

STATE FIRE PREVENTION COMMISSION
MINUTES
August 15, 2013

Members Present: Timothy F. Dayton, Chairman
Charles D. Davis, Vice Chairman
K.C. Harrington
Mark F. Hubbard
Eugene A. Jones
Anthony J. Spencer
Richard L. Yinger

Member Absent: Sharon S. Gilyeat
Martin J. LePore

Chairman Dayton called the meeting to order at the Laurel Municipal Building in Laurel, Maryland.

Colonel Marcus Brown's Chief of Staff Bernard Foster introduced Brian S. Geraci, the newly appointed Maryland State Fire Marshal. Mr. Geraci will commence his six-year term on September 4, 2013. Mr. Foster expressed his heartfelt gratitude to the Commission for reviewing the applications and selecting three finalists for the Colonel's consideration. Chairman Dayton remarked the Commission appreciates the openness of the Colonel and his staff during the process. Mr. Geraci stated he is extremely excited and thanked the Commission for its support. He has been interested in the position for years and is truly blessed to serve the citizens of Maryland. He has some good ideas that he hopes to implement and continue Retired Fire Marshal Barnard's legacy.

FIRE MARSHAL REPORT

Acting State Fire Marshal A. Larry Iseminger, Jr. presented the Fire Marshal's Report. Mr. Iseminger introduced several Office of the State Fire Marshal (OSFM) staff members present: Allen Gosnell, Deputy Chief State Fire Marshal (DCSFM) in the Upper Eastern Shore Region; Jason Mowbray, DCSFM in the Western Region; Fire Protection Engineers C.J. Giblin in the Headquarters Office and Dan Hoang in the Western Region; Deputy State Fire Marshal (DSFM) Dan Giblin in the Upper Eastern Shore Region and Fire Safety Inspector (FSI) Steve Blevins in the Western Region.

Mr. Iseminger congratulated Mr. Geraci on his appointment as State Fire Marshal and stated he looks forward to working under his leadership. Mr. Geraci has a long career in the field of fire code enforcement and fire/explosive investigation. He retired as Battalion Chief from the Montgomery County Division of Fire and Rescue and is also a graduate from the FBI Hazardous Devices School. Currently he is employed with the Arlington Fire Department working with the National Capital Region Bomb Squads. Mr. Geraci will be the fourth Maryland State Fire Marshal since the modern formation of the agency and Fire Prevention Commission in 1964.

In preparation of the OSFM's and Commission's 50th Anniversary, Mr. Iseminger is researching the biography of Former Fire Marshal James C. Robertson who has been in a rehabilitation facility for several months following surgery. Mr. Robertson was very instrumental in getting many key fire and life safety regulations and laws passed in Maryland. Mr. Iseminger is also researching the history of the agency. Commissioner Spencer encouraged Mr. Iseminger in his efforts and strongly suggested audio or video recordings of Mr. Robertson and previous Fire Marshals be taken to document key events and preserve history.

A farewell luncheon attended by 171 guests was held on July 26th at the Annapolis Elks Lodge for the retirement of State Fire Marshal William E. Barnard. During the event, Retired Fire Marshal Barnard stated, *"During my twelve years as State Fire Marshal, it has been a genuine honor and a privilege to serve the citizens of Maryland and work with so many dedicated committed public safety professionals. Working*

with our public safety partners, we made significant strides in improving upon numerous fire and life safety issues affecting the citizens of Maryland. Over the years, we have worked tirelessly to protect our citizens from the impact of unwanted fire and explosives incidents and to keep fire deaths on a downward trend, reaching a new historic low 53 in 2012".

Currently the OSFM has four vacant full-time positions: Two FSIs and two DSFMs. There are also two vacant full-time contractual positions: One FSI and one Program Manager.

As of August 14th there have been 45 fire deaths reported compared to 28 for this period last year. Baltimore City and Prince George's County have seen significant increases. Additional information can be found at www.mdsp.org/firemarshal under document downloads.

Please continue to remind fire departments and/or counties to submit MFIRS reports in a timely manner.

