

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, February 24, 2009 at 7:00pm.

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

EXCUSED: Member James Hamlin

ALSO PRESENT: Village Attorney David F. Mayer, Esq., Mayor Mort Wexler, Daniel Schum, Richard Dalheim, Katherine Dumbleton, Carol Hannan, Tom Ferris, Harry Snyder, Nicholas Corrigan, Jeffrey Martin, Carrie Maziarz, Sandy McPhillips, Cathy Armer, Marcy Stickles, Doreen Webster, Al Stusle, James Stull, Norman GianCursio, Tim Clark, Trustee Connie Castaneda, Planning Board Member Art Appleby, Trustee Scott Hunsinger, Linda Borrayo, Eduardo Galan, Katie Gill, Dianna Tkaczow, Rick Woodson, William Matthias, Fernelle Rodriguez, David Smith, Kim Price, Bethany Young, Kaylin Taggart, Paul Rex, Victoria Gooch, Dillon Klonert, Julia Fina, Caitlin Pollard, Andy Chrusachi, Scott Brooks, Maureen Krue, Samantha Miller, Paul Lauricalla, Anthony Way, Shawn Ebbitt, Allison Williams and several others who did not sign in.

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 Manitsas moved, Member Sciremammano seconded, unanimously carried to approve the minutes of the meeting held January 27, 2009 as written.

NEXT MEETING: Tuesday, March 24, 2009 at 7:00pm if needed, materials due by noon, March 3.

OTHER BUSINESS: Chair Bush and Member Sciremammano are unavailable for a March 24 meeting.

OLD BUSINESS:

1. Application of:

Name:	Jeffrey Martin
Address:	85 Clinton Street
Tax Map #:	068.52-3-3
Property Code:	449 Warehouse
Zoning:	Business use
Lot size:	263'x154'
Purpose:	special permit for gaming facility "Que Billiards and More"
Provision of Zoning Ordinance:	58-11A(11)

Applicant Presentation:

Daniel Schum, an attorney with offices at 43 Nichols Street, Spencerport, spoke on behalf of applicants Jeffrey Martin and Nicholas Corrigan. He stated his clients met with Village of Brockport Building Inspector Scott Zarnstorff to present their plan to open a billiards hall during which Zarnstorff said the application fell under the Zoning Board of Appeals for a special permit. Subsequently, Attorney Schum met with his clients, reviewed the Village of Brockport Zoning map to confirm the property is Business use, then looked at the permitted uses and learned that a billiard room is included in subsection (4). He opined that his clients should have been able to go to the Planning Board to obtain approval, and referenced a letter dated February 19, 2009 to Zarnstorff and copied to applicant Jeffrey Martin and Village Attorney David Mayer detailing the same (copy of the text follows):

"I forward this letter to you in supplement to my phone conversation with you concerning my representation of Jeffrey Martin in his application before the Zoning Board of Appeals with reference to the above property.

As I indicated to you, I have reviewed the Zoning Code of the Village of Brockport and the intended use of the property and I expressed to you my opinion that the intended use of the property as a billiard room is a permitted use within the zone and does not require a special permit for the intended use of the property. Accordingly, it is my opinion that the application before the Zoning Board of Appeals is unnecessary.

I discussed with you the following:

1. That the premises are zoned for business use pursuant to the existing zoning map and code of the Village of Brockport.
2. That pursuant to Section 58-11(a)(4), a billiard room is a permitted use by right in a business district, as would be a dance hall, a theatre or a bowling alley, all as permitted in a business use district.

3. That the primary and principal use of the premises, as proposed by my client, is to offer a billiard parlor. There will be other ancillary games, such as darts, fooseball [*sic*], shuffleboard and arcade games. They propose to serve beer and wine, as well as non-alcoholic beverages and snacks, with prepared foods to be served sometime in the future. These accessory uses of the premises are in support of the primary purpose of the facility which is to be that of a billiard hall, a permitted use.

