

Respondent, premises owner, appeals from a recommended decision finding a Class 1 violation of Section 28-301.1 of the Administrative Code of the City of New York (Code) for failure to maintain its building in a safe and Code-compliant manner. In the summons, the issuing officer (IO) affirmed that on September 9, 2016, he observed: “failure to provide a system of automatic sprinklers where req’d, observed on 9/9/16 @ 11:30 am at front entrance no sprinkler coverage or alternate means, photo taken, BC 903.2 & 27-954.”¹

The hearing

At the hearing, the IO testified as follows: He was conducting a scheduled inspection of a Department of Homeless Services shelter. At the front entrance of the premises there was a glass enclosure with an entrance door and then another door, and there was no sprinkler, smoke detector, or other fire protection in such location. There was sprinkler protection in the premises “further on.” The cited area was for egress only without offices or other activity, and it did not appear that a sprinkler head or connection had been cut off in such area. The attorney for Petitioner, Department of Buildings (DOB), submitted a photograph of the ceiling in such location taken by the IO. She argued that the failure to provide any fire protection in the front enclosed area constituted a failure to maintain the premises in a safe manner.

Respondent’s attorney submitted a copy of the certificate of occupancy (CO) for the premises, dated March 16, 1992, indicating that the premises had an automatic sprinkler system, smoke detector, and fire alarm and signal system “installed in compliance with applicable laws.” The CO showed the premises was 55' in height with Group G occupancy on the cellar and first-floor levels consisting of locker rooms and showers, game rooms, maintenance rooms, offices, a gym, social rooms, daycare classrooms, and storage, and Group J-1 occupancy on the 2nd through 4th floors consisting of a kitchen, household storage, and 102 sleeping rooms. He also submitted a DOB history of job applications and actions at the premises which he argued established there had been no alterations or changes that would have required a new CO. He argued that the sprinkler system had been properly installed per the CO and that Petitioner had failed to establish a requirement for additional sprinkler coverage at the building entrance.

In sustaining the violation, the hearing officer credited the IO’s affirmed statement in the summons and photograph. She found that BC 903.2.1.4 required an automatic sprinkler system in the premises. She further found that Table 17-2 in Code Section 27-954 required an automatic sprinkler system for occupancy group J-1, and that a partial system was not permitted. She concluded that because there was no sprinkler in the cited area of the premises, Respondent was in violation.

Issue on appeal

¹ BC 903.2 is found in Title 28 of the Code, and is part of the 2008 and 2014 Construction Codes. Code Section 27-954 is part of the 1968 Building Code.

The issue on appeal is whether Respondent refuted Petitioner's case that it violated Code Section 28-301.1 requiring that the premises be maintained in a safe and Code-compliant manner based on the absence of a sprinkler head at the front entrance of the building.

The applicable law

Code Section 28-301.1 provides, in relevant part, that a building owner shall maintain in good working order all "safeguards that are required in a building by the provisions of this code, the 1968 building code or other applicable laws or rules, or that were required by law when the building was erected, altered, or repaired."

BC Section 903.2 provides that "[a]pproved automatic sprinkler systems in *new buildings and structures* shall be provided in the locations described in this section." (Emphasis supplied.)

Code Section 27-954 provides that "[a] system of automatic sprinklers shall be provided in the areas listed in this section and as required in subchapters four through eight of this chapter. A summary of sprinkler requirements is given in Table 17-2." Table 17-2 provides that a building and spaces in Residential Occupancy Group J-1 require an automatic sprinkler, and that a partial system is not permitted.

Code Section 27-242 provides:

Multiple occupancy or use. When a building or space is used for multiple purposes, involving different activities at different times, the building or space shall be given a separate occupancy group classification for each of the activities involved. The design and construction of the building or space shall be in accordance with the most restrictive provisions of this code that apply to any of the occupancy group classifications utilized. However, a minor variation of any occupancy or use of a space from technical compliance with a particular space occupancy classification shall not be prohibited if such variation is normally associated with the occupancy classification and no specific danger or hazard is created.

The appeal

On appeal, Respondent's attorney argues that Respondent was not required to provide additional sprinkler coverage in a front entrance area where an automatic sprinkler system was already installed in the premises in compliance with all applicable laws, and that the hearing officer applied the wrong sections of law to the cited area in the premises because it falls under a Group G occupancy.

In its answer, Petitioner's attorney argues that pursuant to Code Section 27-242, the premises is required to have an automatic sprinkler system because the dominant occupancy group of the building is J-1, notwithstanding that the first floor where the cited area is located is classified under Group G. She further argues that because a partial system is not permitted under occupancy Group J-1, the sprinkler system should cover the building "in its entirety" and therefore Respondent violated Code Section 28-301.1.

The Board's determination

Having fully reviewed the record, the Board finds that hearing officer's decision is not supported by the law and a preponderance of the evidence and grants the appeal.

On this record, the Board finds that Respondent refuted Petitioner's case that it failed to maintain the building in a safe and Code-compliant manner because the IO did not observe a sprinkler head at the front entrance of the building. Respondent established that the premises has an automatic sprinkler system that was installed in compliance with applicable laws as set forth in the CO. A valid CO certifies that the use of the building for the authorized occupancy complies with all applicable laws, rules, and regulations. *See NYC v. MJT Realty Inc.* (Appeal No. 0900102, August 13, 2009). Charter Section 645(b)(3)(e) provides that unless it is properly set aside, a CO shall remain binding and conclusive upon all agencies.

Here the CO is dated March 16, 1992, which required compliance with the 1968 Building Code.² As set forth in Code Section 27-954, a building under occupancy Group J-1 required an automatic sprinkler system, and the CO confirms that an automatic sprinkler system was installed.³ There was no allegation in the summons or at the hearing that the automatic sprinkler system had been disconnected, rendered inoperable, or altered in anyway. Rather, at the hearing the IO acknowledged that he did not observe that a sprinkler connection had been removed from the cited area, which he described as a front entrance vestibule, and he further testified that he observed sprinklers "further on" in the building. Petitioner did not allege that the premises was being used for other than its authorized use as set forth in the CO, *see NYC v. Levy Realty LLC* (Appeal No. 1100806, December 15, 2011), and did not cite any authority for its claim that in order for a building to be considered fully sprinklered, a sprinkler head was required to be located in a front entrance vestibule. Under these facts, Respondent is entitled to rely on the CO, which indicates that the existing automatic sprinkler system was installed in compliance with all applicable laws, rules, and regulations at the time of its issuance.

Accordingly, the Board reverses the recommended decision and dismisses the summons.

² BC Section 903.2 of the 2008 and 2014 Construction Codes pertains solely to newly constructed buildings and is inapplicable to the cited existing building.

³ As noted by Petitioner's attorney on appeal, although the first floor where the cited entrance is located is situated in a space classified under occupancy Group G., the premises also includes residential occupancy under Group J-1. Section 27-242 of the 1968 Building Code requires that the design and construction of the building or space shall be in accordance with the most restrictive provisions of the code that apply to any of the occupancy group classifications utilized. Therefore the requirement for an automatic sprinkler system for occupancy Group J-1 contained in Code Section 27-954 applies to the premises.

Additional information from OATH records (not in original decision)

Master NOV #

35207852X

Name of Respondent's counsel or other
authorized representative (if any)

FAINA SAVICH