

9/9/09

STATE OF FLORIDA
BUILDING COMMISSION

In the Matter of

CITY OF JACKSONVILLE,
BUILDING INSPECTION
DIVISION,

Case #: DCA09-DEC-130

Petitioner.

_____ /

DECLARATORY STATEMENT

The foregoing proceeding came before the Florida Building Commission (the Commission) by a Petition from James R. Shock, P.E., C.B.O., of the City of Jacksonville, Building Inspection Division, which was received on April 30, 2009. Based on the statements in the petition, the material subsequently submitted and the subsequent request by the Petitioner, it is hereby ORDERED:

Findings of Fact

1. The petition is filed pursuant to, and must conform to the requirements of Rule 28-105.002, Florida Administrative Code.
2. The Petitioner is an agency of the City of Jacksonville and enforces the Florida Building Code therein.
3. The Petitioner has received plans for a restaurant within a shopping center that has an area of less than 3000 square feet, an occupant load of 35, and seating for 11 patrons.
4. The Petitioner inquires whether the Code requires a separate toilet room for each sex?

Conclusions of Law

1. The Florida Building Commission has the specific statutory authority to interpret the provisions of the Florida Building Code by entering a declaratory statement.

2. Section 309.1, Florida Building Code, Building Volume, identifies restaurants and drinking establishments with an occupancy load of less than 50 persons as a mercantile occupancy.

3. Section 403.2, Florida Building Code, Plumbing Volume, requires separate facilities for each sex where plumbing fixtures are required subject to the following relevant exceptions:

2. Separate facilities shall not be required for food service establishments which seat 10 persons or less.

3. Separate facilities shall not be required in business and mercantile occupancies with a total floor area of 3,000 square feet (279 m²) or less.

4. Section 102.1, Florida Building Code, Building Volume, provides that:

Where, in any specific case, different sections of this code specify different materials, methods of construction or other requirements, the most restrictive shall govern.

Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.

5. The exceptions cited above conflict; application of the language from exception 2 indicates that separate facilities are required because the project is a food service establishment with seating for more than 10 persons; exception 3 indicates that separate facilities are not required as the space qualifies as a mercantile occupancy.

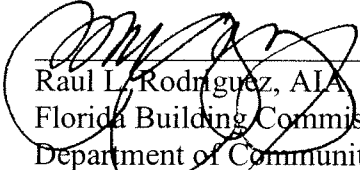
6. The exception pertaining to foodservice establishments is more specific than

that applying to mercantile and business occupancies and therefore governs the circumstances.

7. The restaurant requires separate facilities.

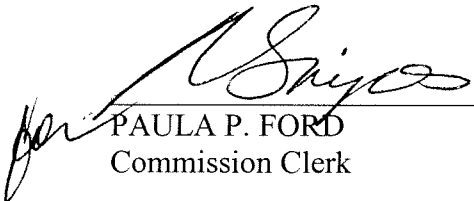
Petitioner and all other interested parties are hereby advised of their right to seek judicial review of this Order in accordance with Section 120.68(2)(a), Florida Statutes, and with Fla. R. App. 9.030(b)(1)(C) and 9.110(a). To initiate an appeal, a Notice of Appeal must be filed with Paula P. Ford, Clerk of the Commission, Sadowski Building, 2555 Shumard Oak Boulevard, Tallahassee, FL 32399-2100, and with the appropriate District Court of Appeal no later than thirty days after this Order is filed with the Clerk of the Commission. A Notice of Appeal filed with the District Court of Appeal shall be accompanied by the filing fee specified by section 35.22(3), Florida Statutes.

DONE AND ORDERED this 3rd of September 2009, in Coral Gables,
Miami-Dade County, State of Florida.


Raul L. Rodriguez, AIA, Chair
Florida Building Commission
Department of Community Affairs
Sadowski Building
2555 Shumard Oak Blvd.
Tallahassee, FL 32399-2100

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent to the
following by the method indicated on this 9th day of September, 2009.


PAULA P. FORD
Commission Clerk

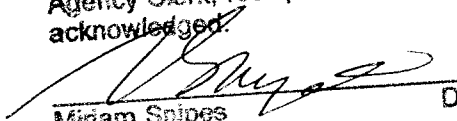
Via U.S. Mail

James R. Shock, P.E., C.B.O.
Building Inspection Division Manager
City of Jacksonville
214 North Hogan Street
Jacksonville, Florida 32202

Via Hand Delivery

Mo Madani, C.B.O. Manager
Codes and Standards Section
Department of Community Affairs
2555 Shumard Oak Blvd.
Tallahassee, FL 32399-2100

FILING AND ACKNOWLEDGEMENT
FILED, on this date, with the designated
Agency Clerk, receipt of which is hereby
acknowledged.


Miriam Snipes
Deputy Agency Clerk
Date 9/9/09