues that
22 are attendant to educational schools as opposed to
23 rooms attendant to a sanctuary and ancillary use to
24 that sanctuary.

25 So it is a -- a case where the -- differing

1 interpretations will be before the Court. York County
2 contends that its role, it -- our charge is to
3 interpret those codes. And that as the interpretive
4 bodies, we have, of course, you get deference to that
5 interpretation when the language is clear.

6 We have Jamie Catoe, the building official
7 who will testify today. Jonathan Buono, our -- our
8 planning director, is a more formal title, but I'll go
9 with that. Donnie Helms, our deputy fire marshal, and
10 Jennifer Culver, our -- our -- also the building
11 official -- deputy building official for York County.
12 And they'll present testimony to elaborate on the
13 skeletal framework we just presented, Your Honor. We
14 would ask ultimately that you find that the educational
15 requirements of the building code apply in this case.

16 THE COURT: Thank you.

17 Ms. Brown, you may call your first witness.

18 MS. BROWN: Your Honor, I call Mark
19 Dellinger.

20 THE COURT: Mr. Dellinger, if you can step
21 up to the witness chair.

22 Before you get seated, if you could raise
23 your right hand for me?

24 MARK DELLINGER,
25 having first been duly sworn, testified as follows:

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1 THE COURT: You may be seated.

2 DIRECT EXAMINATION

3 BY MS. BROWN:

4 Q. Can you please state your name for the
5 record?

6 A. Mark Dellinger.

7 Q. And what is your position at Midway Baptist
8 Church?

9 A. Pastor.

10 Q. How long have you been the pastor?

11 A. Six years.

12 Q. What is the mission of Midway Baptist?

13 A. Our mission at Midway Baptist Church is to
14 reach the world for Jesus Christ, to transform it
15 through his power.

16 Q. And where is the church located, both by an
17 address and then kind of geographically?

18 A. It's -- it's 12984 Highway 55 West, York,
19 South Carolina 29745. And it's midway between Clover
20 and Blacksburg.

21 MS. BROWN: I have a large version of
22 Exhibit 1, Your Honor. So that -- that we can all see
23 it. It's there. That's what I'm going to -- bear with
24 me just a moment. I'll set -- set it up for us.

25 THE COURT: Thank you.

1 BY MS. BROWN:

2 Q. Can you see that?

3 A. I can, yes.

4 Q. Okay. All right.

5 MS. BROWN: I believe this has already been
6 admitted as Plaintiff's Exhibit 1.

7 BY MS. BROWN:

8 Q. Can you briefly explain what the -- what the
9 buildings are on this? And is this a site plan of your
10 campus?

11 A. Yes.

12 Q. And can you kind of briefly, sort of explain
13 what the different buildings are on this site plan?

14 A. Okay. If you start from the left, the --
15 the larger building is our sanctuary. Working your way
16 to the right, the building right beside is our
17 fellowship hall. In front of that is the Sunday school
18 classrooms, Sunday school wing. And then in front of
19 that is our -- we call our chapel, which is the
20 original sanctuary to the church.

21 Q. Okay. And I'm going to come back to this
22 exhibit in a moment, but before that, can you explain
23 what Midway Christian Academy is?

24 A. Midway Christian Academy is a ministry of
25 Midway Baptist Church to teach children, academically,

1 spiritually, practically about -- about -- through
2 Christ.

3 Q. And what is the priority of the academy?

4 A. Our priority is -- is -- is Christ. It's
5 religious education. That is our focus. We -- we meet
6 with our teachers on a -- on a regular basis. And we
7 talk about religion. We talk about spirituality. We
8 talk about academics. We talk about practical life
9 skills. But we always come back to, if we have to
10 choose between one of those three, every day, choose
11 Jesus, Jesus, Jesus.

12 BY MS. BROWN:

13 Q. And how -- can you explain the process that
14 Midway Baptist used to start the academy?

15 A. The -- the start was, we were doing it as a
16 church. We were doing a study through the Book of
17 Deuteronomy, and we came across in -- in studying
18 Deuteronomy 6. And it speaks of, God gave a command to
19 his people to teach the ordinances and statutes of the
20 Lord. And it goes on and talks about the -- the sons
21 and the son's sons, that each generation come along to
22 teach, to transform, to share that.

23 And so we took that very seriously. And it
24 talks about, when I rise up in the morning, when I go
25 to bed at night, and it's a -- it's an all-day thing.

1 It's not just a one time a week type of thing. It's an
2 all-day thing. And so we -- well, that was a burden
3 upon our hearts to -- to teach. And anybody who wants
4 to come and be a part of the statutes and ordinance of
5 the Lord on a regular basis, on a daily basis.

6 Q. And where does the academy currently
7 operate?

8 A. At Smyrna Baptist Church.

9 Q. And where does the church want the academy
10 to operate?

11 A. At -- at our campus at Midway Baptist.

12 Q. Can you take a look at the site plan? And
13 I'm going to give you a marker. Can you draw a circle
14 around the area of the church where you -- the church
15 wants the academy to reside?

16 A. Let's see. It would be this education
17 space.

18 Q. Okay.

19 MS. BROWN: Sorry. Can you see that, Your
20 Honor?

21 THE COURT: I can.

22 MS. BROWN: Okay.

23 BY MS. BROWN:

24 Q. And in this building that you drew a circle
25 around, what types of rooms are -- are in -- within

1 **that building?**

2 A. Right now, they're -- they're Sunday
3 schoolrooms. They're varying sizes. Some are a little
4 bigger than the others, but varying size rooms that we
5 use for Sunday school, adult Sunday school, children's
6 classes, those type of things.

7 **Q. And can you describe how York County became**
8 **involved in the process of you starting the academy?**

9 A. So when we -- we -- we felt this burden to
10 start a school, we contacted York County, and asked
11 them to come out and kind of give us guidance, look
12 over the buildings. We -- in fact, we said, go and
13 look at anything to say or -- and have the run of the
14 place. We went around, I think we looked several
15 places. I don't -- but -- and to give us guidance,
16 give us direction on what we should do, how we should
17 proceed, how we'd go forward with this project.

18 **Q. And what was your expectation about working**
19 **with York County?**

20 A. Well, that we would -- we would come to a
21 place where we could find a solution to move forward.
22 We could find a way, this is what we need to do. This
23 is what we need to accomplish. This is what it's going
24 to take to fulfill this -- this project.

25 **Q. And what guidance did York County provide**

1 for the requirements?

2 A. The -- if -- if -- if I remember correctly,
3 they -- was the -- hire an architect and go through
4 that process and draw plans, and those type of things.

5 Q. Okay. And how many visits did York County
6 representatives make to the property?

7 A. Several, two and three.

8 Q. And do you recall who visited the property?

9 A. Not every time, but I do know Jennifer
10 Culver has been. Donnie Helms has been. Nicole
11 Troutman has been. I'm not sure. There -- there was
12 someone else. I don't remember, with fire safety. I'm
13 not sure who that was.

14 Q. And did you meet with them --

15 A. Yes.

16 Q. -- every time they came?

17 A. Yes.

18 Q. Okay. And did they observe the academy at
19 any point in time?

20 A. No. Because it was -- it --

21 MR. KENDREE: I -- go ahead --

22 THE WITNESS: Oh, I'm sorry.

23 MR. KENDREE: Sorry -- I'm sorry. I'm fine.

24 THE WITNESS: They -- they observed the
25 academy? No.

1 BY MS. BROWN:

2 Q. Okay.

3 A. Because it was never there.

4 Q. Okay. And did they ask to see the
5 curriculum?

6 A. No.

7 Q. Okay. And did they ask to see any policies
8 or procedures for the county?

9 A. Not to my knowledge, no.

10 Q. Okay. How many times did you submit to --
11 plans to York County?

12 A. Three.

13 Q. And how did they respond?

14 A. They denied us all three times.

15 Q. Okay. And what -- what reasons did they
16 give for those denials?

17 A. I'm not sure in each one. I -- I don't
18 remember correctly what each -- each denial was. A lot
19 of times it was -- I know one time it was about the
20 change of occupancy. I know one time it was about a --
21 the -- a traffic impact study, which seemed to be the -
22 - the hanging point. I'm not sure if I recall exactly
23 the reasons why. There may have been even multiple
24 reasons why.

25 Q. I'm going to hand you some documents here.

1 **Bear with me.**

2 MS. BROWN: I believe Mr. Kendree already
3 has copies of these, Your Honor.

4 BY MS. BROWN:

5 **Q. All right. Do you recognize this document,**
6 **Pastor Dellinger?**

7 A. Yes.

8 **Q. What is this document?**

9 A. This is a letter of notification for plan
10 review.

11 **Q. And who is this from?**

12 A. York County Planning and Development
13 Services.

14 **Q. Okay. And what is -- what is the date of**
15 **this one?**

16 A. Date of this one is -- you guys, I know it's
17 on here.

18 **Q. These are -- the dates are at the bottom of**
19 **the page on these.**

20 A. Oh, I'm sorry. 5-10-2022.

21 **Q. And is this part of the records of Midway**
22 **Baptist Church?**

23 A. Yes.

24 **Q. All right.**

25 MS. BROWN: Your Honor, we'd like to admit

1 this as Plaintiff's Exhibit 4.

2 THE COURT: Any objection?

3 MR. KENDREE: No, Your Honor.

4 THE COURT: Entered without objection.

5 (PLAINTIFF'S EXHIBIT 4 WAS RECEIVED INTO
6 EVIDENCE)

7 BY MS. BROWN:

8 Q. Pastor Dellinger, do you recognize this
9 document?

10 A. Yes.

11 Q. And what is this document?

12 A. A letter of notification for plan review.

13 Q. And who is this from?

14 A. Planning and Development Services.

15 Q. And what is the date of this application?

16 A. 5-25-2022.

17 Q. And this is part of the records at Midway
18 Baptist Church?

19 A. Yes.

20 MS. BROWN: Your Honor, we would like to
21 admit this as Plaintiff's Exhibit 5.

22 THE COURT: Any objection?

23 MR. KENDREE: No, Your Honor.

24 THE COURT: Entered without objection.

25 (PLAINTIFF'S EXHIBIT 5 WAS RECEIVED INTO

1 EVIDENCE)

2 MS. BROWN: Your Honor, I didn't by any
3 chance hand you two copies that last time, did I? Just
4 the one -- okay. I must be missing a copy then.

5 BY MS. BROWN:

6 Q. Pastor Dellinger, do you recognize this
7 exhibit?

8 A. Yes.

9 Q. And what is this?

10 A. This is a letter of notification of -- for
11 plan review.

12 Q. And who is this from?

13 A. Planning and Development Services.

14 Q. And what is the date of this letter?

15 A. 6-8-2022.

16 Q. And is this part of the records of Midway
17 Baptist Church?

18 A. Yes.

19 MS. BROWN: Your Honor, we'd like to admit
20 this as Plaintiff's Exhibit 6.

21 THE COURT: Any objection?

22 MR. KENDREE: No objection.

23 THE COURT: Okay. Entered without
24 objection.

25 (PLAINTIFF'S EXHIBIT 6 WAS RECEIVED INTO

1 EVIDENCE)

2 BY MS. BROWN:

3 Q. Pastor Dellinger, on all of these letters of
4 notification, what is the status?

5 A. Not approved.

6 Q. Okay. Look at the letter that is dated 6-8-
7 22.

8 A. Okay.

9 Q. Why did Building and Code state that they
10 denied the -- these plans?

11 A. You -- you want me to read the reasons?

12 Q. Yes -- yes, please.

13 A. "The -- York County Building and Codes
14 maintains the original interpretation of the new Midway
15 Christian school be a change of use from A-3 to E --
16 Group E. Even when academic education is taught from a
17 religious point of view, the 2018 South Carolina IBC
18 Section 305 defines Group E occupancy as a use of a
19 building or structure, or portion thereof, by six or
20 more persons at any one time for educational purposes
21 through the 12th grade, is therefore, Group E.

22 "Our understanding of the section of
23 305.1.1, Accessory to places of religious worship
24 supported by the use and the definition of accessory
25 spaces is when those spaces are being used for

1 occupancies that are ancillary to the main occupancy of
2 the building or portion thereof, to include Sunday
3 school, Bible studies, et cetera, and not for academic
4 education. Per discussions with church staff, the goal
5 for Midway Christian School is to increase its
6 enrollment as the need demands, supporting our decision
7 for the Group E occupancy. And then zoning
8 requirements will be determined outside of the building
9 code determination of your occupancy group. Zoning
10 will be providing additional information for their
11 updated regulations for schools in York County."

12 **Q. So what -- how did you respond when you kept**
13 **getting these denials from York County?**

14 A. Well, we -- we spoke to -- I -- I've spoke
15 to -- I think everybody over there, at one point, we've
16 met and talked, and at least talked on the phone, e-
17 mailed back and forth, reached out to try to find some
18 type of solution, conclusion, somewhere where we could
19 move this project forward.

20 **Q. And did you take any steps on your own to**
21 **try to figure out a resolution?**

22 A. At -- at some point, we did. At some point
23 we started reviewing the -- the -- the zoning codes
24 ourself, and began to tackle some of that. And look
25 into -- read for ourself, and began to discover -- and

1 that's when we came across the -- the -- the 305.1.1.
2 And that's -- I think that would've been part of that
3 discussion. That's why it was on there because we'd
4 just had that discussion.

5 Q. So when you began researching the building
6 codes, what did you find?

7 A. Well, like I say, we -- we found the -- the
8 -- the 305.1.1, the -- the exemption to educational,
9 especially Christian education, that would allow us to
10 operate a school where we are, as long as we stay under
11 100.

12 Q. Pastor Dellinger, I'm going to hand you
13 this. This was entered as Plaintiff's Exhibit 2. Do
14 you recognize these?

15 A. I -- I do. This is -- yes, part of the --
16 the code.

17 Q. Okay. And what sections are you referring
18 to in here that show that there is an exemption for
19 religious education?

20 A. The 305.1.1.

21 Q. Okay.

22 A. Accessory to places of religious worship.

23 Q. And is that also echoed in the assembly uses
24 as well?

25 A. Yes. The 303.1.4, Accessory to places of

1 religious worship.

2 Q. And so when you're looking at these that
3 say, "Accessory religious education rooms, religious
4 auditoriums with occupant loads of less than 100 per
5 room or space are not considered separate occupancies,"
6 in 303.1.4, and then in 305-E, the same, you know,
7 "shall be classified as Group A-3 occupancies."

8 How did the building codes then define
9 religious education?

10 A. How does the building codes define religious
11 education?

12 Q. Yes.

13 A. To my knowledge, it does not.

14 Q. Okay. And what time limitations do they put
15 on the use of those classrooms for religious education?

16 A. From -- from my understanding with the
17 discussions we had had, that that was confined to --
18 religious education was confined to a Sunday morning
19 and Sunday school, and those type things. That it did
20 not apply beyond that.

21 Q. And what did the building code say about
22 time limitations?

23 A. To my knowledge, I couldn't find anything
24 that -- that spoke to the process of time in the
25 building code where it defined religious education had

1 to be on a certain day or a certain time.

2 Q. And what uses are excluded from religious
3 education according to the building codes?

4 A. What uses are excluded?

5 Q. Right. Right. So what uses would be
6 excluded -- do they exclude any sort of uses as being
7 not part of religious education in the building codes?

8 A. Not to my knowledge.

9 Q. Okay. And when does the church currently
10 use its classrooms?

11 A. As far as our classrooms, we -- we -- we use
12 our classrooms probably all week long. Obviously for
13 Sunday school, would be the biggest on -- on Sunday
14 morning. But then through the week, we're using them
15 for all types of things. Bible studies, individual
16 bible studies, we've art, things like that. So there's
17 something going on. There's some group meeting. We
18 try to do something about every night. So there's a
19 use there throughout the week.

20 Q. Okay. And when has someone from York County
21 inquired about activities or events that Midway Baptist
22 holds in its classrooms?

23 A. I don't recall any discussions we've had
24 about those type things.

25 Q. Okay. And what activities has the county

1 restricted or prohibited in your building?

2 A. What --

3 Q. Like have they restricted or prohibited any
4 activities in the Midway Baptist classrooms?

5 A. If -- if that what they restricted having a
6 school, obviously, but I mean, as far as any other
7 things that -- none that -- none that I know of. None
8 to my knowledge, that I've had any conversations with.

9 Q. And approximately how many people use the
10 building for activities during various times of the
11 week?

12 A. Like I say, it's -- it varies. I mean,
13 anywhere from 100, maybe to just a few.

14 Q. Okay. How many students does the academy
15 currently serve?

16 A. 25.

17 Q. And how many does the academy want to serve?

18 A. Somewhere less than 100. Probably even less
19 than that.

20 Q. Okay.

21 A. Because we want to maintain that small
22 family-type atmosphere. We're not looking to become --
23 we don't think that's conducive to good Christian
24 education.

25 Q. And based on the plain reading of the

1 building codes, why do you think the academy would
2 comply?

3 MR. KENDREE: I -- I object, Your Honor.
4 He's not qualified to categorize or interpret the
5 building code. That is singularly, by regulation,
6 vested in the building official. So he can comment on
7 what codes he thinks applies, but I think that's the
8 extent. He can't conclude what it says.

9 THE COURT: Reply?

10 MS. BROWN: Your Honor, I think I'm just
11 asking based on his reading why he thinks it applies,
12 which essentially is the same thing that Mr. Kendree is
13 saying he can testify to.

14 THE COURT: You may proceed.

15 MS. BROWN: Okay. Thank you.

16 BY MS. BROWN:

17 Q. You can answer the question. The -- the
18 question is: Based on your plain reading of the
19 building codes, why do you think the academy would
20 comply?

21 A. Well, because -- several reasons.
22 Obviously, we're less than 100. We're 25. Obviously,
23 it is a -- we're -- we're engaged in religious
24 education. Everything we do is -- is geared towards --
25 centered around teaching Jesus to these children.

1 Whether it's math, whether it's science, everything
2 about it is to put God's word in that literature and
3 teach God's word to them all day long every day.
4 That's our mission. That's our purpose. That's what
5 we're trying to do.

6 Q. During your correspondence with York County,
7 did -- and -- and you read the portion from the final,
8 not approved letter where they are outlining what they
9 think religious education is. Did you ask for follow-
10 up questions to try to -- to get a clear definition?

11 A. Yes.

12 Q. Okay.

13 MS. BROWN: I believe you already have a
14 copy of this, Michael.

15 BY MS. BROWN:

16 Q. So, Pastor Dellinger, do you recognize this
17 e-mail?

18 A. I do.

19 Q. And who wrote this e-mail?

20 A. I did.

21 Q. And who did you write it -- it to?

22 A. Jamie Catoe.

23 Q. Okay. And who is he?

24 A. He is, as I understand, the head building
25 official --

1 **Q. Okay.**

2 A. -- for York County.

3 **Q. All right.**

4 MS. BROWN: All right. Your Honor, we'd
5 like to admit this as Plaintiff's Exhibit 7.

6 THE COURT: Any -- any objection?

7 MR. KENDREE: One moment. No objection,
8 Your Honor.

9 THE COURT: Admitted without objection.

10 (PLAINTIFF'S EXHIBIT 7 WAS RECEIVED INTO
11 EVIDENCE)

12 MS. BROWN: Thank you, Your Honor.

13 BY MS. BROWN:

14 **Q. Can you sort of describe what -- what you're**
15 **asking for in this e-mail, Pastor Dellinger?**

16 A. Well, there was a -- there was a couple of
17 things. We -- we talked about some safety concerns we
18 had and so I asked, are there specific safety issues we
19 have not previously discussed? And then we -- we had a
20 -- so the body there is about our understanding of the
21 codes and reading of the codes and 3051.1.

