APPROVED MINUTES OF THE REGULAR SESSION OF THE BUILDING BOARD OF APPEALS OF THE CITY OF ANN ARBOR Wednesday, June 10, 2009.

MEETING CALLED TO ORDER at 1:32 p.m. by Chair Kenneth Winters

ROLL CALL

Members Present:	(5)	K. Winters, S. Callan P. Darling, R. Hart and R. Reik
Members Absent:	(0)	
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

Moved by R. Reik, Seconded by R. Hart, **"that the Minutes of the February 11, 2009 Regular Session be approved as presented."**

On a Voice Vote – MOTION TO APPROVE **– *PASSED* - UNANIMOUS**

B-2 Draft Minutes of the March 11, 2009 Regular Session

Lines 9 and 10 – members present should not include S. Callan, but should include R. Reik.

Moved by R. Reik, Seconded by R. Hart, **"that the Minutes of the March 11, 2009 Regular Session be approved as amended."**

On a Voice Vote – MOTION TO APPROVE **– *PASSED* – UNANIMOUS**

Note: *There were no Building Board Meetings during April and May of 2009 – so there are no minutes to report for those months.*

C - APPEALS & ACTION

C-1 BBA09-013 – 120 West Washington Street

John Carlson, owner of this property, is requesting a variance from Section **621.4 of the 2006 International Fuel Gas Code**, to install a non-vented gas appliance (fireplace).

Description and Petitioner Presentation

The applicant is requesting a variance from section 621.4 of the 2006 International Fuel Gas Code which states: *"Unvented room heaters shall not be installed within occupancies in Groups A, E and I."*

Petitioner is requesting a variance from the code to allow the installation of a ventless fireplace in restaurant occupancy.) Code prohibits this installation.

Petitioner is proposing an alternate method. *"The installation will have burners at 54 inches above the finished floor. Breathing zone is 46 inches above the finished floor. We will add additional fresh air in accordance with the International Fuel Gas Code mechanical ventilation requirement of .35 CFM per 1000 BTU's. Unit will be located behind a type 1 hood, which will maintain a negative pressure at all times. No products of combustion will remain in place."*

Petitioner was not present, but a Mr. Luis Alarcon of Robertson Morrison heating and cooling was present to speak on behalf of the appeal. He stated that they would like to install a ventless fireplace in Grizzly Peak restaurant. Currently by the letter of the Code, it is an "A" occupancy, and does prohibit that installation. They propose an 'alternate method' for the installation as provided by the code – using the installation of the breathing zone at 46 inches above the floor, the burners will be located 52" above the breathing zone. Oxygen depletion in a building starts from the top down, and the unit is equipped with an O2 depletion sensor. The sensor is located lower and will then detect any depletion prior to affecting the breathing zone.

It is also located near a Type 1 hood for a pizza oven. In addition, in accordance with the code, there is a requirement of .35 CFM per thousand BTU's of fresh air required, and we can more than make this up with the rooftop units and other makeup air systems installed in accordance with the exhaust.

Recommendation:

A. Savoni *(Building Official)* – The proposed alternate method, **in theory,** should be an equal or better method. However, the Code specifically states you shall not install this appliance in an "A" Occupancy, and does not offer any exceptions. As a Code Official I can not ignore this statement. However, the Board can accept the alternate method.

Staff recommends acceptance of this request by the Board. Mr. Vern Pappas, city Mechanical Inspector on the project was present to answer any questions the Board might have.

V. Pappas – What they are proposing, in theory, should work. These units are 95 Percent efficient in a laboratory condition. The density in a restaurant (or "A" Occupancy) is much higher, so the oxygen is lower. Carbon monoxide can develop when the burner gets dirty and when it does in a restaurant with heavy traffic patterns and dust, that air is drawn into the burner with the gas and creates combustion fumes (Carbon Monoxide). As long as it gets clean air, it will create Carbon Dioxide and water vapor. With adding extra air as they propose, it should (in theory) keep the environment to code. My issue is a maintenance issue, which doesn't happen in restaurants. A monthly check of this unit would make me more comfortable.

I don't recall the seating arrangement near this proposed device, but code calls for 44" clearance from the front of the fireplace, as people and tables are combustible material. (He asked the

Board to rule on this as there is a liability on me personally if I allow this as an exception, so the Board needs to rule on this).

