

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Building Code Appeals Board
Docket No. 05-441

_____)
Ron and Theresa Knoll,)
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, 55 Causeway Street, 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.

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 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."

Here, as shown on Exhibit 1 entered into the record, the Rec Room will have a finished height of 6' 10" and the Mechanical Ventilation room will have a finished height of 6' 6". Given that the Project involves finishing an existing basement (of a house constructed in the 1960's), there is an obvious height limitation hardship. Appellant represented that given the existing location of plumbing in the Mechanical Ventilation room, it made more sense to have the finished ceiling height at 6' 6", rather than relocate plumbing or have various finished ceiling heights around the existing plumbing.

Next, Appellant needs to have a finished headroom of 6' 4 and ½" at the base of the stairway (at the basement level). 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." Again, because the Project is for an existing home, there are obvious limitations. As part of completing the stairs, the bottom riser width must be 2' 10". Further, there will be a height of 6' 4" for the soffit at the carrying beam depicted on Exhibit 1.

Finally, 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 there has not been water leakage into the basement area during the last six years. Further, Appellant represented that the basement area has a walkout egress and the outside area slopes in a way that drains water away from the basement.

Appellee did not object to granting the variances, noting that the house had been initially constructed in approximately 1969. Appellee expressed concerns about the lack of natural lighting and ventilation, the lack of energy code information and how the Project area would be heated. Appellee noted that a lighting system was needed and an HRV recovery system was needed for ventilation.

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 address Appellee's concerns about ventilation and energy conservation ("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: February 1, 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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