

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

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

DS 2016-082

Petitioners' Representative

This request for a Declaratory Statement is hereby filed by the undersigned as consultant to Chris Glover of Palmwood Construction, Inc.; James Friedrichs, Hernando County Building Official; and Douglas Buck, Director of Governmental Affairs, Florida Home Builders Association.

Project Information

- The project in question is a community residential home with six or fewer residents licensed under Chapter 419 Florida Statute.
- The project address is Arc Nature Coast House IV 5259 Neff Lake Road, Brooksville, Florida 34601.
- This project is a new construction six-bedroom single-family residence of a single story used as a community residential home built for the non-profit organization The Arc Nature Coast. The funds to construct this home were primarily provided through a grant from the state administered by Florida Housing Finance Corporation.
- Hernando County Permit Number – 1327646

Identification of Petitioners

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

Chris Glover
Palmwood Construction
8245 River Country Drive
Spring Hill, FL 34607
(352) 597-2100
Fax (352) 597-4487
License holder Stuart R. Glover

CBCA 0022129
chris@palmwoodconstruction.com

James Friedrichs. CBCA, CBO
Hernando County Building Official
Hernando County Building Division
789 Providence Blvd
Brooksville, FL 34601
(352)754-4165 Ext 29109
Fax (352)754-4416
BU1808
jfriedrichs@hernandocounty.us

Florida Home Builders Association
2600 Centennial Place
Tallahassee, Florida 32308
(850) 567-1073
Fax (850) 216-0858
DBuck@fhba.com

Petitioner Glover of Palmwood Construction, Inc. represents the holder of an active current Certified Building Contractor's License #CBCA 0022129 issued by the Agency for state-wide contracting services, who constructs both new and remodeled residential and non-residential buildings. The construction of the community residential home in question is directly impacted by changes to the Florida Building Code. In particular, changes to the Florida Building Code, 5th Edition (2014) related to R-4 Occupancies will result in an estimated increase in cost of \$35,000.00 to \$40,000.00. In addition to the cost increase, the changes will decrease the residential character of the project resulting in an undesirable institutional character. Additionally, funding for the project by the Florida Housing Finance Corporation has already been allocated based on previously approved designs for construction. Palmwood Construction believes the code changes have the unintended consequence of creating a disharmony with requirements stipulated in Florida Statute because the statute defines such facilities as single-family units.

Petitioner Friedrichs is the Building Official of Hernando County and has the responsibility of enforcing the provisions of the Florida Building Code on the project. Mr. Friedrichs is aware of the potential disharmony between the code and Florida Statute and seeks clarification from the Florida Building Commission on which provisions prevail regarding the construction of the project under the Florida Building Code-Residential, 5th Edition (2014).

Petitioner Florida Home Builders Association (FHBA), a not-for-profit association representing the interests of all license categories of builders and tradesmen statewide. Palmwood Construction 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 residential community homes of six or fewer residents licensed under Chapter 419 Florida Statute while an R-4 occupancy class may be constructed as a single-family unit under the Florida Building Code – Residential, 5th Edition (2014) in concert with the intent of Chapter 419 Florida Statute. The construction will include the installation of a fire sprinkler system complying with Florida Building Code-Building Section 903.2.8.1.

Statute(s), Agency Rule(s), Agency Order(s) and/or Code Section(s) on which the Declaratory Statement is sought:

- **Florida Building Code-Building, 5th Edition (2014):**
 - Section 310.6.
 - Section 903.2.8.1

- **Chapter 419 Florida Statute – Community Residential Homes**
 - 419.001(1)(a)
 - 419.001(2)
 - 419.001(8)

Discussion: Palmwood Construction, Inc. is a certified building contractor serving the Citrus, Hernando, Pasco, Hillsborough, and Pinellas County areas. The company specializes in custom design built homes, semi-custom homes, home remodeling, design/build commercial new construction, and buildouts. The company is currently the contractor for The Arc Nature Coast Home IV and was the contractor for three other community residential homes for The Arc Nature Coast. Palmwood Construction believes there is an unintended consequence in the adoption of the Florida Building Code-Building, 5th Edition (2014) which creates a disharmony with the provisions of Chapter 419, Florida Statute. The disharmony results in an increase in the cost of construction by an estimated \$35,000.00 to \$40,000.00.

