



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

Automatic Sprinkler Appeals Board

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VICE CHAIRMAN

Docket # 2012-19
788 West Main Street
Plainfield, 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 Plainfield Fire Department requiring the installation of an adequate system of automatic sprinklers in a building owned and/or operated by Mark and Jean Fortier, hereinafter referred to as “the Appellants.” The building, which is the subject of the order, is located at 788 West Main Street, Plainfield, Massachusetts and features an establishment operated under the name of “The Hilltop Colonial Inn.”

B) Procedural History

By written notice received by the Appellant on December 10, 2012, the Plainfield Fire Department issued an Order of Notice to the Appellant requiring the installation of an adequate system of automatic sprinklers in the subject building in accordance with the provisions of M.G.L c. 148, s. 26G½. The Appellant filed an appeal of said Order on December 22, 2012. The Board held a hearing relative to this appeal on March 13, 2013, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant were: Mark and Jean Fortier, owner/manager of the facility. Appearing on behalf of the Plainfield Fire Department was Chief Dennis Thatcher.

Present for the Board were: Maurice M. Pilette, Chairman; Richard Magee; Anthony DiNatale; Thomas Coulombe, Alexander MacLeod; and George 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 determination of the Plainfield Fire Department requiring the installation of an automatic system of sprinklers in 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. Statement in Support of Appeal
3. Order of Notice of the Plainfield Fire Department
4. Overview of property purchase
5. Sprinkler cost estimate from Adams Plumbing & Heating, Inc.
6. Property Card
7. Photographs of property
 - 7A. Exterior Photograph
 - 7B. Exterior Photograph
 - 7C. Interior Photograph (towards windows)
 - 7D. Interior Photograph (towards bar)
 - 7E. Interior Photograph (sitting area with tables)
8. 1st Notice of Hearing to Parties
9. 2nd Notice of Hearing to Appellant
10. 2nd Notice of Hearing to the Plainfield Fire Department
11. Copies of two Memoranda that accompany hearing notices
12. Appellants Documents
 - 12A. License – Alcohol
 - 12B. Certificate of Inspection (11/13/2010 – bar)
 - 12C. Certificate of Inspection (11/13/2010 – restaurant)
 - 12D. Certificate of Inspection (12/13/2012 – restaurant)
 - 12E. Temporary Certificate of Inspection (12/13/2012 – bar)
 - 12F. Certificate of Inspection (12/8/2011 – bar)
 - 12G. Certificate of Inspection (12/8/2011 – restaurant)
 - 12H. Certificate of Occupancy (3/15/2005)
 - 12I. Google Earth Map (showing distance between two fire departments and the facility)
- 12J-1. Fire Alarm Diagram
- 12J-2. Fire Alarm Diagram, page 2, “2nd Floor Framing Plan”

E) Subsidiary Findings of Fact

- 1) By written notice received by the Appellant on December 10, 2012, the Plainfield Fire Department issued an Order of Notice to the Appellant requiring the installation of an adequate system of automatic sprinklers in the subject building in accordance with the provisions of M.G.L c. 148, s. 26G½. The Appellant filed an appeal of said Order on December 22, 2012. The Board held a hearing relative to this appeal on March 13, 2013, at the Department of Fire Services, Stow, Massachusetts.
- 2) The subject building purchased by the Appellants in 2009, is a 25’ x 44’ two story structure. A business, The Hilltop Colonial Inn, is located on the first floor. The second floor is unfinished, unoccupied and not used for storage. The limited basement area beneath the restaurant portion is used for utility and limited storage.
- 3) The business consists of three basic areas: a kitchen, dining room and a bar area. The Certificates of Inspection issued for this building by the Town of Plainfield, dated December 13, 2012, indicate that the restaurant portion has an occupancy capacity of 77

persons and that the bar has an occupancy capacity of 91 persons. Said Certificates of Inspection, do not indicate the use group classification of the building.

