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

Automatic Sprinkler Appeals Board

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CHAIRMAN

PAUL DONGA
VICE CHAIR

Docket # 2006-82
114 Mystic Ave
Medford, 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 26G½ and Chapter 6, section 201, relative to a determination of the Medford Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned and/or operated by the Medford VFW Post 1012 (hereinafter referred to as the Appellant). The building, which is the subject of the order, is located at 114 Mystic Ave, Medford, MA.

B) Procedural History

By written notice dated February 10, 2006, the City of Medford Fire Department issued an Order of Notice to the Appellant informing it of the provisions of M.G.L c. 148, s. 26G½, which requires the installation of an adequate system of automatic sprinklers in certain existing buildings or structures. The building subject to the order is located at 114 Mystic Ave, Medford, MA. The Appellant filed an appeal of said order on March 24, 2006. The Board held a hearing relative to this appeal on May 9, 2007, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant were: Edward Merrifield, Commander; Richard M. Patterson, Commander-Elect; Louis Costifano, Clerk of Corporation, and David E. Ford, Board of Directors. Appearing on behalf of the Medford Fire Department was: Chief Frank A. Gilliberti, Jr.; Fire Prevention Officer Patrick H. Ripley, and; John Bavuso of the Medford Building Department.

Present for the Board were: Thomas Coulombe, Acting Chairman; Stephen D. Coan, State Fire Marshal; Alexander MacLeod, John J. Mahan, Aime R. DeNault, and George Duhamel. 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 Medford Fire Department relative to the subject building in accordance with the provisions of M.G.L. c.148, s. 26G½?

D) Evidence Received

1. Application for Appeal by Appellant
2. Statement in Support of Appeal and Documentation of Social Functions
3. Floor Plan of Facility
4. Order of Notice of Medford Fire Department
5. Notice of Pre-Hearing Status Conference to Parties
6. Notice of 2nd Pre-Hearing Status Conference to Parties
7. Notice of Hearing to Appellant
8. Notice of Hearing to Medford Fire Department
9. Appellant Submissions (A-J)
10. Physical description of facility
11. Certificate of Inspection (expiration May 2007)
12. Appellant's Photographs of Interior (A and B)
13. Fire Department Photographs of Interior (A-N)

E) Subsidiary Findings of Fact

- 1) By Notice dated February 10, 2006, the Medford Fire Department issued an Order of Notice to the Appellant requiring the installation of an adequate system of automatic sprinklers in a building located at 114 Mystic Ave, Medford, MA, in accordance with the provisions of M.G.L. c. 148, s. 26G½.
- 2) The Appellant, the Medford VFW Post 1012, operates a single level, masonry-constructed building with facilities for assembly. The largest portion of the building is a large, function hall consisting of two combined areas of approximately 4,393 s.f. and includes a separate service bar and rest rooms. Another portion of the facility consists of a members' bar area and another room described as a lounge or game room.
- 3) The most recent Certificate of Inspection issued for this facility by the City of Medford (expiration date of May 15, 2007) indicates a current use group classification of "A-3" with a total capacity of 375 persons. The Certificate indicates occupancy limits for specific areas of the building, including: a capacity of 275 persons for the Main Hall, 60 persons for the game room area (lounge room) and 40 persons for the bar room.
- 4) The representatives of the Appellant testified that the facility hosts mainly privately organized functions and that all rentals are booked pursuant to a written contract. They further testified that a meal is the primary attraction for 90% of the functions. The representatives stated that most of the typical functions involve wedding receptions, anniversaries, baby showers, birthdays, christenings, and funeral collations. Additionally, the facility is also used for bingo activity and organizational meetings by both the Post and other organizations. However, at these events only light refreshments are offered.

