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The Commonwealth of Massachusetts
Executive Office of Public Safety
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Automatic Sprinkler Appeals Board

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Docket # 2006-29
141 Cabot Street
Beverly, 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 26G½ and Chapter 6, section 201, relative to a determination of the Beverly Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned and/or operated by the Union Club, Inc. (hereinafter referred to as the Appellant). The building, which is the subject of the order, is located at 141 Cabot Street, Beverly, MA.

B) Procedural History

By written notice received by the Appellant on January 25, 2006, the Beverly 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 141 Cabot Street, Beverly, MA. The Appellant filed an appeal of said Order on February 1, 2006. The Board held a hearing relative to this appeal on February 23, 2007, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant was: John Hamilton, Esq., Bob Hamilton, President, Union Club, Inc., and Thomas Smith, Vice President. Deputy Fire Chief Wayne Francis represented the Beverly Fire Department.

Present for the Board were: Maurice M. Pilette, Chairperson, Paul Donga, Vice Chair, Stephen D. Coan, State Fire Marshal, Alexander MacLeod, Chief Thomas Coulombe, Peter Gibbons, Aime R. DeNault, and George A. Duhamel. Peter A. Senopoulos, Esq. 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 Beverly Fire Department relative to the subject building in accordance with the provisions of M.G.L. c. 148, § 26G½?

D) Evidence Received

1. Application for Appeal by Appellant
2. Statement in Support of Application for Appeal
3. Order of Notice of Beverly Fire Department
4. Notice of Pre-Hearing Status Conference to Appellant
5. Notice of Pre-Hearing Status Conference to Beverly Fire Dept.
6. Notice of 2nd Pre-Hearing Status Conference to Appellant
7. Notice of 2nd Pre-Hearing Status Conference to Beverly Fire Dept.
8. Agreement to Install Type II Fire Alarm System
9. Letter and Stipulations signed by Appellant and Fire Dept.
10. Notice of Hearing to Appellant
11. Notice of Hearing to Beverly Fire Dept.
12. Certificate of Inspection (issued 1/7/2007)
13. Liquor License

E) Subsidiary Findings of Fact

- 1) By notice received by the Appellant on January 25, 2006, the Beverly 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 141 Cabot Street, Beverly, in accordance with the provisions of M.G.L. c. 148, s.26G1/2. The Appellant filed an appeal of said order on February 1, 2006. The Board held a hearing relative to this appeal on February 23, 2007, at the Department of Fire Services, Stow, Massachusetts.
- 2) The Appellant, the Union Club, Inc. operates a non-profit, private club that is operated within a three-story building with an unfinished basement. The club occupies the second and third floors of this building. The first floor is rented out as commercial space. There are two stairways through the first floor that lead to the second and third floors.
- 3) The Certificate of Inspection issued for this facility by the Town of Beverly Building Department on January 1, 2007, indicates an “A-2” use group classification for both the second and third floors. The Certificate indicates that the occupancy for the second floor lounge and adjoining areas and rooms is 240 persons. The third floor function room also has a capacity of 240 persons.
- 4) The Appellant currently holds a license to sell “All alcoholic beverages”.
- 5) The representatives of the Appellant indicate that the second floor primarily consists of three rooms. There is a “members only” bar, which has seating for approximately 28 people. Alcoholic beverages served in the members only bar may be carried into all areas

of the second floor. There is another lounge area/bar on the second floor that is used by members and guests with seating for approximately 40 people. The Appellant offered no evidence, which would contradict a finding that the two lounge areas within the second floor are bars within the context that said term as used in s. 26G½. In addition to the two bar areas, the second floor also features a large-screen television in a sitting room that features sofas, sitting chairs, one pool table and a large screen television. According to the Appellant, this area is used for relaxation, reading and conversation. Guests are allowed in this area if accompanied or otherwise allowed by a member. There is currently no musical entertainment featured on the second floor. However, based upon the A-2 building classification, the Appellant could legally feature such entertainment activity.

- 6) The representatives of the Appellant testified that the third floor consists of a kitchen, a smaller side room and a large function area. The third floor is primarily used as a function room and is often used for club meetings and is also rented for social functions by the members. In recent years there have been approximately 10-12 such functions per year. Such events include graduation parties, small wedding receptions, retirement parties and similar family type events. Some of these events involve entertainment in the form of disc jockey or live band, but most of these events do not. During such entertainment events the manager keeps the sound and lighting levels under strict control. Sound levels are not high and lighting is not abnormally low. Tables and chairs are neatly arranged at all times to assure adequate egress. Appellant indicated that the third floor occupant load is considered “un-concentrated” based upon the available floor area and the current occupant load as indicated on the Certificate of Occupancy. All the events that involve entertainment on the third floor also feature a meal as a main attraction. Such meals are served buffet or sit down and the meals are prepared based upon a prearranged invited guest count. The meals are either prepared in the kitchen or are prepared off site and served during the function by a caterer. The function area features its own service bar for serving alcoholic beverages during social function events. Persons attending social events on the third floor are not allowed on the second floor. All events are overseen by an on site manager who usually tends the service bar. The organization stated that all functions and rentals are accomplished through a written contract. This contract is also used to assure that the conditions regarding the use, attendance and control of the social event are strictly enforced.
- 7) The Appellant indicated that the functions have a definite starting and ending time, that last call is at 11:30 p.m., and that the facility closes at 12:00 a.m.
- 8) The representatives of the Fire Department did not contest the Appellant’s description of the building’s description and use characteristics. In support of the Beverly Fire Department’s position, Deputy Francis testified that he is concerned with the means of egress from the third floor, stating that the only way out is through stairways at the front and rear of the building. Deputy Francis also stated his concerns about the “free-flowing” nature of the second floor lounge areas, wherein most patrons are able to move freely throughout the space without supervision or control of an onsite manager. The order to sprinkler was issued based upon the current building classification and the occupant load of over 100 persons.
- 9) The representative for the Appellant testified that there are exit lights at each exit and a fire door on each level of the building, as well as an installed fire alarm system (which is in the process of being upgraded and connected to a monitoring system).

