

**MICHIGAN CONSTRUCTION CODE COMMISSION
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF CONSTRUCTION CODES**

P. O. Box 30254
Lansing, MI 48909

Bay Logistics, Inc.

Petitioner

Appeal Docket No.
CCC-PRD 12-001

vs

City of Detroit, Buildings, Safety Engineering and Environmental Department

Respondent

ORDER OF THE MICHIGAN CONSTRUCTION CODE COMMISSION

Background:

Bay Logistics, Inc. appeals the May 4, 2012 decision of the City of Detroit, Board of Appeals of the Buildings, Safety Engineering & Environmental Department to deny the request of Bay Logistics, Inc. to reinstate Building Permit Number BLD 2011-06872 and not require compliance with 2009 Michigan Building Code (MBC) Section 415.5 for a change of use from a factory (F-2) occupancy to a high hazard (H2 or H3) occupancy. Bay Logistics, Inc. contends that the subject existing building at 5470 Hecla Street in Detroit, Michigan has been a high hazard (H) occupancy since 1992 under the 1987 BOCA National Building Code. Thus, the petitioner contends it meets the requirements of MBC, Section 102.6 for continued legal occupancy of a previously approved use.

In February 1991 the Detroit Fire Department issued a Notice of Violation for the storage of flammable and combustible liquids at 5470 Hecla Street without the approval of the City of Detroit, Buildings, Safety Engineering & Environmental Department (BSEE)

In March 1991 an application for a building permit was submitted to the City of Detroit by Whiting Distribution Services, Inc. (the predecessor of Bay Logistics Inc.) for a change in use or occupancy to Group H under the 1987 BOCA National Building Code for an existing building at 5470 Hecla Street in Detroit, Michigan. The petitioner stated that all necessary approvals for the change of use (from the City of Detroit) were obtained by February 1992. The Fire Marshal Division and BSEE of the City of Detroit conducted annual inspections at 5470 Hecla from 1992 through 2010. Upon the request of a customer to store nitromethane at the subject facility, Bay Logistics, Inc. obtained a

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building permit from BSEE to change the use on December 7, 2011. On January 18, 2012 BSEE cancelled the building permit due to the fact that the subject building is not a single story structure in compliance with MBC Section 415.5.

Procedural Findings:

On consideration of the request dated May 25, 2012 from Patrick Drueke, a hearing before a panel of the Construction Code Commission was held on June 18, 2012 at the Bureau of Construction Codes, 2501 Woodlake Circle, Okemos, Michigan in accordance with the Stille-DeRossett-Hale Single State Construction Code Act, 1972 PA 230, Section 125.1516.

Present were:

Patrick Drueke	representing	Bay Logistics, Inc.
Kurt Cuncannan	representing	Bay Logistics, Inc.
Gary Fischer	representing	Bay Logistics, Inc.
Edward Keelean	representing	City of Detroit, BSEE
Daljit S. Benipal	representing	City of Detroit, BSEE
David Bell	representing	City of Detroit, BSEE
William Benoit	Construction Code Commission (panel of appeal)	
Roger Donaldson	Construction Code Commission (panel of appeal)	
Matt Reno	Construction Code Commission (panel of appeal)	
Todd Cordill	Bureau of Construction Codes (hearing officer)	

Issue:

Whether or not a building permit under the 2009 Michigan Building Code is required for the storage of nitromethane in an existing multi-story building that has been used for the storage of flammable liquid in accordance with the 1987 BOCA National Building Code, Section 306 Use Group H, High Hazard.

Findings:

The building in question is an existing two story warehouse with a basement constructed of reinforced concrete and brick masonry. The interior columns and floor slabs are built of reinforced concrete. Next to the subject two story building is a five story building constructed of the same materials. A one story structure connects the two buildings. The two story and five story buildings are both approximately one hundred years old and were designed by the architect Albert Kahn of

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Detroit. The petitioner testified that the subject building had gone through a change of use or occupancy in 1992 and that a building permit for a change of use or occupancy in 2011 was not necessary. Since 1992 the existing two story building has been used for the storage of flammable and combustible liquids in 55 gallon drums. There has not been any open handling of hazardous materials at the existing building. The City of Detroit Fire Department and BSEE have made regular inspections of the building for the storage of hazardous materials. The building code in effect at the time of initial use for hazardous material storage (1992) was the 1987 BOCA National Building Code. Use Group "H" under that code included both the storage of flammable and combustible liquids and nitromethane.

The respondent testified that they searched their records of permits and certificates of occupancy and were unable to find that a change of use had been granted in writing in 1992. Had the change of use been granted at that time, a change of use for the planned storage of nitromethane in 2011 would not have been necessary. Without records of a change of use in 1992, the subject building was required to change use under the 2009 MBC from Factory (F1) (as a former commercial bakery) to High Hazard (H-2 or H-3)

Both the petitioner and the respondent testified that personnel of the City of Detroit Fire Department and BSEE had regularly inspected the subject building at 5470 Hecla Street for the safe storage of hazardous materials since 1991. The petitioner further testified that the City of Detroit Fire Department regularly staged practice HAZMAT response exercises in conjunction with the building owner during the same time period. Thus, personnel of the City of Detroit Fire Department and BSEE had first hand knowledge that the building had been used as a high hazard (H) occupancy dating back to 1992 under the 1987 BOCA National Building Code without issuing further citations for code violations.

Conclusions:

An existing building that is not undergoing any additions, alterations or change in use is allowed to continue in use for the same purposes as long as it is maintained in accordance with fire and property maintenance code requirements. MBC Section 102.6 would apply to the continued high hazard (H) use and not MBC Section 405.5 limiting the high hazard (H-1, H-2, or H-3) use to a one-story building without a basement. MBC Section 102.6 states:

The legal occupancy of any structure existing on the date of adoption of this Code shall be permitted to continue without change, except as is specifically covered in this code, the International Property Maintenance Code or the International Fire Code, or as is deemed necessary by the building official for the general safety and welfare of the occupants and the public.

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The subject building is recognized by the panel for the commission as an existing use group "H" occupancy per the 1987 BOCA National Building Code. Section 102.6 of the 2009 MBC is applicable for permitting the continued occupancy of the subject building as a Use Group "H" containing nitromethane per 1987 BOCA National Building Code, Table 306.2.

Decision:

The City of Detroit, Board of Appeals of the Buildings, Safety Engineering and Environmental Department in it's decision to deny the petitioner's appeal for relief from MBC Section 415.5 erred by not recognizing the subject building as a continued existing use or occupancy per MBC Section 102.6.

THEREFORE, it is ordered that the request for relief is granted and the decision of the City of Detroit, Board of Appeals of the Buildings, Safety Engineering and Environmental Department is reversed. Thus, 2009 MBC Sections 415.4 and 415.5 limiting Groups H-1, H-2 and H-3 occupancies to one story in height without a basement do not apply.

This order is binding on all parties unless appealed in accordance with the Stille-DeRossett-Hale Single State Construction Code Act, 1972 PA 230, Section 125.1518.



MICHIGAN CONSTRUCTION CODE COMMISSION

William Benoit, Chair

Panel of Appeals

6-27-12

Date