

Broward County Board of Rules and Appeals Meeting Minutes

June 8, 2023
Time: 7:00 PM

Zoom Meeting Information:
<https://broward-org.zoomgov.com/j/1605817392>
Meeting ID: 160 581 7392

I. Call Meeting to Order

Chairman Lavrich called a published virtual meeting of the Broward County Board of Rules and Appeals to order at 7 p.m.

II. Roll Call

Daniel Lavrich, Chairman
Gregg D'Attile, Vice Chairman
Ron Burr
Steven M. Feller
Shalanda Giles-Nelson
R. Art Kamm
Sergio Pellecer
David Rice
Daniel Rourke
David Tringo
Dennis Ulmer
Derek A. Wassink
Lynn E. Wolfson

III. Approval of Agenda

Mr. Feller made a motion, and Ms. Wolfson seconded the motion to approve the agenda as written. The motion was carried out by a unanimous vote of 13-0.

IV. Approval of Minutes – May 11, 2023, Regular Meeting

Mr. Feller made a motion, and Mr. Wassink seconded the motion to approve the May 11, 2023, minutes as submitted. The motion was carried out by a unanimous vote of 13-0.

V. Public Comment (Except public hearing items on this agenda) - none

Public comments are limited to 3 minutes.

VI. CONSENT AGENDA

1. Certifications – Staff Recommended

2. Certifications – Staff Recommended

CITY OF COCONUT CREEK

Vaughn, Thomas G., Chief Plumbing Inspector

TOWN OF DAVIE

Allen, Adam, Fire Inspector

CITY OF FORT LAUDERDALE

Mark, Preston G., Structural Inspector – Temporary 120-day

TOWN OF HILLSBORO BEACH

Siravo, Michael, Chief Plumbing Inspector
Switalski, Joseph, Chief Mechanical Inspector

CITY OF HOLLYWOOD

Francois, Louis, Fire Inspector

CITY OF LIGHTHOUSE POINT

Siravo, Michael, Chief Plumbing Inspector
Switalski, Joseph, Chief Mechanical Inspector

CITY OF MIRAMAR

Arcelay, Javon, Fire Inspector
Arcelay, Stephon, Fire Inspector

CITY OF POMPANO BEACH

Pelaez, Jonathan, Electrical Inspector – Temporary 120-day
Sayer, Christopher A., Fire Plans Examiner
Zalewski, Ashley, Fire Plans Examiner

CITY OF TAMARAC

Alexander, Diko, Plumbing Inspector – Provisional

COUNTYWIDE

Monier, Claudio Rubin, Structural Inspector
Quesada, Sandy, Electrical Plans Examiner
Rodriguez-Gonzalez, Jose L., Electrical Plans Examiner/Inspector

Mr. Pellecer made a motion, and Mr. Feller seconded the motion to approve the certifications as recommended. The motion was carried out by a unanimous vote of 13-0.

VII. REGULAR AGENDA

1. Appeal 23-01 – Accent Closets Inc. and Pompano Beach Building Department

a. Staff Report

Mr. Michael Guerasio, Chief Structural Code Compliance Officer, reviewed and expanded on his memorandum to the Board, dated June 8, 2023, provided to the Board. This is a request by Accent Closets to reverse the City of Pompano Beach Building Official's ruling for fire sprinkling of the subject space after the annual fire inspection. He explained that the showroom/office square footage space is not surrounded by bounding walls etc. and therefore cannot be separated from the woodworking space with respect to fire sprinkler requirements and the entire 7,800 square feet. With the area exceeding 2,500 square feet, the Code requires fire sprinklers. He went on to say when going from the South Florida Building Code to the Florida Building Code in 2001 and more code changes in 2004. The group occupancy classification changed during that time and with the type of work being done it was put into a moderate hazard F1 designation. The F1 designation under the South Florida Building Code was a low hazard. He concluded by stating it is the staff's opinion that the area needs fire sprinklers and it is recommended that the Board deny the appeal.

b. Appeal Presentation

Mr. Ryan Abrams, representing Accent Closets, Inc., noted the individuals present to speak this evening. Mr. Charles Kramer, Board Attorney, noted that the law does not permit an expert to testify against another expert's work. He also did not think it appropriate to call witnesses who were not noticed. Mr. Abrams clarified that the testimony would be within the confines of what was submitted. A zoning use certificate was issued on June 11, 2023.

Chairman Lavrich indicated he would allow the experts to testify but not about somebody else's work.

