

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Building Code Appeals Board
Docket No. 05-503

Ken Sternberg,)
Appellant)
)
v.)
)
Town of Ipswich,)
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 asks the Board to grant a variance from 780 CMR§ 3603.3.1 & 3603.3.2 of the Massachusetts State Building Code ("Code") with respect to an addition to the existing property located at 92 Country Road, Ipswich, MA ("Project").

By letter, Mr. James Sperber Building Inspector for the Town of Ipswich ("Appellee") revoked the permit for a two-story addition at the property where a portion of the building's exterior wall with many openings is within the required fire separation from a lot line (three feet) as set forth in 780 CMR §3603.3.1 & 3603.3.2.

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 Tuesday, December 18, 2007 where all interested parties were provided with an opportunity to testify and present evidence to the Board.

Ken Sternberg and Pamela Low appeared on behalf of Appellant. James Sperber appeared on behalf of Appellee.

Exhibits in Evidence

Exhibit 1: Application.

Exhibit 2: Plot Plan.

Reasons for Variance

The issue is whether Appellant should be allowed a variance from the limitations set forth in 780 CMR §3603.3.1 & 3603.3.2 for the construction of a two-story addition where the exterior wall appears to be within the required fire separation distance from the lot line (three feet) with many openings (doors and windows).

Ms. Low testified that the Project involved the addition of a corner to an existing structure. The Project had been approved by the Town of Ipswich, as long as the addition was within the foot print of the existing structure. The existing structure was almost 200 years old and included a wall that was non compliant. Ms. Low further explained that the wall was allowed to be in-filled, as long as it rendered the structure no more non compliant then the previously. The construction of the wall took place, and eventually a survey of the property was requested. It was determined that the original structure was 6 inches over property line. After negotiations with the neighbors, a land swap occurred to remedy the fact that the Appellant's structure was encroaching upon the neighbor's property.

After the completion of the Project, the corner remains 2' 9" from property line, and Ms. Low testified that the Fire Code requires a minimum of 3 feet from the property line, rendering the corner just 3 inches shy of compliance. Ms. Low also noted that the neighboring structure is over 30 feet from property line.

The Appellee did not object to the Project and the variance request.

Decision

Board Member Brian Gale made a motion to grant relief from 780 CMR§ 3603.3.1 & 3603.3.2 for a small section of a wall that is 3 inches closer then the 3 feet allowed. The motion was seconded by Dana Haagensen. It was noted that the addition to the structure did not make it more nonconforming then the previous existing structure. Following testimony, and based upon relevant information provided, Board members voted to approve the Motion as described on the record. The Board voted as indicated below.

..... **Granted** Denied Rendered Interpretation

..... Granted with conditions Dismissed

The vote was:

..... **Unanimous** Majority

Dana Haagensen
Dana Haagensen

Robert Anderson
Rob Anderson- Chair

Brian Gale
Brian Gale

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: June 30, 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:

Patricia Barry, Coordinator
State Building Code Appeals Board
BBRS/Department of Public Safety
One Ashburton Place – Room 1301
Boston, MA 02108