

STATE FIRE PREVENTION COMMISSION
MINUTES
April 18, 2019

Members Present: Charles D. Davis, Chairman
Mark Bilger, Vice Chairman
Emily Devan
K.C. Harrington
Kevin Simmons
Edward Tochterman, Jr.
Stacy Welch

Members Absent: Douglas Alexander

Chairman Davis called the meeting to order at the Laurel Municipal Center, in Laurel, Prince George's County.

FIRE MARSHAL REPORT

Fire Marshal Brian Geraci reported the Office the State Fire Marshal (OSFM) currently has four sworn and four civilian vacancies, the lowest vacancy rate since his term began. Some of the vacancies should be filled in the next few months. The full-time merit engineer position for the Western Region has been difficult to fill. Fire Protection Engineer (FPE) Dan Hoang, retired from Western Region, has been re-hired as a part-time contractual FPE. He shares the contract hours for the contractual Western FPE with former Chief Engineer Larry Iseminger. The engineers have suggested a meeting with the Department of Budget and Management to request a salary increase. Fire Marshal Geraci introduced Emily Witty who was recently hired as the Public Affairs Officer and Community Risk Reduction Specialist. She previously worked at the Maryland Department of Commerce and has some media relations experience. Shane McKinney, a lateral hire from the Easton Police Department, has been hired as a Deputy State Fire Marshal (DSFM) for the Upper Eastern Shore. He also has some prior experience as a volunteer firefighter. DSFM Joseph Matthews graduated from the law enforcement academy in March and has been assigned to the Southern Region. His father is a Fire Safety Inspector in the same region.

Fatalities this year total 24, compared to 30 for the same period in 2018. More information can be found at <http://mdsp.maryland.gov/firemarshal>.

The National Association of State Fire Marshals Conference will be held at the Westin Hotel in Annapolis from July 22-25, 2019. Commission members will be invited to the social events. A crab feed is scheduled for Sunday night on Kent Island. Monday's events will include a cruise on the bay.

All agency personnel have received CPR/AED and Stop-the-Bleed training over the last two months. All offices now have AED's and stop-the-bleed kits.

This year's Public Fire Safety Educators Seminar was held March 23rd at MFRI College Park. It was well attended again this year.

The first week in May is Arson Awareness Week. This year's theme focuses on construction sites and the prevention of arson at these locations.

The weekend of May 18-19th will be the first Community Risk Reduction weekend for the year. Fire and rescue departments are encouraged to canvas their communities to check and install smoke alarms.

Home Fire Sprinkler Week is May 19-25th, with the 22nd being Home Fire Sprinkler Day. The agency will be working with other organizations to promote residential sprinklers.

The OSFM investigated a total of 184 incidents during the first quarter of 2019; 170 were fire related. Eight cases were closed by arrest with 12 individuals arrested. 2,418 inspections were conducted and 423 plans were reviewed. Backlog of plans for first quarter was 63. There were 14 sprinkler activations that resulted in a save and 12 smoke alarm activations that resulted in a save.

The Fire and Explosive Investigation Advisory Workgroup held its first meeting on May 21st at MFRI College Park. At this time the Office of the Chief Medical Examiner and the Bureau of Alcohol, Tobacco, Firearms and Explosives are not participating.

The OSFM blog <http://mdosfm.wixsite.com/blog> and Fire and Life Safety Information Exchange www.mdlifesafety.org sites continue to be updated frequently.

The Fire Marshal reported on the status of various legislation having a potential impact on the OSFM:

- HB90/SB117 proposed to change the penalties for smoke alarm violations from criminal to civil (FAILED IN COMMITTEE).
- HB 70 carbon monoxide alarms in rental units (FAILED IN COMMITTEE).
- HB 595 will add three more cancers to the current medical presumptions: bladder, kidney and renal cell (PASSED).
- SB465/HB 1186 is regarding the minimum number of fire drills in non-public schools (PASSED).
- HB 945 would have required the OSFM to oversee a residential sprinkler tax credit program (WITHDRAWN).
- HB 1341 would increase the fine from \$1000 to \$5000 for smoke alarm violations (STAYED IN THE RULES COMMITTEE)
- HB 604/SB 646 is for Workers' Compensation - Medical Presumptions for Diseases and Cancer - Eligibility (Firefighter Jesse McCullough's Cancer Protection Law) (PASSED)
- HB 1264/SB 902 Products containing a flame retardant chemical – Prohibition on import or sale (WITHDRAWN)

