

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM YORK COUNTY
Master-in-Equity

Teasa K. Weaver, Judge

Appellate Case No. 2025-002054

Midway Baptist Church of York,

Respondent

v.

County of York,

Appellant

BRIEF OF RESPONDENT

s/Emily N. Brown
SC Bar # 101131
emily@emilybrownlaw.com
Emily Brown Law LLC
Post Office Box 38113
Rock Hill, South Carolina 29732
(803) 973-0490
emily@emilybrownlaw.com
Attorney for Respondent

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STATEMENT OF ISSUES ON APPEAL

1. Did Appellant properly classify rooms used by Respondent's small, religious school when it refused to apply the building code exception requiring classification of religious educational rooms as assembly occupancy?
2. Did the circuit court err by holding that Respondent's rooms designated for school use qualified as religious educational rooms that are accessory to a place of religious worship and therefore should be classified as assembly occupancy?
3. Did the circuit court err by not deferring to Appellant's interpretation of the building code and by finding Appellant's interpretation arbitrary and capricious based on the testimony of Appellant's building official and other witnesses?
4. Does Appellant's interpretation and application of the building code substantially burden Respondent's free exercise of religion and violate the South Carolina Religious Freedom Act?

COUNTER STATEMENT OF THE CASE

In 2021, Respondent Midway Baptist Church of York ("Respondent" or "Midway") decided to begin a ministry called Midway Christian Academy ("Academy"), a religious school with the primary purpose of providing Christian education to K-12 students. (R. p. 023 ¶ 12; R. p. 107, line 21 - p. 19, line 5) In furtherance of that mission, Midway contacted Appellant County of York, hired an architect as advised by Appellant, and submitted three proposed plans for approval by Appellant on May 10, May 25, and June 8, 2022. (R. p. 112, line 10 - p. 25, line 24; R. pp. 472-480) Appellant denied Midway's applications for different reasons each time. (R. p. 112, lines 13-24; R. pp. 472-480).

On May 11, 2023, Midway filed a declaratory judgment action seeking a determination that the South Carolina Building Code ("SC Building Code" or "SCBC") requires classifying the rooms for use by the Academy as assembly occupancy A-3 rather than educational occupancy (also, "Group E") as Appellant classified them. (R. pp. 22-29) Midway based its action on SCBC § 305.1.1 that requires classifying religious educational rooms, which are accessory to a place of religious worship, with an occupant load of less than 100 as A-3. (R. p. 024, ¶ 20 - p. 025 ¶ 28; R. p. 118, line 17 - p. 119, line 7) On July 3, 2023, Appellant answered denying the allegations and raising affirmative defenses. (R. p. 54-56)

The York County Master in Equity held a trial on December 12, 2024, and filed an order on June 25, 2025 ("Order"), finding in favor of Midway and holding Midway could operate the Academy in its buildings on its church campus as an accessory use to its place of worship, and

those classrooms would retain the accessory occupancy classification as long as Midway complied with the occupancy limit of less than 100 per room or space. (R. pp. 12-13)

On July 7, 2025, Appellant filed a Motion to Alter or Amend the Order under Rule 59(E), SCRPC. (R. pp. 57-71) Respondent filed a reply to Appellant's motion on July 23, 2025, and the court held a hearing on July 24, 2025. (r. pp. 72-80) On September 8, 2025, the court filed Order Rules 52(b) and 59(e), SCRPC, amending its original order ("Amended Order") holding the Appellant's determination that Midway's use does not qualify as religious education or an accessory use of a church as arbitrary, capricious, and not worthy of deference. (R. pp. 16-19) This appeal followed.

STATEMENT OF FACTS

Midway is a Baptist church located in western, rural York County where approximately one hundred people attend church each Sunday. (R. p. 106, lines 16-20; R. p. 121, lines 9-13) Midway also hosts events, including Bible studies, vacation Bible schools, and other events, onsite during most nights of the week. (R. p. 120, lines 9-19) Respondent's campus consists of three buildings, a Sunday school building and chapel ("Sunday School Building"), a sanctuary, and a fellowship building. (R. p. 107, lines 12-20) All buildings are classified as assembly occupancy A-3 under the SC Building Code. (R. p. 116, lines 13-16; R. p. 229, lines 3-6)

In 2021, after studying the Book of Deuteronomy, Midway decided to establish a ministry called Midway Christian Academy ("Academy") to provide an education primarily focused on learning and applying Christian beliefs that would also satisfy South Carolina K-12 academic education requirements. (R. p. 107, line 21 - p. 109, line 5) Midway selected the Sunday School Building as the most appropriate location for the Academy and contacted Appellant to inquire about the process for obtaining approval to use the Sunday School Building for the Academy. (R.

p. 109, line 6 - p. 110, line 17) On multiple occasions, Midway invited Appellant to visit the campus and provide some guidance. (R. p. 111, lines 5-17) Appellant classified the portion of the Sunday School Building as educational occupancy for the Academy. (R. p. 228, lines 2-3, R. p. 472-480)

While working to gain approval, Midway began the Academy at another church in Cherokee County. (R. p. 109, lines 6-8) At the time of trial, the Academy served twenty-five students and planned to serve less than one hundred students in the future. (R. p. 121, lines 14-19)

As guided by Appellant, Midway hired an architect and submitted plans three times. Each time, Appellant denied the plans for a different reason. (R. p. 110, line 25 - p. 111 line 4; R. p. 112, lines 10-24; R. pp. 472-480) After the second denial, Midway began researching the SC Building Code and located an exception in both the educational occupancy and assembly occupancy sections that required classifying religious educational rooms that are accessory to places of religious worship and have occupant loads of one hundred or fewer per room or space a A-3 occupancy. (R. p. 117, line 12 - p. 119, line 7)

