COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Building Code Appeals Board
Docket No. 05-430

Vargas I. DaSilveira, Appellant	)
v.	)
City of Brockton, 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 §§3400.4, 1009, and 1014.6.3 of the Sixth Edition of the Massachusetts State Building Code ("Code").

By letter dated May 1, 2007, James Plouffe, Local Inspector for Appellee, reminded Appellant that the winder staircase Appellant had previously removed, as part of total rehabilitation of a multi-family structure, would not be allowed to be re-framed in its prior configuration. Mr. Plouffe pointed out that the staircase would violate §§3400.4, 1009, and 1014.6.3 of the Code, and informed Appellant of the right to appeal his decision.

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 June 26, 2007 where all interested parties were provided an opportunity to testify and present evidence to the Board.

Appellant was present at the hearing. Paul J. Moriarty and William Murray were present on behalf of Appellant. James Plouffe was present in his capacity as Local Inspector on behalf of the City of Brockton.

Reasons for Variances

By way of background, the matter involves the complete rehabilitation of what will become a three-family dwelling located at 98 Bartlett Street, Brockton, MA ("Project"). The multi-family structure that is the basis for the Project was once a six-family structure, but three of the units were removed to comply with the City's parking requirements.

The issue is whether variances are required to allow Appellant to rebuild a winder staircase, located in the rear of the Project and providing a second means of egress for all three units, in the same configuration as the staircase had existed since the building was first constructed (approximately 100 years ago).

Section 3400.4.1 requires, in pertinent part:

> The following conditions, when observed by the *building official*, shall be cited, in writing as a violation . . . 2. Any required *means of egress* component which is not of sufficient width to comply with 780 CMR 1009, or is not so arranged as to provide safe and adequate *means of egress.*

Under §1009.2, "The width of each *means of egress* component shall not be less than the width computed in accordance with Table 1009.2 for the required capacity of the component, but not less than the minimum width as prescribed by 780 CMR for each such component." Further, §1014.6.3 states, "Winders shall not be permitted in required *means of egress stairways* except in occupancies in Use Group R-3." Because the Project has more that two units served by a common egress, its Use Group is R-2.

The Board considered testimony from Appellant and Appellee, which concurred that reconfiguring the stairway to comply with the Code would create a hardship. Given that Project involves complete rehabilitation of the structure to meet the Code, except with respect to the sections cited above, the City did not object to the winder staircase configuration. Mr. Plouffe believed, however, that he did not have the authority to allow a variance from the Code in order to allow Appellant to rebuild the staircase in the same configuration as it had existed prior to the renovations.

Conclusion

The Chair entertained a motion to allow variances from §§ 3400.4, 1009, and 1014.6.3, based upon finding that the structure will be significantly safer that it was, it will have sprinkler and fire detection systems, and that there would be a clear hardship to cut into the structure or create a set back to avoid using a winder staircase, as originally configured. In addition, the motion added the condition that hand rails be installed on each sidewall of the stairway ("Motion").

Decision

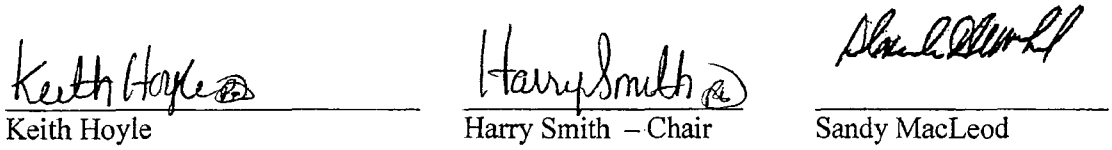
Following testimony, and based upon relevant information provided, Board members voted to allow the Motion, as described on the record. The Board voted as indicated below.

..... Granted ☐..... Denied ☐..... Rendered Interpretation☐

X.....Granted with conditions ☐..... Dismissed

The vote was:

X.....Unanimous .....☐ Majority

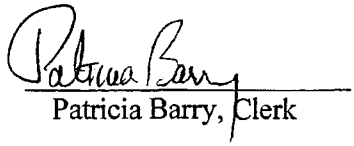


Keith Hoyle — Harry Smith – Chair — Sandy MacLeod

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: October 24, 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 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:

Patricia Barry, Coordinator
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