



**DRAFT MINUTES OF THE REGULAR SESSION OF THE
BUILDING BOARD OF APPEALS OF THE CITY OF ANN ARBOR
MARCH 12, 2008 - 1:30 P.M. – SECOND FLOOR – COUNCIL CHAMBERS
100 N. FIFTH AVENUE, ANN ARBOR, MI 48104**

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

ROLL CALL

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

Members Absent: (0)

Staff Present: (4) A. Savoni, K. Chamberlain, V. Pappas and
B. Acquaviva

A - APPROVAL OF AGENDA

A-1 Approved Without Opposition.

B - APPROVAL OF MINUTES

B-1 Draft Minutes of the February 13, 2008 Regular Session – **Approved as Amended.**

Corrections: Line 285 should state Egress **stair** and not Egress **window**.

Moved by R. Reik, Seconded by S. Callan, “to approve the minutes of the February 13, 2008 Regular Session.”

On a Voice Vote – MOTION PASSED - UNANIMOUS

C - APPEALS & ACTION

C-1 2008-B-007 – 3333 Edgewood Drive

James Amrine and Constance Colthorp, owners of this property are requesting a variance from Sections 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. Exception 4 states: “*Bathrooms shall have a minimum ceiling height of 6 feet 8 inches (2036 mm) over the fixture and at the front clearance area for fixtures.*”

Petitioner is repairing an existing damaged bathroom in a basement. The ceiling height in the bathroom and over the fixtures is too low. This ceiling height in the bathroom and over the fixtures ranges from 6 feet 2-1/2” to 6 foot 3 inches to the finished ceiling.

52 James Amrine, owner, was present to speak on behalf of the appeal. He stated that they are
53 updating a pre-existing basement bathroom and we expect the finished ceiling height to be 6'2
54 ½ inches at its lowest point (assuming a ½ in. ceiling and a ½ in. floor.) The bare floor to the
55 joists above is 6'3 ½ inches at its lowest. There was some water damage, so we have removed
56 some walls, paneling and the shower and lavatory. We would like to return the room back to a
57 usable condition.

58

59 **Recommendation:**

60

61 A. Savoni – Staff is not supportive of the ceiling height request as the ceiling is too low. We
62 would suggest that if the Board is supportive of granting any variance, a fully automatic, building
63 wide smoke detection system be a condition of the variance.

64

65 K. Chamberlain – The Fire Department concurs with the Building Department. We would also
66 request that if the appeal is granted, that building wide, interconnected smoke detectors be a
67 condition of the variance.

68

69 **Comments and Questions from the Board**

70

71 R. Reik (To Petitioner) – What is located above the bathroom? (There is a dining room that
72 projects off the main footprint of the house.)

73

74 P. Darling – Do you know why the floor is raised in that room? Is it due to the plumbing? (I
75 would assume so.) Was the house built in the 40's or 50's? (1942 and we are the second
76 owners of the home.)

77

78 *(The Board discussed the possible pre-existing conditions. The Building Official stated that*
79 *ceiling height code is 6'8" and bathroom headroom is 7'.)*

80

81 K. Winters – You're proposing to put in ceramic tile? (Petitioner – Yes.) What if you were to just
82 leave the ceiling open and paint it? (The ceiling is currently bare joists and one option we
83 considered would be to put some sort of paneling 'between' the joists and leave the bottom of
84 the joists exposed.) Six foot 2 inches is very low. We have previously allowed 6'4", but I don't
85 think you'll be able to achieve that, so we're trying to get alternative ideas.

86

87 R. Hart – The dining area appears fairly small. The underside of the floor is 7 feet above the
88 basement? (Yes - The joists are around 9 inches.) Is there any possibility to 'reframe' the floor
89 of the dining room? (There is some plumbing and electrical running through there, but we may
90 be able to change the joists to 2 x 6.)

