



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 Articles 9.10.21.2. and 9.10.21.3. of Regulation 403, as amended by O. Reg. 22/98, 102/98, 122/98, 152/99, 278/99, 593/99, 597/99, 205/00 and 283/01 (the “Ontario Building Code”).

AND IN THE MATTER OF an application by Jeff Jansen, Fernbrook Homes, for the resolution of a dispute with Frank Asta, Chief Building Official, Town of Oakville, to determine whether the as-installed upper kitchen cabinet valance, situated at the front edge of the underside of the cabinet approximately 360 mm above the counter surface and adjacent to the range/stove opening, provides sufficiency of compliance with Articles 9.10.21.2. and 9.10.21.3. of the Ontario Building Code at 1392 Pinery Crescent and 1392 Clearwater Crescent, Oakville, Ontario.

APPLICANT	Jeff Jansen Fernbrook Homes Concord, Ontario
RESPONDENT	Frank Asta Chief Building Official Town of Oakville
PANEL	Len King, Vice-Chair Tony Chow Donald Pratt
PLACE	Toronto, Ontario
DATE OF HEARING	January 16, 2003
DATE OF RULING	January 16, 2003
APPEARANCES	Jeff Jansen, Fernbrook Homes Concord, Ontario The Applicant
	Frank Asta, Chief Building Official Town of Oakville The Respondent

RULING

1. The Applicant

Jeff Jansen, Fernbrook Homes, has received a building permit under the *Building Code Act*, S.O. 1992, c. 23, as amended, and has constructed residential dwellings at 1392 Pinery Crescent and 1392 Clearwater Crescent, Oakville, Ontario.

2. Description of Construction

The Applicant is constructing a residential subdivision in the Town of Oakville. Included in this development are the subject dwellings located at 1392 Pinery Crescent and 1392 Clearwater Crescent. These homes are classified as Group C residential dwellings and have a gross floor area of approximately 279 m² (3,000 sq. ft). They are two storeys in building height and constructed of combustible construction.

The construction in dispute involves the valance feature associated with the upper kitchen cabinets. The kitchen cabinets are situated approximately 450 mm (17³/₄ in) above the counter surface. The subject valance extends downward approximately 77 mm to 90 mm from the underside of the upper cabinets, running along the front edge and returning toward the wall where the cabinet ends. This projection brings the valance to within 360 mm (14 inches) of the counter surface. The valance itself is generally constructed of wood material, approximately 13 mm to 25 mm (1/2 in to 1 in) in thickness, and finished to complement the kitchen cabinet. This feature is often purchased as an option from the builder and is typically used to camouflage indirect fluorescent lighting affixed to the underside of the upper cabinet and used to illuminate the counter surface.

3. Dispute

The issue at dispute between the Applicant and Respondent is whether the as-installed valance feature, situated at the edge of the upper cabinet adjacent to the stove/range area and extending to within approximately 360 mm above the counter surface, provides sufficiency of compliance with Article 9.10.21.3. of the Ontario Building Code (OBC).

Article 9.10.21.3. outlines horizontal clearances associated with fire protection for gas and electric ranges. Sentence (1) stipulates that, except as provided in Sentences (2) and (3) any combustible wall framing, finishes or cabinets within 450 mm of the area where the range is to be located must be protected above the level of the heating elements with a minimum resistance of no less than what would be provided by a 9.5 mm thickness of gypsum board.

As a specific exemption to this requirement Sentence (2) permits that counter-top splash boards or back plates need not be protected. Further Sentence (3) provides that, except for cabinetry described in Article 9.10.21.2 (situated directly above the area of the range), cabinetry located at least 450 mm above the heating element level also need not be protected. The valance is not being proposed for the cabinetry located directly above the range area therefore the vertical clearance provisions of Article 9.10.21.2. are not at issue.

In the subject dispute, a valance has been attached to the underside of the upper kitchen cabinets. As noted above, the bottom of the cabinet itself is approximately 450 mm (17³/₄ in) above the level of the heating elements and adjacent to the area where the range will be located. With the extension of the valance into this clearance, the projection reaches approximately 360 mm from the counter surface. The

issue in this regard is whether this valance is considered to be part of the cabinet, a finish or framing and/or whether it will provide sufficiency of compliance with Article 9.10.21.3., particularly when considering the exemption in this provision for features such as splash boards and back plates.

