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

Automatic Sprinkler Appeals Board

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VICE CHAIRMAN

Docket # 2017-04
44 Mt. Vernon Street
Fitchburg, 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 Fitchburg Fire Department requiring Mr. Theodore Bronson to install automatic sprinklers in a house owned by him located at 44 Mt. Vernon Street, Fitchburg, MA. Said owner leases the house to Crossing Over, Inc.

B) Procedural History

By written decision dated March 8, 2017 and received by Mr. Bronson on or about March 8, 2017, the Fitchburg Fire Department issued a determination to him, requiring automatic sprinklers to be installed throughout a building owned by him located at 44 Mt. Vernon Street, Fitchburg, MA. The determination was issued pursuant to the provisions of M.G.L. c. 148, section 26H. On April 20, 2017, Mr. Bronson and the tenant, Crossing Over, Inc., (hereinafter referred to as "the Appellants") filed an appeal of the decision with the Automatic Sprinkler Appeals Board. The Board held a hearing on June 14, 2017, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellants were: Theodore Bronson, property owner and landlord; Donald Flagg, operator of Crossing Over, Inc.; and their Attorney, Andrew J. Tine. Appearing on behalf of the Fitchburg Fire Department was Chief Kevin D. Roy; Fire Prevention Officer Phil Jordan; and Assistant City Solicitor, Christine Tree.

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

C) Issue(s) to be Decided

Whether the decision of the Head of the Fitchburg Fire Department requiring sprinklers in the building located at 44 Mt. Vernon Street, Fitchburg, 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. Appellant's Memo in Support of Appeal
3. Confidential Affidavit of Theodore Bronson (4/17/2017)
4. Confidential Affidavit of Donald Flagg (4/17/2017)
5. Order of Notice of the Fitchburg Fire Department (3/8/2017)
6. Correspondence from Attorney Andrew J. Tine to Fitchburg Fire Chief Roy (4/11/2017)
7. Memorandum and Order on Cross Motions for Summary Judgment - U.S. District Court Decision – *Brockton Fire Department and Edward Williams v. St. Mary Broad Street, LLC and Brian Bernenberg* (C.A. No.: 14-13216-RGS) (4/13/2016)
8. Unofficial Property Record Card
9. Pamphlet on Crossing Over, Inc., Male Sober House (pg 1.)
10. Pamphlet on Crossing Over, Inc., Male Sober House (pg 2.)
11. Notice of Hearing to Appellant (4/26/2017)
12. Notice of Hearing to Fitchburg Fire Department (4/26/2017)
13. Copies of two Memoranda that accompany Hearing Notices
14. Fitchburg Fire Department's Submission in Support of Order to Sprinkler Property
- 14A. Overview of 44 Mt. Vernon Street – Sprinkler Requirements regarding Lodging Houses Over 5 Occupants
- 14B. City of Fitchburg – Adoption of M.G.L. c. 148, s. 26H (approved 9/4/2002)
- 14C. Correspondence from Attorney Tine to Fire Chief Roy of the Fitchburg Fire Department (dated 4/11/2017)
- 14D. Correspondence from Fire Chief Roy of the Fitchburg Fire to Attorney Tine (dated 4/17/2017)
- 14E. E-mail correspondence from John M. Deline, Jr., Deputy Commissioner of Water Supply for the Fitchburg DPW regarding water availability (dated 4/26/2017)
- 14F. Unofficial Property Record Card for 76 Mechanic Street, Fitchburg
- 14G. Side Photograph of 76 Mechanic Street, Fitchburg (dated 4/19/2017)
- 14H. Front Photograph of 76 Mechanic Street, Fitchburg (dated 4/19/2017)
- 14I. List of Certified Sober Homes in Fitchburg from the MA Alliance for Sober Housing (MASH)
- 14J. 76 Mechanic Street Dispatch Log (dated 01/01/2014 – 04/26/2017)
- 14K. Copy of Mass. Appeals Court case Massachusetts Sober Housing Corporation vs. Automatic Sprinkler Appeals Board & Another, 66 Mass. App. Ct. 701
15. Request for Continuance from City of Fitchburg Law Department (5/3/2017)
16. E-mail from the Board's Executive Assistant acknowledging receipt of Request to Continue (5/3/2017)
17. 2nd E-mail from the Board's Executive Assistant advising Fitchburg Law Department to obtain Assent of the Appellant in order to continue hearing to later date (5/3/2017)
18. Letter from City of Fitchburg Law Department confirming Appellant has agreed to Continuance until June (5/5/2017)

