



The Commonwealth of Massachusetts
Executive Office of Public Safety and Security
Fire Prevention Regulations Appeals Board
P.O. Box 1025 ~ State Road

Stow, Massachusetts 01775

(978) 567-3181 Fax: (978) 567-3121

ANTHONY P. CAPUTO
CHAIRMAN

CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LT. GOVERNOR

THOMAS A. TURCO, III
SECRETARY

Docket # 2020-01
228R Lexington Street
East Boston, Massachusetts

FIRE PREVENTION REGULATIONS APPEALS BOARD

A) Statutory and Regulatory Framework

This matter is an administrative appeal filed in accordance with Massachusetts General Laws Chapter 22D, section 5. The Appellant is seeking the Board of Fire Prevention Regulation's review of a determination of the Boston Fire Department to deny a site plan/fire department access plan filed with a building permit as it relates to a proposed four-story, four-unit condominium to be located at 228R Lexington Street, East Boston, Massachusetts. The owner is Jorge Rodriguez, represented by Attorney Jeffrey Drago (hereinafter referred to as the Appellant).

B) Procedural History

By notice dated March 2, 2020 and received by the Appellant on March 13, 2020, the Boston Fire Department rejected a site plan filed with the building department as it relates to a proposed four-story, four-unit condominium building to be located at 228R Lexington Street, East Boston, Massachusetts. The Boston Fire Department determined that as proposed, the fire department access in said plan would violate 527 CMR 1.00, Chapter 18, specifically 18.2.3.2.1.1, 18.2.3.2.2.1, and 18.2.3.4.1.1.

On April 21, 2020, the Appellant filed a timely appeal of the Boston Fire Department's determination with the Fire Prevention Regulations Appeals Board. Per Governor Charles D. Baker's Emergency Executive Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, s.20 signed and dated March 12, 2020, the Board held a video conference hearing on this matter on May 28, 2020.

Appearing on behalf of the Appellant was: Jeff Drago, Attorney for Jorge Rodriguez; Doug Anderson, C3 Code Consultant; Arthur Choo, Architect, Choo and Company; and Elida Alba, Choo and Company. Appearing on behalf of the Boston Fire Department was: Brian P. Tully Sr., Fire Marshal; Deputy Chief Paul Glora, District Chief Assistant Fire Marshal; Paul Donga, Head Fire Protection Engineer, Boston Fire Department; and Thomas O'Donnell, ISD and Fire Protection Specialist.

Present for the Board were: Anthony P. Caputo, Presiding Panel Member; Chief William LaLiberty; and Paul C. Scheiner. Glenn M. Rooney, Esq., was the Attorney for the Board.

C) Issue(s) to be Decided

Whether the Board should affirm, reverse or modify the determination of the Boston Fire Department regarding the proposed site plan/fire department access plan in accordance with 527 CMR 1.00, Chapter 18?

D) Evidence Received

1. Application for Appeal by Appellant
2. Statement in Support of Appeal from Appellant
3. Order of Notice from the Boston Fire Department (dated 3/2/2020)
4. Proposed Fire Dept. Access Memorandum Commercial Construction Consulting, Inc. (dated 2/20/2020)
- 5A. Street view photograph of Existing Fire hydrant and existing & proposed lot access
- 5B. Aerial Photograph of existing fire hydrant and structure and proposed project site
- 5C. Aerial Photograph of 228R Lexington Street, East Boston
6. Building Plans for “Proposed 4-Family Condo Building – 228R Lexington St., Boston” (dated 7/25/2019)
7. Notice of Hearing to Appellant (dated 5/11/2020)
8. Notice of Hearing to Boston Fire Department (dated 5/11/2020)
9. Memorandum regarding Remote Hearing Procedures (dated 5/7/2020)
10. Copy of Guidance Document that accompanies Hearing Notices (dated 5/1/2020)
11. E-mail from Deputy Chief Tully to FPR Appeals Board Executive Assistant Describing photographs submitted (dated 5/18/2020)
12. Photographs submitted by Boston Fire Department (labeled 12A-Z)

E) Subsidiary Findings of Fact

1. The Appellant sought this Board’s review of the Boston Fire Department’s denial under the provisions of M.G.L. c. 22D, s. 5. At the hearing, the Appellant’s testified that property currently holds a two and a half story, wood frame, single family home with three bedrooms and no current fire or sprinkler protections. The Appellant stated that the current structure and configuration of the lot has been in place for over 100 years and described the lot as being in the shape of a “pork chop.” He also indicated that this property shape is common in East Boston.
2. The Appellant testified that the lot is currently only accessible by Lexington Street for both ingress and egress and that would remain the same under the proposed project. He stated that the narrow driveway is approximately fifteen (15) feet and can fit two cars. As part of the proposed project, the driveway would also be modified to be re-cemented, sealed and turned into a walkway only, with all vehicular traffic being eliminated.
3. The current distance between the existing structure and the two buildings in front of the structure nearest Lexington Street is approximately 21 feet, 3 inches.

