

JDB CODE SERVICES, INC.

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	10/31/2016
File #	

PETITION FOR DECLARATORY STATEMENT BEFORE THE FLORIDA BUILDING COMMISSION

Identification of the Agency

DS 2016-081

The name and address of the agency affected is:

FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL
REGULATION, FLORIDA BUILDING COMMISSION
2601 Blairstone Road, Tallahassee, FL 32399

Petitioners' Representative

This request for a Declaratory Statement is hereby filed by the undersigned as consultant to Alan Gremillion and the Florida Home Builders Association.

Project Information

- The Project name is Valencia Lakes.
- The questions relate to Lots 103 and 104 of Valencia Lakes Tract "N" according to plat thereof as recorded in Plat Book 125, Page 44 of Public Records of Hillsborough County, Florida.
- Construction for Lots 103 and 104 is in the planning stage and there has been no application for Building Permits for the dwellings to be constructed.
- The Project is a gated 55+ residential community with approximately 1,650 lots consisting of detached single-family and attached single-family dwellings.
- The attached single-family dwellings of two units are separated by a property line.
- The specific questions relate to the attached single-family dwellings with a property line between units and do not concern the detached units.
- The project meets the statutory definition of townhouse.
- The project does not meet the Florida Building Code-Residential, 5th Edition (2014), definition of townhouse.

Identification of Petitioners

For purposes of this petition, the names and addresses of the Petitioners are:

Alan Gremillion
GL Homes
1600 Sawgrass Corporate Parkway, Suite 400

Sunrise, Florida 33323
(954) 753-1730
Fax (954) 575-5220
License holder George M. Atkinson, Jr.
License Number CGC038264

Douglas Buck
Florida Home Builders Association
2600 Centennial Place
Tallahassee, Florida 32308
(850) 567-1073
DBuck@fhba.com

Petitioner Gremillion of GL Homes, Inc. represents the company's holder of an active current Certified General Contractor's License #CGC038264 issued by the Agency for state-wide contracting services. GL Homes builds new home communities including detached single-family homes, estate homes, attached single-family homes, and active adult communities for retirees. Recent changes to the Florida Building Code-Residential, 5th Edition (2014), have created uncertainty on the part of Petitioner in the proper planning and design of upcoming projects. The changes were instituted in response to legislation and have raised questions regarding the application of "zero lot line" provisions. In addition, research into the questions raised reveal the definition for townhouses contained within the Florida Building Code-Residential (FBC-R), 5th Edition (2014), differs from the definition contained in Florida Statute. The noted divergence has a negative effect on the attached single-family dwelling units proposed for Valencia Lakes.

Petitioner Florida Home Builders Association (FHBA) is a not-for-profit association representing the interests of all license categories of builders and tradesmen statewide. GL Homes is a member of FHBA. The interests FHBA seeks to protect are relevant to the organizational purpose of supporting members in the codes, standards, and agency regulation arenas.

Statement Desired

Petitioners seek an interpretation that:

1. That the added language to the definition of Fire Separation Distance (Item 4) and the reinstatement of the Exception to the fire resistance rating requirements for exterior walls (R302.1 Exception 7) are **not** applicable to attached single-family dwellings separated by a property line.
2. That the added language to the definition of Fire Separation Distance (Item 4) and the reinstatement of the Exception to the fire resistance rating requirements for exterior walls (R302.1 Exception 7) are intended to apply to subdivisions or developments permitted by local ordinances to be "zero lot line" developments.
3. Attached single-family dwellings separated by a property line meet the statutory definition of townhouse and may be constructed as provided for townhouses in the Florida Building Code-Residential, 5th Edition (2014) with no regard to the number of

units.

