**COMMONWEALTH OF MASSACHUSETTS**

**SUFFOLK, ss. BUILDING CODE APPEALS BOARD DOCKET NO.: 11-959**

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)

Massachusetts General Hospital, )

Appellant )

)

v. )

)

City of Boston, )

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 1018.1 and 1018.2. Rockwood Edwards of Cosentini Associates and Hubert Murray of MGH Planning and Construction appeared on behalf of the appellant. No building official was present but an email was submitted with the appeal package from the City Building Inspector stating that because this is the only area within the building where the means of egress is inadequate and because the public will be excluded from the area at issue in the appeal that the City defers to whatever ruling the Board deems appropriate in this matter. All witnesses were duly sworn.

**Procedural History**

The Board convened a public hearing on January 6, 2011, in accordance with G.L.c. 30A, §§10 & 11; G.L.c. 143, §100; 801 CMR 1.02; and 780 CMR 122.3. 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 2 North Grove St., Boston, MA.
2. The subject property is the MGH Museum.
3. The subject property is new construction of a 2 story building above grade.
4. The subject property will be located on the corner of Cambridge Street and North Grove Street in Boston, adjacent to the MGH resident physician’s house.
5. The subject property is of use group A3 and construction type 2B.
6. The subject property was permitted under the Seventh Edition of the Building Code and meets all other Code requirements.
7. The subject property will be fully sprinklered.
8. The basement level of the property will be approximately 675 square feet and will include an elevator pit, an elevator machine room, a water room, access to the exit stairway.
9. The basement will be used only by maintenance workers and will not be accessible by the public.
10. There is a lock on the door to the basement.
11. There are 25 feet to the exit in the basement from the farthest distance.

**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: 3 Photographs of Subject Property.

**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

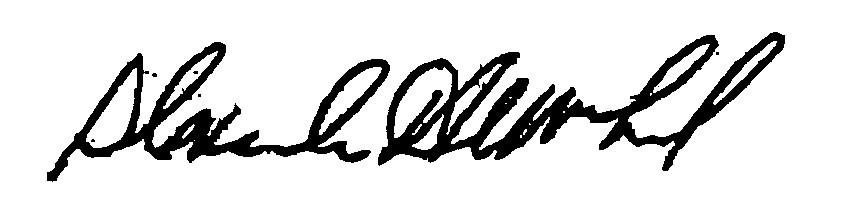
The issue is whether to grant a variance to 780 CMR 1018.1 and 1018.2. The Seventh Edition of the Code does not allow for only one means of egress in a story below grade in this type of construction. See 780 CMR 1018.1 and 1018.2.

The appellant testified that under the newest edition, the 8th, of the Code, that only one means of egress in this property would be allowed. The appellant asserted that this story will be used only for maintenance workers and that it would be onerous and a hardship to include a second exit.

Because the space is small and because it will be inaccessible to the public, the variance may be granted.

**Conclusion**

A motion was made by Alexander MacLeod and seconded by Jacob Nunnemacher to **GRANT** the variances to 780 CMR 1018.1 and 1018.2 based on the fact that this is a small space that is just a space for maintenance workers and because it has a lock on the door, with the **condition that** a smoke detector must be put in Room 001, the corridor that leads to the stairs.



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Jacob Nunnemacher Alexander MacLeod Doug Semple

*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: February 8, 2011