K. Chamberlain *(Fire Marshal)* – Yields to Building.

Comments and Questions from the Board

R. Hart (to V. Pappas) –These units are somewhat controversial – they are not permitted in some states or in Canada. (V. Pappas – Canada, yes, and any state that recognizes the International Code – 44 of 48 states, they are allowed to install these to the manufactures specifications). Does this device otherwise conform to the maximum allowable un-vented room heater specs? (Yes, it's under the limit, and I haven't seen any over that ANSI standard limit.)

R. Hart (To Petitioner) - Why was it necessary to go with an unvented unit? (Petitioner – That is what the owner requested – aesthetically). But this is sitting right next to a Type 1 hood. (They've built a wall to separate the two.)

V. Pappas – There is a wall, but there is a hole in that wall for where you might, for example, insert a big screen TV – that is where the fireplace sits, and if you go around to the back of that wall, that is where the pizza oven is located; but it's all within the same open space and they can't vent it through the ceiling as there is occupancy above that. It can't be sidewall vented either as there are not enough clearances.

K. Winters – Where is the pizza oven vented? (V. Pappas – That goes up through a chase, but there is no additional room in that chase to add another vent.)

R. Hart – How do you know that the negative pressure is going to be maintained at the same time the other unit is on? (Petitioner – That was done when the air balance study was done on the building. All that equipment would run at the same time.)

Ken Winters – If the power goes out, does the fireplace and the pizza oven go off? Does the gas go off? (V. Pappas stated that there is no separate gas valve for this, so they would go off, but the gas would not shut off.)

Discussion:

(Additional in-depth discussion between the petitioner, inspector and the Board. The inspector suggested that this unit be equipped with a shut-off timer in order to prevent oxygen depletion in case someone does not turn the device off at the end of the business day. The Board agreed in general that if safety measures were added, that the variance might be considered.)

MOTION

Moved by R. Reik, Seconded by R. Hart, **"that in the matter of BBA09-013, 120 West Washington Street**, **that the Board grants a variance from Section 621.4 of the 2006 International Fuel Gas Code to allow an unvented heater in a room with a classification of "A" Type Occupancy, to install a non-vented gas appliance (fireplace) to be installed, provided that additional safety measures are taken to the satisfaction of the Building Official and Mechanical Inspector. These additional measures to be considered include (but are not limited to):**

a. **Required cleaning with monthly inspections during the seasons of use with reports provided to the Building Official or his/her representative.**
b. **Inter-locks between the fireplace and the pizza hood vent fan;**
c. **Required Semi-Annual Inspections for Type 1 exhaust and make-up air associated with the Pizza Oven and the Unvented Fireplace, with reports provided to the Building Official or his/her representative.**
d. **If this dwelling changes hands, the new owner must appear before the board to review this variance and their plans to monitor these devices, or this variance will become null and void.**

We find this to be equivalent to what the Code Requires

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

C-2 BBA09-014 - 1021 Snyder Avenue

Description and Petitioner Presentation

Mark and Lisa Davis-Craig, owners of this property, are requesting a variance from **Sections R 311.5.2 and R311.5.3.2** of the **2003 Michigan Residential Code.**

The applicant is requesting a variance from the following sections of the 2003 Michigan Residential Code:

- Section R311.5.2 which states: "*The minimum headroom in all parts of the stairway shall not be less than 6 feet 8 inches measured vertically from the sloped plane adjoining the tread nosing or from the floor surface of the landing or platform."*
- Section R311.5.3.2 which states: "*Winder treads shall have a minimum tread depth of 10 inches measured as above at a point 12 inches from the side where the treads are narrower. Winder treads shall have a minimum tread depth of 6 inches at any point. Within any flight of stairs, the greatest winder tread depth at the 12-inch walk line shall not exceed the smallest by more than 3/8 inch."*

Petitioner is remodeling a portion of the basement with a bedroom and a bath. The stair to this basement is not code compliant for the following reasons:

- According to the building inspectors' notes, the headroom on the bottom riser is 6 foot seven inches. This dimension will be less once carpet is added. The code requires a minimum 6 foot 8" head clearance.
- The winder stairs do not meet code. Per the drawing submitted, the stairs do not meet the required minimum tread depth of 6 inches at all points.

Lisa Davis Craig, owner and petitioner was present to speak on behalf of the appeal. She stated that she had nothing to add to the staff report but was present to answer any questions that the Board may have.

Recommendation:

***A. Savoni* (Building Official)** – *Staff would be supportive of granting this request based on Appendix J of the code which states:* "Where compliance with these provisions or with this code

as required by these provisions are technically infeasible or would impose disproportionate costs because of structural, construction or dimensional difficulties, other alternatives may be accepted by the building official."