- 5) The Appellant stated that for private rental functions, the renters typically bring in their own pre-cooked food or use a caterer. The kitchen on premises was described as old and outdated and used solely by members. During function hall use, alcoholic beverages are purchased or acquired from the function hall service bar. Function hall patrons are generally not allowed entry to the members' bar and lounge (game room) area.
- 6) For rental functions, the Appellant indicated that entertainment is allowed and typically consists of a disc jockey for music and dancing purposes. They testified that the organization has strict rules regarding the noise levels of the music and lights and that the disco ball is rarely used.
- 7) With respect to the Bar room and the lounge/game room, the Appellant testified that the routine hours of operation of the facility are from 9 a.m. to 11 p.m. daily. The Bar room features a full sit-down bar with bar seating and tables and chairs. The lounge/game room, which directly adjoins the bar room, contains a pool table, shuffle board, dart board, vending machine, several tables and chairs and sound speakers. Submitted photographs feature at least one light fixture located above the pool table in the lounge area/game room that promotes "Budweiser" beer. The Appellant stated that the facility has a full service liquor "club" license that allows for the exposing, keeping, and sale of alcoholic beverages until the 1:00 am closing time.
- 8) There was testimony that patrons are allowed to freely travel between the Bar room and the lounge (game room) and that there are no restrictions on such movement.
- 9) In support of the Medford Fire Department's position, Chief Gilliberti testified that he disagrees with the city's classification of the facility as an "A-3" use group, which is more typical of a restaurant and believes that the facility and the activities they allow, more closely resemble that of an "A-2" public assembly. The Medford building official indicated that there is a close distinction between an A-2 and A-3 occupancy and that it was his opinion that this building is not currently used as "a full time nightclub" that would clearly warrant the A-2 classification.
- 10) Chief Gilliberti also indicated that the facility has no fire alarm system. The Chief also testified that the bar and lounge/game room have lounge or bar-like activities and that the combined areas have a mixed occupancy of at least 100 persons.
- 11) The representatives of the Appellant indicated that the installation of an adequate system of automatic sprinklers in accordance with Chief Giliberti's order would prove to be a great financial hardship to the organization. Additionally, they indicated that the existing 2" water pipe is insufficient to supply water to a new sprinkler system and that a new 280' waterline will be required to be installed from the water main to the building. This additional cost will prove to be a great substantial hardship. However, the Appellant did not submit any documentation, which indicates the particular costs, associated with a sprinkler installation and did not submit any information to support any technical alternative installations for this board to consider.

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) 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. 26G½. 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 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 6th 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, by 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. 26G½. 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.

- 4) In accordance with the Town's Certificate of Inspection and based upon a description of activities which occur within this facility, this building is a place of assembly with a capacity of 100 persons or more.
- 5) This facility is used for a very wide variety of different uses relating to the social purposes of the organization
- 6) The large function hall portion of this building is likewise used for a wide variety of events. The majority of these events are not the type of activities within the scope of s. 26G½. However there are a significant number of events in this room that have musical entertainment for dancing purposes. It appears that many of these events are classified as organized private dining events that feature a meal as the main attraction. 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 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. 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. In such situations the occupant load is not typically concentrated or crowded.
- 7) Notwithstanding the incidental appearance of live or recorded music for dancing purposes, this board has concluded in prior decisions that under certain circumstances, a portion of 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. 26G½. The existence of the certain characteristics of such dining events 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, 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 (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. 26G½, 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.

- 8) The board concludes that the majority of social activities within the function hall that feature “A-2 like” activities, such as music and dancing, are considered “privately organized dining events” which feature a meal as the primary attraction. Additionally, the board finds that said area, as currently used, meets the 7 characteristics as stated above. Accordingly, this function area, as currently used, is not subject to the sprinkler requirements of s. 26G½ as long as the characteristics stated in paragraph F), 7) 1 through 7 are met for all events that feature music or entertainment.
- 9) Appellant did not offer any evidence of significance to challenge a finding that the members’ bar and the lounge (also referred to as the game room) are regularly and routinely used in tandem for “bar-like” activities. Although these portions have separate capacities of under 100 persons, they are operationally used as one area, with a combined capacity of 100 persons (40 for the bar and 60 for the game/lounge).
- 10) This board is sensitive to Appellant’s claim of financial hardship as a result of costs relating to sprinkler system installation and possible costs associated with a new water main. This board has taken such cost factors into consideration in reviewing technical installation options that can often result in a reduction in final installation costs without sacrificing fire safety. However, the Appellant failed to provide any details concerning technical options to support a partial or modified sprinkler system that could possibly result in such cost savings.

G) Decision and Order

Based upon the aforementioned findings and reasoning, the Board hereby **modifies** the Order of the Medford Fire Department to install adequate sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s. 26G½. It is the determination that the large function hall and associated areas are not currently subject to the sprinkler requirements as long as the facility meets the conditions stated in Section F paragraph 7 (1-7) of this decision.

The Appellant is hereby required to install an adequate system of automatic sprinklers, as defined in s. 26G½, in the members’ lounge (game room) and bar area, including all areas of egress from said areas.

Sprinkler plans shall be submitted to the Medford Fire Department within 60 days of receipt of this decision. Installation shall be completed by November 15, 2007, in accordance with the statute (see section 11, c.304 of the Acts of 2004), unless an extension is granted by the Medford Fire Department in accordance with said statute.

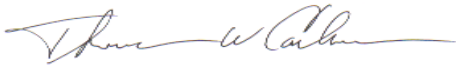
H) Vote of the Board

Thomas Coulombe, Acting Chairman	In favor
Stephen D. Coan, State Fire Marshal	In favor
Alexander MacLeod	In favor
John J. Mahan	In favor
Aime R. DeNault	In favor
George A. Duhamel	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,



Thomas Coulombe, Acting Chairman

Dated: August 6, 2007

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

Edward Merrifield
114 Mystic Ave
Medford, Massachusetts 02155

Chief Frank A. Giliberti, Jr.
Medford Fire Department
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Medford, Massachusetts 02155-4510