

STATE FIRE PREVENTION COMMISSION
MINUTES
December 13, 2012

Members Present: Timothy F. Dayton, Chairman
Sharon S. Gilyeat, Vice Chairperson
Charles D. Davis
Martin J. LePore
Anthony J. Spencer
Richard L. Yinger

Member Absent: Mark F. Hubbard
K.C. Harrington

Chairman Dayton called the meeting to order at the Taylor Avenue Fire Station in Annapolis.

Fire Marshal Barnard requested a moment of silence be observed in memory of Fire Safety Inspector Wayne "Tony" Altomonte who passed away December 11th. Mr. Altomonte was a fire safety inspector assigned to the Metro Regional Office for eight years. He was also a member of the Glyndon Volunteer Fire Department.

FIRE MARSHAL REPORT

Fire Marshal Barnard reported the Office of the State Fire Marshal (OSFM) has five full-time vacancies: one Administrative Aide (AA), two Fire Safety Inspectors (FSI), and two Deputy State Fire Marshals (DSFM). The AA position process has been completed with the selected candidate scheduled to begin employment in January. Additionally, Program Manager Jane Edwards has resigned from the agency effective November 6, 2012. A hiring freeze exemption has been requested to fill her position as well as one of the FSI positions. Two DSFMs will share her duties until an exemption is granted and her position is filled.

OSFM personnel in the Western and Southern Regions participated in the "Shop with a Cop" program in their respective regions during the holiday season. Law enforcement officers take needy families on gift shopping outings using donated funds. OSFM personnel in the Eastern Region assisted the Salvation Army with the distribution of smoke alarms at the Salisbury Mall.

The 2012 fire death total as of December 12th, stands at forty-seven, compared to sixty-four for this period last year. Two additional fatalities occurred last night bringing the year-to-date total to forty-nine, which so far is well below the 2011 total. The all-time low is sixty, which occurred in 2006 and also in 2008. A complete analysis of the 2012 fatalities will be completed by February 1, 2013. More information about fire deaths can be found at the OSFM website: www.mdsp.org/firemarshal under document downloads.

The old OSFM email addresses will no longer function. All OSFM email addresses have been changed to the following format: firstname.lastname@maryland.gov. The Fire Marshal's new address is william.barnard@maryland.gov. The Commission's new email is msp.sfpc@maryland.gov. Please be sure to update your contact information with the new addresses.

Several fire departments and/or counties are still not submitting MFIRS reports to the OSFM by the 10th of the following month. Please continue to remind all departments to submit accurate and timely reports.

Fire Marshal Barnard and other OSFM staff members as well as several Commission members attended and/or participated in the demonstrations of low-pressure water mist systems held at MFRI College Park in October. The demonstrations involved live fire scenarios to show the effectiveness of this

new technology. Chairman Dayton attended the demonstration with Allegany County Commissioner Mike McKay who was very impressed with the information he gleaned. The Chairman thanked Commissioner Lepore, the OSFM Staff, and everyone who participated in making the demonstration a success and for their hospitality.

The Fire and Life Safety Information Exchange Program website www.mdflifesafety.org is being updated on a weekly basis. More interactive fire and life safety related games have been added recently.

The first meeting of the Maryland Youth Fire Intervention Coalition was held at the National Fire Academy in August. The next meeting is scheduled for January 8th at the Howard County DFRS Training Academy. Departments wishing to be involved should contact DSFM Bruce Bouch at the OSFM HQ Office.

Fire departments are encouraged to create a wish list for fire safety education materials through NFPA's Fire-Safe Communities non-profit section. Information to register may be found at www.nfpa.org/SparkysWishList.

The U.S. Fire Administration is moving forward with the "Fire is Everyone's Fight" action plan scheduled for public launch in February 2013. Members of the fire service are being encouraged to begin use of the materials and logos which are available at www.usfa.fema.gov/fireiseveryonesfight. The campaign will have a strong online presence to enable organizations and the public to refer to and download key information and resources to assist with educating the public on fire and life safety practices.

The Consumer Products Safety Commission, NFPA, and the OSFM held a joint press conference on December 5th in Rockville on holiday fire safety issues which included live fire demonstrations involving wreaths, Christmas trees, and menorahs.

The Maryland State Fireman's Association (MSFA) and the OSFM have partnered to establish a Public Fire and Life Safety Education Grant Program. The program is designed to provide assistance to MSFA member companies by providing funding assistance in the form of fire prevention publications and supplies to enhance local public fire and life safety education efforts. The MSFA is making \$60,000 in grant funds available in 2013, with a maximum support of \$500 to each company. Applications must be submitted by midnight April 13th. Grant awards will be announced at the MSFA convention in June.

