

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

Automatic Sprinkler Appeals Board

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CHAIRMAN

PETER GIBBONS
VICE CHAIRMAN

Docket # 2016-08
40 Pleasant Street
Granby, 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, s. 26G, and Chapter 6, s. 201, relative to a decision of the Granby Fire Department to require the owner of the proposed building, Children First Enterprises, Inc. (hereinafter referred to as the "Appellant"), to install automatic sprinklers in a proposed building located at 40 Pleasant Street, Granby, Massachusetts.

B) Procedural History

By written notice dated June 23, 2016, the Granby Fire Department issued a determination to the Appellant requiring automatic sprinklers to be installed in a building owned by the Appellant located at 40 Pleasant Street, Granby, Massachusetts. The determination was issued pursuant to the provisions of M.G.L. c. 148, s. 26G and was received by the Appellant on June 23, 2016. On July 15, 2016, the Appellant filed an appeal of the determination with the Automatic Sprinkler Appeals Board. The Board held a hearing on this matter on August 10, 2016, at the Department of Fire Services, Stow, Massachusetts.

Appearing at the hearing on behalf of the Appellant was Aelan Tierney, Project Architect, Kuhn Riddle Architects; Harold Cutler, Consulting Fire Protection Engineer; and Donna M. Dinette, Executive Director, Children First Enterprises, Inc. Appearing on behalf of the Granby Fire Department was Chief Bruce Carpenter.

Present for the Board at the hearing was: Maurice M. Pilette, Chairman; Jack Dempsey (designee of the Boston Fire Commissioner); Chief Thomas Coulombe; Alexander MacLeod; Aime DeNault; and George Duhamel. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

C) Issue(s) to be Decided

Whether the Board should affirm, reverse or modify the determination of the Granby Fire

Department requiring sprinklers in the Appellant's proposed building, in accordance with the provisions of M.G.L. c. 148, s. 26G?

D) Evidence Received

1. Application for Appeal filed by Appellant
2. E-mail Notification of Sprinkler Requirements - Lt. Stefanowicz, Granby Fire Department (dated 6/23/2016)
3. E-mail Response to Lt. Stefanowicz from Aelan B. Tierney, Project Architect, Kuhn Riddle Architects (dated 6/24/2016)
4. Struck from the Record during the hearing, by Agreement of the Parties
5. Code Review with Fire Protection Information (dated 6/12/2016)
6. DEP Well Test Info and Approval (dated 5/22/2009)
7. R.W. Hall Engineer' Letter re Sprinkler System Requirements (dated 7/12/2016)
8. South Hadley Fire & Water Department Letter re Access to Public Water (dated 7/6/2016)
9. South Hadley Water District Map
10. Children First Enterprises – Expansion II Design Development Drawings (dated 6/28/2016)
- 10A. G1.1 Cover Sheet, showing 3D Views of the existing building and proposed addition
- 10B. G1.2 Code Review Sheet, showing occupancy, egress paths and perimeter access
- 10C. L1.1 Existing Site Conditions, showing the existing building and surrounding site
- 10D. L3.1 Site Layout Plan, showing the proposed addition and site improvements
- 10E. A1.1 West Wing Addition Plan, showing the proposed addition
- 10F. A1.2 East Wing Renovation Plan, showing areas to be modified in the existing building
- 10G. A2.1 West Wing Addition Elevations
- 10H. A2.2 West Wing Elevations
11. Notice of Hearing to Appellant (dated 7/19/2016)
12. Notice of Hearing to Granby Fire Department (dated 7/19/2016)
13. Copies of two Memoranda that accompany Hearing Notices
14. Additional Documents submitted by Appellant
- 14A. E-Mail from Aelan Tierney to Board Assistant, MaryElizabeth Lynch, introducing the Stipulation of Facts between the parties (dated 7/29/16)
- 14B. Children First Enterprises – Expansion II Project – West Wing Addition – documents being added to appeal package
- 14C. Stipulation of Facts – R1, two sided (dated 7/25/16)
- 14D. Building Code Review prepared by Kuhn Riddle Architects (Phase II Expansion), two pages, two sided document
- 14E. Correspondence from Water department – Fire District No. 1 (dated 7/21/16)
- 14F. E-mail from Aelan Tierney to Lt. Stefanowicz, Granby Fire Department, et al. re: Stipulation of Facts (dated 7/26/16)
- 14G. Floor Plans detailing expansion (3 pages)

E) Subsidiary Findings of Fact

- 1) By written notice dated June 23, 2016, the Granby Fire Department issued a determination to the

Appellant requiring automatic sprinklers to be installed in a building owned by the Appellant located at 40 Pleasant Street, Granby, Massachusetts. The determination was issued pursuant to the provisions of M.G.L. c. 148, s. 26G and was received by the Appellant on June 23, 2016. On July 15, 2016, the Appellant filed an appeal of the determination with the Automatic Sprinkler Appeals Board. The Board held a hearing on this matter on August 10, 2016, at the Department of Fire Services, Stow, Massachusetts.

