

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

BUILDING CODE APPEALS BOARD  
DOCKET NO.: 11-1007

_____	)
Curtis Plante,	)
Appellant	)
	)
v.	)
	)
Town of Lancaster,	)
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 from Sections 51.00 through 99.00 of the Eighth Edition of the Massachusetts State Building Code (“Code”) including the base 2009 International Energy Conservation Code (“IECC”) and the Stretch Energy Code (“Stretch Code”). For the following reasons, the Board grants appellant a variance from the Stretch Code with the condition that Appellant complies with the 2009 IECC.

**Procedural History**

The Board convened a public hearing on June 2, 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 an opportunity to testify and present evidence to the Board. Curtis Plante and Holly Plante of Blue Heron Pond LLC appeared on behalf of the appellant. Peter Munro of the Lancaster Building Commission appeared on behalf of the appellee. All witnesses were duly sworn.

**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 properties at issue are located at 556 and 554 Red Trail Way, Lancaster, MA.
2. The properties are two units in a 58-unit condominium project.
3. The Chapter 40B project began in 2004 and was permitted under a general permit from the Town of Lancaster (“Town”) in 2005. The general permit requires Appellant to apply for building permits for each individual unit.
4. The Town denied the permits for the subject properties because Appellant applied for the permits after the State adopted the IECC and the Town adopted the Stretch Code.
5. Of the 58 units, 18 still require building permits and variances that Appellant will request later.

6. Complying with the Code would lead to a great financial hardship because compliance would require many changes to the units, the units have decreased in value due to the economic downturn, and Appellant is currently operating at zero profit on the project.
7. The Lancaster Zoning Board of Appeals voted in favor of relief to the extent that it governs the Stretch Code and 2009 IECC.

### Discussion

#### 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 Board shall grant Appellant a variance from the Code's requirement that construction after Jan. 1, 2010, comply with the 2009 IECC and that construction in the Town comply with the Stretch Code. Sections 51.00-99.00 of 780 CMR provide that all municipalities in the Commonwealth adopt the 2009 IECC effective Jan. 1, 2010, and that any municipality may adopt Appendix AA (the Stretch Code) in the manner proscribed by law. The Town did so prior to Appellant's applying for a building permit for the subject properties. Appellant's competition with other Ch. 40B developers in the area who do not have to comply with the Stretch Code renders the financial situation even direr. Additionally, Peter Munro, the Town's Code Official, is in favor of Code compliance, but will be satisfied if Appellant complies with only the 2009 IECC. Thus the great financial hardship of complying with the Stretch Code and the unfairness of competing with other developers in the same market who are free from its requirements suggest that a variance from the Stretch Code is appropriate. However, the Code Official's insistence on Code compliance along with the fairness of maintaining uniform state-wide standards suggest that a variance from the 2009 IECC is not appropriate.

### Conclusion

Brian Gale motioned to grant a variance from the Stretch Energy Code because of the great financial hardship and Appellant's earlier permit, with the condition that Appellant comply with the 2009 IECC. Jake Nunnemacher seconded his motion. The motion passed unanimously. Appellant's request for variance is hereby **granted**.

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Jacob Nunnemacher

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Doug Semple

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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: June 29, 2011