OSFM news releases are posted at the OSFM Facebook page. At least two educational news releases are issued each month.

On behalf of all the men and women of the OSFM, Fire Marshal Barnard wished everyone a happy and fire safe holiday season.

CHAIRMAN REPORT

Chairman Dayton reported Garrett County and Frostburg City have adopted some residential sprinkler system initiatives. Allegany County is still working on what initiatives it may implement.

The AES Power Company donated \$10,000 worth of 10-year sealed (with hush button) smoke alarms for distribution in Allegany County. The type of alarms purchased were in part based on recommendations in the recently issued Smoke Alarm Task Force Report. The fire departments' goal is to have a smoke alarm installed by the end of the shift which receives the request.

Chairman Dayton requested a volunteer to replace Vice Chair Gilyeat on the Mid-Atlantic Life Safety Conference Steering Committee. The first meeting is scheduled in January at MFRI College Park. Commissioner LePore volunteered to take over this duty. Fire Marshal Barnard reported Fire Protection Engineer Ken Bush will be stepping down as the Steering Committee Chairman and will be replaced by DSFM Bruce Bouch.

OTHER BUSINESS

Commissioner Yinger commended DSFM Matt Stevens and other OSFM deputies for the great job with the investigation of the house fire in November on Hoopers Island.

Motion by Commissioner Davis, second by Commissioner Lepore, and unanimously carried to approve the minutes of the December meeting.

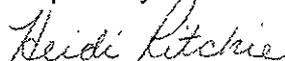
APPEALS

Appeal 09-02 David Hysan (Thursday's Restaurant), Galesville, Anne Arundel County. The Commission's October 14, 2009, decision was appealed to and heard by the Court of Special Appeals. The court remanded the case back to the Commission on August 21, 2012, for further administrative proceedings. The Commission heard additional evidence at a hearing on December 13, 2012. Based on the testimony presented, the Commission unanimously found the existing situation constitutes an inimical hazard to the public welfare and safety as to require correction and compliance with NFPA 101, Section 11.5.3 (2006 edition) as ordered by the Anne Arundel County Fire Marshal.

MEETING SCHEDULED

The next meeting is scheduled for:
Thursday, February 21, 2013 – 9:30 a.m.
Taylor Avenue Fire Station
620 Taylor Avenue, Classroom
Annapolis, Anne Arundel County

Respectfully submitted,



Heidi Ritchie, Secretary

Attachment: Memorandum Opinion and Order Case 09-02

BEFORE THE FIRE PREVENTION COMMISSION

THURSDAY'S STEAK AND
CRAB HOUSE

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Petitioner

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v.

Case No. 09-02

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ANNE ARUNDEL COUNTY
FIRE MARSHAL

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Respondent

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MEMORANDUM OPINION AND ORDER

I. Introduction and Procedural History

On October 14, 2009, this Commission denied an appeal filed by Thursday's Crab and Steak House ("Thursday's"), which is owned by David Hysan ("Hysan"), after determining that Thursday's should be required to comply with the provisions of NFPA 101, § 11.5.3 (2006 ed.), as directed by the Anne Arundel County Fire Department's Fire Marshal ("Fire Marshal"). On November 12, 2009, Hysan filed a petition for judicial review of the Commission's decision in the Circuit Court for Anne Arundel County. By order entered on December 13, 2010, the circuit court affirmed the Commission's order. On December 13, 2010, Hysan noted a timely appeal to the Court of Special Appeals.

In an unreported opinion dated May 4, 2012 (No. 2573, September Term, 2010), the appellate court reversed the circuit court's decision, and directed the circuit court to remand the case to the Commission for further administrative proceedings consistent with

its opinion. In its opinion, the Court of Special Appeals noted: “In case it is not clear from our discussion, if the provisions of NFPA 101, § 11.5.3 are to be applied in this case, the Commission must find that the changes in use of the premises *post-dates* the effective date of COMAR 29.06.01 [July 21, 1972], or else the Commission must find ‘that the existing situation constitutes a hazard so inimical to the public welfare and safety as to require correction.’” Slip op. at page 10, fn. 4.

By order entered on August 21, 2012, the circuit court remanded the case to the Commission for further proceedings consistent with the opinion of the Court of Special Appeals. The Commission scheduled a hearing for October 18, 2012. Hysan, through counsel, requested a postponement of the hearing, to which the Fire Marshal did not object. The hearing was held on December 13, 2012.

