

TOWN OF GRANBY ZONING BOARD OF APPEALS

Meeting Minutes

August 25, 2014

AGENDA: Patrick Flood Public Hearing
Regular Monthly Meeting

MEMBERS PRESENT: Michael French, Chairman
Peter LeoGrande
Patricia Simmons
Tom Thompson
Dan Parkhurst

ALSO PRESENT: Patrick Flood and his attorney Timothy Fennell of Amdursky, Pelky, Fennell & Wallen P.C., Town attorney Scott Chatfield, CEO Charles Lewis, Janet Ingersoll, Brenda Frasier-Hartle, Deputy Supervisor John Snow, Stephen and Alicia Davis, Robert Collins, Deb Somers Baker, Henry Wilcox, Rodney Delong and Rosie –owner of Rosie’s tavern.

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PUBLIC HEARING

Appeal of CEO’s Order to Cease & Desist activities at Floody’s
Patrick Flood of B&F Properties of Oswego Co LLC
2095 State Route 48, Fulton
Tax Map # 201.20-01-05

Chairman French opened the Public Hearing at 7:02 pm and quickly explained the format for the meeting as follows: the Granby CEO officer would outline the actions that brought the appeal, to be followed by Mr. Flood’s statement to the ZBA Board, coinciding with interjections from the Town attorney Scott Chatfield, as he sees fit to assist the Board in determining the facts of the case. The public would then be allowed to make statements to the Board (not the appellant) which in turn would ask clarification from the appellant as well as ask questions that they may have themselves. The first order of business was for Member Thompson to excuse himself from the proceedings because of a personal conflict involving the appellant’s attorney Mr. Tim Fennell. The Chairman stated that the four remaining members present establishes more than the required quorum and the meeting would proceed. The CEO, Charles Lewis, spoke regarding the circumstances that brought about the appeal filed by Patrick Flood, which he also presented in writing to the Board Members and subsequently the attorneys. The appellant had requested a building permit to construct a roof over the stage which CEO Lewis reviewed and found the plot plan did not have dimensions to locate the stage. The appellant was consulted about the setback distances and stated to CEO Lewis that he was 20’ from the side property line and 50’ from the rear property line – dimensions that CEO Lewis was unable to confirm in the field resulting in the non-issuance of the permit. Simultaneously the Codes office had been receiving complaints regarding the noise from live bands performing at night. CEO Lewis found that there was no approval in the file regarding outdoor entertainment and confirmed that fact with the Planning Board Chairman. The appellant was then cited for building too close to the property lines as well as for a non-permitted zoning use pertaining to the outdoor entertainment. Town

attorney Scott Chatfield asked CEO Lewis several questions to clarify the non-conforming use of the property in which Mr. Lewis stated that the bar existed before zoning was established, the property had been rezoned to R-1 close to 10 years ago and that Section VI, Subsections A and C allows for the business to continue as a non-conforming entity in light of the new zoning but that the non-conformance can not be extended or enlarged.

Chairman Mike French then asked for Patrick Flood to address his reasons for appealing the actions of the CEO. He began by addressing the building permit to add a roof to a pre-existing stage that they had been utilizing for over three years on the property that he purchased almost 5 years ago. Mr. Flood stated that he hadn't chosen the location for the stage only rebuilt what had been there and furthermore was continuing in practices that had always taken place at the bar formerly known as Bodees, T.J. Bodees and Jakes – over 30 years of activity. Attorney for the appellant, Tim Fennell, interjected at this time that he wished to clarify the claims of the Codes office and that the filed appeal addresses the CEO's Order to Cease and Desist the outdoor activities only and moved to amend the appeal to include the other 2 infractions of the setbacks. After some discussion between the attorneys and the ZBA Board it was decided to keep the setback issues separate and only deal with the non-conforming use issue. Attorney Fennell then stated that their position was that the bar had been there for many years and had been playing music inside and outside throughout those years, which many of the residents in attendance conceded to, therefore making the present usage by Patrick Flood a continued use and not an expanded or enlarged use. He further stated that the neighbor's complaints were aimed at the type of music being performed and their dislike of that which does not constitute a 'use' issue but rather a noise issue. Furthermore the Town of Granby does not have an enforceable noise ordinance to address the neighbor's complaints and that the CEO's attempt to resolve these complaints thru citing a non-conforming use interpretation is improper, for these reasons they are appealing the Order and request that it be vacated. At this point Chairman French asked what day the bands were scheduled for, how long the shows last and the time that they start. Mr. Flood replied that he had only had 5 shows thus far, the shows occur on various days of the week and typically start at 7:00 pm and finish at approximately 10:30 pm. Chairman French also questioned why an application explaining the specifics of the business and the subsequent appeal hadn't been filed, nor a fee paid for process in front of the ZBA? He further stated that the lack of any of this information has made it difficult for the Board members to assess the situation properly. The ZBA secretary and the Town attorney stated that they had both spoken to attorney Fennell previous to scheduling the meeting regarding the required fee for public notification purposes and that the scheduling of the meeting had not been delayed because of it. The attorneys began to establish the facts presented thus far for deliberation by the ZBA and established the following list of Exhibits that were signed in by the secretary.

