

TOWN OF HILTON HEAD ISLAND
Board of Zoning Appeals
Minutes of the Monday, April 27, 2009 Meeting
2:30pm – Benjamin M. Racusin Council Chambers

APPROVED

Board Members Present: Chairman Jim Collett, Vice Chairman Charles Raley,
Alan Brenner, Roger DeCaigny, Rita Jones and Robert Sharp

Board Members Absent: David D’Amico, Excused

Council Members Present: Bill Ferguson

Town Staff Present: Nicole Dixon, Planner; Anne Cyran, Planner
Jayme Lopko, Senior Planner & Board Coordinator
Brian Hulbert, Staff Attorney
Heather Colin, Development Review Administrator
Kathleen Carlin, Administrative Assistant

I CALL TO ORDER

II ROLL CALL

III APPROVAL OF THE AGENDA

Vice Chairman Raley made a **motion** to approve the agenda as presented. Ms. Jones **seconded** the motion and the motion **passed** with a vote of 5-0-0.

IV APPROVAL OF THE MINUTES

Ms. Jones made a **motion** to **approve** the minutes of the November 24, 2008 meeting as amended. Vice Chairman Raley **seconded** the motion and the motion **passed** with a vote of 5-0-0.

V UNFINISHED BUSINESS

None

VI NEW BUSINESS

PUBLIC HEARING

VAR090002: Request for a variance from LMO Sections 16-5-806C, Buffer Adjacent to OCRM Beachfront Baseline and 16-4-704, Forest Beach Neighborhood Character Overlay District Regulations. Michael Jukofsky with MAJ Enterprises Inc., on behalf of Russell & Lindsay Smith, is requesting a variance from buffer requirements to install a brick pool deck. The property is located at 9 Guscio Way, further identified as Parcel R550 015 00A 0090.

Ms. Nicole Dixon made the presentation on behalf of staff. Mr. Michael Jukofsky, of MAJ Enterprises Inc., is requesting a variance from buffer requirements to construct a pool deck made of brick pavers within the OCRM Beachfront Baseline buffer and FBNCOD buffer. The applicant wishes to extend their existing pool deck to allow for more deck space in the sunlight and to provide a path to connect to the boardwalk to the beach. The applicant claims

that the surrounding properties all have some form of encroachment or disturbance within the OCRM Beachfront Baseline buffer, either by pool or pool deck installation, by block walls or grass ground cover.

The applicant is requesting a variance from Land Management Ordinance (LMO) Section 16-5-806C, Buffer Adjacent to OCRM Beachfront Baseline, which requires a 20 foot minimum and 40 foot average buffer adjacent to the OCRM Beachfront Baseline, and Section 16-4-704, Forest Beach Neighborhood Character Overlay District Regulations (FBNCOD), which requires a 16.7 foot buffer from the rear property line (10% of the lot depth). Because this is a single family residence, the applicant is not required to meet the 40 foot average buffer adjacent to the OCRM Beachfront Baseline, only the minimum, pursuant to Section 16-3-302D7.

The applicant is requesting a variance from buffer requirements to install a pool deck made of brick pavers within a portion of the OCRM Beachfront Baseline buffer and the FBNCOD adjacent use buffer. The house was constructed in 2005. The site plan and the landscape plan associated with the building permit for the house showed the rear buffer as a “natural area”.

The staff was notified in February 2009 that the property owner was doing work in the buffer without a permit from the Town. Upon doing a site visit, staff informed the workers on site to stop work because they were working within the OCRM Beachfront Baseline buffer. The staff had a conversation with Mr. Jukofsky and explained why they couldn't put brick pavers in the OCRM Beachfront Baseline buffer.

The staff sent the property owner and Mr. Jukofsky a notice of violation on February 18, 2009. Mr. Jukofsky was also issued two citations from the Town's Code Enforcement staff. The violation letter explained that a stop work order had been given and that it was a violation of the LMO to remove the sod from the OCRM Beachfront Baseline buffer and replace it with brick pavers. The approved site plan shows the buffer as a “natural area”. The property owner was given the choice to either replant the buffer with acceptable ground cover materials or apply for a variance.

The applicant decided to apply for a variance to be able to continue with constructing the pool deck made of brick pavers within the OCRM Beachfront Baseline buffer. When reviewing the variance application, staff realized that the applicant also needed a variance from the FBNCOD buffer regulations.

Ms. Dixon reviewed the Summary of Facts and Conclusions of Law. The applicant has failed to meet all of the six required criteria. The Board discussed the staff's recommendation to require the installation of native plant materials in the OCRM buffer (instead of replacing the sod.)

Ms. Dixon stated that the staff has received several letters and several phone calls from concerned neighbors in opposition to the variance request. At the completion of the staff's presentation and discussion by the Board, Chairman Collett requested that the applicant make his presentation.

