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*The Commonwealth of Massachusetts*  
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*Automatic Sprinkler Appeals Board*

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MAURICE M. PILETTE  
CHAIRMAN

RODERICK J. FRASER, JR.  
VICE CHAIRMAN

**Docket # 2012-09**  
**19-25 Park Street**  
**Adams, 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 Adams Fire District, requiring Stephen Stetson (hereinafter referred to as the Appellant) to install automatic sprinklers throughout a building that he owns located at 19-25 Park Street, Adams, Massachusetts.

**B) Procedural History**

By written notice, received by the Appellant on March 14, 2012, the Adams Fire District 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 6, 2012, the Appellant filed an appeal of the determination with the Automatic Sprinkler Appeals Board. The Board held two hearings on this matter at the Department of Fire Services, Stow, Massachusetts.

Appearing at a May 9, 2012 hearing on behalf of the Appellant was: Stephen Stetson, building owner. Appearing on behalf of the Adams Fire District was Chief Paul J. Goyette and Building Inspector, David J. Pelletier. During this hearing it was determined by the Board and agreed by the parties that a continuation of this matter was necessary to obtain and review additional information.

Present for the Board at the May hearing was: Maurice M. Pilette, Chairman; Bart J. Shea, designee of the Commissioner of the City of Boston; Alexander MacLeod; Anthony DiNatale; Chief Thomas Coulombe; Peter Gibbons; Aime R. DeNault; and George A. Duhamel. Peter A. Senopoulos was the Attorney for the Board.

A second hearing was held on July 11, 2012. Appearing at this hearing on behalf of the Appellant was: Stephen Stetson, building owner. Appearing on behalf of the Adams Fire District was Philip Grandchamp, attorney for the Adams Fire District and Fire Chief Paul J. Goyette.

Present for the Board at the July hearing was: Maurice M. Pilette, Chairman; Roderick J. Fraser, Jr., Commissioner, Vice Chairman; Alexander MacLeod; Anthony DiNatale; Peter Gibbons; Aime R. DeNault; and George A. Duhamel. Peter A. Senopoulos was the Attorney for the Board.

At this hearing, the Board, without objection from the parties, indicated that the current hearing panel, after reviewing the record, would likely render the decision on this matter.

**C) Issue(s) to be decided**

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

**D) Evidence Received**

1. Application for Appeal by Appellant
2. Memorandum in Support of Appeal
3. Order of Notice of the Adams Fire District
4. Notice of Hearing to Appellant
5. Notice of Hearing to Adams Fire District
6. Copies of two Memoranda that accompany Hearing Notices
7. Review of Sprinkler Protection Requirements submitted by the Appellant
8. Mausert Block Code review submitted by the Adams Fire District (dated July 8, 2011)
9. Mausert Block Code review submitted by the Adams Fire District (dated October 9, 2011)
10. Mausert Block Code review submitted by the Adams Fire District (dated November 7, 2011)
11. Official Assessment – Town of Adams (March 7, 2012)
12. Commercial Property Record Card (as of February 14, 2012)
13. Property Tax Abatement filed by Appellant
14. Article from the North Adams Transcript submitted by the Adams Fire District
15. 2<sup>nd</sup> Notice of Hearing to Appellant
16. 2<sup>nd</sup> Notice of Hearing to the Adams Fire District
17. Copies of two Memoranda that accompany Hearing Notices
18. Appellant, Braytonville Properties Brief (12 pages plus exhibits)
  - 18A. Existing and Proposed Floor Plans – S-1
  - 18B. Existing Plans – A-1
  - 18C. Ground Floor Plan – A-2
  - 18D. Second and Third Floor Plans – A-3
  - 18E. Review of Sprinkler Protection Requirements from Norton Remmer, P.E. dated 11/4/2011
  - 18F. Correspondence from AKF to Appellant re: project dated 3/5/2012
  - 18G. Correspondence from Adams Fire Department to Appellant re: project dated 3/12/2012
  - 18H. Correspondence to Fire Safety Commission from AIA Massachusetts dated 4/30/2012
  - 18I. Correspondence to Chairman Pilette from Mass. Legislators dated 5/9/2012
  - 18J. Economic Threshold Triggers in Other Communities based on Assessed Values
  - 18K. Estimated Cost of Sprinkler and Area Calculations

19. Respondent, Adams Fire District, brief (6 pages)
20. E-mail from Hill Engineering to Appellant
21. Building permit for stairway
22. Building permit for storefront
23. Quitclaim Deed
24. Property Card Assessment – Adams (as of June 1, 2012)