The Mid-Atlantic Life Safety Conference is scheduled for Tuesday, September 24th. This year's theme "Confronting Today's Challenges" will focus on presentations based on doing more with less. Brochures were distributed to the Commission members and are also available at the OSFM and the Maryland State Firemen's Association (MSFA) websites.

Melissa Williams, the current Miss Carroll County Fire Prevention Ambassador, has done a tremendous job in updating the Fire and Life Safety Information Exchange website (www.mdlifesafety.org). Updates and resource links are being added on a weekly basis.

Fire departments are encouraged to create a wish list for fire safety education materials for use during school visits and community events. NFPA's nonprofit section has created Sparky's Wish List (www.nfpa.org/SparkysWishList) to partner with businesses, community members, and others to purchase items directly from NFPA who then will send the materials to the fire department.

The Fan Zone at Dover International Raceway in Dover, Delaware, will be expanded to promote fire prevention and life safety over the September 27-29th NASCAR race weekend. The OSFM, MSFA, NFFF, Delaware State Fire Marshal, Delaware State Fire School, and the Delaware Volunteer Firefighter's Association have partnered to promote the event. A 30x30 foot tent will be erected on site to provide cover for an interactive youth fire prevention area, Kidde smoke alarm and carbon monoxide detector display, and an informative residential fire sprinkler myth and fact section. The Home Fire Sprinkler Coalition will assist with the side-by-side burn demonstration to be held September 28th.

The U.S. Fire Administration is moving forward with the "Fire is Everyone's Fight" action plan. Members of the fire service are being encouraged to use the materials and logos available at the website (www.usfa.fema.gov/fireiseveryonesfight). The official kick-off of the campaign was held July 11th in Emmitsburg.

Educational news releases issued by the OSFM may be viewed at the OSFM Facebook page: <http://facebook.com/MarylandStateFireMarshal>.

Mr. Iseminger encouraged the Commissioners to search the web for Illinois Fire Marshal sprinkler information. The Illinois State Fire Marshal proposed new regulations for all new dwellings and new buildings with more than 70 occupants to be sprinklered as well as retroactively sprinkler all high-rise buildings. The regulations were written in a manner to also force the City of Chicago to comply. After receiving scathing negative feedback, the proposed regulations were ultimately withdrawn prior to the scheduled public hearing.

CHAIRMAN REPORT

Effective October 1, 2013, each public entity subject to the Open Meetings Act must designate a member to be trained on the requirements of the Act. Chairman Dayton will be the Fire Prevention Commissions official designee but he also encouraged Vice Chairman Davis and Secretary to take the on-line training course. Additional information is available at the following website: <http://www.oag.state.md.us/Opengov/Openmeetings/training.htm>.

Secretary Ritchie has prepared the draft Fiscal Year 2013 Fire Prevention Commission Report which is due to the Governor by September 30th. Members should review the report and provide Secretary Ritchie with any additions or corrections.

Any Commission members wishing to attend the Mid-Atlantic Life Safety Conference should submit their intent and workshop selections to Secretary Ritchie as soon as possible so that she can prepare and submit the registrations and request appropriate funds.

The Commission has not yet received notification of Commissioners Yinger's and Harrington's reappointments to their second terms or on the appointment of a member to replace Commissioner Sharon Gilyeat. All necessary paperwork has been submitted to the Governor's Appointment Office.

The MSFA Executive Committee will meet in Mt. Airy on Saturday, August 24th. Chairman Dayton plans to attend.

OTHER BUSINESS

Motion by Commissioner Spencer, second by Commissioner Harrington and unanimously carried to approve the minutes of the June 18, 2013, meeting.

MEETING SCHEDULED

The next meeting is scheduled for:
Thursday, October 17, 2013 – 9:30 a.m.
Laurel Municipal Building Council Chambers
8103 Sandy Spring Road
Laurel, Prince George's County, Maryland

After hearing the appeals, the Chairman Dayton concluded the public meeting.

The Commission convened in closed session to deliberate the evidence presented during the public appeal hearings. Commissioner Spencer did not participate in the deliberations due to time constraints and prior commitments.

