

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss

Department of Public Safety
State Building Code Appeals Board

John McArdle III,)
Appellant,)
)
v.)
)
Town of Andover and Kaija)
Gilmore,)
Appellees)
)

DOCKET NO. 05-280

BOARD'S RULING ON APPEAL

Procedural History

This matter comes before the State Building Code Appeals Board ("the Board") on the Appellant's motion 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 1010.3 (Buildings with one exit) of the State building code for a two story building with Business and Mercantile uses. 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 State Building Code Appeals Board convened a public hearing on August 3, 2006 where all interested parties were provided with an opportunity to testify and present evidence to the Board.

Present and presiding as the Board were Mr. Jacob Nunnemacher, Mr. Harry Smith, Mr. Brian Gale and Ms. Patricia Barry, acting as clerk. The Appellant, John McAardle appeared pro se (the "Appellant"). Present and representing the Town of Andover building department was Ms. Kaija Gilmore. There was no representative present from the Town of Andover Fire Department.

Findings of fact

1. The subject property is a proposed new construction two story mixed use building located at 15-19 Barnard Street, Andover, Massachusetts. (Board records).

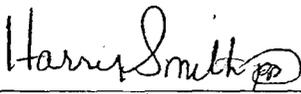
2. The first story of the structure will be for mercantile use and the second floor will be for business use. The floor area per floor is approximately 2700 square feet. (Board records, Appellant's testimony at hearing).
3. The proposed new building has only one means of egress; the Massachusetts State Building Code requires a mixed use building of this type to have two means of egress. (Board records, submitted prior to hearing).
4. Installing a fully enclosed stairway on the subject property would infringe on the limited square footage of the property thereby creating a hardship for the Appellant. (Board records, Appellant and Kaija Gilmore testimony at hearing).
5. There are similar sized one and two story buildings in close proximity to the subject property, with mercantile use on the first floor, that are not sprinklered and some of the buildings are not equipped with fire alarms. The Appellant's building will have a low occupancy rate; will be fully sprinklered and will be equipped with an automatic and manual fire alarm. (Board records, Appellant's testimony at hearing).
6. There were no exterior alternatives for the installation of a second means of egress. The side of the Appellant's property is very close to the property line and would not be able to accommodate a second means of egress; installation of a second means of egress at the front portion of the property would eliminate parking spaces; and if an egress is installed at the rear of the building it would be difficult to get back to the sidewalk. (Board records, Kaija Gilmore testimony at hearing).
7. The Town of Andover building department is in full support of the Board's granting of the Appellant's request for a variance. (Board records, Kaija Gilmore testimony at hearing).
8. The Town of Andover fire department is in full support of the Board's granting of the Appellant's request for a variance. (Board records, Kaija Gilmore testimony at hearing).
9. On or about May 7, 2006 the Appellant filed this appeal with the State Building Code Appeals Board.
10. On or about July 20, 2006 the parties were notified of a hearing scheduled on August 3, 2006.

Conclusion

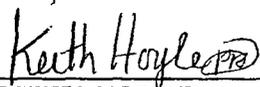
Motion was made by Mr. Gale and duly seconded by Mr. Smith to **GRANT** the Appellant's request for a variance from 780 CMR 1010.3.

Motion carried 2-1. Appeal **GRANTED**. Mr. Nunnemacher cast a vote to deny

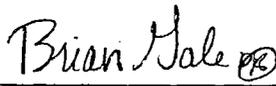
SO ORDERED,



HARRY SMITH



KEITH HOYLE



BRIAN GALE

DATED: September 26, 2006

In accordance with MGL, Chapter 30A, Section 14, any person aggrieved by this decision may appeal the decision to a court of competent jurisdiction within 30 days.