

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss

Department of Public Safety  
State Building Code Appeals Board

Douglas Anderson,	)
Appellant,	)
v.	)
City of Worcester and David	)
Holden,	)
Appellees	)

DOCKET NO. 05-279

**BOARD'S RULING ON APPEAL**

**Procedural History**

This matter comes before the State Building Code Appeals Board ("the Board") on the Appellant's motion filed pursuant to 780 CMR 122.1. In accordance with 780 CMR 122.3, Appellant asks the Board to grant a variance from 780 CMR 1014.6 for an existing exit stairway rise/run and 780 CMR 1014.3 for an existing exit stairway width. In accordance with MGL c. 30A, §10 and §11; MGL c. 143, §100; 801 CMR 1.02 et. Seq.; and 780 CMR 122.3.4, the State Building Code Appeals Board convened a public hearing on August 3, 2006 where all interested parties were provided with an opportunity to testify and present evidence to the Board.

Present and presiding as the Board were Mr. Jacob Nunnemacher, Mr. Harry Smith, Mr. Brian Gale and Ms. Patricia Barry, acting as clerk. Present and representing the owner, HE and PG Realty, was Brett Levy, Kathleen Buckley and Douglas Anderson (the "Appellant"). There was no representative present from the City of Worcester building department.

**Exhibits<sup>1</sup>**

The following Exhibits were entered into evidence:

<sup>1</sup> The Board takes administrative notice of its own records. 801 CMR 1.01(10)(h)(administrative notice); M.G.L. 30A, §11(5).

- Exhibit 1: Photo of exterior of 21 Illinois Street, Worcester, Massachusetts.  
Exhibit 2: Letter of support from City of Worcester Department of Health and Human Services Division of Code Enforcement.  
Exhibit 3: Letter of support from City Manager of the City of Worcester.

### Findings of fact

1. The subject property, located at 21 Illinois Street, Worcester, Massachusetts, was previously used as a warehouse and for other similar uses; it is currently in development to become residential lofts. There will be a change of use for the property to use group R-2. (Board records, Appellant's testimony at hearing).
2. The subject property is made out of cast in place concrete and is a type 2A noncombustible structure. (Board records, Appellant's testimony at hearing).
3. There are two existing stairways on opposite corners of the subject property which are designated as stairway #1 and stairway #2. The existing stairs are cast in place concrete. The existing rise/run on stairway #1 is 7.5" - 10.5"; stairway #2 is 7 ¾" - 10.5". The Massachusetts State Building Code ("MSBC") requires a 7" - 11" rise/run. (Board records and Appellant's testimony at hearing).
4. Appellant interprets 1014.6 Exception 7 to allow stairway #1 to maintain its current measurements and comply with MSBC because it is an existing stairway. The Board was not in agreement with the Appellant's interpretation. (Board records).
5. The stairways are consistent all the way up with 1/16" or 1/8" taller, in some instances, which is technically allowed by MSBC. (Board records, Appellant's testimony at hearing).
6. Stairway #2 will be extended by two flights; one flight will lead up to the roof and another flight will be added from the first floor to the basement garage level. These two flights of stair will be considered new construction and therefore are required to comply with MSBC and have a rise/run of 7"-11". Having different rise/run, on a stairway, presents a tripping hazard. The Appellant requests a variance to allow the two new flights of stairs to maintain the existing rise/run of 7 ¾" - 10.5". (Board records, Appellant's testimony at hearing).
7. The stair enclosure for the two new flights of stair would need to be continued above and below the existing stairway; there will be no room for an 11" run. You can not fit a 7"-11" stair in a stair enclosure that is dimensioned for 7 ¾" - 10.5". (Board records, Appellant's testimony at hearing).
8. To bring the existing stair in compliance with MSBC would most likely involve demolishing the entire structure and putting in a new stair; this would be very costly. (Board records, Appellant's testimony at hearing).
9. The stairways are cast in place concrete within a concrete building; to remove the stairways would require skill sawing around the edges of the stairway and dropping the whole staircase. There would be a tremendous amount of demolition involved. (Board records, Brett Levy testimony at hearing).

10. The width of stairway #2 is 48" wide and stairway #1 is 42" wide. The minimum required width for new construction is 44". (Board records, Appellant's testimony at hearing).
11. The Appellant proposed four mitigation factors to compensate for the 42" stair width. Mitigation factor #1: The 44" minimum width provides egress capacity for a fully sprinklered NFPA 13 building for 220 occupants per exit stair. The subject property will be sprinklered in accordance with NFPA 13. The calculated occupant load for each floor of this building is 42. There are eight units per floor. The actual occupant load will be 20 or less. (Board records, Appellant's testimony at hearing).
12. There are no proposed partitions to be constructed in the units. The lofts will be an open floor plan. (Board records, Appellant's testimony at hearing).
13. Mitigation factor #2: MSBC allows for a maximum travel distance to the nearest exit of 250 feet. The travel distance for the occupants of the subject lofts will be 115 feet. (Board records, Appellant's testimony at hearing).
14. Mitigation factor #3: The construction type minimum for the subject property is a type 3A or type 2B which is a one hour rated floor and a one hour rated column building. The proposed construction for the subject property is a type 2A building which is a two hour rated floor and two hour rated column which is in excess of what is required under Table 503 of the MSBC.
15. Mitigation factor #4: Photoelectric smoke detectors will be installed in the loft units.
16. Michael O'Brien, City Manager for the City of Worcester, submitted a letter of support for the granting of the Appellant's request for a variance. (Board records, submitted prior to hearing).
17. Richard Trifero, Acting Director of Code Enforcement, submitted a letter of support for the granting of the Appellant's request. (Board records, submitted prior to hearing).
18. On or about May 22, 2006 the Appellant filed this appeal with the State Building Code Appeals Board.
19. On or about July 20, 2006 the parties were notified of a hearing scheduled on August 3, 2006.

### Conclusion

Motion was made by Mr. Nunnemacher and duly seconded by Mr. Gale to **GRANT** the Appellant's request for a variance from 780 CMR 1014.3 on the width of the stair and 780 CMR 1014.6 from the stair configuration.

Motion carried 3-0 appeal **GRANTED**.

**SO ORDERED,**

*Harry Smith*  
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**HARRY SMITH**

*Jacob Nunnemacher*  
\_\_\_\_\_  
**JACOB NUNNEMACHER**

*Brian Gale*  
\_\_\_\_\_  
**BRIAN GALE**

DATED: September 29, 2006

In accordance with MGL, Chapter 30A, Section 14, any person aggrieved by this decision may appeal the decision to a court of competent jurisdiction within 30 days.