



The Commonwealth of Massachusetts
Executive Office of Public Safety and Security
Fire Prevention Regulations Appeals Board

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CHAIRMAN

Docket # 2016-03
17 Holman Street
Attleboro, Massachusetts

FIRE PREVENTION REGULATIONS APPEALS BOARD

A) Statutory and Regulatory Framework

This matter relates to an application for an administrative appeal filed in accordance with Massachusetts General Laws Chapter 22D, section 5. The Appellant is seeking this Board's review of a determination of the City of Attleboro Fire Department, requiring corrections to a fence to provide adequate clearance of a fire hydrant. The fence is located at 17 Homan Street, Attleboro, Massachusetts on property owned by Raul Perdomo, (hereinafter referred to as the Appellant).

B) Procedural History

By an Order of Notice dated November 21, 2016 and received by the Appellant on the same date, Inspector Gregory S. Pion, Jr. of the Attleboro Fire Department issued an Order requiring the Appellant to provide a 36" clearance around the circumference of the subject fire hydrant located at 17 Homan Street, Attleboro, Massachusetts. On December 29, 2016, the Appellant filed an appeal of the department's determination with the Fire Prevention Regulations Appeals Board. The Board held a hearing on April 27, 2017, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant was Orlando F. deAbreu, Esq. and Raul Perdomo. Appearing on behalf of the Attleboro Fire Department was Fire Inspector Gregory S. Pion, Jr., District Fire Chief David G. Charest, and Attleboro Building Commissioner William McDonough.

Present for the Board were: Robert MacKendrick, Presiding Panel Member; Gary Keith; and William Laidler. Peter A. Senopoulos, Esq., was the Attorney for the Board.

C) Issue to be Decided

Should the Board affirm, reverse or modify the decision of the Attleboro Fire Department regarding a 36" clearance around the fire hydrant?

D) Evidence Received

1. Application for Appeal by Appellant
2. Authorization of Representation from Raul Perdomo
3. Affidavit of Mr. Perdomo in Support of Appeal
4. Google Map/Photograph of 18 Holman Street, Attleboro
5. Google Map/Photograph of 14 Morey Street, Attleboro
6. Photograph of Hydrant against Fence
7. Photograph of Fence
8. City of Attleboro Building Permit (dated 5/6/2014)
9. City of Attleboro – Fire Prevention and Enforcement Inspection Report (dated 11/21/2016)
10. 1st Notice of Hearing to Parties (dated 1/10/2017)
11. 2ND Notice of Hearing to Appellant (dated 3/27/2017)
12. 2ND Notice of Hearing to Attleboro Fire Department (dated 3/27/2017)
13. Copy of Guidance Document that accompanies Hearing Notices
14. Photographs of Other Hydrants in Attleboro
- 14A. Hydrant – South Main Street
- 14B. Hydrant – 33 Knight Street
- 14C. Hydrant – Seanna Road
- 14D. Hydrant – Pleasant Street
- 14E. Hydrant – South Main Street
15. Attleboro Fire Department Submission
- 15A. Hydrant at Issue – 17 Holman Street, Attleboro
- 15B. City of Attleboro – Fire Prevention and Enforcement Inspection Report (dated 11/21/2016)
- 15C. Copy of current 527 CMR 1.00, section 18
- 15D. Fence Permit Application
- 15E. Diagram of Morey and Holmes Street, Attleboro and Fence Diagram (submitted with building permit application)
- 15F. Building Permit
- 15G. Fence Permit Application
- 15H. Deed for 17 Holmes Street, Attleboro (Book 7345, page 99)
- 15I. Floor Plan for 17 Holmes Street, Attleboro, Unit 1
- 15J. Foreclosure Deed
- 15K. Legal Notice of Mortgagees Sale of Real Estate
- 15L. Quitclaim Deed (Book 13013, page 63)
- 15M. Street Plan for Morey Street, Attleboro
- 15N. Copy of the Master Deed (Seventeen Holman Street Condominium)
- 15O. Correspondence from Lauren Galvin, Esq. for the City of Attleboro to Orlando deAbreu, Esq., Counsel for the Appellant (dated 2/14/2017)

E) Subsidiary Findings of Fact

1. By an Order of Notice dated November 21, 2016 and received by the Appellant on the same date, Inspector Gregory S. Pion, Jr. of the Attleboro Fire Department issued an Order requiring the Appellant to modify an existing fence to provide a 36” clearance around the circumference of the fire hydrant located at 17 Homan Street, Attleboro, Massachusetts. On December 29, 2016, the Appellant filed an appeal of the department’s determination with the Fire Prevention Regulations Appeals Board. The Board held a hearing on April 27, 2017, at the Department of Fire Services, Stow, Massachusetts.