Statute(s), and Code Section(s) on which the Declaratory Statement is sought:

- **2016 Supplement (Code Fixes) to the 5th Edition (2014) Florida Building Code as per HB 535 and SB 1602: Florida Building Code-Residential, 5th Edition (2014):**
 - Section R202 Definitions: Fire Separation Distance – Item 4
 - Section R302.1 Exterior Walls – Exception 7
 - Section R202 Definitions: Townhouse

- **Chapter 481 Florida Statute –**
 - 481.203(7) Townhouse definition

Background. GL Homes. is a certified general contractor serving the Collier, Lee, Palm Beach and Hillsborough County areas. The company specializes in building new home communities including single-family homes, estate homes, and active adult communities for retirees. The company is currently planning further development in the existing Valencia Lakes community in Hillsborough County, Florida, but is uncertain if changes in the code are applicable to attached single-family dwellings with property lines separating the units. Valencia Lakes includes attached single-family structures separated by a property line between the structures, as well as, detached single-family dwellings. Petitioner contends the structures meet the statutory definition of townhouses, but because they consist of two attached dwellings, do not meet the Florida Building Code-Residential definition of townhouses which stipulates three units.

The Code Changes. There are two changes to the code creating the uncertainty for Petitioner GL Homes. The code changes are the result of legislative direction to the Florida Building Commission to change various Volumes of the Florida Building Code, 5th Edition (2014). The code changes are published in the *2016 Supplement (Code Fixes) to the 5th Edition (2014) Florida Building Code as per HB 535 and SB 1602: Florida Building Code-Residential, 5th Edition (2014)* available as 2016 Supplement “Code Fixes” to the 5th Edition (2014) Florida Building Code (Supplement 1) on the Building Code Information System (BCIS) at [http://www.floridabuilding.org/fbc/Links to Code Resources.html](http://www.floridabuilding.org/fbc/Links%20to%20Code%20Resources.html) .

1. **Fire Separation Distance.** The first change to the code in question is the addition of Item 4 to the definition of Fire Separation Distance.

“FIRE SEPARATION DISTANCE. The distance measured from the building face to one of the following:

1. To the closest interior *lot line*; or
2. To the centerline of a street, an alley or public way; or
3. To an imaginary line between two buildings on the *lot*; or
4. To an imaginary line between two buildings when the exterior wall of one building is located on a zero lot line.

The distance shall be measured at a right angle from the face of the wall.” (2016 Supp. FBC-R, 5th

Ed. §R202)

2. Fire Resistance of Walls on Zero Lot Line. The second code change in question is the reinstatement of a previously adopted Florida specific amendment dealing with the fire resistance of exterior walls and projections for zero lot line developments. The Florida specific amendment was inadvertently overlooked in the development of the FBC-R, 5th Edition (2014). While no problems were encountered when the provision was contained in previous editions of the code, questions have arisen apparently due to the addition of Item 4 to the definition of the term Fire Separation Distance.

“R302.1 Exterior walls. Construction, projections, openings and penetrations of *exterior walls of dwellings* and accessory buildings shall comply with Table R302.1(1) ; or *dwellings* equipped throughout with an *automatic sprinkler system* installed in accordance with Section P2904 shall comply with Table R302.1(2).

Exceptions:

1 – 6 No change

7. Openings and roof overhang projections shall be permitted on the exterior wall of a building located on a zero lot line when the building exterior wall is separated from an adjacent building exterior wall by a distance of 6 feet or more, and the roof overhang projection is separated from an adjacent building projection by a distance of 4 feet or more, with 1 hour fire resistive construction on the underside of the overhang required, unless the separation between projections is 6 feet or more. “(2016 Supp. FBC-R 5th Ed. §R302.1)

Townhouse Definition. Petitioner contends the attached single-family dwellings of the Valencia Lakes Community should be considered townhouses based on the definition contained in Florida Statute. Petitioners believe the code definition of the term townhouse changes the statutory definition and the statutory definition supersedes the code definition.

Florida Statute Definition for Townhouse:

“Townhouse” is a single-family dwelling unit not exceeding three stories in height which is constructed in a series or group of attached units with property lines separating such units. Each townhouse shall be considered a separate building and shall be separated from adjoining townhouses by the use of separate exterior walls meeting the requirements for zero clearance from property lines as required by the type of construction and fire protection requirements; or shall be separated by a party wall; or may be separated by a single wall meeting the following requirements:

(a) Such wall shall provide not less than 2 hours of fire resistance. Plumbing, piping, ducts, or electrical or other building services shall not be installed within or through the 2-hour wall unless such materials and methods of penetration have been tested in accordance with the Standard Building Code.

