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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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CHAIRMAN

PETER GIBBONS
VICE CHAIRMAN

Docket # 2017-07
50 Lots Hollow Road
Orleans, 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 26G and Chapter 6, section 201, to determine whether to affirm, reverse or modify the decision of the Orleans Fire Department requiring the Appellant, John S. Souza, owner and Trustee of the JSS Realty Trust (hereinafter "Appellant"), to install automatic sprinklers in a building under construction by the Appellant located at 50 Lots Hollow Road, Orleans, Massachusetts.

B) Procedural History

By written notice dated May 22, 2017 and received by the Appellant on May 22, 2017, the Orleans Fire Department issued a determination to the Appellant, requiring automatic sprinklers to be installed throughout a building under construction owned by the Appellant located at his property, 50 Lots Hollow Road, Orleans, Massachusetts. The determination was issued pursuant to the provisions of M.G.L. c. 148 s. 26G. On May 23, 2017, the Appellant filed an appeal of the determination with the Automatic Sprinkler Appeals Board. The Board held a hearing on July 19, 2017, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant was John S. Souza, owner and Trustee of the JSS Realty Trust. Appearing on behalf of the Orleans Fire Department was Fire Chief Anthony Pike and Fire Inspector Gregory C. Baker.

Present for the Board were: Peter Gibbons, Vice Chairman; Deputy Chief Jack Dempsey, designee of the Boston Fire Commissioner; State Fire Marshal Peter J. Ostroskey; and Alexander MacLeod. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

C) Issue(s) to be Decided

Whether the decision of the Head of the Fire Department requiring sprinklers in the building located at 50 Lots Hollow Road, Orleans, Massachusetts, should be affirmed, reversed or modified?

D) Evidence Received

1. Application for Appeal filed by Appellant
2. Letter/Statement in Support of Appeal (5/19/2017)
3. Order of Notice from the Orleans Fire-Rescue Department (5/22/2017)
4. Photographs of subject building and property
- 4A. Exterior of Building showing 9 Garage Bays
- 4B. Exterior of Building showing 7 Windows
- 4C. Exterior of Side of Building showing Door
- 4D. Exterior of Side of Building showing Utility Panel
- 4E. Interior of Building
- 4F. 2nd Exterior of Building showing 6½ Garage Bays
5. Fire Resistance Ratings from UL for Design No. U404 (stamped by Registered Professional Engineer) with handwriting indicating “1 hr. fire separation between bays – Souza Project”
6. Computer Rendering of Building showing all dimensions
7. Site Plan – Non Hazardous, Non-Sanitary Industrial Wastewater Holding Tank (4/18/2017)
8. Foundation Plan labeled “JSS Realty Trust” – 9 Contractor/Storage Bays
9. Manhole Detail Plan (4/18/2017)
10. 1st Notice of Hearing to the Parties (6/29/2017)
11. 2nd Notice of Hearing to the Appellant (7/11/2017)
12. 2nd Notice of Hearing to Orleans Fire Department (7/11/2017)
13. Copies of two Memoranda that accompany Hearing Notices
14. Correspondence to Board from Appellant re: Other Acceptable Safety Measures (7/7/2017)
15. Site Development Notes
16. Skyliner Insulation Spec. Sheet

E) Subsidiary Findings of Fact

- 1) By written notice dated May 22, 2017 and received by the Appellant on May 22, 2017, the Orleans Fire Department issued a determination to the Appellant, requiring automatic sprinklers to be installed throughout a building under construction owned by the Appellant located at his property, 50 Lots Hollow Road, Orleans, Massachusetts. The determination was issued pursuant to the provisions of M.G.L. c. 148 s. 26G. On May 23, 2017, the Appellant filed an appeal of the determination with the Automatic Sprinkler Appeals Board. The Board held a hearing on July 19, 2017, at the Department of Fire Services, Stow, Massachusetts.
- 2) The Appellant testified that he is the owner and Trustee of the JSS Realty Trust, which is constructing the commercial building located at 50 Lots Hollow Road, Orleans, MA. The building measures 178’ x 56’ for a total size of approximately 9,978 s.f. in floor area. The building, which has a height of approximately 20’, will primarily be used by various

contractors for the storage of extra materials and large equipment and for the storage of the Appellant's personal boat. Examples of contractors using the property would include those engaged in plumbing, electrical and excavating. Pictures submitted indicate that the building, as constructed, has nine (9) garage bays.

