



DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LT. GOVERNOR

MARY ELIZABETH HEFFERNAN
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

MAURICE M. PILETTE
CHAIRMAN

RODERICK J. FRASER, JR.
VICE CHAIRMAN

Docket # 2011-18
52 Brattle Street
Cambridge, Massachusetts

AUTOMATIC SPRINKLER APPEALS BOARD DECISION

A) Statutory and Regulatory Framework

This is an administrative appeal held in accordance with Massachusetts General Laws Chapter 30A, Chapter 148, § 26G, and Chapter 6, section 201, relative to a decision of the Cambridge Fire Department, requiring CGI Management (hereinafter referred to as the Appellant) to install automatic sprinklers throughout a building that it owns located at 52 Brattle Street, Cambridge, Massachusetts.

B) Procedural History

By written notice received by the Appellant on September 29, 2011, the Cambridge Fire Department issued a determination requiring automatic sprinklers to be installed throughout the subject building. According to the notice, the determination was issued pursuant to the provisions of M.G.L. c. 148 § 26G. On October 5, 2011, the Appellant filed an appeal of the determination with the Automatic Sprinkler Appeals Board. The Board held two hearings on this matter at the Department of Fire Services, Stow, Massachusetts.

Appearing at a November 9, 2011 hearing on behalf of the Appellant were: Norton Remmer, Code Consultant; Richard B Cohen, Owner's representative; and MacGregor Freeman, BTA Architects, Inc. Appearing on behalf of the Cambridge Fire Department was Lt. Chris Towski. During this hearing it was determined and agreed by the parties that a continuation of this matter was necessary to obtain and review additional information.

A second hearing was held on January 11, 2012. Appearing at this hearing on behalf of the Appellant were Norton Remmer, Code Consultant; Richard B Cohen, Owner's representative; and MacGregor Freeman, BTA Architects, Inc. Appearing on behalf of the Cambridge Fire Department was Lt. Chris Towski.

Present for the Board at both hearings were: Maurice M. Pilette, Chairman; Bart J. Shea, designee of the Commissioner of the City of Boston; Alexander MacLeod; Chief Thomas Coulombe; Peter

Gibbons; Aime R. DeNault; and George A. Duhamel. Peter A. Senopoulos was the Attorney for the Board at the November 2011 hearing and Steven P. Rourke was the Attorney for the Board at the January 2012 hearing.

C) Issue(s) to be Decided

Whether the Board should affirm, reverse or modify the determination of the Cambridge Fire Department requiring an adequate system of sprinklers to be installed throughout Appellant's building, in accordance with the provisions of M.G.L. c.148 § 26G?

D) Evidence Received

1. Application for Appeal filed by Appellant
2. Letter to the Cambridge Fire Department from Appellant's Representative
3. Letter from the Cambridge Fire Department to the Appellant's Representative
4. Building and Project Description
5. Partial Set of Drawings (17 pages total)
6. Notice of Hearing to Appellant
7. Notice of Hearing to the Cambridge Fire Department
8. Copies of two Memoranda that accompany hearing notices
9. Joint letter from the Parties agreeing on certain undisputed facts.
10. 2nd Notice of Hearing to the Parties
11. 3rd Notice of Hearing to the Appellant
12. 3rd Notice of Hearing to the Cambridge Fire Department
13. Additional Documents outlining project
14. Additional Plans submitted by the Appellant

E) Subsidiary Findings of Fact

- 1) By written notice received by the Appellant on September 29, 2011, the Cambridge Fire Department communicated its determination requiring automatic sprinklers throughout Appellant's building located at 52 Brattle Street, Cambridge, MA. According to the notice, the determination was issued pursuant to the provisions of M.G.L. c. 148 § 26G. On October 5, 2011, the Appellant filed an appeal of the said determination with the Automatic Sprinkler Appeals Board. The Board held hearings on this matter on November 9, 2011 and on January 11, 2012 at the Department of Fire Services, Stow, Massachusetts.
- 2) The Appellant testified that the subject building is an existing 3-story structure constructed in 1960. The building has exterior masonry walls, steel columns, wood trusses and floor joists and interior wood framed partitions. The first floor of the building houses two clothing stores, a chocolate and coffee store and a restaurant. The second and third floors contain continuing adult education facilities, including offices and classrooms located on the third floor. The building currently consists of approximately 24,000 s.f. of gross floor area. The building does not have handicapped access to the second and third floors, as the existing elevator is too small to accommodate wheel chair access. The existing elevator measures 56 inches wide by

30 inches deep and is inaccessible from the sidewalk entrance because there are 6 steps between the sidewalk and the elevator.

- 3) The building owner is planning to construct a new, larger elevator to provide handicapped access to the second and third floor areas. The representative for the Appellant testified that, for reasons relating to the building's configuration, construction design, location of utilities and lot line limitations, the only reasonable location for the larger elevator is to install it to the exterior of the building. The Appellant testified that the elevator project consists of 426 s.f. of additional floor area. Of this amount, the actual elevator shaft areas will consist of 225 s.f.. A small lobby space in the entryway of the elevator on each of the three floors consists of a total of 201 s.f. of floor area.
- 4) The representatives of the Appellant indicated that the elevator installation requires the additional lobby area on each floor, as per the accessibility guidelines, to allow a wheel chair to be safely positioned and able to turn at the elevator door. Appellant also indicated that there would be minimal renovations to the existing building to accommodate the installation of the elevator and that such renovations consist of not more than 319 gross s.f. in floor area.
- 5) The representatives of the Appellant testified that the State Building Code and the State Elevator Code, for reasons related to safety in the event of an emergency, prohibits the installation of sprinklers in elevators.
- 6) The representatives of the Appellant testified that they have not been ordered to install a new elevator, but are doing so to improve and assure accessibility by the disabled to the upper floors. The Appellant indicated that the installation of the elevator and ancillary lobby space adds approximately 1.4% additional s.f. of floor area to the building which measures approximately 24,000 s.f. in total floor area.
- 7) The representatives of the Appellant indicate that they have considered other alternative design plans for the location of an elevator. However, all of the alternative designs created complications due to the location of structural beams, utilities, building configuration and lot line.
- 8) The Appellant testified that the current assessed value of the building is approximately \$4,200,000 and that it would cost approximately \$250-\$300,000 to sprinkler the entire building.
- 9) The representatives for the Appellant indicated that the installation of the new elevator shaft (225 s.f.), new lobby area (201 s.f), and alterations to the existing building (319 s.f.) would consist of approximately 745 total gross s.f. of floor area. They emphasized that this limited floor area is no greater than 3.10% of the gross square footage of the building and that this amount is significantly less than the 33% established by the Board in its October 14, 2009 memorandum which established guidelines to determine if "major alterations or modifications" are occurring.
- 10) The representatives of the Appellant indicated that the planned work presented to the Board is not part of a series of future phased-in alterations that if considered together, could possibly