91

92 K. Winters – If you went to LVL's you could go 5 ¼ in. deep and gain several inches there. (The
93 Building Official stated the petitioner would need a sign-off from an accredited architect or
94 engineer for those changes.) *(The Board discussed possible changes at length.)*

95

96 **MOTION #1**

97

98 Moved by R. Hart, Seconded by R. Reik, **"In the case of Appeal Number 2008-B-007, 3333**
99 **Edgewood Drive, to Table the issue until the petitioner can determine if other means of**
100 **obtaining code are possible. The issue will be heard no later than one year from today, at**
101 **the March 2009 Regular Session."**

102

103 **On a Voice Vote – MOTION PASSED – UNANIMOUS (TABLED).**

104

105

106 **C-2 2008-B-008 – 1595 Meadowside Drive**

107
108 **Craig Nader, contractor for this property, is requesting a variance from Section R310.1 of**
109 **the 2003 Michigan Residential Code.**

110
111 **Description and Petitioner Presentation**

112
113 The applicant is requesting a variance from Section R310.1 that states: *“Basements with*
114 *habitable space shall have at least one openable emergency escape and rescue opening.*
115 *Where emergency escape and rescue openings are required, they shall have a sill height of not*
116 *more than 44 inches above the floor.”*

117
118 Petitioner is finishing a portion of the basement creating habitable space. The finished space
119 consists of a bedroom, bathroom, recreation room and office. In the bedroom, the sill height of
120 the existing egress window is 54 inches above the finished floor. The required minimum height
121 is 44 inches. The Petitioner proposes to install an 8 inch high step/platform at the window that
122 will be 3 feet wide by 3 feet deep. Petitioner states that the step will be permanently installed.

123
124 **Recommendation:**

125
126 A. Savoni - Staff would not be supportive of this request. The code specifically states that the
127 bottom of the opening must be a maximum of 44 inches from the finished floor and does not
128 allow for any provisions or exceptions for a step located at the window. We would suggest that
129 if the Board is supportive of granting any variance, a fully automatic, building wide smoke
130 detection system and a permanently installed sign stated the step is part of the emergency
131 egress system and cannot be removed, be a condition of the variance.

132
133 **NOTE:** *Petitioner was not present to speak on behalf of the appeal.*

134
135 **MOTION**

136
137 Moved by S. Callan, Seconded by R. Reik, **“in the matter of 2008-B-008,**
138 **1595 Meadowside Drive, to table the issue until the April 9, 2008 Regular Session.”**

139
140 **On a Voice Vote – MOTION PASSED – UNANIMOUS (TABLED until the APRIL 2008**
141 **Regular Session.)**

142
143
144 **C-3 2008-B-009 – 309 South Main Street**

145
146 **Jay Walden, tenant for this property, is requesting a variance from Section 507 of the**
147 **2003 Michigan Mechanical Code.**

148
149 **Description and Petitioner Presentation**

150
151 The applicant is requesting a variance from Section 507 of the 2003 Michigan Mechanical Code
152 requiring commercial kitchen hoods. The code states:

153
154 Section 507.1 *“Commercial kitchen exhaust hoods shall comply with the requirements of this*
155 *section and NFPA 96-2001, as listed in chapter 16. Hoods shall be type I or type II and shall be*
156 *designed to capture and confine cooking vapors and residues.”*

157
158 Section 507.2 *“A Type I or Type II hood shall be installed at or above all commercial cooking*
159 *appliances in accordance with Sections 507.2.1 and 507.2.2.*

160 *Where any cooking appliance under a single hood requires a Type I hood, a Type I hood shall*
161 *be installed. Where a Type II hood is required, a Type I or Type II hood shall be installed.”*

162
163 Section 507.2.1 *“Type I hoods shall be installed where cooking appliances produce grease or*
164 *smoke, such as occurs with griddles, fryers, broilers, ovens, ranges and wok ranges.”*

165
166 Section 507.2.2 *“Type II hoods shall be installed where cooking or dishwashing appliances*
167 *produce heat or steam and do not produce grease or smoke, such as steamers, kettles, pasta*
168 *cookers, dishwashing machines, and ovens.”*

169
170 Jay Walden, owner, was present to speak on behalf of the appeal. He stated that he is the CEO
171 of construction and design for “The Melting Pot” restaurant chain. He explained that they have
172 130 restaurants across the country and the concept is fondue. The question is whether or not
173 ‘hoods’ would be required over each table for the cooking process. He stated that this was not
174 an uncommon question for them and they have addressed it elsewhere many times. He stated
175 that they had provided analytical air quality studies which show that they are below the threshold
176 that would trigger the need for those hoods in *NFPA 96 (4.11.2)*, which is 5 milligrams per cubic
177 meter. Anything below that does not require a hood. Their average in the analytical data is 4.1
178 milligrams per cubic meter.

