

**COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF PUBLIC SAFETY AND SECURITY
FIRE PREVENTION REGULATIONS APPEALS BOARD**

**JESSE WILSON, OWNER
28 EVERGREEN STREET, BOSTON**
Appellant

vs.

Docket No: 22-04

BOSTON FIRE DEPARTMENT
Appellee

DECISION AND ORDER

INTRODUCTION

The Fire Prevention Regulations Appeals Board (hereinafter “Board”) considered the appeal and request of a variance in the above-captioned matter on Wednesday, September 8, 2022 at approximately 10:15 a.m., during an open meeting of the Board. The meeting was held virtually via Microsoft Teams pursuant to Chapter 107 of the Acts of 2022.

There was a quorum of the Board and the following members were present and participated: Anthony Caputo, Chair; Dr. Paul Scheiner; Larry Fisher; and Chief Joseph Jackson, Alternate. Attorney John H. Dean was present and served as legal counsel for the Board.

James Ierardi, PhD, PE of AKF Group, Attorney Donald Wiest, and Jesse Wilson, property owner, appeared on behalf of the Appellant.

District Chief Joseph Walsh, Assistant City Fire Marshal appeared on behalf of the Boston Fire Department (hereinafter “BFD”).

THE ORDER OF THE FIRE DEPARTMENT

By written notice dated June 13, 2022, and received by the Appellant on or about

June 15, 2022, the BFD issued a decision to the Appellant, denying his site plan filed with the Inspectional Services Department, because “Fire Department access to the proposed building (a barn into a single family) at the referenced address . . . would be in violation of 527 CMR 1.00, Chapter 18, specifically Section 18.2.3.2.1.1, Section 18.2.3.2.2.1, and Section 18.2.3.4.1.1.”

JURISDICTION AND STANDARD OF REVIEW

The Board has jurisdiction to hear the appeal and conduct an adjudicatory hearing pursuant to M.G.L. c. 22D, section 5. The Board is an agency with expertise and experience in the technical aspects of fire safety. Pursuant to s.5, the Board shall issue a decision or order reversing, affirming or modifying in whole or in part act, any rule, order, directive, decision or requirement of any state or local official charged with the enforcement of the state fire code, relative to the fire protection requirements for buildings or structures.

The Board may also grant a variance from any provision of the state fire code and related rules and regulations in any particular case, determine the suitability of alternate materials or methods of compliance, and provide reasonable interpretations of the state fire code consistent with the purpose thereof.

SUMMARY OF THE ARGUMENTS

The Appellant does not contest the validity or correctness of the BFD decision and concedes that the submitted permit plans do not meet the requirements of 527 CMR 1.00, as it pertains to fire department access.

In the alternative, the Appellant proposed compliance alternative options and asked the Board to consider his request for a variance from the requirements of 527 CMR 1.00 as it pertains to fire department access.

A. Appellant's Position

The property at issue is 28 Evergreen Street, Boston, Massachusetts, which is an existing 2½ story, 2 family home. At the rear of that structure is an existing barn building, which the Appellant proposes to renovate within the existing footprint, and construct an addition that is 14' by 18' (252 s.f.) for a total footprint area of 882 s.f. The proposed structure (called an accessory dwelling unit by the Appellant's representative) will be 3 stories tall and 37' above grade, with a single basement level living space for an aggregate area of approximately 3,528 s.f.

The Appellant acknowledged that the existing driveway has approximately 16.9 ft. of clear width from the exterior wall of the existing two family structure to the property line shared with 24 Evergreen Street. This is narrower than the 20 ft. wide requirement contained in 527 CMR 1.00, section 18. The Appellant also acknowledged that the travel distance from the current fire access road to the exterior door of the rear structure was 75 feet, which is not within the 25 feet as required.

The Appellant proposed a number of options he believed would be a suitable alternative to achieve compliance. These proposals included the installation of a full NFPA 13 sprinkler system, a fire alarm system, fire department connection, 1-hour fire rated walls, the shifting of the building, and removal of an exterior staircase and fence.

