



DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LT. GOVERNOR

ANDREA J. CABRAL
SECRETARY

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

Automatic Sprinkler Appeals Board

P.O. Box 1025 ~ State Road

Stow, Massachusetts 01775

(978) 567-3181 Fax: (978) 567-3121

MAURICE M. PILETTE
CHAIRMAN

RODERICK J. FRASER, JR.
VICE CHAIRMAN

Docket # 2012-06
7 East Main Street
West Brookfield, MA

AUTOMATIC SPRINKLER APPEALS BOARD DECISION

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 West Brookfield Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned and/or operated by Roger and Cynthia Larson (hereinafter referred to as the Appellants). The building, which is the subject of the order, is located at 7 East Main Street, West Brookfield, Massachusetts, and features a business establishment operated under the name of Ye Old Tavern and Pleasant Street Pub.

B) Procedural History

By written notice received by the Appellants on December 29, 2011, the West Brookfield Fire Department issued an Order of Notice to the Appellants informing them 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 7 East Main Street, West Brookfield, MA. The Appellants filed an appeal of said order on February 9, 2012. The Board held a hearing relative to this appeal on December 12, 2012, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellants was Attorney Joseph P. Antonellis, Cynthia A. Larson and Roger E. Larson, the business owners. Appearing on behalf of the West Brookfield Fire Department was Chief Paul Lupacchino and Attorney Barbara J. Saint Andre, West Brookfield Town Counsel.

Present for the Board were: Maurice M. Pilette, Chairman; Bartholomew Shea, Designee of the Boston Fire Commissioner; Anthony DiNatale; Alexander MacLeod; Thomas Coulombe; Peter E. Gibbons; Aime 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 West Brookfield 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 filed by the Appellants
2. Statement in Support of Appeal
3. Order of Notice of the West Brookfield Fire Department
4. Occupancy Study from M.J. Haesche, Architect
5. Drawing of building layout
6. Quote from Cogswell Sprinkler Co., Inc. for Proposed Sprinkler System
7. 1st Notice of Hearing to Parties
8. Letter from Appellants' Counsel indicating consent of West Brookfield Fire Department to reschedule Appeal Hearing
9. 2nd Notice of Hearing to Appellants
10. 2nd Notice of Hearing to West Brookfield Fire Department
11. Joint request to continue from Appellants
12. 3rd Notice of Hearing to Appellants
13. 3rd Notice of Hearing to West Brookfield Fire Department
14. Copies of two Memoranda that accompany Hearing Notices
15. Supplemental Exhibits from Appellants
16. Certificate of Inspection (issued December 28, 2011)
17. Supplemental Exhibits from West Brookfield (items A-U)
 - A. Summary of the West Brookfield Fire Department's case
 - B. Order of Notice from West Brookfield Fire Department (dated 12/29/2011)
 - C. 4 exterior photographs of the building
 - D. Exterior photograph of the front of the building
 - E. Handwritten letter to the Fire Chief from Appellants plus property record card and classification sheet from the Department of Revenue – Division of Local Services
 - F. Diagram of the first floor (floor plan) and Diagram of the second floor hall
 - G. Certificate of Inspection dated 12/28/2011
 - H. Dept. of Revenue Annual License Information Form (2008)
 - I. E-mail memorandum from West Brookfield Building Inspector to West Brookfield Fire Chief regarding 304 Inspections
 - J. E-mail from J. Barry to Jeffrey Taylor (West Brookfield Building Inspector)
 - K. Letter to Appellants from Talevi and Haesche, LLC regarding use group classification
 - L. E-mail memorandum from Dana Haagensen to West Brookfield Fire Chief
 - M. Order to correct violations from West Brookfield Fire Department to Appellants (1/13/2012)
 - N. Photocopy of newspaper reports relative to the Ye Olde Tavern
 - O. Copy of an article from Telegram.com

- P. Photographs of the building (interior and exterior) – 27 total
- Q. Internet Advertisement for “All Folked Up” Halloween Bash at the Ye Olde Tavern
- R. 5 photographs of guests dancing
- S. Advertisement for March 17 dance party
- T. Advertisement for Thanksgiving Eve Homecoming Party with DJ
- U. Draft Offer from West Brookfield Fire Department to Appellants for extensions of time to install sprinklers – up to 3 years from the date of the initial Order (5/15/2012)

