

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

(978) 567-3181 Fax: (978) 567-3121

CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LT. GOVERNOR

THOMAS A. TURCO, III
SECRETARY

MAURICE M. PILETTE
CHAIRMAN

PATRICIA BERRY
VICE CHAIR

Docket # 20-06
90 Gatehouse Road
Amherst, 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 Amherst Fire Department to require Mr. Perry Messer, owner of the Hampshire Athletic Club (hereinafter the “Appellant”), to install automatic sprinklers throughout the entire facility located at 90 Gatehouse Road, Amherst, Massachusetts.

B) Procedural History

By written notice dated October 27, 2020 and received by the Appellant on October 27, 2020, the Amherst 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 throughout the subject facility located at 90 Gatehouse Road, Amherst, Massachusetts. On December 10, 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 January 13, 2021.

Appearing at the hearing on behalf of the Appellant were: Paul Weinberg, Esq., Mr. Perry Messer, owner, Hampshire Athletic Club; and Mr. Jason Newman, Architect. Appearing on behalf of the Amherst Fire Department was Chief Tim Nelson; Assistant Chief Jeff Olmstead; Assistant Inspector, Michael Roy; and David Waskiewicz, Sr. Building Inspector, Town of Amherst.

Present for the Board at the hearing was: Maurice M. Pilette, Chairman; Patricia Berry, Vice Chair; Deputy Chief Brian Tully (designee of the Boston Fire Commissioner); Alexander MacLeod; Kristin Kelly; and George Duhamel and 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 Amherst 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 by Appellant
2. Order of Notice issued by the Amherst Fire Department (dated 10/27/2020)
3. Schedule of Attachments and Statement of Request for Relief filed by Dietz & Company Architects on Behalf of Property/Business Owner, Perry Messer (dated 12/8/2020)
4. Drawings of Hampshire Athletic Club Renovations and Addition (9 pages)
5. Pool Area Product Data Sheet – Floor Finish (Poly-thane # 2 High Solids)
6. Pool Area Product Data Sheet – Pool Area Roof Panels
7. Pool Area Product Data Sheet – Pool Area Heat Detectors
8. Pool Area Product Data Sheet – Pool Area Storefront Glazing
9. Architectural Drawings including floor plans, exterior elevations, and automatic sprinkler shop drawings from by Dietz & Company Architects
10. Notice of Hearing to Appellant (dated 12/21/2020)
11. Notice of Hearing to Amherst Fire Department (dated 12/21/2020)
12. Memorandum regarding Remote Hearing Procedures (dated 5/7/2020)
13. Copies of two Memoranda that accompany Hearing Notices (dated 5/1/2020)

E) Subsidiary Findings of Fact

- 1) The Order of the Amherst Fire Department was issued as a result of the Appellant's repairs and upgrades to the Hampshire Athletic Club and its four buildings, as a result of a November 2019 fire at the facility. The fire was contained to the main level and mezzanine level of the wood framed building on site and caused damage to approximately 5,780 s.f. of floor area or approximately 14% of the total floor area of the facility. The Order of the Amherst Fire Department specifically ordered the Appellant to install "an adequate system of automatic sprinklers . . . throughout the entire structure; to include the pool area".
- 2) The Appellant sought only partial relief from the Amherst Fire Department's order, specifically as it pertained to the requirement to install sprinklers in the pool area of the Hampshire Athletic Club. The Appellant testified that he was fully prepared to comply with the Order of the Amherst Fire Department as it pertained to the remaining areas of the facility.
- 3) There was no dispute between the parties that M.G.L. Chapter 148, s. 26G applied, given the overall cost and nature of the work being performed at 90 Gatehouse Road, Amherst, Massachusetts.
- 4) The Appellant's architect testified that the subject pool area is a "1-story, non-combustible structure composing approximately 5,545sf, or 13% of the overall gross floor area of the facility." The architect testified that the pool area is a concrete slab on grade with a painted steel structure roof, covered by roof panels. This is a wide open space with just a few chairs on either side of the pool. All finishes, including the primary structure, exterior walls, and

floor finishes are all non-combustible and there are four exits in the pool area straight to the outdoors. In addition, the pool area currently has three manual pull stations and two speaker/strobe devices. The architect also testified that while the occupancy of the pool area is 108, the total number of people who use the space rarely exceeds 20-25 and is more commonly between 8 and 10 people.

