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**Docket # 2006-183**  
**369 West Main Street**  
**Northborough, 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 Northborough Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned by the 369 West Main Street Realty Trust and leased by a business known as The Steakloft Restaurant (hereinafter referred to as the Appellant). The building, which is the subject of the order, is located at 369 West Main Street, Northborough, MA.

**B) Procedural History**

By written notice received by the Appellant on September 6, 2006, the Town of Northborough Fire Department issued an Order of Notice to the Appellant informing it of the provisions of M.G.L. c. 148, s.26G½, which requires the installation of an adequate system of automatic sprinklers in certain existing buildings or structures. The building subject to the order is located at 369 West Main Street, Northborough, MA. The Appellant filed an appeal of said order on October 12, 2006. The Board held a hearing relative to this appeal on July 11, 2007, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant were: George Coufos, representing 369 West Main Street Realty Trust, Carolyn Johnson and Mark Johnson, owners of The Steakloft. Appearing on behalf of the Northborough Fire Department was Fire Chief David M. Durgin and Northborough Building Inspector William S. Farnsworth, Jr.

Present for the Board were: Maurice Pilette, P.E., Chairman; Paul Donga, Vice Chairman; State Fire Marshal Stephen D. Coan; Alexander MacLeod; Peter Gibbons; John J. Mahan and Aime R. DeNault. 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 Northborough 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. Order of Northborough Fire Department
3. Notice of Pre-Hearing Status Conference to Parties
4. Notice of Hearing to Appellant
5. Notice of Hearing to the Northborough Fire Department
6. Appellant's Background Documentation (1-11)
7. Photos provided by Appellant (1-8)
- 8A. Memo to the Northborough Fire Department from the Board of Selectmen
- 8B. Assessor's Card on property

**E) Subsidiary Findings of Fact**

- 1) By notice received by the Appellant on September 6, 2006, the Northborough Fire Department issued an Order of Notice to the Appellant requiring the installation of an adequate system of automatic sprinklers in a building located at 369 West Main Street, Northborough, MA in accordance with the provisions of M.G.L. c. 148, s.26G½. This building is owned by 369 West Main Street Realty Trust and leased to The Steakloft Restaurant, a private, for profit organization.
- 2) According to the Appellant, the establishment has in past years always been classified as an A-3 use group classification. A Certificate of Inspection for the period of December 1, 2005 to December 3, 2006, indicates that the facility was classified as an A-3 with a capacity of 195 persons throughout. That Certificate does not list separate capacity limits for any bar area or the dining room. However, on January 1, 2007, a new Certificate of Inspection, marked as "temporary" was issued indicating a use group classification of "A-2", with a capacity of 104 persons in the restaurant portion of the facility, and 36 persons in the bar. The Appellant and building official indicated that the reduction in total occupancy reflects the actual number of seats available in the areas of the establishment. The Board notes that this most recent Certificate of inspection was issued after the date of the Order of Notice issued by the Fire Department.
- 3) The building official indicated that the establishment was recently reclassified based upon the new law, c. 304 of the Acts of 2004. He indicated that it is his opinion that this facility has characteristics of both an A-2 and A-3 classification (an A-3 classification is typical of a restaurant). He indicated that the reclassification from A-3 to A-2 could have been appealed to the Board of Building Regulations and Standards. The Appellant indicated that he questions and is concerned with the reclassification of his establishment as an A-2 use group, since he strongly contends that his establishment does not have the characteristics of a nightclub which is consistent with the A-2 classification.

