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**Commonwealth of Massachusetts**  
**Division of Professional Licensure**  
**Office of Public Safety and Inspections**  
**Architectural Access Board**

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BUSINESS REGULATION

**CHARLES BORSTEL**  
COMMISSIONER, DIVISION OF  
PROFESSIONAL LICENSURE

**THOMAS HOPKINS**  
EXECUTIVE DIRECTOR

**FINAL DECISION OF THE ARCHITECTURAL ACCESS BOARD**

Date: **October 25, 2017**

Name of Property: **Curb Cut**

Property Address: **Jamaica Way and Perkins Street, Jamaica Plain**

Docket Number: **C16-097**

Date of Hearing: **May 22, 2017**

Enclosed please find a copy of the decision relative to the above mentioned matter.

Sincerely:

ARCHITECTURAL ACCESS BOARD

By:

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Karen R. Brann, Program Coordinator/Clerk for Proceedings

cc: Local Building Inspector  
Local Commission on Disabilities  
Local Independent Living Center  
Complainant

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*In re* )  
 )  
 Curb Cut )  
 Jamaica Way & Perkins Street )  
 Jamaica Plain )  
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**BOARD DECISION**

**Procedural History**

This matter originally came before the Architectural Access Board (“Board”) as a Sidewalk Complaint received by the Board on August 11, 2016, pursuant to 521 CMR 4.21<sup>1</sup> and submitted by Julie Knopp, (“Complainant”). The complaint states that the condition of the sidewalk leading to the ramp on the southwest corner of the Jamaica Way and Perkins Street in Jamaica Plain, has been in disrepair for over two years.

On November 21, 2016, a First Notice was sent to all parties stating the reported violation of 521 CMR 2.6 Maintenance of Access Features: “[a]t all times, accessibility features must be maintained and fully operational. (i.e. accessible aisles kept clear at all times, mechanical devices be kept in operating condition, etc).” When no response was received, a Second Notice was issued on January 5, 2017, requesting a response within 10 days of receipt of the notice. Still no response was received and a Complaint Hearing Notice was sent to all parties on January 20, 2017 scheduling a hearing for May 22, 2017. On February 2, 2017, the Board received a letter from William R. Egan, Chief Civil Engineer, City of Boston, indicating that the section of sidewalk in question fell under the jurisdiction of the Boston Department of Parks and Recreation and that the correspondence had been forwarded to Parks and Recreation.

The hearing was held in accordance with M.G.L. c. 30A, §§ 10 and 11; 801 CMR 1.02 *et seq.*; and 521 CMR 4.00. The City of Boston failed to appear at the hearing. William Joyce, Compliance Officer, Architectural Access Board, was sworn in by the Chair and presented a procedural history of the case.

**Applicable Laws**

Pursuant to 521 CMR 2.6, Maintenance of Access Features: “[a]t all times, accessibility features must be maintained and fully operational. (i.e. access aisles kept clear at all times, mechanical devices be kept in operating condition, etc.).

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<sup>1</sup> Code of Massachusetts Regulations

## Exhibits

The following documentation was entered into evidence:

Exhibit 1: Board Packet AAB 1-16, including the Sidewalk Complaint form, all correspondence and photographs.

## Factual Findings

The following findings of fact and conclusions of law are supported by substantial evidence, based on the credited testimony of the witnesses, documents admitted into evidence and AAB records. M.G.L. c. 30A, § 11(2), § 14(7):

- 1) The complainant reports that the curb cut at Jamaica Way and Perkins Street has not been maintained and no longer meets the standard of an accessible route.
- 2) The Board was notified by the Boston Department of Public Works that the matter does not fall under their jurisdiction and that any further inquiries should be sent to the City of Boston Parks and Recreation.
- 3) As of the date of the hearing, the Board has not received a response from the City of Boston.

## Discussion

The complainant claims that the Board's jurisdiction is established pursuant to 521 CMR 2.6, which states that, "[a]t all times, accessibility features must be maintained and fully operational. (i.e. access aisles kept clear at all times, mechanical devices be kept in operating condition, etc.).

Pursuant to 521 CMR 4.1, an "owner or an owner's representative ... who thinks that full compliance with 521 CMR is *impracticable* may apply to the Board for a *variance* from 521 CMR." Impracticability is defined to mean either that compliance with 521 CMR "would be technologically unfeasible" or that it would "result in excessive and unreasonable costs without any substantial benefit to persons with disabilities." 521 CMR 5.00.

As of the date of the hearing, the Board has not received any correspondence or plan to comply with 521 CMR, from the City of Boston Department of Parks and Recreation. Under Massachusetts law, the Board is authorized to take legal action against violators of its regulations, including but not limited to, an application for a court order preventing the further use of an offending facility. The Board also has the authority to impose fines of up to \$1,000.00 per day, per violation, for willful noncompliance with its regulations.

## Conclusion

In light of all of the foregoing, the Board voted as follows:

- to **FIND** in favor of the complainant.
- to **REQUIRE** the curb cut to be repaired no later than January 1, 2018.

A true copy attest, dated: October 25, 2017

**ARCHITECTURAL ACCESS BOARD**

By:



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Walter White, Chair



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Diane McLeod, Vice Chair



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Raymond Glazier, Executive Office of Elder Affairs Designee



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Evan Bjorkland, Massachusetts Office on Disability Designee



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Andrew Bedar, Member

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George Delegas, Member (Absent)



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Jane Hardin, Member

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Dawn Guarriello, Member (Absent)



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Patricia Mendez, Member

A complete administrative record is on file at the office of the Architectural Access Board.

This constitutes a final order of the Architectural Access Board. In accordance with M.G.L. c. 30A, §14 and M.G.L. c. 22, §13A, any person aggrieved by this decision may appeal to the Superior Court of the Commonwealth of Massachusetts within thirty (30) days of receipt of this decision.