

BEFORE THE ELEVATOR SAFETY BOARD
STATE OF ARKANSAS

IN RE: ARKANSAS SECRETARY OF STATE
CAPITOL HILL APARTMENT BUILDING
AS/EV #301

CONSENT ORDER

This matter comes before the Elevator Safety Board on Thursday, March 21, 2013 at the request of the Agency and the Arkansas Secretary of State to extend the variance granted July 19, 2012 one (1) year until December 31, 2015.

THEREFORE, the Board grants a one (1) year extension of the July 19, 2012 variance for AS/EV #301 until December 31, 2015.

IT IS SO ORDERED

ELEVATOR SAFETY BOARD
STATE OF ARKANSAS


By: 

Ricky Belk, Chairman

Date: 3.21.13

Approved: 

Daniel Knox Faulkner, 2002168 DATE
Staff Attorney
Arkansas Department of Labor
10421 West Markham Street
Little Rock, AR 72205
(501) 682-4504

 3/21/13
A.J. Kelly DATE
Deputy Secretary of State
Arkansas Secretary of State
Room 256 State Capitol
Little Rock, AR 72201
(501) 682-1010

BEFORE THE ELEVATOR SAFETY BOARD
STATE OF ARKANSAS

IN RE: ARKANSAS SECRETARY OF STATE
 CAPITOL HILL APARTMENT BUILDING
 AS/EV #301

ORDER

This matter comes before the Elevator Safety Board on Thursday, July 19, 2012. The petitioner, The Honorable Mark Martin, Secretary of State ("Petitioner"), seeks a variance for the freight elevator located at the Capitol Hill Apartment Building on the State Capitol Grounds in Little Rock, Arkansas. The Arkansas Department of Labor was represented by counsel, Daniel Faulkner ("Faulkner"). The Secretary of State was represented by counsel, A.J. Kelly ("Kelly"). The Board makes the following findings of fact and conclusions of law.

FINDINGS OF FACT:

1. The Petitioner has been operating the freight elevator (AS/EV #301) located at the Capitol Hill Apartment Building on the State Capitol Grounds in Little Rock, Arkansas pursuant to permanent variances granted in 2008 and 2011 as follows:
 - a. 2008 Variance
 1. foreign equipment in the machine room, A17.3-2005, 2.2.1; and
 2. foreign piping in the hoistway, A17.3-2005, 2.1.4.
 - b. 2011 Variance
 1. hoistway projections, A17.3-2005, 2.1.3;
 2. access to machine room, A17.3-2005, 2.2.2; and A17.1-2004, Part 8.7.2.7.2;
 3. fire rating on hoistway, A17.3-2005, 2.1;
 4. car enclosures, A17.3-2005, 3.4.1; and
 5. working clearance, NEC 2005, 110.26(a)(1).
2. Effective September 1, 2006, the Board updated the State Elevator Code to the 2005 edition of ASME A17.3, which requires all existing elevators to have Phase I and Phase II fire service.

Existing elevators had until September 1, 2011 to comply with the fire service requirement. The Secretary of State was sent notice of these proposed regulations in 2006 during the regulation promulgation process.

3. The Petitioner filed a variance request December 1, 2011, seeking:

- a. a permanent variance from ASME A17.3-2005, Section 3.11.3 and Arkansas Elevator Rules and Regulations Section 010.05-013 requiring the installation of Firefighter's Phase I and Phase II Service. At the hearing, Kelly clarified that the Petitioner alternatively seeks a temporary variance from Firefighter's Phase I and Phase II Service until December 31, 2014; and
- b. a permanent variance with respect to platform size.

4. Larry Smothers ("Smothers"), Chief Elevator Inspector, Arkansas Department of Labor, made a written report to the board and recommended denial of both variance requests. After on-site inspection, Elevator Inspector Leroy Moore testified at this hearing that the conveyance has the requisite platform size to comply with adopted Codes.

5. Faulkner and Kelly stipulated that the platform size meets adopted codes and that a variance from platform size is unnecessary for the current conveyance. Any new construction/replacement project that retains a minimum platform size of 36 inches by 54 inches is acceptable under A117.1-2003 Section 407.4.1. They further agreed that the sole issue left before the Board involves the installation of Firefighter's Phase I and Phase II Service on AS/EV #301.

