

**CHARLES D.
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GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

MIKE KENNEALY
SECRETARY OF HOUSING AND
ECONOMIC DEVELOPMENT

**Commonwealth of Massachusetts
Division of Occupational Licensure**

1000 Washington Street, Suite 710
Boston, Massachusetts 02118

EDWARD A. PALLESCHI
UNDERSECRETARY OF CONSUMER
AFFAIRS AND BUSINESS
REGULATION

LAYLA R. D'EMILIA
COMMISSIONER, DIVISION OF
PROFESSIONAL LICENSURE

Minutes

**Meeting of the
Board of Elevator Regulations
January 4, 2022 at 1:00 p.m.**

Microsoft Teams meeting

Board Members Present:

Eric Morse, Acting Chairman
Christopher Towski
David Gaudet
Thomas McDermott
David Morgan
Brian Ronan

Division of Occupational Licensure Staff:

James Plotkin
Ruthy Barros
Sarah Wilkinson
Walter Zalenski
George Ramian

Board Members Absent:

Neil Mullane

Guests Present:

Vincent Campo Basso
Al Stearns
Brad McClay
John Shepherd
Amy Abrams
Christine Stewart-Melo
Michael DeFrias
Debra Robbins
Tessa Millard-Davies
Dan Lebiecz
Christine Walsh
Mark Rosenshein
Rockwood Edwards
Mark Whiteside
James Keane

Frantz Thimot
Jerry Mayse
Eric Carr

Call to Order: 1:07 p.m.

The Board discussed the following:

1. **370 Main Street – Worcester, MA [Exhibit 1]**
State IDs: 348-P-961, 348-P-962, 348-P-963, 348-P-964, 348-P-965
524 CMR 2018 §1.13 (5)
Petitioner: Vincent Campo Basso

The petitioner was in front of the Board seeking a variance from 524 CMR 2018 §1.13 (5) – Unsafe or Noncompliant Conditions, to allow use of temporary power. The petitioner stated that the building is 13 stories high, 190,000 sq. ft. with 24 tenants in the building with approximately 300+ employees, and one freight elevator and four passenger elevators servicing the building. Power was lost to the building due to a fire on November 26, 2021, and Electrical contractors have installed two 500kW generators, with one generator being tied into the emergency transfer switch, allowing the freight elevator and four passenger elevators to operate. The elevators were then shut down by an OPSI Elevator Inspector on December 10, 2021. At an onsite visit on December 16, 2021, the Worcester Inspection Services, Worcester Fire Department, Worcester Building Department, and a OPSI Elevator Supervisor discussed that the freight elevator could be used to bring electrical switches down to the basement. The petitioner testified that task is complete, and the building is currently being restored for tenant re-occupancy and the use of the freight elevator to carry equipment and materials is essential in the improvement process. All the elevators are now operational with temporary power from the generators as well as all life safety systems and heat that service the building, the petitioner requested is the freight elevator could be used for bringing materials and supplies to the floors of the building as long as elevator mechanics from Associated Elevator are on site to run the elevators. The National Grid tentative timeline to tie in for permanent power to the grid is scheduled for January 31, 2022, with the building anticipated to open back up on February 1, 2022. A motion was made by Thomas McDermott that no variance is required per A17.1 §2.27.2 – Emergency or Standby Power System and the Division will move forward with scheduling the placard removal inspection. The motion was seconded by David Morgan.

Motion: Thomas McDermott

Seconded: David Morgan

Vote: 6-0; Petition denied, because no variance required.

Roll Call Vote:

• Eric Morse	<input checked="" type="checkbox"/> yea	<input type="checkbox"/> nay
• David Gaudet	<input checked="" type="checkbox"/> yea	<input type="checkbox"/> nay
• Christopher Towski	<input checked="" type="checkbox"/> yea	<input type="checkbox"/> nay
• David Morgan	<input checked="" type="checkbox"/> yea	<input type="checkbox"/> nay
• Thomas McDermott	<input checked="" type="checkbox"/> yea	<input type="checkbox"/> nay
• Brian Ronan	<input checked="" type="checkbox"/> yea	<input type="checkbox"/> nay