- 4) The building has a fire alarm system with strobe lights, sirens, heat sensors and smoke detectors throughout the building and employs a central station notification system.
- 5) The Appellants indicated that upon purchasing the building, they renovated and updated the bar area and kitchen and added two bathrooms. They also constructed a 2-hour firewall between the restaurant and bar areas. This wall includes two, 2- hour fire rated doors. The restaurant portion has 2 egress doors to the outside and 2 other doors that lead into the kitchen and the bar area. The bar area has 3 doors to the exterior. Both the bar and restaurant areas have a set of bathrooms that are independently accessible from each area.
- 6) The Appellants indicated that currently, the hours of operation are as follows: Bar area open Wednesdays and Thursdays from 4:00 p.m. to 10:00 p.m., Fridays from 4:00 p.m. to 1:00 a.m., Saturday from 12:00 p.m. to 1:00 a.m. and Sundays 12:00 p.m. to 10:00 p.m. The restaurant is currently open, on a limited basis, as follows: Thursdays from 4:00 p.m. to 9:00 p.m., Fridays and Saturdays from 5:00 p.m. to 9:00 p.m., and Sundays from 12:00 p.m. to 6:00 p.m. The Appellants testified that during hours of operation when both the restaurant and bar are open, the door between the two portions is open to allow staff to walk between the bar area, restaurant area and the kitchen for the service of food and alcohol beverages.
- 7) The bar area features a large bar, bar stools, bar service and a bartender, tables and chairs and a pool table. The dining area features over a dozen various size tables with chairs. The Appellant indicated that during hours of operation, when both the bar and restaurant portions are operating, customers may be served meals in both areas. Patrons in the bar area may purchase alcoholic beverages directly from the bartender. However, patrons in the dining area are generally served alcohol at their table by the wait staff.
- 8) The Appellants testified that when the bar is open and the restaurant closed, patrons are encouraged to use the separate entrances to the bar area, rather than enter the bar through the restaurant.
- 9) The Appellants testified that occasionally entertainment is provided in the form of a live band. The Appellants indicated that when entertainment is featured, it occurs in the bar portion. During such entertainment events, the restaurant area is closed and patrons are only allowed to occupy the bar area.
- 10) The Appellants indicated that a physical separation exists between the bar area and the restaurant area. They also indicated that they do not allow occupants of the bar and the entertainment activities that occasionally occur in the bar area to expand into the restaurant area.
- 11) The Appellants indicated that they have complied with the “crowd manager” requirements in accordance with 527 CMR 10.13(2)(d).
- 12) The Appellants stated that the business uses well water. They indicated that they have received estimates that the cost to install a sprinkler system would be approximately \$155,000.00. This amount includes the installation of a diesel generator and additional wells to pump adequate water through the system. They indicated that the expense is substantial and

would cause great hardship.

- 13) The head of the fire department indicated that the Town issued the Order to install an adequate sprinkler system based upon the combined occupancy of the restaurant portion (77) and the bar area (91), which exceeds the 100 person threshold of the provisions of M.G.L. c. 148, s. 26G½. Additionally, the Fire Chief believes that the occasional use and opening of the fire door indicates that the bar and restaurant are not separate businesses.