22 And so we talked about how in -- in our
23 opinion, we -- we clicked every box. We touched every
24 box that was less than 100, we engaged in religious
25 education. And so then we just asked from that, had a

1 couple of questions based on the follow-up to -- to ask
2 so we could get some clarification exactly what is
3 religious education because I thought that's what our
4 conversation had become.

5 Q. And what response did you get to this e-
6 mail?

7 A. I did not get any response to any of these
8 questions.

9 Q. How would you describe the -- the curriculum
10 that Midway Academy teaches?

11 A. It is a Bible-based curriculum in -- in all
12 that we do. And one of the reasons we chose it, all
13 that we do, whether it's science, whether it's math,
14 whether it's history, there's -- there's scripture
15 involved, biblical text involved.

16 And so we -- we just -- like I say, once
17 again, that comes back to our burden from Deuteronomy,
18 Chapter 6, to share, to teach. It's not just about
19 academics. It's about the -- the entire program.
20 Spirituality being our -- once again, being our main
21 concern through the teaching of God's word.

22 Q. In addition to -- oh, excuse me, one more
23 thing. How did how much public money does the Academy
24 receive?

25 A. None.

1 Q. Okay. In addition to applying for building
2 codes approval, did you also have to apply for zoning
3 approval?

4 A. Through this process, yes.

5 Q. Okay. Let's see. Do you recognize this,
6 that's been admitted as Plaintiff's Exhibit 3?

7 A. Yes. This is part of the York County Code
8 of Ordinances --

9 Q. And --

10 A. -- Zoning Code.

11 Q. And so -- and you had to comply with this in
12 addition to the building code simultaneously; is that
13 correct?

14 A. It -- it was my understanding, yes. If we
15 was going to do it, according to the York County do a
16 change of occupancy, we had to.

17 Q. Okay. How does the zoning code define
18 churches?

19 A. Define churches?

20 Q. Yes.

21 A. I -- I don't see any churches and religious
22 institutions. "The building used for public assembly
23 or worship, regardless of the denomination of religious
24 affiliation, including other ancillary activities, such
25 as parsonages, offices, classrooms, daycare and

1 recreational facilities."

2 Q. And does it put any restrictions or
3 stipulations on the classrooms?

4 A. None that I see.

5 Q. Okay. And how did the zoning code define
6 the accessory use?

7 A. "A subordinate use, which is incidental to,
8 separated from and customarily associated with the
9 principal building or use, which is located on the same
10 lot with the principal use. Accessory uses are riveted
11 on vacant lots unless otherwise specified in Sub-
12 Chapter C, Part 4, accessory uses."

13 Q. And why do you -- why do you think the
14 Academy qualify as an accessory use?

15 A. Because the Academy is -- is -- is a
16 ministry of, it's not separate from. It's a ministry
17 of Midway Baptist Church. We don't consider it a
18 separate entity or a separate thing. It's part of --
19 it is integral part of what we're trying to do as far
20 as a -- of a Christian education in -- in the lives of
21 young people.

22 Q. Okay.

23 MS. BROWN: No further questions for this
24 witness. Thank you.

25 THE COURT: Mr. Kendree?

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1 MR. KENDREE: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. KENDREE:

4 Q. Pastor Dellinger, good morning again.

5 A. Good morning.

6 Q. You're currently operating a school across
7 the county line?

8 A. Correct.

9 Q. And you did not check with the building
10 officials in that county, did you?

11 A. We did.

12 Q. And what did they say?

13 MS. BROWN: Objection, Your Honor. We --
14 this is not about their school in another county.
15 That's not relevant to this discussion.

16 MR. KENDREE: They're operating a school.
17 They want to transform that school, by his own
18 testimony, to York -- to York County. That was his
19 direct testimony. So I'm curious about how he's
20 operating a school there.

21 THE COURT: Overruled.

22 BY MR. KENDREE:

23 Q. Who did you speak with and --

24 A. Oh, the building official from Cherokee
25 County. I do not remember his name.

1 Q. Thank you. In that provision of the Code
2 that you just read the definition of, was it churches,
3 was that the provision you were reading from? Did it
4 talk about -- you -- you -- you quoted a provision that
5 said "customarily associated."

6 What -- what -- what part of -- of that in
7 the code did that appear?

8 A. I'm -- I'm not sure what you're asking.
9 Where are you -- where are you asking me to read from?

10 Q. The last quote you just read?

11 A. From accessory uses?

12 Q. Yes, sir.

13 A. It says, "A subordinate use which is
14 incidental too, separated from and customarily
15 associated with the principal building or use in which
16 is located on the same lot with the principal use."

17 Q. Okay. Do students at your school take
18 statewide testing, such as to get into college, SAT
19 tests?

20 A. Our -- our seniors this year has taken SAT,
21 yes.

22 Q. And so they pay -- they pay fees to take
23 those standardized tests and --

24 A. I don't know the process to that. I can't
25 speak to that as far as how they did that.

1 Q. They don't do that through your school?

2 A. They do it through the school, but that's
3 not -- I'm not involved in that.

4 Q. Who's involved in it?

5 A. That would be Amy Moss.

6 Q. Okay. Thank you. And what is Amy's title
7 with the school?

8 A. Director.

9 Q. You commented about the daily use of those
10 rooms at Midway Baptist Church during the evenings.
11 Was that your testimony?

12 A. Correct.

13 Q. What -- what goes on there during the day?

14 A. During the day not as much because most
15 people -- a lot of people working, so not as much.

16 Q. And all your students are across the -- the
17 line currently?

18 A. In Cherokee County? Yes.

19 Q. And the -- and the name is Midway Christian
20 Academy?

21 A. Yes.

22 Q. Okay. I want to -- I'll show you some
23 photographs, sir, if you'd be so kind.

24 MR. KENDREE: These are admitted into
25 evidence. We'll mark those as Defendant's 1, Your

1 Honor.

2 (DEFENDANT'S EXHIBIT 1 WAS RECEIVED INTO
3 EVIDENCE)

4 THE COURT: Thank you.

5 BY MR. KENDREE:

6 Q. This is some photographs of -- of the
7 location. Is -- is -- is that the hallway that -- to
8 which the proposed classrooms adjoin, in that first
9 picture on the top?

10 A. It --

11 Q. At -- at Midway Baptist Church?

12 A. That -- that's our second story, yes.

13 Q. Okay.

14 A. This is a second story classroom. Yes, sir.

15 Q. Okay. And then if you turn the page, that
16 is an egress point to the school?

17 A. To the second story.

18 Q. And turn the Page 1 more time. That's just
19 a photograph of the exterior?

20 A. Correct.

21 Q. Thank you. One -- one more picture. And
22 that's the same photograph and that points -- what does
23 that point, does that indicate where the Sunday School
24 classrooms are, that little sign?

25 A. It does. The Sanctuary of the Sunday School

1 and the Fellowship Hall as well. Yes.

2 Q. And then there's one more picture after that
3 -- that's group. Does that depict the -- a stairwell?

4 A. That's a stairwell.

5 Q. And where does that stairwell lead to?

6 A. That's from the first floor. Going up to
7 the second.

8 Q. In the same proposed schoolroom area --
9 school building?

10 A. It -- yes.

11 Q. Okay. Thank you, sir. Have -- in your
12 conversations with York County officials, did they
13 recommend making any upgrades to the current building
14 or have you -- have you -- have you undertaken any of
15 those changes yet?

16 A. We've -- no, we've not done anything.

17 Q. And what are you asking the Court today for?

18 A. To follow the 3051.1.

19 Q. What is your role with the -- with the
20 school on a daily basis currently? Do you -- do you
21 have one?

22 A. I don't have -- no I don't have an official
23 role other than Pastor. I go down, not every day. We
24 go down, we do chapel once a week. And then I go down
25 and do recess, lunch with them. So I'm in and out, but

1 not every day.

2 Q. And so the -- the -- the -- the school day
3 lasts for how long, sir?

4 A. From 8:00 until 2:45, I -- I think.

5 Q. And how many teachers do you have?

6 A. Three.

7 Q. And over at the current location of the
8 school, how many classrooms are being utilized?

9 A. Three. And then I think they have some,
10 what they call flex rooms that they use as -- so maybe
11 five.

12 Q. And you take those students that you said
13 we're how many, 25, about right now, they go on field
14 trips?

15 A. Yes.

16 Q. Do they have a yearly school calendar?

17 A. They do.

18 Q. What time do they arrive at school?

19 A. 8:00.

20 Q. And what time is it, 2:30, you say?

21 A. 7:00 -- not 7:00. 2:45.

22 Q. 2:45? And did -- do they have a summer
23 break?

24 A. They do.

25 Q. And so the school year runs from when,

1 **September to May?**

2 A. Sure. I'm not going to be able to tell you
3 the exact dates, but yes.

4 **Q. We'll ask Amy that question?**

5 A. Yes. That would be a better question for
6 Amy.

7 **Q. Okay. And if I missed it on your direct**
8 **testimony, how long has the school been operational?**

9 A. Three years. This is our third year.

10 **Q. Okay. Were you present when any of the**
11 **county people visited Midway Baptist Church campus?**

12 A. Yes. Yes.

13 **Q. Were -- were you there for all of them, all**
14 **the meetings?**

15 A. No, I don't recall.

16 **Q. Okay.**

17 A. I don't know if I was there for all.

18 **Q. Okay. And you believe Ms. Culver was at --**
19 **at the meeting you attended?**

20 A. Yes.

21 **Q. And perhaps a different fire official, but -**
22 **- but Donnie was there for one of them at least?**

23 A. Donnie has been there, I -- I'm -- I'm
24 pretty sure one time.

25 **Q. Okay.**

1 A. And the first fire official, I believe was,
2 I believe his name was Allen Tice, but I think he's in
3 the process of retiring.

4 Q. Yes. I think that's right. I think it is
5 Allen Tice. Thank you. One more question. What do
6 you perceive to be the -- the biggest distinction
7 between A-3 and E designations under the building code?

8 A. What I perceive to be the biggest
9 distinction?

10 Q. Yes, sir.

11 A. Well, I'm not sure about the biggest
12 distinction. But I -- I just -- I do know that as --
13 as a church and is engaged in religious education that
14 we want to maintain our same occupancy use that we have
15 now. That we don't see the need to go and change that
16 when we're not doing anything outside of what is
17 required of us to change.

18 Q. In your process with York County, through
19 your submissions that you -- you provided the county,
20 did you have an opportunity to bid out the work that
21 they directed or requested that you do perform at the
22 site?

23 A. We -- we have we have spoke to some
24 contractors, yes.

25 Q. And it -- and how costly were those?

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1 A. Extremely.

2 **Q. Was that a -- a concern of the -- of the**
3 **church and your ministry?**

4 A. That's a huge concern. There's no way
5 feasibly, economically possible to charge enough
6 tuition to make that back.

7 MR. KENDREE: That's everything.

8 Thank you, Pastor.

9 THE COURT: Ms. Brown?

10 MS. BROWN: Yes.

11 REDIRECT EXAMINATION

12 BY MS. BROWN:

13 **Q. Pastor Dellinger, can you take a look at**
14 **these photos that Mr. Kendree --**

15 A. I think he took them back.

16 MR. KENDREE: I did.

17 MS. BROWN: Okay. Thank you.

18 BY MS. BROWN:

19 **Q. So this first one that's the hallway, are**
20 **those classrooms off of that hallway going to be used**
21 **by Midway Christian Academy?**

22 A. No.

23 **Q. Where is this hallway?**

24 A. It's upstairs hallway.

25 **Q. Okay. And the second one, where -- where**

1 **does this egress lead to?**

2 A. That goes into Amy Moss's -- Ms. Moss's
3 office.

4 Q. And is this part of what's going to be used
5 as Midway Christian Academy?

6 A. No.

7 Q. Okay. And then in the last page here,
8 there's a stairwell. And where does this stairwell go?

9 A. That goes up to the second floor.

10 Q. And is that part of what's going to be used
11 for the Academy?

12 A. No.

13 Q. Initially, during this process, did you seek
14 a change of occupancy?

15 A. We did in our initial submissions.

16 Q. And why did you do that?

17 A. That's what we're told we had to do.

18 Q. Okay. And since that time, why have you
19 changed your mind about seeking that change of
20 occupancy?

21 A. As -- as we went and did some of our own
22 research and began to read into some of the zone codes
23 that we realized that we did not have to do that in
24 fact, we had an exemption.

25 Q. Okay.

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1 MS. BROWN: No further questions, Your
2 Honor.

3 MR. KENDREE: Just one minor recross.

4 RECROSS-EXAMINATION

5 BY MR. KENDREE:

6 Q. Are those -- are the educational rooms you
7 tend to use, are they in the same building where that
8 photograph was taken?

9 A. They are, yes.

10 Q. They're below?

11 A. They're below.

12 Q. Does the structure and construction of the
13 second floor, is it similar to the first floor?

14 A. It would be similar. The hallway is going
15 to be a little wider at the -- at the first floor.

16 Q. Same form of construction materials?

17 A. Yes.

18 Q. Same -- does it have carpeting like that?

19 A. Yes.

20 Q. Okay.

21 MR. KENDREE: Thank you. That's all I have.

22 THE COURT: Okay.

23 You are excused, Mr. Dellinger.

24 Call your next witness, Ms. Brown.

25 MS. BROWN: Your Honor, we call Amy Moss.

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1 THE COURT: Ms. Moss? And before you get
2 seated, if you could just raise your right hand for me.

3 AMY MOSS,
4 having first been duly sworn, testified as follows:

5 THE COURT: You may have a seat.

6 DIRECT EXAMINATION

7 BY MS. BROWN:

8 Q. Please state your name for the record.

9 A. Amy Moss.

10 Q. Okay. And what is your position with Midway
11 Christian Academy?

12 A. I am director and classroom teacher.

13 Q. Are you a member of Midway Baptist Church?

14 A. No, ma'am.

15 Q. So how did you become involved with the
16 Academy?

17 A. When the church felt led to begin a program
18 they entered an interview process, which I applied for
19 and received the position.

20 Q. Okay. Can you give us some information
21 about your educational background. So what -- what are
22 your degrees in?

23 A. Yes, ma'am. I have a bachelor s degree in
24 business education. I have a master s degree in
25 education. I have National Board Certification, and I

1 had 19 years teaching -- teaching experience in two
2 high schools.

3 Q. And can you describe your work experience
4 before you became the director of the Academy?

5 A. Yes, ma'am. So for 19 years, I taught
6 public high school, career and technology courses,
7 computer science. In that time, I also served on
8 multiple committees, school improvement councils. I
9 was also an assistant to the assistant principal for a
10 few short years, so. But mostly teaching for 19 years.

11 Q. Okay. And what is the Midway -- I'm sorry,
12 what is the mission of the Midway Christian Academy?

13 A. To teach and train students in the way that
14 they should go and follow the Lord Jesus Christ.

15 Q. And who chooses the curriculum?

16 A. In the beginning, I did much of the research
17 and I brought that research to the school board, which
18 consists of the deacons of the church and then we
19 voted.

20 Q. And who determines if the Academy's
21 curriculum satisfies the educational guidelines for the
22 state?

23 A. Say that again?

24 Q. Who determines if the curriculum satisfies
25 the state education guidelines?

1 A. We have a private school accreditation that
2 we follow.

3 **Q. Okay.**

4 A. And so we share all of our decisions, our
5 school policies, our school handbook, our curriculum,
6 everything is funneled through that accreditation.

7 **Q. And so there -- this is not a state approved**
8 **process -- I mean, you said it is not a state of South**
9 **Carolina process, correct?**

10 A. Correct. It is not State Department of
11 Education.

12 **Q. Can you generally describe your curriculum?**

13 A. Yes. We use A.C.E. School of Tomorrow
14 curriculum, which is solely religious-based curriculum.
15 It is -- the Bible is interwoven, integrated in every
16 subject of every grade level all the way from
17 kindergarten up through 12th grade.

18 **Q. Okay. And how does your -- what is the**
19 **difference between the curriculum that the Academy uses**
20 **and public school curriculum?**

21 A. Public school curriculum is not allowed to
22 teach Bible and scripture in every single subject that
23 they offer. They cannot -- a teacher cannot teach her
24 beliefs or her faith in any way, shape or form in a
25 public classroom.

1 Q. Okay. Ms. Moss, do you recognize this
2 document here?

3 A. Yes, ma'am. I have been on this website.

4 Q. Okay. And what is -- what is this about
5 generally?

6 A. It is stating how religion can be expressed
7 in public schools.

8 Q. Okay. And who provides this guidance?

9 A. This would be -- this is ed.gov.

10 Q. And which is?

11 A. Federal government.

12 Q. Okay. And is this something as a public
13 school teacher that you would be familiar with?

14 MR. KENDREE: Your Honor, I object to this
15 line of questioning. This is a document from a third-
16 party website, having no direct correlation to Midway
17 Baptist Church. There's no basis to -- there's no
18 foundation for it to be entered into evidence. And
19 it's -- it's -- it's irrelevant to the question before
20 the Court.

21 MS. BROWN: Your Honor, I'm attempting to
22 lay the foundation to ask for its admission as
23 evidence. If the Court would just grant me some time
24 to complete my -- my questions.

25 THE COURT: I'm going to -- I'm going to

1 allow some questions --

2 MR. KENDREE: Thank you.

3 BY MS. BROWN:

4 Q. Ms. Moss, is this something that as a public
5 school teacher you would be familiar with?

6 A. Yes, ma'am.

7 Q. And -- and how would you -- how would you be
8 familiar with this particular site?

9 A. As public school teachers we would attend
10 trainings, teacher meetings, staff meetings on regular
11 basis throughout the school years. We are reminded of
12 what we are allowed to share and not share, and speak
13 and say and do, we have on our walls in our classrooms.

14 Q. And is this something that -- that you --
15 you were made aware of this website in your training?

16 A. Yes. I could not share my faith.

17 Q. Okay.

18 MS. BROWN: Your Honor, I -- I would like to
19 admit this as Plaintiff's Exhibit -- I'm not certain
20 what number we're up to, I think it's 8?

21 MR. KENDREE: I would object, Your Honor.
22 It is -- it is irrelevant. It's hearsay commentary.
23 Ms. Moss has no direct relevance or connection to this
24 piecemeal document from a website. And it confuses --
25 it's more confusing than helpful to -- to the issue

1 before the Court.