Mr. Abrams indicated Accent Closets is a tenant at the subject location. They have been a family-owned business at this location since 2013. He reviewed information in a slide presentation. He outlined a chronology from the fire inspection on May 16, 2013, to the one on July 19, 2021. The 2013 inspection was made at Accent Closets' request prior to moving in. A zoning use certificate was issued on June 11, 2013, which indicated that the site was compliant with the Florida Building Code. Accent Closets moved in shortly thereafter, and there were regular fire inspections throughout the years. Based on those approvals, lease extensions were signed in 2016 and 2019. The July 19, 2021 fire inspection concluded that woodworking was happening in an area exceeding 2,500 square feet and fire sprinklers were required. Accent Closets disputed this and invited the City to inspect the property. With that inspection, the City cited them for unpermitted work. There were minor items cited. Eventually, Accent Closets decided to submit permit applications. This was in early 2022. There have been six cycles of comments from the City and finally a determination on the sprinkler issue this past April. The Fire Department withdrew their comment and has conditionally approved the application. They have determined that no sprinklers are required. He went on to review the Florida Building Code, the International Building Code Rule, and the Building Official's opinion. If the woodworking area is 2,500 square feet or less, sprinklers are not required. He noted that there is no option to rectify this situation. If the appeal is not granted, Accent Closets will have to vacate the premises. There are only 1,316 square feet of floor area where woodworking activity is occurring. The Building Official has no jurisdiction to say that sprinklers are required under the rule shown in the slide presentation. The occupancy classification within the group has not changed. He showed a slide of the zoning use certificate approved in 2013. The owner of Accent Closets relied on this certificate and moved into this Pompano Beach location. No issue was raised about sprinklers until 2021.

Mr. Simeon Kirilov, Boca Raton, Florida, Architect for Accent Closets, pointed out that this is an existing use in place for eight years. It is technically grandfathered in with respect to the Florida Building Code. The slide presentation by Mr. Abrams notes the Florida Building Code section that indicates buildings that have already been there prior to the permit being pulled. Also, the existing building code applies. The main use of this tenant is cabinet assembly. All components are brought into the space. Much of the space is used for storage. There are only two machines used to cut to size. The machines happen to be large because they are automated. Most of the machines are belts. The primary function is sales, storage, and assembly.

Mr. Andrew Cobbe, an attorney with The Soto Law Group, 2400 East Commercial Boulevard, Fort Lauderdale, Florida, advised that he is board certified in construction law by the Florida Bar, a Florida licensed general contractor and roofing contractor. He questioned using the 2020 Florida Building Code for a building constructed in 1986 with a certificate of use provided in 2013 that would be subject to the 2010 building code that includes chapters on both fire prevention and change of occupancy. He believed that the application of the 2020 Florida Building Code is inappropriate. The 2020 code is for new structures and the change occurred in 2013. With respect to the sprinkler requirement being triggered, the Code refers to fire areas in their totality and specifically indicates a fire area is more than 12,000 square feet. A letter from the Pompano Beach Building Department specifies sprinklers shall be provided for woodworking operations of more than 2,500 square feet. Mr. Cobbe contended that there is no reading of the Code that leads to that conclusion unless one is determining that the Code requires fire areas in excess of 2,500 square feet to have sprinklers if woodworking exists. Under that interpretation a single circular saw plugged in and placed on a table would trigger a sprinkler requirement which he would find inexplicable. New building codes to an existing building is a misapplication and misreading of the code itself.

Mr. Paul Del Vecchio indicated that he is a Florida-licensed general contractor and teaches the Florida Building Code as certified by the Florida Building Commission. He believed that the 2010 building code was applicable. He did not think that the City of Pompano Beach interpretation is applicable.

Mr. Ron Annechiarico, the owner of Accent Closets, indicated that he is 46 years old and has been in this business in Broward County since he was 17. He outlined the process he followed with the City of Pompano Beach when he sought to move to this location. After he received the zoning use certificate, he decided to request a fire inspection before signing the

lease. He complied with the things required by the landlord and moved in. The fire inspector came back and closed out the inspection. This was in 2013. Nothing has changed since that time. Throughout the years inspections continued and he complied with the minor things raised. In the last inspection, the inspector said that fire sprinklers were required. The City then came to the shop again and took multiple photographs of all sorts of things. He agreed to comply with everything brought up and received approval from the Fire Department. Now the Building Department has become involved. He has already signed the lease and has invested a lot of money. There is no fire line to the building for fire sprinklers to be installed.

c. Board Questions

Mr. Burr asked Mr. Kramer if grandfathering was allowed. Mr. Kramer indicated it is less grandfathering than it is occupancy use change. He referred to applicable case law. If you change from storage to woodworking, it is a change in occupancy use, therefore he did not think grandfathering is possible. Also, even though it was allowed for a period, it does not mean it should continue. Mr. Abrams pointed out that in those other cases, there was a specific code provision that said something very specific, and it was ignored. One cannot expect a city official to make a wrong decision to effect a policy change. In this case, the Code says nothing about this specific situation. Moreover, it says a change of group or change of classification. Accent Closets has been at this location with a building code approval since 2013, and there has not been any change since that time. There is nothing in the code to indicate it is not correct whereas in the other cases, the code expressly stated contrary to what was happening which is what makes this different.

