

**STATE OF FLORIDA BUILDING COMMISSION**

**IN RE: DS 2023-053 PETITION FOR DECLARATORY STATEMENT OF JACK BUTLER**

**BROWARD COUNTY BOARD OF RULES AND APPEALS  
MOTION FOR LEAVE TO INTERVENE**

Broward County Board of Rules and Appeals has filed this Motion for Leave to Intervene pursuant to Section 28-105.0027 of the Florida Administrative Code.

**Introduction.**

The Petition seeks a Declaratory Statement from the Florida Building Commission on a total of four (4) questions pertaining to certain sections of the 2020 Florida Building Code, 7th Edition – Building: §107 and the 2023 version (8th Edition) Florida Building Code which contains the same language.

**Petitioner’s claims**

Petitioner states that he has designed a single-family home containing 5,350 square feet of living space (the “SFR”) which include all the standard construction documents needed to secure a residential building permit, as described in Chapters 107 and 1603 in FBC-Building and that the plans fully meet the requirements for registered design professionals contained in Ch. 471, Fla. Stat. Petitioner fails to attach any plans to his Petition so that statutory compliance with the subject plans, and a substantive claim, is not verifiable.

Petitioner states that with respect to the plans for the SFR:

Wind load calculations are performed directly by a Florida-licensed professional engineer, who signs and seals this portion of the plans. Truss suppliers typically want their products to be designed by their own licensed engineers, **so Petitioner's plans just show a typical configuration for contractor pricing purposes and include a note that the final truss design must be supplied by others.** Any other specialized structural elements, such as the foundation design and anchor bolt spacing, are similarly prepared

and/or reviewed by a Florida-licensed engineer, who signs and seals that information.

Petitioner states that he is uncertain as to key requirements in the Florida Building Code (FBC) related to construction documents where multiple jurisdictions apply differing interpretations to the meaning of §107.1 in Florida Building Code – Building (FBC-Building) as it relates to special conditions and additional construction documents.

**BORA’s response to Petitioner’s claims.**

Petitioner incorrectly states that submission of plans which have been prepared and signed by a registered design profession under the protocols set forth in F.S. 471 are all that is necessary to determine compliance with the Florida Building Code. Specifically, Petitioner states that that wind load calculations, truss design, foundation design, anchor bolt spacing, etc., are reviewed by a Florida licensed engineer so that determination by a licensed, registered design professional that all sub-components of a structure will operate properly as a cohesive element, is unnecessary.

BORA does not agree that piecemeal submission of documents without consideration of the interplay with attendant electrical, plumbing, structural, and mechanical factors constitute a competent submittal for plans approval. Florida Statutes §553.73 determines that “[t]he commission shall adopt, by rule pursuant to §§120.536(1) and 120.54, the Florida Building Code which shall contain or incorporate by reference all laws and rules which pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and enforcement of such laws and rules, except as otherwise provided in this section.” That would necessarily include Florida Building Code §107.2.1 (*infra*).

The requirement of a master plan, signed and sealed by a registered design professional and incorporating all sub-components incorporated in a permit application for a residential structure is standard protocol with any building department. *See* Florida Building Code §107.2.1

**Petitioner's questions:**

Petitioner cites F.B.C. §107.1 of the FBC-Building and states that the last sentence contained therein is central to the questions posed by Petitioner. Specifically:

**FBC §107.1**

Submittal documents consisting of construction documents, statement of special inspections, geotechnical report and other data shall be submitted in two or more sets with each permit application. The construction documents shall be prepared by a registered design professional where required by Chapter 471, Florida Statutes or Chapter 481, Florida Statutes. **Where special conditions exist, the building official is authorized to require additional construction documents to be prepared by a registered design professional.**

See Florida Building Code at §107.1

Petitioner then sets forth four (4) questions for which he seeks a Declaratory Statement, *to wit*:

1. Does the phrase "special conditions," as used in FBC-Building §107.1, refer to a residential structure larger than 5,000 square feet?
2. Does the phrase "special conditions," as used in FBC-Building §107.1, refer to a residential structure that costs more than \$30,000 to build?
3. Does the phrase "special conditions," as used in FBC-Building §107.1, refer to a residential structure that is located within a high-velocity hurricane zone that conforms to the regional design parameters addressed in the FBC?
4. Are the "additional construction documents" referenced in FBC-Building §107.1 limited to documents that only address any such special conditions that may exist for the project or construction site and do not include the standard construction documents that are to be submitted with a building permit application, as contained in FBC- Building §§107.2.1 through 107.2.7?

