

ORDINANCE NO. 2025-05

AN ORDINANCE OF WELLINGTON'S COUNCIL AMENDING CHAPTER 5, ARTICLE I, SECTION 5-2, SUBSECTION 113 (CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS) OF THE CODE OF ORDINANCES TO CLARIFY THE PROCEDURES FOR APPEALING A DECISION OF THE BUILDING OFFICIAL TO THE CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS; PROVIDING A CONFLICTS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Wellington Council is authorized and empowered to adopt and amend legislation to govern the affairs of its citizens and promote the public health, safety, and welfare of the community; and

WHEREAS, Chapter 5, Article I, Section 5-2 sets forth the Wellington Building Code Administrative Code to provide a means for enforcing the Florida Building Code 8th Edition, which is adopted by reference in Section 5-1 of the Code; and

WHEREAS, subsection 113 of Section 5-2 sets forth the regulations governing the Construction Board of Adjustment and Appeals; and

WHEREAS, the Wellington Council believes that it is in the best interest of the community to amend these regulations to clarify the procedures for appeals from decisions of the building official to the Construction Board of Adjustment and Appeals.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF WELLINGTON, FLORIDA, THAT:

SECTION 1: Chapter 5, section 5-2, subsection 113 of the Code of Ordinances, Wellington, Florida, is hereby amended to read as follows:

**SECTION 113
CONSTRUCTION BOARD OF
ADJUSTMENTS AND APPEALS**

113.1 Establishment. The Construction Board of Adjustment and Appeals (board) is established ~~The establishment, powers, membership, terms, quorum and voting of the Construction Board of Adjustment and Appeals are set forth~~ in Article VI, ~~Division 7,~~ Sections 2-~~327 through 2-330~~53 of the Village of Wellington Code of Ordinances. Additionally, the following shall apply:

113.2 Secretary of board. The building official or his/her authorized representative shall act as secretary of the board and shall make a detailed record of all of its

proceedings, which shall set forth the reasons for its decision, the vote of each member, the absence of a member, and any failure of a member to vote.

113.3 Powers. The Construction Board of Adjustments and Appeals shall have the power, as further defined in 113.4, to hear appeals of decisions and interpretations of the building official and consider variances of the technical codes.

113.4 Local Construction Regulation Board. The Construction Board of Adjustments and Appeals (~~CBAA~~) shall also constitute and act as the Local Construction Regulation Board ("LCRB"), as provided in F.S. § 489.113. As the LCRB, the ~~CBM~~board may deny, suspend, revoke or limit the authority of a certified contractor to obtain a building permit or permits with specific conditions, if the board has found such contractor, through the public hearing process, to be guilty of fraud or a willful building code violation within the Village of Wellington. For purposes of this section, a "willful building code violation" means an act that is voluntarily and intentionally performed with the intent to violate or disregard the requirements of the law. The board may also, deny, suspend, revoke or limit the authority of a certified contractor to obtain a building permit or permit with specific conditions, if it has proof through the public hearing process, that a contractor has been found guilty in another county or municipality within the past 12 months, of fraud or a willful building code violation and after providing notice and an opportunity to be heard to the contractor, finds that such fraud or willful violation would have been fraud or a violation if committed in the county or municipality that the local construction board represents. Notification of and information concerning such permit denial shall be submitted to the department within 15 days after the ~~LCRB~~board decides to deny the permit.

113.5 Appeals.

113.5.1 Decision of the building official. The owner of a building, structure or service system, or duly authorized agent, may appeal a decision of the building official to the Construction Board of Adjustment and Appeals whenever any one of the following conditions are claimed to 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 this code do not apply to the specific case.
3. That an equally good or more desirable form of installation can be employed in any specific case, which the building official has rejected or refused.
4. The true intent and meaning of this code or any of the regulations hereunder have been misconstrued or incorrectly interpreted.

1 **113.5.2 Variance.** The Construction Board of Adjustments and Appeals, when
2 so appealed to and after a hearing, may vary the application of any provision of
3 this code to any particular case when, in its opinion, the enforcement thereof
4 would do manifest injustice and would be contrary to the spirit and purpose of
5 this or the technical codes or public interest, and also finds all of the following:

- 6
7 1. That special conditions and circumstances exist that are peculiar to the
8 building, structure or service system involved and that are not applicable
9 to others;
- 10
11 2. That the special conditions and circumstances do not result from the action
12 or inaction of the applicant;
- 13
14 3. That granting the variance requested will not confer on the applicant any
15 special privilege that is denied by this code to other buildings, structures
16 or service system;
- 17
18 4. That the variance granted is the minimum variance that will make possible
19 the reasonable use of the building, structure or service system; and
20
- 21 5. That the grant of the variance will be in harmony with the general intent
22 and purpose of this code and will not be detrimental to the public health,
23 safety and general welfare.