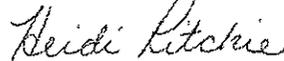
APPEALS

Appeal 13-01 C'Town Laundromat, Chestertown, Kent County. The Petitioner appealed the State Fire Marshal's order to comply with *NFPA 58 Installation of LP-Gas Systems* to provide for greater separation between dry vents on the exterior of the building and the liquid propane cylinders situated under the dryer vents. Based on the testimony presented, the Commission was unable to determine if the requirements of the code were properly applied and remanded the case to the State Fire Marshal for further information.

Appeal 13-02 Bennett's, Chestertown, Kent County. The Petitioner appealed the State Fire Marshal's order to comply with certain provisions of *NFPA 30 Flammable and Combustible Liquids Code* regarding the location of aboveground storage tanks and certain provisions of *NFPA 1 Fire Code*. The Petitioner failed to appear for the hearing and the appeal was dismissed.

Appeal 13-03 Thunder Road Bar & Grille, LLC, Hagerstown, Washington County. The Petitioner appealed the State Fire Marshal's order to install an approved, supervised automatic sprinkler system if the establishment provides live entertainment in the interior of the establishment. Based on the testimony presented, the Commission determined the offering of interior live entertainment constitutes a change in use from the restaurant previously operated on the premises to a nightclub and therefore must comply with the applicable provisions of *NFPA 101 Life Safety Code* which requires an approved, supervised automatic sprinkler system where the occupant load exceeds 100 people. The Commission affirmed the decision of the State Fire Marshal and denied the appeal.

Respectfully submitted,



Heidi Ritchie, Secretary

Attachments:

Memorandum Opinion and Order Case No. 13-01

Order Case No. 13-02

Memorandum Opinion and Order Case No. 13-03

BEFORE THE FIRE PREVENTION COMMISSION

C'Town Laundromat, *

Petitioner *

v. *

Case No. 13-01

STATE FIRE MARSHAL *

Respondent *

MEMORANDUM OPINION AND ORDER

I. Introduction

Currently pending before this Commission is the appeal of C'Town Laundromat ("Laundromat"), an establishment located at 201 Spring Avenue, Chestertown, Maryland. The laundromat is taking issue with the Fire Marshal's enforcement of several provisions of the State Fire Prevention Code.

II. Issue

Should the laundromat be required to comply with § 6.3 of NFPA 58 **Installation of LP-Gas Systems** (2011 edition), adopted as a referenced publication by this Commission by way of the Code of Maryland Regulation (COMAR) 29.06.01.07 and provide for greater separation between the dryer vents on the exterior of the building and the liquid propane cylinders situated under the dryer vents?

III. Facts

The facts of this case are not in dispute:

1. C'Town Laundromat is a laundromat in Chestertown, Maryland.
2. The laundromat is a business owned by Frances Pennell, and her mother, Nony Howell.
3. C'Town is a tenant of the building located at 201 Spring Avenue in Chestertown, Maryland.
4. There are four 100 pound liquid propane containers directly under the exterior dryer vents (three under one vent and one under another vent) of the laundromat. Fire Marshal Exhibit #1.
5. On May 20, 2013, the Fire Marshal cited the laundromat in relevant part with a violation of Chapter 6, paragraph 6.3, Tables 6.3.1. and 6.4.2 of NFPA 58. Fire Marshal Exhibit #2.

IV. Conclusions of Law

1. NFPA 58 (2011 edition) §6.3.1 as adopted by this Commission provides in pertinent part as follows:

Containers installed outside of buildings, whether of the portable type replaced on a cylinder exchange basis or permanently installed and refilled at the installation, shall be located with respect to the adjacent containers, important building, group of buildings, or line of adjoining property that can be built upon, in accordance with Table 6.3.1, Table 6.4.2...

2. Table 6.3.1 specifies the minimum separation distance between containers, important buildings, and line of adjoining property that can be built upon depending on the water capacity per container.