2. 184 Main Street – Fairhaven, MA [Exhibit 2]

State ID: 94-P-18

524 CMR 2018 35:00 §2.8.3.3

Petitioner: Christine Stewart-Melo

The petitioner was in front of the Board seeking a variance from 524 CMR 35:00 §2.8.3.3, to install sprinklers in the hoistway and machine room, to comply by May 3, 2022, with the CMS mandate and avoid denial of payment for patient admissions. The petitioner's memorandum explained that a Life Safety Survey was conducted on the facility on November 8, 2021, and Royal of Fairhaven Nursing Center was not found in substantial compliance with the requirements for participation in Medicare/Medicaid, 42 CFR, 483.90(a-d), by failing to provide sprinkler protection for the elevator and hydraulic elevator machine room. A motion was made by Christopher Towski to grant the petitioner's request with the justification being hardship resulting from the withholding of federal funding due to an inspection by the Centers for Medicare & Medicaid Services (CMS) for non-compliance with NFPA 13 – 1999 Edition of the Standard for the installation of Sprinkler Systems. Specifically, that sprinklers are not installed in the elevator machine room, hoistway and pits. The motion was seconded by Thomas McDermott.

Motion: Christopher Towski

Seconded: Thomas McDermott

Vote: 6-0; Granted.

Roll Call Vote:

• Eric Morse	<input checked="" type="checkbox"/> yea	<input type="checkbox"/> nay
• David Gaudet	<input checked="" type="checkbox"/> yea	<input type="checkbox"/> nay
• Christopher Towski	<input checked="" type="checkbox"/> yea	<input type="checkbox"/> nay
• David Morgan	<input checked="" type="checkbox"/> yea	<input type="checkbox"/> nay
• Thomas McDermott	<input checked="" type="checkbox"/> yea	<input type="checkbox"/> nay
• Brian Ronan	<input checked="" type="checkbox"/> yea	<input type="checkbox"/> nay

3. **240 Tremont Street – Boston, MA [Exhibit 3]**
State IDs: 1-P-19073, 1-P-19074, 1-P-19075, 1-P-19076
A17.1 §2.7.1.1
Petitioner: Tessa Millard-Davies

The petitioner was in front of the Board seeking a variance from A17.1 §2.7.1.1 – Fire Resistive Construction, specifically the machine room fire rating being increased by the application of an intumescent fire retardant paint. The petitioner stated that the Moxy Hotel has three 3,500 lbs. capacity elevators traveling at 500 fpm. Each elevator serves 24 landings. A designated service elevator, also 3,500 lbs. capacity at 500 fpm, is also included which serves 25 landings. All elevators are a machine room-less (MRL) design and all were installed by Otis/DeltaBeckwith. All elevators were installed in accordance with ASME A17.1-2004 and 524 CMR 2008 codes as posted in the elevator machine room. The elevator construction commenced in 2017 and state acceptance tested in August 2019. The petitioner also stated that during the current annual state acceptance test, the State Elevator Inspector commented on the potential fire rating of certain areas of the machine room walls and questioned whether the walls of the elevator disconnect location were two-hour rated. All communication had been verbal and no definitive order or citation was issued. Determination that the walls on which the elevator disconnects were mounted are exterior walls and are not two-hour rated. The walls are clad with KDAT Pyro-Guard Interior Fire-Retardant-Treated (FRT) Wood Panels which were utilized on certain areas of the machine room walls and do provide a fire retardation. However, these panels did not provide a full two-hour fire rating. The product submittal did indicate: “Flammability Summary: Product is not known to be flammable, combustible, pyrophoric or explosive.” In 2021, there had been communication with prior Assistant Chief of Elevator Inspector, Christopher J. Eckler, who commented that a fire rated intumescent paint may be an avenue to pursue. It is the petitioner’s intent to cover the exposed wall areas with the submitted fire barrier intumescent fire protection paint. A motion was made by David Morgan to allow the petitioner to withdraw their application. The motion was seconded by Brian Ronan.

Motion: David Morgan

Seconded: Brian Ronan

Vote: 6-0; Withdrawn.