(b) Such wall shall extend from the foundation to the underside of the roof sheathing, and the underside of the roof shall have at least 1 hour of fire resistance for a width not

less than 4 feet on each side of the wall.

(c) Each dwelling unit sharing such wall shall be designed and constructed to maintain its structural integrity independent of the unit on the opposite side of the wall.' [Ch. 481.203(7)]

Florida Building Code-Residential (FBC-R), 5th Edition (2014), Definition for Townhouse:
“**TOWNHOUSE.** A single-family *dwelling unit* constructed in a group of three or more attached units with property lines separating each unit in which each unit extends from foundation to roof and with a *yard* or public way on at least two sides. (Emphasis provided.) (FBC-R 5th Ed. §R202)

Further, the code defines the term dwelling; however, the definition contains no reference to property lines.

“**DWELLING.** Any building that contains one or two *dwelling units* used, intended, or designed to be built, used, rented, leased, let or hired out to be occupied, or that are occupied for living purposes.” (FBC-R, 5th Ed. §R201)

The Valencia Lakes attached units possibly could be classified as two-dwelling units based on the phrase “... or that are occupied for living purposes...” in the definition of dwelling. However, the fact that the units are separated by property lines and both the code and Florida Statute define attached single-family dwellings separated by property lines as townhouses, the most apparent classification would be as townhouses as defined in Florida Statute.

The Issues. There are two issues of concern.

1. Code Definition and Exception. The first issue is the application of the code Definition and Exception related to Fire Separation Distance to zero lot line versus traditional developments.

2. Code Modification of Townhome Definition. The second issue lies in the fact that the code apparently modifies the definition of townhouse contained in Florida Statute.

The impact of these issues creates ambiguity as to whether the Valencia Lakes attached units should be considered as Two-Family Dwellings or Townhomes, and whether the criteria of Zero Lot Line units should or should not apply.

Petitioner has designed the Valencia Lakes attached units as Townhomes based on the definition of Townhomes in the Florida Statute and has applied the traditional or non-zero lot line criteria of the Code regarding fire separation, specifically Table R302.1 (1). In the case of Valencia Lakes attached units, an interpretation that the zero-lot line criteria should apply impacts the location of windows. As a zero-lot line unit, FBC-R R302.1 Exception 7 prohibits openings in the exterior wall of the dwelling unit unless there is a Fire Separation Distance of six (6) feet between the exterior wall on the property line (the common wall) and an adjacent exterior wall. The design in question has window openings in the adjacent exterior wall within five feet six inches (5'6") of the common wall (i.e. property line). The window opening will be facing a blank two-hour fire resistance rated wall. (Please see detail following.) As a traditional

or townhouse dwelling unit, the code permits unprotected openings within three (3) feet of the property line. (Please see Table R302.1(1) following.)

Petitioners believe the application of the “zero lot line” element in this manner is not the intent of the change to the definition of Fire Separation Distance or the reinstatement of the Exception for zero lot line developments. In fact, zero lot line provisions do not contemplate a common wall, but separation between exterior walls. Applying the zero lot line criteria to this design is considered by the Petitioners as a totally improper application of the provisions.

