



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

Automatic Sprinkler Appeals Board

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Docket # 2008-07
17-23 Salem Street
Salem, Massachusetts

AUTOMATIC SPRINKLER APPEALS BOARD DECISION

A) Statutory and Regulatory Framework

This administrative appeal hearing is held in accordance with Massachusetts General Law, Chapter 30A; Chapter 148, section 26 H; Chapter 6, section 201 and 530 CMR, to determine whether to affirm the order of the Salem Fire Department requiring the Appellant, Michael Viola, (hereinafter "Appellant") to install automatic sprinklers in the building owned by the Appellant located at 17-23 Salem Street, Salem, MA.

B) Procedural History

By written notice dated May 22, 2008 and received by the Appellant on May 22, 2008, the City of Salem Fire Department issued an Order of Notice to the Appellant informing him of the provisions of M.G.L. c. 148, s. 26H, which requires that automatic sprinklers be installed in the Appellant's building located at 17-23 Salem Street, Salem, MA. The Appellant filed an appeal of said Order on June 30, 2008. The board held a full hearing on this matter on August 13, 2008, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant was: Attorney Bruce McDonald. Appearing on behalf of the Salem Fire Department was: Chief David W. Cody; Thomas McGrath, AIA; Salem Building Department; and Attorney Jerald Parisela, Assistant City Solicitor, Salem.

Present for the Board were: Thomas Coulombe, Acting Chairman; Roderick Fraser; Alexander Macleod; Peter Gibbons; John J. Mahan; and Aime R. DeNault. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

C) Issue(s) to be Decided

Whether the building located at 17-23 Salem Street, Salem, as currently used and occupied, is

subject to the automatic sprinkler requirements of M.G.L c.148, s. 26H?

D) Evidence Received

1. Appellant's Application for Appeal and Statement in Support of Appeal
2. Order of Notice of the Salem Fire Department
3. Proposed renovation plans for building
4. Notice of Hearing to Appellant
5. Notice of Hearing to the Salem Fire Department
6. Copies of two Memoranda that accompany hearing notices
7. Appellant's Photographs (A-G)
8. City of Salem Order (adopting 26H – approved by Mayor on February 17, 1987)
9. Building Permit – City of Salem
10. Renovation Letter – Certificate of Occupancy
11. Certificate of Occupancy issued January 8, 2008

E) Subsidiary Findings of Fact

1. By written notice dated May 22, 2008 and received by the Appellant on May 22, 2008, the City of Salem Fire Department issued an Order of Notice to the Appellant informing him of the provisions of M.G.L. c. 148, s.26H, and requiring that automatic sprinklers be installed in the Appellant's building located at 17-23 Salem Street, Salem, MA. The Appellant filed an appeal of said Order on June 30, 2008.
2. On or about January 12, 1987, the City of Salem City Council adopted the provisions of M.G.L. c. 148, s. 26H, a local option law. The Mayor of Salem approved this local option law on February 12, 1987. Said section defines a lodging house or boarding house as a house where lodgings are "let to six or more persons not within the second degree of kindred to the person conducting it."
3. The property located at 17-23 Salem Street, Salem, Massachusetts was formally the St. Jeans French American Social Club prior to the Appellant's purchase in July, 2006. In 2007, the Appellant renovated the property, leaving the first floor as commercial space and transforming the second floor into a residential area. The Appellant is currently leasing the second floor residential portion of this building to individuals who are recovering from drug and/or alcohol addiction.
4. On January 8, 2008, the City of Salem issued a Certificate of Occupancy based upon the building's status as a "single family residence". However, on January 28, 2008, the City revoked the Certificate of Occupancy due to a determination that the property does not feature an adequate system of adequate sprinklers as required for certain buildings considered a lodging house pursuant to M.G.L. c. 148 § 26H.