- 2) The representative for the Appellant testified that the Appellant owns/operates a non-profit, year round childcare program for children ages 2.9-14 years old. The expansion project would allow the program to be housed in one space (the program currently operates from two separate locations). The building would be one story in height. The addition as designed would add approximately 4,417 s.f., to the building with the total building size of 11,345 s.f.
- 3) The Appellant's architect indicated that the building with the planned addition, considered in the aggregate, would result in the building being well over 7,500 s.f. and, unless otherwise exempted, would be subject to the installation of automatic sprinklers in accordance with M.G.L. c. 148, s. 26G. However, she indicated that the building and property clearly lacks sufficient water and water pressure to supply any adequate sprinkler system. She noted the language in M.G.L. c. 148, s. 26G, which states that "no such sprinkler system shall be required unless sufficient water and water pressure exists". Appellant's representatives assert that said statute creates an exemption from the installation of enhanced sprinkler protection in this building due to the lack of sufficient water and water pressure.
- 4) The representatives of the Appellant indicated that the existing water on the property consists of well water that feeds the structure's water supply by means of a 1" pipe. According to information from the Appellant's fire protection engineer, the maximum water yield from the existing well is 5 gallons per minute and this amount is well below that amount of water and water pressure needed to supply an adequate sprinkler system for the building, as so modified.
- 5) Appellant's representative testified that they have used best efforts to secure the water and water pressure necessary to supply an adequate system from other sources. They stated that there is no municipal water or sewer available in the Town of Granby. This was confirmed by Granby Fire Chief Carpenter. The Appellant's representative also testified that they contacted the Water Departments for both the South Hadley Fire District No. 1 and South Hadley Fire District No. 2 to determine the availability of water from those abutting districts. District No. 1 stated that they were unable to provide water to property outside the District's boundaries. District No. 2 stated that it might be possible for them to supply water, but that the closest connection would be over one mile away from the Appellant's property and that a booster pumping station would be necessary to maintain the pressure. They also indicated that there would be a connection fee, bi-annual water stand-by fee and backflow preventer testing fee. Documentation was submitted which confirmed the statements regarding the non-availability of water and the high cost and fees from both Districts.
- 6) Fire Chief Carpenter testified that he issued the determination to require sprinklers based upon the planned additional space, which would make the building well over 7,500 s.f. in size and that this would trigger the enhanced provisions of s. 26G. He also indicated that he would like to see the building sprinklered due to the building's use as a childcare center and due to the fact

that his department is not a full time, staffed fire department. The Chief suggested that this facility could be sprinklered if the Appellant were to create an adequate water supply through a water tank and pump system.

- 7) The representatives of the Appellant stated, in response to the Chief's concerns, that the statute specifically states that "no such sprinkler system shall be required unless sufficient water and water pressure exists". They assert that the statute does not appear to require that they are under an obligation to artificially create the water or water pressure and that the Fire Department's determination should be reversed.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The provisions of M.G.L. c. 148, s. 26G, states, (in pertinent part): "Every building or structure, including any additions or major alterations thereto, (emphasis added) 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". The statute was amended by Chapter 508 of the Acts and Resolves of 2008. The provisions applied to "the construction of buildings, structures **or additions** or major modifications thereto, which total, in the aggregate, **more than 7,500** (emphasis added) gross square feet permitted after January 1, 2010." (Sec. 6, Chapter 508 of the Acts of 2008).
- 2) The current building consists of approximately 6,928 gross square feet in floor area and the proposed addition to the building adds approximately 4,417 additional s.f. The total building size would be 11,345 s.f. in the aggregate, well over the 7,500 s.f. that clearly triggers the sprinkler installation required by the statute.
- 3) However, the statute also clearly states that "no such sprinkler system shall be required unless sufficient water and water pressure exists".
- 4) Based upon the testimony and evidence submitted by the representatives of the Appellant and confirmed by the Granby Fire Chief, the Appellant is unable to legally acquire access to any reasonable source of water or adequate water pressure sufficient enough to operate an adequate system of automatic sprinklers to protect this building. There is no source of adequate water or water pressure available on the land on which the building and planned addition is being constructed or from any reasonably acquired source legally available from the town of Granby or from any adjoining towns or water districts. To require the installation of an automatic sprinkler system that can only be supplied with water and water pressure that must be artificially created by the Appellant at great cost, would render the statutes' exemption relative to water and water pressure, meaningless.

G) Decision and Order

Based upon the evidence presented to the Board and for the reasons stated herein, the Board unanimously **reverses** the Order of the Granby Fire Department to require sprinkler protection

in the proposed buildings to be located at 40 Pleasant Street, Granby, Massachusetts pursuant to M.G.L. c. 148, s. 26G, due to a lack of sufficient water and water pressure.

It should be noted that this decision is based upon this Board's jurisdiction to only hear appeals of orders issued by the head of the fire department under the provisions of M.G.L. c. 148, s. 26G. Such jurisdiction is separate and distinct from any applicable requirements of 780 CMR, the State Building Code.

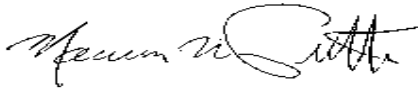
H) Vote of the Board

Maurice Pilette, Chairman	In Favor
Jack Dempsey, Deputy/Fire Marshal, City of Boston	In Favor
Thomas Coulombe	Opposed
Alexander MacLeod	In Favor
Aime DeNault	In Favor
George Duhamel	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,



Maurice M. Pilette, Chairman

Dated: September 27, 2016

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

Donna M. Denette, Executive Director
Children First Enterprises, Inc.
40 Pleasant Street
Granby, Massachusetts 01033

Chief Bruce Carpenter
Lt. Richard Stefanowicz
Granby Fire Department
259-B East State Street
Granby, Massachusetts 01033