



MAURA HEALEY
GOVERNOR

KIM DRISCOLL
LIEUTENANT GOVERNOR

YVONNE HAO
SECRETARY, HOUSING AND
ECONOMIC DEVELOPMENT

Commonwealth of Massachusetts
Division of Occupational Licensure
Office of Public Safety and Inspections

1000 Washington Street, Suite 710
Boston, Massachusetts 02118

LAYLA R. D'EMILIA
UNDERSECRETARY, CONSUMER
AFFAIRS AND BUSINESS
REGULATION

SARAH R. WILKINSON
COMMISSIONER, DIVISION OF
OCCUPATIONAL LICENSURE

Minutes

Meeting of the
Board of Elevator Regulations
February 14, 2023, at 1:00 p.m.

Microsoft Teams Meeting

Board Members Present:

Eric Morse, Acting Chair
Neil Mullane
David Morgan
Christopher Towski
Sarah Wilkinson

Division of Occupational Licensure Staff:

Peter Kelley
Ruthy Barros
Terry Ascii

Board Members Absent:

Brian Ronan
David Gaudet

Guests Present:

Daniel Burns
Paul Hasbrouck
David Goodsell
Christopher DeOrsay
Neil Johanson

Call to Order 1:00 p.m.:

- 1. 18 Frances Street, Woburn [Exhibit 1]**
State ID: 347-P-152
Petitioner: Daniel Burns, Administrator of Woburn Rehabilitation & Nursing Center

Petitioner is requesting a variance from 524 CMR 35:00 § 2.8.3.3 “Sprinklers shall not be permitted in power passenger or freight elevator hoistways pits, machine rooms or control spaces.”, to allow the installation of sprinkler coverage in the elevator machine room. Petitioner, Daniel Burns stated that it was recommended to him that he present the facility’s case in front of Board of Elevator Regulations (BER) and request a waiver to cover the facility until the end of 2023. Daniel Burns said

facility failed the Federal Life Safety Code K161, which affected their score. Daniel Burns added, to date, the facility has not received a termination of funds/admissions from the Center for Medicare & Medicaid Services (CMS). The Chair, Eric Morse explained that typically when the petitioner comes in front of the Board, it is because they have been cited. In this case, CMS stated that sprinklers in the hoistway must be installed. Eric Morse asked the petitioner if he received a denial letter from CMS. Daniel Burns stated he had not. Sarah Wilkinson added that the Agency was previously receiving the citations from the federal government, confirming that CMS will pull the funding and that it would be best if the petitioner's elevator contractor accompanies them to the Board meetings. Eric Morse said the Board requires the termination letter from CMS. Chris Towski deferred to Board counsel if there were any issue if the Board placed the case on hold, until the petitioner receives the required CMS denial letter to present to the Board before deciding on the variance. Board counsel Peter Kelly replied none. Daniel Burns stated that he may or may not receive a letter from CMS but that he has not received anything yet. Neil Mullane explained to the petitioner what the Board is looking for in the letter, including the survey information and the fire wall information between the two buildings. Daniel Burns requested the Board to hold for another week to attempt to comply with the Board's request. A motion was made by David Morgan to place on hold for **30 days (March 16, 2023)**, to allow the petitioner time to provide the Board with additional information including the CMS denial letter. The motion was seconded by Neil Mullane.

Motion: David Morgan

Seconded: Neil Mullane

Vote: 5-0. Placed on hold for 30 days.

2. 29 Endicott Street, Worcester [Exhibit 2]

New Installation

Petitioner: Paul Hasbrouck, Worcester Elevator

Previously in front of the Board.

