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ANTHONY P. CAPUTO
CHAIRMAN

Docket # 2023-01
59 Quobaug Avenue
Oxford, Massachusetts

FIRE PREVENTION REGULATIONS APPEALS BOARD DECISION

A) Statutory and Regulatory Framework

This matter is an administrative appeal filed in accordance with Massachusetts General Laws Chapter 22D, section 5. The Appellant is seeking the Board of Fire Prevention Regulation's review of an "Order to Cease and Desist and Correct" issued by the Oxford Fire-EMS Department on January 13, 2023, for the property located at 59 Quobaug Avenue, Oxford, Massachusetts. The "Order to Cease and Desist and Correct" cites violations of 527 CMR 1.00, Chapter 11. The property is owed by Robert J. King and Casey Gerald Fleming (hereinafter referred to as the Appellants).

B) Procedural History

By a notice dated January 13, 2023 and received by the Appellant on or about January 16, 2023, the Oxford Fire-EMS Department issued an "Order to Correct" to the Appellant for seven (7) violations of 527 CMR 1.00, Chapter 11.

The Appellant filed an appeal with the Fire Prevention Regulations Appeals Board on February 14, 2023. The Board held a video conference hearing on this matter on July 19, 2023.

Appearing on behalf of the Appellant were: Casey Fleming and Robert King, property owners. Appearing on behalf of the Oxford Fire-EMS Department and Town of Oxford were: Nicole J. Costanzo, Esq., Town Counsel; Chief Laurent R. McDonald, Oxford Fire-EMS Department; Patrick Dahlgren, Building Commissioner, and Rike Sterrett, Director of Public Health Services.

Present for the Board were: Alfonso Ibarreta, Presiding Panel Member; Chief Richard K. Arruda; and Paul J. Kennedy, Jr. Glenn M. Rooney, Esq., was the Attorney for the Board.

C) Issue(s) to be Decided

Whether the Board should affirm, reverse or modify the "Order to Correct" of the Oxford Fire-EMS Department regarding the violations of 527 CMR 1.00, Chapter 11.

D) Evidence Received

1. Application for Appeal filed by Appellant with Statement in Support of Appeal and accompanying Exhibits (dated 2/14/2023)
 - A. Order to Cease and Desist and to Correct issued by Oxford Fire dated 1/13/2023
 - B. Correspondence from Oxford Fire Department to Appellant dated 2/3/2023
 - C. Verified Complaint for Injunctive Relief and Declaratory Judgment under M.G.L. c. 231A filed in Worcester Superior Court
 - D. Plaintiff's Motion for Ex-Party Temporary Restraining Order filed in Worcester Superior Court
2. Oxford Fire-EMS Department's Answer of Respondent to Appeal with Accompanying Exhibits (undated)
 1. FPRAB Decision 22-01 dated 12/19/2022
 2. Oxford Fire-EMS Inspection Cancellation Notice dated 2/3/2023
 3. Superior Court Decision (on Temporary Restraining Order) dated 3/28/2023
 4. Photographic Exhibits
 5. Photographic Exhibit Affidavits dated 5/1/2023
 6. Oviitech RPT Manufacturer's Instructions
3. Reply to Answer of Respondent (Appellant) to Appeal (dated 6/1/2023)
- 4-8. Copy of the Administrative Record produced by the Fire Prevention Regulations Appeals Board in Prior Oxford Case (22-01) – submitted by the Appellant
9. Copy of Decision 22-01 of Fire Prevention Regulations Appeals Board in prior Oxford Case – submitted by the Appellant (dated 12/19/2022)
10. Video Recording of Oxford Annual Town Meeting – submitted by the Appellant (dated 5/3/2023)
11. Video Recording of Fire Prevention Regulations Appeals Board Pre-Hearing Status Conference in Prior Oxford Case (22-01) – submitted by the Appellant (dated 8/10/2022)
12. Video Recording of 2nd Fire Prevention Regulations Appeals Board Pre-Hearing Status Conference in Prior Oxford Case (22-01) – submitted by the Appellant (dated 9/21/2022)
13. Video Recording of Hearing before the Fire Prevention Regulations Appeals Board in Prior Oxford Case (22-01), Part 1 – submitted by the Appellant (dated 10/27/2022)
14. Video Recording of Hearing before the Fire Prevention Regulations Appeals Board in Prior Oxford Case (22-01), Part 2 – submitted by the Appellant (dated 10/27/2022)
15. Video Recording of Hearing before the Fire Prevention Regulations Appeals Board in Prior Oxford Case (22-01) – submitted by the Appellant (dated 12/9/2022)
16. Supreme Judicial Court – Single Justice Case Cover Sheet filed by the Appellant – submitted by the Appellant (dated 3/3/2023)