2 MS. BROWN: Your Honor, I think that this
3 particular portion of the website goes directly to the
4 issue which is, what is religious education and how
5 that is different from general academic education?

6 Ms. Moss is a board-certified teacher with
7 multiple degrees who has gone through training. And
8 this has been something that she has been made aware of
9 and has found during her trainings as a teacher. And
10 so I think it speaks directly to what religious
11 education is.

12 MR. KENDREE: It has no basis, no relevance
13 to the Court. It is -- the Court determines what's
14 appropriate for the law, not some document, with nobody
15 from this organization to even comment about it.

16 THE COURT: I'm going to grant the motion,
17 but only as to this exhibit. But I -- I think she's
18 qualified to testify as to what the difference is and
19 what she feels the difference is just based upon her
20 background, experience in education. So her testimony
21 is -- remains. This document is excluded.

22 MS. BROWN: Okay. Thank you, Your Honor.

23 BY MS. BROWN:

24 Q. So, Ms. Moss, can you go into some details
25 to discuss what the difference would be between a

1 religious education and a non-religious public school
2 education?

3 A. In a public school setting, I could pray
4 behind closed doors. I could pray before school
5 opened, you know, after school closed. I could not
6 pray with students. I could not speak to scripture,
7 open up my Bible and read Bible scripture with
8 students. Teach anything regarding or pertaining to
9 scripture or Jesus Christ. I was not allowed to share
10 those words with a student.

11 As a public school teacher, I had, as most
12 all do, we have insurance to protect ourselves in the
13 case of lawsuits. And religion is one of those
14 reasons. We can't legally share anything regarding
15 faith.

16 Q. And how is that different at Midway
17 Christian Academy?

18 A. At Midway Christian Academy, we openly speak
19 of Jesus Christ, our faith, what salvation means with
20 these students, what spiritual life means with these
21 students. We start every day with worship and prayer
22 and praise to God, which would not be allowed in a
23 public school.

24 And then once we enter classrooms, the rest
25 of our day, while we are doing math and science and

1 social studies and English and literature and all of
2 our academics, we are talking about God. There is
3 scripture interwoven in all of the subject matters, not
4 just a Bible course offered separately.

5 History, social studies is -- is taught from
6 a Bible history perspective. Science is taught from --
7 taught from God's creation perspective. So this
8 curriculum is solely allowed in religious -- private
9 religious schools. It is not allowed in a public
10 school system.

11 Q. All right. Ms. Moss, you may already have
12 copies of these with you. I see you brought these; is
13 that correct?

14 A. Yes.

15 Q. Okay.

16 MS. BROWN: I think Mr. Kendree already has
17 copies of these, Your Honor.

18 BY MS. BROWN:

19 Q. So, Ms. Moss, let's look at the one that has
20 the science on the front first. So do you recognize
21 this document?

22 A. Yes, ma'am.

23 Q. What is this?

24 A. This is our science curriculum for sixth
25 grade.

1 Q. Okay. And is this the -- the entire
2 curriculum?

3 A. This is probably about half or more of one
4 chapter --

5 Q. Okay.

6 A. -- for sixth grade.

7 Q. Okay.

8 MS. BROWN: All right. Your Honor, we would
9 like to admit this as Plaintiff's Exhibit 8.

10 THE COURT: Any objection?

11 MR. KENDREE: I have one qualifying
12 question, if I may?

13 THE COURT: Yes.

14 MR. KENDREE: That's the current curriculum
15 at the school?

16 THE WITNESS: Yes, sir.

17 MR. KENDREE: Okay. No objection, Your
18 Honor.

19 THE COURT: Admitted without objection.

20 (PLAINTIFF'S EXHIBIT 8 WAS RECEIVED INTO
21 EVIDENCE)

22 BY MS. BROWN:

23 Q. And then, Ms. Moss, do you have the document
24 that says math on the front of it?

25 A. Yes, ma'am.

1 Q. And do you recognize this document?

2 A. Yes, ma'am.

3 Q. What is this document?

4 A. This is a fifth grade math chapter book from
5 our school, a portion of.

6 Q. Okay.

7 MS. BROWN: All right. Your Honor, we'd
8 like to admit this as Plaintiff's Exhibit 9.

9 THE COURT: Any objection?

10 MR. KENDREE: No objection, Your Honor.

11 THE COURT: Admitted without objection.

12 (PLAINTIFF'S EXHIBIT 9 WAS RECEIVED INTO
13 EVIDENCE)

14 BY MS. BROWN:

15 Q. Ms. Moss, how do these portions of this
16 curriculum compare to the curriculum used for other
17 grades in the school?

18 A. They are all the same. We use the A.C.E.
19 curriculum at every level. So from kindergarten, all
20 the way through 12th -- 12th grade, we use the same
21 working text workbooks. So everyone has a flow from
22 one grade level to the next. And everyone is going to
23 incorporate faith and scripture for every grade level,
24 every subject.

25 Q. And so what is different among the -- the

1 grade levels, then?

2 A. The content is going to change as they age
3 up.

4 Q. Okay. Approximately how many pages are
5 usually total in a workbook?

6 A. 40 to 50 pages.

7 Q. Okay. And how many workbooks on average
8 does a -- is a student going to use?

9 A. In one year they will complete about 84
10 workbooks -- chapter workbooks.

11 Q. And that's for every -- every grade?

12 A. Yes, ma'am.

13 Q. Okay. Can you just point to a couple of
14 examples in the science curriculum that shows how --
15 how you incorporate religion in your curriculum?

16 A. Page -- Page 1 of science, as soon as the
17 students open their books, they will always see a
18 scripture verse. Every chapter of every book the
19 student is required to learn and memorize a scripture
20 verse that they will orally state at the end when they
21 are assessed for their final chapter test.

22 You'll also see biblical principles and
23 characteristics and -- and traits at the beginning of
24 each of those pages, along with their daily goals,
25 which also includes references to God. To learn to use

1 all I have for God's glory, to be generous.

2 Page 2, they have a comic strip regarding
3 the generous character trait. And if you look at the
4 very last picture, we see the words, "We should be
5 thankful God has generously given us all the light we
6 need to live and be healthy."

7 Page 3, they begin to answer some questions
8 based on some reading that they have done. Question 6
9 and 7, both refer to God's provision and God's laws.
10 There's also a scripture verse at the bottom that they
11 are memorizing, Acts 20:35, with fill in the blanks
12 where the students would begin to recall the scripture
13 in memory.

14 Page 7, they are reading about what is
15 light. There are references to scripture John 8:12.
16 It states, "Light is God's way." There is a quote on
17 the right, "Every sunrise is God's greeting. The
18 Sunset, his signature." Along with questions that they
19 would answer.

20 Page 14, there are three scripture
21 references just on that one page where they are still
22 continuing to read about light. The very first
23 statement on that page, "God made another source of
24 natural light for us that we can see at night." At the
25 bottom they also ask a question, "Who made the stars?"

1 And of course, God would be that answer. Also,
2 scripture reference on that page for Psalm 146.

3 Page 15, it continues. They are reading and
4 answering questions. There's a scripture reference to
5 Psalm 97, God created lightning. Another scripture
6 reference, Psalm 77.

7 Page 37, we see one, two, three, four
8 scripture references on -- on this page as they're
9 continuing to learn about how light is measured and how
10 fast does light travel. So while they're learning
11 about the speed of light, scripture is being interwoven
12 in multiple paragraphs.

13 It tells us also on this page, "God gives us
14 light because it's necessary for our existence." It
15 also states that, "We can not have eternal life without
16 the eternal light Jesus Christ." On that very same
17 page as they are learning, how fast does light travel.
18 At the end, Page 42 begins an assessment, a test, and
19 on that test, "Question number 1 is, God created blank
20 on the first day of creation."

21 There are also phrases on there, "Are you
22 letting your light shine for Jesus?" on that test as
23 well, as an inspirational quote for them as they were
24 taking their final assessment. And then on Page 43,
25 the last page, you'll see where they have to recall the

1 scripture. And at the bottom, the supervisor has to
2 initial because they also have to orally state that
3 Bible verse to their teacher as part of the assessment.

4 Q. And so is the math curriculum similar in
5 that -- in that way?

6 A. Yes, ma'am. They are all similar in that
7 way, every subject.

8 Q. And so it is interwoven then throughout the
9 curriculum?

10 A. Yes, ma'am.

11 Q. Okay. Were you involved in the process with
12 York County to use the Midway Baptist campus for the
13 school?

14 A. Yes, ma'am.

15 Q. So can you describe your involvement with
16 that?

17 A. In the beginning, we reached out to York
18 County, just as Pastor said to ask, what do we need to
19 do? And they came to our campus on -- I was not there
20 for all of their visits. I was there for one of the
21 visits where I believe four of the county
22 representatives came. And we actually went to the
23 large sanctuary that is pictured there for a visit and
24 tour of that building on the campus. So they had come
25 prior to that to see other parts of the campus. From

1 the beginning, they recommended that we were -- include
2 an architect in the process, and so from that point
3 forward, most of the communication went through the
4 architect.

5 Q. Okay. Has anyone from the county come to
6 observe the school?

7 A. No, ma'am.

8 Q. Okay. Has anyone asked for a copy of the
9 curriculum?

10 A. No, ma'am.

11 Q. What information has the county asked about
12 the policies and procedures related to the academy?

13 A. I believe Mr. Kendree asked some of those
14 questions when we had the deposition, but none prior to
15 that.

16 Q. Okay. What information or guidance did York
17 County provide about the requirements for moving the
18 school to the Midway Baptist campus?

19 A. There were building changes that they had
20 listed updates and -- and remodels that they were
21 recommending or requiring. I don't recall everyone
22 specifically. Most of that communication, you know,
23 went through the architect.

24 Q. Okay. And how did that guidance change as
25 this process went on?

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1 A. We -- even with the architect involved, we
2 continue to be denied.

3 MS. BROWN: All right. I have no further
4 questions for this witness.

5 THE COURT: Mr. Kendree?

6 MR. KENDREE: Thank -- thank you, Your
7 Honor.

8 CROSS-EXAMINATION

9 BY MR. KENDREE:

10 Q. Hi, Ms. Moss.

11 A. Hello.

12 Q. I have a couple of questions about the
13 campus, if -- if -- if you just -- just -- for the
14 Court's edification.

15 A. Okay.

16 Q. This is the building that was circled by
17 Pastor Dellinger where the classes are going to be
18 held; is that -- is that right?

19 A. Yes, sir.

20 Q. And so can you just depict what you envision
21 your school to, like, how the daily life is going to
22 occur at this school? There is a drop-off zone, would
23 that still be in your plan? Have -- have children
24 dropped off in this location at the -- I'm just
25 pointing to the front of the facility.

1 A. Yes. Yes. We have 25 students, that drop-
2 off pattern would work sufficiently.

3 Q. Okay. And classes would be held here.
4 Would they utilize this chapel for their day of chapel
5 that they go to or however frequently they go?

6 A. For chapel time? Yes. We think we could
7 utilize the chapel.

8 Q. Would it be there or do you envision it
9 being somewhere else in the current sanctuary?

10 A. I would think we could use either one.

11 Q. Where do -- where do you envision them going
12 for recess?

13 A. There is a grassy lawn out back, behind the
14 church.

15 Q. Beside -- towards the rear here? Is it
16 depicted anywhere on this plat? Or would it be on that
17 property --

18 A. I would say about where you see that parking
19 lot on the left. It's that grassy area -- right there,
20 beside it, and then there's a grass area behind it into
21 a -- a -- a portion of woods as well behind that.

22 Q. Does the property go past this border up
23 here to your -- to your knowledge? Or it's just the
24 four corners here --

25 A. Well, I'm not -- it would -- but portion

1 wise, I'm not sure --

2 Q. Okay.

3 A. -- but we do have --

4 Q. Yes. Some wooded area --

5 A. -- some wooded property that -- because we
6 have a rock altar where the -- the kids can go pray.

7 Q. Okay. So you can go pray in the wooded
8 area. Where would they go for lunch?

9 A. Okay. There is currently a fellowship hall
10 on campus.

11 Q. This fellowship building?

12 A. Yes, sir.

13 Q. Okay. And that's where the lunchroom is?

14 A. Yes, sir. It has a full working kitchen.

15 Q. And -- and -- and tables --

16 A. Yes, sir.

17 Q. -- lunchrooms for the kids?

18 A. Yes, sir. Yes.

19 Q. And your administrative offices are -- are
20 where?

21 A. In recent years they have been upstairs, in
22 the picture, with the staircase going up.

23 Q. Okay. And so then the same circle building?

24 A. Uh-huh.

25 Q. Is -- is this the current -- this rectangle

1 here, what is that? That's the current sanctuary?

2 A. Yes, sir. That is the main sanctuary.

3 Q. And we already spoke, the fellowship hall,
4 you have, I guess, classes there after church or before
5 church for adults maybe? Or are they conducted here?

6 A. They do use -- the church does use the
7 fellowship hall as well for gatherings. Yes, sir.

8 Q. And where do -- there are not a lot of
9 teachers, but where would you teach -- your fellow
10 teachers, where would you park your cars? Back here by
11 the fellowship building? Or do you have assigned
12 spaces?

13 A. No, sir. There's no assigned spaces. And
14 there's plenty of parking spaces, so if the teacher
15 wants to walk that day -- if they want to park in the
16 back, you know, I think that would be it --

17 Q. Wherever the parking lot allows?

18 A. Yes.

19 Q. And just for -- location wise, what -- what
20 highway is this?

21 A. Highway 55.

22 Q. And that's out west of the county -- western
23 part of the county?

24 A. Yes, sir.

25 Q. Thank you for that. You mentioned in your

1 deposition -- at -- at -- at your deposition, we --
2 well, actually, I take that back. I do have a couple
3 questions, I apologize, based on direct -- the direct
4 testimony you gave.

5 Who provides accreditation to your -- to
6 your school?

7 A. There are multiple in the state, but we
8 chose Grace Christian School Association.

9 Q. And Grace has a connection to the state. Do
10 they not? The State Department of Education?

11 A. Yes. They get approved. Our accreditations
12 get approved through the State Department.

13 Q. And then Grace, in turn, is able to provide
14 guidance to your academy?

15 A. Yes, sir. To multiple academies.

16 Q. Multiple academies, yes --

17 A. Yes.

18 Q. -- not singularly yours. When -- well, when
19 this -- student that's getting ready to graduate, I
20 presume, in the spring, will they be given a diploma?

21 A. Yes, sir.

22 Q. And I asked this question of -- of the
23 pastor: Has that student taken SAT tests and --

24 A. Yes.

25 Q. So they sit for that. Do they coordinate

1 that through your office? Through the school?

2 A. That is up to the parent and -- or the
3 grandparent, parent guardian.

4 Q. And you mentioned that the accreditation
5 that you have been given is called a private school
6 accreditation. That's what -- the term you used?

7 A. Grace Christian School Accreditation, yes,
8 which is a private school accreditation.

9 Q. Thank you. You clarified it's K through 12
10 -- well, I think I said about first grade through 12th
11 grade?

12 A. Yes, sir.

13 Q. So thank you. As part of your having a --
14 an academy, do you have any reporting requirements to
15 Grace that you have to meet on a periodic basis?

16 A. Yes, sir. We do send information to Grace.

17 Q. And what do they do with that information;
18 do you know?

19 A. I believe they would study and -- and
20 approve to make sure that we are following their
21 requirements, their regulations.

22 Q. And do they report to the -- to a local
23 school superintendent or is this a relationship of
24 Grace to the state department in Columbia?

25 A. Their obligation to the state, I'm not sure

1 of.

2 Q. Does DHEC come out and -- at your current
3 location, inspect the -- the lunchroom facilities?

4 A. No, sir.

5 Q. So there are no -- there's no food
6 supervision of safety?

7 A. Everyone brings their own lunch.

8 Q. It's all a bagged lunch process?

9 A. Yes, sir.

10 Q. So there's no cooking going on at the
11 cafeteria. Is it -- do you require any immunizations
12 of your students?

13 A. They either turn in an immunization form or
14 an exemption form. And there are religious exemption
15 forms that students turn in.

16 Q. So they can do that or provide their
17 doctor's list of immunizations?

18 A. Yes, sir.

19 Q. All right. Thank you. You did mention in
20 your deposition, and I had asked you a series of
21 questions about your -- your school. And I showed you
22 a number of documents. I -- I would like to go over
23 those if I may, and then ask you about them, the -- no
24 particular order.

25 This is, I believe, a Facebook posting that

1 you're in charge of; is that -- is that right?

2 A. Yes, sir.

3 Q. And what is the purpose of that Facebook
4 page?

5 A. To communicate with our families and our
6 church community.

7 Q. And has, as I recall, a series of -- has a
8 calendar or maybe has some photographs of those class
9 trips?

10 THE COURT: Do you have copies?

11 MR. KENDREE: Oh, I thought I gave you one,
12 Your Honor.

13 THE COURT: I don't -- no. I don't have
14 copies of this.

15 Do you have the first page of it?

16 MR. KENDREE: Hmm?

17 THE COURT: This first page of it?

18 MR. KENDREE: The first page, I think, is
19 this one right here. This page.

20 THE COURT: I've got --

21 MR. KENDREE: I'll give you one of each one
22 as I get through it.

23 BY MR. KENDREE:

24 Q. And so, as I recall, you're in charge of
25 that Facebook post?

1 A. Yes, sir.

2 Q. And can you -- can you tell -- my
3 recollection is it has like 250 followers at least at
4 the time of that; is that right?

5 A. Yes, sir.

6 Q. So parents and children, and others perhaps
7 interact on that -- that Facebook page?

8 A. Yes, sir.

9 Q. And do you update that periodically, that
10 Facebook page?

11 A. Yes, sir.

12 Q. Is it a chief form of communication for the
13 academy to students? Or one of the forms?

14 A. It's one of the forms of communication.

15 MR. KENDREE: I'd like to enter that into
16 evidence, Your Honor.

17 THE COURT: Any objection?

18 MS. BROWN: No objection.

19 THE COURT: I think that's Defendant's 2?

20 MR. KENDREE: That's Defendant --

21 Defendant's 2. Yes, please.

22 (DEFENDANT'S EXHIBIT 2 WAS RECEIVED INTO
23 EVIDENCE)

24 BY MR. KENDREE:

25 Q. I'll have that marked by the Court, if I can

1 have that back.

2 A. Yes, sir.

3 Q. Thank you so much.

4 THE COURT: Okay.

5 MR. KENDREE: Thank -- thank you.

6 BY MR. KENDREE:

7 Q. I believe this is just a snapshot of one of
8 the -- the pages, but I just wanted to, for
9 illustrative purposes show that -- that's part of your
10 school calendar that you maintain and provide to the
11 parents?

