

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

**Building Code Appeals Board
Docket No. 08-529**

Joseph Ponte,)	
Appellant;)	
)	
v.)	
)	
City of Fall River,)	
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 grant a variance from the provisions of the State Building Code, 780 CMR §1010, mandating a second means of egress in one of the apartments at the building located at 558 Plymouth Avenue, Fall River, MA.

By letter dated December 19, 2007, James Aguiar, Building Inspector for the City of Fall River, ("Fall River"), informed Appellant that an inspection of the building indicated a violation of the State Building Code for egress, specifically that there was not a second means of egress in the ground floor right-side apartment, in violation of 780 CMR §1010.

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 February 7, 2008 where all interested parties were provided with an opportunity to testify and present evidence to the Board.

Present and testifying at the hearing were James Ponte the Appellant and Joseph Bisko, Interim Director for Code Enforcement for the City of Fall River on behalf of Appellee.

Exhibits in Evidence

- Exhibit 1: State Building Code Appeals Board Appeal Application Form, dated December 28, 2007, including supporting materials.
- Exhibit 2: Four photographs of the premises at 558 Plymouth Avenue, Fall River, MA

Findings of Fact

Based on the credited testimony of the witnesses, the Board finds these facts:

1. The building is a wood framed three story, four unit structure, with two apartments on the ground floor, right and left sides, and one apartment each on the second and third floor.
2. The subject apartment is a first floor apartment of 400-450 sq ft. on the right wing of the building.
3. The lot lines of the property are contiguous with the structure on the right side and right rear. There is no room for a second door and stairway on the right side and right rear.
4. The bottom of the windows on the right side and right rear of the apartment are approximately 3 ½ feet above the ground.
5. The Appellant plans to install a door on the left side ground floor apartment where he has lot space.
6. Ladders provide a means of egress from the second and third floor apartments.
7. The Appellee does not object to the granting of the variance.

Decision

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.”

The issue is whether the Appellant should be granted a variance from the provisions of 780 CMR §1010 mandating a second full means of egress for the right first floor apartment. For the following reasons, the Board **ALLOWS** the appeal and grants the variance with conditions.

The Board noted that there was no lot space to install a door and construct a stairway on the right or right rear sides of the building, creating a hardship. The only lot space available around the right-side apartment was in the front, where the existing means of egress was. Any other egress installed in the front would be within eight feet of the existing egress and thus not compliant with the Code. The Board also noted that the bottom of the windows on the right and right rear

were only three and a half feet above the ground and below the end of the ladder which is a fire escape for the second and third floors.

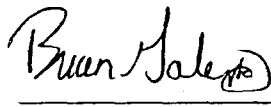
The Chair entertained a motion to grant the variance from the provisions of 780 CMR §1010 requiring a second full means of egress for the right ground floor apartment **on condition that a second full means of egress be provided on the left ground floor apartment and that the ladders which provide egress for the second and third floor apartment be inspected and tested to be fully compliant with the Code.** The Board voted as indicated below.

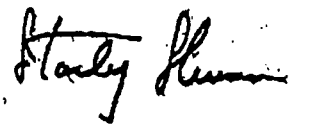
X.....Granted with conditions stated above.

The vote was:

X.....Unanimous


Tim Rodrique

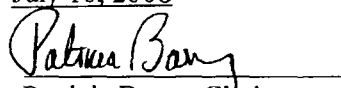

Brian Gale


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: July 10, 2008


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:

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