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The Commonwealth of Massachusetts
Executive Office of Public Safety
Fire Safety Commission

Automatic Sprinkler Appeals Board

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CHAIRMAN

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VICE CHAIR

Docket # 2006-15
203 Carriage Shop Road
Falmouth, Massachusetts

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, relative to a determination of the Falmouth Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned and operated by the Falmouth Rod and Gun Club (hereinafter referred to as the Appellant). The building, which is the subject of the order, is located at 203 Carriage Shop Road, Falmouth, Massachusetts.

B) Procedural History

By written notice dated November 25, 2005, the Falmouth Fire Department issued an Order of Notice to the Appellant informing the facility about the provisions of a new law, M.G.L. c. 148, s.26G1/2, which requires the installation of an adequate system of automatic sprinklers in certain buildings or structures. The Board held a pre-hearing conference relative to this appeal on May 18, 2006. A full hearing before the Board was held on September 13, 2006, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant was Gary Street. Chief Paul D. Brodeur and Deputy Chief Mark Sullivan appeared on behalf of the Falmouth Fire Department.

Present for the Board were: Paul Donga, Acting Chairperson, Stephen D. Coan, State Fire Marshal, Chief Thomas Coulombe, Peter E. Gibbons, and John H. Mahan. 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 Falmouth Fire Department relative to the subject building in accordance with the provisions of M.G.L. c. 148, § 26G 1/2?

D) Evidence Received

1. Application for Appeal by Appellant
2. Statement in Support of Appeal
3. Order of Falmouth Fire Department
4. Notice of Pre-Hearing Status Conference to Appellant
5. Notice of Pre-Hearing Status Conference to Falmouth Fire Dept.
6. Notice of Hearing to Appellant
7. Notice of Hearing to Falmouth Fire Department
8. Appellant's Package (A-I)
- 8A. Application for Renovations
- 8B. Building Permit

E) Subsidiary Findings of Fact

- 1) By Notice dated November 25, 2005, the Falmouth Fire Department issued an Order to the Appellant requiring the installation of an adequate system of automatic sprinklers in a building located at 203 Carriage Shop Road, Falmouth, MA, in accordance with the provisions of M.G.L. c. 148, s.26G½ . The Appellant filed an application for an appeal of the Fire Departments Order in a timely manner. This building and property is owned and operated by the Falmouth Rod and Gun Club, a for-profit organization. The club was established in 1933 and has a membership of 300 men, and is open to members, their families and members guests.
- 2) The subject building, is described by the Appellant as a wooden structure built in 1975 with approximately 3,440 square feet. The building contains several different rooms or areas including a kitchen and rest rooms. The current legal occupant capacity is based upon a Certificate of Inspection issued in December 2005, together with supplemental documentation obtained from Building Department records. One such area, characterized as a meeting/dining room, has a measurement of approximately 75' x 20' and has a capacity of 120 persons. There is also a "pool room" with a capacity of 25 persons, and a lounge area measuring approximately 32' x 20' with a capacity of 35 persons. At the hearing there was some confusion regarding the permit date for the lounge/bar area and its listed capacity. However it appears that a construction permit was applied for relative to this additional area in January, 2004. The building also features a wooden outdoor deck which measures approximately 43' x 12'. The Certificate of Inspection, indicates that this facility has a use group classification of A-3 and a total capacity of 180 persons. The facility also features a lower "basement" level, which, according to the Appellant's representative, is now used for storage only.

- 3) The representative for the Appellant indicated that the facility is used for a variety of social and club sport related events, including “clam-boils” and monthly “Fun Nights” on Thursdays, as well as other activities that promote the interest in the sports of rod, gun, and bow. The Appellant indicated that during “Fun Nights”, a meal is the primary attraction and the attendance is controlled by a count. The Appellant contends that the facility otherwise adheres to the seven characteristics of this Board's previous decision in “the Leicester” case during such events. The Appellant also indicated that the meeting room is used approximately twice a month for members meetings, in which 40-50 members attend.
- 4) The facility is available for rental purposes for members. All rentals are subject to approval by the Board of Directors. The sponsoring member for which the facility is being rented, must be present during the rental function and will be held responsible for the function and the guests who may be non-members. The Appellant indicated that rentals occur approximately once or twice a month. Examples of the type of events features on a rental basis includes: birthday parties, anniversary parties, graduation parties and “super bowl” parties. On such occasions a disc jockey may be used during such events. On some of these occasions, a full meal is not necessarily the primary attraction. The determination whether a meal is served depends upon the person who is renting the facility. The representative for the Appellant indicated that during rentals bar service may be included as part of the rental agreement. A fee is charged for bartender service in such event. In the event the bar/lounge area is not rented out, the bar area may be used by members during such events. These arrangements are also reflected in the club's written rental policy.
- 5) The representative for the appellant indicated that during meetings, social functions, including rental events held in the main function/meeting room, occupants are currently allowed to routinely obtain alcoholic beverages from the bar/lounge area located in another portion of this building.
- 6) The Appellant described the lounge area as being generally accessible to members only except during such times that the facility is rented out. The facility has a full service liquor license issued by the town. The bar is opened by a member of a 10 person “bar committee”. Each bar committee member has a key and has the ability to open the bar. The members of the bar committee also tend the bar during hours of operation. The bar is open on a regular and daily basis.
- 7) In support of the Falmouth Fire Department's position, Deputy Chief Sullivan testified that the subject building operates a large facility with a total occupancy of 180 persons. It has many activities typical of a bar or lounge with full liquor service and features rental events that may feature music by disc jockey. He believes, based upon the characteristics of this building looked at in total, that the building is subject to the new law and that a sprinkler system would be required.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The provisions of the 2nd 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.

