The Commonwealth of Massachusetts
Executive Office of Public Safety and Security
Fire Safety Commission
Automatic Sprinkler Appeals Board
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VICE CHAIRMAN

Docket # 2010-15
72 Deerfield Ave
Westwood, 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 Westwood Fire Department, ordering the installation of automatic sprinklers in a proposed addition to the Deerfield Elementary School by the Westwood Public School Department, Westwood, Massachusetts (hereinafter referred to as the Appellant). The building and proposed addition are located at 72 Deerfield Ave, Westwood, MA.

B) Procedural History

By written notice dated July 16, 2010 and received by the Appellant on July 19, 2010, the Westwood Fire Department issued a determination to the Appellant, requiring automatic sprinklers to be installed in the Deerfield Elementary School and a proposed addition thereto, located at 72 Deerfield Ave., Westwood, MA. The determination was issued pursuant to the provisions of M.G.L. c. 148 § 26G. The Appellant filed an appeal of said order on September 14, 2010. The appeal was initially denied by the Board for reasons relating to timeliness. The Appellant filed a motion for the Board to reconsider the initial denial. On November 2, 2010, the Westwood Fire Chief re-issued a written determination. The Board held a hearing on December 8, 2010 at the Department of Fire Services, Stow, Massachusetts. As a preliminary matter, and with the consent of both parties, the Board determined that the appeal was now timely, based upon re-issuance of the Chief's determination on November 2, 2010.

Appearing on behalf of the Appellant, Town of Westwood School Department, was Alan B. DeHaan and Steven S. Szramiak, Architects with Symmes, Maini & McKee Associates. Appearing on behalf of the Westwood Fire Department was Chief William Scoble.

Present for the Board were: John J. Mahan, Chairman; Maurice M. Pilette, Vice Chairman; Frank Kodzis; Thomas Coulombe; Alexander MacLeod; Peter Gibbons; and Aime R. DeNault. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

C) Issue(s) to be Decided

Whether the Board should affirm, reverse or modify the determination of the Westwood Fire Department requiring sprinklers in the Appellant's proposed addition in accordance with the provisions of M.G.L. c.148 § 26G?

D) Evidence Received

1. Application for Appeal filed by Appellant
2. Statement in Support of Appeal and Letter from Project Architect
3. Photographs of Building (items A-C)
4. Modular classroom plans, elevations and site plan (items A-B)
5. First Order of Notice of the Westwood Fire Department
6. Correspondence from the Westwood Building Department
7. Rejection of Appeal (late) by the Automatic Sprinkler Appeals Board
8. Request for Reconsideration on Rejection of Appeal and copy of ASAB Application Instruction Page from Project Architect
9. Notice of Hearing on Motion to Reconsider Denial of Appeal to Parties
10. Notice of Hearing on Motion to Reconsider Denial of Appeal to Appellant
11. Notice of Hearing on Motion to Reconsider Denial of Appeal to Westwood Fire Department
12. Second Order of Notice of the Westwood Fire Department
13. Overview of map of property

E) Subsidiary Findings of Fact

1) The Westwood Fire Department issued a written determination to the Appellant, requiring sprinklers to be installed throughout a proposed addition and an existing school building known as the Deerfield Elementary School, which is located at 72 Deerfield Ave, Westwood, MA. The determination was issued pursuant to the provisions of M.G.L. c. 148 § 26G. The addition is designed and planned to be used, in general, as classroom space.

2) The Appellant's initial appeal was denied based upon issues relating to timeliness. The Appellant filed a motion for the Board to reconsider the initial denial. Pending the hearing on the motion, on November 2, 2010, the Westwood Fire Chief re-issued his written determination. The Board held a hearing on December 8, 2010. At said hearing, the Appellant argued that the appeal was now timely since the Head of the Westwood Fire Department issued a new determination, therefore re-triggering the ability to appeal in a timely manner. The Fire Department did not oppose the motion and agreed to let the case proceed on the merits. Accordingly, the Board deemed the Appellant's appeal as timely and conducted a hearing on the merits.

3) The proposed addition will consist of a new modular structure consisting of approximately 2,000 sq. ft. It will feature two additional classrooms and two restrooms, which will be A.D.A. compliant. This structure would be added to and connected by a corridor to the existing one story school building (including a basement), which consists of approximately 26,500 sq. ft.

This connecting corridor will be completely enclosed and features heat and air conditioning. The new modular addition will share existing utilities, including heat, electrical power and plumbing. The proposed fire alarm system will be connected to the fire alarm system of the existing building. According to testimony, the proposed new modular addition will be constructed offsite in Spring 2011 and installed and ready for occupation for the school year starting in the Fall 2011. The Appellant also indicated that the modular structures would include automatic fire sprinklers, which will be fully operational prior to occupancy.

4) At the hearing, the Appellant's representative agreed with legal basis of the Fire Chief's determination and stipulated that the proposed new modular structure is an "addition," as that term is used in M.G.L. c. 148, s. 26G. The Appellant's representative agreed and stipulated that sprinklers are required in accordance with M.G.L. c. 148, s. 26G throughout both the existing building and the addition.

