COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

State Building Code Appeals Board
Docket No. 05-436

BOARD'S RULING ON APPEAL

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:

Patricia Barry, Coordinator
State Building Code Appeals Board
BBRS/Department of Public Safety
One Ashburton Place - Room 1301
Boston, MA 02108

Douglas Haring for Andrew Perkins, Appellant,	)
v.	)
City of Lynn and Roger Ennis, Appellees	)

Procedural History

This matter came before the State Building Code Appeals Board ("the 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 a variance from 780 CMR 3404.16; 3404.12.3; and 3400.3 of the Massachusetts State Building Code ("MSBC") for 137 Williams Avenue, Lynn, MA 01905. In accordance with MGL c. 30A, §§ 10 and 11; MGL c. 143, §100; 801 CMR 1.02 et. Seq.; and 780 CMR 122.3.4, the Board convened a public hearing on July 24, 2007 where all interested parties were provided with an opportunity to testify and present evidence to the Board.

Present was Appellant Douglas Haring, the architect of record; property owner Andrew Perkins; and the property owner's representative John C. Mihos, Esq. Present and representing the City of Lynn was Chief Building Inspector Roger Ennis and Lt. Robert Bourke from the City of Lynn Fire Department. Also present and representing the City of Lynn was Andrew Young.

Exhibits: The following exhibits were accepted by the Board as evidence during the course of the hearing.

Exhibit #	Description	Pages	Dated	Submitted by:
1	Packet of pictures of subject property	26	Various	Appellee/Building Official

Pursuant to MGL c. 30A, §11(5), the Board takes administrative notice of its own records including, but not limited to, the State Building Code Appeals Board Appeal Application Form and accompanying documents submitted on CD by Appellant and received by the Board on June 19, 2007.

Decision: Following testimony, and based upon relevant information provided, Board members voted as indicated below.

☐..... Granted **X..... Denied** ☐..... Rendered Interpretation☐

☐.....Granted with conditions (see below) ☐..... Dismissed

The vote was:

X.....Unanimous ☐..... Majority

Reasons for Denial:

1. In accordance with 780 CMR 3400.3.8, "any alteration or change in occupancy within a residential use group shall comply with the requirements of the code for new construction." The subject property is classified as an R-2 use group wherein the potential occupancy was changed by adding a bedroom according to the testimony of the Chief Building Inspector as based on the Inspector's review of the floor plans. R-2 use groups that are new construction are required to include a fire suppression system for life safety purposes.

2. The definition of "substantial alteration" as included in 780 CMR 3401.1 and used in 780 CMR 34 provides that "the building official shall make such determination," with regard

to whether a substantial renovation or alteration exists. The Chief Building Inspector determined that the construction of the subject property was substantial in nature. The testimony of the Chief Building Inspector stated that the property owner was informed of the Chief Building Inspector's determination that a fire suppression system was necessary.

3. The Board agrees with the Chief Building Inspector's determination that photographs submitted to the Board indicate that the subject property is undergoing a substantial renovation thereby triggering the requirement to install a compliant fire suppression system as a matter of life safety. (See Exhibit 1)

4. City of Lynn Fire Department opposed the variance because of life safety concerns.

The motion to deny the variance was made by Member Keith Hoyle and seconded by Member Alexander MacLeod. The variance is **DENIED**. Members voting unanimously to grant the variance were Harry Smith; Alexander MacLeod; and Keith Hoyle.

The following members voted in the above manner

Harry Smith		Keith Hoyle
Chairman -Harry Smith	Alexander MacLeod	Keith Hoyle

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

A true copy attest, dated: October 9, 2007

Patricia Barry, Clerk

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.