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

Automatic Sprinkler Appeals Board

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MAURICE M. PILETTE
CHAIRMAN

PAUL DONGA
VICE CHAIR

Docket # 2005-35
439 Martine Street
Fall River, MA.

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 26G1/2 and Chapter 6, section 201, relative to a determination of the Fall River Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building operated by LePage's Seafood and owned by Eric LePage (hereinafter referred to as the Appellant). The building, which is the subject of the order, is located at 439 Martine Street, Fall River, MA.

B) Procedural History

By written notice received on March 21, 2005, the Fall River Fire Department issued an Order of Notice to the Appellant informing him 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 439 Martine Street, Fall River, MA. The Appellant filed an appeal of said order on May 5, 2005. The Board held a hearing relative to this appeal on August 4, 2005 and again, by agreement of the parties, on September 14, 2005, at the Department of Fire Services, Stow, Massachusetts.

The Appellant, Mr. Eric LePage, appeared on behalf of himself at both hearing dates. William Silvia, Deputy Fire Chief, appeared on behalf of the Fall River Fire Department.

Present for the Board on August 4, 2005 were: Maurice M. Pilette, Chairperson, Brian Gore, Chief Thomas Coulombe, Stephen D. Coan and Paul Donga. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

Present for the Board on September 14, 2005 were: Maurice M. Pilette, Chairperson, Brian Gore, Chief Thomas Coulombe and Paul Donga. 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 Fall River Fire Department relative to the subject building in accordance with the provisions of M.G.L. c.148, s. 26G1/2?

D) Evidence Received

1. Application for Appeal
2. Appellant's State of reason for exemption (Statement)
3. Order of Fall River Fire Department
4. Acknowledgement of Receipt of Fire Department Order
5. 1st Notice to Appellant
6. 1st Notice to Fall River Fire Department
7. Agreement for Continuance
8. 2nd Notice to Appellant
9. 2nd Notice to Fall River Fire Department
10. Letter from Peter Christie, Mass. Restaurant Association
11. Certificate of Inspection dated December 31, 2004

E) Subsidiary Findings of Fact

- 1) By notice dated February 24, 2005 and delivered on March 21, 2005, the Fall River Fire Department issued an Order to the Appellant requiring the installation of an adequate system of automatic sprinklers in a building located at 439 Martine Street, Fall River, in accordance with the provisions of M.G.L. c. 148, s.26G. This building is used by an establishment that operates under the name of LePage's Seafood Restaurant, a private, for profit organization.
- 2) According to the building's Certificate of Inspection, dated December 31, 2004, the establishment has a capacity of 220 persons throughout the facility. Said certificate establishes separate occupant loads for all four rooms which accommodate customers. The capacity of the main dining room is 90 persons and the lounge area can accommodate 60 persons. The covered outside deck can accommodate 40 persons and the small dining/function room has a capacity of 30 persons. Said certificate of inspection does not indicate the particular use group of this building.

- 3) The Appellant contends that the establishment is principally used, advertised and held out as a restaurant and is therefore exempt from the sprinkler provisions of M.G.L. c.148, s.26G1/2. He submitted tax records which indicated that during the years 2002, 2003 and 2004 liquor sales averaged approximately 19% of the establishments annual sales.
- 4) The establishment serves meals on a daily basis. The “lounge area” is also used for restaurant seating. However, a customer can patronize this area for the purchase of liquor only. The bar area does not expand into the dining area since the two rooms are entirely separated by a wall with a door between them.
- 5) The restaurant features karaoke entertainment in the lounge area on Friday nights.
- 6) Full meals are routinely served in the “bar” area at the same time meals are served in the dining area. The restaurant portion is open daily from 11:00 a.m. until 9:00 p.m., Sunday through Thursday and is closed at approximately 10:00 p.m. on Fridays and Saturdays. The lounge area is open from 11: 00 a.m. until approximately 10:30 p.m. and may stay open until midnight on Friday and Saturday nights.
- 7) The fire department issued the Order to install sprinklers based upon the overall building capacity, the existence of liquor sales and the existence of a lounge area.
- 8) The representative of the fire department did not contest the characteristics of the building, including its use and description as presented by the Appellant Said representative indicated that this establishment has not had a history of incidents involving overcrowding.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The provisions of the 2d 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. Under the provisions of the new law (St. 2004, c.304, s.11) an owner is required to submit plans and specifications for the installation of such sprinklers within 18 months of the effective date of the act (May 15, 2006) and is required to complete the mandated sprinkler installation by November 15, 2007.
- 2) This establishment has characteristics that are typical of a restaurant. It clearly appears that the service of food is the primary customer attraction in all portions of the building except for that portion considered the bar or lounge areas. The sprinkler requirements of s. 26G1/2 specifically do not apply to a place of assembly within a building or structure or portions thereof used “principally as a restaurant”. Such restaurant establishments feature meals as

