

**Rules of Procedure**  
**FORT PIERCE**  
**CONSTRUCTION BOARD**  
**OF ADJUSTMENTS & APPEALS**  
**City of Fort Pierce, Florida**

08/23/20

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**Rule 1.**

**Miscellaneous**

**Section (a).** **Name.** The name of this Board shall be the Fort Pierce Construction Board of Adjustment & Appeals, as created by Section 5-1.140 (Construction Board of Adjustment & Appeals) of the Code of Ordinances, Section 5-1.103.5 and Section 111 (Board of Appeals) of the International Property Maintenance Code, as well as Section 5-352 of the Code of Ordinances relating to the Standard Housing Code (Housing Board of Adjustment and Appeals).

**Section (b).** **Interpretation.** These rules shall be interpreted so as to be consistent with the Fort Pierce Code of Ordinances and Florida Building Codes, currently in effect as adopted by the City of Fort Pierce.

**Section (c).** **Definitions.** Unless otherwise required by context, the following words shall have the meanings herein provided for:

- (1) "Code" shall refer to the Code of Ordinances of the City of Fort Pierce.
- (2) "Board" shall refer to the Fort Pierce Construction Board of Adjustment & Appeals.
- (3) "Department" shall mean the City Department responsible for administration of Chapter 5 (Buildings and Building Regulations) of the Code of Ordinances of the City of Fort Pierce, such department presently known as the Department of Building and Code Enforcement or as such Department may be hereafter renamed.
- (4) "Building Official" means the chief administrator of the Department or employees of the City who administer Chapter 5 of the Code of Ordinances subject to the direction and supervision of the Department's chief administrator.
- (5) "Petitioner" means the individual or entity who seeks relief from the Board as provided by the Code of Ordinances.
- (6) Other terms not herein defined shall have the meaning expressly given to them through definition by Chapter 5, other chapters of the Code of Ordinances, the International Property Maintenance Code, or other Florida building codes as adopted by the City of Fort Pierce. In the event a term is not expressly defined as aforesaid, such term shall be given the meaning accorded through normal, customary usage.

**Rule 2.**

**Jurisdiction**

The Board shall have jurisdiction over proceedings as herein provided for.

**Section (a).** **Appeals Under Florida Building Code.** The Board will consider decisions of building officials, as provided by Section 5-1.110.4.1, when claim is made that any one of the following conditions exist:

1. The Building Official rejected or refused to approve the mode or manner of construction proposed to be followed or materials to be used in the installation or alteration of a building, structure or service system;
2. The provisions of the Code do not apply to petitioner's specific case;
3. That an equally good or more desirable form of installation can be employed in petitioner's specific case.
4. The true intent and meaning of this Code or any of the regulations there under have been misconstrued or incorrectly interpreted.

**Section (b).** **Variances Under Florida Building Code.** The Board will consider applications for variance, as provided by Section 5-1.140.4.2, when, in its opinion, the enforcement thereof would do manifest injustice and would be contrary to the spirit and purpose of the Florida Building Code or the Technical Codes or public interest, and also finds all of the following:

1. That special conditions and circumstances exist which are peculiar to the building, structure or service system involved and which are not applicable to others;
2. That the special conditions and circumstances do not result from the action or inaction of the applicant;
3. That granting the variance requested will not confer on the applicant any special privilege that is denied by the Code to other buildings, structures or service systems;
4. That the variance granted is the minimum variance that will make possible the reasonable use of the building, structure or service system;
5. That the grant of the variance will be in harmony with the general intent and purpose of the Code and will not be detrimental to the public health, safety and general welfare.

In granting the variance, the Board may prescribe a reasonable time limit within which the action for which the variance is required shall be commenced or completed or both and may further prescribe appropriate conditions and safeguards in conformity with the Code.

**Section (c).** **Appeals Under International Property Maintenance Code.** Appeals will be considered by the Board pursuant to the current edition of the International Property Maintenance Code, wherein the Board shall provide for final interpretation of the Code's provisions.

**Rule 3.** **Standard of Review**

The Department's order on appeal, containing ultimate findings of fact and conclusions of law, is deemed to establish a *prima facie* case. The burden of moving forward with presentation of evidence is therefore born initially by the appealing respondent. But the department nevertheless ultimately bears the burden of proving its case by a preponderance of the evidence.

