



**APPROVED MINUTES OF THE REGULAR SESSION OF THE
BUILDING BOARD OF APPEALS OF THE CITY OF ANN ARBOR
MARCH 11, 2009 - 1:30 P.M. – COUNTY BUILDING, 200 NORTH MAIN STREET
LOWER LEVEL CONFERENCE ROOM, ANN ARBOR, MI 48104**

MEETING CALLED TO ORDER at 1:42 p.m. by Chair Kenneth Winters

ROLL CALL

Members Present: (5) K. Winters, A. Milshteyn,
P. Darling, R. Hart and R. Reik

Members Absent: (1) S. Callan

Present: (3) A. Savoni, K. Chamberlain and
B. Acquaviva

A - APPROVAL OF AGENDA

A-1 Approved without objection.

B - APPROVAL OF MINUTES

B-1 Draft Minutes of the February 11, 2009 Regular Session (*Not Available*)

C - APPEALS & ACTION

C-1 BBA09-009 – 401 East Washington Street

Barry Levin of Joseph Freed & Associates, agent for this property, is requesting a variance from Section 1009.12 of the 2003 Michigan Building Code.

Description and Petitioner Presentation

The applicant is requesting a variance from Section 1009.12 of the 2003 Michigan Building Code that states "*In buildings located four or more stories in height above grade plane, one stairway shall extend to the roof surface...*" it further states that "*In buildings without an occupied roof, access to the roof from the top story shall be permitted to be by an alternating tread device.*"

Petitioner is constructing a 10 story residential/retail/office building. The stair to the penthouse is not code compliant. The typical floor to floor height of the occupied floors 2 through 10 is 10 foot 8 inches. These stairs have a 6-3/4 inch riser and an 11 inch tread and meet code. The stair to the penthouse is a continuation of these stairs. The distance between the 10th floor and the penthouse is 13 feet 0 (zero) inches. The riser height on these stairs is 8-3/16 inches and the tread width is 9-1/4 inches.

To make the stair code compliant, they would need to remove the existing stair and either replace it with a stair that meets code, which would be difficult in the confined space of the existing constructed stairwell, or use alternating tread device, which the code would also allow.

51 The question that has also arisen is to whether the penthouse is considered a floor and as such
52 would need a code compliant regular stair up to it. Section 1509.2 states "A penthouse,
53 bulkhead or any other similar projection above the roof shall not be used for purposes other than
54 shelter of mechanical equipment or shelter of vertical shaft openings in the roof. Provisions such
55 as louvers, louver blades or flashing shall be made to protect the mechanical equipment and the
56 building interior from the elements. Penthouses or bulkheads used for purposes other than
57 permitted by this section shall conform to the requirements of this code for an additional story."
58 Since this description fits the penthouse in this building, it would not be considered an additional
59 story, not need a code compliant regular stair, and Section 1009.12 would apply.

60
61 Mr. Barry Levin, Applicant and Mike Nicklowitz, Architect from Meier Group were present to
62 speak on behalf of the appeal. Mr. Levin stated that the code cites that they are allowed to put
63 in a stairway or alternating tread as access to the non-occupied penthouse on the top of our ten
64 story building. What we have in place now is a stairway, but the rise of the treads do not match
65 the rise for the rest of the building (which is code compliant). We're asking to keep what we
66 have in lieu of installing an alternating tread or ladder access to the roof. We believe this is a
67 safer means for the mechanical engineers that need to access that equipment.

68
69 **Recommendation:**

70
71 A. Savoni (*Building Official*) – Staff is supportive of this request. While the petitioner has erred
72 by not placing a code compliant stair to the penthouse, forcing them to remove it and replacing it
73 with a code compliant alternating tread device would not be as safe, in our opinion, for use in
74 accessing the penthouse for maintenance. We feel it would be safer for personnel carrying
75 equipment and tools to the penthouse to use the existing stair.

76
77 We would suggest that if the Board is supportive of granting any variance, that the stair be
78 marked so that personnel using it are fully aware that the rise and run are different and that the
79 stair is making a change at the landing. This can be accomplished by any or all of the following:

- 80
- 81 • Add a removable chain across the bottom of the stair to the penthouse.
 - 82 • Painting the nosing of all of the treads safety yellow.
 - 83 • Adding signage.
 - 84 • Adding additional lighting in the stairwell.
- 85

86 Staff feels that in doing this, an equivalent form of construction has been proposed and would
87 support this request with these contingencies.