II. Issue

Should Thursday’s be required to comply with certain provisions of NFPA 101, Life Safety Code (2006 ed.), as adopted by this Commission by way of Code of Maryland Regulation (COMAR) 29.06.01.07?

III. Findings of Fact

Based on the evidence presented at the hearings on August 27, 2009 and December 13, 2012, this Commission makes the following findings of fact:

1. Thursday’s is a restaurant and bar that is situated on and entirely supported by a pier. The Fire Marshal originally limited the capacity of the restaurant/bar building (“building”) to 93 persons. In May, 2009, the Fire Marshal increased the capacity to 150

total persons with no more than 106 persons inside the building. The original limitation to 93 persons applied to the interior of the building only.

2. The building is approximately 25 feet wide and 118 feet long, and it starts at 98 feet from the shore. The first half of the building consists of storage and kitchen areas; the second half of the building consists of a bar and a dining room. The first entrance to the restaurant for the public is 188 feet from shore. The interior of the restaurant extends to the 226 foot mark as measured from the shore.

3. Thursday's also includes assembly areas on the pier outside of the building that exceed in size the assembly areas of the interior of the building. Assembly areas on the pier in addition to the building consist of a covered seating area attached to the end of the building with drop-down sides (the "canopy"), a separate covered bar 42 feet long with drop-down sides (the "Tiki Bar"), picnic tables with seating for 126 people, 19 individual chairs, and a bench along the front walkway adjacent to the building that is 65 feet long. In addition, there are open areas available for standing. In April, 2009, Thursday's provided seating for a total of 298 persons, not including areas that can be used for standing.

4. Exterior assembly areas extend to 250 feet as measured along a straight line from shore.

5. There is a walkway that measures 11 feet in width along the front side of the building and a walkway that varies in width between 4 feet 6 inches and 5 feet 10 inches behind the building.

6. On January 23, 1958, the Board of County Commissioners denied a petition by a prior owner named Molly Foster to rezone the site from Cottage Residential to Heavy Commercial. Ms. Foster's petition listed the uses of the premises as "restaurant, tavern, and cabins, in use since 1936." Hysan's Exhibit 3 at page 2.

7. In 1978, the building at the end of the pier was "used as a restaurant and tavern measuring 82 feet by 20 feet, with a 10-foot by 15-foot addition, for a total floor area of 1,767.5 square feet, having a maximum capacity of 95 and 6 employees." Hysan's Exhibit 3 at page 1.

8. In 1996, a prior owner applied for a building permit to install a seasonal awning canopy over a portion of the deck. The canopy covers outdoor seating.

9. Mr. Hysan enlarged an existing portable bar on the deck to create the Tiki Bar, which is also portable.

10. A single pier that is 9 feet 4 inches wide (handrail to handrail) provides egress back to the shore. At floor level, there are several inches on each side of the pier that extend beyond the handrail.

11. The pier measurement from the shore is 250 feet as measured along a straight line to the end of the pier. Measurement to remote areas of the pier used for assembly purposes exceeds 250 feet from shore. The pier extends more than 150 feet from shore.

12. The pier and the building are both of wood construction.

13. Thursday's does not have either a sprinkler system or a fire alarm system.

14. Travel distance to shore from any area within the building or from the assembly areas on the pier that supports the building exceeds 150 feet.

15. In order to get back to shore from behind the building, one must enter the building adjacent to the storage and kitchen areas. Closet doors open into this area, and there is also an electrical panel. There is no fire separation within this area or along the pier.

16. Given the combustible construction type for the building and pier, the absence of fire separation, the absence of a sprinkler system, and the length of the pier from the shore, a fire on or under the single pier could block egress to shore taken along any route of the pier. Jumping into the water, even if the water is shallow along the pier, would not be a safe option for many of the patrons of the restaurant, especially those who are very young, disabled, or intoxicated.

17. Three fires at the restaurant over the years have not resulted in any serious personal injury. The fact that there has never been a fire resulting in serious personal injury or loss of life, however, does not mean that there will not be a fire that causes serious personal injury or loss of life in the future.

18. This Commission finds that “the existing situation constitutes a hazard so inimical to the public welfare and safety as to require correction.” Md. Ann. Code, Public Safety Article, 6-206(a)(2)(ii).

