

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Building Code Appeals Board  
Docket No. 05-483

Michael Smith,	)
Appellant	)
v.	)
Town of Maynard and	)
Richard Asmann,	)
Appellee	)

**BOARD’S RULING ON APPEAL**

**Procedural History**

This matter came before the State Building Code Appeals Board (“Board”) on Appellant’s appeal filed pursuant to 780 CMR §122.1. In accordance with 780 CMR §122.3, Appellant asks the Board to grant a variance from 780 CMR §5403.1.4.1 of the Massachusetts State Building Code (“Code”) with respect to the construction of a 355 square foot deck, detached 1 inch from the residence (“Project”).

Appellant had requested a building permit for the construction of a deck located at 14 Howard Road, Maynard, MA (“property”). By letter dated September 6, 2007, Richard Asmann, Building Commissioner for the Town of Maynard denied the application indicating a failure to comply with 780 CMR § 5403.1.4. The letter stated that the structure is not entitled to Exception 1 under 780 CMR § 5403.1.4 because the “stair stringers [were considered] part of the permanent structure support of the stair treads and I find no valid exception as proposed.”

In accordance with G. L. c. 30A, §§10 and 11; G. L. c. 143, §100; 801 CMR §1.02 et. seq.; and 780 CMR §122.3.4, the Board convened a public hearing on October 23, 2007 where all interested parties were provided with an opportunity to testify and present evidence to the Board.

Present at the hearing were Michael Smith, Appellant and Richard Asmann on behalf of the Appellee.

**Reasons for Variance**

The issue is whether Appellant should be allowed a variance from 780 CMR §5403.1.4.1. Section 5403.1.4.1 states:

Except where otherwise protected from frost, *footings*, foundation walls, piers and other permanent supports of buildings and structures shall be protected from frost by one or more of the following methods:

1. Extending *a minimum of 48 inches (1219 mm) below finished grade at all points.*
2. Constructing in accordance with 780 CMR 5403.3;
3. Constructing in accordance with ASCE 32-01;
4. Erected on solid rock.

**Exceptions:**

1. Freestanding accessory structures with an area of 400 square feet (37 m<sup>2</sup>) or less and an eave height of ten feet (3048 mm) or less shall not be required to be protected.
2. *When the foundation grade is established by a registered architect or registered professional engineer.* Footings shall not bear, *or be placed* on frozen soil.

The Project involves the construction of a deck by a registered architect at his residence. The anticipated size of the deck is approximately 355 square feet including the stairs to the backyard, and will be detached by a gap of 1 inch from the house. The deck would be constructed on frost protected footings with the exception of the stairs down from the deck, which would be resting on a concrete path. The deck stairs are not intended to be used as a primary egress from the house.

**Decision**

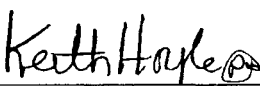
Board member Alexander MacLeod motioned to grant the variance from §5403.1.4.1 because the deck is a detached structure with a gap of 1 inch from the house and frost protected footings will be placed under the main portion of the deck although not required (“Motion”). A second motion was made by Keith Hoyle. Following testimony, and based upon relevant information provided, Board members voted to allow the Motion, as described on the record. The Board voted as indicated below.


..... **Granted**                      ..... Denied                      ..... Rendered Interpretation

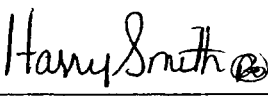
.....Granted with conditions                      ..... Dismissed

The vote was:

.....**Unanimous**                      ..... Majority

  
\_\_\_\_\_  
Keith Hoyle

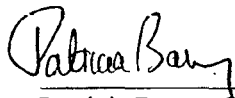
  
\_\_\_\_\_  
Alexander MacLeod

  
\_\_\_\_\_  
Harry Smith -Chair

Any person aggrieved by a decision of the State Building Code Appeals Board may appeal to a court of competent jurisdiction in accordance with Chapter 30A, Section 14 of the Massachusetts General Laws.

A complete administrative record is on file at the office of the Board of Building Regulations and Standards.

A true copy attest, dated: June 12, 2008

  
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Patricia Barry, Clerk

All hearings are audio recorded. The digital recording (which is on file at the office of the Board of Building Regulations and Standards) serves as the official record of the hearing. Copies of the recording are available from the Board for a fee of \$5.00 per copy. Please make requests for copies in writing and attach a check made payable to the Commonwealth of Massachusetts for the appropriate fee. Requests may be addressed to:

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State Building Code Appeals Board  
BBRS/Department of Public Safety  
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Boston, MA 02108