19. E-mail from the Board's Executive Assistant Confirming Hearing Continuance until June (5/8/2017)
20. 2nd Notice of Hearing to Appellant (5/22/2017)
21. 2nd Notice of Hearing to Fitchburg Fire Department (5/22/2017)
22. Copies of two Memoranda that accompany Hearing Notices
23. Appellees' Memorandum in Opposition to Appeal
24. *Summers and Jeffrey's House Inc. v. City of Fitchburg*
25. Joint Statement – Department of Housing and Urban Development and Department of Justice

E) Subsidiary Findings of Fact

- 1) By written decision dated March 8, 2017 and received by Appellant Theodore Bronson on or about March 8, 2017, the Fitchburg Fire Department issued a determination to Mr. Bronson requiring automatic sprinklers to be installed throughout a building owned by him, located at 44 Mt. Vernon Street, Fitchburg, MA. The determination was issued pursuant to the provisions of M.G.L. c. 148, section 26H. On April 20, 2017, the Appellants filed an appeal of the decision with the Automatic Sprinkler Appeals Board. The Board held a hearing on June 14, 2017, at the Department of Fire Services, Stow, Massachusetts.
- 2) According to testimony and documentation provided by the Fitchburg Fire Department, the City of Fitchburg, accepted the provisions of M.G.L. c. 148, section 26H on or about September 3, 2002. The Appellants do not challenge the legality of the City's acceptance of the statute. The provisions of M.G.L. c. 148, section 26H provide for enhanced fire protection requirements 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." According to the third paragraph of the statute, any lodging house subject to the law shall be equipped with automatic sprinklers within five years of the statute's acceptance by a city or town.
- 3) According to the representative of the Appellants, the house is owned by the Appellant, Mr. Bronson, who rents the house to Crossing Over, Inc., a non-profit organization, for \$1,400.00 per month. Crossing Over, Inc. provides congregate living arrangements to eight individuals. One individual is considered the house manager who provides general oversight in lieu of rent payment. The organization charges \$130.00 per week to the seven other individuals. The Program Director testified that the amounts charged pay for heat, hot water, gas/electric, internet, the on-site Program Manager and for drug testing several times a week. It includes daily continental breakfast and lunch. Each guest is expected to also conduct 10 hours of house or community related work per week.
- 4) According to testimony and documentation, Crossing Over, Inc., is a "spiritual based" program, to provide a supportive environment for those recovering from issues with drugs or alcohol. The program does not provide on-site treatment, but does assist the occupants in coordinating outside treatment/counseling activities. The program requires guests to

conform to “House Rules” that include: abstinence from use of drugs and/or alcohol in the house, no smoking within the premises, no overnight guests and active participation in alcohol and/or substance abuse counseling. Failure to comply with the rules may result in release from the house/program.

- 5) The representative of the Appellants asserts that the current occupants of the house should be considered disabled due to their drug and/or alcohol issues and that a provision of the Commonwealth’s Zoning Control Act, M.G.L. c. 40A, s. 3, invalidates the enhanced sprinkler requirements of M.G.L. c. 148, s. 26H, as applied to the present congregate living arrangement. They reference several Federal District Court decisions that support their position.
- 6) The representative of the Appellants also contend that the provisions of M.G.L. c. 148, s. 26H, as applied to the present congregate living arrangement of these particular occupants is a discriminatory practice under the Federal Fair Housing Act and that the City of Fitchburg should provide them with a “reasonable accommodation” in the form of a complete waiver of the s. 26H enhanced fire protection sprinkler requirements.
- 7) The house owner and landlord testified that he contacted one sprinkler installation company and, after providing a description of the property, was given a verbal cost estimate that sprinklers could cost approximately \$55,000.00. He indicated that he could not afford to pay this cost. When questioned by the Board about the unusually high estimate based upon the size of the house, the owner provided no additional details to explain the high estimate.
- 8) In his request for reasonable accommodations, the Appellant’s Counsel requested that the City of Fitchburg treat this property and its residents like a regular family and that the sprinkler requirements should be waived completely.
- 9) In response to arguments presented by Appellant and supported by two Federal District Court cases, the City’s Counsel indicated that neither case is binding on the board. In addition, she argued that the judges erred, since they applied the language of MGL c. 40A, s. 3 in an overly broad manner, without any reasoning to reconcile several distinctions between the provisions of M.G.L. c. 40A, s. 3 and provisions of M.G.L. c. 148, s. 26H.
- 10) Counsel for the City of Fitchburg further argues that the Appellant’s contention that this is a case of discrimination, is not accurate, as every house that is conducted as a lodging house with groups of 6 or more unrelated individuals in the City is required to install sprinklers equally without regard to whether or not the occupants are disabled. Furthermore she argues that sprinklers are a benefit to these residents, providing an enhanced level of life protection that they deserve. Counsel cited a Massachusetts Appeals Court decision which upheld a decision of the Chelsea Fire Department to require automatic sprinklers in a house involving circumstances similar to this case.
- 11) In response to Appellants’ contention that the City failed to provide reasonable accommodations to the Appellant, Counsel stated that Appellant’s request to the City was for a total waiver of the provisions of M.G.L. c. 148, s. 26H for this property, which is something the City cannot legally do. Furthermore, she argued that a request for