be considered in the determination of whether “major” alterations or modifications are occurring for s. 26G purposes.

- 11) The representatives of the Cambridge Fire Department testified that the department believes the addition of this elevator could be considered an “addition” to the building under s. 26G, thus triggering the enhanced sprinkler provisions. However, the representatives indicated that the elevator installation project presented by this appeal may be a unique situation. They indicated that the Fire Department would not oppose a determination by the Board that sprinklers are not required under these circumstances.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The provisions of M.G.L. c. 148, s. 26G state, (in pertinent part): “Every building or structure, including any additions or major alterations thereto, which totals, in the aggregate, more than 7,500 gross square feet in floor area shall be protected throughout with an adequate system of automatic sprinklers in accordance with the provisions of the state building code.” This law, as stated, reflects amendments to the statute enacted by Chapter 508 of the Acts and Resolves of 2008. The revised provisions apply to “the construction of buildings, structures or additions or major modifications thereto, which total, in the aggregate, more than 7,500 gross square feet permitted after January 1, 2010”. (Sec. 6, Chapter 508 of the Acts of 2008).
- 2) Based upon the facts presented at the hearing, the Board finds that the subject building is, in general, the type of building subject to the provisions of s. 26G and clearly consists of more than 7,500 gross square feet in floor area. For existing buildings subject to the law, the installation of sprinklers will be necessary if either (1) an addition is made to the building or (2) major modifications are taking place. In some instances the work may involve both an addition and the occurrence of major modifications.
- 3) The Board has consistently determined that any addition, regardless of size, to a building within the scope of s. 26G, which totals in the aggregate more than 7,500 gross square feet s.f. will, in general, trigger the installation of sprinklers. However, the Board determines that, for the purposes of this case, the nature and characteristics of the additional space to this building which all relate to the installation of an elevator presents circumstances that do not trigger the installation of sprinklers. The planned additional space is clearly limited to that space taken up by the elevator and related lobby areas needed to allow clear and safe wheelchair access to the elevator. This additional lobby space is merely ancillary to and necessary for the elevator installation.
- 4) The fact that the Massachusetts State Building Code and State Elevator Code, for technical reasons relating to safety, prohibits the installation of sprinklers in elevators is also a significant factor in this determination.
- 5) Notwithstanding a finding that the elevator and related areas are not considered an “addition,” the Board must also determine whether the planned work is considered a “major” alteration or modification to the subject building in accordance with s. 26G. In a memorandum issued by this Board on October 14, 2009, this Board indicated that the determination of whether “major” alterations or modifications are occurring will be based upon (1) a review of the

nature and scope of the work and (2) whether the alterations affect a substantial portion of the building. In said memorandum, the Board established a presumption that “major alterations or modifications” are reasonably considered major in scope when such work affects thirty-three (33) % or more of the “total gross square footage” of the building, calculated in accordance with section 26G.

- 6) Based upon the evidence presented in this case, the addition of the elevator shaft, ancillary lobby space and related alterations of the existing building to accommodate the elevator installation, consist of not more than 745 s.f. of floor area. This total is significantly less than 33% of the entire of existing floor area of the subject building, which consists of approximately 24,000 gross s.f. in floor area. Accordingly, the alterations or modifications as presented are not considered “major”, and the sprinkler requirements of s. 26G are not triggered.

G) Decision of the Automatic Sprinkler Appeals Board

Based upon the evidence and testimony presented at the hearing, the Board hereby **reverses** the Order of the Cambridge Fire Department and finds that the work, as presented to the Board, is considered neither a building addition nor a major alteration or modification under MGL c. 148, s. 26G. Accordingly, the installation of an adequate system of automatic sprinklers is not required.

This decision is based upon the following conditions:

- (a) All lobbies shall, at all times, be kept clear of any debris or any objects that may impair the use of a wheelchair, and
- (b) The cost and scope of the project, which was the subject of this appeal, shall be combined with the cost and scope of any further alterations to this building occurring within a 5-year period from the date of this decision for determining if major alterations are occurring in the future for the purposes of s. 26G.

H) Vote of the Board

Maurice M. Pilette, Chairman	In Favor
Bart J. Shea, Acting Deputy/Fire Marshal, City of Boston	In Favor
Thomas Coulombe	Opposed
Alexander MacLeod	In Favor
Peter E. 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, P.E., Chairman

Dated: February 16, 2012

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

Norton S. Remmer, P.E.
18 John Street Place
Worcester, Massachusetts 01609-2667

Deputy Chief Lester M. Bokuniewicz
Lt. Chris Towski
Cambridge Fire Department
491 Broadway
Cambridge, Massachusetts 02138