

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

BUILDING CODE APPEALS BOARD  
DOCKET NO. APP-BCAB 20-0022

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Defcon Products, LLC,  
Appellant

v.

City of Fitchburg,  
Appellee

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**DECISION**

**Introduction**

This appeal is before the Massachusetts Building Code Appeals Board (“BCAB”) as a result of an application filed on February 20, 2020 with respect to the installation of locking hardware for doors in the Longsjo Middle School, 98 Academy Street, Fitchburg, Massachusetts. *G. L. c. 143, § 100; 780 CMR 113.1* (“Appeal”).

On or about February 10, 2020, City of Fitchburg Building Commissioner Mark Barbadaro issued a letter to Appellant regarding proposed new locking mechanisms for doors in Fitchburg school classrooms. The Building Commissioner found that the proposed locking mechanisms would not comply with 780 CMR 1010.1.9 and 1010.1.9.5. But he noted that he was “not opposed to the use of the product in [the] schools” but felt it was too important an issue and remained unclear that the devices would comply with the Code. (Exhibit 1-A). Appellant sought an interpretation.<sup>1</sup>

Notices of hearing were issued and the hearing was held on May 26, 2020. All interested parties were provided an opportunity to testify and present evidence and argument

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<sup>1</sup> “Whoever is aggrieved by an interpretation, order, requirement, direction or failure to act by any state or local agency or any person or state or local agency charged with the administration or enforcement of the state building code or any of its rules and regulations, except any specialized codes as described in section ninety-six, may within forty-five days after the service of notice thereof appeal from such interpretation, order, requirement, direction, or failure to act to the appeals board. Appeals hereunder shall be on forms provided by the appeals board and shall be accompanied by such fee as said appeals board may determine.” *G. L. c. 143, § 100.*

to the BCAB.<sup>2</sup> The following individuals appeared: (for Appellant: Felix Zemel; Salvatore Emma; Amy Emma; Paul Zbikowski); (for Appellee: Mark Barbadoro; Lt. Jordan (Fitchburg Fire Department)).

The following BCAB members were present and participated in the decision: Kristen McDonough; Steven Frederickson; Michael McDowell. Patricia Barry, the BCAB's clerk was also present.

### **Exhibits**

The following documents were accepted in evidence:

1. BCAB20-0020 Appeal Application, (4 pages);
- 1-A. February 20, 2020 letter to Salvatore Emma from Mark Barbadoro (2 pages);
- 1-B. March 26, 2020 Building Code analysis for Mark Barbadoro from Harold R. Cutler, P.E. (6 pages).

### **Findings and Discussion**<sup>3</sup>

The type of locking mechanisms in issue, "TeacherLock," were designed in response to active shooter and other threats to schools. The BCAB incorporated by reference the facts set forth in Exhibit 1-B. In addition, the BCAB found credible the testimony by Appellant's representatives. Appellant included a live demonstration, clearly shown via video, of the locking mechanisms in operation on doors.

Appellant's argument is that, based on the facts, the locking mechanism complies with 780 CMR 1010.1.9 and 1010.1.9.5. The City did not oppose the requested relief.

"The [BCAB] may grant a variance from any provision of [780 CMR or the "Code"] in any particular case, may determine the suitability of alternate materials and methods of construction, and **may provide reasonable interpretations** of the provisions of [780 CMR]; provided, however, that [BCAB] decisions shall not conflict with the general objectives set forth in" G. L. c. 143, § 95.<sup>4</sup> (emphasis added). In exercising its powers under this section, the

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<sup>2</sup> Note that the scheduling of hearings was delayed due to the COVID-19 pandemic. When hearings resumed, they have been held "remotely" or "virtually" via web-based platforms to help ensure safety of all participants. The hearings were, as always, held in accordance with G. L. c. 30A and 801 CMR 1.02 to ensure all parties were adequately heard and the members of the BCAB could adequately evaluate the evidence and arguments.

<sup>3</sup> Findings and conclusions were reached in accordance with G. L. c. 30A and 801 CMR 1.02.

<sup>4</sup> "The powers and duties of the board set forth in section ninety-four [the BBRS] shall be exercised to effect the following general objectives:

[BCAB] may impose limitations both as to time and use, and a continuation of any use permitted may be conditioned upon compliance with regulations made and amended from time to time thereafter.” *G. L. c. 143, § 100.*

In sum, the BCAB agreed with Appellant’s interpretation and found that it would not conflict with the general objectives set forth in *G. L. c. 143, § 95.*

**Conclusion and Order**

Accordingly, the BCAB issued an **INTERPRETATION** that the proposed locking mechanisms for the Fitchburg schools meet 780 CMR 1010.1.9 and 1010.1.9.5.

**SO ORDERED,  
BUILDING CODE APPEALS BOARD**

By:

Kristen McDonough  
Kristen McDonough

Steven Frederickson  
Steven Frederickson, Chair

Michael McDowell  
Michael McDowell

DATED: June 10, 2020

*Any person aggrieved by a decision of the State Building Code Appeals Board may appeal to Superior Court of the Commonwealth of Massachusetts in accordance with M.G.L. c. 30A, § 14 within 30 days of receipt of this decision.*

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- (a) Uniform standards and requirements for construction and construction materials, compatible with accepted standards of engineering and fire prevention practices, energy conservation and public safety. In the formulation of such standards and requirements, performance for the use intended shall be the test of acceptability, in accordance with accredited testing standards.
  - (b) Adoption of modern technical methods, devices and improvements which may reduce the cost of construction and maintenance over the life of the building without affecting the health, safety and security of the occupants or users of buildings.
  - (c) Elimination of restrictive, obsolete, conflicting and unnecessary building regulations and requirements which may increase the cost of construction and maintenance over the life of the building or retard unnecessarily the use of new materials, or which may provide unwarranted preferential treatment of types of classes of materials, products or methods of construction without affecting the health, safety, and security of the occupants or users of buildings.” *G. L. c. 143, § 95.*