

Meeting of the Zoning Board of Appeals of the Village of Brockport was held in the Conference Room, Municipal Building, 49 State Street, Brockport, New York, Tuesday, July 22, 2008 at 7:00pm.

PRESENT: Chair John Bush, Vice Chair / Member Irene Manitsas, Member Francisco Borrayo, James Hamlin, Member Sal Sciremammano, Building/Zoning Officer Scott C. Zarnstorff, Clerk Pamela W. Krahe.

ALSO PRESENT: Christopher Cody, Wendy Cody, Henry Enos, Barbara Whited, Linda Borrayo

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

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

→ Member Borrayo moved, Member Sciremammano seconded, unanimously carried to approve the minutes of the meeting held June 24, 2008 as written.

CORRESPONDENCE: None

NEXT MEETING: Tuesday, August 26, 2008 at 7:00pm if needed
Application materials are due by Noon Tuesday, August 5.

NEW BUSINESS:

1. Application of:	Name:	Christopher W. Cody
	Address:	39 N. Main St.
	Tax Map #:	068.44-2-15.1
	Zoning:	Business
	Parcel size:	.48 acre (132.50' x 273')
	Property class:	484
	Purpose:	special permit – Fit Club 24/7
	Provision of Zoning Ordinance:	58-11A(11)

Chair Bush read Zoning Ordinance 58-11A (11) for the Board and the audience.

Applicant Presentation:

Christopher Cody and wife Wendy Cody of 1657 Attridge Road, Churchville, NY 14428 announced they would like to open a 24-hour a day, 7-days a week fitness center at 39 North Main Street. The center would have weights, cardio equipment, fitness trainers, massage therapy, a tanning room, vitamins and supplements for purchase and would have healthy living information available to members. It would be open 24 hours a day, entry would be by keycard, the center would use security cameras and remote monitoring by computer when unmanned.

Public Comment:

Henry Enos of 759 Hamlin Center Road, Hamlin, NY commented that he owns the building and thinks the business would be good for the town. Barbara Whited of 42 Clark Street noted she is a neighbor of the property and the business would be fine with her.

⇒ Member Borrayo moved, Member Sciremammano seconded, unanimously carried that the public hearing be closed and the regular meeting be reopened.

Continued Board discussion on application:

Member Sciremammano inquired whether or not there would be speakers or music outside to which W. Cody replied no. All music, etc. would be inside and would automatically turn off if no one were inside using the facility. C. Cody continued that if no one was in there for an hour, the lights would dim, music shut off, etc. Member Sciremammano asked if the center would be unmanned. W. Cody stated the facility would be manned about 50 hours per week, and then unmanned the remainder of the time. Member Sciremammano clarified that members would then use their keycard to get in and the Codys affirmed. They also stated they would monitor the club on their laptop from home and their security system would be set up to alert them to potential problems.

Chair Bush asked if they knew of any other facilities that operated on a 24/7 basis. C. Cody responded they considered becoming part of a franchise based in Minnesota with 700 clubs open around the country, including one in Buffalo, but decided to do it on their own. W. Cody noted there is a 24-hour Snap Fitness Center in North Chili after which they are modeling their business.

Chair Bush continued, asking if they had conducted a survey to see who would patronize a facility at night. W. Cody cited some statistics of those who have gym memberships, the fact that they would be open weekends and holidays and that the peak usage would be at 6:00am and 6:00pm-8:00pm, which would be manned.

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Member Borryo inquired whether or not there would be free weights. C. Cody explained that instead of free weights they would have a hammer system machine that has no crossbar to come down on someone. He added there would be treadmills, ellipticals, etc. Member Borryo asked what would happen in the event of someone getting hurt. W. Cody answered that members would wear a necklace with a button to press to dial 911 directly and if a person has swiped in and no activity has occurred nor has the person swiped back out, the security system is set up to alert the Codys to a potential problem.

CEO Zarnstorff voiced concern that if there was a medical emergency and a member activated the 911 necklace, how responders would get into the building. W. Cody stated that was a good question that they hadn't thought of and they would have to check with owners of similar facilities to see how that is handled. CEO Zarnstorff asked if entry was all by pass card, or if there were any keyed entries with an emergency key box. The Codys replied that there must be an answer to the question and they would research it and get back to the CEO. They also noted that the building has five entry doors and that a couple of them could be keyed for emergency entries.