Roll Call Vote:

• Eric Morse	<input checked="" type="checkbox"/> yea	<input type="checkbox"/> nay
• David Gaudet	<input checked="" type="checkbox"/> yea	<input type="checkbox"/> nay
• Christopher Towski	<input checked="" type="checkbox"/> yea	<input type="checkbox"/> nay

- | | | |
|--------------------|---|------------------------------|
| • David Morgan | <input checked="" type="checkbox"/> yea | <input type="checkbox"/> nay |
| • Thomas McDermott | <input checked="" type="checkbox"/> yea | <input type="checkbox"/> nay |
| • Brian Ronan | <input checked="" type="checkbox"/> yea | <input type="checkbox"/> nay |

4. **215 Thatcher Street – Brockton, MA [Exhibit 4]**

State IDs: 44-P-248 and 44-P-249

524 CMR 2018 35:00 §2.8.3.3

Petitioner: James Keane

The petitioner was in front of the Board seeking a variance from 524 CMR 35:00 §2.8.3.3, to install sprinklers in the elevator shafts and control rooms, to comply by January 7, 2022, with the CMS mandate and avoid denial of payment for admissions. The petitioner's memorandum explained that a Life Safety Survey was conducted on the facility on July 7, 2021, and St. Joseph Manor Health Care Inc. was not found in substantial compliance with the requirements for participation in Medicare/Medicaid, 42 CFR, 483.90(a)(6), NFPA15 2010 Edition Section 8.15.5 and LCS Section 19.35, 19.3.5.4, 19.3.5.5 and 19.7.1.1, by failing to provide sprinkler protection for the elevator and hydraulic elevator machine room. A motion was made by Christopher Towski to grant the petitioner's request with the justification being hardship resulting from the withholding of federal funding due to an inspection by the Centers for Medicare & Medicaid Services (CMS) for non-compliance with NFPA 13 – 1999 Edition of the Standard for the installation of Sprinkler Systems. Specifically, that sprinklers are not installed in the elevator machine room, hoistway and pits. The motion was seconded by Thomas McDermott.

Motion: Christopher Towski

Seconded: Thomas McDermott

Vote: 6-0; Granted.

Roll Call Vote:

- | | | |
|----------------------|---|------------------------------|
| • Eric Morse | <input checked="" type="checkbox"/> yea | <input type="checkbox"/> nay |
| • David Gaudet | <input checked="" type="checkbox"/> yea | <input type="checkbox"/> nay |
| • Christopher Towski | <input checked="" type="checkbox"/> yea | <input type="checkbox"/> nay |
| • David Morgan | <input checked="" type="checkbox"/> yea | <input type="checkbox"/> nay |
| • Thomas McDermott | <input checked="" type="checkbox"/> yea | <input type="checkbox"/> nay |
| • Brian Ronan | <input checked="" type="checkbox"/> yea | <input type="checkbox"/> nay |

5. **620 Laurel Street – Lee, MA [Exhibit 5]**

State IDs: 44-P-248 and 44-P-249

524 CMR 2018 35:00 §2.8.3.3

Petitioner: Frantz Thimot

The petitioner was in front of the Board seeking a variance from 524 CMR 35:00 §2.8.3.3, to install sprinklers in the elevator shafts and control rooms, to comply by February 16, 2022, with the CMS mandate and avoid denial of payment for admissions. The petitioner's memorandum explained that a Life Safety Survey was conducted on the facility on November 16, 2021, and Lee Healthcare was not found in substantial compliance with the requirements for participation in Medicare/Medicaid, 42 CFR, 483.70(a)(8), NFPA13 2010 Edition Section 8.15.5 and LCS Section 19.35, 19.3.5.4, 19.3.5.5 and 9.7.1.1, by failing to provide sprinkler protection for the elevator and hydraulic elevator machine room. A motion was made by Christopher Towski to grant the petitioner's request with the justification being hardship resulting from the withholding of federal funding due to an inspection by the Centers for Medicare & Medicaid Services (CMS) for non-compliance with NFPA 13 – 1999 Edition of the Standard for the installation of Sprinkler Systems. Specifically, that sprinklers are not installed in the elevator machine room, hoistway and pits. The motion was seconded by David Morgan.

Motion: Christopher Towski

Seconded: David Morgan

Vote: 6-0; Granted.

