



BROWARD COUNTY

Board of Rules & Appeals

One North University Drive, Suite 3500B, Plantation, Florida 33324

Phone (954) 765-4500 Fax: (954) 765-4504

<http://broward.org/codeappeals.htm>

BOARD OF RULES AND APPEALS

SEPTEMBER 13, 2018

MEETING MINUTES

Call to order:

Chair Daniel Lavrich called a published meeting of the Broward County Board of Rules and Appeals to order at 7:06p.m. The roll was called and the following members were present:

Present:

Daniel Lavrich, Chair
Kenneth B. Wynn, Vice Chair
Jeffrey Lucas
Ron Burr
Gregg D'Attile
Stephen Bailey.
Jeff Falkanger
John Famularo
Albert Fernandez
David Rice
Daniel Rourke
Dennis A. Ulmer
Abbas Zackria

After the roll call, the presence of a quorum was announced.

Approval of Minutes

MR. LUCAS MADE A MOTION AND MR. D'ATTILE SECONDED THE MOTION TO APPROVE THE JUNE 14, 2018 MEETING MINUTES. THE MOTION CARRIED BY UNANIMOUS VOTE OF 13-0.

- 4. The Board will consider adopting Broward County Local Amendments to the Florida Fire Prevention Code, Sections F-103.3 Certification of Fire Marshal/Fire Code Official, F-103.4.3 Certification of a Fire Plans Examiner, and F-103.5.3.1, to remove old terminology and replace with new per FAC 69A-37 language, effective September 24, 2018**
- 5. The Board will consider adopting amendments to the Florida Building Code 6th Edition (2017) – Building – Chapter I, Administrative provisions, Sections 104.19.3 Certification of Fire Marshall/Fire Code Official, 104.20.3 Certification of Fire Plans Examiner and 104.21.3.1, to remove old terminology and replace with new per FAC**

69A-37 language, effective September 24, 2018

The above items were removed from the agenda due to an issue with posting of the legal notice.

CONSENT AGENDA

1. Certifications – Staff Recommended

MR. ZACKRIA MADE A MOTION AND SECONDED BY MR. RICE TO APPROVE ALL SUBMITTED CERTIFICATIONS. THE MOTION PASSED BY UNANIMOUS VOTE OF 13-0.

2. Appeal 18-02 – 2941 Las Olas Boulevard, Fort Lauderdale – 239 Almond Avenue, Fort Lauderdale.

All those testifying was sworn in.

a. Staff Report

Mr. Rolando Soto, Chief Mechanical Code Compliance Officer, summarized the appeal and staff recommendation to deny the appeal and thereby support the City of Fort Lauderdale's position as outlined in the staff memorandum of September 13, 2018 provided in the agenda support materials.

Mr. Israel Rengil, representing the Appellant, indicated that the same installation exists in three places in Broward County, that being a direct vent system.

b. City Response

Mr. Andres Vera, representing the City of Fort Lauderdale, indicated the Building Division's administration (chief) was different when the three other locations were approved and consequently he could not speak to those cases. The duct work, UL103, is not for commercial use. This is an extra-heavy-duty appliance and there are no exceptions in the code. He quoted from Chapter 2 of the Building Code, that describes extra-heavy-duty appliances using open flame combustion of a solid fuel at any time. The proposed pizza oven is mixed fuel, gas and wood-burning, and therefore considered an extra-heavy-duty appliance. He also quoted Section 507 of the Building Code, that indicates Type 1 hoods shall be installed where cooking appliances produce grease or smoke as a result of the cooking process. He continued with the quote, that Type 1 hoods shall be installed over medium-duty, heavy-duty and extra-heavy-duty cooking appliances. He advised that the plans submitted to this Board are not what was submitted to the City. He referred to information in the appeal submittal. On page 27, it indicates applications for Forno Bravo ovens wherein Type 1 hoods are required. On page 28, (attached), it spells out reasons for a Type 1 hood. There is no exception to the requirement.

Mr. Vera confirmed for Mr. Rice that their plans have never been approved and plans from a new engineer have not been submitted. Discussion turned to the issue of life safety. Mr. Bailey wanted the matter to be reviewed by the Mechanical Committee. He

was concerned with Mr. Vera's statement that this is a life safety issue and consequently wanted to hear from the Mechanical Committee on this point.