We would suggest that if the Board is supportive of granting a variance, a fully automatic, building wide smoke detection system be a condition of the variance.

***K. Chamberlain (Fire Marshal)** – I concur with the Building Official, but would request that there NOT be a lock on the bedroom door to facilitate access to the egress window.*

Petitioner states that there are two egress windows, one in the bedroom and one in the main room.

Comments and Questions from the Board

P. Darling – Is the stairway existing or was it renovated? (Petitioner – Existing.)

K. Winters – Would it be possible to re-do the last three stair treads to meet code?

A. Savoni – It's difficult to say. There are headroom problems on that first tread.

R. Hart – If you do that it might push the second or third winder back causing additional problems.

K. Winters (To Petitioner) – Can something be done with the handrail? It seems as though the handrail stops up quite high. Can that come down vertically and come down more?

A. Savoni – In fact, it should. We could ask that the handrail at the bottom be moved.

K. Winters – I would still like to see something done to that corner. There is nothing to continue holding onto, then you have to switch sides. (P. Darling suggested a newel post.)

R. Hart – Suggested the rail in question be moved to the other side to provide continuity.

Discussion:

MOTION

Moved by P. Darling, Seconded by R. Hart, **"that in the matter of BBA09-014, 1021 Snyder Avenue, the Board grants a variance from Sections R 311.5.2 and R311.5.3.2 of the 2003 Michigan Residential Code to allow the continued use of an existing stairway under Appendix "J", provided that the handrail be continuous from the first floor elevation to the basement elevation of the house, along the exterior side of the stairway. Interconnected, hard-wired smoke detectors shall be installed throughout the house to the satisfaction of the Fire Marshal. Minimum headroom at the bottom step can be a minimum of 6'6" headroom clearance and the two egress windows will remain installed to the satisfaction of the Fire Marshall."**

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

C-3 BBA09-015 – 1205 E. University

Chester Roble, owner of this property, is requesting a variance from **Section R305.1** of the **2003 Michigan Residential Code.**

Description and Petitioner Presentation

The applicant is requesting a variance from Section R305.1 of the 2003 Michigan Residential Code that requires a 7 foot 0 (zero) inch ceiling height in a basement with habitable space, and allows beams/girders not less than 4 feet on center to project below, a maximum of 6 inches.

This is a rental property. There is a bedroom, study/common room and bath in the basement which has been finished without a permit. The housing inspector has requested that the petitioner apply for a building permit for this work for legal occupancy of this space by tenants. Petitioner states that the ceiling height in the basement is 6 foot 8 inches. The code requires a minimum 7 foot 0 (zero) inch ceiling height. It is not clear fro the plan whether there is an egress window in the bedroom.

Chester Roble, owner of the property and the window contractor were present to speak on behalf of the appeal. Mr. Roble explained that the room in question has no current access to the outside. There is a crawlspace adjacent to this room (through the bathroom). The variance needed is a head space variance. The distance from the floor to the joist is 6'8" and the requirement is 7'. There is currently a drop ceiling which makes the headroom 6'5" – if replaced with drywall, it would extend from the room into the crawlspace.

That crawlspace currently has a 40" head and width clearance. (Mr. Roble proposes to use this area for egress for the adjacent room. *The contractor demonstrated the window which is a single latch system that acts like a door, providing 5.77 ft. of clear egress.*

Recommendation:

A. Savoni (Building Official) *- Staff is supportive of the ceiling height request. We would suggest that if the Board is supportive of granting any variance, a fully automatic, building wide smoke detection system be a condition of the variance. We would also request that an egress window be installed in the bedroom if there is not already one in place.*

K. Chamberlain (Fire Marshal) *– (To Petitioner) – So the tenant would be in the room and would have to find the crawlspace area and this is where they would access the window. Would this crawlspace area be permanently open? How high is the access to the crawlspace – is it at ground level? (40 inches from the floor to the sill).*

A. Savoni – That is my question. Per code, you can't do that, so you would need a variance for that. You're actually 'stepping in to" the room and then accessing the window. (The contractor explained that you can reach inside and open the window).

The code says you have to be 44 inches from the opening to the floor, and you're putting a platform in front of that to get up to it – but this is a bit different.

Comments and Questions from the Board

Discussion:

K. Winters – I would be concerned that someone – in a panic – gets into that space and tries to open that window and can't open it because they're up into that space already. (The Board members asked the petitioner several questions about the plans he presented as the information is not clear).

A. Savoni – Is there any way to excavate that crawlspace all the way down to the floor so that it would just be an indentation? Make it a part of the room? (It's all stone and about 16" thick).

