

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Building Code Appeals Board  
Docket No. 05-450

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PRZ Realty Trust, John R. Rivers, Trustee,		)
	Appellant	)
		)
v.		)
		)
City of Malden,		)
	Appellee	)
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**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 §§116.0, 116.2, 116.2.2.2, 116.2.2.3, 116.2.3, 116.3, 116.5, 110.0, 110.12, 1705.0 of the Massachusetts State Building Code ("Code").

By letter dated June 12, 2007, Paul E. Johnson, Inspector of Buildings for the City of Malden ("Appellee"), informed Appellant that it failed to take several required steps as part of a permit application to construct retaining walls to support land known as Lots 21 and 22 Roberts Street Extension, Malden. The letter stated that Appellant failed to comply with §§116.0, 116.2, 116.2.2, 116.2.3, 116.3, 116.5, 110.0, 110.12, and 1705.0. The letter also stated that Appellant had failed to comply with Mr. Johnson's order of February 5, 2007, ordering Appellant to supply plans and specifications in accordance with the above-cited Code sections. As a result, the letter ordered Appellant to remove the rip rap wall and fill, and denied Appellant's application for permit to build (dated April 5, 2007) ("Letter").

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 August 2, 2007 where all interested parties were provided with an opportunity to testify and present evidence to the Board.

John R. Rivers was present at the hearing as was James R. Senior, counsel for Appellant. Paul E. Johnson was present on behalf of Appellee.

**Reasons for Variance**

By way of background, Appellant had constructed a three-tier, rip rap retaining wall system ("Wall") to provide lateral support ("Project") for land known as Lots 21 and 22, Roberts Street Extension, depicted on "Site Plan of Land, Blueberry Ridge, Malden, MA, prepared by P.J.F. and Associates", dated July 26, 2006, File No. 4114-WALL4A ("Plan"). The issues are whether Appellant should be granted variances from the Code provisions cited above, which generally require the submission of certain documentation to municipal building officials **prior** to commencing construction.

Under §116.2.1 and §116.2.2., in pertinent part, plans and specifications for new construction must be prepared and certified, in writing, by a registered professional engineer. Section 116.2.3 requires that structural tests and inspections must be provided in accordance with §1705.0, which sets forth requirements for structural tests and inspections. Section 116.5 states that nothing in §116.0 "shall have the effect of waiving or limiting the building official's authority to enforce 780 CMR with respect to examination of the contract documents, including plans, computations and specifications, and field inspections." Section 110.0 requires the submission of an application to, and the receipt of a permit from, a building official before one begins to "construct, reconstruct, alter, repair, remove or demolish a *building* or *structure*; or to change the use or *occupancy* of a *building* or *structure*; or to install or alter any equipment for which provision is made or the installation of which is regulated by 780 CMR." Finally, §110.12 states: "In those structures subject to control as required in 780 CMR 116.0, affidavits must be submitted with the permit application that the individuals and testing laboratories responsible for carrying out the duties specified in 780 CMR 116.0 have been licensed by the BBRS."

Appellant asked that a building permit be issued and that Appellant not be ordered to remove the Wall. Appellant argued that the Wall be allowed to stand, and that a permit be issued, as long as an engineer certified that the Wall was structurally sound. Appellant admitted that the Wall had been constructed *without* first receiving a permit and having the required inspections by the City.

The Board acknowledged the hardship of requiring the Wall to be taken down, highlighting the possibility that the Wall may be structurally sound and that there may be methods to ascertain the Wall's compliance with the Code's structural requirements. Although Appellee emphasized its concern about Appellant's failure to comply with the processes required under the above-cited Code sections, Appellee's major concern, now that the Wall has been constructed, is the Wall's structural safety.

### **Decision**

The Chair entertained a motion to grant the variances, with the following conditions: (1) Appellant must hire an independent professional engineer, who has not been involved in the Project, who has background qualifications in rip rap walls and stone work; (2) the engineer must create a detailed plan that depicts how the walls **are** built; (3) the engineer must do whatever destructive investigation he believes is necessary to determine how the walls are constructed, to verify that they are constructed according to the appropriate standards, are stable, and have the appropriate compaction; (4) the engineer's certified plan must be submitted to the City's Inspector

of Buildings within 90 days from the date of the hearing (August 2, 2007); (5) any extension of the 90-day period must be applied for, in writing, to the Inspector of Buildings, but in no event shall the period be extended beyond 120 days from the date of the hearing; (6) if it exceeds 120 days, the Letter is in full force and effect and the Wall must be taken down.

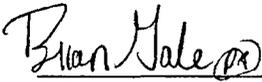
Following testimony, and based upon relevant information provided, Board members voted to allow variances from §§116.0, 116.2, 116.2.2.2, 116.2.2.3, 116.2.3, 116.3, 116.5, 110.0, 110.12, 1705.0 on the six (6) conditions, specified above, as described on the record. The Board voted as indicated below.

..... Granted                      ..... Denied                      ..... Rendered Interpretation

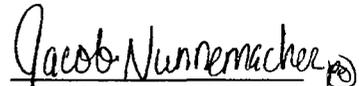
**X.....Granted with conditions**                      ..... Dismissed

The vote was:

**X.....Unanimous**                      .....  Majority

  
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Brian Gale

  
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Robert Anderson - Chair

  
\_\_\_\_\_  
Jacob Nunnemacher

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: November 5, 2007

  
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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:

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