- 4) Photographs submitted by the Appellant depict a large dining area that features neatly arranged tables and chairs surrounded by glass walls, opened on the ends and leading out to a bar area. Both areas are carpeted. There was testimony indicating free flowing occupancy characteristics throughout the facility, including the bar area and the dining room areas.
- 5) The establishment holds a full liquor license, which allows "all forms of alcoholic beverages to be drunk on the premises" until 1:00 a.m., seven days a week. The Appellant indicated that the establishment has never remained open until 1:00 a.m.
- 6) The facility has been issued an entertainment license, pursuant to M.G.L. Chapter 40 § 183A and features a keno machine. The Appellant testified that the only forms of entertainment is a television in the bar area that is provided for the convenience of customers for general viewing and is not the type of large, multiple screen television configuration typical of a bar that features sports viewing as a customer attraction. On Thursday and Friday nights, the establishment features a singer/guitarist who performs from 6:30 pm until 10:30 pm. Appellant indicated that the entertainment does not exceed normal sound levels, does not feature low lighting levels and is not for dancing purposes. He indicated that the entertainment is for the listening pleasure of the diners and is incidental to the dining activity.
- 7) The facility features a wide assortment of full course meals for lunch and dinner, served in all areas of the facility, including the "bar area." However, a customer can patronize this bar area and other areas of the establishment for the purchase of liquor only at any time during the hours of operation. Full food service is generally provided until 11:00 p.m. at all locations, including the bar. The Appellant testified that after the kitchen closes, bar service is available for approximately one-half hour after the kitchen closes. In no event does it remain open for more than one hour after the kitchen closes. The Appellant also stated that on slow nights, the restaurant could close as early as 9-9:30 p.m.
- 8) Currently, as confirmed by photographs, the establishment features many characteristics typical of a restaurant, including wait stations, upholstered booths or tables, most of which feature flower arrangements and chairs. Although there are many framed images and photographs, there are limited interior images promoting alcoholic beverages. Additionally, the establishment does not feature significant signage, ornaments or neon lights in or on the exterior of the building, which promote the sale of alcoholic beverages.
- 9) The Appellant indicated that in the past he has featured wedding anniversary functions and similar events on Sunday afternoons. However, such events do not feature the type of entertainment typical of a nightclub, dance hall or discotheque.
- 10) The Appellant contends that the establishment has been known for years as principally a restaurant and that the existence of the bar is incidental to said principal use.
- 11) The fire department issued the Order to install sprinklers based upon the overall building capacity (100 persons or over), the existence of certain characteristics typical of a "bar-like" establishment including: full bar area, full liquor license, entertainment license and lack of a physical or operational separation or independent occupant load providing separation between the bar area and dining area. Additionally, Chief Durgin also drew the Board's attention to the ability of patrons to

order, "liquor only" at any time without ordering food. He was also concerned with the limited number of exits within the facility, two of which empty directly into the parking lot. Chief Durgin indicated that it is his opinion that some people frequent this establishment for a fine meal, but others also patronize the establishment to have a drink and relax.

**F) Ultimate Findings of Fact and Conclusions of Law**

- 1) The provisions of the 2<sup>nd</sup> paragraph of M.G.L. c. 148, s. 26G½, 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, c.148, s. 26G½. This new 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 noted that the statute did not contain a definition of the words "nightclub, dance hall, discotheque, bar or similar entertainment purposes". This Board reviewed the legislative intent and background of the statute and concluded that there were certain characteristics typical of "nightclubs", "dancehalls" and "discotheques". The board indicated that such occupancies are 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.26G½. It was noted that the list of

characteristics were 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.

Notwithstanding the recent classification of this building as an A-2 use group (which the Board notes was actually issued after the Order of the head of the fire department to install sprinklers), the Board finds that the establishment, as currently used, does feature significant characteristics as described in a) through h) which would warrant a finding that this establishment is a nightclub, dancehall or discotheque. However, the Board notes that M.G.L. c. 148, s. 26G½ is not limited only to certain buildings or portions thereof designed or used for occupancy as a nightclub, dance hall or discotheque which feature "A-2 like" characteristics as described herein. The statute also clearly applies to a "bar", which may not necessarily feature the A-2 like characteristics of a nightclub, dance hall discotheque. The Board is also well aware that the statute specifically exempts establishments from the sprinkler system requirements that are "used principally...as a restaurant". In its 1-10-05 memorandum the Board acknowledged the existence of establishments that may feature characteristics of both a restaurant and a bar or nightclub. In determining whether or not such "combination" establishments are subject to the provisions of M.G.L. c. 26G½, this Board looks at such common sense factors such as:

- a) Does the restaurant establishment regularly and routinely serve meals on a daily basis?
- b) Does the establishment provide a bar, bar seating, bar standing and a bartender for the purposes of serving alcoholic beverages directly to alcohol consuming customers?
- c) Does the bar and bar seating area have the ability to expand into the dining area to accommodate special entertainment activities or increased capacity/density.
- d) If the establishment provides a bar and bar seating, are alcoholic beverages continuously served to customers more than one hour after full kitchen facilities have been closed?
- e) Is live or recorded music provided for dancing purposes or for a viewing audience? (does not include background dinner music)?
- f) Does the establishment provide special entertainment, including but not limited to: musical, theatrical, comedy, or sport viewing activities?
- g) Based upon the establishment's name, décor, and atmosphere, does a customer expect a bar or nightclub type establishment?
- h) Is the establishment or portions thereof routinely or regularly used for private or public functions for dancing, parties, celebrations, entertainment or performance purposes?
- i) Does the establishment have an entertainment license?