Mr. Shahrouz Rahimi, Appellant, asked if there has been any record or documentation indicating that the direct vent hood applications at the other locations have had any problems or caused life-threatening incidences.

Ms. Rhonda Montoya Hasan, Assistant City Attorney, City of Fort Lauderdale, believed that question is out of order for the City. The Board is hearing this appeal for this matter. In response to Mr. Bailey, she advised that the mechanical inspector has said it is a life safety issue by definition of the code in his opinion. The City's response includes an opinion from the Building Officials Association of Florida, dated July of 2014, that addresses the issue. It is the intent of 507.21 to require wood burning pizza ovens be installed under a Type 1 hood.

c. Board Action

Mr. Rice pointed out that other approved permits have nothing to do with this issue which is before the board now. Life safety issues have to do fire alarm systems, emergency lighting, etc. It is not possible to grant exceptions to the code.

Mr. Bailey was interested to know the reasoning for other ovens being approved in the past. Chairman Lavrich explained those examples are not on the agenda and it is not relevant to this appeal.

Mr. Zackria raised the question and the Appellant explained why the original plans included what was required by code. The original cost was \$22,000 and considered overkill by the new architect. The proposed oven is wood-burning only. There were several submittals to Mr. Tony Sadoff, the mechanical plan reviewer. He complied with the several requirements set forth by Mr. Sadoff. Mr. Falkanger indicated that the plans presented to the board indicate wood burning/gas. Mr. Vera advised that there is no fire suppression on the ductwork and the listing is for residential use only. Direct vent is residential use.

MR. FALKANGER MADE A MOTION BASED ON THE EVIDENCE PRESENTED AND AFTER CONSIDERING THE STAFF RECOMMENDATION AND MR. RICE SECONDED THE MOTION TO DENY APPEAL 18-02. THE MOTION PASSED BY A VOTE OF 12-0 WITH MR. LUCAS ABSTAINING. A MEMORANDUM OF VOTING CONFLICT, DATED SEPTEMBER 13, 2018, FILED BY MR. LUCAS IS ATTACHED TO THESE MINUTES.

3. Request of the City of Tamarac that Mr. Rafael M. Guzman be certified as a Structural Inspector.

a. Staff Report

Mr. Michael Guerasio, Chief Structural Code Compliance Officer, corrected his report provided in the agenda materials to note the request is for structural inspector only. In following Broward County Administrative Provisions of the Building Code, Section

104.10.1, (BCAP) he could not find sufficient evidence of experience to approve this application.

b. Request of Building Official

All those testifying were sworn in.

Mr. Claudio Grande, Building Official, City of Tamarac, referenced BCAP 104.16.3, that requires an architect or engineer shall have practiced in the discipline requested within the HVHZ for at least three years. Mr. Guzman is originally from Puerto Rico and has been an engineer there for the last twenty-six years. He obtained a Bachelor of Science degree in Puerto Rico in 1979, did his internship for a period of 7 years and obtained his professional engineer license in 1989. His resume shows that he has worked all of his career in Puerto Rico as an engineer building, designing and inspecting engineer's work. In 2011 Puerto Rico adopted the International Building Code which is essentially the same as the Florida Building Code. Although he does not have experience in a HVHZ zone, he has experience in the same code followed in Florida. He received a professional engineer license from the State of Florida almost a year ago, September 26, 2017. In 2015 until now, he worked for Home Depot as a field inspector, inspecting projects relating to roofing, windows, doors – basically high velocity. If Mr. Guzman worked for an engineering company, he could be a special inspector, inspecting any type of work. The only thing he is lacking is that he has not practiced as an engineer in the State of Florida.

c. Board Action

Discussion ensued about experience and being able to qualify to sit for the HVHZ exam. In terms of not having any experience in a HVHZ zone, Mr. Kramer, Board Attorney, noted approval would be precedent setting. Mr. DiPietro, Administrative Director, indicated that the intent is for the experience to be in Florida. If one does not have the high velocity experience, he or she could take the exam, but would still have Florida experience.