- 3) The Appellant testified that he is aggrieved by the Order of the Orleans Fire Department since the town told him about the requirement for sprinklers after the building was constructed. The Appellant stated that before he started construction, he submitted construction plans for review by Town of Orleans officials, including those from the building and fire departments. He indicated that he also met with other town officials and there was no mention of the need for an automatic sprinkler system based on the building size. He indicated that upon review by the Orleans Building Department, he was initially told by the building inspector that since the building was of metal frame construction and under 12,000 s.f. in size, sprinklers would not be required.
- 4) The Appellant stated that in lieu of the sprinklers, he would agree to certain conditions and limitations on the use/occupancy of the building, including the installation of various fire safety measures. Such conditions would include: an agreement that he would never use the building as a place of assembly or for residential purposes; the installation of a monitored fire detection system with a two line communicator; the installation of 10 manually operated, double action, pull stations including interior horn/strobe units for audible/visual notification; the installation of 18 fixed temperature /rate of rise heat detectors and the installation of fire separation petition walls with 30 minute ratings between each bay in the building.
- 5) When asked by the Board about the cost to install sprinklers throughout the building, the Appellant said that he had received two estimates, and that the cost would be approximately \$60,000.00. He stated that this amount would be over 10% of the cost of the building and would create a financial hardship for him. The Appellant stated that the building is located approximately one mile away from the Orleans Fire Department with easy road access and that a fire hydrant is located on the property at the beginning of the driveway. The Orleans Fire Department verified this information and indicated that adequate water is available from the street to supply any sprinkler system.
- 6) The Appellant requested that if the Board upholds the Fire Department's order to install the sprinklers, that he be granted an extension of at least two (2) years to complete the installation, since he would need time to secure additional financing. The Appellant offered no statutory or legal basis that would support a total waiver of the mandatory sprinkler provisions based upon misinformation or misunderstanding or other similar circumstances presented in this case. The Board notes that the Appellant engaged an engineer for the purpose of structural design, but apparently did not retain a professional engineer during the design phase to advise him about fire protection requirements.
- 7) Chief Pike of the Orleans Fire Department testified that there was a communication breakdown within the Town in regard to this construction project. He noted that a Massachusetts Fire Code change in 2015, eliminated the requirement of a fire department permit to install fire protection equipment, including sprinklers. This hampered the Orleans Fire Department's ability to become aware of the project until after construction. The Chief

stated that the Order was issued due to the size of the building and the requirements of M.G.L. c. 148, s. 26G, as well as his concerns over the potential bulk storage of fuel and other flammable materials on site.

- 8) Chief Pike indicated that if sprinklers were ordered by the Board, he believes that there is adequate and accessible town water to supply the sprinklers. He also indicated that he understands the circumstances of this situation and Appellant's frustration about the need for sprinklers.

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, 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 applies to "**the construction** (emphasis added) of buildings, structures or additions or major modifications thereto, which total, in the aggregate, more than 7,500 gross square feet *permitted after January 1, 2010*". (Sec. 6, Chapter 508 of the Acts of 2008). The legislative activity leading to the amendment of M.G.L. c. 148, s. 26G arose in the aftermath of a tragic commercial building fire, which occurred in Newton, Massachusetts in February 2000, resulting in the death of five individuals.
- 2) The subject newly constructed commercial building is the type of building within the scope of s. 26G and building consists of approximately 9,968 s.f., in the aggregate, of floor area. The size of the subject building is clearly more than the 7,500 gross square feet, which triggers the provisions of s. 26G. The Appellant did not contest this finding.
- 3) It is understandable that the Fire Department Order, issued at this late date after construction has caused the Appellant unexpected hardship and frustration. However, such circumstances, solely based upon miscommunication and /or misinformation, should not result in a determination by this Board to overturn the fire department and waive the provisions of this law, which clearly mandates the installation of an adequate system of sprinklers in certain newly constructed buildings with more than 7,500 s.f. of floor area. Such a waiver by this Board under these circumstances and without legal justification would frustrate the clear legislative intent of this important life safety provision.
- 4) Based upon a review of the circumstances, which lead to the issuance of the compliance order by the Fire Department at this late date, the Board does find that a reasonable extension of time to complete the sprinkler installation is warranted. The Board notes that both parties were in agreement in this regard.

G) Decision and Order of the Automatic Sprinkler Appeals Board

Based upon the evidence presented to the Board and for the reasons stated herein, the Board hereby **upholds** the Order of the Orleans Fire Department to require an adequate system of

sprinklers be installed throughout the building pursuant to the requirements of M.G.L. c. 148, s. 26G, as approved by the Fire Department.

Plans for such installation are to be filed within six (6) months from the date of decision (February 15, 2018). Installation of the sprinkler system shall be completed not later than eighteen (18) months from the date of decision (February 15, 2019).

H) Vote of the Board

Peter Gibbons, Vice Chair	In Favor
Deputy Chief Jack Dempsey	In Favor
Peter J. Ostroskey, State Fire Marshal	In Favor
Alexander MacLeod	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,



Peter Gibbons, Vice Chairman

Dated: August 15, 2017

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

John S. Souza
56 Katherine Lane
Brewster, Massachusetts 02631

Chief Anthony L. Pike
Orleans Fire-Rescue Department
58 Eldredge Park Way
Orleans, Massachusetts 02653