Midway approached Appellant with the information and sought to classify the Academy as A-3. (R. p. 123, line 6 - p. 125, line 8) Appellant admitted the SC Building Code does not define religious educational rooms or religious education but claimed the Academy did not qualify as religious education because it met the South Carolina education requirements. (R. p. 213, line 9 - p. 221, line 6; R. p. 228, line 2 - p. 230, line 18) Appellant determined that religious education only applied to activities that occurred during "normal" church meeting times of Sunday morning and Wednesday night and did not apply to the use of the building during weekdays to educate children. (R. p. 213, line 9 - p. 221, line 6; R. p. 228, line 2 - p. 230, line 18)

Midway filed a declaratory judgment action. In the Order, the court determined the rooms qualified as religious educational rooms accessory to a place of religious worship regardless of

whether the instructional content satisfied academic requirements and held Midway could operate the Academy under its current A-3 occupancy classification as long as it the Academy's occupancy remained at less than 100 as required by the SC Building Code. (R. pp. 12-13) In the Amended Order, the court, at Appellant's prompting, delved into Midway's justification that its curriculum qualified as religious education and held Appellant's determination that Midway's Sunday School Building did not qualify as religious educational rooms if the instruction simultaneously qualified as religious and academic instruction as arbitrary, capricious, and not worthy of deference. (R. pp. 18-19)

STANDARD OF REVIEW

"The standard of review for a declaratory judgment action is ... determined by the nature of the underlying issue." *Davis v. S.C. Educ. Credit for Exceptional Needs Children Fund*, 441 S.C. 187, 197, 893 S.E.2d 330, 336 (Ct. App. 2023). The interpretation of a regulation is a question of law determined by the court de novo. *S.C. Dep't of Revenue v. Blue Moon of Newberry, Inc.*, 397 S.C. 256, 260, 725 S.E.2d 480, 483 (2012).

"Regulations are construed using the same canons of construction as statutes." *Id.* at 261, 725 S.E.2d 483. While the court may "give deference to an agency's interpretation of its own regulation," the court "will reject [an] agency's interpretation if it is contrary to the regulation's plain language." *Id.* Therefore, the words in the regulation "must be given their plain and ordinary meaning," and the Court will reject the agency's interpretation where "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).

Furthermore, the Court "may interpret statutes, and ... resolve the case without any deference to the court below." *Davis* at 198, 893 S.E.2d at 336. As the prevailing party, Midway

may raise an additional sustaining ground, and the Court may "affirm the lower court's ruling for a reason other than the one primarily relied upon by the lower court." *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 417, 526 S.E.2d 716, 722 (2000).

ARGUMENT

The Court should affirm the ruling of the court because Appellant failed to properly classify the Academy's occupancy by refusing to apply the plain language of the SC Building Code exception for religious educational rooms that were accessory to places of religious worship. The court did not err in holding the rooms used by the Academy were religious education rooms accessory to places of religious worship. While the court erred in its Amended Order by delving into the definition of religious education in violation of the Establishment Clause, the court did not err in ultimately affirming its original decision and holding Appellant's definition of religious educational rooms was arbitrary, capricious, and not worth of deference. Additionally, the Court should affirm the ruling of the court because Appellant's interpretation of the building code substantially burdens Midway's free exercise of its religion and violates the South Carolina Religious Freedom Act.

I. Appellant improperly classified Midway's building when it refused to apply the plain reading of the building code exception requiring classification of religious educational classrooms accessory to a place of religious worship with an occupancy of fewer than 100 as assembly occupancy.

Currently, Midway's buildings are classified as assembly occupancy A-3 in compliance with SC Building Code § 303.4. Midway does not dispute that the SCBC generally requires an educational occupancy classification for "the use of a building ... of portion thereof, by six or more persons at any one time for educational purposes through the 12th grade." SC Building Code §

305.1. However, in the next sentence, the building code provides an exception to this general requirement that Appellant failed to properly interpret and refused to apply to Midway. The exception states, "Religious educational rooms ..., which are accessory to *places of religious worship* in accordance with SCBC § 303.1.4 and have *occupant loads* of less than 100 per room or space, shall be classified as Group A-3 occupancies." SC Building Code § 305.1.¹ In SCBC § 303, the building code clarifies "accessory religious educational rooms ... are not considered separate occupancies" from the assembly classification from the place of religious worship. SC Building Code § 303.1.4.

"Regulations are interpreted using the same rules of construction as statutes." *Blackmon v. S.C. Dep't of Health & Env't Control*, 441 S.C. 342, 353, 893 S.E.2d 578 (Ct. App. 2022). When interpreting a regulation, one must consider the plain, ordinary meaning of the words. *Id.* Additionally, when the regulation contains both a general and specific provision on the same issue, the more specific provision prevails. *Mikell v. County of Charleston*, 386 S.C. 153, 160, 687 S.E.2d 326, 330 (2009).

Appellant improperly classified Midway's building because it sought to apply only SC Building Code § 305.1 and ignore § 305.1.1. However, proper classification requires reading and applying all portions of the building code, not just the portions Appellant wants to apply. Furthermore, SCBC § 305.1.1 specifies that religious educational rooms accessory to places of religious worship are not classified as educational occupancies. They are classified as assembly occupancies. Therefore, the building code does not require Appellant to apply a mixed-use

¹ Respondent attached relevant sections of the 2021 South Carolina Building Code omitted by Appellant in its brief. Where Respondent refers to sections not attached, it consents to the use of the sections attached to Appellant's initial brief.

occupancy classification to Midway's building for the Academy. The building code classifies the rooms as A-3.

Appellant claims the mixed used occupancy requirements of SC Building Code § 508 only relieve separation requirements between occupancies. In fact, SCBC § 508 includes other requirements, such as limits on the floor area an accessory occupancy may occupy. SC Building Code § 508.2. But as written, building code SCBC §§ 305.1.1 and 303.1.4 require classifying religious educational rooms the same occupancy classification as the place of religious worship to which they are ancillary.

