

GROUP 6, ITEM C

FLOODPLAIN MANAGEMENT AND BUILDING CODE AMENDMENTS

Chapter 6 - BUILDINGS AND BUILDING REGULATIONS

ARTICLE II. - CODES AND STANDARDS

DIVISION 1. - GENERALLY

Sec. 6-45. - Permit fees.

Staff Note: Update section to reference location of where fee schedule can be found.

The Board of County Commissioners has the power to determine and set reasonable permit fees. A schedule of these fees ~~is shall be~~ published as a part of the Lee County Administrative Code and copies of such schedule may be found on the County website.~~obtained at the County Department of Public Resources.~~

DIVISION 2. - BOARD OF ADJUSTMENT AND APPEALS

Staff Note: Update Division 2 to provide reference to Administrative Code governing the Board of Adjustment and Appeals, which provides the rules of procedure for the Board. Sections 6-74 through 6-82, which is verbatim language of Administrative Code 2-18, is proposed to be deleted to remove redundancy.

Sec. 6-73. - Board established; jurisdiction.

There is hereby established a Board of Adjustment and Appeals, which will be known as the Lee County Board of Adjustment and Appeals. The purpose of this Board is to hear and decide appeals from the decision of the Building Official, Fire Official, Floodplain Administrator, County Flood Insurance Coordinator (Coordinator), or their designees, on any of the various standard codes regulated and enforced by the County. Appointment of members and rules of procedure for the Lee County Board of Adjustment and Appeals are provided in Lee County Administrative Code.

~~Sec. 6-74. Membership; appointment of members.~~

~~The Board of Adjustment and Appeals will consist of 13 members as follows: one architect or engineer, one general contractor, one residential or building contractor, one plumbing contractor, one electrical contractor, one mechanical contractor, one aluminum contractor, one solar contractor, one representative from the fire service, one roofing contractor, one sign or outdoor advertising contractor, one mobile home installer and one representative of disabled persons. Members of the County Board of Adjustment and Appeals will be appointed by the Board of County Commissioners.~~

~~Sec. 6-75. Term of office.~~

~~Members shall be appointed to the Board of Adjustment and Appeals for a term of four years. Vacancies shall be filled for an unexpired term in the same manner in which original appointments are required to be made; providing, however, that any appointment to fill a vacancy for an unexpired term shall be made only to fill the completion of the original term. Continued unexcused absence of any member from three consecutive regular meetings of the Board shall be construed as a voluntary resignation, and the Board of County Commissioners shall appoint a new member to fulfill the unexpired term of the resigned member.~~

~~Sec. 6-76. Quorum.~~

~~Five members of the Board of Adjustment and Appeals shall constitute a quorum. Variation with respect to the application of any provision of the standard code or modification of any order of the Building Official, Fire Official, coordinator or their designees, requires an affirmative of the majority vote among the Board members present. Any member of the Board of Adjustment and Appeals shall not act in any case in which he has a personal interest.~~

~~Sec. 6-77. Meetings; rules of procedure.~~

~~The Board of Adjustment and Appeals shall establish rules and regulations for its own procedure not inconsistent with this Land Development Code or the County Administrative Code. Such procedure shall be approved and designated by resolution of the Board of County Commissioners or become a part of the County Administrative Code. The Board of Adjustment and Appeals shall meet at regular intervals, to be determined by its Chairman, or, in any event, the Board shall meet within 15 days after an appeal has been filed unless good cause for delay can be shown.~~

~~Sec. 6-78. Records.~~

~~The Building Official or his designee shall act as ex-officio secretary of the Board of Adjustment and Appeals, and shall make a detailed record of all its proceedings, which shall set forth the reasons for its decisions, the vote of each member participating therein, the absence of a member, and any failure of a member to vote.~~

~~Sec. 6-79. Funding; staff.~~

~~The Board of County Commissioners is hereby authorized to annually expend such County funds and do all things and employ such clerical and other help as may be necessary to effectuate the purposes of this division. Such purposes are hereby determined and declared to be County purposes.~~

~~Sec. 6-80. Right of appeal; notice of appeal.~~

~~(a) When it is claimed that the true intent and meaning of a code or any of the regulations thereunder have been misconstrued or wrongly interpreted, the owner of such building or structure, or his duly authorized agent, may appeal from the decision of the Building Official, Fire Official, Floodplain Coordinator or their designees to the Board of Adjustment and Appeals. Notice of appeal must be in writing and filed within 30 days after the decision is rendered by the Building Official, Fire Official, Floodplain Coordinator or their designees. Requests for appeal must be on forms provided by the Department of Community Development. The fee required by the administrative code must accompany the notice of appeal. (b) In the case of a building or structure which in the opinion of the Building Official is unsafe or dangerous, the Building Official may, in his order, limit the time for such appeal to a shorter period.~~

