



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 Sentence 9.8.8.5.(1) 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 Judy and Michael Djurdjevic, owners, The Old Bank House, for the resolution of a dispute with William Walker, Chief Building Official, Town of Niagara-on-the-Lake, to determine whether the as-installed guard serving the second floor balconies and having a horizontal member located at approximately 150 mm to 160 mm above the floor level, provides sufficiency of compliance with Sentence 9.8.8.5.(1) of the Ontario Building Code at The Old Bank House, 10 Front Street, Niagara-on-the-Lake, Ontario.

APPLICANTS Judy and Michael Djurdjevic, owners
The Old Bank House
Niagara-on-the-Lake, Ontario

RESPONDENT William Walker
Chief Building Official
Town of Niagara-on-the-Lake

PANEL Kenneth Peaker, Chair
Fred Barkhouse
Robert De Berardis

PLACE Toronto, Ontario

DATE OF HEARING October 25th, 2001

DATE OF RULING October 25th, 2001

APPEARANCES Judy and Michael Djurdjevic, owners
The Old Bank House
Niagara-on-the-Lake, Ontario
The Applicants

Rolf Wiens
Assistant Chief Building Official
Town of Niagara-on-the-Lake
Designate for the Respondent

RULING

1. The Applicant

Judy and Michael Djurdjevic, owners, The Old Bank House, have applied for a building permit under the *Building Code Act*, S.O. 1992, c. 23, as amended and have undertaken renovations at 10 Front Street, Niagara-on-the-Lake, Ontario.

2. Description of Construction

The Applicants are the owners of a building known as The Old Bank House. The original building was constructed in 1902 and served as the first branch of the Bank of Canada in Niagara-on-the-Lake. In the 1940s and 1950s the building was operated as a guest house and in the mid 1970s it was converted to a bed and breakfast facility and now operates as a 9 bedroom country inn. The building is classified as having a Group C occupancy. It is comprised of combustible construction, is equipped with a fire alarm system and is partially sprinklered. The structure has a building area of 566.7 m² (6,100 ft²) according to the Applicant and 549.7 m² (5,917 ft²) according to the Respondent.

The building has been recently renovated by the Applicants. The construction in dispute involves the exterior guards that have been installed for the second floor balconies serving three of the guest suites. The metal guards are 1,070 mm (42 in) in height and contain two horizontal members along the lower portion. The lowest of these members is approximately 50 mm (2 in) above the floor level, whereas the higher member is approximately 150 mm (5 7/8 in) to 160 mm (6 1/4 in) from the finished floor. The guard also incorporates some decorative detailing along its upper portion, just below the handrail. This detailing is located approximately 940 mm (37 in) from the floor level and is situated at roughly 780 mm (30 3/4 in) to 790 mm (31 1/8 in) from the highest of the two lower members.

3. Dispute

The issue at dispute between the Applicant and Respondent is whether the as-installed guards having a horizontal member located approximately 150 mm to 160 mm above the floor level provides sufficiency of compliance with Sentence 9.8.8.5.(1) of the Ontario Building Code (OBC).

Sentence 9.8.8.5.(1) mandates that required guards serving building of residential occupancy shall be designed so that no member, attachment or opening located between 100 mm (4 1/8 in) and 900 mm (35 3/8 in) above the walking surface will facilitate climbing. In this instance, the higher of the two lower horizontal members occurs at approximately 150 mm to 160 mm above the floor level. However, it should be noted that the decorative detailing at the top of the guard is located approximately 940 mm from the floor. The separation between the two elements is 780 mm to 790 mm.

4. Provisions of the Ontario Building Code

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 (4 in) and 900 mm (2 ft 11 in) above the floor or walking surface protected by the *guard* will facilitate climbing.

5. Applicant's Position

The Applicants advised they acquired this building in 1996 and, through the course of their renovations, consulted with a number of individuals and organizations in their attempt to maintain the historic character of the structure. This included some precise design detailing that was thought to exemplify the appropriate time period. As part of their consultations they looked at constructing guards for the second floor balconies that would have been similar in nature to the guard surrounding the porch on the lower level. They were advised that the characteristics of the porch guard would not conform with today's Building Code requirements. They were then advised that the requirements for new guards were a minimum height of 1,070 mm and a maximum opening between balusters of 100 mm.