Member Manitsas noted that if this were going to be for cardio rehab, would there be someone there to take blood pressures or monitor them? W. Cody replied that they will recommend a doctor's visit prior to joining and each member will sign a statement in their contract stating they have cleared this with their doctor. Member Manitsas continued, stating her concerns that a staff member should be there all the time and wondering who would exercise at 2am. W. Cody concurred that there are concerns, but they are confident with the hundreds of other facilities operating successfully and with the security systems they will have in place. She also noted that there may not be many members coming in at 2am, but there are some shift workers in the area, especially with the hospital so close by. Member Manitsas again asked if the Codys did not feel it necessary to have a person there 24 hours a day. W. Cody noted that it would be nice if someone would be there 24 hours a day, but this is how fitness centers operate now and that about 75% of the traffic would be coming in during the manned hours.

Chair Bush inquired as to the hours staff would be onsite. W. Cody replied from 10:00am to 2:00pm and 6:00pm to 8:00pm and C. Cody noted he would be there "countless hours" in the beginning. He added there would be one or two "member" doors for pass cards and a non-member door open during manned hours for those interested in looking at the club. Chair Bush asked if members would be provided a set of rules upon signing up. W. Cody indicated that they have been in close contact with other successful 24/7 fitness clubs such as the Anytime Fitness Club in Buffalo, and are following their business plan closely.

Member Sciremammano asked if something did happen, how the Codys would be notified. W. Cody replied that the security system pages C. Cody on his cell phone, which he carries 24/7 and the member necklace would call 911 directly. Member Sciremammano wondered what would happen if someone could not push the button. W. Cody replied that the security system would send an alert if someone had swiped in and there was no activity after a period of time or if they had not swiped out. She added that they have a security company.

CEO Zarnstorff asked if the equipment would be bolted to the floor to guard against theft. C. Cody noted that the equipment is extremely heavy and there are security cameras in place and the system at the door will tell them who is coming and going and what time. W. Cody continued that the Buffalo facility has had no security concerns whatsoever, despite being in a heavily populated area. Chair Bush asked if they knew of any medical emergencies at the Buffalo facility and they replied no and they know of none at the 28 other facilities that are in the eastern US.

Chair Bush inquired about insurance in the event someone dies and the Codys replied they would have appropriate coverage. Chair Bush reiterated his concern at not having staff there all the time, especially as it might apply to someone who has a stroke or heart attack and time is of the essence. W. Cody again brought up that they are not the first to have this type of unmanned facility and added that it is simply not viable for them to man it 24 hours a day.

Member Hamlin asked CEO Zarnstorff whether or not the Codys would have to go to the Planning Board next and whether many of these questions would be redundant. CEO Zarnstorff confirmed the next step would be the Planning Board and he noted the questions asked so far are very relevant to this Board's purview. He added that the Planning Board will be more concerned with looking at the exterior, parking and so forth and will not have to look at a change of use, because this Board is taking care of that by issuing the special permit.

Member Sciremammano asked if any licenses were needed to operate and the Codys responded no. W. Cody continued that she is a licensed physician assistant and a licensed personal trainer and that her husband is working on his personal trainer credentials and that each person on staff would have their own applicable certification or license. Member Sciremammano continued, saying that many gyms "suggest" that a new member have medical clearance before starting a fitness program, but none ask for proof of that. C. Cody responded, saying their forms will have the member's signature stating that s/he will obtain medical clearance and if the member chooses to lie about that, then that is

something the Codys cannot control. He added that the last thing they want is someone to fall ill while in their

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facility. They are trying to promote healthy living. Member Sciremammano confirmed that if the member has been dishonest, then it would be the member's fault if something happens. Member Sciremammano also brought up a concern if, on a Friday night after drinking, a member decides to go in on his pass and take a bunch of buddies in with him, what would happen. C. Cody quickly replied that the door pass card system does not operate that way. He explained there is a tailgate sensor that if a member swipes in and then someone else tries to come in right behind him without swiping in, the security system will alert the Codys. They would then monitor the security cameras to see what was happening, call 911 if necessary, and they would be en route right away. W. Cody added that membership can be revoked at any time, so if someone causes trouble, they would be out.

