

PROPERTY MAINTENANCE BOARD OF APPEALS
MINUTES

April 28, 2009

Meeting called to order at 7:00 p.m. with Chairperson Ralph Manting presiding.

Board members present:

Ted Johnson
Jeff Joseph
Ralph Manting
Donald McDonald

Board member excused:

Chris Jacobs

Staff Present:

Warren Hansen, Deputy Director of Public Safety
Scott Mroz, Fire Marshal
Julius Suchy, Zoning Administrator
Eric Williams, City Attorney

There were 13 persons in the audience.

Approval of Minutes from regular meeting of March 24, 2009

A motion for approval of the minutes was made by Ted Johnson, and seconded by Jeff Joseph. The motion was put to a vote and carried with unanimous support from all members.

Public Comment:

Mr. Joe Bechaz requested to be added to the end of the agenda so he could be heard regarding the Board's decision of March 24, 2009 meeting upon which his postponement and appeal was denied. The Board granted Mr. Bechaz his request.

General Business:

PUBLIC HEARING:

Chairperson Manting opened the Public Hearing at 7:00 p.m. to consider an appeal from Frank and Ruth York. This is a Public Hearing for Appeal #01-2008 which is a request for a variance or modification of the International Property Maintenance Code 2006 edition from the property owners of parcel number 54-17-11-458-014, 901 Colburn Avenue, Big Rapids, MI concerning the replacement of existing basement egress windows in all basement level apartments.

Applicant Statement:

Attorney Michael A. Figliomeni stated for the record that this hearing was not for a variance but for an application for appeal of Ordinance Section 111.1 pertaining to the November 21, 2008 citation letter that Mr. and Mrs. York received. Fire Marshal Scott Mroz stated that was correct.

Attorney Figliomeni stated that he was concerned about the application for appeal of the ordinance. He questioned the appeals procedures and would like more information.

Mr. Mroz suggested that he present his PowerPoint presentation then if there are any questions he can answer them at the end. Mr. Mroz did his PowerPoint presentation which is attached to these minutes.

The following is the recommendations of Scott Mroz the Fire Marshal:

- Permanently install an eight (8) to ten (10) inch step under the emergency escape window in each basement sleeping unit.
- Install a casement window in each basement sleeping unit which would provide the minimum net clearance for egress.
- Modify the existing windows so both sashes remove allowing for maximum egress area.
- Install a replacement windows where both sashes remove allowing for maximum egress area.

The following is an alternative corrective actions recommended by Mr. Mroz.

- Install a residential sprinkler system in accordance with NFPA standards throughout each residence. This would effectively allow the existing egress components to remain in place.

Upon the conclusion of the PowerPoint, Mr. Mroz gave his professional opinion as follows:

In accordance with the International Property Maintenance Code, the International Fire Code and my professional opinion, the basement windows located at 901 Colburn pose a distinct hazard to life and shall be corrected. Additionally, a rental housing certificate will not be issued until corrective actions are completed.

Eric Williams, City Attorney, asked Mr. Mroz "what is the distinct hazard posed by the windows"? Mr. Mroz replied that gases build up along with black smoke which impairs a person's judgment. A person's judgment is altered and they need a second means of egress. If a window is too small, it is almost impossible to get out.

Mr. Figliomeni set up display posters on an easel with two excerpts from the International Property Maintenance Code. Those are as follows:

702.1 General: A safe, continuous and unobstructed path of travel shall be provided from any point in a building or structure to the public way. Means of egress shall comply with the International Fire Code.

702.4 Emergency Escape Openings:

Required emergency escape openings shall be maintained in accordance with the code in effect at the time of construction, and the following. Required emergency escape and rescue openings shall be operational from the inside of the room without the use of keys or tools. Bars, grilles or similar devices are permitted to be placed over emergency escape and rescue openings provided the minimum net clear opening size complies with the code that was in effect at the time of construction and such devices shall be releasable or removable from the inside without the use of a key, tool or force greater than that which is required for normal operation of the escape and rescue opening.

Mr. Figliomeni asked Mr. Mroz to walk through the citation letter that was sent to Mr. and Mrs. York. A copy of that letter is attached to the minutes.

Mr. Figliomeni commented that section 702.4 was never mentioned in the citation letter. Mr. Mroz commented that was correct because that was a requirement for maintenance of that. Mr. Figliomeni asked Mr. Mroz if he then went to section 702.1 of the International Property Maintenance Code than to 1026 of the International Fire Code. Mr. Mroz state that was correct. Mr. Figliomeni asked if Mr. Mroz than went back to section 1027 of the International Fire Code than cited the Maintenance certificate requirement of the ordinance of the City. Mr. Mroz stated that he also cited section 1026.2, 1026.2.1 and 1026.3. Mr. Figliomeni asked if Mr. Mroz also cited 1028. He stated yes he did.