12 A. Yes, sir.

13 Q. And is that your work? Did you --

14 A. Between myself and my staff.

15 Q. Yes, ma'am.

16 A. The teachers.

17 Q. And you -- so that's this year's -- part of
18 this year's school calendar?

19 A. Yes, sir.

20 MR. KENDREE: I'd like to have that as
21 Defendant's 3, please, Your Honor, if I may?

22 THE COURT: Any objection?

23 MS. BROWN: No objection.

24 THE COURT: Entered without objection.

25 (DEFENDANT'S EXHIBIT 3 WAS RECEIVED INTO

1 EVIDENCE)

2 MR. KENDREE: Thank you.

3 BY MR. KENDREE:

4 Q. I have to get that --

5 A. Yes, sir.

6 Q. I apologize. Thank you. I'm going to show
7 you one other -- a document now. This is another
8 portion that is from your website, I believe, a
9 different section called -- what is it called?
10 Admission Steps?

11 A. Yes, sir.

12 Q. Please tell us -- the Court, what the
13 admission steps are -- what does that outline for
14 potential families?

15 A. Yes, sir. So this page on our website is
16 called Admissions Steps, and it just gives parents my
17 direct e-mail, a link to an application to apply. Step
18 2 tells them to prayerfully consider this family
19 commitment. Prayer should be a part of the application
20 process. They can apply for potential scholarships.
21 They can complete enrollment form, registration form.

22 Then they need to -- Step 6, schedule a
23 placement test. We do a diagnostics test with every
24 student -- new student that comes to the academy to
25 determine their -- their grade level placement. Step

1 7, pay curriculum fee and register for courses. Step
2 8, deals with tuition. And then Step 9, after school.

3 Q. And -- and that's all informational. And is
4 that part of your role of creating that document?

5 A. Yes, sir.

6 Q. Thank you. I've already lost track of what
7 number I'm on.

8 A. Yes, sir. Okay.

9 MR. KENDREE: Number --

10 THE COURT: 4.

11 MR. KENDREE: 4? Thank -- thank you, Your
12 Honor. If I could enter it as -- as an exhibit, Your
13 Honor.

14 THE COURT: Any objection?

15 MS. BROWN: No objection.

16 THE COURT: Entered without objection.

17 (DEFENDANT'S EXHIBIT 4 WAS RECEIVED INTO
18 EVIDENCE)

19 MR. KENDREE: Thank you.

20 BY MR. KENDREE:

21 Q. I think this is the document, if I'm not
22 mistaken, that talks about the testing. I could be --
23 I could be mistaken. One of them does. So the -- the
24 kids take their standardized tests through your school,
25 right?

1 A. Yes, sir. One a year.

2 Q. One -- one student a year?

3 A. One -- one test.

4 Q. Or one test. And which one is that?

5 A. Right now, we do the Ohio state testing.

6 Q. Thank you. I think I have just two more
7 documents. This is a -- the tuition schedule. I'm
8 sorry. I think I need two of them.

9 A. May I make a correction?

10 Q. Yes.

11 A. I said Ohio state testing. Iowa state
12 testing.

13 Q. Yes.

14 A. My apologies.

15 Q. Thank you. No, that -- that's certainly the
16 case. Yes.

17 THE COURT: Thank you.

18 BY MR. KENDREE:

19 Q. And what is your annual tuition?

20 A. 5,000 per student.

21 Q. And that is collected monthly. Did I read
22 that correctly in your --

23 A. Parents may pay in full or pay monthly.

24 Q. And families aren't necessarily parishioners
25 or members of the church -- of Midway? Is that what --

1 so it's open to all families that want a Christian
2 education for their children?

3 A. Yes, sir.

4 Q. And they can get scholarships, I presume? I
5 think you have -- you mentioned that?

6 A. Yes.

7 MR. KENDREE: I'd like to enter that as
8 number 5 for Defendants, please.

9 THE COURT: Wait, what are we entering as 5?

10 MR. KENDREE: The -- the tuition page that
11 is maintained by Ms. Moss.

12 THE COURT: Ms. Brown?

13 MS. BROWN: No objection, Your Honor.

14 THE COURT: Entered without objection.

15 (DEFENDANT'S EXHIBIT 5 WAS RECEIVED INTO
16 EVIDENCE)

17 BY MR. KENDREE:

18 Q. Oh, I need one --

19 A. Yes, sir.

20 Q. Thank you. And then lastly, I believe this
21 is just a document -- at least showing your staff at
22 the time; is that -- is that correct?

23 A. Yes, sir.

24 Q. And you maintained -- and you maintained
25 that page as well?

1 A. Yes, sir.

2 Q. And I don't have absolute recollection, but
3 maybe not all those teachers are there now at the
4 school; is that right? Or are they?

5 A. This is current.

6 Q. That is current. Wonderful.

7 A. Yes, sir.

8 Q. And is that the -- the two teachers in
9 addition to yourself, or -- or is that the total --
10 totality of your instructors?

11 A. Yes, sir.

12 Q. Okay.

13 MR. KENDREE: I'd like to have that marked
14 as Plaintiff's 6 -- Defendant's 6, Your Honor.

15 THE COURT: Defendant's 6. Any objection?

16 MS. BROWN: No objection.

17 THE COURT: Entered without objection.

18 (DEFENDANT'S EXHIBIT 6 WAS RECEIVED INTO
19 EVIDENCE)

20 BY MR. KENDREE:

21 Q. Quickly, we'll look at the Facebook
22 document. Exhibit number 2. Make sure my recollection
23 was clear. Yeah. That's what I wanted to recall. So
24 on pages -- well, it doesn't have a page. There's a
25 Fun at Clover Park page on the -- on the Midway

1 Facebook document. And then the following, I believe
2 is a class trip to a movie theater, perhaps the -- the
3 Sylvia Theater?

4 A. Yes, sir.

5 Q. And if you could look at those or maybe you
6 recall, in the -- particularly in the Sylvia Theater
7 photograph, is that the whole school? Does the whole
8 school go on the class trips?

9 A. All are invited. Yes, sir.

10 Q. All are invited. And -- and if you -- what
11 if you don't want to go? Do you stay at the school or
12 do you not go to school that day?

13 A. That would be no attendance for that day.

14 Q. Okay. And it looks like there are roughly,
15 what? Is that at least 20 students in that one --
16 Sylvia Theater photograph?

17 A. Yes, sir.

18 Q. Approximately. And they wear a -- a school
19 uniform?

20 A. No, sir. We do not have uniforms, but we do
21 have school shirts.

22 Q. School shirts. That's what they're wearing.
23 It's a -- it's a -- and -- and who produces those
24 shirts? You just -- they change every year?

25 A. We have had two different companies that

1 have made those for us.

2 Q. And do they wear those all the time or just
3 on special trips to be identified?

4 A. Special -- special trips. Yes, sir.

5 Q. Okay. Wonderful. Thank you. I have one
6 more question for you. And it -- it concerns another
7 document. This is an application where you're --
8 you're named as a contact on April 25th, 2022.

9 Could you tell the Court what the purpose of
10 that application was for?

11 A. This one says, "Commercial Building Plan
12 Review Application."

13 Q. Application. And are you aware if that was
14 submitted?

15 A. Yes, sir.

16 Q. May I see Page 2 of that document really
17 quickly? Well, I'm -- I'm going to look at the
18 description of the proposed work on Page 1, and then
19 the other -- could you just read to the Court the
20 description of proposed work and then the other
21 designation on the following page?

22 A. Okay. Description of proposed work --

23 MS. BROWN: Objection, Your Honor. Is this
24 going to be admitted as evidence?

25 MR. KENDREE: This was one of the documents

1 we agreed upon.

2 MS. BROWN: Oh, was it agreed upon?

3 MR. KENDREE: Yes, ma'am.

4 MS. BROWN: Okay. Which one is it -- what -
5 - is this -- is this --

6 MR. KENDREE: I'm sorry. I apologize. This
7 is the --

8 MS. BROWN: This would be --

9 MR. KENDREE: The application.

10 MS. BROWN: And what number is this?

11 MR. KENDREE: This will be 7?

12 MS. BROWN: Okay. Thank you.

13 THE COURT: Defendant's 7.

14 BY MR. KENDREE:

15 Q. I'm sorry. Could you -- the description of
16 the proposed work?

17 A. Okay. "Change of occupancy requirements
18 create 1-hour rated corridor and proof wall finishes,
19 new electrical."

20 Q. Thank you. Do you have any knowledge of why
21 a 1-hour rated corridor was required at that time or
22 sought at that time?

23 A. I believe this had to do with all of the
24 fire requirements.

25 Q. Yes, ma'am. Thank you. And on the -- on

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1 the following page, there's another designation making
2 a request of York County. Could you read for the Court
3 what -- what that request is?

4 A. Are you referring to this?

5 Q. I'm referring to the other purpose.

6 A. Okay. "Changing A-3 educational space to E
7 educational space for starting a Christian school."

8 Q. And if I understood your testimony
9 correctly, this was submitted most likely by your
10 architect? Or is it just architect information?

11 A. I do not recall if the architect submitted
12 this or who submitted this.

13 Q. Okay. Thank you, Ms. Moss.

14 MR. KENDREE: This would be Defendant's 7?

15 THE COURT: 7. And that's stipulated to?

16 MR. KENDREE: Yes. We -- we did, Your
17 Honor.

18 (DEFENDANT'S EXHIBIT 7 WAS RECEIVED INTO
19 EVIDENCE)

20 MR. KENDREE: That's all I have, Ms. Moss.
21 Thank you very much.

22 THE COURT: Ms. Brown, redirect?

23 MS. BROWN: Yes, Your Honor.

24 REDIRECT EXAMINATION

25 BY MS. BROWN:

1 Q. Ms. Moss, so the last document that you were
2 presented with was the change of occupancy. Initially,
3 did you apply for a change of occupancy for the church?

4 A. Initially, that is what we were recommended
5 to do.

6 Q. Okay. And throughout the process, what
7 changed?

8 A. As we went through the process and continued
9 to receive the denials of approval, we began to
10 research the codes ourselves.

11 Q. And based on your research, what is it that
12 you understood was actually required?

13 A. Based on our research, we realized that A-3
14 places of worship had the right to religious education
15 up to 99 participants.

16 Q. Okay. Do you still have the copies of the
17 Facebook posts and all that that Mr. Kendree --

18 A. Yes, ma'am.

19 Q. Okay.

20 MR. KENDREE: Well, all but one, I believe.

21 MS. BROWN: Okay. All right.

22 Thank you. Okay.

23 BY MS. BROWN:

24 Q. So in looking at the -- the tuition page, it
25 says that you're fortunate to be a ministry of Midway

1 Baptist Church where financial support is at heart.

2 What does that -- what does that mean?

3 A. As stated here, MCA receives no government
4 funding. So there are church members and community
5 members that have felt a tugging at their hearts to
6 provide and help families who want to attend, but who
7 cannot financially because they -- there is no
8 government assistance. There are no tax-dollar
9 assistances for our families.

10 Q. So you actually receive funding through the
11 church and its members; is that correct?

12 A. Yes, ma'am.

13 Q. Okay. All right. I don't think I have any
14 other questions about this. Ms. Moss, I did just want
15 to clarify that -- so Mr. Kendree asked you about the
16 SATs, so -- and you mentioned that is coordinated by
17 the parents.

18 So is that something that if parents
19 request, they then coordinate that testing to occur off
20 campus or does that occur on campus at Midway?

21 A. That is off campus. Parents sign their
22 children up for that process of their own accord. We
23 will assist and help if needed. The parents do handle
24 that signing, and they pay the fees for the student to
25 take the assessments.

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1 **Q. So that is completely outside of anything**
2 **that Midway provides as part of its --**

3 A. Yes, ma'am. They have to attend the testing
4 at -- and -- a public school testing site.

5 **Q. Okay.**

6 MS. BROWN: All right. No further
7 questions, Your Honor.

8 MR. KENDREE: One -- one brief question.
9 Recross.

10 THE COURT: Okay.

11 RE CROSS-EXAMINATION

12 BY MR. KENDREE:

13 **Q. You -- you commented about doing your own**
14 **research on the building codes, and wanting the**
15 **exemption or the classification of A -- A-3. What does**
16 **that practically mean to you? Having one designation**
17 **as opposed to the other?**

18 A. I believe, you know, wholeheartedly that a
19 church has a right to educate its youth. Yes, they
20 have youth groups and Bible studies and, you know,
21 activities such as that through the church. But in a
22 public school setting, my children of Christian faith
23 cannot receive faith instruction five days a week in a
24 public school.

25 So if I want my child to be raised up in the

1 way that he should go, to be raised up where they're
2 learning science and social studies and history, and
3 everything from a biblical perspective, then I have to
4 choose to pay to send them to a private school setting
5 or homeschool. And I believe that the code is giving
6 churches the right to do that.

7 Q. Well, you could do that under either
8 categorization, could you not?

9 A. Yes, you could.

10 Q. But I may have given you an unclear
11 question. Practically, from a nuts and bolts
12 standpoint to -- to the structure itself, what does A-3
13 -- if you have an opinion on it, what does an A-3
14 categorization mean as opposed to an E?

15 A. An A-3 place of worship or a church has a
16 right to do and perform the duties and tasks that they
17 see fit, based on their religious beliefs and
18 practices.

19 Q. But that, too, could be done under E. So
20 I'm going to try one more time: Is it less costly to do
21 the A-3 designation as opposed to the E designation in
22 your opinion?

23 A. I -- I -- in my opinion, it's not about
24 cost. It's the -- that the church has a right to stay
25 as an A-3. So why do they need to be rezoned or

1 changed? They are a church and they were always a
2 church, and they will always be a church.

3 Q. Okay. So you have no opinion on -- on cost
4 factors on the designations?

5 A. I -- I believe that my God owns all the
6 silver and gold, so I have no concern of -- of cost.
7 If God calls his believers, his children to do
8 something, he will provide.

9 Q. Okay. You heard Pastor Dellinger say it was
10 prohibitive to have -- to do the upfits that were
11 required under the -- did you not?

12 A. Yes. Cost is -- is real. That is a real
13 thing.

14 Q. And -- fair -- fair enough.

15 MR. KENDREE: Thank -- thank you.

16 THE COURT: Thank you, Ms. Moss.

17 MS. MOSS: Thank you. Do I leave these?

18 MR. KENDREE: Uh-uh.

19 THE COURT: Yes, please.

20 MR. KENDREE: Yes.

21 THE COURT: Thank you.

22 MS. MOSS: These were --

23 MS. BROWN: Yes, you -- I believe you had
24 two copies of your --

25 MS. MOSS: I did.

1 THE COURT: I just want to say, you-all let
2 me know, at any time, if you need a break or --

3 MS. BROWN: I would like a break, if that's
4 okay, Your Honor. And I am going to -- I'm going to
5 rest at this point anyway, so.

6 THE COURT: Do you want to go ahead and
7 handle any motion that you might have as far as
8 resting, or we'll take that up after the break?

9 MR. KENDREE: We'll take it up after the
10 break.

11 THE COURT: Okay. 10-minute break?

12 MS. BROWN: Yes, Your Honor. Thank you.

13 THE COURT: We'll all pause for 10 minutes.

14 (OFF THE RECORD)

15 THE COURT: Okay. Are we ready to proceed?

16 MS. BROWN: Yes, Your Honor.

17 THE COURT: Mr. Kendree.

18 MR. KENDREE: Thank you, Your Honor.

19 As a point of order, before we present our -
20 - our case, I'd like to enter the two cases that -- as
21 Exhibits 8 and 9.

22 THE COURT: That would be 8 and 9?

23 MR. KENDREE: Or 9 and 10? 8 and 9?

24 THE COURT: Okay. Any objections?

25 MS. BROWN: I believe we stipulated to these

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1 earlier.

2 MR. KENDREE: Oh, we did. I apologize. The
3 -- most of the documents -- I think all of the
4 documents I'm presenting have been stipulated to from
5 here on out, Your Honor.

6 THE COURT: The South Carolina case is
7 Exhibit 8, and the Texas case is Exhibit 9.

8 (DEFENDANT'S EXHIBIT 8 WAS RECEIVED INTO
9 EVIDENCE)

10 (DEFENDANT'S EXHIBIT 9 WAS RECEIVED INTO
11 EVIDENCE)

12 MR. KENDREE: All right. Thank you. May it
13 please the Court? York County would like to call
14 Jonathan Buono to the stand.

15 THE COURT: If you can just raise your right
16 hand before you get seated? Okay.

17 JONATHAN BUONO,
18 having first been duly sworn, testified as follows:

19 THE COURT: You may be seated.

20 DIRECT EXAMINATION

21 BY MR. KENDREE:

22 Q. Jonathan, would you please state your full
23 name?

24 A. Jonathan Buono.

25 Q. What is your position in the county?

1 A. Planning and development services director.

2 Q. And how long have you held that -- that
3 position?

4 A. About four and a half years.

5 Q. Would you give the Court a brief summary of
6 -- of what your job entails?

7 A. Yes. I manage and oversee the Planning and
8 Development Services Department, which has many
9 divisions, including long-range planning, zoning, storm
10 water compliance, building and codes, code enforcement.

11 Q. What is your interaction with buildings and
12 -- building and codes?

13 A. Provide general supervision, proof budgets,
14 things of that nature.

15 Q. Are you familiar with the -- the issues at
16 hand in this case?

17 A. Yes, sir.

18 Q. Please explain to the Court what -- strike
19 that.

20 Have you been involved in this case since
21 its inception?

22 A. Yeah.

23 Q. Not the case. With -- with the issue before
24 York County?

25 A. Yes, sir.

1 Q. Could you please summarize for the Court
2 what your understanding of the issues that are before
3 the county with regards to the initial contacts and
4 thereafter?

5 A. Yes. We have normal plan review processes.
6 I don't normally become involved in those unless an
7 issue is raised. Pastor Dellinger did reach out to me,
8 and -- and we met a couple of times to discuss some
9 issues that he had with the review comments. And
10 that's how I became involved. And at least in the --
11 the meetings that I had with the pastor, our dialogue
12 was mostly -- revolved around the TIA.

13 Q. What is a TIA?

14 A. It's a Traffic Impact Analysis.

15 Q. And if you recall, what -- why was that an
16 issue or a concern of Pastor Dellinger?

17 A. There was a concern that -- that -- that --
18 he felt that we did not need -- that they did not need
19 to do one as part of their application for the building
20 upfit.

21 Q. Were you involved in any decision making
22 with regards to the application of an A-3
23 categorization or an E categorization?

24 A. No, sir. I'm -- I'm generally made aware of
25 decisions that are made, but when it comes to certain

1 codes, there are authorities and -- directed by statute
2 or county ordinance as to who makes decisions. So
3 we'll talk about it. I'll be advised of a decision,
4 but those decisions are vested in the individuals that
5 are responsive to those pieces of legislation. So for
6 the building codes, the building official makes those
7 decisions. For the zoning code, the zoning
8 administrator makes those decisions.

9 Q. You touched upon, I believe, the respective
10 obligations and duties of -- of personnel. I'm going
11 to show you what will be marked as Defendant's Number 9
12 (sic).

13 MR. KENDREE: Which was a stipulated
14 document, Your Honor, of an ordinance.

15 BY MR. KENDREE:

16 Q. Can you tell the Court if you recognize it.
17 And if so, what -- what that document is?

18 A. Yes, sir. This is an ordinance from
19 December of 2022, where the York County Council adopted
20 the most recent fire code and building code and
21 associated codes that go along with the building code
22 as required by the State?