**Analysis and Response to Petitioner's Proposed Answers:**

**As to the First Question,** Petitioner states that:

“Special conditions” are not established by the size of a proposed detached single- family residence. The term means the presence of an element of the construction site and/or design that is outside the parameters upon which the Florida Building Code is based or exceed the

prescriptive guidance found in the code, and that are unique to the proposed construction rather than generally applicable within a local jurisdiction.

Petitioner goes on to state that “[t]here is no component of the FBC that is dependent on the livable space and there is no limitation based on the size of the structure found in §481.229(1)(b), Fla. Stat., which includes the exemption from licensure for residential home design.” Conversely, BORA states that there is no component of the FBC which places a limitation on the sound discretion of the Building Official to determine that the size of a structure cannot in and of itself create a “special condition.” The size of a structure will directly impact storm drainage, energy efficiency, electrical load calculations, and sewage drainage to name a few. The inability of this Commission to add or remove words to statutes or change the clear language of state codes is well established. *See R.C. v. Department of Agriculture and Consumer Services, Division of Licensing*, 323 So.3d 275 (Fla. 1st DCA 2021)

Petitioner’s citation of §481.229(1)(b) is an attempt to breathe life into those arguments which were propounded in its previous Petition for Declaratory Statement (2023-037) and for which Declaratory relief was denied. Although §481 contains an exemption from licensure, that portion of §481 is not applicable to any claim asserted by Petitioner because the language of FBC- Residential §202 refers specifically to registered and licensed design professionals. Petitioner is not a registered, licensed, design professional. *See BORA Motion for leave to Intervene 2023-037* at pgs. 10-13.

**Petitioner must not be permitted to claim that but for the last sentence of F.B.C. §107.1 he would otherwise be permitted to submit plans in violation of Florida Building Code.**

To the point, FBC §§107.2.1 states:

**Construction documents shall be of sufficient clarity to indicate the location, nature and extent of the work proposed and show in detail that it will conform to the provisions of this code and relevant laws,**

ordinances, rules and regulations, as determined by the building official.

See FBC §107.2.1

Petitioner plainly states that:

Wind load calculations are performed directly by a Florida-licensed professional engineer, who signs and seals this portion of the plans. Truss suppliers typically want their products to be designed by their own licensed engineers, so **Petitioner's plans just show a typical configuration for contractor pricing purposes and include a note that the final truss design must be supplied by others.**

See Petition at pg.2,

Submission of plans which show a “**typical configuration**” does not comport with the statutory requirement that “**construction documents be of sufficient clarity to indicate the location, nature and extent of the work proposed and show in detail that it will conform to the provisions of this code.**”

**2. As to the Second Question Petitioner states that:**

“Special conditions” are not established by the construction cost of a proposed detached single-family residence. There is no component of the FBC or Florida Statutes that is dependent on the cost of construction except for exemptions from permitting based on a low cost of construction. In addition, §481.229(1)(b), Fla. Stat., specifically says the exemption from licensure as an architect for designing a detached single-family home is “regardless of cost.”

BORA states that pursuant to legislative authority, it is within the sound discretion of the Building Official to determine whether or not the cost of a construction project, including that of a single-family residence, constitute “special conditions.” All of the arguments set forth in BORA’s Analysis and Response to Petitioner’s First Question are applicable here. BORA shows the Commission that there is no language in the FBC which prohibits the determination of cost as a special condition.

BORA further states that Florida Administrative Code §28-105.002(5) requires that Petitioner provide a “[a] description of how the statutes, rules, or orders may substantially affect the petitioner in the petitioner’s particular set of circumstances.” In this case, Petitioner has made no allegation as to the

price of the SFR, or any other home(s). See also Florida Statutes §120.565(2). “The petition seeking a declaratory statement shall state with particularity the petitioner’s set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.” The Commission must deny a Petition for Declaratory Statement where there is a lack of existing doubt or controversy. See Federation of Mobile Homeowners of Florida, Inc. v. Department of Professional Regulation, 479 So. 2d 252 (Fla. 2d DCA 1985).

