

## **TOWN OF GRANBY ZONING BOARD OF APPEALS**

### **Meeting Minutes**

February 24, 2022

Chairman Palmitese called the regular meeting of the Granby Zoning Board of Appeals, held on Thursday, February 24, 2022 to order at 7:01 pm.

**AGENDA:** Fairway Billiards Inc; John Cox Public Hearing

Regular Meeting

**MEMBERS:** Tyler Palmitese, Chairman

Peter LeoGrande

Linda Parkhurst

Mallori Stoia

Melanie Strong

**ALSO PRESENT:** John Cox, Nathan Parsons, Kenneth Brown, Stacy Benn, Leonard Besau, Cheryl and Tom Anthony, Harold and Mary Waugh, Paul Brewster, Brad Rees, Russell Crutchley, Jamie Crutchley, Mike Gorham, William DePaola, and Town Councilor/ZBA liaison Sandra Farrands.

Three new members were welcomed to the ZBA and introductions made to the audience present.

### **PUBLIC HEARING**

**Fairway Billiards Inc. – John Cox; in lieu of property owner Vigesco Inc.**

Chairman Palmitese opened the Public Hearing at 7:02 pm.

*Appeal of the stipulations of an existing Use Variance Resolution 2018-03 for continued usage of a restaurant and banquet facility with billiards on property that contains a commercial facility in the R-1 zoning district and is located at 2107 State Route 48, Fulton, NY 13069; Tax Map #201.20-01-04.*

Chairman Palmitese asked John Cox to explain his request and business proposal to the Board Members. Mr. Cox began that he needs relief from the restrictions of the Use Variance imposed on the property to make his business successful. He proposes to continue offering lunch and dinner with a bar and has placed several APA tables in the banquet hall area of the structure. He has been involved with billiards most of his life and has been looking for an appropriately sized venue within the area for many years. He entered into a 5-year lease with an option to buy, and has been renovating the building over the past few months with approximately \$10,000 invested so far. He was unaware of the restrictions of a use variance associated with the property until applying for a liquor license. Although the property owners had not disclosed this information, he still wants to pursue the required approvals because of the opportunities he believes the location affords him. He explained that the carrying costs average about \$6,000 a month without employee costs, extending the hours and use of the exterior areas of the property would allow him to run the business efficiently and support his family. He used a great deal of his savings thus far because he believes this venue will benefit the community as well as the Town by establishing and maintaining an aesthetically pleasing valuable property that will bring good people into the area and provide a sport for the residents and youth. He needs to stay open later than the current stipulation of 8 pm in order to accommodate the pool leagues that run weekly all year long. Using the outside areas would allow for weddings, banquets and barbecues that would provide financial support for the billiards programs and sustain the overall business. He explained that APA has a huge following but that very few places cater to the sport, this location would provide a home for many of the local players that must travel to Syracuse and beyond to play. He has been a member of the APA family for years and covid displaced the group gatherings and social comradery prevalent in the sport, much like covid has impacted everyone in the past two years. There is a need for this type of venue and believes that this property can provide the space, if allowed, to build a worthwhile family-oriented business that will become a vital part of the Granby community. He intends to bring the property back to its former state by tending to the grounds and landscaping, perform general clean-up and repair of the exterior areas as well as continuing to remodel the interior to make the property a valuable asset of the Town. He provided photos of the interior of the building to show the work that he has completed thus far, and to clarify the standard of quality he will bring to the business. He isn't looking to run a bar and cater to that crowd, instead he wants to offer restaurant quality food with a conversational atmosphere for to the public, and offer the opportunity to build a unique sport for the area to enjoy.

Member Stoia asked for details of the outside music. John Cox replied that music would be at a low volume as background by a DJ or jukebox, additionally no live performances would be allowed. He also stated that he intends to add fencing to surround the concrete patio area which would help buffer the activity as well as the noise. He reinforced that the business will be a restaurant and billiards with banquet style events such as weddings, the bar is not the central point rather an extension of the dining use. Generally speaking, a billiards establishment does not cater to a loud drinking crowd, instead they are pretty quiet to support the concentration of the players. Member Stoia added that in her research of speaking to people affiliated with the APA, she found that the leagues require several hours of play time which coincides with Mr. Cox's request to remain open until 11:30. She added that the venues welcome families and are generally low key. She asked if he would cater only to APA members or could anyone come in with their children and play pool. John Cox replied that there would be time available for the tables to be booked or used by the general public. He also said that in time he would like to offer junior leagues but plans to initially start with some youth programs during the summer while kids are out of school.

