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DECISION OF THE ARCHITECTURAL ACCESS BOARD

Date: **July 16, 2013**

Name of Property: **Waverly Commuter Rail Station**

Property Address: **525 Trapelo Road, Belmont, MA**

Docket Number: **C12-033 and V13-076**

Date of Hearing: **July 1, 2013**

Enclosed please find a copy of the decision relative to the above mentioned matter.

Sincerely:

ARCHITECTURAL ACCESS BOARD

By:

Kate Sutton, Program Coordinator/Clerk for Proceedings

cc: Local Building Inspector
Local Commission on Disabilities
Local Independent Living Center
Andrew Baldwin and Diane Rubin, Prince Lobel Tye LLP
Complainant

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

ARCHITECTURAL ACCESS BOARD
Docket No. C12-033 and V13-076

In re)
)
Waverly Commuter Rail Station)
525 Trapelo Road)
Belmont, MA)
_____)

BOARD DECISION

Introduction

This matter originally came before the Architectural Access Board (“Board”) as a letter regarding recent upgrades and platform replacement at the station in question. Included with the March 16, 2012 letter was a copy of a letter from the Massachusetts Department of Transportation Rail and Transit Division, dated March 7, 2012, outlining the work that was performed. A Board Staff complaint was filed on March 30, 2012, pursuant to 521 CMR 2.3.1 and 4.00, with reported violations of 521 CMR 18.2 and 20.1, regarding the lack of an accessible route to the platform level, and 521 CMR 18.5.2, regarding the lack of an accessible platform at the reconstructed station.

A complaint hearing was held February 11, 2013, where all interested parties were invited to appear. At this hearing, the Board voted to *find in favor of the Complainant*, regarding the reported violations of 521 CMR 18.2, 18.5.2 and 20.1. The Board also voted to *require* that the Petitioners submit a completed variance application to be received by the Board no later than *March 15, 2013*.

On March 22, 2013, the Board received the variance application (Docket V13-076) and reviewed the application as an incoming case on April 8, 2013, at which time the Board voted to schedule a hearing. The hearing was scheduled for June 3, 2013, with notice sent to all parties concerned on April 10, 2013. On May 20, 2013 the Board received a letter from Attorney Diane Rubin requesting the hearing be rescheduled. The Board rescheduled the hearing to July 1, 2013, with notice sent to all parties concerned on May 23, 2013.

In accordance with M.G.L. c. 30A, §§ 10 and 11; 801 CMR 1.02 *et. seq.*; and 521 CMR 4.00, the Board convened a Variance Hearing on December 17, 2012 where all interested parties were provided with an opportunity to testify and present evidence to the Board. At said hearing, the Board voted to *continue* the discussion regarding this matter to have the Board Staff conduct a site visit to help the Board understand the layout of the intersection in question.

Diane Rubin and Andrew Baldwin, Prince Lobel Tye, Counsel for MBTA; Marie Trotter, MBTA, Chief Accessibility Officer; and Andre Martecchini, Kleinfelder, all appeared on behalf of the MBTA. Bill Shine,

Independence Associates; Bill Henning, Andrew Forman and Alexandra Johansen, Boston Center for Independent Living; Eileen Feldman, Community Access Project of Somerville; Hang Lee, Boston Multicultural Independent Living Center; Thomas Gilbert; Don Summerfield; Marilyn McNab; John Winske, Disability Policy Consortium; Chris Hart and John Kelly all appeared on behalf of the Complainant. Thomas Hopkins, Executive Director, and Mark Dempsey, Compliance Officer, both appeared on behalf of the Board. All were sworn in by the Chairman.

Applicable Laws

The Board established jurisdiction pursuant to 521 CMR 3.3.2 which states that, “[i]f the work performed, including the exempted work, amounts to 30% or more of the *full and fair cash value (see 521 CMR 5.00)* of the *building* the entire *building* is required to comply with 521 CMR.”

