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The Commonwealth of Massachusetts
Executive Office of Public Safety and Security
Fire Prevention Regulations Appeals Board
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ANTHONY P. CAPUTO
CHAIRMAN

Docket # 2021-03
32R Perkins Street
Boston, Massachusetts

FIRE PREVENTION REGULATIONS APPEALS BOARD DECISION

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 two story, one unit carriage house to be located at 32R Perkins Street, Boston, Massachusetts. The property owners are Shai Genish and Dar Sandler, represented by Architect Timothy Burke (hereinafter referred to as the Appellant).

B) Procedural History

By an undated notice issued by the Boston Fire Department rejected a site plan filed with the building department as it relates to a proposed single story, one unit carriage house to be located at 32R Perkins Street, 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 July 30, 2021, the Appellant filed an appeal of the Boston Fire Department's determination with the Fire Prevention Regulations Appeals Board. Due to the inability of the Board to determine the date the order was originally issued and whether the appeal was timely filed, the Boston Fire Department re-issued the Order of Notice denying the project on August 9, 2021, by certified mail.

The Board held a video conference hearing on this matter on September 23, 2021.

Appearing on behalf of the Appellant was: Shai Genish and Dar Sandler, property co-owners and Timothy Burke of Timothy Burke Architecture. Appearing on behalf of the Boston Fire Department was: Deputy Chief/Boston Fire Marshal, Joseph Shea; Paul Donga, Head Fire Protection Engineer, Boston Fire Department; and Thomas O'Donnell, ISD and Fire Protection Specialist.

Present for the Board were: Chief Richard K. Arruda, Presiding Panel Member; Larry Fisher; and Paul Kennedy. 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. Designation of Property Owner to allow Timothy Burke, Architect, to file the appeal on the property (dated 7/30/2021)
3. Order of Notice of the Boston Fire Department (Undated)
4. Aerial Photograph of 32 an 32R Perkins Street, Boston
5. Firefighting Access Diagram for ERT 1079150 from Timothy Burke Architecture
6. Site Plan for 32R Perkins Street from Timothy Burke Architecture
7. 32R Floor Plans from Timothy Burke Architecture
8. 32R Elevations – Proposed from Timothy Burke Architecture
9. Decision of the Boston Zoning Board, Case No. BOA1099404 for 32R Perkins Street, Ward 19, Boston (dated 2/19/2021)
10. Re-issued Order of Notice of the Boston Fire Department with mailing envelope (dated 8/9/2021)
11. Notice of Hearing to Appellant (dated 8/27/2021)
12. Notice of Hearing to Boston Fire Department (dated 8/27/2021)
13. Memorandum regarding Remote Hearing Procedures (dated 5/7/2020)
14. Copy of Guidance Document that accompanies Hearing Notices (dated 5/1/2020)
15. Correspondence and Alternate House Plans submitted to Executive Assistant to the Fire Prevention Regulations Appeals Board from the Appellant (dated 9/10/2021)
- 15A. Alternate 1 – Single Story Option
- 15B. Alternate 2 – Property Access Modifications
16. Correspondence from Chief Shea of the Boston Fire Department to Appeals Board with copy of 527 CMR 1.00, Chapter 18 (dated 9/15/2021)
17. Photographs submitted by the Boston Fire Department
- 17A. Front of 32 Perkins Street Property
- 17B. Front of 32 Perkins Street Property
- 17C. Driveway looking towards rear of 32 Perkins Street Property
- 17D. Photograph taken standing in driveway of 32Perkins Street, looking towards closest fire hydrant to property
- 17E. Photograph of garage on South Huntington Street, at rear of 32 Perkins Street property
- 17F. Photograph of garage on South Huntington Street, at rear of 32 Perkins Street property
- 17G. Backyard/driveway view of 32 Perkins Street
- 17H. Driveway of 32 Perkins Street
- 17I. Photograph of hydrant on Perkins Street, approximately 100 feet away from 32 Perkins Street
- 17J. Photograph of rear of Perkins Street property taken from Barbara Street
- 17K. Photograph of rear of Perkins Street property taken from Barbara Street (different angle)
- 17L. Photograph of rear of Perkins Street property taken from Barbara Street (black van in front of photo)
- 17M. Property abutting Perkins Street property (as taken from adjacent Whole Foods parking lot)
- 17N. Photograph of adjacent building showing property access restrictions to 32 Perkins Street
- 17O. Alley between 32 Perkins Street and abutting building
- 17P. Driveway of 32 Perkins Street showing two cars parked and power lines above driveway
- 17Q. Photo of abutting buildings showing potential severe fire exposures

