

*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*

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THOMAS A. TURCO, III  
SECRETARY

**Docket # 2019-04**  
**97 Center Street**  
**Chicopee, 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 Chicopee Fire Department to require Joseph M. Phillips, the Phillips Insurance Agency, Inc. (collectively hereinafter the “Appellant”), to install automatic sprinklers in a building located at 97 Center Street, Chicopee, Massachusetts.

**B) Procedural History**

By written notice dated October 29, 2019 and received by the Appellant on October 29, 2019<sup>1</sup>, the Rehoboth Fire Department issued an Order pursuant to the provisions of M.G.L. c. 148, s. 26G, to the Appellant requiring automatic sprinklers to be installed in a building located at 97 Center Street, Chicopee, Massachusetts. On October 9, 2019 the Appellant filed a timely appeal of the determination with the Automatic Sprinkler Appeals Board. The Board held a hearing on this matter on November 13, 2019 at the Department of Fire Services, Stow, Massachusetts.

Appearing at the hearing was the Appellant, Joseph M. Phillips, Owner/President of the Phillips Insurance Agency, Inc. Appearing on behalf of the Chicopee Fire Department was Chief Daniel Stamborski, Captain Benjamin Turnberg, and Associate City Attorney, Kevin Corridan.

Present for the Board at the hearing was: Maurice M. Pilette, Chairman; Patricia Berry, Vice Chair; Jack Dempsey (designee of the Boston Fire Commissioner); Chief Thomas Coulombe; Kristin Kelly; and Steven P. Rourke, designee for the State Fire Marshal. Glenn M. Rooney, Esquire, was the Attorney for the Board.

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<sup>1</sup> The Appellant, in his original appeal to the Board, included an informal email from the Chicopee Fire Department dated October 9, 2019 purporting to require him to install sprinklers at the subject property. Some three weeks after the appeal application was received, on October 29, 2019, Chicopee Fire Department issued a formal Order (on Department letterhead and citing the applicable statute(s)) and the Appellant amended his submission to include the formal October 29, 2019 Order.

**C) Issue(s) Presented**

Whether the Board should affirm, reverse or modify the determination of the Chicopee Fire Department requiring sprinklers in the Appellants building, in accordance with the provisions of M.G.L. c.148 § 26G?

**D) Evidence Received**

1. Application for Appeal by Appellant
2. Statement in Support of Appeal (dated 10/15/2019)
3. E-mail correspondence from Captain Turnberg, Chicopee Fire Dept. to Joe Phillips (dated 10/8/2019)
4. Order of Notice from the Chicopee Fire Department (dated 10/29/2019)
5. Property Record Card for 97 Center Street – City of Chicopee
6. Proposed Site Improvements for 89 & 97 Center Street, Chicopee (dated 3/8/2018)
- 6A. Plan of Land
- 6B. Existing Conditions Plan
- 6C. Layout & Materials and Grading & Utilities
- 6D. Drawings of Second Floor, First Floor, and Ground Level
- 6E. Drawing of New Addition 20' x 43' +/-
7. Photographs of Building
- 7A. Photograph of Front of the Property
- 7B. Photograph of Side of Property
- 7C. Photograph of Rear of Property
8. Notice of Hearing to Appellant (dated 11/4/2019)
9. Notice of Hearing to Chicopee Fire Department (dated 11/4/2019)
10. Copies of two Memoranda that accompany Hearing Notices
11. Aerial Photograph of Property/Neighborhood
12. Cost estimate on sprinkler system – Legacy Fire Protection (dated 10/30/2019)
13. E-mail between Appellant and Chicopee Fire Department (dated 10/15/2019)
14. Application for Certificate of Occupancy (dated 8/18/1999)
15. Application for Building Permit (dated 9/13/2019)
16. Copy of M.G.L. c. 148, s. 26G
17. E-mail from Chicopee Water Department re: water supply (dated 11/7/2019)
18. Photographs of exterior of property submitted by the Chicopee Fire Department (labeled 18A-F)

**E) Subsidiary Findings of Fact**

- 1) By written notice dated October 29, 2019 and received by the Appellant on October 29, 2019, the Chicopee Fire Department issued an Order pursuant to the provisions of M.G.L. c. 148, s. 26G, to the Appellant requiring automatic sprinklers to be installed in a building located at 97 Center Street, Chicopee, Massachusetts. On October 9, 2019 (*see f.n.1*) the Appellant filed a timely appeal of the determination with the Automatic Sprinkler Appeals Board. The Board held a hearing on this matter on November 13, 2019 at the Department of Fire Services, Stow, Massachusetts.

