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

Automatic Sprinkler Appeals Board

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DANIEL GARY ROGERS
CHAIR

KRISTIN M. KELLY
VICE CHAIR

Docket # 2024-02
261 East Main Street
Westfield, 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 Westfield Fire Department to require Brixmor Property Group (hereinafter the “Appellant”), to install automatic sprinklers in the building located at 261 East Main Street, Westfield, Massachusetts.

B) Procedural History

By written notice received by the Appellant on March 11, 2024, the Westfield Fire Department issued a determination requiring automatic sprinklers to be installed throughout the subject building. According to the notice, the determination was issued pursuant to the provisions of M.G.L. c. 148 § 26G. On April 18, 2024, the Appellant timely filed an appeal of the determination with the Automatic Sprinkler Appeals Board. The Board held a hearing relative to this appeal on August 14, 2024, via video conference.

Appearing on behalf of the Appellant were: Michael Pietras, P.E., Engineering and Land Solutions, Inc. and TJ McKeever, Brixmor Property Group. Appearing on behalf of the Westfield Fire Department was Erik Valdes, Esq., Assistant City Solicitor and Deputy Chief Seth Ellis.

Present for the Board at the hearing were: Daniel Gary Rogers, Chair; Kristin Kelly, Vice Chair; State Fire Marshal Jon M. Davine; Deputy Chief Patrick Ellis (designee of the Boston Fire Commissioner); Chief Michael Spanknebel; Alexander MacLeod; and Patricia Berry. Rachel E. Perlman, Esq., served as counsel to the Board.

C) Issue(s) Presented

Whether the Board should affirm, reverse or modify the determination of the Westfield 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 4/18/2024)
2. Order of Notice of the Westfield Fire Department to Brixmor Property Group (dated 3/11/2024)
3. Figure 1 – WestGate Plaza, Westfield, MA (Undated)
4. Statement in Support of Appeal from Appellant’s expert, Engineering and Land Solutions, Inc. with Appendices (dated 6/26/2024)
- 4A. Appendix A - Figure 1 – West Gate Plaza
- 4B. Appendix B – City of Westfield GIS Image w/aerial overlay
- 4C. Appendix C – Fire Deputy Chief Warren’s Order
- 4D. Appendix D – Demo Floor Plan and Proposed LS Plan (2 pages)
5. Memorandum of Law from the City of Westfield with accompanying documents
- 5A. Affidavit of Deputy Chief Ben Warren
- 5B. Certified mail receipt for the mailing of the Order of Notice (dated May 11, 2024)
- 5C. Order of Notice dated March 11, 2024
- 5D. Order of Notice dated August 10, 2018, but incorrectly updated by word processing programing to May 9, 2024
- 5E. Building’s property card on record with the City of Westfield (8 pages)
- 5F. Drone footage of building attached after approval (smaller file)
- 5G. Drone footage of building attached after approval (larger file)

E) Subsidiary Findings of Fact

- 1) By written notice received by the Appellant on March 11, 2024, the Westfield Fire Department issued a determination requiring automatic sprinklers to be installed throughout a building located at 273B East Main Street, Westfield, Massachusetts.
- 2) Mr. Pietras, the Professional Engineer of record, testified that the property at issue is a commercial shopping plaza/strip mall known as the WestGate Plaza, a two-building strip mall type configuration that was reportedly constructed in 1971. The property is 14.78 acres in total.
- 3) Mr. Pietras testified that one side of the shopping plaza houses commercial businesses including an Ocean State Job Lot (# 231), PetSmart (# 273B), and FiveBelow (#267), while the other side of the plaza houses TJ Maxx (#191) and ALDI (#235), with a group of smaller, unsprinklered commercial stores between the two main buildings (#249-261).
- 4) Mr. Pietras testified that the two primary buildings (on either end of the plaza) were constructed as two separate, standalone buildings. The buildings were later connected with a small roof that runs above a walkway between the two buildings which measures approximately 10 feet from building edge to building edge. He stated that the connecting roof accounts for approximately 120 s.f.
- 5) Mr. Pietras stated that the main building at issue is 67,033 s.f. in total size and is currently occupied, in part, by PetSmart, which occupies 20,500 s.f. and accounts for 30.6% of the

total building space. He stated that 58,198 s.f. of the building or 87% is already sprinklered with an NFPA-13 system.