- 5) The architect stated that there were several challenges to installing an automatic sprinkler system in the pool area, including the highly corrosive environment, as a result of high humidity, which causes a substantial threat of corrosion to metallic building components; the expense of a galvanized and/or stainless-steel sprinkler system with coated sprinkler heads to eliminate corrosion issues; and access and lack of serviceability to both install and maintain a sprinkler system direct over a pool. The installation of such a sprinkler system would either require the initial draining and later refilling of the pool (at an estimated cost of \$10,000), or a rolling scaffolding for installation.
- 6) The architect suggested that in lieu of installing sprinklers, the Appellant would be willing to install other fire protection devices, including heat detectors around the pool and in the pool mechanical room, additional fire extinguishers and pull stations. The architect testified that the Appellant had not received a definitive cost estimate for such work but that their research had indicated that a traditional sprinkler system for the pool area would cost approximately \$8 per square foot or roughly \$43,000 total. A system with coated sprinkler heads using galvanized components would be approximately \$10 per square foot or roughly \$55,000 total for the pool area.
- 7) The Appellant testified that these building renovations and upgrades are being completed, in part, due to a previous fire. The Appellant testified that his cost to install sprinklers in the other un-sprinklered portions of the building are approximately \$50,000. He stated that the insurance proceeds from the fire have already been spent and that any costs to further upgrade the facility are coming directly from him. However, due to the hardships of running a business during the COVID-19 pandemic, the Appellant is facing a more severe financial hardship if he has to install sprinklers within the pool structure. Furthermore, the Appellant stated that if sprinklers were required in the pool building, he would need additional time to find financing for the work. The Appellant was unable to specify how much additional time he would need in order to make that determination.
- 8) Assistant Fire Chief Olmstead from the Amherst Fire Department testified that the Order was issued to the Hampshire Athletic Club because of the nature, scope and cost of the work being proposed. The facility exceeds 7,500 s.f., the amount of floor area which triggers the enhanced provisions of s. 26G.
- 9) Assistant Fire Chief Olmstead testified that the Department is pleased that the Appellant is working to upgrade the sprinkler system in all portions of the facility but believes that M.G.L. 148, s. 26G requires sprinklers in the pool area. When questioned by the Board as to the accessibility to the site and water accessibility, Assistant Chief Olmstead indicated that the Department is easily able to access the property and that water accessibility is not a concern, citing the Department's ability to successfully fight the November 2019 fire at the site.
- 10) The Amherst Fire Department ordered that the entirety of the subject property be sprinklered by October 1, 2021.

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) The parties stipulated that the subject building is over 7, 5000 s.f. and is subject to the sprinkler requirements pursuant to M.G.L. c. 148, s. 26G.
- 3) The Board agrees that the provisions of M.G.L. Chapter 148, s. 26G apply to the proposed building. However, based upon the unique characteristics of the building as presented at the hearing and stated herein, including the structure’s limited use, uniquely and highly corrosive environment, occupancy and fire load, the Board hereby determines that the installation and maintenance of a full sprinkler system would not be practical. However, a modified system that would offer some level of sprinkler protection within the pool area would be appropriate.
- 4) Although the Appellant testified that compliance with the provisions of M.G.L. Chapter 148, s. 26G would cause or exacerbate an existing financial hardship, mindful of the fact that the Appellant’s business has been heavily impacted by the COVID-19 pandemic and accompanying business closures and restrictions, such a variance by the Board, if based solely on the cost of compliance, would be without legal justification and would frustrate the clear legislative intent of this important life safety provision.

G) Decision and Order

Based upon the evidence presented demonstrating a uniquely corrosive environment and in consideration of the unique characteristics and limited use of the pool area of the subject building, the Board hereby **modifies** the determination of the Amherst Fire Department, requiring the Appellant to install sprinkler protection in the entirety of the subject building, including a portion of the pool area in accordance with the provisions of M.G.L. c.148, s. 26G.

Accordingly, an adequate system of automatic sprinklers shall be installed 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 60 days from the date of this written decision;
- This adequate sprinkler system shall be installed throughout the subject building and shall extend into the pool area, consistent with industry standard, only so far as to provide adequate sprinkler protection adjacent to the curtain wall in the pool area;
- The pool mechanical room shall be provided with a local suppression system or equivalent system approved by the Amherst Fire Department; and

- The installation of an adequate sprinkler system shall be no later than October 1, 2021.


H) Vote of the Board

Maurice Pilette, Chairman	In Favor
Patricia Berry, Vice Chair	In Favor
Deputy Chief Brian Tully, designee	In Favor
Alexander MacLeod	In Favor
Kristin Kelly	In Favor
George Duhamel	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,



Maurice M. Pilette, Chairman

Dated: January 20, 2021

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

Perry Messer, owner of Hampshire Athletic Club
Hampshire Athletic Club
306 King Street
Northampton, MA 01060

Chief W. Tim Nelson
Amherst Fire Department
68 No. Pleasant Street
Amherst, Massachusetts 01004-0654