5) At the hearing, the Appellant indicated that the addition of the modular structure is a temporary solution to an increase in student population pending the development of the school district's master plan for a long-term solution. The Appellant indicated that the future of the Deerfield Elementary School has not been determined and that a long-term option may be to phase-out the school or possibly renovate it. The Appellant expressed concerns about the costs associated with installing sprinklers in the existing school, which would be approximately $200-$225,000.00. Such costs were not anticipated in the current project and are burdensome, particularly if the building is going to be taken out of service in the near future. The Appellant requested that the sprinkler requirements for the existing building be waived, extended or delayed pending a final decision of the Town. The Appellant indicated that a three-year extension would be reasonable at this time based upon the circumstances, pending the Town's final decision.

6) The Westwood Fire Chief indicated that in his opinion it is clear that sprinklers are required in both the proposed modular units and the existing school building based upon the provisions of M.G.L. c. 148, s. 26G, as recently revised. He indicated that, to the best of his knowledge, the school department does not have plans to install sprinklers in the existing building, nor has it allocated any funds to do so. The Chief understands that the school system needs additional space for an increase in students and that it may take time to secure funding. However, he is reluctant to support a blanket or long-term extension for sprinklers for the existing building. The Chief indicated that he would not oppose a reasonable extension to allow the project to move forward and to allow the Town to acquire funding and plan the installation. It was indicated that the town would address this issue at a meeting in May 2011.

F) <u>Ultimate Findings of Fact and Conclusions of Law</u>

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 of 2008.

2) On October 14, 2009, this Board under the authority of M.G.L. c. 30A, s. 8, issued a written guidance document to assist heads of fire departments and building owners to understand the

basic requirements of this law. In that document the board detailed the various changes to the old law and provided detailed guidance regarding the type of buildings or structures subject to the enhanced sprinkler protection requirements. 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). Therefore, if the date of the issuance of the permit is after January 1, 2010, the enhanced requirements will be applicable.

3) In the guidance document, the Board also discussed the new statute, as it applies to additions. The Board noted that the legislative activity to amend the provisions of M.G.L. c. 148, s. 26G arose in the aftermath of a tragic commercial building fire, which occurred in Newton, Massachusetts in February 2000, resulting in the death of five individuals. The Board stated that under the prior law, the statute required enhanced sprinkler protection in the "addition only" if the addition consisted of more than 7,500 gross square feet in floor area. The elimination of the "addition only" language in the old law and the requirement that the square footage determination be conducted "in the aggregate", indicates the clear intent of the Legislature to require the enhanced sprinkler protection throughout the building when the building is added to and if the gross s.f. of the addition, combined with the existing building, totals more than 7,500 s.f. "in the aggregate."

4) The existing school building consists of approximately 26,500 sq. ft. The proposed addition will consist of approximately 2,000 sq. ft. Under the revised law, the building, will now total, "in the aggregate", approximately 28,500 sq. feet in floor area based upon the statutorily calculated floor area. This is well over the 7,500 sq. ft. threshold stated in the statute, which triggers the sprinkler installation. In addition, the related project has been or will be permitted after the effective date of the statute – January 1, 2010.

5) The Board finds that both the existing building and the planned addition, are subject to the sprinkler requirements of M.G.L. c. 148, s. 26G, as newly revised. At the hearing, the representative for the Appellant did not provide any factual, technical or legal basis to support a contrary finding and stipulated to such finding by this Board at the hearing.

6) The Board finds that a reasonable extension of time is warranted, based upon factors relating to the local municipal budget process necessary to secure funds to complete the sprinkler installation. These factors were presented at the hearing by the Appellant's representative and were confirmed by the Fire Department representative, who concurred that a reasonable extension is appropriate.

G) <u>Decision and Order</u>

Based upon the evidence and testimony presented at the hearing, the Board hereby **<u>upholds</u>** the determination of the Westwood Fire Department to install sprinklers throughout both the subject existing building and proposed addition in accordance with the requirements of M.G.L. c. 148, § 26G.

The Board hereby determines that plans for the installation of an adequate system of automatic

sprinklers shall be submitted to the Fire Department on or before the date in which the Appellant applies for a building permit for this project .

The modular classroom building shall be sprinklered prior to occupancy planned for September 2011. The existing school building shall be sprinklered prior to the start of the fall school year, September 1, 2012.

H) Vote of the Board

John Mahan, Chairman	In Favor
Maurice Pilette, Vice Chair	In Favor
Frank Kodzis	In Favor
Thomas Coulombe	In Favor
Alexander MacLeod	Opposed
Peter Gibbons	In Favor
Aime DeNault	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,

_____
John Mahan, Chairman

Dated: January 26, 2011

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

Steven S. Szramiak, Associate, Project Architect
Symmes Maini & McKee Associates
1000 Massachusetts Avenue
Cambridge, Massachusetts 02138

Chief William P. Scoble
Westwood Fire Department
637 High Street
Westwood, Massachusetts 02090