

Minutes of the Property Maintenance Board of Appeals

Regular Meeting 1:00 PM July 6, 2018

Board Members Present: Russ McCannaha, Elizabeth Kerr, Jim Davis and Joe Witter

Also Present: Bruce Crowe (Chief Housing and Property Maintenance Inspector), Tom Ayers (Chief Building Official), Dave Morrison (City Attorney), Amanda Rodell (Bruce Crowe's Assistant), and Chandler Poole (Director of Community Economic Development)

Dave Morrison began with asking all board members to please state their name for the record.

Jim Davies volunteered to be chairperson and preside over hearings, unless unavailable, in which case an alternate would serve in that capacity.

Mr. Morrison asked if everyone thought they were capable of being fair and objectionable, free of conflicts. All board members agreed and it was determined there were enough board members for a quorum.

Mr. Morrison began explaining that the purpose of the board is to hear and decide appeals, decisions or determinations made by the chief building official. Mr. Ayers is serving as ex-officio and does not vote or participate in deliberations

Mr. Morrison relayed the three criteria for finding an appeal to be legitimate & having grounds for appeal

1. True intent of code has been incorrectly interpreted
2. Provisions of code do not fully apply
3. Requirements of code were adequately satisfied by other means

Motion made by Ms. Kerr to nominate Mr. Davies as the Chairperson of the Board, seconded by Mr. McCannaha. Motion passed unanimously. Mr. Davies duties and responsibilities were explained by Mr. Morrison.

Mr. Morrison also explained open meetings and the process and delved briefly into procedures and definitions.

Meeting closed

Minutes of the Property Maintenance Board of Appeals

Special Meeting 1:30 PM July 6, 2018

Board Members Present: Russ McCannaha, Elizabeth Kerr, Jim Davies and Joe Witter

Also Present: Bruce Crowe (Chief Housing and Property Maintenance Inspector), Tom Ayers (Chief Building Official), Dave Morrison (City Attorney), Amanda Rodell (Bruce Crowe's Assistant), and Chandler Poole (Director of Community Economic Development), Nick and Angie DeVolder (Appellants), Jerry Pepping (appellant's attorney), Shawn Haubenstein (Point Electric on behalf of the appellants), Alderman James Spurgetis

Chairman Davies called the meeting to order at 1:30 PM.

Mr. Pepping began by thanking the Board for the opportunity to address their appeal. Mr. Pepping states that DeVolder Properties originally purchased this property in March 2004 and that they take very good care of the property. Pictures of the property were passed around.

Mr. Pepping discussed that there are two codes, the International Building Code and the International Property Maintenance Code. Mr. Pepping cited Section 102.6 from the Property Maintenance Code which states that "The provisions of this code shall not be mandatory for existing buildings where such buildings or structures are judged by the Code Official to be safe and in the best interest of health, safety and welfare. Mr. Pepping posed the question as to whether this is an objective standard or a subjective standard and does the language about it being judged to be safe and in the best interest of health, safety and welfare apply to historic structures or does it apply to existing structures? Mr. Pepping stressed the safety of the building and introduced Shawn Haubenstein of Point Electric to present on Mr. DeVolder's behalf.

Mr. DeVolder asked Mr. Haubenstein if he was a Master Electrician, to which Mr. Haubenstein indicated that he is. Mr. Morrison asked Mr. Haubenstein if the appliances we use today draw more electricity than the appliances that were around when the apartment complex was built. Mr. Haubenstein agreed. Mr. Morrison mentioned that MidAmerican has a minimal requirement of 100 amp service and Mr. Haubenstein agreed.

Mr. Pepping stated that if the City were to require Mr. DeVolder to put in the same type of electrical service that would be in a new building today, it would impose a serious hardship on his client. He stated that this could devalue property because the loss could not be recovered.

Mr. DeVolder points out that per the International Building Code, the building inspector has the right to make exceptions. He states that there are gray areas, nothing is cut and dry and no mention is made of which code supersedes what.

Mr. Morrison asked Mr. Haubenstein if this was a new building, would MidAmerican require 100 amp service? Mr. Haubenstein indicated that 400 amp service would be required by today's standards.

Mr. Pepping stated that if the code is interpreted to require property owners to upgrade their electrical service to that which would now be required for new construction, it would impose a serious hardship. It would de-value properties because the cost could not be recovered.

Mr. DeVolder stated that the International Building Code allows the building inspector the right to make exceptions and that there were many gray areas when trying to decide which codes supersede which.

Mrs. DeVolder stated that she and Mr. DeVolder operate a beautiful building with excellent tenants. She stated that this upgrade to their electrical service was not something that was factored in to their budget.

Mr. Morrison cited Section 101.2 (Scope and Administration) of the International Property Maintenance Code which applies to all existing residential and non-residential structures. Mr. Morrison states that there is no distinction between historical and non-historical or existing buildings, so safety issues apply whether it's an existing structure or a historical structure.

Mr. Morrison cited Section 101.3 (Intent) of the International Property Maintenance Code. The intent is to ensure public health, safety and welfare insofar as they are affected by the continued occupancy and maintenance of structures and premises'. Mr. Morrison continues that existing structures and premises' that do not comply with this provision shall be altered or repaired to provide a minimum level of health and safety as required herein, which demonstrates the intent.

Mr. Morrison stated that when there is a conflict between a general requirement and a specific requirement, the specific requirement shall govern, as noted in Section 102 of the International Property Maintenance Code. It further states that where there are differences that occur between the provisions of this code (IPMC) and reference standards, the provisions of this code shall apply.

