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FINAL DECISION OF THE ARCHITECTURAL ACCESS BOARD

Date: **January 9, 2017**

Name of Property: **Nahant Housing Authority – Spindrift Building**

Property Address: **194 Nahant Road, Nahant**

Docket Number: **C14-018 & V15-148**

Date of Hearing: **August 22, 2016**

Date of Administrative Discussion: **January 6, 2017**

Enclosed please find a copy of the decision relative to the above mentioned matter.

Sincerely:

ARCHITECTURAL ACCESS BOARD

By:

Kate Sutton, Program Coordinator/Clerk for Proceedings

cc: Local Building Inspector
Local Commission on Disabilities
Local Independent Living Center
Complainant
Lynn Leonard, Attorney At Law
Maureen Reilly, Reilly Law, LLC

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

ARCHITECTURAL ACCESS BOARD
Docket No. C14-018 & V15-148

In re)
)
Nahant Housing Authority)
194 Nahant Road)
Nahant)
_____)

BOARD DECISION

Introduction

This matter originally was brought to attention of the Architectural Access Board (“Board”) based on a complaint, submitted pursuant to 521 CMR 4.00, **G.L. c. 4 § 7(26)(c) - Privacy**, and received by the Board on March 14, 2014. The complaint was submitted citing violations of the following sections of 521 CMR: 21.3, regarding a noncompliant curb cut cross slope of 4.7%; 22.3/24.1, regarding the slope of the walkway from the first level to the basement measuring 10-12%; 26.6.1, regarding the lack of a level landing at the first floor side entry door (sloped at 4.7%); 26.8.1b, regarding the noncompliant door opening force (more than five pounds) at interior door of the first floor entrance vestibule; and 28.1 (14.1 (1977) and 35.1 (1982)), regarding the lack of compliant vertical access within the building.

At the initial hearing before the Board on December 15, 2014, the Board voted to find in favor of the Complainant for all reported violations and ordered that a plan for compliance and/or variance request(s) be submitted to the Board by March 6, 2015. Based on submittals, the Board reviewed the matter during an administrative discussion on July 13, 2015 and voted to accept a request to extend the date of compliance for the installation of a vertical wheelchair lift between the basement and first floor, allowing until May 1, 2016 for the lift for be installed, inspected and in working order. The order of the Board also required that the plans of the proposed vertical wheelchair lift (complying with 521 CMR 28.12.2) be submitted to the Board for approval prior to the issuance of any permits for the installation of the lift.

On March 22, 2016, the Board received correspondence from Maureen Reilly, attorney for the Nahant Housing Authority, seeking an extension to November 1, 2017 for the installation of the vertical wheelchair lift. After several submittals regarding proposed costs and locations for the installation of the lift, notification that there are two (2) incline stair lifts provided within the building (not compliant with 521 CMR 28.12.5), and a request to amend the variance application to include the continued use of these lifts, the Board decided to schedule a hearing. The “Complaint/Variance Hearing Notice” was sent to all parties concerned on April 26, 2016, notifying them of the hearing scheduled for July 25, 2016 at 11:00 a.m. The hearing was rescheduled to August 8, 2016 at 11:00 a.m. Notice was sent to all parties concerned of the rescheduled hearing on May 3, 2016.

In accordance with M.G.L. c. 30A, §§ 10 and 11; 801 CMR 1.02 *et. seq.*; and 521 CMR 4.00, the Board convened a hearing on August 22, 2016 where all interested parties were provided with an opportunity to testify and present evidence to the Board.

Lynn Leonard, Attorney, and Gene Argiro, Certified Building Official, both appeared on behalf of the Complainant. G.L. c. 4 § 7(26)(c) - Privacy, Complainant, appeared on her own behalf. Maureen Reilly, Attorney; Donna McDonald, Executive Director; Avalon McLann, DHCD Project Manager; and Neal Mongold, Narrow Gate Architecture, all appeared on behalf of the Nahant Housing Authority. The Chairman swore in all but Leonard and Reilly.

