

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

BUILDING CODE APPEALS BOARD  
DOCKET NO.: 11-1000

_____	)
Finia, LLC,	)
Appellant	)
	)
v.	)
	)
Town of Braintree,	)
Appellees	)
_____	)

**BOARD’S RULING ON APPEAL**

**Introduction**

This matter came before the State Building Code Appeals Board (“Board”) on appellant’s appeal filed pursuant to G.L. c.143, §100 and 780 CMR 122.1. In accordance with 780 CMR 122.3 the appellant petitioned the Board to grant a variance from Section 1028.2 of the Eighth Edition of the Massachusetts State Building Code (“Code”) requiring that a Night Club with a capacity of fifty persons or greater have a main entrance of at least 72 inches. In the alternative, Appellant petitioned for an interpretation that the current use of the premises does not constitute a Night Club as defined by 780 CMR 303.1.1. For the following reasons, the Board grants appellant a variance from 780 CMR 1028.2 and holds that the property is a Night Club.

**Procedural History**

The Board convened a public hearing on May 17, 2011, in accordance with G.L. c. 30A, §§10 & 11; G.L. c. 143, §100; 801 CMR 1.02; and 780 CMR 122.3. All interested parties were provided an opportunity to testify and present evidence to the Board. James Baldassini, owner and attorney for Finia, LLC, and Marco Piro Fani of the LLC appeared on behalf of the appellant. All witnesses were duly sworn.

**Findings of Fact**

The Board bases the following findings upon the testimony presented at the hearing. There is substantial evidence to support the following findings:

1. The property at issue is located at 16-18 Commercial Street, Braintree, MA.
2. Appellant purchased a pre-existing building for use as a restaurant and pub, which opened in February 2011.
3. Appellant holds a Beer and Wine License and an Entertainment License through the Town of Braintree, the latter of which does not permit dancing.
4. Appellant’s occupancy permit allows 70 people during dining hours and 49 people during Entertainment.
5. The property does not have a dance floor and the lighting is not dim.
6. Food is not served during Entertainment.

7. The main entrance opens onto a public sidewalk. Retrofitting a 72-inch door would require the entire reconfiguration of the façade and would lead to a loss of seating.
8. A 36-inch rear entrance marked with exit signs exists.

### Discussion

#### A. Jurisdiction of the Board

There is no question that the Board has jurisdiction to hear this case. The governing statute provides that:

Whoever is 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 or any of its rules and regulations, except any specialized codes as described in section ninety-six, may within forty-five days after the service of notice thereof appeal from such interpretation, order, requirement, direction, or failure to act to the appeals board. G.L. c.143, §100.

The issues giving rise to this matter directly implicate provisions of the Code. As such, this Board has jurisdiction to decide this case pursuant to G.L. c. 143, §100.

#### B. State Building Code requirements

The issue in this case is whether the Board shall grant appellant a variance from the Code's requirement that the main entrance width of a Night Club with a capacity of fifty persons or greater be at least 72 inches due to the hardship of retrofitting the entrance to meet the Code. Section 1028.2 of 780 CMR provides that "[f]or buildings or portions thereof that are classified as A-2 Nightclubs and which have an occupant load of 50 or greater, the main entrance egress system shall be sized such that the width of all required means of egress elements is 72 inches (nominal)." A Night Club is defined as:

An occupancy generally characterized by a combination of any of the following: no theatrical stage accessories other than raised platform; low lighting levels; entertainment by a live band or recorded music generating above-normal sound levels; later-than average operating hours; tables and seating arranged or positioned so as to create ill defined aisles; a specific area designated for dancing; service facilities for alcoholic beverages with limited food service; and high occupant load density. 780 CMR 313.1.1.

Appellant's property does not employ low lighting levels or a dance floor, but it otherwise fits the characteristics of a Night Club as defined by the Code. Additionally although the occupancy permit only allows for 49 people during Entertainment, the property's 70-person occupancy level at all other times places it under the purview of 780 CMR 1028.2. While the property is a Night Club with an occupant load of 50 or greater, the hardship of expanding the main entrance along with the marked rear entrance, normal lighting, lack of dancing and 70-person maximum occupancy all suggest that a variance from the Code is appropriate.

### Conclusion

Brian Gale motioned to **grant** a variance from 780 CMR 1028.2 requiring a 72-inch doorway for a Night Club due to the hardship of complying with the Code along with the marked rear entrance, normal lighting, lack of dancing, and 70-person maximum occupancy. Jake Nunnemacher seconded his motion. The motion passed unanimously. Appellant's request for variance is hereby granted.

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Jacob Nunnemacher

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Doug Semple

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Brian Gale

*Any person aggrieved by a decision of the State Building Code Appeals Board may appeal to Superior Court in accordance with G.L. c.30A, §14 within 30 days of receipt of this decision.*

DATED: June 14, 2011