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Timothy P. Murray
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FINAL DECISION OF THE ARCHITECTURAL ACCESS BOARD

Date: **February 26, 2013**

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

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

Docket Number: **C12-033**

Date of Hearing: **February 11, 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
Complainant

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

ARCHITECTURAL ACCESS BOARD
Docket No. C12-033

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.

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 hearing on February 11, 2013 where all interested parties were provided with an opportunity to testify and present evidence to the Board.

Mark Dempsey, Compliance Officer, appeared on behalf of the Board. Andrew Baldwin and Diane Rubin, both of Prince Lobel Tye LLP, appeared as counsel for the Massachusetts Bay Transportation Authority (MBTA). Marie Trottier, Chief Accessibility Officer, appeared on behalf of the MBTA. Andre Martecchini of Kleinfelder appeared as a consultant for the MBTA. All but Rubin and Baldwin were sworn in.

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, AAB1-38, including all correspondence and plans submitted by the Petitioner.
Exhibit 2: February 7, 2013 submittal from Prince Lobel submitted by the Petitioners.

Facts

The Complaint Hearing was held on February 11, 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, 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. (Testimony of Baldwin, 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 a group of advocates, including 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, 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.

Upon review of the submitted testimony and documentation, 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, regarding the lack of access to

and at the newly reconstructed platforms. The Board further ordered that the Petitioners are *required* to submit a completed variance application to be received by the Board *no later than March 15, 2013*. The Board also voted that, based on the complaint packet and AAB17 (the notification in writing to the Board regarding other reported areas of violations of 521 CMR) have the Board Staff look into all of the station listed in said letter to determine if access was required at those stations, including but not limited to the B, C, D and Mattapan Line stations; as well as, Mansfield and Oak Grove Commuter Rail Stations.

Conclusion

After reviewing the matter, the Board voted as follows:

- *FIND IN FAVOR OF THE COMPLAINANT*, regarding the reported violations of 521 CMR 18.2, 18.5.2, and 20.1, regarding the lack of access to and at the newly reconstructed platforms.
- *REQUIRE* that the Petitioners submit a completed variance application to be received by the Board *no later than March 15, 2013*.
- *REQUIRE* the Board Staff look into all of the station listed in the complaint packet and AAB17 (the notification in writing to the Board regarding other reported areas of violations of 521 CMR) to determine if access was required at those stations, including but not limited to the B, C, D and Mattapan Line stations; as well as, Mansfield and Oak Grove Commuter Rail Stations.

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: February 26, 2013

ARCHITECTURAL ACCESS BOARD

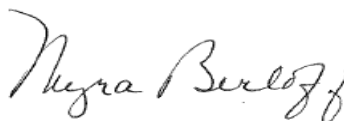
By:



Walter White, Chair



Diane McLeod, Vice Chair



Andrew Bedar, Member (not present)

Myra Berloff, Director of Massachusetts Office on Disability

Raymond Glazier

Raymond Glazier, Executive Office of Elder
Affairs Designee

Gerald LeBlanc, Member (not present)

Carol Steinberg

Carol Steinberg, Member

D. Mark Trivett

D. Mark Trivett, Member

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

This constitutes a final order of the Architectural Access Board entered pursuant to G.L. c. 30A. Any aggrieved person may appeal this decision to the Superior Court of the Commonwealth of Massachusetts pursuant to Section 14 of G.L. c.30A. Any appeal must be filed in court no later than thirty (30) days of receipt of this decision.