

**COMMONWEALTH OF MASSACHUSETTS**

**SUFFOLK, ss.**

**Building Code Appeals Board  
Docket No. 08-548**

Richard Lockhead,	)
as agent for Alkermes, Inc.	)
Appellant;	)
	)
v.	)
	)
City of Chelsea,	)
Appellee.	)
	)

**BOARD'S RULING ON APPEAL**

**Procedural History**

This matter came before the State Building Code Appeals Board ("Board") on Appellant's appeal filed pursuant to 780 CMR §122.1. In accordance with 780 CMR §122.3, Appellant has requested that the Board review Appellee's decision to deny the Appellant's application for a permit to build an already-built fire escape and the order to the Appellant to remove it. The already-built fire escape is located at 307 Fourth Street, Chelsea, ("Property").

By letter dated February 8, 2008, Michael McAteer, Building Inspector for the City of Chelsea, ("Chelsea"), informed Appellant that 780 CMR §1025.1.3 had been violated, denied the permit application and ordered the Appellant to remove the fire escape.

In accordance with G. L. c. 30A, §§10 and 11; G. L. c. 143, §100; 801 CMR 1.02 et. seq.; and, the Board convened a public hearing on April 3, 2008 where all interested parties were provided with an opportunity to testify and present evidence to the Board.

Present at the hearing were Richard Lockhead and Don Reitano on behalf of Appellant and Michael McAteer on behalf of Appellee.

**Exhibits in Evidence**

- Exhibit 1: State Building Code Appeals Board Appeal Application Form, dated March 4, 2008, including supporting materials.
- Exhibit 2: Two colored photos of the fire escape on the property.

**Findings of Fact**

1. The Appellant constructed the fire escape prior to November 2007 after a July 2007 inspection by the Appellee of a previously existing fire escape on the property, in which Appellee found that the previously existing fire escape's condition had become unsafe.
2. The Appellant did not apply for and obtain a permit prior to the construction of the new fire escape.
3. The fire escape was discovered in a re-inspection of the property by the Appellee prior to November 2007. The Appellant was then informed of the necessity of applying for a permit.
4. The fire escape is classified as such because the width of the stairs at 28 – 30 inches does not meet the requirements of an exterior stairway, see 780 CMR 1014.3. The width of the stairs does exceed the 22 inch requirement for fire escapes, see 708 CMR 1025.3.1 and otherwise conforms to or exceeds the requirements for fire escapes, see 708 CMR 1025.3.
5. The Appellant first appealed to this Board from a notice by the Appellee Michael McAteer, Building Inspector for the City of Chelsea dated February 8, 2008, denying the after-the-fact permit application and ordering him to remove the fire escape on the ground that none of the conditions required by 780 CMR 1025.1.3 for construction of a fire escape existed, and the Appellant was thus in violation of 780 CMR 1025.1.3.
6. The Appellee testified and the Board finds that the fire escape is safer than the previously existing fire escape and that egress from the building had been improved by the fire escape.
7. Neither the Appellee nor the Chelsea Fire Department object to the granting of the variance and the issuance of a permit for the fire escape.

### Decision

The issue is whether the Appellant should be granted a variance from the provisions of 780 CMR 1025.1.3 to allow a permit for the fire escape as it was built. For the following reasons, the Board **ALLOWS** the appeal. Pursuant to M.G.L. c. 143, § 100, the Board has the authority to decide appeals by those "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."


While the Board noted that the Appellant constructed the fire escape without applying for a permit and submitting plans, the Appellee does not object to the granting of the variance and the fire escape as constructed corrects an unsafe condition. The Appellant is cautioned to apply for permits in advance of construction in the future.

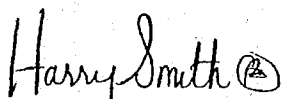
The Chair entertained a motion to grant the variance from the provisions of 780 CMR 1025.1.3 and allow the issuance of a permit for the fire escape. Accordingly, the Board voted as indicated below.

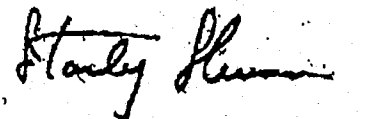
X..... **Granted** ..... Denied ..... Rendered Interpretation  
.....Granted with conditions ..... Dismissed

The vote was:

X.....**Unanimous** ..... Majority

  
\_\_\_\_\_  
Jacob Nunnemacher


  
\_\_\_\_\_  
Harry F. Smith

  
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Stanley Shuman

Any person aggrieved by a decision of the State Building Code Appeals Board may appeal to a court of competent jurisdiction in accordance with Chapter 30A, Section 14 of the Massachusetts General Laws.

A complete administrative record is on file at the office of the Board of Building Regulations and Standards.

A true copy attest, dated: June 12, 2008

  
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Patricia Barry, Clerk

All hearings are audio recorded. The digital recording (which is on file at the office of the Board of Building Regulations and Standards) serves as the official record of the hearing. Copies of the recording are available from the Board for a fee of \$5.00 per copy. Please make requests for copies in writing and attach a check made payable to the Commonwealth of Massachusetts for the appropriate fee. Requests may be addressed to:

Patricia Barry, Coordinator  
State Building Code Appeals Board  
BBRS/Department of Public Safety  
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Boston, MA 02108