4. Your advice to my client that Section 58-11(a)11 applies to his proposed use, I believe, is misguided. It is clear from the reading of subsection 11, that the purpose of that section is to allow for the establishment of membership clubs, lodges, social and recreational centers, hospital, convalescent homes, homes for the aged, children's nursery facilities for the developmentally challenged and medical centers for the care and treatment of humans, a catch all provision for uses which the village may wish to allow within the business district subject to special permit. The matter of membership clubs, lodges or social and recreational centers, I believe relates to such uses as Elks Club, Moose Club, VFW, American Legion and other similar membership clubs or social organizations, all of whom have a specific membership which they wish to serve. The reference to recreational centers in subsection 11 is for an enterprise which actually offers recreational services, i.e., Bally's Health and Fitness Center, Gold's Gym, Curves and other similar facilities which normally involve a membership obligation and furnish actual physical recreational activities. It is these type [*sic*] of activities that the Village Board wishes to make subject to special permit through the Zoning Board of Appeals process.

5. Conversely, dance halls, theatres, bowling alleys, billiard rooms, clubs, lodges and similar places of recreation and hotels, motels, auto courts and similar places of lodging are authorized permitted uses within the business district without regard to subsection 11 of the code.

Based on the foregoing, I would hope that you would support the position of my client that the establishment of a billiard room at the above location is a permitted use in the business district. I will be asking the Zoning Board of Appeals to confirm this interpretation through a vote of the Board at the next meeting. I believe that the above analysis of the code is both accurate and well reasoned and I again, ask for your support.

Please share this letter with the members of the Zoning Board of Appeals in advance of the next meeting."

Attorney Schum continued, stating his belief that pursuant to Section 58-11(a)(4), a billiard room is a permitted use. In looking through the amendments, he remarked the authors might have had trouble with the wording "clubs and lodges and similar places of recreation" so they added subsection (11) and say "with respect to clubs and lodges and similar places..." He suggested the Village Board, by inserting subsection (11), had given the Zoning Board of Appeals the discretion to make that decision on a case-by-case basis. Reiterating his stance that the application should go in front of the Planning Board pursuant to Section 58-11(a)(4), he noted his opinion differs from Building Inspector Zarnstorff and the Board will have to vote on whose opinion to accept. Attorney Schum referred to the Business Plan submitted by his clients and noted they will have more than just billiard tables there. Though they will have dartboards, foosball tables, finger foods and some beverages, he emphasized that does not make them not a billiard room, as billiards remains their primary business. He also mentioned Barber's Grill (22 Main Street) and explained that they are considered a bar, even though they cook food, have a dartboard, interactive games and a billiard table inside.

Member Sciremammano asked for clarification that there is no place in the proposed billiard hall where patrons would sit and be served beverages. Jeffrey Martin affirmed, stating there would not be a bar, just tables. Member Sciremammano also asked for confirmation that because no food would be cooked on the premises, there would be no outside vents that would dispel food odors and J. Martin affirmed.

Member Borrayo questioned the number of coin-operated games and J. Martin explained there would be a combination of three dartboards, two foosball tables and two bumper pool tables and some day they hope to get a golf game. Chair Bush inquired if the largest part of their revenue would be from billiards rather than from refreshments. J. Martin replied that without being open, it is difficult to answer, but they intend their main business to be games and if a patron would like to drink a beer while playing billiards, that would be available.

Member Sciremammano asked if only a portion of the building would be used and if some of the parking that is available for Sunnking would be available to patrons after Sunnking employees have left for the day; J. Martin affirmed. Chair Bush reviewed entrances to and exits from the building.

Public Comment:

Richard Dalheim, 127 Erie St. – Recalled when the facility was a disco in the 1970s and how terrible it was for the neighborhood at that time. He noted that he read about hosting pool tournaments in the business plan and thought it mentioned having 60 players. He wondered where 60 people would park. J. Martin clarified that tournaments are usually limited to 32 players. R. Dalheim also noted the

sell it off. J. Martin corrected, stating they would like to be in business indefinitely and have hopes of eventually purchasing the building. R. Dalheim concluded by stating he does not feel this business belongs in this neighborhood.

Katherine Dumbleton, 5 Perry Street – Indicated the property is in her backyard and while she has no problem with the billiard hall, she feels serving alcohol would cause disruption. She stated people walk past her home on their way to the canal, throwing stuff in her yard and she opined there will be more of the same with alcohol use as well as extra noise.