4. The Appellant testified that the proposal is to create a four-story building with four separate condominium units (one per floor). Each unit would have one bedroom and would have two means of egress from each unit, while maintaining a main ingress/egress and exterior stairways for all units. The proposed new building would be 33½ feet wide by 26 feet deep and would be approximately in the same footprint as the existing structure.
5. The Appellant stated that the nearest fire hydrant to the property is approximately sixty-five feet from the property line and that Boston Fire Department Engine 5 is located approximately six hundred (600) feet away from the subject property at 360 Saratoga Street, East Boston.
6. In support of the Appellant's case, Code Consultant Doug Anderson from C3 Code Consulting also testified. Mr. Anderson testified that the Appellant was proposing additional fire safety mitigations due to the lack of fire department access, pursuant to 527 CMR 1.00, 18.2.3.1.4. Those measures include: NFPA 13 sprinkler system installed throughout the proposed building; separating exterior stairs from the interior with two-hour fire rated walls; enclosing the exterior stairs; using fire retardant material for all framing and exterior wall sheathing; using dimensional lumber for all interior joists, instead of open bar joists; finishing the exterior with non-combustible materials such as Hardie Plank; and providing a dry standpipe at the exterior stair, possibly with a fire department connection at the street.
7. Mr. Anderson further testified that if the current structure on the site is razed and replaced, any new structure in its place including one or two family structure, would fall under the same requirements found in 527 CMR 1.00, 18.1.1.3.
8. In support of the Boston Fire Department's position, Deputy Chief Tully testified that the Department is opposed to this project for many reasons due to life safety concerns. As currently proposed, this project does not comply with the requirements of 527 CMR 1.00, Chapter 18 which requires that a twenty (20) foot access way be provided, which would allow a fire department apparatus to gain access within twenty-five feet of the front door.
9. Deputy Chief Tully further stated that the current building at 228R Lexington Street, East Boston is currently surrounded by other properties. In the front of 228R Lexington Street are existing buildings numbered as 226 and 230. Each building has a rear porch and Deputy Chief Tully stated a fire starting in one of those porches could easily spread to other buildings.
10. Deputy Chief Tully stated that building as proposed, has no rear access due to a ten to eleven foot retaining wall at the rear of the subject property and that both proposed egresses are through the front of the building and out to Lexington Street through the new walkway, which would be between 226 Lexington Street and 230 Lexington Street.
11. Deputy Chief Tully indicated that while there is a nearby fire station on Saratoga Street, East Boston is the most isolated neighborhood in the city. Deputy Chief indicated that other fire stations are located 1.5 miles away and 3 miles away and that most fires, due to the congested nature of the neighborhoods, often escalate to two alarms for lack of resources. Deputy Chief Tully expressed concern about the lack of aerial ladder access to this specific property. Deputy Chief Tully indicated that without aerial ladder access, the

fire department would be required to use ground ladders that are only fifty feet, can weigh two-hundred and fifty (250) pounds and require five firefighters to operate.

12. Fire Protection Engineer Paul Donga also testified in support of the Boston Fire Department's position stating that the purpose of 527 CMR 1.00, Chapter 18 was exactly for lots like 228R Lexington Street. Due to the overall difficulty of the site location, ground ladders would not be the best option and that emergency personnel would face extreme difficulties for ingress and egress to the property and for residents to egress from the proposed structure.
13. ISD and Fire Protection Specialist Thomas O'Donnell testified that as of the date of this hearing, the City of Boston has not adopted the provisions of the so-called *Subdivision Control Law* in M.G.L. Chapter 41 Sections 81K-81GG or any type of similar zoning bylaws that would render 527 CMR 1.00, Chapter 18 inapplicable to the subject property.
14. Mr. Anderson suggested that Appellant and his team, could explore seeking easements from abutting neighbors to the property to create a 2nd means of egress. He also suggested that additional changes to the building plans could be made, including the creation of a water curtain, enclosing the stairway, installation of sprinklers on the inside of the windows, and even shutters or doors over the windows. Mr. Anderson stated that the Appellant and his team are willing to work with the Boston Fire Department in any way to make this project work.