Keeping those requirements in mind and, after consulting with the Town's architectural committee about the guard design, a permit was applied for and issued. It was not until the final inspection that they were advised of the problem respecting the horizontal members along the bottom of the guard. They now understand that this does not comply with the strict wording of the Code but are appealing to the Commission to view the discrepancy as a minor one. The Applicants emphasized that, in their view, these railings do not pose a safety hazard. They do not facilitate climbing and no ladder effect is created. They argued that, to remedy the situation at this point would not be a simple exercise. The guards are handmade and would have to be completely removed and replaced to strictly comply with the requirements. This endeavour would be quite costly.

In support of their submission, the Applicants advised that the guards in question are located on the second floor and cannot be accessed by the general public. They serve the private bedroom suites of guests to the bed and breakfast. They also advised that the establishment caters to adults only. It is a policy of their operation that children under 14 are not permitted. In addition, they advised that the property is monitored 24 hours a day and keyed access to the rooms is required to gain entry to the area. They also submitted that the balconies themselves are relatively small and would not function as a space for gatherings.

In summation, the Applicants emphasized that they do not want to jeopardize the safety of any of the occupants of this building in any way. They have exceeded Code requirements in a number of areas and were simply unaware of the requirement regarding horizontal members within the guard design. When they did become aware, they explored options to comply but, in all instances, the historic look of this feature would have been compromised. They also noted that the decorative detailing along the top of the guard is at 940 mm from the finished floor. They believe that this maintains the intent of the Code to protect the area between 100 mm and 900 mm from being used for climbing, despite the horizontal member at the bottom being slightly higher than permitted.

6. Respondent's Position

The Designate for the Respondent submitted that the building was classified for review under Part 9 of the OBC, being that it is a small bed and breakfast with an area of approximately 5,900 ft². When the permit was issued the municipality did not have any drawing to review the design of the railings. It was not until final inspection that it was visually noted that the higher of the horizontal members at the bottom of the guard exceeded the 100 mm provision. At that time, it was discussed with the builder and the architect which part of the OBC would apply to this structure. The Designate advised that the builder had suggested that the guard was constructed in accordance with the provision of Part 3. These provisions would have permitted a horizontal member at 140 mm (5 ½ in) above the finished floor. The guard that was eventually installed would still exceed those provisions, but not by as much.

The Designate maintained that the building falls within the parameters of Part 9 and, as such, the guard, with a horizontal member between 100 mm and 900 mm, does not comply with Code. His position therefore, was that he is unable to issue an approval in this circumstance.

7. Commission Ruling

It is the decision of the Building Code Commission that the as-installed guard serving the second floor balconies and having a horizontal member located at approximately 160 mm about the finished floor provides sufficiency of compliance with Sentence 9.8.8.5.(1) of the Ontario Building Code at The Old Bank House, 10 Front Street, Niagara-on-the-Lake, Ontario.

8. Reasons

- i) In Sentence 9.8.8.5.(1) the OBC sets out a vertical zone or band above a walking surface within which the design of a guard shall not facilitate climbing. This “safety zone” is established as 100 mm to 900 mm in height from its lower to upper limits with the width of the vertical band being 800 mm (31 ½ in). In the present instance, while the safety zone has been shifted slightly upwards its total width, measured between the top lower rail and the underside of the decorative detailing at the top of the guard, is approximately 780 mm (30 ¾ in) to 790 mm (31 1/8 in), or nearly 800 mm.
- ii) There is no ladder effect created within this “safety zone”.
- iii) Access to the balcony areas is controlled and not open to the general public.

Dated at Toronto this **25th** day in the month of **October** in the year **2001** for application number **2001-69**.

Mr. Kenneth Peaker, Chair

Mr. Fred Barkhouse

Mr. Robert De Berardis