



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

CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LT. GOVERNOR

DANIEL BENNETT
SECRETARY

MAURICE M. PILETTE
CHAIRMAN

PETER GIBBONS
VICE CHAIRMAN

Docket # 2016-12
8 Pine Street
Norton, Massachusetts

AUTOMATIC SPRINKLER APPEALS BOARD DECISION

A) Statutory and Regulatory Framework

This administrative appeal is held in accordance with Massachusetts General Law, Chapter 30A; Chapter 148, section 26H and Chapter 6, section 201, to determine whether to affirm, reverse or modify the decision of the Norton Fire Department requiring the Appellant, Peter G. Berg (hereinafter "Appellant"), to install automatic sprinklers in a building owned by the Appellant located at 8 Pine Street, Norton, MA.

B) Procedural History

By written decision dated October 31, 2016 and received by the Appellant on November 17, 2016, the Norton Fire Department issued a determination to the Appellant, requiring automatic sprinklers to be installed throughout a building owned by the Appellant located at 8 Pine Street, Norton, MA. The determination was issued pursuant to the provisions of M.G.L. c. 148, section 26H. On December 15, 2016, the Appellant filed an appeal of the decision with the Automatic Sprinkler Appeals Board. The Board held a hearing on January 11, 2017, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant was: Peter G. Berg. Appearing on behalf of the Norton Fire Department was Deputy Fire Chief, William G. Myles.

Present for the Board were: Maurice M. Pilette, Chairman; Deputy Chief, Jack Dempsey; Alexander MacLeod; Chief Thomas Coulombe; and Aime DeNault. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

C) Issue(s) to be Decided

Whether the decision of the Head of the Norton Fire Department requiring sprinklers in the building located at 8 Pine Street, Norton, MA pursuant to M.G.L. c. 148, section 26H, should be affirmed, reversed or modified?

D) Evidence Received

1. Application for Appeal by Appellant
2. Request for Relief from Appellant with Appendices
- 2A. Notes of 1988 Meeting with Chief Burgess, Norton Fire Department
- 2B. Correspondence to Chief Burgess from Appellant (dated 6/2/89)
- 2C. Order of Notice from Norton Fire Department (dated 10/31/16)
- 2D. Photograph of Class A Fire Alarm System Plans, signed off by Chief Burgess (April 1989)
- 2E. Correspondence from Home & Commercial Security, Inc. to Willis-MacKinnon Ins. Agency regarding Class A Fire Alarm System (dated 7/19/89)
- 2F. Copy of Deed to Property (undated)
3. Photographs (Interior and Exterior) of Property
- 3A. Exterior photograph of property
- 3B. Interior photograph of green striped couch/living space
- 3C. Interior photograph of dining table
- 3D. Interior photograph of antique hutch
- 3E. Interior photograph of brown sectional couch/living space
- 3F. Interior photograph of pedestal sink in bathroom
- 3G. Interior photograph of toilet / sink cabinet
- 3H. Interior photograph of kitchen sink and stove
4. Notice of Hearing to Appellant (dated 12/22/16)
5. Notice of Hearing to Norton Fire Department (dated 12/22/16)
6. Copies of two Memoranda that accompany Hearing Notices
7. Letter from Norton Town Clerk on adoption of M.G.L. c. 148, s. 26H (dated 1/3/17)
8. Letter to Mr. Berg (Appellant) from Chief Burgess, Norton Fire Department regarding Alarms/sprinklers (dated 11/17/88)

E) Subsidiary Findings of Fact

- 1) By written decision dated October 31, 2016 and received by the Appellant on November 17, 2016, the Norton Fire Department issued a determination to the Appellant, requiring automatic sprinklers to be installed throughout a building owned by the Appellant located at 8 Pine Street, Norton, MA. The determination was issued pursuant to the provisions of M.G.L. c. 148, section 26H. On December 15, 2016, the Appellant filed an appeal of the decision with the Automatic Sprinkler Appeals Board. The Board held a hearing on January 11, 2017, at the Department of Fire Services, Stow, Massachusetts.
- 2) According to testimony and documentation provided by the Norton Fire Department, the Town of Norton adopted the provisions of M.G.L. c. 148, section 26H on May 20, 1987.

The Appellant does not challenge the legality of the Town's adoption of the law. The provisions of M.G.L. c. 148, section 26H provide for enhanced sprinkler requirements, on a local option basis, for certain buildings that are considered lodging or boarding houses. Section 26H states, in pertinent part: "For the purposes of this section "lodging house" or "boarding house" shall mean a house where lodgings are let to six or more persons not within the second degree of kindred to the person conducting it, but shall not include fraternity houses or dormitories, rest homes or group residences licensed or regulated by agencies of the commonwealth."

