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*The Commonwealth of Massachusetts*  
*Executive Office of Public Safety*  
*Fire Safety Commission*

*Automatic Sprinkler Appeals Board*

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CHAIRMAN

PAUL DONGA  
VICE CHAIR

**Docket # 2005-103**  
**242 Spencer Ave**  
**Chelsea, 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 and Chapter 148, section 26G1/2, relative to a determination of the Chelsea Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned and operated by the French Naturalization Club Inc. (hereinafter referred to as the Appellant). The building, which is the subject of the order, is located at 242 Spencer Ave, Chelsea, Massachusetts.

**B) Procedural History**

By written notice dated August 10, 2005, the Chelsea Fire Department issued an Order of Notice to the Appellant informing the facility about the provisions of a new law, M.G.L c. 148, s.26G1/2, which requires the installation of an adequate system of automatic sprinklers in certain buildings or structures. The building subject to the order is located at 242 Spencer Ave, Chelsea. The Appellant filed an appeal of said Order on September 13, 2005. The Board held a pre-hearing conference relative to this appeal on February 8, 2006. A full hearing before the Board was held on September 13, 2006, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant was Julio Gonzalez, Chairman of the Board. Chief Joseph Siewko appeared on behalf of the Chelsea Fire Department.

Present for the Board were: Paul Donga, acting Chairperson, Stephen D. Coan, State Fire Marshal, Chief Thomas Coulombe, Peter Gibbons, and John Mahan. 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 Chelsea Fire Department relative to the subject building in accordance with the provisions of M.G.L. c. 148, § 26G 1/2?

**D) Evidence Received**

1. Application for Appeal by Appellant
2. Consent of Director/Appointment of Authorized Representative of Organization
3. Outline of Club Activities and description of club space
4. Letter from Chelsea F.D. Notifying Club of Law and Order of Chelsea F.D.
5. French Club Function Hall Contract
6. Floor Plan of Club for Events and Function Report
7. Photos of the Exterior of Building
8. Notice of Pre-hearing Status Conference to Appellant
9. Notice of Pre-Hearing Status Conference to Chelsea Fire Dept.
10. Notice of Hearing to Appellant
11. Notice of Hearing to Chelsea Fire Department
12. Letter from Board to Julio Gonzalez Re: Missed Hearing
13. Letter from Julio Gonzalez to Board Re: Missed Hearing
14. 2<sup>nd</sup> Notice of Hearing to Appellant
15. 2<sup>nd</sup> Notice of Hearing to Chelsea Fire Dept.
16. 3<sup>rd</sup> Notice of Hearing to Appellant
17. 3<sup>rd</sup> Notice of Hearing to Chelsea Fire Dept.
18. Occupancy Permit (original, 11/23/1974)
19. Certificate of Inspection (issued 12/12/05)

**E) Subsidiary Findings of Fact**

- 1) By Notice dated August 10, 2005, the Chelsea Fire Department issued an Order to the Appellant, requiring the installation of an adequate system of automatic sprinklers in a building located at 242 Spencer Ave, Chelsea, MA, in accordance with the provisions of M.G.L. c. 148, s.26G1/2. This building is owned and operated by the French Naturalization Club, a private, non-profit organization. The club currently has 72 members. The club is open to members, their families, and member's guests and to persons who may rent out portions of the facility for a variety of social events. Approximately 60 percent of the rental activity is to "outsiders".
- 2) The subject two story building, which has an exterior measurement of approximately 80'x 79', is described by the Appellant as a "private place of assembly for members only." According to the building's Certificate of Inspection, issued on December 12, 2005, the building is currently classified as use group "A-2". It has a total capacity of 421 persons: 155-person capacity for the first floor area and 266 persons for the second floor area.