**3. As to the Third Question Petitioner states that:**

“Special conditions” are not established by the permitting jurisdiction’s being located within a high-velocity hurricane zone, as the construction requirements for such a single-family house are contained in the FBC’s regional guidance that is specific to such a location.

It is well established that Broward and Miami-Dade Counties are legislatively recognized to be in locations which require special consideration for construction. Due to damage caused by Hurricane Andrew in 1992, the Florida legislature created a more demanding Building Code system for Miami-Dade and Broward counties. Broward County and Miami-Dade have a legislatively recognized status as High Velocity Hurricane Zones (“HVHZ”) which includes a much more stringent code than the other 65 counties in the state of Florida.

The Florida Building Code, Building 2020 Chapter 2 specifically designates Broward and Miami-Dade Counties as High Velocity Hurricane Zones and Chapter 16 contains specific provisions for any structural work to be performed in the high velocity wind zones of Broward and Miami-Dade Counties. See FBC Chapter 2, Definitions and Chapter 16 at Sec.1616.

Broward and Miami-Dade counties were given the right to promulgate more stringent administrative sections (§553.73(4) of the Building Code which address the need for additional safety and security to the life, health and safety of the persons and property, is the very definition of “special conditions” set forth in FBC §107.1.1, §553.73(4)(a), and BCAP §107.1.

BORA states that the creation high velocity hurricane zones, and the legislative recognition that

Broward and Miami-Dade counties exist in such locations necessarily required the creation of mor stringent building codes. Petitioner fails to cite even anecdotal evidence that would lead to his conclusions.

**4. As to the Fourth Question Petitioner states that:**

The standard construction documents required for all detached single-family home construction do not include those referenced in §107.1 as "additional construction documents." Such additional documents include one or more documents beyond those standard documents that are needed to address the special conditions related to the particular project.

Petitioner is in error where Florida Building Code specifically states:

**Submittal Documents**

**107.1 General.**

Submittal documents consisting of construction documents, statement of special inspections, geotechnical report and other data shall be submitted in two or more sets with each permit application. The construction documents shall be prepared by a registered design professional where required by Chapter 471, Florida Statutes or Chapter 481, Florida Statutes. **Where special conditions exist, the building official is authorized to require additional construction documents to be prepared by a registered design professional.**

The Florida Building Code derives its authority through legislation including Florida Statutes §553.73(4)(a) which states *inter alia*:

(4)(a) All entities authorized to enforce the Florida Building Code under s. 553.80 shall comply with applicable standards for issuance of mandatory certificates of occupancy, minimum types of inspections, and procedures for plans review and inspections as established by the commission by rule. **Local governments may adopt amendments to the administrative provisions of the Florida Building Code, subject to the limitations in this subsection. Local amendments must be more stringent than the minimum standards described in this section and must be transmitted to the commission within 30 days after enactment.**

The Statute is a model of clarity and BORA is at a loss as to how to better explain the law other than citing the Statute and the Florida Building Code. See Campbell v. Monroe County, 426 So.2d 1158 (Fla. 3d DCA 1983) (*The Florida Building Code allows local governments to enact local amendments that are more stringent than the minimum standards where there is a determination that local conditions require.*). See

also Greenberg v. Martin County, 2014 WL 12970296.

The local amendments address the need to implement more stringent standards for building plans in a legislatively recognized High Velocity Hurricane Zone (“HVHZ”) and Broward County may properly require that construction plans are prepared and bear the impress seal of an Architect or Engineer or their authorized representative. *See* Florida Building Code, Broward County Edition at §107.3.4 et.al., *See* also Florida Building Code §107.1.1, §1616 et.al, FBC Broward County Amendments §107.1, §553.73(4)(a) and F.S. §553.899.

### **Response to Discussion**

Petitioner states that pursuant to Florida Statutes §553.73(3) the Commission probably used the 2018 edition of the International Building Code (IBC) in its drafting of the Florida Building Code and then goes on to cite text from the 2018 IBC. BORA shows the Commission that Petitioner fails to cite Florida Statutes §553.73(3) (d) wherein is stated:

**The commission shall incorporate within the Florida Building Code provisions that address regional and local concerns and variations.** The commission shall make every effort to minimize conflicts between the Florida Building Code, the Florida Fire Prevention Code, and the Life Safety Code.