88
89 K. Chamberlain (*Fire Marshall*) – The Fire Department concurs with the Building Department,

90
91 **Comments and Questions from the Board**

92
93 P. Darling – Is there a way to access the roof for maintenance? (B. Levin – Yes there is a door
94 near the penthouse directly out.)

95
96 K. Winters – We don't have a plan of the Penthouse – just the roof plan. (B. Levin – The floor
97 level of the penthouse is just about the level of the roof. (*Plan is discussed*). There are two
98 stairs – which stair? (East stair). Do you also have a roof access hatch? (No.) The lower right
99 of this plan states "Roof Access" – (This was our demonstration for another approach if we had
100 to put a ladder through to the roof. It's not actually in place. This would be the only way we
101 could access the roof if we're not allowed to keep the current stair that we have.)

102
103 P. Darling – What is the rise and run of the stair you want to keep? (Rise is 8 3/16 and the
104 Tread is 9 1/4.) Pretty steep then.

105 **Discussion:**

106
107 *(Board and Staff discuss how and what to require to partition that area off from the public).*

108
109 K. Chamberlain – Stated that the door to the penthouse should NOT be locked so that
110 emergency personnel can access that area if needed.

111
112 **MOTION**

113
114 Moved by R. Reik, Seconded by P. Darling, **“In regard to Appeal Number BBA09-009,**
115 **401 East Washington Street, that a variance be granted from Section 1009.12 of the 2003**
116 **Michigan Building Code, to permit a non-compliant stair extending to the roof’s surface**
117 **with a rise of 8 3/16” and a tread of 9 1/4”, provided that a removable, non-locking chain**
118 **is installed across the bottom of the stairs; that the nosings of the treads are painted**
119 **safety yellow and that signage is added to the chain indicating that this is solely for**
120 **maintenance staff and repair personnel only. We find this to be equivalent to what the**
121 **Code requires.**

122
123 **On a Voice Vote – MOTION PASSED – UNANIMOUS (Variance Granted)**

124
125
126 **C-2 BBA09-010 – 2475 Adare Road**

127
128 **Vinewood Custom Builders, Inc., contractor for this property, is requesting a variance**
129 **from Section R310.1 of the 2003 Michigan Residential Code.**

130
131 **Description and Petitioner Presentation**

132
133 The applicant is requesting a variance from Section R310.1 of the 2003 Michigan Residential
134 Code that states *“Basements with habitable space and every sleeping room shall have at least*
135 *one openable emergency escape and rescue opening. Where emergency escape and rescue*
136 *openings are required, they shall have a sill height of not more than 44 inches above the floor.”*

137
138 Petitioner has remodeled the second floor of this residence. The master bedroom was included
139 in this project and has an alcove for a small office. The egress window for the bedroom is in this
140 office area. Petitioner has installed a built-in desk in this space located below the egress
141 window. The desk is 13 inches wide and 31 inches above the floor, at the window. The window
142 meets all code requirements for size. The sill height is 33-1/4” above the floor.

143
144 Mr. Michael Clark of Vinewood Custom Builders was present to speak on behalf of the appeal.
145 He stated that he wanted to clarify that he is not asking for a variance from the Building Code;
146 the window in place does meet all of the requirements of Section 310 in square footage,
147 minimum heights and widths; however, the inspector stated that the ledge in front of that window
148 with the built in desk was an issue. At this point it is a 13 inch ledge, supported by a 12 inch
149 deep cabinet, so in effect it does not hinder egress emergency entrance or exit. There is a roof
150 immediately outside this window at the same floor height of this building, so it’s convenient to
151 climb in and out. We feel that the built in desk is not an obstruction.

152
153 **Recommendation:**

154
155 A. Savoni *(Building Official)* – Staff would not be supportive of this request. The code
156 specifically states that the bottom of the opening must be a maximum of 44 inches above the
157 floor, and while the sill height from the finished floor is at 33-1/4”, egress is obstructed by the
158 built-in desk.