- 10) The Appellant indicated that the costs associated with the sprinkler system throughout the building would be over \$100,000 dollars. However, a formal written estimate has not been issued. Notwithstanding arguments that certain portions of this building may be exempt from sprinkler installation based upon prior decisions of this board, the Appellant did not provide any technical or engineering basis to support the installation of a modified or partial sprinkler system.

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) The Inspection Certificate issued for this establishment on 1-1-06 indicates that the occupancy is classified as an “A-2” assembly occupancy with a legal capacity of 240 persons on both the first and second floors. The legal classification of this establishment as an “A-2” assembly occupancy by the Town of Beverly Building Department is significant. Under the provision of the State Building Code, 780 CMR, such a classification includes establishments that are “designed for occupancy as dance halls, nightclubs and for similar purposes” (see 780 CMR 303.3).
- 4) The A-2 classification is an important factor in determining whether this establishment is subject to the sprinkler requirements of M.G.L. c. 148, s. 26G1/2. However, this classification alone is not the sole factor that this Board will look at in making a determination. 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 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 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.

- 5) The third floor function area of this establishment is routinely used or rented out for a variety of activities including weddings, showers, banquets, and social receptions, which may feature, recorded or live music for dancing purposes. However, according to testimony, all these events appear to be privately organized dining events that 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 the certain characteristics of such dining events is distinguishable from the “A-2 like” characteristics that this Board concluded were typical of nightclubs, dancehalls and discotheques and within the legislative intent of this law. The characteristics, are as follows:
 1. The facility is used for events that feature a meal as the primary attraction.
 2. 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.
 3. Each event has a definite starting and ending time.
 4. Tables and chairs are arranged in well-defined aisles in such a manner to not impede easy egress, and
 5. There are no significantly low lighting levels, and

6. 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 (6th Edition), table: 780 CMR 1008.1.2.
7. The characteristics of the event, as referenced above, are strictly controlled by an on-site 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. This determination does not preclude such a facility from ever hosting an event that features music by a live band or recording, dancing or similar entertainment as the main attraction. Under the provisions of M.G.L. c.148, s.26G½, 4th paragraph, such a facility 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.

- 6) In looking at the characteristics of this establishment as currently used, the board concludes that the event activities that occur within the third floor area are considered “privately organized dining events” which feature a meal as the primary attraction. The board has determined that such activities are not the type of use, which triggers the installation of the required sprinkler system, as long as the seven (7) characteristics listed in paragraph F(5) are met.
- 7) However, with respect to the second floor portion of this building, which contains two separate lounge or bar areas, the Board reaches a different conclusion. Although, the second floor does not currently feature A-2 characteristics such as low lighting, entertainment by a live band or recorded music generating above normal sound levels and a specific area designated for dancing, such characteristics may not necessarily exist in certain establishments that clearly may be considered a “bar”. Nevertheless, the provisions of M.G.L. clearly apply to “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...bar...”.
- 8) The second floor lounge areas of this building clearly feature the characteristics of a “bar” as that term is used in s. 26G½. Such characteristics include:
 - a. A full liquor license to sell “all alcoholic beverages.”
 - b. The existence of two separate bar or lounge areas that feature a bar, and bar seating or bar standing and a bar tender for the purposes of serving alcoholic beverages to patrons.
 - c. The lounge areas provide minimum, limited or no food service.

- d. The actual or potential for later than average operating hours
- e. The entire second floor has a listed occupant load of 240 persons. The second floor consists of two lounge areas and several ancillary lounge recreation areas. There are no separate occupancy loads for these rooms. Club members and occupants may freely move from one room to another, thus allowing potentially high occupant load situations. These areas contain features typical of a bar including a pool table and a large screen television for sports and entertainment viewing purposes.

G) Decision and Order

Based upon the aforementioned findings and reasoning, the Board hereby **modifies** the Order of the Beverly Fire Department to install 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,” as defined in said s.26G½, throughout the second floor of this building. Such system shall also be installed in all stairwells and hallways on the first floor, which are used as a means of egress from the third and second floors. The third floor portion of this building is not subject to the sprinkler requirements as long as all seven conditions stated in paragraph F(5) are continuously met and documented with the head of the Beverly Fire Department.

Plans for the installation of the required system shall be submitted to the head of the Beverly Fire Department within 60 days of the date of this decision or as otherwise extended by the fire department.

System installation shall be completed in accordance with the statutory time period (November 15, 2007) unless otherwise extended by the Fire Department in accordance with Section 11 of St. 2004, c. 304.

H) Vote of the Board

Maurice Pilette, (Chairperson)	In favor
Paul Donga (Vice Chair)	In favor
Stephen D. Coan, State Fire Marshal	In favor
Alexander MacLeod	In favor
Thomas Coulombe	In favor
Peter Gibbons	In favor
Aime R. DeNault	In favor
George A. 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,



Maurice Pilette, P.E. Chairman

Dated: March 15, 2007

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

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1st Class Mail, Postage Pre-paid to:

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