

FL Building Code
Informal Brief
Temporary Chain Link Fence Permit #15105036
Application Date 09-22-2015
May 1, 2017

Is there a local board of appeals? Yes,
Has there been an appeal filed? Applicant is not a qualified appellant.

Petitioner's Local Appeal Board

The Construction Board of Adjustment and Appeals is restricted to appeals by owners or authorized agents only and is not open to appeals by others. (Attached e-mail from Monroe County Assistant Attorney Steve Williams)

A review of the interpretations, made by the Building Official, by the Florida Building Commission, is appropriate and authorized by FLS 553.775(3)(c)2.

Enter explanation of how Petitioner's substantial interests are being affected by the local interpretation of the FBC

Petitioner's property, occupied by a single-family home, abuts the subject property (sharing approx. 400 ft. boundary line). Both the subject property and Petitioner's property are within coastal High Hazard Flood and High Velocity Hurricane Zones. A "temporary" construction fence, noncompliant with applicable Florida Building Code (FBC) flood and windstorm requirements, has been in place along the shared property boundary for more than one year, notwithstanding the 180-day limit imposed on temporary structure permits by *Florida Building Code* §108.1.

FBC 3103 requires temporary structures to meet the requirements of the Florida Building Code. The fence is not constructed to Florida Building Code standards for High velocity Hurricane Zones as required by FBC 2216. The Florida Keys is entering another hurricane season. Prolonged presence of a structure susceptible to destruction by flood surge and windstorm, immediately abutting Petitioner's property, subjects Petitioner's property to increased risk of damage from storm-driven debris, blocking of egress and perpetuates a nuisance.

The Building Official's statement that the fence may stay indefinitely and belated extension of the long-expired "temporary structure" fence permit, without the required showing of "demonstrated cause", allows the improperly-built fence abutting Petitioner's property to remain in place rather than being removed and replaced with a Code-compliant fence built pursuant to a new permit. The "construction fence" is a rented chain link fence nearly 6 feet high, covered by an opaque windscreen covering. The fence posts are unanchored. They are merely driven into the ground.

The fence rental company's admonition against placing an opaque windscreen on the fence was disregarded by the owner/builder. Moreover, the fence does not accomplish its stated purpose, because it does not fully enclose the construction site, and extends into areas not affected by construction.

Enter statement of the interpretation given to provisions of the FBC by the local building official and the manner in which the interpretation was rendered.

Petitioner contends that the interrogatories are answers, to questions, posed by Petitioner, and are sworn statements, by the Building Official, of the Building Official's interpretation of the Florida Building Code and Monroe County Code of Ordinances as they relate to the subject property, circumstances and permit.

In response to Petitioner's question, in the attached interrogatory #7, to identify the Monroe County Building Code and or Florida Building Code sections relied upon in issuing Building Permit # 1505036 ...for a temporary chain link fence, the Building Official responded

"Sec. 6-112. - Temporary structure.

The building official may issue a special building permit for a limited time of not more than six months for the erection of temporary structures, including but not limited to sheds, trailers, seats, canopies, tents, and fences used in construction work or for temporary uses and events. Any such permit for temporary uses shall be in compliance with this section and the provisions of the Land Development Code, specifically section 103-5. Any structures shall be completely removed upon expiration of the time stated in the permit, which shall be the minimum amount of time necessary to accommodate the temporary use. In the event a temporary structure is required for more than six months for a construction-related project, the application shall apply for a new special building permit prior to the expiration of the original building permit."

In response to Petitioner's written complaint of Aug 4, 2016, concerning expiration and non-conformity to the FL building code, of a temporary permit, the Building Official replied, "As long as they have an open and active permit [i.e., a SFR building permit, issued in 2010], they are allowed to have the fence, and if the fence permit has expired, they can come back and renew the permit". This interpretation by the Building Official was rendered in writing and is posted on the official Monroe County web site.

Subsequently, on Feb 6, 2017, Monroe County "reopened" the permit and issued a 180-day permit extension, more than 1 year after the fence was constructed, and 10 months after the permit was closed. This action is posted on the Monroe County web site.

In written response to Petitioner's interrogatory whether the fence's design and construction were in conformity with the FBC section 108, Monroe County responded, "*Yes the Building Permit is in conformity with the requirements of Florida Building Code 108.*" (MC Response # 12).

Issues presented:

1. Was the Building Official correct in relying upon Monroe County building code instead of the Florida Building Code in the issuance and reopening of the permit?

2. Was the Building Official correct in "reopening" an expired permit and granting a 180 day extension?

3. Is a temporary chain link fence, constructed 16 months ago, required to conform to the standards for structural strength of the Florida Building code?

1. Petitioner's Interpretation:

The Florida Building Code supersedes the Monroe County Code and must be followed by the Building Official. There are no local amendments to the FBC for Monroe County. In this situation, it can be argued that the Building Official is not even following the local building code. Therefore it appears, to the Petitioner, that no building code is being followed in the permitting of this temporary structure..

