

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

BUILDING CODE APPEALS BOARD
DOCKET NO.: 10-953

_____)
Cubist Pharmaceuticals,)
Appellant)
)
v.)
)
Town of Lexington,)
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”). For the following reasons, the variance is hereby **GRANTED with conditions**.

The appellant requested that the Board grant a variance from 780 CMR Section 717.5. Jonathan Eisenberg and Chris Lynch, of Rolf Jensen & Associates, Inc., fire protection and life safety consultants for the project testified on behalf of the appellant, owner Cubist Pharmaceuticals. Gary Rhodes, Building Commissioner for the Town of Lexington, and Lieutenant Kenneth J. Tremblay of the Lexington Fire Department testified on behalf of the appellee. All witnesses were duly sworn.

Procedural History

The Board convened a public hearing on December 2, 2010, 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

The facts of this matter are largely not in dispute. Instead, 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 65 Hayden Avenue, Lexington, MA.
2. The property involves an existing 3 story structure and an existing 1 story structure directly North of it.
3. The proposed renovations include a 2 story addition above the existing 1 story component of approximately 104,000 square feet, including a 2 story link between the old and the new buildings with a mechanical space on the first floor adjacent to the existing first floor

building and approximately 88,000 square feet of new space on the second and third levels above the existing 1 story structure.

4. There is an existing roof on top of the 1 story structure.
5. The new construction will be consistent with Type 1B construction and have a 2 hour fire resistance rating, completely independent of the existing 1 story portion.
6. It is being proposed that the roof assembly remain.
7. The existing roof on the 1 story building is made of rubber EPDM membrane on top of insulation on top of metal decking.

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 780 CMR 717.5. The relevant provisions of the regulations state, "Combustibles shall not be permitted in concealed spaces of buildings of Type I or II construction." 780 CMR 717.5.

The appellant testified that the client found it integral to keep the roof space occupied during renovation and it is therefore not possible to change the material of the roof. The appellant asserted they were proposing several measures as compliance alternatives to mitigate the fact that there will be combustible material in a concealed space. The appellant stated that putting the 2 new stories on top of the existing roof will create an interstitial space. The appellant proposed fully sprinklering the interstitial space with an extra hazard group 1 sprinkler. The appellant also stated that there will be 9 sprinkler zones throughout the interstitial space.

The appellant also stated there would be additional smoke exhaust systems and manual activation systems. The appellant testified that due to many beams and mechanical systems in the interstitial space fire personnel and a hose stream might be obstructed and proposed the higher sprinkler rating as a safer option.

The appellant also asserted that the roofing material has a Class A roof rating, the highest possible for roofs, and that it does have many fire-resistant properties.

The Town Fire and Building officials testified that they had no objection to the variance and believe the proposal is adequate.

Based on the testimony and documentation, as well as a lack of any opposition, the variance may be granted with conditions.

Conclusion

A motion was made by Jacob Nunnemacher and seconded by Ralph Cirelli to **Grant** the variance to 780 CMR Section 717.5.7 based on the testimony provided and included in the documentation submitted with 2 **contingencies**: 1) the sprinkler zoning will exist as the appellant stated in testimony, that there will be separate zoning for the first, second and third floors, and for the interstitial space and the interstitial space will have 9 separate zones and 2) Diagrams of the sprinkler zoning and all access points will be provided to the Lexington Fire Department for posting for their prefire planning wherever they determine is appropriate.

Jacob Nunnemacher

Jeffrey Putnam

Ralph Cirelli

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: January 20, 2011