



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

*Automatic Sprinkler Appeals Board*

*P.O. Box 1025 ~ State Road*

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VICE CHAIRMAN

**Docket # 2017-01**  
**93 Beacon Street**  
**Boston, 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 Boston Fire Department requiring the Appellant, Jay Podolsky representative of the owner, 93 Beacon Street, L.L.C. (hereinafter "Appellant"), to install automatic sprinklers in a building owned by the Appellant located at 93 Beacon Street, Boston, MA.

**B) Procedural History**

By written decision received by the Appellant on December 31, 2016, the Boston Fire Department issued a determination to the Appellant, requiring automatic sprinklers to be installed throughout the lodging and boarding house owned by the Appellant located at 93 Beacon Street, Boston, MA. The determination was issued pursuant to the provisions of M.G.L. c. 148, section 26H. On February 14, 2017, the Appellant filed an appeal of the decision with the Automatic Sprinkler Appeals Board. The Board held hearings on two dates at the Department of Fire Services, Stow, Massachusetts.

Appearing at the April 12, 2017 hearing on behalf of the Appellant were: Jay Podolsky, representative of the owner, 93 Beacon Street L.L.C. and Lynne Friedman, property manager/owner. Appearing on behalf of the Boston Fire Department were Assistant Fire Marshal, Dennis Keeley, and Richard Baldowski, Fire Prevention FPE.

Present for the Board at the April 12, 2017 hearing were: Maurice M. Pilette, Chairman; Peter Gibbons, Vice Chairman; Alexander MacLeod; Chief Thomas Coulombe; Aime DeNault; and George Duhamel. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

After opening the hearing and receiving evidence in the form of documents and testimony from both parties, the Appellant, with the agreement of the Boston Fire Department, requested a 60 day

continuance of this matter, which was granted by the Board, to allow the parties more time to attempt to resolve the matter without the need for Board action.

A second hearing in this matter was held on November 8, 2017. Appearing on behalf of the Appellant were: Jay Podolosky, representative of the owner, 93 Beacon Street L.L.C. and Lynne Friedman, property manager/owner. Appearing on behalf of the Boston Fire Department was Assistant Fire Marshal, Dennis Keeley.

Present for the Board at the hearing were: Maurice M. Pilette, Vice Chairman; Alexander MacLeod; Peter Gibbons; and Steven P. Rourke, designee for the State Fire Marshal. 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 Order of the Boston Fire Department to sprinkler the Appellant's building in accordance with the provisions of M.G.L. Chapter 148, s. 26H?

**D) Evidence Received**

1. Application for Appeal by Appellant
2. Letter/Statement in Support of Appeal (2/13/2017)
3. Letter from the Boston Fire Department – re: Inspections of Lodging / Boarding Houses (12/29/2016)
4. Photographs of Property
  - 4A. Exterior of Property
  - 4B. Walkway to Door
  - 4C. Inside Stairwell
  - 4D. Inside Stairwell (towards top of stairs)
  - 4E. Top of Stairs
  - 4F. Living Room Area (with green couch)
  - 4G. Kitchen
  - 4H. Inside Room with three large glass doors
  - 4I. Inside Room with wood paneling and fireplace
  - 4J. Small Bedroom with desk and refrigerator
5. Fire Alarm Device Plan for Property (Lower Level and 1<sup>st</sup>/2<sup>nd</sup> Floors) (11/5/2014)
6. Fire Alarm Device Plan for Property (3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup>/attic Floors) (11/5/2014)
7. Letter from Best Alarm Systems re: fire alarm system in building (2/10/2017)
8. Certificate of 5 Year Alternative Inspection Compliance Plan – City of Boston, Inspectional Services Department (2/8/2016)
9. Order of Notice of the Boston Fire Department (Undated)
10. Email from Appellant indicating that Order of Notice from Boston Fire Department was Received on February 21, 2017 (2/22/2017)
11. Notice of Hearing to Appellant (3/15/2017)
12. Notice of Hearing to Boston Fire Department (3/15/2017)