- 2) The statutory timeline for said sprinkler installation in accordance with the provisions of section 11, St. 2004, c.304, 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).
- 3) In a memorandum dated 1-10-05, this Board issued an interpretive guidance document relative to the provisions of this new law found in c.148, s.26G1/2. This law was a portion of a comprehensive legislative initiative undertaken as the result of a tragic Rhode Island nightclub fire, which took place in February 2003. In said memorandum, this Board acknowledged that the statute did not contain a definition of the words “nightclub, dance hall, discotheque, bar or similar entertainment purposes”. However, the board noted that the terms “nightclub” and “dance hall” are used within the A-2 use group classification found in the 6th Edition of the Massachusetts Building Code, 780 CMR 303.3. This use group definition was drafted from nationally recognized model building code language. The commentary documents relating to the A-2 use group definitions used in the nationally recognized model code, indicates that such classification includes occupancies in which people congregate in high densities for social entertainment purposes. Examples given in the commentary are: dancehalls, nightclubs, cabarets, beer gardens, drinking establishments, discotheques and other similar facilities. The commentary concluded that the uniqueness of these occupancies is characterized, but not limited to, the following factors:
 - a) No theatrical stage accessories other than raised platform;
 - b) Low lighting levels;
 - c) Entertainment by a live band or recorded music generating above-normal sound levels;
 - d) Later-than-average operating hours;
 - e) Tables and seating arranged or positioned so as to create ill defined aisles;
 - f) A specific area designated for dancing;
 - g) Service facilities primarily for alcoholic beverages with limited food service; and
 - h) High occupant load density.

It was the interpretation of this board that such characteristics are typical of the “A-2 like” occupancy (which was a general reference to the A-2 use group referenced in 780 CMR , The State Building Code) and that these are the type of factors that heads of fire departments should consider in enforcing the sprinkler mandates of M.G.L. c.148, s.26G1/2. It was noted that the list of characteristics was not necessarily all-inclusive. Additionally, the factors may be applied individually or in combination depending upon the unique characteristics of the building at the discretion of the head of the fire department.

- 4) The subject building has been classified as a place of assembly with a capacity of 100 persons or more.

- 5) The building is clearly used for a variety of purposes related to the sporting and social activities of the organization. However, this building, as currently used, is not currently classified as an “A-2” establishment. Additionally it does currently feature many of the characteristics typical of a nightclub or dance hall, as described above.
- 6) However, this establishment, as currently used and designed, clearly features characteristics typical of “bar” within the context of M.G.L. c. 148, s.26G1/2. In some instances this Board has determined that certain buildings that feature a bar in only a portion of the building may not be subject to the sprinkler requirements of s. 26G1/2 if a reasonable separation exists between that portion of the building used or designed as a bar (or room used for entertainment purposes) and the other portion of the building used as for other purposes. In determining if a sprinkler system is required in such “combination” establishments the Board will conduct the following two-part analysis:
 1. Is that portion of the building used or designed for bar purpose reasonably apportioned and separate from the other areas of the building? In determining this question, there must be a sufficient physical separation that exists between the bar portion from the rest of the building which prevents the occupants or activities of the bar to expand into the dining area. Such separation can include a permanent wall or closed door. Additionally, there must be a separation in an operational or business context that exists which assures that the activities that occur in the bar or entertainment area do not overflow or expand into the restaurant or other areas when such areas are no longer in operation.
 2. If the separation exists, as described in question #1, does that portion used or designed for bar or entertainment purposes legally exceed a capacity of 100 persons or more?

This particular establishment features several rooms that are currently used together in a “free-flowing” manner with no operational separation between the bar area, meeting/dining room and the poolroom. Based upon these characteristics, the entire facility may be currently used and is designed in a manner typical of a bar or lounge. It has a full liquor license and it has the ability to remain open until late night hours. It routinely and regularly serves a variety of alcoholic beverages to members or non-members who may be attending social events within the facility. Activities and persons in that portion of the building known as the meeting or dining room and the pool table room are allowed to converge into the lounge or bar area. Likewise, the activities and occupancy of the bar area is allowed to expand or flow into all rooms and areas of the building. Taking into consideration the current capacity of the building (180 persons) with the relatively small floor space of the bar area, consisting of approximately 640 s.f. (32’x 20’), the potential for concentrated occupant load congregating in the bar area exists during those times when all of the areas of the facility are being utilized and alcohol is available in the bar area. In short, the free-flowing characteristics of this building clearly indicate that it is public assembly building or structure with a capacity of 100 persons or more that is designed and regularly used for occupancy as a “bar”.

7) The Appellant emphasized certain “members only” characteristics of this facility, but failed to provide any significant factual or legal basis to support a finding that this establishment is not subject to the provisions of M.G.L. c.148, s.26G1/2.

G) DECISION AND ORDER

Based upon the facility’s current characteristics as determined by the Board at the hearing and based upon the aforementioned reasoning, the Board unanimously upholds the Order of the Falmouth Fire Department to install sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s.26G1/2.

H) VOTE OF THE BOARD

Paul Donga, (Chairperson)	In Favor
Stephen D. Coan, State Fire Marshal	In Favor
Thomas Coulombe	In Favor
Peter Gibbons	In Favor
John J. Mahan	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,



Paul Donga, Acting Chairperson

Dated: November 7, 2006

A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY CERTIFIED MAIL, RETURN RECEIPT TO: Gary Street, Falmouth Rod & Gun Club, 203 Carriage Shop Road, Falmouth, Massachusetts 02541 **and 1st Class Mail, Postage Pre-paid to:** Chief Paul D. Brodeur, Falmouth Fire Department, 399 Main Street, Falmouth, Massachusetts 02540.