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Administrator

Date: May 15, 2009

Name of Appellant: Timothy Warnick

Service Address: Warnick Associates, Inc.
163 Main Street
Salem, NH. 03079

In reference to: 108 New Braintree Road
North Brookfield, MA. 01535

Docket Number: 09-711

Property Address: 108 New Braintree Road
North Brookfield, MA. 01535

Date of Hearing: 02-24-09

Enclosed please find a copy of the decision on the matter aforementioned.

Sincerely:

BUILDING CODE APPEALS BOARD

Patricia Barry, Clerk

cc: Building Code Appeals Board
Building Official

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

BUILDING CODE APPEALS BOARD
DOCKET NO.: 09-711

_____)
Corporation of the Presiding Bishop)
of the Church of Latter-day Saints,)
Appellant,)
)
v.)
)
City of North Brookfield,)
Appellees)
_____)

MEMORANDUM OF DECISION AND ORDER

Procedural History

This matter came before the State Building Code Appeals Board (“Board”) on the Appellant’s appeal filed pursuant to G.L.c. 143, §100 and 780 CMR 122.1. In accordance with 780 CMR 122.3, the Appellant requested that the Board overturn the local building official’s determination that the emergency power provided for 108 New Braintree Road, North Brookfield, MA (“premises”) did not meet the requirements of the 6th Edition of the State Building Code, 780 CMR 924.1 and 924.3. The Board convened a public hearing on February 24, 2009 in accordance with G.L.c. 30A, §§10 & 11; G.L.c. 143, §100; 801 CMR 1.02; and 780 CMR 122.3. All interested parties were provided with an opportunity to testify and present evidence to the Board.

Exhibits

The following Exhibits were entered into evidence at the hearing on this matter and reviewed by the Board:

- Exhibit 1: State building code appeal application form with attachments, dated January 14, 2009.
- Exhibit 2: Email to Dana Haagensen from Bill Laidler dated November 12, 2008.

The facts of this matter are largely not in dispute. Instead, this matter turns on an interpretation of the applicable regulatory provisions. The Board bases the following findings upon the exhibits identified above and the testimony presented at the hearing.

Discussion

The Appellant was notified in writing by letter dated December 1, 2008 by the North Brookfield Building Commissioner that after a final inspection of the premises he determined that the fire pump was missing emergency power as required by the State Building Code (“Code”), specifically 780 CMR 924.1 and 924.3. Section 924.3 provides that “[a]ll fire pumps shall be provided with emergency power when installed in the following types of buildings or use groups. Emergency power equipment installation shall conform to 527 CMR 12.00 and NFPA 20 as listed in *Appendix A.*” The premises fit into a Use Group A classification and have a total occupant load of

more than 300 occupants making section 924.3 applicable to the premises. Accordingly, the fire pump at the premises must be provided with emergency power and be installed in accordance with 527 CMR 12.00 and NFPA 20. There is no dispute up to this point.

Distilled to its essence, the issue in this case then, is whether the emergency power at the premises was installed in accordance with the Code. However, the Code does not itself set out specific requirements for emergency power, but instead cross-references the requirements of 527 CMR 12.00 and NFPA 20. Accordingly, in order to determine whether the applicable provisions of the Code have been met, we must look to the referenced codes for guidance.

It is the Appellant's position that the emergency power system installed at the premises meets the requirements for emergency power in the referenced codes and therefore meets the Code requirements. The Board agrees with the Appellant.

The regulatory provision that serves as the gateway to the maze of referenced standards that must be navigated to crack this case is located in 527 CMR 12.00, the Massachusetts Electrical Code. This code adopts the National Electric Code (NFPA-70) and incorporates Massachusetts amendments. We begin with the modification made to section 700.12 of NFPA 70 adding an exception to the rule. The rule as set forth in section 700.12 of NFPA 70 governing "Sources of Power" states in relevant part that:

Current supply shall be such that, in the event of failure of the normal supply to, or within, the building or group of buildings concerned, emergency lighting, emergency power, or both shall be available within the time required for the application but not exceed 10 seconds. The supply system for emergency purposes in addition to the normal services to the building and meeting the general requirements of this section, shall be one or more of the types of systems described in 700.12(A) through 700.12 (E). . . .

The Massachusetts Electrical Code amends NFPA 70 by adding an exception to the aforementioned rule which states that "[a] fire pump shall be permitted to use a connection ahead of the service disconnecting means in accordance with 695.3(A)(1)." In this case, the pump has a connection ahead of the service disconnecting means. So, as long as it complies with this referenced standard, it passes muster. The referenced standard in this exception, section 695.3(A)(1), provides in pertinent part that "[a] fire pump shall be permitted to be supplied by a separate service, or from a connection located ahead of and not within the same cabinet, enclosure, or vertical switchboard section as the service disconnecting means. The connection shall be located and arranged so as to minimize the possibility of damage by fire from within the premises and from exposing hazards. . . ." The pump on the premises clearly meets this standard as it is supplied by a separate connection located ahead of the service disconnecting means. This referenced section, however, is itself supplemented by 527 CMR to incorporate item A-6.2.3 of Appendix A of NFPA 20. This item provides that "[a] reliable source possesses the following characteristics: (1) Infrequent power disruptions from environmental or man-made conditions, (2) A separate service connection or connections on the supply side of the service disconnect, (3) Service and feeder conductors either buried under 2 in. (50 mm) of concrete or encased in 2 in. (50 mm) of concrete or brick within a building. . . . The determination of the reliability of a service is left up to the discretion of the authority having jurisdiction." The Board finds that indicia 2 and 3 are present in this case. The building commissioner did not dispute the appellant's assertion at the hearing that these requirements were met. However, the Appellant must ultimately be able to demonstrate that the power source from

the street does not suffer from frequent power disruptions due to from environmental or man-made conditions.

It is important to note that the State Building Code does not specifically require a "secondary" or "redundant" power supply. In this case, providing a separate power service line from the street directly to the fire pump, separate from the power service line feeding the building power supply panel, satisfies the emergency power requirements of 527 CMR 12.00 and NFPA 20, provided the appellant demonstrates that the street power is a reliable source as defined therein. Accordingly, in sum, there is substantial evidence in this case demonstrating that the emergency power system at the premises meets the requirements of the Code (780 CMR 924.3) and is likely reliable.

The Board recognizes that it does not have jurisdiction over the Massachusetts Electrical Code and may not grant a variance there from. If the Appellant were seeking a variance from the emergency power requirements in the Electrical Code it would have to have directed the request to the body responsible for enforcement of that code. In this case, however, the Board has simply determined that the basic requirements of the State Building Code have been satisfied.

Conclusion

A motion was made to grant the Appellant's request to overturn the North Brookfield Building Commissioner's determination that the emergency power provided for the fire pump is not in accordance with the requirements of the 6th Edition of the State Building Code provided the appellant demonstrates to the building commissioner that the street power is a reliable source. There was a second on the motion and a Board vote was taken. The Board voted unanimously to **GRANT** the request. The Appellant's request to overturn the local building official's determination regarding the 6th Edition 780 CMR 924.1 and 924.3 is hereby granted as described in the discussion above.



Brian Gale



William Middlemiss



Alexander MacLeod

Any person aggrieved by a decision of the State Building Code Appeals Board may appeal to Superior Court in accordance with G.L. c.30A, §14 within 30 days of receipt of this decision.

DATED: May 15, 2009