6. The Petitioner presented evidence to the Board that an undue hardship is present in this matter because of the length of potential disruption to the building (3-6 months); that it is not practical to perform the construction during an annual legislative session; that Petitioner delayed legislative approval of funds for renovation due to the uncertainty of the platform size issue; budget constraints due to publication requirements for Constitutional amendments; that there is a passenger elevator in this building with Phase I and Phase II Fire Service; and that the Phase I and Phase II project is not severable from the proposed renovation project with the elevator company.

7. During consideration of the variance request, Board Member Marvin Vaughter recommended that an intercom be installed in the conveyance to raise the level of safety in the limited occasions the elevator is in use by Petitioner's staff. Petitioner agreed to amend its request to allow consideration of this recommendation.

8. As a result, the Board considered four (4) different variance requests:

- a. permanent variance with no conditions;
- b. permanent variance provided an intercom is added to the conveyance;
- c. temporary variance with no conditions until December 31, 2014; and
- d. temporary variance until December 31, 2014 provided an intercom is added to the conveyance or is otherwise confirmed as in place.

All of these requests are based on the elevator remaining locked to the public.

CONCLUSIONS OF LAW:

1. Ark. Code Ann. § 20-24-106(d) provides that "[t]he board shall also have the power in any particular case to grant exceptions and variations which shall only be granted where it is clearly evident that they are necessary in order to prevent undue hardship or where the existing conditions prevent compliance with the literal requirements of the rules and regulations. In no case shall any exception or variation be granted unless, in the opinion of the board, reasonable safety will be secured thereby."

2. ASME A17.3-2005 is the applicable code for this conveyance.

3. In the present case, the Board concludes that there is no undue hardship present in the variance requests contained in Paragraphs 8a-c above (permanent variance with no conditions; permanent variance provided an intercom is added to the conveyance; temporary variance with no conditions until December 31, 2014); and that reasonable safety will not be secured if they are granted.

4. The Board concludes that there is an undue hardship present in the variance request contained in Paragraphs 8d above (temporary variance until December 31, 2014 provided an intercom is

added to the conveyance or is otherwise confirmed as in place) because of the length of potential disruption to the building (3-6 months); that it is not practical to perform the construction during an annual legislative session; the Petitioner delayed legislative approval of funds for renovation due to the uncertainty of the platform size issue; budget constraints due to publication requirements for Constitutional amendments; there is a passenger elevator in this building with Phase I and Phase II Fire Service; and that the Phase I and Phase II project is not severable from the entire renovation project with the elevator company.

5. The Board further finds that reasonable safety will be secured if this request is granted provided an intercom is installed and the elevator remains locked to the public with limited access to the key. Additionally, there is a passenger elevator in this building with Phase I and Phase II Fire Service. If an intercom is not installed within the required thirty (30) days, the conveyance shall be "red-tagged" until such time the intercom is installed.

THEREFORE, the Board grants the Petitioner's variance request from ASME A17.3-2005, Section 3.11.3 and Arkansas Elevator Rules and Regulations Section 010.05-013 for AS/EV #301 until December 31, 2014, provided an intercom is added to (or confirmed to already be installed in) the conveyance.

IT IS SO ORDERED.

ELEVATOR SAFETY BOARD
STATE OF ARKANSAS

By: 

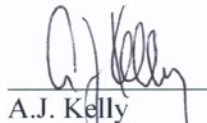
Ricky Belk, Chairman

Date: 3.21.13

Approved:

 3/21/13

Daniel Knox Faulkner, 2002168 DATE
Staff Attorney
Arkansas Department of Labor
10421 West Markham Street
Little Rock, AR 72205
(501) 682-4504

 3/21/13
A.J. Kelly DATE
Deputy Secretary of State
Arkansas Secretary of State
Room 256 State Capitol
Little Rock, AR 72201
(501) 682-1010

BEFORE THE ELEVATOR SAFETY BOARD
STATE OF ARKANSAS

IN RE: AS 1496 and 1497

ARKANSAS FOUNDATION FOR MEDICAL CARE
1020 W. 4th Street
Little Rock, AR 72201

ORDER

This matter came before the Elevator Safety Board on Thursday, November 15, 2012. The applicant for a variance was represented by John Clayborn, Arkansas Foundation for Medical Care; Tim Yelvington, Roark Perkins Perry and Yelvington, Architects; and Rebekah Gray, Colliers International. Larry Smothers, Chief Elevator Inspector, made a report and recommendation to the board. Also present representing the Department of Labor's staff recommendation was Denise Oxley, Chief Counsel.