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 representative testified that the subject property is currently occupied by a single-family home, with a detached garage/carriage house in the back, approximately 450 s.f. in size. The garage/carriage house is two stories in height with a partial basement and is currently used for storage purposes.
2. The Appellants' architect testified that the existing structure is largely dilapidated and the plan would be to convert the garage/carriage house into a new living unit and completely rehabilitate the structure. The new structure would be all wood construction but would have cement/fiber board cladding on the exterior, with a 1-hour fire rating and sprinklers located throughout the structure.
3. Mr. Burke, the Appellant's architect acknowledged that although this project meets NFPA requirements, it does not meet the 25' requirement to the front door and does not have maneuvering space for the fire department as required by 527 CMR 1.00.
4. Mr. Burke also testified that following the initial appeal filing with the Board, he consulted with his clients to see if the project could be modified to appease concerns raised by the Boston Fire Department. Accordingly, exhibits 15, 15A and 15B were submitted prior to the hearing showing two alternate plans for the structure, which would reduce the structure to one story in height, reducing the number of occupants. The second alternate allows for the removal of a fence between 28 and 32 Perkins Street, the removal of a bay window on 32 Perkins Street and expanding the driveway to 19.5' in width between the buildings to improve vehicular access. The Appellants' indicated that this would result in a permanent easement granted to them by the owner of 28 Perkins Street and would be recorded with the Suffolk County Registry of Deeds.
5. When asked by the Board as to whether an analysis/evaluation for fire department access and turning access was conducted as part of this project, Mr. Burke conceded that no such evaluation had been done.
6. In support of the Boston Fire Department's position, Deputy Chief Shea testified that the Department is opposed to this project due to life safety concerns and access issues. 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 (25) feet of the front door.
7. Deputy Chief Shea further stated that the current building at the rear of 32 Perkins Street, Boston is currently surrounded by other properties and is in a densely packed neighborhood. He expressed his concern that if a fire was to occur within or around the proposed structure, there would be severe fire exposures on all sides. Chief Shea indicated that one building behind the garage/carriage house is located approximately 4 feet away.
8. Deputy Chief Shea also expressed concern about the congested nature of this particular neighborhood and the ability for apparatus to respond to the property during peak traffic times and about the lack of aerial ladder access to this specific property. Deputy Chief Shea indicated that without aerial ladder access, the fire department would be required to use ground ladders and would need to carry them down the driveway and behind the home to gain access to the renovated carriage house.

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 Board takes administrative notice based upon Fire Prevention Regulations Appeals Board docket numbers 20-01 (East Boston) and 20-03 (Brighton) that 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, 32R Perkins 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 32R Perkins Street, Boston, MA.

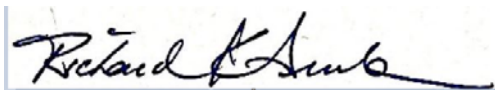
H) Vote of the Board

Chief Richard K. Arruda, Presiding Panel Member	In Favor
Larry Fisher	In Favor
Paul Kennedy	In Favor

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,



Chief Richard K. Arruda, Presiding Panel Member
Fire Prevention Regulations Appeals Board

Dated: September 29, 2021

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

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