



DEVAL L. PATRICK  
GOVERNOR

ANDREA J. CABRAL  
SECRETARY

*The Commonwealth of Massachusetts*  
*Executive Office of Public Safety and Security*  
*Fire Safety Commission*

*Automatic Sprinkler Appeals Board*

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AIME R. DENAULT  
CHAIRMAN

MAURICE M. PILETTE  
VICE CHAIR

**Docket # 2013-07**  
**450 Pittsfield Road**  
**Lenox, Massachusetts**

**AUTOMATIC SPRINKLER APPEALS BOARD DECISION**

**A) Statutory and Regulatory Framework**

This is an administrative hearing held in accordance with Massachusetts General Laws, Chapter 30A; Chapter 148, section 26G and Chapter 6, section 201, relative to a determination of the Lenox Fire Department ordering the installation of an adequate system of automatic sprinklers in a building owned by Ross Kunzmann, (hereinafter referred to as the "Appellant") located at 450 Pittsfield Road, Lenox, Massachusetts.

**B) Procedural History**

The Appellant owns a building which is undergoing certain alterations and renovations. Upon review of the application for a building permit, Chief Daniel Clifford of the Lenox Fire Department determined that the subject building was more than 7,500 s.f. and that the planned construction activity would trigger the installation of automatic sprinklers in accordance with M.G.L. c. 148, s. 26G. Because of the Chief's determination on April 22, 2013, the building permit was denied. The Appellant, being informed of his right to appeal to this Board, filed an appeal of the determination on June 5, 2013.

The Board held a hearing on this matter on August 13, 2013, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant was Ross Kunzmann, property owner. Appearing on behalf of the Lenox Fire Department was Captain Jason Saunders.

Present for the Board were: Aime DeNault, Chairman; Richard Magee, Designee, Boston Fire Commissioner; Anthony DiNatale; Alexander MacLeod; and Thomas Coulombe. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

**C) Issue(s) to be Decided**

Whether the Board should affirm, reverse or modify the determination of the Lenox Fire Department requiring sprinklers in the Appellant's building, in accordance with the provisions of M.G.L. c.148 s. 26G?

**D) Evidence Received**

1. Application for Appeal filed by Appellant
2. Letter/Statement in Support of Appeal
3. Unsigned Agreement between Appellant and Town of Lee, MA
4. Hard Construction Estimate – Lee Bank – Pittsfield Lenox Road Office
5. Sprinkler Cost Estimate from Warehouse Mechanical Contractors, Inc.
6. Quote from Berkshire Lighting to do Sprinkler Main installation
7. Copy of Town of Lenox Fiscal Year 2013 Actual Real Estate Tax Bill
8. Page 1 of Lease Agreement between Appellant and Lee Bank
9. Chapter 34 Review from Design Group, Inc.
10. Site Plan (Pittsfield – Lenox Road, Route 7/20)
11. Lee Bank Floor Plans
12. Berkshire Lighting Floor Plan
13. Photo of Front of Building
14. Town of Lenox Building Permit
15. Notice of Hearing to Appellant
16. Notice of Hearing to Lenox Fire Department
17. Copies of two Memoranda that accompany Hearing Notices
18. Supplemental Package from the Lenox Fire Department (with exhibits A-F attached)
19. Appellant's submission (exhibits A-I)

**E) Subsidiary Findings of Fact**

- 1) The Appellant owns a single story building which is undergoing certain alterations and renovations. Upon review of the application for a building permit, Chief Daniel Clifford of the Lenox Fire Department determined that the subject building was more than 7,500 s.f. and that such planned construction activity triggers the installation of automatic sprinklers in accordance with M.G.L. c. 148, s. 26G. Because of the Chief's determination issued on April 22, 2013, the building permit was denied. The Appellant filed an appeal of the chief's determination to this Board on June 5, 2013.
- 2) The Appellant testified that the building at issue is a one-story, combination wood, steel and masonry commercial building totaling 9,714 s.f. The commercial property is divided into three (3) tenant spaces, with a fourth space currently under construction for occupancy by Lee Bank. The Appellant testified that all commercial spaces are separated by a one hour fire wall and that each space has independent front and rear exits. In addition to the space planned to be occupied by the bank, the businesses located in this commercial space also include a

Subway restaurant, a doctor's office, and Berkshire Lighting, which is owned by the Appellant.

- 3) Lee Bank is currently in the process of renovating 2,974 s.f. of space within the commercial building. The Appellant testified that this amount is 30.7% of the total s.f. of the building.
- 4) The Appellant testified that the cost of the renovations would be approximately \$261,400.00 and that the current assessed value of the building is \$658,400.00. The Appellant argued that according to a memorandum issued by the Board, in order for any alterations or modifications to be considered "major" in scope, the work would have to affect 33% or more of the gross square footage of the property or be greater than 33% of the assessed building value.
- 5) The Appellant indicated that there is currently no sprinkler system in the building and in order to comply with the determination of the fire department, sprinklers would have to be installed in all commercial spaces. There would also be an additional cost to connect the public water supply, which is located on the other side of State Highway, Route 7. That cost alone would be approximately \$70,000.00, in addition to a cost of approximately \$31,000.00 to install sprinklers throughout the subject building.
- 6) In support of the position of the Lenox Fire Department, Captain Saunders testified that the Order of Notice was issued by the Chief based upon a review of both the building cost estimates provided by the contractor (\$305,000.00) and the building's assessed value (\$658,400.00). The Chief also noted that the building permit application estimate did not include costs of the installation of a new tenant separation wall and the demolition of a suspended ceiling, conducted under a separate permit application. That cost was an additional \$16,000.00, which brought the project total to \$321,000.00. Said cost, in comparison to the building's assessed value of \$658,400.00 is 48.75% of the current assessed value of the building.
- 7) Captain Saunders further testified that the Town of Lenox had previously agreed to give the Appellant additional time of up to one year to connect to the public water supply, due to the cost and connection challenges as a result of the water supply being located across the state highway in front of this property.

