

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

BUILDING CODE APPEALS BOARD
DOCKET NO.: 11-1035

_____)
Andrew Zalewski,)
Appellant)
)
v.)
)
James Kelley,)
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 make a determination based on the Seventh Edition of the Massachusetts State Building Code (“Code”). For the following reasons, the appellant will be denied a variance and the building official’s decision that a second means of egress from the first level of the subject unit is required in accordance with 780 CMR 5311.4.1 will be upheld.

The appellant requested that the Board grand a variance from the Code’s requirement that there be two means of egress on the normal level of entry. Andrew Zalewski and Robert Roth appeared on behalf of the appellant. All witnesses were duly sworn.

Procedural History

The Board convened a public hearing on September 1, 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 with an opportunity to testify and present evidence to the Board.

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 Maple Meadows, Unit 202, 35-202 Maple Avenue, Sudbury, MA.

2. The issue in the case is whether the appellant shall be granted a variance from the Code's requirement that there be two means of egress on the property's normal level of entry.
3. The building was permitted under the Seventh edition of the Base Code.
4. The Seventh edition includes Appendix Z, which incorporates the one and two family Code requirements.
5. The unit has two exit doors, one being the front door leading to the driveway and the other being the back door from the basement leading to grade.
6. The front door is the normal entry door.
7. The unit is currently occupied under temporary occupancy.

Analysis

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 appellant shall be granted a variance from the 780 CMR 5311.4.1 requirements that there be two means of egress that are as remote as possible from each other, are at the normal level of entry, and lead directly to grade. The appellant testified that the subject property has two means of egress but due to the slope and grade, the main entrance is at a higher level than the secondary entrance. The appellant testified that the main entrance is the front door, which exits directly to grade. The appellant further testified that the secondary entrance is on the basement level and does not exit to grade. The appellant argued that the Code's multi-level dwelling exception for split levels and raised ranches applies to the subject property. The appellant testified that the exception permits two separate exit doors to be located at different levels.

+Conclusion

A motion was made by Jacob Nunnemacher and seconded by Alexander MacLeod to deny appellant's request for a variance and uphold the building official's decision that a second means of egress from the first level for the subject unit is required in accordance with 780 CMR 5311.4.1. The motion passed. The appellant's request for a variance is hereby **denied**.



Alexander MacLeod

Jacob Nunnemacher

Doug Semple

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: November 29, 2011