Pursuant to 521 CMR 18.2, “[a]t all newly *constructed, reconstructed, altered or remodeled* stations, an *accessible route* shall connect all terminal *buildings* or station houses, platforms, parking areas and street *entrances.*”

Under the requirements of 521 CMR 18.5.2, “[p]latforms at *reconstructed* stations: *Any reconstructed, altered or remodeled* stations serving *commuter rail* coaches shall afford access to at least two coaches of a train by means of a raised platform. Said platform shall comply with the following: a. Such platforms shall be at least 60 inches (60" = 1524mm) in *clear* width...b. Such platforms shall be at least 45 feet (45' = 14m) in length and shall, along their full length and at all access *ramps*, provide overhead shelter from rain and snow.”

Section 20.1 of 521 CMR states that, “An *accessible route* shall provide a continuous unobstructed path connecting *accessible spaces* and *elements* inside and outside a *facility*. *Accessible routes* may include but are not limited to *walks, halls, corridors, aisles, skywalks, and tunnels*. *Accessible routes* may not include stairs, steps, or escalators, even if the stairs and steps are required to be *accessible* under 521 CMR.”

Exhibits

Exhibit 1: Board Packet, AAB1-72, including all correspondence and plans submitted by the Petitioner.

Facts

The Variance Hearing was held on July 1, 2013 and based on the credited testimony of the witness, and the documents submitted, the Board finds the following facts:

- 1) On March 16, 2012, the Board received a letter from Christopher Hart (Disability Law Center Board Member), Eileen Feldman (Community Access Project Member), Joanne Daniels-Feingold (GBLS-BCIL Lead Plaintiff & GBLS Board Member), and John Kelly (Neighborhood Access Group Member). The letter noted that work had recently been done at the Waverly Commuter Rail Station in Belmont, in excess of \$300,000.00, with no access to the newly reconstructed platforms provided. The letter from the advocates also noted that the MBTA had done extensive work at stations along the B, C, D, and Mattapan Line Stations. The letter to Linda Ford, Acting Director of the Office of Civil Rights for the Federal Transit Administration from Gerald Kelley, Acting General Counsel for the MBTA, dated March 7, 2012 noted that “the Massachusetts Bay Transportation Authority continues to believe that, in performing work at Waverly Station, it has fully complied with its obligations under the Americans with Disabilities Act of

