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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

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VICE CHAIR

**Docket # 2005-54
13 Cross Street
East Bridgewater, 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 26G1/2 and Chapter 6, section 201, relative to a determination of the East Bridgewater Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned and operated by Thomas F. Smith and Joseph M. Smith of T.J. Smith's Victorian House (hereinafter referred to as the Appellant). The building, which is the subject of the order, is located at 13 Cross Street, East Bridgewater, Massachusetts.

B) Procedural History

By written notice dated April 28, 2005, the East Bridgewater Fire Department issued an Order of Notice to the Appellant informing them of 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 13 Cross Street, East Bridgewater, MA. The Appellant filed an appeal of said order on June 10, 2005. The Board held a hearing relative to this appeal on January 11, 2006, at the Department of Fire Services, Stow, Massachusetts.

The Appellant was represented by Thomas F. Smith and Joseph M. Smith of T.J. Smith's Victorian House. The East Bridgewater Fire Department was represented by Chief Ryon T. Pratt.

Present for the Board were: Maurice M. Pilette, Chairperson, Paul Donga, State Fire Marshal Stephen D. Coan, Chief Thomas Coulombe, Alexander MacLeod, and Peter E. Gibbons. 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 East Bridgewater 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 by Appellant
2. Written Statement in Support of Appeal
3. Drawing of T.J. Smith's Victorian House
4. Order of East Bridgewater Fire Department
5. Notice of Hearing to Appellant
6. Notice of hearing to East Bridgewater Fire Department
7. Appellant's document packet (Tabs 1 through 8)
8. Photographs (A-D)

E) Subsidiary Findings of Fact

- 1) By Notice dated April 28, 2005 the East Bridgewater Fire Department issued an Order of Notice to the Appellants requiring the installation of an adequate system of automatic sprinklers in a building located at 13 Cross Street, East Bridgewater, MA. in accordance with the provisions of M.G.L. c. 148, s.26G1/2.
- 2) According to the representatives for the Appellant, the building is a two story wooden structure with a total floor area of approximately 4,000 square feet including the kitchen area. The building houses a single function hall, with two dining areas. In addition to the function areas, customers have the use of a lounge and bar area, an enclosed porch area, an open porch area, and two restrooms.
- 3) According to the current certificate of inspection the occupant load has been established at 215 persons with a use group classification of A-3.
- 4) The representatives for the Appellant testified that the business is regularly and routinely used for formal functions, a majority of which are weddings. The Appellants further indicated that there are approximately 60 functions a year with an average of one per week, and that the number of attendees is limited by pre-arrangement between the facility and the organizers of the event and is part of a written contract. Many of these events feature a disc jockey and music for dancing. The main attraction for all of these functions is a full meal prepared by the Appellant. They also testified that they have a full liquor license but only serve liquor until 11 p.m. at night during functions.
- 5) The hours that the Appellant provides function facilities typically includes afternoon and evening events, and that the facility is never open after 12:00 a.m.

- 6) At events that feature alcoholic beverages, in addition to serving wine at the tables, the Appellant provides a “standup only” service bar that serves soft drinks and alcoholic beverages to function guests only. The service bar is only open during the hours that a function is ongoing and at no other time. Last call is given ½ hour prior to the termination of the event. The bar never remains open after the function is terminated.
- 7) The Appellant stated that upon receiving the order of the East Bridgewater Fire Department, they obtained written estimates from three separate contractors in regards to fire alarm notification systems as well as automatic sprinkler systems. The estimate for a fire alarm system was \$2,633.66 and the estimates for the sprinkler systems ranged from \$93,000.00 to \$111,000.00. Appellant indicated that the establishment intends to install the fire alarm system, however they believe that the installation of a sprinkler system would cause financial difficulty.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The subject building is considered a public assembly with a capacity of 100 persons or more.
- 2) 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.
- 3) 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). The Appellant, notwithstanding the language contained in the Fire Department’s Order of Notice, is not currently in violation of the sprinkler retrofit provisions of M.G.L. c.148, s.26G1/2. The Appellant is not required to submit plans and specifications for the installation of sprinklers until 18 months from the effective date of the act (by May 15, 2006) and is not required to complete the mandated sprinkler installation until November 15, 2007.
- 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 concluded that there were certain

characteristics typical of nightclubs, dancehalls and discotheques. The board indicated that such occupancies are 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.

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) Based upon the testimony of the Appellant, this building is used primarily for weddings and organized private dining events that feature a meal as the main attraction. In most instances the guests who attend such organized dining events are present as the result of written invitation or limited ticket purchase. Such “organized” private dining events, by their very nature, have pre-arranged limitations on attendance and seating because a meal is being prepared and served. They tend to have a fixed starting and ending times and do not have later than average operating hours. Whether the meal is buffet style or sit-down, each guest has a chair and a table to sit down and eat. The tables and chairs are not positioned as to create ill-defined aisles. Although there may be dancing to live or recorded music during some portion of the event, the entertainment is not the main feature of the event. The dancing activity is limited to those persons who are attending for the purposes of eating a meal. Each guest has a seat at a table. In such situations the occupant load is not typically concentrated or crowded. According to the testimony, the characteristics of such events are within the strict control of an on-site manager and are established by a written agreement.
- 6) Notwithstanding the incidental appearance of live or recorded music for dancing purposes, the Board has concluded that under certain circumstances, a place of assembly which provides facilities for organized private dining events may not necessarily be subject to the retroactive sprinkler installation requirements of M.G.L. c.148, s.26G1/2. The existence of the following characteristics in certain facilities is distinguishable from the “A-2 like” characteristics that this Board concluded were typical of nightclubs, dancehalls and discotheques and within the legislative intent of this law. The characteristics are as follows:

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;
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 (6th Edition), table: 780 CMR 1008.1.2.
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.

Examples of organized private dining events may include organized banquets, private parties, fundraisers, wedding receptions and ceremonial banquet events, as long as all the aforementioned characteristics exist. This determination does not preclude such a facility from ever hosting an event that features music by a live band or recording, dancing or similar entertainment as the main attraction. Under the provisions of M.G.L. c.148, s.26G1/2, 4th paragraph, such a facility may be used as a nightclub, dance hall, discotheque or similar entertainment purposes on a temporary basis without the need to install an adequate system of automatic sprinklers under said section. However, such temporary use is allowed only if a permit is issued for such use by the head of the fire department in consultation with the local building inspector. The issuance of such a permit is a matter within the sole discretion of the head of the fire department who may set the terms and conditions to protect against fire and preserve public safety.

G) Decision and Order

The Board hereby reverses the Order of the East Bridgewater Fire Department to install sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s.26G1/2, since the building, at present is used for organized private dining events that feature a meal as the main attraction. At present, the establishment does not feature the “A-2 like” characteristics that are typical of a nightclub, dance hall discotheque or bar or similar

entertainment purpose. This determination is contingent upon the continued operation of the establishment in a manner consistent with the present characteristics as stated in section F-6.

H) Vote of the Board

Maurice Pilette, (Chairperson)	In favor
Paul Donga	In favor
Stephen D. Coan, State Fire Marshal	In favor
Thomas Coulombe	In favor
Alexander MacLeod	In favor
Peter E. Gibbons	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: January 27, 2006

A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY 1st CLASS MAIL, POSTAGE PRE-PAID, TO: Mr. Joseph M. Smith and Mr. Thomas Smith, 13 Cross Street, East Bridgewater, Massachusetts 02333 **and to** Chief Ryon Pratt, East Bridgewater Fire Department, 268 Bedford Street, East Bridgewater, Massachusetts 02333.