



Safety Codes Council

COUNCIL ORDER No. 0015482

BEFORE THE BUILDING SUB-COUNCIL

On January 24, 2018

IN THE MATTER OF the *Safety Codes Act*, Revised Statutes of Alberta 2000, Chapter S-1.

AND IN THE MATTER OF the Order Pursuant to Section 49(1)(a) of the *Safety Codes Act*, R.S.A. 2000 c. S-1, issued October 19, 2017 by the Accredited Municipality (Respondent) against the Home Builder (Appellant).

UPON REVIEWING the Issued Order **AND UPON HEARING** the Appellant and the Respondent; **THIS COUNCIL ORDERS THAT** the Order is **VARIED**.

FROM:

1. **Install a bedroom window that conforms to the egress requirements in the Alberta Building Code 2006, Division B, Article 9.9.9.1.(2).** Permit application revisions can be submitted to the Accredited Municipality's Service Centre;

AND

2. **Vacate the bedroom until the infraction has been resolved and it has been confirmed by a Building Safety Codes Officer to be in compliance with the Alberta Building Code 2006.** You are not permitted to use the bedroom for sleeping until the infraction has been resolved.

TO:

1. **Install a bedroom window in one of the three bedrooms on the third level that conforms to the egress requirements in the Alberta Building Code 2006, Division B, Article 9.9.9.1.(2), and/or a balcony as allowed by and meeting the intent of Article 9.9.9.1.(3) of the Code.** Permit application revisions can be submitted to the Accredited Municipality's Service Centre;

OR

2. **Propose an *Alternative Solution* that is acceptable to the Accredited Municipality;**

AND

3. **Vacate the bedroom until the infraction has been resolved and it has been confirmed by a Building Safety Codes Officer to be in compliance with the Alberta Building Code 2006.** You are not permitted to use the bedroom for sleeping until the infraction has been resolved.

If you do not propose an acceptable Alternative Solution or otherwise comply with this Order by **Wednesday March 14, 2018**, pursuant to Section 55 of the *Safety Codes Act*, the Accredited Municipality may take all necessary steps to enforce this Order.

Issue:

1. The Appeal concerns an Order issued October 19, 2017 to the Property Owner of a three storey Group Home located in Alberta.

Appearances, Preliminary, Evidentiary, or Procedural Matters:

2. Appearing for the Appellant, the Appeal Panel heard from the representatives of the Home Building Company.
3. Appearing for the Respondent, the Appeal Panel heard from the Building Safety Codes Officer with the Accredited Municipality.
4. Attending as observers were individuals from the Accredited Municipality and the Alberta Municipal Affairs.
5. At the commencement of the hearing, the Appellant and Respondent confirmed there were no objections to any members of the Appeal Panel, and that the Safety Codes Council (Council) in general and the Appeal Panel in particular had jurisdiction to hear and decide the appeal.
6. The Appeal Panel Chair (the "Chair") then explained the process to be followed in hearing this appeal, and read out a list of the written material before the Appeal Panel, consisting of the documents listed below in The Record, paragraph 8 as items 1) to 7). The Appellant and Respondent confirmed that there were no objections to any of the written material submitted to the Appeal Panel prior to the hearing.
7. At the commencement of the hearing the Appellant submitted additional documentation identified as Exhibit 1 – Appellant in The Record. The Respondent had no objection to this additional documentation being entered into evidence. It was noted that this new material was an alternative proposal that had not been presented to or seen by the Accredited Municipality prior to the order or this appeal hearing.

The Record:

8. The Appeal Panel considered, or had available for reference, the following documentation:

1. Notice of Appeal
2. Request for a Stay of the Order
3. Acknowledgment Letter dated October 31, 2017
4. Stay of Order Letter dated November 9, 2017
5. Appeal Hearing Brief Preparation Guide
6. Appeal Hearing Brief submission from the Appellant
7. Appeal Hearing Brief submission from the Respondent
8. Exhibit 1 – Appellant

Provisions of the Safety Codes Act:

9. The *Safety Codes Act* (S-1, RSA 2000), as amended provides, *inter alia*:

Part 3

Standards

Permits required

43(1) If this Act requires a person to have a permit to sell, construct, control or operate any thing or supervise, operate or undertake any process or activity, no person shall do so unless the person has the proper permit.