- 1991 and related regulations. Specifically it would be disproportionate under 49 C.F.R. 37.43(e) to provide an accessible path of travel to the station platform at the Waverly Station.” (Exhibit 1).
- 2) Dempsey noted that after he filed the staff-generated complaint regarding this matter on March 30, 2012, a First Notice was sent to Attorney Kelley and copied to all parties concerned, notifying the MBTA of the reported violations of 521 CMR. The Notice was sent out on May 7, 2012. After receiving no response to the First Notice, Dempsey stated that a Second Notice was sent out on June 18, 2012, seeking written response from the MBTA within ten (10) days receipt of said notice. On July 25, 2012 a Complaint Hearing Notice was sent to all parties concerned, notifying them of the compliant hearing scheduled for October 29, 2012 at 1:00 p.m. The hearing was later rescheduled to February 11, 2013 at 11:00 a.m. at the request of Andrew Baldwin of Prince Lobel Tye, LLP. The Rescheduled Hearing Notice was sent out to all parties concerned on October 23, 2012. (Exhibit 1).
 - 3) Upon being asked by the members of the Board at the February 11, 2013 complaint hearing, Rubin stated that work had been done at the station. Upon questioning, Martecchini added that work was specifically done at the platforms of the station. The Board also noted that building permits were issued in the amount of \$353,280.71, which Rubin verified as sounding “approximately” correct. Baldwin verified, upon being questioned by members of the Board, that the station value, prior to the work being performed, was \$44,000.00. The Board Members also questioned if a variance application was submitted to the Board prior to the start of this project, to which Rubin responded that no variance had been submitted. And when asked if accessibility was incorporated into this project, Rubin stated that it had not been, and Martecchini added that new tactile warning strips had been added along the edge of the platform as part of the project. (Exhibit 1).
 - 4) Andre Martecchini stated that he was a structural engineer, licensed in Massachusetts, with 33 years experience. Kleinfelder was retained by the MBTA to do repairs at the platform level of the Waverly Commuter Rail Station, which was uneven and broken, with a lot of the concrete falling off of the existing stairs. Martecchini noted that his firm was asked by the MBTA to do additional work to provide an opinion as to the feasibility of making the Waverly Commuter Rail Station accessible. He stated that the station is small and located in a congested part of downtown Belmont, with access to the station currently only provided by two (2) sets of stairs down the 21 foot change in level to each side of the tracks (inbound side to Boston and outbound side to Waltham). Martecchini stated that there is a metered parking area owned by the Town of Belmont that is used for the local businesses in the area and not as a commuter parking facility; adding that there is no commuter rail parking provided at this station. (Exhibit 1 and Testimony of Martecchini).
 - 5) Martecchini stated that two (2) options for access to the station were examined by his firm, based on general measurements of the property and not a site survey. One option was a series of elevators to access both platforms of the station, and the other option was a series of ramps, also to create access to both platforms of the station. Martecchini stated that the elevator plan would require a minimum of two (2) elevators (one (1) to each platform), but that four (4) elevators (two (2) at to each platform) would be preferred. He noted that the minimum size of a full size, compliant, stretcher elevator was 10 feet by 10 feet, with a mechanical room required to be the same size. The existing platforms at Waverly Station are 12 feet wide. Martecchini stated that with the current property lines as they are understood (again, not surveyed), it would require that the MBTA do a property taking in order to have the required space to install elevators to the platform. He noted that this land taking would be required at both sides of the track. The estimated cost for the installation of two (2) elevators (one (1) to each platform) was \$3,400,000.00, and did not include the recommended additional two (2) elevators, to have two (2) elevators to each platform, the required land-taking cost, other structural costs, other MBTA soft costs for designs. (Exhibit 1 and Testimony of Martecchini).
 - 6) The ramp option for accessing the Waverly Commuter Rail Station platforms would result in switchback ramps, a minimum of 307 feet in length. The ramp would have to bypass the existing girders of the Lexington Street bridge, requiring the reconfiguration of the platform based on the lack of sufficient head room, and would also create a problem with covering the ramp. Martecchini noted that there would also have to be a jog in the ramp to go around the existing stairway. He also stated that the ramps would need

to be 60 inches wide (to provide for two (2) people to pass) and 7 inches between the two (2) switchback ramp structures, for a total of 12 feet of width overall, if the ramps were attached to the 100 year old retaining walls, which they would not recommend. He noted that even as designed, the ramp would not fit within the property constraints of the existing station. Martecchini noted that this would take up the entire current depth of the platform, and would be a hazard to passing trains, since the minimum depth of a fixed obstruction to the edge of the platform is 7 ½ feet, per the requirements of the MBTA. Martecchini noted that this plan did not include raising the overall platform of the station; adding that a mini-high platform was looked at, but not incorporated into the plans. Martecchini stated that a ramp down to a mini-high platform or stair would be too close to the track for people to still use the platform. The estimated cost for the installation of a ramp system to the platform was \$1,300,000.00 and did not include land-taking, the installation of mini-high platforms, or other MBTA soft costs for designs. (Exhibit 1 and Testimony of Martecchini).

