



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

Automatic Sprinkler Appeals Board

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Docket # 2010-11
25 Conwell Street
Provincetown, 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, § 26G, and Chapter 6, section 201, relative to a decision of the Provincetown Fire Department, requiring 21 Conwell Street Realty Trust d/b/a Conwell Ace Hardware (hereinafter referred to as the Appellant) to install automatic sprinklers throughout the building located at 25 Conwell Street, Provincetown, Massachusetts.

B) Procedural History

By written notice received by the Appellant on May 27, 2010, the Provincetown 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 July 9, 2010, the Appellant filed an appeal of the determination with the Automatic Sprinkler Appeals Board. The Board held a hearing on August 11, 2010, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant were Charles N. Rogers, Building Owner, Jeff Rogers, President of Conwell Enterprise, Inc. and Robert Evans, Architect, A+E Architects. Appearing on behalf of the Provincetown Fire Department was Chief Michael S. Trovato.

Present for the Board were: Maurice M. Pilette, Vice Chairman; Frank Kodzis; Alexander MacLeod; and Peter Gibbons. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

C) Issue(s) to be Decided

Whether the determination of the Head of the Fire Department requiring sprinklers in the building located at 25 Conwell Street, Provincetown, MA, should be affirmed, reversed or modified?

D) Evidence Received

1. Application for Appeal by Appellant
2. Memorandum and Supporting Documentation in support of Appeal – A+E Architects
3. Order of Notice of Provincetown Fire Department
4. Notice of Building Code Violation and Order to Cease, Desist and Correct from Provincetown Department of Community Development
5. Memorandum to Bob Evans, A+E Architects from Russell Braun, Building Commissioner
6. Sprinkler System Proposal and Scope of Work from J B Engineering to Ace Hardware
7. Letter from A+E Architects to Russell Braun, Building Commissioner
- 8A. Photograph of Existing Southwest, Conwell Street Elevation
- 8B. Photograph of Existing Northwest, Parking Lot Elevation
9. Property Card – Town of Provincetown – Fiscal Year 2009
10. Notice of Hearing to Appellant
11. Notice of Hearing to Leominster Fire Department
12. Copies of two Memoranda that accompany Hearing Notices
13. Site Plan
14. Proposed First Floor Egress Plan
15. Proposed First Floor Plan
16. Details and Schedules
17. Proposed Second Floor

E) Subsidiary Findings of Fact

- 1) By written notice received by the Appellant on May 27, 2010, the Provincetown Fire Department issued a determination to the Appellant, requiring automatic sprinklers to be installed throughout a building owned/operated by the Appellant located at 25 Conwell Street, Provincetown, MA. The determination was issued pursuant to the provisions of M.G.L. c. 148 § 26G. On July 9, 2010, the Appellant filed an appeal of the determination with the Automatic Sprinkler Appeals Board. The Board held a hearing on August 11, 2010, at the Department of Fire Services, Stow, Massachusetts.
- 2) The Appellant testified that the building at issue is a two-story, wood framed building which was constructed in the mid 1940's, and is currently owned/operated as a retailer of hardware and lumber products. The existing building is approximately 15,260 sq. ft. The first floor of the building underwent renovations beginning in January 2010, which included an update to the store layout to improve traffic flow, create defined exit aisles and to improve store appearance. Designers from Ace Hardware participated in this redesign of the first floor.

While work was being conducted on the first floor, the Appellant made a decision to renovate and expand the second floor space for use as office area and additional storage space. The planned work included the construction of a significant dormer. It was determined that this addition work required another permit and review relative to zoning, which was eventually approved by the town. According to testimony of the parties, the Fire Department was not aware of the ongoing extensive modifications to the building, including the addition of a dormer until members of the fire department observed the work sometime in late April. Shortly thereafter, in May 2010, a review was completed by the fire department and it was

determined that sprinklers were required to be installed throughout the building in accordance with the provisions of M.G.L. c. 148, s. 26G.