Exhibit A - Order to Cease and Desist issued by CEO Lewis, dated 7/7/14.

Exhibit B – Summarizing letter of events written by CEO Lewis, dated 8/11/14.

Exhibit C – Notice of Violation/Order to Remedy – Extension of non-conforming use, dated 7/29/14.

Exhibit D - Notice of Violation/Order to Remedy – Stage structure does not meet setback requirements for rear and side property lines, dated 7/29/14.

Exhibit E – Notice of Appeal signed by Patrick Flood, dated 8/4/14.

Exhibit F - NYS Building Code Table 1607.1; Minimum live loads for stage.

Exhibit G – Two photos, front views of the building 25-30 years ago.

Exhibit H – Two photos, front view before and after renovation in 1994.

Attorney Tim Fennell concluded his presentation by citing two case laws that support the property usage by Patrick Flood in that the cases go to the extent of use changes, they were as follows:

- 1.) Hillside Restaurant 1977 – an establishment that offered music and bands added dancing girls, found to be an acceptable change of use.
- 2.) PESCO Hillihan 2008 – business that had been serving food inside added food service outside, found to be acceptable change of use.

Town Attorney Chatfield stated he would investigate the case laws, both attorneys to provide summaries. At this time CEO Lewis stated for clarification that the Notice of Violation dated 7/1/14 was support for the non-conforming usage determination by citing factual ads from the internet/facebook page that the activity in question was occurring.

The Public Hearing was opened for public comments as follows:

- 1.) Steve & Alice Davis – Mr. Davis stated that the venue has changed from a bar/restaurant to a venue that offers outdoor entertainment of national acts with a set-up that is more akin to an amphitheatre. His family resides $\frac{3}{4}$ of a mile north on State Route 48 and it sounds as if it's outside their door even when the windows are closed. The activity devalues the area homes in that the resale capability of prime R-1 residences is greatly diminished by its existence –who would want to buy them? The bar business has become secondary.
- 2.) Robert Collins – Mr. Collins family has lived in the neighborhood for over 30 years and has seen a slight stage – basically a pile of wood pallets - which the new owner renovated and made into a deck. Exhibit F, minimum live loads table, was supplied by Mr. Collins as he described the dangerous and poorly constructed platform which he believes is a hazard. The construction and the electrical supply connections were not professionally completed, inspected or permitted. Mr. Collins also quoted Section I, Subsection C-7 and C- 8 of the Zoning Ordinance which assures freedom from nuisances and things harmful to the senses, as well as protection from obtrusive and noisome land uses. The final statement of Mr. Collins dealt with the setback dimensions and the fact that a survey should be provided by the owner to accurately locate the property lines.
- 3.) Deborah SomersBaker – Ms. SomersBaker reiterated all of what Mr. Collins had stated because together they had researched the zoning law for the arguments presented. She further stated that there wasn't a stage when Mr. Flood purchased the property and that they watched him build it not knowing at the time that he hadn't secured a building permit. They had assumed the Town was aware of the activity. She also stated that respect and courtesy regarding everyone in the neighborhood as well as everyone's enjoyment of their own property should dictate the standard of proper usage.
- 4.) Terri Somers – Mrs. Somers previously owned the bar with her sister and described the general usage that was non-invasive to the neighbors, in fact no complaints had ever been filed. She further stated that she had watched the

progression of building the stage, building a roof to cover the stage and the introduction of loud music during the week with noise until midnight – unaware that all activity had been unbeknownst to the Town. She firmly stated that the Town of Granby needs to do their job! Complaint driven action is not enough. Mrs. Somers elaborated that the business has negatively affected her and her husbands quality of life by forcing doors and windows to be closed, being forced to listen to offensive language at a volume where they can not speak aloud to each other and be heard for hours at a time, patrons park on their property, block their driveway and access road, as well as threaten bodily harm and property damage.