- 7) Marie Trottier stated that there are also accessible buses that go through Waverly Station, including an express bus into Boston at certain times, and buses to the Red Line. She noted that the closest accessible station to Waverly Commuter Rail Station is the Waltham Commuter Rail Station, which has parking available. Trottier noted that 9 out of 13 trains bypass Waverly Commuter Rail Station daily, adding that most (if not all) stop at the Waltham Commuter Rail Station. Trottier stated that an average of 33 people a day take the train from the Waverly Station, while an average of 425 people take the train from Waltham Station each day. Rubin noted that based on the alternate forms of transportation from Waverly Station, there is no substantial benefit to creating access to this station, based on the excessive cost that would be required to make the station accessible. (Exhibit 1 and Testimony of Trottier and Rubin).
- 8) Don Summerfield stated that when the Waverly Commuter Rail Station was reconstructed, the Assistant General Manager for the MBTA at the time was Gary Talbot, who told the MBTA that based on the work done, the station was required to be brought into compliance with the requirements of 521 CMR. At the time, it was reported that against Mr. Talbot's suggestion, the MBTA stated that they did not want to invest the money in making the Waverly Commuter Rail Station accessible. (Testimony of Summerfield).
- 9) Thomas Hopkins noted that American Recovery and Reinvestment Act (ARRA) money was used to renovate this station and the variance request was not brought to the Board until after the Board ruled that a violation of 521 CMR had occurred when the work was done at this station. Hopkins also noted that he would be interested in seeing what would be feasible after exploring easements with the Town of Belmont. (Testimony of Hopkins).
- 10) Andrew Forman stated that he was not concerned with how many people are served at the commuter rail station, especially since this does not account for persons with disabilities, since they are unable to access the station. He noted that he was strongly opposed to the issuance of a variance in this matter, stating that there would be a benefit to persons with disabilities to have access to this commuter rail station. (Testimony of Forman).
- 11) Eileen Feldman stated that she supported the previous testimony submitted, and questioned (like others) if any land taking options were pursued to see if the installation of the elevators would be feasible. She also stated that she would like to see the opportunity for people with disabilities to have access to the Waverly Commuter Rail Station. (Testimony of Feldman).
- 12) Alexandra Johansen stated that she has a friend that lives in Belmont, and would love to have access to this station to visit her friend. She also noted that the usage to this station is not high, because people know that they cannot get to or from the station if they are unable to traverse the existing stairs. (Testimony of Johansen).
- 13) Marilyn McNab stated that she would like to see other alternatives explored for access, and reiterated the statements of others that the usage would be greater if people had an accessible route into and out of the station. She also noted that some unique wheelchairs do not fit on the MBTA buses and that this would not make them a viable option. McNab stated that the commuter rail is also a much more direct means of travel, whereas the buses make multiple stops throughout their routes. (Testimony of McNab).
- 14) John Winske noted that it was reported that the Waverly Station buses were being put on the "cut-off list" to have bus service scaled back or stopped altogether. Winske noted that the MBTA was arguing

technological infeasibility when testimony was given that a full survey of the property had not been done. Winske also stated that if the Waverly Commuter Rail Station was so insignificant, then why did the MBTA spend \$400,000.00 to renovate a station that only serves an average of 33 people per day. (Testimony of Winske).

