

Continued testimony of the extended Public Hearing of the Town of Union Planning Board held relative to a revision of a special use permit for a tavern prohibiting outdoor amplified music at the Fairways Indoor Golf Company, located at 511 Hooper Road, on April 11, 2023, at 7:03 p.m.

PRESENT: Members present: L. Miller
M. Jaros
S. McLain
T. Crowley
C. Bullock
N. Sarpolis
G. Ksenak

Others present: Marina Lane
Alan Pope
Blake Hickey
Chris Brown
John Miller
Adam Fishel
Phil Bartkovich
Muammar Hermanstyne
Rich Linder
Michael Pisani
Anthony Hranek
Robert Potochniak

MS. MILLER: We will reopen the Public Hearing, and I will read the public notice.

The Town of Union Planning Board opened a public hearing on March 14, 2023, to consider revising the stipulations of approval for a special use permit for a tavern. The proposed revision is to prohibit outdoor amplified music at the Fairways Indoor Golf Company, located in the multi-tenant commercial plaza at 511 Hooper Road (Tax Map #142.13-1-12). The property is zoned Neighborhood Commercial, and outdoor entertainment is not a permitted, nor special permitted, use.

The public hearing has been extended for any additional comments through to the regularly scheduled Planning Board meeting on Tuesday, April 11, 2023, at 7:00 PM in the Town Board Meeting Room on the second floor of the Town of Union Office Building located at 3111 East Main Street, Endwell, New York. The project information is available for review in the Town of Union Planning Department during normal business hours (M-F, 8 AM to 4 PM).

Individuals with special needs requiring accommodations may contact the Planning Department at (607) 786-2926 at least 24 hours prior to the scheduled public hearing. Lisa B. Miller, Planning Board Chair

MS. MILLER: Does anyone have any comments or questions?

MR. BROWN: My name is Chris Brown and we just had some conversation or comments to make in terms of how the process works in terms of the staff recommendations, whenever we get to that point.

MS. MILLER: Okay.

MS. LANE: I was wondering if you want me to read that report, not the stipulations, but just the summary of the report as part of that public hearing. Then Chris could ask questions as part of that public hearing. What do you think?

MR. BROWN: Yes.

MS. LANE: “On May 11, 2021, the Town of Union Planning Board approved the special use permit for a tavern with an accessory simulated golf facility at 511 Hooper Road, with stipulations. The tavern is in an existing multi-tenant commercial building located in a Neighborhood Commercial zoning district, and the tavern use is permitted only by special use permit. Special use permits allow uses that may not be desirable in all areas of a zoning district, and are subject to requirements designed to assure that the proposed use is in harmony with the zoning law and the use will not adversely affect the neighborhood if the requirements are met.

Stipulations of the 2021 special use permit prohibited cooking and seating outdoors. Owners of the business, Chad Kies and Chris Brown, submitted an application in June 2022 for a revised special use permit and site plan to install a 1,000 square-foot outdoor seating area under a 1,200 square-foot canopy attached to the west end of the building, and an accessory grill for occasional use at the rear of the property at 511 Hooper Road.

On July 26, 2022, the Planning Board approved the revision to the special use permit for the tavern at 511 Hooper Road to include outdoor seating under the canopy and outdoor cooking with stipulations, including that amendments or revisions to an approved special use permit require review and approval in accordance with § 300-66.10.

Town of Union Board members, Code Enforcement and the Planning Department have received a number of complaints from residents about noise from events on site when amplified bands play at the garage door entrance. Special use permit approval did not include outdoor musical entertainment. Outdoor entertainment venues are not a permitted use in Neighborhood Commercial zoning districts.

The Town Planning Board has extended the public hearing begun on March 14, 2023, through April 11, 2023, to revise the original stipulations of special use permit approval for a tavern at Fairways Indoor Golf Co. to add a stipulation prohibiting outdoor amplified

music, per the Town Code § 300-21.3, Table 21-2, Permitted and Specially Permitted Uses in commercial zoning districts.

Per § 300-66.7, the Planning Board shall consider and make findings that the use will be compatible with existing uses adjacent to and near the property; will not alter the essential character of the neighborhood nor be detrimental to the neighborhood residents; and will not otherwise be detrimental to the public convenience and welfare.

Per § 300-66.8A., the Planning Board may impose such conditions upon the premises benefited by a special use permit as may be necessary to prevent or minimize adverse effects upon other property in the neighborhood, including limitations on the time period for which the permit is granted.

§ 300-66.8B states that such conditions shall be expressly set forth in the motion authorizing the special use permit.

