

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

Automatic Sprinkler Appeals Board

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MAURICE M. PILETTE
VICE CHAIRMAN

Docket # 2018-05
532 Pond Street
Weymouth, 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 Weymouth Fire Department, requiring Carmine DiBello, Manager, Tricolore, LLC (hereinafter referred to as the Appellant) to install automatic sprinklers throughout a building that the Appellant owns at 532 Pond Street, Weymouth, Massachusetts.

B) Procedural History

By written notice dated June 5, 2018 and received by the Appellant on June 7, 2018, the Weymouth Fire Department issued a determination requiring automatic sprinklers to be installed throughout the subject building. According to the notice, the determination was issued pursuant to the provisions of M.G.L. c. 148 s. 26G. On July 5, 2018, the Appellant filed an appeal of the determination with the Automatic Sprinkler Appeals Board. The Board held a hearing on August 8, 2018, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant were: Carmine DiBello, CEO, Tricolor, LLC and Jawahar Babu Selvaraj, operator of the Barwachi Indian Restaurant. Appearing on behalf of the Weymouth Fire Department was Deputy Chief Justin Myers.

Present for the Board were: Thomas Coulombe, Chairman; Maurice M. Pilette, Vice Chairman; Patricia Berry; Deputy Chief Jack Dempsey; Alexander MacLeod; Aime DeNault; and George Duhamel. 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 Weymouth Fire Department requiring sprinklers in the Appellant's building, in accordance with the provisions of M.G.L. c. 148 s. 26G?

D) Evidence Received

1. Application for Appeal filed by Appellant
2. Statement in Support of Appeal
3. Plan of Existing Parking – 532 Pond Street, Weymouth (5/1/1996)
4. Weymouth Fire Department – Permit Report (6/5/2018)
5. Order of Notice from Weymouth Fire Department – Permit Report (6/5/2018)
6. Application for Permit for Alteration / Addition to Existing Structure (Undated)
7. Notice of Hearing to Appellant (7/20/2018)
8. Notice of Hearing to Weymouth Fire Department (7/20/2018)
9. Copies of two Memoranda that accompany Hearing Notices
10. Photographs of Building from Appellant (items A-C)
11. Photographs from Weymouth Fire Department (items A-G)
12. Building Permit Application Package submitted by Weymouth Fire Department (1-4 pages)
13. Weymouth Property Record Card

E) Subsidiary Findings of Fact

- 1) By written notice dated June 5, 2018 and received by the Appellant on June 7, 2018, the Weymouth Fire Department issued a determination requiring automatic sprinklers to be installed throughout the subject building located at 532 Pond Street, Weymouth, Massachusetts. According to the notice, the determination was issued pursuant to the provisions of M.G.L. c. 148 s. 26G. On July 5, 2018, the Appellant filed an appeal of the determination with the Automatic Sprinkler Appeals Board. The Board held a hearing on August 8, 2018, at the Department of Fire Services, Stow, Massachusetts.
- 2) The representative for the Appellant testified that Appellant owns a single story, commercial building constructed in 1986. Appellant's appeal application indicated that the building consists of 7,800 s.f of floor area and features retail space leased and occupied by several different retail establishments, including a Papa Gino's, Princess Nails, and the Barwachi Indian Restaurant. However, the Town of Weymouth Property Card from town records indicates that the building actually consists of 8,170 s.f. of floor area. It was generally agreed by both parties that this is the accurate figure.
- 3) On or about April 25, 2018, one of the Appellant's tenants, Jawahar Babu Selvaraj, the operator of the Barwachi Indian Restaurant, applied for a building permit to renovate a portion of the Appellant's building currently used as storage space. He is seeking to convert space adjoining his restaurant into a retail convenience store for the sale of Indian grocery products. The application for the building permit indicated that the renovation work would include the installation of new walls, sheet rock, mudding, installation of drop ceilings and racks. The estimated cost listed on the permit application was \$15,000.00. The renovations will impact approximately 700 s.f. of floor area.
- 4) The Appellant building owner testified that he was not completely aware that the tenant's recent application for a building permit would trigger the requirement to install a sprinkler system pursuant to M.G.L. c. 148, s. 26G. He indicated that had he known this, he would not

have agreed to have the work completed because he cannot afford the expense of installing a sprinkler system throughout the building. When asked about the estimated costs to install the system, he indicated that the costs would be in the “hundreds of thousands of dollars”. However, the Appellant did not provide any detailed explanation for such high numbers and did not present any written estimate.

- 5) In support of the Weymouth Fire Department’s determination, Deputy Chief Myers testified that the Weymouth Fire Department issued the Order of Notice to install a sprinkler system throughout the entire building, since the latest planned renovation of the space by the Barwachi Indian Restaurant into an Indian grocery store, would be the second renovation within a one-year area period. He testified and provided documentation that on or about June 15, 2017, the Appellant was issued a permit to conduct renovations in certain portions of the building occupied by the Barwachi Indian Restaurant and that the area impacted by said renovations that were completed consisted of approximately 2,578 s.f. of floor area.
- 6) Deputy Chief Myers testified that the 2017 renovations were significant and consisted of the relocation and erection of new walls, tile flooring, ceilings, installation of a new exhaust hood, paint, carpentry, in addition to significant cosmetic improvements. This work, as described, was listed on the application for the 2017 building permit. Deputy Myers further stated that the work would have also included new/updated wiring and HVAC modifications. However, he did not provide specific details on this conclusion. As indicated in the 2017 permit application and testimony at the hearing, the cost of this renovation work was between \$20-30,000.00. However, the exact figure is not clear.
- 7) Deputy Myers testified that the 2017 renovations to the Barwachi Indian Restaurant, consisting of 2,578 s.f., combined with the newly planned renovations consisting of 700 s.f., clearly exceed 33.3% of the total s.f of floor area of the entire building (8,170 s.f.), therefore triggering sprinkler installation under M.G.L. c. 148, s. 26G. Deputy Myers stated that said combined projects, as per prior determinations of this Board, will be considered “major alterations”. Deputy Meyers also referenced a guidance memorandum dated October 14, 2009 issued by this Board through the Fire Safety Commission that supported his determination.
- 8) According to the Weymouth Property Record Card, the current assessed value of the building, other, and land combined is \$1,274,000.00.
- 9) Appellant and the owner of the Barwachi Indian Restaurant did not provide any arguments of any significance in opposition to the Board’s previous conclusion about the 33% of total s.f. threshold. Although the Appellant did provide generalized arguments that, due to the nature of the renovations, they should not be considered “major”, but provided no specific details to support this conclusion.
- 10) Upon the Board’s inquiry, the Appellant provided no suggested timeline or extension of time to complete the installation of a sprinkler system in the event the Board upheld the determination of the Weymouth Fire Department.

