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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 CHAIRMAN

Docket # 2015-02
42 West Street
Leominster, Massachusetts

AUTOMATIC SPRINKLER APPEALS BOARD DECISION

A) Statutory and Regulatory Framework

This administrative appeal is held in accordance with Massachusetts General Law, Chapter 30A; Chapter 148, section 26H and Chapter 6, section 201, to determine whether to affirm, reverse or modify the decision of the Leominster Fire Department requiring the Appellant, Joseph R. Evangelista (hereinafter "Appellant"), to install automatic sprinklers in a building owned by the Appellant located at 42 West Street, Leominster, MA.

B) Procedural History

By written decision received by the Appellant on December 18, 2014, the Leominster Fire Department issued a determination to the Appellant, requiring automatic sprinklers to be installed throughout a building owned by the Appellant located at 42 West Street, Leominster, MA. The determination was issued pursuant to the provisions of M.G.L. c. 148, section 26H. On January 15, 2015, the Appellant filed an appeal of the decision with the Automatic Sprinkler Appeals Board. The Board held hearings on two dates at the Department of Fire Services, Stow, Massachusetts.

Appearing at a February 11, 2015 hearing on behalf of the Appellant were Joe Evangelista and Anthony Evangelista, the property owners. Appearing on behalf of the Leominster Fire Department was Chief Robert Sidleau and Deputy Chief John Gendron. At the hearing it was determined by the Board, with agreement of the parties, that a continuation of this matter was necessary to obtain and review additional information.

Present for the Board at the February 11, 2015 hearing was: Aime DeNault, Chairman; Maurice M. Pilette, Vice Chairman; Andre R. Stallworth (designee of the Boston Fire Commissioner); Chief Thomas Coulombe; Alexander MacLeod; and George Duhamel. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

The second hearing in this matter was held on May 13, 2015. Appearing at this hearing on behalf of the Appellant were Joe Evangelista and Anthony Evangelista, the property owners. Appearing on behalf of the Leominster Fire Department was Chief Robert Sidleau and Deputy Chief John Gendron.

Present for the Board at the May 13, 2015 hearing was: Aime DeNault, Chairman; Maurice M. Pilette, Vice Chairman; Deputy Chief Jack Dempsey (designee of the Boston Fire Commissioner); Chief Thomas Coulombe; Alexander MacLeod; Peter Gibbons; and George Duhamel. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

C) Issue(s) to be Decided

Whether the decision of the Head of the Leominster Fire Department requiring sprinklers in the building located at 42 West Street, Leominster, MA pursuant to M.G.L. c. 148, section 26H, should be affirmed, reversed or modified?

D) Evidence Received

1. Application for Appeal filed by Appellant
2. Statement in Support of Appeal
3. Assessment and Sales Report – 42 West Street, Leominster (1/15/15)
4. Copy of M.G.L. c. 148, section 26H from Mass. Legislature Website
5. Copy of Leominster Zoning Ordinance – section 16.5.1.2 highlighted (dated 1/14/13)
6. Order of Notice of the Leominster Fire Department issued to Appellant (12/18/14)
7. City of Leominster – Office of Health Department – “Mass. State Sanitary Code Inspection Report & Order to Correct Violation” – 42 West Street, Apt. # 1 (1/8/15)
8. City of Leominster – Office of Health Department – “Mass. State Sanitary Code Inspection Report & Order to Correct Violation” – 42 West Street, 3rd Floor (1/8/15)
9. Notice of Hearing to Appellant (1/21/15)
10. Notice of Hearing to Leominster Fire Department (1/21/15)
11. Copies of two Memoranda that accompany Hearing Notices
12. Leominster Fire Department submissions (labeled 12A-Z) submitted at hearing (2/11/15)
13. Correspondence from Sprinkler Appeals Board to the Parties (2/19/15)
14. Correspondence to Board from Leominster Fire Department with copy of Leominster Building Department findings (2/25/15)
15. Correspondence to Board from Leominster Fire Department (3/31/15)
16. 2nd Notice of Hearing to Appellant (4/15/15)
17. 2nd Notice of Hearing to Leominster Fire Department (4/15/15)
18. Copies of two Memoranda that accompany Hearing Notices

E) Subsidiary Findings of Fact

- 1) By written decision received by the Appellant on December 18, 2014, the Leominster Fire Department issued a determination to the Appellant, requiring automatic sprinklers to be installed

throughout a building owned by the Appellant located at 42 West Street, Leominster, MA. The determination was issued pursuant to the provisions of M.G.L. c. 148 section 26H. On January 15, 2015, the Appellant filed an appeal of the decision with the Automatic Sprinkler Appeals Board. The Board held hearings on two dates at the Department of Fire Services, Stow, Massachusetts.

