



DEVAL L. PATRICK
GOVERNOR

ANDREA J. CABRAL
SECRETARY

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

Automatic Sprinkler Appeals Board

P.O. Box 1025 ~ State Road

Stow, Massachusetts 01775

(978) 567-3181 Fax: (978) 567-3121

AIME R. DENAULT
CHAIRMAN

MAURICE M. PILETTE
VICE CHAIRMAN

Docket # 2013-11
9 Houghton Street
Webster, 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, section 26G½ and Chapter 6, section 201, relative to a determination of the Webster Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned and/or operated by the Webster/Dudley American Legion Post # 184 located at 9 Houghton Street, Webster, Massachusetts (hereinafter referred to as the Appellant).

B) Procedural History

By written notice dated October 30, 2013 and received by the Appellant on the same day, the Town of Webster Fire Department issued an Order of Notice to the Appellant requiring the installation of sprinklers in the Appellant's building pursuant to the provisions of M.G.L c. 148, s. 26G½. The building subject to the Order is located at 9 Houghton Street, Webster, MA. The Appellant filed an appeal of said Order on November 30, 2013. The Board held a hearing relative to this appeal on December 11, 2013, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant was: Karl Kuhn, Sr., Commander, Sons of the American Legion # 184; David Konieczny, Finance Officer, Sons of the American Legion # 184; and Eugene Ethier, Commander, American Legion Post # 184. Appearing on behalf of the Webster Fire Department was: Chief Brian Hickey and Webster Building Inspector, Theodore Tetreault.

Present for the Board were: Aime DeNault, Chairman; Alexander Macleod; Chief Thomas Coulombe; Chief Richard Magee, designee, Boston Fire Department; and George A. Duhamel. 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 Webster Fire

Department relative to the subject building in accordance with the provisions of M.G.L. c.148, s. 26G½?

D) Evidence Received

1. Application for Appeal by Appellant
2. Letter verifying Commander of the Webster-Dudley American Legion Post
3. Letter verifying service of appeal package on Chief Hickey of the Webster Fire Dept.
4. Letter in support of Appeal
5. Order of Notice of the Webster Fire Department (dated October 30, 2013)
6. Order of Notice of the Webster Fire Department from 2005 (dated 10/14/2005)
7. Memo to American Legion Post from Webster Fire Dept. regarding “draft requirements” the Webster Fire Dept. would like to have implemented in the facility, in lieu of sprinklers (April 4, 2006)
8. Unsigned joint correspondence from Webster-Dudley American Legion Post and Webster Fire Department regarding an agreement (April 7, 2006)
9. Signed agreement between the Webster-Dudley American Legion Post and Webster Fire Department (October 25, 2006)
10. New and Renewal Certificate of Inspection (issued 1/1/2013)
11. Photographs of Facility
 - 11A. Exterior of Building
 - 11B. Interior of building – bar area (taken at a distance)
 - 11C. Interior of building – bar area (taken close up)
 - 11D. Interior of building – stairway
 - 11E. Interior of building – bar area (showing liquor bottles and lottery machine)
 - 11F. Interior of building – bar area (showing windows and sitting area near the bar)
 - 11G. Interior of building – second floor function hall (facing stage)
 - 11H. Interior of building – second floor function hall (facing away from stage)
12. Notice of Hearing to Appellant
13. Notice of Hearing to Webster Fire Department
14. Copies of two Memoranda that accompany hearing notices
15. Advertisement for American Legion Events (from Webster Fire Dept.)

E) Subsidiary Findings of Fact

- 1) By written notice dated October 30, 2013 and received by the Appellant on the same day, the Town of Webster Fire Department issued an Order of Notice to the Appellant requiring the installation of sprinklers in the Appellant’s building pursuant to the provisions of M.G.L c. 148, s. 26G½. The building subject to the Order is located at 9 Houghton Street, Webster, MA. The Appellant filed an appeal of said Order on November 30, 2013. The Board held a hearing relative to this appeal on December 11, 2013, at the Department of Fire Services, Stow, Massachusetts.
- 2) Based upon information presented at the hearing, a similar order to install sprinklers throughout the building was issued in 2006. However, an agreement was reached between the parties, in which the Appellant was not required to install sprinklers as long as the facility complied with certain operational conditions.

