



DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LT. GOVERNOR

KEVIN M. BURKE
SECRETARY

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

Automatic Sprinkler Appeals Board

P.O. Box 1025 ~ State Road

Stow, Massachusetts 01775

(978) 567-3181 Fax: (978) 567-3121

JOHN J. MAHAN
CHAIRMAN

MAURICE M. PILETTE
VICE CHAIR

**AUTOMATIC SPRINKLER APPEALS BOARD CONSOLIDATED
DECISION**

For the following three cases:

Docket #: 2007-06
198 Whitwell Street
Quincy, MA

Docket #: 2007-07
9 Ryden Street, Quincy
Quincy, MA

Docket #: 2007-08
184 Whitwell Street
Quincy, MA

A) Statutory and Regulatory Framework

This is an administrative appeal hearing held in accordance with Massachusetts General Laws, Chapter 30A; Chapter 148, section 26 H and Chapter 6, section 201, to determine whether to affirm the Orders of the Quincy Fire Department requiring Carl Smith, (hereinafter referred to as the "Appellants") to install automatic sprinklers in three buildings owned by him located at 198 Whitwell Street, Quincy, MA; 9 Ryden Street, Quincy, MA; and 184 Whitwell Street, Quincy, MA.

B) Procedural History

By written notice dated February 2, 2007 and received by the Appellant on February 2, 2007, the City of Quincy Fire Department issued Orders of Notice to the Appellant informing him of the provisions of M.G.L. c. 148, s. 26H, and the Department's determination to require the installation of automatic sprinklers in the Appellant's three buildings located at 198 Whitwell Street, Quincy, MA; 9 Ryden Street, Quincy, MA; and 184 Whitwell Street, Quincy, MA. The Appellant filed three appeals of said Orders with this Board on February 28, 2007. The Board held a Pre-Hearing Status Conference on April 27, 2007. Subsequently, several hearing dates were scheduled and rescheduled at the request of the parties.

With the consent of the parties, the Board consolidated the three appeals and held a hearing on November 12, 2009, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant was Carl Smith. Appearing on behalf of the Quincy Fire Department was Captain Thomas Lyons and Lt. William E. Griffin.

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

C) Issue(s) to be Decided

Whether the buildings located at 198 Whitwell Street, Quincy, MA; 9 Ryden Street, Quincy, MA; and 184 Whitwell Street, Quincy, MA are subject to the automatic sprinkler requirements of M.G.L c.148, s. 26H?

D) Evidence Received

07-06 198 Whitwell Street, Quincy, MA

1. Application for Appeal by Appellant
2. Statement in support of Appeal
3. Description of facility / Materials used to construct facility
4. Order of Notice of Quincy Fire Department
5. Notice of Pre-Hearing Status Conference to Parties
6. 1st Notice of Hearing to the Parties
7. 2nd Notice of Hearing to the Parties
8. Copy Correspondence from Mass Housing re: application for grant funding for Sprinklers for Appellant's properties
9. Letter to Appellant from Board requesting status update on case
10. Returned "Request to Continue Appeal Form" from the Appellant
11. Copy of Correspondence from Quincy Fire Dept. to Appellant re: status of sprinkler plans
12. Letter to Appellant from Board regarding tentative hearing for August 2009
13. 3rd Notice of Hearing to the Appellant
14. 3rd Notice of Hearing to the Quincy Fire Department
15. Copies of Memoranda that accompany Notices of Hearing

07-07 9 Ryden Street, Quincy, MA

1. Application for Appeal by Appellant
2. Statement in support of Appeal
3. Description of facility / Materials used to construct facility
4. Order of Notice of Quincy Fire Department
5. Notice of Pre-Hearing Status Conference to Parties
6. 1st Notice of Hearing to the Parties
7. 2nd Notice of Hearing to the Parties
8. 3rd Notice of Hearing to the Appellant
9. 3rd Notice of Hearing to the Quincy Fire Department
10. Copies of Memoranda that accompany Notices of Hearing

07-08 184 Whitwell Street, Quincy, MA

1. Application for Appeal by Appellant

2. Statement in support of Appeal
3. Description of facility / Materials used to construct facility
4. Order of Notice of Quincy Fire Department
5. Notice of Pre-Hearing Status Conference to Parties
6. 1st Notice of Hearing to the Parties
7. 2nd Notice of Hearing to the Parties
8. 3rd Notice of Hearing to the Appellant
9. 3rd Notice of Hearing to the Quincy Fire Department
10. Copies of Memoranda that accompany Notices of Hearing