E) Subsidiary Findings of Fact

- 1) By notice received by the Appellants on December 29, 2011, the West Brookfield Fire Department issued an Order of Notice requiring the installation of an adequate system of automatic sprinklers in a building located at 7 East Main Street, West Brookfield, Massachusetts in accordance with the provisions of M.G.L. c. 148, s. 26G½. This building is used by an establishment that operates under the name of Ye Old Tavern and Pleasant Street Pub, a private, for profit organization.
- 2) The establishment is located in a 2½ story wooden structure built in 1760. The first floor features a kitchen, lounge area, a sitting room and three “function” rooms used for dining, various functions and other entertainment activities. The second floor features several guest rooms/apartments used for overnight accommodations.
- 3) According to the current Certificate of Inspection issued on December 28, 2011, the Building Department listed the facility’s occupant capacity as follows: 96 persons in the lounge, 67 persons in the main dining room, 48 persons in the secondary dining room, 78 persons in the bar and balance of dining areas, and 41 persons in the entry hall and living room. Said Certificate of Inspection indicates the use group of this building as “A-2”.
- 4) The facility holds an “All Alcoholic Innholder’s License” and a General License issued by the Town of West Brookfield which allows for a juke box, pool table, live entertainment (7 days per week), 2 video machines, and 1 outdoor liquor sales license. The Appellants testified that their liquor license does not indicate the hours for which they are allowed to serve alcohol, but rather states that service hours are per “M.G.L.”
- 5) Photographs submitted by both the Appellants and the Fire Department show the interior of the various rooms or areas on the first floor. Said photographs depict a substantial lounge area with a fully stocked bar, bar stools, high standup tables and several other tables with chairs that could be used by patrons for dining or bar purposes. This lounge area also features a pool table, juke box, pin ball machine, lottery vending machine, “Keno” machine and 3 televisions, as well as several dartboards, framed wall art and several signs that advertise “Miller Lite” and “Budweiser” beer. Next to the lounge area, through 3 wooden café doors, is a substantial function room which features a portable stage, dance floor and another fully stocked bar area described as a “service” bar. This area, on two sides, opens up into two additional function areas by means of vinyl accordion style entryways. Said function areas

feature dining style tables and chairs. The tables are fully set with linen tablecloths and napkins in a manner typical of restaurants and dining establishments. The function areas are connected by means of a combination of full walls, half walls and wide, folding vinyl according partitions.

- 6) The representatives of the Appellants contend that the establishment is exempt from the provisions of M.G.L. c. 148, s. 26G½, since it is principally used as a “restaurant” where pizza and full meals are served on a daily basis from opening until closing.
- 7) The representatives of the Appellants testified that the other portion of the establishment is the function space. They indicated that functions are typically family oriented and include: post funeral meals, graduation parties, weddings, showers, baptism parties, etc. According to the Appellants, most of the functions require a signed contract, assigned seating, and a pre-arranged menu. Typically, functions are approximately 50-60 people; however there can be as many as 120 people. The Appellants stated that they also host functions for community groups, for which there is no charge, i.e. youth sports banquets, community suppers, etc.
- 8) The representatives of the Appellants also indicated that the facility features live entertainment in the form of live bands or a vocalist. This live entertainment occurs in both the lounge area and in the function areas. In the past year, the Appellants stated that the frequency of the appearance of live entertainment, which could be considered “nightclub” activity, occurred on approximately 7-8 occasions. The Appellants stated that such activity has been reduced over the past years.
- 9) The West Brookfield Fire Department issued the Order to install sprinklers based upon the overall building capacity, the presence of guestroom apartments, the lack of a physical and operational separation within the business, the presence of live and recorded entertainment, a raised stage and the existence of a full bar area and liquor sales. The Fire Chief contests the Appellants characterization of the establishment as a restaurant and indicated that the classification of the building as an “A-2” establishment and the existence of an entertainment license indicate that this is the type of establishment subject to the provisions of M.G.L. c. 148, s. 26G½.
- 10) The Fire Chief submitted copies of advertisements for the business for parties and other events that clearly say “first come, first serve” or “no cover charge.” In addition, for events such as holiday and Halloween parties, which feature live bands, the facility appears to be open to an undetermined number of people, as there is no set number of tickets sold for these events. In addition, the patrons at such events are able to flow freely throughout the facility.
- 11) The representatives of the Appellants indicated that they had received an estimate for the installation of sprinklers dated November 20, 2009. The estimate included costs to install sprinkler protection throughout the building, including “all necessary pipe, fittings, hangers and sprinkler heads.” The estimate for all work was \$58,000.00. The Appellants testified that this cost would create an unreasonable hardship on the business. This amount did not include a breakdown of costs associated with a “partial system” for only those portions used as a bar or nightclub purposes.