Member Parkhurst stated that the noise is the biggest concern and issue to contend with. You state that it would be quiet by 9:00 pm in your proposal, but I think that a clear directive in any approval should include that statement. She added that she likes the inclusion of kids and teens because there is very little for them to become involved with in this area. Mr. Cox agreed and reemphasized that it will be quiet because pool players require concentration not rowdy bar activity. Member Parkhurst stated that hours of 11 am to 11:30 pm seem reasonable for a restaurant business, and with the pool activity limited to the interior – limiting noise should be manageable. The fact that the exterior would be used only half the year (seasonably) also limits the intrusion upon the surrounding neighborhood. She added that it would be nice to get a guarantee that you would limit the sound and that the outside would be quiet after a set time – his paperwork states quiet without music after 8:00 pm. Member Parkhurst added that the zoning district dictates first and foremost that it is a residential area.

Chairman Palmitese asked what kind of noise could be expected at 11:00 pm, 12:00 am and 1:00 am? He has concerns of how it will be controlled by the owner, and how complaints would be handled since enforcement by the Town is problematic – work hours by CEO and lack of applicable laws. He also asked if Mr. Cox had spoken with the neighbors before tonight's hearing. John Cox replied that he had not because he was unsure of how to approach them, fearing that they would close doors in his face or not listen, instead he decided to speak to everyone at one time with the same information at tonight's meeting. He added that this is his first venture into owning a business and was unprepared for this roadblock, instead thinking his difficulty would be with the liquor license board. Member Parkhurst stated that the neighbors want to continue life at home as everyone else within a residential area, there is a history of arguments attributed to the noise of the nearby bar but also complaints associated with previous tenants, harmony between them and your business will be key to your success. Chairman Palmitese reaffirmed that Mr. Cox had entered into a 5-year lease with an option to buy the property, to which Mr. Cox agreed. Failure of the property owners to disclose the use variance and its conditions, although unfortunate, does change the fact that this situation is a self-created hardship, and reason for denial of the request. Members Stoia and Strong were in total disagreement, stating instead that he should not be held responsible for knowledge that the owners didn't disclose, and that the illness is on them for failing full disclosure and not tonight's applicant. Chairman Palmitese specified that the future use of the property must be considered, although he hopes that Mr. Cox is successful, it is a fact that nearly 70% of new business ventures fail, and the conditions removed or placed on the property in response to this application will be attributable to future use of the property. The Clerk added that Use variances are attached to the property, not the owner or particular business, if Mr. Cox decides for whatever reason to relocate then the next business would be afforded the same use which could be problematic for the surrounding neighborhood. It bears heavy consideration by the ZBA, and as a quasi-judicial body adherence to the rules of procedure and criteria-based decision is essential. Chairman Palmitese stated that the applicant spent a lot of money without knowing a huge chunk of information that would impact his business operation, and that's shady practice on the owner, but it does not justify approval because he has not met one of the criteria – this is a self-created hardship.

Member Stoia asked the applicant if he had been affiliated with Shooter's Billiards in Fulton. Mr. Cox had not, but did verify that the business was affiliated with APA organization. Members wondered how long it had lasted and why it hadn't been successful. A member of the audience, also affiliated with APA, stated that the business had been on a pathway to viability but issues between owners and sale to a third party interrupted the momentum. The

pool tables in that establishment were sold and are currently placed within Lakeview Lanes. Mr. Cox was asked if anyone would be able to go in and play pool, he replied that there would absolutely be hours where the general public could play. He was also asked about the restaurant hours and whether they would be solid or fluctuate with the crowd. He replied that the restaurant would be open and serving food until 9:00 pm firm, because that's a source of the profits and therefore a necessary component to success. A member clarified that weddings would and could only be held outside because the billiards are utilizing the interior banquet facility – he replied affirmatively.