reasonable accommodation must have a connection between the disability and the accommodation being requested. An argument that the high cost of sprinklers alone combined with Appellant/Landlord's lack of financial resources, is not an appropriate reasonable request for accommodations under these circumstances.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The Board finds that on or about September 3, 2002, the City of Fitchburg adopted the provisions of M.G.L. c. 148, section 26H.
- 2) Section 26H, a Massachusetts statute, requires the installation of an adequate system of automatic sprinklers in accordance with the state building code in certain lodging or boarding houses. The statute requires installation of said system in all applicable houses within five years after acceptance of the law by a City or Town. 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 . . ."
- 3) Appellant Mr. Bronson, the owner and Landlord, rents the house at 44 Mt. Vernon Street to Crossing Over, Inc., a non-profit organization that provides communal living arrangements to eight individuals who are not related "within the second degree of kindred to the person conducting it". The organization provides a supportive environment for those recovering from issues with drugs or alcohol. One individual is considered the house manager and provides general oversight in lieu of rent payment. The other seven individuals are charged \$130.00 by Crossing Over, Inc. on a weekly basis. The amounts charged pay for heat, hot water, gas/electric, internet, the onsite program manager and for drug testing several times a week. It also covers a daily continental breakfast and lunch.
- 4) The Crossing Over program requires guests to conform to "House Rules" that include: abstinence from use of drugs and/or alcohol in the house, no smoking within the premises, no overnight guest and active participation in alcohol and/or substance abuse counseling. Those who violate the rules may be subject to being released from the house and program.
- 5) The Board finds that the house located at 44 Mt Vernon Street is a lodging house as defined in M.G.L. c. s. 26H, since room and board is provided by Crossing Over, Inc. for transient lodgings for a weekly charge of \$130 to six or more persons "...not within the second degree of kindred to the person conducting it . . ." The Board also finds that the subject house and the arrangement does not fall within any of the specific exceptions enumerated in the second paragraph of section 26H.
- 6) This Board has decided many appeals of fire department orders enforcing the provisions of M.G.L. c. 148, s. 26H. Once this Massachusetts statute is accepted by a municipality, it requires enhanced protection to boarders by means of an adequate system of automatic sprinklers installed in accordance with the State Building Code. A significant number of these appeals involve houses that are leased or owned and operated by various organizations or persons that provide, usually at a cost to the occupants, communal living accommodations and support to persons who seek recovery from substance abuse issues. The Board has consistently determined that the provisions of M.G.L. c.148, s. 26H applies to all such houses that fit the criteria of the statute. These decisions have

been upheld upon appeal, including a case decided by Massachusetts Appeals Court (see *Mass Sober House Corp. v. Automatic Sprinkler Appeals Board* , 66 Mass. App. Ct. 701 (2006)).