IV. Conclusions of Law

1. When the Fire Marshal inspected Thursday’s Restaurant in 2009, § 11.5.3 of NFPA 101, Life Safety Code (2006), was in effect in Maryland, effective January 1, 2007. COMAR 29.06.01.07. Section 11.5.3 of NFPA 101, Life Safety Code (2006), provided in pertinent part as follows:

Piers....shall have means of egress arranged in accordance with Chapter 12 through Chapter 42. In addition, one of the following measures shall be provided on piers extending over 150 ft (46 m) from shore to minimize the possibility that fire under or on the pier blocks the escape of occupants to shore:

(1) The pier shall be arranged to provide for two separate ways to travel to shore, such as by two well-separated walkways or independent structures.

(2) The pier deck shall be open, fire resistive, and set on non-combustible supports.

(3) The pier shall be open, unobstructed, and not less than 50 ft (15 m) in width if less than 500 ft (150 m) long, or its width shall be not less than 10 percent of its length if more than 500 ft (150 m) long.

(4) The pier deck shall be provided with an approved automatic sprinkler system in accordance with Section 9.7 for combustible substructures and all superstructures.

(5) The sprinkler system specified in 11.5.3(4) shall be supervised where required by the applicable occupancy chapter, Chapter 12 through Chapter 42.

2. Effective January 1, 2010, the Commission adopted without amendment § 11.5.2.2 of the 2009 edition of NFPA 101, Life Safety Code, which recodified without substantive change § 11.5.3 of the Life Safety Code, the provision that was in effect in Maryland in 2009, when the Fire Marshal inspected Thursday's. That section provided as follows:

Buildings on piers not meeting the requirements of 11.5.2.1 [piers used exclusively to moor cargo vessels and to store material] and occupied for other than cargo handling and storage shall be in accordance with both of the following:

(1) Means of egress shall be arranged in accordance with Chapters 12 through 43.

(2) One of the following measures shall be provided on piers extending over 150 ft (46 m) from shore to minimize the possibility that fire under or on the pier blocks the escape of occupants to shore:

- (a) The pier shall be arranged to provide for two separate ways to travel to shore, such as by two well-separated walkways or independent structures.
- (b) The pier deck shall be open, fire resistive, and set on non-combustible supports.
- (c) The pier shall be open, unobstructed, and not less than 50 ft (15 m) in width if less than 500 ft (150 m) long, or its width shall be not less than 10 percent of its length if more than 500 ft (150 m) long.
- (d) The pier deck shall be provided with an approved automatic sprinkler system in accordance with Section 9.7 for combustible substructures and all superstructures.
- (e) The sprinkler system specified in 11.5.2.2(2)(d) shall be supervised where required by the applicable occupancy chapter, Chapters 12 through 42.

3. Effective January 1, 2013, the Commission adopted without amendment § 11.5.2.2 of the 2012 edition of NFPA 101, Life Safety Code. This provision is identical to § 11.5.2.2 of the 2009 edition of NFPA 101, Life Safety Code, quoted above.

4. Given that the Commission has found that “the existing situation constitutes a hazard so inimical to the public welfare and safety as to require correction,” Md. Ann. Code, Public Safety Article, 6-206(a)(2)(ii), § 11.5.3 of NFPA 101, Life Safety Code (2006), as adopted by this Commission on January 1, 2007 (which is substantively identical to § 11.5.2.2, the provision currently in effect), may be applied to Thursday’s. The pier on which Thursday’s sits extends over 150 feet from shore, and Thursday’s must therefore provide one of the above-listed measures.

5. Estoppel does not lie against a government agency performing a governmental function. *Salisbury Beauty Schools, et al. v. State Bd. of Cosmetologists*, 268 Md. 32, 300 A.2d 367 (1973). Therefore, the fact that the Fire Marshal may have inspected Thursday's Restaurant over the years and not enforced the provisions of the Life Safety Code against Thursday's does not mean that the Fire Marshal cannot enforce the State Fire Prevention Code against Thursday's.

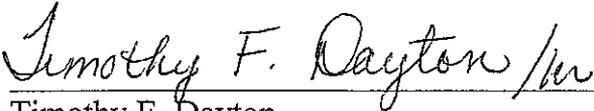
6. The Anne Arundel County Fire Marshal, as the authority having jurisdiction, may therefore enforce the above-quoted provisions of NFPA 101, Life Safety Code, as adopted by this Commission, at Thursday's.

V. Conclusion

Therefore, based on the above findings and our review of the above-quoted provisions of the NFPA Life Safety Code adopted by this Commission, the Commission will deny the appeal of Thursday's Crab and Steak House by separate order.

ORDER

For the foregoing reasons, on this 10th day of January, 2013, the appeal of David Hysan and Thursday's Crab and Steak House is DENIED.



Timothy F. Dayton
Chairman, Fire Prevention Commission