**E) Subsidiary Findings of Fact**

- 1) By written notice, received by the Appellant on March 14, 2012, the Adams Fire District issued a determination requiring automatic sprinklers to be installed throughout the subject building located at 19-25 Park Street, Adams, Massachusetts. According to the notice, the determination was issued pursuant to the provisions of M.G.L. c. 148 § 26G. On April 6, 2012, the Appellant filed an appeal of the determination with the Automatic Sprinkler Appeals Board. The Board held two hearings on this matter at the Department of Fire Services, Stow, Massachusetts on May 9, 2012 and July 11, 2012.
- 2) The Appellant indicated that the building at issue is a three-story, brick building built in 1890. The first floor of the building is predominantly retail space with stair access to 18 residential apartments located on the second and third floors. There is a basement which is unoccupied and used for utilities and consists of approximately 9,050 s.f. The first floor consists of approximately 9,050 s.f. in floor area. Of this first floor area, 7,052 s.f. is considered commercial space and the balance is dedicated to residential use. The second and third floors are used solely for residential purposes and consist of approximately 5,500 s.f. and 5,150 s.f. respectively. The total gross s.f. of the building, including basement, is approximately 28,750 s.f.
- 3) The Appellant purchased the building in March 2011 for \$60,000.00 with the intention of rehabilitating and updating the exterior of the building and modifying the interior floor space from 18 studio apartments to 16 apartments with 2-3 bedrooms. Plans also included the construction of an interior second means of egress and the installation of 9 ADA (“Americans with Disability’s Act”) compliant bathrooms. Prior to the Appellant’s purchase of the building, the Adams Board of Health issued a condemnation order and the building was vacated around June 2009. On January 11, 2012, the Town of Adams Board of Assessors reduced the assessed value of the building from \$158,000.00 to \$36,500.00.
- 4) According to the evidence submitted at the hearing, significant renovations are taking place in the first, second and third floor portions of this building used for residential purposes. It appears that limited or no renovations are taking place in the basement and that limited renovations, in the form of the construction of 9 ADA compliant bathrooms, are taking place within the commercial/retail space on the first floor. According to testimony, the renovations relating to the bathrooms on the first floor affects approximately 668 s.f.
- 5) It is the Appellant’s position that the determination of the Adam’s Fire District is in error since he believes that the provisions of M.G.L. Chapter 148, s. 26G are not applicable to the subject building because a substantial portion of it is used for “residential purposes”. In

addition, the Appellant testified that he believes that the nature of the work in the building is not “major in scope”.

- 6) The representatives of the Adams Fire District testified that the order was issued pursuant to M.G.L. Chapter 148, s. 26G due to the size of the building, which totals over 7,500. s.f., and the nature, scope and cost of the project in comparison with the assessed value of the building. Chief Goyette testified that the building was purchased for approximately \$60,000.00 in 2011. He indicated that Appellant applied for and received permits to do work on the building with the cost of the project in excess of \$340,000.00 thus far. He testified that such work clearly exceeds 33% of the assessed value of the building. Such percentage is the numerical threshold established by this Board as a factor to be considered in determining if major alterations are occurring.
- 7) The representatives of the Adams Fire District indicated that the building is a “mixed use building” since portions are used for both commercial and residential use. It is the District’s opinion that the s. 26G residential exception referenced by the Appellant’s should only apply to those buildings that are solely used for residential purposes.

**F) Ultimate Findings of Fact and Conclusions of Law**

- 1) The building consists of over 7,500 s.f. in floor area.
- 2) The basement consists of approximately 9,050 s.f. and is unoccupied and used for utilities. The first floor consists of approximately 9,050 s.f. Of this first floor area, 7,052 s.f. is considered commercial space and the remaining balance, approximately 1,998 s.f., is dedicated to residential use. The second and third floors are used solely for residential purposes and consist of approximately 5,500 s.f. on the second floor and 5,150 s.f. on the third floor.
- 3) The Board finds that the subject building is used for both residential and non-residential purposes. The residential portions of this building are located on first floor (a portion), as well as the second and third floors and total approximately 12,648 s.f. of floor area.
- 4) The non-residential portion of this building, including 9,050 s.f. in the basement and 7,052 s.f. on the first floor total approximately 16,102 s.f. of floor area.
- 5) The relevant 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.” This law reflects amendments to the statute enacted by Chapter 508 of the Acts and Resolves of 2008. The provisions apply to “the construction of buildings, structures or additions *or major modifications* (emphasis added) 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). The last sentence of the second paragraph states: “This section shall not apply to buildings or additions used for residential purposes”.