179
180 **Recommendation:**

181
182 A. Savoni - The City has a letter on file that The Melting Pot has agreed not to use the oil
183 method of cooking at this facility. Therefore, the attached information regarding air quality is not
184 applicable. We are addressing this Appeal on a steam and heat only basis which is covered in
185 Section 507.2.2, MMC 2003.

186
187 The applicant is proposing to provide two cooking pots at each table. These pots will contain
188 broth and water which will be used by the patrons to cook their meat and/or vegetables. The
189 code requires a Type II hood be installed at each table. There are no exceptions in the code
190 which would eliminate this requirement.

191
192 **Discussion:**

193
194 Mr. Vern Pappas - Mechanical Inspector for the city of Ann Arbor was present to speak
195 regarding the appeal. He stated that he has previously spoken to the petitioner on a number of
196 occasions regarding this project. The standard that the petitioner is using (*NFPA 96 – 4.11.2*) –
197 that section didn’t come into effect until the 2004 ‘version’ was presented for use, and this is a
198 ‘tentative interim amendment;’ which means that the entire committee has not yet voted on this
199 and that it can be repealed once the committee conducts that vote at the end of 2008.

200
201 The code that we are currently under is the approved 2003 Mechanical Code. This is what the
202 project was reviewed on and the section he quotes does not apply. It is not included in the
203 current code for use. The *NFPA Mechanical Code* states that anything that is in ‘conflict’ with
204 the Michigan Mechanical Code – the Michigan Mechanical Code will apply. In this case, there is
205 a conflict. I also asked the petitioner to contact the State of Michigan to get approval for the
206 product. I also spoke with the State of Michigan, Mechanical Division, and the petitioner
207 submitted the same information to them. I spoke to the Director at the state this morning, and
208 he said “based on the information provided, he could not accept it or grant him a variance,
209 unless they go for a ‘product approval.’” The Code states that *“any cooking operation (including*
210 *the preparation of food), must be exhausted to the outdoors through a Type 1 or Type 2 hood,*
211 *depending on grease vapor or heat/steam.”*

212
213

214 We could possibly accept an alternate method for removal of the heat and steam if we could be
215 satisfied that there is no grease vapor from the broth (since they're still 'cooking' the meat, i.e.,
216 *steak, chicken, pork and fish*) you're still producing *grease* vapor in that steam. The state is still
217 undecided on this as well. If it were only steam, and they had a method to extract that effluent
218 so as not to create any problems with the structure, (moisture in buildings creates habitat for
219 mold growth and can deteriorate the structure itself.) This is not a single-story building, and can
220 affect others as well. We have not been presented with any alternate method of extracting that
221 heat and steam without the use of a hood. We recommend that at a minimum, they install a
222 Type 2 hood over each table to eliminate vapor. If there are grease vapors in the cooking
223 process, at least the Type 2 hood could be cleaned to eliminate that. I did recently visit one of
224 their other restaurants. You can't actually see if there is residue on their ceilings, as that is
225 painted black and we visited the restaurant at night.

226
227 It's also evident that the 'air quality study' they submitted does not address long term effects
228 (this is a 39 hour study). They have given us a letter that they will not use oil and only the broth
229 method of cooking. If they can present a way to exhaust/remove the heat and moisture that
230 would satisfy the Mechanical Code, we would be happy to look at that. At this time, the Code
231 only gives us one option.

232
233 K. Chamberlain – The Fire Department concurs with the Building Department.

234
235 **Comments and Questions from the Board**

236
237 S. Callan – (to V. Pappas) – Which restaurant did you visit, the location in Novi, MI? (Yes.)
238 What did they have for hoods? (Nothing.)

