

## SECTION 113

### CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS

**113.1 Establishment.** 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 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) to convene as the Local Construction Regulation Board (LCRB), shall also constitute and act as the LCRB as provided in F.S. § 489.113. As the (LCRB) the CBAA 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. 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 of an opportunity to be heard to the contractor, finds that such fraud or 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 local construction regulation 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 this specific case.
3. That an equally good or more desirable form of installation can be employed in any specific case.
4. The true intent and meaning of this code or any of the regulations hereunder have been misconstrued or incorrectly interpreted.

**113.5.2 Variances.** The Construction Board of Adjustments and Appeals, when so appealed to and after a hearing, may vary the application of any provision of this code to any particular case when, in its opinion, the enforcement thereof would do manifest injustice and would be contrary to the spirit and purpose of this 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 this code to other buildings, structures or service system.
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 this code and will not be detrimental to the public health, safety and general welfare.

**113.5.2.1 Conditions of the variance.** 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. In addition, the board may prescribe appropriate conditions and safeguards in conformity with this code. Violation of the conditions of a variance shall be deemed a violation of this code.

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

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

## **113.6 Procedures of the board.**

**113.6.1 Rules and regulations.** The board shall establish rules and regulations for its own procedure not inconsistent with the provisions of this code. The board shall meet on call of the chairman. The board shall meet within 30 calendar days after notice of appeal has been received.

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

## **Wellington, Florida - Code of Ordinances / PART II - CODE OF ORDINANCES / Chapter 2 - ADMINISTRATION / ARTICLE VI. - BOARDS AND COMMITTEES / DIVISION 6. - CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS**

### **DIVISION 6. - CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS<sup>[12]</sup>**

Footnotes:

--- (12) ---

**Cross reference**— Buildings and building regulations, ch. 18.

#### **Sec. 2-327. - Powers and duties.**

The construction board of adjustment and appeals shall have the power to hear appeals of decisions and interpretations of the building official and consider variances of the technical codes.

(Ord. No. 99-09, § 9, 5-11-99)

#### **Sec. 2-328. - Creation; qualifications.**

- (a) The board shall consist of seven regular members. Appointments of members of the board shall be for a term of two years.
- (b) Such board members shall be composed of individuals with knowledge and experience in the technical codes to include: an architect, engineer, general contractor, electrical contractor, HVAC contractor, plumbing contractor, and any other contractor-licensed category.

(Ord. No. 99-09, § 9, 5-11-99; Ord. No. 00-08, § 5, 3-20-00; Ord. No. 2004-32, § 6, 5-25-04; Ord. No. 2010-15, § 1, 6-22-10)

Sec. 2-329. - Meetings, quorum, and required vote.

- (a) A quorum for the transaction of business shall consist of four members.
- (b) The affirmative vote of four members shall be necessary to take official action. If any motion fails to achieve the affirmative vote of four members, then such petition or other matter shall be deemed denied.

(Ord. No. 99-09, § 9, 5-11-99; Ord. No. 2010-15, § 1, 6-22-10)

Sec. 2-330. - Reserved.

Chapter 489, Part I F.S.

489.113 Qualifications for practice; restrictions.—

(b) Notwithstanding the provisions of paragraph (a), a local construction regulation board may deny, suspend, or revoke the authority of a certified contractor to obtain a building permit or limit such authority to obtaining a permit or permits with specific conditions, if the local construction regulation board has found such contractor, through the public hearing process, to be guilty of fraud or a willful building code violation within the county or municipality that the local construction regulation board represents or if the local construction regulation board has proof that such contractor, through the public hearing process, has been found guilty in another county or municipality within the past 12 months, of fraud or a willful building code violation and finds, after providing notice of an opportunity to be heard to the contractor, that such fraud or 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 local construction regulation board decides to deny the permit.

Chapter 489, Part II F.S.

489.516 Qualifications to practice; restrictions; prerequisites.—

(3) When a certificateholder desires to engage in contracting in any area of the state, as a prerequisite therefor, he or she shall only be required to exhibit to the local building official, tax collector, or other authorized person in charge of the issuance of licenses and building or electrical permits in the area evidence of holding a current certificate and a current business tax receipt issued by the jurisdiction in which the certificateholder's principal place of business is located and having paid the fee for the permit required of other persons. However, a local construction regulation board may deny the issuance of an electrical permit to a certified contractor, or issue a permit with specific conditions, if the local construction regulation board has found such contractor, through the public hearing process, to be guilty of fraud or a willful building code violation within the county or municipality that the local construction regulation board represents, or if the local construction regulation board has proof that such contractor, through the public hearing process, has been found guilty, in another county or municipality within the past 12 months, of fraud or a willful building code violation and finds, after providing notice to the contractor, that such fraud or 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 of Business and Professional Regulation within 15 days after the local construction regulation board decides to deny the permit.