23 Q. Yes. Thank you for mentioning that. Can
24 you explain what the requirements are and the process
25 that -- that obligates York County to pass that

1 ordinance?

2 A. Yeah. So in Title 6, Chapter 9, I believe
3 it is, requires all divisions of the State, whether
4 they be municipalities or counties, to enforce the
5 building codes that are enacted by the State. And this
6 is the -- this document, this ordinance is the council
7 passing that most updated version.

8 Q. And what year are we under with regards to
9 the building codes?

10 A. 2021.

11 Q. Is that the same for the fire code?

12 A. It is.

13 MR. KENDREE: Did we do -- did I get that
14 marked? I apologize.

15 THE COURT: I have [inaudible 01:43:46].

16 MR. KENDREE: Yeah? Okay.

17 Mark that as Exhibit Number 10, Your Honor.

18 (DEFENDANT'S EXHIBIT 10 WAS RECEIVED INTO
19 EVIDENCE)

20 BY MR. KENDREE:

21 Q. Expounding upon the reason for that
22 ordinance, Mr. Buono. Why are we required to pass that
23 ordinance?

24 A. To protect the health, safety, and welfare
25 of residents of York County.

1 Q. And who develops the code that we ultimately
2 adopt?

3 A. So they are developed by ICC, but the State
4 of South Carolina has a building codes council that
5 adds some slight amendments. And that becomes the
6 South Carolina Building Code.

7 Q. For use across the state?

8 A. That's correct.

9 Q. Not just York County?

10 A. Yes, sir.

11 Q. We don't have any latitude to alter that?

12 A. The County does not.

13 Q. You also touched upon Title 6. I'm going to
14 show you three code sections that are all part of the
15 building codes provision of Title 6. Section 6-9-5, 6-
16 9-30, and 6-9-55.

17 Are you familiar with that?

18 A. Generally, yes.

19 Q. And is that the -- the code that's part and
20 parcel associated with the building codes that are at
21 issue today?

22 A. Yes, sir.

23 Q. What is the purpose of the building codes
24 statute?

25 A. I believe that would fall under 695(A), "To

1 maintain reasonable standards of construction in
2 buildings and other structures in the State consistent
3 with the public health, safety, and welfare of its
4 citizens. To secure these purposes, a person
5 performing building codes enforcement must be certified
6 by the South Carolina Building Codes Council, and this
7 act is necessary to provide for certification."

8 Q. And on Page -- the second page -- thank you.
9 On the second page of that document, what -- what
10 statutory provision is -- is that? In regards to
11 authority; is that right?

12 A. Are you referring to Section 6-9-30?

13 Q. Yes.

14 A. Yes. The appointment of building official.

15 Q. Yes, sir. What does that touch upon?

16 A. It states that, "Each county shall appoint a
17 building official or contract with other political
18 subdivisions as authorized in Section 6-9-20 so that
19 the unincorporated area of the county is under the
20 jurisdiction of a building official." It goes on
21 further, but it addresses municipalities.

22 Q. And our -- and our building official is
23 whom?

24 A. Jamie Catoe.

25 Q. And then the final section, I believe, is 6-

1 9-55 in that packet. And what -- what does that
2 section talk about?

3 A. That references the Building Codes Council,
4 that they "shall promulgate the regulations in
5 accordance with the procedure and requirements
6 contained in Article 1, Chapter 23, Title 1, any
7 provision of or amendment to any building code that
8 would affect construction requirements for one-family
9 or two-family dwellings. No building code provision
10 that would otherwise become effective after the
11 effective date of this section concerning construction
12 requirements for one-family or two-family dwellings
13 shall be enforced until the effective date of the
14 regulations."

15 Q. Thank you. And -- and are you aware of
16 South Carolina's past building code regulations?

17 A. Yes.

18 Q. I'm going to show you another agreed-upon
19 document, South Carolina Code of Regulations R8-105.
20 And before you answer my -- my question, I need to get
21 that marked, too. I apologize.

22 MR. KENDREE: So that's Number 11?

23 THE COURT: This would be Number 11.

24 MS. BROWN: Would -- are these the -- the
25 threes --

1 MR. KENDREE: The three code sections that I
2 -- I apologize.

3 MS. BROWN: Okay.

4 Without objection, Your Honor.

5 THE COURT: Okay. Then it's admitted
6 without objection. I mean, we'll stipulate it.

7 (DEFENDANT'S EXHIBIT 11 WAS RECEIVED INTO
8 EVIDENCE)

9 MR. KENDREE: Well --

10 THE COURT: And then we'll --

11 MR. KENDREE: -- kind of a hybrid. But yes,
12 Your Honor. Without -- without objection.

13 MS. BROWN: We worked it out. Let's just
14 say that.

15 THE COURT: And now is he looking at --

16 MR. KENDREE: Right. Which will be --

17 MS. BROWN: -- Defendant's 12?

18 MR. KENDREE: Yes. That will be Defendant's
19 12. And that was stipulated.

20 MS. BROWN: Which -- which one is this?

21 MR. KENDREE: That's the code of regs. I
22 think it's -- what is it? 105? 8-105.

23 THE WITNESS: Yes, 8-105.

24 MS. BROWN: Okay.

25 MR. KENDREE: Yes.

1 BY MR. KENDREE:

2 Q. Does that fall under the -- the regulations
3 you believe were enacted by the State?

4 A. This is my first time seeing this particular
5 section, but I believe so.

6 Q. Okay. I can certainly ask the -- the
7 building official about that.

8 A. Uh-huh.

9 Q. Thank you.

10 MR. KENDREE: I'd like to get that marked.

11 Well --

12 (DEFENDANT'S EXHIBIT 12 WAS RECEIVED INTO
13 EVIDENCE)

14 BY MR. KENDREE:

15 Q. I'm just going to leave that up there with
16 you. I'm going to ask you to help us understand some
17 of the processes that you deal with on a daily basis.

18 Can you tell the Court what a zoning
19 compliance is?

20 A. Yes. So in another -- in a chapter of Title
21 6, Chapter 29, that's a local planning enabling act.
22 So that allows jurisdiction to have a comprehensive
23 plan through a planning commission. And as part of
24 implementation of the comprehensive plan, jurisdictions
25 are allowed to pass a zoning ordinance to guide

1 development to match the comprehensive plan. And so as
2 part of a review of any project, any development in the
3 county, a component of that review, of which there are
4 many, including building and codes, the zoning review
5 encompasses that zoning compliance to ensure that the
6 proposed project is in conformance with York County
7 Zoning Ordinance.

8 **Q. And is there a difference between the zoning**
9 **compliance and then compliance with building and fire**
10 **codes?**

11 A. Yes, sir.

12 **Q. How so?**

13 A. They are different codes and they have
14 different authority -- authorities that are empowered
15 to interpret them. As I mentioned in an earlier
16 answer, the zoning administrator is empowered by the
17 York County Zoning Ordinance to interpret that code.
18 The building official is empowered by the State to
19 interpret the building code. And by the York County
20 Fire Code, the fire services director is empowered to
21 interpret that fire code.

22 **Q. Does the York County Zoning Code have any**
23 **bearing upon the terms and conditions within the**
24 **building or fire codes?**

25 A. It does not. They are separate and distinct

1 codes.

2 Q. When -- when you look at the -- a -- a plan
3 review, what -- what do you look at first? Zoning -- a
4 zoning compliance issue? Do you look at code
5 compliance, such as fire and building?

6 A. They are all encompassing. So there are
7 many divisions within the Planning and Development
8 Services Department that perform a review. And some
9 external agencies take a look as well. And it's one
10 comprehensive review. And those were the non-approved
11 letters that were part of the record here. So those
12 include all of the commentary about which code
13 provisions need to be addressed by the proposed
14 project.

15 Q. So to help understand that prior exhibit
16 that was entered. The -- the reviews are all separate
17 departmental reviews. Explain how that works. How do
18 you have so many people being able to contribute to one
19 document?

20 A. Because there are so many different codes at
21 play with any particular development. You might have,
22 with a project that has significant land disturbance,
23 some stormwater and erosion control factors to
24 consider. There are reviewers that are specialized in
25 that field and they issue those review comments. Same

1 for zoning, building code, fire, floodplain
2 administration, even disposal of fat soils and greases
3 has a -- has a reviewer.

4 Q. So pardon the elementary question here. But
5 the application is housed in a central part of your
6 departments or as the county?

7 A. Yes. We have an application software called
8 Evolve. The applicant would upload their application
9 with any of their required application materials for
10 what their proposal was.

11 Q. And each department then has access to -- to
12 that plan.

13 A. Yeah. We have development coordinators that
14 take an initial review of what is being proposed. And
15 they will assign it to reviewers to make sure that all
16 the particular codes are reviewed against the proposal.

17 Q. So -- great. Thank you. That -- that
18 provoked a question for me. So when you get a not
19 approved letter, does that mean everybody is not
20 approving it? Explain what that letter is intended to
21 achieve?

22 A. Yes. So it's deliberately called a non-
23 approved letter. We don't have denial letters because
24 denial connotes finality. A non-approved letter will
25 be issued and have all of the commentary from the

1 individual viewers covering specialty topics. And each
2 individual reviewer will say whether their responsible
3 section of their particular code is satisfied by the
4 proposal or not. And so once all of the commenters say
5 approved, and they approve it against their
6 individually responsible codes. Then the project,
7 overall, itself is approved and the permit can be
8 issued.

9 Q. Let's say there are six separate
10 departments. I don't know the total number that's
11 looking at plan. And four of them approve it and two
12 do not. What -- what becomes of that letter? That
13 letter is issued. And what is the request of the
14 applicant?

15 A. Yeah. So that would be the other exhibits,
16 the not approved letters that would be issued. And
17 there's contact information for each of the individual
18 reviewers, if there are questions about how to comply
19 with the comments. And there's -- the letter is issued
20 to the applicant and they have the opportunity to meet
21 with staff, to call and ask questions. Or they don't
22 even need to make additional contact, they are free to
23 resubmit again with any of the changes that are
24 necessary to get to a full approval.

25 Q. So they're free to address the two, under my

1 hypothetical. They're free to address the two
2 remaining components and -- and seek to get those
3 approved?

4 A. Yes, sir.

5 Q. And upon approval, they get a final
6 approval?

7 A. Yes. They would get that building permit
8 issued in -- in this case.

9 Q. So the permit is the end result. You're
10 full speed ahead on your -- on your proposal?

11 A. Yes, sir.

12 Q. Thank you, Jonathan. That's -- that's
13 helpful. Can you explain to the Court what a zoning
14 verification is?

15 A. Yeah. A zoning verification is typically
16 something that an applicant would request. That's
17 typically a letter that states that your property is in
18 this zoning district and could enumerate what the uses
19 that are allowed on a particular property might be.

20 Q. Sorry to get into the weeds on this. What's
21 the difference between that and the zoning compliance?

22 A. Yeah. So a -- a zoning verification is just
23 stating -- it's usually something that's requested from
24 financial institutions before they invest in a
25 development or sign off on loans, things of that

1 nature. To verify that what's being proposed is going
2 to be allowed from a land use perspective period.

3 Whereas the zoning compliance is a full
4 review of the zoning codes and all of the development
5 standards, such as site management -- site access
6 management, signage, anything that might fall under the
7 purview of the zoning code. They go just beyond what
8 the zoning district is and what the uses are allowed.

9 Q. That's a limited view?

10 A. Yes, sir.

11 Q. So it's an external assessment of whether it
12 complies with the zoning code?

13 A. Whether the -- the -- what the district is
14 for the property and what the uses are allowed for that
15 property.

16 Q. Does that verification have any impact on
17 whether a property meets health, safety, and welfare
18 requirements for a particular intended use?

19 A. It does not.

20 Q. We touched briefly about the -- the facts of
21 this case. Who -- who handled -- if you weren't
22 involved in the building code determination, do you
23 know -- or -- or who -- who handled that assessment?

24 A. Yes. So I believe the reviewer assigned to
25 this particular project was Nicole Troutman, one of our

1 building plan reviewers.

2 Q. Okay. And then did she -- who posed the A-3
3 versus E question? Did she pose it? Did Mr. Catoe's
4 office pose it? Where did that emanate from?

5 A. Posed the question? I'm not familiar with
6 who posed the question of A-3 versus E.

7 Q. Okay. You've not been to the church
8 location, Midway Baptist Church --

9 A. I have not.

10 Q. Did -- did Midway apply to the planning
11 department for either a zoning compliance or a
12 verification in advance of -- of plan submittals?

13 A. They did not apply for a zoning verification
14 letter, to my knowledge. They did apply for a zoning
15 compliance, technically, because it's a -- it's part
16 and parcel with a -- a building permit application. So
17 it's one of the components of the review of a building
18 permit. So they would've received and they did receive
19 comments from Jeff Kirchner, who would be the zoning
20 reviewer on that project. And his review is the zoning
21 compliance for the project.

22 Q. Do you have any understanding or sense --
23 you heard testimony about three, I believe, separate
24 submissions. Do you have any knowledge of -- of why
25 that was occurring?

1 A. Yes. It's because, as you kind of alluded
2 to in -- in your example review, there -- through none
3 of those reviews did we have all of the reviewers
4 marked the review as approved. So there were -- across
5 the reviews, there were several reviewers that did
6 approve it. And then a few that marked it not approved
7 for their particular specialty.

8 **Q. That's helpful. Are the three separate**
9 **submissions all part and parcel of one application**
10 **process?**

11 A. Yeah. A lot of plan review is iterative. I
12 don't think we've hardly ever had an application come
13 in perfect and we just approve it on the first
14 submittal. It's always a process of initial submittal,
15 where we provide probably the -- the largest volume of
16 -- of commentary from the different reviewers. And the
17 applicants and their design teams work to address those
18 comments to work towards approval.

19 **Q. Is it fair to say that not approval letters**
20 **occurs frequently or often when applicants apply for a**
21 **permit?**

22 A. Yes, sir.

23 **Q. And then if they work through that, do they**
24 **ultimately get approved?**

25 A. Yes, sir.

1 **Q. So if a more complicated application came**
2 **in, it's not unusual for an -- an applicant to get**
3 **multiple not approved letters?**

4 A. Yeah. It's dependent upon how quickly or
5 how comprehensively an applicant might address all of
6 the reviewer's comments. It's certainly feasible that
7 an applicant could address all of the comments that are
8 provided after a first review and could get approved in
9 a second submittal. But the more common -- the more
10 common situation is that, either there are design
11 preferences that do not meet code, or there are delays
12 in addressing some of the comments that require
13 additional submittals.

14 **Q. Do you have any knowledge of why the**
15 **submittal process and review process stopped?**

16 A. So it -- the last review, the third one,
17 was, I believe, in June of 2022. And it was another
18 not approved letter. There were some comments to
19 address. Applicants are free to resubmit as many times
20 as they would like. It could be two, and they get to
21 approve. It could be 100. There's no limit on how
22 many times they could resubmit until they get to an
23 approval.

24 **Q. Just out of curiosity. What's -- what's the**
25 **largest number of not approved letters that you've been**

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1 exposed to that ultimately became approved?

2 A. I can't say with certainty. We've certainly
3 had some that -- that might have gone six, seven, eight
4 deep.

5 Q. If you have an opinion on it. What would be
6 the next steps -- steps for Midway Baptist Church to
7 pursue approval at their current -- their campus, their
8 York County campus location? What would they need to
9 do at this juncture?

10 A. Resubmit again and work towards complying
11 with the review comments that were issued in that June
12 letter.

13 MR. KENDREE: And that's all I have,
14 Jonathan. Thank you.

15 CROSS-EXAMINATION

16 BY MS. BROWN:

17 Q. Mr. Buono, so you said it's frequent that,
18 you know, plans are not approved multiple times; is
19 that correct?

20 A. Yes, ma'am.

21 Q. Okay. Isn't it reasonable that if an
22 applicant goes to the county ahead of time, asks for
23 guidance, they should be reasonably compliant when they
24 submit their application because they should have a
25 fair knowledge about what they need to do?

1 A. Compliance is not based on efforts ahead of
2 a submission. They're based on what's drawn on the
3 plans and what the codes dictate.

4 Q. But shouldn't an applicant have a fair idea
5 of what should appear on those plans if they come to
6 the county in advance and meet with them and -- and get
7 input and guidance?

8 A. It is helpful.

9 Q. But there's no responsibility for providing
10 a checklist or anything?

11 A. The County does provide a checklist for
12 applications.

13 Q. But that is the process, correct, not --

14 A. Yes, ma'am.

15 Q. -- what needs to appear for any particular -
16 - particular type of application, what needs to be
17 within the application? It is merely the process,
18 correct?

19 A. Yes, ma'am.

20 Q. Okay. So you mentioned that the codes are
21 interpreted by different officials. But some of them
22 have the same terminology across them and use the same
23 terms; is that correct?

24 A. Could you --

25 Q. So for example, churches is defined in

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1 **building codes, it's also defined in the zoning code**
2 **with similar definitions; is that correct?**

3 A. The same words, yeah.

4 **Q. Okay. All right.**

5 MS. BROWN: I have no further questions,
6 Your Honor.

7 THE COURT: Any redirect?

8 REDIRECT EXAMINATION

9 BY MR. KENDREE:

10 **Q. Have you compared the two definitions, or do**
11 **you know that?**

12 A. I don't know them off the top of my head,
13 no.

14 **Q. But you have reason to believe they're at**
15 **least similar?**

16 A. There are similarities in some of the
17 phrases, but they are distinct.

18 **Q. That was my -- my thought.**

19 MR. KENDREE: Thank -- thank you, Jonathan.

20 THE COURT: Okay. Call your next witness.

21 MR. KENDREE: Thank you, Your Honor. We're
22 going to call Jennifer Culver to the stand, please.

23 THE COURT: And before you get seated, raise
24 your right hand. Okay.

25 JENNIFER CULVER,

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1 having first been duly sworn, testified as follows:

2 THE COURT: You may be seated.

3 DIRECT EXAMINATION

4 BY MR. KENDREE:

5 **Q. Can you state your full name for the record?**

6 A. Jennifer Culver.

7 **Q. And who are you employed by?**

8 A. By York County.

9 **Q. And what is your current title?**

10 A. I'm the deputy building official.

11 **Q. And how long have you held that position?**

12 A. About three and a half years.

13 **Q. How long have you been with York County?**

14 A. Almost 28.

15 **Q. Can you explain to the Court what positions**
16 **you've held prior to being the deputy building**
17 **official?**

18 A. I started with the county in the Building
19 and Codes Department. Moved to Environmental
20 Compliance and held several positions in Environmental
21 Compliance, but was the administrator for that division
22 for a while. And then moved back into Building and
23 Codes to perform commercial plan reviews. And then
24 when the building -- a deputy building official
25 position came open, I moved up into that.