159 K. Chamberlain (*Fire Marshal*) – The Fire Department concurs with the Building Department.

160

161 **Comments and Questions from the Board**

162

163 *(Discussion among the Board about steps, furniture, obstructions concerning egress, etc.)*

164

165 **Discussion:**

166

167 **MOTION**

168

169 Moved by P. Darling, Seconded by R. Reik, “In regard to Appeal Number BBA09-010
170 **2475 Adare Road, to allow the installation of a built in desk area in front of the egress**
171 **window, provided that the desk area is capable of supporting a 250 lb. person, and that a**
172 **3 x 5 inch size sign be permanently affixed adjacent to this window, indicating that the**
173 **desk is a component of the emergency egress system. We find this to be equivalent to**
174 **what the code requires.”**

175

176 **On a Voice Vote – MOTION PASSED – UNANIMOUS (Variance Granted)**

177

178

179 **C-3 BBA09-011 – 811 Brookwood Place**

180

181 **Scott Klaassen of F. Scott Company, contractor for this property, is requesting a**
182 **variance from Sections R311.5.1 and R311.5.4 2006 Michigan Residential Code.**

183

184 **Description and Petitioner Presentation**

185

186 The applicant is requesting a variance from the following two sections of the 2006 Michigan
187 Residential Code

188

- 189 • R311.5.1 which states “*Stairways shall not be less than 36 inches in clear width at all*
190 *points above the permitted handrail height and below the required headroom height.*
191 *Handrails shall not project more than 4.5 inches on either side of the stairway and the*
192 *minimum clear width of the stairway at and below the handrail height, including treads*
193 *and landings, shall not be less than 31.5 inches where a handrail is installed on one side*
194 *and 27 inches where handrails are provided on both sides.”*
- 195 • R 311.5.4 which states “*There shall be a floor or landing at the top and bottom of each*
196 *stairway. The width of each landing shall not be less than the width of the stairway*
197 *served. Every landing shall have a minimum dimension of 36 inches measured in the*
198 *direction of travel.”*

199

200 This is rental property. This stair goes from the first to the second floor. Previously there was a
201 spiral stair in this location. It was removed and replaced with the current non code compliant
202 stair. Petitioner states that this work was done by the previous owner. Petitioner is proposing to
203 rebuild the stairs but due to structural considerations it will have the following restrictions:

204

- 205 • The stair will have a 27 inch width. Code requires a minimum 36 inch width.
- 206 • The landing between the upper and lower portion of the stairs will be 24 inches deep, by
207 27 inches wide. Code requires the landing to be 36 inches deep by 36 inches wide
208 minimum.

209

210 Petitioner writes that there is a central hall on the second floor that connects to a second
211 exterior stair. Petitioner does not state whether there is an egress window in each of the two
212 second floor bedrooms.

213 **Recommendation:**

214
215 A. Savoni (*Building Official*) - Staff would be supportive of granting this request based on
216 Appendix J of the code which states: *"Where compliance with these provisions or with this code*
217 *as required by these provisions is technically infeasible or would impose disproportionate costs*
218 *because of structural, construction or dimensional difficulties, other alternatives may be*
219 *accepted by the building official."*

220
221 If the board is supportive of granting these requests, a fully automatic, building wide smoke
222 detection system should be a condition of the variance.

223
224 K. Chamberlain (*Fire Marshal*) – The Fire Department yields to the Building Department.

225
226 **Comments and Questions from the Board**

227
228 **The Board noted that this item was denied in 2008. Staff stated that this home is now**
229 **owned by a new person, and they have applied for this variance.**

230
231 **Discussion:**

232 **MOTION**

233
234 Moved by P. Darling, Seconded by Reik, **"In Regard to Appeal Number BBA09-011, 811**
235 **Brookwood Place, the Board tables this hearing to no later than the Regular Session of**
236 **the BBA in May 2009. Petitioner did not appear for this hearing."**

237
238 **On a Voice Vote – MOTION TO TABLE - PASSED – UNANIMOUS (TABLED until May 2009).**

239
240 ***Staff Note: As of 3/22, 2008, Contractor has decided to withdraw this application and put**
241 **in the original spiral staircase that had previously been approved with another variance.**

242
243 **D - OLD BUSINESS**

244
245 **D-1 BBA09-004 – 1880 Coronada (Revised – Originally heard 1/2009 –**
246 **Tabled at the 1/2009 Meeting for lack of drawings and information from the**
247 **petitioner).**

248
249 **Alpha Remodeling, contractor for this property, is requesting a variance from Sections**
250 **R305.1 and R311.5.2 of the 2006 Michigan Residential Code. Contractor states he no longer**
251 **needs a variance on Section R311.5.2.**