According to Palmwood Construction: “There are three main items that have to be changed to comply with the Florida Building Code-Building 5th Edition (2014):

1. The entire lid of the building and all the corridors have to be fire rated (including fire rated doors with closers). The doors and rated drywall lid and walls are estimated at around \$10,000 at this point.

2. Because of #1, all AC supply and returns in the Community Residential Home have to have fire rated dampers installed on them. There are about 34 of those at an average cost of \$300 each.

3. A Type I hood is required over the residential range. These commercial hoods usually

start upwards of \$15K to \$20K with Ansul System and other manufacturers. Palmwood Construction has located a company that makes a specialty type of this hood for this specific type use (basically, a non-commercial use that requires a type I hood but it doesn't have to be full blown commercial grade), but even this specialty hood is going to cost about \$10,000.

Beyond these there will be some smaller items that affect the electrician and likely some other small unforeseen items. But the three above are the major changes to the Community Residential Home and that's not counting any charge to revise two sets of plans and have them resealed by the engineer." (Source: C. Glover, Palmwood Construction, Email 10-19-2016)

Adding to the problems for Palmwood Construction and The Arc Nature Coast is the fact that funding for the project has already been allocated by the Florida Housing Finance Corporation (FHFC). The Arc Nature Coast serves adults with intellectual and developmental disabilities. In addition to offering employment and adult day training services to this population, The Arc Nature Coast offers a variety of Community residential homes. These homes are licensed by The Agency for Persons with Disabilities under Florida Statute 419. The homes are not medical in nature but do meet the health and safety needs of the residents as staff assist in meal preparation, personal hygiene, community outings and learning other daily living skills. The homes are reviewed each year by The Agency for Persons with Disabilities in order to maintain their license with the Agency. The idea behind community residential homes is to provide a home like atmosphere for these special needs citizens of the State of Florida.

The Code Change: The change is the result of changes to the base code and was not examined in detail by any Florida Building Commission Technical Advisory Committee or the full Florida Building Commission. Research into the change to the base code reveals the change was a part of a much larger change with ..." A major goal to provide clarity and consistency in terminology..." (ICC G20-09/10) Much of the emphasis was to correlate and clarify institutional type occupancies. The changes affected sections of the International Building, Fire, Residential, and Plumbing Codes. While the Reason statement for the code change alludes to problems, there is no specific data identifying the problems. The changes to R-4 were a small part of the overall change and the Reason statement does not justify (or mention) the deletion of the provision allowing R-4 occupancies including five (5) but not more than sixteen (16) occupants to comply with the International Residential Code. The reason does go into some detail regarding the type of sprinkler system permitted in small congregate living facilities.

The Reason statement, provided in full below, states that state licensing provisions were considered to avoid conflicts. Apparently, Chapter 419 Florida Statutes was not one of the state licensing provisions considered. At no point in the Reason statement was a proven need for the change or a problem with the existing code requirements cited. Finally, the Reason statement for the code change states: "**Cost Impact:** The code change proposal will not increase the cost of construction." The estimated cost increase on The Arc Nature Coast Home IV is conservatively estimated at \$35,000.00 to \$40,000.00. The cost increase for similar projects

planned around the state would be similar and possibly higher.

ICC PUBLIC HEARING October 2009 IBC-G20-09/10¹

“Reason: The ICC Board established the ICC Code Technology Committee (CTC) as the venue to discuss contemporary code issues in a committee setting which provides the necessary time and flexibility to allow for full participation and input by any interested party. The code issues are assigned to the CTC by the ICC Board as “areas of study”. Information on the CTC, including: meeting agendas; minutes; reports; resource documents; presentations; and all other materials developed in conjunction with the CTC effort can be downloaded from the following website: <http://www.iccsafe.org/cs/cc/ctc/index.html>. Since its inception in April/2005, the CTC has held seventeen meetings - all open to the public.

