

Regular meeting of the Planning Board of the Village of Brockport was held in the Conference Room, Municipal Building, 49 State Street, Brockport, New York, Monday, April 13, 2009 at 7:00pm.

PRESENT: Chair Charles Switzer, Member R. Scott Winner, Member Annette Locke, Member Arthur Appleby, Member Kent Blair, Building/Zoning Officer Scott C. Zarnstorff, Clerk Pamela W. Krahe.

EXCUSED: Village Engineer Jason Foote of Chatfield Engineers

ALSO PRESENT: Village Attorney David F. Mayer, Jeffrey Martin, Nicholas Corrigan, James Hamlin, Steve Locke, and Carrie Maziarz

CALL TO ORDER: Chair Switzer called the meeting to order and led the Pledge of Allegiance.

REVIEW OF MEETING MINUTES: Chair Switzer called for a motion to approve the minutes of the previous meeting.

➔ Member Blair moved, Member Winner seconded, unanimously carried to approve the minutes of the meeting held March 9, 2009 as written.

CORRESPONDENCE: Chair Switzer reminded board members of Spring Workshops on May 15.

PUBLIC HEARINGS: None

NEW BUSINESS:

1. Application of:	Name:	Jeffrey Martin
	Address:	85 Clinton St.
	Tax Map #:	068.52-3-3
	Zoning:	Business
	Parcel Size:	263'x154'
	Property Class:	449
	Purpose:	change of use, site plan for gaming facility "Que Billiards & More" (completed ZBA process 2/24/09 re: special permit)

Applicant Presentation:

Jeffrey Martin and Nicholas Corrigan stated they would like to open a billiard hall at 85 Clinton where they will offer billiards and other games such as darts and shuffleboard.

Continued Board discussion on application:

Chair Switzer noted receipt of the application and site plan, and then asked what the interior floor plan might look like. J. Martin indicated he had obtained a list of points to address with this board including parking, lighting and trash management, all of which he covered in his application to this board. He started by explaining there are 23 10'x20' parking spots available, which they believe to be adequate for their needs. There are four exterior lights and he pointed out the locations of those to the board (one by parking space #3, #10, # 11 and #15) as well as one street light on the ramp leading to/from the Smith Street bridge, and stated they will be adding a light on the wall between parking spaces #8 and #9 which will illuminate a new emergency exit. The area between spaces 8 and 9 will be striped as a No Parking zone.

Member Blair asked if they would be using the whole building and if the lighting is adequate by the front door and J. Martin clarified it would only be the east part of the building and that there is a light next to the front door between spaces #4 and 5 and if that doesn't seem bright enough, they will add another light by the door. Member Blair asked if there are any exits on the south or east side of the building, J. Martin indicated there are not and Chair Switzer expressed concern of just one way into/out of the building. J. Martin explained that he and CEO Zarnstorff came up with an emergency exit plan which will feature a hallway with fire-rated walls, accessible from the rear portion of room, and which will have people exit toward the front of the building into the front parking lot. He further stated this will help in the event of an emergency evacuation by funneling all patrons toward the front parking lot so it will be easier to account for everyone rather than having to circle the building looking for everyone who may have been inside.

J. Martin does not expect much in the way of trash and feels that two totes, which will be stored inside, should be adequate. Member Locke said this minimal amount of trash seemed a contradiction to their business plan, which indicates use of a kitchen and food operation. J. Martin explained the business plan is a growing document and there is not a full kitchen and there would be just prepared food offered now such as chips, pop, and candy. One of their goals is to use the kitchen eventually. Member Winner asked if the kitchen is operational and J. Martin said no. Chair Switzer asked if the kitchen would be future development and J. Martin affirmed. Member Blair questioned if they are presenting their entire plan, for both now and in the future. J. Martin reiterated it is a work in progress and they realize they have to start small and grow. Chair Switzer asked if the kitchen is currently not useable and J. Martin indicated a kitchen would have to be built and right now there would simply be a

refrigerator, a microwave and a sink. Member Blair again asked if there is no kitchen currently and J. Martin affirmed. **MINUTES OF PLANNING BOARD MEETING HELD APRIL 13, 2009**
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Member Locke cautioned if the volume of trash were to increase, they must find a way to handle it and the applicants indicated their understanding. Member Appleby posed the question of where the extra trash would go and suggested they might need a dumpster with an enclosure. J. Martin replied they might never have that much trash. Member Locke reiterated if the volume increases, it must be handled to avoid health and safety issues. Chair Switzer opined that having very few tables in the hall should equate to very little trash.