- 3) The Appellant testified that he purchased the subject home in August 1973 and agrees that he does operate the property as a lodging house. The house is of wooden construction and features 8 bedrooms on the first floor, 9 bedrooms on the second floor and has an occupancy limit of 22 persons.
- 4) The Appellant testified that in 1988, he was informed by then Norton Fire Chief, George Burgess that sprinklers would be required to be installed in the home in accordance with M.G.L. c. 148, section 26H. A letter dated November 17, 1988 from said Chief confirms this. The Appellant contends that conversations between himself and Chief Burgess that occurred after the order was issued, lead him to believe that the Chief allowed the Appellant to install an interconnected smoke detectors which was considered to be "in lieu of sprinklers". The Appellant submitted a copy of a letter from the Appellant to Chief Burgess, dated June 2, 1989, supporting Appellant's understanding that the sprinklers were not required and, that as of said date, the alarm system "will meet all existing fire safety regulations now in effect in the state of Massachusetts and there will be no further additional work planned".
- 5) Deputy Chief Myles of the Norton Fire Department testified that the Norton Fire Department conducts inspections on the property four (4) times per year and that following a recent inspection, he was concerned that the house had no sprinklers under the provisions of M.G.L. c. 148, s. 26H.
- 5) Accordingly, based upon the use of the property as a lodging/boarding house, Deputy Chief Myles issued a new order to install sprinklers on October 31, 2016, with a deadline to comply by April 1, 2017.
- 6) Deputy Chief Myles also indicated that there is an adequate water supply to the property on Pine Street to supply the system and that he would be willing to work with the Appellant to ensure that a cost effective, but adequate system of sprinklers is installed.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The Board finds that on or about May 20, 1987, the Town of Norton adopted the provisions of M.G.L. c. 148, section 26H. Said law requires the installation of a system of automatic sprinklers in certain lodging or boarding houses within five years of said adoption. The statute defines a "lodging house" or "boarding house" 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) Based upon the testimony and evidence received, the subject house has 17 bedrooms, a capacity of 22 persons, and is licensed and operated as a lodging house. The Board finds that it is clearly a lodging or boarding house for the purposes of the enhanced sprinkler provisions of M.G.L. c. 148, section 26H. Appellant did not contest this finding.
- 3) The original Order of Notice to the Appellant to install sprinklers was dated November 17, 1988 and required the Appellant to have installation complete and operating by July 1, 1990. The Board notes that M.G.L. c. 148, section 26H was amended two years after the original adoption of 26H by the Town of Norton. The amendment, added a new paragraph 3 which extended the time to install sprinklers “within five years after acceptance of this act by a city or town”. (See St. 1989, c.330, approved August 3, 1989)
- 3) Whether the Appellant’s contention that Chief’s 1989 decision to allow the installation of an alarm system in lieu of a sprinkler system under section 26, was based on an error or misunderstanding of the parties, or was based upon the then newly amended statutory language that allowed a 5-year compliance deadline from the date of local adoption (which would have allowed the Appellant until May 27, 1992 to complete installation), is unclear. Regardless of the reasons for the actions that occurred over 27 years ago, the Appellant failed to provide and the Board cannot justify any legal basis to support a reversal of the Norton Fire Department’s October 31, 2016 decision to require the enhanced sprinkler system.

G) Decision and Order of the Automatic Sprinkler Appeals Board

Based upon the aforementioned findings and reasoning, the Board hereby unanimously **upholds** the October 31, 2016 Order of the Norton Fire Department to require the installation of an adequate system of sprinklers as acceptable to the Head of the Fire Department which shall be connected to the supervised alarm, in accordance with the provisions of M.G.L. Chapter 148, section 26H. This decision is subject to the following conditions:

1. Plans for the installation of sprinklers shall be submitted to the Head of the Norton Fire Department within ninety (90) days of the date of hearing (April 11, 2017);
2. The installation of adequate sprinkler system shall be completed within eighteen (18) months of the date of hearing (July 18, 2018).

H) Vote of the Board

Maurice Pilette, Chairman	In Favor
Jack Dempsey, Boston Fire Marshal	In Favor
Chief Thomas Coulombe	In Favor
Alexander MacLeod	In Favor
Aime DeNault	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,



Maurice Pilette, P.E., Chairman

Dated: January 27, 2017

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

Peter G. Berg
260 Towne Street
North Attleboro, Massachusetts 02760

Deputy Chief William Myles
Norton Fire Department
70 East Main Street
Norton, Massachusetts 02766