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*The Commonwealth of Massachusetts*  
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*Automatic Sprinkler Appeals Board*

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VICE CHAIR

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**Docket # 2006-193**  
**171 Faunce Road**  
**Dartmouth, 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 26H; Chapter 6, section 201 and 530 CMR, relative to a decision of Dartmouth Fire District 3, requiring the installation of automatic sprinklers in a building owned and/or operated by Hersha Hospitality, (hereinafter referred to as the Appellant). The building, which is the subject of the order, is located at 171 Faunce Road, Dartmouth, MA and is known as the Comfort Inn.

**B) Procedural History**

By letter dated November 22, 2006 and received by the Appellant on the same date, Dartmouth Fire District 3 ordered the Appellant to complete the installation of an automatic sprinkler system throughout the building located at 171 Faunce Road, Dartmouth, MA, in accordance with the sprinkler provisions of M.G.L. c.148, s.26H. On December 19, 2006, the Appellant filed an appeal of the Fire District's Order with this Board. The Board held a hearing on February 23, 2007, at the Department of Fire Services, Stow, Massachusetts.

Appearing at the hearing on behalf of the Appellant was: Attorney Paul Moriarty and David Choquette of the Comfort Inn Maintenance Department. Appearing for Dartmouth Fire District 3 was Chief Richard Arruda.

Present for the Board were: Paul Donga, Presiding Chairman; Stephen D. Coan, State Fire Marshal; Alexander Macleod, Chief Thomas Coulombe, Peter E. Gibbons, Aime R. DeNault, and George A. Duhamel.

**C) Issue(s) to be Decided**

Whether the Board should affirm, reverse or modify the Order of the Dartmouth Fire District 3 to

sprinkler the Appellant's building in accordance with the provisions of M.G.L. c.148, s. 26H.

**D) Evidence Received**

1. Application for Appeal by Appellant
2. Memorandum in Support of Appeal
3. Order of Notice of Dartmouth Fire District No. 3
4. Appellant's Exhibits in Support of Appeal
5. Notice of hearing to Appellant
6. Notice of hearing to Dartmouth Fire District No. 3
7. Brochure of Facility
8. Appellant's Pictures (A-G)
9. Appellant's Pictures of Interior (A-E)
10. Supplemental Memorandum from Appellant
11. Copy of SJC decision *Selvetti v. Building Inspectors of Revere*
12. Copy ASAB decision – 2003-03 146 Main Street, Clinton
13. Submissions of Dartmouth Fire District No. 3 (A-C)
14. 2<sup>nd</sup> Submissions of Dartmouth Fire District No. 3 (A-E)

**E) Subsidiary Findings of Fact**

- 1) By letter dated November 22, 2006, and received by the Appellant on the same date, the head of Dartmouth Fire District 3 ordered the Appellant to complete the installation of an automatic sprinkler system throughout the building located at 171 Faunce Road, Dartmouth, MA, in accordance with the sprinkler provisions of M.G.L. c.148, s.26H. On December 19, 2006, the Appellant filed an appeal of the Fire District's Order with this Board. The Board held a hearing on February 23, 2007, at the Department of Fire Services, Stow, Massachusetts.
- 2) The Town of Dartmouth adopted the provisions of M.G.L. c.148, s. 26H on January 15, 1991. The Appellant does not challenge the legality of the Town's adoption of the law.
- 3) The representative for the Appellant contends that said building, as currently used and occupied, is not subject to the provisions of M.G.L. c.148, s.26H as it is a "hotel" not subject to Chapter 148 s. 26H.
- 4) The Certificate of Inspection issued by the Town on February 6, 2006, classifies the building as an "R-1 Hotel". Said certificate indicates that the established occupancy load is 168 persons on the first floor and 180 persons on the second floor.
- 5) The establishment, built in 1987, provides 84 room accommodations. Each room includes a locked door, its own bathroom, refrigerator and television. The establishment features a lobby with lounge chairs and a substantial registration desk, which is staffed 24 hours per day. The establishment also features an outdoor patio, swimming pool and free parking. Ninety percent of the rooms are designated as "smoking free". Appellant indicates that cooking is not

permitted, although the Board notes that, according to the facility's brochure, "in-room coffeemakers..." are provided. Maid service is provided on a daily basis. The representatives for the Appellant indicated that the establishment does not feature communal or shared living arrangements typical of a lodging or boarding house. They also indicated that the guests routinely stay for a short term, paid on a daily or weekly basis. Guests must provide their residential addresses at the time of registration.