*See* Florida Statutes §553.73(3) (d)

In conjunction with Florida Statutes §553.73(4) BORA states that there is a legislative mandate that the Commission not only recognize regional and local concerns, but that local Code amendments requiring more stringent standards must be recognized as a valid exercise of delegated, legislative authority. Jurisdictions where sinkholes are prevalent require more test borings before construction, jurisdictions prone to tidal surge require higher freeboard requirements for foundations, and jurisdictions located in areas prone to high wind events require more stringent code standards and proven expertise of registered design professionals to prepare plans.

Petitioner notes that in the FBC, the Commission added references to Florida Statutes Chapters 471 and 481 in the 2018 version of the IBC at §107.1. BORA agrees with Petitioner that “[t]hese are the two



chapters of Florida Statutes that govern registered design professionals.” BORA further states that it has been conclusively shown that Petitioner is not a registered design professional, and any supposition attendant thereto is baseless.

Petitioner provide lengthy discourse on the changes to the 2020 and 2023 FBC with regards to §§ 107.1 and 107.2 and their parenthetical citation of §107.2.7 (referencing continued inclusion of information required under FBC Chapter 16 – High Velocity Hurricane Zones). However, Petitioner wrongfully attempts to postulate that:

The 2020 and 2023 editions of FBC-Building include the text of §107.2.7, but does not list it within the list found in §107.2. Even though it is not included in the range contained in §107.2, §102.2.7 and its referenced §1603 are still required standard construction documents as a standalone element given the language of the code. Thus, §102.2.7 was likely omitted from the range of subsections in FBC-Building §102.2 as being redundant and has no impact on what actually is included in the list of standard construction documents.

BORA is uncertain as to who to respond in that FBC 102.2 and its subsections pertain to those “buildings, structures and facilities exempt from the Florida Building Code as provided by law, and any further exemptions shall be as determined by the legislature and provided by law.” Petitioner’s apparent position is that special conditions encountered in high velocity hurricane zones as set forth in FBC Chapter 16, are not required considerations for plan submittals. However, Chapter 16, §§1603 and 1603.1.4 state respectively:

1603.1 General.

Construction documents shall show the size, section and relative locations of structural members with floor levels, column centers and offsets dimensioned. The design loads and other information pertinent to the structural design required by Sections 1603.1.1 through 1603.1.9 shall be indicated on the construction documents.

And:

1603.1.4 Wind design data.

The following information related to wind loads shall be shown, regardless of whether wind loads govern the design of the lateral force-resisting system of the structure:

...

6.Design wind pressures and their applicable zones with dimensions to be used for exterior component and cladding materials not **specifically designed by the registered design professional responsible for the design of the structure**, psf (kN/m2). Where design for tornado loads is required, the design pressures shown shall be the maximum of wind or tornado pressures.

From these sections, BORA once again shows the Commission that: 1) submission of individual, stamped product approvals is NOT compliant with the language of the FBC and:2) plans submitted in high velocity hurricane zones require that they be specifically designed by a registered design professional. <sup>1</sup>

Petitioner states that construction documents are limited to those set forth under §107.2 and proceeds to list same, however Petitioner fails to show the Commission FBC §107.1 General wherein is stated:

§107.1 General

Submittal documents consisting of construction documents, statement of special inspections, geotechnical report and other data shall be submitted in two or more sets with each permit application. **The construction documents shall be prepared by a registered design professional where required by Chapter 471, Florida Statutes or Chapter 481, Florida Statutes. Where special conditions exist, the building official is authorized to require additional construction documents to be prepared by a registered design professional.**

BORA will not repeat previous analysis of Florida Statutes §§ 107.1, 107.2, 107.3.4, 553.73(4)(a), and FBC Chapter 16.

Petitioner cites unsubstantiated correspondence he alleges to have received from a person associated with the ICC. A copy of that correspondence was not submitted and any statements as to what may be contained therein is wholly unsubstantiated. Further to that end, Petitioner fails to submit a copy of any correspondence generated by himself which shows how and what questions might have been posed.

