



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

*Automatic Sprinkler Appeals Board*

*P.O. Box 1025 ~ State Road*

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VICE CHAIRMAN

**Docket # 2015-11**  
**401 State Road**  
**Dartmouth, Massachusetts**

**AUTOMATIC SPRINKLER APPEALS BOARD DECISION**

**A) Statutory and Regulatory Framework**

This is an administrative appeal held in accordance with Massachusetts General Laws Chapter 30A, Chapter 148, s. 26G, and Chapter 6, section 201, relative to a decision of Dartmouth Fire District No. 3, requiring Tom's Auto Repair and owner Toufic Raad (hereinafter referred to as the Appellant) to install automatic sprinklers throughout a building that it owns located at 401 State Road, Dartmouth, Massachusetts.

**B) Procedural History**

By written notice received by the Appellant on October 21, 2015, Dartmouth Fire District No. 3 issued a determination requiring automatic sprinklers to be installed throughout the subject building. According to the notice, the determination was issued pursuant to the provisions of M.G.L. c. 148 s. 26G. On November 21, 2015, the Appellant filed an appeal of the determination with the Automatic Sprinkler Appeals Board. The Board held a hearing on January 13, 2016 at the Department of Fire Services, Stow, Massachusetts.

Appearing at the hearing on behalf of the Appellant were: Attorney Richard J. Manning, Jr. and the Appellant, Toufic Raad. Appearing on behalf of Dartmouth Fire District No. 3 was Chief Richard K. Arruda.

Present for the Board were: Maurice M. Pilette, Chairman; Peter Gibbons, Vice Chairman; Jack Dempsey, designee of the Commissioner of the City of Boston; Alexander MacLeod; and Chief Thomas Coulombe. Peter A. Senopoulos was the Attorney for the Board.

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

Whether the Board should affirm, reverse or modify the determination of Dartmouth Fire District No. 3 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 by Appellant
2. Statement in Support of Appeal and Accompanying Exhibits
- 2A. Property Deed
- 2B. Certificate of Occupancy (dated 8/4/15)
- 2C. Drawing of New Building on Property and portion of Existing Building
- 2D. Photographs of New Building and Existing Building (3 pages)
- 2E. Inspection Report / Order of Notice of Dartmouth Fire District No. 3 (dated 10/7/15)
3. Notice of Hearing to Appellant (12/15/15)
4. Notice of Hearing to Hingham Fire & Rescue Department (12/15/15)
5. Copies of two Memoranda that accompany Hearing Notices
6. Copy of Revised Floor Plan
7. E-mail from Chief Arruda to Dartmouth Building Inspector (dated 7/14/14)

**E) Subsidiary Findings of Fact**

- 1) By written notice received by the Appellant on October 21, 2015, Dartmouth Fire District No. 3 issued a determination requiring automatic sprinklers to be installed throughout the subject building. According to the notice, the determination was issued pursuant to the provisions of M.G.L. c. 148 s. 26G. On November 21, 2015, the Appellant filed an appeal of the determination with the Automatic Sprinkler Appeals Board. The Board held a hearing on January 13, 2016 at the Department of Fire Services, Stow, Massachusetts.
- 2) The representative for the Appellant testified that Appellant owns the land and structures located at 401 State Road in Dartmouth, Massachusetts. At this location, the Appellant operates a business known as “Tom’s Auto Repair” which engages in motor vehicle repair and sales. Business activity has been conducted in a 4,800 s.f. garage type building. In Fall 2013, the Appellant hired a builder to construct an additional structure consisting of a metal building measuring 67’ x 70’ ft. (approximately 4,690 s.f.). The building permit was issued on August 12, 2014. The new structure as built was separated from the original garage by approximately 4’2”. The plans submitted indicated that the space between the two structures would be partially covered by a canopy with a 2” separation. The new structure was completed and a certificate of occupancy was issued on August 4, 2015 is used in the Appellant’s business as a garage for the storage and/or repair of over-sized motor vehicles. It features three automobile lifts, two garage bay doors and 2 doors that exit into the parking lot, in addition to a double door (6’) that leads out the side of the building and into the 4’2” space. The older building also features a 6’ door leading into the said space, which allow for direct and unimpeded passage between the two structures. According to the Appellant’s representatives, each structure feature independent utilities, including heat and electricity but share a common fire alarm system by means of an underground conduit.
- 3) The representative for the Appellant testified that shortly after the completion of the newer structure and issuance of the certificate of occupancy on August 4, 2015, the Appellant constructed a metal canopy or roof over the 4’2” space between the two buildings. Appellant indicated that he installed the canopy to prevent the accumulation of snow and ice in the space between the two structures used by employees. The Appellant at this same time constructed

barriers or wall at both ends of said space and according to the Appellant, these walls were constructed out of concerns for security. The new roof and associated walls used to enclose the 4'2" space between the two buildings, were made of the same corrugated metal with fire retardant insulation, used in the construction of the two garage structures.

