

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Building Code Appeals Board
Docket No. 05-412

Stephen J. Clifford and Richard Bernard)
Appellants)
)
v.)
)
Town of Dedham)
Appellee)
)

BOARD'S RULING ON APPEAL

Procedural History

This matter came before the State Building Code Appeals Board ("Board") on the Appellants' appeal filed pursuant to 780 CMR §122.1. In accordance with 780 CMR §122.3, Appellants ask the Board to grant variances from 780 CMR §§3603.3.1 and 3603.3.2 the Massachusetts State Building Code ("Code") to reconstruct the exterior/interior wall of an existing building because of the *de minimis* distance between the actual space between the building and the lot line and the required distance under the Code. Appellants had requested a building permit for the reconstruction of an existing single family dwelling as well as the construction of a new single family dwelling on an adjacent lot ("Application").

By letter dated March 12, 2007, Frederick W. Johnson, Jr, Assistant Building Inspector for the Town of Dedham ("Appellee"), denied the Application because the proposed dwelling would be less than three (3) feet from the proposed new lot line, in violation of 780 CMR § 3603.3.

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 May 3, 2007 where all interested parties were provided with an opportunity to testify and present evidence to the Board.

Counsel for the Appellants, Michael A. Podolski, was present at the hearing. Stephen J. Clifford was also present. Richard Bernard was not present. (Messrs. Clifford and Bernard are the owners of the property subject to the Application). Frederick W. Johnson, Jr. was present on behalf of the Town of Dedham Building Department.

Reasons for Variance

The property subject to the Application is located at 10 Coventry Road, Dedham ("Lot"). The front corner of the building is located 2.61 feet from the front Lot line, instead of three feet as required by 780 CMR § 3603.3.1; the rear corner of the building is located 2.96 feet from the Lot line. Appellants argued that the difference between the actual location and the required three feet is *de minimis*. Under §3603.3.1:

Exterior walls located less than three feet (0.914m) from property lines shall have a minimum of one-hour fire-resistive rating. The fire-resistive rating of exterior walls located less than three feet (0.914 m) from a property line shall be rated for exposure from both sides. Projections beyond the exterior wall shall not extend more than 12 inches (0.305 m) into areas where openings are prohibited.

In addition, Appellants noted that they own vacant land that abuts the Lot. They propose constructing a single family dwelling on the vacant land, under provisions of the Dedham zoning by-laws that, based on the testimony, effectively allow construction on non-conforming lots under prior divisions of land. (Appellants control two lots, one of which is the vacant parcel, the other—the Lot— in which the existing building is located within three feet of the Lot line. When the new building is completed it will be located in accordance with Dedham's zoning by-laws, at least 10 feet from the Lot line, or at least twelve feet from the existing building, according to Appellants.)

Further, there are three window openings on the side of the building that is within three feet of the Lot line, which does not conform with § 3603.3.2. Under §3603.3.2:

Openings shall not be permitted in exterior walls of dwellings located less than three feet (914 mm) from the property line. This distance shall be measured perpendicular to the vertical plane of the wall.

Mr. Clifford, also pointed out that the interior stairwell is located along that side, which could make reconstruction difficult if a variance were not granted. The Board acknowledged the hardship in eliminating windows and changing ventilation in the existing building.

Mr. Johnson explained that Dedham's by-laws allow for building on existing lots if those lots have at least 50 feet of road frontage and 5000 square feet. Although Appellants own both lots, they could not, in compliance with the Town's by-laws, move the existing lot line that divides to two parcels in order to address §§3603.3.1 and 3603.3.2.

Mr. Johnson proposed that the Appellants place a deed restriction on the Lot that would prohibit the construction of combustible materials, such as fences or storage sheds, within a certain distance from the Lot line. After further discussion with the Board, Mr. Johnson proposed a restriction that would prohibit the construction of combustible materials along the lot line at a distance of the length of the building plus ten feet beyond the rear of the building and 10 feet beyond the front of the building. Mr. Clifford did not object to this proposal.

Decision

The Chair entertained a motion to grant variances from §§3603.3.1 and 3603.3.2 with the condition that the Appellants place a deed restriction imposing a no-combustible-construction zone on the lot adjacent to the Lot, the width of ten feet along the side of the new building, and ten feet beyond the front and ten feet beyond the rear of the new building to be constructed on this adjacent lot ("Motion"). (The Chair included in the record, as an Exhibit, a mortgage inspection plan of the Lot, dated September 8, 2006). Following testimony, and based upon relevant information provided, Board members voted to allow the Motion.

The Board voted as indicated below.

..... Granted Denied Rendered Interpretation

.....Granted with conditions Dismissed

The vote was:

.....Unanimous Majority



Stanley Shuman



Harry Smith-Chair

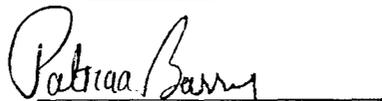


Jacob Nunnemacher

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: October 2, 2007



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