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SECRETARY

Docket # 2023-05
34 Wachusett Street
Worcester, 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. 26H, and Chapter 6, s. 201, relative to a decision of the Worcester Fire Department to require Mary Hubbe of the Lancaster Realty Trust (hereinafter the “Appellant”), to install automatic sprinklers in a building located at 34 Wachusett Street, Worcester, Massachusetts.

B) Procedural History

By written notice dated February 6, 2023 and received by the Appellant on February 6, 2023, the Worcester Fire Department issued an Order pursuant to the provisions of M.G.L. c. 148, s. 26H, to the Appellant requiring automatic sprinklers to be installed in a building at 34 Wachusett Street, Worcester, Massachusetts. On March 22, 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 June 14, 2023 via video conference.

Appearing at the hearing on behalf of the Appellant was: Benjamin Kafka, Esq.; Michael DiMascio, Solutions Engineering, Inc.; and Mary Hubbe, Trustee, Lancaster Realty Trust.

Appearing on behalf of the Worcester Fire Department was Captain Thomas Bull; Lt. John Ushinski; and Lt. Katie Harrington.

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; Alexander McLeod; Kristin Kelly; Daniel “Gary” Rogers; and George Duhamel. Rachel E. Perlman, Esquire, was the Attorney for the Board.

C) Issue(s) Presented

Whether the Board should affirm, reverse or modify the determination of the Worcester Fire

Department requiring sprinklers in the Appellant's building, in accordance with the provisions of M.G.L. c. 148, s. 26H?

D) Evidence Received

1. Application for Appeal filed by Appellant (dated 3/22/2023)
2. Appellant's Statement in Support of Appeal (dated 3/21/2023)
3. Order of Notice from the Worcester Fire Department (dated 2/6/2023)
4. Building Photographs (pages 6-9)
5. Copy of M.G.L. c. 148 (pages 10-14)
6. Excerpts from the Massachusetts State Building Code (page 15)
7. City of Worcester Real Estate Tax Notice – FY2023 (page 16) (dated 12/30/2022)
8. Affidavit of property owner, Mary Hubbe (pages 17-82) with accompanying exhibits (dated 3/21/2023)
 - 8-1. Floor Plans for Units 1, 2 & 3
 - 8-2. Copy of the current lease for Unit 1 with photographs
 - 8-3. Copy of the current lease for Unit 2 with photographs
 - 8-4. Copy of the current lease for Unit 3 with photographs
9. Lancaster Realty Trust's Memorandum of Law and Exhibits (page 83 to end) (dated 3/21/2023)
10. Agreed upon Stipulations of Fact submitted by the Appellant and Worcester Fire Dept. (dated 5/26/2023)
- 11A-N. Photographs of the Interior and Exterior of Property
12. Copy of Automatic Sprinkler Appeals Board Case Decision # 2019-06, 29 Nutting Street, Fitchburg (dated 2/18/2020)

E) Subsidiary Findings of Fact

- 1) By written notice dated February 6, 2023 and received by the Appellant on February 6, 2023, the Worcester Fire Department issued an Order pursuant to the provisions of M.G.L. c. 148, s. 26H, to the Appellant requiring automatic sprinklers to be installed in a building at 34 Wachusett Street, Worcester, Massachusetts. On March 22, 2023, the Appellant filed a timely appeal of the determination with the Automatic Sprinkler Appeals Board.
- 2) According to testimony and documentation provided by the Worcester Fire Department, the City of Worcester accepted the provisions of M.G.L. c. 148, section 26H on or about September 25, 1990. The Appellants did not challenge the legality of the City's acceptance of the statute.
- 3) 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.