1 **Q. Could you briefly describe your current**
2 **duties for the county?**

3 A. Day-to-day, I oversee the building -- the
4 commercial building and the residential building plan
5 reviewers.

6 **Q. Are you familiar with this particular case?**

7 A. I am.

8 **Q. Can you tell the Court how you became**
9 **familiar with the case?**

10 A. In 2021, we were asked by Ms. Moss to come
11 out and just take a look at the building so that we
12 could make a determination on how to -- to guide them
13 in establishing the school at that building.

14 **Q. And that was pre-plan submittal?**

15 A. Yes.

16 **Q. Who went out with you on that -- that trip?**

17 A. I believe that was Allen Tice, the deputy
18 fire marshal at the time.

19 **Q. And can you describe what happened on that**
20 **visit? Did you walk the site?**

21 A. Walked the site and toured the main
22 building. And just received a description of how the
23 church wanted to use that building for their school.

24 **Q. Did you go into the classroom area?**

25 A. We did.

1 Q. And did you observe the exterior of the
2 building?

3 A. Yes.

4 Q. And pardon me. Who did you have a dialogue
5 with on that tour?

6 A. We spoke with Amy Moss, but we ended up
7 meeting with the pastor because Amy was out of town at
8 the time.

9 Q. And the pastor explained his vision for the
10 -- for the property?

11 A. Yes.

12 Q. What did he tell you, if you recall?

13 A. That they were wanting to establish a -- a
14 school, a K through 12 school. Or K through 6
15 initially, and I think work up to the 12th grade.

16 Q. Did he talk about the programming for the
17 classes?

18 A. Specifically, no. But I believe we had a
19 discussion about whether or not there would be English
20 and math and history type teachings at the school.

21 Q. I don't know where they are. I was looking
22 for those photographs. So I hope I haven't misplaced
23 them. Personally, I didn't see them up here.

24 MS. BROWN: Oh, Michael, I think you're
25 looking for those.

1 MR. KENDREE: Oh, thank you.

2 MS. BROWN: Yeah. Sorry.

3 MR. KENDREE: Pastor, come on. Thank you,
4 sir.

5 BY MR. KENDREE:

6 Q. I'm going to show you these photographs and
7 -- and the -- Pastor Dellinger explained, kind of, what
8 they specifically were.

9 But did you -- do -- do those look familiar,
10 not the photos, but the appearances of -- of what you
11 observed that day?

12 A. They do.

13 Q. Does it reflect the condition of it as you
14 best can recall on the day of that tour?

15 A. Yes, sir.

16 Q. Thank you. Do you have a sense of how long
17 that -- that site visit, that initial site visit
18 occurred?

19 A. It -- it wasn't extremely long, maybe 30 or
20 40 minutes. But I don't remember specifically.

21 Q. Did you have any role in assessing the
22 application of the code, the -- the building code to
23 that site?

24 A. Once the documents were submitted, our plan
25 reviewer reviews those documents and then we discuss

1 her review.

2 Q. But that's a function of plan submission?

3 A. Yes.

4 Q. If you can, can you tell us or walk us
5 through how you determine what parts of the building
6 code are applicable to a structure when you review
7 plans or inspect a property?

8 A. We generally start with the use of the
9 building. That establishes the different code
10 requirements in that -- in the building code. Once we
11 establish a use and either agree with what the
12 architect has submitted or disagree with the architect
13 has submitted, then we can establish the next
14 requirements. The life safety requirements. The means
15 of facility, restroom and sink facilities, and occupant
16 loads and everything else. They're all driven by that
17 initial occupancy establishment.

18 Q. And how is that a function of the actual
19 detail that's submitted on a plan?

20 A. Can you --

21 Q. Sure.

22 A. -- rephrase?

23 Q. So I presume there's an application. Is a -
24 - well, let me clarify that. There's an application.
25 Is part of that application a -- a design?

1 A. A plan.

2 Q. A plan?

3 A. Yes. A plan is submitted that details that
4 information.

5 Q. And in this case, would it be a plan to up-
6 fit the existing building?

7 A. A portion of it, yes.

8 Q. Can -- maybe it's the same as Jonathan
9 described. But can you tell the Court how you go
10 through the process of obtaining compliance with the
11 building code?

12 A. It's very similar to what Jonathan
13 described. We review the submission and compare that
14 to code requirements. Offer our comments for things
15 that don't appear to meet code requirements. And then
16 that's a back and forth process until we've established
17 that the code requirements have been met so that we can
18 approve that plan.

19 Q. And so your comments are your position on
20 your review?

21 A. Yes.

22 Q. After you get that submission, is -- is it
23 typical to have follow up inspections or is that not
24 performed?

25 A. Typically, we don't. We will if we're

1 requested. But typically, we don't actually follow up
2 at the site until we issue a building permit and
3 construction begins.

4 Q. And in this case there's been testimony, at
5 least two or three visits were conducted at the
6 location; is that right?

7 A. To my knowledge, too.

8 Q. To your knowledge too? Do you have a
9 recollection of why the second one occurred?

10 A. I believe it was after we had made the
11 initial comments. Just to clarify those comments.

12 Q. On site?

13 A. On site, yes.

14 Q. And the initial one was more of a courtesy?

15 A. Correct.

16 Q. We talked a little bit about the site itself
17 and when you visited the site. Did you, during that
18 visit, provide any feedback in either -- I guess we
19 need to talk about both of them. Did you provide any
20 feedback on the initial visit?

21 A. We did. After the visit, we researched the
22 code and provided some topics for them to discuss with
23 their architect to help make decisions and -- and show
24 that they're complying with the code requirements.

25 Q. Did you provide any official comments as a

1 result of that initial visit?

2 A. No. Not official comments.

3 Q. And -- and to restate, I believe, the
4 official comments came after the -- come after the
5 plaintiff's submission?

6 A. Correct.

7 Q. Do you have an -- a recollection of when you
8 received the first application?

9 A. I believe it was in April or May of '22.

10 Q. 2022?

11 A. Yes.

12 Q. I think that's approximately right. Did you
13 have a role in providing a review of that application?

14 A. I've discussed comments with our plan
15 reviewer. She provided the main review.

16 Q. Okay. Does your supervisor -- do your -- do
17 your -- well, is your supervisor Mr. Catoe?

18 A. Yes.

19 Q. Do you and he ever have an opportunity to
20 debate an issue and -- and reach a consensus on what
21 should be done?

22 A. We do.

23 Q. But typically, you work autonomously and
24 submit your comments?

25 A. Typically.

1 Q. I think I asked Jonathan this question. But
2 -- but do you recall how your department, how the
3 building code and building official determine that the
4 structure needed to meet the requirements as an
5 educational facility?

6 A. Using the code requirements. The -- the
7 educational occupancy classification defines education
8 of students from K through 12, and it's six or more
9 students from K through 12.

10 Q. Do you have any recollection about
11 discussion on ancillary use under A-3?

12 A. Yes.

13 Q. And was that driven by your department or by
14 the applicant?

15 A. It was driven by our review of the
16 application.

17 Q. I suppose you just answered, and your
18 determination was that educational was the controlling
19 code section?

20 A. Yes.

21 Q. I think Jonathan touched upon it, but if you
22 left anything out, how is that applicant relayed the
23 position in your department? Is it all through the
24 not-approved letter?

25 A. It is.

1 Q. Is that the -- that's the chief form of
2 communication?

3 A. It is.

4 Q. Do you engage in supplemental or additional
5 commentary outside that review process?

6 A. If they're -- if we receive a phone call or
7 a question about comments, yes, we do.

8 Q. Thank you. Are you aware of any meetings
9 that occurred with elected officials on this project?

10 A. Yes.

11 Q. What happened with -- in that meeting?

12 A. We were -- we were invited to the meeting --

13 Q. Did you attend?

14 A. -- with several elected officials that --
15 and I attended just to discuss the -- the comments that
16 we had at that time. I don't remember during which
17 time frame that was, if it was after first, second, or
18 third review. But --

19 Q. Were representatives from the church there?

20 A. Yes.

21 Q. I'm sorry. I interrupted. Go ahead.

22 A. It's okay. Just to -- it was just to
23 discuss the overall comments and how we viewed the --
24 the occupancy classification, from my recollection.

25 Q. I lost my place. I'm sorry. Did you have

1 any concerns regarding the structure that was proposed
2 to be used as a school facility?

3 A. Yes.

4 Q. What were those?

5 A. The construction type at the time that the -
6 - the visits of the building was made, excuse me, was
7 not protected as we would typically see today. So the
8 -- the hallways were paneling, whereas the code would
9 require it to be fire rated. The corridors from the
10 pictures that you had showed earlier, the corridors
11 were open to the second floor, which today, would
12 require to either be closed off, rated, or fire
13 sprinklered. Basically, it was just an area that, if
14 there happened to be a fire or any sort of emergency,
15 would be more difficult to get out of quickly before
16 that fire was able to spread.

17 Q. Were you able to inspect the doors that were
18 there?

19 A. Didn't inspect them, no. From my
20 recollection, they were standard, hollow wooden doors,
21 but we did not specifically inspect them.

22 Q. So what would be required to pro -- to
23 address those concerns, in your opinion, per the code?

24 A. Rating -- there's hallways, with adding
25 layers of sheet rock to help protect the -- the

1 corridors, to help protect -- protect the occupants as
2 they're trying to get out of the building. Rating the
3 doors, providing a different door type so that, if
4 there was a fire, that door would provide additional
5 protection for the occupants to leave the space. And
6 then creating some sort of separation between that
7 first and second floor.

8 Q. Where that picture of the stairwell was?

9 A. Yes.

10 Q. What were the requested improvements to the
11 hallway?

12 A. Adding -- it's called enveloping them with a
13 protection or a barrier which typically is a sheet rock
14 material that burns a lot slower than the -- the
15 paneling that they have there now does.

16 Q. Is the paneling there now proposed to be
17 removed? Do you have any knowledge of that?

18 A. I don't recall if it was proposed to be
19 removed or covered with the other materials.

20 Q. Stopping at that point for a second, we're
21 just going -- going back to your -- your site visits.
22 Have you ever -- had you ever been at the Midway
23 Baptist Church prior to the school request?

24 A. Many years ago when I was in environmental
25 compliance for storm and water. I think it was the

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1 newest sanctuary when that was developed. I was out
2 there in the other -- my other capacity as
3 environmental --

4 **Q. For your storm and water --**

5 A. -- compliance. Yes.

6 **Q. Environmental compliance. All right. Thank**
7 **you. I forgot to ask you about that. So fast**
8 **forwarding to the requests before the county.**

9 **If -- if an A-3 designation were to be**
10 **applied to the -- to the building for school purposes,**
11 **what would that exemption -- what would -- changes**
12 **would need to be made to the property if that exemption**
13 **was provided?**

14 A. If it was provided, there would be no code
15 required changes to be made to the property.

16 **Q. So would -- it would sit as is?**

17 A. Yes, it could.

18 **Q. To the best of your knowledge?**

19 A. Uh-huh.

20 MR. KENDREE: Thank you, Jennifer. That's
21 all I have.

22 THE WITNESS: Thank you.

23 CROSS-EXAMINATION

24 BY MS. BROWN:

25 **Q. So, Ms. Culver, you said at the initial**

1 meeting that you discussed the type of teaching that
2 was going to occur; is that correct?

3 A. Yes.

4 Q. So you discussed what they were going to be
5 teaching and used that to determine what the use was
6 going to be; is that correct?

7 A. No. We discussed that they were teaching,
8 and that helped us to determine what the use would be.

9 Q. I believe you testified they would be
10 teaching English, math, things like that and that's --
11 that's what you discussed; is that correct?

12 A. As part of the aspect that they were
13 teaching K through 12, yes.

14 Q. And that informed your determination on the
15 use?

16 A. Yes.

17 Q. Okay.

18 A. It aided.

19 Q. And during this -- the submissions and
20 approvals in your department, you had discussions about
21 what religious education is and whether this A-3
22 applies, did you not?

23 A. Yes.

24 Q. And what is the definition of religious
25 education?

1 A. We don't have a specific definition in the
2 building code of religious education. We have a
3 definition of religious -- places of religious worship
4 and education associated with that that I could read
5 from the code if you'd like to hear it.

6 **Q. But you -- there's no definition of**
7 **religious education; is that right?**

8 A. Correct.

9 **Q. But that was part and parcel of the decision**
10 **making in this process, right, is -- is what qualifies**
11 **as religious education?**

12 A. The decision was made based on what
13 qualifies as education in a K through 12 setting.

14 **Q. But within the department, you had**
15 **discussions about what qualified and if the -- this was**
16 **religious education, correct? As qualified for --**

17 A. As -- as to whether or not --

18 **Q. -- that accessory piece?**

19 A. As to whether or not it fit the exemption
20 for accessory use to the A-3 designation based on
21 building code requirements.

22 **Q. And so that's solely, then, based on what**
23 **they were teaching at the school, correct?**

24 A. Not based on what they were teaching, but
25 based on the educational definition of education of K

1 through 12 for six or more students.

2 Q. So they can have religious education
3 currently, correct, as long as it doesn't meet the
4 build -- the education -- education requirements for
5 the state; is that right?

6 A. Religious education associated with the
7 religious -- the religious uses of the church, for the
8 religious functions of the church. The way the
9 building code defines a place of religious worship.

10 Q. And so then how would you define religious
11 education not an extension of the religion of the
12 church?

13 A. We don't have a building code definition of
14 religious education so we're not defining the religious
15 education. We're defining the place of religious
16 worship.

17 Q. And -- but the code allows for religious
18 education, correct?

19 A. Associated with the place of religious
20 worship definition, yes.

21 Q. Okay. And Midway currently uses this as a
22 place of religious worship, right?

23 A. To my knowledge.

24 Q. And there are no time limitations within the
25 code on when they can have religious education

1 associated with that religious worship, correct?

2 A. No time limits.

3 Q. And so they can potentially, I mean, in
4 theory, 24 hours a day, seven days a week have
5 religious education classes going on there currently;
6 is that correct?

7 A. Based on the building code requirements,
8 during religious functions.

9 Q. Really? Where does it say that in the
10 building code requirements?

11 A. The definition that's provided for places of
12 religious worship, and then associated with the
13 ancillary uses to that. The ancillary uses meaning the
14 accessory occupancies or those associated with the
15 ancillary -- or, excuse me, that are ancillary to the
16 main occupancy of the building or a portion thereof.
17 That leads us back to the place of religious worship
18 definition, a building or portion thereof intended for
19 the performance of religious services.

20 Q. Okay. And so something that is ancillary is
21 in support of that, correct?

22 A. Based on the building code requirements,
23 it's an area or use that is necessary for the principal
24 occupancy to properly function.

25 Q. Where is that definition?

1 A. That's a definition as such. It's under
2 508.2, the explanation of accessory occupancies.

3 Q. But there -- that is a general definition of
4 accessory occupancy, correct?

5 A. That's not a definition. It's the code
6 section of accessory occupancy.

7 Q. And that is -- that is general, but there is
8 a specific code section that says, "Religious
9 educational rooms and religious auditoriums, which are
10 accessory to places of religious worship, in accordance
11 with Section 303.1.4 and have occupant loads of less
12 than 100 per room or space shall be classified as Group
13 A-3 occupancies."

14 And that is in 305.1.1, and that's very
15 specific to religious education and religious
16 auditoriums, correct?

17 A. That points you to accessory occupancies
18 which is what I was reading from.

19 Q. But there is -- but there is no limitation.
20 I mean, they can have more classroom space than they
21 actually have sanctuary space and still meet the A-3
22 occupancy, correct?

23 A. The code doesn't -- it doesn't dictate
24 specifically, if that exemption is applied, how much
25 classroom space it can have --

1 Q. It --

2 A. -- based on --

3 Q. No. It merely limits the number of people
4 that can use it, correct?

5 A. No. Not under an A-3. It doesn't limit the
6 number of people.

7 Q. Well, it says, "And have occupant loads of
8 less than 100 per room or space."

9 A. Excuse me. For that -- for that particular
10 exemption to apply, you're correct, it limits the
11 amount of people to 100.

12 Q. And so that exemption, Midway can then have
13 religious education any time, correct, at its church?

14 A. It doesn't -- the code doesn't specify that.

15 Q. And it doesn't limit -- limit the times
16 either, does it?

17 A. No. It doesn't limit time.

18 Q. Okay. So in the -- you approved all the
19 review comments; is that correct?

20 A. Yes.

21 Q. And in the last letter for the review
22 comments, you said that -- or the reviewer that you
23 approved said that, "Accessory to places of religious
24 worship is when the spaces are being used for
25 occupancies that are ancillary to the main building or

1 portion thereof to include Sunday school, Bible study,
2 et cetera, and not for academic education."

3 So, ultimately, the issue here is whether or
4 not they're -- what they're teaching qualifies as
5 academic education, not whether it's religious
6 education.

7 Is that -- is that how you're determining
8 that? What their teaching is what actually determines
9 the codes?

10 A. Not what they're teaching, but that they are
11 teaching.

12 Q. You don't think religious education is --
13 involves teaching?

14 A. My opinion? It could, yes.

15 Q. Okay. So you're not shutting down Midway
16 Baptist Church as it currently sits, are you?

17 A. No.

18 Q. So as the building is currently used, there
19 is no issue from York County's perspective with the
20 continuing use; is that correct?

21 A. As it's currently used, yes.

22 Q. Okay. And so they can have 100 people, the
23 pastor testifies sometimes they have 100 people in
24 there, and that does not present such a safety issue
25 that they need to make any upgrades or improvements to

1 use that for -- for their current use, right?

2 A. Correct.

3 Q. And it doesn't present any kind of safety
4 problems that would allow them to continue using that
5 in the future, correct?

6 A. As the -- the church use, correct.

7 Q. And so for religious education, then, that -
8 - it doesn't present a problem. But from the county's
9 perspective, if it meets state requirements, all of the
10 sudden, it's a safety issue?

11 A. If it --

12 MR. KENDREE: I'd object. That's
13 argumentative.

14 THE COURT: Overruled.

15 THE WITNESS: If it meets education
16 requirements, it's a change of occupancy from a
17 building code perspective, and it does not currently
18 meet the building code requirements for that occupancy
19 classification.

20 BY MS. BROWN:

21 Q. And so that is totally based on what -- what
22 they are teaching, correct?

23 A. It's based on the K through 12 education of
24 over six students.

25 MS. BROWN: No further questions, Your

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1 Honor.

2 MR. KENDREE: Very briefly.

3 REDIRECT EXAMINATION

4 BY MR. KENDREE:

5 Q. Earlier in your testimony, cross-
6 examination, you commented about the conversation with
7 Pastor Dellinger, and the question was something like
8 that -- you based your determination on that
9 conversation. And I don't know if there was another
10 question coming, but your response was it aided the --
11 the determination.

12 It wasn't determinative of that decision; is
13 that right?

14 A. Yes.

15 Q. You had talked in the cross-examination
16 about the building code, specifically 508.2, and -- and
17 you also referenced in your discussion 305.1.