239
240 K. Winters – They use the oil method? (Yes, they use oil and the broth. I arrived at 6:00 p.m.
241 and in Novi, it's a single building, with windows all the way around. We happened to be sitting in
242 a corner where there were numerous windows that had shades. The windows were clean and
243 clear when we got there. Your cooking experience in this restaurant lasts for over three hours.
244 You're actually doing all the preparing of the food at the table in the fondue pot. By 7:30, the
245 windows were all full of condensation. By 9:00 p.m., condensation was 'rolling' down the
246 windows. This could have been just a function of their HVAC system or whatever system they
247 have there – not working? But this is what we saw.)

248
249 S. Callan (to Petitioner) – You have three facilities currently in Michigan? (Yes.) Do any of
250 those have hoods over the tables? (No. None of the 130 locations currently operating are
251 required to have hoods, and we've never had an incident related to the cooking process in any
252 of those restaurants in thirty years. I spoke to Mr. Pappas after his visit, and I went to the
253 franchisee and asked what could be the problem. He indicated that it happens occasionally
254 and that he didn't know exactly what caused it and has some people looking at why (from what
255 he described) this happened. From what he described, it was something that certainly needed
256 to be addressed, but not a common occurrence in our restaurants. We own four ourselves in
257 Tampa, FL and have glass windows. Sometimes condensation takes place with heat on the
258 inside and cold on the outside, but I don't yet have a response from the franchisee as to what
259 that situation was. I'll point out as well that the entrée process – which is actually under review
260 – is about 20 or 30 minutes. Two or three hours would be a very long dining experience. Our
261 average is about 2 hours.

262
263 S. Callan – Your fondue pots are pre-warmed in the kitchen and brought out and placed on a
264 ceramic hot surface? (Yes. It's a cook top (magna-wave induction wave cooking – the surface
265 doesn't actually heat up in that one.) The broth comes out hot from being in 212 degree water
266 out of a dispenser, and the customer cooks bite-size pieces of protein.

268 V. Pappas – Stated that the broth comes out ‘warm’ – not ‘hot’ – the cooking temperature build-
269 up occurs at the table itself. The thermostat at the table allows you to turn it up to the point
270 where the broth will actually boil. When you don’t have product in the broth or the oil, it boils at
271 the table. You can see the plume rising from every table. They were packed with customers,
272 and I’ll assume we’ll have the same factors in Ann Arbor. This is where my concern comes in.
273

274 R. Hart – The building is not in use for this restaurant yet, correct? (No, under construction for
275 the interior.) What is the actual mechanical system. Is it a ‘ducted/return’ system? (V. Pappas
276 – There isn’t any. Other than the regular heating and cooling system for the people who visit,
277 there is none.) Within the space, the air system is delivering ‘fresh air’ or tempered air. Does it
278 return by a plenum or anything? (V. Pappas – It is a return duct system. They do have an ERV,
279 which will help with recovery ventilation, but it’s prohibited to use an ERV under a Type 1 or
280 Type 2 cooking condition in the Mechanical Code, as there is a recirculation of the unit itself – it
281 re-circulates and uses a desiccant reel and mixes it with the outside air (which saves energy,
282 which is great), but that desiccant wheel will load up with moisture within two weeks and will
283 create a maintenance nightmare.)
284

285 R. Hart – For the sake of argument, any restaurant condition where something is brought out –
286 let’s say it’s even oil based, and it’s kicking up steam – brought out on a hot skillet – it’s grease
287 laden fumes. That may be only for a few minutes versus two or three hours, how do you see
288 the difference between that and the fondue restaurant? (V. Pappas – In a normal restaurant
289 condition, your food is prepared in the kitchen. The majority of the grease vapor or whatever
290 we’re cooking is captured by the hood in the kitchen and exhausted to the outside and filtered;
291 in this case, there is no ‘exhaust’ to the outside; including heat or steam. The only exception to
292 this is electric ovens that reheat pre-cooked food. This and under the counter dishwashers are
293 the only things that don’t require hoods.
294

295 Petitioner – Stated that there are pending proposals to include other cooking equipment (such
296 as jacketed steam kettles) to not be required to have a hood.
297