- 3) At the hearing, the Appellant agreed that the nature and extent of the work required sprinklers to be installed throughout the building in accordance with the provisions of M.G.L. c. 148, s. 26G, as recently revised. However, the Appellant was of the opinion that the Town Building Official should have informed him that the installation of sprinklers would be required due to the nature of the work.
- 4) Appellant indicated that the requirement to install a sprinkler system will cause him a significant financial hardship. Although the Appellant did not produce any written sprinkler cost estimates to the Board, he stated that plans are currently being drafted and that he believes that the cost to install sprinklers throughout the building and connect to the town water system would be about \$100,000.00. He indicated that the project already has cost overruns of as much as 50% and, as such, he would need another full summer season in order to acquire sufficient funds to complete the sprinkler system. The Appellant indicated that 60% of business revenue for a given year is earned during the summer season.
- 5) In order to obtain additional financing information, the Appellant requested that the Board grant him an extension of time within which to comply. Appellant suggested that an extension be granted until the Fall of 2011.
- 6) In support of the Fire Department, the Fire Chief testified that a sprinkler system should be installed in the building as soon as possible due to the potential high fire load, including the high hazards contained within the hardware business (paints, thinners, lacquers, etc.). The Chief also indicated his concern for apartment buildings and office building located on either side of the subject building. The Chief indicated that the Provincetown Fire Department is a call department and the estimated response time in the event of an emergency would be between 3-5 minutes.
- 7) It was the Chief's position that the Appellant should install the legally required sprinkler system throughout the building forthwith. He suggested that said system could be connected to an exterior fire pumper location that could be used in case of a fire, pending final hook-up to the town water system the following year.

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." This law, as stated, reflects recent amendments to the statute enacted by Chapter 508 of the Acts and Resolves of 2008. The new provisions apply to "the construction of buildings, structures or additions or major modifications 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) Based upon the facts presented at the hearing, the Board finds that “major alterations” and the construction of an “addition,” in the form of a dormer, are occurring with respect to this building authorized by permit issued after January 1, 2010. The Board further finds that the building, including the additional space, consists of more than 7,500 gross square feet. Accordingly, this building is subject to the enhanced sprinkler requirements of M.G.L. c. 148, s 26G. Appellant does not contest this finding and did not present any evidence to support a contrary finding.
- 3) Based upon the stated concerns of the fire department relative to this building, combined with the Appellant’s need for additional time needed to acquire additional financing, design an appropriate sprinkler and complete installation, the board determines that additional time to complete installation is warranted. However, Appellant’s suggested timeline is unacceptable due to the life safety nature of the sprinkler requirement and the Appellant’s lack of specificity or detail to support such an extended timeline.

G) Decision of the Automatic Sprinkler Appeals Board

Based upon the evidence and testimony presented at the hearing, the Board hereby **upholds** the determination of the Provincetown Fire Department to install sprinklers throughout the subject building in accordance with the requirements of M.G.L. c. 148, § 26G.

The Board hereby determines that a full fire alarm system, as described at the hearing, shall be competed and inspected within 60 days from the date of the hearing (by October 11, 2010). The installation of an adequate system of automatic sprinklers throughout the building with connection to the fire department pumper connection, in accordance with plans approved by the head of the Fire Department, shall be completed no later than March 1, 2011. Said system shall be connected to the public water source by July, 1, 2011.

H) Vote of the Board

Maurice Pilette, Vice Chair	In Favor
Frank Kodzis, Boston Fire Marshal	In Favor
Alexander MacLeod	Opposed
Peter Gibbons	In Favor

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I) Right of Appeal

You are hereby advised you have the right to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order, pursuant to section 14 of chapter 30A of the General Laws.

SO ORDERED,



Maurice M. Pilette, Vice Chairman

Dated: September 28, 2010

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

Robert D. Evans
A+E Architects, Inc.
2384 A Main Street (Rt. 6A)
Brewster, Massachusetts 02631

Chief Michael Trovato
Provincetown Fire Department
25 Shankpainter Road
Provincetown, Massachusetts 02657