2. The Appellant's Counsel testified that a fence and the hydrant at issue have both existed at the location since the Appellant purchased the property in 1997. At the time of purchase, there was an existing wooden fence and a fire hydrant that nearly comes into contact with the outside of the fence.
3. The Appellant's Counsel testified that in 2014, the Appellant erected a new plastic fence on the site after obtaining a building permit from the Attleboro Building Department. They stated that that new fence was erected in the same exact location as the old wooden fence and was the same height.
4. Appellant stated that there are numerous other fire hydrants located through the City of Attleboro that currently do not feature a full 36" clearance. The Appellant submitted photographs of several locations. Four of the photographs depict fire hydrants located within 36" of older masonry or stone walls. In addition, the Appellant does not believe that said fence interferes with the use and operation of the fire hydrant.
5. Appellant believes that they followed the proper procedures to replace the fence by securing a building permit to complete the work. The Appellant believes that the hydrant was placed on his property years ago, without the knowledge or legal authority of previous owners. The Appellant stated that he cares for and maintains the 7 foot wide grassy area between the fence and the curb.
6. The representatives of the Attleboro Fire Department testified that this issue was brought to their attention by an engine crew who noticed the condition on their return from a fire at a 100 unit apartment building less than ¼ mile away from Appellant's address. Subsequent inspection by the Attleboro Fire Department's Fire Prevention Office resulted in a determination that the fence interferes with the efficient operation of the hydrant. The Fire Department issued their determination to correct the fence based upon the provisions of The Massachusetts Comprehensive Fire Safety Code, 527 CMR 1.00:18.5.3 which states: "A 36" in.(914mm) clear space shall be maintained around the circumference of fire hydrants except as otherwise required or approved".
7. Inspector Pion of the Attleboro Fire Department testified that the use of the hydrant is substantially hampered because fire crews would not have full clearance to operate a special wrench to loosen the operating nut at the top of the hydrant. He explained that it takes 14, 360 degree turns with the wrench that requires a 36" clearance. He stated that using ½ turns to avoid the fence would take up precious time and would interfere with the efficient and timely suppression of a fire, particularly during the winter months when there is a possibility of snow and ice pack accumulation in the area of fire hydrant. The representatives of the Fire Department indicated that it was their firm opinion that the current configuration of the fence and the hydrant presents a very dangerous condition that would hamper fire suppression operations, thus contributing to the spread of a fire. He indicated that the hydrant serves the oldest housing section in the City and that the single, two and multiple family structures in the area are of wooden construction.
8. The Attleboro Fire Department representatives stated that while the Appellant did secure a permit for the new fence, the permit was granted based upon a drawing accompanying the application that failed to indicate the presence of the fire hydrant. The Attleboro Building Commissioner stated that the Appellant indicated that the replacement fence would be the

same height as the existing wood fence. However, the new plastic fence is actually taller. He also indicated that had the Building Department known about the fire hydrant, it would not have issued the permit. He also indicated that the permit could be subject to revocation or rescission due to the concerns about the fence and the failure to disclose the hydrant in the plan. The representatives of the Fire Department also submitted several documents and provided testimony indicating that the hydrant appeared to be located on City property.

F) Ultimate Findings of Fact and Conclusions of Law

1. Based upon the evidence presented at the hearing, including the testimony of both parties the Board finds that the present configuration of the fence next to the hydrant is clearly a dangerous condition that, in the event of a fire, could hamper necessary and expedient fire suppression operations, thus contributing to the spread of fire. The fence at issue is nearly in contact with the rear of the hydrant. The fence is also well above the level of the operating nut on top of the hydrant which must be allowed to be fully turned by the specially designed wrench in order to activate the hydrant.
2. The Massachusetts Comprehensive Fire Safety Code, 527 CMR 1.00:18.5.3 states: “A 36” in.(914mm) clear space shall be maintained around the circumference of fire hydrants except as otherwise required or approved”. The Board notes that this provision is contained in the 2012 edition of the NFPA-1 base code, which was recently incorporated by reference into 527 CMR 1.00, which was effective January 1, 2015, before the installation of the new fence. Generally, such a new code requirement would not have retroactive application with respect to an existing condition or installation that is compliance with the applicable code in effect at the time of the installation and was “approved” by the Authority Having Jurisdiction (see 527 CMR 1.00:1.1). However, according to said section 1.00:1.1, this apparent limit on retroactivity does not apply “... if any prior installation or condition exists which constitutes an imminent danger...”
3. The Board is aware that the previous version of the code, which was in effect at the time of the installation of the new fence in 2014, featured provisions allowing the head of the fire department to issue orders to eliminate “...dangerous conditions which are liable to cause or contribute to the spread of fire...” (527 CMR 1.06(1) or “conditions which interfere with the efficiency and use of any fire protection equipment” (527 CMR 1.06(1)(b)). The current code also features several provisions authorizing the Authority Having Jurisdiction to order such dangerous conditions to be removed, remedied or otherwise eliminated (see 527 CMR 1.00:1.7.6.2; 527 CMR 1.00:1.7.7 and 527 CMR 1.00:1.7.15).
4. With respect to the Appellant’s assertions about the possibility that the hydrant may have been installed on the land owned by the Appellant, the Board finds that there was insufficient evidence at the hearing to determine who actually owns the land where the hydrant is located or if any past easement or other property right has been granted. Furthermore, assuming the boundary line could be established, this Board is without jurisdiction to grant any relief to the Appellant in that regard.

G) Decision and Order

Notwithstanding the effective date of the 36” requirement referenced by the fire department, the Board hereby modifies the Order of the Attleboro Fire Department and determines that the current

positioning of the fence creates a condition which impedes the efficient operation of the fire hydrant in the event of fire suppression operations. The fence shall be modified to eliminate this dangerous condition.

A plan shall be submitted within 30 days of the date of this decision to the head of the fire department for review and approval. Corrective action shall be made within 60 days from the date of this decision.

H) Vote of the Board

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| Robert MacKendrick, Presiding Panel Member | In Favor |
| Gary Keith | In Favor |
| William Laidler | 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,



Robert MacKendrick, Presiding Panel Member
Fire Prevention Regulations Appeals Board

Dated: June 7, 2017

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

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Chief Scott T. LaChance
Attleboro Fire Department
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Attleboro, Massachusetts 02703