Mr. Figliomeni stated that 702.1 of the International Property Maintenance Code specifically refers to the International Fire Code. Mr. Mroz stated that is does. Mr. Figliomeni asked if the City had adopted the International Fire Code and Mr. Mroz stated that they have not. Mr. Figliomeni stated that Section 702.4 does not mention the International Fire Code and for that reason cannot rely on the International Fire Code.

Mr. Figliomeni gave definitions of egress and emergency escape and rescue opening stating that they are defined differently so in fact they are two different things. Mr. Mroz commented that they are components of each other and disagrees with Mr. Figliomeni's interpretation that they are different.

Mr. Figliomeni commented that he understands that egress means leaving the building by normal means of egress, the door hallways, stairs, etc. and there is a distinct notion of emergency escape. Mr. Mroz stated that there was a difference.

When reading 702.4 Mr. Figliomeni asked if after the first sentence if the rest of the definition applies to the Yorks'. Mr. Mroz answered no.

Mr. Figliomeni asked if "distinct hazard to life was cited in section 1026 of the International Fire Code. Mr. Mroz stated that it was cited in section 1027. Mr. Figliomeni commented that 1027 refers to egress for existing buildings and that egress is defined differently from emergency escape. Mr. Mroz commented that even though they are defined differently they are components of each other.

Mr. Figliomeni referred to section 1028.6 of the International Fire Code and asked if Mr. Mroz was suggesting that the windows that are in question had been maintained in a way that was contrary to the code that was in effect at the time of construction. Mr. Mroz stated no.

In the letter to the Yorks' there were no obstructions noted. Mr. Mroz reviewed the York's file from previous years and found no problems prior to 2005. In 2005 the windows became an issue. From 1987 to 2005 there were no citations for these windows. In 2008 the windows became a distinct hazard.

Mr. Figliomeni stated in the letter that the only remedy is to replace these windows. Mr. Mroz stated that he did not state his recommendations in the letter but stated them tonight in his PowerPoint presentation. Mr. Figliomeni stated that the letter stated that the windows needed to be altered or replaced and that is considered construction. Mr. Mroz commented that it depended on what you wanted to do. Making the windows bigger would mean construction.

Mr. Figliomeni presented a document from the Department of Labor and Economic Growth in Lansing regarding building codes. He also presented the commentary to 702.4 Emergency Escape Openings. Both are attached to the minutes. He commented that 702.4 of the International Property Maintenance Code and 1028.6 of the International Fire Code stated the same thing, that windows that are placed according to code at time of construction can stay there.

In closing Mr. Mroz gave his experience of having to pull charred bodies out of a fire because they did not have adequate egress. He is passionate about his job and believes that it is his responsibility to look out for those people.

Ruth York gave a brief description of the apartment complex. She stated she purchased it in 1987, which at that time all the apartments were rented out. She had some small problems during inspection but no big problems and windows were never cited nor were they ever an issue. In 2005 all that changed. The Zoning Administrator plus a couple of firefighters came to inspect the complex. They started measuring the

windows, taking off window locks, and saying that the windows needed to be replaced. Mr. Figliomeni asked Mrs. York if anyone had reason to egress and ingress out of the windows. Mrs. York stated that some of the tenants had forgotten their keys and went in through the window. Mrs. York described herself as a short handicapped lady who can get out of the windows.

Chairperson Manting commented that two names always seem to be coming up when it comes to windows. He asked if any other landlords had problems with their windows. Mr. Mroz stated that 90 – 95% of the landlords had already complied.

Chairperson Manting called for those who wished to speak in support of the request.

Cathy Heavner, 11382 190th, Mecosta, stated that in 2003 she was asked to replace her windows because they were ¼ “ to small. She complied but was not happy.

Sue Glatz, 17810 205th, Big Rapids, received disturbing letters stating that she had to have 5.0 windows. Her windows were off by ¼ to ½ of an inch. No one wants anyone to die in our property but the building code states what code was in effect at the time of construction.

Joe Bechaz, 8613 Wilson Road, Mecosta, in 2005 had a rental inspection where Scott Mroz and Jim Peek came and stated that Mr. Bechaz needed to replace some windows because of the State building code. Mr. Bechaz asked to see the code. He was never showed the code and there was never any mention of a Board of Appeals. He was sent several letters regarding this issue.