298 *(The petitioner and staff then discussed positive and negative air pressure involving the HVAC*
299 *systems in the building. Positive pressure does not allow the air to escape properly. Mr.*
300 *Pappas pointed out that the petitioner is excessively exceeding the positive air pressure*
301 *allowable. He suggested that the petitioner enlist the services of a design professional that*
302 *could solve this problem.) The petitioner stated that he did not know that they were exceeding*
303 *the positive air pressure and would research the problem.*
304

305 K. Winters – Stated that the Board can approve variances if the applicant provides evidence that
306 something above and beyond the code requirements has been undertaken by the applicant. I
307 don’t see any evidence of anything to that effect. I don’t see that we can provide a variance
308 based on that and the information provided to us by staff.
309

310 Petitioner – I respectfully disagree with Mr. Pappas in that this is necessary. I certainly agree
311 that if our air is in a positive state (as opposed to a negative one which would allow a better
312 outside air exchange), this needs to be corrected, and I will look into this. Our position is that
313 hoods are not required due to the minimal amounts of grease laden vapors that might be
314 emitted when guests do use canola oil (which is about 13% of the time.) I would like to clarify
315 that we could move forward with using the bullion method (broth) as a means of cooking so that
316 we can put the restaurant into service and open as we go.
317

318 R. Hart – This is not what I’m getting. The oil was not the biggest issue, but the fact that there is
319 a cooking ‘process’ that is generating steam and other vapors, which would require the Type 2
320 hood. This is the issue. In consideration of that, it also sounds that if you’re looking to avoid
321 having to put a ‘drop’ at every table and actually create a Type 2 hood, and you have an

322 engineering way of showing that you can handle those vapors and positively exhaust them and
323 do it in a way that is equivalent to the spirit or intention of the Mechanical Code, that would be
324 something we as a Board could consider.

325
326 K. Winters – We have two options; we can put this appeal up for a vote, or we can table this,
327 allowing you to redesign to see if the Mechanical Inspector will approve it, or if you still need to
328 come back for a variance, dependant upon the method you come up with. If tabled, this would
329 save you the cost of filing a second appeal.

330
331 **MOTION**

332
333 Moved by P. Darling, Seconded by S. Callan, “**In the matter of Appeal Number 2008-B-009,**
334 **309 South Main Street to allow the use of this piece of cooking equipment without the**
335 **need of an exhaust hood.** “

336
337 **On a Voice Vote – MOTION FAILED – UNANIMOUS (Variance Denied)**

338
339 ***NOTE:** IF the state disapproves his appeal for product approval, the Board would consider*
340 *reevaluation of the system at the April or May 2008 Regular Session without an additional fee to*
341 *the petitioner.*

342
343 K. Chamberlain – Asked to add the following for clarification: The NFPA and the Michigan
344 Mechanical Code are two separate bodies. The NFPA may have a different opinion on the
345 subject.

346
347 **C-4 2007-B-010 – 1127 Clair Circle**

348
349 **Robert Martin, contractor for this property is requesting a variance from Section R305.1,**
350 **of the 2003 Michigan Residential Code.**

351
352 **Description and Petitioner Presentation**

353
354 The applicant is requesting a variance from Section R305.1 of the 2003 Michigan Residential
355 Code that requires a 7 foot 0 (zero) inch ceiling height in a basement with habitable space, and
356 allows beams/girders not less than 4 feet on center to project below a maximum of 6 inches.

357
358 Petitioner is finishing a basement creating a recreation room. The finished ceiling will be 7 foot
359 0 (zero) inches. Within the space there is a beam and adjacent ductwork. The clear height
360 under this area is 6 foot 4 inches. Contractor proposes to leave the beam and ducts exposed.

361
362 Mr. Robert Martin, building contractor for this project, was present to speak on behalf of the
363 appeal. This is a single-family ranch style home built in the 1950's. The basement is
364 approximately 25 ft. x 50 ft., and they've cut it essentially down the middle. You're left with two
365 25 ft. x 25ft. rooms. We are refinishing one of the rooms. Their intention is to move their home
366 office to the basement and free up the upstairs room it is currently in.

