

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

Automatic Sprinkler Appeals Board

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Docket # 2016-10
100 Sharp Street
Hingham, 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 Hingham Fire Department to require the owner of the building, Christopher P. Cazeault, President of Joseph T. Cazeault & Sons, Inc. (hereinafter referred to as the "Appellant"), to install automatic sprinklers in a proposed building located at 100 Sharp Street, Hingham, Massachusetts.

B) Procedural History

By written notice dated August 15, 2016, the Hingham Fire Department and Hingham Building Department issued a joint determination to the Appellant requiring automatic sprinklers to be installed in an existing building and in a proposed additional building to be constructed by the Appellant at its 100 Sharp Street, Hingham, Massachusetts property. The determination was issued pursuant to the provisions of M.G.L. c. 148, s. 26G and was received by the Appellant on August 15, 2016. On September 27, 2016, the Appellant filed an appeal of the determination with the Automatic Sprinkler Appeals Board. The Board held a hearing on this matter on November 9, 2016, at the Department of Fire Services, Stow, Massachusetts.

Appearing at the hearing on behalf of the Appellant was Patricia J. Fisher, Architect, Fisher Associates Architects and Christopher P. Cazeault, President of Joseph T. Cazeault & Sons, Inc. Appearing on behalf of the Hingham Fire Department was Captain David Damstra and Lieutenant Chris DiNapoli.

Present for the Board at the hearing was: Peter Gibbons, Vice Chairman; Peter J. Ostroskey, State Fire Marshal; Jack Dempsey (designee of the Boston Fire Commissioner); Chief Thomas Coulombe; and Alexander MacLeod. 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 Hingham Fire Department requiring sprinklers in the Appellant's existing building and proposed additional building, in accordance with the provisions of M.G.L. c. 148, s. 26G?

D) Evidence Received

1. Application for Appeal by Appellant
2. Statement regarding Scope of Project from Fisher Associates
3. Order of Notice of the Hingham Fire and Building Departments (dated 8/15/16)
4. Property Record Card for 100 Sharp Street, Hingham
5. Copy of M.G.L. c. 148, s. 26G (Sprinkler Systems for Buildings and Structures totaling more than 7,500 square feet)
6. Plan for Open-Air Parking Structure at 100 Sharp Street, Hingham
7. Roof Framing Plan for Open-Air Parking Structure
8. 1st Notice of Hearing to Parties (dated 9/29/2016)
9. 2nd Notice of Hearing to Appellant (dated 10/26/16)
10. 2nd Notice of Hearing to Hingham Fire Department (dated 10/26/16)
11. Copies of two Memoranda that accompany Hearing Notices
12. Photographs submitted by the Appellant (A-I)
 - 12A. Rear of the existing building
 - 12B. Two garage doors
 - 12C. Interior – nail rack
 - 12D. Interior – Shop wall
 - 12E. Interior – Workshop
 - 12F. Interior – Workshop (stacked ladders and buckets)
 - 12G. Exterior of existing building with flag pole
 - 12H. Exterior – ladder racks
 - 12I. Exterior – two storage containers

E) Subsidiary Findings of Fact

- 1) By written notice dated August 15, 2016, the Hingham Fire Department and Hingham Building Department issued a joint determination to the Appellant requiring automatic sprinklers to be installed in a proposed building to be constructed by the Appellant at its 100 Sharp Street, Hingham, Massachusetts property. The determination was issued pursuant to the provisions of M.G.L. c. 148, s. 26G and was received by the Appellant on August 15, 2016. On September 27, 2016, the Appellant filed an appeal of the determination with the Automatic Sprinkler Appeals Board. The Board held a hearing on this matter on November 9, 2016, at the Department of Fire Services, Stow, Massachusetts.
- 2) The representative for the Appellant testified that Appellant owns a commercial building, constructed of steel and masonry. The building consists of approximately 9,000 s.f. in floor area in an L-shaped configuration. The building is occupied by the Appellant's roofing business and is used as an office and storage space for equipment.