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, 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) Upon review of the evidence, this establishment clearly features characteristics of both a bar and a restaurant. The service of meals is the primary customer attraction in the restaurant portion of the building. This dining area features over a dozen various size tables with chairs. Full course meals are provided during the limited hours that this “restaurant” portion of the facility is in operation. According to the Appellants, customers who seek meals are not seated in the restaurant portion beyond 9:00 p.m. Additionally, bar service is only offered to the patrons in the restaurant area who are also eating meals. The restaurant area does not feature “bar-like” activities or the décor, atmosphere typical of an entertainment facility. This restaurant portion has two independent egress doors to the outside in addition to the two other doors into the kitchen and the bar area and has an independent set of bathrooms. Clearly, the evidence indicates that the dining portion of this establishment is principally used for restaurant purposes. The mandatory sprinkler provisions of section M.G.L. c. 148, s. 26G½, specifically “shall not apply to a place of assembly within a building, structure or portions thereof used “principally as a ... restaurant ...”
- 3) However, this establishment does feature a portion of the building that has the characteristics of a “bar” or nightclub. This area features a large bar, various size tables with chairs and a bartender for the service of alcoholic beverages directly to customers, whether or not they are served a meal. Said bar portion also features a pool table, which is moved to accommodate band set-up when live entertainment performs.
- 4) This establishment, that features combined characteristics of both a restaurant, bar and entertainment or nightclub activities, are fairly common throughout the Commonwealth. In such instances, this Board notes that section 26G½, in pertinent part, requires the installation of an adequate system of automatic sprinklers in: “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 ... nightclub, dancehall discotheque, bar or similar entertainment purposes ...” (emphasis added). In determining whether the sprinkler requirements will apply in this case that involves a building which features 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. This language clearly requires an analysis of the building’s

characteristics and floor plan to determine if a reasonable separation exists between that portion of the building used or designed for bar or entertainment purposes and the other portion of the building not subject to the law. In determining if a sprinkler system is required in such “combination” establishments, the Board will conduct the following two-part analysis:

1. Is that portion of the building used or designed for bar or entertainment purpose 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 to expand into the dining area. Such separation can include a permanent wall or closed door. 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 restaurant or other areas when such areas are no longer in operation.
 2. If the separation exists, as described in question #1, does that portion used or designed for bar or entertainment purposes legally exceed a capacity of 100 persons or more?
- 5) This establishment features a physical separation between the bar area and the restaurant portion of the building, which prevents bar patrons and bar like activities from expanding into the dining area. This separation includes a permanent wall with doors that are capable of closing. The bar area also has a separate and independent means of egress. There was testimony that a separation, in an “operational” and business context, exists that assures that the activities that occur in the bar area do not overflow or expand into the restaurant portion or other areas when the restaurant area is not in operation. The separate portion of the building used as a bar, has a legal capacity of 77 persons. This is less than the s. 26G½ statutory capacity of 100 persons or more, which triggers the installation of sprinklers in this area.

G) Decision and Order

The dining portion of this establishment clearly has the characteristics of a restaurant. The sprinkler requirements of M.G.L. c.148, s. 26G½ do not apply to buildings or portions thereof, used “principally as a ... restaurant ...” Although a bar exists in the first floor portion of this building, it is sufficiently separated, both physically and operationally, from the restaurant and other portions of this building. The portion of the building, used as a bar, does not have a legal capacity of 100 persons or more required to trigger the s. 26G½ sprinkler mandate.

For the foregoing reasons, this Board **reverses** the Order of the Plainfield Fire Department to install sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s. 26G ½. This determination is contingent upon:

1. The Appellants shall continue to maintain the physical and “operational” separation between the entertainment or bar portion of this building from the dining area. This separation must prevent customers (as distinguished from wait staff) and bar activities from expanding into the dining room area which is used principally for restaurant purposes;
2. The Appellant shall modify the existing fire alarm system by installing automatic door release devices at all door openings between the bar and restaurant areas. Such device shall assure that said doors shall automatically close upon activation of the fire alarm system; and

3. The owner/operator shall continue to have a crowd manager on duty **at all times** when the bar area is open to assure that the operational separation relied upon in this determination is continuously maintained.

H) Vote of the Board

Maurice M. Pilette	In Favor
Richard Magee	Opposed
Anthony DiNatale	In Favor
Thomas Coulombe	Opposed
Alexander MacLeod	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,



Maurice M. Pilette, Chairman

Dated: May 15, 2013

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

Mark and Jean Fortier
The Hilltop Colonial Inn
788 West Main Street
Plainfield, Massachusetts 01070

Chief Dennis Thatcher
Plainfield Fire Department
38 North Central Street
Plainfield, Massachusetts 01070