**Rule 4.** **Officers**

**Section (a).** **Chair.** The Chair shall preside at all meetings and hearings of the Board and shall have the duties normally conferred by parliamentary usage on such officers. In particular, the Chair shall sign all orders as may be adjudicated and/or authorized by the Board.

**Section (b).** **Vice Chair.** The Vice Chair shall act in the absence of the Chair. The Vice Chair shall sign orders in the absence of the Chair. In the absence of the Chair and the Vice Chair, a majority of the Board members present may designate a temporary Chair to serve in such absence.

**Section (c).** **Recording Secretary.** The Recording Secretary for the Board shall be provided by the Department. The Recording Secretary shall maintain a record of Board proceedings, which records shall set forth reasons for any Board decision, the vote of each member, the absence of a member and any failure of a member to vote. The Secretary shall further prepare and deliver meeting agendas and, in general, serve as the liaison between the Board and the City of Fort Pierce and perform those duties more specifically provided in these rules.

**Section (d).** **Board Attorney.** The Office of the Fort Pierce City Attorney shall provide counsel for the Board to serve as a legal adviser.

**Rule 5.**

**Election of Officers**

The Chair and Vice Chair of the Board shall be elected by and from its membership during the last organizational meeting of the year, normally December. Nominations for office shall be made from the floor and the election shall be held immediately thereafter. Candidates receiving a majority vote shall be declared elected and shall serve a term of one (1) year, or until a successor shall take office. Vacancies in office shall be filled by the election procedure as described in this part at any regularly scheduled meeting when a vacancy is declared.

**Rule 6.**

**Meetings**

- Section (a).** **Regular Meetings.** Regular meetings shall be held at least once every two (2) months or at such other interval as the Chair may declare, upon consultation with the Department. Regular meetings shall normally be held on the last Tuesday of each designated month, beginning at 9:00 a.m. in the City Council Chambers on the first floor of City Hall, unless the Chair shall declare a different date, time or place.
- Section (b).** **Special Meetings.** Special meetings may be called by the Chair or by written request of three (3) or more Board members.
- Section (c).** **Notice.** Notice of all meetings, both regular and special, shall be given to Board members by the Recording Secretary at least twenty-four (24) hours in advance of the meeting. Notice of all meetings shall be provided by the Secretary to the City Clerk for inclusion in the City's schedule of meetings and events.
- Section (d).** **Attendance.** Members shall notify the Recording Secretary in the event they are unable to attend a meeting. If a member is absent from two (2) of three (3) consecutive meetings, or more than twenty-five percent (25%) of all meetings during the year, without being excused upon good cause shown by vote of the Board, the Secretary shall notify the Commission in writing.
- Section (e).** **Quorum and Voting.** A simple majority of the Board, consisting of no more than nine (9) members and no fewer than seven (7) as provided by Section 5-1.110.1, shall constitute a quorum, except that proceedings arising under the International Property Maintenance Code shall require for a quorum no fewer than two-thirds of the regular membership. In varying any provision of the Code of Ordinances, the affirmative votes of the majority present, but not fewer than three (3) affirmative votes, shall be required. In modifying a decision of the Building Official, not less than four (4) affirmative votes, but not less than the majority of the Board, shall be required.

**Section (f).** **Voting and Abstention.** Voting on the disposition of cases shall be by either voice vote or roll call vote except that in the event the vote is less than unanimous then, in order to preserve clarity in the record, the Chair shall conduct the vote by roll call. All other motions may be by voice vote.

Pursuant to Fla. Stat. §112.3143, a member may not vote in any official capacity on any matter which would inure to the member's private gain or on any measure which inures to the special gain of any principal by whom the member is retained, or to the gain of a parent organization or subsidiary of a corporate principle by which the member is retained, or any matter which the member knows may inure to the special private gain of a relative or business associate. In the event of any such conflict, the member shall, prior to the vote being taken, publicly state the nature of the interest giving rise to the voting abstention and, within fifteen (15) days after the vote occurs, file a written disclosure of the interest on Form 8B Memorandum of Voting Conflict for County, Municipal and other Local Public Officers, with the recording secretary who shall incorporate such declaration as part of the minutes. Except for such reasons of conflict, a member may not abstain from voting, as provided by Fla. Stat. §286.012.

**Rule 7.** **Sunshine**

No Board member shall discuss the merits of any pending case with any other person outside the meeting wherein the case is scheduled to be heard.