The Board discussed the issue of exterior music. The Clerk expressed the fact that stating that the music would be kept at a reasonable volume in consideration of the neighbors is somewhat ambiguous and unenforceable, the ZBA needs to consider the implications of accepting this statement as a legitimate standard because what is reasonable for this use may not be the same as what's reasonable for future use. Member Parkhurst agreed and stated that what's reasonable to the owner may not be reasonable to the neighbors and so on. Member Parkhurst also stated that the Town does not have a noise ordinance which is problematic for enforcement if complaints are filed or the owner doesn't comply with conditions the ZBA establishes. As a former Town Board member, she also stated that it would be very unlikely that a noise ordinance would be adopted largely due to the agricultural endeavors in the Town. Member Stoia stated that she had spoken to police about this issue, and was told that the police could assist in disturbing the peace situations so the Town wouldn't necessarily need a mechanism of enforcement. Member Stoia then asked Mr. Cox where outside he would allow people to smoke since that could contribute to noise in the evening hours. Mr. Cox pointed out an area on the site plan identified as the rear patio which would be fenced.

Board members commented on the photos Mr. Cox supplied, that it was indeed becoming a beautiful venue once again and that the more visible exterior has become an eyesore as businesses have struggled to operate in the past few years. The residential designation of the neighborhood must be a priority of the usage, but at the same time the property would be extremely costly to use residentially and would fall into worse disrepair if not occupied. The members balancing the expectations of a residential neighborhood with the reality of a large commercially developed property that would more than likely become abandoned with the presently placed stipulations. The impact to the value of the subject property and the surrounding neighborhood would then be wholly negative and involve not only aesthetic but safety issues as well. The initial granting of a use variance for the property leads some members to believe that sustaining the usage was important to consider, especially since other commercial venues are located nearby – the Battle Island State Park golf course and Floody's bar.

Short discussion ensued with acknowledgement of the letters of reference included with his application –

- 1.) Small Business Development Center of SUNY Oswego – Supports thoughtful business plan development with solid financial projections.
- 2.) APA League Operator, Greg Cordero – States that organization has a very large membership of just over 2000K and would support Mr. Cox by providing a consistent business model involving several charity functions and tournaments that would be hosted by his establishment and cater to the Fulton/Oswego residents. The organization strives to uphold family values and reinforces ethical conduct of all involved. Family and community involvement is encouraged and is upheld with good sportsmanship and strict behavior standards creating a safe, friendly, and conversational atmosphere.
- 3.) Bradley Rees, Retired military MSgt USAF and previous APA League Operator – Character reference – Has known John Cox for several years, attests to his overall good character, level headed individual with strong belief in the APA community and a strong advocate of the youth program. Believes that he can achieve his goal building a business that is comfortable and welcoming for any member of the community to enjoy.

With no further questions from the ZBA members, Chairman Palmitese opened the Hearing to public comments, as follows:

- 1.) *Harold Waugh* - Neighboring property owner that has lived in the neighborhood for 50 years, paid taxes to the Town, supported the fire district and has always followed the rules. He wishes that the Town would get out of the practice of granting variances that allows intrusive activity in zoning districts meant to have different and specified land usage. He is not against Mr. Cox and hopes that his business is successful, but the previous tenants have all proven to be problematic because of the contradictory land usage and he doesn't see how this can be any different especially if the ZBA lifts the imposed conditions concerning exterior activity and noise. Expanding the

hours of operation does not align with residential character, it seems that this business would be better suited in a commercially designated property.

2.) William DePaolo – Resident of Honey Hill Road, providing a character reference. He is retired military and will vouch that Mr. Cox's has integrity and is reliable. He has also been a member of the APA for several years and has to travel to Syracuse to play on regulated tables, so the convenience of the location and the overall beneficial impact this family driven organization can bring to the Town is why he supports this application. He also stated that in his experience with John Cox, he fulfills his obligations and is a man of his word.