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 in part, reflects amendments to the statute due to the enactment of Chapter 508 of the Acts and Resolves of 2008. The amendment 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. 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) The subject building consists of approximately 8,170 s.f. in total floor area and its current use and occupancy is not within any of the enumerated exemptions of s. 26G. The building clearly totals, in the aggregate, more than 7,500 gross s.f. in floor area.
- 3) Since this building is existing and is not undergoing an addition, the provisions of s. 26G will apply only if major alterations or modifications are made to the existing building. In determining whether major alterations are taking place, the Board has relied upon the factors stated in its October 14, 2009, guidance document which was referenced by the parties. In the document, the Board discussed the meaning of the words “major alterations” as those terms are used in the statute. The Board, generally guided by *Congregation Beth Shalom & Community Center, Inc. v. Building Commissioner of Framingham et. Al., 27 Mass. App. Ct. 276 (1989)*, indicated that it would review factors such as: (A) **the nature** of the work and (B) **the scope** of the work. In determining the **nature** of the work, the Board indicated that it would determine if the work is the type of work that would make the effort to install sprinklers substantially less than it would have been if the building were intact or is the work merely minor repairs or cosmetic vs. major alterations. This Board also established two presumptions that could be used to determine if the **scope** of the alterations or modifications are “major.” The Board concluded that major alterations or modifications could reasonably be considered major in scope when: (1) **such work affects thirty-three (33)% or more of the “total gross square footage” of the building, calculated in accordance with section 26G** or (2) when the total cost of the work (excluding costs relating to sprinkler installation) is equal to or greater than thirty-three (33)% of the assessed value of the subject building. It was the conclusion of the Board that if the nature of the work is the type of work described in A and also meets at least one of the two presumptions described in B above, then it can be reasonable to conclude that the alterations or modifications are “major,” thus requiring sprinklers throughout the building.
- 4) In reviewing the evidence as a whole, the Board finds that the renovations that took place in 2017 consisting of 2,578 s.f., combined with the planned 2018 renovations which consist of at least 700 s.f. to create the grocery store, total 3,278. This number clearly exceeds 33% of 8,170 s.f. area of the subject building. Furthermore, the Board finds that the Appellant’s testimony regarding the nature and extent of the remodeling and associated costs, including

the cost to install a sprinkler system is unreliable and self-serving at best. In conclusion, the work is major and substantial and is clearly the type of work that the Legislature envisioned would trigger enhanced sprinkler installation.

- 5) The Board notes that this appeal involves two separate set of renovations that will occur during a (one) 1 year period. The Board concludes, as it did in its October 14, 2009 memorandum, that a series of renovation projects conducted over a reasonably short period of time, may reasonably be combined to be considered “major” alterations or modifications, thus triggering the sprinkler requirements of s. 26G. The board’s position is consistent with legislative intent of the 2008 amendments to s. 26G to close a loophole in the law which allowed a Newton commercial building to undergo a series of major modifications/alterations over the course of many years without the need to upgrade fire protection systems.

G) Decision of the Automatic Sprinkler Appeals Board

Based upon the evidence presented at the hearing and the aforementioned reasons, the Board hereby **upholds** the determination of the Weymouth Fire Department to require the installation of an adequate system of automatic sprinklers throughout the building located at 532 Pond Street, Weymouth, Massachusetts in accordance with the requirements of M.G.L. c. 148, s. 26G. The specific deadlines are as follows:

1. Plans for the required system shall be provided to the Weymouth Fire Department no later than 90 days from the date of the Board’s written decision (**November 27, 2018**);
2. Installation of an adequate sprinkler system shall be completed in that portion of the building occupied by the Barwachi Indian Restaurant and the planned Indian grocery store no later than six (6) months from the date of written decision (**February 25, 2019**); and
3. The remaining portion of the building shall have an adequate system of sprinklers installed no later than one (1) from the date of said decision (**August 29, 2019**).

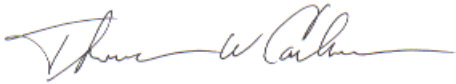
H) Vote of the Board

Chief Thomas Coulombe, Chairman	In Favor
Maurice M. Pilette, Vice Chairman	In Favor
Patricia Berry	In Favor
Deputy Chief, Jack Dempsey	In Favor
Peter Gibbons	In Favor
Alexander MacLeod	Opposed
Aime DeNault	Opposed
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,



Chief Thomas Coulombe, Chairman

Dated: August 29, 2018

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

Carmine DiBello, Manager
TriColore LLC
60 Newman Street
Revere, Massachusetts 02151

Chief Kenneth Stark
Weymouth Fire Department
636 Broad Street
Weymouth, Massachusetts 02189