E) Subsidiary Findings of Fact

- 1) By written notice dated February 2, 2007 and received by the Appellant on February 2, 2007, the City of Quincy Fire Department issued Orders of Notice to the Appellant informing him of the provisions of M.G.L. c. 148, s. 26H, and the Department's determination to require the installation of automatic sprinklers in the Appellant's buildings located at 198 Whitwell Street, Quincy, MA; 9 Ryden Street, Quincy, MA; and 184 Whitwell Street, Quincy, MA. The Appellant filed three appeals of said Orders with this Board on February 28, 2007. The Board held a hearing on this matter on November 12, 2009, at the Department of Fire Services, Stow, Massachusetts.
- 2) The parties agreed and stipulated that the City of Quincy adopted the provisions of M.G.L. c. 148, s. 26H, a local option law, as of March 1989. This law requires the installation of a system of automatic sprinklers in certain lodging or boarding houses. Said section defines a lodging house or boarding house subject to said law, 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 parties agreed and stipulated that the three buildings located at the following addresses: 198 Whitwell Street, Quincy, MA; 9 Ryden Street, Quincy, MA; and 184 Whitwell Street, Quincy, MA, are subject to the enhanced automatic sprinkler provisions of 26H.
- 4) The Appellant owns three houses that provide residence (New Horizons Residences) for persons who are recovering from issues relating to substance abuse. He testified that he seeks to comply with the Orders of Notice issued by the Quincy Fire Department to comply with the provisions of M.G.L. c. 148, s. 26H. However, due to financial considerations he has been unable to comply in a timely manner. The Appellant indicated that he received a grant in November 2008, in the amount of \$22,000 for the installation of sprinklers in all three properties. He indicated that he may also receive additional grant money in the future. He has contacted several sprinkler installation companies and is in the process of obtaining final estimates for the required installation work and is conducting activities to secure the additional funding.
- 5) The Appellant indicated that, as of the date of hearing, approximately 14 persons occupy the homes located at both 184 Whitwell Street and 198 Whitwell Street. He also indicated that 13 other persons occupy the home located at 9 Ryden Street in Quincy, Ma.

- 6) The Appellant has submitted sprinkler plans to the Quincy Fire Department for the property located at 184 Whitwell Street and is hopeful that he will be able to complete the installation in that home shortly. He stated that the cost estimate for sprinklers in said location is approximately \$31,000.00.
- 7) At the hearing, the Appellant requested adequate time to secure funding and complete the installations. The Appellant indicated that street openings will be required to hook-up to water necessary to supply the sprinkler systems. He indicated that the City of Quincy has a moratorium on street openings during the winter months. Upon inquiry he suggested that approximately one year would be adequate to complete the installation. The representatives of the Quincy Fire Department confirmed that a moratorium does exist as stated, from approximately December 1 through March 1. They were also agreeable to a reasonable extension of time.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The Board finds that on or about March 1989, the City of Quincy adopted the provisions of M.G.L. c. 148, s. 26H. This finding is not contested, as it was a stipulated fact at the hearing.
- 2) The buildings located at 198 Whitwell Street, Quincy, MA; 9 Ryden Street, Quincy, MA; and 184 Whitwell Street, Quincy, MA, are subject to the provisions of M.G.L. c. 148, § 26H, as currently used and occupied, since they are all “a house where lodgings are let to six or more persons not within the second degree of kindred to the person conducting it.” This finding is not contested, as it was a stipulated fact at the hearing
- 3) Based upon facts presented at the hearing by both parties to this appeal, a reasonable period of time is necessary to complete the installation of an adequate system of sprinklers in each of the three buildings owned by the Appellant and at issue before this board. Such factors include: time to acquire necessary funding, time to submit installation plans for review and approval of the fire department and time to complete the actual installation. Some of the factors, such as the prohibition relating to the opening of the City streets during the winter, are not within the control of the Appellant.

G) Decision

Based upon the aforementioned findings, the Board hereby **upholds** the Orders of the Quincy Fire Department to install an adequate system sprinkler protection in the subject buildings in accordance with the provisions of M.G.L. c.148, s. 26H.

Furthermore, the Board hereby establishes the following compliance schedule:

In the matter of **Case No. 07-08, 184 Whitwell Street, Quincy, MA**, the plans which have been submitted to the Quincy Fire Department by the Appellant shall be either approved or denied within seven (7) days of the date of this decision. The Appellant is ordered to engage in a contract and commence work on the subject property within forty-five (45) days of the date of this decision, with interior work to be completed no later than ninety (90) days following commencement of work. Final water service connection and completion of the work shall be completed no later than April 1, 2010.

With respect to the matters of **Case No. 07-06, 198 Whitwell Street, Quincy and Case No. 07-07 and 9 Ryden Street, Quincy, MA**, plans shall be submitted to the Quincy Fire Department by the Appellant within sixty (60) days of the date of this. The Quincy Fire Department shall approve or deny said plans within thirty (30) days of the date of such submission. Sprinkler installation for these properties shall commence by February 1, 2010 with work being completed no later than September 1, 2010.

H) Vote of the Board

John J. Mahan	In Favor
Thomas Coulombe	In Favor
Alexander MacLeod	In Favor
Peter Gibbons	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,



John J. Mahan, Chairman

Dated: December 3, 2009

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

Carl Smith
198 Whitwell Street
Quincy, Massachusetts 02169

Lt. William E. Griffin
Quincy Fire Department
40 Quincy Avenue
Quincy, Massachusetts 02169