- 6) During testimony, Mr. Pietras stated that the Brixmor Property Group was unclear on the exact triggering event for the Westfield Fire Department to issue the Order to install sprinklers. However, in the Statement in Support of the Appeal signed by Mr. Pietras, he stated that the “triggering” activity for the Order was the “permit application for the PetSmart buildout.”
- 7) Mr. Pietras described the remodeling work within the PetSmart space as: bathroom remodeling, new signage, window glazing, concrete floor polishing, installation of display shelves and build out of a veterinarian space. Mr. Pietras further stated the demo and renovations of the space did not affect more than 1/3 of the overall building square footage. He stated that the PetSmart space was already sprinklered prior to renovations and was permitted to remain sprinklered with an NFPA-13 system. He stated that there were no alterations to the life safety or physical characteristics of the space.
- 8) Mr. Pietras stated that he does not believe that the triggering requirement is met in this case, as the PetSmart space already has a sprinkler system and because the project only affects 30.6% of the total gross square footage of the total building.
- 9) In support of the Order of Notice, the representatives for the Westfield Fire Department testified that while the Order was issued for 273B East Main Street (PetSmart), they view the property to be a single building running from one end to another. Westfield Deputy Chief Ellis testified that the alterations to the PetSmart space occurred in 2024 and affected 20,500 s.f.
- 10) Westfield Deputy Chief Ellis testified that according to city records, the buildings on the property were constructed at separate times, with the main portion of the building (from Ocean State Job Lots to TJ Maxx) being constructed in 1971. In 2021, the second building containing ALDI was constructed. In total, City of Westfield records show that the entire structure measures 119,030 s.f. in size and is valued at \$99.7 million. He stated that the portion of the building containing the smaller commercial stores in the middle, is not sprinklered.
- 11) Attorney Valdes stated that the City became aware of the project following the permit application. He stated that they also reviewed a prior guidance document issued by the Automatic Sprinkler Appeals Board dated January 25, 2024¹ regarding M.G.L. c. 148, s. 26G and triggering events. Attorney Valdes stated that the memo indicates that a local authority has the ability to review a project and to determine if the work is part of a “series of modifications being conducted over a short period (i.e. 5 years or less), it may be reasonable to conclude that such work could be part of a long range project resulting in “major alterations” to the entire building, or a substantial portion of it, thus triggering the sprinkler requirements.”

¹ Advisory regarding M.G.L. c. 148, s. 26G issued by the Automatic Sprinkler Appeals Board
<https://www.mass.gov/doc/updated-advisory-on-mgl-c-148-s-26-g/download>

- 12) Based upon the guidance memorandum, the City of Westfield determined that there were several triggers on this project including: the renovations and upgrades to the PetSmart space; the combining of two vacant store units into one larger unit for FiveBelow; the installation of a new sprinkler system in the FiveBelow space; and the construction and connection of the ALDI structure to the existing commercial structure.
- 13) Westfield Deputy Ellis testified that the ALDI store was initially permitted as new construction, it was permitted to be a separate structure with a 6–8-inch gap between the existing and new building. However, approximately six months following the building’s construction in 2021, the ALDI building was connected to the TJ Maxx building next door. Westfield Deputy Ellis could not provide a definitive “connection” date but described the connection as being “unpermitted” work.
- 14) Attorney Valdes further referred to the Board’s guidance memorandum which refers to both nature of work and scope of work as being considered as triggers for M.G.L. c. 148, s. 26G. For the scope of work, the Board’s January 25, 2024 guidance document states that consideration should be given to whether the square footage affected by work is more than 33% of the total gross square footage of the structure or more than 33% of the assessed value of the property.
- 15) Westfield Deputy Ellis stated that the alterations to the PetSmart space affected 20,500 s.f. the alterations in FiveBelow space affected 8,750 s.f., and the construction of the ALDI structure was an addition of 18,518 s.f. Based upon his calculations, Westfield Deputy Ellis stated that the value of all work performed, exceeded 33% of the assessed value of the building. Further, it was his position that major alterations were made to the existing structure (PetSmart and FiveBelow spaces) through demolition of ceilings, removal of subflooring, and repositioning and removal of walls and through the connection of the ALDI building to the existing structure at 273B East Main Street.
- 16) Attorney Valdes stated that the triggering requirements under M.G.L. c. 148, s. 26G are all present and believes that even if the Board were to determine that there are two separate structures at this location, the modifications to the structure at 273B East Main Street and the connection of the ALDI space to the existing structure, still trigger the sprinkler requirements of s. 26G.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The 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.” The law is triggered if: (1) a new building or structure is constructed, (2) an addition is built onto an existing building or structure, or (3) major alterations or modifications are made to an existing building.
- 2) Based upon the exhibits submitted into the record and the testimony received during the hearing, the Board finds that the buildings located within the WestGate Plaza on East Main Street, Westfield are connected.