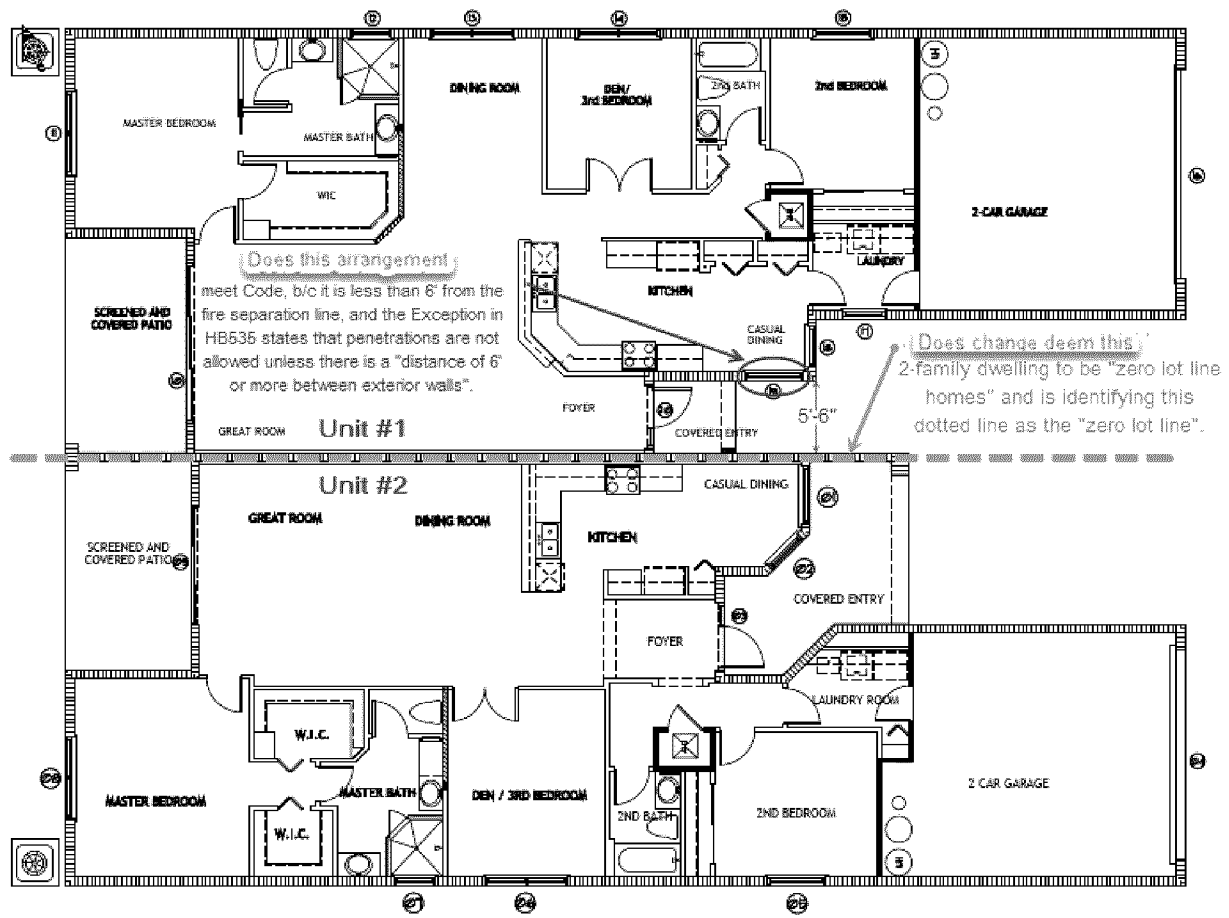


Table R302.1(1) Exterior Walls

EXTERIOR WALL ELEMENT		MINIMUM FIRE-RESISTANCE RATING	MINIMUM FIRE SEPARATION DISTANCE
Walls	Fire-resistance rated	1 hour—tested in accordance with ASTM E 119 or UL 263 with exposure from both sides	0 feet
	Not fire-resistance rated	0 hours	3 feet
	Not allowed	N/A	< 2 feet

Projections	Fire-resistance rated	1 hour on the underside	2 feet
	Not fire-resistance rated	0 hours	3 feet
Openings in walls	Not allowed	N/A	< 3 feet
	Unlimited	0 hours	3 feet
Penetrations	All	Comply with Section R302.4	< 3 feet
		None required	3 feet

For SI: 1 foot = 304.8 mm.
N/A = Not Applicable

Discussion. Regarding both changes to the code, Petitioner Florida Home Builders Association (FHBA) was instrumental in obtaining legislative approval of the changes. The undersigned representative of the Petitioners, working as a consultant to FHBA, provided the language that was eventually adopted into the legislation. There is no doubt on the Petitioner’s part that the intent was to reinstate and clarify provisions from earlier editions of the code for zero lot line developments.

Zero Lot Line. Zero lot line developments typically are permitted by a jurisdiction in local zoning or land development ordinances. Zero lot line developments are a mechanism for increasing the density of development on the subdivision level by changing the requirements for setbacks from property lines by allowing one wall of a dwelling to be located on the property line. Setbacks are then typically set using spatial separation between buildings rather than separation from property lines. To be effective, zero lot line development must be in a whole or a section of a subdivision platted or subdivided for zero lot line development.

