

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Building Code Appeals Board
Docket No. 08-525

Eduardo and Mary Ferreira,)
Appellants)
)
v.)
)
Joseph Biszko,)
Building Commissioner,)
Town of Fall River,)
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 § 1010.0 of the Massachusetts State Building Code ("Code") with respect to the requirement of a second means of egress for two first floor units inside a building located at 83 Jencks, Fall River, MA ("Property").

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, the Board convened a public hearing on February 7, 2008 where all interested parties were provided with an opportunity to testify and present evidence to the Board.

Present at the hearing were Appellant Eduardo Ferreira and Joseph Biszko on behalf of the Appellee.

Exhibits in Evidence

Exhibit 1: Three photographs taken of the property.

Reasons for Variance

The issue is whether Appellant should be allowed a variance from 780 CMR § 1010.0. Section 1010.2 states:

1010.2 Minimum number: Every floor area shall be provided with the minimum number of approved independent *exits* as required by Table 1010.2 based on the occupant load, except as modified in 780 CMR 1010.3.

Exception: In buildings with occupancies in Use Group R having multistory *dwelling units*, the *means of egress* from a *dwelling unit* to the required *exits* is permitted to be provided from one level only. Within the *dwelling unit* access to the *means of egress* from the unit shall conform to the applicable provisions of 780 CMR 10.

**Table 1010.2
MINIMUM NUMBER OF EXITS FOR
OCCUPANT LOAD**

Occupant load	Minimum number of exits
500 or less	2
501 - 1,000	3
over 1,000	4

The Property is a six unit building and the two units at issue are located on the first floor. Each first floor unit has only one means of egress; however, each bedroom has an egress window. The side windows are located approximately 66" from the ground and just 21" from the property line enclosed by a fence. The front windows are 59" from the ground and 5' 10" from the fence at the property line. Mr. Biszko testified that the first floor windows are closer to the ground than the bottom of the fire escape ladders which are intended for use by the units on the upper floors.

The board recognized the significant hardship as a result of the property line being located in close proximity to the building.

Decision

Board member Brian Gale motioned to grant the variance from § 1010.0 because the first floor windows are closer to the ground than the fire escape ladders and the fact that a substantial hardship exists to create a second means of egress. This motion is based on the condition that the fire escape ladders are inspected by a professional or qualified person ("Motion"). The motion was seconded by Stanley Shuman. Following testimony, and based upon relevant information provided, Board members voted to allow the Motion, as described on the record. The Board voted as indicated below.

..... Granted Denied Rendered Interpretation

.....**Granted with conditions** Dismissed

The vote was:

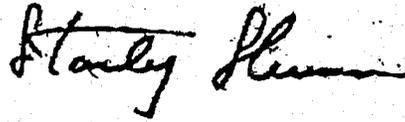
.....**Unanimous** Majority



Brian Gale



Tim Rodrique



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: June 26, 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:

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