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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 # 2005-43
1315 Main Street
Acushnet, 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 Acushnet Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned and/or operated by Richard J. Elgar (hereinafter referred to as the Appellant). The building, which is the subject of the appeal operates under the legal name of the Henhouse Restaurant & Pub, Inc. It is located at 1315 East Main Street, Acushnet, MA.

B) Procedural History

By a written notice dated April 28, 2005, the Acushnet Fire Department issued an Order of Notice to the Appellant informing him of the provisions of 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 1315 Main Street, Acushnet Ma. The Appellant filed an appeal of said order on May 20, 2005 and the Board held a hearing relative to this matter on August 4, 2005. The matter was continued for further hearing on September 14, 2005. Both hearings were held at the Department of Fire Services, Stow, Massachusetts.

On both hearing dates, Mr. Richard J. Elgar, owner, appeared on behalf of the Appellant. Chief Kevin A. Gallagher appeared on behalf of the Fire Department. Present for the Board on August 4, 2005 were Maurice M. Pilette, Chairperson, Paul Donga, Thomas Coulombe, Stephen D. Coan, and Brian Gore. Present for the Board on September 14,

2005, were Maurice M. Pilette, Chairperson, Paul Donga, Thomas Coulombe and Brian Gore. Peter Senopoulos was attorney for the Board on both hearing dates.

C) Issue(s) to be Decided

Whether the Board should affirm, reverse or modify the enforcement action of the Acushnet 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. Order of Notice from the Acushnet Fire Department
3. Notice of hearing to Appellant dated July 20, 2005
4. Notice of hearing to Fire Department dated July 20, 2005
5. Certificate of Inspection dated October 2004
- 6A Photograph of exterior of the building
- 6B Photograph of pool table area
- 6C Photograph of dining area
7. Notice of hearing to Appellant dated August 29, 2005
8. Notice of hearing to Fire Department dated August 29, 2005
- 9A Request of Fire Department to Building Department for Building Classification
- 9B Response from Building Department on Building Classification
10. Floor Plan
11. Photographs of Interior (A-D)
- 12A Common Victualer License
- 12B Restricted Music License

E) Subsidiary Findings of Fact

- 1) By Notice dated April 28, 2005, the Acushnet Fire Department issued a written Order of Notice to the Appellant requiring the installation of an adequate system of automatic sprinklers in a building located at 1315 Main Street, Acushnet, MA. in accordance with the provisions of M.G.L. c. 148, s.26G1/2. Said notice indicated that the Appellant's building was subject to the provisions of said s.26G1/2.
- 2) The building is a one story wooden structure consisting of a floor area of approximately 3,774 s.f. The building houses an establishment with the corporate name of: Henhouse Restaurant and Pub, Inc. The Certificate of Inspection issued for the building in October, 2004 indicates that the establishment has a capacity of 103 persons. According to documentation from the Town Building Department this building is classified as a "mixed use building with a non-separated use with the main use of A-2...". Currently there is no physical separation between the so-called bar

or lounge area. The establishment consists of essentially one large free flowing area with carpeted floors. On one side of the building is a dining area with booths and tables. On the other, is a bar area which consists of tall tables with high back chairs, seating at the bar, and a pool table in the center of the bar area. There are numerous lights, signs and commercial ornaments promoting alcoholic beverages throughout the establishment.

