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SECRETARY

**Docket # 2023-01**  
**469 Winthrop 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 Gary Eucalito of Garrett Homes (hereinafter the “Appellant”), to install automatic sprinklers in a proposed building located at 469 Winthrop Street, Rehoboth, Massachusetts.

**B) Procedural History**

By written notice dated January 26, 2023 and received by the Appellant on January 26, 2023, 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 469 Winthrop Street, Rehoboth, Massachusetts. On February 28, 2023 the Appellant filed a timely appeal of the determination with the Automatic Sprinkler Appeals Board. The Board held a hearing relative to this appeal on April 12, 2023 via video conference.

Appearing at the hearing were Douglas Grunert, Senior Project Manager, BKA Architects and Gary Eucalito of Garrett Homes for the Appellant. Appearing on behalf of the Rehoboth Fire Department was Chief Frank Barresi and Bill McDonough, Rehoboth Building Inspector.

Present for the Board at the hearing was: Maurice M. Pilette, Chairman; Patricia Berry, Vice Chair; Deputy Chief Patrick Ellis (designee of the Boston Fire Commissioner); Chief Michael Spanknebel; Kristin Kelly; Daniel “Gary” Rogers; and George Duhamel. 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 (dated 2/27/2023)
2. Proposed Retail Sprinkler Requirement / Statement in Support of Appeal (dated 2/27/2023)
3. Order of Notice from Rehoboth Fire Department (dated 1/26/2023)
4. Copy of previously issued decision of Automatic Sprinkler Appeals Board re: Case 2019-05, 7 Park Street, Rehoboth (dated 11/18/2019)
5. Retail Shell Conceptual Elevations (dated 1/4/2023)
6. Preliminary Site Plans (dated 10/25/2022)
7. Rehoboth MA Code Summary (submitted by Appellant)

**E) Subsidiary Findings of Fact**

- 1) By written notice dated January 26, 2023 and received by the Appellant on January 26, 2023, 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 469 Winthrop Street, Rehoboth, Massachusetts. On February 28, 2023 the Appellant filed a timely appeal of the determination with the Automatic Sprinkler Appeals Board. The Board held a hearing relative to this appeal on April 12, 2023 via video conference.
- 2) The Appellant owns the property at 469 Winthrop Street, Rehoboth, Massachusetts and is in the process of permitting for construction of a building with a total gross finished space of 10,640 s.f., and would be a general commercial building used as a mercantile. The Appellant's architect testified that the building would be one story in height (slab on grade), constructed of non-combustible finishes including steel on 3 sides, masonry in the front, and with a flat roof. The building will also require the installation of well water and septic services.
- 3) The Appellant conceded 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 Fire Chief and Building Commissioner at the hearing. The Appellant testified that due to the location of this parcel of land, essentially in the middle of Town, that they are unable to gain access to municipal water from the abutting Towns of Attleboro or Seekonk, both approximately 3-3½ miles away.
- 5) The Appellant's architect testified that there was no source of water legally available on or off the land, and this was not disputed by the Fire Department.
- 6) The Appellant's architect, Mr. Grunert, testified that the estimated cost to install an in-ground fire protection tank and sprinkler system to be serviced by the tank would be \$78,000.00 and \$85,000.00 respectively, for a total cost of \$163,000.00 and stated that these costs would be incredibly cost prohibitive for the project.
- 7) When questioned by the Board regarding other fire safety features within the building, Mr. Mr. Grunert stated that smoke detectors and duct smokes would be installed, as well as a fire alarm, in accordance with the requirements of the Rehoboth Fire Department.
- 8) In further support of their position regarding the availability of water and water pressure, the Appellant cited an earlier case decided by the Board (*Docket # 2019-05, 7 Park Street, Rehoboth, 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"*.
- 9) Chief Barresi 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.
- 10) Chief Barresi stated that while the Town of Rehoboth does not have a municipal water supply, there are other five (5) buildings within the town that have sprinkler systems, run with holding tanks, diesel pumps and generators. He conceded that they may be cost prohibitive but sprinklers are "do-able". When specifically questioned regarding the property located at 469 Winthrop Street, Rehoboth, the Chief stated that sufficient water and water pressure does not in fact exist at or in the area of 469 Winthrop Street, Rehoboth, Massachusetts.
- 11) Lastly, Chief Barresi spoke to the previously decided case of 7 Park Street, Rehoboth and stated that following the Board's decision to reverse the sprinkler requirements in that case (issued in November 2019), the property suffered a catastrophic fire loss and burned to the ground in February 2022. As a result, the Chief felt it was necessary to issue his Order to require sprinklers in this proposed structure, despite the lack of available water and water pressure.

**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 10,640 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 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 469 Winthrop 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
Kristin Kelly	In Favor
Daniel “Gary” Rogers	In Favor
Deputy Chief Patrick Ellis, designee	Opposed
Chief Michael Spanknebel	Opposed
George Duhamel	Opposed

**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,



Patricia Berry, Vice Chair

Dated: April 19, 2023

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

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