



City Commission

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REGULAR MEETING OF THE BOARD OF ADJUSTMENT MINUTES

Monday, August 7, 2017

6:01 PM

City of Margate
Municipal Building

PRESENT:

Chad Dangervil, Chair
Karl Artner, Vice Chair
Fred Schweitzer

ABSENT:

Julianne Lore, Secretary
Ruben Rivadeneira

ALSO PRESENT:

Douglas Gonzalez, City Attorney
Reddy Chitepu, Acting Director of Economic Development; Director of DEES
Andrew Pinney, Associate Planner
Andy Dietz, Associate Planner
Shalom Einhorn, owner, Mario The Baker

The regular meeting of the Board of Adjustment of the City of Margate, having been properly noticed, was called to order by Chair Chad Dangervil at 8:03 p.m. on Monday, August 7, 2017. The Pledge of Allegiance was recited, followed by a roll call of the Board members.

1A) APPROVAL OF THE MINUTES FROM THE JUNE 6, 2017 BOARD OF ADJUSTMENT MEETING

Mr. Schweitzer made the following motion, seconded by Mr. Dangervil:

MOTION: TO APPROVE AS WRITTEN

ROLL CALL: Mr. Schweitzer, Yes; Ms. Lore, Absent; Mr. Rivadeneira, Absent; Mr. Artner, Yes; Mr. Dangervil, Yes. The motion passed with a 3-0 vote.

1B) APPROVAL OF THE MINUTES FROM THE JULY 11, 2017 BOARD OF ADJUSTMENT MEETING

Mr. Schweitzer made the following motion, seconded by Mr. Dangervil:

Economic Development Department

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MOTION: TO APPROVE AS WRITTEN

ROLL CALL: Mr. Schweitzer, Yes; Ms. Lore, Absent; Mr. Rivadeneira, Absent; Mr. Artner, Yes; Mr. Dangervil, Yes. The motion passed with a 3-0 vote.

2) **NEW BUSINESS**

2A) **BA-15-17** VARIANCE REQUEST FOR PERMISSION TO HAVE A 2COP BEER AND WINE LICENSE AT MARIO THE BAKER LOCATED AT 1490 NORTH STATE ROAD 7.

All persons speaking on the item were duly sworn.

Andrew Pinney led with a PowerPoint presentation. He advised that this item was originally scheduled to be heard on July 11, 2017 but was rescheduled due to some conflicts. He referenced Section 3.22 (VIII) of the Code which stated, "No liquor license approval or beer and wine license approval for consumption on the premises shall be issued where the place of business designated in the application therefore is 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. The distance shall be measured from the main entrance or front door of such house of worship, school, or day care to the main entrance of such place of business in accordance with subsection IX." He showed a slide of the subject property noting that it was the former Hollywood Video. He said the applicant purchased the property and had it sub-divided into six tenant spaces, one of which the applicant built into Mario The Baker. He said the conflicting use for his alcohol application was Hebrew Academy, an elementary and middle school.

Mr. Pinney read aloud Section 3.22 (IX) of the Code, "The measuring distance shall be from the front door of one (1) establishment to the front door of the other establishment in determining the distances called for in this section and according to the following rules:

- 1) Distance will be the result of measured length along property lines abutting a street going across the street if necessary in any direction.
- 2) The starting point for the existing store location will be established by drawing a line at ninety (90) degrees with or to the nearest property line. The starting point for the proposed store or location for an alcoholic beverage license will be established by drawing a line at ninety (90) degrees with or to the nearest property line of that proposed location."

He showed a slide and explained the route taken by Community Development Officer Dan Topp when he reviewed the application. He said the measurement came in at 810 feet which was the walking distance prescribed by Code.

Mr. Pinney advised that there were currently alcohol licenses in existence in the Trizek Village Plaza. He showed a diagram of the plaza and pointed out the licensed locations; specifically, Saigon Cuisine, O'Malley's Bar, Sr.Ceviche (formerly El Zocalo), and Amvets Post (private). He called attention to the former El Zocalo location and advised that there was a previous variance approved for alcohol service on October 7, 2007, and it was done by a straight line measurement from the restaurant across the street to Hebrew Academy of 250 feet. He said Staff had recommended denial at the meeting, but a compromise was made with the

restauranteur to limit their hours until after 4:00 p.m. He said staff recommended approval of the variance before them based on the consideration given to El Zocalo and the close proximity of that restaurant to the petitioner's restaurant. He said the favorable recommendation also came with the same condition due to the historical presence of alcohol licenses on the property and its variance history. He said staff recommended approval subject to the condition that alcohol could not be served or sold before 4:00 p.m. on school days at Hebrew Academy.