**Rule 8.** **Notice of Appeal**

An appeal to the Board shall be initiated by means of a written notice filed with the Department within thirty (30) days of the action or decision complained of, except that appeals from a ruling under the International Property Maintenance Code must be filed within 20 days. The notice of appeal shall be in substantially the form prescribed by the Department. It should include the following minimum information:

- (1) Identification of the building or structure concerned by street address or legal description;
- (2) A statement identifying the petitioner's ownership of, or legal interest in, the property;
- (3) A statement identifying any specific order or code section being appealed;

- (4) A statement identifying the issues to be heard;
- (5) The legal signature of petitioner and petitioner's mailing address.

**Rule 9.**

**Application for Variance**

An application for variance shall be filed in writing with the Department on a form prescribed by the Department. Such form shall specify the nature of the variance and the reasons for such variance. It will be accompanied by such plans, drawings, schematics or other documents as may be reasonably required by the Department for an understanding of the request.

**Rule 10.**

**Hearing Notices**

**Section (a).** **Hearings on Appeals and Variances.** The Department shall schedule a hearing for a date within thirty (30) days of the date the notice of appeal or request for variance was filed. The petitioner shall be given at least fifteen (15) days notice of the hearing. Written notice of the date, time and location of the hearing shall be delivered personally or mailed to the petitioner at the address shown on the notice of appeal or request for variance, by certified mail, postage pre-paid and receipt requested. In the event the post office receipt is returned unsigned or as non-deliverable, the notice shall be resent, postmarked and mailed pre-paid to the recipient, with documentation of such mailing and prepayment to be retained by the Department and the Department shall additionally post a copy of the meeting notice in a prominent location on the property. The notice shall include this highlighted statement: *“a copy of the Rules of Procedure for the Fort Pierce Construction Board of Adjustment & Appeals may be obtained upon request from the Department of Building and Community Response.”* The notice shall also include the following statement in compliance with Fla. Stat. §286.0105: *“in the event a decision is made to appeal any ruling or order of the Board, a record of the proceedings will be needed for any such appeal, for that purpose, you may need to insure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which any such appeal is to be based.”* Further, the notice shall state that petitioner may be represented by counsel, may present relevant evidence, will be given opportunity to cross-examine witnesses and may request production of supporting data or documentation by filing a written request with the Department and may further request through counsel issuance of subpoenas to compel witnesses.

**Section (b).** **Subsequent Proceedings.** Notification of subsequent proceedings provided for by these rules shall be by regular mail, at least seven (7) days in advance of the Board's meeting.

**Section (c).** **Supplemental Notification.** Whenever the Department shall give notice as provided by Section (a) above, it shall additionally provide simultaneously a supplemental notification as follows:

**Supplemental Notice to Persons Appealing to the Construction Board of Adjustments and Appeals.**

(i) Your appeal is now scheduled for a hearing on the merits before the Construction Board of Adjustments and Appeals. Enclosed you will find a copy of the Board's Rules of Procedure. *You are expected, whether represented by counsel or not, to follow these procedures.* Failure to follow them may possibly result in dismissal or loss of your case.

(ii) If you proceed to hearing as currently scheduled, you will need to present evidence in support of your appeal, including testimony as appropriate by a qualified construction professional. If you fail to appear, without explanation, the Board will automatically dismiss your case based upon your nonappearance.

(iii) The Department submits copies of its documentary evidence to the Board in advance of the hearing. You may also get copies, by requesting them in accordance with the Public Records Act. If you, too, would like to provide copies of any documentary evidence to the Board before the hearing, you should provide them to the Department for inclusion in the Board's agenda packet, no later than 10 days before the hearing.

(iv) If you feel a delay is necessary in your case, whether to have more time to prepare evidence, because of a scheduling conflict, or any other reason that might make it impossible or inconvenient to present the merits of your appeal as presently scheduled, you will need to carefully follow the requirements of Rule 11. That is, you must file a written request for postponement as soon as possible. The request must explain why a delay is necessary. If the request is granted, your case will be reset for another time. If it is denied, you will need to be ready to present your case at the scheduled time. *If you wait until the scheduled hearing date before then asking the Board to delay your case, it is unlikely it will agree to do so.*

(v) If you decide to appeal the Board's ruling, the appeal must be filed in the Circuit Court of the Nineteenth Judicial

Circuit in the manner provided for by the Florida Rules of Appellate Procedure, within 30 days from the date the Board's written Order is mailed to you.