- 3) The Appellant seeks to construct an open-sided, free-standing structure with a metal roof, measuring approximately 27' x 103' and consisting of approximately 2,780 s.f. of floor area. The structure would be located within the L-shaped area next to the existing building. Two of the sides would directly face the existing structure with a 3" separation between the two structures. The Appellant plans to use the new structure to shelter his business vehicles, equipment and materials from the weather. Examples of such items include: a scissors lift, front end loader and a bobcat.
- 4) According to testimony and photographs, the existing building features no existing windows, doors or other means of entry or egress facing the two sides that would adjoin the planned structure. The Appellant testified that he has no current or future plans to provide such entry or egress between the new and proposed structures that would allow occupancy to flow between the two structures. The proposed structure will not feature any utilities such as HVAC, plumbing or electrical power and will not share such utilities with the existing building.
- 5) The Appellant contends that the proposed structure is not an "addition" as that term is used in M.G.L. c. 148, s. 26G, since it is not attached to or part of the existing building. In the alternative, Appellant argues that the additional structure is an "open air parking structure" and is therefore specifically exempt under the provisions of said s. 26G.
- 6) In support of the Hingham Fire Department's determination, Captain Damstra testified that the Order was issued pursuant to the provisions of M.G.L. c. 148, s. 26G based upon Appellant's plans, which appeared to show that the new structure would be attached to the existing building. He indicated that sprinklers would be required under s. 26G, since both the existing building (9,000 s.f.) combined with the planned additional space (2,780 s.f.) total well over 7,500 s.f. in the aggregate. He did indicate that a second plan submitted to the Town showed that the flashing on the proposed structure was changed and no longer connected the existing structure. It was his contention that he believes that the planned structure would be considered, as a practical matter, "an addition" to the existing building, thus triggering the enhanced sprinkler requirements of s. 26G. In addition, Captain Damstra indicated that it is his opinion that the planned new structure is not an "open air structure" under s. 26G, since it would not be used solely for "parking motor vehicles" as implied in the statute, since it would be also used for the storage of equipment and materials in addition to several motor vehicles.

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 provisions apply 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). The law is only applicable if: (1) a new building or structure is constructed, (2) an addition is built onto

an existing building or structure, or (3) major alterations or modifications are made to an existing building.

- 2) Based upon the facts presented at the hearing, the Board finds that the planned structure is not “an addition” to the existing building as said term is used s. 26G. Although these structures will be close to one another, they are physically separate. Each building features its own means of independent support at the point of attachment and are separated by a 3” space. In addition to said referenced physical separation, the Board notes that there are no windows, doors or other means of entry or egress on the two sides of the existing building facing the propose new structure that would allow occupancy to flow between the two structures. In addition to the planned physical 3” separation, the “operational” separation created by the lack of ingress or egress between the two structures is an important consideration in this determination.
- 3) With respect to Appellant’s contention that the proposed structure should be considered an “open air parking structure” and is therefore specifically exempt under the provisions of said s. 26G, the Board determines that Appellant’s broad intended use of said structure for the shelter of equipment and materials, in additional to motor vehicles goes well beyond the exemption limited to the activity of the parking of motor vehicles.

G) Decision and Order

Based upon the evidence presented to the Board and for the reasons stated herein, the Board **reverses** the Order of the Hingham Fire Department. The Board determines that the proposed structure is not “an addition” for the purposes of triggering the installation of a system of automatic sprinklers in both the existing and planned structures. Additionally, the proposed structure is not an “open air parking structure” as that term is used for the purposes of the s. 26G exemption.

This decision is conditioned upon the Board’s findings that the two structures are both physically and operationally separate, and that there is a lack of ingress or egress between the two structures.

Finally, the Board notes that determinations relative to this planned construction have been made by the Town building official based upon the State Building Code. However, such determinations under said Building Code are not within the appellate jurisdiction of this Board. This decision therefore only addresses the actions of the Hingham Fire Department pursuant to M.G.L. c. 148, s. 26G.

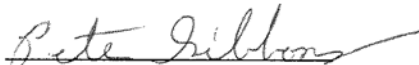
H) Vote of the Board

Peter Gibbons, Vice Chairman	In Favor
Peter J. Ostroskey, State Fire Marshal	In Favor
Jack Dempsey, Deputy/Fire Marshal, City of Boston	In Favor
Thomas Coulombe	Opposed
Alexander MacLeod	In Favor

D) 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,


Peter Gibbons, Vice Chairman

Dated: December 22, 2016

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

Christopher P. Cazeault, President
Joseph T. Cazeault & Sons, Inc.
100 Sharp Street
Hingham, Massachusetts 02043

Chief Robert J. Olsson
Hingham Fire Department
339 Main Street
Hingham, Massachusetts 02043