Shalom Einhorn, 1490 North State Road 7, said they opened a restaurant and believed that wine and beer was a normal accompaniment to Italian food. He said their location was the farthest away from the entrance of the school and they were not visible from the school. He said City staff said they were 810 feet away from the school but he had another person take the measurements and they told him it was 960+ feet away. He said their business was not doing very well because it was so young and being able to serve beer and wine would help them to survive. He said their customers who ranged from 30 to 80 years of age have requested wine and beer. He said he did not understand why they should not be allowed to sell alcohol during the lunch hour.

Mr. Schweitzer made the following motion for discussion, seconded by Mr. Dangervil:

MOTION: TO ACCEPT

Mr. Artner said he had previously brought the subject up before the City Commission and the City Clerk and he had not received an answer on how to change the Code. He said he gave a theoretical example of a liquor store being opened in the rear parking lot of Margate Elementary School and it was over 1,000 feet using the same measurement method which meant it would not have had to come before the Board. He said he agreed with Mr. Arserio that we [City] rubbed stamped everything. He said he was absolutely against a liquor license across the street from an elementary school. He insisted that the 1,000 feet distance requirement in the Code needed to be met, adding that Margate was a family friendly city. He said he hoped his fellow Board members would agree with him.

Mr. Schweitzer said the reason he would consider approving it was because there was a restriction on it for sales after school hours when no students were at the school. He clarified that the request was for the sale of beer and wine versus liquor. He asked whether the 4:00 p.m. limitation would also apply to non-school days or whether it would be seven days a week.

Mr. Pinney responded that the intent was to maintain a separation between the school activity and the alcohol so it made sense during school days. Mr. Schweitzer said he was in favor of adding an exclusion for seven days a week so there would be no alcohol until after 4:00 p.m. seven days a week. Mr. Schweitzer made the following amendment, seconded by Mr. Artner:

AMENDMENT: TO ALLOW BEER AND WINE SALES SEVEN DAYS A WEEK AFTER 4:00 P.M.

Mr. Artner said he contacted Hebrew Academy and they did have activities after 4:00 p.m. occasionally.

Mr. Dangervil expressed a concern about changing the rules whereby other businesses would expect similar approvals. He asked what the hours of alcohol sales were for the other establishments in that shopping center. Mr. Pinney responded that Sr. Ceviche operated under El Zocalo's approval so they had the same 4:00 p.m. restriction. He said Saigon Cuisine and O'Malley's were beyond the 1,000 foot mark so they did not have the same restrictions.

Attorney Gonzalez suggested the Board vote on the amendment prior to further discussion on the item.

Mr. Einhorn commented that Hebrew Academy was a religious Jewish school that was closed on Friday afternoons and closed on Saturdays. He said the school was not visible from the restaurant. Mr. Dangervil stated that the issue was the distance as required by the Code.

ROLL CALL: Mr. Schweitzer, Yes; Ms. Lore, Absent; Mr. Rivadeneira, Absent;
Mr. Artner, Yes; Mr. Dangervil, Yes. The amendment passed with
a 3-0 vote.

Mr. Artner made the following amendment, seconded by Mr. Schweitzer for discussion:

SECOND
AMENDMENT: TO CHANGE TIME FROM 4:00 P.M. TO 6:00 P.M., SEVEN DAYS A
WEEK

Mr. Schweitzer commented that the other properties already had a 4:00 p.m. restriction. Attorney Gonzalez asked Mr. Pinney to again review the restriction previously put in place on the other property. Mr. Pinney explained that when El Zocalo came before the Board in 2007, staff had initially recommended denial of the application due to how close it was with a 250 foot measurement. He said the Board and the applicant went back and forth and reached an agreement that 4:00 p.m. would be a reasonable time to start alcohol service as the school would be vacant at that time. Mr. Pinney said that was the reason staff was recommending the same agreement that day.