- 3) On October 30, 2013, after a recent review of the facility and its use characteristics, the Webster Fire Department issued an Order of Notice to install sprinklers throughout the building pursuant to M.G.L c. 148, s. 26G½.
- 4) The Appellant, the Webster/Dudley American Legion Post # 184, operates a 2½ story wood framed building with facilities for public assembly. The lower level features a bar area which is approximately 60 ft. x 45 ft. The second level contains a function hall measuring approximately 55 ft. x 56 ft. long. In addition to the function hall, there is also a kitchen and a service bar on this level to service function hall guests. There is also a third level which features a vacant apartment.
- 5) The Certificate of Inspection issued by the Town of Webster (expiration date of 12/31/2013) indicates that the building is classified as an “A-2” use group with a total capacity of 270 persons throughout the facility. The occupant capacity is broken down as follows: 120 persons for the first level bar area and 150 capacity for the second level function hall.
- 6) The members lounge in the first level features a fully stocked bar, tables, chairs, a pool table and shuffleboard table. The Appellant testified that the establishment has a full liquor license, which legally allows it to serve all kinds of liquors daily from 12:00 p.m. to 1:00 a.m. Notwithstanding the ability to remain open until 1:00 a.m., the representatives for the Appellant indicated that the bar area usually closes at 9:00 p.m. The lounge portion of the facility is open on a routine basis for members, members’ guests and the general public, though the general public has to sign a “sign in” book.
- 7) With respect to the second floor function area, the hall is used for a wide variety of activities, events and functions. Most functions are held by local community organizations for such events as fundraising social events, Boy Scouts meetings, senior citizen dances and for a senior citizen band. The Appellants indicated that some of the functions feature a meal as the main attraction. However there was also testimony that some events feature music by a disc jockey for dancing purposes and the service of alcoholic beverages without full meals. The Appellant indicated that the hall features a dance area and lights, including a reflective “disco ball,” which are capable of being dimmed. Chief Hickey indicated that during summer months, the Appellant has advertised multiple events open to the general public that included “Live country music and dancing every Sunday” and appeared not to have limited ticket sales. Because of these events, the lack of a crowd manager and crowd manager checklists, the current occupant load of the building, particularly the bar area and because the building’s use group classification is A-2, Chief Hickey issued a new Order of Notice. Chief Hickey also testified that he conducted an inspection of the building on October 23, 2013 and noted several fire code violations in the building, including in the kitchens. He also noted that that the Appellant had no crowd manager or checklists as required by the State Fire Safety Code.
- 8) The representatives of the Appellant testified that the majority of events in the hall do not exceed 100 persons. It is the Appellant’s contention that the function area is not required to be sprinklered based upon prior decisions of this Board in other cases in which the Board determined that certain establishments that feature “privately organized dining

events” may not, under certain circumstances, be subject to the law. According to the Appellant’s testimony, the function hall and members bar area are separated by a stair case and that the bar and function hall each have a separate bar and rest rooms, thus providing an operational and physical separation between the bar and function areas. Both the function hall area and the bar area have separate occupant capacities and routes of egress. During function events, it is management’s policy to not allow the flow of function hall guests to the members’ bar and vice versa.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The provisions of the 2nd paragraph of M.G.L. c. 148, s. 26G½, in pertinent part states: “every building or structure, **or portions thereof** (emphasis added), 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) Based upon the most recent Certificate of Inspection and other evidence submitted to this Board, this facility has been assigned an A-2 assembly occupancy with an occupant capacity of 100 persons or more. Such an A-2 designation is the appropriate building classification for occupancies used for bars, nightclubs, dancehalls and discothèques. The building consists of a bar/lounge area on the first level, which features, on a routine basis, “bar-like” characteristics. This facility also contains a function hall on the second level. In determining whether the s. 26G½ sprinkler requirements will apply in cases involving buildings, which feature a combination of characteristics, the Legislature’s use of the words “portions thereof” in describing the areas of the building subject to the sprinkler installation is significant. In determining if a sprinkler system is required in such “combination” establishments the Board will conduct the following two-part analysis:
 - a. Is that portion of the building used or designed as a bar 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 entertainment or bar portion from the rest of the building, which prevents the occupants or activities of the bar from expanding into the dining or function area. Such separation can include a permanent wall, closed door or existence of portions on separate floors of a building. 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 areas do not overflow or expand into the other areas.

 - b. If the separation exists, as described in question (a) above, does that portion used or designed for bar or entertainment purposes legally exceed a capacity of 100 persons or more?

