

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Building Code Appeals Board
Docket No. 05-416

Judith Schwenk,)
Appellant)
)
v.)
)
Town of Marblehead,)
Appellee)
)

BOARD'S RULING ON APPEAL

Procedural History

This matter came before the State Building Code Appeals Board ("Board") on the Appellant's appeal filed pursuant to 780 CMR §122.1. In accordance with 780 CMR §122.3, Appellant asks the Board to grant variances from 780 CMR §§705.3 and 3603.13.4 of the Massachusetts State Building Code ("Building Code").

On March 28, 2007, Robert S. Ives, Building Commissioner for the Town of Marblehead, issued a building permit to renovate an existing residential structure. Sometime later, Appellant proposed to create habitable attic space by adding a new dormer with windows that are within three feet of the side property line and by installing winding staircases to the attic and the basement ("Application"). By letter dated April 4, 2007, Mr. Ives denied the Application because, as stated in his letter, the proposed changes to the building permit would not conform to 780 CMR §§705.3 and 3603.13.4.

In accordance with G. L. c. 30A, §§10 and 11; G. L. c. 143, §100; 801 CMR §1.02 et. seq.; and 780 CMR §122.3.4, the Board convened a public hearing on May 22, 2007 where all interested parties were provided with an opportunity to testify and present evidence to the Board.

Appellant was present. Robert S. Ives was present on behalf of the Town of Marblehead's Office of the Building Commissioner. William A. Hall, was present, representing Appellant as her architect.

Reasons for Variance

Openings

The first issue involves adding openings to an unprotected area in close proximity of the property line. The side of the building in which Appellant proposes to add a dormer and windows is located 1.9 feet from the property line. There is also the related issue of the area of the openings located in an exterior wall. Section 705.3 of the Code provides:

The maximum area of unprotected or protected openings permitted in an exterior wall in any story shall not exceed the values set forth in Table 705.3. Where both unprotected and protected openings are located in the exterior wall in any story, the total area of the openings shall comply with the [the formula set forth in § 705.3].

(In addition, §§3603.3.1 and 3603.3.2 require at least a distance of three feet between a property line and an exterior wall.)

Mr. Hall testified that Appellant is seeking relief because the structure lies next to a largely open area on an adjacent lot, in which no structure would ever be constructed. As a result, the concern in the Code about spreading fire to nearby structures is not as great as it might be (if the adjacent area were not open). Appellant testified that although the building is located 1.9 feet from the property line, most of it is located 26 feet from another house.

In addition, Mr. Hall testified that the proposed openings represent 4.97 per cent of the entire façade. Further, the structure is currently a two-family home but will be converted to a single family home under the Application.

Stairways

The second issue involves installing stairs to the attic, which currently do not exist, that will replicate the two-winder design that exists in the stairway from the first to the second floors. The proposed new stairways would have a winder tread width less than six inches at the small end, not in compliance with §3603.14.1. Section 3603.14.1 provides:

Winders are permitted, provided that the width of the tread at a point not more than 12 inches (305 mm) from the side where the treads are narrower is equal to the tread depth of the straight run portion of the stairs and the minimum width of any tread is not less than six inches (153 mm). The continuous handrail required by 780 CMR 3603.14.1 shall be located on the side where the tread is narrower.

Mr. Hall testified that the attic will not be habited, but will be used as storage space. In addition, there are two main carrying beams that define the opening for the stairs. He commented that although it would be structurally possible to alter the opening to accommodate a different stair design, to do so would incur a great additional expense. Regardless, because the Application involves a substantial renovation, the completed project would comply with the Building Code with respect to all fire protection systems

Mr. Ives testified that he did not object to any of the Applicant's proposed changes. He observed that the addition of the dormer/windows to the attic would provide greater opportunity for egress from the top stairway. Further, the dormer/windows face an open area on an adjacent lot that is, and will be, used only for parking for another property. With respect to the bay window to be installed on the eastern side of the building, Mr. Ives stated that he did not object to such a window as long as it had a one-hour rating. Mr. Ives also testified that the building, upon completion, will comply with smoke and fire protection regulations. Finally, Mr. Ives testified that the Applicant would be doing "a great favor" to the building because it had been converted (illegally at an earlier time) to a two-family dwelling, and the Applicant would be restoring the building to a one-family dwelling.

Decision

The Chair entertained a motion to allow variances from 780 CMR §§705.3 and 3603.13.4. The motion noted that the building was originally constructed in the 1800's, had been converted to a two-family house, and that the Appellant was changing it back to a single family house with substantially better construction, and that the Building Commissioner had no objection as long as the bay window is of one-hour materials. Following testimony, and based upon relevant information provided, Board members voted to allow variances from 780 CMR §§705.3 and 3603.13.4. The Board voted as indicated below.

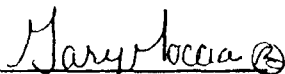
X..... **Granted** ☐..... Denied ☐..... Rendered Interpretation ☐

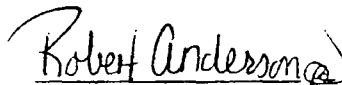
.....Granted with conditions (see below) ☐..... Dismissed

The vote was:

X.....**Unanimous** ☐ Majority

The following members voted in the above manner:

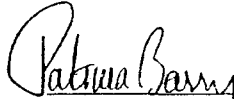

Garry Moccia


Robert Anderson-Chair


Keith Hoyle

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

A true copy attest, dated: October 18, 2007


Patricia Barry, Clerk

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.

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 \$10.00 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
One Ashburton Place – Room 1301
Boston, MA 02108

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