24
25 **113.5.2.1 Conditions of the variance.** In granting the variance, the board
26 may prescribe a reasonable time limit within which the action for which the
27 variance is required shall be commenced or completed, or both. In
28 addition, the board may prescribe appropriate conditions and safeguards
29 in conformity with this code. Violation of the conditions of a variance shall
30 be deemed a violation of this code.

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32 **113.5.3 Notice of appeal.** Notice of appeal shall be in writing and filed within 30
33 calendar days after the building official renders the decision. Appeals shall be in
34 a form acceptable to the building official.

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36 **113.5.4 Unsafe or dangerous buildings or service systems.** In the case of a
37 building, structure or service system, which in the opinion of the building official,
38 is unsafe, unsanitary or dangerous, the building official may, in the order, limit
39 the time for such appeals to a shorter period.

40 41 **113.6 Procedures of the board.**

42
43 **113.6.1 Meetings.** The board shall meet upon call of the chair. The board shall
44 meet within ~~30-45~~ calendar days after a notice of appeal has been received by
45 Wellington, unless the building official and the appellant mutually agree to an
46 extension of this time period.

1
2 **113.6.2 Rules and regulations.** The board shall comply with the procedures set
3 forth in Village Council Resolution No. ~~R2014~~R2024-7541. The board shall give
4 the appellant a reasonable opportunity to be heard. The interpretation or decision
5 in question shall be presumed to be correct and the appellant shall have the
6 burden to demonstrate errors. The board shall not reject or modify the building
7 official's interpretation/decision if it is supported by competent substantial
8 evidence. At the conclusion of the hearing, the board shall render its
9 determination.

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11 **113.6.3 Decisions.** The Construction Board of Adjustment and Appeals shall, in
12 every case, reach a decision without unreasonable or unnecessary delay. Each
13 decision of the board shall also include the reasons for the decision. If a decision
14 of the board reverses or modifies a refusal, order, or disallowance of the building
15 official, or varies the application of any provision of this code, the building official
16 shall immediately take action in accordance with such decision. Every decision
17 shall be promptly filed in writing in the office of the building official and shall be
18 open to public inspection. A certified copy of the decision shall be provided to the
19 appellant and a copy shall be kept publicly posted in the office of the building
20 official for two weeks after filing. Every decision of the board shall be final; subject
21 however to such remedy as any aggrieved party might have at law or in equity.
22

23 **SECTION 3:** Should any section, paragraph, sentence, clause, or phrase of this
24 Ordinance conflict with any section, paragraph, clause, or phrase of any prior Wellington
25 Ordinance, Resolution, or Municipal Code provision, in that event the provisions of this
26 Ordinance shall prevail to the extent of such conflict.
27

28 **SECTION 4:** Should any section, paragraph, sentence, clause, or phrase of this
29 Ordinance be declared by a court of competent jurisdiction to be invalid, such decision
30 shall not affect the validity of this Ordinance as a whole or any portion or part thereof,
31 other than the part so declared to be invalid.
32

33 **SECTION 5:** This Ordinance shall become effective immediately upon adoption
34 of the Wellington Council following second reading.
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36 **PASSED** this _____ day of _____, 20____ upon first reading.
37

38 **PASSED AND ADOPTED** this _____ day of _____, 20____ on second
39 and final reading.
40

41 **WELLINGTON**

FOR

AGAINST

42
43
44 BY: _____

45 Michael J. Napoleone, Mayor
46
47 _____

1 John T. McGovern, Vice Mayor

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3
4 Tanya Siskind, Councilwoman

5
6
7 Maria Antuña, Councilwoman

8
9
10 Amanda Silvestri, Councilwoman

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13 **ATTEST:**

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15 BY: Chevelle D. Hall, MMC, Village Clerk

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19 **APPROVED AS TO FORM AND**
20 **LEGAL SUFFICIENCY**

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23 BY: Laurie S. Cohen, Village Attorney