~~Sec. 6-81. Variations; modification of orders.~~

~~(a) The Board of Adjustment and Appeals, pursuant to an appeal from a decision of the Fire Official, Floodplain Coordinator or their designees, may vary the application of a code to any particular case when, in its opinion and based upon sufficient evidence, the enforcement thereof would do manifest injustice and would be contrary to the spirit and purpose of a code or public interest, or when, in its opinion and based upon sufficient evidence to the contrary, the interpretation of the Fire Official, Floodplain Coordinator or their designees should be modified or reversed. (b) Decisions of the Board of Adjustment and Appeals to vary the application of a provision of a code or to modify an order of the Fire Official, Floodplain Coordinator or their designee must specify the variation or modification made, the conditions upon which it is made, and the reasons therefor. (c) Pursuant to F.S. § 553.73(5), the variance procedures adopted in Article IV of this chapter, Flood Hazard Reduction, will apply to requests submitted for variances to the provisions of Section 1612.4 of the Florida Building Code, Building or, as applicable, the provisions of Section R322 of the Florida Building Code, Residential. This section does not apply to Section 3109 of the Florida Building Code, Building.~~

~~Sec. 6-82. Decisions.~~

~~(a) Decisions of the Board of Adjustment and Appeals will be final; subject, however, to any remedy an aggrieved party might have at law or in equity. Decisions must be in writing and must indicate the vote upon the decision. Decisions of the Board of Adjustment and Appeals must be signed and attested to by the Chairperson of the Board. (b) The Board of Adjustment and Appeals must, in every case, reach a decision without unreasonable or unnecessary delay. (c) If a decision of the Board of Adjustment and Appeals reverses or modifies a refusal, order or disallowance of the Fire Official, Coordinator or their designees, or varies the application of a provision of a code, the appropriate official will immediately take action in accordance with that decision. (d) Any aggrieved person may obtain judicial review of the decision of the Board of Adjustment and Appeals by filing a petition for writ of certiorari in the circuit court. Such petition must be filed within 30 calendar days after the Board of Adjustment and Appeals' decision, but~~

~~not thereafter, pursuant to the Florida Rules of Civil Procedure. The original petition for writ of certiorari must be filed with the Clerk of the Circuit Court. Copies of the petition must be filed with the Department of Community Development for forwarding to the County Attorney's Office.~~

Secs. ~~6-7483~~—6-110. Reserved.

DIVISION 3. - BUILDING CODE

Sec. 6-118. - Reserved. ~~Building permits issued on the basis of an affidavit.~~

Staff Note: The Florida Building Code (FBC) has been updated to include this language; therefore, it is no longer needed in the LDC.

Amend the FBC, Building Section, by adding Section 107.6.1, as follows:

~~107.6.1 Building permits issued on the basis of an affidavit. Pursuant to the requirements of federal regulations for participation in the National Flood Insurance Program (44 CFR 59 and 60), the authority granted to the Building Official to issue permits, to rely on inspections, and to accept plans and construction documents on the basis of affidavits and plans submitted pursuant to Sections 105.14 and 107.6, shall not extend to the flood load and flood resistance construction requirements of the Florida Building Code.~~

Sec. 6-119. - Reserved. ~~Mandatory structural repairs for condominium and cooperative buildings.~~

Staff Note: SB 913 requires the County to adopt language to specify the timeframe for repairs of substantial structural deterioration of condo and co-op buildings. This statutory requirement followed the collapse of the Surfside condominium tower in 2021.

Condominium or cooperative associations or any other owners that are subject to Section 553.899, Florida Statutes must commence repairs for substantial structural deterioration within the timeframe mandated by Section 553.899, Florida Statutes.

Sec. 6-120. - Critical facilities.

Staff Note: Update language to match terminology in FBC and ASCE 24.

Amend FBC, Building Section 1612.4, pertaining to elevation of buildings, as follows: 1612.4.1 Elevation of Flood Design Class 3 and 4 ~~Category III and IV~~ buildings (critical facilities).