Additionally, Appellant claims religious educational rooms apply only to rooms where Midway teaches Bible studies or Sunday school. However, that interpretation ignores the basic definition of educational occupancy, which applies to rooms of six or more students in grades K-12. S.C. Building Code § 305.1. Appellant admits Midway may teach any topics to any ages of people without limitation of time or use in the existing building classified as A-3. (R. p. 216, line 24 - p. 217, line 19; R. p. 219, lines 12-17; R. p. 247, lines 13-18) Therefore, unless SCBC § 305 applies to all students receiving education meeting the South Carolina requirements, including religious education meeting the South Carolina requirements, then then the exception in 305.1.1 is meaningless and inapplicable. As the circuit court stated, "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." (R. p. 12) Therefore, by refusing to apply SCBC §§ 305.1.1 and 303.1.4 to the Academy, Appellant failed to properly interpret the building code or classify Midway's Sunday School Building.

II. The circuit court did not err when it ruled that the rooms used by Respondent's school qualified as religious education rooms accessory to a place of religious worship and therefore qualified for classification as assembly occupancy rather than educational occupancy.

When considered together, the two orders from the circuit court comprehensively and correctly interpret SCBC § 305.1.1. As cited above, South Carolina law requires interpreting regulations using the same canons of construction as statutes. Regulations must be interpreted within context and according to the plain, ordinary meaning of words not specifically defined within the regulation.

To meet the exception in SCBC § 305.1.1, Midway's building must meet certain requirements. First, as Appellant admitted at trial, Midway must use the building for educational purposes that meet the South Carolina education requirements for K-12 students for § 305 to apply. (R. p. 209, lines 1-9 and 17-20; R. p. 213, line 25 - p. 214, line 16; R. p. 228, line 19 - p. 230, line 9) Then, to qualify as A-3 occupancy under § 305.1.1, Midway must have a religious educational room, which is accessory to a place of religious worship that meets the requirements of Section 303.1.4 and has an occupant load of less than 100 per room or space. Midway testified and Appellant did not dispute that Midway's occupant load for the Academy is less than 100 students. Therefore, we must consider whether Midway's building is a religious educational room that is accessory to a place of religious worship within the requirements of SCBC § 303.1.4.

As the court determined in its Amended Order, interpreting a regulation requires a two-step process where the court first examines the code to determine if it directly addresses the issue. If so, the court must apply the plain meaning of the code. If the code is silent or ambiguous on an issue, then the court will defer to an agency's interpretation unless that interpretation is "arbitrary,

capricious, or manifestly contrary to the statute [or regulation]." *Doe v. Keel*, 440 S.C. 427, 431, 892 S.E.2d 282, 284 (2023).

The building code defines a place of religious worship as "[a] building or portion thereof intended for the performance of religious services." SC Building Code § 202. In its brief, Appellant claims the court erred by using this definition. However, the court cited the definition directly from the building code, and as Appellant pointed out, the court may not change a definition or impose another definition. *Storm M.H. v. Charleston Cty. Bd. of Trs.*, 400 S.C. 478, 488, 735 S.E.2d 492, 498 (2012). Testimony of Appellant and Midway support that Midway currently uses the Sunday School Building for religious worship, and Midway testified that they intended to continue using the building for religious worship. Therefore, the Sunday School building is a place of religious worship.

The building code defines an accessory occupancy as one ancillary to the main occupancy of the building or a portion thereof. SC Building Code §508.2. In its testimony, Appellant admitted the classrooms in the Sunday School Building are currently ancillary to the main occupancy, which is a place of religious worship because Midway uses those classrooms to teach Bible studies, Sunday school, and host events associated with teaching and practicing their religion. Therefore, Appellant admitted the rooms, when used to teach religion, qualify as an accessory occupancy to a place of worship under SCBC § 303.1.4, and the court deferred to Appellant's definition of accessory occupancy.

At trial, Appellant claimed those rooms qualify as religious educational rooms unless Midway begins teaching material that qualifies for academic education credit. (R. p. 215, line - p. 216, line 23; R. p. 228, line 13 - p. 229, line 24; R. p. 246, line 17 - p. 247, line 12) So, the dispute centers on the definition of religious educational rooms. The building code does not define

religious educational room or religious education. However, James William Catoe, III, Appellant's Building Official tasked by law with interpreting the building code, admitted Midway's Sunday school building is currently classified as A-3 because "[i]t's religious education." S.C. Code Ann. § 6-9-30; York County Code §§ 150.50 and 150.51. (R. p. 226, line 2 - p. 227, line 1; R. p. 229, lines 3-12; R. p. 468) Mr. Catoe then testified that the Academy "is a K through 12 school with a religious-based curriculum." (R. p. 231, lines 2-20) He also testified that it did not qualify as religious education, but it was "education with ... religious values applied." (R. p. 231, lines 16-17) Furthermore, Deputy Building Official Jennifer Culver claimed the Academy did not qualify as religious education because it was teaching and then stated that religious education could include teaching. (R. p. 215, line 22 - p. 216, line 1; R. p. 219, line 21 - p. 220, line 14) As the court determined in its order, Appellant defined religious education as a means to interpret religious educational room. However, Appellant's definition excluded what it admitted was a form of religious education. (R. p. 18-19) Therefore, Appellant's interpretation made no sense, and the court concluded it was arbitrary, capricious and not worthy of deference. (R. p. 19) Because Appellant admitted Midway would qualify for the exception in SCBC § 305.1.1 if the Sunday School Building qualified as religious educational room and because Appellant admitted Midway and its Academy used the rooms for religious education, the court properly interpreted the regulation and concluded the rooms qualified as religious educational rooms, regardless of whether the material taught satisfied academic education requirements. Therefore, the Academy met all elements for the exception in SCBC § 305.1.1.

III. While the circuit court erred in its analysis, it did not err when it held Appellant failed to properly interpret religious educational rooms and found Appellant's decision to ignore the written exception for religious educational rooms arbitrary and capricious.