These factors are not necessarily all inclusive. However, such factors or combination of these factors, are taken into consideration in determining whether the statute will apply to certain establishments which may feature the combined characteristics of a restaurant and a bar or nightclub, dance hall or discotheque.

- 4) Based upon the evidence provided at the hearing, as applied to the aforementioned factors, this establishment features the following characteristics:
- a) It regularly and routinely serves luncheon and dinner meals on a daily basis. Such meals are significant and substantial and are typical of a full service restaurant, rather than the type of light fare offered at establishments principally designed to attract patrons for drinking purposes.
  - b) The establishment provides a bar, bar seating, bar standing and a bartender for the purposes of serving alcoholic beverages directly to alcohol consuming customers. However, the board finds that bar activity is incidental to the principal use of the establishment as a restaurant and is used to serve diners who are seated throughout the establishment and who are usually eating a meal.
  - c) The bar and bar seating area does not have the tendency to expand into the dining area to accommodate special entertainment activities or increased capacity/density.
  - d) The establishment routinely closes at approximately 11:00 p.m. to 11:30 p.m. and does not remain open for bar service or bar seating for more than one hour after full kitchen facilities have been closed. Although the liquor license allows the service of liquor until 1:00 a.m., it appears that this 1:00 a.m. time period is standard language on all liquor licenses issued throughout the state without regard to whether said license is issued to an establishment principally designed as a restaurant.
  - e) Although there is live entertainment, it appears to be routinely limited to a solo guitar player who is performing at the same time people are eating a meal and terminates at the same time or prior to the time kitchen services cease. Due to the current nature of the entertainment, such music is neither above normal sound levels and does not involve low light levels, nor is such music provided for dancing or viewing activities. There is no dance floor.
  - f) Except for the guitar soloist, the establishment does not provide special entertainment, such as musical, theatrical, comedy, or sports viewing activities. This establishment does not feature the multiple use of big screen televisions that are visible throughout the facility, thus indicating the configuration typical of a bar that features sports viewing as an important entertainment attraction.
  - g) This facility does not feature a décor or atmosphere typical of bar or nightclub-type establishment. Currently, the establishment features wait stations, upholstered booths or tables, most of which feature flower arrangements and chairs. Although there are many framed images and photographs, there are limited interior images promoting alcoholic beverages. Additionally, the establishment does not feature significant

signage, ornaments or neon lights within or outside the building, which promotes the sale of alcoholic beverages. The exterior features only one sign that reads: "Good Food and Drink". The Board notes that the name of the establishment: "The Steak Loft Restaurant," tends to indicate that the establishment features restaurant type accommodations. In prior determinations, this Board has found that the name of an establishment is often an important factor in determining customer expectation.

- h) A copy of an internet advertisement indicates that the facility is clearly marketed to attract dining customers. It boasts the "best prime rib around" and invites guests to "come taste what makes us so special in our warm and cozy surroundings." Additionally, the advertisement clearly supports this board's finding that the music is incidental to the dining activity, since it states: "Easy listening music while you dine, Thurs & Fri 6:30-10:30."

**G) Decision**

Based upon the evidence presented at the hearing and findings stated herein, the board concludes that this establishment, as currently used and designed, is "used principally... as a restaurant" and is therefore not subject to the enhanced automatic sprinkler system requirements of M.G.L. c. 148, s. 26G½. This determination is conditioned upon the continued operation of the establishment in accordance with the findings stated in Section F, paragraph 4, items (a) through (g).

This determination does not preclude the possible temporary permit options contained in the statute. (see: M.G.L. c. 148, s. 26G½, 4<sup>th</sup> paragraph) This section allows the temporary use of such places of assembly (including restaurants) as a nightclub, dance hall, discotheque or bar, or similar entertainment purpose without the need to install a sprinkler system if a permit is issued by the head of the fire department in consultation with the building inspector. The head of the fire department may set the terms and conditions of said permit to protect against fire and preserve public safety.

For the foregoing reasons, this Board unanimously reverses the Order of the Northborough Fire Department to install sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s.26G½ subject to said stated conditions,

**H) Vote of the Board**

Maurice Pilette, P.E., Chairman	In Favor
Paul Donga, Vice Chairman	In Favor
Stephen D. Coan, State Fire Marshal	In Favor
Alexander MacLeod	In Favor
John J. Mahan	In Favor
Peter E. Gibbons	In Favor
Aime R. DeNault	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,



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Maurice M. Pilette, P.E., Chairman

Dated: October 17, 2007

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

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