Ruth York, 217 Sanborn, Big Rapids, never refused to replace the windows but did call the State for an interpretation and asked if she had to replace her windows. The gentlemen that she talked to at the State advised her that she did not have to replace the windows if she had not done any remodeling.

Craig Chapman, 910 Cypress, Big Rapids, started beautifying his houses with siding one to two houses a year to make them look better. When the window issue surfaced, he had to put \$80,000 into windows. Now he has no money to side his other houses.

Eric Williams, City Attorney, directed the board to look at some critical issues in the code. The codes are as follows:

- Fire Code 1026.1 Emergency Escape and Rescue
- Fire Code 1027.1 Means of Egress for Existing Buildings
- IPMC 702 Means of Egress
- IPMC 702.4 Emergency Escape Openings

Mr. Figliomeni gave closing remarks and commented that Mr. Mroz has a job to do but he is asking the Yorks' to reconstruct their units. The State building code states that

you cannot do this. If the windows are not altered than they remain unchanged. 702.4 states "required emergency escape openings shall be maintained in accordance with the code in effect at the time of construction".

Chairperson Manting called for those who wished to speak in opposition of the request. No comments.

Chairperson Manting called for any written or telephonic correspondence received by staff. They were none received.

Chairperson Manting closed the Public hearing at 8:50 p.m. and the Board entered into fact finding.

This is for Appeal #01-2008 which is a request for an application for appeal of Ordinance Section 111.1 for Ruth and Frank York of parcel number 54-17-11-458-014, 901 Colburn Avenue, Big Rapids, MI concerning the replacement of existing basement egress windows in all basement level apartments.

Mr. Ted Johnson asked if people really do pop out the screens on the windows to get in and out of their apartment and asked why the windows are not locked. Mrs. York explained that it is the tenants' preference to lock or not lock the windows and yes they do at times go through the window.

Mr. Johnson stated that he went and seen the windows in question and does not believe that he could fit through the windows.

Mr. Jeff Joseph asked if by definition, are the windows emergency escape windows. Mrs. York stated that they were and they met code at the time.

Mr. Ralph Manting asked Mr. Mroz if one of his alternatives was to install a step under the windows. Mr. Mroz stated that yes and that would entail 23 steps in all.

Mr. Johnson believes that it is a safety question now. Mr. McDonald commented that 40 to 50 years ago there were no seat belts but now we are ticketed for not wearing one. The alternative of installing the steps sounds like a good suggestion. He is not in favor of replacing the windows.

Motion was made by Jeff Joseph, seconded by Donald McDonald to grant the appeal to Ruth and Frank York.

Yeas: Joseph, Manting, McDonald

Nays: Johnson

Motion was declared passed.

REOPENING OF AN APPEAL

Appeal #02-2008 request from Joe and Mary Bechaz for a variance or modification of the International Property Maintenance Code 2006 edition on Parcel #17-14-176-011, 425 oak Street in Big Rapids concerning the installation of nonexistent basement egress windows in apartment numbers three (3) and five (5) was denied at the March 24, 2009 meeting due to failure to show at the meeting.

Appeal request for a postponement of the public hearing of March 24, 2009 was also denied.

Applicant Statement:

Mr. Joe Bechaz sent a letter to Chairperson Manting requesting a postponement of the March 24, 2009 meeting date. Mr. Manting informed Mr. Bechaz that he did not have the authority to cancel a meeting and that the board could only do that. He would bring it up to the board for a vote that night. Mr. Bechaz did not have all of the information that was needed from the City of Big Rapids for the Public Hearing. He requested the information on January 16, 2009 and received it on March 16, 2009. Mr. Bechaz did not realize that he needed to attend the meeting since he mailed Mr. Manting on March 20, 2009 of his request to have a postponement.

Mr. Joseph asked if Mr. Bechaz could file a re-appeal to the same board. Mr. Williams stated that yes the board can reconsider to adjourn and reconsider now at this board.

Motion was made by Jeff Joseph, seconded by Donald McDonald to grant Mr. Bechaz's request for an adjournment.

Yeas: Johnson, Joseph, Manting, McDonald

Nays: None

Motion was declared passed.

A Public Hearing was set for May 26, 2009 at 7:00 at City Hall to hear Joe and Mary Bechaz's request for a variance or modification of the International Property Maintenance Code 2006 edition on Parcel #17-14-176-011, 425 oak Street in Big Rapids concerning the installation of nonexistent basement egress windows in apartment numbers three (3) and five (5).

Other business: None

There being no further business to come before the property Maintenance Board of Appeals, the meeting was adjourned at 9:20 p.m.

Respectively Submitted,
Tamyra Gillis
Acting Secretary