



*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*

DEVAL L. PATRICK  
GOVERNOR

TIMOTHY P. MURRAY  
LT. GOVERNOR

KEVIN M. BURKE  
SECRETARY

MAURICE M. PILETTE  
CHAIRMAN

PAUL DONGA  
VICE CHAIR

**Docket # 2007-05**  
**3-5 Church Street**  
**Greenfield, 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 the informal rules of hearing procedures, 801 CMR 1.02, relative to a determination of the Greenfield Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned and operated by the Greenfield Lodge of Elks # 1296 (hereinafter referred to as the Appellant). The building, which is the subject of the order, is located at 3-5 Church Street, Greenfield, Massachusetts.

**B) Procedural History**

By written notice, dated January 8, 2006, the Greenfield Fire Department issued a determination to the Appellant informing the organization about the provisions of M.G.L c. 148, s. 26G½, which requires the installation of an adequate system of automatic sprinklers in the Appellant's building located at 3-5 Church Street, Greenfield, Massachusetts. The Appellant filed an appeal of said determination with this Board on February 21, 2007. The Board held a Pre-Hearing Status Conference on April 27, 2007. A full hearing before the Board was held on December 12, 2007, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant were building trustees Wesley Clark and Fran Siram. Appearing on behalf of the Greenfield Fire Department were Deputy Chief Robert Strahan and Mark Gogswell. Also attending was Greenfield Building Inspector Mark Snow.

Present for the Board were: Maurice M. Pilette, Chairman; Paul Donga, Vice-Chair; Thomas Coulombe; Alexander MacLeod; Peter Gibbons; Aime R. DeNault; 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/determination of the Greenfield 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 Appeal
3. Order of Notice of the Greenfield Fire Department
4. Notice of Pre-Hearing Status Conference to the Parties
5. Letter to the Board from Parties requesting a full hearing
6. Notice of Hearing to the Parties
7. 2<sup>nd</sup> Notice of Hearing to the Parties
8. 1<sup>st</sup> Level Floor Plan
9. Greenfield Fire Department Submission (1-6)
10. Food Establishment Certificate
11. Appellant's Photos (1-13)
12. Function List

**E) Subsidiary Findings of Fact**

- 1) By Notice dated January 8, 2006 and received by the Appellant on the same date, the Greenfield Fire Department issued a determination to the Appellant, requiring the installation of an adequate system of automatic sprinklers in a building located at 3-5 Church Street, Greenfield, MA, in accordance with the provisions of M.G.L. c. 148, s. 26G½. This building is owned and operated by the Greenfield Lodge of Elks # 1296, a fraternal, non- profit establishment. The club has 500 members, 150 of which are active members. The club is open to members, their families and members' guests.
- 2) The subject building, as described by the Appellant is a club, function facility and a bar for members and their guests. The building is a brick, two level structure. The first level, also known as the basement level, features a banquet hall, a bar area and several other rooms including: a kitchen, club offices, storage/utility rooms, a coatroom and ladies and men's restrooms. Except for temporary bi-fold doors, there is no physical separation between the banquet hall and the bar area. The banquet /bar area essentially consists of a large, free flowing area that features a bar with 30 bar seats. The 1<sup>st</sup> level also features, a disco ball, dancing area, light dimming switches, a jukebox, a bowling game, pool table, dartboard, and a 40" wide screen television. This level also features three means of egress.
- 3) According to the current Certificate of Inspection, issued on December 12, 2006, the building has a use group classification "A-3". The building has a total capacity of 535 persons: with a listed 235-person capacity for the first level bar/function area and 300 persons for the second floor function area.

