COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Building Code Appeals Board
Docket No. 05-445

Shi Mao Lin,	)
Appellant	)
	)
v.	)
	)
City of Malden,	)
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 relief pursuant to 780 CMR §111.1 of the Massachusetts State Building Code ("Code"). By way of background, Appellant attempted to file a building permit application on May 14, 2007, but Appellee refused to accept the application. Because Appellant does not understand English very well, he contacted Kevin Wood, a construction, zoning, and litigation consultant, ("Wood") to help him submit the building permit application. The building permit application pertained to Appellant's residence, 263 Mountain Avenue, #2, Malden, MA

By letter dated May 29, 2007, Paul E. Johnson, Inspector of Buildings for the City of Malden ("Appellee"), informed Wood that, pursuant to 780 CMR §108.3.6, Wood was required to have a valid Home Improvement registration number in order to obtain a building permit, and denied Wood's submission (and informed him of the right to appeal under §122).

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 24, 2007 where all interested parties were provided with an opportunity to testify and present evidence to the Board.

Appellant was present at the hearing. Attorney Jie Tan spoke on behalf of Appellant. Appellee was not present.

Reasons for Variance

Appellant's building permit application involved work to upgrade an existing sink to create a wet bar in an attic living space ("Project"). The sink was pre-existing, in that Appellant had not first installed the sink, then sought a permit to make further changes. The room in which the proposed wet bar is to be located is part of Appellant's living space, and the room is not to be rented out.

Appellant asserted that Wood was not being hired as the contractor to perform the work for the Project, and that Appellant be allowed to submit a building permit application on his own behalf, pursuant to 780 CMR §108.3.5. In pertinent part, §108.3.5 provides:

> Any Home Owner performing work for which a building permit is required shall be exempt from the licensing provisions of 780 CMR 108.3.5; provided that if a Home Owner engages a person(s) for hire to do such work, that such Home Owner shall act as supervisor.

However, the licensing provisions of 780 CMR §108.3.5 apply to Construction Supervisors, rather than to registered Home Improvement Contractors. Thus, in pertinent part, §108.3.5 states, "no individual shall be engaged in directly supervising persons engaged in construction, reconstruction, alteration, repair, removal or demolition involving any activity regulated by any provision of 780 CMR, unless said individual is licensed in accordance the Rules and Regulations for Licensing Construction Supervisors as set forth in 780 CMR R5."

Regarding the laws and regulations governing Home Improvement Contractors, "any owner personally doing residential contracting work on his/her own home" is not required to be registered as a Home Improvement Contractor. *780 CMR R6.1.6(5)*. But, as Appellee noted in the May 29, 2007 letter, §108.3.6 provides:

> In accordance with the provisions of M.G.L. c. 142A, no home improvement contractor, or organization or firm shall be involved in the improvement of any existing owner occupied one to four family residential building unless said home improvement contractor has registered with the BBRS in accordance with the rules and regulations for the registration of Home Improvement Contractors as set forth in 780 CMR R6.

Nothing in 780 CMR prohibits the homeowner from obtain a building permit on his own. "Application for a permit shall be made by the **owner or** lessee of the building or structure, or agent of either." *780 CMR §110.5* (emphasis added). Further, although "it shall be the responsibility of the registered contractor to obtain all permits necessary for work covered by the Home Improvement Contractor Registration Law, M.G.L. c. 142A [,a]n owner **who secures his or her own permits** for such shall be excluded from the guaranty fund provisions as defined in M.G.L. c. 142A." *Id.* (emphasis added).

Decision

The Chair entertained a motion to direct the Inspector of Buildings to issue a permit, pursuant to 780 CMR §111.1, and with the condition that Appellant is not to rent out the attic space as a separate dwelling unit ("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

Keith Hoyle (R) Harry Smith (R)

Keith Hoyle Harry Smith - Chair Alexander MacLeod

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: April 15, 2008

Patricia Barry

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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