Applicable Laws

The Board's jurisdiction was established pursuant to the 521 CMR (1977) 2.4, which required that, "[t]here shall be no construction, reconstruction, alteration or remodeling of a public building except in conformity with these Rules and Regulations, nor shall the use of any building be changed to a use in which the building is open to and used by the public as defined in these Rules and Regulations until such building so conforms or until a copy of the plans and specifications has been approved as provided in the General Laws, showing compliance with these Rules and Regulations and provided, however, that if this Board determines that compliance with these Rules and Regulations is impracticable in the particular case, it may provide for modification of, or substitution for such Rules and Regulations."

The Board's jurisdiction was further established pursuant to the 521 CMR (1998/2006) 3.3.1a which required that, "[i]f the work 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."

Pursuant to 521 CMR 28.12.5a, "[i]nclined wheelchair lifts shall comply with the following: a. The platform shall be a minimum of 30 inches wide by 48 inches long (30" by 48" = 762mm by 1219mm)...."

Section 28.1 of 521 CMR states that, "[i]n all multi-story *buildings* and *facilities*, each level including *mezzanines*, shall be served by a passenger elevator. If more than one elevator is provided, each passenger elevator shall comply with 521 CMR 28. *Accessible* elevators shall be on an *accessible route* and located within the *space* with which it is intended to serve."

Exhibits

- Exhibit 1: Board Packet AAB1-115, including all correspondence and plans submitted.
- Exhibit 2: August 18, 2016 e-mail from Neal Mongold, including schematic drawings and cost estimates for installing a three-stop elevator and installing a 2-stop vertical wheelchair lift.

Factual Findings

The complaint/variance hearing was held on August 22, 2016 and based on the credited testimony of the witness, and the documents submitted, the Board finds the following facts:

- 1) The property in question is an elderly housing complex, which is owned and operated by the Nahant Housing Authority. The building was converted from a school (originally built in 1875) to public housing in 1982. This conversion included renovations to the existing building and the creation of 29 dwelling units. (Exhibit 1).
- 2) In October of 2013, there was a paving project that resulted in difficulty for tenants entering and leaving the building, a 29-unit public housing building. In November of 2013, the Massachusetts Office on Disability was sent to the property to do an assessment of the building, which was conducted by Access Specialist Christopher Becker. Based on the inability to come to an agreement with the Nahant Housing Authority about the reported violations found at the property, G.L. c. 4 § 7(26)(c) - Privacy filed a complaint with the Architectural Access Board. On March 14, 2014, the Board received a complaint submitted by G.L. c. 4 § 7(26)(c) - Privacy reporting violations of 521 CMR regarding the following: lack of vertical access within the building; installation of a chair glide device between the first floor and second floor, and between the basement and first floor; noncompliant door opening force at the interior first floor vestibule door; lack of compliant slope (10-12% provided) at the exterior walkway between the first floor and the basement, and the lack of handrails at this same walkway; noncompliant cross slope at the curb cut near the parking area; and lack of level landing (4.9% provided) at the first floor side entry door. (File).
- 3) Pavement added along a walkway from the parking area to the side entrance is not accessible if a car is parked in the adjacent accessible parking space, leaving only 17” of clear route beyond the parking space. (File).
- 4) The complaint form was received in March of 2014, with a first notice of the reported violations sent to all parties concerned in June of 2014, citing the lack of vertical access (based on the installation of the chairlift along the stairs and the conversion to housing), and the lack of compliant routes (based on paving in 2013). The jurisdiction of the Board is based on the 1982 conversion of the building to multiple dwellings (1977 and 1982 edition of 521 CMR), and the paving work in 1998 and 2012 (2006 edition of 521 CMR). (File).
- 5) At the hearing held on December 15, 2014 the Board voted in favor of the Complainant regarding the reported violations of 521 CMR 21.3, 22.3/24/1, 26.6.1, 26.8.1b, and 28.1 (14.1). The Board also ordered that a plan for compliance and/or request for variances by March 6, 2015 for the following items: the path of travel to the side entrance door; maneuvering clearance at the side entrance door; the walkway from the first floor to the lower level; and the lack of compliant vertical access within the building. (File).
- 6) The Board received a variance request seeking variances to the following sections of 521 CMR, on March 4, 2015: the slope of the walkway in front of the building (521 CMR 22.3/24.2.1), the lack of vertical access to all floors of the building (521 CMR 35.1 (1982 regulations)), and the lack of handrails at both sides of the front walkway (521 CMR 24.5.1). On April 8, 2015, the Board received an opposition to the requested variances, submitted by Attorney Leonard. The Board reviewed the submittals during an administrative review of the case during their regularly scheduled April 27, 2015 meeting. At said meeting, the Board voted to grant the variances requested for the lack of compliant slope (521 CMR 22.3/24.2.1) and the lack of handrails (521 CMR 24.5.1) at both sides of the sidewalk in front of the building, between the first floor level entry and the basement level entrance. The Board also voted to grant the variance to allow the use of a fully compliant vertical wheelchair lift (521 CMR 28.12.2) to create an accessible route between the basement and the first floor, and to

