COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Building Code Appeals Board
Docket No. 05-422

Mark Cutone,		)
	Appellant;	)
v.		)
		)
City of Boston,		)
	Appellee.	)
		)

BOARD'S RULING ON APPEAL

Procedural History

This matter came before the State Building Code Appeals Board ("Board") on Appellant's appeal filed pursuant to 780 CMR §122.1. In accordance with 780 CMR §122.3, Appellant has requested that the Board review Appellee's decision to deny the Appellant's application for a permit, Boston permit application 06-1795, to build a roof deck at 15 Charter Street, Boston, MA

By letter dated August 14, 2006, Philip Taylor, for the Inspectional Services Department of the City of Boston ("Boston"), informed Appellant that the proposed roof deck would violate 780 CMR §§1010.2, 1014.4, 1014.8, 1014.8.1 and 1014.8.2 and denied the building permit.

In accordance with G. L. c. 30A, §§10 and 11; G. L. c. 143, §100; and 801 CMR 1.02 et. seq., the Board convened public hearings on June 14, 2007 and March 6, 2008 where all interested parties were provided with an opportunity to testify and present evidence to the Board.

Present and testifying at the hearings was Mark Cutone of BPC Architecture on behalf of Appellant. There were no appearances on behalf of the Appellee.

Exhibits in Evidence

Exhibit 1: State Building Code Appeals Board Appeal Application Form, dated May 17, 2008, including supporting materials and plans.

Exhibit 2: Letter from Boston Inspectional Service Department dated March 5, 2008

Findings of Fact

Based on the credited testimony of the witness and the plans and documents submitted, the Board finds these facts:

1. The building is a five story brick structure built in 1906, divided into five residential condominiums. The building is one in a row of similar buildings on Charter Street. There is no alley allowing access by fire trucks to the rear of the building.

2. The proposed project is a roof deck dedicated to one of the condominium units, on the front side of the roof. There is an existing roof deck on the back of the roof built in 1997.

3. The proposed roof deck would have one means of egress, a stairwell from the roof to the interior stairwell of the building.

4. The Appellant proposes alternative means of compliance:

   (1) A fire alarm annunciatior on the roof connected to the fire alarm system of the building, which is triggered by smoke detectors in the common areas of the building.

   (2) Limiting the occupancy of the deck to 8 people, less than the 10 people allowed into a space with one means of egress under Table 1017.2 of the Building Code.

   (3) Changing the door to swing from the deck instead of to the deck.

   (4) Define an area of refuge on the roof between the two roof decks.

5. The Appellant states that the stairway is greater than 36 inches in width and thus compliant with 780 CMR 1014.8.1 and the headroom on the stairway exceeds 80 inches and is compliant with 1014.4.

6. In a letter (Exhibit 2) Boston opposes granting the variance, as it states the roof deck would not be in compliance with the Building Code.

Decision

Pursuant to M.G.L. c. 143, § 100, the Board has the authority to decide appeals by those "aggrieved by an interpretation, order, requirement, direction or failure to act by any state or local agency or any person or state or local agency charged with the administration or enforcement of the state building code."

No evidence other than that of the Appellant's having been presented on the alleged violations of 780 CMR §§1014.4, 1014.8 and 1014.8.1, regarding egress stairway width and height, we do not reach those issues. The issue before the Board is whether the Appellant should be granted variances from the provisions of 780 CMR 1010.2 (number of egresses) and 1014.8.2

(direction of swing for an egress door), to permit a roof deck to be constructed. For the following reasons, the Board **DENIES** the appeal.

First, the proposed compliance alternative to have a fire enunciator on the roof linked to the fire alarm system would not provide adequate warning to any occupants of the deck. The fire alarm smoke detectors are only installed in the common areas of the stairway and landings which would be the only means of egress from the roof deck. The stairway leading from the roof deck thus might be fully involved with fire or smoke by the time the enunciator sounds. Second, the proposed area of refuge, in the middle of the roof between the existing roof deck and the proposed roof deck, is beyond the reach of firefighters. Firefighters only have access to the front of the building because of the row house construction on the block. Third, changing the door swing from the roof deck into the interior stairway is an egress violation for the building itself and thus violates 780 CMR 1014.8.2. Fourth, limiting the occupancy of the roof deck to eight, under the occupancy the Appellant states is allowed under 780 CMR Table 1017.2, sets an undesirable precedent.

The roof deck will not have two means of egress as specified in 780 CMR 1010.2.

The Chair entertained a motion to deny the variance from the provisions of 780 CMR §§1010.2 and 1014.8.2 for the reasons stated above. The Board voted as indicated below.

..... Granted

..... Rendered Interpretation

.....Granted with conditions

..... Dismissed

.....X....Denied

The vote was:

.....Unanimous

X..... Majority

Robert Anderson

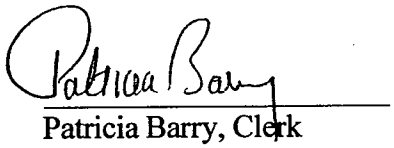
Dana Haagensen

Stanley Shuman

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: July 30, 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 $5.00 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