- 4) The hall on the second floor level is used, on a limited basis, for business and club meetings. Appellant indicates that there is no bar or “bar-like” or entertainment activities on this second level. At the hearing, the parties indicated that they have agreed that the installation of sprinklers on the second level of this building is not required based on the current use of this area.
- 5) The representatives of the Appellant concede that the first floor level has the characteristics of a bar at most times and that patrons can order alcoholic beverages and freely walk throughout the entire 1<sup>st</sup> floor level. They further assert that no more than 30 people usually occupy the bar at any given time. The Appellants also indicated that a new fire alarm system was recently added to the facility. The Appellants indicated that the Lodge either hosts or rents out the 1<sup>st</sup> level function hall for a variety of social events. Such activities include: funeral collations, birthday parties, Jack/Jill parties, baby showers, Christmas parties, bridal showers, anniversaries, New Years Eve parties and Super Bowl Parties. At some of these events, music is provided, in the form of disc jockey or on rare occasion, a live band. During the past 12 months, there were approximately 30 such social events. Additionally, the facility hosts dinners two times per week. Occasionally, the organization’s 40” television is rolled out into the function hall for sports viewing events. The bar is open to members and their guests, 7 days a week from 12:00 noon until 12:00 midnight. On weekends the bar may stay open until 1:00a.m. During functions, the bar remains open and provides service to both the function and bar areas.
- 6) The fire department representative indicated that the Order to install sprinklers was based upon the overall building capacity of over 100 persons, the existence of a liquor license, regular use of bar/lounge-type accommodations and entertainment and dancing. Deputy Chief Strahan did not contest the factual characteristics of the building, including its use and description, as presented by the Appellants.
- 7) Deputy Strahan further indicated that the lack of physical/operational separation between the members’ lounge/bar and the function area contributed to his decision to order the facility to install sprinklers. Deputy Strahan believes, based upon discussions with club personnel, that the primary income for this facility comes from the sale of alcohol.
- 8) The parties confirmed that preliminary sprinkler plans have been submitted. The representatives of the fire department indicated that they would approve the installation of any reasonable sprinkler system that would provide an adequate level of sprinkler protection in accordance with the intent of the statute. They also would not object to the Board allowing a reasonable time frame to complete the installation.

**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 January 10, 2005, this Board issued an interpretive guidance document relative to the provisions of this law. 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 6<sup>th</sup> 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. 26G½. It was noted that the list of characteristics was not necessarily all-inclusive and 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. Additionally, it is important to note that notwithstanding a lack of A-2 like characteristics or a formal A-2 used group classification typical of a nightclub, dancehall or discotheque, the statute also clearly applies 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**...”.

- 4) With regard to this appeal, the first level of this establishment features a wide-open area with no physical or operational separation between the so called “bar area” and the function hall/activity area. The entire area clearly and legally operates in a manner typical of a bar or lounge with a capacity of 235 persons. The facility has a full liquor license with no or minimal foodservice. It routinely and regularly serves all kinds of alcoholic beverages to customers, seven days per week until late night hours, including 1:00 a.m. on weekends.
- 5) The first floor level of this establishment features activities, an atmosphere and décor, which makes a customer reasonably, expect “bar-like” accommodations. Examples of such features in this establishment include: full service bar, bartender, bar chairs, several televisions including a “big screen” television, a dart game, lottery machine, cigarette machine, pool table, bowling game and juke box. In short, the characteristics of this lounge/function area, as currently used and designed, are typical of a “bar” with a capacity of over 100 persons. Appellant’s argument that the establishment rarely, if ever, has 100 persons in the establishment has no merit. The statute clearly looks to the facility’s legal capacity to establish the 100-person threshold. For this board to determine whether an establishment should install sprinklers based upon average attendance or business success, rather than legal capacity would frustrate the legislative intent of this law and result in arbitrary enforcement outcomes.
- 6) In addition to the “bar-like” factors stated above, the first level of this facility regularly and routinely hosts a variety of various social events, some of which appear to have many of the “A-2 like” characteristics described herein. Such factors include: the display and use of a disco ball, light dim switch, the existence of a dance area, the regular appearance of a disc jockey and “A-2 like” entertainment events such as a Super Bowl party, Jack and Jill, birthday, anniversary and holiday parties, events where the meal is not the primary attraction.

#### **G) DECISION AND ORDER**

After a careful review of all the evidence presented and based upon the aforementioned findings and reasoning, the Board hereby determines that the entire 1<sup>st</sup> level of the building located at 3-5 Church Street, Greenfield, is a public assembly with a legal capacity of 100 or more persons and is currently used or designed as a “bar” within the meaning of the statute.

Accordingly, the Order of the Greenfield Fire Department to install sprinkler protection in the subject portion of the building in accordance with the provisions of M.G.L. c.148, s. 26G½ is hereby **affirmed**.

An adequate sprinkler system shall be installed throughout all areas of the first floor level, including all areas of egress. Plans and specifications for the installation of said system shall be submitted to the head of the fire department within four months of the date of the hearing (April 12, 2008). The Installation shall be completed within one (1) year of the date of hearing (December 12, 2008). In the event that the fire department rejects an installation plan, the Appellant may file an appeal of such determination to this Board, based upon technical issues, within 45 days of the date of such rejection.

**H) Vote of the Board**

Maurice M. Pilette, (Chairperson)	In favor
Paul Donga	In favor
Chief Thomas Coulombe	In favor
Alexander MacLeod	Opposed
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: February 15, 2008

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

Wesley Clark, Trustee  
c/o Greenfield Lodge of Elks  
3-5 Church Street  
Greenfield, Massachusetts 01301

Deputy Chief Robert Strahan  
Greenfield Fire Department  
412 Main Street  
Greenfield, Massachusetts 1301