**COMMONWEALTH OF MASSACHUSETTS**

**SUFFOLK, ss. BUILDING CODE APPEALS BOARD DOCKET NO.: 10-951**

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Bed Bath and Beyond, )

Appellant )

 )

v. )

 )

Town of Hadley, )

Appellees )

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**BOARD’S RULING ON APPEAL**

**Introduction**

 This matter came before the State Building Code Appeals Board (“Board”) on appellant’s appeal filed pursuant to G.L. c.143, §100 and 780 CMR 122.1. In accordance with 780 CMR 122.3 the appellant petitioned the Board to grant a variance based on the Seventh Edition of the Massachusetts State Building Code (“Code”). For the following reasons, the variance is hereby **GRANTED with conditions**.

 The appellant requested that the Board grant a variance from 780 CMR Sections 118.1, 424.5, 424.6, and 9017.1.3. David Saurette of WS Development, David Burkhart of CCI, and Jeremy Mason of RJA testified on behalf of the appellant. Timothy Neyhard, Building Inspector for the Town of Hadley testified on behalf of the appellee. The fire official was unable to attend. All witnesses were duly sworn.

**Procedural History**

The Board convened a public hearing on November 23, 2010, in accordance with G.L.c. 30A, §§10 & 11; G.L.c. 143, §100; 801 CMR 1.02; and 780 CMR 122.3. Variances had previous been granted to the appellant for a specific sprinkler density. The building and fire officials found the appellant in violation of the conditions of that variance. The appellants thus proposed additional changes to come into compliance and requested these variances from the Board. All interested parties were provided with an opportunity to testify and present evidence to the Board.

**Findings of Fact**

 The facts of this matter are largely not in dispute. Instead, this matter turns on the review of the applicable provisions of the State Building Code. The Board bases the following findings upon the testimony presented at the hearing. There is substantial evidence to support the following findings:

1. The property at issue is located at Russell St., Hadley, MA.
2. The subject property is a Bed Bath and Beyond store.
3. The subject property is open for operation.
4. The store has some back to back shelving units.

**Exhibits**

The following Exhibits were entered into evidence at the hearing on this matter and reviewed by the Board:

Exhibit 1: Application for Appeal.

Exhibit 2: 5 page letter to Dave Burkhart from Jeremy Mason, the 3rd Party reviewing

engineer.

Exhibit 3: Black and white photograph of shelves.

**Analysis**

1. Jurisdiction of the Board

There is no question that the Board has jurisdiction to hear this case. The governing statute provides that:

Whoever is aggrieved by an interpretation, order, requirement, direction or failure to act by any state or local agency or any person or state or local agency charged with the administration or enforcement of the state building code or any of its rules and regulations, except any specialized codes as described in section ninety-six, may within forty-five days after the service of notice thereof appeal from such interpretation, order, requirement, direction, or failure to act to the appeals board. G.L. c.143, §100.

The issues giving rise to this matter directly implicate provisions of the Code. As such, this Board has jurisdiction to decide this case pursuant to G.L. c. 143, §100.

1. State Building Code requirements

The issue is whether to grant a variance to the required width of aisles and to the required sprinkler system for the commodities in the store. The issue is also defining the size of a palette load where the merchandise is on a shelf rather than actually in a palette.

The national fire and protection engineer for Bed Bath and Beyond testified for the appellant that the prior variance granted by this Board for a sprinkler density reduction was based on class 1-4 commodity with 10 additional palette loads of plastics. The appellant asserted that the fire marshal came into the store and determined that the amount of plastics displayed exceed the 10 palette loads that were allowed for under the original variance.

The appellant requested a variance to increase the sprinkler density to .6 over 2000 which will protect all commodities including Group A plastics except for exposed expanded plastics and to then have an additional 10 palette loads allowed only for those types of plastics.

The 3rd party engineer reviewer testified for the appellant that it is his belief that such a design is a safe system. He asserted he based his opinion on a test that was done with an EC 25 sprinkler in the same configuration. He asserted that although the appellant will not be using an EC 25 sprinkler system but rather one with a lower K factor of 11, that it is a higher density than the one used in the test and over a greater area.

The Hadley Building Inspector testified that there have been ongoing issues with this project, that they have not received the required documentation in a timely fashion and that the fire official has seen a vast amount of expandable plastics above and beyond what was allowed under the first appeal. The building inspector also testified that he and the fire officials want the appellant to provide a storage plan for their review.

There was discussion and controversy about whether a palette was defined in the NFPA and if so whether it was 5x5x5 cubic feet or 4x4x4 cubic feet. The appellant testified that it was 5x5x5 and the Board thought it was 4x4x4. The appellant also asserted that there was a difference in the requirements for an actual palette and applying those measurements to products on a shelf which have more air space and thus are less hazardous.

So long as the conditions below are met, the variances may be granted.

**Conclusion**

A motion was made by Jacob Nunnemacher and seconded by Alexander MacLeod to **Grant** the variances **with conditions**: The variances to 780 CMR 118.1, 424.5, 424.6 and 901.7.3 may be granted for a reduction in the aisles to 3 feet 5 inches from the 4 foot requirements of the Code and for the use of a K11.2 sprinkler in lieu of the K25 sprinkler that was used in testing. The Board also made a determination to use 64 cubic feet to define palette size for palettes in storage and to use 125 cubic feet for products on display. These variances and determinations are **contingent upon** the appellant providing all necessary information to the building official within 2 weeks time of this appeal, including the updated narrative report, affidavits, and designation of the engineer of record, as well as providing the fire and building departments with an updated storage plan and owner certificate. Additionally, the proposed sprinkler system must be submitted to the building and fire departments within 1 month, by December 22nd, 2010 for their approval. The installation must be complete with 2 months of the approval date by the fire and building departments.

 

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Brian Gale Alexander MacLeod Jacob Nunnemacher

*Any person aggrieved by a decision of the State Building Code Appeals Board may appeal to Superior Court in accordance with G.L. c.30A, §14 within 30 days of receipt of this decision.*

DATED: January 4, 2011