- 3) The first floor portion, described as a “function /bar area” consists of a large, free flowing room that features a fully stocked bar with 22 seats, additional tables and chairs, several large televisions, a 280 s.f. dance floor with a “disco ball” reflecting light fixture, and a small raised stage (approximately 84 s.f.) used by disc jockeys. Photographs indicate the presence of state lottery ticket vending machines and many signs/ornaments promoting alcoholic beverages. The bar can legally serve all types of liquors until 1:00 a.m. There is a second small room just off the main area that features a couch, a pool table, card table and dartboards. This lounge area has a total of approximately 1,960 s.f. According to the Certificate of Inspection, this area has a capacity of 155 persons. This lower area is routinely used on a regular basis as a bar/lounge by club members and their guests and is frequently rented-out for functions, which feature music by a disc jockey for dancing purposes. This bar/lounge area features regular weekly hours of operation and provides limited or no food service.
- 4) The second floor features an area described by the Appellant as the “main function room”. It has a floor area of approximately 3,632 s.f., which includes a dance floor consisting of approximately 572 s.f. According to the Certificate of Inspection this area has a capacity of 266 persons. The Appellant stated that this area is used frequently on weekends for functions, including weddings, showers, birthday parties, retirement parties, and political functions. The 2<sup>nd</sup> floor function area features its own liquor service bar that has no seating capability. The Appellant indicated that rental agreements are executed for each rental event clearly stating event details and club policy including: the nature of the event, starting and ending times and the number of people in attendance. The Appellant stated that during function events, the 2<sup>nd</sup> floor function guests are not permitted entrance to the downstairs function/bar area unless a club member accompanies them. The Appellant also stated that there are 3 means of egress from the second floor, and that the facility has smoke and heat detectors throughout. Independent egress from the 2d floor function area is provided without the need to exit through the lower lounge area. The Appellant testified that the facility does not have a stage and does not usually allow live entertainment or bands, although a disc jockey is occasionally hired by event hosts for dancing purposes. Appellant indicated that they prohibit the use of candles or open flame. The Appellant indicated that for many events, food is the primary attraction for functions. However, appellant indicated that there have been fundraising events, political events or other events that serve only limited food items. The representatives of the Appellant indicated that any function over 100 people requires a paid police detail.
- 5) The representative for the appellant indicated that the club currently has 72 members. Members, member’ families, and their guests who wish to visit the club, may do so accompanied by a member. He indicated that the current occupant capacity appears to be too high and that it would be too crowded if the areas reached full capacity. Accordingly, the club has self-imposed limits on capacity for both lower and upper levels.
- 6) The Chelsea Fire Chief testified that he has substantial knowledge about the facility and its activities. He generally agreed with the physical description of the facility as presented by the appellant. However, with respect to the nature of the activities, it has been his experience that this club is one of the most socially active establishments in the City. He agreed that many events may occur which feature a meal as the primary attraction. However, in his personal experience, he is aware of many events where food

is not the main attraction. He indicated that there have been many “police” calls to the facility in response to disturbances and fights. He believes that the facility is subject to the enhanced fire protection requirements of s. 26G1/2 based upon the facility’s current use group classification “A-2” and the A-2 nature of many of the activities that currently take place within the establishment and that the occupant load is over 100 persons. He also emphasized that the 1<sup>st</sup> floor portion of the building is clearly used and designed as a “bar”. The Chief also stated that based upon his personal experience, he believes that anyone, including non-members, could gain access to the downstairs function/bar area, contrary to the testimony of the appellant.

