

**BEFORE THE ELEVATOR SAFETY BOARD
STATE OF ARKANSAS**

**IN RE: NORTHWEST ASSEMBLY, INC.
 AS # 5929**

ORDER

This matter comes before the Arkansas Elevator Safety Board on Thursday, March 15, 2018, in the offices of the Arkansas Department of Labor. The petitioner, Northwest Assembly, Inc. seeks a variance for a wheelchair lift, AS # 5929, located at 301 SW Unity Blvd., Bentonville, Arkansas.

FINDINGS OF FACT:

1. An installation permit for the wheelchair lift, AS #5929, was issued on March 29, 2005. The latest operating permit expired March 31, 2015. The wheelchair lift subsequently operated without an inspection or permit.
2. On November 17, 2017, a private licensed inspector, Tom Sharp with ATIS Inspection Service, inspected the lift and filed an inspection report with the Elevator Safety Division reflecting no violations.
3. On January 4, 2018, the wheelchair lift was inspected by the Chief Elevator Inspector, Greg Tipton, because the operating permit had been expired for over twelve (12) months. Mr. Tipton found the unit to be “in good operating order and no violations were found except that an emergency phone will have to be installed.” See Staff Report and Recommendation dated January 29, 2018.

4. On January 25, 2018, the Elevator Safety Division received a variance request from Northwest Assembly, Inc. The variance request indicates that it was a change of personnel that resulted in the operating permit expiring.

5. Mr. Tipton recommended that the variance be granted. *Id.*

CONCLUSIONS OF LAW:

6. The board has authority to adopt administrative rules establishing minimum standards for the installation, construction, maintenance and operation of elevators pursuant to Ark. Code Ann. § 20-24-106(c).

7. The board's administrative rules provide that "[a]ll conveyances shall be maintained by the owner or lessee in a condition that conforms to the standards established by the board which were in effect on the date of installation or the provisions of ASME A17.3-2005, whichever are more stringent." Rule 010.01-013(A)(1)(Elevator Safety Board, Sept. 1, 2006).

8. The administrative rules in effect at the time the installation permit was issued for this conveyance were Part XX (wheelchair lifts) ASME A17.1-1990 and the 1991 and 1992 Addenda.

9. The board's administrative rules further provide:

Any conveyance which is out of operation or without an operating permit for twelve (12) months or more shall . . . shall conform to the standards established by Rule 010.05-011 [ASME A18.1-2005] or have a variance issued. . . before an operating permit can be issued or before it can operate.

Rule 010.05-013(B)(1)(Elevator Safety Board Sept. 1, 2006).

10. In short, because this conveyance was without an operating permit for more than twelve (12) months, the owner must bring it up to the standards of ASME A18.1-2005, the code applicable to new installations of wheelchair lifts, or obtain a variance to allow it to continue operating under the rules on the date of installation or ASME A17.3-2005.

11. The board does have the power to grant a variance from minimum standards when it is clearly evident that 1) it is necessary to prevent undue hardship or existing conditions prevent compliance with the literal requirements of the standards; and 2) in the opinion of the board, reasonable safety will be secured. Ark. Code Ann. § 20-24-106(d).

12. The board recognizes that the owner will have some cost-savings if the variance is granted. That alone, however, is not sufficient to establish an undue hardship. *See* Rule 010.05-016(D)(3). In this case, however, the additional costs would be borne by a non-profit church organization. The board also recognizes that this conveyance is a wheelchair lift. Providing the disabled access is not only important to the petitioner, but important as a matter of public policy. The board concludes that there is an undue hardship in the present case.

13. The board also concludes that reasonable safety will be secured as the owner will have to maintain the elevator to the minimum standards of ASME A17.1-1990 and the 1991 and 1992 Addenda, or the standards for Existing Elevators, ASME A17.3-2005, whichever is most stringent. Additionally, the emergency phone will have to be installed prior to the issuance of an operating permit.

THEREFORE, the Board grants Northwest Assembly a variance to maintain its wheelchair lift in conformity to the standards applicable before its operating permit expired, specifically: ASME A17.1-1990 and the 1991 and 1992 Addenda, or the standards for Existing Elevators, ASME A17.3-2005, whichever is most stringent. The variance is conditioned upon the installation of an emergency phone.

IT IS SO ORDERED.

ELEVATOR SAFETY BOARD
STATE OF ARKANSAS

By: LSJc
Leon Jones, Jr., Chairman

DATE: 3.20.18

Approved:

Denise P. Oxley

Denise P. Oxley (84-117)
Attorney
Arkansas Department of Labor
10421 W. Markham
Little Rock, AR 72205
(501) 682-4507

Melody Espinoza

Melody Espinoza
Director of Finance and Administration
Northwest Assembly, Inc.
301 SW Unity Blvd.
Bentonville, AR 72712
(479) 273-5141