- 12) The representatives of the Appellants requested that the Board consider any modified or limited installation options and to exclude the basement of the building, which is a dirt basement with crawl space and storage space for liquor and wet storage.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The provisions of the 2nd paragraph of M.G.L. c. 148, s. 26G½, 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 nightclub, 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 Appellants’ contention that the facility is currently operated as a restaurant, rather than a bar or nightclub, has some factual basis. However, in reviewing the activities, licenses, legal building classification and overall characteristics, this facility is also clearly operated as a bar and nightclub.
- 3) In a memorandum dated January 10, 2005, this Board issued an interpretive guidance document relative to the provisions of M.G.L. c. 148, s. 26G½. This law was part 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 the existence of establishments that may feature a “combination” of characteristics typical of both a restaurant, bar or nightclub and established some common sense factors that this Board would review in determining if the provisions of s. 26G½ are applicable. Such factors include:
 - 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 bartender 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 dining 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 establishment's 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?
- 4) Based upon the evidence provided at the hearing, this establishment currently serves meals on a daily basis to both dining and function event customers as indicated by the Appellants. However, in reviewing the characteristics as a whole, it also features substantial characteristics typical of both a bar and nightclub.

The establishment provides a bar, bar seating, bar standing and a bartender for the purposes of serving alcoholic beverages directly to alcohol consuming customers. Alcoholic beverages are available to customers at all times, whether or not they choose to eat a meal or not. The evidence indicated that the bar, bar seating and bar related activities occur on a routine basis, and expand throughout all first floor areas to accommodate special entertainment activities or increased capacity/density. Live or recorded music is routinely provided for entertainment and/or dancing purposes. The facility provides a platform or stage for band set-up, a dance floor and capabilities for dim or low light levels.

Although apparently more infrequently in the past year or so, newspaper and web based advertisements indicate that performances by rock bands and vocalists are routine. Newspaper articles were also submitted which indicate that some of these events resulted in complaints from neighbors about noise and rowdy behavior. Reports also included at least one incident involving an altercation within the facility involving band members.

The facility features a pool table, juke box, pin ball machine, lottery vending machine, "Keno" machine and 3 televisions, as well as several dartboards, framed wall art and several signs that advertise "Miller Lite" and "Budweiser" beer. The name of the establishment: "Ye Olde Tavern" and Pleasant Street Pub" are clear indications that the facility holds itself out to the public as a tavern or pub. Likewise, the prominent sign over the front entrance advertises that the facility provides "FOOD, DRINK and ENTERTAINMENT." Clearly the name, signage and pub-like entertainment items, are common in facilities that seek to create an atmosphere to attract customers to a bar or pub type facility and encourage the consumption of alcoholic beverages in addition to meals.

The establishment's current classification as an "A-2" occupancy is the appropriate legal classification for facilities designed and use as a nightclub, dancehall, discotheque or bar under 780 CMR, the State Building Code. The broad scope of activities, including live entertainment permitted under the establishment's liquor and live entertainment licenses, clearly indicate that this facility is legally capable, designed and licensed to provide live entertainment and related bar and nightclub activities, notwithstanding the Appellant's recent self-imposed reduction of such activity and usage.

- 6) The Appellants' position that this establishment is "principally a restaurant" and therefore exempt from the provisions of M.G.L. c. 148, s. 26G½, is without merit. Although the facility currently provides an attractive assortment of food items, this facility is also clearly and legally designed, used and marketed as a bar and nightclub with a legal capacity of 100 or more persons and is therefore subject to the sprinkler provisions of s. 26G½.

G) Decision and Order

Based upon the evidence presented at the hearing and for the foregoing reasons, this Board unanimously **upholds** the Order of the West Brookfield Fire Department, requiring the Appellants to install an adequate system of sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s. 26G½. An adequate system of automatic sprinklers shall be installed throughout those portions and areas of the building associated with use as a bar and/or nightclub (first floor only), in accordance with the following terms and conditions:

- Plans for the installation of an adequate sprinkler system (first floor) shall be submitted to the Head of the Fire Department no later than 90 days from the date of this decision (May 13, 2013); and
- The installation of an adequate sprinkler system shall be completed by October 1, 2013. An extension of time no later than October 1, 2014, may be allowed by the Head of the Fire Department, if such an extension is necessary and the delay has not been caused by the actions of the Appellants.

H) Vote of the Board

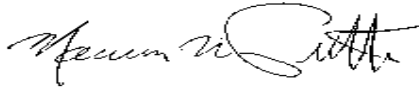
Maurice M. Pilette, Chairman	In Favor
Bartholomew Shea, Designee	In Favor
Anthony DiNatale	In Favor
Alexander MacLeod	In Favor
Thomas Coulombe	In Favor
Peter E. Gibbons	In Favor
Aime DeNault	In Favor
George Duhamel	In Favor

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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 M. Pilette, Chairman

Dated: February 12, 2013

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

Joseph M. Antonellis, Esq.
Mayer, Antonellis, Jachowicz & Haranas, LLP
228 Main Street
Milford, Massachusetts 01757

Chief Paul Lupacchino
West Brookfield Fire Department
3 Cottage Street
West Brookfield, Massachusetts 01585