- 5.) Henry Wilcox – Mr. Wilcox has been a neighbor directly to the south for 42 years and has always had a friendly relationship with the past owners as well as been a patron of their businesses. He has never had a reason to complain in the past but now finds the conditions intolerable. He recently moved his 90+ old father into his home to assist in his old age and has found that they can no longer enjoy the outside hot tub, the 3 season room of windows and screens with large tv or other amenities of his property because of the noise and contentious situation that has arisen. He further stated that he can stand on his property and reach the light pole that detaches from the stage when not in use which places the stage roughly 5' from the side property line, not 20' as required by code.

The attorneys cross examined Mr. Wilcox as a historical witness regarding music at the bar – he stated that there had always been a juke box inside, an amplifier/radio inside, bands inside, couldn't recollect outside bands or whether cover charges used. They also cross-examined Terri Somers as a previous owner for 9 years previous to Mr. Woodward who owned it for 9 years previous to Patrick Flood – in the 18 years before Floody's outside bands on the deck had occurred during the daytime on a small scale and cover charged bands played inside the bar in the evenings.

- 6.) Owner of Rosie's Tavern - She stated that she had recently attended a benefit held at Floody's and was surprised at the loud music blaring from the Somer's "Club" up the hill at about 5:00 pm. The music lasted for quite some time and conversation couldn't be heard above it – she feels that this is a personal vendetta by the Somers.
- 7.) John Snow – Clarified that tonight's hearing is only addressing the 'use' of the property.

The Chairman of the ZBA called a short recess at 8:25 pm, the meeting reconvened at 8:30 pm.

- 8.) Terri Somers- Reiterated that they do not enjoy their property, that Mr. Flood has committed several violations of the building code - two setbacks for stage location, construction of stage without a permit, renovated stage without a permit, no electrical inspections and enlarged non-conforming use without Town approval.
- 9.) Janet Ingersoll – The Town Clerk clarified for the record that Patrick Flood had come into the office to pay for and complete application for publication and notification of appeal. The form does not exist but he did pay the nominal fee of \$75.00 for the ZBA process.

- 10.) Bob Collins - The appellant is attempting to spot zone his business which is unlawful. The Board members need to look at the change and determine if it is allowed in the R-1 district and be mindful of a precedent setting situation where business starts small to get in the door and then go big.
- 11.) Steve & Alice Davis - The business has changed!!!!
- 12.) Peter LeoGrande, ZBA Member – Mr. LeoGrande stated for the record that he has personal knowledge of the bar when it was Bodees in 2005. He played on a horseshoe league that played at Bodees several times and he remembers that there was not a stage, only a pile of pallets.
- 13.) Rodney DeLong – Stated that it has always been a bar with music and that bands have played inside and outside for many years.

Without any further comments from the public, Town Attorney Chatfield took time to explain to everyone present that this process was only beginning and would be several months before concluded. Any activities that Floody's has planned will continue for the time being because the filing of the appeal released the Order to Cease and Desist. The ZBA is a quasi-judicial process that can have several stages of appeals to exhaust until a final decision is made. Regardless of the ZBA's decision, an appeal pursuant to S267 of the NYS Town Law will probably be forthcoming from either the owner or a neighbor.

Discussion amongst the Board Members and Town attorney resulted in a motion moved by Member Peter LeoGrande to accept written information and comments for the next (7) seven days, it was seconded by Member Dan Parkhurst, all were in favor without further discussion and the motion carried. It was also decided that the another meeting would be held Monday September 15, 2014 at 7:00 pm allowing time for the Board members to evaluate the information provided as well as research the property and zoning law. The Hearing was closed at 9:07 pm on a motion moved by Member LeoGrande and seconded by Member Tricia Simmons, all were in favor and the motion carried.

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REGULAR MONTHLY MEETING

The regular meeting was opened and called to order at 9:04 pm by Chairman French.

A **motion** to approve the meeting minutes for June 24, 2014 was **moved** by Member Dan Parkhurst and seconded by Member Peter LeoGrande, all were in favor, **motion carried**.

With no other business before the Board a **motion** to adjourn at 9:12 pm was **moved** by Member Patricia Simmons and seconded by Member Dan Parkhurst, all were in favor, **motion carried**.

Respectfully submitted by:
Lisa Somers, ZBA secretary

