

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

Automatic Sprinkler Appeals Board

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Docket # 2017-12
538 Clark Street
Gardner, 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, relative to a determination of the Gardner Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned and operated by the Gardner Fish & Gun Club (hereinafter referred to as the Appellant). The building, which is the subject of the order, is located at 538 Clark Street, Gardner, Massachusetts.

B) Procedural History

By written notice dated November 15, 2017, the Gardner Fire Department issued an Order of Notice to the Appellant informing the facility about the provisions of M.G.L c. 148, s. 26G½, 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 538 Clark Street, Gardner, Massachusetts. On December 27, 2017, the Appellant filed an appeal of the departments' determination with the Automatic Sprinkler Appeals Board. The Board held a hearing on February 14, 2018, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant were: Shawn Couture, Board of Directors; Erik Storm, President of the Gardner Fish & Gun Club; and William Shea, Board of Directors. Appearing on behalf of the Gardner Fire Department were: Chief Richard Ares; Captain Gregory Lagoy; Roland Jean, Jr., Gardner Building Department; Jeffrey Coote, former Gardner Building Commissioner; and Priya Gandbhir, Gardner Law Department.

Present for the Board were: Chief Thomas Coulombe, Chairman; Maurice M. Pilette, Vice Chairman; State Fire Marshal Peter Ostroskey; Deputy Chief Jack Dempsey (designee of the

Boston Fire Commissioner); and Alexander MacLeod. Steven P. Rourke, Esq. 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 Gardner 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
3. Order of Notice from Gardner Fire Department (dated 11/15/2017)
4. Certificate of Inspection/Occupancy (issued 11/7/2017)
5. Plans showing layout of Facility including Ground Floor, Lower Level and Attic
6. Photographs of Facility
- 6A. Photograph of Bar / Sitting Area
- 6B. Photograph of Sitting Area (facing towards glass sliding door)
- 6C. Photograph of Sitting Area (from behind the bar)
- 6D. Photograph of Pool Table
- 6E. Photograph of Office
- 6F. Photograph of Table and Gaming Machine
- 6G. Photograph of Room with Tables
- 6H. 2nd Photograph of Room with Tables
- 6I. Photograph of Room setup with banquet tables and chairs
- 6J. Photograph of Room setup with just banquet tables
- 6K. Photograph of Room setup with banquet tables and chairs (facing exit doors)
7. 2017 Annual Liquor License
8. Gardner Fish & Gun Club Rental Agreement
9. Job Estimate from David R. Richard Excavating for installation of 1” Water Line
10. Proposal for Sprinkler System – from Eugene Jagminas
11. Cost Estimate from Blue Hill Plumbing & Heating, Inc. for sprinkler system
12. Project Agreement from Red Hawk Fire & Security for sprinkler installation
13. Notice of Hearing to Appellant (dated 1/11/2018)
14. Notice of Hearing to Gardner Fire Department (dated 1/11/2018)
15. Copies of two Memoranda that accompany Hearing Notices
16. Submission from the Gardner Fire Department with Exhibits A-O
- 16A. Letter to the Board outlining the City of Gardner’s position on the Gardner Fish & Gun Club
- 16B. Order of Notice of the Gardner Fire Department (dated 11/15/2017)
- 16C. Letter from Chief Ares to Mr. Hartwood (dated 9/27/2016)
- 16D. Letter from Chief Ares to Gardner Fish & Gun Club notifying them of violation of M.G.L. c. 148, s. 26G½ (dated 8/9/2016)
- 16E. Letter from Chief Therrien to Gardner Fish & Gun Club on guidelines for “private dining events” (dated 7/19/2006)

- 16F. Letter from Chief Therrien to Gardner Fish & Gun Club on what events constitute “organized private dining events” (dated 10/12/2006)
- 16G. Letter from William J. Shea to “To Whom it May Concern” agreeing to comply with the “plan for public functions” (dated 12/4/2007)
- 16H. Newspaper advertisement for Gardner Fish & Gun Club for a “Jack n’ Jill” event on 8/6/2016
- 16I. Internet printout advertising an “Adults Only Party”
- 16J. Photograph of Upper Hall
- 16K. 2nd Photograph of Upper Hall
- 16L. 3rd Photograph of Upper Hall
- 16M. Copy of Mass. Non-Criminal Fire Code Violation Notice (Ticket #: F051-038108) issued 12/12/2014
- 16N. Gardner Fire Department – Fire Incident Narrative Reports for Inspections for multiple dates (for annual liquor license inspections)
- 16O. Gardner Building Department – Building Inspection Information Sheets (2012, 2013, 2015 and 2016)