Petitioner requesting relief from 524 CMR 35:00 Section 5.2.1.4.2-bottom car clearance requirements (pit depth). Petitioner, Paul Hasbrouck presented and reviewed with the Board photos of the foundation and the pit supports. David Goodsell of DA Sullivan referenced the photos and explained the cobblestone east and west sides of the old foundation where the current pit slab is installed. Paul Hasbrouck reviewed the flood plain location and the FEMA plot plain photo. David Morgan inquired if there was a flood plain map to reference and he asked about the shallowness with a 14" pit and if it remained in a flood plain. Paul Hasbrouck stated that the flooding is a concern and the pit is designed with a sump pump should flooding occur. David Morgan stated that a sump pump would not be of any good in a 14" pit if the elevator comes down. Paul Hasbrouck stressed that there was concern about the general undermining of the historic foundation. David Morgan expressed that the reasoning for a 35" pit as opposed to a 14" pit is that it guarantees the safety of the licensed people who work underneath the equipment. The Chair, Eric Morse asked the petitioner about his previous presentation with regards to the structural reasons as the real issue. Paul Hasbrouck shared and reviewed a stamped letter with the Board from the structural engineer. Dave Morgan questioned the letter and the indication that the foundation remained as originally designed and constructed. Paul Hasbrouck stated that the design went by the national code and he was misled during the design phase. Eric Morse questioned the design and the compromise flood plain and asked the petitioner to clarify if pit had been designed with the correct depth with appropriate

waterproofing provisions, would there have been compromises to the foundation? David Goodsell stated that no waterproofing provisions to the pit flood plain came up as the construction was going on. The waterproofing that was done was concurrent or after the pit was poured. Neil Mullane inquired about the 16” and if it was modified and if the equipment was designed for modification for water incursion on a standard LULA. Paul Hasbrouck stated that the design was a standard rope LULA from Canton Elevator. The design was due to the flooding concerns. Paul Hasbrouck stated that they missed the original drawings that displayed the 16” and not the 35” and that the project had moved forward. He could add a flood alarm that would prevent the elevator from going to the basement floor level. Neil Mullane referred the photos of the footings (page three). Paul Hasbrouck stated that the concrete was sticking into the pit slab and the excavation was stopped. Chris Towski asked if there was an issue, why was a variance being sought. Paul Hasbrouck replied that it was mistake from the factory that wasn’t caught in the time of the pit construction. Eric Morse added that the pit construction was not compliant to MA 524 CMR and that it continued to be built incorrectly. Paul Hasbrouck referenced the function of the elevator pad that covers the entire pit and that once it is stepped on the elevator will not operate. The mat is wired to a safety circuit equivalent to an emergency stop switch. Eric Morse asked if it had to be manually reset when it trips, and the petitioner could not verify and stated it would have to be manually reset. David Morgan expressed his concern about the elevator being deployed downward and the fact that the power is only cut off by half. This is not OSHA compliant and presents hazards for a person in the pit. Eric Morse asked the petitioner how he can make the shallow pit safe. Paul Hasbrouck stated that a pit stop device designed to support the weight of the unit would be outside of the pit and the mechanic can pull the lever. Eric Morse asked the petitioner to explain the sequence of the operation. Paul Hasbrouck referenced the drawings (page thirty-seven) and explained the sequence. David Morgan added that there are auto-mated devices on the current market, and he provided an explanation. Christopher Towski voiced concern over the petitioner filing a hardship relief for something that was missed. Paul Hasbrouck added that signage will be provided as a reminder of the shallow pit arrangement. The variance sought was 35” and that anything can be changed to protect the people operating underneath the elevator. David Morgan referenced a manufacturer in western Massachusetts. Paul Hasbrouck stated that he contacted them, and they will not allow another elevator company to use the device. Eric Morse suggested that the petitioner switch to another manufacturer. Neil Mullane deferred question to David Goodsell if the elevator pit was poured up to the foundation does it have any impact and to possibly jack hammer the pit floor out to go deeper using the current structure. David Goodsell added if it were to be dug another 18” and the pit taken out it may undermine the foundation and cause a cave-in. The floors are tied into the elevator shaft and that would be serious. Neil Mullane stated the current condition provides a code infraction and what are the methods to make it safer. Eric Morse conferred with counsel about going into a closed session to discuss. Eric Morse made a motion to put on the agenda for a closed adjudicatory conference for the next meeting. Christopher Towski seconded the motion. Neil Mullane added the comment that the exploration of the hardship of moving forward with the excavation pit if the applicant gained any other detail may be relevant upon the board’s further review.

Motion: Eric Morse

Seconded: Christopher Towski

Vote: 5-0. Placed on hold

3. 5 Sabrina Farm Road, Wellesley [Exhibit 3]

New Installation

Christopher DeOrsay (Petitioner's representative)

Previously in front of the Board.