4. Provisions of the Ontario Building Code

9.10.21.3. Horizontal Clearances

- (1) Except as provided in Sentences (2) and (3), *combustible* wall framing, finishes or cabinets within 450 mm (17³/₄ in) of the area where the *range* is to be located shall be protected above the level of the heating elements by material providing fire resistance not less than that of a 9.5 mm (³/₈ in) thickness of gypsum board.
- (2) Counter-top splash boards or back plates which extend above the level of the heating elements need not be protected as described in Sentence (1).
- (3) Except for cabinetry described in Article 9.10.21.2., cabinetry located not less than 450 mm (17³/₄ in) above the level of the heating elements need not be protected as described in Sentence (1).

5. Applicant's Position

The Applicant submitted that the feature in question and being referred to as a valance is attached to the underside of a standard sized upper kitchen cabinet. This is offered to purchasers, primarily of high-end residential dwellings, as an option in the finish of their homes. He advised that the feature has become quite popular and builders throughout the province have been offering it to home buyers. Further, cabinet manufacturing industry has been regularly producing this type of feature as an add-on to standard sized cabinets. In his opinion, it was not part of the cabinet and was frequently added on as an after-thought by many purchasers.

The Applicant advised that it was not until this development in Oakville that the issue had been challenged by a building official. In this regard, he suggested that there is nothing in the Code to specifically prohibit a valance or to regulate the valance encroachment into the area beneath the cabinet. In fact, he argued, the valance feature was similar in nature to the counter back splash that is specifically exempted from providing any level of fire protection in the same Article of the Code. In his opinion, the back splash would be much or more of a hazard than the valance under dispute. Flames erupting from the heating element, he argued, would come into contact with the counter-top extension before ever reaching the valance projection. Furthermore, he argued that, considering the design of many modern kitchens, range surfaces may be directly adjacent to exposed wall board, again causing more concern than a valance extension.

In summation, the Applicant submitted that the cabinetry has been manufactured to meet Code requirements, providing 450 mm clearance. The issue was merely with respect to the valance, which he again considered to be equivalent to a back splash for which there were no restriction on size or projection. He suggested that this ruling would be important industry wide especially when considering the increase in popularity of indirect cabinet lighting and valance additions.

6. Respondent's Position

The Respondent submitted that, while this issue has arisen in the subject homes constructed by the Applicant builder, it is also a concern in other homes presently being constructed. He suggested that as many as 70% to 75% of the high-end homes being constructed offer this feature as an option to the design of the cabinetry. Many home purchasers, he advised, consider the indirect lighting to be appealing and are opting for the decorative valance alternative to hide the light fixtures. This design and the issue associated with it has been evolving in the industry for some time. In his review of the situation, however, he couldn't reconcile how the valance could comply with the present Code requirements for 450 mm of clearance in the area of the stove. To be prudent, therefore, this is an issue to be decided upon by the Commission.

The Respondent advised that, if not for the valance, the cabinet would comply in all other respects with the Code requirements. Valances however, unlike counter-top back splashes, are not addressed in the Code. He was concerned with the projection of radiant heat from the elements or the hazard associated with "aggressive cooking" when considering the encroachment of the valance into the 450 mm required clearance.

In summation, the Respondent submitted that he felt unable to determine whether this type of valance feature would contribute to a fire if the source of ignition was the stove-top burner. Because this feature is relatively new, the Code does not address the issue nor whether this type of encroachment would be acceptable from a fire safety perspective. In conclusion, he stated that he was looking for direction from the Commission as to whether sufficiency of compliance with the OBC requirements is being achieved.

7. Commission Ruling

It is the decision of the Building Code Commission that the as-installed upper kitchen cabinet valance, situated at the front edge of the underside of the upper cabinet approximately 360 mm above the counter surface and adjacent to the area where the range/stove is to be located, does not provide sufficiency of compliance with Article 9.10.21.3. of the Ontario Building Code at 1392 Pinery Crescent and 1392 Clearwater Crescent, Oakville, Ontario.

8. Reasons

- i) The valance is considered to form part of the upper cabinet and, as a result, is required to provide a minimum clearance of 450 mm above the level of the heating elements.
- ii) Presently, no Code amendment is proposed by the Building and Development Branch of the Ministry of Municipal Affairs and Housing to exempt this type of valance feature from the minimum Code requirements for cabinets outlined in Article 9.10.21.3.

Dated at Toronto this **16th** day in the month of **January** in the year **2003** for application number **2002-45**.

Len King, Vice-Chair

Tony Chow

Donald Pratt