Mr. D'Attile questioned sprinklers being cited after some ten previous years of inspections. Ms. Giles-Nelson believed that work without a permit was discovered. It progressed from that point. She asked if the City of Pompano Beach is going to speak this evening. Chairman Lavrich indicated that the City's response was provided with the staff's submittal packet. Ms. Giles-Nelson indicated that the Code needed to be applied when the work was installed. It was cited in 2021 therefore 2020 Building Code would be applicable. Mr. Burr noted that the Fire Department has signed off on this and it has now moved to the Building Department. He wanted to know what had changed since 2013 when it was approved.

Ms. Jill Ziluck, Assistant City Attorney, City of Pompano Beach, advised that the zoning use certificate did not indicate woodworking. The F1 classification does not include woodworking. It is not clear when the machines came into the facility. One is labeled 2018 and the other 2019. The issue came to light in 2021 when the inspector went to the site. In dealing with life safety issues, she thought it is irrelevant to investigate the history. It is clearly a change in occupancy use. They are woodworking and need to abide by the Code. The original use was manufacturing and display of closets. Mr. Abrams noted that the zoning certificate indicates closets. In the F1 classification next to woodworking it says closets. The City approved it for closets.

Mr. Kamm asked if a fire rating was installed around the area, would the facility be compliant. Mr. Guerasio advised that if the area is enclosed and is less than 2,500 square feet, it would be compliant. Ms. Ziluck added that this suggestion had been posed to Accent Closets many times.

In response to Mr. D'Attile, Mr. Abrams advised that if the appeal is denied, Accent Closets would have to relocate.

Mr. Feller suggested referring this matter to the Fire Code Committee. Perhaps the Committee could act as an intermediary between the City and Accent Closets.

d. Board Action

Mr. Feller made a motion, and Mr. D'Attile seconded the motion to refer this matter to the Fire Code Committee to work with the Appellant for a solution amenable to the City of Pompano Beach and the Appellant. The motion was carried out by a unanimous vote of 13-0

During the discussion of the above motion, Chief Peter McGinnis, Assistant Fire Chief/Fire Marshall, City of Pompano Beach, explained that the Fire Department referred this back to

the Building Department because it was unpermitted work and the change of use which is clarified by the Building Department. Accent Closets was cited in August of 2021 for lack of fire sprinklers. However the unpermitted work would ultimately be addressed by the Building Department.

2. Agreement between Broward County Board of Rules and Appeals and Charles Kramer, Esquire for legal services effective July 1, 2023

a. Staff Report

Dr. Ana Barbosa, Administrative Director, advised that the proposed contract would be for a three-year period. The rate was changed to what it was three years ago. She felt Mr. Kramer had done a great job.

b. Board Questions

She responded to Mr. D'Attile, indicating the rate was negotiated and it is comparable to other municipal attorneys.

c. Board Action

Chairman Lavrich said that Mr. Kramer has been outstanding in his work and interactions with the Board.

Ms. Wolfson made a motion, and Mr. Rice seconded the motion to approve the agreement as submitted. The motion was carried out by a unanimous vote of 12-0. Mr. Feller was not present.

3. Director's Report

Dr. Barbosa apologized for not sending meeting invites to the Board. She indicated they have now been sent to the Board in a monthly format. She would be happy to change the format if that would be preferred.

Dr. Barbosa indicated that she is looking into adding an operations manager to the staff.

4. Attorney's Report

Mr. Charles Kramer, Board Attorney, advised that he has yet to hear from the 17th Circuit Court on the appeal filed with respect to the Plantation Inn case. The Board's answer brief for the My Amelia case concerning virtual inspections was filed with the Fourth District Courts of Appeals on June 5. He offered to send a link to the brief to the Administrative Director so it could be forwarded to the Board.

5. Committee Reports – none

6. General Board Member Discussion

Chairman Lavrich announced the upcoming Board Open Discussion on June 14th at 9 a.m. via Zoom. A notice and link will be posted on the website.

7. Adjournment

There being no further business, the meeting adjourned at 8:12 p.m.



Daniel Lavrich, P.E., Chairman

