



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 # 2014-07
21 Harris 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, s. 26G½, and Chapter 6, s. 201, relative to a decision of the Webster Fire Department, requiring The TSKK Club (hereinafter referred to as the Appellant) to install automatic sprinklers throughout a building that it owns and operates, located at 21 Harris Street, Webster, Massachusetts.

B) Procedural History

By written notice dated June 27, 2014 and received by the Appellant on the same date, the Webster Fire Department issued a determination requiring automatic sprinklers to be installed throughout the subject building. According to the notice, the determination was issued pursuant to the provisions of M.G.L. c. 148 s. 26G½. On July 31, 2014, the Appellant filed an appeal of the determination with the Automatic Sprinkler Appeals Board. The Board held a hearing on September 10, 2014, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant were Michael Paschopoulos, Director and James Walker, President. Appearing on behalf of the Webster Fire Department was Fire Chief Brian Hickey and Webster Building Inspector, Theodore Tetreault.

Present for the Board were: Aime R. DeNault, Chairman; Alexander MacLeod; Thomas Coulombe; Peter Gibbons; and George A. Duhamel. Peter A. Senopoulos was the Attorney for the Board.

C) Issue(s) to be Decided

Whether the Board should affirm, reverse or modify the determination of the Webster Fire Department requiring sprinklers in the Appellant's building, in accordance with the provisions of M.G.L. c. 148 s. 26G½?

D) Evidence Received

1. Application for Appeal filed by Appellant
2. Statement in Support of Appeal
3. Copy of agreement between TSKK and the Webster Fire Department regarding sprinklers (dated March 12, 2007)
4. Order of Notice of the Webster Fire Department (dated June 27, 2014)
5. Hand drawing of TSKK Hall
6. Hand drawing of TSKK Bar area
7. Copy of Quitclaim Deed for TSKK (dated August 26, 2013)
8. Photographs of TSKK Building (labeled A-M)
 - 8-A Club (facing pool tables)
 - 8-B Club (facing window)
 - 8-C Between hall and club
 - 8-D Main entrance (from interior out to street)
 - 8-E Exit both hall and club
 - 8-F Bar to hall
 - 8-G Exit hall
 - 8-H Hall (facing windows)
 - 8-I Hall (facing dart boards)
 - 8-J Hall (facing club sign)
 - 8-K Hall (facing club sign and accordion walls)
 - 8-L Exit back
 - 8-M Exit – Harris Street
9. Notice of Hearing to Appellant
10. Notice of Hearing to Webster Fire Department
11. Copies of two Memoranda that accompany Hearing Notices
12. Submission from Webster Fire Department (labeled A-C)
 - 12A. Order of Notice from Webster Fire Department to TSKK kitchen non-compliance with 527 CMR 11.00 (dated December 13, 2013)
 - 12B. Copy of Webster Department of Inspections – Building Permit Job Card (dated December 30, 2013)
 - 12C. Copy of New and Renewal Certificate of Inspection – Town of Webster (date unreadable)

E) Subsidiary Findings of Fact

- 1) By written notice dated June 27, 2014 and received by the Appellant on the same date, the Webster Fire Department issued a determination requiring automatic sprinklers to be installed throughout the subject building. The determination was issued pursuant to the provisions of M.G.L. c. 148 s. 26G½. On July 31, 2014, the Appellant filed an appeal of the determination with the Automatic Sprinkler Appeals Board. The Board held a hearing on September 10, 2014, at the Department of Fire Services, Stow, Massachusetts.
- 2) Representatives for the Appellant testified that their organization, TSKK, is a nonprofit benevolent organization which owns the single story building at issue. The building consists of a hall (41 x 44 = 1,804 s.f.), and bar area (51 x 31 = 1,581 s.f.) for a total square footage of 3,385 (not including kitchen and restrooms). The building also has a full basement which is used as a storage area with two walk in beer coolers, an ice machine,

locked liquor room, compressor and boiler. The basement is not designed for occupancy by members and guests.

- 3) The facility has a full liquor license with minimal or no food service. It routinely and regularly serves all kinds of alcoholic beverages to patrons. Photographs and testimony provided at the hearing indicate that the bar area features a fairly large sit-down bar with bar stools, tables and chairs, sports memorabilia, banners, keno machine, ATM machine, two pool tables, stereo with speakers and many decorative signs and lighting which promote the sale of alcoholic beverages.
- 4) According to testimony and photographs submitted at the hearing, the area that adjoins the bar area, referred to as the “function hall,” features a large hall with wooden floors, tables and chairs, several televisions, including an extra large HD television and four dart boards. Testimony indicated that the function hall televisions are regularly used to watch sporting events and to display KENO numbers.
- 5) Patrons may directly enter the function hall from the bar through two large openings. The openings are capable of being closed off by means of plastic accordion style doors that can be folded and closed. The Appellant testified that the bar and hall areas are used for various club functions and rentals. Examples include: parties, christenings and funeral meals. The representatives of the Appellant also indicated that the bar and function hall are regularly used simultaneously for routine activities typical of a bar, such as sport viewing events and dart games. During such activities, club patrons routinely and freely move between the bar and function hall areas. Patrons who occupy the hall will generally walk to the bar area to acquire their drinks. Although the function hall is capable of providing a service bar, it is not used, since the cash registers are not electronically linked.
- 6) The Appellant stated that the building has 5 exits, all equipped with push bars, and the building has a recently updated fire alarm system. They indicated that the on-site kitchen is used in a limited manner, usually for making coffee or snacks or for heating food brought in from an outside source.
- 7) Building Inspector Tetreault testified that soon after his appointment, he began a process to verify the status of various public assembly buildings, including occupancy classification and capacity limits. The original occupancy classification of the subject building was listed as an “A-2” assembly occupancy, with a legal occupancy of 115 persons throughout the entire facility. Chief Hickey and the Inspector Tetreault determined that the plastic accordion doors between the two portions of the building do not provide an adequate fire separation, particularly if the Appellant wanted to separate the bar area from the function area. It was at this time, that they communicated to the Appellant’s representatives that sprinklers would need to be installed under the provisions of s. 26G½. The representatives of the Appellant indicated that following discussions with the fire and building officials about fire sprinklers, they concluded that one option was to erect a permanent wall between the bar and hall areas, with fixed doors.
- 8) Based upon the Appellant’s plans to erect a wall and the submission of a building permit for such work, the Building Department established new occupancy limits for the building, which are now reflected in the current Certificate of Occupancy. It indicates that the