Mr. Zackria pointed out when Broward County's Chapter 1 was written, Broward County was not on the International Building Code (IBC). Now most of the world follows IBC. Perhaps the Florida requirement that should be revisited and broadened to IBC experience. For example, if both Florida and Puerto Rico are on IBC, there is not much of a difference other than the HVHZ. Chairman Lavrich pointed out that there are a number of things in the HVHZ zone some of which are quite significant that other parts of the country do not follow. Mr. Burr agreed that the Certification Review Committee should look into this. Chairman Lavrich thought perhaps the Committee should look into this. Mr. Lucas raised the idea of the HVHZ zone in Puerto Rico being equivalent to Florida time. He advocated for a mechanism to accept equivalencies.

MR. BAILEY MADE A MOTION AND MR. ZACKRIA SECONDED THE MOTION TO DENY THE APPLICATION AS SUBMITTED. THE MOTION PASSED BY UNANIMOUS VOTE OF 13-0.

MR. RICE MADE A MOTION AND MR. D'ATTILE SECONDED THE MOTION TO

REFER THIS SUBJECT TO THE BUILDING CERTIFICATION REVIEW COMMITTEE FOR REVIEW OF THE CERTIFICATION APPLICATION AS TO EXPERIENCE IN OTHER STATES AND OTHER COUNTIES IN THE STATE OF FLORIDA QUALIFY FOR EXPERIENCE IN A HIGH VELOCITY ZONE. THE MOTION WAS LATER AMENDED TO INCLUDE REVIEW OF AN EQUIVALENCY MECHANISM AND PASSED BY UNANIMOUS VOTE.

During discussion of the above motion, Mr. Lucas thought this is a good example of the kind of problems being faced for the last few years. There is a big demand for engineers, inspectors and contractors and there is a shortage. This is an opportunity to look at an equivalency of his experience in Puerto Rico that he would consider as a hurricane zone. Chairman Lavrich summarized that the Board is looking for the Certification Committee to study the requirements to become an inspector in Broward County as to whether those requirements need modification. Mr. Rice clarified it would be specifically relating to high velocity hurricane zone experience.

Mr. Zackria suggested looking that it not be specific to the State of Florida because most of the world now follows the International Building Code. Mr. Rice indicated that with the motion specifying other states, it could include Puerto Rico. In response to Chairman Lavrich, Mr. DiPietro noted that based on the latest cycle, a lot of the International Code Council amendments have not been accepted particularly with respect to the structural area. Mr. Lucas pointed out that this board has very little power to accept equivalencies. He felt the Certification Committee should look at an equivalency mechanism that the Board could use that would allow a decision to be made on one application instead of changing the code. Mr. Rice amended his motion. Chairman Lavrich felt there should be caution with using equivalency because it leaves too much to subjectivity.

Mr. D'Attile asked that this particular application be included in the information for the Certification Review Committee as an example. Chairman Lavrich asked that this be presented to the Committee as soon as possible.

6. Response from Attorney General to request from Board of Rules and Appeals' attorney in regard to interpretation of restrictions on building inspectors using their certifications to engage in free enterprise. 71-575(4)(b)

- a. BORA Attorney's opinion on the Attorney General response 8/23/18
- b. Response from Attorney General 8/21/18
- c. Board Discussion

Mr. Charles Kramer, Board Attorney, highlighted the history around this matter as well as the questions posed and advised that the Attorney General's response confirms what the Board of Rules and Appeals has been enforcing.

7. Changing status of the Committee to Address Uniform Procedures for Installation of Bi-Directional Amplifiers from Ad Hoc to permanent. Updating Policy 05-01 "Representation of Board of Rules and Appeals Standing Committees and Appointing Guidelines"

- a. Recommendation of Committee Chair and Administrative Director

Mr. Rice, Chair of the Committee, highlighted the history around the topic. Initially the thinking was that the problem could be resolved in a few meetings, but new issues continue to arise. He is proposing that this committee be changed to a standing committee.

b. Board Action

MR. LUCAS MADE A MOTION AND MR. ZACKRIA SECONDED THE MOTION TO CHANGE THE STATUS OF THE AD HOC COMMITTEE TO ADDRESS UNIFORM PROCEDURES FOR INSTALLATION OF BI-DIRECTIONAL AMPLIFIERS TO A STANDING COMMITTEE. THE MOTION PASSED BY UNANIMOUS VOTE OF 13-0.