13. Copies of two Memoranda that accompany Hearing Notices
14. Proposal – ABCO Fire Protection, Inc. (Undated)
15. Letter from Boston Fire Department to Board requesting another hearing on case (10/11/2017)
16. 2<sup>nd</sup> Notice of Hearing to Appellant and Boston Fire Department (10/18/2017)
17. Copies of two Memoranda that accompany Hearing Notices
18. Sprinkler quote from Blackwater Fire Suppression (10/17/2016)

**E) Subsidiary Findings of Fact**

- 1) By written determination received by the Appellant on December 31, 2016, the Boston Fire Department issued a determination to the Appellant, requiring automatic sprinklers to be installed in a building owned by the Appellant located at 93 Beacon Street, Boston, MA. The determination was issued pursuant to the provisions of M.G.L. c. 148, section 26H. On February 14, 2017, the Appellant filed an appeal of the decision with the Automatic Sprinkler Appeals Board. The Board held hearings on two dates at the Department of Fire Services, Stow, Massachusetts.
- 2) According to testimony provided by the Boston Fire Department, the City of Boston adopted the provisions of M.G.L. c. 148 section 26H on or about December 5, 2012. 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.” The law requires existing buildings, subject to the law, to install the required systems “within five years after acceptance of the act by the municipality.” Accordingly, if subject to this law, this building must comply as of December 5, 2017.
- 3) The Appellant described the property as a 5 story building, containing 18 residential units. The basement level features one studio apartment and common areas, including a laundry area. The 1<sup>st</sup> floor contains three (3) apartments, the 2<sup>nd</sup> floor contains two (2) apartments, and the 3<sup>rd</sup> floor contains three (3) apartments. All of the apartments on the first three floors and the basement studio are of a non-transient nature; feature full bathrooms and kitchens and the tenants have entered into long term lease arrangements with the owner(s). The Appellant indicted that the 4<sup>th</sup> floor features one (1) full apartment and two (2) single occupancy boarding rooms, which share a bath and have no kitchen. The 5<sup>th</sup> floor features six (6) single boarding rooms, all of which share one bathroom, and have no kitchens. The Appellant testified that residents of the 4<sup>th</sup> and 5<sup>th</sup> floor have access to a rear fire escape in the case of an emergency. The 6<sup>th</sup> floor features only unoccupied attic space and is not used for storage. According to City of Boston Records, the building is licensed as a lodging and boarding house.
- 4) The Appellant testified that he agrees that portions of the building, more specifically the rooms and common areas on the 4<sup>th</sup> and 5<sup>th</sup> floors are of a transient nature, share common bathroom(s), are used for lodging/boarding purposes, and are subject to section 26H. He

also agreed that the law is applicable to this portion of the building as of December 5, 2017. At the April 2017 hearing, the Appellant testified that the subject building is a unique/historic brownstone located in Boston's Back Bay. Although not on the National Historical Register, the building is listed by the Boston Historical Commission and was first occupied in 1849. Appellant provided excerpts from a book about *Boston's Back Bay*, which indicated that the building is on one of the "finest blocks in Back Bay" and that the property features a unique circular stair hall in the middle of the building, creating a geometric design. It also indicated that other similar homes in that area were either previously knocked down or otherwise converted. The Appellant stated that his family has owned the property for 60 years.