Under the requirements of Section 617.7(c), the proposed action was determined in 2022 to be a Type II Action as the proposal involves less than 4,000 square-feet. A 239-review was also completed in 2022, and following consultation with the Broome County Planning Department, further review under GML § 239-l and -m for the current revision is not warranted as the proposal is to limit activity, versus an expansion or change of action.”

MR. BROWN: So, thanks. We certainly feel that what we do there is certainly not detrimental to the public convenience or welfare. Going through these hearings and meeting with the Board, we just feel that some of the recommendations might be a little bit over burdensome or unnecessary. So how do the recommendations actually play into making the final decision for you guys?

MS. LANE: So normally what happens is that I will read through the recommendations. The Planning Board members are not shy about making suggestions for changes, and we also are perfectly willing to work with the applicant, right now. So we will keep the public hearing open for this part, I guess.

MS. MILLER: For you to read the recommendations?

MR. BROWN: So, I guess the first recommendation is really one of the biggest problems that we have. Obviously at these hearings we did not hear from anyone from the public about the level of the noise. In that regard, that first recommendation essentially says and mandates that, if we have music at our facility, the garage door which we put in would have to remain closed. We obviously understand that we will not be having any amplified music outdoors. But going forward, closing that garage door, if for example, we put the band in back of the facility, we just think it will be a little bit over-burdensome and will kind of frustrate the purpose of our business in the sense that that door opens up the

facility for people to walk through and enjoy the evening whether it is eating, drinking or dancing.

MS. LANE: Let me address that. I happened to be there Friday night.

MR. BROWN: Okay.

MS. LANE: I don't know if you heard about bagpipers. We did not play, but one of the members of our band was having a birthday, and one of our former members played in the band that played there. We left because it was so loud. Three times I asked the sound guy to lower that music. So that experience makes me concerned about what you are suggesting. They did not lower the volume of the music; it was painful. We went back to one of the golf simulators just to try to get around the corner from them.

MR. BROWN: Was the garage door opened or closed?

MS. LANE: No, it was closed. But I am saying that the music was so loud, the band was not respectful or responsive to our request, and I can just picture that happening when the garage doors are open.

MR. BROWN: Well, I think, Marina, it might be a little bit different experience. Obviously I don't control what the band does on a given night; unfortunately I wasn't there. But with the garage doors being closed, I think that might be a different conversation to have in regards to how loud the music is indoors that evening.

MS. LANE: I think you need to have that conversation anyway.

MR. BROWN: Yes, we certainly will. But to get back to the point of the staff recommendation though, which would be that we can hopefully continue some events where we can barbecue and people can enjoy the bands. Our plan going forward would be to put the band in the back and make sure that their decibel reading would be at an acceptable volume. I did chat with Alan Pope a little bit about this. I believe there is some kind of general rule about how acceptable the decibel level can be. We are willing to even install a decibel reading device, which we could show you. We will do whatever we need to do to make sure, and to be able to prove to all of you guys, that the music is not too loud. We can make sure that bands that are invited to our facility will certainly respect that. Again, it sounds like this band on Friday was having a great time.

MS. LANE: Yes, it was a rock band.

MR. BROWN: Yes, it's a rock band, but that wasn't on my radar to make sure that the indoor music on Friday was at an acceptable level.

MS. LANE: Here is my concern about that. First of all, you know I really had a great time when I went in September. I went back by the barbecue, Chad was grilling, I walked back there; I didn't go past the Dunkin Donuts, but even by where the barbecue was, it did not sound really loud to me.

MR. BROWN: Correct.

MS. LANE: We had that issue before at Pines at the Pavilion, where maybe at the edge of the property the music didn't seem that loud, but it was up the hill in the subdivision where all the people were complaining. So, that's just my concern.

MR. BROWN: Again, I really wish that maybe at least one of those people showed up to say, "Hey guys, this is where I live," to say that the music was too loud, or maybe to say at this time of night the music was too loud. One thing that we are definitely going to do is to make sure that the music is off by 9:59 p.m. That is the first thing that we are going to do. And the second thing is that we are looking at a decibel issue. But again, just the fact that no one was able to come either tonight or last time, or even to send me an email to say, "Hey, it was just too loud," or "here is what my experience was like." Because obviously we can't read their minds or know what they are thinking. In addition, just like any business has, we know that we have two or three guys that just don't like us for whatever reason. We have an inclination, but obviously no proof, that they are the ones who are calling. We just want to make sure that we don't get punished because one or two people just don't want music there or it seems that way.

MS. LANE: It wasn't one or two.

MR. BROWN: Okay.