E) Subsidiary Findings of Fact

1. The Appellant sought this Board's review of the Oxford Fire-EMS Department's ("the Fire Department") "Order to Correct" ("Order") under the provisions of M.G.L. c. 22D, s. 5. The Order was dated January 13, 2023, and received by the Appellant on or about January 16, 2023. The Order cites seven (7) separate violations of 527 CMR 1.00, Chapter 11.
2. The property at issue is 59 Quoboag Road, Oxford, Massachusetts. The Board heard testimony from both parties that the property is used in part for the breeding and raising of bearded

dragons and other reptiles.

3. The Appellants, in presenting their case, testified to each of the separate violations of the State Fire Code. In response to **Violation 1**, the Appellants testified that relocatable power taps (RPTs) in use are plugged into smart timers, which control power to the device and turn power on and off at designated times. The RPTs currently have lights plugged into them, which for allow for the care of animals. The smart switches have the same 15-amp capacity as the RPTs, which is a small percentage of the devices themselves.
4. The Appellant stated that the smart plugs in use are from Sylvania (Model # - E22286) and are found at many retailers. They can be controlled and monitored through a smart hub and/or through an app on a smart phone.
5. The Appellants disputed allegations by the Fire Department that the RPTs were being used above capacity, and stated that the wattage of lights being used were very small. They further stated that the RPTs being used, which have 20 outlets, are not all in use at the same time.
6. In response to **Violations 2 and 3** in the Order, the Appellants disputed the Fire Department's allegations that extension cords are in use and that they are daisy chained into an RPT in the breeding area. The Appellants stated that there are no extension cords in use anywhere on the property.
7. When the Appellants were questioned by members of the Board regarding cords (green cord and white cords) seen in various photographs submitted into the record by the Fire Department, the Appellants stated that there are no extension cords at the property and further questioned how it was possible that the Fire Department could take so many photographs of "extension cords" yet fail to take pictures of the "female ends" of any of the cords, which would prove whether or not the cords were actually extension cords.
8. The Appellants further testified that citation listed in **Violation 3** (11.1.4.1) does not match the alleged violation of the State Fire Code in the Fire Department Order. The Order states that a "green extension cord is plugged (daisy-chained) into the RPT mounted on habitat in basement." However, the Code cited, 11.1.4.1. specifies that RPTs "shall be polarized or grounded with over current protection and shall be listed." Based upon the incorrect citation, the Appellant believes that this Violations should be thrown out.
9. In response to **Violations 4 and 5** in the Order, the Appellants dispute these violations. The Appellants testified that there is nothing in the State Fire Code which states that an RPT cannot be attached to a piece of furniture. Rather, the Code states that the cord cannot be permanently affixed. The Appellant's stated that some of the RPTs are affixed to shelving units on rolling castors with zip ties while others are affixed to wooden shelves by a bracket, allowing the RPTs to be easily removed. They argued that the described installation, on rolling shelving units, cannot be considered as "permanently affixed" to a structure, if the RPT can be "slid off" its bracket and the "structure" is movable and not part of the home.
10. In response to **Violation 6** in the Order, the Appellants stated that there is no reference in the State Fire Code to "high ampacity power cords" and that the allegation by Chief McDonald that the cords or RPTs are overfilled, is untrue and that no evidence has been presented or submitted to support this allegation. The Appellants stated that heat lamps for the care of the animals are most frequently used with the RPTs and that a lamp with just one bulb would be

equivalent to 27% capacity, while two (2) lights would equal 53% capacity of an RPT, which they argued is nowhere close to causing an overload issue.