3. The Fire Marshal determined that the proximity of the liquid propane cylinders to the exterior dryer vents constitutes a violation of the §6.3.1, Table 6.3.1 and 6.4.2 of NFPA 58.

4. The Fire Marshal determined the minimum distance separation to achieve compliance is 10 feet.

V. Discussion

The Fire Marshal did not provide information on the water capacity of the cylinders or how it determined a minimum separation distance of 10 feet was required based on the requirements of the above quoted code citations. The Fire Marshal did not provide a relevant code citation to determine the required proximity of the cylinders to the dryer vents.

VI. Conclusion

For the foregoing reasons, the Commission will remand this case to the Fire Marshal to provide additional information on the water capacity of the cylinders, how it determined the minimum separation distance to be ten feet, and what code citation is relevant to the proximity of the cylinders to the dryer vents.

ORDER

For the foregoing reasons, it is, on this 12th day of September, 2013, by the
Fire Prevention Commission,

ORDERED that this case is REMANDED to the Fire Marshal for
additional information.

Timothy F. Dayton/m

Timothy F. Dayton
Chairman, Fire Prevention Commission

BEFORE THE FIRE PREVENTION COMMISSION

BENNETT'S, *

Petitioner, *

v. *

Case No. 13-02

STATE FIRE MARSHAL, *

Respondent. *

ORDER

The above case having come for hearing before this Commission on August 22, 2013, and the Petitioner having failed to appear for the hearing, it is this 11th day of September, 2013, ORDERED, that the appeal is DISMISSED.

Timothy F. Dayton /nr

Timothy F. Dayton
Chairman, Fire Prevention Commission

BEFORE THE FIRE PREVENTION COMMISSION

THUNDER ROAD BAR & GRILLE, LLC,	*	
Petitioner	*	
v.	*	Case No. 13-03
STATE FIRE MARSHAL	*	
Respondent	*	

MEMORANDUM OPINION AND ORDER

I. Introduction

Currently pending before this Commission is the appeal of Thunder Road Bar & Grille, LLC (“Thunder Road”), an establishment located at 15124 National Pike in Hagerstown, Maryland. Thunder Road contends that it is a restaurant that offers live entertainment two days a week, and that it is not a nightclub. For the reasons set forth below, this Commission has determined that Thunder Road is a nightclub and that it must therefore meet the requirements for existing assembly occupancies under NFPA 101, § 13.3.5.1, which requires an approved, supervised automatic sprinkler system where the occupant load exceeds 100 people.

II. Issue

Does the use of Thunder Road as a nightclub instead of a restaurant constitute a change in the use of the premises, and is Thunder Road therefore required to have an approved, supervised automatic sprinkler system?

III. Facts

1. On March 28, 2013, Jason Provard signed a "Building/Tenant Space Intent of use Form," for 15124 National Pike, Hagerstown, Maryland, 21740, stating the "building will operate as previous (Restaurant and Bar)." Mr. Provard did not indicate on the form that Thunder Road planned to offer live entertainment. Fire Marshal Exhibit 3.

2. On April 12, 2013, Dan Hoang, Fire Protection Engineer II, sent a plan review letter to Mr. Provard, for Thunder Road Bar & Grille, 15124 National Pike, Hagerstown, Washington County. Based on the permit application submitted by Mr. Provard on behalf of Thunder Road, Mr. Hoang considered the building to be "an existing restaurant." Fire Marshal Exhibit 1. Mr. Hoang's primary concern was the apartment on the second floor of the building; when he conducted his plan review, he was not aware that Mr. Provard intended to offer live entertainment at Thunder Road.

3. Prior to April 30, 2013, Fire Protection Engineer Hoang and Fire Inspector Steve Blevins visited Thunder Road for an inspection. During this visit, they inspected the kitchen area and the exterior deck area, and they attempted to determine the construction separating the second floor apartment.

4. On April 30, 2013, Mr. Blevins conducted a follow-up inspection. Mr. Blevins, a former musician, noticed tape on the floor of the building, and he deduced that the tape marked the area where a band would set up to play. Mr.

