

2017-58-A

APPLICANT – SBP 69 Street, LLC/Favor J. Smith, Esq., for SBP 69th Street, LLC, owner.

SUBJECT – Application March 2, 2017 – Appeal of a determination of the New York City Fire Department that the subject property is in violation of §901.5 of the New York City Code. R8B zoning district.

PREMISES AFFECTED – 7 E 69th Street, Block 1384, Lot 11, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Appeal Denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta.....4

Absent: Commissioner Sheta.....1

THE RESOLUTION –

WHEREAS, this is an appeal of a final determination from the New York City Fire Department’s Chief of Fire Prevention dated January 31, 2017 (the “Final Determination”), which reads in pertinent part:

The Fire Department is in receipt of your appeal, on behalf of SBP 69th Street LLC (“SBP”), of the above-referenced Violation Order (copy attached), issued on or about July 11, 2013, by an inspector with the Fire Alarm Inspection Unit of the Fire Department’s Bureau of Fire Prevention. For the reasons set forth below, the appeal is denied, except as to the direction to schedule a Fire Department inspection, which is granted.

The Violation Order was marked “TB-60” to indicate that the Fire Department received a notification (Fire Department TB-60 form) that the central station connection for the private fire alarm company monitoring of the sprinkler system at the above-referenced premises (“subject premises”) had been terminated.

The Violation Order directed the owner to remedy the violation by: (1) connecting the sprinkler system to an approved central station; (2) placing the fire alarm system in proper working order and maintaining it at all times; (3) submitting copy of monitoring contract; (4) provide documentation of action TB-60 assignment (a central station filing with the Fire Department registering the monitoring of the fire alarm system on the premises); . . .

SBP appeals from the Violation Order on the grounds that the subject premises is a single-family dwelling (as documented by Certificate of Occupancy No. 108778, dated February 5, 1996) and that there is no commercial activity at the premises. The Certificate of Occupancy attached to the appeal indicates (on its reverse) that a smoke detector and an automatic sprinkler system have been installed at the premises. SBP represents that the smoke detector on the premises are [sic] fully

functional. No representation is made with respect to the functionality of the sprinkler system.

The appeal attaches a New York City Department of Buildings (DOB) Building Information System (BIS) printout that references a 1986 “fire alarm” filing (#2908-86). The appeal attaches a second BIS printout indicating that the work associated with that filing relates to the installation of a sprinkler system at the subject premises. The appeal states that there have been no other relevant alterations to the subject premises.

The appeal does not clearly state why SBP believes the Violation Order was issued in error based on this set of facts. The Fire Department infers that SBP is asserting that no fire alarm system is required at the subject premises and accordingly SBP has not failed to maintain it by discontinuing the central station connection.

The record is unclear why a sprinkler system was installed in a single-family dwelling and why a central station connection was established instead of (or in addition to) installing a gong or other audible device at the premises in accordance with the Building Code. However, regardless of whether such a system and connection were installed voluntarily or required as part of some other work being done in the building, both the New York City Fire Code (FC) and New York City Building Code (BC) require that fire protection systems (which includes sprinkler systems and fire alarm systems) be maintained in good working order at all times.

FC901.6 further provides that any fire protection system not in good working order must be repaired or replaced, or *where authorized by the Building Code*, removed from the premises. Section 901.3 of the Building Code provides that no person shall remove or modify any fire protection system installed or maintained under any provision of the Building Code or Fire Code without the approval of the New York City Department of Buildings (DOB). DOB consults the Fire Department with respect to such applications.

[. . .]

Upon a review of this record, the Fire Department concludes that the Violation Order was properly issued. SBP’s termination of the central station monitoring of its sprinkler system effectively disabled the transmitter, constituting an alteration of an approved sprinkler [sic] sprinkler/fire alarm system that rendered it not fully functional as originally approved. Such an alteration required DOB and Fire Department approval.

