



CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT Governor

JAY ASH
SECRETARY OF HOUSING AND
ECONOMIC DEVELOPMENT

Commonwealth of Massachusetts
Division of Professional Licensure
Office of Public Safety and Inspections
Architectural Access Board

1 Ashburton Place, Rm 1310 • Boston • Massachusetts • 02108
V: 617-727-0660 • www.mass.gov/dpl/aab • Fax: 617-727-0665

JOHN C. CHAPMAN
UNDERSECRETARY OF
CONSUMER AFFAIRS AND
BUSINESS REGULATION

CHARLES BORSTEL
COMMISSIONER, DIVISION OF
PROFESSIONAL LICENSURE

THOMAS HOPKINS
EXECUTIVE DIRECTOR

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

ARCHITECTURAL ACCESS BOARD
Docket Nos. C16-042 & V16-244

_____)
In re)
)
Joseph Osgood School)
210 Sohier Street)
Cohasset)
_____)

BOARD DECISION

Procedural History

This matter originally came before the Architectural Access Board (“Board”) via a complaint submitted by Mary Flaherty on June 13, 2016, pursuant to 521 CMR 4.00. The complaint cited a violation of 521 CMR 19.7 for failure to have an accessible route to and around the school playground. On July 12, 2016, the Board issued a First Notice, advising Cohasset Public Schools (“Cohasset”), the owner of the school and playground, to notify the Board within 14 days of the steps taken or planned to comply with the regulations.

In a request that the Board received on July 18, 2016, Cohasset sought additional time to respond and, on August 8, 2016, the Board received an Application for Variance to permit Cohasset time to ensure compliance. At its August 22, 2016 meeting, the Board voted to grant Cohasset until August 15, 2017 to bring the playground into compliance with 521 CMR.

On August 11, 2017, the Board received Cohasset’s request to amend the Application for Variance by extending its time to comply. The Board considered the request at its August 21, 2017 meeting and voted to schedule the matter for a hearing which was calendared on October 30, 2017.

The hearing was held in accordance with M.G.L. c. 30A, §§ 10 and 11; 801 CMR 1.02 *et seq.*; and 521 CMR 4.00. All interested parties were provided with an opportunity to testify and present evidence. Louise L. Demas, Cohasset’s superintendent, appeared on its behalf. William Joyce, the Board’s compliance officer, also appeared. Both were sworn in by the Board Chair.

The instant decision now memorializes the Board's rulings at that time.

Applicable Laws & Regulations

Pursuant to 521 CMR 2.1, "521 CMR is designed to make *public buildings* and facilities *accessible* to, functional for, and safe for use by *persons with disabilities*."

521 CMR 3.3.1 states that, "[i]f the work being performed amounts to less than 30% of the *full and fair cash value* of the *building* and ... a. if the work costs less than \$100,000, then only the work being performed is required to comply with 521 CMR."

Per 521 CMR 19.7, "[a]n *accessible route*, complying with **521 CMR 20.00: ACCESSIBLE ROUTE** shall be provided to reach playground equipment and around the playground."

Finally, 521 CMR 20.1 requires that "[a]n *accessible route* shall provide a continuous unobstructed path connecting *accessible spaces* and *elements* inside and outside a *facility*. *Accessible routes* may include but are not limited to *walks*, halls, corridors, aisles, skywalks, and tunnels. *Accessible routes* may not include stairs, steps, or escalators, even if the stairs and steps are required to be *accessible* under 521 CMR."

Exhibits

The following documentation was entered into evidence:

Exhibit 1: Board Packet AAB 1-56, including the initial complaint, an estimated budget, subsequent application for variance, correspondence and photographs.

Factual Findings

The following findings of fact and conclusions of law are supported by substantial evidence, based on the credited testimony of the witnesses, documents admitted into evidence and AAB records. M.G.L. c. 30A, § 11(2), § 14(7).

- 1) The subject facility is a public school in Cohasset, Massachusetts. Exhibit 1.
- 2) A playground is located on school property. It is utilized by children during the summer for the camp program and during the school year at recess. Exhibit 1, AAB 34.
- 3) The playground is primarily used by children aged three to six. Ibid. It includes swings, slides, a multiplex play area and an arched climbing structure. All these areas have rubber support mats beneath the equipment. Exhibit 1, AAB 41. There is no access to reach the equipment and the playground. AAB 53.
- 4) The anticipated cost of construction of new facilities for the playground is between \$125,000 and \$130,000. AAB 34, 42.