B. Fire Department's Position

The BFD opposed the request for a variance on several grounds. First, since the regulation was put into place in 2019, the BFD has been steadfast in its requirement that a fire department access road be at least 20 feet wide and in compliance with 527 CMR 1.00. This is because the size of the apparatus has gotten larger over the years and requires greater room to operate to its maximum capabilities.

Also, District Chief Walsh, who was familiar with this area due to his history of working in the district, as well as responding to this particular address, detailed the difficulties the BFD would

have in accessing the barn structure should a fire breakout. These concerns included a congested neighborhood, with many cars on the street and difficult traffic. These impediments for responding companies increase in the nighttime when the likelihood of a serious fire is greater. As such, the first due ladder truck would not be able to make the swing into the driveway. This would instead require the use of ground ladders, which would take more manpower and time to set up, thus increasing the risk to any persons trapped in the residence. Finally, although sprinklers would be beneficial, they would not address all issues that the BFD might respond to that location for.

Ultimately, the BFD's position was that the alternative methods suggested by the Appellant were not enough to overcome the lack of fire department access.

DISCUSSION AND FINDINGS OF FACT

The Appellant presented a well-prepared and comprehensive compliance option plan. Nonetheless, the Board determined that, as presented, the Appellant's proposal was not a suitable alternative to compliant fire department access.

In reaching its decision, the Board made the following findings of fact. Without a compliant fire department access road, the characteristics of the property and the neighborhood would prevent the BFD from efficiently utilizing its aerial apparatus. As a result, the BFD would be forced to utilize ground ladders, thus increasing the time and manpower it would take to get the ladders into position. This increased the risk to occupants should a fire break out.

The Board also found that there were issues which had either had not been addressed by the Appellant, or which could not be answered by the Appellant. For example, the Appellant testified that there would never be more than 1 car in the driveway, yet there was no explanation as to who would be occupying the new structure and/or whether they would have any car(s) as well. There was also no consideration for the future use of electronic vehicles and charging stations discussed. Nor

did it appear to the Board that the Appellant and BFD had had any substantive conversations in an attempt to find a suitable solution which was satisfactory to both Parties.

Finally, in taking administrative notice of facts based on the Board's experience and specialized knowledge in the area of fire ground tactics and strategy, life safety requirements, and history of fires in similar neighborhoods, the Board found that the Appellant's proposal did not overcome the lack of compliance with fire department access, and was therefore not a suitable alternative to 527 CMR 1.00 and its stated purpose to "safeguard life, property and public welfare from the hazards of fire..."

CONCLUSIONS OF LAW

The City of Boston is not required to follow the provisions of M.G.L, c. 41, s.81 *et. Seq.*, the so-called *Subdivision Control Law*, or similar laws, which provide local jurisdiction over, fire department access and water supply. Accordingly, the requirements of 527 CMR 1.00, Chapter 18 are controlling on the fire department access issues presented herein.

The Board concludes that that 527 CMR 1.05, §§ 18.1, 18.2.3.2.1.1, 18.2.3.2.2.1, and 18.2.3.4.1.1 are applicable. As proposed, the subject property does not have an unobstructed width of at least twenty (20) feet, nor does it extend to within twenty-five (25) feet of a least one exterior door that can be opened from the outside and that provides access to the interior of the building.

The Board also concludes that the compliance alternative options, presented by the Appellant, which include, but are not limited to the installation of sprinklers, a fire department connection, an alarm system, and the removal of certain impediments, is not a suitable alternative to compliance with the requirements of 527 CMR 1.00.

DECISION AND ORDER

Based on the Board's findings of fact and conclusions of law, the Board unanimously

upholds the decision of the BFD. The Board also unanimously denies the Appellant's request for a variance.

SO ORDERED,



Anthony P. Caputo, Chairman

Dated: September 21, 2022

RIGHT OF APPEAL

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.

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

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