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GOVERNOR

TIMOTHY P. MURRAY
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MARY ELIZABETH HEFFERNAN
SECRETARY

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

RODERICK J. FRASER, JR.
VICE CHAIRMAN

Docket # 2011-12
985 North Pleasant Street
Amherst, 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, reverse or modify an Order of the Town of Amherst Fire Department requiring John Zhang, (hereinafter referred to as the "Appellant") to install automatic sprinklers in a building owned by him located at 985 North Pleasant Street, Amherst, MA.

B) Procedural History

By written notice dated July 22, 2011 and received by the Appellant on July 22, 2011, the Town of Amherst Fire Department issued an Order 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 Appellant's building, located at 985 North Pleasant Street, Amherst, MA. The Appellant filed an appeal of said Order with this Board on August 31, 2011. The Board held a hearing on this matter on September 14, 2011, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant was Kevin Heffernan, Esquire. Appearing on behalf of the Amherst Fire Department were Assistant Chief Donald R. McKay and Amherst Building Inspector, David Waskiewicz.

Present for the Board were: Maurice Pilette, Chairman; Roderick J. Fraser, Jr.; John Mahan Alexander Macleod; Peter Gibbons; Aime DeNault; and George Duhamel. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

C) Issue(s) to be Decided

Whether the building located at 985 North Pleasant Street, Amherst, 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 Appellant
2. Letter/statement in support of Appeal
- 2A. Letter of compliance of property with State Sanitary Code
- 2B. Copy of Lease of property commencing April 1, 2011
- 2C. Order of Notice of the Amherst Fire Department
- 2D. Property Card of the Property
3. Notice of Hearing to the Appellant
4. Notice of Hearing to the Amherst Fire Department
5. Copies of two Memoranda that accompanied the hearing notices
6. Property cards/drawings submitted by Owner/Appellant
7. Letter from Building Inspector to Appellant
8. Letter from Appellant to the Amherst Fire Department
9. Copy of new lease signed (September 2, 2011)
10. E-mails regarding 1st lease
11. Letter from Building Inspector to Appellant (July 15, 2011)
12. E-mail from Appellant (March 23, 2011)
13. Position of the Amherst Fire Department
14. Letter/E-mail to Appellant (2 pages) (July 14, 2011)

E) Subsidiary Findings of Fact

- 1) By written notice dated July 22, 2011 and received by the Appellant on July 22, 2011, the Town of Amherst Fire Department issued an Order 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 building, located at 985 North Pleasant Street, Amherst, MA. The Appellant filed an appeal of said Order with this Board on August 31, 2011. The Board held a hearing on this matter on September 14, 2011, at the Department of Fire Services, Stow, Massachusetts.
- 2) In 1990, the Town of Amherst 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) According to testimony, the Town of Amherst also has a bylaw that prohibits more than four unrelated individuals to live a building classified as a single-family dwelling.

- 4) The representative of the Appellant testified that the property is a single-family home that was purchased by the Appellant in 2006. He indicated that in accordance with the Town of Amherst's property summary record, the home consists of approximately 1,542 sq. ft. and features four bedrooms and two bathrooms. He indicated that the Appellant leased the home to four college students with the lease term beginning April 1, 2011.
- 5) The Appellant indicated that on July 8, 2011, the Amherst Fire Department, Health Department and Building Department conducted an interior inspection of the home. It was during this inspection that the Amherst Fire Department determined that it appeared that six or more individuals were living in the home. This conclusion, in addition to other information, led to the issuance of the Order to install sprinklers in accordance with the provisions of M.G.L. c. 148, s. 26H.
- 6) The representative of the Appellant stated that the owner of the property was probably not aware that more than four persons may have been living in the home.
- 7) Appellant believes that the action of the Amherst Fire Department to require the building to be considered a lodging house and therefore sprinkled, is misguided since such a conclusion was based upon the occupancy of six or more individuals in violation of the lease and without the knowledge of the owner/landlord.
- 8) In support of the Amherst Fire Department's position, Assistant Chief McKay testified that the Order of Notice was issued based upon his inspection, which indicated that the house had seven bedrooms (1 on the first floor, 4 on the second floor and 2 in the attic). The Amherst Fire Department also testified that several of the parents of the original 4 renters had contacted them about quality of living and occupancy issues. The Department inspected the property based upon the parent's complaints.
- 9) The Amherst Fire Department submitted a copy of an e-mail sent by the Appellant to a prospective renter. In the document the Appellant clearly indicated that the house had 7 bedrooms, can accommodate 7-9 tenants and that utility costs may be split between 7-9 individuals. It is the Fire Department's belief that the Appellant was actively marketing the house as a lodging or rooming house, accommodating more than six individuals as per the definition of s. 26H. Additionally, based upon statements made to the Amherst Fire Department representative and supported by email documents, the Appellant entered into a written lease with four tenants, but required a guarantor agreement with 7 renters. E-mails and testimony also indicated that the Appellant accepted the equivalent of 3 months rent, \$9,900.00 (\$3,300 x 3) consisting of contributions from 7 individuals. Such evidence was not contested by the representative of the Appellant.
- 10) The Assistant Chief indicated that boarding houses are allowed in the Town of Amherst, but only by special permit. Further, he confirmed that the Town zoning laws restrict not more than four (4) unrelated individuals to live in the same property.
- 11) The Amherst Building Inspector testified that the property is a single family home and has always been classified as a single family home.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The Board finds that on or about 1990, the Town of Amherst adopted the provisions of M.G.L. c. 148, s. 26H. In 1990, the Town of Amherst 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."
- 2) The building located at 985 North Pleasant Street, Amherst, MA is classified as a single-family home.
- 3) The Appellant's contention is that the property is not subject to the law since there is no direct evidence that the property was actually occupied by six or more individuals, or if it was so occupied, it was without the knowledge or consent of the Appellant/owner, is not supported by the record. The Assistant Chief of the Amherst Fire Department, who conducted the inspection of the property, testified that he viewed seven bedrooms. Several e-mail communications between the Appellant/owner and perspective tenants and/or parents of tenants or perspective tenants, clearly indicate the Appellant's intent to aggressively solicit, encourage and profit by the use of the house by 7 to 9 unrelated persons. The existence of these e-mails, the execution of a separate document guaranteeing payment by seven persons and the collection of the first month's rent and security deposit, totaling \$9,900.00, indicate that the Appellant took every step possible to conduct activities which would trigger a reasonable determination that the building was being operated as a lodging or boarding house as described in MGL c. 148, s. 26H. The Appellant's failure to appear before the board and provide direct testimony about the facts claimed by his representative, was also a factor considered in the Board's findings.

G) Decision

Based upon the aforementioned findings and reasoning, the Board hereby **upholds** the Order of the Amherst Fire Department to require the installation of an adequate system sprinkler protection in the subject building in accordance with the provisions of M.G.L. Chapter 148, s. 26H. Sprinklers shall be installed if this building continues to be marketed, held-out, used or occupied as a lodging/boarding House as so defined in s. 26H.

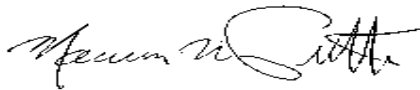
H) Vote of the Board

Maurice Pilette, Chairman	In Favor
Roderick J. Fraser, Jr.	In Favor
John Mahan	In Favor
Alexander Macleod	In Favor
Peter Gibbons	In Favor
Aime DeNault	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,

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

Maurice Pilette, PE, Chairman

Dated: October 24, 2011

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

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