



REPRESENTING
ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

In The Matter Of:

Bonita Springs Fire Control and Rescue
District,

Case No.: 104163-09-FM

Petitioner,

Petition for Declaratory Statement to the
Florida Department of Financial Services.

DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the Petition for Declaratory Statement (hereinafter "Petition"), filed by Bonita Springs Fire Control and Rescue District (hereinafter "Petitioner"), received by the Department of Financial Services, Division of State Fire Marshal (hereinafter the "Department"), on or about April 30, 2009. Upon consideration thereof, and being duly advised, the Chief Financial Officer, as State Fire Marshal, finds as follows:

1. The Chief Financial Officer, as State Fire Marshal, has jurisdiction over the subject matter and the parties to this matter.
2. This Declaratory Statement is premised upon the assertions of fact set forth in the Petition, and the facts brought forth in the hearing. Any modification to the assertions of fact could alter the conclusions set forth in this Declaratory Statement. None of the assertions of fact are admitted by the Department as being true and Petitioner's questions are being answered as purely hypothetical. If any of the facts asserted by Petitioner are untrue or materially incomplete, the conclusions of this Declaratory Statement could be significantly different.

3. If the Petition contains various legal assertions, conclusions, and arguments, those assertions, conclusions, and arguments are not adopted by the Department and are not used as legal premises or authority for the conclusions of this Declaratory Statement. Legal assertions, conclusions, and arguments are considered only to illustrate the manner in which Petitioner may be an affected person entitled to have the Department issue this Declaratory Statement.

BACKGROUND AND FACTS ASSERTED

4. The Declaratory Statement was requested pursuant to the provisions of Sections 120.565 and 633.01(6), Florida Statutes, and Rules 28.105, and 69A-60.007, Florida Administrative Code, which authorize a substantially affected person to seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory or rule provision as it applies to Petitioner's particular set of circumstances. Section 633.01(6), Florida Statutes, requires the State Fire Marshal to issue a Declaratory Statement when the Petition relates to the Florida Fire Prevention Code and the Life Safety Code (hereinafter the "Code").

5. The Petition was filed by Timothy A. Fernandez, Fire Marshal, on behalf of Bonita Springs Fire Control and Rescue District, the authority having jurisdiction. The Petition involves a disagreement between the Petitioner and representatives of Waldrop Center Office Building (hereinafter "Waldrop Center"), located at 28100 Bonita Grande Drive, Bonita Springs, Florida . The disagreement concerns the egress requirements of the Florida Fire Prevention Code (hereinafter "Code") for a proposed rooftop storage area.

6. The Waldrop Center is a three-story flat roofed office building. The roof has a surround that hides various mechanical units on the roof from street view, and gives the illusion of a mansard roof. The surround is a covered structure approximately ten feet in depth that covers

the majority of the outside circumference of the building. The covered space on the rooftop is sometimes referred to by the parties as an “attic structure.”

7. To address egress concerns of Petitioner, and to facilitate the issuance of a certificate of occupancy, Ronald Waldrop, managing member of Austin Developers, LLC., the owner of Waldrop Center, sent a letter to Petitioner dated September 2, 2008, assuring that storage and other uses of the attic area would not be allowed without prior authorization from the Petitioner. Based upon this assurance, the Petitioner approved the project on September 3, 2008, and a certificate of occupancy of the newly constructed three story business occupancy was issued.

8. In January of 2009, representatives of Waldrop Center met with the Petitioner to explore the idea of converting the “attic structure” space into storage. The Petitioner advised that an additional means of egress must be added because only a single stairway leads from the storage space to the ground exit. Two doorways exist on the rooftop, but they both enter the same single stairway. Other requirements were discussed, but are not relevant to the questions asked in the Petition. Austin Developers, LLC, disagrees with the Petitioner’s application of the Code and requested a variance from the Petitioner because of an undue hardship.

9. The deadline for issuance of this Declaratory Statement was waived by the Petitioner to facilitate a hearing.

10. The duly noticed hearing was conducted before the Fire Code Advisory Council who met in concurrent session with the Florida Building Commission’s Fire Technical Advisory Committee on August 10, 2009 in Melbourne, Florida. Mr. Bill Monroe appeared and addressed the members on behalf of Waldorp Center. At the conclusion of the hearing, the members recommended answers to both questions; the recommendations are adopted in this Declaratory Statement.

11. Receipt of the Petition herein was published in Volume 35, Number 19 of the Florida Administrative Weekly, on May 15, 2009.