A. The circuit court did not err when it held Appellant failed to properly interpret religious educational rooms and found Appellant's failure to properly classify Midway's rooms designated for Academy use as arbitrary, capricious, and not worthy of deference.

In the Amended Order, the circuit court found Appellant reasonably interpreted accessory to a place of religious worship as "associated with the principal use of the church, functions of the church, or church purpose." Then, the court held Appellant erred by not classifying the Academy as an accessory use because Appellant failed to interpret religious educational rooms. Instead, Appellant repeatedly interpreted religious education and determined what type of education was or was not included within the meaning of religious education. Building Official James Catoe testified that the Academy taught education with religious values. However, he then determined that religious educational rooms did not include that type of instruction because the instruction also qualified for academic educational requirements. Appellant, not the court, used content to interpret religious education and apply that to religious educational rooms.

Based on Catoe's own testimony, a church could never teach anything that qualified for State educational requirements in its religious educational rooms, regardless of how much religion was incorporated. Additionally, he admitted Section 305 did not apply at all unless the teaching met State educational requirements. Yet, he claimed the exception in 305.1.1 applying to religious educational rooms somehow did not apply to rooms where the teaching qualified for State

educational requirements. As the court determined, "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."

Appellant seeks to use the testimony of Fire Marshall Donnie Helms as a basis to support Catoe's interpretation. However, Helms also ignored the exception and analyzed the interpretation by attempting to determine which portions of the fire code he thought should apply to determine the classification. But Helms' analysis reverses the analysis required by the building code. The Building Official must determine the classification, and the classification then determines the requirements under the building code and fire code. Furthermore, despite Helms' testimony about the intent to apply religious educational rooms to instruction or functions for limited duration or certain days of the week, both he and Culver admitted neither the building code nor the fire code limits the ages of the occupants or duration of time for any use in A-3. In fact, Helms sought to impose some common meeting times specific to a certain religion but could not apply his definition to other religions.

In its brief, Appellant asks how much and what type of religion would qualify for religious educational rooms. That poses an interesting question since Appellant formulated a definition and criteria it could not apply to all religions. Rather than reading and applying the SC Building Code as written, Appellant decided to ignore the exception and not apply it to any religious educational room where the instruction simultaneously fulfilled religious education and academic educational requirements. By interpreting the building code to ignore the entire exception and determine it did not apply to the Academy, Appellant's interpretation was arbitrary, capricious, and not worthy of deference.

B. By seeking to ignore the plain meaning of the exception, delving into the Academy's religious teaching, and refusing to apply the exception to the Academy because its instruction qualified as religious instruction and academic credit, Appellant violated the Establishment Clause.

In its Order, the court did not delve into whether Midway's curriculum qualified as religious education. The court found the exception limited to rooms or auditoriums associated with a place of religious worship, and the exception did not require Appellant "to delve into whether the curriculum, activity or function sufficiently includes religious teachings, worship, service or practice." (R. p. 12). In the Amended Order, the court examined Appellant's failure to define or interpret religious educational rooms and rejected Appellant's interpretation that religious education did not include academic education even if it taught religion. The court erred by delving into the Academy's religious teachings, but it did not err in ultimately holding Appellant's refusal include religious teachings qualifying for academic credit in the definition of religious education as arbitrary, capricious, and not worthy of deference. In its brief, Appellant asks this Court to adopt a "content-neutral" interpretation that excludes any determination of religious education. Adopting such an interpretation would violate the Establishment Clause and established United States Supreme Court precedent for interpreting and applying exceptions within regulations that apply to religion.

"The Establishment Clause prohibits Congress and, through the Fourteenth Amendment, the States from making any law respecting an establishment of religion." *Ehlers-Renzi v. Connelly Sch. of the Holy Child, Inc.*, 224 F.3d 283, 287(4th Cir. 2000)(citing U.S. Const. amend. I). In *Ehlers-Renzi*, the Fourth Circuit Court of Appeals considered whether a zoning regulation that exempted parochial schools located on land owned or leased by a church or religious organization

from a special exception requirement applicable to other private schools violated the Establishment Clause. In applying the test articulated by the United States Supreme Court in *Lemon v. Kurtzman* and refined in subsequent decisions, the Fourth Circuit held a regulation did not violate the Establishment clause because it "in some manner aids an institution with a religious affiliation...." *Id.*

"Under *Lemon*, for a legislative act to withstand an Establishment Clause challenge, (1) it must have a secular legislative purpose; (2) its principal or primary effect must neither advance nor inhibit religion; and (3) it must not foster excessive governmental entanglement with religion." *Id.* at 288. In applying the *Lemon* test, the Fourth Circuit found the exemption fulfilled the secular purpose of allowing the government to avoid interference with religious organizations' defining and carrying out their religious missions. *Id.* at 289. The court noted that whether the school is actually parochial or nonsectarian is irrelevant because an inquiry into any school on property owned by a religious organization would require the same inquiry that would risk religious entanglement. *Id.* at 290. For the second prong, the Fourth Circuit found that an exemption in a regulation that allows a religious school to advance its purposes does not violate the Establishment Clause. A violation would occur if the government were using its resources to further the religion. *Id.* at 291. Finally, the court found the exemption met *Lemon*'s third requirement by "avoiding governmental intrusion into matters of religious education." *Id.*

In *Moss v. Spartanburg County School District Seven*, the Fourth Circuit applied the *Lemon* test and referenced *Ehlers-Renzi* when it upheld the Spartanburg School District release time credit policy in which the district allowed students to leave school to take religious classes taught by private religious schools and receive credit for those classes. The court held "[t]he fact that a public school accepts credits for released time courses does not alter the analysis under any one of

Lemon's three prongs in view of the neutral administrative manner adopted by the School District for accepting those credits." *Moss v. Spartanburg County Sch. Dist. Seven*, 683 F.3d 599, 609-610 (4th Cir. 2012). In fact, the government must apply any regulations neutrally, not adopt a "content-neutral approach" that ignores any exception for religion. Inquiries into the religious curriculum or amount of religion taught by the Academy or any other religious school would violate the Establishment Clause.