- 4) Upon questioning about the use of the now covered space, the Appellant's representative indicated that an air compressor is housed in this space to reduce noise to the adjoining structures.
- 5) In support of the Dartmouth Fire District No. 3's position, the Fire Chief testified that he was aware of Appellant's plans to construct a new building and, in July 2014, reviewed the building plans. Chief Arruda testified that following his review of the building plans, he e-mailed the Building Inspector and expressed his opinion that the construction of the new structure and related canopy would trigger sprinkler protection in accordance with M.G.L. c. 148, s. 26G. He understood that this information was communicated to the Appellant, who did not disagree with this conclusion.
- 6) Chief Arruda testified that at the time of final inspection of the new building in July 2015, and as of the date of the issuance of the Certificate of Occupancy (August 4, 2015), there was no roof/canopy or walls over the subject space. At no time did the Appellant's builder mention the erection of the roof and walls to either the Fire Department or Building Department. In September 2015, Chief Arruda first observed the new construction and made a determination that the installation of the roof and walls sufficiently connected the structures thus requiring enhanced sprinkler protection pursuant to M.G.L. c. 148 s. 26G. This determination was issued by Chief Arruda on October 7, 2015. Chief Arruda also indicated that when the Dartmouth Building Department was informed about the newly constructed roof and walls, they confirmed that such work was conducted without the required building permit and in January 2016, a violation notice was issued to the Appellant for failure to possess the required building permit.
- 7) In response to the Chief's testimony, the representative for the Appellant testified that the same builder constructed both the newer structure and the canopy roof and walls. It is the Appellant's position that both structures should be considered as independent buildings, less than 7,500 s.f. each, and that they are both physically and operationally separate from one another with separate utilities. They also noted that that the structures have the same occupancy permit and classification. Upon Board inquiry, the Appellant's representative stated that they received an estimate indicating that it would cost approximately \$30,000-\$35,000.00 to install a sprinkler system throughout the two structures.

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

- 1) The provisions of M.G.L. c. 148, s. 26G, state, (in pertinent part): "Every building or structure, including **any additions** (emphasis added) 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." The law was amended in 2008 and said amendment stated that the provisions apply to "the construction of buildings, structures or additions or major modifications thereto, which total, in the aggregate, more than 7,500 gross square feet permitted after January 1, 2010" (Section 6, Chapter 508 of the Acts of 2008). The legislative activity to amend the provisions

of M.G.L. c. 148, s. 26G arose in the aftermath of a tragic commercial building fire, which occurred in Newton, Massachusetts in February 2000, resulting in the death of five individuals. Over the past decades, a long series of significant additions and /or alterations were made to the building without the need to update or enhance the building's fire protection systems. However, such update, including the installation of a sprinkler system, would have been required if the building was newly constructed. The intent of the 2008 amendment was to close this compliance loop hole. The elimination of the limiting words "addition only," from the pre-existing law and the requirement that the square footage determination be conducted "in the aggregate" indicated the clear intent of the Legislature to require enhanced sprinkler protection throughout the building when the building is added to and if the gross s.f. of the additional space, combined with the existing building, totals more than 7,500 s.f. "in the aggregate."

- 2) Based upon the facts presented at the hearing, the Board finds that the more recent construction of the additional space to the older building, including the construction of the roof and walls between the two structures, as described, is considered an "addition" for the purposes of triggering sprinkler protection under the provisions of M.G.L. c. 148, s. 26G.
- 3) In prior cases dealing with the construction of additions to single or multiple structures or building complexes, the Board has considered certain factors to determine whether or not a building or structure, or a complex or set of buildings or structures, should be considered "one" building for the purposes of s. 26G sprinkler protection. Such factors include, but are not limited to: plot and property boundary lines; building ownership and control; building configuration and location and nature of exterior walls and fire walls; the characteristics, dimensions and combustible fire load of the point of "connection" of the buildings or structures; the operational relationship between the structures, including occupant load, space and use group classification, shared utilities, facilities and restroom access; the nature and extent of existing fire protection and detection systems and the nature of smoke and fire behavior.
- 4) Clearly, the newly constructed additional structure is now "connected" in an "operational" sense to the older, pre-existing structure. Both structures are owned and operated by the same person/entity engaged in the auto repair and/or sales business. Business activities and employees flow freely throughout the combined business complex. The structures now share a direct and common means of ingress and egress that allow persons and equipment free unimpeded passage between the two structures and also share a common fire protection system connected by means of an underground conduit.
- 5) Until the Appellant enclosed the 4' 2" space between the two structures by means of the construction of the roof and walls, the newly constructed garage space could have reasonably been considered a separate building for s. 26G purposes. However, the subsequent enclosure of the open 4'2" space by means of the erection of a permanent roof and walls, constructed from the same insulated metal material as the two garages, is significant. The construction of this additional interior space could not only be reasonably considered "an addition" for s. 26G purposes, but also, physically and operationally combines the two structures into one building complex. For this Board to rule otherwise would clearly frustrate and circumvent the life safety intent of the Legislature to require the enhanced sprinkler protection under such circumstances. The Board notes that this subsequent activity was conducted without the legally required building permit or the knowledge of the local fire or building officials.

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

Based upon the evidence presented at the hearing and the aforementioned reasons, the Board hereby **upholds** the determination of the Dartmouth Fire District No. 3 to require the installation of an adequate system of sprinkler protection throughout the buildings located at 401 State Road, Dartmouth in accordance with the requirements of M.G.L. c. 148, s. 26G.

Plans for the installation of sprinklers in both buildings shall be submitted to the Head of the Dartmouth Fire District No. 3 within ninety (90) days of the date of the hearing (April 12, 2016). Sprinkler installation shall be completed by September 1, 2016.

**H) Vote of the Board**

Maurice M. Pilette, Chairman	In Favor
Peter E. Gibbons, Vice Chairman	In Favor
Jack Dempsey, Deputy/Fire Marshal, City of Boston	In Favor
Alexander MacLeod	Opposed
Thomas Coulombe	In Favor

**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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Maurice M. Pilette, Chairman

Dated: March 2, 2016

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

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Chief Richard K. Arruda  
Dartmouth District 3 Fire Dept.  
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