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 section 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. 148 section 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 existing buildings, subject to the law, to install the required systems "within five years after acceptance of the act by the municipality."

3) Testimony indicated that the subject building was originally built and used as a single family Victorian style home that, at some time, approximately 20 years ago, was used by DMH as a supervised group home. In 2012, after DMH left, the Appellant began renting out apartments and room units on a month to month basis. According to records of the Assessor's Office, the house features "2 apartments & 10 individual rented rooms...Currently utilized as a boarding house." The Assessor's document breaks down the house as follows: "1st FLR- 1 Unit:6 RMS/3bedrooms/1 bath; 2nd FLR- 6 individual RMS/1bath; and 3rd floor -1 unit: 4rms/1bedroom/1bath and 4 individual rms/1bath."

4) The Appellant testified that there is one apartment on the first floor, 6 individual rooms with one bath on the 2nd floor and two apartments on the 3rd floor. However, one of the apartments on the 3rd floor is closed off. The evidence indicated that the apartment and units each have individual locks and/or keyed entry ways and that the tenants only have access to their assigned rooms/areas and do not have access or the right to occupy the entire house.

5) Appellant indicated that, at least recently, he does not rent to more than one person in each of the 1st floor and 2nd floor apartments and that he only allows four persons to rent each of the four individual rooms on the 2nd floor. Although the 2nd floor has six individual boarding rooms, Appellant indicated that City Zoning Board representatives told him that if he rents out to more than four persons on the second floor, he would be considered a boarding house and in violation of the City's zoning ordinance. He also indicated that if he were to rent to more than four persons, the Appellant would need a lodging house license from the City and would also need to comply with lodging house requirements, including the maintenance of written guest records.

6) The Appellant-landlord indicated that rents are currently paid to him by Alternatives, Inc. Apparently social security and other public assistance benefits are paid to Alternatives, Inc. who handles the financial affairs of most of the tenants/boarders. Amounts are paid to the Appellant on a monthly basis. He collects \$450 each per month for the individual rooms on the 2nd floor, \$550 for the 3rd floor apartment and \$950 per month for the 1st floor apartment.

7) It is Appellant's contention that the house should not be considered a boarding house for the purposes of MGL c. 148, section 26H, since he will not knowingly allow more than four persons to rent the six rooms on the second floor.

8) Currently, the Appellant indicated that he has two people living in the first floor apartment, one (1) person living in a room on the 2nd floor and has one (1) person in the apartment on the 3rd floor.

9) Deputy Chief Gendron of the Leominster Fire Department indicated that on December 11, 2014, the Leominster Fire Department responded to the house for a fire alarm activation and that responding crews saw 2 individuals exiting the property and five boarders in the house. He stated that upon questioning, several of the occupants indicated that other guests frequently stay at the house, including the two persons who fire personal saw leaving. They also indicated that a woman often lives in the knee wall of the 3rd floor.

10) During a subsequent inspection of the property, Deputy Gendron indicated that members of the Leominster Fire Department spoke with two (2) tenants on site who confirmed that two (2) other individuals lived on the 3rd floor and come and go as they pleased. The Leominster Fire Department also found evidence of broken windows and doors, containers in other areas of the building which contained urine. He indicated that the fire department members viewed indications that someone had been living behind the knee wall in the 3rd floor apartment.

11) In addition to its determination that the house should be considered a lodging house subject to section 26H, the representatives of the fire department indicated that they have concerns about the 2nd floor occupants frequent use of hotplates to warm their food. They presented documents indicating that between 2002 to the date of hearing there were 231 fire department emergency calls to the property. About one-half of these were ambulance calls. Approximately 15 calls were related to cooking incidents and the remaining calls were related to smoke detector activations. The representatives also indicated that they are aware of numerous police calls to the location and viewed a 5 page printout of police incidents involving the house.