(2) If any thing to which this Act applies is approved by the regulations for a certain use or purpose, no person shall use that thing for any other use or purpose unless a safety codes officer issues a permit for that other use or purpose or it is an innocuous use or purpose.

(3) If the regulations require that any thing be approved before it is installed or operated, no person shall install or operate that thing unless a safety codes officer issues a permit for it.

(4) A permit under this Act does not authorize a person to do any thing, implement any process or engage in any activity that does not comply with any other enactment.

Provisions of the Alberta Building Code 2006 (ABC 2006):

10. The Alberta Building Code 2006 provides, *inter alia*:

Division C

2.2.10. Occupancy

2.2.10.1. Occupancy Permit

- 1) If required by the *authority having jurisdiction*, an owner shall obtain an *occupancy permit* or permission in writing to occupy from the *authority having jurisdiction*, before any

- a) *occupancy* of a *building* after
 - i) construction,
 - ii) relocation,
 - iii) partial demolition, or
 - iv) *alteration* of that *building*, and
 - b) change in the *occupancy* of a *building*.
- 2) An *occupancy permit* or permission to use a *building* issued under the Safety Codes Act shall not be construed to be a licence to operate or engage in any business.

Division B

9.9.9. Egress from Dwelling Units

9.9.9.1. Travel Limit to Exits or Egress Doors

- 1) Except as provided in Sentences (2) and (3), every *dwelling unit* containing more than 1 *storey* shall have *exits* or egress doors located so that it shall not be necessary to travel up or down more than 1 *storey* to reach a level served by
- a) an egress door to a *public corridor*, enclosed *exit* stair or exterior passageway, or
 - b) an *exit* doorway not more than 1.5 m above adjacent ground level.
- 2) Where a *dwelling unit* is not located above or below another *suite*, the travel limit from a floor level in the *dwelling unit* to an *exit* or egress door may exceed 1 *storey* where that floor level is served by an openable window
- a) providing an unobstructed opening of not less than 1 m in height and 0.55 m in width, and
 - b) located so that the sill is not more than
 - i) 1 m above the floor, and
 - ii) 7 m above adjacent ground level.
- 3) The travel limit from a floor level in a *dwelling unit* to an *exit* or egress door may exceed 1 *storey* where that floor level has direct access to a balcony.

Position of the Parties

Appellants

From the Appellants' submissions and testimony, and in response to questions posed by the Panel, the Appellants' position may be summarized as follows:

- 11.** This issue began when the Property Owner decided to renovate an existing third floor bedroom by adding a dormer to increase the ceiling height, due to a concern that an occupant would bump their head if they sat up quickly in bed. While the bedroom was full height in the centre of the room, the ceiling sloped down to five feet on the sides.
- 12.** There are three bedrooms on the third floor, only two of which are currently being used. These two bedrooms do not have egress windows and are more than 7.0 metres above grade.
- 13.** The Home Builder is not aware how many residents live in the building or how many may potentially occupy the third floor.
- 14.** The window that was installed does not meet the egress size requirements in the Alberta Building Code (ABC) 2006, and while the Home Builder would gladly install a new window, the issue is that the height of the window sill is more than 7.0 metres above grade as the height of the building is greater than was indicated on the drawings, originally submitted and approved by the Accredited Municipality.
- 15.** Given the height of the building (8.4 metres), the Home Builder is having difficulty an acceptable and safe solution to the egress issue. Two suggestions that have been discussed; exterior stairs from the second floor to the ground, and a sprinkler system installed throughout the house, were found unacceptable to the Property Owner as they would present security and liability issues as described in an e-mail found on page 58 of the Appellant's written submission.
- 16.** Another option suggested by the Accredited Municipality was raising the grade of the ground below the window, and installing a door instead of a window which would then meet the height requirement of 7.0 metres. They understand the 7.0 metre requirement is to allow for a fire department ladder to access the bedroom in question. The issue with that suggestion is that there is a large addition below the window in question, and raising the grade below the window might not only block a basement window, the fire department ladder might still not reach the door due to the location of the addition. (Note the two diagrams included with their written submission, pages 62 and 63).
- 17.** The fire department suggested installation of a Juliette Balcony, which made sense as the peak of the roof below the window is only 10' 7" from the current sill and an emergency escape ladder would easily reach this roof. The Accredited Municipality however, said the suggestion does not satisfy Article 9.9.9.1 (2) of the 2006 ABC.
- 18.** The bedroom in question is, in the Contractor's opinion, the best location for quick and safe egress notwithstanding the more than 7.0 m. elevation from the ground due to the addition below the window providing a roof one storey below. They asked the Panel to consider modern two story houses, with walkout basements resulting in egress from the second storey, well over the maximum 7 m. code requirement.
- 19.** In the hope of finding a solution acceptable to all parties, the Home Builder asked the Municipality to issue the Order that is now before the Panel.
- 20.** The Panel Members were referred to drawings included with the new document submitted during the hearing (Exhibit 1 - Appellant), specifically the addition of a small