F) Ultimate Findings of Fact and Conclusions of Law

1. The applicable sections of 527 CMR 1.00, Chapter 18 to the subject property are as follows:

527 CMR 1.00, 18.1 - Fire department access and water supplies shall comply with this chapter. The provisions of the chapter shall not apply to any city, or town which has accepted the provisions of M.G.L. Chapter 41, Section 81 *et. seq.* or similar laws which provide local jurisdiction over fire department access and water supply. In the absence of any such laws, fire department access and water supply shall comply with this chapter.

527 CMR 1.00, 18.2.3.2.1.1 - Where a new building, not provided with adequate frontage, is to be located behind an existing building that has frontage, a fire department access road shall extend to within 25 feet of at least one exterior door that be opened from the outside and that provides access to the interior of the building.

527 CMR 1.00, 18.2.3.2.2 - Fire department access roads shall be provided such that any portion of the facility or any portion of an exterior wall of the first story of the building is located not more than 150 feet from fire department access roads as measured by an approved route around the exterior of the building or facility.

527 CMR 1.00, 18.2.3.2.2.1 - When buildings are protected throughout with an approved automatic sprinkler system that is installed in accordance with NFPA 13: *Standard for Installation of Sprinkler Systems* the Distance in Section 18.2.3.2.2 shall be permitted to be increased to 250 feet.

527 CMR 1.00, 18.2.3.4.1.1 - Fire department access roads shall have an unobstructed width of not less than 20 feet. Fire department access roads constructed in the boulevard-style shall be allowed where each lane is less than 20 feet but not less than ten feet when they do not provide access to a building or structure.

2. The City of Boston has not accepted the provisions of M.G.L. Chapter 41, Section 81 *et seq.*, the so-called *Subdivision Control Law*, or similar laws which provide local jurisdiction over fire department access and water supply. Accordingly, 527 CMR 1.00, Chapter 18 is controlling on the fire department access issues presented in this appeal.
3. The Board finds that 527 CMR 1.00, 18.2.3.1.4 is inapplicable as it is the Appellant, and not naturally occurring and uncorrectable conditions, that would render fire department access impossible, as contemplated by 527 CMR 1.00, 18.2.3.1.4. The Board does not find anything unique about the proposed use of the building or characteristics of the property that would support a contrary finding.
4. As proposed, 228R Lexington Street would not have adequate frontage and the subject project would be located behind existing buildings that have frontage. However, fire department access would not extend within twenty five (25) feet of at least one exterior door that can be opened from the outside and that provides access to the interior of the building. Further, fire department access roads, as proposed, would not have an Unobstructed width of at least twenty (20) feet. As such, the Board finds that the proposed fire department access would be in violation of 527 CMR 1.00, 18.2.3.2.1.1, 527 CMR 1.00, 18.2.3.2.2.1 and 527 CMR 1.00, 18.2.3.4.1.1.

G) Decision and Order

Based upon the forgoing reasons, this Board **unanimously upholds** the Order of the Boston Fire Department to deny the site access/fire department access plan for the property located at 228R Lexington Street, East Boston, MA.

H) Vote of the Board

Anthony P. Caputo, Presiding Panel Member	In Favor
Chief William LaLiberty	In Favor
Paul Scheiner	In Favor

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

I) Right of Appeal

You are hereby advised you have the right, pursuant to section 14 of chapter 30A of the General Laws, to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order.

SO ORDERED,



Anthony P. Caputo, Presiding Panel Member
Fire Prevention Regulations Appeals Board

Dated: June 2, 2020

**A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY E-MAIL AND
CERTIFIED MAIL, RETURN RECEIPT REQUESTED TO:**

Jeffrey R. Drago, Esq.
15 Broad Street
Boston, Massachusetts 02109
(JDrago@DTLawLLP.com)

Deputy Chief Brian Tully, City Fire Marshal
Boston Fire Department
1010 Mass. Ave, 4th Floor
Boston, MA 02118
(Brian.Tully@boston.gov)