MS. LANE: So, here is an email that Mr. Materese received last year. "Dear Mr. Materese, last night Fairway's Indoor Golf in the plaza at Hooper and Country Club Road held its first 'Party on the Patio.' We live a block away and had to close all of our windows and turn up the volume to hear our television. That was tolerable for a while, but when we tried to go to sleep at 9:30 it was impossible to fall asleep with the music still blaring. I hate to sound like an old grump, but I think of my neighbors, too. There are a few children under 5, an infant, a group home and an elderly gentleman on our block alone (Ms. Lane explained, "that's Patterson, which is the next street over"). There are other residential areas all within a block of the venue. I appreciate a new business in the town and I realize we're a block from a commercial area, but the noise shouldn't be allowed to infringe on

the nearby neighborhoods. Is there a noise ordinance in place? Did the business owner obtain a variance? Can the volume be controlled if future events are held? I noted that Friday night concerts are planned through the end of September. The music eventually ended around 10:30, thank goodness, but earlier with less volume would be better.”

So, that is when I got together with you and Chad and we said, okay, because you had planned and already advertised, we were going to be nice and let you get the special use permit through the Code Enforcement office. At that point, Mr. Materese wrote back to this person and said, “Code and Planning will be meeting with them.”

Then, on September 27th, Mr. Materese received another email from the resident; “Just an update to let you know that this past Friday night's show at Fairways Golf was the loudest yet and didn't end until close to 10:30 p.m. It's an inconvenience to us as we're unable to go to sleep or hear our television clearly until after the concerts end. That's with windows closed. It's much harder on neighbors who try to put their 5-year-olds in bed at 8 p.m. I checked with town code enforcement today and was told the permit is good until the end of September and that there was no current application to extend it. I highly recommend that there be no similar permit extended this year or reissued in 2023.”

Then that person wrote us again when they saw you starting work on the nice stone work that you are doing, which is very nice, with concerns that you were ramping up to start it again. And that is what prompted this.

Town Board members received phone calls. One is Heather Staley, a former Town Board member. Her email to us said that she had gotten three phone calls just that day. That is what people tend to do; they tend to call their representative.

MR. BROWN: Yes and we understand that. I think working as a team, hopefully with the decibel meter we can install, hopefully we can make sure that they are taken care of. We are very serious in saying that we are going to work and do whatever we need to do to make sure that the volume isn't too loud so they are not impacted.

MS. LANE: So let's go to the next one, and then after the public hearing is closed, we can have a brief discussion.

MR. BROWN: So, the next one was the outdoor seating with the canopy. In that regard, it is a private lot; our landlord is here. What we did to just be

able to accommodate the amount of people we had, we just installed a temporary fence to keep them enclosed. So just in regards to that recommendation, we would still like to do that. We will certainly make sure that any and all transportation will not be blocked; no businesses will be blocked. Obviously, we will not eliminate the ability for emergency services to get to through that pathway.

MS. LANE: There is another concern about that. When we went there Friday night, there was a question raised by someone who works in Code Enforcement about the number of egresses. Now, I know that you are talking about outside.

MR. BROWN: Correct.

MS. LANE: So, you don't have someone monitoring what your capacity is outside, versus inside. You have a maximum capacity in the building of 99, I think. Do you have enough restrooms to handle all those people per the Code? Do you have the necessary egress? I have asked Code Enforcement; it is not my area of expertise at all. But I did ask Code Enforcement, and he thought that you talked about removing the golf cart that was on display in the front, covering up an exit. Do you remember that?

MR. BROWN: Correct. And we did do that.

MS. LANE: So you did do that?

MR. BROWN: So, technically, in the back right, which you can't really see unless you are back there, there is an emergency exit.

MS. LANE: In the back right of the facility but facing the pub?

MR. BROWN: So that would be right through where the golf cart was. That would be the second egress.

MS. LANE: So it's there. Great. The more seats you have, it changes your capacity and bathroom requirements.

MR. BROWN: So we haven't heard anything about bathroom requirements yet. We didn't think that was an issue. If it is an issue, we can certainly fix that.

MS. LANE: It's a code enforcement requirement, so I hesitate to have the Planning Board agree to that right now, because I would want to consult with Code Enforcement.

MR. BROWN: Of course. But that is something that we can deal with very quickly.