the main or principal customer attraction. However, it appears that this particular establishment features a portion of the building that could also be considered a “bar” or lounge area designed or used to serve alcoholic beverages to customers beyond the hours of restaurant operation. This establishment also routinely and regularly features a karaoke entertainer on a weekly basis. Establishments, that feature some combined characteristics of a restaurant and a bar are fairly common throughout the Commonwealth, yet present unique challenges in implementing the provisions of section 26G1/2.

- 3) In an attempt to interpret the legislative intent of this law as applied to such establishments, the board will look to the plain language of the statute in rendering a determination. The Board notes that section 26G1/2, 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 requirement will apply in this case and other similar cases that involve 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 apportionment or 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 review the following characteristic:
- a. Is that portion of the building used or designed for bar or entertainment purposes reasonably apportioned and separate from the other areas of the building? In determining this question there must be:
 - 1. 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.
 - 2. 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 area do not overflow or expand into the restaurant or other areas when such areas are no longer in operation.
 - b. If the separation exists, as described the question above, does that portion used or designed for bar or entertainment purposes legally exceed a capacity of 100 persons or more?
- 4) The above analysis, applied to this particular establishment, indicates the existence of a physical separation between the “lounge” or bar area and the rest of the building which

prevents the bar activities from expanding into the dining area. This separation includes a permanent wall with a door that is capable of closing. The bar area also has a separate and independent means of egress. Additionally, there was testimony that a separation in an operational and business context exists which assures that the activities that occur in the bar area do not overflow or expand into the restaurant or other areas when they are shut down.

- 5) The portion of the building used as a bar and features entertainment has capacity of 60 persons as indicated in the current certificate of inspection. This amount is less than the statutory capacity of 100 persons or more which would require the installation of sprinklers in this bar area.
- 6) The Board notes that the provisions of M.G.L. c. 148, s.26G1/2 (4th paragraph) allows a building principally used as a restaurant to be used temporarily as a nightclub, dance hall, discotheque or bar, or similar entertainment purpose without the need to install a sprinkler system if a permit is issued by the head of the fire department in consultation with the building inspector who may set the terms and conditions to protect against fire and preserve public safety.

G) Decision and Order

Most portions of this establishment clearly have the characteristics of a restaurant. The sprinkler requirements of M.G.L. c.148, s.26G1/2 do not apply to places of assembly within a building or portions thereof, used principally as a restaurant. Although a bar exists in the first floor portion of this building, it is sufficiently apportioned and separated, both physically and operationally from the restaurant and other areas of this building. This portion of the building, used or designed as a bar and for entertainment purposes does not have a capacity of 100 persons or more. For the foregoing reasons, this Board reverses the Order of the Fall River Fire Department to install sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s.26G1/2. This determination is contingent upon the continued use and operation of the establishment in a manner consistent with the findings herein.

H) Vote of the Board

Maurice Pilette, (Chairperson)	In Favor
Paul Donga	In Favor
Thomas Coulombe	In Favor
Brian Gore	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,

A handwritten signature in black ink, appearing to read "Maurice Pilette", written in a cursive style.

Maurice Pilette, P.E.. Chairman
Chairperson

Dated: October 17, 2005

A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY 1st CLASS MAIL, POSTAGE PRE-PAID, TO: Eric LePage, 184 Kaufman St., Tiverton, RI 02878 **and** Deputy Chief William Silvia, Fall River Fire Department, 140 Commerce Drive, P.O. Box 749, Fall River, MA. 02720-0749.