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ANTHONY P. CAPUTO
CHAIRMAN

MEMORANDUM

TO: Appellants Requesting a Variance from the Requirements of
527 CMR 1.00, Chapter 18 – Fire Department Access

FROM: Anthony P. Caputo, Board Chair

DATE: March 31, 2023

RE: Documentation Required Prior to Scheduling Hearing

This memorandum serves to provide guidance to persons who have filed a request for an Appeal pursuant to M.G.L. c. 22, s.5, specifically as the Appeal pertains to Fire Department Access. The information contained herein is not all encompassing, nor does it serve to provide legal advice or a roadmap for your case. Nonetheless, in order for the Board to make an informed decision as to whether or not a variance should be granted, necessity dictates that the Appellant be aware of the following information.

Scope of Appeal/Variance Request

M.G.L. c. 22D, s. 5 grants the Board the authority to issue a decision or order reversing, affirming or modifying, in whole or in part, an order or decision of the authority having jurisdiction (“AHJ”). The Board may also grant a variance from any provision of the state fire code and related rules and regulations, determine the suitability of alternate materials or methods of compliance, and provide reasonable interpretations of the state fire code consistent with the purpose thereof.

To narrow the issue before the Board, the Board will ask the Appellant whether or not he/she disputes the validity of the AHJ’s order or decision. If there is no argument that the plans as submitted to the AHJ did not comply with the fire department access chapter of the fire code, then the Board will uphold the order or decision and allow the Appellant to move on to its request for a variance.

If there is a dispute over the validity of the AHJ’s order or decision, the Board will hear the case and render a decision. The Appellant may also present its request for a variance at the same time. Under either scenario, the information contained in the rest of this memorandum is applicable.

Appellant's Burden

It is the Appellant's burden to persuade the Board that the AHJ's order or decision should be reversed or modified, or that his/her request for a variance should be granted. When seeking a request for a variance, the Appellant may propose compliance alternatives, which may include, additional fire protections features, including the installation of an approved fire sprinkler system installed in accordance with the Building Code, cistern(s), additional fire hydrant(s), and/or similar devices or systems. The proposal must be a suitable alternative to compliance with 527 CMR 1.00 and its stated purpose to "safeguard life, property and public welfare from the hazards of fire..."

Legal / Professional Representation

The information the Board requires for consideration in a hearing can be highly technical and specialized. As such, an Appellant may not have a sufficient knowledge base to competently present its case or respond to questions from the Board. Therefore, while not required, the Board suggests that the Appellant be represented by, or at least consult with, a lawyer or other industry professional in preparing/presenting his/her case.

Recommended Evidence / Documentation:

The burden of persuasion rests with the Appellant, so it is incumbent upon him/her to provide sufficient information to the Board to render a decision. The Board can also take administrative notice of certain technical facts and requirements of the fire code. However, its knowledge and experience is not a substitute for the Appellant's case. As such, the following non-exhaustive list of information and materials is provided to assist the Parties in the presentation of their cases.

- Current photographs of the site
- Site plans showing current and proposed conditions and measurements
- Map of neighborhood showing hydrant locations and other pertinent details
- Architectural drawings / renderings
- Engineering plans
- Survey plans
- Proposed nature and use of the building(s)
- Neighborhood characteristics including width of streets, congestion, traffic, parking, etc.
- If proposing a fire sprinkler system, a description of the type of system and any available fire protection plans
- If proposing other alternative fire protection devices or systems, descriptions of each
- The analysis and evaluation of fire apparatus maneuvers through the access roads created by swept path analysis and turn simulation software as required in 527 CMR 1.00, Chapter 18.1.1.4
- Current and anticipated parking descriptions

Discussions with AHJ

If the AHJ has denied a permit application or issued a notice of violation, the Board strongly

suggests that the Appellant speak with the AHJ as soon as possible. Many times, the Board learns that the Appellant and the AHJ have not previously discussed any alternative solutions. By working together, the Parties can fashion an agreement which is beneficial to both sides. Such an agreement does not need to come before the Board because the AHJ has the authority to permit such alternative proposals.

Board Created Compliance Alternatives

Some Appellants assume that the Board will hear to the Appellant's case and provide its own compliance alternatives to the Appellant. This is not the case. The Board shall only grant or deny the variance request based on the proposal the Appellant presents.

If you have additional questions, please contact the Board at (978) 567-3181.