flat landing platform as highlighted in red on pages 80, 81 and 82. The builder suggests building this landing on the roof below the window, installing egress hardware on the window, and providing a window emergency ladder to allow occupants to lower themselves onto the landing, from where they could either lower themselves to the ground or await fire department rescue. As this suggestion is new, the Panel leaves it to the Accredited Municipality to determine if it provides an acceptable solution to the concerns that have been identified.

- 21.** The builder is anxious to find a solution to this matter as the Property Owner is losing \$2,400 per month in government funding.

Respondent

From the Respondent's submissions and testimony, and in response to questions posed by the Panel, the Respondent's position may be summarized as follows:

- 22.** Original permits were issued based on what later turned out to be inaccurate drawings. An inspection completed by the Building Safety Codes Officer found that the window installed in the third story dormer did not match that approved in the Commercial Final Permit and did not meet the minimum egress requirements in the 2006 ABC. Not only was the unobstructed opening of the window less than required, the sill was more than 1 m. above the floor, and more than 7 m. above the adjacent ground level therefore not meeting the requirements for travel limit to exits or egress doors.
- 23.** Several proposals for possible alternative solutions were discussed, which were either not acceptable to the Property Owner for reasons of security and liability, or did not meet the intent of the Alberta Building Code.
- 24.** The Accredited Municipality has classified the building as a Group C building. The Panel reviewed the appeal on the basis of the Municipality's classification
- 25.** The safety codes officer had no knowledge of when or how this decision was made, nor what permits may have been issued historically that allowed bedrooms on the third floor.
- 26.** Regarding the issue before the Panel, the original permit was approved solely on the basis of the drawings submitted. There was no site visit at the time. A site visit was only conducted for purposes of occupancy.
- 27.** Regarding the fire department's suggestion that a Juliette would be acceptable, the ABC is clear (Article 9.9.9.1 (3)) that it must be a balcony, meeting the intent of the Article, to provide refuge for occupants.
- 28.** There are smoke detectors on each of the three levels and they are interconnected.

Reasons for Decision (Findings of Fact and Law):

The Appeal Panel makes the following findings:

- 29.** The Panel acknowledges the efforts and willingness of all parties to find a solution to this issue.
- 30.** The Panel Members agree that the Accredited Municipality was correct in issuing the Order which it did. The site inspection on May 16, 2017 correctly identified that the installation did not meet Alberta Building Code requirements for travel limit to exits or egress doors.
- 31.** Several alternative solutions have been discussed none of which have proved acceptable for one reason or another or did not provide an equivalent level of safety. It is the owner's responsibility to gather information to support an alternative solution proposal. That is not the responsibility of either the Accredited Municipality or the Safety Codes Council.
- 32.** The document recently submitted during the hearing before the Safety Codes Council may provide grounds for additional consideration of an alternative solution, by the Accredited Municipality.
- 33.** It is the Appeal Panel's understanding that the egress requirements identified in Article 9.9.9.1. of the Alberta Building Code would allow consideration of these to be applicable to any location on the third floor level, and is not limited only to the bedroom in question.

Signed at the City Edmonton)
in the Province of Alberta)
this 30th Day of January A.D. 2018)

Chair, Building Sub-Council Appeal Panel