

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

BUILDING CODE APPEALS BOARD
DOCKET NO.: 11-958

_____)
 255-257 Northampton LLC,)
 Appellant)
)
 v.)
)
 City of Boston,)
 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 based on the Sixth Edition of the Massachusetts State Building Code (“Code”). For the following reasons, the variance is hereby **GRANTED with conditions**.

The appellant requested that the Board grant a variance from 780 CMR Section 704.8 Doug Anderson, Code Consultant, from Commercial Construction Consulting, Inc., David Goldman, of New Boston Housing Ventures, the developer for the project, and Marya Praseeki and Alberto Cardenas, of DHK architects, architect of record for the project, appeared on behalf of the appellant. No City Building official was present. All witnesses were duly sworn.

Procedural History

The Board convened a public hearing on January 6, 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 facts of this matter are largely not in dispute. Instead, this matter turns on the review of the applicable provisions of the State Building Code. 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 255-257 Northampton St., Boston, MA.
2. This project is the second part of a 2 phase project. It is a multifamily residential construction. The first phase, a 6 story building was completed in 2008.
3. Both the original building and this building were permitted under the 6th edition of the Building Code. The City of Boston and the BCAB previously granted extensions for this permit and it also falls under the Permit Extension Act timeline for extension.

4. The proposed project will have 37 dwelling units and consists of a redevelopment and repair of previously city owned vacant parcels.
5. The proposed project is a 6 story R2 non-high rise Type 2A construction, mixed use building.
6. The proposed windows will be on the north side of the building.
7. The adjacent property is a 1 story parking garage, built in 1920 of concrete noncombustible material, used for special event parking.
8. The proposed property is concrete noncombustible material with a 2 hour rated exterior wall.

Exhibits

The following Exhibits were entered into evidence at the hearing on this matter and reviewed by the Board:

Exhibit 1: Application for Appeal.

Exhibit 2: Sample of Unit Deed with Draft Language for the provision that if the lot owner next door builds then the windows at issue in this appeal would have to be boarded up.

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 is whether to grant a variance to 780 CMR 704.8, to allow the appellant to include windows in the subject property on the North side of the building, even though they are within 3 feet of the lot line, which is not allowed under the Code.

The appellant testified that to mitigate for the proposed windows, each will be individually protected with sprinkler heads no closer than 4 inches to the window, that no draperies or blinds will be hung between the window openings and sprinkler heads and that the developer is willing to provide these window treatments as a condition of sale and to add language stating such as well as that if the builder next door decides to build then these windows must be boarded up, in the deed for each unit. The appellant also testified that

they never heard from the City building inspector regarding this variance request but that the City was notified of this hearing.

The appellant asserted that some of the windows are in bedrooms but they are not required for the ventilation or light requirements of the sanitary code or for emergency egresses. The Board noted this was not the case for every window and the appellant asserted that they are willing to relabel those units and sell them as 1 bedroom units with a study rather than 2 bedroom units and to reverse the closets in those rooms.

Conclusion

A motion was made by Jacob Nunnemacher and seconded by Alexander MacLeod to **GRANT** the variance allowing windows within 3 feet of the lot line, based on the fact that and with the **conditions that** the owner has written into the deed of each condo owner and recorded with the registry of deeds the provision that if the adjacent owner is going to build then the condominium owners will have to seal up the windows, and further **provided that** the appellant will change all bedrooms on column line 2 as noted in the plan to become 1 bedroom units with a study and the closet in those units will be reversed to face the vestibule in order to be in compliance with other Code provisions.



Jacob Nunnemacher

Alexander MacLeod

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: February 8, 2011