- 3) Approximately two years ago the Appellant applied for and received a restricted music license for use of radio, television, jukebox music, and live bands between 11:00 a.m. and 11:00 p.m. Monday through Thursday, and from 11 a.m. to 12:00 p.m. on Friday and Saturday. The Appellant has also been issued a Common Victualer's license to expose, keep for sale, and to sell "all kinds of alcoholic beverages" from 8 a.m. to 2 a.m. Monday through Friday, and from 11:00 a.m. to 2:00 a.m. on Sunday. The appellant indicated that the establishment usually operates from 11:00 a.m. until approximately 10:00 p.m. However, the appellant indicated that he is able to and is actually required by law to stay open until 2:00 a.m. The Appellant, who is also the cook for the establishment, indicates that food service usually begins at 11:00a.m. and ends around 6:00 or 7:00 p.m. when the dining area usually shuts down. At this time, the appellant usually leaves the restaurant and walks to his personal residence (located behind the establishment). After 7:00 pm the establishment continues to serve alcohol until closing time and sandwiches and snacks are still available. However, if a customer desires a full meal after 7:00, the appellant testified that he will walk back to the establishment to cook the meal.
- 4) The Appellant testified that he originally bought the establishment for use as a restaurant. However, he indicated that the business plan has changed and now the business is somewhat more focused on liquor sales. Both parties indicated that the greatest occupancy load for this building is on the weekends, particularly on Sunday afternoon during favorable weather conditions, when his establishment is frequented by motorcycle enthusiasts.
- 5) Appellant testified that a sale of the business is pending. However, the appellant intends to retain legal ownership of the building and property.
- 6) Appellant indicated that he thought a sprinkler system would be costly and would cause him a great financial hardship. Both parties indicated that the part of town where the business is located lacks access to the municipal water line. The Appellant neither requested this board to review an alternative system nor did he present any plans for a modified sprinkler system based upon the lack of a public water supply. The Appellant indicated that he made several attempts to contact sprinkler contractors to obtain price quotes and designs for sprinkler systems, but was unable to obtain any information except for an informal verbal estimate of about \$20,000.dollars. Appellant failed to produce additional information or costs estimates for a sprinkler system notwithstanding the fact that this Board granted him additional time to produce such information.
- 7) Fire Chief Gallagher indicated that the facility has no direct fire alarm notification system, linking it with the Acushnet Fire Department and that the closest manned fire station is approximately 4.9 miles away. The nearest fire station is approximately half way between the facility and the manned station. In the event of a fire the on-call members of the fire department would respond to that station, pick up a tanker truck and then respond to the restaurant in case of emergency.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The provisions of the 2nd 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) Documents from the town’s building department indicates that the occupancy is classified as an “A-2” assembly occupancy with a legal capacity of 103 persons. Therefore the subject building is considered a public assembly with a capacity of 100 persons or more.
- 4) In a memorandum dated 1-10-05, this Board issued an interpretive guidance document relative to the provisions of this new law found in c.148, s.26G1/2. This new 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 noted that the statute did not contain a definition of the words “nightclub, dance hall, discotheque, bar or similar entertainment purposes”. This Board reviewed the legislative intent and background of the statute and noted that the State Building Code, 780 CMR defines an “A-2” occupancy as one that is designed for occupancy as dance hall, nightclub and for similar purpose (see 780 CMR 303.3). The legal classification of this establishment as an “A-2” assembly occupancy by the building official is significant and should be an important factor that heads of fire departments should look to in determining whether an establishment is subject to the sprinkler requirements of M.G.L. c. 148, s. 26G1/2. However, such classification alone should not necessarily be the only determining factor that this Board will look to. An analysis of all the relevant characteristics of the specific building should be conducted.
- 5) The appellant alleges that his establishment is more like a restaurant and is thus exempt from the sprinkler provision s. 26G1/2. However, the Board notes that Under 780 CMR, restaurants, other than nightclubs, are classified within the A-3 use group (see 780 CMR 303.4). In its 1-10-05 memorandum the Board acknowledged the existence of establishments that may feature characteristics of both a restaurant and a nightclub, dancehall discotheque or bar or similar occupancy. In determining whether or not such establishments are subject to the provisions of M.G.L. c.26G1/2 this Board indicated that it would look at such common sense factors such as:

- a) Does the restaurant establishment regularly and routinely serve meals on a daily basis?
 - b) Does the establishment provide a bar, bar seating, bar standing and a bar tender for the purposes of serving alcoholic beverages directly to alcohol consuming customers?
 - c) Does the bar and bar seating area have the ability to expand into the dinning area to accommodate special entertainment activities or increased capacity/density.
 - d) If the establishment provides a bar and bar seating, are alcoholic beverages continuously served to customers more than one hour after full kitchen facilities have been closed?
 - e) Is live or recorded music provided for dancing purposes or for a viewing audience? (does not include background dinner music)?
 - f) Does the establishment provide special entertainment, including but not limited to: musical, theatrical, comedy, or sport viewing activities?
 - g) Based upon the establishments name, décor, atmosphere, does a customer expect a bar or nightclub type establishment?
 - h) Is the establishment or portions thereof routinely or regularly used for private or public functions for dancing, parties, celebrations, entertainment or performance purposes?
 - i) Does the establishment have an entertainment license?
- 6) Although the establishment regularly serve meals on a daily basis it appears that such food service is not the principal function of this business, particularly after the hours of 7:00 p.m. and until closing time which could legally be as late as 2:00 a.m. It is during these hours, which are substantial, that this establishment features many of the characteristics typical of a bar or “A-2 like” occupancy. Such factors of this establishment include: The existence of a bar, bar seating, bar standing and a bar tender for the purposes of serving alcoholic beverages directly to alcohol consuming customers; The lack of a physical separation between the bar area and the dining area which allows the bar area to expand into the dinning area to accommodate activities or increased capacity/density; Alcoholic beverages are continuously served to customers well after dining activities have been curtailed. The establishment’s décor and atmosphere, is typical of a bar and features a pool table and numerous lights, signs and commercial ornaments throughout the building promoting alcoholic beverages. Additionally, the establishment has been issued an entertainment license and is legally capable of featuring later than average operating hours (2:00a.m.).

G. Decision and Order

Based upon the aforementioned evidence presented at the hearing and reasoning as stated, the Board hereby determines that the subject building, as currently classified, used and designed is subject to the provisions of M.G.L. c. 148, s.26G1/2. Accordingly, this Board unanimously upholds the Order of the Acushnet Fire Department to install sprinkler protection in the subject

building in accordance with the provisions of said section 26G1/2 and further orders the installation in accordance with statutory timeline:

1. 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
2. Complete installation within 3 years of the effective date of the act (by November 15, 2007).

H) Vote of the Board

Maurice Pilette, (Chairperson)	In favor
Brian Gore	In favor
Paul Donga	In favor
Thomas Coulombe	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: September 30, 2005

A copy of this Decision and Order was forwarded by certified mail, return receipt requested, to Mr. Richard Elgar, 1315 Main Street, Acushnet, Massachusetts 02743 and by 1st class mail, postage prepaid, to: Chief Kevin Gallagher, Acushnet Fire Department, 24 Russell Street, Acushnet, Massachusetts 02743.