A temporary permit for a construction fence may not be extended beyond its 180-day expiration date, without a showing of demonstrated cause made prior to the expiration date. (FBC 108.1).

An expired permit may not be renewed or "reopened" but the owner must obtain a new permit. FBC (105.4.1.1).

Monroe County Building Code 6-112, Allows a Temporary Structure for six months. (MC Response #7). Monroe County Code 6-103(e) allows a one-time only extension for 180 days. (MC Response #11) The fence has been standing for 15 months as of April 4th, 2017. This is clearly much longer than any possible interpretation of the MC Building Code or the Florida Building Code.

Contrary to the Building Official's contention that the fence is in conformance to the requirement to meet the standards of the FBC, Petitioner contends otherwise. The fence was not constructed to meet the structural standards of the FBC. All of the supporting posts were merely driven into the ground. There is no anchoring system employed. The chain link fence was then covered with an opaque windscreen, which will serve to increase the wind load on the structure.

Indeed the FBC requires that a Temporary Structure, in place more than 180 days, meet the appropriate sections of the code (FBC 3103, 2224.2, 1616.2.1, 2216).

2. Supporting statement:

Monroe County has not enforced its own Building Code as pertains to this fence. Monroe County only allows a Temporary Structure for six months from date of permit plus a 180-day extension from date of “work commencement”. The fence has been standing since “commencement of work” for 16 months and 18 months since date of permit.

Florida Building Code §108.1 limits the duration of a permit for a temporary structure to 180 days. Extension of a permit for a temporary structure requires the permit holder to timely make a showing of demonstrated cause.

Florida Building Code §105.4.1.1 requires that a new permit must be obtained upon expiration of a permit. There is no FBC provision allowing the building official to waive the “demonstrated cause” requirement of FBC §108.1, nor to resurrect an expired permit (here, 10 months after permit closure). To uphold the Building Official’s interpretation of these Florida Building Code provisions would be to allow a shoddily constructed, “temporary structure” to be extended for a practically unlimited period of time, in fact this is the intention of the Building Official.

To insure public safety, the FBC requires temporary structures to conform to specific Code requirements for structural strength. If a temporary structure is to remain after 180 days, then it must meet the construction standards of the FBC. (see citations below). The FBC requires that chain link fences in High-Velocity Hurricane Zones meet minimum wind load requirements. The fence constructed pursuant to the subject permit has been allowed to remain, notwithstanding that it was covered with an opaque screen installed by the Owner/Builder against the advice of the fence company, in violation of the Code requirements cited below, and absent any submittal of structural strength calculations demonstrating its ability to withstand storm impacts.

The subject Single Family Residence building permit is already 7 years old and there has been minimal construction activity to date. To allow a temporary fence to remain until construction has been completed means it may in fact be there for decades.

3. **Petitioner’s supporting citations:**

- a. FBC 108.1 General. *“Such permits shall be limited as to time of service, but shall not be permitted for more than 180 days. The building official is authorized to grant extensions for demonstrated cause.”*

- b. FBC 108.2 Conformance. *“Temporary structures. ...Shall conform to the structural strength..of this code as necessary to ensure public health, safety and general welfare.”*
- c. FBC Section 3103 TEMPORARY STRUCTURES General. *“The provisions of Sections 3103.1 through 3103.4 shall apply to structures erected for a period of less than 180 days.Those erected for a longer period of time shall comply with applicable sections of this code”*
- d. FBC 2224.2 *“Chain link fences less than 12 feet (3.7m) in height shall be designed to the loads specified in Chapter 16 (High-Velocity Hurricane Zones) or may be constructed to meet the minimum requirements specified in Table 2224.”*
- e. Table 2224 Notes: *“This table is applicable only to fences with unrestricted airflow.”*
- f. FBC 1616.2.1 Fences. *“Fences not exceeding 6 feet (1829 mm) in height from grade maybe designed for 75 mph (33 m/s) fastest mile wind speed or 115 mph (40 m/s) 3-second gust”*
- g. FBC 2216 HIGH-VELOCITY HURRICANE ZONES—
DESIGN LOADS
2216.1 *“Design shall be based on the dead, live, wind and other loads set forth in Chapter 16 (High-Velocity Hurricane Zones) and the additional stress considerations set forth in this chapter.”*
- g. The fence was constructed by merely pounding posts into the ground. No soil tests were conducted nor were there any anchoring systems. The fence is covered with an opaque fabric covering which is very effective at impeding airflow. The fence was extended into areas where construction will not take place. 30 mph winds have already caused posts to lean. The fabric covering has been torn loose on numerous occasions by wind. The fence is immediately adjacent, within 1 foot, to Petitioner’s driveway and sole means of egress from the property.

4. Attached Optional Files

- a. Informal Brief
- b. Monroe County’s Responses to Plaintiff’s First Set of Interrogatories
- c. E-mail from Steve Williams on appeals
- d. Permit Info.
- e. Code Enforcement Detail

f. Pictures