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The Commonwealth of Massachusetts
Executive Office of Public Safety
Fire Safety Commission
Automatic Sprinkler Appeals Board
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MAURICE M. PILETTE
CHAIRMAN

PAUL DONGA
VICE CHAIR

Docket # 2005-03
1422 Elm Street
W. Springfield, MA.

AUTOMATIC SPRINKLER APPEALS BOARD
DECISION AND ORDER

A) Statutory and Regulatory Framework

This is an administrative appeal held in accordance with Massachusetts General Laws Chapter 30A; Chapter 148, section 26G1/2 and Chapter 6, section 201., relative to a determination of the West Springfield Fire Department, requiring the installation an adequate system of automatic sprinklers in a building owned and/or operated by Abdon Corporation, d/b/a Ivanhoe Restaurant (hereinafter referred to as the Appellant). The building, which is the subject of the order, is known as the Ivanhoe Restaurant is located at 1422 Elm Street, West Springfield, MA.

B) Procedural History

By written notice dated 2-24-05, the West Springfield Fire Department issued an Order of Notice to the Appellant informing him of the provisions of a new law, M.G.L c. 148, s.26G1/2, that requires the installation of an adequate system of automatic sprinklers in certain buildings or structures. The building subject to the order is located at 1422 Elm Street, West Springfield, MA. The appellant filed an appeal of said order on 4-3-05. The Board held a hearing relative to this appeal on 5-18-05, at the Department of Fire Services, Stow, Massachusetts.

The Appellant was represented by Steven Abdow, the Corporate President and co-owner of the establishment. Deputy Chief Lou Lamothe, Chief David Barkman and Building Official Thomas Lagodich appeared on behalf of the West Springfield Fire Department.

Present for the Board were: Maurice M. Pilette, Chairperson, Edward G. McCann, Brian Gore, Chief Thomas Coulombe and Paul Donga. 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 enforcement action of the West Springfield Fire Department relative to the subject building in accordance with the provisions of M.G.L. c.148, s. 26G1/2?

D) Evidence Received

1. Application for Appeal
2. Order of Notice
3. Appellant's memorandum
4. Notice of hearing to Fire Department
5. Notice of hearing to Appellant
6. Photographs 6 A-D
7. Certificate of Inspection
8. Building Floor plan

E) Subsidiary Findings of Fact

- 1) By Notice dated 2-28-05 the West Springfield Fire Department issued an order to the Appellant requiring the installation of an adequate system of automatic sprinklers in a building located at 1422 Elm Street, West Springfield, MA. in accordance with the provisions of M.G.L. c. 148, s.26G ½. Said notice contained the statutory timeline for said sprinkler installation in accordance with the provisions of section 11, St. 2004, c.304, which requires the submission of plans and specifications for the installation of sprinklers within 18 months of the effective date of the act (by May 15, 2006) and complete installation within 3 years of the effective date of the act (by November 15, 2007).
- 2) The provisions of the 2d paragraph of M.G.L. c. 148, s. 26G1/2, in pertinent part, states: "every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a night club, dance hall, discotheque, bar, or similar entertainment purposes...(a) which is existing or (b) for which an approved building permit was issued before December 1, 2004, shall be protected throughout with an adequate system of automatic sprinklers in accordance with the state building code". The law was effective as of November 15, 2004.
- 3) According to the building's Certificate of Inspection, issued on 7-23-04, the establishment is a place of assembly with a total capacity of 248 persons. Of this amount, the capacity of the bar or lounge area is listed as 48 persons. The establishment is on one floor, which is "free flowing"; in that there is no separation, doors or partitions between the lounge area and the other areas. There is an open area considered a "dance floor" in the middle of the floor plan which measures approximately 12' x 14'.
- 4) The Appellant contends that the establishment is principally used as a restaurant and is therefore exempt from the sprinkler provisions of M.G.L. c.148, s.26G1/2. He indicates

that the establishment regularly and routinely serves meals on a daily basis and that 80% of the income is generated by the service of meals. There is usually a hostess at the door that accompanies patrons to their table.