**Rule 11. Continuances**

In the event there are circumstances constituting good cause for postponement of a hearing, the petitioner may file a written request for continuance or postponement with the Department. The request must be made within a reasonable time following the date the petitioner became aware of the circumstances which form the basis of the request and such request must specify the justifying circumstances with particularity. In the event the Department agrees with the request, the hearing shall be rescheduled. In the event the Department disagrees, the Department shall immediately contact the Chair who will promptly schedule a hearing to be attended by the Chair or the Chair's designee, the Recording Secretary, counsel for the Board, the petitioner and a representative of the Department. After hearing both sides, the Chair or the Chair's designee shall determine whether there is good cause for the postponement, and whether such good cause outweighs any counter-valing public interest, in determining if the hearing is to proceed as originally scheduled. The request will then be either granted or denied. If it is granted, the hearing shall be promptly rescheduled, with notice according to Rule 10(b).

**Rule 12. Order of Business**

**Section (a).** Cases will be called in the order in which they appear on the agenda, except that the Chair may take cases out of order as appropriate.

**Section (b).** The outline for the regular meeting agenda shall be as follows:

- (1) Call to Order
- (2) Roll Call
- (3) Consideration of Absences
- (4) Consideration of Minutes
- (5) Certification of Alternate Member Voting Status
- (6) Administrative of Oath to Departmental Witnesses
- (7) Consideration of Continuances
- (8) Appeals and Variance Requests
- (9) Requests for Rehearing
- (10) Old or Unfinished Business
- (11) New Business
- (12) Next Meeting Date
- (13) Adjournment

**Rule 13. Conduct of Hearings**

**Section (a).** **Procedural Rules.** Generally accepted parliamentary procedures shall prevail except as may otherwise be provided for in these rules.

**Section (b).** **Minutes.** Minutes shall be kept of all meetings by the Board and all hearings and proceedings shall be open to the public.

**Section (c).** **Conduct of Hearing.** Each side, the petitioner and Department, may make an opening statement and may then offer evidence in support or in opposition to the respective positions. The petitioner shall go first. The petitioner may be represented by counsel. Both sides may present sworn testimony through witnesses and may cross-examine the witnesses. Formal rules of evidence shall not apply but fundamental due process shall be observed. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but the further use of hearsay evidence shall be limited to what is admissible in civil court. Members of the Board may question any witness or call any witness believed necessary. The Board may, in its discretion, continue a hearing in the interest of justice should it determine that further information is necessary from either party, whereupon the Chair shall declare a date certain for continuation of the proceeding. The Chair may act to exclude irrelevant, immaterial or unduly repetitious evidence but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible. Upon presentation of all evidence, the Chair shall close the hearing.

**Section (d).** **Inspection of Premises.** In its discretion and with permission of the owner, the Board may suspend a hearing for the purpose of inspecting any building, structure or premises involved in the proceeding, as follows:

- (1) Notice of such inspection shall be given to the parties before it takes place;
- (2) The parties are permitted to be present during the inspection; and
- (3) Any observation of fact made by a Board member or party believed material to disposition of the cause shall be described of record by the observer when the hearing is reconvened.

**Section (e).** **Disposition of Charge.** Deliberations of the Board on any case shall be conducted in open session immediately following the hearing. It shall then orally issue findings of fact, based on record evidence, and conclusions of law, and shall issue an order upon motion, affording the proper relief consistent with the provisions of the City Code of Ordinances or the applicable Building Code. Although the public is welcome at meetings of the Board, such members of the public may not participate in or address the Board during deliberation. The Board's order shall be

reduced to writing and a certified copy thereof shall be mailed to the petitioner. A copy shall also be publicly posted in the office of the Department for two (2) weeks after filing.

**Rule 14.**

**Rehearings**

Within ten (10) days of the date the Board's written order is mailed to the petitioner, the petitioner may file with the Department a written request for rehearing. The request shall include a description of new evidence or circumstances not presented or considered at the original hearing. The request should also state why any such new information was not presented at the original hearing. The Department shall schedule the request for rehearing by the Board at its next regular meeting, with notice to the petitioner. No such request shall stay the terms of any order, except as otherwise provided for in these rules.

