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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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MAURICE M. PILETTE
CHAIRMAN

PAUL DONGA
VICE CHAIR

Docket # 2009-05
7-9 Bowers Avenue
Somerville, Massachusetts

AUTOMATIC SPRINKLER APPEALS BOARD DECISION

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 an Order of the Somerville Fire Department requiring Christina Yanhui Li and Steven Kwang, (hereinafter referred to as the "Appellants") to install automatic sprinklers in a building owned by them located at 7-9 Bowers Avenue, Somerville, MA.

B) Procedural History

By written notice dated April 28, 2009 and received by the Appellants on April 29, 2009, the City of Somerville Fire Department issued an Order of Notice to the Appellants informing them 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 Appellants' building, located at 7-9 Bowers Avenue, Somerville, MA. The Appellants filed an appeal of said Order with this Board on April 29, 2009. The Board held a hearing on this matter on May 13, 2009, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellants were Christina Yanhui Li and Steven Kwang. Appearing on behalf of the Somerville Fire Department was Deputy Chief Stephen Keenan.

Present for the Board were: Maurice Pilette, Chairman; Thomas Coulombe; Frank Kodzis, Designee, Boston Fire Department; Alexander Macleod; Peter Gibbons; John J. Mahan; George Duhamel; and Aime DeNault. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

C) Issue(s) to be Decided

Whether the building located at 7-9 Bowers Avenue, Somerville, MA, is subject to the automatic sprinkler requirements of M.G.L c.148, s. 26H?

D) Evidence Received

1. Application for Appeal filed by Appellants
2. Statement in Support of Appeal
3. Copy – City of Somerville Code of Ordinances (Chapter 11, Article 2, Sec. 11-24)
4. Order of Notice of the Somerville Fire Department
5. Notice of Hearing to the Appellant
6. Notice of Hearing to the Somerville Fire Department
7. Copies of two Memoranda that accompanied the hearing notices
8. List of laws adopted by Somerville (local option laws)
9. Somerville Zoning Board of Appeals Decision
10. Somerville Zoning Ordinance (Article 7)
11. Application for Innholders License (Appellants)
12. Document with photograph of property
13. Application for Bed/Breakfast – 21 Morrison Avenue, Somerville, MA

E) Subsidiary Findings of Fact

- 1) By written notice dated April 28, 2009 and received by the Appellants on April 29, 2009, the City of Somerville Fire Department issued an Order of Notice to the Appellants informing them of the provisions of M.G.L. c. 148, s.26H, and requiring that automatic sprinklers be installed in the Appellants' building located at 7-9 Bowers Avenue, Somerville, MA. An appeal of said Order was filed on April 29, 2009. The Board held a hearing on this matter on May 13, 2009, at the Department of Fire Services, Stow, Massachusetts.
- 2) On or about March 12, 1992, the City of Somerville adopted the provisions of M.G.L. c. 148, s. 26H, a local option law. 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 Appellants testified that the property is a three story, two family home located in the Davis Square area of Somerville. They have owned the property for over ten years. The owners occupy the second and third floors. In the past they have rented out rooms on the first floor level on a year-to-year basis to students and young professionals. The Appellants now seek to use the first floor unit area for guests and tourists. Each room, would have its own lock and key, have a queen sized bed and a private bathroom. The living room, reading room, and dining rooms would be used as common space. A fee would be charged for each room on a daily or other short-term basis.
- 4) The Appellants testified that the guest rooms on the ground floor could be available right away without the need for alterations or construction. The Appellants stated that they hoped to rent the rooms to adults only and operate the facility as a "bed and breakfast," offering a continental breakfast to the guest. They hope to be able to advertise and market the facility to local colleges and universities.