- 4) The Appellant and the Worcester Fire Department submitted into the record, as Exhibit 10, Agreed upon Stipulations of Fact. The stipulations stated that 34 Wachusett Street, Worcester, MA is a three-story building, containing three separate and independent dwelling units. The property is classified by the Worcester Assessor's Department as Class 1 (Residential), Class 105, Class Description: Three family.
- 5) Each unit is located on its own floor and each apartment contains an independent kitchen/dining room, bathroom, living room, and 3 separate bedrooms, and a fourth room to be used at the tenants' discretion. Counsel for the Appellant stated that the lessees of each unit sign one (1) year leases, with the option of subleasing to one additional person. They stated that at the time of the City's Order of Notice (February 2023), all three units in the building were being leased for one (1) year terms to 3 individuals and one additional sub-lessee in each unit.
- 6) Counsel for the Appellant argued that tenants have exclusive rights to the unit they are renting and that each unit is separately responsible for their own utilities (gas and electric). In addition, there is no shared lodging space such as bathrooms or kitchens, which would be found in a traditional lodging or boarding house. Furthermore, tenants do not have the right or ability to enter the other apartments in the building for which they do not live.
- 7) Counsel for the Appellant cited *City of Worcester v. College Hill Properties, LLC* (465 Mass. 134 (2013)), for the proposition that "lodgers" are distinguishable from "tenants".
- 8) In support of the Order of Notice, Captain Bull of the Worcester Fire Department testified that the building is a triple decker and that each unit is rented to 3 or 4 individuals, making a total of 9-12 total individuals in the building who are unrelated, which would trigger the provisions of M.G.L. c. 148, s. 26H.
- 9) Captain Bull stated that an inspection of the property revealed that in some of the units there are keyed locks on the bedroom doors, which indicates a single occupancy. This, in the department's eyes, demonstrates that the building is being used as a lodging or boarding house. In addition, Captain Bull testified that he believes tenants in the building can move freely from unit to unit through the use of outside exterior stairwells.
- 10) Captain Bull also stated that the property had suffered a prior fire loss, which was part of the decision to require the installation of sprinklers throughout.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The Board finds that on or about September 25, 1990, the City of Worcester adopted the provisions of M.G.L. c. 148, section 26H. Said law requires the installation of a system of automatic sprinklers throughout certain lodging or boarding houses within five years of said adoption. 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 . . .”.

- 2) The Board finds that the units on the 1st, 2nd and 3rd floors are three separate and independent units, being operated as apartments. Each apartment unit features a living room, kitchen, bathroom, and separate bedrooms. Each apartment unit is accessible through a locked door that the tenant(s) have sole access to. The apartment units are occupied by unrelated college-students under a long-term lease arrangement. In this instance, the Board finds that the apartment units are separate and distinct from one another and not occupied as lodgings so as to trigger Section 26H.
- 3) This case is distinguishable from many prior appeals of fire department orders enforcing the provisions of M.G.L. c. 148, s. 26H. A significant number of those appeals involve houses that are leased or owned and operated by various organizations or persons that provide, usually at a cost to the occupants, communal living accommodations and at times, various forms of support to the occupants. In those cases, in finding that multi-unit properties were single lodging houses under Section 26H, the Board analyzed factors which included, but were not limited to, the transient nature of the occupants; that the property was leased to a single commercial enterprise which then let rooms to individual unrelated occupants; the house being managed by a “house manager” and occupants having to comply with “house rules”; that no individual occupants of the property acquired a property interest, or possession in housing accommodations, but only had the right to live at the property in a designated bed or space which remained in possession of the owner/leaseholder and in those cases, the type of occupancy was different from that which is ordinary and expected in a single, two or three-family structure.

G) Decision and Order

Based upon the evidence presented to the Board and for the reasons stated herein, the Board **reverses** the Order of the Worcester Fire Department to require sprinkler protection in the building located at 34 Wachusett Street, Worcester, Massachusetts pursuant to M.G.L. c. 148, s. 26H.

H) Vote of the Board

Maurice Pilette, Chairman	Opposed
Patricia Berry, Vice Chair	In Favor
Deputy Chief Patrick Ellis, designee	In Favor
Chief Michael Spanknebel	In Favor
Alexander McLeod	In Favor
Kristin Kelly	In Favor
Daniel “Gary” Rogers	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,



Patricia Berry, Vice Chair

Dated: July 10, 2023

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

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