

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

BUILDING CODE APPEALS BOARD
DOCKET NO.: 11-971

_____)
Dorothy Montini,)
Appellant)
))
v.)
))
Town of South Yarmouth,)
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 Seventh Edition of the Massachusetts State Building Code (“Code”).

The appellant requested that the Board grant a variance to 780 CMR Sections 5323.3, and 5323.3.6. The appellant was represented by David Bennett. James Brandolini, Building Commissioner for the Town of South Yarmouth appeared on behalf of the appellees. All witnesses were duly sworn.

Procedural History

The Board convened a public hearing on February 15, 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

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 45 South Shore Drive, South Yarmouth, MA.
2. There was an oil spill in the basement of the subject property.
3. The original foundation was concrete block foundation.
4. The subject property is a single story seasonal cottage on Nantucket sound.

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 allow the appellant to install a pile foundation with an elevation of 12 rather than the required 18 for substantial construction.

The appellant testified that in order to remediate the oil spill the dwelling had to be lifted off its foundation in order to conduct soil removal and chemical oxidation. The appellant stated that during remediation that more than 50 percent of the existing concrete block foundation was involved and it was made clear by the appellee that this met the threshold for any construction to meet the upgrade requirements. The appellant asserted that no renovations are being done to the property but rather that the exact same house with the same bathroom and kitchen is going to be put back on the foundation. The appellant testified that meeting the upgrade requirements would be a significant financial hardship. The appellant also stated that there is a current safety concern with the building located where it currently is, 11 feet off the existing grade on a small lot.

The Building commissioner raised the issue that the existing foundation is not capable of carrying the loads required to replace the house in its current state and that a new foundation has to be provided. The request for the variance is to still install the piles necessary but at a lower elevation than is required by the Code. The Building Commissioner stated no objection to this proposal.

Conclusion

A motion was made by Alexander MacLeod and seconded by Jacob Nunnemacher to **GRANT** a variance of 780 CMR Section 5323.3 and 5323.3.6 based on the fact that the foundation shall be installed on piles to elevation 12 for velocity and based on the fact also that the building commissioner is not opposed. The Board also made a recommendation that the appellant look at the flood insurance issue.



Jacob Nunnemacher

Alexander MacLeod

Brian Gale

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: March 16, 2011