



The Commonwealth of Massachusetts
Executive Office of Public Safety and Security
Fire Prevention Regulations Appeals Board
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Docket # 2023-06
5-7 Jerusalem Place
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 single family dwelling unit to be located at 5-7 Jerusalem Place, Boston, Massachusetts. The property is owed by Chris Young, who was represented by developer David Neilson (hereinafter referred to as the Appellant).

B) Procedural History

By notice dated November 30, 2023 and issued by the Boston Fire Department, the Department rejected a site plan filed with the building department as it relates to a proposed single family dwelling unit to be located at 5-7 Jerusalem Place, 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 December 26, 2023, the Appellant filed an appeal of the Boston Fire Department's determination with the Fire Prevention Regulations Appeals Board. The Board held a video conference hearing on this matter on January 31, 2024.

Appearing on behalf of the Appellant was: David Neilson, Developer. Appearing on behalf of the Boston Fire Department was: District Chief/Assistant Fire Marshal, Joseph Walsh. Present for the Board were: Dr. Paul Scheiner, Presiding Panel Member; Chief Richard K. Arruda; John Correia; and Anthony Caputo, alternate. Glenn M. Rooney, Esq. and Rachel E. Perlman were the Attorneys 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 filed by Appellant (dated 12/26/2023)
2. Statement of Chris Young allowing David Neilson to represent Property and to seek/obtain a building permit (dated 2/15/2022)
3. Order of Notice from Boston Fire Department (dated 11/20/2023)
4. Appellant's Statement in Support of Appeal with Exhibits
- 4A. Copies of 527 CMR 1.00, Section 18 (4 pages)
- 4B. Overview Photograph of Site of Proposed 5-7 Jerusalem Place
- 4C. Boston Tax Parcel Viewer
- 4D. Plan for Single Family Residence: 5-7 Jerusalem Place, Boston
- 4E. Site Plan of Land – 3 Jerusalem Place, Boston, MA (dated 12/7/2021)
- 4F. Site Plan as Proposed by 5-7 Jerusalem Place, Boston
- 4G. General Service Application Site Plan (dated 4/5/2018)
- 4H. Building Elevations showing both 1 single family unit and 3 single family dwelling Units (2 pages)
- 4I. Proposed Building Structure for 5-7 Jerusalem Place, North End, Boston (dated 10/2/2023)
- 4J. Copy of 2022 Order of Notice from Boston Fire Department (dated 6/22/2022)
- 4K. Technical Memorandum on Fire Truck Access from Kurt Fraser, P.E. of Fraser Polyengineering Services to Deputy Chief Joseph Shea, Boston Fire Department (dated 8/11/2022)
- 4L. Proposed Site Plan (dated 1/4/2024)
- 4M. Zoning Code Refusal from Boston Inspectional Services Department Planning and Zoning Division (dated 2/10/2023)
- 4N. Notice of Decision from the Boston Zoning Board of Appeal (dated 7/5/2023)
5. Photographs submitted by the Boston Fire Department in Support of Order of Notice
- 5A. Photo showing alleyway with fire escape and trash barrels
- 5B. Photo showing street access on Salem Street side
- 5C. Photo from parking lot to street (cars parked on opposite side of street)
- 5D. Photo showing black car parked beneath handicapped parking sign (an impossible turn for any ladder truck in the Boston Fire Department fleet)
- 5E. Photo of North Margin Street showing how narrow the street is, with on street parking
- 5F. Photo taken on North Margin Street side (proposed fire department access) showing parking lot with yellow bollards and gates
- 5G. Photo North Margin Street parking lot to street (cars parked on opposite side of street)
- 5H. Gates around the North Margin Street parking lot with a chain and lock in place
- 5I, 5J, 5K, 5L, 5M. Photographs showing elevation change/lack of access between Jerusalem Place and North Margin Street, in addition to clearly marked parking spots.