Here, the circuit court initially, correctly found the exception applied to occupancies ancillary to a building or portion thereof intended for the performance of religious services. Appellant refused to apply the exemption because the Academy taught religion that qualified for academic credit. Based on *Moss*, Appellant's interpretation was legally incorrect and violated the Establishment Clause because it caused Appellant to delve into and attempt to define religious education and excluded religious education that also qualified for academic credit. That analysis was unnecessary. Midway, directly through its church or its ministry of the Academy, may teach religious education and whether it qualifies for academic credit is irrelevant to the application of the exception.

IV. Appellant's interpretation and application of the building code substantially burdens Midway's free exercise of religion and violates the South Carolina Religious Freedom Act.

Appellant asks the Court to apply a "content-neutral" interpretation that effectively ignores the exception for religious educational rooms in SCBC § 305.1.1 and strictly applies the general educational occupancy classification in SCBC § 305 to the Academy. However, this strict application would burden Midway's free exercise of religion and violate the South Carolina Religious Freedom Act.

Decades of United States Supreme Court precedent required governments to refrain from substantially burdening the free exercise of religion. "[T]here are areas of conduct protected by the Free Exercise Clause of the First Amendment and thus beyond the power of the State to control, even under regulations of general applicability." *Wis. v. Yoder*, 406 U.S. 205, 220 (1972). "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." *Id.* (citing *Sherbert v. Verner*, 374 U.S. 98 (1963)).

In *Employment Division, Department of Human Resources of Oregon v. Smith*, the United States Supreme Court changed this 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 and other states enacted similar laws prohibiting the State or its political subdivisions from substantially burdening a person's free exercise of religion. *Barr v. City of Sinton*, 295 SW.3d 287, 294-296 (TX 2007).

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 (1976, as amended). 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 (1976, as amended).

The Act does not define a substantial burden. However, case law provides 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. *Yoder* at 236. In *Barr v. City of Sinton*, the Texas Supreme Court held an ordinance prohibiting a religious halfway house ministry from relocating substantially burdened the free exercise of religion under the Texas Religious Freedom Restoration Act. *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 (D. Colo. 1994). In *Barr*, 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 Midway, Appellant's application of the general educational occupancy classification substantially burdens Midway's free exercise of religion. As described in the Order, Midway's witnesses testified at length about the church's calling and mission to provide Christian education and the integration of religion into all curriculum and school activities. Midway also testified that Appellant's occupancy application required it to operate in the neighboring county, which excluded some potential students. The cost of compliance with Appellant's requirements would prohibit Midway 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, Appellant 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 (1976, as amended). Here, Appellant fails to describe any interest, much less a compelling state interest, to justify burdening 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 exception. Both justified the decision based on a general applicability and their own definition of religious education. Neither stated any governmental interest that justified denying Midway the exception. In fact, they testified Midway's building was safe for use without any restrictions as long as Midway 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 Notice and Motion to Alter or Amend the Order of the Court Pursuant to Rule 59(E), SCRCP, the building code determines the occupancy classification, and the Fire Marshall testified Plaintiff's building was safe for use without restrictions as it exists.

Appellant claims the circuit court's first 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) (1976, as amended). As explained above, the Fourth Circuit Court of Appeals addressed this issue in regard to a land use regulation and found the exception prevented the government from scrutinizing a person's religion. Therefore, the exception does not require Defendant to interfere with Midway's religion or delve into religion. It protects Appellant from unnecessary inquiry and improper action that burdens its right of free expression and is permissible under the Establishment Clause.

Because Appellant's application of educational occupancy to Midway's religious school substantially burdens Midway's free exercise of religion, Appellant must demonstrate a compelling government interest justifying the educational occupancy classification by providing evidence and persuasion of the compelling government interest. Appellant failed to provide any evidence of a compelling government interest. Therefore, the Court should find Appellant violated Midway's right to free exercise of religion under the South Carolina Religious Freedom Act by refusing to apply the plain exception in SCBC § 305.1.1 to the Academy.

CONCLUSION

The Court should affirm the holding because the circuit court's decision was ultimately correct. In the Order, the court correctly held that Appellant failed to properly classify the rooms designated for use by the Academy as A-3 occupancy because Appellant refused to apply the plain language of S.C. Building Code § 305.1.1. The court also correctly held that those rooms were accessory to a place of religious worship.

In the Amended Order, the circuit court violated the Establishment Clause when it incorrectly delved into the Midway's religion by analyzing whether the curriculum sufficiently qualified as religious education. However, the court ultimately affirmed its original decision when it found Appellant's interpretation arbitrary, capricious, and not worth of deference. Therefore, the Court should affirm the circuit court.

Finally, this Court may affirm the holding of the lower court for any reason. In addition to the correct holdings in the order, the Court should affirm this holding because Appellant's decision to ignore the exception based on the Academy's curriculum satisfying both religious and academic requirements and to strictly apply the general educational occupancy classification to the Academy

unjustifiably burdened Midway's right to free exercise of religion and violated the South Carolina Religious Freedom Act.

Rock Hill, South Carolina
August 3, 2026

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 Respondent

CHAPTER 2

DEFINITIONS

User notes:

About this chapter: Codes, by their very nature, are technical documents. Every word, term and punctuation mark can add to or change the meaning of a technical requirement. It is necessary to maintain a consensus on the specific meaning of each term contained in the code. Chapter 2 performs this function by stating clearly what specific terms mean for the purposes of the code.

Code development reminder: Code change proposals to sections preceded by the designation [A] or [BS] will be considered by one of the code development committees meeting during the 2022 (Group B) Code Development Cycle.

SECTION 201 GENERAL

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

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

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

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

SECTION 202 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

[F] AEROSOL CONTAINER. A metal can or plastic container up to a maximum size of 33.8 fluid ounces (1000 ml), or a glass bottle up to a maximum size of 4 fluid ounces (118 ml), designed and intended to dispense an aerosol.

