

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Building Code Appeals Board
Docket No. 05-440

Donald Ogilvie,)
Appellant)
v.)
City of Fitchburg,)
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 grant variances from 780 CMR §§3603.8.1 (Exception 3), 3603.13.3, and 3604.6.2 of the Massachusetts State Building Code ("Code") to create habitable spaces of part of the basement at Appellant's home, 26 Thurston Place, Fitchburg, MA 01420 ("Project").

By letter dated June 4, 2007, Michael A. Gallant, Building Commissioner for the City of Fitchburg ("Appellee"), informed Appellant that in order to complete the Project, variances from 780 CMR §§3603.8.1, 3603.13.3, and 3604.6.2 were required.

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 July 5, 2007 where all interested parties were provided with an opportunity to testify and present evidence to the Board.

Appellant was present at the hearing. Shawn McCormack, of Owens Corning/NES, was present at the hearing on behalf of Appellant. Michael A. Gallant was present on behalf of Appellee.

Reasons for Variance

The issues are whether Appellant should be granted variances from the above cited sections of the Code to complete the Project.

First, there is the issue of whether Appellant should be required to have the foundation water proofed. Section 3604.6.2 requires:

In areas where a high water table or other severe soil-water conditions are known to exist, exterior foundation walls enclosing habitable or storage space shall be waterproofed with a membrane extending from the top of the footing to the finished grade. The membrane shall consist of two-ply hot-mopped felts, 55 pound (25 kg) roll roofing, 6-mil (0.15 mm) polyvinyl chloride, six-mil (0.15 mm) polyethylene or 40-mil (1 mm) polymer-modified asphalt. The joints in the membrane shall be lapped and sealed with an adhesive compatible with the waterproofing membrane.

Appellant represented that the house was constructed in 1964 and that there has been very little water leakage into the basement area. Appellant said that there has been only some leaking around a water pipe that passes through the foundation into the basement area.

Next, there are the Project's dimensional requirements. Under 780 CMR §3603.8.1 (Exception 3), "Habitable basements shall have a minimum clear ceiling height of seven feet zero inches, except that beams, girders and other obstructions spaced not less than four feet on center may project not more than six inches below the required ceiling height." In addition, under §3603.13.3 "the minimum headroom in all parts of the stairway shall not be less than six feet six inches (1981 mm) measured vertically from the sloped plane adjoining the tread nosing or from the floor surface of the landing or platform."

Here, the Project calls for a finished ceiling height of 6' 7", and a soffit height, around the perimeter the basement area, of 6' 5". In addition, because there is an existing I beam at the ceiling at the base of the stairway, with a height of approximately 5' 10", the Project calls for a finished soffit height around the I-beam of 5' 9". Given the age of the house and its existing structures, there are obvious dimensional hardships.

Appellee expressed concerns about energy code and ventilation issues in the area. Appellant represented that he will comply with the Code in all other respects (except for the above variances he is seeking as to height and waterproofing), including, for example, installing an HRV (Heat Recovery Ventilation) system to address moisture issues in the basement area. Appellee did not object to allowing the variances.

Decision

The Chair entertained a motion to grant the variances from 780 CMR §§3603.8.1 (Exception 3), 3603.13.3, and 3604.6., provided that Appellant work with Appellee to install proper ventilation, and to mark the soffit that encloses I beam at the base of the stairway to avoid causing people to bump their heads on the soffit ("Motion"). 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 Denied Rendered Interpretation

X.....Granted with conditions Dismissed

The vote was:

X.....Unanimous Majority



Brian Gale



Timothy Rodrique



Robert Anderson

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: January 31, 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:

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