

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Building Code Appeals Board
Docket No. 05-398

Forest City Corporation,)
Appellant)
v.)
City of Haverhill,)
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 variance[s] from 780 CMR §§503.1 and 1014.1.1 of the Massachusetts State Building Code ("Code"), regarding the conversion of an 8-story former mill building into residential apartment units ("Project").

By letter dated March 15, 2007, Richard Osborne, Building Inspector for Appellee ("Appellee"), informed Appellant that because the Project will consist of eight (8) stories, type 4, heavy timber construction and will exceed the five (5) story maximum allowed under 780 CMR 503, Appellant must seek a variance.

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 April 5, 2007 where all interested parties were provided with an opportunity to testify and present evidence to the Board.

Kevin Hastings of R.W. Sullivan, Inc. was present on behalf of Appellant. Richard Osborne and Less Godin were present on behalf of Appellee.

Reasons for Variances

The first issue is whether Appellant should be allowed a variance from §503.1 of the Code because the Project will exceed the height limitations for its type of building. Section 503.1 provides:

The heights and areas of all buildings and structures between exterior walls or between exterior walls and fire walls, shall be governed by the type of construction and the use group classification as defined in 780 CMR 3 and 6 and shall not exceed the limitations fixed in Table 503.

Appellant testified that a hardship exists because converting an existing mill building to residential dwelling units is one of the few viable uses allowed under Table 503. Appellant represented that the building will have all fire protection systems, pressurized stairways, alarms, etc. for a high-rise structure. The building, after renovation, will be classified as Type 3A construction. But the height of 8 stories exceeds the height limitation of 5 stories/70 feet for Type 3A construction.

A motion was made to allow the variance from §503.1, based on the hardship described above.

The next issue is whether Appellant should be allowed a variance from §1014.11.1 to allow existing windows in stairways to remain in the Project. Section 1014.11.1 provides:

Exterior walls of an enclosed exit stairway shall comply with the requirements of 780 CMR 705.0 for exterior walls. Where nonrated walls or unprotected openings enclose the exterior of the stairway, the building exterior walls within ten feet (3048 mm) horizontally of the nonrated wall or unprotected opening shall be constructed as required for stairway enclosures, including opening protectives, but are not required to exceed a one-hour fire resistance rating with ¾-hour opening protectives. This construction shall extend vertically from a point ten feet (3048 mm) above the topmost landing of the stairway or to the roof line, whichever is lower, and down to the ground.

Appellant pointed out that the 1996 BOCA National Building Code, modified the above section by changing the second sentence to read, “Where nonrated walls or unprotected openings enclose the exterior of the stairway *and the wall or opening are exposed by other parts of the building at an angle of less than 180 degrees (3.14 rad),* the building exterior walls”

There are a total of 14 windows in the stairways, two on each floor except for one of the floors. The existing window openings are, at their closest, approximately seven feet apart from each other, where §1014.11.1 requires the distance to be 10 feet apart. Appellant argued that the

1996 additional language highlighted above amounts to a reasonable interpretation of §1014.11.1 because the additional language addresses the increased hazard when two window openings are not on the same plane (i.e. less than 180 degrees). The variance would allow the existing extra windows to remain, without additional protection, as required in §1014.11.1.

Further, Appellee represented that the City's Fire Chief had no objection to this variance.

A motion made to allow variance based on the latter language of the 1996 BOCA Code, that fact that the City does not object, and the hardship to eliminate the additional openings.

Decision

The Chair entertained a motions to grant the variances from §§503.1 and 1014.11.1 ("Motions"). Following testimony, and based upon relevant information provided, the Board members voted to allow the Motions, as described on the record. The Board voted as indicated below.

X..... **Granted** □..... Denied □..... Rendered Interpretation□

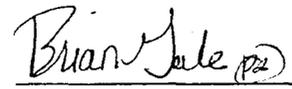
___.....Granted with conditions □..... Dismissed

The vote was:

X.....**Unanimous** □ Majority



Jacob Nunnemacher



Brian Gale - Chair



Stanley Shuman

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: December 20, 2007



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 \$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:

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