

Petition for Declaratory Statement  
before the Florida Building Commission

<b>FILED</b>	
Department of Business and Professional Regulation	
Senior Deputy Agency Clerk	
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File #	

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**DS 2019-078**

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**Statutory provision, Florida Building Code provision, commission rule or order on which the Declaratory Statement is sought:**

2017 Florida Building Code, Residential  
Chapter 1, Section R101.2 Scope  
Chapter 2, Section R202, Definitions  
Chapter 3, Section R302.2, Fire-Resistant Construction, Townhouses

**Background**

Our company is a small developer pursuing the design and construction of sustainable and resilient townhouses in several South Florida locales (focused in Miami-Dade County). We are elevating these projects by design, to prepare for sea level rise. We want to be sure that the dwelling units that we wish to build will qualify as *townhouses* under the Florida Building Code.

We have three projects in development that we ask the Commission to consider (see Figure 1). In each project, the townhouses are elevated or partially elevated. We find the definitions in the Code somewhat ambiguous with regard to elevated, or partially elevated, townhouses.

In Project A, the ground floor of each townhouse contains an enclosed garage at the front that does not extend the full depth of the floorplate above it. To the rear of the garage, there is a paved area, owned by that townhouse. These paved areas, one under each townhouse, are connected together to form a driving lane. Each townhouse will grant their neighbors access to their section of this lane, via an easement, so that these neighbors can drive to their own garages, passing beneath the neighboring townhouse(s). No other vehicular access is available.

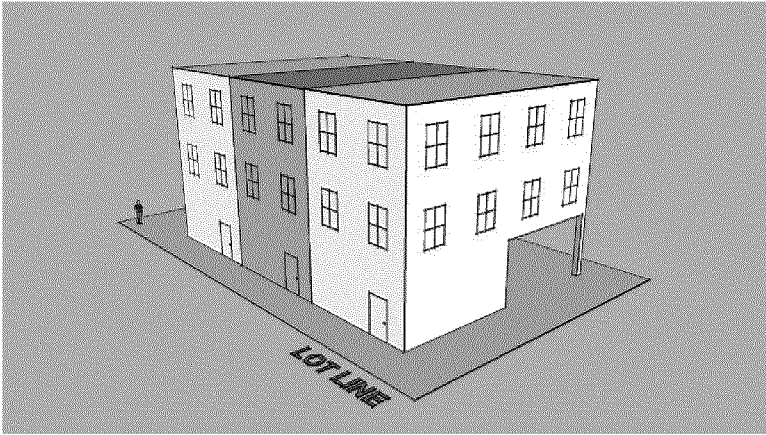
In Project B, there is no solid enclosure at the ground floor. Each townhouse will own the area beneath it, and will use this area for parking. They will also allow their neighbors, via easement, to drive through this area to reach their own homes.

Project C is identical to Project B, except no easement will exist. The space beneath each townhouse will be owned and used exclusively by that unit. A common driveway lies outside the building envelope.

In all three projects A, B, and C, the following conditions are present:

1. The townhouses are three stories above grade in height;
2. The townhouses are built in a row of three or more units (separated by a common wall);
3. Each townhouse has an independent means of egress;
4. Property lines separate each townhouse from its neighbors;
5. Each townhouse extends from the foundation to the roof (via columns in some cases);
6. A yard or public way exists on at least two sides of each townhouse;
7. Each townhouse is designed to comply with the townhouse fire separation requirements in section R302.2 and R302.2.1 of the Building Code, Residential, as follows:
  - a. Where the ground floor is enclosed, a common 2-hour fire-resistance-rated wall will be continuous from the foundation to the roof; and
  - b. Where the ground floor is not enclosed, the fire barrier continuity requirements of R302.2.1 will be met by a 1-hour fire-resistance-rating at each slab separating the area underneath the townhouse from the floor above it (maintaining a total 2-hour rating between adjacent townhouse interiors);
8. In all respects not addressed specifically herein, the townhouses will also comply with all of the applicable requirements for townhouses in the Florida Building Code, Residential.