E) Subsidiary Findings of Fact

1. The Appellant sought this Board's review of the Boston Fire Department's denial of a site plan/fire department access plan filed with the Department under the provisions of M.G.L. c. 22D, s. 5. At the hearing, the Appellant's representative testified that the proposed plan is for a four-story, single-family dwelling to be located on Jerusalem Place, a 12-foot-wide street in the North End neighborhood of Boston. The site is currently open space.
2. The Appellant testified that this project was initially submitted to the Boston Fire Department for review and consideration in 2022 but was denied at that time because it did not contain a swept path analysis. The project was later re-submitted in 2023, and the analysis was provided.

3. The Appellant testified that he originally believed that fire department access would require a fire truck to get within 25 feet of the subject building. The swept path analysis showed that a fire truck could gain access to the site by traveling down North Margin Street, a street behind the site. The fire truck could then make a turn into a 20-foot-wide driveway on an adjacent parcel but only if 105 feet of parking could be removed from North Margin Street. The Appellant stated that the removal of parking spaces would have to be decided by the Boston Transportation Department but could only be considered if the Boston Fire Department submitted a letter requesting the same, which they declined to do.
4. As to the specific code violations cited in the Boston Fire Department Order, the Appellant stated that section 18.2.3.2.1.1 states that where a new building not provided with adequate frontage is to be located behind an existing building that has frontage and that fire department access roads will extend to within 25 feet of at least one exterior door. The Appellant admitted that the proposed building does not have adequate frontage, as Jerusalem Place is a 12-foot-wide street. However, the Appellant believes that because the proposed structure is located behind buildings on North Margin Street, which does have adequate frontage, that the violation of 18.2.3.2.1.1 does not apply.
5. For the second violation listed, section 18.2.3.2.1.1 the Appellant testified that this violation does apply, as it references the term “townhouse” which is defined in the Massachusetts State Building Code as a “single family dwelling unit constructed in a group of three or more attached units in which each unit extends from the foundation to the roof and with open space on at least two sides.”
6. The Appellant argued that the single-family dwelling unit proposed at 5-7 Jerusalem Place, contains components that are identical to that of a townhouse: the unit extends from the foundation to the roof and has open space on at least two sides. Further, section 18.2.3.2.1.1 specifically states that if the townhouse is protected by “an approved automatic sprinkler system that is installed in accordance with NFPA 13D or 13R” the distance from the property to the fire department access road can be increased to 150 feet. The Appellant stated that the only difference between a townhouse with three or more units and his project, is that his project is a single building with a single unit and would have a full sprinkler system installed throughout in accordance with NFPA 13.
7. Based upon the installation of a sprinkler system throughout, the Appellant indicated that 527 CMR 1.00 should allow a variance to be granted extending the fire department access road measurements from 20 feet to 150 feet, which would be from the corner of his proposed structure to the middle of Salem Street. The Appellant stated that his variance request was not on the access requirement but rather for the number of units in the proposed structure.
8. The Board notes that the Appellant submitted an Exhibit (4I) which showed three options for the building: (A) erect a single family dwelling unit with an approved automatic sprinkler system and a new fire hydrant located at Salem Street; (B) erect a single family dwelling unit with three units inside the building, with an approved automatic sprinkler system and a new fire hydrant located at Salem Street; and (C) erect a single family dwelling unit with an approved automatic sprinkler system and a new fire hydrant located at Salem Street.
9. District Chief Joseph Walsh testified in support of the Boston Fire Department’s denial of the fire department access plan. Chief Walsh stated that the Department opposed the proposed 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 wide access way be provided, which would allow a fire department apparatus to gain access within twenty-five (25) feet of the front door.