367
368 He stated that the beam hangs down 8 inches and the code states that you can only hang down
369 by 6 inches. They've also run some duct work alongside of the beam.

370
371 **Recommendation:**

372
373 A. Savoni - Staff is supportive of the ceiling height request. We would suggest that if the Board
374 is supportive of granting any variance, a fully automatic, building wide smoke detection system
375 be a condition of the variance.

376 K. Chamberlain – The finished living area is the area that will be occupied? (Petitioner – they go
377 through the utility room to get to the finished area.) My concern is that with that beam coming
378 across, it is in the direct path of anyone in the finished living room area trying to get to the
379 stairwell to get out. If there is an emergency, the finished area seems the most likely place for
380 them to be, and to get out they would have to make their way past the beam which would be the
381 low level to get to the stairwell for egress. (Petitioner stated that there are two ways out and
382 explained the other egress.)
383

384 R. Reik – How wide would the soffit have to be? (Petitioner – It varies. One side of the beam,
385 approximately 20 inches, then it narrows to about 12 inches, but runs the entire length of the
386 finished area.)
387

388 *(The Board discussed the depth and width of the soffit.)* The petitioner stated that they would be
389 leaving the ductwork and beam exposed.
390

391 **MOTION**

392
393 Moved by R. Reik, Seconded by R. Hart, **“In the matter of 2008-B-010, 1127 Clair Circle, that
394 a variance be granted from Section R305.1 of the 2003 Michigan Residential Code, to
395 allow a minimum soffit headroom height of 6’4” and an unfinished soffit width of up to 5’
396 wide, provided that a second means of egress is left unencumbered and that a fully
397 automatic, building wide smoke detection system is installed to the satisfaction of the
398 Fire Marshal. We find this to be equivalent to what the code requires.”**
399

400 **On a Voice Vote – MOTION PASSED – UNANIMOUS**
401

402 **D - OLD BUSINESS**

403
404
405 A. Savoni – As is evident, Mr. Lewis is not present. This morning we received the certified mail
406 return receipt back, stating that he never picked up this notice (“Undeliverable – Unclaimed”). I
407 called the City Attorney (Kristen Larcom) and she has not yet responded. We will have to put
408 the matter on hold until we receive further direction.
409

410 **D-1 2007-DBSC-001 – 800 North Main Street (Final Show-Cause Hearing)**

411
412 *Rev. Melvin Lewis, owner of the property, was directed by the Board to clean up the site and*
413 *secure the building within 30 days of the December meeting. Rev. Lewis was also directed by*
414 *the Board to present a site plan prepared by a design professional within 60 days of the*
415 *December meeting. Staff has not been contacted by Rev. Lewis regarding the condition of the*
416 *building. **(Referred to the City Attorney’s office for further direction)***
417

418 **D-2 2007-DBSC-002 – 309 North Seventh Street**

419
420
421 A. Savoni - We did send the owner, Mr. Edward Green, a copy of the letter requesting that the
422 city building inspectors be allowed access to the property to satisfy the requirement set forth by
423 the Board in December of 2007, that the home be inspected to insure habitability. All four
424 trades inspectors were there. They did not discover any ‘life-safety’ issues; the house is
425 determined to be habitable. There were no major problems, but a few code violations that must
426 be addressed. One of those is a foundation item that was on the open permit. We’ve requested
427 that he fix those.
428

429 We've also requested that he obtain a mechanical permit for the new furnace that was installed
430 without permits and to have that furnace inspected and finalized out by March 31, 2008. If this is
431 not done by March 31, 2008, we will begin to issue tickets. If these things are completed, it will
432 no longer be an issue for the Board at this time.

433
434 **E – NEW BUSINESS** – None.

435
436 **F - REPORTS & COMMUNICATIONS** (Covered under Old Business).

437
438 **F. AUDIENCE PARTICIPATION – GENERAL** – None.

439
440 **ADJOURNMENT**

441
442 Moved by S. Callan, R. Reik, “**that the meeting be adjourned.**” The meeting was adjourned
443 without opposition at 2:48 p.m.

444
445 ***Minutes prepared by B. Acquaviva, Administrative Support Specialist V***