



BUILDING CODE COMMISSION

IN THE MATTER OF Subsection 24(1) of the *Building Code Act*, S.O. 1992, c. 23, as amended.

AND IN THE MATTER OF Subsections 9.15.5., Section 9.23., and Subsection 9.8.8. of the Regulation 403, as amended, (the Building Code).

AND IN THE MATTER OF an application by Thomas Lehan, Homeowner, for resolution of a dispute with Sandy Korakis, Chief Building Official, City of St. Catharines, to determine whether the projection of the three existing steel beams, located on the exterior of the second storey of the main dwelling, provides sufficiency of compliance with Subsections 9.8.8., 9.15.5., and Section 9.23. of the Building Code at 1164 Pelham Road, City of St. Catharines, Ontario.

APPLICANT	Thomas Lehan Homeowner St. Catharines, Ontario
RESPONDENT	Sandy Korakis Chief Building Official City of St. Catharines
PANEL	Tony Chow, Chair Ed Link Rick Florio
PLACE	Toronto, Ontario
DATE OF HEARING	September 7, 2006
DATE OF RULING	September 7, 2006
APPEARANCES	Thomas Lehan Homeowner St. Catharines, Ontario The Applicant Brian Thiessen Chief Building Inspector City of St. Catharines Designate for the Respondent

RULING

1. Particulars of Dispute

The Applicant has received an Order to Remedy Unsafe Building under the *Building Code Act, 1992*, requiring that a building permit be obtained and that the “balcony/porch” structure be constructed in accordance with the building permit or that the unsafe condition (the “balcony/porch” structure) be demolished at 1164 Pelham Road, City of Catharines, Ontario.

The subject building is a two storey, Group C, residential dwelling having a building area of approximately 130 m². The dwelling is comprised of combustible construction and is not equipped with standpipe and hose, sprinkler or fire alarms systems.

The construction in dispute involves the three existing steel beams which project out at the second storey level of the easterly wall of the main dwelling. The Respondent describes these beams as a balcony/porch structure which would therefore be required to comply with the provisions of the Building Code pertaining to guards, structural supports and framing. The Applicant describes these beams as a shelf which is therefore not required to comply with the requirements of the Building Code pertaining to guards, structural supports and/or framing.

2. Provisions of the Building Code in Dispute

Guards 9.8.8.

9.8.8.1. Required Guards

(1) Except for the edges of floor pits in *repair garages* and loading docks, every surface to which access is provided for other than maintenance purposes, including but not limited to exterior landings, porches, decks, balconies, *mezzanines*, galleries, raised *walkways* and roofs, shall be protected by a *guard* on each side which is not protected by a wall and where there is a difference in elevation to adjacent surfaces of more than 600 mm.

(2) Every exterior stair with more than 6 risers and every ramp shall be protected with *guards* on all open sides where the difference in elevation between the adjacent ground level and the stair or ramp exceeds 600 mm.

(3) When an interior stair has more than 2 risers, the sides of the stair and the landing or floor level around the stair well shall be enclosed by walls, or be protected by *guards*, except that a stair to an unfinished *basement* in a *dwelling unit* is permitted to have 1 unprotected side.

9.8.8.2. Height of Guards

(1) Except as provided in Sentences (2) to (4), all *guards*, including those for balconies, shall be at least 1 070 mm high.

(2) *Guards* for porches, decks, landings and balconies are permitted to be a minimum of 900 mm high where

(a) the walking surface of the porch, deck, landing or balcony served by the *guard* is not more than 1 800 mm above the finished ground level, and

(b) the porch, deck, landing or balcony serves not more than one *dwelling unit*.

(3) Except as provided in Sentence (4), *guards* for stairs shall be not less than 900 mm high measured vertically from a line drawn through the outside edges of the stair nosings, and 1 070 mm high at landings.

(4) *Guards* for stairs within *dwelling units* and stairs serving not more than one *dwelling unit* shall be not less than 800 mm measured vertically above a line drawn through the outside edges of stair nosings, and not less than 900 mm above landings.