The Fire Marshal reported on some recent high-rise fires in Montgomery County. The fire in Kensington started on the ninth floor. It was an older condominium type building and a lot of the doors didn't close and latch. The occupant was able to escape and pulled the fire alarm which alerted everyone in the building. Two occupants and one firefighter were transported to the hospital with injuries. Had the fire occurred on a lower floor or earlier in the morning it could have been a much different situation. Two other high-rise fires in the past week occurred in kitchens, one on the 13th floor and one on the 14th floor. None of these buildings were sprinklered. Chairman Davis suggested the Fire Marshal approach high-rise owners/associations with the four recommended options the Commission developed in the report presented at the February meeting. Commissioner Spencer would like to see Baltimore City involved with any potential residential high-rise improvements.

CHIEF FIRE PROTECTION ENGINEER REPORT

CFPE Ken Bush reported the Attorney General's Office has not provided its opinion on the definition for "recovery homes" in order to determine if they will be classified as single-family. With the increased attention to the opioid crisis, it seems like more homes are being established but it is difficult to ascertain how many and in what areas since there is no clear process. The issue is if homes housing six or more occupants will be legally defined as a family since Maryland law prohibits enforcement of fire code requirements for private dwellings. If not considered a private dwelling, the number of occupants and level of care would determine whether it would be considered lodging and rooming, dormitory, board and care, health care, etc. NFPA no longer defines what a "single family" is. It used to contain verbiage of being related by blood or marriage. The Attorney General's opinion will play a major factor on how the fire code is applied to these facilities.

Meetings are scheduled this summer and fall for the next drafts of NFPA 101 Life Safety Code and NFPA 1 Fire Code. The public comment period ends May 8th for NFPA 101 and June 5th for NFPA 1. NFPA is attempting to reduce the size of NFPA 1 by reducing the amount of extracted material.

NFPA's annual meeting will be the week of June 17th, which conflicts with the Maryland State Firemen's Association Convention in Ocean City. The main focus will be on the National Electrical Code.

Locking devices on classroom doors continues to be an on-going discussion. NFPA has introduced a tentative interim amendment that parallels the amendment Maryland has proposed which will allow an additional locking device on existing doors in existing educational buildings. Security for classrooms in the older schools has been an issue and permitting one additional locking device helps address this.

The International Code Council will be holding hearings April 28-May 8th in Albuquerque dealing mostly with structural issues, the Building Code, the Energy Conservation Code, and the Green Construction Code.

The Smoke Detector Technology Task Force, chaired by Jim Resnick from Montgomery County, had an interesting meeting that included telephonic participation of NFPA 72 National Fire Alarm Code Technical Committee and Underwriters Laboratories representatives. With increasing improvements in battery technology, the committee discussed such things as moving away from AC-power detectors. Combination smoke/carbon monoxide alarms and activation of detectors were discussed. Additional reports will be provided as the task force continues its work.

Regarding the engineering staff, CFPE Bush reported they are working hard to keep the backlog down. The Headquarters' engineer is expected to resign in June. Salary seems to be the issue. Dr. Milke with the University of Maryland says everyone graduating from the engineering class this semester has a job with an average starting salary of \$70,000 which is about 20-25 percent below the OSFM. Once hired, most OSFM engineers seem to stay but getting them on-board is the difficulty.