- 6) The Appellant submitted several photographs, which depict the interior of the establishment. There were photographs showing long hallways with numerous entryways to guest rooms. The guest rooms are typical of hotel/motel rooms. They appear neat, clean and well maintained. They feature wall-to-wall carpeting, one or two queen size beds, end tables, a desk, several lamps and several chairs. The Appellant testified that the photographed rooms are a representative sampling of all the rooms.
- 7) The Dartmouth Fire District 3 testified that he has heard from several persons familiar with the establishment that there have been occasions when guests of the facility have stayed for 30 days and longer. In one instance he heard that a person had lived at the establishment for 8 years. However, the Chief indicated that such arrangements occurred over two years ago. The Chief indicated that his requests for records to verify this information have been unanswered. Appellant indicated that such requests were directed to Appellant's Attorney. The maintenance supervisor appeared and testified on behalf of the Appellant. He indicated that stays of longer than 30 days have occurred, but such situations are not routine.
- 8) Chief Arruda indicated that he was aware that there were some microwave ovens being used and that he recalled one recent instance when the Fire Department was dispatched to the facility for a call of "smoke from cooking" and that upon inspection, several microwaves and other cooking devices could be seen in some rooms. The Chief also stated that in recent years certain work has been completed without proper permits and that such work may have jeopardized the fire safety aspects capabilities of this building. The Chief submitted several photographs, which depicted alleged fire/building code violations. However, he indicated that these violations have since been corrected. The Chief issued the Order to sprinkler the building under s. 26H, because he was concerned about the fire safety aspects of the building and believed that the facility was renting out rooms on a long-term basis.

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

- 1) The provisions of M.G.L. c. 26H provide for enhanced sprinkler requirements, on a local option basis, for lodging or boarding houses. Section 26H states, in pertinent part: "For the purposes of this section "lodging house" or "boarding house" shall mean a house where lodgings are let to six or more persons not within the second degree of kindred to the person conducting it, but shall not include fraternity houses or dormitories, rest homes or group residences licensed or regulated by agencies of the commonwealth".

- 2) The Board finds that the Town of Dartmouth adopted the provisions of M.G.L. c. 148, s. 26H on January 15, 1991. The Appellant does not challenge the legality of the Town's adoption of the said law.
- 3) The Appellant concedes that the establishment is let to six or more persons who are not related to the person conducting the activity. However, Appellant argues that s. 26H is clearly not applicable to "hotels" since the statute uses the term "house" rather than the word "building" to describe the class of structures within the scope of the enhanced sprinkler requirements. Appellant argues that the statute and certain interpretive cases indicate that a lodging or boarding house involves a more long-term living arrangement.
- 4) This Board concludes, for the purposes of s. 26H, that a "lodging or boarding house", as that term is used can be distinguished from a "hotel or motel". However, in determining whether or not the provisions of s. 26H apply to a particular structure, the board does not solely rely upon the business name or the town or owner's classification of the building as a "hotel or motel", but will rather look to the day to day operation, usage and configuration of the building and its accommodations, on a case by case basis.
- 5) The representative for the Town suggests that the word "house" as used in section 26H, should be used broadly without limitation and should, in essence, apply to any house let to six or more persons. This is not necessarily an unreasonable interpretation. Therefore, this Board notes that the Fire Chief's action, in issuing such an order to sprinkler this building, was not misguided. However, such a sweeping interpretation of the applicable section would tend to ignore the modifying words "lodging" and "boarding" to the word "house." Such terms tend to indicate that the law was intended to apply to accommodations of a more communal or somewhat long-term nature. Further support for this conclusion exists in the analysis of the exemptions from the statutory sprinkler requirements, which specifically include "Fraternity houses or dormitories, rest homes or group residences licensed or regulated by agencies of the commonwealth". All of these exemptions have the aforementioned aspects of communal or long term living arrangements. However, the exemptions also have an element of supervision and/or enhanced regulatory oversight, which provides the rational for the sprinkler exemption. Therefore, this board finds that it is significant that all the stated exemptions represent a very limited and specific subset within a larger classification of houses that involve shared or communal living arrangements or are of a long-term nature.

Additionally, in general, guest arrangements of a typical hotel involve accommodations of a more transient nature. (See *Selvetti v. Building Inspector of Revere*, 353 Mass. 645, 646 (1968). "The term lodging house implies a degree of permanence as distinguished from the transiency of a hotel and motel accommodations". Although there was testimony indicating at least one instance of a more permanent living arrangement, such activity was in the past and appears to be a rare occurrence. If it was clear that such long-term living arrangements occurred and continue to occur on a usual or routine basis, this Board may have reached a different conclusion.

**G) Decision and Order**

Upon a review of the facts as presented at the hearing, the board hereby unanimously

determines, based upon the aforementioned reasons, that the subject building, as currently used and occupied, is not subject to the sprinkler provisions of M.G.L. c. 148, s.26H. Therefore, the order of Dartmouth Fire District No. 3 is hereby **reversed**.

**H) Vote of the Board**

Paul Donga, (Presiding Hearing Officer)	In Favor
Stephen D. Coan, State Fire Marshal	In Favor
Alexander Macleod	In Favor
Chief 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 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,



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Paul Donga, Vice Chair

Dated: April 25, 2007

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

Paul Moriarty, Esq.  
22 Washington Street  
Norwell, Massachusetts 02061

Chief Richard K. Arruda  
Dartmouth Fire District No. 3  
140 Cross Road  
North Dartmouth, Massachusetts 02747