The board makes the following findings of fact and conclusions of law.

FINDINGS OF FACT:

1. On or about June 27, 2011, the Elevator Safety Division of the Arkansas Department of Labor received applications to modernize two passenger elevators, permitted as AS 1496 and 1497. The two elevators are located at 1020 W. 4th Street. The Arkansas Foundation for Medical Care is the owner.

2. Once the modernization project was nearing completion, the owner was advised by the Elevator Safety Division that the ship's ladder used to access the machine room did not meet current code and would have to be replaced with stairs and railing with a maximum angle of 60 degrees together with a floor or platform at the top of the stairs.

3. The ships ladder was on a wall located at a 90 degree angle from the door to the machine room. The door to the machine room and the machine room floor is located 5'4" off the accessing corridor floor.

4. On or about July 23, 2012, the owner applied for a variance, requesting that the existing ships ladder to remain.

5. At the hearing, the applicant submitted evidence regarding the difficulty of installing stairs because it would reduce a 44-inch wide corridor to a 22-inch wide corridor with a 22-inch wide stair. The owner believed this would violate the building code, although the specific provision of the building code was neither cited nor a copy provided to the board.

6. The board discussed other options with the owner, such as the possibility of a fold-away stair; a portable stair; or removing one wall. The owner was adamant that the request was to leave things as they were with the ship's ladder.

CONCLUSIONS OF LAW:

7. The regulations of the Board of Elevator Safety provide that: "All alterations and major repairs to conveyances shall be made in conformity with the same standards as established by Rule 010.05-011(A)." Elevator Safety Board Rule 010.05-012 (September 1, 2006). Rule 010.05-011 is the minimum standards for new construction and installation and adopts by reference the American Society of Mechanical Engineers Safety Code for Elevators and Escalators, ASME A17.1-2007.

8. ASME A17.1-2007, Rule 2.7.3.34 and 2.7.3.3.5 provides, in part, with respect to machine room access:

2.7.3.3.4. Permanent, noncombustible stairs shall have a maximum angle of 60 deg from the horizontal, and shall be equipped with a noncombustible railing conforming to 2.10.2.1, 2.10.2.2, and 2.10.2.3.

2.7.3.3.5. A permanent, noncombustible platform or floor shall be provided at the top of the stairs with noncombustible railings. . . on each side.

9. Ark. Code Ann. § 20-24-106(d) provides that “[t]he board shall also have the power in any particular case to grant exceptions and variations which shall only be granted where it is clearly evident that they are necessary in order to prevent undue hardship or where the existing conditions prevent compliance with the literal requirements of the rules and regulations. In no case shall any exception or variation be granted unless, in the opinion of the board, reasonable safety will be secured thereby.”

10. The board interprets Rule 010.05-012 to require that for major alterations or modifications to existing conveyances, the installation must be “brought up to Code,” meaning it must be brought up-to-date in terms of compliance with the standards for new construction. In the present case, this means stairs at a 60 degree angle with hand rails and a platform.

11. This variance request deals with not with public safety, as the general public would not access the machine room. It deals solely with the safety of maintenance personnel, elevator mechanics, and inspectors.

12. There is insufficient evidence to conclude that the owner/operator could not comply with the literal requirements of the rule. There is insufficient evidence to conclude that a variance is necessary to prevent an undue hardship. There was no evidence of the time, inconvenience, business interruption, or costs that compliance would entail.

13. The board concludes that “reasonable safety” includes not just public safety, but the safety of maintenance personnel, elevator mechanics, and inspectors. The board has consistently expressed this opinion as evidenced by the variances it has dealt with on overhead clearance at the top of an elevator shaft.

14. There is insufficient evidence to conclude that reasonable safety will be assured if the variance is granted.

THEREFORE, the board denies the variance request of Arkansas Foundation for Medical Care.

IT IS SO ORDERED.

ELEVATOR SAFETY BOARD
STATE OF ARKANSAS

By 
Ricky Belk, Chairman

Date: 3.21.13

Approved:
Denise P. Oxley, 84-117
Chief Legal Counsel
Arkansas Department of Labor
10421 West Markham Street
Little Rock, AR 72205
(501) 682-4504