Carol Hannan, 292 Main Street – Declared this business would be a hardship on a residential family neighborhood, that alcohol would promote the nuisance factor of noise, there would be a decrease in property value of the surrounding lots and there is not enough space with the small streets nearby. She noted there are commercial lots available which would be a better place to have this business and feels this would be a bar with pool tables. In her opinion, one cannot make a living with dartboards and pool tables. She concluded by noting the Village had recently been involved in the purchase of a nearby property on Clinton Street with the intention of revitalizing the area and she feels this business is not in the same character.

Eduardo Galan, 70 Clinton Street – Offered that it was he who recently sold the property to the Village and he did so because he was promised the Village was going to revitalize the area. He expressed his concerns that this business would draw people with nothing else to do, that parking is inadequate and that property values will decrease. Mr. Galan indicated that in the summer, he calls police about once a week regarding garbage or parking issues, etc. He feels alcohol would be necessary in order to make money. He indicated that he would do whatever he must to oppose this.

Tom Ferris, 82 Erie Street – Stated he does not want to stand in the way of progress and said the Board must decide what “progress” is regarding this residential neighborhood. He referenced his letter to the Zoning Board of Appeals of February 15, 2009 and asked that it be included in the minutes (copy follows):

“Please accept the following in connection with your consideration of the application for a special “gaming facility” permit in relation to the warehouse facility currently at 85 Clinton Street. As a long time resident of Erie Street in the Village, I stand in opposition to any allowance by the village for establishing a gaming facility where alcohol will be served, especially as such an application relates to 85 Clinton Street as that property, like no other, is abutted and surrounded by single family residential. As a general matter, allowing such a permit in this type of neighborhood would be sacrificing the character of one of the village’s most historic neighborhoods for the sake of establishing another bar in our village. Indeed, the Greater Brockport Development Corporation has recently taken ownership of the former Fay’s Garage with the intention of restoring that historic building to its former glory so that the Village’s rich history can be showcased. Having a bar (pool hall) across the street would be, at a minimum, counter-productive and opposite the village’s intention of rehabilitating the Clinton Street corridor along the Erie Canal.

More to the point however, I believe the application should be denied given the tenets [*sic*]of the village code itself. Although the public notice indicates that this application is being considered in connection with zoning ordinance 58-11A(11), a fair reading of that ordinance indicates that a [*sic*] “establishment of membership clubs, lodges, social and recreational centers” *may be* “permitted” in a business use district once the ZBA is satisfied, after a public hearing that the “*conditions essential to the safety, health and general welfare of the people of the village*” are addressed. The proposed use is none of these. Whereas the entities mentioned in this ordinance are organizations intended to develop a quality of life through social, service and recreational organization, the proposed use would be a for-profit pool hall/bar, a far cry from the lofty aspirations of most social, service or recreational organizations. This point is reinforced by the fact that the code mentions “billiard rooms” in the vein of “similar places of recreation” in §58-11A(A)(4). It is obvious that the term “billiard room,” within the meaning of the code does not include a bar with billiard tables **nor** does it include a billiard room with a bar.

As a fundamental matter, the fact that the applicant wants to serve alcohol requires a determination by the planning board with respect to whether or not the *primary purpose* of the establishment *is the retail sale of alcohol for consumption on the premises*. SEE §58-11A (14) (a) & (b). To my knowledge, there has been no consideration made on this application by the planning board as required by law. As such, the ZBA cannot, as a matter of law, consider this application *unless* the applicant will affirm that no alcohol will be sold and served on the premises.

As a business owner, I understand the pluses and the minuses of running a successful business. In thinking about Mr. Martin’s business plan, I cannot envision a successful billiard hall at the proposed location. I understand the applicant’s desire to serve alcohol in this establishment as this would be the only way for such a business to have any chance at success at this location. However, the village’s planning board and ZBA have the ultimate responsibility to insure that business, commercial and

industrial uses *such as this*, do not infringe on the enjoyment that residents of this village have in their own properties. Conversely, these boards cannot allow concessions where such proposed interests collide with the continuing interests

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of residential property owners in order to give proposed non-residential uses more “favorable conditions,” viz., allowing a billiard hall/bar to operate in a residential and historical zone. Whether it’s a pool hall with a bar or a bar with billiard tables, I think you can clearly see that neither option should be allowed at 85 Clinton Street. There are certainly better places within the village and town for such an enterprise. The village should invite the applicant to work with them at indentifying [*sic*]such locations.

