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The Commonwealth of Massachusetts
Executive Office of Public Safety
Fire Safety Commission

Automatic Sprinkler Appeals Board

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MAURICE M. PILETTE
CHAIRMAN

PAUL DONGA
VICE CHAIR

Docket # 2005-133
60 Summer Street
Leominster, Massachusetts

AUTOMATIC SPRINKLER APPEALS BOARD
DECISION AND ORDER

A) Statutory and Regulatory Framework

This is an administrative appeal held in accordance with Massachusetts General Laws Chapter 30A; Chapter 148, section 26H; Chapter 6, section 201 and 530 CMR, relative to a decision of the Leominster Fire Department, ordering the installation of automatic sprinklers in a building owned and operated by Mr. Steven Cabana, (hereinafter referred to as the Appellant). The building, which is the subject of the order, is located at 60 Summer Street, Leominster, Massachusetts.

B) Procedural History

By an Order of Notice, the Leominster Fire Department issued a decision to the Appellant requiring automatic sprinklers to be installed in Appellant's building located at 60 Summer Street, Leominster, MA, pursuant to the provisions of M.G.L. c. 148, s.26H. Upon receipt of the Order of Notice, September 10, 2005, the Appellant filed an appeal of this decision with the Automatic Sprinkler Appeals Board on October 24, 2005. The Board held a hearing on January 31, 2007 at the Department of Fire Services, Stow, Massachusetts.

Steven Cabana, the owner and Appellant, appeared on his own behalf. Appearing on behalf of the Leominster Fire Department were Chief Ronald M. Pierce and Deputy Chief William T. Ashton.

Present for the Board were: Maurice M. Pilette, Chairman, Paul Donga, Chief Thomas Coulombe, Alexander MacLeod, Peter Gibbons, and George A. Duhamel. 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 Order of the Leominster Fire Department to sprinkler the Appellant's building in accordance with the provisions of M.G.L. c.148, s. 26H.

D) **Evidence Received**

1. Application for Appeal by Appellant
2. Order of Notice of the Leominster Fire Department
3. Notice of Pre-Hearing Status Conference to Appellant
4. Notice of Pre-Hearing Status Conference to Leominster Fire Dept.
5. Notice of 1st Hearing to Appellant (10/17/2006)
6. Notice of 1st Hearing to Leominster Fire Department (10/17/2006)
7. Notice of 2nd Hearing to Appellant (1/3/2007)
8. Notice of 2nd Hearing to Leominster Fire Department (1/3/2007)
9. Package from Leominster Fire Dept. on 26H Adoption and 60 Summer Street
- 9A. Revised package from Leominster Fire Department
 - A. Narrative
 - B. Parcel Summary
 - C. Fire Alarm Inspection Report
 - D. Letter from Clerk
 - E. Lodging house license
 - F. Notice of Applicability
 - G. Photos (1-7)

E) **Subsidiary Findings of Fact**

- 1) By Order of Notice, the Leominster Fire Department issued an Order to the Appellant requiring automatic sprinklers to be installed in Appellant's building located at 60 Summer Street, Leominster, MA in accordance with the sprinkler provisions of M.G.L. c. 148, § 26H. The Appellant received said notice on September 10, 2006. The Appellant filed an appeal of the Fire Department's order with this Board on October 24, 2006.
- 2) According to testimony and documentation provided by the Leominster Fire Department, the City of Leominster adopted the provisions of M.G.L. c. 148, § 26H on June 13, 2005. The Appellant does not challenge the legality of the Town's adoption of the law. The provisions of M.G.L. c. 26H provide for enhanced sprinkler requirements, on a local option basis, for certain buildings that are considered lodging or boarding houses. Section 26H states, in pertinent part: "For the purposes of this section "lodging house" or "boarding house" shall mean a house where lodgings are let to six or more persons not within the second degree of kindred to the person conducting it, but shall not include fraternity houses or dormitories, rest homes or group residences licensed or regulated by agencies of the commonwealth". The law requires that existing buildings, subject to the law, install the required systems "within five years after acceptance of this act by a city or town".
- 3) According to the testimony of the Appellant and municipal documents, including the lodging house license, the subject house is a large 3-story single family home consisting of approximately nineteen (19) rooms for up to 19 persons. The Appellant testified that said house is in fact currently occupied and let to ten or eleven persons not within the second degree of kindred to the person conducting it. The occupants share a kitchen and all common areas including areas of egress. The majority of occupants are long-term tenants.