Discussion

The Board's jurisdiction is established pursuant to 521 CMR 2.1 which states that "521 CMR is designed to make *public buildings* and facilities *accessible* to, functional for, and safe for use by *persons with disabilities*." Further, without addressing the actual cost of the installations within the playground, per 521 CMR 3.3.1a. even if the "work performed amounts to less than 30% of the *full and fair cash value* of the *building*" and "the work costs less than \$100,000", the work is nonetheless "required to comply with 521 CMR." Accordingly, the installation at issue must comply with the requirements of 521 CMR 19.00, *et seq.*

Pursuant to 521 CMR 4.1, an “owner or an owner’s representative or tenant who thinks that full compliance with 521 CMR is *impracticable* may apply to the *Board* for a *variance* from 521 CMR.” Impracticability is defined to mean either that compliance with 521 CMR “would be technologically unfeasible” or that it would “result in excessive and unreasonable costs without any substantial benefit to persons with disabilities.” 521 CMR 5.00.

Ms. Demas attested that Cohasset’s primary funding sources for the renovation of the subject playground are the parents association and local community. Cohasset’s plan is to recruit community funding sources and coordinate fundraisers to reconstruct the playground for the particular needs of younger children (it will serve children aged three to six). The work will include locating a consultant, locating and hiring a contractor, vetting bids, funding and building new structures, all while children attend the school which is directly proximate to the playground.

Mr. Demas noted that the work will be performed in collaboration with a design consultant and that town facilities need to complete drainage and field work before any construction can be done at the site. The project is constrained to await determinations from other agencies such as the Cohasset Conservation Commission and the Department of Public Works with regard to the wetlands status of areas abutting the playground.

Because of these factors, Cohasset seeks additional time until September 2019 to complete the work ensuring the necessary compliance.

The evidence, particularly Ms. Demas’ detailed testimony, is deemed consistent and credible. Additionally, members of the Board were able to corroborate Ms. Demas’ experience of delays in coordinating the requirements of multiple agencies for similar projects. Based thereon, it is determined that, because of the complexity of coordinating across various municipal entities and the restraints created by funding, it is impracticable to require immediate compliance with the relevant portions of 521 CMR. The Petitioner’s claims and requests are reasonable and, therefore, it is found to have established by substantial evidence that additional time to ensure compliance is justified in this particular circumstance.

Conclusion and Order

In light of all of the foregoing, the Board voted as follows:

- to ***FIND IN FAVOR OF THE COMPLAINANT*** regarding the reported violation of 521 CMR 19.7 in that the playground currently fails to have accessible routes that reach all playground equipment and run around the playground.
- to ***GRANT*** the Petitioner’s request for a ***TIME VARIANCE*** to permit it until September 1, 2019 to ensure full compliance for the subject playground on the ***CONDITION*** that it provides the Board with regular updates as to the progress of installation and funding. Such status reports shall be made at six month intervals beginning no later than April 30, 2018. Such reports shall include pictures, plans and drawings as relevant and necessary.

A true copy attest, dated: December 13, 2017

ARCHITECTURAL ACCESS BOARD

By:



Walter White, Chair



Jane Hardin, Vice Chair

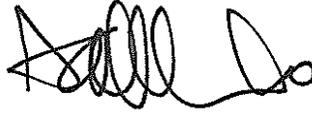


Andrew Bedar, Member

Evan Bjorkland, Massachusetts Office on
Disability Designee (Not Present)



George Delegas, Member



Dawn Guarriello, Member



Raymond Glazier, Executive Office of Elder
Affairs Designee

Patricia Mendez, Member (Not Present)

Harold Rhodes, Member (Opposed)

A complete administrative record is on file at the office of the Architectural Access Board.

This constitutes a final order of the Architectural Access Board. In accordance with M.G.L. c. 30A, §14 and M.G.L. c. 22, §13A, any person aggrieved by this decision may appeal to the Superior Court of the Commonwealth of Massachusetts within thirty (30) days of receipt of it.