



DEVELOPMENT SERVICES DEPARTMENT STAFF REPORT

Project Name: Steakhouse PepperTree Plaza

Hearing No. BA-04-2019

Applicant: Marco A. Dombrowski

Hearing Date: August 13, 2019

Project Location: 5650 West Sample Road

Board: Board of Adjustment

I. RECOMMENDATION:

APPROVAL

II. EXECUTIVE SUMMARY:

The petitioner is requesting permission to acquire a license to sell alcoholic beverages for consumption on the premises within 1,000 feet of a daycare center. The code prohibits any new establishment licensed to sell alcohol for consumption on the premises within 1,000 feet of a daycare center. Staff is recommending approval of the variance request to allow a new establishment licensed to sell alcohol for consumption on the premises based upon positive findings with respect to Section 2-78 of the Margate Zoning Code.

III. ANALYSIS:

1) Description.

The subject property has a land use designation of Transit Oriented Corridor, and a zoning designation of Transit Oriented Corridor-Gateway (TOC-G) zoning district. The subject property is an out parcel within the Peppertree Plaza formerly occupied as a Golden Coral restaurant with a license to sell alcoholic beverages for consumption on the premises at 5650 West Sample Road (exhibit 1). The building has since been vacated and available to be occupied by a new steakhouse restaurant.

Pursuant to Section 3.22(VIII), the code restricts the distance from an establishment that is licensed to sell liquor or beer and wine for the consumption on the premises within one thousand (1,000) feet of a house of worship or a public or private elementary, middle or high school, or child care center.

Currently, there is a newly constructed daycare center within 454 feet from the vacant building where the proposed steakhouse restaurant would like to occupy.

On January 23, 2018, the Development Review Committee provided a conditional approval of two new buildings in Peppertree Plaza, one of which is the daycare center. One of the conditions of approval was that the proposed daycare at the time could only occupy the new building if a variance was granted by the Board of Adjustment.

On March 20, 2018, the Board of Adjustment failed the motion to approve the variance request for the daycare with a 2-2 vote.

On May 16, 2018, the City Commission of the City of Margate granted the appeal by LSREF3 Peppertree, LLC of Public Hearing BA-03-2018 which was denied by the Board of Adjustment (Res No. 18-057).

Today, the petitioner is seeking relief from Section 3.22(VIII), the distance from an establishment that is licensed to sell liquor or beer and wine for the consumption on the premises within one thousand (1,000) feet of a house of worship or a public or private elementary, middle or high school, or child care center.



Exhibit 1: Location Map



2) Compliance with Zoning Code.

The intent of the above referenced code requirement is to protect sensitive land uses from the perceived ill effects which may spread through businesses licensed to sell alcoholic beverages for consumption on the premises. The use of alcohol sales and consumption is well established within this shopping plaza. Currently, there are about 6 restaurants in the shopping plaza which are licensed to sell alcohol for consumption on the premises. In 2018, the City Commission granted approval of a variance to allow the daycare within 1,000 feet of several establishments licensed to sell alcoholic beverages for consumption on the premises. This restaurant should not be hindered or be limited in the activity by a daycare center that has willingly located themselves within this environment.

Section 2-78 of the Margate Zoning Code provides that a decision to grant a variance by the Board of Adjustment must be in conformance with three specified criteria. Those criteria are as follows:

- 1) It shall be demonstrated that special conditions and circumstances exist which, if there is a literal and strict enforcement of the provisions of a zoning ordinance, would constitute a hardship or practical difficulty in the use of the property involved.**

The following statement by the applicant:

"The establishment at 5650 West Sample road is located within 1,000 feet of a daycare. Section 3.22 VIII of the Margate Zoning Code creates undue hardship on an applicant for a liquor license at a restaurant business to be located at this property. "

As result of the 2018 variance approval allowing the daycare center to be located within 1,000 feet of establishments licensed to sell alcoholic beverages (exhibit 2), a special condition and circumstance has been created within the Peppertree Plaza for any existing and future businesses licensed to sell alcoholic beverages for consumption on the premises. The subject property that was once allowed to operate as a restaurant licensed to sell alcoholic beverages for consumption on the premises is now prohibited by the literal and strict enforcement of the zoning ordinance. This special circumstance has created undue hardship and practical difficulty in the use of the property by creating a competitive disadvantage in the use of this building. The zoning ordinance should take into consideration any school, house of worship or daycare that has willing located themselves into a confined location that hosts multiple businesses licensed to sell alcoholic beverages for consumption on the premises to waive all distance restrictions to any and all future businesses licensed to sell alcoholic beverages for consumption on the premises.