This proposed change is a result of the CTC’s investigation of the area of study entitled “Care Facilities”. The scope of the activity is noted as: Study issues associated with Day Care/Adult Care, Ambulatory Health Care and Assisted Living facilities with an emphasis on the number of occupants in relation to the supervision, and the determination of the resident’s capability of responding to an emergency situation without physical assistance from the facility’s supervision. The Code Technology Committee Study Group on Care Facilities has conducted a comprehensive review of current building and fire codes, federal regulations and prior code change proposals dealing with the provision of “care”. “Care” as it relates to the scope of this work relates to an occupant of a building who is compromised (mentally or physically) and receives some type of support (care). These facilities encompass a full spectrum of acuity and span a wide range of occupancy types including Groups B, E, I and R. On the lower end of the spectrum, occupants may be aged and receive occasional day living assistance such as cooking and cleaning. On the opposite end of the spectrum, occupants may be completely bedridden and dependant [*sic*] on medical gases and emergency power to maintain life.

The proposed changes provide clear direction for design and construction by using terms and concepts consistently and clearly identifying thresholds related to the condition of an occupant. Federal regulations and state licensing provisions were considered, but primarily in terms of avoiding conflicting requirements. It is not the intent of these changes to address licensing or operational issues. We do believe that the proposed changes will provide consistent and correlated language between these multiple sources of regulations that will help design and code professionals address the needs of care recipients in the many different types of facilities.

A major goal is to provide clarity and consistency of terminology. New definitions are added to specifically describe each type of care or facility and identify the distinct differences in these. Some terms are consolidated to be more descriptive of a group of occupants, yet generic enough to be used interchangeably. For example: a “Patient” is now identified as a “care recipient” and “nurse” is now “care provider”. People receive care of varying types but they are not always referred to as “patients”. They receive care from a wide range of persons with different technical abilities, not just a “nurse” or “staff”. Other definitions address existing terms

¹ International Code Congress, Publications, *Code Changes Resource Collection:2012 edition, A Complete Revision History, 2009 to 2012 I-Codes*, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795:

not defined within current code. The study group believes that these changes bring a practical response to the recent developments within the healthcare delivery system.

Group I-1, I-2, R-4; Section 308 and related correlations

Change modifying the existing language includes:

- A modification is proposed to the general charging language of Group I to more clearly express the various types of occupancy conditions found within Group I.
- Consolidate the definitions from Section 308.3.1 and 308.1 to create a definition Section 308.2 for all of Group I, consistent with current format within the code. Some of the definitions have been modified to add clarity; others are new to remove confusion of meaning and intent.
- Modified the general language of specific use occupancies within Group I and R to reflect the new definitions proposed and be more current with industry and licensing descriptions, but not the provisions.
- Modifications or additions have been made to the example listings of uses and correlate the terminology for a consistency of application. The threshold of more than 5 persons was added to the first paragraph of Group I-2 and the last sentence was added after the example listing to allow for families to care for person without becoming an I-2 use. This also correlates how the occupancies with less than 5 persons are handled in the other care facilities.
- The definition of Child Care Facilities has been to Foster Care Facilities and the provision of 24 hours was removed as it is redundant to the general language of an I-2 use. Foster Care for more than 5, children 2 ½ years of age or less is still an I-2 use. Facilities providing care to 6 to 16 children greater than 2 ½ years of age, is an R-4 and facilities for greater than 16 children it will be an I-1. Additionally, this will eliminate the confusion between day care and 24 hour care facilities.
- In Section 903.2.6 it is proposed to delete the option for the NFPA13D sprinkler system for Group I-1 because a NFPA 13D system is not permitted based on the threshold for Group I-1 being greater than 16 occupants. The sprinkler requirements for Group R is generic and currently not clear for facilities such as small congregate residences. As a small assisted living facility, the NFPA 13D sprinkler system is appropriate permitted in Group R-4 (see the revisions to Section 903.2.8) as well as other congregate residences with 16 or fewer occupants. Indicating the used in Section 903.1.3 clarifies that congregate residences with 16 or fewer occupants, while not single family dwellings, are permitted to use NFPA 13D systems. This is consistent with NFPA13D requirements. This was permitted specifically for Group R-4 in the 2000 IBC. This would also be consistent with Fair Housing Act court cases based on non-discrimination for group homes.
- Changes proposed beyond Chapter 3 are correlative in nature to reflect the new definitions or provisions previously allowed under chapter 3 provisions but not correlated for ease of use.

Cost Impact: The code change proposal will not increase the cost of construction.”

FBC-B 2010 §310.1:

“R-4.