In conclusion, this board should **decline** consideration of this application. The first step enumerated under Village Code §58-11A (14), is that this application must be reviewed by the planning board for the purpose of determining whether or not the primary purpose of the proposed business “**Que Billiards & More**” will be for the retail sale of alcohol for consumption on the premises, for if it is, then such a use would not be allowed under the code as the business would be far less than the 300ft. limit from an O residential district as required by this same code. The reasons for not allowing the sale and distribution of alcohol within 300 ft. of a residential zone are obvious and will be discussed in greater detail should this matter be submitted to the planning board for it [*sic*] determination in conformance with VC §58-11A (14) (b).”

He expressed his belief that there had been a procedural error and that 58-11 A (11) is not the proper code section to consider because the applicants want to serve alcohol. He paraphrased from the ordinance stating the establishment of membership clubs, lodges, social and recreational centers may be permitted in a business use district once the ZBA is satisfied after a public hearing that the conditions essential to the safety, health and general welfare of the people of the village are addressed. Additionally, he said section A (4) speaks to “billiard rooms” and “similar places of recreation” and such language would exclude this application. He contended that a billiard room does not include a billiard room with a bar. He further cited sections (14) (a) and (b) which state the Planning Board must first determine the primary purpose of the business. In conclusion, he requested the Board decline the special permit for a gaming facility.

Carrie Maziarz, 42 Adams Street – Concurred with Mr. Ferris regarding the serving of alcohol and Ms. Hannan’s statement that this is one of our last family neighborhoods and that this would be detrimental to it. She continued that there is plenty of room to put the business elsewhere in the Village or in the Town of Sweden and she would encourage the Village to work with the applicants to find a more suitable location.

Cathy Bott Armer, 22 Utica Street – Indicated her property backs up to the warehouse and she has seen it in the past when there was a bar there. She stated it had been loud, she had witnessed sexual activity and physical fights, people had used her driveway for parking and tried to get in her back door. She has been fearful in the past and voiced that this would be unsafe.

Doreen Webster, 81 Clinton Street – Pointed out that she lives right next door to the property and the two driveways are on top of each other. In the past, she noted she has had her vehicles and her house windows and doors vandalized, adding that since the college has instituted the “three and out” policy, the situation has improved. She indicated she wants people to be able to have a business, but that it is not a good environment for this business and she suggested the Sweden plaza that housed the former Wal-Mart. She continued that her deck looks out on the property and, while conceding that it is her problem, she feels she would not be able to sell her home if there is a billiard facility with alcohol next door. She said she was unsure about the hours of operation. In conclusion, she felt there is not room for 32 cars and noted she is fearful of what could happen there. She wished the applicants good luck but said she does not want the business next to her.

Jim Stull, currently of 15 Mercer Street, previously of 165 Erie Street – Reiterated that the 1970s were terrible. He commented that when the roller rink was there and there had not been any alcohol, it was a family environment that had been good. He said those days preceded Zoning and the building was grandfathered in as business during Zoning. Slowly it turned into a college gathering place, leading to the destruction of private property, lewd behavior and constant police calls. The huge building was later converted into a packaging business. He expressed his opinion that billiards is fine but alcohol is not. Referencing Tony’s barber shop, he stated it had the only good pool table in town and that billiards have never made it in Brockport. He wished the applicants well, said he wants to encourage business in Brockport but asked the Board to please deny the application.

Tim Clark, 7179 W. Bergen Rd., W. Bergen – As realtor, he has worked with J. Martin and N. Corrigan and does not understand the opposition. He noted that at age 18 you can fight for your country, but cannot have a beer and cannot play pool in Brockport. While people want no crime in Brockport, they do not want to provide an outlet for activity for people. He noted the facility’s close proximity to the police station, brought up the amount of time and money the applicants are sinking in to the effort, and added we have free enterprise and time will tell whether or not the business will work. He concluded by

stating there has been no one in the building for a long time and that these gentlemen are “legit” and should not be pushed out.