- 15) Thomas Gilbert stated that at other bus stations, buses are frequently going to Waverly Station, so it must be a station of some significance. (Testimony of Gilbert).
- 16) Bill Henning stated that he would encourage the Board to uphold the requirements for equal access for all to this station. He added that although alternative means of transportation may be provided, there are other areas served by bus stations where residents had demanded that commuter rail stations be created since the bus services provided were not adequate for the overall need of public transportation in the area. (Testimony of Henning).
- 17) John Kelly reiterated the previous statements of shock that the MBTA did not seek a variance prior to the work being done, and prior to the Board ordering compliance based on an adjudicated complaint regarding this station. He also noted that if the station was so unimportant, the MBTA should have closed the station, not done a substantial renovation. Kelly noted that he cannot use the MBTA bus service because of the wide turning radius of his wheelchair, and noted that other wheelchair and scooter users have trouble using the crowded buses. Kelly stated that the MBTA should explore other options for access, such as modified compliant solutions. (Testimony of Kelly).
- 18) Chris Hart stated that the Waverly Commuter Rail Station work was originally taken off of the ARRA funding list because there was no additional funding to address the required access, the only accessible features that were added when the work was done was the installation of detectable warnings. Hart noted that the platform is much wider than 12 feet, it is more like 20 feet wide. He also stated that at the Quincy Center Station, the MBTA had installed an accessible platform below the existing Red Line station, and had to do land-taking to complete that project. He also cited the work done at Park Street Station to install new elevators to the existing underground platforms, and the proposed project to do the same for Downtown Crossing Station. Hart stated that compliance would not be technically infeasible or an excessive cost without substantial benefit to persons with disabilities. He also noted that the Waverly Bus Station was currently not accessible, with no curb ramps provided at the station. (Testimony of Hart).
- 19) Board Member Raymond Glazier stated that he is a Belmont resident and went to the station last Thursday (June 27, 2013) and found that in the hour that he was there, 28 people total disembarked the trains (one (1) inbound and one (1) outbound). He note that of the two (2) commuter rail stations in Belmont, both Waverly and Belmont Center Stations are completely inaccessible, with Waverly Station being below grade and Belmont Center Station being above grade. Glazier stated that there is a small grassy area to one (1) side of the station, which could be requested from the Town of Belmont to help with the installation of an elevator. He added that the bus stop provided at Waverly Station is on a sidewalk that has no curb ramp at either end, resulting in a person in a wheelchair being stuck on this sidewalk if they get off the bus at this location. (Testimony of Board Member Glazier).
- 20) When asked by the Board, Rubin stated that she was unsure as to if the MBTA had reached out to the Town of Belmont to discuss potential land-taking. When asked, Martecchini stated that they had not looked into an elevator with multiple doors to allow for straight on and off. He added that when the work was done at the platform they had not looked into raising the platform since there was an issue with freight traffic also traveling through this station, and there was no money to do the work to raise the platform at the time that the work at the station was done. (Testimony of Martecchini and Rubin).

Analysis

The Board established jurisdiction pursuant to 521 CMR 3.3.2 which states that, “[i]f the work performed, including the exempted work, amounts to 30% or more of the *full and fair cash value* (see 521 CMR 5.00) of the *building* the entire *building* is required to comply with 521 CMR.” Since the cost of the work performed amounted to \$353,280.71 and the value of the facility at the time was \$44,000.00, the work performed

exceeded 30% of the full and fair cash value of the facility, therefore requiring that the entire facility be brought into compliance with the applicable requirements of 521 CMR.

On March 16, 2012, the Board received a letter from Christopher Hart (Disability Law Center Board Member), Eileen Feldman (Community Access Project Member), Joanne Daniels-Feingold (GBLS-BCIL Lead Plaintiff & GBLS Board Member), and John Kelly (Neighborhood Access Group Member). The letter noted that work had recently been done at the Waverly Commuter Rail Station in Belmont, in excess of \$300,000.00, with no access to the newly reconstructed platforms provided. The letter from the advocates also noted that the MBTA had done extensive work at stations along the B, C, D, and Mattapan Line Stations. The letter to Linda Ford, Acting Director of the Office of Civil Rights for the Federal Transit Administration from Gerald Kelley, Acting General Counsel for the MBTA, dated March 7, 2012 noted that "the Massachusetts Bay Transportation Authority continues to believe that, in performing work at Waverly Station, it has fully complied with its obligations under the Americans with Disabilities Act of 1991 and related regulations. Specifically it would be disproportionate under 49 C.F.R. 37.43(e) to provide an accessible path of travel to the station platform at the Waverly Station."

