

STATE OF FLORIDA
BUILDING COMMISSION

DCA09-DEC-259
FILING AND ACKNOWLEDGEMENT
FILED, on this date, with the designated
Clerk, receipt of which is hereby
acknowledged.

Paula P. Ford
Paula P. Ford
Commission Clerk
Date 7/2/09

IN RE:

MALIBU LODGING INVESTMENTS,
LLC, a Florida limited liability
corporation.

CASE No. DCA09-DEC-_____

PETITION FOR DECLARATORY STATEMENT

Malibu Lodging Investments, LLC, (“Malibu”) files this petition for declaratory statement (the “Petition”) and states as follows:

Jurisdiction

1. The Florida Building Commission (the “Commission”) has jurisdiction to issue declaratory statements pursuant to section 120.565, Florida Statutes, relating to an agency’s interpretation and enforcement of the specific provisions of the Florida Building Code (“FBC”), which the agency is authorized to enforce. *See* § 553.775(3)(a), Fla. Stat.¹; Ch. 28-105, F.A.C. (2009).

¹ All references are to the 2009 Florida Statutes unless otherwise indicated.

The Petitioner

2. Petitioner's address is 660 N.W. 81st Street, Miami, Florida 33150; its telephone number is (305) 324-0800 and its facsimile number is (305) 547-1820.

3. Petitioner is a Florida limited liability corporation. Petitioner is also the owner of the property located at 660 N.W. 81st Street, Miami, Florida 33150.

4. Petitioner is represented in this petition by Robert S. Fine, Esq., AIA, Greenberg Traurig, P.A., 1221 Brickell Avenue, Miami, Florida 33131; telephone (305)579-0826; facsimile (305) 961-5826.

The Code Provision and its effect on Petitioner

5. Petitioner owns and/or operates a building located at 660 N.W. 81st Street, Miami, Florida. (the "Miami Location"). Petitioner leases the exterior of the building to entities who cover significant portions of certain facades of the building with a lightweight material mural that contains artwork which presents an advertising message. In addition, Petitioner is considering the acquisition of additional sites in other areas of Florida such as in the general metropolitan areas of Tampa and Orlando (as well as additional locations in South Florida) to conduct the same business (lease the exterior of the buildings for advertising murals).

6. Because of the time and costs involved in preparing permit applications and associated submittals (if required), as well as the potential for

differing interpretations of Section 105.1 of the FBC by building officials in the various jurisdictions leading to inconsistent standards that Petitioner would have to abide by as it expands its business in the state, the question regarding the application or non-application of Section 105.1 of the FBC (2004, 2007) to Petitioner's business substantially affects Petitioner.

6. Petitioner seeks a declaratory statement as to whether the installation and maintenance of such building façade murals require a building permit, as might otherwise be required by Section 105.1 of the FBC.

Nature of Declaratory Statement Sought

7. Petitioner seeks a declaratory statement answering the question: "Does the installation of lightweight material (such as vinyl mesh) murals on the exterior of existing buildings require a building permit as might otherwise be required by Section 105.1 of the FBC (2004 and 2007 editions)?"

8. The FBC's provision requiring permits provides, in pertinent part:

Required. Any owner or authorized agent who intends to *construct*, enlarge, alter, repair, move, demolish, or change the occupancy of a *building or structure*, or to erect, install, enlarge, alter, repair, remove, convert or replace any required impact-resistant coverings, electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit.

§ 105.1, FBC (2004, 2007)(emphasis added).

9. The FBC defines *building* as “any structure used or intended for supporting or sheltering any use or occupancy.” § 202, FBC (2004, 2007). *Structure* is defined as “that which is built or constructed.” *Id.*

10. The word *construct* is not defined in the FBC (2004, 2007). The definition of *construct* in Merriam-Webster Online Dictionary is “to make or form by combining or arranging parts or elements; build.”

CONCLUSION

11. Since the plain reading of Section 105.1 of the FBC does not state a requirement for a building permit to install murals on the exterior of buildings, we respectfully request the Commission issue a declaratory statement holding that such murals do not require a building permit.

12. A memorandum of law in support of this petition and illustrative exhibits will be filed under separate cover.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing by hand delivery upon:

James Richmond, Esq.
Counsel to Florida Building Commission
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

Mo Madani
Staff to Florida Building Commission
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

This 2 day of July, 2009.

By: _____



Robert S. Fine

Counsel for Malibu Lodging Investments, LLC