GRAYSCALE PARTNERS PETITION FIG 1

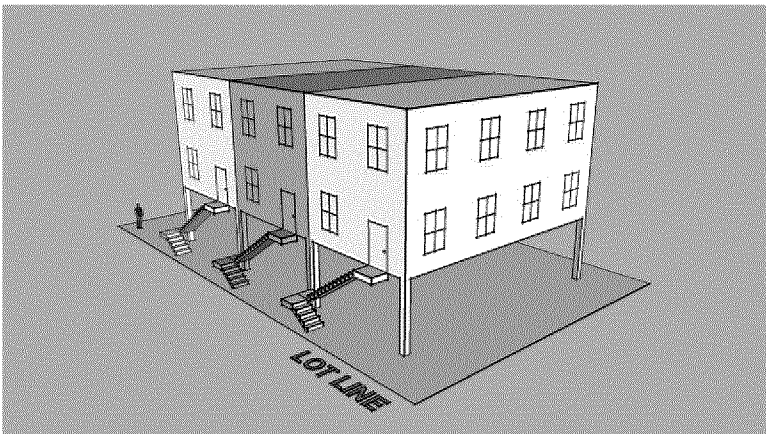


Project A front



Project A rear

**Project A:** Part of the ground floor, although privately owned, acts as a driveway for other units to access their garages, via an easement.

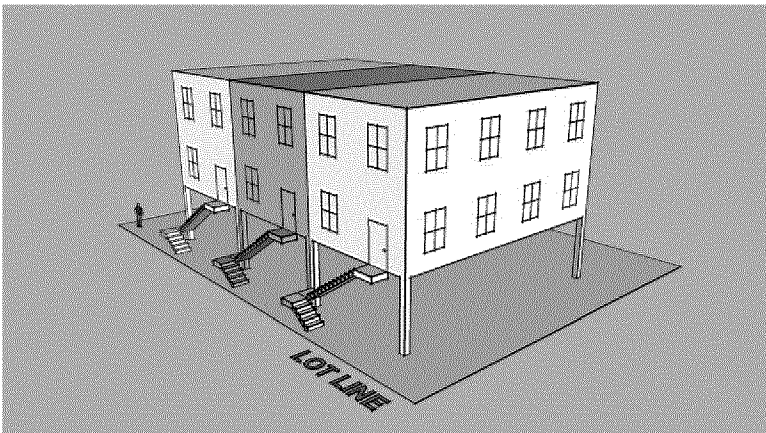


Project B front

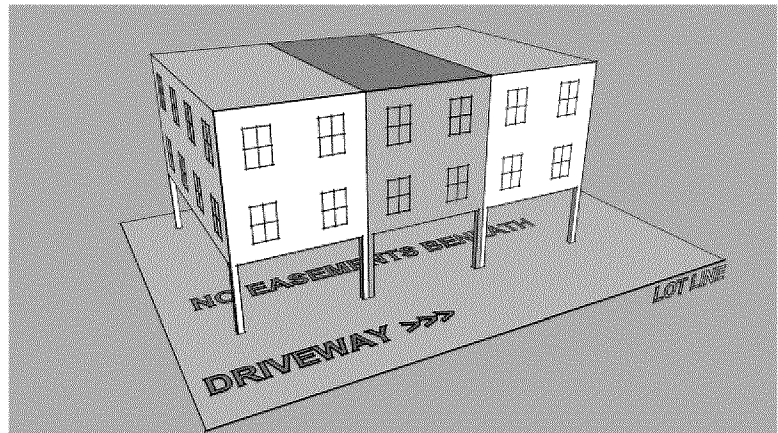


Project B rear

**Project B:** Elevated townhouse. Each townhouse privately owns the space beneath it, but part of this space acts as a driveway for other units to access their townhouses, via an easement.



Project C front



Project C rear

**Project C:** Elevated townhouse. Each townhouse privately owns the space beneath it, and there are no easements across these spaces for adjacent units.

The code upon which we base our question is as follows:

2017 Florida Building Code, Residential

**R101.2 Scope.**

The provisions of the Florida Building Code, Residential shall apply to the construction, *alteration*, movement, enlargement, replacement, repair, *equipment*, use and occupancy, location, removal and demolition of detached one- and two-family dwellings and *townhouses* not more than three stories above *grade plane* in height with a separate means of egress and their *accessory structures* not more than three stories above *grade plane* in height.