18 MR. KENDREE: I'm going to show you what's
19 already been stipulated to, Your Honor. I'd just ask
20 you to --

21 THE COURT: Which one? I'm sorry to
22 interrupt.

23 MR. KENDREE: Yeah.

24 THE COURT: Which one is this because --

25 MR. KENDREE: It's a great question.

1 THE COURT: -- you gave me, like, three of
2 them.

3 MS. BROWN: I don't know that that's been
4 marked yet.

5 MR. KENDREE: It has not. I believe it's
6 that darker one right there.

7 THE COURT: This one? Okay.

8 MR. KENDREE: Yes.

9 THE COURT: Yep. Okay.

10 MR. KENDREE: I'm sorry.

11 MS. BROWN: I think it's 13.

12 MR. KENDREE: Thanks so much.

13 It's been marked as 13.

14 (DEFENDANT'S EXHIBIT 13 WAS RECEIVED INTO
15 EVIDENCE)

16 BY MR. KENDREE:

17 Q. Is that the code provision you were reading
18 from, Jennifer?

19 A. Yes, it is.

20 Q. And within that provision, the contention
21 is, as an ancillary use, a room as a religion -- a
22 classroom for church purposes is okay under A-3?

23 A. Correct.

24 Q. But the -- the rub is educational purposes
25 of six or more --

1 A. Yes.

2 Q. -- students? And is that -- is that six or
3 more requirement in that provision I just gave you? Do
4 you know?

5 A. It's in 305 in the Educational Provision.

6 Q. And is that part of that document?

7 A. It is.

8 Q. Okay. Thank you. Do you -- do your
9 concerns about the structure exist regardless of the
10 use?

11 A. From an overall build -- current building
12 code perspective, yes. The concerns are still there.
13 But from a requirement, if the use stayed as it is
14 today, no. The building code does not take concern
15 with that because it was built under standards in 1960s
16 time frame.

17 MR. KENDREE: Thank you.

18 That's all I have.

19 MS. BROWN: I have no more questions, Your
20 Honor.

21 THE COURT: Now, we can break and --

22 MS. BROWN: Yes, please.

23 MR. KENDREE: Can we get a bite to eat?

24 MS. BROWN: Yes. Absolutely.

25 THE COURT: Before we break, may I ask what

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1 number this last exhibit, I believe --

2 MR. KENDREE: 13.

3 THE COURT: That was 13?

4 MS. BROWN: 13.

5 THE COURT: Okay. Thank you. Reconvene at
6 2:15 or 2:30?

7 MR. KENDREE: 2:30 works for me.

8 MS. BROWN: That's fine, Your Honor.

9 THE COURT: All right. We're done.

10 (OFF THE RECORD)

11 THE COURT: All right. Mr. Kendree, call
12 your next witness.

13 MR. KENDREE: Thank you. York County will
14 call Jamie Catoe to the stand, please.

15 THE COURT: Mr. Catoe, if you could just
16 raise your right hand.

17 JAMIE CATOE,
18 having first been duly sworn, testified as follows:

19 THE COURT: You may be seated.

20 DIRECT EXAMINATION

21 BY MR. KENDREE:

22 Q. Jamie, can you state your full name for the
23 record, please, sir?

24 A. James William Catoe, III.

25 Q. And with whom are you employed?

1 A. York County Building and Codes.

2 Q. And what is your official title?

3 A. Building official.

4 Q. How long have you held that position?

5 A. I've been with Building and Codes for 30
6 years. Been building official for about four.

7 Q. How long have you been with York County?

8 A. Thirty-five years.

9 Q. Where were you those first five years? So
10 30 years with Building and Codes?

11 A. Yes.

12 Q. Do you know the meat of the matter? Have
13 you -- are you familiar with the issues in this case?

14 A. Yes, sir. I am.

15 Q. Please tell the Court how you became
16 familiar with -- with the questions.

17 A. Our -- our staff members, Jennifer and
18 Nicole, made a field visit out to Midway Baptist and,
19 after the reviews came back and there was comments back
20 from Midway and -- and us. There was obviously a -- a
21 hangup on the type of occupancy. That's how I got
22 involved in it.

23 Q. What was that last part? I'm sorry.

24 A. There was a lot -- there was obviously a
25 disagreement on the occupancy type and that's when I

1 got involved.

2 Q. And so how do you undertake to determine
3 what applicable building code -- what -- what building
4 code applies?

5 A. The International Building Code.

6 Q. The owner?

7 A. I'm sorry?

8 Q. What did you -- sorry. I'm having trouble -
9 -

10 A. You asked me what code applies.

11 Q. Oh, the building code, absolutely.

12 A. Yes, right.

13 Q. How -- how do you determine what part of
14 that building code applies to the question of
15 occupancy?

16 A. Oh, okay. Occupancy type. It's -- it's --
17 the building code is broke into certain areas and types
18 of construction, occupancy types, and then it goes on
19 into some other things. But that's the very, you know,
20 the basics there are the first few chapters there where
21 you have to determine what the type of occupancy or
22 type of construction that the building is going to be
23 constructed as.

24 Q. Have you had an opportunity to determine
25 what occupancy applies in this case?

1 A. Yes.

2 Q. What -- what occupancy is that?

3 A. Educational.

4 Q. And why did you reach that determination?

5 A. When we looked at the definitions of
6 educational, we determined that that's where it best
7 fit at. It's K through 12 with --

8 Q. K through 12 and with more than six
9 students?

10 A. Yep. Yes.

11 Q. Have you been out to the site?

12 A. No, sir. I have not.

13 Q. But you are familiar, based on the
14 application, with the intended uses of -- of the
15 building?

16 A. Yes, sir.

17 Q. Or at least a part of that building as I --

18 A. Yep. Correct.

19 Q. -- understand it? How would you categorize
20 the intended use?

21 A. Say that again?

22 Q. Certainly. I mean, what -- what -- so we're
23 talking about Education E building code application.
24 To what portion of that building are you determining
25 that applies?

1 A. To the area where they're having the school
2 at.

3 Q. And currently, do you know what that -- that
4 are of the school is -- is categorized under the
5 building code?

6 A. A-3 currently.

7 Q. And why is it A-3 currently?

8 A. Because it's -- it's Sunday school
9 classrooms. It's religious education.

10 Q. And that is associated with the principal
11 use?

12 A. Yes, sir.

13 Q. What does -- does the concept of mixed use
14 apply at all --

15 A. Yes, sir.

16 Q. -- in this case?

17 A. The part that's not being used as a school
18 will still be A-3. Just be applied, the educational
19 use -- the educational -- the requirements for the
20 educational occupancy just to the educational part.

21 Q. So if you want to upfit a certain part of
22 the building, you don't have to do the whole building
23 if it's not impacted?

24 A. Correct.

25 Q. And can you tell the Court what section of

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1 the building code you relied upon to make the E
2 determination? What code section is that?

3 A. I don't have my code book with me, but can -
4 -

5 MR. KENDREE: Can we approach and hand him a
6 -- a code book, Your Honor?

7 THE COURT: Yes.

8 MR. KENDREE: Excuse me. Thank you.

9 THE WITNESS: 305. Section 305.

10 BY MR. KENDREE:

11 Q. So you've heard the -- the commentary about
12 educational purposes and religious classes. What is
13 your view of that comparison?

14 A. That's how we viewed it. We viewed it as
15 educational classes with a religious -- with religion
16 being taught, as well.

17 Q. A faith-based curriculum?

18 A. Yes, sir.

19 MR. KENDREE: That's all I have, Mr. Catoe.
20 Thank you.

21 THE COURT: Ms. Brown?

22 CROSS-EXAMINATION

23 BY MS. BROWN:

24 Q. So, Mr. Catoe, you said currently, it is A-3
25 and that allows religious education, correct?

1 A. Yes, ma'am.

2 Q. And then in Section 305 that you cited that
3 you used to make that determination, there is this
4 exemption for religious educational rooms, correct?

5 A. Uh-huh.

6 Q. And so you said in making the determination,
7 you looked at what was being taught, correct?

8 A. No. Well, sort of, yeah. But no. We don't
9 -- we don't care that it's a -- I mean, we -- we looked
10 at it as it is a K through 12 school with a religious-
11 based curriculum.

12 Q. So it has a religious-based curriculum. So
13 how is that religious education?

14 A. Because we don't -- we don't -- we do not
15 believe -- we don't believe it's religious education.
16 We believe it's just -- it's education with a religious
17 values applied.

18 Q. And how do you define religious education?

19 A. It's not -- not a definition in the code
20 book.

21 MS. BROWN: I have no further questions,
22 Your Honor.

23 MR. KENDREE: That's all I have.

24 Thank you, Mr. Catoe.

25 THE COURT: Okay. Thank you.

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1 Any other witnesses, Mr. Kendree?

2 MR. KENDREE: I have one more witness, Your
3 Honor, and I apologize. I -- I misplaced one document
4 that we stipulated to. May I have one minute to find
5 it, please?

6 THE COURT: Yes, certainly.

7 MR. KENDREE: Thank you. Fortunately, it's
8 right here.

9 Yes. Thank you.

10 Call on Donnie Helms to -- to the stand.

11 THE COURT: Oh, I -- I have my copy. Thank
12 you.

13 If you could please raise your right hand?

14 Okay.

15 DONNIE HELMS,
16 having first been duly sworn, testified as follows:

17 THE COURT: Thank you.

18 MR. KENDREE: Mr. Helms will be our last
19 witness.

20 DIRECT EXAMINATION

21 BY MR. KENDREE:

22 **Q. Please state your full name for the record.**

23 **A.** Donnie L. Helms, Jr.

24 **Q. And with whom are you employed?**

25 **A.** York County Fire.

1 Q. And what is your title?

2 A. Senior deputy fire marshal.

3 Q. How long have you been senior deputy fire
4 marshal and how long have you been with the fire
5 department?

6 A. I've been in the fire service --

7 Q. Service.

8 A. -- for over 30 years. I've been with York
9 County fire for 23. Senior deputy for the last two and
10 a half.

11 Q. Your predecessor was Mr. Tice, who was
12 talked about in some of the testimony today?

13 A. Yes, sir.

14 Q. How did you become familiar with the facts
15 of this case?

16 A. Well, Allen had informed me of it when he
17 was training me right before he retired. Some of the
18 facts. I mean, I believe in May, I met with Jennifer
19 and Nicole on site and we walked the site after the
20 first review comments were sent out.

21 Q. So you were at that initial meeting?

22 A. The second meeting. Yes, sir.

23 Q. You went to the second, not the very first
24 one?

25 A. Yes, sir.

1 Q. I apologize. I misunderstood. Is that the
2 only time you've been there?

3 A. Yes, sir.

4 Q. Did you walk -- there was some photographs.
5 I don't recall what exhibit that -- that is. But were
6 you able to walk the halls of the building and -- and -
7 - and the grounds?

8 A. Yes, sir.

9 MR. KENDREE: That's Exhibit, what is that,
10 1? 1?

11 THE COURT: It might be.

12 BY MR. KENDREE:

13 Q. Do those photos accurately reflect your
14 recollection of -- of the premises on the -- on the day
15 you visited?

16 A. They do.

17 Q. There was some commentary or -- or there was
18 testimony. I apologize. There was testimony earlier
19 that the photograph on the top, the one of the hallway,
20 is actually on the second floor.

21 A. That is correct. You can see the attic
22 access hole in the picture.

23 Q. Perfect. Thank you. Good call on that.
24 The -- did you -- does it look like the first floor
25 hallway?

1 A. Yes, sir. The first floor mimics the second
2 floor with the current wall coverings and arrangements.

3 **Q. The -- the second photograph is of the**
4 **stairwell. Does that appear to be similar the -- to**
5 **the day you -- you visited?**

6 A. Yes, sir. That -- that's the one.

7 **Q. And it has wood paneling on the side?**

8 A. Yes, sir.

9 **Q. And carpeting?**

10 A. Uh-huh.

11 **Q. Let's stop there for one -- one second and**
12 **ask you a question about the Fire Prevention Code.**

13 MR. KENDREE: Which we stipulate --
14 stipulated to, Your Honor. This will be, I believe,
15 our last exhibit. Might be 14?

16 THE COURT: Might be 14.

17 (DEFENDANT'S EXHIBIT 14 WAS RECEIVED INTO
18 EVIDENCE)

19 MR. KENDREE: Thank you.

20 BY MR. KENDREE:

21 **Q. Could -- do you recognize that -- that code?**

22 A. Yes, sir, I do.

23 **Q. And what is that?**

24 A. That's the York County ordinance called the
25 Fire Prevention Code.

1 Q. And what is the intent of that code?

2 A. The intent? This intent is intended to
3 prescribe regulations consistent with the national
4 recognized practice for the reasonable protection of
5 life, property, and hazards of fire explosion due to
6 storage, use of handling hazardous materials,
7 substance, and devices, and from conditions hazardous
8 to life and property for the use of the occupancy of
9 buildings and premises.

10 Q. And --

11 THE COURT: Excuse me. May I interrupt you
12 for a second?

13 MR. KENDREE: Absolutely.

14 THE COURT: Are you on -- oh, you were on
15 this right here? This -- this --

16 MR. KENDREE: Yes, ma'am.

17 THE COURT: -- document? This is 14?

18 MR. KENDREE: Yes, ma'am.

19 THE COURT: Not this one. Okay.

20 MR. KENDREE: Oh, yeah. Not that one.

21 THE COURT: Okay. Not that one. Okay.

22 MR. KENDREE: Sorry.

23 THE COURT: I apologize.

24 THE WITNESS: Do you want me to do B as
25 well?

1 BY MR. KENDREE:

2 Q. You can because I want to ask you about it.

3 A. Okay. "Compliance with the standards of the
4 National Fire Protection Association or -- or the
5 Insurance Association and other National Approved
6 Safety Standards shall be deemed a prima facie evidence
7 of compliance of this intent."

8 Q. I think it didn't speak towards what -- what
9 I thought. I apologize. But -- but what codes do you
10 enforce?

11 A. The 2021 International Fire Code. Well,
12 amended to be the 2021 South Carolina Fire Code.

13 Q. And is that integrated or referenced in
14 tandem with the building code?

15 A. Some chapters are. Yes, sir.

16 Q. Some chapters. If you look to the
17 "Responsibility for Enforcement," who does that fall
18 upon?

19 A. "The director of fire safety shall be
20 responsible for administering and enforcing the
21 provisions of this chapter. He shall function as the
22 fire code official" or his duly recognized person, I
23 believe it should say somewhere in there. Direct --

24 Q. Duly authorized representative?

25 A. Yep. Duly recognized representative. Yes,

1 sir.

2 Q. Thank you.

3 A. Uh-huh.

4 MR. KENDREE: That is entered into evidence,
5 I believe.

6 BY MR. KENDREE:

7 Q. So getting back to the -- to the site visit,
8 were you -- you were able to walk the classrooms?

9 A. Yes, sir.

10 Q. The hall?

11 A. Uh-huh.

12 Q. And the grounds?

13 A. Yes, sir.

14 Q. Who did you interact with from Midway
15 Baptist Church?

16 A. Me and Nicole kind of stuck together a
17 little bit and made our notes because we worked closely
18 together a good bit. I think I spoke with the pastor
19 and Ms. Angie (phonetic) while I was there as well.

20 Q. And I believe that visit, you testified to
21 was post plan submission?

22 A. That's correct.

23 Q. So why did you go back out?

24 A. They requested a meeting to go back out so
25 they would understand there were -- all the code stuff.

1 You know, you could explain it to them in layman's
2 terms.

3 Q. And you had -- and you had that dialogue
4 with them?

5 A. Yes.

6 Q. So what was the result of that meeting?

7 A. We just -- it was information only, I mean,
8 some --

9 Q. You made no subsequent determination after
10 that?

11 A. No. I mean, as far as that, we didn't.

12 Q. Okay.

13 A. So no.

14 Q. Do you have any impressions of the condition
15 of the building that is sought to be the school?

16 A. Yes.

17 Q. What are -- what are those impressions?

18 A. These codes are written because something
19 happened in the past. And to have a school, an
20 educational occupancy in that type of building
21 construction, I think would be unsafe. The wall
22 coverings aren't rated or even have a flame spread
23 rating, means they can -- they'll catch fire real
24 quick. They burn readily, quickly and spread quickly.
25 There's no fire alarm right now to give anybody any

1 early detection that there was a fire in the building.
2 The stairway would provide a chimney effect.

3 Q. What does that mean?

4 A. That means it is going to -- that's just
5 going to help air and train the fire to keep moving
6 forward.

7 Q. And what's the ignition point for the
8 paneling?

9 A. I don't know that exactly right off the top
10 of my head, but that's way -- the way lower ignition
11 point than would be a sheet -- piece of sheet rock.

12 Q. And did you hear the testimony addressing
13 that sheet rock?

14 A. Yes.

15 Q. What -- what -- what is intended to provide
16 protection?

17 A. The intent to provide an envelope-type
18 construction, as Ms. Culver spoke of, is to give the
19 occupants a protected way out of the building when a
20 fire is detected, and to get out quickly and safely.
21 So to protect them from the spread of fire.

22 Q. So it holds back the fire?

23 A. It holds back the fire. It -- it
24 compartmentalizes the fire to a certain degree so it
25 can't move as fast. You know, the doors are 20-minute

1 doors, one-hour wall, the studies say, you know. And
2 you're going to get at least 35, 40 minutes versus this
3 paneling and the type of doors that are there now, the
4 Lauan, not much time at all.

5 **Q. It's easily combustible?**

6 A. Very combustible.

7 **Q. Well, how does it burn, hot or -- or low?**

8 A. Oh, it burns -- it'll burn hot. It'll burn
9 faster, spread quicker -- quicker because of these --
10 what's the covering on the walls.

11 **Q. And -- and why -- so why -- so it's for the**
12 **public health and safety that you're placing that?**

13 A. Yes. I mean, that's -- that's the egress
14 path, and we are trying to get people out of the
15 building. Our intent is to keep people safe by giving
16 them the proper number of exits, protection until they
17 get there. And, of course, the early detection is
18 required for the Group E occupancy, which is the fire
19 alarm, which that's always a good thing to know
20 beforehand.

21 **Q. But no fire alarms there now?**

22 A. There is no fire alarm in that -- in that
23 portion of the building where they proposed the school
24 to be, there is no fire alarm in sight.

25 **Q. And you saw the fire extinguisher, right?**

1 A. Yes, sir.

2 Q. Was it high or low?

3 A. It's a little high for code purposes.

4 Q. The -- the first floor had that same
5 condition?

6 A. I believe they were in the same location on
7 the first floor. Yes, sir.

8 Q. There was a photograph of a stairwell,
9 looked like it had a wrought iron rail, if I'm not
10 mistaken.

11 A. Yes. I think that came out in the back.
12 Yes, sir.

13 Q. Was that stairwell proposed for any use
14 regarding the school?

15 A. I don't think they -- the architect plan on
16 using this portion of the -- that is an exit, was just
17 a photograph taken of when --

18 Q. Of the condition?

19 A. Of the conditions, yeah. Because that's the
20 exit from the second floor, correct? If I'm saying --
21 so -- and they're proposing not to use the second
22 floor.