11. In response to **Violation 7** in the Order, the Appellants dispute this violation in its entirety and stated that while “cords may be subject to damage”, Chief McDonald did not allege there was actual damage to cords pass through a piece of furniture.
12. The Appellants further stated that the RPT in question is mounted to the side of a cage enclosure on its mounting bracket, which prevents the cord from moved, cut, or otherwise impacted. The cord of the lights passes through the cage to allow for the warming of the animals and not through a wall, ceiling or floor. The Appellants argued that they do not believe the text of this violation applies, due to the fixed nature of both the light and the RPT.
13. As to the state of the electrical system in the property, the Appellants indicated that the home contained the standard number of electrical receptacles for a 1-2 family dwelling. They advised that while the garage is unfinished, the electrical system is complete and that the electrical outlets are properly spaced per the requirements in the Code and that additional outlets were added to this area to accommodate the amount of capacity they thought would be needed.
14. In addition, the Appellants stated that RPTs are needed throughout the property, as the lamp cords in cages are not long enough to reach the electrical outlets on the walls, so instead they are plugged into the RPTs. They stated that they specifically purchased the RPTs with 20 outlets and 15-foot cords to reach an outlet to prevent the use of extension cords and daisy chaining.
15. In support of the Order issued by the Fire Department, Chief McDonald testified the property at issue is not just a single-family home but also a retail/commercial operation for the breeding and growing of over 200 reptiles for commercial purposes. He stated that the amount of electricity being used and electrical components, including smart devices and RPTs, is of great concern to him and the Department, as they want to ensure safety for the residents, animals, neighborhood and first responders, in case of an emergency.
16. Chief McDonald, through direct testimony and written submissions, stated that there are numerous violations of 527 CMR 1.00, 11.1.4 in existence at the property, through the use of RPTs, smart devices, and extension cords.
17. In response to **Violation 1** (527 CMR 1.00, 11.1.4.2), Chief McDonald testified that the RPTs in use are connected to “smart” automatic control devices, which are then directly connected to permanently installed receptacles. He stated that the Appellants have failed to provide the Fire Department with requested information on these products.
18. Chief McDonald expressed concern that the manufacturer instructions/listings specifically state that RPTs are not intended for portable temporary use, but for fixed, continuous loading under automatic control for set periods of time per day. Further, Chief McDonald believes that the Appellant’s use of RPTs, in conjunction with smart timers, is a direct violation of 527 CMR 1, 11.1.4.2, which requires RPTs to be directly connected to a permanently installed outlet and not plugged into another RPT, extension cord, or any other electrical device.

19. In response to **Violations 2 and 3** (527 CMR 1.00, 11.1.4.1), Chief McDonald testified that the Appellants are currently using the RPTs in a manner inconsistent with their listing. Specifically, he stated that the RPTs are “daisy chained” with extension cords, either between the outlet and the RPT or the RPT and a connected appliance.
20. In response to **Violations 4 and 5** (527 CMR 1.00, 11.1.4.1), Chief McDonald stated that the RPTs currently in use are affixed to reptile habitats with zip ties and staples in both the garage and basement areas. He indicated that he disagrees with the Appellant’s argument that attaching an RPT with a zip tie constitutes a permanent attachment/mount, especially if any tools would be required to remove them. The standard, according to Chief McDonald, spells out that RPTs may not be used in place of permanent wiring. In this case, a single outlet is being used with an ancillary tool (an RPT) to create 20 more outlets.
21. Chief McDonald expressed additional concern about the RPTs and their voltage. Specifically, they are intended for use with low voltage items and not for commercial operations, such as this one. He indicated that there are at least 11 RPTs in use throughout the property. In the garage alone, he believed it added 196 outlets, which presents an overload hazard and potential to cause a fire, which is why his Order contained “corrective action” to require an evaluation by an electrician to ensure proper electrical loads throughout the property.
22. In response to **Violation 6** (527 CMR 1.00, 11.1.4.1), Chief McDonald maintains that the RPTs in use and attached to the reptile habitats are filled to capacity and overloaded with high ampacity power cords. Further, the number of RPTs in use exceeds the number of permanently installed receptacles and are being used in place of fixed wiring. He disagreed with the Appellant’s argument that the devices in use are only at 53% of their total capacity but failed to provide proof of same. Further, it was his contention that the lights and warming devices used to care for the reptiles, generate more than 25-watts of power. He stated that the care instructions provided by the Appellants to customers suggest that warming lights/devices to maintain temperatures between 80° and 110°F, would require lights that generate more than 25 watts of power.
23. Chief McDonald further testified that at least five (5) of the RPTs in use have been altered, through the removal of the male plug and the installation of a strain reliever and another new plug on the cord end. He contends that the modification of these devices, in any way, would void the manufacturer’s warranty and listing of the device.
24. In response to **Violation 7** (527 CMR 1.00, 11.1.4.3), Chief McDonald directed the Board’s attention to photographs submitted into the record (Exhibit 4) that the RPTs attached to the reptile habitats are installed in such a manner that presents a danger of physical damage, including pinch points, abrasion, wear, impact, and cuts.
25. The photographs, in Chief McDonald’s view, clearly show RPTs extending through unfinished and unprotected openings in plywood “habitat” sidings openings and are exposed to physical damage based on their location and geometry of arrangement. He further testified that the RPTs in use and attached to shelving units, have objects stored above them, making them subject to unsafe and physically dangerous conditions such as impact, rubbing, pinching, and abrasions.
26. In conclusion, Chief McDonald testified that his Order was both proper and sufficient and stated that the violations of the State Fire Code are clear and that if the violations are left