- 7) The purpose of the automatic sprinkler requirement is to protect the boarders of the house in the event of a fire. The statute applies to all such buildings and unrelated occupants, in a neutral manner, without regard to the actual or perceived disability status of the building occupants. The Board believes that the legislative intent of both M.G.L. c. 148, s. 26H and c. 40A, s. 3 can be applied in a harmonious manner. The purpose of M.G.L. c. 40A, s. 3 is to protect certain identified persons or groups of persons from discrimination by means of the adoption of local, “home grown” land and building use restrictions that target said groups differently from other similarly situated groups. The purpose of M.G.L. c. 148, s. 26H is to protect unrelated groups of persons living in a lodging or boarding house, as defined, from the deadly consequences of fire. The Board does not believe that the statutes should be interpreted in such a manner that results in unrelated occupants in such congregate living situations to be provided less protection from fire due to their unfortunate life circumstance. Although the statute may require a monetary expenditure by the landlord for the installation of a fire sprinkler system, it clearly does not prohibit the intended use of the house by the Appellants.
- 8) The Board does not concur with Appellant’s argument that the provisions of the 4th paragraph of M.G.L. c. 40A, s. 3, creates a blanket exemption of such lodging houses from the provisions of the enhanced fire sprinkler protection of M.G.L. c. 148, s. 26H when it is occupied by six or more persons recovering from drug and alcohol dependency. The provisions of c. 40A, as indicated in section 1 as “the Zoning Act”, establishes a standardized, uniform and comprehensive method for the Commonwealth’s municipalities to adopt their own unique zoning and land use ordinances. The statutory scheme of the Zoning Act creates very specific procedures for municipalities to adopt, permit and enforce local zoning and land use provisions. It features separate and distinct provisions relative to enforcement authority, including specific penalties and an avenue for appeal and judicial review. The Zoning Act, in subject s. 3, entitled “Subjects which zoning may not regulate...” establishes specific statutory limitations upon a city or town’s ability to promulgate local provisions relating to zoning and land use relating to health or public safety. The specific provisions of s. 3, as referenced by the Appellants, place a prohibition upon a town’s enactment of homegrown local land use, health and safety bylaws that discriminate against disabled persons who live in congregate living circumstances. To the contrary, the enhanced fire protection requirements of M.G.L. c.148, s. 26H is a state statute, enacted by the Massachusetts Legislature. It is not a creation of a municipal local zoning authority acting pursuant to the M.G.L. c. 40A, s. 3 methodology.
- 9) The Board rejects Appellant’s contention that the Legislature’s use of the words “notwithstanding any general or special law to the contrary” in said third paragraph of s. 3, should act to nullify the provisions of MGL c. 148, s. 26H, as applied to the subject living arrangement. The Board believes, consistent with the plain language of said statute that the use of such words apply to the subject matter within the scope of the Zoning Act: matters of “...local...” (emphasis added) zoning and by laws. To apply the provisions of s. 3 so broadly to nullify a separate and distinct statute, enacted by the General Court not within the scope of local zoning, would certainly frustrate the public safety intent of the

law. Applying the provisions of s. 3 in the manner sought by the Appellant would act to nullify all state laws and related regulations pertaining to building safety, including, but not limited to: the State Building Code, Fire Code, Plumbing Code, Gas Code and Health Codes.

- 10) The purpose of the automatic sprinkler requirement is to protect public safety in the event of a fire. The statute applies to all such buildings, in a neutral manner, without regard to the actual or perceived disability status of the building occupants. Although the statute requires a monetary expenditure related to the installation of a fire sprinkler system, it clearly does not prohibit the intended use of the house by the Appellants.
- 11) In regard to Appellant's contention that s. 26H, as applied to these Appellants is a violation of Federal Housing and/or Federal discrimination laws, the Board believes that it is not the proper forum to determine this issue. With respect to Appellant's reference to the Federal District Court cases on this issue, the Board notes that said courts based their decisions upon an interpretation of the Commonwealth's zoning statutes rather than on Federal law. The decisions, although useful for the purposes of legal argument, are as indicated by both parties, not binding upon this Board. The Board also notes that the decisions contain no substantive consideration of the statutory framework of the two state statutes as herein discussed in detail. Absent a determination by a court of law, which clearly reconciles or invalidates the enhanced public safety purpose of M.G.L. c. 148, s. 26H, as applied to the circumstances of this case, it is reasonable for the Board to conclude that the statute remains valid.

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 Fitchburg Fire Department and requires the installation of an adequate system of sprinklers throughout all portions of the subject building used and/or occupied for boarding or lodging purposes 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 Fitchburg Fire Department within six (6) months from the date of this decision; and
2. The installation of adequate sprinkler system shall be completed within twelve (12) months from the date of this decision.

H) Vote of the Board

Maurice Pilette, Chairman	In Favor
Jack Dempsey, Boston Fire Marshal	In Favor
Chief Thomas Coulombe	In Favor
Alexander MacLeod	Opposed
Aime DeNault	In Favor
George Duhamel	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: July 14, 2017

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

Andrew J. Tine, Esq.
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Barrington, Rhode Island 02806

Chief Kevin D. Roy
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