252
253 **Description and Petitioner Presentation**

254
255 The applicant is requesting a variance from the following section of the 2006 Michigan
256 Residential Code:

- 257
258
- 259 • Section R305.1 that requires a 7 foot 0 (zero) inch ceiling height in a basement with
260 habitable space, and allows beams/girders not less than 4 feet on center to project
261 below, a maximum of 6 inches.
 - 262 • Section R311.5.2 which states: *"The minimum headroom in all parts of the stairway shall*
263 *not be less than 6 feet 8 inches measured vertically from the sloped plane adjoining the*
264 *tread nosing or from the floor surface of the landing or platform."* (Petitioner is no longer
265 requesting a variance on this section)

266 Petitioner is creating finished space in the basement. This space will contain an egress window.
267 The code violations requiring the variances are as follows:

- 268
- 269 • The petitioner plans to finish the drops around the ductwork. The finished ceiling height
270 under the drops will be 6 foot 4 inches. Code requires a minimum ceiling height of 6 foot
271 6 inches. The width of the drop is proposed to be 5 foot 6 inches wide; the code allows a
272 maximum of 4 foot wide. **The height of the soffit is no longer an issue for this
273 variance, only the width.**
- 274 • Petitioner also has low headroom at the existing stair. The existing headroom is 6 foot 4
275 inches. Code requires a minimum of 6 feet 8 inches.
- 276 • Petitioner has not provided a sketch of the stair showing the location of the low
277 headroom. **(Petitioner is no longer requesting a variance on this issue)**

278

279 Mr. Alan Lutes of Alpha Remodeling was present to speak on behalf of the appeal, filling in for
280 Randy Schreck who originally submitted the appeal. He stated that they have measured the
281 stairs and provided a cross section drawing that shows the clear space from nose and tread to
282 ceiling and believe that the stairs meet the 7 ft. requirement. He went on to say that he is
283 unsure, but believes that they are in disagreement with the inspector on the measurements.

284

285 There are two issues in this particular case. The basement has been finished and some issues
286 have arisen. We were previously granted a variance for a ceiling height of 6'10" and a finished
287 ceiling height of 6'4" for an 'L' shaped soffit and agreed to put in building wide smoke detectors
288 and an egress window related to that. The current issues are finished stair headroom height
289 under the 6'8" requirement. Our measurements show a 7' to 7'1" ceiling height.

290

291 The other issues are relating to soffits. When we received the original variance for the "L"
292 shaped soffit, we apparently have one soffit that was finished out at 4'8" wide, yet it is above
293 6'5" clearance. The inspector felt that because that soffit was not specified in the original
294 variance for exceeding the maximum width allowed (4'), we needed a variance for that.

295

296 On both of these issues, this permit was issued on July 22, 2008. As such, this was issued
297 under the 2003 Michigan Residential Code. If this permit were issued ten days later under the
298 2006 Code, all of these 'issues' would be 'non-issues,' as there is new information under
299 Section "J." Relating to the stair situation, sometime in 2008, some but not all of the Ann Arbor
300 Building inspectors began interpreting the Code such that finishing a basement constitutes a
301 'change in use,' and as such all stairways must comply with the current code as would be
302 required in a new structure. We've worked in over a dozen different jurisdictions under this
303 same Code, and no other Building Dept. is interpreting the code in this manner.

304

305 Other Building Inspectors seem to apply a standard of reasonableness as defined under Section
306 "J"; for existing buildings and structures, specifically AJ 101 under Purpose and Intent (*Quotes*
307 *Section*). He went on to say that the City of Ann Arbor is the only one applying these strict
308 standards. Some building inspectors decided to interpret this differently. There was no public
309 notice relating to this, nothing stated on the plans during plan review, etc. Prior to this the
310 inspectors did not flag these items. (*The Board discussed what types of clearances the*
311 *petitioner actually has*).

312

313 **Recommendation:**

314

315 A. Savoni (*Building Official*) – Staff is supportive of a variance for the width of the soffit at the
316 ductwork. We would suggest that if the Board is supportive of granting a variance, a fully
317 automatic, building wide smoke detection system be a condition of the variance.