establishment is an A-2 occupancy, with a total occupancy of 196 persons. The occupancy limits are broken down as follows: 47 persons in the bar area and 149 persons in the hall area. According to the parties, the establishment of the new separate occupancy limits occurred as a result of the Appellant's submission of a building permit for the construction of a wall with doorways between the hall and the bar areas.

- 9) As discussions continued between the parties, the Appellant's representatives decided not to erect a wall as the installation of a permanent wall would impact the current operational characteristics of the facility. Accordingly, the order to install sprinklers was issued by the head of the fire department.
- 10) The representatives of the Appellant indicated that they sought informal estimates that a sprinkler system could cost between \$32,000 and \$34,000. They stated that this amount does not include additional costs associated with hooking up the system to the water main at the street location. They indicated that this cost would be prohibitive, as the finances of the club are limited due to an outstanding loan on another property they own.

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 and was a major piece of the Commonwealth's sweeping enhanced fire safety legislation enacted in the aftermath of the horrific R.I. nightclub fire which occurred in February 2003.
- 2) Based upon the most recent Certificate of Inspection and other evidence submitted to this Board, this facility has been classified as an A-2 assembly occupancy with a total occupant capacity of 196 (47 in the bar area and 149 in the hall area). Such an A-2 designation is the appropriate building classification for occupancies used and designed as a bar, nightclub, dancehall or discothèque. The Board notes that the newly established occupancy limit of 196, consists of two separate limits for the bar area and hall, and was dependent upon Appellant's construction of a wall between the said two areas, which in fact has not occurred.
- 3) This Board has determined in prior decisions that the requirement of automatic sprinklers pursuant to s. 26G, may vary in establishments that feature portions of a building that are clearly legally, physically and operationally separate from each other. In determining whether the s. 26G½ sprinkler requirements will apply in cases involving buildings, which feature a combination of portions or 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?
- 4) Based upon the evidence presented at the hearing, the Board finds that that portion of the building used or designed as a bar is not reasonably apportioned and separate from the other areas of the building. There is an inadequate physical separation that exists between the entertainment or bar portion from the function hall that would prevent the occupants or activities of the bar from expanding into the function hall. Such separation merely consists of a plastic accordion style curtain, which is not the type of permanent separation which would physically separate the bar area from the hall area. Additionally, there is clearly no separation, in an operational sense, since the activities and characteristics of the bar area routinely expand into the function hall. The function hall, which features televisions for sports viewing activity and keno, and several dart boards, is merely an extension of the bar area. According to the testimony of the Appellant's representatives, it is not the club's desire to establish either the required physical separation as described, nor the operational separation that would prevent persons, activities or characteristics from expanding into the hall or vice verse.
 - 5) The Board finds that both the "bar area" and the function hall are classified for use as an A-2 classification, which legally allows the establishment to feature bar, nightclub or dancehall activities throughout the entire establishment. Consistent with said A-2 classification, both the bar and function hall routinely feature characteristics typical of a bar and have a capacity of well over 100 persons, the threshold set by statute. This finding would apply to this building and its use and characteristics, both prior to and after the most recent reclassification.
 - 6) With respect to Appellant's option that the erection of a wall would somehow eliminate the need for sprinklers under s. 26G½, the Board understands that such action, including the establishment of new capacity limits would trigger the jurisdiction and requirements of the State Building Code and could trigger enhanced fire protection requirements of said code which may be above and beyond the sprinkler requirements of s. 26G½.

G) Decision of the Automatic Sprinkler Appeals Board

Based upon the evidence presented at the hearing and the aforementioned reasons, the Board

hereby **upholds** the determination of the Webster Fire Department to require the installation of an adequate system sprinkler protection throughout the building located at 21 Harris Street, Webster, Massachusetts in accordance with the requirements of M.G.L. c. 148, s. 26G½.

Plans for an adequate system of sprinklers shall be submitted to the head of the fire department for department review and approval within six (6) months of the date decision. Full installation of said system shall be completed within one (1) year from the date of this decision.

H) Vote of the Board

Aime R. DeNault, Chairman	In Favor
Alexander MacLeod	Opposed
Thomas Coulombe	In Favor
Peter Gibbons	In Favor
George Duhamel	In Favor

I) Right of Appeal

You are hereby advised you have the right to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order, pursuant to section 14 of chapter 30A of the General Laws.

SO ORDERED,



Aime R. DeNault, Chairman

Dated: October 17, 2014

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

Mark Costa and James Walker
c/o TSKK
21 Harris Street
Webster, Massachusetts 01570

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