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If SBP wishes to discontinue central station monitoring of its sprinkler/fire alarm system, it can file the appropriate applications requesting authorization to discontinue its central station connection and addressing the issue of local activation notification in lieu of the central station connection. Alternatively, it can restore the central station connection and comply with the Violation Order. . . .; and

WHEREAS, a public hearing was held on this appeal on June 19, 2018, after due notice by publication in *The City Record*, with a continued hearing on August 14, 2018, and then to decision on that date; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood; and

WHEREAS, the Fire Department submitted materials and testimony in opposition to this application; and

WHEREAS, the subject site is located on the north side of East 69th Street, between Fifth Avenue and Madison Avenue, in an R8B zoning district, in the Upper East Side Historic District, in Manhattan; and

WHEREAS, the site has approximately 21 feet of frontage along East 69th Street, 100 feet of depth, 2,084 square feet of lot area and is occupied by a five-story plus cellar single-family dwelling; and

WHEREAS, this application is filed on behalf of the owner of the property (the "Appellant"); and

WHEREAS, on June 11, 2013, the Fire Department issued a violation order for the subject premises directing the Appellant to (1) connect the sprinkler system to an approved central station; (2) place the fire alarm system in proper working order and maintain such system at all time; (3) submit copies of monitoring contract; (4) provide documentation indicating active TB-60 assignment; and (5) schedule an inspection of the premises (the "Violation Order"); and

WHEREAS, the Fire Department filed a criminal information, dated March 11, 2014, alleging an offense at the premises under New York City Administrative Code § 15-223.1(a) and (b) predicated upon violations of Fire Code § 901.5 (Fire Code Fire Alarm Approval & Maintenance and Building Code Fire Alarm Systems) and referring to the 2013 violation order; and

WHEREAS, Section 901.5 of the Fire Code reads as follows:

901.5 Installation acceptance testing. Fire detection and alarm systems, fire extinguishing systems, private fire hydrant systems, yard hydrant systems, standpipe systems, fire pump systems, private fire service mains and all other fire protection systems and appurtenances thereto shall be subject to acceptance tests as set forth in the installation standards specified in this code. Where required by the construction codes, including the Building Code, this code or the rules, such tests shall be conducted, at the owner's risk, by his or her representative before a

representative of the department; and

WHEREAS, the Appellant represents that they were served with the criminal information on May 21, 2015, and appealed the determination pursuant to Section 104-1 of the Rules of the Fire Department of the City of New York by submission dated June 27, 2017 (the "FDNY Appeal"); and

WHEREAS, in the FDNY Appeal, the Appellant argued that the issuance of Certificate of Occupancy No. 108778 to the property, dated February 5, 1996, represented a tacit acknowledgement that the building, its uses and the systems contained therein, including the fire protection systems, met all applicable legal requirements, including Fire Code § 901.5; accordingly, the violation should be dismissed; and

WHEREAS, the Fire Department issued its decision on the FDNY Appeal by letter dated January 23, 2017; the letter was subsequently amended and reissued on January 31, 2017, and this appeal of that Final Determination followed; and

THE APPELLANT'S POSITION

WHEREAS, the Appellant argues that they acquired the premises on or around August 31, 2012; have made no changes to any systems at the subject premises, with the exception of a furnace, which was replaced and inspected; that the building maintains smoke detectors and an automatic sprinkler system in compliance with its certificate of occupancy, issued February 5, 1996; and that there is no legal requirement for a "fire alarm system" at the premises, as referenced in the Violation Order and the Final Determination; and

WHEREAS, regarding the history of the fire protection systems installed at the premises, the Appellant asserts that the Department of Buildings ("DOB") approved plans to install a sprinkler system at the subject premises on February 8, 1991; that an alarm lease for the premises, which included monitoring of the sprinkler system and a central office transmitter, was executed with a private central station alarm company on May 18, 1991 (the "Alarm Lease"); the Fire Department approved the installation of a sprinkler booster pump motor and controller and a central office connection to the sprinkler alarm-pump on January 3, 1992; the certificate of occupancy, indicating that a smoke detector and automatic sprinkler system were required and installed at the premises in compliance with applicable laws, was issued on February 5, 1996; and on or around September 4, 2012, the prior owner of the premises requested cancellation of the Alarm Lease; and