- 6) In determining the significance of the s. 26G “residential” building exemption, as applied to this building, which features both residential and non-residential portions, the Board is guided by the definition provided in M.G.L. Chapter 148, section 1. In accordance with said section, the definition of the word “building” states (in pertinent part): “shall be construed where the context allows as though followed by the words “or part or parts thereof”.” In applying this definition to this building involving a mix of residential and non-residential portions, the Board interprets this exception to only apply to those parts or portions of the building used for residential purposes, rather than to the entire building. Accordingly, those non-residential parts or portions of the building remain subject to the sprinkler provisions if they total, in the aggregate, more than 7,500 gross s.f. and are undergoing major modifications or alterations. The Board believes that this interpretation is in harmony with both the plain meaning of the applicable statutes and the legislative public safety intent to provide enhanced sprinkler protection in certain larger buildings undergoing major alterations or modifications.
- 7) The non-residential portions of this building total approximately 16,102 s.f., which is well over the 7,500 s.f. threshold. The only remaining issue to determine is if these portions are also undergoing major alterations or modifications. In determining whether major alterations are taking place, the Board has relied upon those factors stated in an October 14, 2009, general advisory document referenced by the parties. In the document, the Board discussed the meaning of the words “major alterations” as those terms are used in the statute. The Board, guided by *Congregation Beth Shalom & Community Center, Inc. v. Building Commissioner of Framingham et. Al., 27 Mass. App. Ct. 276 (1989)*, indicated that it would review factors such as: **(A) the nature** of the work and **(B) the scope** of the work or cost/benefit of sprinkler installation. In determining the **nature** of the work, the Board indicated that it would determine if the planned physical work is the type of work that would make the effort to install sprinklers substantially less than it would have been if the building were intact or is the work merely minor repairs or cosmetic vs. major alterations. This Board also established two presumptions that could be used to determine if the **scope** of the alterations or modifications are “major.” The Board concluded that major alterations or modifications could reasonably be considered major in scope when: (1) such work affects thirty-three (33)% or more of the “total gross square footage” of the building, calculated in accordance with section 26G or (2) when the total cost of the work (excluding costs relating to sprinkler installation) is equal to or greater than thirty-three (33) % of the assessed value of the subject building. It was the conclusion of the Board that if the nature of the work is the type of work described in **A and** also meets at least one of the two presumptions described in **B** above, then it can be reasonable to conclude that the alterations or modifications are “major,” thus requiring sprinklers throughout the building.
- 8) The non-residential portion of this building including 7,052 s.f. on the first floor and 9,050 s.f. in the basement, total approximately 16,102 s.f. It appears that no renovations are taking place in the basement and that limited renovations, in the form of the construction of 9 ADA compliant bathrooms are taking place within the commercial retail area space on the first floor. According to testimony, the renovations relating to the bathrooms on the first floor impacts approximately 668 s.f. of floor area. This work clearly affects less than 33% of the total s.f. area of the non-residential part or portion of this building.
- 9) With respect to the Board’s presumption involving the calculation of the cost of the work in comparison to the assessed value of the building, the Board finds that such an analysis is not

practical as applied to the building in this case. In establishing the referenced presumptions created in the guidance document, the Board indicated that it was aware that buildings and circumstances vary from one project to another and that it would be unreasonable to expect that a single set of criteria could reasonably apply to all situations. The Board concludes that the circumstances presented by the building in this case is an example of a situation where the Board's cost of work vs. assessed value formula to determine the existence of major alterations is, as a practical matter, unworkable. This conclusion is based upon the "mixed-use" characteristics of the building involving the apportionment of residential vs. non-residential space and associated renovations, combined with the dramatic fluctuation in assessed value based upon apparent economic factors.

**G) Decision of the Automatic Sprinkler Appeals Board**

The Board hereby determines that the subject building is a mixed-use building featuring both residential and non-residential portions. The provisions of M.G.L. c. 148, s. 26G, in conjunction with the definition stated in M.G.L. c. 148, s. 1, create an exception from the s. 26G enhanced sprinkler requirements for those identifiable portions of the building used for residential purposes. With respect to the remaining non-residential portions of the building, the Board determines that the current alterations or modifications to this portion at this time are not considered "major".

Accordingly, based upon the evidence and testimony presented at the hearing, the Board hereby **reverses** the Order of the Adams Fire District to install sprinklers throughout the building located at 19-25 Park Street, Adams, Massachusetts. This decision is conditioned upon the Board's reliance on the limited nature of the renovations occurring in the non-residential portion of the building. The parties should be aware that future renovations to this portion within a short period of time (i.e. five years or less) may be viewed cumulatively with the current work and could be considered part of a long term phased-in project resulting in "major" alterations to the building, thus triggering the sprinkler requirements.

**H) Vote of the Board**

Maurice M. Pilette, Chairman	In Favor
Roderick J. Fraser, Jr., Commissioner, Vice Chairman	In Favor
Alexander MacLeod	In Favor
Anthony DiNatale	In Favor
Peter E. Gibbons	In Favor
Aime DeNault	In Favor
George Duhamel	In Favor

**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,



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Maurice M. Pilette, Chairman

Dated: August 29, 2012

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

Stephen Stenson  
c/o REDPM  
P.O. Box 382434  
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