(5) All required *guards* within *dwelling units* other than those described in Sentence (4) shall be not less than 900 mm high.

9.8.8.3. Guards for Floors and Ramps in Garages

(1) Except for floors of garages referred to in Section 9.35., a continuous curb not less than 150 mm in height and a *guard* not less than 1 070 mm above the floor level shall be provided at every opening through a garage floor and around the perimeter of such floor and ramps where the exterior walls are omitted and where the top of the floor is 600 mm or more above an adjacent ground or floor level.

9.8.8.4. Openings in Guards

(1) Except as provided in Sentence (2), openings through any *guard* which is required by Article 9.8.8.1. shall be of a size which will prevent the passage of a spherical object having a diameter of more than 100 mm unless it can be shown that the location and size of openings which exceed this limit do not represent a hazard.

(2) Openings through any *guard* which is required by Article 9.8.8.1. and which is installed in a *building of industrial occupancy* shall be of a size which will prevent the passage of a spherical object having a diameter of more than 200 mm unless it can be shown that the location and size of such openings which exceed this limit do not represent a hazard.

(3) Openings through any *guard* which is not required by Article 9.8.8.1. and which serves a *building* of other than *industrial occupancy*, shall be of a size which

(a) will prevent the passage of a spherical object having a diameter of more than 100 mm, or

(b) will permit the passage of a spherical object having a diameter of more than 200 mm unless it can be shown that the location and size of openings which exceed these limits do not represent a hazard.

9.8.8.5. Design to Prevent Climbing

(1) *Guards* required by Article 9.8.8.1. and serving *buildings of residential occupancy* shall be designed so that no member, attachment or opening located between 100 mm and 900 mm above the floor or walking surface protected by the *guard* will facilitate climbing.

9.8.8.6. Guards for Ramps

(1) *Guards* for ramps including vehicular ramps shall conform to the requirements for *guards* for stairs in Articles 9.8.8.2. and 9.8.8.4.

9.8.8.7. Glass in Guards

(1) Glass in *guards* shall be

- (a) safety glass of the laminated or tempered type conforming to CAN/CGSB-12.1-M, "Tempered or Laminated Safety Glass", or
- (b) wired glass conforming to CAN/CGSB-12.11-M, "Wired Safety Glass".

9.8.8.8. Construction of Guards

- (1) Except as permitted in Sentence 2, *guards* shall conform to the loading criteria in Article 4.1.10.1.
- (2) Guards constructed in accordance with the requirements in the Supplementary Guidelines shall be deemed to satisfy the requirements of Sentence 9.1.

Joist and Beam Support 9.15.5.

9.15.5.1. Support of Floor Joists

- (1) Except as permitted in Sentence (2), *foundation* walls of hollow unit masonry supporting floor joists shall be
 - (a) capped with not less than 50 mm of solid masonry or concrete, or
 - (b) have the top course filled with mortar or concrete.
- (2) Capping required in Sentence (1) is permitted to be omitted
 - (a) in localities where termites are not known to occur,
 - (b) when the joists are supported on a wood plate not less than 38 mm by 89 mm, and
 - (c) when the siding overlaps the *foundation* wall not less than 12 mm.

9.15.5.2. Support of Beams

- (1) Not less than a 190 mm depth of solid masonry shall be provided beneath beams supported on masonry.
- (2) Where the beam referred to in Sentence (1) is supported below the top of the *foundation* walls, the ends of such beams shall be protected from the weather.

9.15.5.3. Pilasters

- (1) Pilasters shall be provided under beams that frame into unit masonry *foundation* walls 140 mm or less in thickness.
- (2) Pilasters required in Sentence (1) shall be not less than 90 mm by 290 mm and shall be bonded or tied into the wall.
- (3) The top 200 mm of pilasters required in Sentence (1) shall be solid.

9.23. Wood-Frame Construction

(Please see Section 9.23. of the Building Code)

3. Applicant's Position

The Applicant stated that he had applied for and received a building permit sometime in 1997 to effect repairs to the interior of the main dwelling. He further stated that as part of these repairs the steel beams in question were installed. He advised the Commission that at the time of the repairs undertaken to the second storey, the steel beams were too long and projected outside the dwelling. The Applicant further advised that the steel beams were left projecting out at the second storey level of the dwelling and were approved by the municipality as part of the 1997 building permit.