Member Blair voiced his understanding that the plan shows this is just "Stage 1" of 12. He opined the plan puts the board in an awkward position because there are a lot of "what-ifs" and noted he is uncomfortable with the "what-ifs." J. Martin commented a business plan is full of "what-ifs" because one cannot predict the future. He emphasized their desire to succeed and feels that will be accomplished if they start small and then down the road plan to grow.

Member Locke stated the board needs to know what the applicants want tonight. J. Martin replied a billiard parlor with soft drinks, water, chips and candy available, charging a reasonable hourly rate for billiards. He noted if they want to change that plan down the road, they would come back here to do so as they want to be in Brockport a long time. Chair Switzer referred back to the information sheet with the application, specifically about the lack of beer and wine sales. J. Martin reiterated they are not planning on serving beer or wine at this time. Member Winner asked if they had applied for an alcohol license and J. Martin replied no.

Member Locke recapped this application would be for a recreation center with vending machine food and only non-alcoholic beverages which is what she would be asked to approve or deny. She opined that to decide later to serve alcohol and a full menu would indeed redefine the type of business and that would be a different application. She said she could only approve what is presented tonight with regard to the business, its name, and its character. Member Appleby indicated that no liquor license could be granted for that building as it is too close to a residential area. J. Martin indicated they did not want that for at least 6 months and he reiterated they do not want a bar. They want to have a place where people can play billiards and enjoy a beer at the same time if they so choose. Member Winner opined that as soon as any kind of alcohol is sold, the place becomes a bar and he would then insist on it serving a full menu.

Member Winner contended the applicants were simply saying what they feel the board members want to hear in an effort to gain the approval. He also questioned the viability of the business without an alcohol license, wondering how it will be able to pay a salary of \$25,000 to the owner after two years with no alcohol sales as stated in their budget plan. Member Winner also then brought up the fact that the business plan refers to bartenders and that is incongruous with what they are asking for here tonight. He challenged the applicants to be forthright about their ultimate goals rather than deceptive and he reiterated his opinion that the business cannot succeed without alcohol sales. N. Corrigan said in sessions with a business advisor, they purposely set estimates of numbers of customers and revenue figures low, realizing they will have to do some growing in the first couple of years and that there could be additional revenue if they have more customers than anticipated and due to other cost-cutting measures they have taken since first writing their plan.

Member Locke asked the applicants to define their target market and N. Corrigan stated anyone who wants to play pool, including the college crowd. Member Locke then questioned whether that would include a family with children who want to come in after church on a Sunday, and J. Martin replied yes, why not? Member Locke added that with alcohol sales and the proofing that comes with it, the target market will change because those under 21 would not be admitted. J. Martin countered that often times when families go out as a group, the parents will drink even though their younger children are in attendance. He emphasized one of their targets is college students because they are in such close proximity to the college. Member Locke opined the applicants need to clearly define their target market and then grow the business around that, adding if they are looking to cater to families, they will not want to intimidate them by drawing in another type of customer. N. Corrigan answered that the local bowling alley has a full bar and very often there are many kids in there. Member Blair reminded the applicants a bar cannot be located within 300' of a residential area.

Member Blair asked if the pair had considered the college population drops dramatically during the summer months and J. Martin said that it will be a risk for them, but yes, they have taken it into consideration and hope to come up with some special deals to combat that.

Member Appleby asked what the special permit was that the Zoning Board of Appeals had approved for them. Village Attorney David Mayer stated it was the special use permit to operate a billiard hall. When Member Appleby asked why that was necessary, Village Attorney Mayer stated under the Code the application was ambiguous whether it was a billiard room, which is permitted as of right or if it was something else. Administratively it's classified as a recreation center and as such it requires a special use permit from the ZBA, which is what was granted.

Chair Switzer stated what the applicants were bringing tonight is a change of use from a manufacturing facility to a recreational facility and there would be no beer or wine sales. Member Winner noted the **MINUTES OF PLANNING BOARD MEETING HELD APRIL 13, 2009 continued.....page 3**

business plan indicates otherwise with incongruities regarding staffing, for example no salary for kitchen staff, which they would need if they had alcohol sales. He voiced that he still struggles with the application because the board has been told one thing, yet the business plan shows another and he referred to it as a "bait and switch." Member Winner inquired of counsel just what stipulations could be placed on the approval of a recreational center, for example if the pair decides to apply for a liquor license in the future, they would have to come back before the board for a redesignation of the type of business. Attorney Mayer stated the board could go even further, specifically stipulating there would be absolutely no alcohol sales on the premises. He explained that would have two effects. First, in order to even submit a completed application to the ABC, they would have to show they have the right to sell alcohol. J. Martin interrupted, saying he thought that was already taken care of at the last meeting, that they would not be able to sell alcohol until they came to this board. Attorney Mayer stated that is correct, but added it would make a stronger position and more difficult, if not impossible, for the applicants to sneak it past the board, if the approval specifically states there will be no alcohol sales on the premises.