3.) Paul Brewster – Resident two doors north. Appreciates the efforts put forth by Mr. Cox to establish a business in the Town, and assures him that he would not slam his door in his face if he were to stop by to discuss his project. He is in favor of the property being maintained and has seen progress in the past few months, but cautions to ZBA to consider the impact of outdoor music and extended hours which once granted cannot be easily reversed. He wishes Mr. Cox success and hopes that he considers the neighborhood properties as much as his own when running events.

4.) Russell Crutchley – Granby resident. Stated that he plays pool so is probably somewhat biased. He thinks that if this business isn't allowed then what, the property falls further into disrepair and becomes an eyesore that eventually the Town has to take care of at the expense of the taxpayers. He also thinks it would be very difficult to turn this property to residential use. His experience with organized pool leagues, like the APA and not bar driven, is a nice crowd of people.

5.) Brad Rees – Stated that he was not a resident of Granby, would it be alright for him to speak – the Chair replied yes anyone can speak at a public hearing. He has vast experience with pool halls and the APA, he's owned two similar businesses in Syracuse in that he was a League Operator. The concerns regarding noise levels are unfounded in that the pool players require quiet in order to concentrate. That's different than the rest of the business use, but in his experience the atmosphere of the billiards generally encompasses the entire facility otherwise the players would go elsewhere. The operators and standards of the APA does not allow excessive noise, and people are quickly escorted out of the area if non-compliant. The group of people this business would attract would be an asset for the community – good people that work together and support charity events and efforts.

6.) Levi - A teenage youth that recently moved into the area and has participated in pool leagues, is appreciative of the comradery and supportive efforts offered by these organizations. The big events or tournaments are always on weekends so little disruption to school and work routines. This business will bring people to Granby. With no further comments from the audience, a motion was moved by Chairman Palmitese to close the Hearing. The motion was seconded by member Stoia, all were in favor, and the motion carried.

## **REGULAR MEETING**

Chairman Palmitese continued with the Regular meeting of the ZBA at 7:52 pm.

The Members voiced their opinions with debate as follows:

*Member Stoia* – Stated that she had spoken to many different people preparing for the meeting including pool players, APA operators, police, the golf course and other. Noise seems to be the biggest issue for any business and the applicant has stated that he wants to not only work with the neighbors but become a part of the community. Everyone associated with APA organizations speaks highly of the people and the establishments because they are family oriented and unacceptable behavior is controlled, which means that noise should not be an issue. The tables for APA are referred to as diamond tables and are quite expensive so it is easy to believe that the owner is not going to allow a rowdy drinking crowd access to either the banquet hall or the restaurant because the two areas flow together. The outside activity will be seasonal and occasional therefore the frequency of disruption is small in comparison to the ongoing activity of the interior spaces. She believes that Mr. Cox will control the level of noise and foster good relations with the neighborhood to ensure a successful business at this location. There are many benefits this business brings with it: people and money to the Town which may overflow to other areas, and improvements to the aesthetic and overall value of the property.

The Chairman and the Clerk commented that the decision is not based on making the applicants business successful, but rather to be based on the future of the property use within the residential district and in accordance with the four criteria established by NYS Law to determine unnecessary hardship.

*Member Strong* – Stated that the property has always been commercial, and has commercial businesses next door and across the road – Floody's bar and the golf course. Disallowing the business to operate as others do, not only in the neighborhood but as other businesses in general, offers tremendous hardship and hampers the ability to

succeed, which should be noted that several previous businesses have lasted only a year at most. The golf course opens early and has midnight golfing, why shouldn't this business be allowed to operate similarly. Location along State Rt 48 brings a level of noise in itself – the constant traffic flow of vehicles and trucks both night and day. The Clerk suggested that proof of previous business failure submitted by the applicant could be useful in providing substantive financial evidence of the first criteria of being unable to realize a reasonable return. Chairman Palmitease added that the Ordinance establishes the character of the districts which this property needs to coexist with – it bears the non-conforming use status. The Clerk added that the ZBA's purpose and function is to uphold the Town's Laws and provide relief of a strict adherence to those laws when and if they present an unnecessary hardship, and to do so in accordance to the established four criteria as prescribed by NYS law.