- 4) Appellant stated that he does not contest the determination of the fire department to declare the building a boarding house within the meaning of s. 26H. However, the Appellant indicated that existing safety features make the installation of sprinklers unnecessary. He stated that the building employs a Simplex fire alarm system with fire and heat detectors, that there are two means of egress on the front and side of the building on the 1st floor, and that there are fire escapes leading from all rooms on the third floor of the house to the street. He also stated that there is a fire hydrant directly outside the building on the street. The Appellant stated that smoking is allowed and that approximately 2/3 of the occupants do smoke. The building is heated by an oil fired heating system located in the basement.
- 5) The Appellant indicated that he is also concerned with the expense of system installation. He has received informal estimates that the sprinkler system would cost approximately \$30,000-\$50,000 dollars. This does include an estimated \$10,000 dollar cost for a new water line. Accordingly, he is requesting that a sprinkler system be "phased in" over the next few years and that certain areas, such as the basement, be exempt. The Appellant provided no documentation, technical or otherwise, to support the installation of any specific alternative or modified system.
- 6) In support of their determination, the representatives of the Leominster Fire Department testified that the building is a three-story, wood frame structure with approximately 7,900 gross square feet within. There are manual fire extinguishers located on each floor, and there appears to be a smoke control door within the first floor hallway. Deputy Ashton testified that there is an unenclosed main stairway that accesses the upper floors and a narrow rear hallway leads from the rear of the second floor hall to the first. These hallways do not lead directly to an egress door. Secondary egress from the second floor (for some rooms) is via exterior fire escapes. Egress from all third floor rooms is from the fire escapes. There is no enclosed stairway within the three floors of the building.
- 7) Deputy Ashton also testified that the fire alarm system for the building was installed in 1990 and that various notification devices, including strobe lights and horns, are located throughout the building. Deputy Ashton expressed concern that this system is monitored by the Leominster Fire Department via telephone lines, and that in case of a telephone problem or loss of service, the department would not know if an emergency existed. He also voiced concerns that during at least one inspection, several of the smoke alarms in the building were disabled or missing.
- 8) Deputy Ashton stated that the Leominster Fire Department would consider the installation of a NFPA 13-R sprinkler system to address the cost concerns of the Appellant. A 13-R system may result in a cost savings without sacrificing the public safety intent of the law. The fire department indicated that the existing water supply and water pressure appears sufficient to support an adequate system of sprinklers.

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

- 1) The City of Leominster adopted the provisions of M.G.L. c. 148, § 26H, on June 13, 2005. This law provides for enhanced sprinkler requirements, on a local option basis, for certain buildings

that are considered lodging or boarding houses. Section 26H states, in pertinent part: "For the purposes of this section "lodging house" or "boarding house" shall mean a house where lodgings are let to six or more persons not within the second degree of kindred to the person conducting it, but shall not include fraternity houses or dormitories, rest homes or group residences licensed or regulated by agencies of the commonwealth". The law requires that existing buildings subject to the law install the required systems "within five years after acceptance of this act by a city or town".

- 2) The evidence presented at the hearing clearly indicates that this building is a house where lodgings are let to six or more persons who are not related to the person conducting it, within the meaning of M.G. L. c. 148, s. 26H. The Appellant does not challenge this finding. There was no evidence presented that would indicate that said house comes within any of the enumerated exemptions specified by the statute.
- 3) Appellant's request that he be allowed more than the 5-year installation time frame to comply with s. 26H is not supported by any circumstances or facts to support such an extension. .
- 4) There was inconclusive evidence presented to support any determination regarding the Appellant's request for a modified or partial sprinkler system. However, the fire department indicated that such a system could be a possibility if the appropriate technical plan was submitted to the department.

G) Decision and Order

Upon a review of the evidence presented at the hearing and based upon the aforementioned reasons and findings, the board hereby unanimously determines that the building is subject to the sprinkler provisions of M.G.L. c. 148, s.26H. Accordingly, the Board affirms the decision of the City of Leominster Fire Department. However, this determination does not prevent the Fire Department, upon review of plans provided by the Appellant, to approve an alternative system of adequate sprinkler system protection, including, but not limited to, the possible installation of a system in accordance with NFPA 13-R. Such installation shall be completed in accordance with the statutory 5-year time frame (by June 13, 2010).

H) Vote of the Board

Maurice Pilette, (Chair)	In Favor
Paul Donga	In Favor
Thomas Coulombe	In Favor
Alexander MacLeod	In Favor
Peter Gibbons	In Favor
George A. Duhamel	In Favor

I) **Right of Appeal**

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

SO ORDERED,



Maurice M. Pilette, P.E., Chairman

Dated: March 8, 2007

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

Steven Cabana
60 Summer Street
Leominster, Massachusetts 01453

1st Class Mail, Postage Pre-paid to:

Deputy Chief William T. Ashton
Leominster Fire Department
19 Church Street
Leominster, Massachusetts 01453