uncorrected, would continue to create a potential hazard to the health and safety of all occupants, employees, abutters and first responders.

F) Ultimate Findings of Fact and Conclusions of Law

1. The sections of 527 CMR 1.00, Chapter 11 cited by the Fire Department relative to the subject property are as follows:

527 CMR 1.00, 11.1.4.2	The relocatable power taps shall be directly connected to a permanently installed receptacle. (Violation 1)
527 CMR 1.00, 11.1.4.1	Relocatable power taps shall be of the polarized or grounded type with overcurrent protection and shall be listed. (Violations 2-6)
527 CMR 1.00, 11.1.4.3	Relocatable power tap cords shall not extend through walls, ceilings, or floors; under doors or floor coverings; or be subject to environmental or physical damage. (Violation 7)

G) Decision and Order

Based upon the forgoing reasons, this Board **modifies** the January 13, 2023 Order of the Oxford Fire-EMS Department regarding the “Order to Correct” issued for the property located at 59 Quobaug Avenue, Oxford, MA. The modification is as follows:

1. The Board **affirms** **Violation 1**.
(Violation 1: Multiple Relocatable Power Taps are plugged into “smart” automatic control devices and not directly connected to a permanently installed receptacle.)
2. The Board **modifies** **Violation 2**, specifically the Corrective Action. The Appellant shall not be required to obtain the services of a licensed electrician.
(Violation 2: Three (3) white, residential style multiplug (multi-outlet) extension cords are plugged (daisy-chained) into the left RPT mounted on reptile habitat in garage/breeding/boarding area. One (1) white residential style multiplug (3 outlet) extension cord plugged (daisy-chained) into the RPT mounted on reptile habitat in garage/breeding/boarding area.)
3. The Board **reverses** **Violation 3**.
(Violation 3: Green extension cord is plugged (daisy-chained) into the RPT mounted on habitat in basement.)
- 4-5. The Board **modifies** **Violations 4 and 5**, specifically the Corrective Action. The relocatable power taps shall be affixed in accordance with the manufacturer’s requirements. The Appellant shall not be required to obtain the services of a licensed electrician.
(Violation 4: Relocatable Power Tap and flexible cords are affixed to reptile and insect habitats with zip ties and staples in the garage/boarding/breeding area.
Violation 5: Relocatable Power Tap are affixed to habitat with zip ties in the basement.)

6. The Board **reverses** **Violation 6.**
(Violation 6: Relocatable Power Taps attached to reptile habitat adjacent to metal shelving units appear to be filled to capacity and overloaded with high ampacity power cords. The number of RPTs in use indicate there are not sufficient permanently installed receptacles for the devices in use. RPTs are in use in place of fixed wiring.)
7. The Board **reverses** **Violation 7.**
(Violation 7: Relocatable Power Taps attached to reptile habitats in close proximity to and extend through metal and/or wood shelving units, walls, and other equipment/devices. The number of devices, geometry of arrangement, and placement are such that they are subject to physical damage including but not limited to pinch points, abrasion, wear, impact, and cuts.)

H) Vote of the Board

Alfonso Ibarreta, Presiding Chair	In Favor
Chief Richard K. Arruda	In Favor
Paul J. Kennedy, Jr.	In Favor

I) Right of Appeal

You are hereby advised you have the right, pursuant to section 14 of chapter 30A of the General Laws, to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order.

SO ORDERED,



Alfonso Ibarreta, Presiding Panel Member
Fire Prevention Regulations Appeals Board

Dated: August 9, 2023

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

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