*Member Parkhurst* - Stated that Russ Crutchley from the audience had summed it up quite nicely in that commercial property being left to set idly is not good for the neighborhood or the Town, and that if it can make money and be a viable part of the tax roll is beneficial to everyone. The main issue continues to be the acceptable level of noise and its enforcement which needs to be the responsibility of the business owner since the Town doesn't possess the tools to enforce or adopt a noise ordinance. John Cox has stated that he will keep the music and noise at a low level, which he compared to being as a conversational level or as background. A time to end the noise has been stated to be 8:00 pm which he will need to enforce or risk neighbor complaints and possible disruption to his business.

*Member Stoia* – Stated that she compares this to the situation of the property next door being up for sale and how you hope that the new owner is going to be considerate and not be intrusive of the properties around them, but you could end up with a neighbor that throws wild parties late into the night – you never know. John Cox has repeatedly stated that he wants to have a good relationship and be part of the neighborhood, he also has a lot of money invested in the remodel and the furniture and pool tables - so a lot is at stake for him as well.

*Chairman Palmitease* – Stated that he has a couple of concerns – the first is the 5-year lease which is a temporary arrangement, but the changes this Board makes will last long beyond the five years. The second is the criteria of whether it is self-created, which he believes that it is. Another concern is the discussion seems to revolve around the success of the business instead of the impact of the use in a residential district.

*Member Strong* – Asked what the life span of a pool hall is. Member Stoia asked Brad Rees, a former APA league operator and billiards owner, how long on average do pool halls last. Most establishments have public interest for decades, and the halls remain open, that is as long as the owner operation is continual. He stated that the tables at Lakeview Lanes generally packs the place even when there is no bowling.

*Member LeoGrande* – Asked John Cox when he would be applying for a liquor license. Mr. Cox responded that he had already started that process, in fact that was how the restrictions on the property were discovered. Member LeoGrande stated that the neighbors have valid concerns of a bar business and the crowd that it attracts, which usually has noise and disruptive activity associated with it. Mr. Cox replied that he doesn't want a bar, he needs the bar as part of the restaurant as well as for the adults in the pool leagues, but his primary interest is the billiards, the rest makes money to sustain the business and make the profit to support his family.

*Member Stoia* – Stated that in her job and as a part of the special events committee in Fulton, she can attest to the fact that people in this area are hungry for something to do. It may be because of covid or it could be attributable to the fact that there are very few venues that offer entertainment or recreational activity in this area. She thinks that this would be an asset to the community if Mr. Cox stands by his statements as to how he's going to operate the business. She also believes that this isn't intended to be a bar.

*Member LeoGrande* - Asked how he derived the hours of 11:30 and 1:00 for closing various nights. John Cox replied that the leagues that run weeknights can easily last to 10:30 or 11:00 and tournaments to be held on the weekends commonly run to 12 or 1 am because of the number of games players need to complete. He stated that generally the crowd subsides as the players finish, and that once the players are done, he plans to close up regardless of the time – keeping the business open to serve a few beers is not profitable or in his best interest.

Chairman Palmitease asked the members if they would benefit from additional time to render a decision, and that they have 60 days from the close of the Hearing to make a determination on the application. The members responded that they could vote tonight. The four criteria to demonstrate unnecessary hardship to be considered for Use variances was discussed as follows:

1.) Cannot realize a reasonable return, provided that the lack of return is substantial as demonstrated by competent financial evidence.

Member Strong claimed that several businesses that have moved in were open for very short periods of time which attests to the inability to operate a successful business at this location. The applicant has presented scenarios of events that he would not be able to host because of the limited hours imposed by the current Use Variance conditions. Member Stoya agreed that the facility has a developed exterior including large concrete patio, gazebo and landscaped/terraced grounds which are unusable because of the imposed conditions, she supports the removal of the conditions which would then allow the property to utilize the commercially developed areas and give the applicant the means to sustain and create a viable business. The abandonment of the property would ultimately create an eyesore in the neighborhood.

