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# The Commonwealth of Massachusetts

## Department of Public Safety

Board of Building Regulations and Standards

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Chairman

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Vice Chairman

Robert Anderson  
Administrator

Date: December 15, 2008

Name of Appellant: Brian Wall , Esq.

Service Address: 90 Route 6A  
Sandwich, MA 02563

In reference to: Lot 9, 2 Harbour Drive  
Provincetown, MA 02657

Docket Number: 05-480

Property Address: Lot 9, 2 Harbour Drive  
Provincetown, MA 02657

Date of Hearing: 10-04-07

We are pleased to enclose a copy of the decision on the request for certain variances from the Building Code.

Sincerely:

**BUILDING CODE APPEALS BOARD**

*Patricia Barry*  
Patricia Barry, Clerk

cc: Building Code Appeals Board  
Building Official

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Building Code Appeals Board  
Docket No. 05-480

Brian Wall, Esq.,	)
Appellant	)
	)
v.	)
	)
Town of Provincetown,	)
Appellee	)
	)

**BOARD'S RULING ON APPEAL**

**Procedural History**

This matter came before the State Building Code Appeals Board ("Board") on Appellant's appeal filed pursuant to 780 CMR §122.1. In accordance with 780 CMR §122.3, Appellant asks the Board to interpret or, if necessary, grant a variance from, 780 CMR §1010.2 of the Massachusetts State Building Code ("Code") with respect to a dwelling unit, known as 2 Rose Court, Blue Hill Commons, that is part of a six-unit housing structure ("Property").

By letters dated November 9, 2007 and December 18, 2007, Edwin May, Commissioner of Buildings for the Town of Great Barrington ("Appellee"), denied issuing a certificate of occupancy for the Property because he interpreted 780 CMR §1010.2 to require two exits from the main entry/exit level of each dwelling unit; only one exit exists on the main level of the Property.

In accordance with G. L. c. 30A, §§10 and 11; G. L. c. 143, §100; 801 CMR §1.02 et. seq.; and 780 CMR §122.3.4, the Board convened a public hearing on December 18, 2007 where all interested parties were provided with an opportunity to testify and present evidence to the Board.

Harold Cutler and Stephan Green appeared on behalf of Appellant. Edwin May appeared on behalf of Appellee.

**Reasons for Variance**

The issues are whether §1010.2 requires two exits from the same level or, if so required, Appellant should be granted a variance from that requirement. This matter involves one unit of a six-unit housing complex, constructed on the side of a hill. The Property has an entrance/exit on the front of the unit, at the main or second story level. A second entrance/exit exists from the

finished basement, on the ground level (one level downgrade from the main level), by way of a sliding door.

780 CMR §1010.2 provides:

Every floor area shall be provided with the minimum number of approved independent *exits* as required by Table 1010.2 based on the occupant load, except as modified in 780 CMR 1010.3.

**Exception:** In buildings with occupancies in Use Group R having multistory *dwelling units*, the *means of egress* from a *dwelling unit* to the required *exits* is permitted to be provided from one level only. Within the *dwelling unit* access to the *means of egress* from the unit shall conform to the applicable provisions of 780 CMR 10.

**Table 1010.2**  
**MINIMUM NUMBER OF EXITS FOR**  
**OCCUPANT LOAD**

Occupant load	Minimum number of exits
500 or less	2
501 - 1,000	3
over 1,000	4

Appellee testified that other units in the same complex have the same exit issues, but those already have been issued certificates of occupancy. Thus, Appellee stated that for him to ensure that those other units are in compliance, he would have to issue exit orders. As a result, Appellee would like the Board to grant relief in this case, and with respect to the other units with the same exit issues. (A prior municipal building official had issued approvals and certificates of occupancy). Appellee also argued that §1010.2 should be interpreted as allowing the exits, as constructed, rather than requiring a variance from §1010.2

The central issue is whether the sliding door from the finished basement to the outside should be allowed as the second means of egress from the dwelling unit. (The obvious hardship is that the Property has been constructed and awaits issuance of a certificate of occupancy.)

### Decision

The Chair entertained a motion to grant a variance from §1010.2, as an exception from the requirement in the R use group that both exits be from the same level, and allow one exit from the second story level and allow the second exit to be from the lower/basement level, provided that the travel distance does not exceed 75 feet to one of those exits from any point in the dwelling. This applies to the other units in that same building that are configured the same way ("Motion").

The Chair stated that he was voting to break a tie (one board voted in favor of the motion, one opposed the motion), but his interpretation of §1010.2 is that the Property already complies with the section because it has two exits, thus, a variance would not be necessary.

Following testimony, and based upon relevant information provided, Board members voted to allow the Motion, as described on the record. The Board voted as indicated below.

- ..... Granted                      **X..... Denied**                      ..... Rendered Interpretation
- .....Granted with conditions                      ..... Dismissed

The vote was:

- .....Unanimous                      **X..... Majority**

Dana Haagensen                      Robert Anderson                      Stanley Shuman  
 Dana Haagensen                      Robert Anderson – Chair                      Stanley Shuman – (Abstained)

Any person aggrieved by a decision of the State Building Code Appeals Board may appeal to a court of competent jurisdiction in accordance with Chapter 30A, Section 14 of the Massachusetts General Laws.

A complete administrative record is on file at the office of the Board of Building Regulations and Standards.

A true copy attest, dated: December 15, 2008

Patricia Barry, Clerk

All hearings are audio recorded. The digital recording (which is on file at the office of the Board of Building Regulations and Standards) serves as the official record of the hearing. Copies of the recording are available from the Board for a fee of \$10.00 per copy. Please make requests for copies in writing and attach a check made payable to the Commonwealth of Massachusetts for the appropriate fee. Requests may be addressed to:

Patricia Barry, Coordinator  
State Building Code Appeals Board  
BBRS/Department of Public Safety  
One Ashburton Place – Room 1301  
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