Member Winner asked if the ZBA approval also addressed the issue of the proximity to residential areas as well by stating if it's a pool hall and there is no alcohol, that can be done; Attorney Mayer affirmed. Member Winner restated it would be a pool hall and there would be no alcohol sales and Member Locke added there would be no food preparation as well, not even a microwave. Member Winner asked the two gentlemen what type of experience they have running that type of business. J. Martin indicated 20 years ago he ran a small billiards parlor in Medina whose customers were primarily 16-25 years old. Member Winner asked the name of the parlor, its location and the name of the owner. J. Martin said it was a long time ago but he thought it had been called Showcase Billiards, it had been on Main Street though he couldn't remember exactly which building and he recalled the owner of the building as being Robert Hungerford and the owner of the business as maybe being Bert VanAulker. Member Locke asked if they sold alcohol, were profitable and how long they were open and J. Martin answered there was no alcohol, they were not very profitable as the business closed down and they were open for a couple of years.

Member Locke questioned the parking, wondering whether or not Sunnking uses the parking lot. J. Martin replied Sunnking is there only during the day and the lot is used mostly for their large truck backing up to load/unload. Member Locke wondered if the applicants had spoken with the owner of the building and J. Martin affirmed, stating they had no concerns.

Chair Switzer mentioned the applicants had noted the graffiti on the exterior and that they would try to work with the owner to make it look good and J. Martin affirmed. Chair Switzer asked CEO Zarnstorff about any code requirements for the inside and the CEO replied that a Building Permit would be issued and that he would work with the applicants regarding the corridor for the emergency exit. Member Winner asked where patrons would enter the emergency hall and CEO Zarnstorff explained it would be from the south end of the corridor, which will be near the back of the parlor. Chair Switzer asked about restrooms and J. Martin stated there would be a one "male" and one "female" restroom in the back and they would add a handicap-accessible unisex bathroom. Member Winner asked if the front door is handicap-accessible as well and CEO Zarnstorff affirmed, stating the grade out front is flat.

Member Locke asked if the gentlemen were from Albion and if they owned their own homes and the applicants affirmed both questions. Member Locke asked them to put themselves in the shoes of those neighboring 85 Clinton so as to minimize the impact the neighbors will feel because of this application. J. Martin indicated they had already done so and would ask their patrons to be quiet and careful, leave their trash inside the building, etc. J. Martin reiterated they would only be open from 3pm to midnight weekdays and until 1am on weekends and will monitor the patrons and be a good neighbor.

J. Martin continued with the list, saying the front roof needs some shingling attention and gutter work. Member Appleby asked if they were going to paint the building and J. Martin said he is not sure. Member Blair asked if the application is approved, when they plan on opening and J. Martin said he expects the repairs to take about a month or so and then they would prep the place, so maybe about mid-June. Member Appleby noted that would be the most difficult time of the year for them and J. Martin answered they would offer specials and deals to entice customers. Member Appleby referred to the billiard hall that was previously in town, adding there were problems with young people loitering outside and using drugs on the premises. J. Martin quickly emphasized they would not put up with that and he said he remembered the former pool hall and just how dark and deep the parking lot was. Member Blair noted with the Smith Street Bridge out, the area is like a funnel with only one way in and out. If police have to get in there, it becomes a foot chase. J. Martin said he did not know how many police calls there have been for that area and he agreed it is a tight area but noted when the bridge reopens it should help and that they would do their best to monitor their parking lot, but the area in question is a little far away for them to police it too. Member Blair said to be realistic, they cannot be both inside and outside at the same time. J. Martin said all he could do is his best and to ask

customers for their cooperation.

Member Locke asked about music and N. Corrigan noted they would have a jukebox. Member Locke noted that noise can spill out when the door opens and asked if there is a second door to help buffer the

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noise. J. Martin said they only have the one door and they were thinking of adding a small inside foyer with a second door to help with weather issues anyway. The Board concurred this is a good idea. N. Corrigan added the music would not be blaring.

Member Blair referenced Code Chapter 55-3 B (1) which speaks to “unnecessary noise” between the hours of 9pm and 7am, adding he would like them to be aware of the noise and to be prepared for police visits, code enforcement visits and fines if they are in violation. J. Martin again emphasized they will deal with issues should they arise. Member Locke recommended the addition of the second door be a stipulation of the approval.

Member Appleby asked how much of a kitchen they should have given the fact that there will be no alcohol. Chair Switzer and Member Winner indicated the kitchen would be minimal seeing how all that will be offered would be vending machine food.