- 3) The representatives of the Appellant assert that the PetSmart portion of this complex is not undergoing major renovations and that the connection of the ALDI store to the commercial complex should not be subject to the sprinkler requirements of s. 26G, as both spaces are fully sprinklered. However, after close examination of the evidence, this Board determines otherwise.
- 4) The Board finds that following the construction of the ALDI building in 2021, the building was connected to the TJ Maxx space within six (6) months of construction, which constitutes an addition of 19,770 s.f. Further, the Board finds that demolition and upgrades were made to the PetSmart space in 2024 and which affected 28,948 s.f. The Board finds that 40% of the overall square feet of the structure was affected by both the addition and renovation.
- 5) The Board realizes that some buildings subject to the provisions of s. 26G may have a variety of characteristics and configurations involving multiple buildings or portions of buildings constructed on different dates, within different lot lines and possibly involving different owners. In such instances, the determination of whether a building or structure, or a complex or set of buildings or structures should be considered “one” building for the purposes of s. 26G sprinkler protection, is dependent upon many factors. Such factors include, but are not limited to: plot and property boundary lines; building ownership and control; building configuration and the location and nature of exterior walls and fire walls; the characteristics, dimensions and combustible fire load at the point of “connection” of two or more buildings, structures or portions thereof; the operational use relationship between said buildings, structures or portions; the nature and extent of existing fire protection and detection systems and the nature of smoke and fire behavior.
- 6) Although the subject buildings or portions of this building complex were apparently built at different times and by different owners, it is clear that the buildings within the WestGate Plaza are all connected physically and operationally and through common ownership and control and are considered one building for the purposes of triggering the requirements of M.G.L. c. 148, s. 26G.
- 7) The Board concludes, as it did in its January 25, 2024, memorandum, that a series of renovation projects conducted over a reasonably short period of time, may reasonably be combined to be considered “major” alterations or modifications, thus triggering the sprinkler requirements of s. 26G. Allowing property owners to divide renovations into smaller, incremental projects to avoid triggering the sprinkler mandate undermines the law’s preventive goal. Permitting such workarounds would allow buildings to continue operating with outdated or inadequate fire suppression systems, putting lives at risk and contravening the statute’s clear objective of prevention.

G) Decision and Order

Based upon the evidence presented to the Board and for the reasons stated herein, the Board **upholds** the Order of the Westfield Fire Department to require adequate system of sprinklers through the building located at 261 East Main Street, Westfield, Massachusetts in accordance with the requirements of M.G.L. c. 148, s. 26G. The specific deadlines are as follows:

- (1) The plans for the required system shall be provided to the Westfield Fire Department no later than 90 days from the date of the board's written decision; and
- (2) Installation of the adequate sprinkler system shall be completed no later than September 1, 2025.

H) Vote of the Board

Daniel Gary Rogers, Chair	In Favor
Kristin Kelly, Vice Chair	In Favor
Patricia Berry	In Favor
State Fire Marshal Jon M. Davine	In Favor
Deputy Chief Patrick Ellis, designee	In Favor
Chief Michael Spanknebel	In Favor
Alexander MacLeod	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,



Daniel Gary Rogers, Chair

Dated: September 23, 2024

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

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