

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Building Code Appeals Board
Docket No. 05-407

_____)
Bristol-Myers Squibb,)
Appellant)
)
v.)
)
Devens Enterprise Commission,)
Appellee)
_____)

BOARD’S RULING ON APPEAL

Procedural History

This matter came before the State Building Code Appeals Board (“Board”) on the Appellant’s appeal filed pursuant to 780 CMR §122.1. In accordance with 780 CMR §122.3, Appellant asks the Board to grant variances from 780 CMR §§503.1, 504.2, 506.1, and 506.3, of the Massachusetts State Building Code (“Code”) with respect to the development of a bio-pharmaceutical facility in Building 140, 38 Jackson Road, Devens, MA (“Project”).

By letter dated March 15, 2007, Gabriel Joseph Vellante, Jr, Building Commissioner for the Devens Enterprise Commission (“Appellee”), informed Appellant that its suggested compliance alternatives for the Project were being denied. The letter stated that the denial “should not be construed as a negative opinion to the design alternative, rather as an indication that said design alternative request is beyond the scope and capability” of the Building Commissioner.

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 April 24, 2007 where all interested parties were provided with an opportunity to testify and present evidence to the Board.

George T. MacKnight and Geoff Middleton were present on behalf of Appellant.

Discussion

Electrical/Transformer Rooms

The issue is whether Appellant should be allowed to install two-hour fire rated construction materials, in lieu of a sprinkler protection system, in a certain electrical/transformer

room located on the ground floor of the Project. Such a change would require variances from §§503.1, 504.1, 504.2, 506.1, and 506.3 of the Code.

Here, Appellant represented that the entire building, except for the electrical/transformer room, would be fully sprinklered, in accordance with NFPA 13, §8.14.10.3. In addition, because the electrical/transformer room is located on the ground floor, there will be a direct egress from the room to the outdoors.

Although the Building Commissioner for the Town was unable to attend the hearing, he submitted a letter, dated April 19, 2007, stating his support for the Board's granting of the variances. The Building Commissioner stated that the requests are reasonable given the complexity of the structures and that the Code may not have kept pace with the technology for this type of development.

Decision

The Chair entertained a motion to grant variances from §§ 503.1, 504.2, 506.1, 506.3 provided that **all** the following conditions (derived from similar circumstances with respect to N-Star facilities) are satisfied:

1. The cable within the vault is flame retardant or limited combustible.
2. The dielectric fluid is a limited combustible fluid.
3. The vault is enclosed in three hour fire resistance rated construction.
4. The vault is at grade or no more than one level below grade. Access to the vault is directly from the exterior or via a dedicated two hour passageway.
5. The vault is protected with automatic smoke detection connected to the building fire alarm system which notifies the fire department upon activation.
6. The room is limited to the sole use of the transformer equipment and is limited in size to accommodate said equipment only. Storage is prohibited in the vault enclosure.
7. The vault is provided with spill containment.
8. An emergency fire plan has been developed with and approved by the fire department.
9. Continuous ventilation is provided for the vault enclosure in accordance with the ventilation requirements of NFPA 30.
10. The ventilation equipment is dedicated to serve the vault only.
11. Emergency power is provided for the ventilation equipment.
12. The vault is no larger in area than 2400 sq. ft.

("Motion").

Note that the above conditions specify that the vault be enclosed in **three** hour fire resistance rated construction, rather than the two-hour rating in Appellant's request.

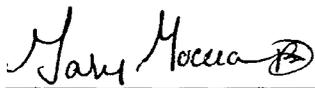
Following testimony, and based upon relevant information provided, Board members voted in favor of the Motion, as described on the record. The Board voted as indicated below.

..... Granted Denied Rendered Interpretation

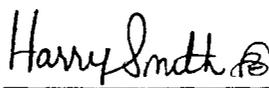
X.....Granted with conditions Dismissed

The vote was:

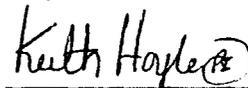
X.....Unanimous Majority



Gary Moccia



Harry Smith – Chair



Keith Hoyle

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: February 5, 2008

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 \$10.00 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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