**F) Ultimate Findings of Fact and Conclusions of Law**

- 1) The relevant provisions of M.G.L. c. 148, s. 26G, state, (in pertinent part): "Every building or structure, including any additions or major alterations thereto, which totals, in the aggregate, more than 7,500 gross square feet in floor area shall be protected throughout with an adequate system of automatic sprinklers in accordance with the provisions of the state building code." (See Chapter 508 of the Acts and Resolves of 2008.) The new provisions apply to "the construction of buildings, structures or additions *or major modifications* (emphasis added) thereto, which total, in the aggregate, more than 7,500 gross square feet *permitted after January 1, 2010*" (Sec. 6, Chapter 508 of the Acts of 2008).
- 2) Based upon the facts presented at the hearing the Board finds that the building consists of more than 7,500 gross square feet. The Board further finds that "major alterations" are clearly

occurring with respect to this building. Such activities are being conducted pursuant to a permit issued after January 1, 2010.

- 3) In a memorandum issued by this Board on October 14, 2009, this Board issued a general advisory document to guide persons impacted by the amendments to s. 26G. In the memorandum the board discussed the meaning of the words “major alterations” as those terms are used in the statute. The Board indicated that it would be guided by the Massachusetts Appeals Court case of Congregation Beth Shalom & Community Center, Inc. v. Building Commissioner of Framingham et. Al., 27 Mass. App. Ct. 276 (1989).

In said case, the Court stated that the terms “major alterations” shall include “any work, not repairs, which is “major” in scope or expenditure, and which results in changes affecting a substantial portion of the building”. In its decision, the Court looked at the nature of the planned work and would require sprinklers throughout the building if “the extra cost of installing sprinklers would be moderate in comparison to the total cost of the work contemplated...” or “if the physical work being done is of such scope that the additional effort to install sprinklers would be substantially less than it would have been if the building were intact”. Accordingly, the Board indicated that it would consider certain factors established in the Congregation Beth Shalom case, to determine whether “major” alterations or modifications are taking place. Such factors include reviewing: **(A) the nature** of the actual work and **(B) the scope** of the work or cost/ benefit of sprinkler installation.

In determining the **nature** of the work, the Board determines if the planned physical work is the type of work that would make the effort to install sprinklers substantially less than it would have been if the building were intact or is the work merely minor repairs or cosmetic vs. major alterations.

- 4) In determining the **scope** of the work, the Board will determine if the alterations affect a substantial portion of the building. This requires a review to determine how much of the building is being affected by the work; **or** a determination that the cost of installing sprinklers is moderate in comparison to the total cost of the work.
- 5) To assist fire officials, building owners and construction project managers in making decisions, the Board established two presumptions that may be used to determine if the scope of the planned alterations or modifications are “major” thus requiring sprinklers to be installed throughout a building. They concluded:
- 1) Major alterations or modifications are reasonably considered **major in scope** when such work affects thirty-three (33) % or more of the “total gross square footage” of the building, calculated in accordance with section 26G.
  - 2) Major alterations or modifications are reasonably considered **major in scope** or expenditure, when the total cost of the work (excluding costs relating to sprinkler installation) is equal to or greater than thirty-three (33) % of the assessed value of the subject building, as of the date of permit application.

It was the conclusion of the Board that if the nature of the work is the type of work described in **A** **and** also meets at least one of the two presumptions described in **B** above, then it can be

reasonable to conclude that the alterations or modifications are “major,” thus requiring sprinklers throughout the building.

- 6) The Board finds that the construction work as described to the Board at the hearing, affects less than 33% of the s.f. of the building. However, the total cost of the work, regardless of whether or not the greater or lower estimates submitted by the Appellant are used in the calculation, clearly exceed 33% of the assessed value of the building. Accordingly, the Board finds that major alterations are planned or are taking place within this building.

**G) Decision of the Automatic Sprinkler Appeals Board**

Based upon the aforementioned findings and reasoning, the Board hereby **modifies** the determination of the Lenox Fire Department to require the installation of an adequate system of sprinkler protection in the subject building pursuant to the provisions of M.G.L. Chapter 148, s. 26G, in accordance with the following terms and schedule:

1. Phase 1 – Adequate system of sprinklers shall be installed throughout the building and shall include a fire department connection to enable the fire pump to be charged by the Lenox Fire Department (which has a volunteer station ¼ mile away). An automatic alarm system shall also be installed. Phase 1 to be completed within 6 months of the date of the issuance of occupancy certificate for Lee Bank.
2. Phase 2 – The automatic sprinkler system shall be connected to the town water supply within 3 years of the date of completion of phase 1.

**H) Vote of the Board**

Aime DeNault, Chairman	In Favor
Richard Magee	In Favor
Anthony DiNatale	In Favor
Alexander MacLeod	Opposed
Thomas Coulombe	In Favor

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**I) Right of Appeal**

You are hereby advised you have the right to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order, pursuant to section 14 of chapter 30A of the General Laws.

SO ORDERED,



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Aime R. DeNault, Chairman

Dated: October 8, 2013

**A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED TO:**

Ross Kunzmann  
1237 Main Road  
Savoy, Massachusetts 01256

Captain Jason Saunders  
Lenox Fire Department  
14 Walker Street  
Lenox, Massachusetts 01240