23 Q. That's right.

24 A. They're going to wall off the first floor at
25 that stairwell and only use the first floor.

1 Q. And your contention is, right now it should
2 have a door?

3 A. It should have a door, a rated door with a
4 rated corridor.

5 Q. What are your overarching concerns regarding
6 the condition of that site right now?

7 A. It would concern me if you're having school,
8 I think. Sunday school, you -- you're limiting your
9 time when -- let me go back to explain fire marshal for
10 a minute.

11 Q. Absolutely.

12 A. I only -- not only do I do code, we also are
13 charged with fire investigation, which in that,
14 learning that and -- and investigating fires, we
15 actually have to learn how fire behaves and how it
16 moves. So with that being said and both -- both hats
17 that I wear, that fire is going to move very fast, very
18 quickly and be an unsafe condition.

19 Q. So --

20 A. But then back to when it was built, it's
21 intended for several hours on Sunday morning, Wednesday
22 night, a couple of meetings during the week. We're not
23 loading this building with students for, you know, six,
24 seven hours a day hanging art on the walls, things like
25 that. Displaying art, you know, things like that,

1 actually making the condition even worse if it doesn't
2 change.

3 Q. So art on the wall would enhance a fire. Is
4 that what you're saying?

5 A. Oh, yeah. Paper on the wall would enhance a
6 fire in a heartbeat. Current code doesn't allow more
7 than 20 percent of the artwork to be covered on the
8 wall in an educational occupancy.

9 Q. I asked the question. Do you know if the
10 plans required the paneling to come down, or were they
11 going to be enveloped?

12 A. I -- I want to say when I remembered it,
13 they were going to remove the current wall covering and
14 install two layers of five-eighth sheet rock, I believe
15 was the --

16 Q. And then also on the ceiling?

17 A. Yeah. And they would envelope the ceiling
18 with two layers on the ceiling.

19 Q. And do you have a knowledge of the -- of the
20 doors? Are they hollow or solid?

21 A. Those -- I believe the doors are hollow
22 Lauan, which the doors will be replaced with a stamped
23 certified rated fire door, which is 20 minutes, which
24 is what is code.

25 Q. And what is Lauan?

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1 A. It's just a -- it's almost a material like
2 the paneling on the wall that's really thin. It's just
3 thin layers of wood put together.

4 **Q. In your 30 years of inspecting fires and --**
5 **and sites, do you have an opinion as to the safety of**
6 **this current site and its current condition for a**
7 **school?**

8 A. Yes, I do.

9 **Q. And what is that?**

10 A. That it would be unsafe condition to put the
11 kids in that -- in that type of environment without
12 some early detection and some protection for them to
13 exit the building in a reasonable amount of time.

14 **Q. Would that also include the suppression**
15 **paneling?**

16 A. That would also -- yeah, but the protect --
17 exit protection is being the rated corridor. Yes.

18 MR. KENDREE: Thank you, Donnie. Please
19 answer any questions Ms. Brown will have.

20 CROSS-EXAMINATION

21 BY MS. BROWN:

22 **Q. Now, you said that this is based on use,**
23 **correct?**

24 A. Yes, ma'am.

25 **Q. Okay. So who determines the use?**

1 A. The building official is charged with it,
2 but also I have the definition in my book for an A-3,
3 if that's where you're going. Is a church religious?
4 All these things you-all said all day long. You go to
5 educational, and it's K through the 12th grade.

6 Q. And there is also that exemption for
7 religious educational rooms that have occupant loads of
8 less than 100 per room or space in the fire code as
9 well, correct?

10 A. I believe somewhere it's in there. Yes,
11 ma'am.

12 Q. All right. And so if the use dictates that,
13 then, as we've heard earlier today, there's no
14 definition for religious education in the code,
15 correct?

16 A. That is correct.

17 Q. Okay. And I believe we've heard quite a bit
18 of testimony about how the use determination of the
19 county was looking at what was being taught. And that
20 is -- that is the same thing that -- that you --

21 A. That is not how I determined it. I
22 basically determined it on the fact that it's teaching
23 children K through 12 -- through the 12th grade.
24 That's how I determined that.

25 Q. And then within that same section is this

1 exemption --

2 A. That is correct.

3 Q. -- for religious education.

4 A. But it is in my opinion that it doesn't meet
5 that exemption because those are in -- rooms were
6 intended for Sunday school, minimum to moderate use,
7 moving into a heavy use situation.

8 Q. Where in the code does it say that that was
9 the intent?

10 A. I mean, it doesn't say really. I mean, it
11 says -- it's my determination that it's a -- it's an
12 educational occupancy.

13 Q. There's -- but there's nothing in the code
14 that limits the time of use for religious education at
15 all.

16 A. No, ma'am. There's not. It's the use of.

17 Q. Okay.

18 A. It's what are they doing there.

19 Q. Okay. So -- so there's -- there's no limit
20 in the code. And as the building sits right now,
21 you're not going in there to shut them down, right?

22 A. No, ma'am. I have no -- no reason to.

23 Q. And as it currently sits, it -- it met the
24 code at the time it was constructed and it continues --

25 A. That is correct.

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1 Q. -- to be -- it continues to be in use for
2 religious education as part of the church, correct?

3 A. Yes. Yes, ma'am.

4 Q. Okay. So you mentioned that it was unsafe
5 for kids to be in there, but don't they have kids on
6 other times when the church meets in that building?

7 A. Yes, ma'am.

8 Q. Okay. All right. But the -- the building
9 is perfectly fine to continue using by the church?

10 A. The building is -- was built and has no
11 current violations under the code it was built under.

12 Q. Okay.

13 MS. BROWN: All right. No further
14 questions, Your Honor.

15 THE COURT: Any redirect, Mr. Kendree?

16 MR. KENDREE: Yes, Your Honor. Thank you.

17 REDIRECT EXAMINATION

18 BY MR. KENDREE:

19 Q. Do your -- two -- two points, I believe.
20 The -- the first is the A-3 exemption that's addressed.
21 Is it your contention or belief that that is because it
22 is ancillary to the principal use of the church? Or is
23 it because it is a use consistent with the church
24 services? How do you -- how do you make that
25 determination? How do --

1 A. About the -- I just -- I -- I don't think it
2 applies. I just -- I -- I'm not quite sure where
3 you're going.

4 **Q. Okay. Sure.**

5 A. But yeah, I just --

6 **Q. I can -- I can rephrase that.**

7 A. Yeah. Help me.

8 **Q. She -- Ms. Brown commented about an**
9 **exemption --**

10 A. Right.

11 **Q. -- under A-3. You made the determination**
12 **that exemption did not apply.**

13 A. Is in my opinion, it did not apply.

14 **Q. And that is because of the -- is that**
15 **because of the customary uses?**

16 A. That's the customary usage of what the use
17 of the building is for.

18 **Q. My other question on -- on follow-up is: Do**
19 **your -- notwithstanding the use determination, do your**
20 **concerns on the safety still remain?**

21 A. Yes, sir. They do.

22 MR. KENDREE: That's all I have. Thank you,
23 Your Honor.

24 THE COURT: Any recross, Ms. Brown?

25 MS. BROWN: Yes.

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1 RECROSS-EXAMINATION

2 BY MS. BROWN:

3 Q. So you mentioned customary use of the
4 building, so doesn't this apply to all types of
5 religious buildings, this exemption?

6 A. It would.

7 Q. So for other religions, how would you
8 determine their customary use? Because their customary
9 use wouldn't necessarily be the same as Midway Baptist
10 Church, correct?

11 A. It's not --

12 MR. KENDREE: Objection.

13 THE WITNESS: -- it's not a custom -- I mean
14 --

15 THE COURT: Overruled.

16 THE WITNESS: -- I may --

17 THE COURT: You -- you can proceed with your
18 answer.

19 THE WITNESS: If you want to use the word
20 customary, I -- you know, that's a play on words to me.
21 I don't think the exemption applies, by the research
22 that we've done, that I think the code is -- is the
23 code, and it is an E. If you are teaching kids through
24 the 12th grade, whether it's teaching, whatever
25 religion or whatever curriculum.

1 BY MS. BROWN:

2 Q. So --

3 A. It doesn't -- the -- the code book doesn't
4 say math or anything -- or anything. The code book
5 says an age and what the age of the kids doing in the
6 room at the time.

7 Q. And then within that same section, it does
8 provide an exemption for religious educational rooms
9 that have occupant loads of less than 100 per room or
10 space, correct?

11 A. It does say that.

12 Q. All right.

13 MS. BROWN: No further questions.

14 THE COURT: Okay.

15 Thank you, Mr. Helms. You're -- you're
16 excused.

17 MR. HELMS: Okay.

18 THE COURT: Yeah.

19 MR. KENDREE: Thanks. Thank you, sir.

20 THE COURT: Nothing further, Mr. Kendree?

21 MR. KENDREE: Nothing from -- more from York
22 County. We rest.

23 THE COURT: Okay.

24 MS. BROWN: The only thing that I have, Your
25 Honor, is I did submit some cases under judicial

1 notice. Do we need to mark those as exhibits? Is that
2 necessary or --

3 THE COURT: You don't -- you don't have to.

4 MS. BROWN: Okay.

5 THE COURT: I'll -- I'll note --

6 MS. BROWN: Okay.

7 THE COURT: -- that they are -- they're
8 received. I can mark them as a court exhibit if you'd
9 like or as a plaintiff's exhibit if -- but they'll be
10 included.

11 MS. BROWN: Okay. That's fine.

12 THE COURT: And I do take judicial notice of
13 these.

14 MS. BROWN: Okay. Thank you, Your Honor.

15 THE COURT: And I'll -- if you, just for the
16 record, want me to state that -- what that is, this --
17 cases of Hunt v. McNair, Hartness v. Patterson,
18 Blackmon v. the South Carolina Department of Health,
19 Mikell v. County of Charleston, Reed v. Town of
20 Gilbert, and Ward v. Rock Against Racism.

21 MS. BROWN: Okay.

22 THE COURT: I think that's it.

23 Ready for closings?

24 MS. BROWN: Yes, Your Honor.

25 THE COURT: All right, Ms. Brown.

1 You have something else while we're here?

2 MR. KENDREE: Oh. I just want to -- if we
3 can have a five-minute recess very quickly.

4 THE COURT: Sure. Go.

5 MR. KENDREE: Thank you.

6 THE COURT: We'll take a five-minute break.

7 (OFF THE RECORD)

8 THE COURT: Okay, Ms. Brown.

9 MS. BROWN: Thank you, Your Honor.

10 So the plain language of the building and
11 codes provides an exemption for religious education
12 uses as long as the rooms or classrooms accommodate 100
13 or fewer people. And it's a specific term within the
14 code that is applied for religious education purposes.

15 York County has arbitrarily decided that
16 because Midway's curriculum also meets the state
17 requirements, that it would no longer qualify as
18 religious education. And unfortunately, you know, this
19 then means that York County is looking at Midway's
20 speech and what they're speaking within their
21 classrooms and determining it -- what is and is not
22 religious education, even though a definition does not
23 exist in the code.

24 And in Ward v. Rock Against Racism, the U.S.
25 Supreme Court said, "A government regulation is neutral

1 so long as that it's not justified in reference to the
2 content of the speech." And if it is -- if it is
3 justified in reference to the content of the speech, it
4 must be strict scrutiny and must be narrowly construed
5 and, further, a compelling government interest.

6 You know, what York County has admitted here
7 today is that the building, as it stands, is not unsafe
8 for Midway to use. It's not unsafe for children to go
9 into. It's not unsafe for religious education. They
10 have decided that when Midway starts speaking in a way
11 that also meets state requirements, then somehow it
12 becomes unsafe. And they've arbitrarily deemed that to
13 no longer qualify as religious education.

14 And so what we're asking the Court to find
15 is that the exemption in the plain language exists in
16 the code. It exists for religious education, and it --
17 and it is a -- an exemption that applies only for
18 spaces that accommodate 100 people or less. And it --
19 you know, the schools -- religious schools fulfill two
20 functions according to South Carolina Supreme Court and
21 the U.S. Supreme Court, and that is religious
22 education and secular education. And so what Midway is
23 doing is religious education, and we're just asking
24 that the Court apply the plain language to find that
25 Midway can continue its religious education and through

1 its school under an A-3 designation on its campus.

2 THE COURT: Thank you, Ms. Brown.

3 Mr. Kendree.

4 MR. KENDREE: Thank you, Your Honor.

5 Plain language of the building code is that
6 educational requirements are needed in the situation of
7 a school -- an educational school. In this case, it's
8 a school. It's a private academy, actually, is how
9 they hold themselves out to be with a curriculum,
10 tuition, standardized testing followed, students that
11 come from all facets of the -- the county, outside,
12 within and without the church. They take class trips.
13 They're holding themselves out as a school. That was
14 the accreditation that was assigned to it by their --
15 by their own Grace accreditation entity. And they are
16 a private academy by their accreditations and by their
17 own requests.

18 You may recall the application for changes
19 in use was to change it from A-3 to E. What is
20 clouding the -- the process is using the word religious
21 education to somehow mean a school. And the
22 traditional customer uses was in the provision that Ms.
23 Brown had one of the witnesses read -- read out,
24 because there are customary uses with Sunday school
25 classes. You'll look at the photograph that was

1 entered into evidence. There's a plaque that says,
2 "Sunday school classes." So that's the traditional and
3 customary use of those rooms.

4 Here, they're inviting families to entrust
5 their children into a school setting, a private academy
6 setting. That transforms the customary usage of a
7 church-related classroom for -- for their religious
8 teachings in conjunction with their primary use as a
9 church. But instead, now they want to be an academy,
10 but yet cloak it in terms of religious class
11 terminology. They are teaching a curriculum with
12 religious overtones. It's a faith-based curriculum.
13 Many schools throughout the state and nation follow
14 that same process. So we would invite the Court not to
15 be confused by terminology.

16 The only person in this room charged with
17 interpreting the building code is the building
18 official, and his pronouncement was that it is
19 educational use. That decision or that interpretation
20 is accorded deference by -- by the courts of South
21 Carolina. Pressley v. REA Construction Company, Court
22 of Appeals of South Carolina, 374 S.C. 283, 648 S.E.2d
23 301, 2007 case. "Construction of statute by agency
24 charged with its administration has courted most
25 respectful deference and will not be overruled absent

1 compelling reasons."

2 Moreover, the testimony from the county's
3 witnesses were that the codes are integrated. And what
4 plaintiff is trying to do is isolate a phrase with a
5 purposeful use of -- of explaining why you don't change
6 a designation by virtue of the teachings of the church
7 to the classes that are taught in association with the
8 -- with the service of the church. Citizens for
9 Quality Rural Living v. Greenville County Planning
10 Commission, 426 S.C. 97, 825 S.E.2d 721, sets out, "The
11 intent of the legislature is not gleaned by taking
12 clauses out of context. We therefore should not
13 concentrate on isolated phrases within the statute."

14 Similarly, the person charged with
15 interpreting the fire code made the same determination.
16 The testimony from the plaintiff was that -- well, they
17 started looking at the code and determining what they
18 thought was the appropriate determination. Well,
19 they're not charged with that. You have 30-plus years
20 in both gentlemen from the county, in their respective
21 fields, making the determination that is -- that is an
22 educational use.

23 The greatest, most telling commentary during
24 the trial about the absurdity of saying that all these
25 classes are related to the church was that, you know,

1 if we're going to operate 24/7, we can operate --
2 there's no limit. We can operate all the time, and,
3 therefore, those classes must be affiliated with the
4 principal use. But that is undercut by the very public
5 pronouncements on their webpage, on their -- on their
6 guidelines to parents and students, that they have a
7 school, that they have an academy. And that is what
8 they want to undertake.

9 The -- the Texas case that we handed up
10 summarizes it best. It says, "Children are accorded in
11 a -- a heightened degree of protection when public
12 health, safety and welfare is -- is at hand in a
13 school. Adults need less attendant protection, but the
14 schools do -- do not." And that case speaks directly
15 to the issues in this Court. The -- the Texas court
16 clearly said that you can't transform a Sunday school
17 class to a -- to a school without increasing the
18 protections under the building code. It also pointed
19 out that safety was a critical factor in -- in whether
20 you should undertake protections to help safeguard the
21 students. And thirdly, cost of improvements is
22 irrelevant because the safety is paramount.

23 It's quite ironic in South Carolina, that
24 with a history of dilapidated schools for generations,
25 is now taking a premise from a private academy saying,

1 we don't want to upfit anything. It's too costly. But
2 you can't put the children's health and safety at risk
3 just because of a -- a monetary burden. But the facts
4 in this case are, the school is holding itself -- the
5 church is holding itself at -- as a school, as a
6 private academy.

7 And that as a result, the singular
8 determination by the statutory authorized person in the
9 code of regulations that are in evidence, that the
10 building official is charged with not only
11 administering the building code but interpreting it.
12 And he has unequivocally interpreted the code to be
13 educational requirement.

14 So absent a clear abuse of his discretion
15 and an error of law, that this Court owes deference to
16 the interpretive measures of those entrusted with that
17 decision-making duty for 30 years. Not whimsical
18 phraseology picking of a -- of a code from untrained
19 and -- and unauthorized individuals. So as a result,
20 we'd ask you find in favor of the defendant and that
21 the determination of educational uses is appropriate
22 designation under the building code, and fire code for
23 that matter. Thank you, Your Honor.

24 THE COURT: Thank you. All right. Well,
25 I'm going to take this matter under advisement. And

1 what I would ask for Counsel is, by no later than the
2 end of January, and if you need additional time let me
3 know, I'd like a proposed order before making a final
4 decision from -- from both Counsel regarding these
5 issues.

6 MR. KENDREE: Thank you, Your Honor. That
7 would be great.

8 MS. BROWN: Thank you, Your Honor.

9 THE COURT: All right. Anything further,
10 Ms. Brown?

11 MS. BROWN: No, Your Honor. Thank you.

12 THE COURT: Anything further, Mr. Kendree?

13 MR. KENDREE: No, Your Honor. Thanks.

14 THE COURT: Okay. Thank you all. And just
15 let me say, for the children that were out in the
16 gallery, I applaud the parents or whoever was sitting
17 with them. They have been absolutely quiet. That's
18 wonderful. They -- and sat peaceful and quiet through
19 this whole trial, and I'm actually amazed by that. So
20 -- so good -- good to that parent or guardian that's
21 with them today, so -- and I thank you all.

22 And if I don't see Counsel prior to
23 Christmas, Merry Christmas.

24 MS. BROWN: Merry Christmas, Your Honor.

25 THE COURT: And have a happy holidays. And

1 to all of you in the gallery, Merry Christmas.

2 AUDIENCE: Thank you. Merry Christmas.

3 THE COURT: All right. This trial is
4 concluded.

5 (TRIAL CONCLUDED)

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CERTIFICATE

I, Doug Yarborough, do hereby certify
that I was authorized to and transcribed the
foregoing recorded proceedings, and that the
transcript is a true record, to the best of my
ability.

Dated this 12th day, of December, 2024.



Doug Yarborough

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