Blevins advised Mr. Provard that Thunder Road had been inspected as a restaurant, and that it was therefore not permitted to offer live entertainment.

5. Thunder Road was scheduled for a grand opening with the Washington County commissioners for April 30, 2013, and it was scheduled to open to the public on May 4, 2013.

6. Having orally advised Mr. Provard on April 30, 2013, that Thunder Road was not permitted to offer live entertainment, the Fire Marshal issued a Supplemental Inspection Report dated April 30, 2013, stating that the "OSFM does not oppose U[se] and O[ccupancy.]" Appellant's Exhibit 1. The Fire Marshal issued the supplemental inspection report dated April 30, 2013, based on its inspection of Thunder Road as a restaurant, not as a nightclub.

7. Mr. Hoang testified that, after he learned from Thunder Road's website that the establishment intended to offer live entertainment, rather than withdrawing the use and occupancy approval, he extended a courtesy to Mr. Provard, and he permitted Mr. Provard to state that he did not intend to have live music so that he could remain open. It was Mr. Hoang's understanding that Thunder Road would not offer live entertainment, and that Mr. Provard would apply for approval to operate a nightclub at a later time.

8. At some point during the first week of May, 2013, another inspector gave Mr. Blevins a flyer advertising live entertainment at Thunder Road. Fire Marshal Exhibit 4. The flyer prompted an internet search which found a website, www.thunderoadbarandgrille.com, that listed the bands that were scheduled to

perform at Thunder Road every weekend from May 4, 2013 through August, 2013. Fire Marshal Exhibit 5.

9. On May 8, 2013, the Fire Marshal received a letter dated April 28, 2013, from Mr. Provard in which he stated that "we at Thunder Road Bar and Grille operating [sic] as a restaurant that plans to serve the surrounding area with exceptional service. *We do not have live entertainment*, and will be open Thursday thru Sunday. I am the Tenant and I have Leased the current space that was Gateway Seafood." Fire Marshal Exhibit 2 (emphasis added).

10. On May 9, 2013, Mr. Blevins issued a Supplemental Inspection Report stating the following:

Be advised your Washington County zoning permit application 2013-01234 for this establishment indicated it would be operated as a restaurant and our plan review letter of April 12, 2013, was based on requirements for re-opening of an existing restaurant with an established occupant load total of 268 persons.

You advised this office verbally during telephone conversations and in writing in your letter of April 28, 2013, that "We do not have live entertainment...". However, it has come to our attention from advertisements on the Thunder Road Bar and Grille website and printed flyers have been distributed, that the establishment had a live band perform on May 4, 2013, and live bands scheduled on Saturday nights through the end of August.

You are hereby notified that the NFPA 101 Life Safety Code (2012 edition) as adopted by the State Fire Prevention Code requires dance halls, discotheques, nightclubs, and assembly occupancies with festival seating be protected by an approved, supervised automatic sprinkler system. If your establishment provides live music bands or other live entertainment, it falls under the criteria of this NFPA 101 requirement and an approved automatic sprinkler system shall be installed.

NO LIVE ENTERTAINMENT IS PERMITTED IN YOUR ESTABLISHMENT UNTIL SUCH TIME THAT AN AUTOMATIC SPRINKLER SYSTEM IS INSTALLED AND APPROVED BY THIS OFFICE....

Fire Marshal Exhibit 8 (emphasis in original).

11. Mr. Provard appealed the May 9, 2013 decision to Deputy Chief State Fire Marshal Jason Mowbray.

12. By letter dated May 15, 2013, Deputy Chief Mowbray approved the use of the outside deck for live entertainment, with certain conditions. Fire Marshal Exhibit 9.

13. On June 27, 2013, Mr. Provard appealed the determination of the Office of the State Fire Marshal that offering live entertainment at Thunder Road Bar & Grille constituted a change in the use of the premises that would require the installation of an approved automatic sprinkler system.

14. By letter dated July 9, 2013, Acting Fire Marshal Joseph C. Flanagan denied Mr. Provard's appeal, after determining that "[t]he addition of live entertainment within the interior of the Thunder Road Bar & Grill classifies as a change in use...." Fire Marshal Exhibit 10.