CHAIRMAN REPORT

Regarding the progress of updating the State Fire Prevention Code, legislative coordinators requested the Commission provide a summary explaining each proposed amendment. Secretary Ritchie prepared the proposal for Chairman Davis' signature and submitted it. Fire Marshal Geraci also discussed it with Colonel Pallozzi as such an explanation has never been requested or required for past updates. It is unclear at what level the proposed amendments are being scrutinized and it may have something to do with residential sprinkler requirements. Fire Marshal Geraci pointed out to the Colonel that the residential sprinkler requirements are in the building code and not the fire code. The proposal by the Department of Labor, Licensing and Regulation (DLLR) to the update to the 2018 edition of the building code has already been approved and adopted and it still contained requirements for residential sprinklers. Chief Fire Protection Engineer (CFPE) Ken Bush reported all code books have been delivered for distribution to the legislative review committee. He also noted that Section 903 of the International Building Code which deals with sprinkler requirements is proposed for deletion from the State Fire Prevention Code, thus reducing sprinkler requirements for some occupancies.

Chairman Davis noted the Commission received copies of some recent correspondence between DLLR and Worcester County. Worcester County is proposing to allow the homeowner to opt out of installing a sprinkler system. DLLR responded to Worcester County reminding them of the public safety statutes that apply to the adoption of the building code, sprinkler requirements, and local amendments. Commissioner Tochterman expressed his concern about Allegany County's failure to enforce the residential sprinkler requirements. They are still operating under the 2006 building code which does not require one- and two-family dwellings to be sprinklered. In view of the actions of Allegany and Worcester Counties, Commissioner Tochterman stated he feels strongly that if Maryland is going to have a residential sprinkler law then it should be enforced. If local jurisdictions continue to ignore the law and are successful in adopting local amendments to not require sprinklers, other jurisdictions may do likewise. Allegany County government has chosen to disregard enforcement of the duly enacted Maryland statewide single-family residential automatic sprinkler law and Worcester County government anticipates its citizens to disregard the same law, and apparently neither the Maryland State Fire Marshal nor DLLR has the authority or the power to require mandatory enforcement thereof. Commissioner Tochterman motioned that the Chairman of the Maryland State Fire Prevention Commission notify the Office of the Maryland State Attorney General of the gravity of the failure of these local governmental bodies, the danger to their citizens, including fire service personnel, and request that his office take prompt action to require enforcement of the law, and that copies of the correspondence be forwarded to the Maryland State Fire Marshal, DLLR, the Maryland State Firemen's Association, as well as to both Allegany and Worcester County governments. Motion was seconded by Commissioner Welch and unanimously carried.

OTHER BUSINESS

In a response to an inquiry from Commissioner Simmons, Fire Marshal Geraci said he didn't believe the bomb squad was involved with MEMA's Complex Coordinated Terrorist Attack training but he will look into it. The OSFM is involved with the Active Assailant Interdisciplinary Work Group and other school safety groups.

Vice Chairman Bilger reported the Mid-Atlantic Life Safety Conference steering committee is continuing its work to organize the conference. Since this is the 60th anniversary for the conference, the committee will offer a challenge coin. The lunch will also be served with real dinner and silver ware with cloth napkins. He thanked Commissioner Tochterman for his suggestions on potential presenters.

Commissioner Welch reported on a recent meeting she attended with NFPA and the West Virginia State Fire Marshal and other state and local representatives. NFPA is developing a Fire and Life Safety Ecosystem which basically will help determine how effective fire protection is implemented and enforced. It deals with code development and adoption, government responsibility, enforcement, education, skilled workforce, and skilled engineers and how all these need to be in place to be effective. NFPA is considering creating a tool that states or local jurisdictions could use to evaluate how effective they are and where there may be weaknesses.

Motion by Vice Chairman Bilger, second by Commissioner Tochterman, and unanimously carried to approve the February minutes.

Chairman Davis recognized Ron Wineholt with the Apartment and Office Building Association. Mr. Wineholt has attended several Commission meetings and participated in the high-rise workgroup. He thanked the Commission for allowing him to offer his opinions and recommendations. He will be retiring in May and hopes the Commission will move in the direction of improving kitchen safety and working with owners/associations on training and education. Some of the four options presented at the February meeting may be a bit aggressive at this point in time.

APPEAL 18-02 BLACKWATER DISTILLING, INC.

The Petitioner, Blackwater Distilling, located in Stevensville, Queen Anne's County, appealed the Queen Anne's County's Fire Marshal order that if it offers live entertainment it would be considered a night club and would be required to meet the fire sprinkler requirements of NFPA 101 Life Safety Code (2015 edition).