Roll Call Vote:

• Eric Morse	<input checked="" type="checkbox"/> yea	<input type="checkbox"/> nay
• David Gaudet	<input checked="" type="checkbox"/> yea	<input type="checkbox"/> nay
• Christopher Towski	<input checked="" type="checkbox"/> yea	<input type="checkbox"/> nay
• David Morgan	<input checked="" type="checkbox"/> yea	<input type="checkbox"/> nay
• Thomas McDermott	<input checked="" type="checkbox"/> yea	<input type="checkbox"/> nay
• Brian Ronan	<input checked="" type="checkbox"/> yea	<input type="checkbox"/> nay

The Board recessed at 2:40 p.m. and resumed at 2:45 p.m.

6. **40 Martin Street – Melrose, MA [Exhibit 6]**

State ID: 178-P-59

524 CMR 2018 35:00 §2.8.3.3

Petitioner: Matthew Galezowski

The petitioner was in front of the Board seeking a variance from 524 CMR 35:00 §2.8.3.3, to install sprinklers in the elevator shafts and control rooms, to comply with CMS mandate and avoid denial of payment for admissions. On October 7, 2021, the Department of Public Health, Division of Health Care Facility Licensure and Certification completed a survey of Melrose Healthcare and concluded that they will be

recommending to the Centers for Medicare and Medicaid Services (CMS) that Melrose Healthcare's participation in the Medicaid and Medicare programs will be terminated on April 7, 2022, unless the facility has achieved substantial compliance by November 14, 2021. The petitioner's representative stated that CMS has not issued a violation at this time. A motion was made by David Gaudet to place the petitioner's request on hold for no more than 60 days (March 5, 2022) for additional information from the petitioner. The motion was seconded by David Morgan.

Motion: David Gaudet

Seconded: David Morgan

Vote: 6-0; Placed on hold for 60 days.

Roll Call Vote:

• Eric Morse	<input checked="" type="checkbox"/> yea	<input type="checkbox"/> nay
• David Gaudet	<input checked="" type="checkbox"/> yea	<input type="checkbox"/> nay
• Christopher Towski	<input checked="" type="checkbox"/> yea	<input type="checkbox"/> nay
• David Morgan	<input checked="" type="checkbox"/> yea	<input type="checkbox"/> nay
• Thomas McDermott	<input checked="" type="checkbox"/> yea	<input type="checkbox"/> nay
• Brian Ronan	<input checked="" type="checkbox"/> yea	<input type="checkbox"/> nay

7. Matters not reasonably anticipated 48 hours in advance of meeting:

The Board discussed potentially conducting all future Board meetings remotely. A motion was made by David Morgan to conduct future Board meetings remotely until further notice from the Division. The motion was seconded by Thomas McDermott.

Motion: David Morgan

Seconded: Thomas McDermott

Vote: 6-0; Passed.

Roll Call Vote:

• Eric Morse	<input checked="" type="checkbox"/> yea	<input type="checkbox"/> nay
• David Gaudet	<input checked="" type="checkbox"/> yea	<input type="checkbox"/> nay
• Christopher Towski	<input checked="" type="checkbox"/> yea	<input type="checkbox"/> nay
• David Morgan	<input checked="" type="checkbox"/> yea	<input type="checkbox"/> nay
• Thomas McDermott	<input checked="" type="checkbox"/> yea	<input type="checkbox"/> nay
• Brian Ronan	<input checked="" type="checkbox"/> yea	<input type="checkbox"/> nay

Motion to Adjourn: Christopher Towski

Seconded: David Morgan

Vote: 6-0; Adjourned.

Hearing concluded at 3:21 p.m.

Prepared by: Ruthy Barros

Exhibit List:

- Exhibit 1: Variance packet for 370 Main Street, Worcester
- Exhibit 2: Variance packet for 184 Main Street, Fairhaven
- Exhibit 3: Variance packet for 240 Tremont Street, Boston
- Exhibit 4: Variance packet for 215 Thatcher Street, Brockton
- Exhibit 5: Variance packet for 620 Laurel Street, Lee
- Exhibit 6: Variance packet for 40 Martin Street, Melrose