**Rule 15.**

**Appeals and Stays**

**Section (a).** **Appeals.** Either the Department or petitioner may appeal a ruling or order of the Board. Rulings of the Board regarding interpretation decisions of local officials may be appealable to the Florida Building Commission pursuant to Fla. Stat. §553.775(3)(c) except that decisions declaring structures to be unsafe and subject to repair or demolition shall not be appealable to the Commission in the event the Board finds there to be an immediate danger to the health and safety of its citizens. All other rulings not otherwise appealable to the Florida Building Commission are appealed as administrative, quasi-judicial rulings in a manner provided for by the Florida Rules of Appellate Procedure.

**Section (b).** **Stays.** An appeal by the petitioner does not automatically stay enforcement of the action which is the subject matter of the appeal. A stay may be requested when an appeal is filed. The request for a stay shall be submitted to the Department in writing which shall schedule it for hearing before the Board with a recommendation, upon notice to the petitioner. If the petitioner believes that potential prejudice may accrue by delaying resolution of the request for stay until the Board's regular meeting, the petitioner may additionally request an emergency hearing which the Department shall immediately transmit to the Chair who may, upon such Chair's discretion, schedule a hearing within forty-eight (48) hours to be attended by the Chair or the Chair's designee, the Secretary, the Board's attorney, the petitioner and a representative of the Department. After hearing both sides, the Chair or the Chair's designee shall temporarily either grant or deny the request for stay, until the Board is able to act upon such request at its regular meeting.

But any ruling of the Board upholding or rejecting a decision of the building official under the International Property Maintenance Code shall be automatically stayed by an appeal from such ruling of the Board,

notwithstanding the foregoing subsection, during the pendency of the appeal, unless the building official's decision involves a determination of imminent danger as provided by §109.1 of the International Property Maintenance Code. In the event of such a determination of imminent danger, entitlement to a stay shall be governed by the procedure set forth in the immediately foregoing paragraph.

**Rule 16.**

**Amendments**

These rules may be amended upon motion of any member providing, further, that any such amendment shall not be effective unless or until subsequently ratified or approved by the City Commission.

## **Amendment History**

### **November 19, 2007**

On November 19, 2007, the City Commission adopted Resolution 07-51 which provided for a series of amendments effecting Rules 1, 2, 6, 8, 11, 13 and 15. Rule 1(a) was amended to show a renumbering of Code §5-1.110 to §5-1.140. Previous reference to §5-1.101.4.2.3.2 was eliminated and there was added a reference to §1-11 of the International Property Maintenance Code. Rule 1(c) (3) was amended to substitute reference to the Department of Building and Code Enforcement in place of reference to the Department of Building and Community Enforcement. Rule 1(c) (6) was amended by substituting reference to the International Property Maintenance Code, in place of the Standard Unsafe Building Abatement Code. Rule 2(c) was amended by substituting the current edition of the International Property Maintenance Code, for reference to Chapters 4 and 5 of the SBCCI Standard Unsafe Building Abatement Code, 1977 ed. Rule 2(d) (Appeals Under Standard Housing Code) was eliminated in its entirety. Rule 6(e) was amended so as to provide for a special quorum requirement of two-thirds of the regular Board membership, as to proceedings arising under the International Property Maintenance Code. Rule 8 was amended to provide that rulings under the International Property Maintenance Code must be filed within 20 days. Rule 10(a) was amended so as to substitute a reference to the Department of Building and Code Enforcement, in place of reference to the Department of Building and Community Response. Such section was also amended by deletion of any reference to subpoenas. Rule 11 (Subpoenas) was deleted in its entirety and subsequent rules were renumbered. Rule 13 (Order of Business) was amended to provide a procedure for recognition of voting status as possessed by alternate members participating in place of regular Board members. Rule 16(b) (Stays) was amended to provide that any decision of the Board under the International Property Maintenance Code that is appealed shall be automatically stayed during the pendency of the appeal.

### **November 16, 2009**

On November 16, 2009, the City Commission adopted Resolution No. 09-64, which provided for amendment of Rule 10. There was created a new subsection, Rule 10(c), which requires that notice by the Department to the appellant include certain supplemental information for the petitioner.

### **July 16, 2012**

On July 16, 2012, the City Commission adopted Resolution No. 12-39, which provided for amendment of Rule 3. The amendment modified the standard of review for appeal, providing for that an order of the department which contains ultimate findings of fact and conclusions of law is deemed to establish a *prima facie* case on behalf of the department, but that the department remains responsible for proving its case by preponderance of the evidence.