- 5) The Appellant further testified that if the Board were to order sprinklers to be installed throughout the building, that some additional time would be needed to secure funding and to complete the work.
- 6) In support of the Boston Fire Department, Assistant Fire Marshal Keeley testified that the department was following the law and that they would not make any property owner undertake such measures if they were unnecessary. On or about October 11, 2017, the Boston Fire Department issued a request to the Board to reschedule this case for a status update or hearing due to lack of communication from the Appellant. He indicated that it had been months since the first hearing date (April 2017) and the department believed that the Appellant was stalling the installation of sprinklers since it had seen no activity relative to the installation. He indicated that the department could facilitate in acquiring needed approvals, including the required water permits to move the project along.
- 7) In response to Assistant Fire Marshal Keeley's statements, the Appellant indicated that since April 2017, he had been working to obtain sprinkler quotes from sprinkler installers and estimates for new water pipes necessary for water hook up. The Appellant presented a quote received from a contractor that would install a modified NFPA 13R system (2013 Edition). He indicated that delay in progress was due to waiting for approval from the Boston Water and Sewer Commission for a permit for a new pipe to be run from the street into the building to supply the sprinkler system. In addition, he acknowledged that the deadline to open city streets is approximately November 15, which would cause additional delays.
- 8) The Appellant indicated that he believed that sprinklers would be required throughout those portions of the building operated as a boarding house, which would include all rooms and common areas of the 4<sup>th</sup> and 5<sup>th</sup> floors, in its entirety. He was under the understanding that the apartment units on the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> floors had independent kitchens and bathrooms and are occupied by tenants under a long term lease arrangements would not be subject to section 26H. The Appellant indicated that he agreed to also install sprinklers throughout the basement level and all common areas/hallways on the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> floors. The representative of the Boston Fire Department agreed with and confirmed that the Appellant's description of the planned sprinkler system installation in those portions of the building, as described, would satisfy the Order of the Boston Fire Department.

- 9) The Appellant requested that the Board allow additional time to complete the installation due to the need to acquire financing, complete the plan approval process and delay caused by the need to install a new water pipe from the street. He requested an extension to December 2018, to complete the system. The representative of the Boston Fire Department indicated that the Appellants have known about the requirement for some time and that he was concerned about the Appellants' past tendency to delay and failure to communicate with the department. He indicated that an extension until June 2018 would be more advisable.

**F) Ultimate Findings of Fact and Conclusions of Law**

- 1) The Board finds that on or about December 5, 2012, the City of Boston adopted the provisions of M.G.L. c. 148, section 26H. Said law requires the installation of a system of automatic sprinklers throughout 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 at both hearings, the Board finds that portions of the subject house, more specifically, all rooms and areas throughout the 4th and 5th floors are clearly used and operated for lodging and/or boarding house accommodations and fall within the requirements of section 26H.
- 3) The Board finds that the apartment units on the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> floors, which feature independent kitchen and bathroom features and are occupied by tenants under a long term lease arrangement, do not currently have the characteristics of a boarding house. However, since the common areas/hallways of these floors, including all areas of the basement are an integral part of this building that features lodging or boarding room portions, the Board concludes that the life safety intent of the provisions of section 26H, including the Legislature's use of the word "throughout" when describing the scope of sprinkler protection in boarding houses, justifies sprinkler protection in the basement level and common areas on the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> floors as agreed by the parties.
- 4) The Board also finds that the subject building features unique characteristics based upon historical and architectural considerations that are a factor in supporting a reasonable extension of time to accomplish full compliance.

**G) Decision and Order of the Automatic Sprinkler Appeals Board**

Based upon the aforementioned findings and reasoning, the Board hereby **upholds** the Order of the Boston Fire Department to require the installation of an NFPA 13 system in accordance with the provisions of M.G.L. Chapter 148, section 26H. Sprinklers shall be installed throughout the building, except for the leased apartment dwelling units located on the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> floors. The installation of said sprinklers shall be in accordance with the following terms:

1. The Appellant shall submit plans and a signed contract for the installation of sprinklers to the Boston Fire Department by January 1, 2018;
2. The Boston Fire Department shall conduct a plan review by January 30, 2018;
3. The Appellant shall complete interior sprinkler work in the subject property by June 1, 2018 and shall complete the final installation and obtain the final inspection and/or approvals by September 1, 2018.

**H) Vote of the Board**

Maurice Pilette, Vice Chair	In Favor
Alexander MacLeod	In Favor
Peter Gibbons	In Favor
Steven P. Rourke, designee, State Fire Marshal	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,




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Maurice M. Pilette, Vice Chairman

Dated: December 12, 2017

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

Jay Podolsky  
 263 South Street, # 2  
 Holliston, Massachusetts 01746

Dennis Keeley, Assistant Fire Marshal  
 Boston Fire Department  
 1010 Mass. Ave, 4th Floor  
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