



City of Boston
Mayor Martin J. Walsh
Board of Appeal

**NOTICE OF DECISION
CASE NO. BOA903638
PERMIT # ALT895615
APPEAL SUSTAINED**

In reference to appeal of

Timothy Burke

concerning premises

4 Melrose Street, Ward 05

to vary the application of the Massachusetts State Building Code, Chapter 802, Acts of 1972, as amended, in this specific case, I beg to advise that the petition has been granted.

Decision has been filed in the office of the Commissioner of the Inspectional Services Department , 1010 Massachusetts Avenue, fifth floor, Boston, MA 02118, and is open for public inspection. Date of entry of this decision in the Inspectional Services Department was 5/3/2019.

FOR THE BOARD OF APPEAL

Kevin P. O'Connor, Jr.
Principal Administrative Assistant



CITY OF BOSTON BOARD OF APPEAL

OFFICE OF THE BOARD OF APPEAL

Decision of the Board of Appeal on the Appeal of

4 Melrose Street, Ward 5

BOA: #903638

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The Applicant appeals from the refusal of the Building Commissioner to grant a permit to construct a new roof deck with a hatch at the property located at 5 Melrose Street, Ward 5, as the same will be in violation of the Massachusetts State Building Code, Statute 1972, Chapter 802, as amended to wit: 780 CMR 1011.12

In their formal appeal, the appellant states briefly in writing the grounds of the reasons for its appeal from the refusal of the Building Commissioner referred to above. Their Application numbered ALT895615 and dated October 31, 2018, is made part of the record, including plans submitted to the Inspectional Services Department and the Board, now on file.

SECTION: 780 CMR 1011.12: Roof Access: Penthouse is required to access the story roof pursuant to Section 1510.2.

In conformity with the law, the Board mailed reasonable notice of the petitioner, Boston Building Department, Boston Fire Department, Commonwealth of Massachusetts Department of Public Safety and to all those who requested notice in writing, which notice of public hearing was duly advertised in a daily newspaper published in the City of Boston, namely the Boston Herald, March 19, 2019.

Whereas, in its opinion, this decision is not in conflict with general objectives of the Building Code or any of its enabling legislation, the Board of Appeal hereby grants relief from the provisions of the Sections mentioned above.

Boston Zoning Code Article 63-20 [Restricted Roof Structure Regulations], conflicts with this finding and the requirements of 780 CMR 1011.12, which provides that "where a stairway is provided to a roof, access to the roof shall be provided through a penthouse complying with Section 1510.2."

Due to the conflict between the Building Code requirement and the requirements of Article 63, the Board is of the opinion that in the circumstances of this case, a variance



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from the Building Code requirements is appropriate. The roof deck is solely for the use of the residents of this single-family structure and the access hatch is large enough to provide a safe means of egress to any occupant on the roof in the event of an emergency. Further, the hatch will not be visible and thus satisfy the requirements of the historic district.

The appellant presented renderings of the proposed roof hatch construction to the Board, showing the new plan would provide hatch access to the egress stairway as opposed to the required penthouse. The proposed change will provide sufficient and safe access to the internal stairway egress for the building.

The building would remain totally within range of all fire-fighting equipment and safety vehicles. All construction materials and workmanship used to construct this new area would be regulated as required for new construction.

The appellant has communicated these plans to interested persons and organizations in the community. The appellant attended meetings with neighbors (and any local neighborhood group) to discuss these plans and there were no objections raised by the community.

It was presented to the Board that no hazard to the occupants of the building would be presented by the granting of the variances requested from full compliance with Sections 1011.12 of the Code.



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The Board is of the opinion that all the conditions required for the granting of a variance under Section 1011.12 of The Code have been met and that the varying of the terms of The Code will avoid manifest injustice and will not conflict with the general objectives of said Code or any of its enabling legislation. Therefore, acting under its discretionary power, the Board voted to grant the requested variances as described above. This annuls the refusal of the Building Commissioner and orders him to grant a permit in accordance with this decision.

Approved as to form:

Assistant Corporation Counsel

Signed, April 30, 2019,

Christine Araujo, Chair

Mark Fortune - Secretary

Tyronne Kindell

Bruce Bickerstaff

Kelly Walsh Logue

Mark Erlich

Craig Galvin