- MS. LANE: I think it is a building code issue. Is that all of your questions for the moment?
- MR. BROWN: Yes, so again, it was really just those two recommendations that we felt were over burdensome, given the business.
- MS. MILLER: Any questions?
- MR. SARPOLIS: Mr. Pope, he mentioned a decibel number. Is there a number in Town code that is written out in terms of the decibel limit for outdoor entertainment?
- MR. POPE: Yes, there is a maximum decibel code for the Town of Union. The problem that everybody runs into, every municipality, including the Town of Union, as Marina mentioned for Country Pines, is how you measure it. And if there's a violation, let's say there is an excess of noise, how do you get Code there in time to measure it in comparison to the complaints from the neighbors. It's almost impossible, really. But I was mentioning to Chris a couple of weeks ago, that we have a client that installed a decibel reader that goes as an app to your phone. So when there was an excess decibel reading, the owners got an instant message and they called the tenants. It is not really the same application as here. So, that is just new technology that allows if a party gets out of hand, the landlord got a notice and they called the tenants to calm it down. Here, I don't know whether that technology would work. On that one that we had with the landlord and tenant, it was with an app, so Code Enforcement got the same notice. It was self-reporting. I mentioned that to Chris; I don't know if that is something that he would want to do. And it is after hours so it is a real difficult issue of how you monitor that in a way that keeps it below the limits. Right now 90 decibels is the Town Code; 90 decibels is pretty high.
- MS. LANE: Sixty decibels is what comes to my mind. But also there is a clause in that Code that pertains to whether it is adjacent to a residential district.
- MR. POPE: I can go back and take a look at it.
- MR. CROWLEY: Alan, there was a company years ago that was trying to put in a go cart track down here, and one of the things that kept coming up was how do you calibrate the noise, how often should it be calibrated, and who has control. At that time they said that the Sheriff's Department would take care of it and the Sheriff's Department said no, we are not going to be responsible for that calibration. When it gets into the decibels like that, through the years that I have been on the Board, it's always been an issue. It has never been a clear cut issue in the end.

In fact, some of the projects that started never continued because of the noise factor.

MR. POPE: Yes, it is very difficult. We typically measure from the perimeter of the property. Here, it is a multi-use plaza, so you have to decide if you are going to impose some kind of decibel reading, where does it get imposed. Is it the perimeter of the property?

MR. KSENAK: There are standards. I have some experience in industry. First, you have to model and utilize the background noise. Because you have commercial traffic in the area, it is generally acceptable at 65 decibels. Then you would get your background noise, and then you could test just conversation at your plaza or your place of business against the walls for echoing. Also with amplified music, in industry, anything over 80 d.b.a., you have to wear hearing protection. So if you were to go up to 90 or 100 d.b.a., unless you had some sound absorbing materials on the outside walls, it would be tough to...

MR. SARPOLIS: Chris, last year when the complaints came in, was the amplified music actually outside?

MR. BROWN: It was. Not every night, but multiple nights, just the way the band set it up for the people outside, they put these really big speakers outside.

MR. SARPOLIS: So since then, have we tested a period where we limit it to inside but we allow the garage door to be open? If they were outside, the sound is going to carry pretty far outside.

MR. BROWN: I spent a lot of time outside, like Marina was saying, and I spend most of my time about 50 yards, not even, 40 yards, to the right of the grill. And even at the grill, it was like this; you could hear the sound of the music but it wasn't very loud.

MS. LANE: You could talk very comfortably.

MR. BROWN: So it never even dawned on me that the music was too loud and that was with the speakers outside. But I really feel with the appropriate game plan with the band inside and the speakers in the back right corner, this could be resolved. I truly believe that.

MR. SARPOLIS: You can probably test this; sound is very directional. If they are inside and they are not facing the exit, then that should provide a good...

MR. BROWN: I agree.

MR. SARPOLIS: Does anybody else have any thoughts?

- MS. LANE: I don't know because I am not a musician who plays with amplifiers. I don't know how it works with these bands, but as I mentioned Friday night, the sound guy was running around with a little tablet, checking everything, so I assume he is the sound guy. I would think that the amplifiers are set at a particular decibel or megahertz, however they are measuring it. I would be curious to know, can you as the business owner, or John as the property owner, have a contract with a band that they will not set their amplifiers above a certain decibel?
- MR. BROWN: I think that is very doable. I don't know the details, but I think right within the contracts that we sign with the radio station that we use, Equinox, that wording can be put in there. We will make sure that they abide by it, as well. I think that's very doable.
- MR. JAROS: Chris, can I ask you a quick question? Since the bands in September played later in the evening, what is your time span from start to finish, if this were to go forward?
- MR. BROWN: We are looking at a 7 p.m. start and a 9:59 p.m. hard stop. We don't care what you are doing; if you are in the middle of a song, that's when you have to stop.
- MS. MILLER: How many days a week?
- MR. BROWN: One day a week, Friday nights. Maybe some Saturdays.
- MR. CROWLEY: I want to see everything in writing, so that I can understand what I will be voting on.
- MS. MILLER: Does the public have any more questions? No. We will close the public hearing at 7:30.

Public Hearing concluded: 7:30 p.m.

I, CAROL M. KRAWCZYK, do hereby certify that the foregoing transcript of a Public Hearing of the Town of Union Planning Board is a true, accurate, and complete transcript of my stenographic notes/tape taken at the above time and place.

CAROL M. KRAWCZYK