grant a variance for the lack of access to the second and third floors of the building (521 CMR 35.1, 1982 Regulations). The motion was based on the condition that the required number of Group 2A units (521 CMR 9.4), are provided within the building, with plans of the units to have been submitted to the Board within 30 days receipt of the decision from the April 27, 2015 meeting. (File).

- 7) On May 13, 2015, the Board received a submittal from Neal Mongold regarding the existing floor plans of the two accessible units within the Spindrift Building, in accordance with the Board's April 27, 2015 decision. The Board reviewed the plans during an administrative discussion at their regularly scheduled June 1, 2015 meeting and voted to require that larger and more detailed plans of the existing Group 2 units were to be submitted to the Board by June 25, 2015. The Board also voted to require that a fully compliance vertical wheelchair lift (521 CMR 28.12.2) to access the basement and first floor, and one compliant handrail at the building side of the walkway were to be completed by August 1, 2015. Confirmation of compliance with the Board's order was required to be submitted by August 3, 2015, verifying the work was completed by the submittal of photographs and a copy of the State Elevator Inspection certificate for the vertical wheelchair lift. (File).
- 8) The Board received a request on July 6, 2015 to extend the deadline for the installation of the proposed vertical wheelchair lift until May 1, 2016, and for another month to September 1, 2015 for the handrail at the walkway. The Board reviewed the submittals during an administrative discussion at their July 13, 2015 meeting and voted to accept the extension requests allowing until May 1, 2016 for the completion and inspection of the vertical wheelchair lift. The Board also granted the extension for the installation of one compliant handrail along the building side of the walkway to be installed by September 1, 2015. (Exhibit 1).
- 9) On September 8, 2015, the Board received a submittal from Maureen Reilly requesting an extension for the installation of the handrail along the walkway to November 1, 2015. The Board reviewed said request during an administrative discussion at their September 21, 2015 meeting and voted to grant an extension to November 1, 2015 for the handrail along the building side of the walkway. (File).
- 10) On February 4, 2016, the Board received several photographs submitted by Maureen Reilly, Attorney for NHA. The pictures showed the new handrails installed along the building side of the walkway. (Exhibit 1).
- 11) On March 22, 2016, the Board received a request from Maureen Reilly on behalf of the Nahant Housing Authority to extend the installation deadline for the vertical wheelchair lift to November 1, 2017. The extension was requested due to "a number of unforeseen circumstances" delaying the project and the determination as to the location of the vertical wheelchair lift. The timeline was based on the need for the following timeframes: six (6) months to retain experts (per public bidding laws) and obtain/review analysis of code and the location of an existing underground oil tank; three (3) months to evaluate options; 3-6 months to retain contractors (per the public bidding laws); three (3) months for construction; and two (2) months of unforeseen delays. (Exhibit 1).
- 12) On March 24, 2016, the Board received an e-mail from Neal Mongold of the Narrow Gate Architecture Ltd. His e-mail included several files that included background information regarding the efforts of the Department of Housing and Community Development (DHCD) and the Nahant Housing Authority to arrive at a location for the vertical wheelchair lift. The first attached document was Mongold's July 6, 2015 letter to Mr. Avalon McLaren, Project Manager for the Department of Housing and Community Development, Division of Public Housing and Rental Assistance, Public Housing Modernization. This letter was a summary of design options studied by The Narrow Gate for DHCD and the Nahant Housing Authority (NHA) to correct the violations of the initial complaint before the Board, including but not