Exterior wall fire resistance rating requirements of the FBC-R are based on separation from property lines. The original Exception 4 to FBC-R §R302.1 was adopted in the FBC 2009 Supplement to correlate the fire resistance rating provisions of the code based on separation between buildings rather than property lines, for zero lot line developments. The current provision, FBC-R §R302.1 Exception 7, is verbatim to the original except for the number. The proponent’s Reason statement for the change specifically addresses the differences between zero lot line and traditional developments. (Please see Rationale below.)

“Rationale [Provide an explanation of why you would like this Proposed Modification to the Florida Building Code.]:

Provides for the Florida Specific Amendment left out from the 2004 FBC, by allowing an exemption from Table R302.1. The table allows fire resistant rated walls on the zero lot line (ZLL) side of a residence, without allowing for any openings, but requires a 2-3 foot minimum fire separation distance for projections, depending on the fire resistance rating. With the definition of “fire separation distance” included in the 2007 FBC, the closest interior lot line is the point of beginning for the measurement. Utilizing Table R302.1 in its proposed form, the projection of a 2 foot roof overhang (for example) would force the wall 4-5 feet back from the property line, depending upon the fire rating of the projection, cause the wall to be fire rated, even though it had the same separation from the adjacent building as traditional development, and would require walls to be a minimum of 3 feet off the property line for any openings to be allowed. .
“(sic) (FBC BCIS, Mod 2844 Comment 1; Revision 1, and Revision 2, J. Glenn and R. Caldwell)

The intent was to allow the fire resistance rating of exterior walls and projections to be based on separation between building walls or projections rather than from property lines in zero lot line developments. There are thousands of existing zero lot line dwelling units located within the State of Florida. The existence of numerous such developments which had received local approvals prior to the adoption of the Florida Building Code, 5th Edition (2014), was the reason Petitioner Florida Home Builders Association sought timely legislative relief from the provisions of the code. Application of these provisions to standard traditional developments or construction of attached single-family dwellings separated by a property line is improper.

Townhouse: As stated above, Florida Statute and the FBC-R both define the term “townhouse”. Researching past editions of the FBC-R reveals this is apparently a long-standing difference between the documents which apparently has not created a known problem in the past. In the Valencia Lakes Community, however, the proposed construction is as required by the FBC-R for townhouses. Classification as townhouses would resolve the potential issues of incorrect application of the zero lot line provisions.

Solution: The Petitioners request the Florida Building Commission respond in the negative to the following questions:

Question 1: Does the definition of Fire Separation Distance Item 4 apply to an attached single-family dwelling separated by a property line?

Question 2: Does Exception 7 to FBC-R, 5th Edition (2014), Section R302.1 Exterior Walls apply to an attached single-family dwelling separated by a property line?

The Petitioners request the Florida Building Commission respond affirmatively to the following questions:

Question 3: If the answers to Questions 1 and 2 are no, do the fire separation provisions of Table R302.1(1) prevail?

Question 4: Does the definition of the term “townhouse” of Ch. 481.203(7), F.S, prevail over the definition of the term “townhouse” of the FBC-R, 5th Edition (2014)?

Question 5: May an attached single-family dwelling consisting of two dwelling units separated by a property line be designed and constructed in accordance with the FBC-R, 5th Edition (2014), provisions for “townhouses”? (FBC-R, 5th Ed, §R302.2)

Joseph Belcher

Digitally signed by Joseph Belcher
DN: cn=Joseph Belcher, o=JDB Code
Services Inc., ou,
email=joe@jdbcodeservices.com, c=US
Date: 2016.10.31 10:57:27 -04'00'

Joseph D. Belcher, Code Consultant

JDB Code Services, Inc

41 Oak Village Boulevard

Homosassa, Florida 34446

Telephone: 352-302-0825

Fax: 813-925-4152

Email: joe@jdbcodeservices.com

Representative for Petitioners:

Alan Gremillion of GL Homes and Florida Home Builders Association