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

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

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

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

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

DEFINITIONS

standard net size of dressed lumber, in accordance with DOCPS 20 for sawn lumber and with the ANSI/AWC NDS for glued-laminated lumber.

[BG] NONCOMBUSTIBLE MEMBRANE STRUCTURE. A membrane structure in which the membrane and all component parts of the structure are noncombustible.

[BF] NONCOMBUSTIBLE PROTECTION (FOR MASS TIMBER). Noncombustible material, in accordance with Section 703.6, designed to increase the *fire-resistance rating* and delay the combustion of *mass timber*.

[BS] NONSTRUCTURAL CONCRETE. Any element made of plain or reinforced concrete that is not part of a structural system required to transfer either gravity or lateral loads to the ground.

[F] NORMAL TEMPERATURE AND PRESSURE (NTP). A temperature of 70°F (21°C) and a pressure of 1 atmosphere [14.7 psia (101 kPa)].

[BE] NOSING. The leading edge of treads of *stairs* and of landings at the top of *stairway flights*.

NOTIFICATION ZONE. See “*Zone, notification*.”

[F] NUISANCE ALARM. An alarm caused by mechanical failure, malfunction, improper installation or lack of proper maintenance, or an alarm activated by a cause that cannot be determined.

[BG] NURSING HOMES. Facilities that provide care, including both intermediate care facilities and skilled nursing facilities where any of the persons are *incapable of self-preservation*.

[BE] OCCUPANT LOAD. The number of persons for which the *means of egress* of a building or portion thereof is designed.

[BG] OCCUPIABLE SPACE. A room or enclosed space designed for human occupancy in which individuals congregate for amusement, educational or similar purposes or in which occupants are engaged at labor, and which is equipped with *means of egress* and light and *ventilation* facilities meeting the requirements of this code.

[BG] OPEN PARKING GARAGE. A structure or portion of a structure with the openings as described in Section 406.5.2 on two or more sides that is used for the parking or storage of private motor vehicles as described in Section 406.5.3.

[F] OPEN SYSTEM. The use of a *solid* or *liquid hazardous material* involving a vessel or system that is continuously open to the atmosphere during normal operations and where vapors are liberated, or the product is exposed to the atmosphere during normal operations. Examples of open systems for *solids* and *liquids* include dispensing from or into open beakers or containers, dip tank and plating tank operations.

[BE] OPEN-AIR ASSEMBLY SEATING. Seating served by *means of egress* that is not subject to smoke accumulation within or under a structure and is open to the atmosphere.

[BE] OPEN-ENDED CORRIDOR. An interior *corridor* that is open on each end and connects to an exterior *stairway* or *ramp* at each end with no intervening doors or separation from the *corridor*.

[BF] OPENING PROTECTIVE. A *fire door assembly*, *fire shutter assembly*, *fire window assembly* or *glass-block assembly* in a fire-resistance-rated wall or partition.

[F] OPERATING BUILDING. A building occupied in conjunction with the manufacture, transportation or use of explosive materials. Operating buildings are separated from one another with the use of intraplant or intraline distances.

[BS] ORDINARY PRECAST STRUCTURAL WALL. See Section 1905.1.1.

[BS] ORDINARY REINFORCED CONCRETE STRUCTURAL WALL. See Section 1905.1.1.

[BS] ORDINARY STRUCTURAL PLAIN CONCRETE WALL. See Section 1905.1.1.

[F] ORGANIC PEROXIDE. An organic compound that contains the bivalent -O-O- structure and which may be considered to be a structural derivative of hydrogen peroxide where one or both of the hydrogen atoms have been replaced by an organic radical. Organic peroxides can pose an *explosion hazard (detonation or deflagration)* or they can be shock sensitive. They can also decompose into various unstable compounds over an extended period of time.

Class I. Those formulations that are capable of *deflagration* but not *detonation*.

Class II. Those formulations that burn very rapidly and that pose a moderate reactivity hazard.

Class III. Those formulations that burn rapidly and that pose a moderate reactivity hazard.

Class IV. Those formulations that burn in the same manner as ordinary combustibles and that pose a minimal reactivity hazard.

Class V. Those formulations that burn with less intensity than ordinary combustibles or do not sustain combustion and that pose no reactivity hazard.

Unclassified detonable. Organic peroxides that are capable of *detonation*. These peroxides pose an extremely high *explosion hazard* through rapid explosive decomposition.

[BS] ORTHOGONAL. To be in two horizontal directions, at 90 degrees (1.57 rad) to each other.

[BS] OTHER STRUCTURES. This definition applies only to Chapters 16 through 23.

Structures, other than buildings, for which loads are specified in Chapter 16.

OUTPATIENT CLINIC. See “*Clinic, outpatient*.”

[A] OWNER. Any person, agent, operator, entity, firm or corporation having any legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding an interest or title to the property; or otherwise having possession or control of the property.

including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

[F] OXIDIZER. A material that readily yields oxygen or other *oxidizing gas*, or that readily reacts to promote or initiate combustion of combustible materials and, if heated or contaminated, can result in vigorous self-sustained decomposition.

Class 4. An oxidizer that can undergo an explosive reaction due to contamination or exposure to thermal or physical shock and that causes a severe increase in the burning rate of combustible materials with which it comes into contact. Additionally, the oxidizer causes a severe increase in the burning rate and can cause spontaneous ignition of combustibles.

Class 3. An oxidizer that causes a severe increase in the burning rate of combustible materials with which it comes in contact.

Class 2. An oxidizer that will cause a moderate increase in the burning rate of combustible materials with which it comes in contact.

Class 1. An oxidizer that does not moderately increase the burning rate of combustible materials.

[F] OXIDIZING GAS. A gas that can support and accelerate combustion of other materials more than air does.

