

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

State Building Code Appeals Board
Docket No. 05-288

Jacqueline Voss,)
Appellant,)
)
v.)
)
Town of Ipswich and James)
Sperber,)
Appellees)
)

BOARD'S RULING ON APPEAL

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 the Appellant asks the Board to grant a variance from sections 780 CMR 120.1 and 780 CMR 1014.6 of the Massachusetts State building code ("MSBC"); and section 521 CMR 20.00, 22.00, 23.6 of the Massachusetts Architectural Access Board regulations. The Appellant also requests that the Board render an interpretation of section 120.1 of the MSBC. 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 August 22, 2006 where all interested parties were provided with an opportunity to testify and present evidence to the Board.

Present and representing the owner, Timothy K. McCarthy ("McCarthy") was Jacqueline Voss Lees, Esq. ("Appellant"). Although notified, there was no representative present from the Town of Ipswich building department.

Exhibits¹

The following Exhibit was entered into evidence:

Exhibit 1: Three page faxed document from the Town of Ipswich building department.

¹ The Board takes administrative notice of its own records. 801 CMR 1.01(10)(h)(administrative notice); M.G.L. 30A, §11(5).

Findings of fact

1. The subject property is a commercial building located at 59 Mitchell Road, Ipswich, Massachusetts.
2. The interior stairway at the subject property is not built in accordance with the commercial code. The stair as built has an 8 inch rise with a 10 ¼ inch tread. MSBC requires a 7 inch rise with an 11 inch tread. There is a railing on either side of the stair and a landing half way down the stairway.
3. The stairway is not open to the public. It is only used by McCarthy and his employees.
4. Sperber did not oppose the request for a variance from section 1014.6 of MSBC for the current configuration of the stairway as long as the stairs are primarily used by employees of the owner.
5. On or about August 21, 2006 McCarthy was issued a temporary certificate of use and occupancy for the subject property which is valid until November 3, 2006.
6. James Sperber ("Sperber"), Town of Ipswich Inspector of Buildings, is awaiting advice from Town counsel in regards to whether he can issue a permanent Certificate of use and occupancy when the town planning board has not signed off on the plan review.
7. A site plan review was conducted prior to McCarthy's purchase of the subject property. Subsequent to the purchase he applied for and obtained a building permit based upon plans dated September 20, 2000.
8. Currently, the planning board will not sign off on this project because they can no longer find the plans.
9. The Appellant withdrew her appeal of section 780 CMR 110.13 of the MSBC.
10. The Board does not have jurisdiction over issues relating to 521 CMR 20.00; 22.00; and 23.6.

Discussion

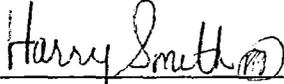
A motion was made by Mr. MacCleod to order the building official to issue a permanent Certificate of Use and Occupancy for the subject property. If there was a zoning issue the building official should have resolved that prior to issuing the building permit. It is now improper for the building official to withhold the permanent Certificate of Use and Occupancy for the subject property as a result of zoning issues. If there were building code violations then the building official would have a reason to deny the issuance of a permanent Certificate of Occupancy, but that does not appear to be the case here. Motion was seconded by Mr. Gale.

A motion was made by Mr. MacCleod to grant variance from 780 CMR 1014.6 to allow the existing stairway configuration with an 8 inch rise and 10 ¼ inch tread to remain at the subject property as designed as long as there are railings on both sides of the stairway and the stairway is not open to the public.

Conclusion

The building official is hereby ordered to issue a permanent Certificate of Use and Occupancy for the subject property. The Appellant's request for a variance is **GRANTED** from 780 CMR 1014.6 of the MSBC. Motion carried 3-0.

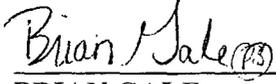
SO ORDERED,



HARRY SMITH



ALEXANDER MACLEOD



BRIAN GALE

DATED: November 9, 2006

**In accordance with M.G.L. c. 30A § 14, any person aggrieved by this decision may appeal to the Superior Court within 30 days after receipt of this decision.*