



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

Automatic Sprinkler Appeals Board

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CHAIR

PATRICIA BERRY
VICE CHAIR

Docket # 2020-05
4 Prospect Ave.
Onset, 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 Order of the Onset Fire Department requiring Ms. Carolyn Dunlavy (hereinafter referred to as “the Appellant”) to install automatic sprinklers in a building at 4 Prospect Ave, Onset, Massachusetts.

B) Procedural History

By written Order dated July 13, 2020 and received by Ms. Carolyn Dunlavy on or about July 17, 2020, the Onset Fire Department required automatic sprinklers to be installed throughout a building located at 4 Prospect Ave, Onset, Massachusetts. The Order was issued pursuant to the provisions of M.G.L. c. 148, section 26H. On August 21, 2020, the Appellant filed a timely appeal of the determination with the Automatic Sprinkler Appeals Board.

Per Governor Charles D. Baker’s Emergency Executive Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, s. 20 signed and dated March 12, 2020 and in effect at the time, the Board held a video conference hearing on this matter on October 14, 2020.

Appearing on behalf of the Appellant were: Ms. Carolyn Dunlavy and her husband, Dr. Ali Titiz. Appearing on behalf of the Onset Fire Department were: Lt. Robert Feeney and Lt. Richard Sniger.

Present for the Board were: Maurice M. Pilette, Chair; Patricia Berry, Vice Chair; Deputy Chief, Brian Tully; Alexander MacLeod; Kristen Kelly; Thomas Coulombe; and George Duhamel. Glenn M. Rooney, Esquire, was the Attorney for the Board.

C) Issue(s) to be Decided

Whether the Order of the Onset Fire Department requiring sprinklers in the house located at 4 Prospect Ave, Onset, Massachusetts 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. Order of Notice issued by the Onset Fire Department (dated 7/13/2020)
3. Correspondence from Appellant to Onset Fire Department (dated 7/30/2020)
4. Advisory from State Fire Marshal Coan to Heads of Fire Departments on recent amendments to M.G.L. c. 148, s. 26G (dated 11/01/2009)
5. Copy of Automatic Sprinkler Appeals Board Guidance Document on M.G.L. c. 148, s. 26G with underlines and highlights added by Appellant (dated 11/01/2009)
6. Photographs of Building Permit issued for 4 Prospect Ave, Wareham (issued 5/1/2018)
7. Copy of Loan Advance Schedule from Santander Bank to Appellant with description of work listed (dated 1/26/2018)
8. Certificate of Occupancy – Town of Wareham for 4 Prospect Ave (dated 4/17/2019)
9. Loan Statement for Carolyn Dunlavy from Santander Bank (dated 2/1/2019)
10. Copies of 11 “Standard Vacation/Recreational Lease” Agreements between Appellant and Renters for Property
11. Copies of 2 “Residential Lease Agreements” Appellant and Renters for Property
12. Notice of Hearing to Appellant (dated 8/27/2020)
13. Notice of Hearing to Onset Fire Department (dated 8/27/2020)
14. Memorandum regarding Remote Hearing Procedures (dated 5/7/2020)
15. Copies of two Memoranda that accompany Hearing Notices (dated 5/1/2020)
16. Air B N B Property Review labeled “Zhengxing” for Mar 16-June 16, 2020 submitted by Appellant
17. Air B N B Reservation listed “Stephanie Brown for 3 guests, 22 nights submitted by Appellant
18. Onset Fire Department’s Submission Package in Support of Order of Notice
- 18A. Town Assessors card on 4 Prospect Ave (3 pages)
- 18B. Location on map where property is (One-Way Street) (1 page)
- 18C. Advertisements for 5 Units for rent on Airbnb, including renter reviews, amount of rentals each month per unit (5 pages)
- 18D. Photos of exterior of property (12 pages)
- 18E. District Warrant showing acceptance of Ch. 148, Section 26H (2 pages)
- 18F. Building permit applications, permits, town documents (8 pages)
- 18G. Rental application and renewal application; BOH Inspection for Rental Permit (9 pages)
- 18H. Correspondences between Fire Inspector and Ms. Dunlavy, and Wareham Bldg. Commissioner (11 pages)
- 18I. Correspondences between Lt. Feeney, Ms. Dunlavy and Wareham Town Inspectional Services (20 pages)
- 18J. Onset Fire Department emergency responses to 4 Prospect Ave (2 pages)