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**R202 Definitions**

**[RB]TOWNHOUSE.**

A single-family *dwelling unit* not exceeding three stories in height constructed in a group of two or more attached units with property lines separating such units in which each unit extends from foundation to roof and with a *yard* or public way on not less than two sides.

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**R302.2 Fire Resistant Construction: Townhouses.**

Each townhouse shall be considered a separate building and shall be separated by separate fire-resistance rated exterior wall assemblies meeting the requirements of zero clearance from property lines of Section R302.1 for exterior walls.

**Exception:** A common 2-hour fire-resistance-rated wall assembly tested in accordance with ASTM E119, UL 263, or in accordance with the Florida Building Code, Building Section 722 is permitted for townhouses if such walls do not contain plumbing or mechanical equipment, ducts or vents in the cavity of the common wall unless such materials and methods of penetration comply with Section R302.4. The wall shall be rated for fire exposure from both sides and shall extend to and be tight against exterior walls and the underside of the roof sheathing. Electrical installations shall be installed in accordance with Chapters 34 through 43. Penetrations of electrical outlet boxes shall be in accordance with Section R302.4.

**R302.2.1 Continuity.**

The fire-resistance-rated wall or assembly separating *townhouses* shall be continuous from the foundation to the underside of the roof sheathing, deck or slab. The fire-resistance rating shall extend the full length of the wall or assembly, including wall extensions through and separating attached enclosed *accessory structures*.

**Questions**

1. Do the dwelling units in Project A meet the definition of *townhouse* under the Florida Building Code?
2. Do the dwelling units in Project B meet the definition of *townhouse* under the Florida Building Code?
3. Do the dwelling units in Project C meet the definition of *townhouse* under the Florida Building Code?
4. If the answer is yes to one or more of the questions (1-3) above, does it follow that the townhouses in that project are subject to the Florida Building Code, Residential, and therefore not subject to the Florida Building Code, Building?

## Summary

We believe the answer to all four questions is yes.

We believe that in each of our projects A, B, and C, these dwellings meet each of the criteria in the definition of *townhouse* in R202: The dwellings are three stories in height. Each dwelling has its own means of egress. The dwellings are constructed in a group of two or more attached units. Property lines separate each unit. Each unit extends from foundation to roof. Finally, there is a yard on (at least) two sides of each unit.

Further, we believe the townhouses in each project meet the fire separation continuity requirements in R302.2.1, although these requirements do not explicitly address an elevated townhome. Our interpretation of this section for an elevated townhome is as follows:

- a) In areas where a common wall exists, the 2-hour fire resistance rating extends the full length of the wall, as required;
- b) In areas where the townhouse is elevated and structurally open beneath, and no common wall exists, it is logical that the continuity of the fire separation would apply to the slab above the open portion. Each such slab in our projects will have (at least) a 1-hour fire resistance rating, thus maintaining a total fire resistance rating of 2-hours between townhouse interiors.

Further, we believe that the presence or absence of an easement across, under, or through part of the building has no effect on whether the dwelling units meet the definition of *townhouse* under the Building Code, per the earlier finding of the Building Commission DS 2014-043, paragraph (12), and also per the townhouse definition in R202, which does not preclude easements.

Finally, we believe that any dwelling unit meeting the definition of *townhouse* under the Florida Building Code, as clarified by the Building Commission pursuant to this Petition, would be subject to the Florida Building Code, Residential, and not to the Florida Building Code, Building.

Clarification of the correct classification of these projects into the appropriate Building Code, Residential or Building, will have important benefits to these projects and to others, particularly in localities where lot widths and setbacks do not permit a separate driveway outside the building footprint, and where elevation for sea level rise creates an opportunity to use the space beneath the townhouses for parking and/or access.

We sincerely appreciate the Commissioners' attention to the questions that we pose.

Respectfully submitted,



Ted Caplow  
Grayscale Partners LLC

5 December 2019