After hearing the testimony, Chairman Davis concluded the appeal hearing and the Commission convened in closed session to deliberate its findings. The Commission unanimously concluded that the addition of live entertainment without dancing or a floor show does not convert the bar/tavern into a nightclub. However, the Commission agreed with the Queen Anne's County's Fire Marshal if live entertainment is offered, it must install an approved, supervised automatic sprinkler system because it is essential for the safety of the building's occupants. A copy of the Commission's Memorandum Opinion and Order is attached.

MEETING SCHEDULED

There being no further business, the meeting was adjourned.

Respectfully submitted,
(as summarized from transcript provided by Hunt Reporting),



Heidi Ritchie, Secretary

Attachment: Memorandum Opinion and Order 18-02

BEFORE THE FIRE PREVENTION COMMISSION

BLACKWATER DISTILLING, INC., *

Petitioner, *

v. *

Case No. 18-02

QUEEN ANNE'S COUNTY
FIRE MARSHAL, *

Respondent. *

MEMORANDUM OPINION AND ORDER

I. Introduction

Currently pending before this Commission is the appeal of Blackwater Distilling, Inc. ("Blackwater Distilling"), an establishment located at 405 Cleat Street in Stevensville in Queen Anne's County, Maryland. The Queen Anne's County Fire Marshal has determined that "[u]pon adding live entertainment, this occupancy would be considered a Nightclub and be required to meet the Fire Sprinkler requirement under NFPA 101, Section 12.3.5.1 which states that 'The following assembly types 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.'" Blackwater Distilling contends that it is a bar or a tavern that will occasionally offer live entertainment rather than a nightclub, and that it therefore does not need to be protected by automatic sprinklers.

For the reasons set forth below, this Commission has determined that the addition of live entertainment without dancing or a floor show does not convert Blackwater Distilling from a bar or tavern into a nightclub. However, this Commission nevertheless agrees with the determination of the Queen Anne's County Fire Marshal that if Blackwater Distilling offers live entertainment, it must install an approved, supervised automatic sprinkler system because it is essential for the safety of the building's occupants.

II. Issue

If Blackwater Distilling offers live entertainment, should it be required to install an approved, supervised automatic sprinkler system?

III. Procedural History

1. Assistant Chief Jeffrey C. Morgan of the Queen Anne's County Fire Marshal's Office conducted a fire plan review of Blackwater Distilling, located at 405 Cleat Street in Stevensville, Maryland. Assistant Chief Morgan noted in his August 6, 2018 Fire Code Plan Review that the Fire Marshal's Office considers Blackwater Distilling to be a nightclub, and he indicated that it must therefore be protected by an approved, supervised automatic sprinkler system in accordance with § 9.7.1.1 (1) and 12.3.5.1 of NFPA 101 (2015 ed.) (the Life Safety Code).

2. By letter dated September 12, 2018 to Blackwater Distilling, Assistant Chief Morgan explained that "upon further review this office has determined that fire sprinklers shall be required if live entertainment is provided at this proposed location." The Assistant Chief went on to detail his concerns: Blackwater Distilling

is a mixed use occupancy (assembly and industrial); the building is located on a dead-end street, which could pose access issues for first-responders; there is no access to public water; and the building was not built with an assembly use in mind. The Queen Anne’s County Fire Marshal explained that NFPA 101, Life Safety Code, § 4.6.1.2 gives him the authority to impose “requirements that are essential for the safety of building occupants and that are not specifically provided for by this Code....”

3. In a Fire Code Plan Review dated September 24, 2018, Assistant Chief Morgan again indicated that “A Fire Sprinkler System shall be required if live entertainment is provided at this location.”

4. Blackwater Distilling filed the instant appeal of the Queen Anne’s County Fire Marshal’s September 21, 2018 decision on or about October 2, 2018.

5. The Commission held a hearing in this matter on April 18, 2019.¹ During the hearing, Assistant Chief Morgan testified on behalf of the Queen Anne’s County Fire Marshal’s office. Jonathan Cook, the chief operating officer of Blackwater Distilling, and Michael T. Reardon, the president of Reardon Fire Consulting, P.C., testified on behalf of Blackwater Distilling.