limited to, the lack of an elevator within the building when it was converted from a school to public housing (521 CMR (1982) 35.1). Mongold's March 24, 2016 e-mail noted that the options for an internal or external installation of vertical access ran into opposition from the affected residents. The e-mail noted that [G.L. c. 4 § 7(26)(c) - Privacy] and her attorney (Leonard) had retained a building expert, but that NHA was proposing to hire a building code expert to review a proposed option for creating vertical access within the building. (Exhibit 1).

- 13) On April 6, 2016, the Board received two e-mails from Anna Bryson, Assistant to Lynn Leonard, which included a letter from Leonard in response to a meeting, held on March 17, 2016 at the office of the Nahant Housing Authority. An additional e-mail, sent the same day, included an April 1, 2016 review of the existing chair lift, conducted by Eugene Argiro, a certified building official and consultant regarding applicability of 780 CMR. Argiro's letter noted that the installation of the chair lift on the stairway between the first floor and the basement was a violation of 780 CMR, based on the requirements for stairs and emergency exit passageway requirements. (Exhibit 1).
- 14) On April 14, 2016, the received a letter from Mongold on behalf of the NHA requesting consideration for an amendment to the original variance, to include the continued use of two (2) existing inclined chair lifts, in addition to the proposed two-stop vertical wheelchair lift, which was previously approved by the Board. The proposed vertical wheelchair lift will connect the lower level of the building to the main floor level, in lieu of vertical access to all three (3) levels of the building. The letter noted that the two (2) inclined chair lifts were installed in September 2008 and in June 2013 by the NHA "in an attempt to make it easier for residents to travel between the 3 floors of the building." Mongold's letter noted that at the time of installation, the NHA was not aware that the installation of inclined chair lifts were a violation of 521 CMR 28.12.5. The two (2) lifts are Stannah Model 260 Sofia machines that are serviced by Stannah and kept in good working order. (Exhibit 1).
- 15) Based upon the notification of the existence of two (2) noncompliant chair lifts within the building, the Board scheduled a complaint/variance hearing. Notice was sent to all parties concerned on April 26, 2016, notifying them of the hearing scheduled for July 25, 2016 at 11:00 a.m. On May 3, 2016, the Board received an e-mail from Maureen Reilly, asking that the hearing be rescheduled because she was scheduled for a trial that same day. On June 6, 2016, a "Rescheduled Complaint/Variance Hearing Notice" was sent to all parties concerned, notifying them of the change in the hearing date to August 22, 2016 at 3:00 p.m. (Exhibit 1).
- 16) On July 29, 2016, the Board received an e-mail from Mongold updating the Board on the proposed location of the vertical wheelchair lift. The proposed location will not require [G.L. c. 4 § 7(26)(c) - Privacy] to relocate during construction, will not block any windows of or take any space out of any existing apartment units, or negatively impact the NHA administration space for operational purposes. (Exhibit 1).
- 17) The August 18, 2016 e-mail from Mongold included his letter of the same date, stating that DHCD and NHA had agreed to install a full commercial three-stop elevator at the Spindrift building, rather than the previously proposed two-stop vertical wheelchair lift, approved by the Board as a variance. The proposed cost of the elevator installation will exceed the 30% threshold, per 521 CMR 3.3.2. Mongold stated that they would be providing the Board with a list of the work required to comply in full with the applicable sections of 521 CMR. The submittal also included a drawing and cost estimate for the installation of the three-stop elevator, as well as a drawing and cost estimate for the installation a vertical wheelchair lift (provided as a reference only). The NHA seeks to maintain the two (2) existing incline chair lifts until such time that the elevator is completed.
- 18) Mongold testified that based on the trigger with the proposed elevator installation project requiring full compliance with 521 CMR, which will include 5% of the units to comply with the requirements of 521 CMR 9.4. Mongold stated that there are currently two (2) accessible

units, built to the standards of 1982 edition of 521 CMR. NHA proposes to provide one (1) additional accessible unit; however, there are some violations that have been found in the existing accessible units that may require renovation as well.