12) It is Appellant's opinion that except for his ability to control the occupancy through rental agreements, he does not have the ability to control who visits or occupies the house and cannot control the activities of the occupants. He indicated that such issues are the responsibility of the authorities charged with enforcing the laws.

F) Ultimate Findings of Fact and Conclusions of Law

1) The board finds that on or about June 13, 2005, the City of Leominster adopted the provisions of M.G.L. c. 148, section 26H. Said law requires the installation of a system of automatic sprinklers in certain lodging or boarding houses within five years of said adoption. The statute 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 . . ."

2) Testimony indicated that the home was originally built and used as a single family Victorian style home. There was no evidence in the record that indicates that the home was legally converted to or classified as a multi-family home. Records from the Assessor's office indicates that the house features "2 apartments & 10 individual rented rooms...Currently utilized as a

boarding house”. Said document also indicates that the house provides accommodations as follows: “1st FLR- 1 Unit: 6 RMS/3bedrooms/1 bath; 2nd FLR- 6 individual RMS/1bath; 3rd floor -1 unit: 4rms/1bedroom/1bath and 4 individual rms/1bath.” Such records confirm the results of the March, 2015 site inspection and written determination submitted to this board by the city building and fire officials, that the subject building is used as a boarding house. Photographs of the interior of the facility, clearly confirm that, in addition to the two multi-room apartments, the house features multiple individual rooms that employ locks or keyed doorways. The unrelated boarders/tenants, who pay rent on a month to month basis, only have access to those rooms or areas of the house that are assigned to them.

3) Appellant contends that the provisions of section 26H do not apply to the subject house since he only allows lodgings to not more than four persons in four rooms on the second floor. This conclusion is without merit, since it ignores the fact that the Appellant also rents out the apartment areas on the first and second floors to at least two other persons. Thus, even when the Appellant imposes the limitations on occupancy, the house is often rented to at least six renters/boarders, thus triggering the “six or more” language of the statute. The Board finds that the Appellant’s voluntary, self imposed limitation on the number of persons allowed to rent various areas of the building in order to avoid zoning laws and state licensing statutes, is self serving, unreliable and, as a practical matter, unenforceable. For this Board to recognize and condone the Appellant’s “self imposed”, voluntary occupancy and use limitations, notwithstanding the actual use and design characteristics of the building, as evidenced in the City assessor’s records and most recent building classification, would be contrary to well established compliance methods relating to building use and classification. Compliance with such classification methods has a direct impact on public safety with respect to fire prevention and life safety in the event of a fire. The Board notes that it is without jurisdiction to issue a conclusion about the legality of the apparent change of use from a single family home.

4) Based upon the testimony and evidence received, the subject house is clearly a lodging or boarding house for the purposes of the enhanced sprinkler provisions of M.G.L. c. 148, section 26H.

G) Decision and Order of the Automatic Sprinkler Appeals Board

Based upon the aforementioned findings and reasoning, the Board hereby **upholds** the Order of the Leominster Fire Department to require the installation of an adequate system sprinkler protection in the subject buildings in accordance with the provisions of M.G.L. Chapter 148, s. 26H, in accordance with the following terms:

1. Plans for the installation of sprinklers shall be submitted to the Head of the Leominster Fire Department within ninety (90) days of the date of hearing (August 11, 2015);
2. The installation of adequate sprinkler system shall be completed by May 13, 2016. As a cost savings measure, the determination of an adequate system of automatic sprinklers may be made by the Head of the Fire Department, including consideration of a NFPA 13D system (edition as referenced by the State Building Code).

H) Vote of the Board

Aime DeNault, Chairman	In Favor
Maurice Pilette, Vice Chair	In Favor
Jack Dempsey, Boston Fire Marshal	In Favor
Thomas Coulombe	In Favor
Alexander MacLeod	In Favor
Peter Gibbons	In Favor
George Duhamel	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,



Aime R. DeNault, Chairman

Dated: June 19, 2015

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

Joseph R. Evangelista
217 W. Boylston Street
West Boylston, Massachusetts 01583

Chief Robert A. Sideleau
Deputy Chief John Gendron
Leominster Fire Department
19 Church Street
Leominster, Massachusetts 01453-3193