ROLL CALL: Mr. Schweitzer, No; Ms. Lore, Absent; Mr. Rivadeneira, Absent;
Mr. Artner, Yes; Mr. Dangervil, No. The amendment failed with a
1-2 vote.

Mr. Artner asked the applicant what evidence he had to prove his hardship. Mr. Einhorn responded that the restaurant had been opened two and one-half months and they were struggling to pay the cook, pay for the food, and to pay the rent. He said many times he needed to bring in monies from home. He said the air conditioning recently broke and they had been closed the past three days because they did not have the \$12,000 to replace it. He said they were being asked whether they would be offering wine and beer, noting that most of their customers were 40-80 years of age. He said the school was closed by 4:00 p.m. on Friday and were closed on Saturday for the Sabbath. Mr. Artner said he had not presented anything to the Board to prove his hardship other than his word. Mr. Einhorn said that he could submit the income and expenses of the restaurant. Mr. Artner said he was all for businesses in Margate but there were certain rules to follow and rubber stamping every variance diluted the purpose of having the Code. Mr. Artner commented that selling a few glasses of wine or beer would not

get him out of the financial bind he was in. Mr. Einhorn said it was common for restaurants to sell wine and beer and it was only in Margate that they were given a hard time. He said they were a full Italian restaurant and serving wine and beer was normal. Mr. Artner agreed and pointed out that to Mr. Einhorn that he should have done the necessary research to learn that he was too close to the school before he put his business there. Mr. Einhorn said that he owned the entire plaza and if he had known before, he would not have invested one dollar. He said he was a general contractor and he worked in fancier places than Margate. He said Margate did want people to succeed; other places were easier to work with. He said he would put his property up for sale.

Richard Zucchini, 380-B Lakewood Circle East, said that putting a restaurant on the same playing field as a liquor store was highly restrictive and did not make sense. He said he would recommend a special exception and that by not allowing them from offering a brunch service on Sunday or allowing them to expand their business was restrictive.

Mr. Artner said he agreed with Mr. Zucchini, a member of the Planning and Zoning Board, and said that maybe the codes should be looked at. He said he had been trying for three months to get someone to look at the codes to see if they made sense but he does not get a response. He suggested it be picked up by the Planning and Zoning Board. Mr. Zucchini agreed that there were a number of issues with the code that should be looked at and he would recommend doing so. He said they were a Board that looked at people who were trying to create and continue businesses in the community. He asked that the Board take a stronger look at the request because they were serving food and not just liquor; they were not a bar or a liquor store.

Mr. Artner asked Mr. Zucchini where the line should be drawn. Mr. Zucchini responded that more work needed to be done to make a better distinction between alcohol and liquor service and that more consideration should be given to a restaurant.

Mr. Pinney, as a Point of Information, advised that the Code provided remedies such as a Board of Adjustment hearing to review individual applications to determine whether they should be approved or whether conditions needed to be imposed. He said any request within 1,000 foot would come before the Board for its opinion on whether it should be granted, and the Board would look at the individual merits of the application versus rubber stamping them.

In regards to the hardship, Mr. Pinney clarified that the Code indicated that it should not be due to financial hardship; rather, it should be due to something unique on the property. He said that was the reason he pointed out the existing license and the equitable use of land, thereby giving him the same opportunity as his neighbors. He said had the previous applications not been approved, the staff recommendation for this would have been different.

Mr. Pinney asked for clarification on whether the 4:00 p.m. restriction, seven days a week, included those times when the school was closed for some duration, i.e., winter, spring or summer breaks. He asked whether it made sense to link the restriction to the hours of operation for the school.

Mr. Dangervil asked Mr. Einhorn to provide their hours of operation. Mr. Einhorn replied that they were open daily from 11:00 a.m. to 10:00 p.m. and from 11:00 a.m. to 11:00 p.m. on weekends.