Petitioner is seeking a variance from 524 CMR 35.00 Section 2.1.5 – Windows and Skylights. The matter was placed on hold to come back in front of the Board with additional information. Christopher DeOrsay reviews and explains the additional information provided to the Board. Christopher Towski stated his concern that the letter from the fire department is without a date and signature and with the proposed signage: location and size. Christopher Towski does not believe the proposed signage will remain permanently as presented on plans and might be possibly better suited somewhere else. A motion was made by Neil Mullane to Grant the variance to install the window as proposed, as the applicant has provided the additional information and signage for safety. The justification being the owner's medical condition, and the window will meet the code and the Wellesley fire department will have the final review of this. The motion was seconded by Sarah Wilkinson. Erick Morse stated that the location of the signage should be changed, and proposed a friendly amendment to the motion, on the window. Neil Mullane expressed no objection to where the signage is to be located. Christopher Towski suggested that the final version be deferred to the authority of the Wellesley fire department with regards to the placement, durability, and reflection. Neil Mullane revised motion to include signage provided at the exterior of the hoistway to include approved language regarding hoistway/shaftway and subject to WFD approval as to weathering, wear and tear, and reflectability. David Morgan asked Christopher Towski if the fire departments were aware that residential elevators are not periodically inspected. Christopher Towski stated that they are not aware. Christopher Towski and David Morgan opposed.

Motion: Neil Mullane

Seconded: Sarah Wilkinson

Vote: 3-2. Granted.

4. 37 Temple Place, Boston (Exhibit 4 and 4A)

State ID: 1-P-7108

Petitioner originally sought a variance from 524 CMR. 17.30.1, 17.02.9, and 18.02.4- due to not having enough clearance for the controller if a door is added. The petitioner is seeking relief to retain wooden counterweight weights and retain the machine room ceiling. The matter was previously in front of the Board and was placed on hold to come back in front of the Board with additional information. Neil Johanson went over the pictures of the counterweights and the proposed machine room layout (Exhibit 4A). Eric Morse asked if there was any occupiable space. Neil Johanson replied that there was not. The retention of the wooden counterweight rails is the only variance that they are currently seeking because of the door clearance difficulty. Now seeking variance from 524 Code Mass. Regs. § 35.00 and §§ 2.23.2, 2.23.3, 2.23.4, and 2.23.9.2. Neil Johanson stated that the rails are to be cleaned and painted with fireproof paint and labeled. David Morgan inquired about the signage on the top and bottom of the hoistway. Neil Johanson replied that a proper hitch plate would be installed. Christopher Towski inquired if wooden rails were common in the Commonwealth. Eric Morse replied that wooden rails were not common, yet still out there. (Chapter 288). 2:28:24 A motion was made by David Morgan to Grant the variance to allow the wooden rails, as its almost impossible to get a counterweight into the area, and proposed painting, maintenance, and signage will address the fire hazard and safety issues. The motion was seconded by Sarah Wilkinson. Neil Mullane made a

comment that the proposed scope of work created a safer space, commending applicant.

Motion: David Morgan

Seconded: Sarah Wilkinson

Vote: 5-0. Granted.

5. Approval of meeting minutes from November 15, 2022. (Exhibit 5)

A motion was put forth by Christopher Towski to accept the minutes as written. The motion was seconded by Neil Mullane. Vote: 4-0: Granted, with Sarah Wilkinson abstaining.

6. Approval of meeting minutes from November 29, 2022. (Exhibit 6)

A motion was put forth by Christopher Towski to accept the minutes as written. The motion was seconded by Neil Mullane. Vote: 3-0: Granted., with Sarah Wilkinson and David Morgan abstaining.

Motion to Adjourn: Christopher Towski

Seconded: Neil Mullane

Vote: 5-0; Adjourned at 3:33 PM

Prepared by: Terry Asci

Exhibit List:

- Exhibit 1: Variance packet for 18 Frances Street, Woburn
- Exhibit 2: Variance packet for 29 Endicott Street, Worcester
- Exhibit 3: Variance packet for 5 Sabrina Farm Road, Wellesley
- Exhibit 4/4A: Variance packet 37 Temple Place, Boston
- Exhibit 5: Meeting minutes November 15, 2022
- Exhibit 6: Meeting Minutes November 29, 2022