The applicant, Mr. Michael Jukofsky, with MAJ Enterprises, Inc., presented statements in support of the application. The applicant presented several photographs of the property and neighboring properties. The applicant stated that the construction into the OCRM buffer was done in error. The applicant claimed that several of the surrounding properties have some form of encroachment or disturbance within the OCRM Beachfront Baseline buffer, either by pool or pool deck installation, by block walls or grass ground cover. The applicant apologized for the error and stated that they have paid the required fine. The applicant respectfully requested that the Board grant the application for variance from buffer requirements to install a brick pool deck.

The Board and the applicant discussed the history of the project. The Board reported concern with the applicant's inability to meet the six required criteria for approval of the application. At the completion of the discussion, Chairman Collett requested public comments and the following were received: Mr. Chris (unintelligible last name), Ms. Beverly Thompson, Mr. Jim Drahiem, and Mr. Philip Moyer all presented statements in opposition to the variance. Chester C. Williams, Esq., also presented statements in opposition to the variance. At the completion of the discussion, Chairman Collett requested that a motion be made.

Ms. Jones made a motion to **deny** Application for Variance, VAR090002, based on the Findings of Fact and Conclusions of Law contained in the staff's report. In addition, the OCRM buffer area is to be re-vegetated with native materials instead of sod in accordance with the LMO and Comprehensive Plan. Mr. DeCaigny **seconded** the motion and the motion **passed** with a vote of 5-0-0.

PUBLIC HEARING

SER090001: Angela Adams, on behalf of Walis Parra, is requesting a Special Exception for a pool hall, which is classified as Indoor Entertainment, in the Commercial Center (CC) district. The property is located at 2 Southwood Park Drive (Suite C), further identified as Parcel R510 008 000 223A.

Ms. Anne Cyran made the presentation on behalf of staff. The applicant proposes to open a pool hall, classified as an indoor recreation use, in the Commercial Center (CC) zoning district. The Town of Hilton Head Island Land Management Ordinance (LMO) Section 16-4-1104, Use Table, states that a special exception is required for an indoor recreation use in the CC zoning district.

The subject parcel is located at 2 Southwood Park Drive in the Commercial Center (CC) zoning district. Ms. Cyran presented a vicinity map of the property. The parcel is bounded by William Hilton Parkway and Southwood Park Drive on the north; offices and a thrift store on the east; Sandalwood Terrace on the south; and an undeveloped parcel on the west. The other tenants in the shopping center are a restaurant, an auto parts store and a money wiring service. A chain link fence on the property line separates 2 Southwood Park Drive from Sandalwood Terrace.

In early February 2009, the applicant asked Community Development staff about opening a bar and pool hall in the 2 Southwood Park Drive center. The applicant was informed that a bar was not a permitted use but that a pool hall could be permitted with a special exception per LMO Section 16-4-1104.

Per this section of the LMO, a bar is permitted in the CC zoning district if it meets the conditions in LMO Section 16-4-1239, Nightclub or Bar. One of these conditions is that the proposed bar is not located within 200 feet of any existing residential district. Sandalwood Terrace, a multi-family housing development zoned as a Moderate to High Density Residential District (RM-12), is adjacent to 2 Southwood Park Drive. Therefore, a bar cannot be located at 2 Southwood Park Drive because it would not meet the separation requirements from an existing residential district.

LMO Section 16-10-201, Defined Terms, defines a bar as a facility that sells alcoholic beverages for consumption on the premises, and where the dominant source of revenue is from alcohol sales. To meet the conditions of the LMO, the pool hall's alcohol sales cannot be the dominant source of its revenue. The applicant understands these restrictions and agrees that the proposed use would be a pool hall that serves alcohol as opposed to a bar and pool hall.

There are ongoing parking problems at 2 Southwood Park Drive; parking overflows into medians and in the right-of-way from 11:30 AM to 2:00 PM on weekdays. Staff does not believe the pool hall would exacerbate the problem, however, because it will be open in the evening on weekdays and in the afternoon and evening on weekends.

Sandalwood Terrace, a multifamily housing development, is directly south of 2 Southwood Park Drive. To limit any possible disturbance to this neighborhood, the applicant has agreed to prohibit customers from using the back door (except in an emergency) to access the parking lot, which is adjacent to Sandalwood Terrace. This will limit customers' noise and smoke to the front of the building.

The staff recommended that if the Special Exception is granted, the Board attach the following conditions to their approval to ensure that this or any future indoor recreation use at 2 Southwood Park Drive does not have the characteristics of a bar, does not disturb the neighboring residential area, and does not create a greater parking problem:

1. The applicant shall provide a floor plan to Town staff demonstrating that 80 percent of customer space is dedicated to billiards; and
2. When the applicant renews his business license, he will provide a copy of the business's earnings to the LMO Official, who will ensure that alcohol sales do not exceed fifty percent of the business's total revenue; and
3. The business is not open before 2:00 PM on weekdays; and
4. The applicant does not allow customers to use the back door of the building (except in an emergency) to avoid disturbing the residents of Sandalwood Terrace; and
5. Any subsequent indoor recreation use at 2 Southwood Park Drive abides by the above conditions.