WHEREAS, the Appellant represents that the 1968 New York City Building Code (the "1968 BC"), the edition of the Building Code applicable to the existing building at the premises, does not require a sprinkler or fire alarm system in a single-family dwelling and that the 1996 certificate of occupancy does not indicate that a "fire alarm system and signal system" was required at the premises; and

WHEREAS, the Appellant submits that Section 902.1 of the Fire Code defines "fire alarm system" as "any system, including any interconnected fire alarm sub-system, of components and circuits arranged to monitor

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and annunciate the status of fire alarm or supervisory signal-initiating devices”; and

WHEREAS, the Appellant acknowledges that, pursuant to Section 1703.4(b) of the 1968 BC, a sprinkler alarm system is required when more than 36 sprinkler heads are located in any fire area or section and concedes that, according to the plans, the existing building, which constitutes a single fire area, has 85 sprinkler heads “and was required to have a sprinkler alarm system, which would be connected to an approved central station,” but maintains that this requirement is contrary to Section 901.6.1 of the 2014 New York City Building Code, which “exempts single-family dwellings unconditionally, whether the system has 20, or 36, or 85 sprinkler heads”; and

WHEREAS, in addition, the Appellant asserts that the offense complained of—failure to maintain a connection between the sprinkler system and an approved central station—does not fit the Fire Code section cited in the Violation Order because the fire protection systems installed at the premises were approved, and thus passed installation acceptance tests, as evidenced by Fire Department’s January 3, 1992, Letter of Approval and DOB’s issuance of the certificate of occupancy in 1996; and

WHEREAS, finally, the Appellant represents that if the Final Determination is upheld and the installation of a new fire alarm system at the premises is required, the cost of installing such system, retaining relevant professionals and applying to DOB for a modification of the certificate of occupancy would cost in excess of \$20,000 and prove a significant hardship; and

FIRE DEPARTMENT’S POSITION

WHEREAS, the Fire Department clarifies that the Final Determination does not require the installation of a new “fire alarm system” at the subject premises, but, rather, the reconnection of the existing sprinkler system to a central monitoring system and that, in the alternative, the Appellant may make an application to DOB, in consultation with the Fire Department, to modify the sprinkler system to provide an alternative alarm notification device or system as a substitute for the central station connection; and

WHEREAS, the Fire Department further clarifies that a “fire alarm system,” as referenced in the Violation Order and the Final Determination, is a component of the “automatic sprinkler system” referenced on the building’s certificate of occupancy that enables central station monitoring of the sprinkler system by detecting water flow in the sprinkler system and sending a signal to a transmitter that transmits an alarm to a private fire alarm company’s central station, which then communicates the alarm to the Fire Department dispatcher; that a sprinkler system with more than 36 heads was installed at the premises and, thus, pursuant to Section 1703.4(b) of the 1968 BC, a “sprinkler alarm” system was additionally required at the premises; that the central monitoring component of the sprinkler system was discontinued contrary to the 1968 BC and the Section 901.6 of the Fire Code; that the central station notified the Fire

Department of this discontinuance and the Violation Order followed, seeking the restoration of the connection; and

WHEREAS, the Fire Department asserts that the sprinkler system at the premises was designed and installed with central station monitoring as a necessary component and that the Fire Department’s 1992 Letter of Approval was conditioned on central station monitoring; and

WHEREAS, the Fire Department represents that the failure of the building’s certificate of occupancy to indicate that a “fire alarm system” was required and installed at the subject premises, in addition to an automatic sprinkler system, is not dispositive of such a requirement; that the Appellant does not dispute that the sprinkler system was installed at the premises with central station monitoring connection and, per records provided by the Appellant in the FDNY Appeal and submitted into the record for the subject application, application “FA 2908-86” was filed with DOB for a “fire alarm” at the subject premises on or around November 14, 1986, in addition to a permit for the installation of a “sprinkler system from basement to penthouse” at the subject premises, which was filed under DOB Job No. 100139495 on November 13, 1990; and

WHEREAS, the Fire Department concedes that DOB records do not indicate whether the sprinkler system and central station connection were installed on a voluntary basis or were required as a condition of DOB’s approval of another aspect of proposed work at the subject site, but notes that, the connection having been established, it may not be altered except in compliance with Section 901.6 of the Fire Code, which states:

901.6 Maintenance. Fire protection systems shall be maintained in good working order at all times. Any fire protection system that is not in good working order shall be repaired or replaced as necessary to restore such system to good working order, or, where authorized by the Building Code, removed from the premises; and

WHEREAS, the Fire Department represents that the subject offense raises significant public safety concerns, specifically, if the sprinkler system at the premises activates in response to a fire, the Fire Department may not be notified or such notification may be delayed because of absence of the connection to a central station and, even in the absence of a fire emergency, the discontinuance of the central station monitoring means that a malfunction of the sprinkler system could result in the continuous and surreptitious discharge of water at the premises for hours or even days without being noticed and cause significant damage to the property; and

DISCUSSION

WHEREAS, the Board notes that a “fire alarm system,” as referenced in the Final Determination, is more aptly described as a “sprinkler alarm,” which both parties concede was required to be installed at the subject premises pursuant to Section 1703.4(b) of the 1968 BC

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due to the provision of more than 36 sprinkler heads in a single fire area, because (1) the Fire Department's clarification of the term "fire alarm system" (as referring to a device that detects water flow in the sprinkler system and transmits an alarm that is ultimately communicated to the Fire Department dispatcher) is consistent with the definition of "sprinkler alarm" set forth in Section 201.0 of the 1968 BC ("an apparatus constructed and installed so that a flow of water through the sprinkler system equal to, or greater than, that required for a single automatic sprinkler head will cause an alarm to be given") and (2) Section 1703.4 of the 1968 BC explicitly requires the provision of a "sprinkler alarm system," rather than a "fire alarm system," when more than 36 heads are installed in any fire area or section; and

WHEREAS, the Board notes that Section 1703.11(b) of the 1968 BC additionally provides that, where the pressure from the city water main is insufficient, sprinkler booster pumps may be accepted provided that, among other things, such pumps:

[S]hall be maintained under approved automatic control with closed circuit supervisory attachment. The supervisory attachments shall be directly connected to an office where maintenance personnel are in attendance twenty-four hours a day; or, in lieu thereof, the supervisory attachment may be directly connected to the central station of an approved operating fire alarm company . . . ; and

WHEREAS, the Board finds that a sprinkler alarm system, as require pursuant to Section 1703.4(b) of the 1968 BC was, in fact, installed at the premises with a connection to a central station for monitoring, as evidenced by (1) the Fire Department's January 3, 1992, Letter of Approval, covering a sprinkler booster pump motor and controller and central office connection to sprinkler alarm-pump; (2) the 1991 Alarm Lease for central station monitoring; and (3) the building's 1996 certificate of occupancy, which indicates that an automatic sprinkler system was required and installed in compliance with applicable laws, such applicable laws including Section 1703.4(b) of the 1968 BC; and

WHEREAS, the Board additionally finds that such system, particularly the connection to a central office monitor, was required to be maintained pursuant to Section 1703.11(b) of the 1968 BC and Section 901.6 of the Fire Code, but that the system's connection to a central station was discontinued on or around September 4, 2012, and the Appellant has not provided any evidence demonstrating that the disconnection and removal of the central station monitoring feature of the sprinkler alarm system was authorized by either of the applicable Codes; and

WHEREAS, the Board finds the Appellant's

A true copy of resolution adopted by the Board of Standards and Appeals, August 14, 2018.

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Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

argument that a sprinkler alarm system monitored by a central supervising station would not be required under the 2014 BC unavailing because the 1968 BC, not the 2014 BC, applied to the subject premises at the time a certificate of occupancy was issued on February 5, 1996, more than a decade prior to the 2014 BC, and that, regardless of whether a sprinkler alarm system was required for occupancy of the subject building as a single-family dwelling under the 1968 BC, once more than 36 sprinkler heads were installed within a fire area at the premises, a sprinkler alarm was required pursuant to Section 1703.11(b) of the 1968 BC and maintenance of the system was required pursuant to Section 901.6 of the Fire Code; and

Therefore, it is Resolved, that the instant appeal, seeking a reversal of the Fire Department decision dated January 31, 2017, is hereby denied.

Adopted by the Board of Standards and Appeals, August 14, 2018.