E) Subsidiary Findings of Fact

- 1) By written notice dated November 15, 2017, the Gardner Fire Department issued an Order of Notice to the Appellant informing the facility about the provisions of M.G.L c. 148, s. 26G½, 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 538 Clark Street, Gardner, Massachusetts. On December 27, 2017, the Appellant filed an appeal of the departments’ determination with the Automatic Sprinkler Appeals Board. The Board held a hearing on February 14, 2018, at the Department of Fire Services, Stow, Massachusetts.
- 2) The building is owned and operated by the Gardner Fish & Gun Club, a non-profit organization. The club is open to members, their families and guests and to those persons, including the general public who rent or attend the facility for functions.
- 3) The subject building is a “two-level, masonry/wood constructed building totaling approximately 6,565 square feet. The building is classified as an A-2 Assembly use group classification. It has ground floor which features a function hall consisting of approximately 2,817 s.f. of floor area with an allowable occupant load of 265 persons and an adjoining “Member’s Room” which, according to testimony and photographs, has the characteristics typical of a bar. It features a long bar with a granite countertop, approximately ten bar stools and 5 round tables with chairs. This “Member’s Room” bar area consist of approximately 1,885 s.f. and has an allowable occupant load of 100 persons. Connected to the “Member’s Room” is a pool room with a pool table and another room referred to as the “Officer’s Room”.
- 4) The building also has a lower level that Appellant indicated is rarely used. This lower level features another function hall that consists of approximately 1,863 s. f. of floor area with a capacity of 120 persons. It also features a kitchen, several storage areas and a

basement area, which includes several storage rooms and a boiler room. The building also has an attic area with stairs from the Member's Room. This area is used for storage only and is not accessible to members or guests.

- 5) The Club possesses an "All Alcohol Club" liquor license issued by the City of Gardner. A copy of the license indicates that the club is allowed to serve liquor from 8:00 a.m. to 2:00 a.m. on all days except for Sundays and legal holidays, which hours shall be from 11:00 a.m. to 2:00 a.m.
- 6) Representatives of the Appellant indicate that the facility is routinely used for a variety of social events. The ground level function hall is rented to the public approximately 30 times per year for various social events such as: birthday parties, baby showers, weddings, engagement parties, awards banquets and graduation parties. It is also used by members for club dinners, a member's Christmas party and a children's Christmas party. For the majority of these events, Appellants stated that the functions feature a sit down or buffet meal. The events often feature music, either by disc jockey or other electronic source. There is a raised platform, but no fixed dance floor. The dance floor, if used, is determined by the arrangement of tables and chairs.
- 7) Appellant's representatives stated that all events have a fixed starting and ending time, either 12 p.m. to 4 p.m. for daytime events, or 6 p.m. to 11 p.m. for evening events. They indicated that main function hall on the ground level has a bar that serves both the hall and the Member's Room at the same time. The ground level floor has a ladies and men's room and a unisex bathroom and that serves both the Members Room and the Function Hall.
- 8) According to the Appellant's representatives, all facility renters sign a rental agreement which specifies the number of attendees and hours of the event. In addition, during such events they indicated that there is always a crowd manager on site who assures the events are held in accordance with club rules.
- 9) The Appellant's representatives believe that the facility, the ground level function hall, in particular, is not subject to the s. 26G½ sprinkler requirements based upon previous decisions of this Board which determined that sprinklers are not required in facilities that operate function events that feature a meal as the primary attraction, have tightly controlled pre- arranged attendance limits and feature "un-concentrated" capacity, based upon the floor area and legal capacity. The Appellant's representatives referenced several Board decisions, including ASAB Docket # 2005-23, 91 Manville Street, Leicester, MA, which supports their position that their functions should be considered "organized private dining events" and therefore, the building is not subject to the s. 26G½ sprinkler requirements.
- 10) The Appellant's indicated that the Order to install sprinklers was issued by the Gardner Fire Department on November 15, 2017 and it required the club to install sprinklers in the upstairs hall by July 1, 2019 and the "remainder of the system" by July 1, 2020. The Appellants' stated that they have sought three separate quotes for the sprinkler installation work and that the average cost would be approximately \$65,730, plus an additional

\$12,000 to install a new, dedicated water line to the building. Appellant's indicated that this cost would cause a financial burden for the club and may result in its possible closure. They also indicated that if the Board required sprinklers to be installed, they would need additional time, greater than the timetable required by the Fire Department.

- 11) In support of the Gardner Fire Department's position, Captain Lagoy testified that the facility may be used for private dining events, as described by the Appellant. However, they have become aware that the club has also advertised events open to the general public by means of the newspaper and internet. Such events included a "Jack n' Jill" party and an "Adults Only" fundraiser party. Copies of advertisements were submitted that state that attendees could purchase tickets either in advance or "at the door". Photographs were also submitted that depict disc jockey sound equipment and apparently low light levels/and or special effect lighting. They also submitted documentation of several code violation notices, including: failure to use a crowd manager and maintain a safety checklist, blocked egress, improper storage of cooking oil, commercial cooking equipment problems and other miscellaneous equipment defects. In addition, the Gardner Fire Department believes that the Members Room is a "bar" with a capacity of 100 persons and therefore subject to the sprinkler requirements.
- 12) Both Captain Lagoy and Chief Ares indicated that, in their opinion, this facility should have been sprinklered in accordance with M.G.L. c. 148, s. 26G½ years ago, but previous Fire Department personnel had agreed to allow the facility to hold limited or temporary "nightclub" type events with the condition that the club provide a fire detail. The Fire Department representatives have knowledge that the facility continues to hold entertainment events where the meal is not the primary attraction and that the facility does not meet the criteria stated in this Board's previous decisions, including the referenced Leicester decision. They indicated that they would not oppose a reasonable extension of time for Appellant to install the system.