Ms. Cyran reviewed the Summary of Facts and Conclusions of Law. The application has met all six of the required criteria. The Board and the staff discussed the recommended conditions. The Board stated concern with the Town's ability to monitor the majority of business sales coming from pool tables rather than alcohol sales. The Board and staff also discussed the business license and security needs of the neighborhood.

Brian Hulbert, Staff Attorney for the Town, presented statements in clarification of code enforcement and the Town's Public Nuisance Ordinance. The new law allows business licenses to be revoked by the Town if the police are repeatedly called for crimes or noise complaints. At the completion of the discussion, Chairman Collett requested that the applicant make his presentation.

The applicant, Ms. Angela Adams, Property Manager of Southwood Park, presented statements in support of the application. The applicant stated that she believed the business would be an asset to the area, and that it would not create problems for the neighboring community.

At the completion of the applicant's presentation, Chairman Collett requested public comments. The following residents of Sandalwood Terrance presented statements in opposition to the application: Mr. Randy Tanner, Ms. Gloria Moss, Mr. Elliott Sherrell, Ms. Patricia Purnell, and Ms. Cecil Bebo. A signed petition from other Sandalwood residents opposing the application is attached to the record.

Other representatives from groups that opposed the application were speakers from the local chapter of the NAACP and the Beaufort Housing Authority.

Citizen, Mr. Dan Ferguson presented statements in support of the application. This concluded all public statements on this application.

Mr. Gil Guillen, business partner with Mr. Walis Parra, also presented statements in support of the application. Mr. Guillen stated that he intends to operate a safe and law abiding business. The owners have agreed to comply with the Town's conditions for operation of the business. Mr. Guillen stated that he will hire private security guards if necessary. The Board and the applicant discussed the use and the intent of this business.

The Board discussed whether it can prevent the business from operating since it is entirely allowed under the Comprehensive Plan and the LMO. It has a lawful right to operate subject to the Town's conditions.

The Board cannot prevent a business from opening based on whether it will or will not have future problems. The business is subject to the Town's new nuisance laws and is subject to the business earning less than 50% of its income in alcohol sales.

Chairman Collett and several other Board members reported that they were concerned with community safety and noise as well as the enforcement plan. A couple of members reported concerned with the application being fully compliant with Criteria # 10 (regarding public health and safety).

Brian Hulbert, Esq., presented statements in clarification of the issues of safety and security. The Board and Mr. Hulbert discussed the issue of auditing the sales of liquor as needed.

Mr. Hulbert also reported that State law requires that a business must serve food when it serves alcohol. The Board stated that this issue needs to be researched further. The Board also reported the need to further research the issue of monitoring the percentage of alcohol

sales. Based on these needs, the Board stated that they do not have sufficient information to make a decision on this issue today.

The Town staff and Town attorney are to study whether the Town can legally limit the percentage of sales coming from alcohol. The Board would also like to look into other State requirements for a liquor permit including whether the pool hall must serve food. The staff and applicant need to determine the issue of food being served, the issue of 50% alcohol revenue, the liquor licensing standards that are being applied to this business, and the arrangements for seating. The Board requested that this information be provided in time for the May 18, 2009 meeting. At the completion of the discussion, Chairman Collett requested that a motion be made.

Vice Chairman Raley made a **motion** to **remand** this matter to the staff and the applicant to study whether the Town can legally limit the percentage of sales coming from alcohol. They should also research other State requirements for a liquor permit including whether the pool hall must serve food. The staff and applicant need to determine the issue of food being served, the issue of 50% alcohol revenue, the liquor licensing standards that are being applied to this business, and the arrangements that are being made for seating. This information is to be provided in time for the May 18, 2009 meeting. Mr. DeCaigny **seconded** the motion and the motion **passed** with a vote of 5-0-0.

VII STAFF REPORT

1. Ms. Heather Colin presented an update on amendments to the LMO.
2. Mrs. Jayme Lopko presented an update on pending litigation from BZA decisions.
3. Mrs. Jayme Lopko presented the Administrative Waivers report.
4. Mrs. Jayme Lopko discussed possible changes to the Rules of Procedure. The staff will draft the proposed revisions and present them at the May 18, 2009 meeting.

Chester C. Williams, Esq., presented statements in regard to the issue of an application being withdrawn.

IX ADJOURNMENT

The meeting was adjourned at 4:15pm.

Submitted By:

Approved By:

Kathleen A. Carlin
Administrative Assistant

James Collett
Chairman