

Board of Zoning Appeals  
Minutes  
December 5, 2017

I. Call to order

The regular meeting of the Board of Zoning Appeals was called to order on December 5, 2017 at 5:30 p.m. in the City Hall Conference Room, 1207 Palm Boulevard. Members present were Elizabeth Campsen, Pete Doherty, Glenn Thornburg, Carolyn Holscher and Arnold Karig; also secretary Douglas Kerr was present.

Mr. Kerr acknowledged that the meeting had been advertised in compliance with State law and the properties had been posted.

II. Approval of minutes

The next item on the agenda was the review of the minutes of the November 7, 2017 meeting. Ms. Holscher made a motion to approve the minutes and Mr. Thornburg seconded the motion. The vote was unanimous in favor of the motion.

III. Special Exception

Mr. Karig explained that the Board acted as a quasi-judicial body and all comments made were treated in the same manner as court testimony; therefore, any person who would like to speak to the Board should be sworn in. He then swore in all members of the audience that would be speaking.

**1012 Ocean Boulevard**

Mr. Kerr explained that the applicant was requesting a special exception to allow the outdoor sales of food and drink in the area of a proposed second level deck at a future restaurant at 1012 Ocean Boulevard.

He stated that the proposed area would be approximately 560 square feet (40'x15') located on the second floor of the proposed addition. The property is located in the GC2 zoning district and Section 5-4-38(5)(a) of the City's zoning code specifies the conditions of when the Board can approve the sale of food or beverage in the district.

He explained that the applicant claimed that the standards for the special exception will be satisfied by complying with all the underlying zoning criteria of setbacks, screening, loading and parking requirements. The applicant has stated on the application that the restaurant would be agreeable to imposing a limit to the hours of the day the outdoor area is used of 11am to 10pm on Sunday through Thursday and 11am to 11pm on Friday and Saturday.

Mr. Kerr read the pertinent zoning code sections, which is Section 5-4-38(5)(a):

Outdoor sale of food or beverage, in whole or in part, in the GC-2 district more than two hundred feet (200') seaward of the right-of-way of Ocean Boulevard is strictly prohibited. Outdoor sale of food or beverage, in whole or in part, in the GC-2 district within two hundred feet (200') seaward of the right-of-way of Ocean Boulevard is permitted only by special exception pursuant to section 5-4-5. Outdoor sale of food or beverage, in whole or in part, in the GC-3 district is permitted only by special exception pursuant to section 5-4-5. Outdoor sale or rental of other tangible personal property, in whole or in part, in the GC-2 and GC-3 districts is strictly prohibited. All activity associated with outdoor sale of food or beverage in the GC-2 and GC-3 districts must occur within the footprint of a permitted permanent structure. Any use of a mobile or temporary unit, including, but not limited to, food trucks, vehicles, trailers, and carts, is prohibited, except as provided in section(5)(c) and 5-4-38(5)(d).

Mr. Karig asked if the applicant had anything to add to what has been presented. The applicant, Mr. Daryl Cobb, explained that the only change is that the proposed footprint of the addition would be slightly narrower to account for the fire code requirements. He explained that the first floor of the addition would be heated and cooled, but the upstairs portion is proposed to be open.

Ms. Holscher asked if what is proposed would be considered permanent. Mr. Kerr answered, yes, that the structure would be permanent and would therefore comply with the provision in the code requiring that all outdoor sales be conducted from within permitted, permanent structures.

Ms. Holscher asked how many people would be outdoors at any one time. Mr. Cobb answered about 35 people.

Ms. Campsen asked if there were setback requirements for the GC2 district. Mr. Kerr answered that there was not a front or side setback required, but there was a maximum building line on the ocean side of the properties within GC2.

Mr. Karig asked how the downstairs area would relate to the upstairs area. Mr. Wyatt Durette, partner in the restaurant, explained that the downstairs would be closed in and the upstairs portion of the addition would be open with a stairwell connecting the two floors.

Ms. Campsen asked if there was a stairwell only and not an access that complied with the ADA requirements. Mr. Cobb answered that as long as the same services are offered in both areas, there does not need to be an ADA compliant access.

Mr. Campsen asked if there would be seated areas upstairs as well. Mr. Durette answered, yes, occasionally there would be tables and seats in this area.

Mr. Doherty asked if the proposed addition had parking requirement implications. Mr. Kerr answered that the GC2 district did not have parking requirements. He stated that he believed that the intention of the code was to not have a lot of curb cuts over the busy sidewalks creating conflicts with pedestrians and vehicles.

Ms. Campsen asked if the area of the addition is the area where the trash cans are currently stored. Mr. Brett Jones, co-owner of the restaurant, answered yes this was the area where the addition is proposed. Ms. Campsen asked what would happen to the trash cans. Mr. Jones answered that there would be an alcove remaining for can storage.

Mr. Karig explained that he was concerned with the amount of noise that could be produced from such an operation and the number of residential units around the area. He stated that he would therefore propose conditions limiting the time of use and prohibiting live music, amplified or not, as well as any other amplified devices including stereos, televisions, radios, and any other device that emits sounds.

Ms. Holscher asked if there was an intention of having live music in this area. Mr. Durette answered no.

Mr. Karig made a motion to approve the request under the following conditions: 1. That the hours of use of the outdoor space be limited to the hours suggested in the application, which are 11am to 10pm on Sunday through Thursday and 11am to 11pm on Friday and Saturday; and 2. That there be no live music, amplified or acoustic; and 3. That there be no electronic devices used to make sound or play music including stereos, televisions, radios, phonographs, PA systems, or any other electronic device intended to play music or amplify sound.

Mr. Thornburg seconded the motion and the vote was unanimous in favor of the motion.

#### IV. Miscellaneous business

Mr. Kerr stated that the only miscellaneous business he had was to establish a time to complete the state required continuing education for city boards and commissions. He stated that he would like to coordinate it with the Planning Commission, which is scheduled to meet on December 13<sup>th</sup>. The Board members indicated that this date would work for them.

#### V. Adjournment

With no other business, the meeting was adjourned at 6:10 PM.