Residential occupancies shall include buildings arranged for occupancy as residential care/assisted living facilities including more than five but not more than 16 occupants, excluding staff.

Group R-4 occupancies shall meet the requirements for construction as defined for

Group R-3, except as otherwise provided for in this code or shall comply with the Florida Building Code, Residential provided the building is protected by an automatic sprinkler system installed in accordance with Section 903.2.8.” (Emphasis provided.)

FBC-B 5th Edition (2014) §310.6

“310.6 Residential Group R-4. This occupancy shall include buildings, structures or portions hereof for more than five but not more than 16 persons, excluding staff, who reside on a 24-hour basis in a supervised residential environment and receive *custodial care*. The persons receiving care are capable of self-preservation. This group shall include, but not be limited to, the following:

- Alcohol and drug centers
- Assisted living facilities
- Congregate care facilities
- Convalescent facilities
- Group homes*
- Halfway houses
- Residential board and *custodial care* facilities
- Social rehabilitation facilities

Group R-4 occupancies shall meet the requirements for construction as defined for Group R-3, except as otherwise provided for in this code.” (Emphasis provided.)

Florida Statute: Florida Statute specifically addresses community residential homes at Ch. 419.001, F.S. Palmwood Construction and its client, The Arc Nature Coast, relied upon past experience and the language of Florida Statute in planning and designing the project. Presumably, the Florida Housing Finance Corporation relied upon the language in Florida Statute and past experience in allocating funding for the project. Florida Statute in this regard has not changed.

The statute has specific language defining community residential homes and clearly deeming such homes with six or fewer residents to be single-family units.

““Community residential home” means a dwelling unit licensed to serve residents who are clients of the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Juvenile Justice, or the Department of Children and Families or licensed by the Agency for Health Care Administration which provides a living environment for 7 to 14 unrelated residents who operate as the functional equivalent of a family, including such supervision and care by supportive staff as may be necessary to meet the physical, emotional, and social needs of the residents.” [Ch. 419.001(1)(a)]

“Homes of six or fewer residents which otherwise meet the definition of a community residential home shall be deemed a single-family unit and a noncommercial, residential use for the purpose of local laws and ordinances. Homes of six or fewer residents which otherwise meet the definition of a community residential home shall be allowed in single-family or multifamily zoning without approval by the local government, provided that such homes are not located within a radius of 1,000 feet of another existing such home with six or fewer residents or within

a radius of 1,200 feet of another existing community residential home. Such homes with six or fewer residents are not required to comply with the notification provisions of this section; provided that, before licensure, the sponsoring agency provides the local government with the most recently published data compiled from the licensing entities that identifies all community residential homes within the jurisdictional limits of the local government in which the proposed site is to be located in order to show that there is not a home of six or fewer residents which otherwise meets the definition of a community residential home within a radius of 1,000 feet and not a community residential home within a radius of 1,200 feet of the proposed home. At the time of home occupancy, the sponsoring agency must notify the local government that the home is licensed by the licensing entity. For purposes of local land use and zoning determinations, this subsection does not affect the legal nonconforming use status of any community residential home lawfully permitted and operating as of July 1, 2016.” (Emphasis provided.) [Ch. 419.001(2)]

Regarding the construction of community residential homes with six or fewer residents, statute clearly states the homes shall be subject to the same laws applicable to other noncommercial, residential family units in the area.

“A dwelling unit housing a community residential home established pursuant to this section shall be subject to the same local laws and ordinances applicable to other noncommercial, residential family units in the area in which it is established.” [Ch. 419.001(8)]

In summary, Florida Statute defines community residential homes, designates such homes with six or fewer residents as single-family units, and specifies such homes be constructed consistent with laws for single-family units.

Solution: The Petitioners are requesting the Florida Building Commission respond in the affirmative to the following question:

Question: With the understanding the project will be protected by a fire sprinkler system per Florida Building Code-Building, 5th Edition (2014), §903.2.8.1, do the provisions of Chapter 419 Florida Statute which classifies the project as a single-family non-commercial unit supersede or prevail over the provisions of the Florida Building Code, 5th Edition (2014) permitting construction under the Florida Building Code-Residential because Florida Statute already defines the facility as a single-family non-commercial unit?

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 11:01:21 -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:

Chris Glover, James Friedrichs, and Florida Home Builders Association