K. Winters – Is this rental property? (Contractor – Yes, and someone is already living in that room).

K. Chamberlain – The Fire Department feels that this is a death trap. Someone will get up into that space, the window opens to the inside and they'll be in the way of opening the window. If you have the window open to the outside, what is to say that someone won't block it? Is there any way you can put it in the wall instead of the crawlspace? (No, because it's all under the house). People completely panic in a fire, and they'll get up in there to get out and try to push it open, and that won't be happening. It's too much to expect that people will rationally think about opening up the window first before crawling in and then out.

A. Savoni – I think the only way you'll get this approved is to dig that crawlspace down so that someone can stand in there. (The Board discussed withdrawal of this portion of the request).

C. Roble – I'll withdraw my request for the egress window and if I don't get the ceiling height, I would have to withdraw the ceiling height request because I can't use this room without an egress window.

A. Savoni – This was discovered during a Rental Housing inspection, and that the tenant was told to vacate (the storage room). It's the conflict we've had for years between the Building Code and the Housing Code, and we hope to solve that by going to use of the International Property Code.

(After significant discussion between the petitioner and the Board regarding the ceiling height issue, the following occurred):

MOTION

Moved by S. Callan, Seconded by P. Darling, **"that in regard to Appeal Number BBA09-015, 1205 S. University Avenue, that the Board tables this issue for sixty (60) days in order to allow the petitioner additional time to provide better detailed plans and to come up with a better solution."**

On a Voice Vote – MOTION PASSED – ***UNANIMOUS (Application Tabled for 60 days)***

C-4 BBA09-016 – 1361 Wilmot

Scott Klaassen of F. Scott Company, contractor for this property, is requesting a variance from **Sections R 311.5.4 and R311.5.1** of the **2006 Michigan Residential Code.**

Description and Petitioner Presentation

The applicant is requesting a variance from the following sections of the 2006 Michigan Residential Code:

- Section R311.5.4 which states: *"There shall be a floor or landing at the top and bottom of each stairway. The width of each landing shall not be less than the width of the stairway served. Every landing shall have a minimum dimension of 36 inches measured in the direction of travel."*
- Section R311.5.1 which states: *"Stairways shall not be less than 36 inches in clear width at all points above the permitted handrail height and below the required headroom height."*

This is rental property. Petitioner is remodeling a portion of the basement creating two new bedrooms. Petitioner rebuilding the existing stair to better accommodate access to the basement and to comply closer to code than the original stairway. The petitioner does not state whether an egress window will be installed in each bedroom, however the code will require that this be done.

The rebuilt stair to the basement is not code compliant for the following reasons:

- The landing will be 32 inches deep. Code requires it be a minimum 36 inches deep.
- The stair width will be 32 inches. Code requires a minimum width of 36 inches.

Mr. Scott Klaassen, Contractor for this property was present to speak on behalf of the appeal. He stated that the basement steps need rebuilding, but cannot be built to code due to the stairway above. The rebuilt stairs will be improved to meet riser height and tread depth, but cannot comply with the stairway width or landing requirements. These are the variances we're asking for. The basement will become habitable space and this is why those are being rebuilt. The current width is 32".

Recommendation:

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

We would suggest that if the Board is supportive of granting a variance, a fully automatic, building wide smoke detection system be a condition of the variance.

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

Comments and Questions from the Board

R. Hart – (To Contractor) – Does everthing else in the basement comply with code? (It will – we're putting in the egress windows, the ceiling height will be met and will comply with current code).

K. Winters – You're only rebuilding the basement stair up to the first floor? (Yes). Are you rebuilding it because the tread and risers don't meet code? (We've actually dropped the floor of the basement 6 or 8 inches in order to gain headroom for the habitable space, so we have to add

stairs. All other requirements except for width will be met). The landing is 32" deep, and you make a 'u' turn and that is 32"? (There are two landings – a step up).

(The Board and the Petitioner engaged in possible solutions to make the stairs wider).