8. **Board of Rules and Appeals Policy 18-02 – Design Professional and Contractor requirements to become a certified inspector, as it relates to the closing out of open and ongoing projects**

a. Recommendation of Administrative Director

Mr. James DiPietro, Administrative Director, introduced the proposed policy. He explained that the individual would be given a defined period of time (six months) to close out his or her jobs before becoming certified as an inspector. This would give building officials a map. Any extension would need to be approved by the Board of Rules and Appeals.

Mr. Zackria did not think the period of time is sufficient. Moreover, he felt there should be flexibility. Mr. Rice noted that the policy spells out an exception process. Mr. DiPietro advised that while the staff's authority stops at six months, the Board would have the authority to grant extensions. Chairman Lavrich commented that if an individual has multi-year projects assigned to him or her, perhaps this would not be the proper career path at that point in time. He felt 180 days is a good amount of time.

b. Board Action

MR. D'ATTILE MADE A MOTION AND MR. FAMULARO SECONDED THE MOTION TO ADOPT POLICY 18-02. THE MOTION PASSED BY UNANIMOUS VOTE OF 13-0.

9. **Lobby Tools yearly contract relating to legislative research, tracking and reporting**

a. Staff Report

Mr. Bryan Parks, Chief Fire Code Compliance Officer, introduced the item. He explained that staff generally finds out about actions of the Legislature too late to properly bring information to the Board of Rules and Appeals. He outlined the proposed contract and clarified for the Chair that the associated cost in future years is anticipated to be \$3,825, but not exceed \$4,500. He also confirmed that the Director is being given authority to renew the contract annually not to exceed \$4,500. Lobby Tools did not commit to the amount being exactly the same going forward but gave assurance that it would be close

to that amount.

Some discussion ensued as to the software functionality and staff follow-up.

b. Authorization for FY 19 or \$3,825

c. Motion authorizing Director to renew annual contracts not to exceed \$4,500 per year

MR. D'ATTILE MADE A MOTION AND MR. RICE SECONDED THE MOTION TO ACCEPT THE PROPOSAL. THE MOTION PASSED BY UNANIMOUS VOTE OF 13-0.

10. Director's Report

Mr. James DiPietro, Administrative Director, advised that if the Board would like to take any legislative action, it would be appropriate to direct the item be placed on a future agenda.

A. Case 17-27, Allegation of Non-Code Compliant Fire-Rated Ventilation Duct

Mr. DiPietro reviewed information provided in the backup materials. A joint meeting of the Mechanical/Smoke Control and Structural Committees will offer technical advice. Staff also recommended training for the building department.

MR. BAILEY MADE A MOTION AND MR. RICE SECONDED THE MOTION TO ACCEPT THE ADMINISTRATIVE DIRECTOR'S REPORT OF SEPTEMBER 13, 2018 CONCERNING CASE 17-27. THE MOTION PASSED BY UNANIMOUS VOTE OF 13-0.

B. Case 17-26, Private Provider Conflict; Case Closing

Mr. DiPietro reviewed the report of September 13, 2018.

MR. ULMER MADE A MOTION AND MR. D'ATTILE SECONDED THE MOTION TO ACCEPT THE ADMINISTRATIVE DIRECTOR'S REPORT OF SEPTEMBER 13, 2018 CONCERNING CASE 17-26. THE MOTION PASSED BY UNANIMOUS VOTE OF 13-0.

11. Attorney's Report – none

12. Committee Report – none

13. General Board Members Discussion

Mr. Bailey referred to the previous discussion (Agenda Item 2) where life safety was raised. If there had indeed been something life safety related, he would be bound to report it. He did not think life safety should be presented to the Board of Rules and Appeals as an argument unless it is truly so. For someone without an engineering background, it is a strong argument that would close a case.

Mr. Burr commended staff on an excellent newsletter.

Mr. DiPietro made a brief announcement including logistic details about the upcoming administrative hearing (John Madden) scheduled for October 22, 2018.

14. **Public Comment (3-minute limit per person) and written communication**

15. **Adjournment**

Having no further business to go before the Board, the meeting adjourned at 9:09 p.m.

A handwritten signature in black ink, appearing to read "D. L. Lavrich". The signature is written in a cursive style with large, rounded letters.

Daniel Lavrich, P.E. – Chair