[BS] PANEL (PART OF A STRUCTURE). The section of a floor, wall or roof comprised between the supporting frame of two adjacent rows of columns and girders or column bands of floor or roof construction.

[BE] PANIC HARDWARE. A door-latching assembly incorporating a device that releases the latch upon the application of a force in the direction of egress travel. See “*Fire exit hardware*.”

[BS] PARTICLEBOARD. A generic term for a panel primarily composed of cellulosic materials (usually wood), generally in the form of discrete pieces or particles, as distinguished from fibers. The cellulosic material is combined with synthetic resin or other suitable bonding system by a process in which the interparticle bond is created by the bonding system under heat and pressure.

[BF] PENETRATION FIRESTOP. A *through-penetration* firestop or a *membrane-penetration firestop*.

[BG] PENTHOUSE. An enclosed, unoccupied rooftop structure used for sheltering mechanical and electrical equipment, tanks, elevators and related machinery, *stairways*, and vertical *shaft* openings.

[BS] PERFORMANCE CATEGORY. A designation of *wood structural panels* as related to the panel performance used in Chapter 23.

[BF] PERIMETER FIRE CONTAINMENT SYSTEM. An assemblage of specific materials or products that is designed to resist for a prescribed period of time the passage of fire through voids created at the intersection of exterior curtain wall assemblies and fire-resistance-rated floor or floor/ceiling assemblies.

[BS] PERMANENT INDIVIDUAL TRUSS MEMBER DIAGONAL BRACING (PITMDB). Structural member or assembly intended to permanently stabilize the *PITMRs*.

[BS] PERMANENT INDIVIDUAL TRUSS MEMBER RESTRAINT (PITMR). Restraint that is used to prevent local buckling of an individual truss chord or web member because of the axial forces in the *individual truss member*.

[A] PERMIT. An official document or certificate issued by the *building official* that authorizes performance of a specified activity.

[A] PERSON. An individual, heirs, executors, administrators or assigns, and also includes a firm, partnership or corporation, its or their successors or assigns, or the agent of any of the aforesaid.

[BG] PERSONAL CARE SERVICE. The care of persons who do not require *medical care*. Personal care involves responsibility for the safety of the persons while inside the building.

[BE] PHOTOLUMINESCENT. Having the property of emitting light that continues for a length of time after excitation by visible or invisible light has been removed.

[BS] PHOTOVOLTAIC MODULE. A complete, environmentally protected unit consisting of solar cells, optics and other components, exclusive of tracker, designed to generate DC power when exposed to sunlight.

[BS] PHOTOVOLTAIC PANEL. A collection of modules mechanically fastened together, wired and designed to provide a field-installable unit.

[BS] PHOTOVOLTAIC PANEL SYSTEM. A system that incorporates discrete *photovoltaic panels*, that converts solar radiation into electricity, including rack support systems.

[BS] PHOTOVOLTAIC SHINGLES. A *roof covering* resembling shingles that incorporates *photovoltaic modules*.

[F] PHYSICAL HAZARD. A chemical for which there is evidence that it is a *combustible liquid*, *cryogenic fluid*, *explosive*, flammable (*solid*, *liquid* or *gas*), *organic peroxide* (*solid* or *liquid*), *oxidizer* (*solid* or *liquid*), *oxidizing gas*, *pyrophoric* (*solid*, *liquid* or *gas*), *unstable (reactive) material* (*solid*, *liquid* or *gas*) or *water-reactive material* (*solid* or *liquid*).

[F] PHYSIOLOGICAL WARNING THRESHOLD LEVEL. A concentration of airborne contaminants, normally expressed in parts per million (ppm) or milligrams per cubic meter (mg/m³), that represents the concentration at which persons can sense the presence of the contaminant due to odor, irritation or other quick-acting physiological response. When used in conjunction with the permissible exposure limit (PEL) the physiological warning threshold levels are those consistent with the classification system used to establish the PEL. See the definition of “*Permissible exposure limit (PEL)*” in the *South Carolina Fire Code*.

PLACE OF RELIGIOUS WORSHIP. See “*Religious worship, place of*.”

RAMP, EXTERIOR EXIT. See “*Exterior exit ramp.*”

RAMP, INTERIOR EXIT. See “*Interior exit ramp.*”

[BG] RAMP-ACCESS OPEN PARKING GARAGES. *Open parking garages* employing a series of continuously rising floors or a series of interconnecting ramps between floors permitting the movement of vehicles under their own power from and to the street level.

[A] RECORD DRAWINGS. Drawings (“as built”) that document the location of all devices, appliances, wiring sequences, wiring methods and connections of the components of a *fire alarm system* as installed.

[BF] REFLECTIVE PLASTIC CORE INSULATION. An insulation material packaged in rolls, that is less than 1/2 inch (12.7 mm) thick, with not less than one exterior low-emittance surface (0.1 or less) and a core material containing voids or cells.

[A] REGISTERED DESIGN PROFESSIONAL. An individual who is registered or licensed to practice their respective design profession as defined by the statutory requirements of the professional registration laws of the state or *jurisdiction* in which the project is to be constructed.

[A] REGISTERED DESIGN PROFESSIONAL IN RESPONSIBLE CHARGE. A *registered design professional* engaged by the owner or the owner’s authorized agent to review and coordinate certain aspects of the project, as determined by the *building official*, for compatibility with the design of the building or structure, including submittal documents prepared by others, deferred submittal documents and phased submittal documents.

[BG] RELIGIOUS WORSHIP, PLACE OF. A building or portion thereof intended for the performance of religious services.

[A] RELOCATABLE BUILDING. A partially or completely assembled building constructed and designed to be reused multiple times and transported to different building sites.

[A] REPAIR. The reconstruction, replacement or renewal of any part of an existing building for the purpose of its maintenance or to correct damage.

[BG] REPAIR GARAGE. A building, structure or portion thereof used for servicing or repairing motor vehicles.