15. Merriam Webster's Collegiate Dictionary, Eleventh Edition (principal copyright 2003), defines "nightclub" as "a place of entertainment open at night usu. serving food and liquor and providing music and space for dancing and often having a floor show." The same dictionary defines "restaurant" as "a business establishment where meals or refreshments may be purchased."

16. Before Thunder Road opened, the premises located at 15124 National Pike, Hagerstown, Maryland, 21740, was used as a restaurant, Gateway Seafood, not as a nightclub.¹

17. Thunder Road's offering of live entertainment constitutes a change in the use of the premises from a restaurant to a nightclub. The 2013 Band Schedule (Fire Marshal Exhibit 5) reflects that all but one of the bands are scheduled to play from 9:00 p.m. to 1:00 a.m., and that there is "No Cover Charge." There is currently a dance floor in front of the area where the band sets up. (Appellant's exhibit 3.) The primary draw of Thunder Road is the music, not the food, and Thunder Road is primarily a place of entertainment, not dining.

18. The occupant load of the interior of Thunder Road is 168 people, and the occupant load of the exterior deck at Thunder Road is 100 people.

19. The Office of the State Fire Marshal is required to enforce the Fire Prevention Code as it is written.

IV. Conclusions of Law

1. The operation of a nightclub by Thunder Road constitutes a change in use from the restaurant previously operated on the premises (Gateway Seafood).

2. Thunder Road must therefore comply with the applicable provisions of the Life Safety Code, as quoted below.

¹ In the absence of any corroborating or documentary evidence, this Commission does not find credible the appellant's assertion that prior tenants of the premises offered live entertainment.

3. The NFPA 101 Life Safety Code (2012 edition) as adopted by this Commission by way of Code of Maryland Regulation (COMAR) 29.06.01.07, provides in pertinent part as follows:

3.1 General. The definitions contained in this chapter shall apply to the terms used in this *Code*. Where terms are not defined in this chapter or within another chapter, they shall be defined using their ordinarily accepted meanings within the context in which they are used. *Merriam-Webster's Collegiate Dictionary*, 11th edition, shall be the source for the ordinarily accepted meaning.

3.3.188.2 Assembly Occupancy. An occupancy (1) used for a gathering of 50 or more persons for deliberation, worship, entertainment, eating, drinking, amusement, awaiting transportation, or similar uses; or (2) used as a special amusement building, regardless of occupant load.

13.3.5.1 Where the occupant load exceeds 100, the following assembly occupancies shall be protected throughout by an approved, supervised automatic sprinkler system in accordance with 9.7.1.1(1):

- (1) Dance halls
- (2) Discotheques
- (3) Nightclubs
- (4) Assembly occupancies with festival seating

43.2.2.1.5 Change of use. A change in the purpose or level of activity within a structure that involves a change in application of the requirements of the *Code*.

43.7.1 Change of use.

43.7.1.1 A change of use that does not involve a change of occupancy classification shall comply with the requirements applicable to the new use in accordance with the applicable existing occupancy chapter, unless the change of use creates a hazardous contents area as addressed in 43.7.1.2.

4. 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).

V. Conclusion

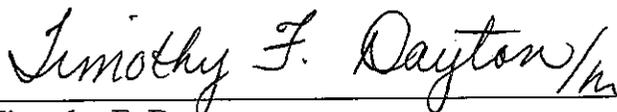
Based on the above findings and our review of the above-quoted provisions of the applicable codes, the Commission will affirm the Fire Marshal's July 9, 2013 decision. The Commission's Order follows.

ORDER

For the foregoing reasons, it is, on this 12th day of September, 2013, by the Fire Prevention Commission,

ORDERED that the appeal of the Thunder Road Bar & Grille, LLC, is DENIED, and it is further

ORDERED that the Fire Marshal's July 9, 2013 decision is AFFIRMED.



Timothy F. Dayton
Chairman, Fire Prevention Commission