- 5) A live 3-piece orchestra appears for several hours, one night per week on the weekends. The orchestra plays “oldies” type music for dinner and dancing purposes for an “older” type clientele. When the orchestra is playing, the lights in the dance area are dimmed to approximately 70%. The kitchen and dining room curtails operation at 10:30 P.M., light food and sandwiches are served after this and the establishment remains open until 12:30 A.M. There is no cover charge for the entertainment. Except for the appearance of the orchestra, Appellant indicates that there are never any other “special” events held at the establishment that could be considered consistent with the activities of a nightclub or dance hall.
- 6) The representatives for the Fire Department indicated that the owners have been responsible in the operation of their business and that there have been no problems with the establishment, particularly with respect to overcrowding. There have been issues with the fire warning system relating to the kitchen hood. However the operators have been cooperative in updating and correcting the problems. The department agrees that the establishment is principally used as a restaurant except during those occasions that involve the appearance of the live orchestra
- 7) The representative for the appellant indicated to the board that if the only reason for the requirement to install sprinklers is based upon the weekly appearance of live entertainment he would simply eliminate the appearance of the orchestra.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The subject building is considered a public assembly with a capacity of 100 persons or more.
- 2) Based upon the testimony of both the Appellant and the representatives of the Fire Department it appears that this establishment is used principally as a restaurant since it regularly and routinely serves meals on a daily basis. A Building used principally as a restaurant is exempt from the sprinkler requirements of M.G.L. c.148, s.26G1/2 (4th paragraph).
- 3) Although the establishment is considered principally a restaurant, the appearance of a live band for dancing purposes, the existence of a dance floor area, the dimming of the dance floor lights and the serving of alcohol directly from the bar to customers with limited food service are factors that indicate that activities exist in this restaurant that are consistent with activities typical of a nightclub, dance hall, discotheque or similar entertainment purposes. Such activities occur in this establishment approximately one time per week.

- 4) Under the provisions of M.G.L. c.148, s.26G1/2, 4th paragraph, a building used principally as a restaurant may be used as a nightclub, dance hall, discotheque or similar entertainment purposes on a temporary basis without the need to install an adequate system of automatic sprinklers under said section. However, such temporary use is allowed only if a permit is issued for such use by the head of the fire department in consultation with the local building inspector. The issuance of such a permit is a matter within the sole discretion of the head of the fire department who may set the terms and conditions to protect against fire and preserve public safety. There is no definition of “temporary use” as used in M.G.L. c.148, s.26G1/2 relative to the issuance of the temporary permit under said 4th paragraph, accordingly, this Board, in an advisory memorandum dated 1-10-05, indicated that the determination of the term “temporary use” is within the discretion of the head of the fire department. However, this Board indicated that such use should not be considered temporary if it is so used “often, regularly or on a routine basis. This Board’s memorandum dated 1-10-05 is attached hereto and incorporated by reference into this decision.
- 5) The current use of the subject restaurant for nightclub or dancehall activities, as stated in paragraph F#3, is not at this time considered temporary, since such weekly use would obviously be considered “often, regular or routine”. However, the Appellant indicated at the hearing that he would be willing to reduce the frequency of the subject activities, in cooperation with the head of the fire department, in order to conform to the temporary nature of the subject permit.

G) Decision and Order

The Board hereby modifies the Order of the West Springfield Fire Department to install sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s.26G1/2, since the building is used principally as a restaurant and is therefore exempt from said sprinkler requirements. However, if the Appellant continues to feature the entertainment activities described in paragraph F#3 after November 15, 2007, he must either (1) apply for and obtain a temporary permit from the head of the fire department or (2) comply with the sprinkler installation requirements stated in the fire Department’s order dated 2-28-05.

H) Vote of the Board

Maurice Pilette, (Chairperson)	In Favor
Edward G. McCann	In Favor
Thomas Coulombe	Not In Favor
Brian Gore	In Favor
Brian Donga	In Favor

I) Right of Appeal

You are hereby advised that 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,

A handwritten signature in cursive script, appearing to read "Maurice Pilette".

Maurice Pilette, P.E.. Chairman

Dated: June 8, 2005

A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY 1st CLASS MAIL, POSTAGE PRE-PAID, TO: Steven Abdow, Ivanhoe Restaurant, 1111 Elm Street, West Springfield, MA. 01089 **and** Louis Lamothe, Deputy Fire Chief, West Springfield, MA. 01089