¹ A hearing in this matter was originally scheduled for February 21, 2019, but on January 17, 2019, the Commission postponed the hearing at the request of Blackwater Distilling.

IV. Facts

1. Blackwater Distilling serves primarily alcohol as opposed to food.
2. It is located on a dead-end street, and it does not have access to public water. Its location on a dead-end street with only one access road could pose an access issue for first-responders. Its lack of access to public water could also cause a problem for first-responders in the case of a fire.
3. Blackwater Distilling is a mixed use occupancy: assembly and industrial. It was not originally designed as an assembly occupancy.
4. Blackwater Distilling intends to offer live entertainment, but not dancing. It does not have a stage or room for a stage, and its tables are bolted to the floor.
5. Merriam Webster's Collegiate Dictionary, Eleventh Edition defines "nightclub" as "a place of entertainment open at night usually serving food and liquor and providing music and space for dancing and often having a floor show." The same dictionary defines "bar" as "a room or establishment where alcoholic drinks and sometimes food are served," and it defines "tavern" as "an establishment where alcoholic beverages are sold to be drunk on premises." The dictionary's definitions of bar and tavern do not include references to music, dancing, or floor shows.
6. If Blackwater Distilling offers live entertainment without dancing or a floor show, it is not a nightclub. Rather, it is a bar or tavern that offers live entertainment.

7. However, given the factors listed above and cited in the Fire Marshal's decision (Exhibit B) at page 1,² the Fire Marshal was well within his discretion to determine that if Blackwater offers live entertainment, it should be protected by an automatic sprinkler system.

V. Conclusions of Law

1. The NFPA 101 Life Safety Code (2015 edition), adopted by this Commission by way of Code of Maryland Regulation (COMAR) 29.06.01.07, provides at § 4.6.1.1 that "The authority having jurisdiction shall determine whether the provisions of the *Code* are met."

2. NFPA 101, § 4.6.1.2 provides that "any requirements that are essential for the safety of building occupants and that are not specifically provided for by this *Code* shall be determined by the authority having jurisdiction."

3. COMAR 29.06.01.03.A provides in pertinent part that "The State Fire Marshal or the legally appointed designee has the authority to make a determination of the applicability of this chapter to any building or condition in it, subject to the right of appeal to the State Fire Prevention Commission as prescribed in COMAR 29.06.02."

² Blackwater Distilling is a mixed use occupancy that includes an assembly use and an industrial use under the same roof; it is located on a dead-end street with only one access road, which could pose an access issue for first-time responders in the event of a fire; it lacks access to public water, which is of major concern in case of a fire; and the building was not built with an assembly use in mind.

VI. Conclusion

Based on the above findings and our review of the above-quoted provisions of the State Fire Prevention Code, incorporating by reference the NFPA 101 (Life Safety Code), this Commission concludes that the Queen Anne's County Fire Marshal properly exercised his discretion in determining that if Blackwater Distilling offers live entertainment, it must be protected by an approved, supervised automatic sprinkler system. This Commission will therefore affirm, by separate Order, the Queen Anne's County Fire Marshal's September 12, 2018 determination that if Blackwater Distilling offers live entertainment, then the installation of an approved automatic sprinkler system at Blackwater Distilling Inc. is essential for life safety.



C. Daniel Davis, Jr.
Chairman, Fire Prevention Commission

BEFORE THE FIRE PREVENTION COMMISSION

BLACKWATER DISTILLING, INC., *

Petitioner, *

v. *

Case No. 18-02

QUEEN ANNE'S COUNTY
FIRE MARSHAL, *

Respondent. *

ORDER

For the reasons set forth in the accompanying memorandum, it is this 17th day of May, 2019, by the Fire Prevention Commission,

ORDERED that the appeal of the Blackwater Distilling, Inc. is DENIED, and it is further

ORDERED that the Queen Anne's County Fire Marshal's determination that if Blackwater Distilling offers live entertainment, then the installation of an approved automatic sprinkler system at Blackwater Distilling Inc. is essential for life safety, is AFFIRMED.



C. Daniel Davis, Jr.
Chairman, Fire Prevention Commission