The Applicant maintained that the steel beams are not a balcony or porch, nor are they used as a balcony. The Applicant confirmed that a door located on the second storey of the dwelling was also installed at the time of the 1997 renovations. He explained that the door cannot be opened because it does not have a door knob and that there is a block of wood preventing the door from being opened. He further explained that a sign marked "Danger – No Entry" has been posted in the vicinity of the door.

The Applicant likened the steel beams to a shelf and reiterated his opinion that the steel beams do not constitute a balcony and should not be subject to the provisions of the Building Code pertaining to balconies.

In summary, the Applicant reiterated that the steel beams in question have been in existence since 1997 and that they were approved as part of the building permit issued in 1997. He asserted that the door located on the second storey is not operational. In his opinion, he stated that there is no issue with the steel beams as they do not constitute a balcony.

4. Respondent's Position

The Designate for the Respondent submitted that a balcony/porch structure has been constructed without a building permit and that the balcony/porch structure is considered unsafe. He further advised that an Order to Remedy Unsafe Building was issued to the Applicant.

The Designate stated that the municipality has had a number of issues with the Applicant commencing construction without applying for a building permit. He further stated that complaints had been received from neighbouring property owners which resulted in the municipality visiting the property. Upon reviewing the property in question, a number of violations to Waste and Property Standards By-laws and the Building Code became apparent to municipal officials and as a result, various orders were issued to the Applicant. One of the Orders has resulted in the Applicant's appeal to the Building Code Commission.

The Designate recounted that an Order to Remedy Unsafe Building was issued to the Applicant because, in his opinion, the three steel beam projections constitute a balcony/porch. He advised the Commission that a building permit had not been obtained for the construction of a balcony. He further advised that the balcony structure does not comply with the minimum standards for structural adequacy or safety of occupants as the structure is not equipped with guards.

The Designate described structure, which, in his opinion, constitutes a balcony, a being comprised of skids and plywood supported by a television antennae and being tied with rope. He directed the Commission to one of the pictures included as part of the submission and noted the presence of a door at the second storey level. He argued that the presence of the door further supported the municipality's belief that the area constituted a balcony. He advised that the municipality has been denied access to the property and therefore, has been unable to inspect to ensure that the structural adequacy has been achieved. He further advised that the

municipality felt it necessary to issue an order to not allow occupancy or use of this structure until such time as a building permit has been obtained and work completed to make the area safe.

In summation, the Designate reiterated that the municipality believes the structure constitutes a balcony which is therefore required to be protected with a guard. He added that the structure must also be properly framed. In his opinion, the structure does not comply with the minimum construction requirements outlined in the Building Code.

5. Commission Ruling

It is the Decision of the Building Code Commission that the projection of the three existing steel beams, located on the exterior of the second storey of the main dwelling, need not comply with Subsections 9.15.5., Section 9.23., and Subsection 9.8.8. of the Building Code 1164 Pelham Road, City of St. Catharines, Ontario, on condition that:

- a) The projection of the steel beams in question shall have nothing built or structurally attached to them and that they shall not have any type of use or occupancy, including storage.
- b) The door located on the second storey of the main dwelling shall comply with the requirements outlined in Sentence 9.6.4.1.(2) of the Code.

6. Reasons

- i) The three steel beams, which project out at the second storey level of the main dwelling, were constructed and approved as part of the 1997 building permit. With the current storage use discontinued, the steel beam projections will not have any occupancy and they will therefore not be required to comply with the Subsection 9.15.5., Section 9.23. and Subsection 9.8.8. of the Building Code.
- ii) Adherence to the requirements outlined in Sentence 9.6.4.1.(2) as required by the above noted condition, will prevent the door from being opened and thereby prevent access to the steel beam projections.

Dated at Toronto this 7th day in the month of **September** in the year **2006** for application number **2006-18**.

Tony Chow, Chair

Ed Link

Rick Florio