10. Chief Walsh described the location of the proposed property in North End neighborhood of Boston, as being one of the oldest neighborhoods in the country where streets are small, and the buildings/structures are very old and built very tight to one another. Chief Walsh specifically described Jerusalem Place as an alleyway and referred to photographs submitted into the record which show that the access to Jerusalem Place from Salem Street. He stated that the alleyway was less than 20 feet wide and less than 13 feet high and was further narrowed due to fire escapes on the buildings and trash containers against the buildings. He stated that the nearest hydrant is located across from this alleyway on Salem Street.
11. Chief Walsh stated that it would be impossible to get a truck with a water supply in front of the proposed building or anywhere near the building, as it would be tucked behind other buildings. Further, he stated that access from the Salem Street side would be nearly impossible except for firefighters walking in and manually carrying any equipment that would be needed to the front of the building. Chief Walsh testified that while firefighters could walk to the proposed building in the case of an emergency, the goal of the Department is to put a fire truck in front of the building.
12. Chief Walsh advised the Board that the technical memorandum that was submitted by the Appellant to the Boston Fire Department and contained in the subject appeals package is flawed, as the technical specifications on the example aerial ladder truck used is not accurate. He stated that the example used shows a truck with an overall length of 39 feet. However, the Department uses Tower Ladder 10 as their example truck for calculating distances and stated that the subject tower ladder is 44 ft., 6 inches long, with a 245-inch wheelbase.
13. As to the Appellant's argument that a ladder truck would be able to access the proposed structure through a parking lot on North Margin Street (owned by the Knights of Columbus), Chief Walsh stated that at least 105 feet of parking spaces including a handicapped parking spot would need to be removed to allow a ladder truck to maneuver down the street and to have enough room to make the turn into the parking lot. It was his opinion that the Boston Transportation Department would not be agreeable to that change since parking is already at a premium in the North End.
14. Further, Chief Walsh also expressed concern about using a private parking lot for firefighting operations and referred to the photograph in Exhibit 5H showing signage on a gate indicating that it is a driveway, and that 24-hour access is required. However, the photograph also shows the gate with a heavy-duty steel cable and lock cable/lock set attached to it.
15. Chief Walsh stated that while photos show the lot being open and mostly free of cars, there is no guarantee that the lot would be empty and accessible in the case of an emergency. He further expressed concerns that this private lot could be sold in the future and another structure put on that site, further restricting access to the proposed structure.
16. Chief Walsh argued that even if all circumstances were in their favor and the private lot could be used, there would still be several obstacles, including a change in grade of several feet and a chain link fence between the private lot and proposed structure. He stated that those would pose additional delays for firefighting crews, as they would need to be overcome prior to reaching the proposed structure to engage in a primary search or before charging a line to enter the front door.
17. Chief Walsh testified that while the Boston Fire Department is aware of the need to increase housing within the City of Boston, the Department cannot support a project such as this one in which personnel and trucks would not be able to access the property easily or readily both due to the narrow streets and the existing buildings being so close one another.

18. The Appellant testified that he understood all concerns identified by the Boston Fire Department but stated that he was fully agreeable to making any other changes to the plan and or proposed site that would appease any other concerns held by Chief Walsh and the Boston Fire Department.

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:

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 can be opened from the outside and that provides access to the interior of the building.

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 the Installation of Sprinkler Systems* the distance in Section 18.2.3.2.2 shall be permitted to be increased to 250 feet.

18.2.3.4.1.1 Fire department access roads shall have an unobstructed width of not less than 20 feet (6.1 m). 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. As proposed, 5-7 Jerusalem Place, Boston 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.
4. The Board also concludes that the compliance alternative options, presented by the Appellant, which include but are not limited to the installation of sprinklers, changes to the property including the removal of fencing between property lines, the lowering of grade, and installation of stairs between the property, all of which are not suitable alternatives to compliance with the requirements of 527 CMR 1.00.
5. While the Appellant presented several options for constructing and/or configuring the space in the proposed building at 5-7 Jerusalem Place, the Board is limited in the scope of its review to the plans that were review by the Boston Fire Department and serve as the basis for the November 30, 2023 Order. Any proposed redesigns or alternative configurations are not properly before this Board

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 5-7 Jerusalem Place, Boston, Massachusetts.

H) Vote of the Board

Dr. Paul Scheiner, Presiding Panel Member	In Favor
Chief Richard K. Arruda	In Favor
John Correia	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,



Dr. Paul Scheiner, Presiding Panel Member
Fire Prevention Regulations Appeals Board

Dated: February 15, 2024

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

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District Chief Joseph Walsh
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