Member Manitsas expressed her concern about being in a college town and being open 24 hours and she wondered if they could close from midnight until 6am. W. Cody again noted the security systems in place and their confidence in them. Member Manitsas added that someone could break a window from outside and W. Cody assured that the alarm would be activated, causing a response.

CEO Zarnstorff inquired if all the systems are electric and what would happen if power were lost. C. Cody replied that all doors would lock and they would take it up with their security company to ensure people could get out. CEO Zarnstorff asked if a member must swipe to exit and C. Cody confirmed, stating that is how they know who is coming and going and at what times. CEO Zarnstorff added that the door must then be electronic and the Codys affirmed. CEO Zarnstorff stated that there should be two doors that can be used as emergency exits, one of which would have a locking mechanism that would be unlocked upon power failure and the other would have a delayed egress system in place where the door would release after 30 seconds of continuous pressure. This would allow people inside to get out and emergency responders to get in.

Member Sciremammano asked whether CEO Zarnstorff would inspect the building before it opened and CEO Zarnstorff affirmed. The CEO added that there are many locked facilities in the area including the hospital and nursing homes and they have doors in place that conform to code for delayed egress and so forth. Chair Bush mentioned that safety is essential to the Board. Member Sciremammano asked that if the ZBA approves this special permit, the facility would still be subject to the safety laws that CEO Zarnstorff enforces, to which CEO Zarnstorff replied absolutely. W. Cody noted that they would be working hard with the CEO and the property owner.

Member Sciremammano noted that of the area fitness centers, the college is the least expensive, but is closed many times when the students are on break or if a class is using the facility. Other centers may be reasonable in cost, but they have times they are closed that a member may like to workout. This may satisfy a niche for some people. He added that as long as CEO Zarnstorff is overseeing the safety issues and as long as there is not a problem for neighbors with any noise, then he feels this is a good concept.

CEO Zarnstorff replied that the ZBA does not see many special permits and these permits all need to consider health and welfare issues. He also pointed out to the Board that it is not unreasonable to ask the new business owner to return to the ZBA for a review of the business within six months after opening. By that time, Board members may have taken the opportunity to tour and/or use the facility and any issues that may have come up in that time can then be addressed. Member Sciremammano asked if that meant the Board would be issuing a conditional permit, to which CEO Zarnstorff stated it would not be a conditional permit, but rather a condition OF the permit.

Chair Bush inquired of CEO Zarnstorff what inspections the business would be subject to. CEO Zarnstorff summarized that he would inspect when the building permit is issued and during the construction and setup of the business. Once all codes and regulations are satisfied, he would issue a Certificate of Occupancy and then the business would be subject to annual inspections from that time forward.

Member Manitsas inquired whether or not there would be showers. W. Cody replied yes and locker rooms as well.

Chair Bush called for a motion. Member Sciremammano stated that he would make a motion for the approval of the special permit but would like the above-mentioned condition added in case things are not going as well as anticipated and was unsure how to word that. CEO Zarnstorff also reminded the Board that special permits are revocable, unlike an area variance or use variance.

Member Hamlin asked the applicants if, after they have been open several months, they might reassess and close from 10pm to 5am for example. W. Cody replied that they could consider that, but may run into a problem if members have signed a contract believing the club to be available 24 hours and then suddenly that term was changed. C. Cody added that in all honesty they would probably not switch to less than 24 hours and would not switch to manning the facility 24 hours a day. He reiterated

that if there were no one in the facility for a period of time, the security system would automatically dim the lights, turn the heat down and televisions off, etc.

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Chair Bush asked Clerk Krahe to restate the complete motion, including the condition of the 6-month review.

⇒ Member Sciremammano moved, Member Hamlin seconded, unanimously carried that the application for the special permit be approved with the condition that Christopher and Wendy Cody will return to the Zoning Board of Appeals for a review within six months after opening their fitness club.

The Codys thanked the Board for granting the permit and asked a few questions of CEO Zarnstorff regarding their return to the ZBA. The Board wished the Codys well.

Adjournment:

→ Member Borrayo moved, Member Sciremammano seconded, unanimously carried that the meeting be adjourned at 7:48 pm.

Pamela W. Krahe, Clerk