- 2) The Appellant testified that the building at issue is an insurance agency and that he has been in the subject property since 1985. He testified that the building is currently 6,144 s.f. and his plans are to put on an addition at the rear of the building, which would add space onto each floor. The proposed addition would be 1,720 s.f., which would bring the overall size of the building to 7,864 s.f, clearly in excess of the 7500 s.f. threshold that triggers M.G.L. c. 148, s. 26G.
- 3) In arguing for a waiver from the Board from installing a sprinkler system as M.G.L. c. 148, s. 26G requires, the Appellant testified that the building is used as a commercial space for his insurance company. He stated that there is no cooking or cooking appliances on site and the property has new heating and alarm systems throughout, and two means of egress from the second floor level. In addition, the nearest fire station to the property is approximately 75 yards away.
- 4) The Appellant further testified that the cost to install sprinklers throughout the building would be approximately \$51,000.00 per the estimate he received (\$40,000.00 for the original building and \$11,000.00 for the new addition) and would result in his planned addition being cost prohibitive. This estimate did not include the costs associated with connecting the sprinkler system to municipal water. In addition, the Appellant argued that sprinklers would also affect the aesthetics of the interior of the building, which dates back to the pre-1900's, and would also force sprinkler pipes on the first floor to be exposed.
- 5) The Chicopee Fire Department testified that the Order was issued based upon the provisions of M.G.L. c. 148, s. 26G, which requires the installation of an adequate system of automatic sprinklers upon the construction of any addition, as long as the building and the addition are over 7,500 s.f. in the aggregate. They further indicated that while the Appellant stated that the installation of sprinklers would be a hardship, the building permit application filed with the City of Chicopee indicates that the renovation cost for the new addition is approximately \$102,000.00.

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

- 1) The relevant 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 reflects amendments to the statute enacted by Chapter 508 of the Acts and Resolves of 2008. The provisions apply to “the construction of buildings, structures or additions or major modifications (emphasis added) 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).
- 2) On October 14, 2009, this Board issued an advisory memorandum regarding the then recent amendments to M.G.L. c. 148, s. 26G, which are applicable in certain non-residential buildings. In said memorandum, the Board noted that the legislative activity to amend s. 26G arose in the aftermath of a tragic commercial building fire, which occurred in Newton, Massachusetts on February 9, 2000, resulting in the death of five individuals. Over the course of several decades, that building had undergone numerous renovations and modifications

without the need to install a fire sprinkler system. In said memorandum, the Board noted that the Legislature intended to give some protection to owners of existing/older buildings against the large expense of installing sprinklers by requiring the installation only upon some triggering event: (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 planned for an existing building. Additionally, it was noted that the building must total more than 7,500 gross s.f. in floor area, in the “aggregate” (existing building and addition).

- 3) The existing building (6,144 s.f.), when combined with the proposed addition (1,720 s.f.), would consist of approximately 7,864 s.f., in the aggregate, of floor area. This amount is clearly more than the 7,500 gross square feet, which triggers the provisions of s. 26G. The Appellant did not contest this finding and did not ask for any extension of time to install sprinklers. Furthermore, the Appellant failed to submit any evidence of substance to support a determination of this board to grant a variance or waiver from the provisions of s. 26G.
- 4) Although the Appellant argues that sprinklers should not be required in the subject building because the proposed addition *only* exceeds the 7,500 s.f. threshold by just 364 s.f., this argument fails as a matter of law. The applicability of the statute is triggered as soon as the subject building exceeds 7,500 s.f.
- 5) Finally, although the Appellant argues that sprinklers would not conform to the aesthetics of the building, the Board finds that the provisions of M.G.L Chapter 148, s. 28G, apply. The Board does not find anything unique regarding the structure’s use, occupancy and/or fire load that would support a contrary finding.

**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 Chicopee Fire Department, requiring the Appellant to install sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s. 26G. Accordingly, an adequate system of automatic sprinklers shall be installed throughout the building, including the addition, in accordance with the following terms and conditions:

- Plans for the installation of an adequate sprinkler system shall be submitted to the Head of the Fire Department no later than 90 days from the date of this written decision (December 10, 2019); and
- The installation of an adequate sprinkler system shall be upon completion of new construction and prior to the granting of a Certificate of Occupancy for the new addition.

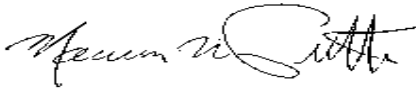
**H) Vote of the Board**

Maurice Pilette, Chairman	In Favor
Patricia Berry, Vice Chair	In Favor
Deputy Chief Jack Dempsey, designee	In Favor
Chief Thomas Coulombe	In Favor
Kristin Kelly	In Favor
Steven P. Rourke, designee, State Fire Marshal	In Favor

**I) Right of Appeal**

You are hereby advised you have the right, pursuant to section 14 of chapter 30A of the General Laws, to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order.

SO ORDERED,



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Maurice M. Pilette, Chairman

Dated: December 10, 2019

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

Joseph M. Phillips, President  
Phillips Insurance Agency, Inc.  
97 Center Street  
Chicopee, Massachusetts 01013

Captain Benjamin Turnberg  
Chicopee Fire Department  
80 Church Street  
Chicopee, Massachusetts 01020-1815