Dempsey noted that after he filed the staff-generated complaint regarding this matter on March 30, 2012, a First Notice was sent to Attorney Kelley and copied to all parties concerned, notifying the MBTA of the reported violations of 521 CMR. The Notice was sent out on May 7, 2012. After receiving no response to the First Notice, Dempsey stated that a Second Notice was sent out on June 18, 2012, seeking written response from the MBTA within ten (10) days receipt of said notice. On July 25, 2012 a Complaint Hearing Notice was sent to all parties concerned, notifying them of the compliant hearing scheduled for October 29, 2012 at 1:00 p.m. The hearing was later rescheduled to February 11, 2013 at 11:00 a.m. at the request of Andrew Baldwin of Prince Lobel Tye, LLP. The Rescheduled Hearing Notice was sent out to all parties concerned on October 23, 2012.

Upon being asked by the members of the Board at the February 11, 2013 complaint hearing, Rubin stated that work had been done at the station. Upon questioning, Martecchini added that work was specifically done at the platforms of the station. The Board also noted that building permits were issued in the amount of \$353,280.71, which Rubin verified as sounding "approximately" correct. Baldwin verified, upon being questioned by members of the Board, that the station value, prior to the work being performed, was \$44,000.00. The Board Members also questioned if a variance application was submitted to the Board prior to the start of this project, to which Rubin responded that no variance had been submitted. And when asked if accessibility was incorporated into this project, Rubin stated that it had not been, and Martecchini added that new tactile warning strips had been added along the edge of the platform as part of the project.

Andre Martecchini stated that he was a structural engineer, licensed in Massachusetts, with 33 years experience. Kleinfelder was retained by the MBTA to do repairs at the platform level of the Waverly Commuter Rail Station, which was uneven and broken, with a lot of the concrete falling off of the existing stairs. Martecchini noted that his firm was asked by the MBTA to do additional work to provide an opinion as to the feasibility of making the Waverly Commuter Rail Station accessible. He stated that the station is small and located in a congested part of downtown Belmont, with access to the station currently only provided by two (2) sets of stairs down the 21 foot change in level to each side of the tracks (inbound side to Boston and outbound side to Waltham). Martecchini stated that there is a metered parking area owned by the Town of Belmont that is used for the local businesses in the area and not as a commuter parking facility; adding that there is no commuter rail parking provided at this station.

Martecchini stated that two (2) options for access to the station were examined by his firm, based on general measurements of the property and not a site survey. One option was a series of elevators to access both platforms of the station, and the other option was a series of ramps, also to create access to both platforms of the station. Martecchini stated that the elevator plan would require a minimum of two (2) elevators (one (1) to each platform), but that four (4) elevators (two (2) at to each platform) would be preferred. He noted that the minimum

size of a full size, compliant, stretcher elevator was 10 feet by 10 feet, with a mechanical room required to be the same size. The existing platforms at Waverly Station are 12 feet wide. Martecchini stated that with the current property lines as they are understood (again, not surveyed), it would require that the MBTA do a property taking in order to have the required space to install elevators to the platform. He noted that this land taking would be required at both sides of the track. The estimated cost for the installation of two (2) elevators (one (1) to each platform) was \$3,400,000.00, and did not include the recommended additional two (2) elevators, to have two (2) elevators to each platform, the required land-taking cost, other structural costs, other MBTA soft costs for designs.

The ramp option for accessing the Waverly Commuter Rail Station platforms would result in switchback ramps, a minimum of 307 feet in length. The ramp would have to bypass the existing girders of the Lexington Street bridge, requiring the reconfiguration of the platform based on the lack of sufficient head room, and would also create a problem with covering the ramp. Martecchini noted that there would also have to be a jog in the ramp to go around the existing stairway. He also stated that the ramps would need to be 60 inches wide (to provide for two (2) people to pass) and 7 inches between the two (2) switchback ramp structures, for a total of 12 feet of width overall, if the ramps were attached to the 100 year old retaining walls, which they would not recommend. He noted that even as designed, the ramp would not fit within the property constraints of the existing station. Martecchini noted that this would take up the entire current depth of the platform, and would be a hazard to passing trains, since the minimum depth of a fixed obstruction to the edge of the platform is 7 ½ feet, per the requirements of the MBTA. Martecchini noted that this plan did not include raising the overall platform of the station; adding that a mini-high platform was looked at, but not incorporated into the plans. Martecchini stated that a ramp down to a mini-high platform or stair would be too close to the track for people to still use the platform. The estimated cost for the installation of a ramp system to the platform was \$1,300,000.00 and did not include land-taking, the installation of mini-high platforms, or other MBTA soft costs for designs.