D. Schum reminded everyone the property is zoned Business and that the zoning hasn’t changed; that **MINUTES OF ZBA MEETING HELD February 24, 2009.....page 5**

there are concerns because of the adjoining residential area, but the line for business property is there. He reiterated his stance that this application should be heard before the Planning Board, noting Pizza Hut serves pizza and it also serves beer, wine and pop, but it is not a bar. He restated this is a billiard hall, a permitted use, that will serve beer and wine, and that does not make them a bar. He added that codes would be enforced. Again, he informed that comments about property values are just comments and they come without proof. He restated the Code is clear and that a billiard hall is a permitted use.

T. Ferris posed the question that if there were no alcohol, would the applicants still have their business there. D. Schum referenced the applicant’s written business plan and that business plans may change.

Sandy McPhillips, 7 Utica Street – Concurred with Mr. Stull; stated she has lived there for 53 years; opined the situation will get worse with more alcohol in the neighborhood. She noted when she sees people outside and calls the police, then the people flee. She emphasized that she has always taken care of problems on her property and will continue to do so.

E. Galan pointed out that the police are aware and he would like to see the Chief of Police here to address the problems concerning more alcohol. He commented that he is not against the business, he would just like to see it someplace else and it is free to go someplace else.

⇒ Member Borraro moved, Member Sciremammano seconded, unanimously carried that the public hearing be closed and the regular meeting be reopened at 7:50pm.

Continued Board discussion on application:

Member Sciremammano asked whether or not the applicants would ever anticipate a night with 100 people there. J. Martin answered no, probably more like 25-30 on a usual night and that if there were 100, they would need a larger place. Member Sciremammano inquired why they chose this building, if it had anything to do with the proximity to the college. J. Martin affirmed and added they were also attracted to the raw, open space. Chair Bush asked if the rental fee was also a factor and J. Martin affirmed.

Member Borraro proposed the Board table the application pending review by the Planning Board to determine the sale of alcohol factor. Member Sciremammano emphasized the Zoning Board’s decision should be restricted to whether or not they can open a billiard hall—it is a business use and it is a permitted use within that. He added that it could not be more clear—whether or not to sell alcohol is not the Zoning Board’s decision to make. Member Sciremammano referred to the legal paperwork that had accompanied the application materials and reminded the Board that they cannot base their decision on “public opinion” unless it comes with proof. He also voiced that one of the things the Board must take into consideration is whether or not the neighborhood will change. While many have commented on what might happen, none have offered proof.

Member Borraro concurred, reiterating Mr. Ferris’ earlier statement that part of the process as stated in 58-11 A (14) (b) is having the Planning Board determine the primary business. He read from the Code, “The primary purpose shall be determined by the Planning Board based on, but not limited to, information supplied by the applicant.” He again encouraged the Board to be prudent and wait for the Planning Board decision. Member Sciremammano disagreed.

Chair Bush explained that while the Board sympathizes and understands the concerns of those who are opposed, it cannot assume the concerns will come true and it is obligated to use the Code as written. He mentioned the Board also has the option of putting restrictions on the approval of the special use permit having the applicant return in a set amount of time to review how the business is doing.

Village Attorney David Mayer supported that by stating while the Code may not be as clear as we would like it to be, it is still what the Board must use and the Board’s first decision should be if this is a billiard room or if it is something else--is a place with pool tables and other things a billiard room or is it a recreation center? If it is a recreation center, then he stated Chair Bush’s comments under the special permit use were correct.

Member Borraro again voiced that the Board should be prudent and table their decision pending Planning Board review, which will include items like parking. Member Sciremammano inquired about parking and whether or not that fits within the Village Code and if it is under the review of the Planning Board. CEO Zarnstorff said that by staying with his original decision, this fits under the statement of recreation center because there are billiards and other games and then a special permit would be required. If it falls under special permit, then it goes to the Planning Board. A special permit carries more weight as far as the use of the billiard hall. Then if the special permit prevails, you don’t have to

grant that with any caveats at all, you can refer that to the Planning Board decision, as well as the parking and whether serving beer is primary or secondary. He opined that the general special permit needs to be deliberated here first, then it will move on to the Planning Board.