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<sup>1</sup> Petitioner's statement that "[t]he plans fully meet the requirements for registered design professionals contained in Ch. 471, Fla. Stat." is inapposite to the FBC where Petitioner admits that wind load calculations are performed for a "**portion of the plans**," 2) "Petitioner's plans just show a **typical configuration for contractor pricing purposes** and include a note that the final truss design must be supplied by others," and 3) "[a]ny other specialized structural elements, such as the foundation design and anchor bolt spacing, are similarly prepared and/or reviewed by a Florida-licensed engineer, who signs and seals **that information**."

The opinion by Petitioner's "expert" states:

"Special conditions", as alluded to in your correspondence, is not, in my opinion, necessarily related to the cost of the project or other local amendments.

This opinion is not rendered by any recognized authority, judicial or legislative, and is neither binding nor sufficient for the Commission to rely upon in publishing a Declaratory Statement which would have such far reaching implications.

BORA notes that even the alleged correspondence concludes by stating:

As noted, "additional construction documents" could include drawings, structural calculations, research reports, test data or additional studies, prepared by a registered design professional, to substantiate equivalent compliance with the intent of the code with final approval subject to the building official.

Petitioner is thus hoisted on his own petard. There is nothing to which the Honorable Commission, or Petitioner could point to which supports Petitioner's proposed answers to his four (4) questions. Rather, the citation of correspondence determines that additional construction documents could include drawings, structural calculations, research reports, test data or additional studies, prepared by a registered design professional. There is nothing within the in-text citation which determines that construction plans do not require the signature of a registered design professional, or that special conditions may not include the size of a project. Actually, the document does state that height and area/ size may constitute special conditions.

Finally, BORA states that Petitioner's continued reliance upon the ICC and ICC experts is contrary to Florida law.

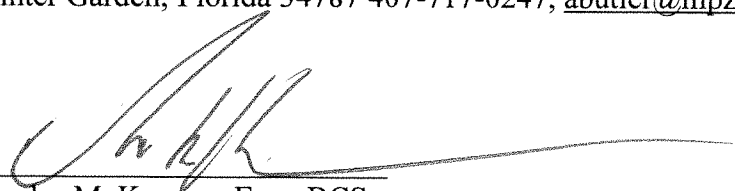
As of March 1, 2002, the Florida Building Code, which is developed and maintained by the Florida Building Commission, supersedes all local building codes. The previous system consisted of a complex and confusing patchwork system of codes and regulations, developed, amended, administered and enforced differently by more than 400 local jurisdictions and state agencies with building code responsibilities. There was no accountability and confusion as to

how, when and where codes would be enforced. The fact that the ICC is used as a template in the drafting of the FBC does not render the ICC dispositive on FBC issues. The ICC and the FBC are two separate codes and Florida has one code, The Florida Building Code

Petitioner states in closing that “[i]n other words, a special condition is one that is not directly addressed by prescriptive guidance found in the code” with which BORA agrees, but then references the opinion of his expert with which BORA does not agree. The opinion of BORA established through language of statute and code is that special conditions include the size, cost, and location of a structure. All must be considered in the interest of life, health, safety and the specific language of the Florida Statutes and the Florida Building Code.

#### **CERTIFICATE OF SERVICE**

This Petition for Declaratory Statement is hereby submitted on January 24, 2024, via email to Mo Madani, Technical Director, Building Codes & Standards Office, 2601 Blair Stone Road, Tallahassee, Florida 32399, [Mo.Madani@myfloridalicense.com](mailto:Mo.Madani@myfloridalicense.com), or W. Justin Vogel Chief Legal Counsel, Florida Building Commission, Office of Codes & Standards Department of Business and Professional Regulation, 2601 Blair Stone Road Tallahassee, FL 32399-2202, [William.Vogel@myfloridalicense.com](mailto:William.Vogel@myfloridalicense.com); Dr. Ana Barbosa, Administrative Director, Board of Rules and Appeals, 1 N. University Dr., Ste 3500B, Plantation, FL 33324, Email: [ABarbosa@broward.org](mailto:ABarbosa@broward.org); and Petitioner Jack A . Butler, 301 Avalon Road, Winter Garden, Florida 34787 407-717-0247, [abutler@mpzero.com](mailto:abutler@mpzero.com).



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