~~The term "critical~~ "Critical facilities," as defined in the Flood Hazard Reduction Ordinance, shall be located outside the limits of the special flood hazard area where feasible. Construction of new critical facilities shall be permissible within the special flood hazard area if no feasible alternative site is available. If permitted, critical facilities shall be elevated or protected to or above the base flood elevation, plus two feet or the 500-year (0.2 percent chance) flood elevation, whichever is higher. Floodproofing and sealing measures must be implemented to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the base flood elevation shall be provided to all critical facilities to the maximum extent possible. Critical facilities shall be designed to remain operable during such an event.

ARTICLE III. - COASTAL CONSTRUCTION CODE

DIVISION 1. - GENERALLY

Sec. 6-333. - Definitions.

Staff Note: Delete definition since it is not used in this Article, it is not consistent with the definition provided in Section 6-479 and is inconsistent with State law.

~~Substantial improvement means any repair, reconstruction, rehabilitation or improvement of a structure, the cost of which equals or exceeds, over a five-year period, a cumulative total of 50 percent of the market value of the structure either:~~

~~(1) Before the repair or improvement is started; or~~

~~(2) If the structure has been damaged and is being restored before the damage occurred.~~

~~For the purposes of this definition, substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term "substantial improvement" includes structures that have incurred repetitive loss or substantial damage, regardless of the actual repair work performed. The term "substantial improvement" does not include any project for improvement of a structure to comply with existing State or local health, sanitary or safety code specifications that are necessary solely to ensure safe living conditions; or any alteration of a structure listed on the National Register of Historic Places or the State Inventory of Historic Places, or designated as a historic resource, individually, or as a contributing property in a historic district, under Chapter 22.~~

ARTICLE IV. - FLOOD HAZARD REDUCTION

DIVISION 1. - ADMINISTRATION

Subdivision III. - Duties and Powers of the Floodplain Administrator

Sec. 6-421. - Designation.

Staff Note: Update to reflect the position is an official position within the Department of Community Development.

The Floodplain Administrator is a designated position in the Department of Community Development. ~~by the County Manager.~~ The Floodplain Administrator may delegate performance of certain duties to other employees.

Sec. 6-424. - Substantial improvement and substantial damage determinations.

Staff Note: Update for consistency with FEMA's approval.

For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator will:

- (1) Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure ~~will~~ must be the market value before the damage occurred and before any repairs are made;

Remainder of section unchanged.

Sec. 6-428. - Other duties of the Floodplain Administrator.

Staff Note: Update for consistency with FEMA's approval.

The Floodplain Administrator will have other duties, including, but not limited to:

(1) – (2) remain unchanged.

- (3) Require applicants who submit hydrologic and hydraulic engineering analyses to support permit applications to submit to FEMA the data and information necessary to maintain the Flood Insurance Rate Maps if the analyses propose to change base flood elevations, flood hazard area boundaries, or floodway designations; such submissions ~~will~~ must be made within six months of such data becoming available;

Remainder of section unchanged.

Sec. 6-429. - Floodplain management records.

Staff Note: Update for clarity in terminology.

Regardless of any limitation on the period required for retention of public records, the Floodplain Administrator will maintain and permanently keep and make available for public inspection all records that are necessary for the administration of this article and the flood-resistant construction requirements of the Florida Building Code, including Flood Insurance Rate Maps; Letters of Map Change; records of issuance of permits and denial of permits; determinations of whether proposed work constitutes substantial improvement or repair of substantial damage; required design certifications and documentation of elevations specified by the Florida Building Code and this article; notifications to adjacent communities, FEMA, and the State related to alterations of watercourses; assurances that the flood carrying capacity of altered watercourses will be maintained; documentation related to appeals and variances, including justification for issuance or denial; and records of enforcement actions taken pursuant to this article and the flood-resistant construction requirements of the Florida Building Code. These records are available for public inspection at the County Department of Community Development.

Subdivision VI. - Inspections

Sec. 6-456. - Manufactured homes.

Staff Note: Update for consistency. Previously the Building Official was the Floodplain Administrator, it is now two separate positions.

~~The Building Official must~~ The Floodplain Administrator will inspect manufactured homes that are installed or replaced in flood hazard areas to determine compliance with the requirements of this article and the conditions of the issued permit. Upon placement of a manufactured home, certification of the elevation of the lowest floor must be submitted to the Floodplain Administrator. ~~Building Official.~~

Subdivision VII. - Variances and Appeals

Sec. 6-461. - General authorization to hear and decide requests.

Staff note: Update for consistency with FEMA approval.