Mr. Ferris spoke up in strong disagreement with CEO Zarnstorff's opinion, stating he is an attorney and **MINUTES OF ZBA MEETING HELD February 24, 2009.....page 6**

understands how these things work. Mr. Schum reminded Mr. Ferris the public comment portion of the meeting was closed and this is Mr. Zarnstorff's opinion and it was his turn to speak. Mr. Ferris opined this is subject matter for Article 78 to which Mr. Schum replied they could talk to a judge. Chair Bush said this is a difficult subject for all concerned and started to explain his interpretation of the Code when Mr. Ferris interrupted, again bringing up the serving of alcohol. Attorneys Ferris and Schum exchanged heated words and Chair Bush brought the room back to order.

Member Borraro stated to CEO Zarnstorff that it did not appear there was any specific procedure outlined in the Code and it was up to the Board's discretion. He again suggested the Board be prudent and not make a decision until after the Planning Board had conducted their review. CEO Zarnstorff remarked that the Planning Board is indeed part of the process and it is their decision whether or not they call for a public hearing. Member Borraro continued, explaining that what makes this application so difficult is having the combined activities of billiards and the serving of alcohol. Attorney Mayer said he wished the code was clearer and opined that either course of action is within the permitted procedure. If the Board grants a special permit, that could be undone by the Planning Board and if the applicant receives an unfavorable finding from the Planning Board, they could quite possibly appeal that decision to this Board. He remarked they would be going in circles. He stated he has no legal objection to this proposal or to the original proposal.

Chair Bush emphasized that if this Board denies the application and it is appealed and overturned, then the ZBA gives up its chance to impose restrictions.

Member Manitsas asked the applicants if they would consider opening the facility without alcohol. N. Corrigan replied that is exactly what they would be doing to start out. They currently have no liquor license and it takes a year or more to obtain one. J. Martin added that it is part of their plan down the road. Member Borraro inquired whether or not the applicants would consider amending their application so as to eliminate the alcohol sales and then when they are ready to serve alcohol, they could go to the Planning Board for permission. J. Martin reiterated they do not want to be a bar, they want to be a billiard hall with "neighborhood-friendly" hours of operation. He stated the liquor license is something they are not going to have tomorrow anyway, so they might as well take it out, adding if they agree to remove alcohol from the application now, it would stop them from applying now and it would be even longer before they could get their license.

Chair Bush asked CEO Zarnstorff what the process would be if the application would be approved without alcohol. CEO Zarnstorff noted it would be under the Planning Board and the ZBA could stipulate as a condition of approval, that J. Martin and N. Corrigan return to the ZBA to review the Planning Board decision. Member Sciremammano asked if this Board could pass the application then have a public hearing in a year to see whether or not it has become a nuisance adding that residents would have to have proof. Chair Bush noted that was what he was thinking of—to place restrictions on the approval.

J. Martin asked what kind of a timeframe the Board was thinking of, noting it would be difficult to sign a 4-year lease with permission to open for only a 6-month period. Chair Bush answered it would be more like a year unless something came up prior to that. Chair Bush reiterated the objection tonight is the serving of alcohol. Member Sciremammano added they could approve the application for the billiard room and the liquor authority would determine if the building is too close to houses, what the parking accommodations are, etc., then in a year's time, the Board could have an open house to determine how the business is doing and to see if they should continue the permit for specific reasons.

Village Attorney Mayer offered the time limit of one year and he indicated his doubt that it would stand up to Article 78 if challenged. Again, Member Borraro asked if the applicants would consider amending their application to eliminate the sale of alcohol. J. Martin indicated they want to start the process because it is such a long process. Member Borraro asked for clarification that that meant the applicants would not amend their application. Attorney Schum interjected that if you apply for a liquor license, you must show that you have been given the right to serve, so the applicants cannot apply until after they receive permission. He also noted the applicants still must go to the Planning Board for site plan, etc., as well as the determination of whether or not the primary use is as a bar. If it is not a primary use, then the Planning Board could acknowledge that Mr. Martin could apply for a liquor license and whether the license is granted would be up to the liquor authority.