QUESTIONS

12. The Petition poses the following questions:

A. Can the local authority having jurisdiction waive code safety requirements that are specifically provided by Code?

B. Based on the drawing set forth in Exhibit A to the Petition, does the single stairway (means of egress) with two exit doors comply with code section FFPC 101-38.2.4.1?

DISCUSSION

13. The Department has authority pursuant to Section 120.565, Florida Statutes, to issue declaratory statements. The section provides that, “Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.” Rule 28-105.001, Florida Administrative Code, promulgated in furtherance of Section 120.565, Florida Statutes, provides that a declaratory statement is “a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner’s particular circumstances.”

14. The Department is required to issue a declaratory statement pursuant to the provisions of Section 633.01(6), Florida Statutes, “when requested in writing by any substantially affected person or a local enforcing agency. . . relating to the Florida Fire Prevention Code and the Life Safety Code.”

15. The Code is adopted by rule of the Department, and the Department has final interpretive authority over its provisions; however, the Code is enforced by local authorities pursuant to Section 633.025(2), *Florida Statutes*. Rules adopted by the Department may only be waived by the Department under the narrow provisions of Section 120.542, *Florida Statutes*. Local authorities may not waive the Department's rules; however, Section 633.025(4), *Florida Statutes*, authorizes local authorities to establish alternatives to Code requirements on a case-by-case basis, in order to meet special situations arising from historic, geographic, or unusual conditions, if the alternative requirements result in a level of protection to life, safety, or property equal to or greater than the applicable requirements of the Code.

16. National Fire Protection Association ("NFPA") 101 (2006 edition), the "Life Safety Code" is adopted in Rule 69A-60, Florida Administrative Code. The Life Safety Code "establishes minimum criteria for the design of egress facilities so as to allow prompt escape of occupants from buildings or, where desirable, into safe areas within buildings." NFPA 101-4.5.1 sets forth the fundamental requirements of life safety compliance; the provision requires that "Two means of egress, as a minimum, shall be provided in every building or structure, section, and area where size, occupancy, and arrangement endanger occupants attempting to use a single means of egress that is blocked by fire or smoke. The two means of egress shall be arranged to minimize the possibility that both might be rendered impassable by the same emergency condition."

17. The phrase "means of egress" is defined at NFPA 101-3.3.151 as a "continuous and unobstructed way of travel from any point in a building or structure to a public way consisting of three separate and distinct parts: (1) the exit access, (2) the exit, and (3) the exit discharge."

18. Chapter 38 of NFPA 101 relates to new business occupancies such as the Waldrop Center. NFPA 101-38.2.4.1(2) requires that “not less than two separate exits shall be provided on every story.” The term “story” is defined at NFPA 101-3.3.237 as the “portion of a building located between the upper surface of a floor and the upper surface of the floor or roof next above.”

19. Whether the area proposed to be used as tenant storage is considered a new fourth floor, an addition, or a renovation, as long as the ten foot space constituting the faux mansard roof was used only for decoration, it did not require two means of egress because it was not occupied by people; however, when the empty covered space is converted to tenant storage space, occupants of the building will use the space, thus necessitating two separate means of egress in accordance with NFPA 101- 4.5.1.

NOW, THEREFORE, in accordance with the foregoing, and the statutes and rules cited therein, it is hereby declared that:

1. The Petitioner is a substantially affected person entitled to the issuance of this Declaratory Statement.

2. The answers to the Petitioner’s questions are:

Question A. Can the local authority having jurisdiction waive code safety requirements that are specifically provided by Code?

Answer: No, only the Department can waive code safety requirements adopted by rule of the Department.

Question B: Based on the drawing set forth in Exhibit A to the Petition, does the single stairway (means of egress) with two exit doors comply with code section FFPC 101-38.2.4.1?

Answer: No, the arrangement provided in Exhibit A does not satisfy a requirement for two separate exits.

NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Declaratory Statement is entitled to seek review of this Declaratory Statement pursuant to Rule 9.110, *Florida Rules of Appellate Procedure*. Review proceedings must be instituted by filing a petition or notice of appeal with Tracey Beal, Agency Clerk, Florida Department of Financial Services, 200 E. Gaines Street, Tallahassee, Florida, 32399-0390, within thirty days of rendition of this Declaratory Statement. A copy of the notice of petition must also be filed with the appropriate district court of appeal.

ENTERED in the City of Tallahassee, Leon County, Florida, on August __, 2009.

Brian London
Deputy Chief Financial Officer

Copies furnished to:

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