The Board of Adjustment and Appeals ~~will must~~ hear and decide on requests for appeals and requests for variances from the strict application of this article. Pursuant to F.S. § 553.73(5), the Board of Adjustment and Appeals will hear and decide on requests for appeals and requests for variances from the strict application of the flood-resistant construction requirements of the Florida Building Code. This section does not apply to Section 3109 of the Florida Building Code, Building.

Sec. 6-465. - Historic buildings.

Staff note: Update to reflect chapter number change.

A variance is authorized to be issued for the repair, improvement, or rehabilitation of a historic building that is determined eligible for the exception to the flood-resistant construction requirements of the Florida Building Code, Existing Building, Chapter ~~11~~ 12 Historic Buildings, upon a determination that the proposed repair, improvement, or

rehabilitation will not preclude the building's continued designation as a historic building and the variance is the minimum necessary to preserve the historic character and design of the building. If the proposed work precludes the building's continued designation as a historic building, a variance will not be granted and the building and any repair, improvement, and rehabilitation will be subject to the requirements of the Florida Building Code.

DIVISION 2. - DEFINITIONS

Sec. 6-479. - Definitions in general.

Staff note: Revise definitions to reflect updates to Florida Building Code, remove obsolete definitions, and clarify terminology as needed. The FBC now uses the term CHHA and has updated chapter numbers, and these changes are reflected in the definitions below.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Appeal means a request for a review of the Floodplain Administrator's interpretation of any provision of this article ~~or a request for a variance.~~

Coastal high hazard area means a special flood hazard area extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. Coastal high hazard areas are also referred to as "high hazard areas subject to high velocity wave action" or "V Zones" and are designated on Flood Insurance Rate Maps (FIRM) as Zone V1-V30, VE, or V. ~~[Note: The FBC, B defines and uses the term "flood hazard areas subject to high velocity wave action" and the FBC, R uses the term "coastal high hazard areas."]~~

Historic structure means any structure that is determined eligible for the exception to the flood hazard area requirements of the Florida Building Code, Existing Building, Chapter ~~11-12~~, Historic Buildings.

~~*New manufactured home park or subdivision* means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after September 19, 1984.~~

Start of construction means the date of issuance of permits for new construction and substantial improvements to existing structures, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement is within 180 days of the date of the issuance. The actual start of construction means either the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns.

DIVISION 3. - FLOOD-RESISTANT DEVELOPMENT

Subdivision III. - Site Improvements, Utilities and Limitations

Sec. 6-487. - Limitations on sites in regulatory floodways.

Staff Note: Update for consistency with FEMA's approval.

No development, including, but not limited to, site improvements, and land disturbing activity involving fill or regrading, ~~will may~~ be authorized in the regulatory floodway unless the floodway encroachment analysis required in Section 6-446(1) demonstrates that the proposed development or land disturbing activity will not result in any increase in the base flood elevation.

Subdivision IV. - Manufactured Homes

Sec. 6-490. - General compliance and placement and development requirements.

Staff Note: Update to remove Section references. Section 6-494 and 6-495 are reserved.

All manufactured homes installed in flood hazard areas must be installed by an installer that is licensed pursuant to F.S. § 320.8249 and must comply with the requirements of F.A.C. Chapter 15C-1 and the requirements of this article. If located seaward of the coastal construction control line, all manufactured homes must comply with the more restrictive of the applicable requirements.

The placement of manufactured homes or recreational vehicles is prohibited in coastal high hazard areas (Zone V), except in an existing manufactured home or recreational vehicle park or subdivision. A replacement manufactured home or recreational vehicle may be placed on a lot in an existing manufactured home or recreational vehicle park or subdivision, provided the anchoring standards of Section 6-492 and the elevation standards of Section 6-493 ~~Sections 6-494 and 6-495, as applicable,~~ are met. New or expanded manufactured home or recreational vehicle parks or subdivisions are prohibited until such time, if ever, that the Lee Plan is amended so as to allow such new or expanded manufactured home or recreational vehicle development.

Sec. 6-493. - Elevation.

Staff Note: Update for consistency with FEMA's approval.

All manufactured homes that are placed, replaced or substantially improved in flood hazard areas ~~shall~~ must be elevated such that:

- (1) The lowest floor is at or above the base flood elevation plus one foot in flood hazard areas other than coastal high hazard areas, as defined by FEMA.
- (2) The bottom of the frame is at or above the base flood elevation plus one foot in coastal high hazard areas, as defined by FEMA.