- 5) In developing their plans to convert the portion of the house into guest rooms, the Appellants contacted the City of Somerville. They were informed that in order to accomplish their plans they would be required to apply for and obtain an “inn holders” license. The Appellants have filled out the necessary application, but have not yet formally submitted it. The application indicates that the name of the facility will be “Bowers House Bed & Breakfast” and that Continental Breakfast would be offered. It indicates that there would be 3 bedrooms available to 3 to 6 guests.
- 6) In support of the Somerville Fire Department’s position, Deputy Chief Keenan testified that the Order of Notice was issued based upon the proposed future occupancy and use of the facility as a bed and breakfast. Deputy Keenan indicated that if the three tourist rooms were rented, the property would have “six or more persons not within the second degree of kindred to the person conducting it” as per § 26H. It was the Deputy’s opinion that the facility is not yet being used as a tourist home, but wanted to resolve this potential issue before the property underwent a change in use.
- 7) The Appellants testified that upon receipt of the Order of Notice, they solicited bids from several sprinkler contractors for the installation of the required system. They were quoted prices ranging from \$25,000.00 to \$40,000.00. In addition, the Appellants indicated that the City of Somerville has a 5-year moratorium on the excavation of any street that had recently been paved. The Appellants stated that Bowers Avenue had been resurfaced in 2007 and, according to the various sprinkler bids received, any sprinkler system installed would need to be connected to municipal water in the street and would involve excavation.
- 8) The Appellants did not provide any evidence or arguments of significance that would challenge the fire department’s determination that the proposed use of the house is subject to the provisions of § 26H. However, they indicated that the installation of an adequate sprinkler system, at this time, would be a severe financial hardship due to the current recession, which has resulted in a reduction in business. They also expressed concerns about their ability to secure financing for the installation work. The Appellants requested that in lieu of a complete sprinkler system that they be allowed to install a comprehensive fire alarm system that is ADA compliant, including horns and strobes.
- 9) Deputy Chief Keenan testified that the Order was based upon the potential for the building’s current use to be changed to be used as a “lodging house,” as defined in the statute, M.G.L. s. 26H. However, it was Deputy Keenan’s opinion that if the Appellants limited the number of guests to under six, the requirements of M.G.L. c. 148 § 26H may not be applicable.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The Board finds that on or about March 12, 1992, the City of Somerville adopted the provisions of M.G.L. c. 148, s. 26H.
- 2) The building located at 7-9 Bowers Avenue, Somerville, MA, would be subject to the provisions of M.G.L. c. 148, § 26H if it is used and occupied as proposed since it would be “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 building does not come within any of the enumerated statutory exemptions.

G) Decision

Based upon the aforementioned findings and reasoning, the Board hereby **upholds** the Order of the Somerville Fire Department to install an adequate system sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s. 26H, if the building is to be used as planned: to provide lodgings for six or more persons not within the second degree of kindred to the person conducting it". If it is going to be used and so occupied, Appellant shall be required to install an adequate system of automatic sprinklers throughout the first floor unit in all areas used and occupied by the guests and in such other areas used in connection therewith. Said sprinkler system shall include an adequately monitored fire alarm system throughout all such areas. The Board hereby determines that an adequate system of sprinklers may consist of either an NFPA 13R or NFPA 13D system, subject to the approval of the Fire Department.

Plans for the installation of the referenced sprinkler system and the required alarm system shall be submitted to the Somerville Fire Department within (90) ninety days from the date of this decision. The installation shall be completed within one hundred and eighty (180) days from the date of this decision.

H) Vote of the Board

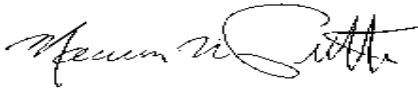
Maurice Pilette	In Favor
Thomas Coulombe	In Favor
Frank Kodzis, Designee, Boston Fire Department	In Favor
Alexander MacLeod	In Favor
Peter Gibbons	In Favor
John J. Mahan	In Favor
George Duhamel	In Favor
Aime DeNault	In Favor

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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,

A handwritten signature in black ink, appearing to read "Maurice Pilette", written over a horizontal line.

Maurice Pilette, PE, Chairman

Dated: June 16, 2009

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

Christina Yanhui Li and Steven Kwang
7-9 Bowers Avenue
Somerville, Massachusetts 02144

Chief Kevin W. Kelleher
Deputy Chief Stephen Keenan
Somerville Fire Department
266 Broadway
Somerville, Massachusetts 02145