Marie Trottier stated that there are also accessible buses that go through Waverly Station, including an express bus into Boston at certain times, and buses to the Red Line. She noted that the closest accessible station to Waverly Commuter Rail Station is the Waltham Commuter Rail Station, which has parking available. Trottier noted that 9 out of 13 trains bypass Waverly Commuter Rail Station daily, adding that most (if not all) stop at the Waltham Commuter Rail Station. Trottier stated that an average of 33 people a day take the train from the Waverly Station, while an average of 425 people take the train from Waltham Station each day. Rubin noted that based on the alternate forms of transportation from Waverly Station, there is no substantial benefit to creating access to this station, based on the excessive cost that would be required to make the station accessible.

Don Summerfield stated that when the Waverly Commuter Rail Station was reconstructed, the Assistant General Manager for the MBTA at the time was Gary Talbot, who told the MBTA that based on the work done, the station was required to be brought into compliance with the requirements of 521 CMR. At the time, it was reported that against Mr. Talbot's suggestion, the MBTA stated that they did not want to invest the money in making the Waverly Commuter Rail Station accessible. Thomas Hopkins noted that American Recovery and Reinvestment Act (ARRA) money was used to renovate this station and the variance request was not brought to the Board until after the Board ruled that a violation of 521 CMR had occurred when the work was done at this station. Hopkins also noted that he would be interested in seeing what would be feasible after exploring easements with the Town of Belmont. Multiple other advocates stated that they were not concerned with how many people are served at the commuter rail station, especially since this does not account for persons with disabilities, since they are unable to access the station. The advocates expressed their opposition to the variance requested and asked that the MBTA explore other possible options for access. John Winske noted that it was reported that the Waverly Station buses were being put on the "cut-off list" to have bus service scaled back or stopped altogether. Winske noted that the MBTA was arguing technological infeasibility when testimony was given that a full survey of the property had not been done. Many advocated questioned that if the Waverly Commuter Rail Station was so insignificant, then why did the MBTA spend \$400,000.00 to renovate a station that only serves an average of 33 people per day. The advocates also expressed statements of shock that the MBTA did not seek a variance prior to the work being done, and prior to the Board ordering compliance based on an

adjudicated complaint regarding this station. Kelly stated that the MBTA should explore other options for access, such as modified compliant solutions. Chris Hart stated that the Waverly Commuter Rail Station work was originally taken off of the ARRA funding list because there was no additional funding to address the required access, the only accessible features that were added when the work was done was the installation of detectable warnings. Hart noted that the platform is much wider than 12 feet, it is more like 20 feet wide. He also stated that at the Quincy Center Station, the MBTA had installed an accessible platform below the existing Red Line station, and had to do land-taking to complete that project. He also cited the work done at Park Street Station to install new elevators to the existing underground platforms, and the proposed project to do the same for Downtown Crossing Station. Hart stated that compliance would not be technically infeasible or an excessive cost without substantial benefit to persons with disabilities. He also noted that the Waverly Bus Station was currently not accessible, with no curb ramps provided at the station.

Board Member Raymond Glazier stated that he is a Belmont resident and went to the station last Thursday (June 27, 2013) and found that in the hour that he was there, 28 people total disembarked the trains (one (1) inbound and one (1) outbound). He note that of the two (2) commuter rail stations in Belmont, both Waverly and Belmont Center Stations are completely inaccessible, with Waverly Station being below grade and Belmont Center Station being above grade. Glazier stated that there is a small grassy area to one (1) side of the station, which could be requested from the Town of Belmont to help with the installation of an elevator. He added that the bus stop provided at Waverly Station is on a sidewalk that has no curb ramp at either end, resulting in a person in a wheelchair being stuck on this sidewalk if they get off the bus at this location.