Discussion:

MOTION

Moved by P. Darling, Seconded by S. Callan, **"that the Board grant a variance for Appeal Number BBA09-016, 1361 Wilmot, from the 2006 Michigan Residential Code, Section R311.5.4 and R311.5.1, to allow the reconstruction of an existing staircase from the basement to the first floor and to allow a reduced staircase width of 32 inches – and landing width of 32 inches, provided that a building-wide, hardwired smoke detection system is installed to the satisfaction of the Fire Marshall. We find this to be equivalent to Appendix "J" of the Michigan Residential Code.**

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

**(Paul Darling leaves at 3:04 P.M.)*

C-5 BBA09-017 - 954 Greenwood

Scott Klaassen of F. Scott Company, contractor for this property, is requesting a variance from **Section R311.5.3.2** of the **2006 Michigan Residential Code.**

Description and Petitioner Presentation

The applicant is requesting a variance from Section R311.5.3.2 of the 2006 Michigan Residential Code which states: *"The minimum tread depth shall be 9 inches."*

This is rental property. Petitioner is remodeling the basement creating two bedrooms and a bath. The petitioner originally applied for a variance for the existing stair width and stair landing. Both are 30 inches wide. The 2006 Michigan Residential Code now allows the 30 inch width and therefore a variance is not required.

However, in discussions with the applicant, it was determined that existing tread depth does not meet code. The tread depth is 8-1/2 inches; code requires a minimum of 9 inches.

Mr. Scott Klaassen, Contractor for this property was present to speak on behalf of the appeal.

Recommendation:

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

Mr. Savoni explained to the Board that the new code (2006) does not require that the contractor change the stair if it is existing, so he's applied for variances on the landing and the stair width, but 2006 Residential Code says that this ok as long as he is NOT rebuilding the stair.

"I had him go back and check the rise and run (as the new code doesn't mention that. He found that the treads were 8 ½" and not 9"; he needs a variance on the tread alone."

We would suggest that if the Board is supportive of granting a variance, a fully automatic, building wide smoke detection system be a condition of the variance.

Mr. Scott Klaassen - Stated that they are creating habitable space in the basement and want to use the existing staircase as explained by Mr. Savoni. We're requesting the variance for the 8 ½" tread.

Comments and Questions from the Board

K. Winters – The 30" stair width is acceptable under this new code? (A. Savoni – Correct. We don't understand why the Code Officials missed the tread issue, but it may come up in the next version of the code).

R. Hart – Will there be a full wall alongside the stair? (S. Klaassen – Yes). The 30" – is that the absolute minimum? (The block walls will have just a veneer on them and the 30" is actually clear space. We're limited by the space between the joist and the floor).

K. Winters – The block wall to the edge of the first floor is 30" and you'll have a veneer on the block? (It will just be a thorough seal – not a 'wall' built there).

R. Hart – If you build a wall on the open side, that won't create a condition on the stair? There won't be a projection on that stair? (Mr. Klaassen explained it was a straight area).

Discussion:

MOTION

Moved by R. Hart, Seconded by R. Reik, **"In the matter of Appeal Number BBA09-017, 954 Greenwood, the Board grants a variance from Section R311.5.3.2 of the 2006 Michigan Residential code, to permit a variance for a tread depth of 8 ½" with the balance of the existing stair to remain as is under Appendix "J" of the Code, and we find this to be equivalent, provided that a fully automatic, building wide smoke detection system be a condition of the variance."**

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

D - OLD BUSINESS – None

E- NEW BUSINESS –

E-1 Memo from Building Official – (New 2006 Code Changes)

A. Savoni – Stated that he had put this particular memo together for the Building Inspectors, and thought he would modify it and the information with the Board. Mr. Klaassen's case was a perfect example or introduction to this. The new Code will allow a person in a basement to have 6'8" ceiling clearance and the minimum height under projections is 6'4".

What I've told the inspectors is that this Board has previously granted 6'10" and 6'4"(in regard to the heights above), and has informed the inspectors not to encourage anyone to come before this

Board if they want a variance for anything lower than that. We won't be seeing any variances for ceiling height unless someone just insists.

The second point is the staircase stair width example that we've just gone over. If you have an existing basement stair and you can even modify it as long as the headroom is not being made any less than it currently exists or the stair landing can remain. There is no mention of treads and risers in the new Code, so our policy has been to hear these issues before the Board for a variance.

Other than that, we will probably be experiencing a lot less variance requests than we have over the past several years. We will still be seeing a few that linger under the 2003 code that get discovered along the way.

R. Hart – If a home is an owner-occupied, one or two family structure – but the minute this becomes a rental property, doesn't that trigger something regarding this? (A. Savoni – Not with up to two units. Once it becomes 3 or more 'units,' it is considered a Commercial dwelling and has to be evaluated by the 2006 Commercial Code).

F - REPORTS & COMMUNICATIONS -

G - AUDIENCE PARTICIPATION – GENERAL

ADJOURNMENT - *The Meeting was adjourned at 3:15 p.m. without objection.*

SUBMITTED BY: B. Acquaviva, Administrative Service Specialist V, Planning and Development Services.