

*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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SECRETARY

**Docket # 2019-05**  
**7 Park Street**  
**Rehoboth, 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 Rehoboth Fire Department to require Ryan DuVally and Heritage Realty Enterprises, LLC (collectively hereinafter the “Appellant”), to install automatic sprinklers in a proposed building located at 7 Park Street, Rehoboth, Massachusetts.

**B) Procedural History**

By written notice dated October 18, 2019 and received by the Appellant on October 18, 2019, 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 proposed building at 7 Park Street, Rehoboth, Massachusetts. On October 23, 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, Ryan DuVally, Owner/President of Heritage Realty Enterprises, LLC. Appearing on behalf of the Rehoboth Fire Department was Assistant Chief Mark Haskeh and Building Commissioner William McDonough.

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.

**C) Issue(s) Presented**

Whether the Board should affirm, reverse or modify the determination of the Rehoboth Fire Department requiring sprinklers in the Appellant's proposed 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 (10/23/2019)
3. Order of Notice from the Rehoboth Fire Department (10/18/2019)
4. Well Driller Forms – Mass. DEP
5. Letter to Appellant from Rehoboth Conservation Commission, re: Approved Order of Conditions (9/4/2019)
6. Site Plan Approval from Rehoboth Conservation Commission (10/3/2019)
7. Proposal for Fire Sprinkler System from Rustic Fire Protection, Inc.
8. Two (2) Page Proposed Floor Layout for Building (10/9/2019)
9. Plans/Drawings for Proposed Heritage Plaza (10/9/2019)
- 9A. Proposed Foundation Plan
- 9B. Proposed Floor Layout (Roof Off)
- 9C. Proposed Floor Layout (Roof On)
- 9D. Proposed First Floor Layout
- 9E. Proposed Second Floor Layout
- 9F. Proposed Front and Rear Elevations
- 9G. Proposed Left and Right Side Elevations
10. Proposed Site Plans (10 pages)
- 10A. Location Map / Site Map
- 10B. Existing Conditions Plan
- 10C. Overall Site Plan
- 10D. Layout and Parking Plan
- 10E. Grading and Utility Plan
- 10F. Landscape and Lighting Plan
- 10G. Erosion Control Plan
- 10H. Detail Sheet 1
- 10I. Detail Sheet 2
- 10J. Detail Sheet 3
11. Notice of Hearing to Appellant (10/30/2019)
12. Notice of Hearing to Rehoboth Fire Department (10/30/2019)
13. Copies of two Memoranda that accompany Hearing Notices
14. E-mail correspondence with Attleboro re: water availability
15. Agreement between Appellant and Rehoboth Fire Department for Fire Warning System in Proposed Building (11/18/2019)

**E) Subsidiary Findings of Fact**

- 1) By written notice dated October 18, 2019 and received by the Appellant on October 18, 2019, 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 proposed building at 7 Park Street, Rehoboth, Massachusetts. On October 23, 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.

- 2) The Appellant owns the land at 7 Park Street, Rehoboth, Massachusetts and is in the process of permitting for construction of a building with a total gross finished space of 11,924 s.f. Once constructed, a portion of the building will be used by the Appellant for his real estate brokerage and development company. The remainder of the building is intended to be used for mixed use business and potential restaurant space.
- 3) The Appellant stipulated at the hearing that the building, as planned/constructed, exceeds 7,500 s.f. and as a result, M.G.L. c. 148, s. 26G applies. However, he argued that the location lacks sufficient water and water pressure to supply an adequate sprinkler system. He noted language in the applicable statute, M.G.L. c. 148, s. 26G, which states that “no such sprinkler system shall be required unless sufficient water and water pressure exists”. The Appellant asserted that said statute creates an exemption from the installation of enhanced sprinkler protection in the subject building due to the lack of sufficient water and water pressure.
- 4) To that end, the Appellant testified that there is no municipal water or sewer available in the Town of Rehoboth. This was confirmed by the Assistant Fire Chief and Building Commissioner at the hearing. The Appellant also testified and provided evidence that he attempted to obtain water from the abutting Town of Attleboro (town nearest to his property) but due to a lack of an inter-municipal agreement with the Town of Rehoboth, it would not be possible to connect to municipal water from Attleboro.
- 5) The Appellant testified that he had obtained a cost estimate for a sprinkler system to be connected to a well on the property and it totaled \$352,500.00. The Appellant also testified that while water is available on the property from this well, it can only produce 20 gallons per minute, far less than what would be required to establish and maintain a sprinkler system.
- 6) In further support of this position, the Appellant cited an earlier case decided by the Board (*Docket # 2016-08, 40 Pleasant Street, Granby Massachusetts*) for the proposition that “*to require the installation of an automatic sprinkler system that can only be supplied with water and water pressure that must be artificially created by the Appellant [in that case] at great cost, would render the statutes’ [M.G.L. c. 148, s. 26G ] exemption relative to water and water pressure, meaningless*”.
- 7) The Assistant Fire Chief testified that the Order was issued because the proposed building exceeds 7,500 s.f., the amount of floor area which triggers the enhanced provisions of s. 26G.
- 8) At the hearing, the Assistant Fire Chief conceded that based upon the information that was made available to the Fire Department following the issuance of the October 18, 2019 Order (i.e. that the subject well could only produce 20 gallons per minute), sufficient water and water pressure does not in fact exist at or in the area of 7 Park Street, Rehoboth, Massachusetts.

**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.” The stated provisions reflect amendments to the statute enacted by Chapter 508 of the Acts and Resolves of 2008.
- 2) The statute also states that “no such sprinkler system shall be required unless sufficient water and water pressure exists”.
- 3) The proposed building will consist of approximately 11,924 gross square feet in floor area. This clearly exceeds the statutory 7,500 s.f. threshold.
- 4) With respect to the Appellant’s contention that the sprinklers should not be required due to the lack of sufficient water and water pressure, the board is guided by the language of the statute and related case law. In the case of *Chief of the Fire Department of Worcester v. John Wibley*, et al. 24 Mass. App. Ct. 912 (1987), the Massachusetts Appeals Court concluded that “The term ‘sufficient water and water pressure exists’ means that the owner of a building or addition to which the statute applies **must have access to a source of water sufficient to operate an adequate system of sprinklers, or the exemption applies**. The source may be either on the land on which the new building or addition is constructed or off the land, provided that it is legally available to the owner of the building or addition.”
- 5) Based upon the testimony and evidence submitted by the Appellant and confirmed by the Assistant Fire Chief, it is clear that the Appellant is unable to acquire legal access to any source of water or adequate water pressure sufficient to operate an adequate system of automatic sprinklers. There is no source of adequate water or water pressure available on either the land on which the new building is being constructed or from any source legally available from the Town of Rehoboth.

**G) Decision and Order**

Based upon the evidence presented to the Board and for the reasons stated herein, the Board unanimously **reverses** the Order of the Rehoboth Fire Department to require sprinkler protection in the proposed building to be located at 7 Park Street, Rehoboth, Massachusetts pursuant to M.G.L. c. 148, s. 26G, due to a lack of sufficient water and water pressure.

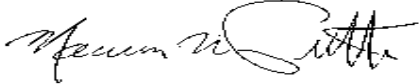
**H) Vote of the Board**

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: November 18, 2019

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

Ryan DuVally  
3 Park Street, # 10  
Rehoboth, Massachusetts 02769

Chief Francis T. Barresi  
Rehoboth Fire Department  
334 Anawan Street  
Rehoboth, Massachusetts 02769