- 3) Applying the above analysis to the characteristics of this establishment indicates that an adequate separation exists between the members' bar/lounge portion and the other areas of the building. The separation is in the form of a stairway, separate floor location and a solid set of doors that are capable of closing. Both the member's lounge and the large function hall have independent bar service areas, a separate set of restrooms and an independent means of egress. Additionally, the representatives for the Appellant indicated that it is the policy of the facility to keep the activities and occupancy of the bar/lounge area from expanding into the function hall and vice versa.
- 4) The portion of the building referred as the members' bar/lounge area is currently used, designed and classified as a bar with an occupancy of 120 persons. Accordingly, this "bar portion" of the building on the ground level is clearly subject to the sprinkler requirements of s. 26G½. The Appellant's representative failed to provide any evidence to contradict this finding. Appellants' statements involving the possible alteration of this area and/or a reduction in legal capacity are subject to the separate and distinct requirements of the State Building Code and not subject to the jurisdiction of this Board.
- 5) With respect to the function hall portion of the building, it appears that it is used and/or rented out on a routine basis for a variety of different events. The area has a capacity of 150 persons or more. Some of the events that occur in this hall feature music by live band and/or DJ for dancing purposes. However, it appears that many events feature a meal as the main attraction. Notwithstanding the incidental appearance of live or recorded music for dancing purposes, this board has concluded, in prior decisions, that under certain circumstances, a portion of a place of assembly, which provides facilities for "organized private dining events," may not necessarily be subject to the retroactive sprinkler installation requirements of M.G.L. c.148, s. 26G½. The existence of certain characteristics of such dining events is distinguishable from those that this Board concluded were typical of nightclubs, dancehalls and discotheques and within the legislative intent of this law. The factors that are considered by this Board in such situations are as follows:
 - a. The facility is used for events that feature a meal as the primary attraction;
 - b. The facility is used for events that are organized for the purpose of a private function. Attendance for each specific event is limited and pre-arranged between the facility operator and the private event organizers. The number of guests is limited by written invitation or limited ticket availability and does not exceed the agreed upon attendance limit;
 - c. Each event has a definite starting and ending time;
 - d. Tables and chairs are arranged in well-defined aisles in such a manner to not impede easy egress; and
 - e. There are no significantly low lighting levels; and
 - f. The maximum documented legal capacity, based upon the available floor space, is not less than 15 feet (net) per occupant. The Board notes that this formula is

consistent with the definition of the “unconcentrated” Assembly Occupancy found in 780 CMR, The State Building Code (table 1004.1.1).

- g. The characteristics of the event, as referenced above, are strictly controlled by an onsite manager and are made part of a written function event contract.

Examples of organized private dining events may include organized banquets, private parties, fundraisers, wedding receptions and ceremonial banquet events, as long as all the aforementioned characteristics exist. However, such temporary use is allowed only if a permit is issued for each event by the head of the fire department in accordance with s. 26G½.

- 6) The Board finds that the representatives of the Appellant failed to provide reliable evidence that the function hall portion of the facility currently meets all 7 characteristics as stated above. Accordingly, the second level function area is also subject to the sprinkler requirements of M.G.L. c. 148, s. 26G½, unless the operators of the facility, with the coordination and written approval of the fire department, meet the conditions and characteristics stated in paragraph (5), a-g listed above.

G) Decision

Based upon the aforementioned findings and reasoning, the Board hereby **modifies** the Order of the Webster Fire Department to install adequate sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s. 26G½.

The Appellant is required to install an adequate system of automatic sprinklers in the first level members’ lounge/bar area, including all means of egress and entrances thereto.

The Appellant is likewise required to install an adequate system of automatic sprinklers in the second level function hall area, including all means of egress and entrances thereto. However, such sprinklers may not be required in said hall if the operators of the facility, with the coordination and written approval of the fire department, establish and meet the conditions and characteristics stated in paragraph (5), a-g referenced above.

Plans for the required sprinkler system shall be submitted to the head of the fire department within 6 months from the date of this decision. Installation shall be completed no later than one (1) year from the date of decision. Until the sprinkler system is installed, the Appellants shall comply with the special conditions, 1 through 8 listed in the Webster Fire Department’s letter dated October 25, 2006 [incorporated herein by reference and marked as Exhibit 9].

H) Vote of the Board

Aime DeNault, Chairman	In Favor
Alexander Macleod	In Favor
Chief Thomas Coulombe	In Favor
Chief Richard Magee	In Favor
George Duhamel	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,



Aime R. DeNault, Chairman

Dated: January 21, 2014

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

Gene Ethier, Commander
Webster/Dudley American Legion Post # 184
61 New Boston Road
Dudley, Massachusetts 01571

Chief Brian C. Hickey
Webster Fire Department
55 Thompson Road
Webster, Massachusetts 01570