Analysis

The Board's jurisdiction was established pursuant to the 521 CMR (1977) 2.4, which required that, "[t]here shall be no construction, reconstruction, alteration or remodeling of a public building except in conformity with these Rules and Regulations, nor shall the use of any building be changed to a use in which the building is open to and used by the public as defined in these Rules and Regulations until such building so conforms or until a copy of the plans and specifications has been approved as provided in the General Laws, showing compliance with these Rules and Regulations and provided, however, that if this Board determines that compliance with these Rules and Regulations is impracticable in the particular case, it may provide for modification of, or substitution for such Rules and Regulations."

The Board's jurisdiction was further established pursuant to the 521 CMR (1998/2006) 3.3.1a which required that, "[i]f the work 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."

The Petitioners seek a variance for the use of two (2) Stannah Model 260 Sofia Stair Lifts, during the time when the three-stop elevator is being constructed. The existing chair lifts (installed in 2008 and 2013) consist of only a seat that glides along the stairwell. This type of incline lift does not comply with the requirements of 521 CMR 28.12.5a, which requires a platform with a minimum of clearance of 30 inches wide by 48 inches long. The Petitioners also proposed to submit a plan for compliance or variance request for any items required to comply with the applicable requirements of 521 CMR based on the current work triggering full compliance with 521 CMR.

Conclusion

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

- *GRANT* a time variance to keep the two (2) incline chair lifts to maintain in place until such time that the elevator is installed, inspected and fully operational, to be verified as comply by no later than *January 1, 2018*. Status reports are required to be submitted *every six (6) months*, starting *January 1, 2017*, with the first report to include a copy of the deposit check, shop drawings and copy of the signed contract for the elevator installation. The full evaluation of the building and the applicability of 521 CMR (based on the new trigger of full compliance per 521 CMR 3.3.2) is required to be submitted to the Board by *January 1, 2017*.

On December 28, 2016, the Board received a submittal from Mongold in accordance with the Board's previous order to submit a January 1, 2017 status report. The report noted that the construction documents for the elevator will be reviewed and approved by DHCD staff by March 23, 2017, with public bidding for the project to begin on March 31, 2017. Filed sub-trade bids

are to be received by NHA by April 14, 2017, and general contractor bids are to be received by NHA by April 30, 2017. The contractor will be selected and approved by DHCD, as well as voted on by the NHA Board of Directors to issue a "Notice to Proceed" by June 15, 2017. The construction of the elevator will begin on June 16, 2017, with construction proposed to be completed by December 15, 2017. The submittal also noted that after a comprehensive survey of the existing site and building conditions, additional work items were identified, and determined to be an additional \$50,000 worth of upgrade work. The NHA also proposes to convert one (1) existing apartment into a compliant Group 2 unit, and repair one (1) apartment to bring it up to full compliance with the requirements for a Group 2 unit.

The Board reviewed the submittals during an administrative discussion at their January 6, 2017 meeting and voted as follows:

- *ACCEPT* the timeframes as proposed, with the understanding that the proposed work will be completed and verified as such by no later than *January 1, 2018*.
- *EXPEDITE* the decision of the Board, therefore bypassing the Board's approval of the decision prior to it being sent out to all parties concerned.

A true copy attest, dated: January 9, 2016

ARCHITECTURAL ACCESS BOARD

By:



Walter White, Chair



Diane McLeod, Vice Chair



Raymond Glazier, Executive Office of Elder Affairs Designee (not present 1/6/17)



Jeffrey Dougan, Massachusetts Office on Disability Designee



Andrew Bedar, Member



George Delegas, Member (not present 1/6/17)



Dawn Guarriello, Member



Jane Hardin, Member (not present 8/22/16)

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 entered pursuant to G.L. c. 30A. Any aggrieved person may appeal this decision to the Superior Court of the Commonwealth of Massachusetts pursuant to Section 14 of G.L. c.30A. Any appeal must be filed in court no later than thirty (30) days of receipt of this decision.