318

319 K. Chamberlain (*Fire Marshal*) – The Fire Department concurs with the Building Department.

320 **Comments and Questions from the Board**

321
322 K. Winters – If there were a section drawing (which you stated you provided) – that we don’t
323 have, then we could tell what those current clearances are. (L. Lutes – If you wish to table this I
324 can provide a cross section at that time.)

325
326 R. Hart – If we had a diagram that showed the nosing to the ceiling height is no less than 6’6”
327 consistently, we could grant the variance.

328
329 Mr. Lutes also stated that they were accused of trying to do something underhanded to get their
330 permits finalized out, related to this, and that was not the case. “We were trying to get inspections
331 so that we could identify any issues that the inspector might have before we came before the
332 Board again. We’re into a cycle of ‘get an inspection, come to the Board for a variance, get
333 another inspection under another interpretation, come back to the Board,” so it was never or
334 intention to do anything underhanded.”

335
336 B. Acquaviva – Stated that no one ever accused them of that, and that complaint didn’t involve
337 this address, it was another address and another one of five other appeals that they have
338 outstanding. It had to do with two others scheduled today and those addresses were both
339 scheduled for finals. What you are doing, unfortunately with our staff, is taking up time for an
340 inspector to come to your location and say “yep – it’s not right, do it over again...” In essence,
341 they’re being paid to be a barometer to see if your job is correct. We assume that if you are
342 scheduled for a Final Inspection, that your job is complete and ready for closure.

343
344 “What your employee (Scott) did was show our inspector the former variance that this Board
345 granted for this appeal, and said, “See ... I have a variance.” Unfortunately, our inspector didn’t
346 scrutinize that piece of paper, and he’s at a disadvantage because he is a temporary inspector
347 that does not have a field computer to be able to verify this information. He should have
348 measured everything in that area, but he didn’t – he took your employees word in good faith,
349 and I happened to stumble on this issue. Because you didn’t have an approved variance on
350 these areas in question, a final inspection should not have been scheduled. You are also taking
351 up valuable time that inspectors could be using to final out other customer’s permits, but can’t
352 get that inspection done because you are using inspector time unnecessarily.”

353
354 **MOTION**

355
356 Moved by R. Hart, Seconded by P. Darling, “**In regard to Appeal Number BBA09-010, 1880**
357 **Coronada Street, the Board grants a variance from Section R305.1, to permit a soffit with**
358 **a width of 4’8” and a minimum height of 6’5” and to permit another variance from Section**
359 **R311.5.2, allowing a headroom in the staircase of no less than 6’6” uniformly throughout**
360 **the sloping plane of the stair, provided a fully automatic, building wide smoke detection**
361 **system be installed as a condition of these variances, and this will meet the requirements**
362 **of the intent of the Code.”**

363
364 **On a Voice Vote – MOTION TO APPROVE – UNANIMOUS (Additional Variances Granted).**

365
366 B. Acquaviva – *(To the Building Official and the Board)* I want to ask you all now if you would be
367 agreeable to granting another hearing without a fee in this particular case *if by some chance*
368 *that the inspector finds another issue when this forthcoming final is done?* –We have a new rule
369 this year that if you must return to the Board because something was amiss during the final
370 inspection after you have already gone to the Board for your variance that you would have to
371 pay an additional fee – because in essence, it’s a new appeal. Since this one has been heard
372 twice without a fee, and considering the circumstances, I’d like permission to grant a ‘no fee’
373 hearing for this if something is not to code. *(Agreed).*

374

375

(She asked Mr. Lutes to have his employee call her directly if this address and related permit has additional problems at the final).

376

377

Mr. Lutes thanked the Board and Staff for that consideration.

378

379

D-2 through D5

380

381

382

***D-2 2008-B-025 – 805 Ivydale Street - *D-3 – 2008-B-026 – 601 Dartmoor Road,**

383

***D4 – 2008-B-015 – 1905 Dunmore Road and *D-5 – BBA08-003 – 2411 Londonderry Road**

384

385

Most of the above variances have been withdrawn as petitioner has now re-filed for these permits under the new 2006 Michigan Residential Requirements.

386

387

388

E - NEW BUSINESS – None.

389

390

F - REPORTS & COMMUNICATIONS – None.

391

392

G - AUDIENCE PARTICIPATION – GENERAL

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394

395

ADJOURNMENT

396

397

The meeting was adjourned without opposition at 3:40 p.m.

398

399

Minutes prepared by B. Acquaviva, Administrative Support Specialist V