E. Galan mentioned he thought that was what Member Borraro intended with mentioning it would be prudent for the Board to send the application first to the Planning Board.

⇒ Member Borraro moved to table the decision until after the application has been first sent to the

Planning Board for their determination on the primary use. There was no second so the motion died.

- ⇒ Member Sciremammano moved that the application for the permit be approved knowing that the application will next go to the Planning Board, who would ultimately decide whether they can have liquor or not.

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Discussion: Member Borraro asked if he was using Code section 58-11 (A) (4) and Village Attorney Mayer noted the Board should be very clear which section is being used, be it section 58-11 (A) (4) or 58-11 (A) (11). Chair Bush clarified that under (A)(4) the applicant didn't even have to come here, Attorney Mayer affirmed and Member Sciremammano clarified he was referring to 58-11 (A) (11).

- ⇒ Member Manitsas seconded.

Discussion: CEO Zarnstorff asked about SEQR determination; Attorney Mayer asked if there was a standing resolution as to who is the lead agency. CEO Zarnstorff replied there is none and suggested the lead should be here as this Board is approving the application with the caveat that the Planning Board will review it next; Attorney Mayer concurred and informed the Board that before they take any final action, they should go through the SEQR process as follows: 1) Determination of lead agency; 2) Determination of whether this is a Type I, Type II or an Unlisted Action; 3) Identify the issues, if any; followed by a determination of any significant environmental effects.

Member Borraro again stated his belief that the Board must be prudent and allow the Planning Board to first render its decision. Chair Bush wondered why they were even there tonight if this is going to go to the Planning Board and Attorney Mayer explained the Board must start somewhere and he suggested identifying whether or not the Board is looking at a billiard room under (11) (A) (4) or a recreation center under (11) (A) (11). Chair Bush asked for clarification of the difference between the two terms and where alcohol is allowed to be served and where it is not. Member Sciremammano reminded the Board there is a motion on the floor and something should be done with it. CEO Zarnstorff then reminded the Board they must also complete the SEQR process and Attorney Mayer concurred, stating before any kind of approval can be given on the application, the SEQR process must be completed. Attorney Mayer then lead the Board through the SEQR process as follows:

- 1) Determination of lead agency –
⇒ Member Sciremammano moved, Member Manitsas seconded, unanimously carried to approve the ZBA as lead agency.
- 2) Classification of the action – Attorney Mayer explained the difference between Type I, Type II and Unlisted actions.
⇒ Member Sciremammano moved, Member Manitsas seconded, unanimously carried to declare this an Unlisted Action.
- 3) Determination of any resulting adverse environmental effects; discussion and resolution of same.

Discussion: Member Sciremammano first identified traffic and noise and Attorney Mayer clarified they would be looking at things like runoff and pollution, but probably not noise. Member Sciremammano asked if there was any plan to increase the parking and J. Martin replied no. Member Borraro inquired about the music and J. Martin said there would be a jukebox and some wall speakers, but that the music will not be blaring.

- ⇒ Member Sciremammano moved, Member Manitsas seconded, carried 3-1 to declare no significant environmental impact with this application, with Chair Bush, Member Manitsas and Member Sciremammano in favor.

T. Ferris suggested there be public input on environmental issues along with the SEQR process and that the Board might be rushing through the process. Member Sciremammano posed a question to those in attendance who live near the property if a jukebox inside the building, with wall-mounted speakers also inside the building, with the building having no open windows, no use of the back door and the front closed, would cause excessive noise. T. Ferris stated he would like specific measurements on the sound and decibels of the sound system. Member Sciremammano asked residents to think about the noise level of a normal jukebox. One resident asked if they planned on putting more windows in and J. Martin answered no.

Member Borraro suggested they open the floor for comments and T. Ferris stated the Board needs to give notice. D. Schum refuted, stating notice is only necessary for Type I actions. J. Martin broke in and stated they want to be good neighbors, they will abide by ordinances and they are just as concerned as anyone else about garbage, people walking or fighting, noise, etc. He noted if CEO Zarnstorff comes to his door and asks him to turn the radio down, they would do it. He reiterated their intent is to be in the location for a long time. Chair Bush reminded the Board the decision needs to be made using the information in front of them.