**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. 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) In a memorandum dated January 10, 2005, this Board issued an interpretive guidance document relative to the provisions of this new law found in c.148, s.26G1/2. 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.
- 4) 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 current use group classification of this building as “A-2” is a very important factor to consider in making a determination. Clearly this building is legally designed as and may be legally used for A-2 activities as described above and within the scope of M.G.L. c. 148, s. 26G1/2. Although the current use group classification is significant, this Board will also review the building’s characteristics. Clearly that portion of this building located in the first floor or level and referred to as the “lounge/bar area” has the characteristics of a “bar” within the context of s. 26G1/2. It features a bar, bar seating, bar standing and a bartender for the purposes of serving alcoholic beverages directly to alcohol consuming customers on a regular basis. The décor and atmosphere, is typical of a bar. It features a pool table, card tables and lottery vending machines and many ornaments and signs promoting alcoholic beverages. It features later than average operating hours (1:00a.m.). The capacity of this “lounge/bar area is clearly 100 persons or more. Appellant failed to provide any evidence of any significance to indicate that this first floor area is anything other than a “bar” within the meaning of s. 26G1/2.
- 6) With respect to the 2<sup>nd</sup> floor function area, the board finds that many of the A-2 characteristics described in its January 10, 2005, memorandum (see above) exist with respect to this portion of the building. However, this Board has determined that certain function facilities that host privately organized dining events that feature a meal as the primary attraction, may not necessarily be subject to the requirements of 26G1/2, notwithstanding the existence of music for dancing purposes. Such a determination however, is conditioned upon the facility meeting seven (7) specific characteristics:
- 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 (6<sup>th</sup> Edition), table: 780 CMR 1008.1.2; and
  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.
- 7) Although appellant’s representative attempted to present testimony in support of the existence of the seven characteristics listed above, the Board finds that the facility does not present all the necessary characteristics. The 2<sup>nd</sup> floor function area clearly does not meet the minimum floor space to be deemed an “unconcentrated” occupancy. Additionally, there was substantial evidence presented by the fire department indicating that a significant number of events occur in this function area that do not feature a meal as the primary attraction. The police activity associated with this establishment in response to many late night disturbances and fights, indicates that circumstances exist which are inconsistent with the strict control and orderly nature envisioned by this board during a privately organized dining event that features a meal as the main attraction.
- 8) The Appellant’s argument that the use of this lounge area is limited to “members only” and is therefore not a “public assembly” within the meaning of the statute has no basis in fact or law. There was ample testimony to conclude that organization members, as well as non-member guest (through sponsorship) are patrons of this lounge area and routinely rent out and/or attend events at this location. Appellant’s argument is similar to the arguments used relative to the statutory prohibition with respect to smoking. However, it appears that such “no smoking” statutes contain specific language, which preclude the application of such law to such private “members only” organizations. However, such an exemption does not exist in M.G.L. c. 148, s.26G1/2. To the contrary, the Board notes that the State Building Code (6<sup>th</sup> Edition), in section 780 CMR 303.1, dealing generally with Assembly Use Groups, clearly states that such Assembly Use Groups includes: “All structures which are designed or occupied for the gathering together of persons for the purposes such as civic, social or religious functions...”.

**G) Decision and Order**

After a careful review of all the evidence presented and based upon the aforementioned findings and reasoning, the Board hereby unanimously determines that the building located at 242 Spencer Ave, Chelsea is a public assembly with a legal capacity of 100 or more persons and is

currently used or designed as a Nightclub, dancehall or bar within the meaning of the statute. Accordingly, the Order of the Chelsea Fire Department to install sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s.26G1/2 is hereby **affirmed**. An adequate sprinkler system shall be installed in accordance with the statutory provisions of the law as stated in paragraph (F), (2)

**H) Vote of the Board**

Paul Donga	In favor
Stephen D. Coan	In favor
Thomas Coulombe	In favor
Peter Gibbons	In favor
John Mahan.	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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Paul Donga  
Acting Chairperson

Dated: October 31, 2006

**A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY CERTIFIED MAIL, RETURN RECEIPT TO:** Julio Gonzalez, French Naturalization Club, 242 Spencer Ave, Chelsea, Massachusetts 02150 **and 1<sup>st</sup> Class Mail, Postage Pre-paid to:** Chief Joseph Siewko, Chelsea Fire Department, 307 Chestnut Street, Chelsea, Massachusetts 02150.