19. Confirmation of acceptance of M.G.L. c. 148, s. 26H by the Onset Fire District (dated 10/9/2020)

E) Subsidiary Findings of Fact

- 1) By written Order dated July 13, 2020 and received by Ms. Carolyn Dunlavy on or about July 17, 2020, the Onset Fire Department required automatic sprinklers to be installed throughout a building located at 4 Prospect Ave, Onset, Massachusetts. The Order was issued pursuant to the provisions of M.G.L. c. 148, section 26H. On August 21, 2020, the Appellant filed a timely appeal of the determination with the Automatic Sprinkler Appeals Board. Per Governor Charles D. Baker's Emergency Executive Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, s. 20 signed and dated March 12, 2020 and in effect at the time, the Board held a video conference hearing on this matter on October 14, 2020.
- 2) A review of the Order of Notice issued by the Onset Fire Department indicated that the Department had cited the Appellant for both M.G.L. c. 148, s. 26G and M.G.L. c. 148, s. 26H. Lt. Feeney indicated that the order was issued for s. 26G due to the size of the building, which was in excess of 7,500 s.f., and because the property was being operated as a business. Lt. Feeney indicated further that the order was issued for s. 26H due to the number and transient nature of the occupants of the subject property
- 3) After some discussion with the Board, Lt. Feeney agreed that due to the fact that the 4 Prospect Ave., Onset was being used for residential purposes, M.G.L. c. 148, s. 26G was inapplicable as there is an express statutory exemption for buildings used for residential purposes. Therefore, the Board limited the scope of testimony and evidence presented to only that which pertained to M.G.L. c. 148, s. 26H.
- 4) According to testimony and documentation provided by the Onset Fire Department, the Onset Fire District, accepted the provisions of M.G.L. c. 148, section 26H on or about May 15, 2015. The Appellants did not dispute Onset Fire District'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.
- 5) The Appellant described the property as a 4 story building, 4 unit multi-family building. The basement level is used for storage only. The 1st floor contains one (1) unit with 4 bedrooms, 2 baths, and a kitchen. One of the bedrooms in this unit contains an on suite bathroom. The 2nd floor contains one (1) unit with 4 bedrooms, 2 baths, and a kitchen. The 3rd floor contains one (1) unit with 3 bedrooms and 1 bathroom. The 4th floor contains one (1) unit with 3 bedrooms and 1 bathroom.

