

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

State Building Code Appeals Board
Docket No. 05-286

William Grieco,)
Appellant,)
)
v.)
)
Town of Braintree and Darrin)
McAuliffe,)
Appellees)
_____)

BOARD'S RULING ON APPEAL

Procedural History

This matter came before the State Building Code Appeals Board ("the Board") on the Appellant's appeal filed pursuant to 780 CMR 122.1. In accordance with 780 CMR 122.3, Appellant requests the Board's interpretation of 780 CMR 3102.12.4 to determine whether it applies to a suspended Christmas display. 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 Board convened a public hearing on August 22, 2006 where all interested parties were provided with an opportunity to testify and present evidence to the Board.

Present and representing the Appellant was Jonathan Young, Esq. Present and representing the Town of Braintree was Carolyn Murray, Esq. Present and testifying was the adjacent property owner Michael McGourty. Also present and testifying were David Cushing and Roger Aiello board members of the Town of Braintree Local Board of Appeals Under Building Code.

Exhibits¹

The following Exhibits were entered into evidence:

- Exhibit 1: Five photos of Santa Clause display
- Exhibit 2: Subdivision plot plan

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

Exhibit 3: Letter from Town of Braintree Local Board of Appeals Under Building Code.

Findings of fact

1. Rosedale Avenue is a dead end road. There are two houses located on either side of Rosedale Avenue. The Grieco family resides at 1 Rosedale Avenue and the Foley family resides at 2 Rosedale Avenue.
2. Beginning in the late 1980's the Grieco and Foley families have erected an illuminated Santa Clause display ("display") during the Christmas season. The display is suspended on a cable that runs across Rosedale Avenue between the Grieco and Foley family homes.
3. The display is illuminated and consists of Santa Claus and eight reindeers.
4. The display does not qualify as a sign as defined in the Massachusetts State Building Code ("MSBC") and therefore 780 CMR 3102.12.4 is not applicable.
5. The Santa Claus display qualifies as a structure as defined in the MSBC.

Discussion

A motion was made and the interpretation of the Board is that the display is a structure as defined in the Massachusetts State Building Code ("MSBC") and the erection and subsequent suspension of the display will be allowed provided that a building permit is applied for and obtained. There are public safety issues regarding how this structure is erected and supported therefore the Building Commissioner will set forth how all connections are to be inspected to insure that the structure is safe. The determination of whether a structural engineer is required to ensure that the structure is safe will be made by the Building Commissioner. Motion carried 3-0.

Although this Board has no jurisdictional authority over this matter as it relates to the Town of Braintree zoning bylaws, we do have authority over this matter as it relates to the MSBC. This display in its most primitive form affects public safety. The display is attached to two houses by use of a line that is suspended in the air and susceptible to falling down therefore public safety is an issue. The Town of Braintree Building Department is the only authority within this town with the right to mandate compliance of these safety issues. The building department has the power to perform a site visit and inspect the structure to make a determination relative to public safety and as a result, this Board is put in the position of having to make a decision in regards to this display.

Conclusion

Based upon the foregoing, the building official will issue a permit for the Santa Clause display once the structure is determined to be safe.

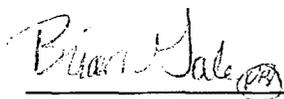
SO ORDERED,



HARRY SMITH



ALEXANDER MACLEOD



BRIAN GALE

DATED: December 1, 2006

** In accordance with M.G.L. c. 30A § 14, any person aggrieved by this decision may appeal to the Superior Court within 30 days after the date of this decision.*