Member Blair asked the board if it would be appropriate to ask the applicants to rewrite their business plan specific to tonight’s requests from the board. Chair Switzer commented they should use the single-page plan that was submitted with the application. Member Winner asked Attorney Mayer if it would be possible to include a one-year renewal clause in the motion and Attorney Mayer opined that would not be permissible under Village Law as there is not a specific provision for that.

⇒ Member Appleby moved to approve the application for the change of use and the site plan only insofar as what is stated on the single-page explanation attached to the application, which expressly prohibits alcohol sales and with the following stipulations:

1. The applicants install a second interior entrance door as a noise buffer;
2. The applicants work with the Code Enforcement Officer/Building Inspector regarding all applicable codes, including those for the restrooms, accessibility to the building, the emergency exit and the double door;
3. There will be absolutely no alcohol sales; and
4. Should the applicants choose to apply for a liquor license in the future, they must re-apply to this board for a change of use from a recreation center billiard hall to a bar.

There was no immediate second and Chair Switzer asked the clerk to reread the motion. Member Winner asked if there should be additional discussion. Member Appleby inquired of the board why there is no second and Member Blair indicated he is uncomfortable with the plan he sees and that he opposes the application. Member Appleby asked whether or not the board should request the applicants rewrite the business plan to show that three years from now 50% of the income would not come from the sale of alcohol, but Member Winner contended the applicants are not asking to sell alcohol at this time.

Member Winner asked Attorney Mayer if the board fails to move and thereby denies the application, how easily that could be appealed. Village Attorney Mayer indicated he would not want to predict the outcome of an Article 78 action, confirming that any denial can be challenged. Member Winner asked if the board must indicate why the application is denied and Attorney Mayer emphatically affirmed. Attorney Mayer explained that the board can take action within a certain period of time, perhaps 62 days, that it does not have to be done tonight and further explained a failure to approve is not a denial. Member Winner asked Member Blair what he is specifically uncomfortable with and Member Blair replied that when the motion was made to approve, none of the other members said anything. He also indicated that even though the board made several changes to the plan, the plan remains intact and when the minutes are done, the board would essentially be rewriting what they see the plan as. Member Winner disagreed, reiterating the motion is to approve what was outlined on the cover sheet, which is very clear. Member Blair said it was very telling that when Member Appleby made the motion, not one board member spoke up to second the motion. Member Locke concurred, asking Member Winner what his reservations are. Member Winner stated he was curious as to why the board does not support the application. Member Blair pointed out that no one offered a second to the motion when the Chair asked for one. Member Winner said the motion is still active and that he is looking for more discussion on the topic.

Chair Switzer opined that all issues and concerns have been addressed, that the Zoning Board of Appeals has granted the special use permit for the billiard hall and that there will be no alcohol sales so it is not a bar. Chair Switzer noted that as Chair he can second the motion and Member Winner said he would save him the trouble, as he would make the second.

⇒ Member Winner seconded the motion, which carried 3-2 with Chair Switzer, Member Appleby and Member Winner in favor and Member Blair and Member Locke opposed.

The applicants thanked the board and were wished good luck.

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OTHER BUSINESS:

Member Appleby brought up the matter of change of use, questioning if it is the job of this board or if it falls to this board by default or if the Board of Trustees should be asked to make it the job of this board. Attorney Mayer noted it should be written into the Code with clear parameters of when an application has to come before the board. Member Appleby said he has reviewed state regulations and sees the board is responsible for health, safety and general welfare, and wondered whether Code Review Committee should take a look at it. Attorney Mayer encouraged them to look at the tavern provision. Member Winner asked if it should be the attorney who makes the suggestion to either Code Review or to the Trustees as this board has been wrestling with this for a long time. Attorney Mayer replied that should be something the Chair could have done before; Member Winner stated that as previous Chair he did go to the Board of Trustees and the action went nowhere. Member Appleby asked Member Winner if he had anything in writing regarding that and Member Winner said it may be reflected in previous minutes as this is certainly not the first time this has been brought up. Chair Switzer asked Member Appleby if he, as Vice Chair, could write up something this board could look at next time for approval. Chair Switzer indicated that with the new election coming up there would be different board members the idea could be submitted to. Member Appleby accepted; Member Winner restated his wish to have it done for clarification. Member Appleby inquired which chapter he should be addressing and Attorney Mayer replied Chapter 58 – Zoning as the board is talking about use of real property; CEO Zarnstorff concurred.

NEXT REGULAR MEETING: Monday, May 11, 2009
(Application materials due by Noon Tuesday, May 5)

ADJOURNMENT:

- ➔ Member Locke moved, Member Appleby seconded, unanimously carried that the meeting be adjourned at 8:15pm.

Pamela W. Krahe, Clerk