2.) Alleged hardship is unique and does not apply to a substantial portion of the district or neighborhood.

Property was commercially developed prior to the current Zoning District designation of R-1, which is a more restricted zone that allows for the construction of various styles of residential structures. As such, this property could be considered as unique or unlike others in the neighborhood.

3.) The request will not alter the essential character of the neighborhood.

Member Strong stated that the neighborhood has a golf course across the road and a bar on an adjacent property to the south, therefore it operates as the other businesses do within the neighborhood. The golf course is open early, has tournaments throughout the season, and offers midnight golfing hours; the bar (when open prior to covid) had outdoor sport activities/events, late hours, and live music – this business should be allowed to function similarly. She added that the area doesn't appear to be residential or within a residentially zoned district when passing through in a vehicle.

4.) Alleged hardship has not been self-created.

Chairman Palmitese stated that this criterion concerned him because the applicant should have done more research before committing funds to the development of his business. The property owners were wrong not to disclose the information of the conditions, which provides the foundation for action against them by the applicant, but doesn't alleviate the burden of proof required by this criterion. Some other members of the Board voiced the opposite opinion – that it wasn't the applicant's error and therefore not self-created by him.

New conditions were formulated to allow outdoor events and establish hours thereof, allow for outdoor music, extend the hours of normal business operations inside on weekday and weekend nights, extend morning hours for special indoor events, and limit the number of special events held. Chairman Palmitese allowed Mr. Waugh (adjacent property owner to the north) to speak, he cautioned the board about allowing the outdoor music because of the inability to enforce the volume level as well as the precedent it could set for other business uses.

Chairman Palmitese stated that he didn't want to make a hasty decision in light of the impactful changes to the usage that are being requested, and perhaps time to further investigate the merits of the criteria and property usage would be beneficial to reaching a determination. The Board Members countered that they were ready and that time wouldn't change their perspective or vote.

Without further discussion, a **motion** was **moved** by Chairman Palmitese to grant revised conditions of use and allow inside billiards to Use Variance #2018-03. The **motion** was seconded by Member Parkhurst, without further discussion, a vote was taken and the **motion carried**.

**Resolution # 2022-01**

*BE IT RESOLVED, by the Zoning Board of Appeals for the Town of Granby, upon the facts presented and the determination made, that the requested Modifications to conditions of Use Variance **Resolution 2018-03** and continued usage as a restaurant and banquet facility with billiards on property located at 2107 State Route 48, Fulton, NY 13069 Tax Map #201.20-01-04 is hereby **GRANTED** with the following express condition:*

- 1.) *Standard Hours of Operation: Sunday thru Thursday from 11:00 am to 11:30 pm, and Friday and Saturday from 10:00 am to 1:00 am.*
- 2.) *Indoor Special Events: Tournaments; allowed to open at 8:30 am. Special Events limited to (10) ten per year.*
- 3.) *All doors of structure to remain closed at all times.*
- 4.) *Inside music limited to jukebox and DJ, no bands or live music.*
- 5.) *Allowing the use of outside gazebo for ceremonies and pictures only.*
- 6.) *Allowing for outside events such as weddings and banquets between 11:00 am and 8:00 pm on concrete patio only.*

- 7.) *Outside music limited to jukebox and DJ for special events only from 11:00 am to 8:00 pm; and at a reasonable volume in consideration of the neighbors.*
- 8.) *No outside concerts, bands or live music performances allowed.*
- 9.) *Allowing for future bar/liquor use in accordance with NYS Laws.*

A vote was taken:

Tyler Palmitese, Chairman	Naye
Peter LeoGrande, Member	Aye
Linda Parkhurst, Member	Aye
Mallori Stoia, Member	Aye
Melanie Strong, Member	Aye

4 AYES 1 NAYE 0 ABSTENTIONS – **Application APPROVED.**

#### **ADJOURN**

With no other business before the Board a **motion** to adjourn at 8:45 pm was **moved** by Member Parkhurst and seconded by Member Stoia, all were in favor and the **motion carried.**

Respectfully submitted by:

  
Lisa Somers, ZBA secretary