When asked by the Board, Rubin stated that she was unsure as to if the MBTA had reached out to the Town of Belmont to discuss potential land-taking. When asked, Martecchini stated that they had not looked into an elevator with multiple doors to allow for straight on and off. He added that when the work was done at the platform they had not looked into raising the platform since there was an issue with freight traffic also traveling through this station, and there was no money to do the work to raise the platform at the time that the work at the station was done.

Based on the time of the day, and the need to begin the next hearing, the Board voted to take this matter *under advisement*.

Later in the day, the Board voted to *reopen* this matter to render a final vote. After reopening the hearing, the Board voted that based on the following reasons, the variances to 521 CMR 18.2, 18.5.2 and 20.1 are *DENIED* and the station shall be brought into compliance with the applicable sections and verified as such, no later than *January 1, 2015*:

- testimony submitted, concurring that there is substantial benefit to accessing this commuter rail station;
- the discrepancy in the number of passengers that use the station, based on the testimony that 28 people were seen disembarking trains in one hour, when the MBTA reported approximately 33 people per day use the commuter rail station;
- the fact that the MBTA spent a good deal of money (more than 30% of the value of the facility) on upgrades to the station; and
- the fact that the Petitioners had stated that they had not done a full analysis of all possibilities of access, with all submitted options for compliance being limited and worst case scenario options, therefore not proving that technologically infeasible since they did not explore further options.

The Board voted to *expedite* the decision of the Board, therefore bypassing the Board's approval of the most recent decision prior to it being sent out.

Conclusion

After reviewing the matter, the Board voted as follows:

- Take the matter *UNDER ADVISEMENT*, based on the time of the day, and the need to begin the next hearing.

Later in the day, the Board voted to *reopen* this matter and voted as follows:

- *DENY* the variances to 521 CMR 18.2, 18.5.2 and 20.1 and *REQUIRE* that the station shall be brought into compliance with the applicable sections and verified as such, no later than *January 1, 2015*. The Board noted that the denial of the variance was based on the following reasons:
 - o testimony submitted, concurring that there is substantial benefit to accessing this commuter rail station;
 - o the discrepancy in the number of passengers that use the station, based on the testimony that 28 people were seen disembarking trains in one hour, when the MBTA reported approximately 33 people per day use the commuter rail station;
 - o the fact that the MBTA spent a good deal of money (more than 30% of the value of the facility) on upgrades to the station; and
 - o the fact that the Petitioners had stated that they had not done a full analysis of all possibilities of access, with all submitted options for compliance being limited and worst case scenario options; therefore, not proving that full compliance was technologically infeasible since they did not explore further options.
- *EXPEDITE* the decision of the Board, therefore bypassing the Board's approval of the most recent decision prior to it being sent out. (Motion carries with Board Member Myra Berloff abstaining).

PLEASE NOTE: All documentation (written and visual) verifying that the conditions of a variance have been met, or the required work has been done, must be submitted to the AAB Office as soon the work is completed and/or on or before any ordered deadlines.

A true copy attest, dated: July 16, 2013

ARCHITECTURAL ACCESS BOARD

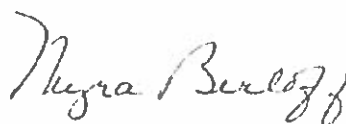
By:



Walter White, Chair



Diane McLeod, Vice Chair



Myra Berloff, Director of Massachusetts
Office on Disability

Andrew Bedar, Member (not present)

Raymond Glazier

Raymond Glazier, Executive Office of Elder
Affairs Designee



Gerald LeBlanc, Member

D. Mark Trivett

Carol Steinberg, Member (not present)

D. Mark Trivett, Member

A complete administrative record is on file at the office of the Architectural Access Board.