Attorney Mayer suggested the Board should ask if anyone has a purely environmental concern.

D. Webster of 81 Clinton stated her concern of traffic coming in and out of the building. She stated the street is currently a dead end but the Smith Street bridge would be reopening and she noted the dead end makes it a one-way road at that end. K. Dumbleton added she has seen people parking at Sunnking, at the dead end and in the nearby grass. C. Maziarz

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Reiterated the environmental issues of parking and noise and suggested that if the Board needs to educate itself on how to handle this application and the code it falls under, it should be done in executive session. Chair Bush stated the Board is handling it within the Code and they wish to make the decision tonight rather than delaying it.

T. Ferris commented that 58-11 (A) (11) has a quasi-SEQR requirement built into it where the Board “may, ” which means you can turn it down, permit a business to operate a billiard hall once the ZBA is satisfied after public comment that the conditions essential to the safety, health and general welfare of the people of the village are addressed. He continued, saying the Board hasn’t touched on those critical issues, which are in the requirement of the public notice. He noted that while there have been many negative comments expressed, there have been no positive comments and all of that would be evidence in a court of law. Attorney Mayer interjected that there is remedy available in the courts and the remedy is not to browbeat the Board and try and steer it out of order. D. Schum and T. Ferris again exchanged comments. Chair Bush again noted the decision would be made based on the code rather than on assumptions.

Attorney Mayer pointed out the Board should tie up SEQR by deciding if any public comment has affected the Board’s decision. Member Sciremammano felt the only issue would be the music and he stated he has a loud neighbor and when the noise gets excessive, he calls the police to handle the situation. He went on to opine that with no back door, a concrete building, just one jukebox with some wall speakers and music that will probably not be so loud that pool players couldn’t even talk with each other, that a reasonable person would not think this would be a loud place, even though we don’t know the decibel level. He concluded by again asking if there were any other environmental issues and there was no response from the audience.

Village Attorney Mayer stated the motion should be renewed following public comment.

⇒ Member Sciremammano again moved, Member Manitsas again seconded, to declare no significant environmental impact with this application.

Discussion: Member Manitsas asked if there were problems down the road with the establishment, could CEO Zarnstorff or the police shut the place down. Attorney Mayer stated it would be difficult for the CEO to shut it down but that if any place of business becomes a constant source of police calls, the police do have some remedies available.

CEO Zarnstorff stated that while noise does not fall under his jurisdiction, he could cite a business for violations of occupancy, fire code, garbage, etc. He also reminded the Board that the business would be subject to an annual safety inspection and that Codes Officials routinely conduct occupancy checks nearly every weekend of bars/restaurants within the village and this place would be included as well.

Member Manitsas asked if there would be restrooms and J. Martin affirmed, stating they would be handicap-accessible.

⇒ Call to question: The motion again carried 3-1, again with Chair Bush, Member Manitsas and Member Sciremammano in favor.

Attorney Mayer indicated the SEQR process had been completed. CEO Zarnstorff reminded the Board that previously a motion had been made and seconded to approve the application under section 11 (A) (11) that has not yet been voted on.

Member Sciremammano asked if the application was guaranteed to go to the Planning Board for permission to apply for the liquor license and CEO Zarnstorff replied that would be up to the applicant to decide if he wants to ask for that. He did state that the application would have to be reviewed for adequate parking and so forth. Member Sciremammano clarified that this Board is simply approving whether or not the applicants can operate as a billiard hall and it will be the Planning Board’s decision as to whether this a billiard hall that serves beer or whether it is a bar that has billiard tables.

⇒ Member Sciremammano reiterated the motion to approve the application for a special permit for a billiard hall and that the applicant must go before the Planning Board to seek approval for the

consumption of alcohol; again seconded by Member Manitsas. Motion carried 3-1 with Chair Bush, Member Manitsas and Member Sciremammano in favor.

Adjournment:

- ➔ Member Manitsas moved, Member Borryo seconded, unanimously carried that the meeting be adjourned at 9:15pm.

Pamela W. Krahe, Clerk