5. Originally, the Appellant sought to establish the ability to provide living accommodations in the subject building for 22 individuals. The Appellant later reduced his request to 14 persons.
6. The subject property is a 2-story brick building that contains commercial space on the first floor and residential space on the second floor. The second floor has 7 bedrooms for sleeping accommodations. The living arrangements are communal in nature. There are no locks on any bedroom doors. Residents share common living space including: a kitchen, living room, bathrooms, and a laundry area on the first floor.
7. There are currently six (6) individuals who reside at the subject property. They each pay individual rent directly to the Appellant on a weekly basis. By agreement, residents submit to routine drug/alcohol testing and agree to abide by house rules, which among other things prohibit smoking within the house. There is a house manager on site.
8. The attorney for the Appellant agrees that the house is occupied by six or more persons not within the second degree of kindred to the person conducting it and that the house would be considered a lodging house subject to the provisions of M.G.L. c. 148, s. 26H, but for the provisions of Federal Fair Housing Act. Appellant's counsel contends that the property, as it is currently used and occupied, is exempt from the provisions of s. 26H since the particular occupants are considered a "family" under the provisions of the Federal Fair Housing Act and are therefore exempt from the provisions of M.G.L. c. 148, s.26H. Appellant further contends that the application of the provisions of said section 26H, as applied to the occupants of the subject building, is discriminatory and requests that the Board grant reasonable accommodations, in the form of a waiver.
9. The Attorney for the Appellant, although citing several cases which support his legal argument involving situations based upon local "zoning" laws, conceded that there are no Federal or state cases that he is aware of that would support his contention based upon the subject sprinkler requirements or other related public safety laws.
10. Appellant's attorney requests that if this board is not inclined to grant such an exemption or waiver, that the Board grant a reasonable extension of time within which Appellant can complete the installation of an adequate sprinkler system. The Attorney suggested that a period of one-year would be reasonable. The representatives for the City did not provide any evidence in opposition to this request.
11. The Board notes that the Appellant owns the building with his wife. He does not live in the subject building and does not present any evidence indicating that he is a member of a "family" or is a disabled person who comes within the terms of the Fair Housing Act.
12. In support of their position, the representatives of the City of Salem Fire Department testified that they ordered the installation of sprinklers due to the fact that the building is currently used as a "lodging house", as defined in s. 26H. They also indicated that the City's position is not based upon a zoning law and does not prohibit the use of the building as a lodging house. They indicated that the installation of sprinklers in the current situation is not considered discriminatory under the Fair Housing Act, since it applies equally to all such houses whether or not the resident occupants are disabled or not.

F) Ultimate Findings of Fact and Conclusions of Law

1. The Board finds that the building located at 17-23 Salem Street, Salem, as it is currently used and occupied, is subject to the provisions of M.G.L. c.148, s.26H. The Board finds that said house is a lodging house being let to six or more persons who are unrelated to the person conducting it. The building does not come within any of the enumerated statutory exemptions. In previous decisions, the Board has consistently determined that the provisions of M.G.L. c.148, s.26H apply to all houses that fit the criteria stated in said statute.
2. The obvious purpose of the enhanced automatic sprinkler requirement of said s. 26H is to protect public safety in the event of a fire. The statute applies to all such buildings, in a neutral manner, without regard to the actual or perceived disability status of the building occupants. Although the statute requires a monetary expenditure related to the installation of a fire sprinkler system, it clearly does not prohibit the intended use of the house by the Appellant or its occupants.
3. Additionally, the Board does not believe that it is the proper forum to determine whether the provisions of M.G.L. c. 148, s. 26H, as applied to the Appellant, is contrary to Federal or constitutional provisions. Absent a clear determination by a court of law that the statute, as applied to the Appellant, is contrary to Federal law it is reasonable for the Board to conclude that the statute remains valid and enforceable. The Board notes that a prior decision of this Board, which presented a very similar set of facts, was upheld by the Commonwealth's Appeals Court (Massachusetts Sober Housing Corporation v. Automatic Sprinkler Appeals Board, 66 Mass. App. Ct. 701, 705 (2006)).

G) Decision

Based upon the aforementioned findings and reasoning, the Board hereby **upholds** the Order of the Salem Fire Department to install adequate sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s. 26H.

The Appellant is hereby required to install an adequate system of automatic sprinklers throughout the entire second floor living area, including all means of egress and entrances thereto from the first floor. The first floor laundry area shall also be provided with an adequate sprinkler system. Additionally, the Appellant shall install an adequately monitored fire alarm system throughout all areas of the building including first floor areas.

The Board finds that a reasonable extension of time is warranted to comply with this determination. Plans for the installation of an adequate sprinkler and the required alarm system shall be submitted to the Salem Fire Department within 90 days of the receipt of this decision. Installation shall be completed no later than one year from the date of this decision.

H) Vote of the Board

Thomas Coulombe, Acting Chairman	In Favor
Roderick Fraser, Commissioner	In Favor
Alexander MacLeod	In Favor
Peter Gibbons	In Favor
John J. Mahan	In Favor
Aime DeNault	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,



Thomas Coulombe, Acting Chairman

Dated: September 23, 2008

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

Bruce T. MacDonald, Esq.
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Suite 901
Cambridge, Massachusetts 02139-3355

Chief David W. Cody
Salem Fire Department
48 Lafayette Street
Salem, Massachusetts 01970