Mr. Morrison stated that according to Section 102.6 (Historical Buildings), the provisions of this code shall not be mandatory for existing buildings or structures designated as historical buildings where such buildings or structures are judged by the code official to be safe and in the public interest.

Mr. Morrison stated that it comes down to whether or not the Board thinks there is a safety issue or not.

Mr. Morrison cited Section 604.2 (Service) of the International Property Maintenance Code that states size and usage of appliances and equipment shall serve as the basis for determining the need for additional facilities in accordance with NFPA70. Dwelling units shall be served by 3-wire, 120-240 volt single phase electrical service having a minimal rating of 60 amps.

Mr. Morrison explained that there are three reasons the Board can overturn a decision or notice from the Chief Building Official:

- 1) Claim that the true intent of the code legally adopted hereunder have been incorrectly interpreted.
- 2) Provisions of the code don't fully apply.

3) Requirements of code are adequately satisfied by other means.

Mr. Morrison called Bruce Crowe. Mr. Crowe was asked his title, to which he replied that he is the Chief Housing and Property Maintenance Inspector. Mr. Morrison asked Mr. Crowe if he sent a Notice of Violation to DeVolder Properties, Mr. Crowe replied that he had. Bruce was then asked about his experience and training. Mr. Crowe stated that he is a Master Electrician and has been one since 2002.

Mr. Crowe then showed pictures taken at DeVolder Properties. He described the pictures and provided additional information for each picture. A picture of the common area showed two panels, a service panel and one for the time clock that ran the hallway lights. Mr. Crowe stated that he could not use the timer for the hallway lights. Mr. Morrison referenced a photo of a breaker at the DeVolder property and asked Mr. Crowe if he had ever witnessed a similar breaker being overloaded. Mr. Crowe stated that he had and provided pictures from another property where the breaker was glowing red hot.

Mr. DeVolder and Mr. Pepping both argued that this was a poor comparison.

Mr. Ayers stated that he was at this property and the breaker was glowing and pulsating. Mr. DeVolder and Mr. Pepping argued that the breaker in the photo was faulty. Mr. Crowe stated that if asked if the breakers at this property are doing their job, his answer would be that they are right now.

Mr. Morrison went over the specifics of the Notice of Violation. Mr. Pepping asked Mr. Crowe if there was anything that Mr. Hauberstein said that he disagreed with, Mr. Crowe said no, that he agrees with Mr. Hauberstein's comments.

When Mr. Pepping asked Mr. Crowe if the building was safe, Mr. Crowe replied that it isn't safe per the International Property Maintenance Code.

Mr. Morrison said that there have been questions as to the relevance of things happening at another residence. He argued that it is relevant because it could happen elsewhere.

Mr. Crowe stated that the DeVolder's property needs a new 400 amp service and new 100 amp panels.

Ms. Kerr asked if it was the City's opinion that this upgrade would make the building safer. Mr. Crowe said yes, because it will be 400 amp service split into seven 100 amp panels and that is fine. He continued that how the DeVolder's choose to configure the rest is up to them and their contractor.

Mr. Davies asked then if the city has the authority to make every 50 year old house in Rock Island make similar changes. Mr. Crowe said yes, if they do not have 60 amp service. He also stated that this service is unsafe, it happens to be working right now, but he doesn't think it's safe.

Mr. McCannaha stated that even if Mr. Crowe thought it was safe, if the code says it's unsafe, then it's unsafe.

Mr. Pepping cited Section 101.2 (Scope) of the International Property Maintenance Code as it pertains to a reasonable level of safety. He stated that the electrical service has been functioning properly, it existed before the code was changed and it is operating in a safe fashion today. A breaker could fail n

any situation, water could affect the breaker, wires could fray, but that is not the case here. He stated that he isn't saying to abandon those principles of safety, but in this situation, there isn't a necessity requiring the DeVolders to spend \$18,000.

Mr. Ayers stated that the building has been safe up until now, but it isn't code compliant.

Mr. Pepping argued that this could negatively affect the value of properties in Rock Island.

Mr. Davies stated that we can only deal with this case right now.

Mr. McCannaha stated that they are just trying to make a fair decision.

Ms. Kerr clarified that it's the City's stance that the property is not code compliant based on the fact that they view it as unsafe. She then asked the DeVolder's if their stance is that it's too costly of an upgrade. Mr. DeVolder stated that it's a huge factor.

Mr. Morrison stated that if the Code Official deems the property as unsafe, we should not require a catastrophe to happen to deem it unsafe.

Formal motion to close for deliberation made by Mr. Davies. Ms. Kerr seconded the motion and no one opposed.

Mr. Davies re-opened the hearing by stating that the Board does not feel good about denying the appeal, but they do feel the City has the right to impose this. He continued that the DeVolder's reasons of possible financial hardship have nothing to do with the code. The Board's stance is that they do not want to see the DeVolders fined.

Mr. Crowe and Mr. Ayers stated that they do not want to fine them, they just want the electrical service upgraded to meet code.

Mr. Davies said the DeVolders are good people that the Board wants to own properties in Rock Island. Ms. Kerr concurred.

Mr. DeVolder asked questions about the mast and wires and Mr. Crowe replied that they need to talk to MidAmerican to ensure compliance with them. Mr. Crowe then discussed the MUNICES process.