Mr. Artner asked how summer activities or summer school would be controlled. Mr. Pinney replied that the recommendation could be reworded to limit it to after 4:00 p.m. and anytime that Hebrew Academy was operational. Mr. Artner asked whether there was a schedule and how one would know they were operational. He said a lot of schools were not officially open during the summer yet they had summer programs. Mr. Pinney replied that it would be done through observation by the City's Code Enforcement division. He said it would either be the applicant's responsibility to obtain the schedule from the school or the City would have to provide the applicant with the schedule but it could become very complicated if there were short notice schedule changes and their schedules did not match and the applicant got fined. Mr. Einhorn said the school followed the Jewish calendar and it was very easy to know when it was the Sabbath and other Jewish holidays. He agreed the summer camp was different. Mr. Artner asked about after school events or events during school breaks. Mr. Einhorn said he would be in agreement with the 4:00 p.m. restriction but he would also like to be granted Saturday.

Mr. Schweitzer suggested leaving the amendment as it were and having him come back another time to consider exemptions for certain days of the week. Mr. Pinney advised that a decision given by the Board of Adjustment was final and there was a seven day within which an appeal could be filed with the Commission. Attorney Gonzalez concurred.

Mr. Schweitzer commented that this applicant should be treated the same as the others in that complex in regards to the 4:00 p.m. restriction. Mr. Artner asked whether the 4:00 p.m. restriction at the other restaurant in the complex, Sr. Ceviche (former El Zocalo), was for seven days a week. Mr. Pinney said the previous variance was for Monday through Friday. Mr. Artner said if the intent was to treat all the tenants the same, then it would not be fair for the applicant to have seven days a week. Mr. Artner asked if there were any restrictions for Saturday or Sunday at Sr. Ceviche. Mr. Pinney said he did not believe so. Attorney Gonzalez said the staff recommendation to restrict alcohol sales to after 4:00 p.m. on school days had been done based on what had been done in the past at another property and that was what was behind Mr. Pinney's belief that Sr. Ceviche's restriction was probably on school days.

Mr. Schweitzer made the following amendment, seconded by Mr. Artner:

THIRD
AMENDMENT: TO EXEMPT SATURDAY AND SUNDAY; TO ALLOW MONDAY
THROUGH FRIDAY AFTER 4:00 P.M. AND AFTER NOON
ON SATURDAY AND SUNDAY

ROLL CALL: Mr. Schweitzer, Yes; Ms. Lore, Absent; Mr. Rivadeneira, Absent;
Mr. Artner, Yes; Mr. Dangervil, Yes. The amendment passed with
a 3-0 vote.

Mr. Pinney indicated that he had been handed a copy of the meeting minutes from the 2007 meeting and the motion recorded was "to approve the petitioner's request with the stipulation

of no sale of beer, wine or liquor before 4:00 p.m." He said there was no mention of days or the week or any link to the school schedule.

Hearing this, Mr. Artner made the following amendment, seconded by Mr. Dangervil:

FOURTH

AMENDMENT: TO ALLOW SALES OF BEER AND WINE 365 DAYS A YEAR AFTER 4:00 P.M.

ROLL CALL

ON THE Mr. Schweitzer, Yes; Ms. Lore, Absent; Mr. Rivadeneira, Absent;
AMENDMENT: Mr. Artner, Yes; Mr. Dangervil, Yes. The amendment passed with a 3-0 vote.

Mr. Einhorn said it was a continuation of his big disappointment with the City of Margate. He said instead of going forward and helping businesses, the City did not want to take a risk. He said the City looked backwards instead of considering that something changed. He said he invested a lot of money to bring something new with quality to Margate, but the City did not want to take any chances and chose to stay in the past.

**ROLL CALL ON
THE ORIGINAL
MOTION**

AS AMENDED: Mr. Schweitzer, Yes; Ms. Lore, Absent; Mr. Rivadeneira, Absent; Mr. Artner, Yes; Mr. Dangervil, Yes., The motion as amended passed with a 3-0 vote.

Mr. Pinney asked Attorney Gonzalez whether it would be possible for the Board to reconsider the ten-year old variance from El Zocalo to allow Saturday-Sunday sales. Attorney Gonzalez said the right could not be taken away from them; the property owner would need to apply to do so and would need to follow the process.

3) **GENERAL DISCUSSION**

There was no discussion.

There being no further business, the meeting was adjourned at 8:50 p.m.

Respectfully submitted,

Prepared by Rita Rodi

Chad Dangervil, Chair