[BS] REROOFING. The process of recovering or replacing an existing *roof covering*. See “*Roof recover*” and “*Roof replacement*.”

[BG] RESIDENTIAL AIRCRAFT HANGAR. An accessory building less than 2,000 square feet (186 m²) and 20 feet (6096 mm) in *building height* constructed on a one- or two-family property where aircraft are stored. Such use will be considered as a residential accessory use incidental to the dwelling.

[BS] RESISTANCE FACTOR. A factor that accounts for deviations of the actual strength from the *nominal strength* and the manner and consequences of failure (also called “strength reduction factor”).

[BE] RESTRICTED ENTRANCE. An entrance that is made available for common use on a controlled basis, but not public use, and that is not a *service entrance*.

[BG] RETRACTABLE AWNING. A retractable *awning* is a cover with a frame that retracts against a building or other structure to which it is entirely supported.

[BS] RISK CATEGORY. A categorization of buildings and *other structures* for determination of *flood*, wind, snow, ice and earthquake *loads* based on the risk associated with unacceptable performance.

[BS] RISK-TARGETED MAXIMUM CONSIDERED EARTHQUAKE (MCE_R) GROUND MOTION RESPONSE ACCELERATIONS. The most severe earthquake effects considered by this code, determined for the orientation that results in the largest maximum response to horizontal ground motions and with adjustment for targeted risk.

[BS] ROOF ASSEMBLY (For application to Chapter 15 only). A system designed to provide weather protection and resistance to design *loads*. The system consists of a *roof covering* and roof deck or a single component serving as both the *roof covering* and the roof deck. A roof assembly can include an *underlayment*, a thermal barrier, insulation or a *vapor retarder*.

[BS] ROOF COATING. A fluid-applied, adhered coating used for roof maintenance or *roof repair*, or as a component of a *roof covering system* or *roof assembly*.

[BS] ROOF COVERING. The covering applied to the roof deck for weather resistance, fire classification or appearance.

ROOF COVERING SYSTEM. See “*Roof assembly.*”

[BS] ROOF DECK. The flat or sloped surface constructed on top of the *exterior walls* of a building or other supports for the purpose of enclosing the *story* below, or sheltering an area, to protect it from the elements, not including its supporting members or vertical supports.

ROOF DRAINAGE, POSITIVE. See “*Positive roof drainage.*”

[BS] ROOF RECOVER. The process of installing an additional *roof covering* over a prepared existing *roof covering* without removing the existing *roof covering*.

[BS] ROOF REPAIR. Reconstruction or renewal of any part of an existing roof for the purposes of correcting damage or restoring pre-damage condition.

[BS] ROOF REPLACEMENT. The process of removing the existing *roof covering*, repairing any damaged substrate and installing a new *roof covering*.

[BG] ROOF VENTILATION. The natural or mechanical process of supplying conditioned or unconditioned air to, or removing such air from, *attics*, cathedral ceilings or other enclosed spaces over which a roof assembly is installed.

[BG] ROOFTOP STRUCTURE. A structure erected on top of the roof deck or on top of any part of a building.

[BS] RUNNING BOND. The placement of *masonry units* such that *head joints* in successive courses are horizontally offset at least one-quarter the unit length.

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 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.

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.

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 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.

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.

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 ^c , 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 ^c , 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 Sections 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.

508.5.4 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.

SECTION 509 INCIDENTAL USES

509.1 General. Incidental uses located within single occupancy or mixed occupancy buildings shall comply with the provisions of this section. Incidental uses are ancillary functions associated with a given occupancy that generally pose a greater level of risk to that occupancy and are limited to those uses specified in Table 509.1.

Exception: Incidental uses within and serving a *dwelling unit* are not required to comply with this section.

[F]TABLE 509.1
INCIDENTAL USES

ROOM OR AREA	SEPARATION AND/OR PROTECTION
Furnace room where any piece of equipment is over 400,000 Btu per hour input	1 hour or provide automatic sprinkler system
Rooms with boilers where the largest piece of equipment is over 15 psi and 10 horsepower	1 hour or provide automatic sprinkler system
Refrigerant machinery room	1 hour or provide automatic sprinkler system
Hydrogen fuel gas rooms, not classified as Group H	1 hour in Group B, F, M, S and U occupancies; 2 hours in Group A, E, I and R occupancies.
Incinerator rooms	2 hours and provide automatic sprinkler system
Paint shops, not classified as Group H, located in occupancies other than Group F	2 hours; or 1 hour and provide automatic sprinkler system
In Group E occupancies, laboratories and vocational shops not classified as Group H	1 hour or provide automatic sprinkler system
In Group I-2 occupancies, laboratories not classified as Group H	1 hour and provide automatic sprinkler system
In <i>ambulatory care facilities</i> , laboratories not classified as Group H	1 hour or provide automatic sprinkler system
Laundry rooms over 100 square feet	1 hour or provide automatic sprinkler system
In Group I-2, laundry rooms over 100 square feet	1 hour
Group I-3 cells and Group I-2 patient rooms equipped with padded surfaces	1 hour
In Group I-2, physical plant maintenance shops	1 hour
In ambulatory care facilities or Group I-2 occupancies, waste and linen collection rooms with containers that have an aggregate volume of 10 cubic feet or greater	1 hour
In other than ambulatory care facilities and Group I-2 occupancies, waste and linen collection rooms over 100 square feet	1 hour or provide automatic sprinkler system
In ambulatory care facilities or Group I-2 occupancies, storage rooms greater than 100 square feet	1 hour
Electrical installations and transformers	See Sections 110.26 through 110.34 and Sections 450.8 through 450.48 of NFPA 70 for protection and separation requirements.

For SI: 1 square foot = 0.0929 m², 1 pound per square inch (psi) = 6.9 kPa, 1 British thermal unit (Btu) per hour = 0.293 watts, 1 horsepower = 746 watts, 1 gallon = 3.785 L, 1 cubic foot = 0.0283 m³.