- 6) The Appellant testified that while the property is residential and she lives on site, she is also running this as a business, as the other units on the property are rented out throughout the year and at various times to unrelated persons. During the summer months from June to mid-August, rentals are to coaches, staff, and players of the Cape Code Baseball League and during other portions of the year, the units are rented through the website Air B n B. She further testified that the units have recently rented to traveling nurses (which were unrelated). She indicated that payment for the rentals is made by the individual and/or group who made the reservation, as a single payment.
- 7) The Appellant stated that the rentals for the property are not, in her opinion, transient in nature because most but not all of the rentals are for more than 30 days in length. In addition, she does not believe the property is subject to the provisions of M.G.L. c. 148, s. 26H, which states “6 or more renters” and her property only has 4 units being rented. The Appellant reiterated that she does not believe her property is being used as a “lodging or boarding house” since all units are have their own kitchens and bathrooms. Those facilities are not shared with other renters at the property and that each unit has its own standalone entrance and exit.
- 8) The Appellant indicated that no alterations or modifications have been made to the property since its date of purchase except for a hard wired fire alarm system installed at the request of the Onset Fire Department. In addition, the Appellant stated that at the time the property was purchased in March 2018, she was not advised that sprinklers may need to be installed in the building. Furthermore, the Appellant argued that the Certificate of Occupancy prepared by the building official and contained in the submitted exhibits (Exhibit 8) stated clearly “sprinklers not needed.”
- 9) Given the May 15, 2015 acceptance date of s. 26H by the Onset Fire District, the provisions of that section were previously unenforceable until May 15, 2020.
- 10) The Appellant further testified that if the Board were to order sprinklers to be installed throughout the building, that additional time would be needed, without providing a specific estimate of how much, to secure funding and to complete the work. The Appellant only offered that a sprinkler system would “cost tens of thousands of dollars” when asked to provide the cost of sprinklers at the subject property.
- 11) In support of the Order of Notice issued by the Onset Fire Department, Lt. Feeney testified that in June 2020 he became aware that there were 5 units being rented at the property at 4 Prospect Ave, Onset. Previously, he was only aware of 4 apartments being used for long term stays. As a result, the Onset Fire Department began its investigation and was able to determine, based upon information on the website Air B n B, that there were 5 units available for rent and that each unit could accommodate more than 6 people who were unrelated.
- 12) Lt. Feeney stated that at the time the investigation into the property began, there were 5 units available to rent, 2 of which were on the first floor, and not the 4 units the Appellant indicated. The Appellant testified that at the beginning of 2020, she had been stuck in

California due to the COVID-19 pandemic and began renting out her unit for additional revenue.

- 13) When asked by the Board what would constitute an adequate system of sprinklers in the subject property, Lt. Feeney stated that he believes a commercial system would be most appropriate given the overall size of the building, in addition to the stairway leading to each unit. Both Lt. Feeney and Lt. Sniger expressed a desire to work with the Appellant and a sprinkler engineer to determine the best system for the property. In addition, per the Order of the Onset Fire Department, they would request that plans for said sprinkler system be submitted by January 13, 2021 and that the sprinkler installation be completed by January 13, 2022. However, Lt. Feeney indicated that the Department would be agreeable to additional time if needed.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The Board finds that on or about May 15, 2015, the Onset Fire District adopted the provisions of M.G.L. c. 148, section 26H.
- 2) Section 26H 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) The Appellant uses the website Air B n B as a hosting platform that allows her to advertise, list or offer the use of the subject property, to collect the payment of rent on an accommodation and a person to arrange, book, reserve or rent space at the subject property for short or long terms.
- 4) The Board also finds that the subject house and the arrangement of renting the units out to unrelated persons does not fall within any of the specific exceptions enumerated in the second paragraph of section 26H
- 5) Based upon the testimony and evidence received at the hearing, the Board finds that the subject property is clearly used and operated for lodging and/or boarding house accommodations and falls within the requirements of section 26H.

G) Decision and Order of the Automatic Sprinkler Appeals Board

Based upon the documentation and testimony received, the Board hereby **upholds** the Order of the Onset Fire Department and requires the installation of an adequate system of sprinklers throughout all portions of the subject building in accordance with the provisions of M.G.L. Chapter 148, section 26H. The Board hereby determines that an adequate system of sprinklers may consist of an NFPA 13R system. This decision is subject to the following conditions:

1. Plans for the installation of sprinklers shall be submitted to the Head of the Onset Fire Department by July 1, 2021; and
2. The installation of the sprinkler system shall be completed by October 14, 2022.

H) Vote of the Board

Maurice Pilette, Chairman	In Favor
Patricia Berry, Vice Chair	In Favor
Brian Tully, Boston Fire Marshal	In Favor
Alexander MacLeod	Opposed
Kristin Kelly	In Favor
Thomas Coulombe	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: October 27, 2020

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

Carolyn Dunlavy
 26 Lincoln Ave
 Buzzards Bay, Massachusetts 02532

Lt. Robert P. Feeney and Lt. Richard Sniger
 Onset Fire Department
 5 East Central Ave, P.O. Box 44
 Onset, Massachusetts 02258