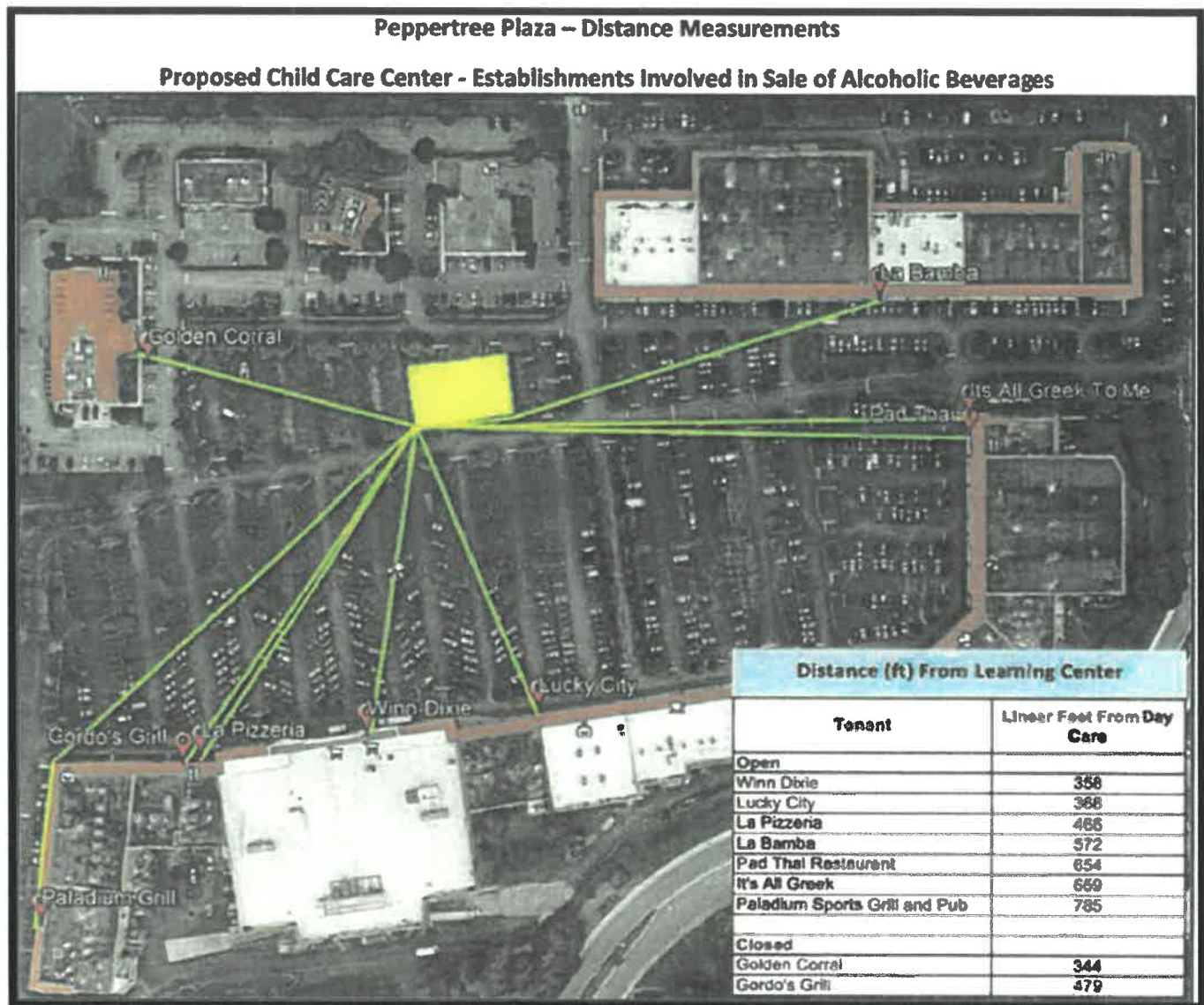


Exhibit 2: Distance Measurements

- 2) The board shall find that the granting of the variance will not be contrary to the public interest or the general purpose sought to be accomplished by the zoning ordinances.**

The following statement by the applicant:

"Granting the variance would not be contrary to the public interest due to the fact that this establishment previously served alcohol, and there are several other businesses that serve alcohol within the restricted 1,000 feet. The City Commission has previously granted permission to allow a child care center to be located at 5594 West Sample Road, which is within 344 feet of the property address. At the time of the original application to propose the daycare to be located in this proximity, there were seven open establishments involved in the sale of alcoholic beverages, and two closed, which includes the location at 5650 West Sample Road."

The variance application today is in conflict with the zoning code due to a daycare center in close proximity of the subject property pursuing a license to sell alcohol beverages for consumption on the premises within the Peppertree Plaza. However, the daycare center was granted the same variance request to be located within 1,000 feet of establishments licensed to sell alcohol beverages for the consumption on the premises. It is assumed that the approval by City Commission has deemed that allowing this particular daycare center to be located within those establishments not to be contrary to the public interest. In addition, the daycare has willingly located themselves into a confined location waiving all distance restrictions by the variance approval in 2018. Therefore, granting this variance would not be contrary to the public interest or the general purpose of the zoning ordinance.

- 3) In granting any variance, the board shall record in its minutes the circumstances and conditions constituting the hardship or practical difficulties upon which the variance is based.**

The following statement by the applicant:

"Section 3.22(VIII) prevents the establishment at 5650 West Sample Road from obtaining a liquor license, which creates practical difficulty to a potential buyer of this property for restaurant use. Strict enforcement of the provisions of this zoning ordinance creates a practical difficulty in a sale that would result in significant improvements to the property value as well as generate employment in the City of Margate."

Due to the 2018 variance approval for the daycare center within the Peppertree Plaza, this has created undue hardship and a competitive disadvantage for the new restaurant owner. The building located at 5650 West Sample Road is prohibited from exercising a previously established use to sell alcoholic beverages for consumption on the premises. The special conditions and circumstances created by this 2018 variance approval by City Commission has created unnecessary hardship which was not self-created by the petitioner. It is assumed that the approval by City Commission has deemed that allowing this particular daycare center to be located within those establishments not to be contrary to the public interest.

- 3) Consistency with Comprehensive Plan.**

The plan is silent on this matter.

4) Compatibility with surrounding area.

The use of alcohol sales and consumption is well established at this shopping center and the subject property was previously operating with an alcohol license. Therefore, it is compatible with surrounding area.

IV. RATIONALE:

Staff finds that a literal and strict enforcement of the provisions of the zoning code would create a hardship and practical use of the property for the new restaurant owner and property owner. In addition, staff finds that the granting of the variance would not create a nuisance or be contrary to the public interest. Staff recommends approval of this variance request based upon positive findings with respect to Section 2-78 of the Margate Zoning Code.



Robert Massarelli, AICP
Director of Economic Development Services