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 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 and required all required systems to be installed within 3 years of the effective date of the act (by November 15, 2007).
- 2) In a memorandum dated January 10, 2005, this Board issued a guidance memorandum relative to the provisions of M.G.L. c.148, s. 26G½ which 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 Massachusetts Building Code, 780 CMR. 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, indicate 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, 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.
- 3) 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 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) The current use group classification of this building as “A-2” is an important factor to consider in making a determination. Clearly this building is legally designed as and may be legally used for A-2 activities as described above and thus within the scope of M.G.L. c. 148, s. 26G½. In addition to the use group classification, this Board will also review the building’s characteristics, on a case by case basis.
- 5) Clearly the “Members Room” located in the ground level has the characteristics of a “bar” within the context of s. 26G½. It features a fully stocked bar, bar seating and additional tables and chairs for the purpose of serving alcoholic beverages directly to alcohol consuming members and guests on a regular basis. The occupant load in this bar area is 100 persons. It also features an adjoining pool room with pool table. The Club possesses an “All Alcohol Club” Liquor License issued by the City of Gardner which allows the club to legally serve liquor from 8:00 a.m. to 2:00 a.m. on all days except for Sundays and legal holidays which hours shall be from 11:00 a.m. to 2:00 a.m. The Appellants failed to provide any evidence of significance to indicate that this area is anything other than a “bar” within the meaning of s. 26G½ and therefore, subject to sprinkler installation.
- 6) With respect to the ground floor function area, the Board finds that many of the “A-2”

characteristics described in its January 10, 2005, memorandum exist with respect to this portion of the building. However, as emphasized by the Appellant's representatives, this Board has determined that certain buildings or portions thereof used for functions that consist of privately organized dining events that feature a meal as the primary attraction, may not necessarily be subject to the requirements of s. 26G½, notwithstanding the existence of music for dancing purposes. Such a determination however, is conditioned upon the facility meeting seven (7) specific characteristics in previous decisions as indicated by the Appellants found in previous decisions of this Board:

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 has determined that this formula is consistent with the definition of the "unconcentrated" Assembly Occupancy used in 780 CMR, The State Building Code.
 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.
- 7) Although the Appellant's representative attempted to present testimony in support of the existence of the seven characteristics listed above, the Board finds that the facility does not feature all the characteristics. The ground floor function area consisting of approximately 2,817 s.f. of floor area with an allowable occupant load of 265 persons clearly does not meet the minimum 15 s.f. per person floor area to be deemed an "unconcentrated" occupancy. Additionally, there was credible evidence presented by the Gardner Fire Department, contrary to Appellant's testimony, that a significant number of entertainment events occur in this area that do not feature a meal as the primary attraction and that some events are open to the public without pre-arranged attendance.
- 8) Even if the Appellant's representatives were able to satisfy the "privately organized dining event" criteria for the ground floor function area, the Appellant's failed to provide any evidence of significance that would allow this Board to view, as separate, said function portion from that portion of the building used as a "bar". Based upon testimony, floor plans, photographs, function advertisements and the club's rental agreement, it appears

that both the facility and the activities conducted within it, lack the necessary physical and operational characteristics between that portion of the building used as a bar and the function areas, on both levels. Occupants of this building who attend social events whether as a member, guest of member, the general public and renters of the facility may engage in “A-2” like social function activities throughout the entire facility.

G) Decision and Order

Based upon the evidence presented at the hearing and based upon the aforementioned reasoning, the Board **upholds** the Order of the Gardner Fire Department to install sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s.26G½ and further orders the installation in accordance with following timeline:

1. The submission of plans and specifications for the installation of sprinklers shall be submitted to the Gardner Fire Department by July 1, 2018;
2. The Appellant shall enter into a contract and provide proof of same to Gardner Fire Department by September 1, 2018;
3. The ground (first) floor including the function hall, members room, and associated hallways shall have sprinklers installed by January 1, 2020; and
4. The lower level and remaining portions of the building, except for the attic, shall have sprinklers installed by January 1, 2021.

H) Vote of the Board

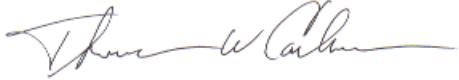
Chief Thomas Coulombe, Chairman	In Favor
Maurice Pilette, Vice Chair	In Favor
Peter Ostroskey, State Fire Marshal	In Favor
Chief Jack Dempsey	In Favor
Alexander MacLeod	In Favor

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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,



Chief Thomas Coulombe, Chairman

Dated: April 2, 2018

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

Gardner Fish & Gun Club
P.O. Box 396
538 Clark Street
Gardner, Massachusetts 01440

Captain Gregory F. Lagoy
Gardner Fire Department
70 City Hall Avenue
Gardner, Massachusetts 01440-2671