



**SPECIAL MEETING OF  
THE BOARD OF ADJUSTMENT  
MINUTES**

**Tuesday, March 20, 2018**

**6:30 PM**

City of Margate  
Municipal Building

**PRESENT:**

Chad Dangervil, Chair  
Karl Artner, Vice Chair  
Fred Schweitzer  
Patrick Laffey

**ABSENT:**

Julianne Lore, Secretary

**ALSO PRESENT:**

Shana Bridgeman, Interim Assistant Attorney, Law Offices of Goren, Cherof,  
Doody & Erzol, P.A.  
Reddy Chitepu, Acting Director of Economic Development and Director of D.E.E.S  
Andrew Pinney, Senior Planner  
Steve Wherry, Greenspoon Marder Law

The special meeting of the Board of Adjustment of the City of Margate, having been properly noticed, was called to order by Chair Chad Dangervil at 6:30 p.m. on Tuesday, March 20, 2018. The Pledge of Allegiance was recited followed by a roll call of the Board members.

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Interim Assistant City Attorney Shana Bridgeman noted for the record that there was a written letter received from Board Secretary Julianne Lore that was asked to be read into the record at this evening's meeting. She stated that on the advice of the City Attorney this letter shall not be read. Atty. Bridgeman stated that because Ms. Lore is not present her comments will not be read into the record.

**1) NEW BUSINESS**

*ID 2018-821*

**1A) BA-03-18** VARIANCE REQUEST FOR PERMISSION TO ALLOW A CHILD CARE CENTER TO BE LOCATED WITHIN 1,000 FEET OF ESTABLISHMENTS SELLING ALCOHOLIC BEVERAGES IN THE PEPPERTREE PLAZA SHOPPING CENTER LOCATED AT 5476 WEST SAMPLE ROAD.

All those speaking on the item were duly sworn.

**Development Services Department**

901 NW 66<sup>th</sup> Avenue, Margate, FL 33063 • Phone: (954) 979-6646  
[www.margatefl.com](http://www.margatefl.com) • [dsd@margatefl.com](mailto:dsd@margatefl.com)

**City Commission**

Mayor Arlene R. Schwartz  
Vice Mayor Anthony N. Caggiano  
Lesa Peerman  
Tommy Ruzzano  
Joanne Simone

**City Manager**

Samuel A. May

**Interim City Attorney**

Goren, Cherof,  
Doody & Erzol, P.A.

**City Clerk**

Joseph J. Kavanagh

Mr. Andrew Pinney started off by thanking the board for coming together for this special meeting. He then acknowledged the honorable Mayor Arlene Schwartz who was present at this tonight's meeting. Mr. Pinney then gave a brief PowerPoint presentation explaining the location of the property within a shopping center, detailing the surrounding roads of the plaza. He then identified the zoning designation as TOC-G and showed a map with the location of the proposed daycare. He then explained that an application was received by the Development Review Committee, which met on January 23, 2018 to review the new use in the shopping center, explaining the in the Gateway District a daycare or childcare center is a permitted use. He said that one of the conflicts that came up was that there are existing businesses in the shopping center which sell alcohol for consumption on the premises, which is a conflict in the city code. Mr. Pinney explained that this project started originally as a retail building in the summer of 2015, but the property owner changed the application to be reviewed as a daycare. He then read from the city code section 3.22 paragraph 8 which explains the distance restrictions. Mr. Pinney then gave a list of existing businesses in the shopping center that are licensed to sell alcohol for consumption on the premises along with their proximity to the proposed daycare. He explained that the map was provided by the applicant which provided the measurements for the analysis, which begins at the daycare building's front door measuring in a straight line to all the different uses. He said that a package sale business has no conflict for with the use, explaining that the conflict is only when the license is for consumption on the premises. He then provided the staff findings which gives the history of the project and includes the security measures that the applicant is providing. Mr. Pinney said that he wanted to keep the focus on two things, first is the alcohol sale and consumption which is an established use in Peppertree Plaza as indicated in the list of businesses that were previously mentioned. Second is the intent of the code and to protect sensitive uses, such as a house of worship, a public or private school, and a child care center. He stated the intent is to protect those sensitive uses from nuisance uses such as alcohol, from perceived ill effects that may permeate out of those businesses. In this case the alcohol is already there and established with the daycare coming to the alcohol. Mr. Pinney stated that staff is recommending approval of this application subject to the condition that the board waive the distance requirements for any future businesses that may want to locate in Peppertree Plaza.

Mr. Wherry spoke on behalf of the applicant by thanking the board for accommodating his client at this meeting. He then went on to explain the nature of this variance request. He stated the location is a shopping center and that with the TOC-G Zoning District this contributes to what is considered a special circumstance or condition to establishing the hardship. He went on to say the nature of a shopping center is to bring together a mix of businesses and uses in a balanced way that brings convenience to the residents, which is the intent of the having the daycare at this location. Mr. Wherry mentioned the code which gives the regulations that apply to distance separation between alcohol serving establishments and daycare centers, schools, and churches. He said that a daycare center and specifically the one that they are proposing is fairly insular in its operation, where the children are coming during the day and not at night. He

explained that this will be a controlled and secured environment and the children would not be leaving without being in the accompaniment of their parent or guardian. He said that this is in contrast to what is seen in a school or a church situation where children can leave and roam around. He stressed that this would not be happening with the daycare that they are proposing. He went on to give an update on the Palladium Sports Grill and Pub which closed two months ago with no plans to bring another alcohol serving establishment, the intent as made by the owner is to bring in retail to that location. He went on to ask for the board's consideration to approve this variance.

Mr. Dangervil asked how they found out about the Palladium closing. Mr. Wherry responded that he was told by his client who owns Peppertree Plaza.

Mr. Artner stated that in his opinion the petitioner has not proven a hardship for this request. He then asked the petitioner a series of questions including, how many families have they spoken to in Margate asking if this daycare is a convenience to them and he would like to know what kind of daycare center they envisioned for this location. He then questioned what else would be going in the rest of the location since the daycare center only takes up 6,000 square-feet of the 8,400 square-foot location.

Mr. Schweitzer asked what the proposed hours of operation will be for the daycare center. Mr. Wherry answered that he did not have the specific hours for this location however normally the hours of operation for daycare centers are from 7:00 a.m. until possibly 6:00 or 7:00p.m.

Mr. Schweitzer then asked how many days a week will this center be opened. Mr. Wherry answered that the intention is that for the location to be opened 7 days a week.

Mr. Schweitzer then commented in regards to both the businesses in the shopping center plus the 3 car dealerships in the area, and how the business may appreciate a daycare center close by. He stated that this is a great convenience for the people in the area.

Mr. Laffey asked about the proposed drop off and pick up for the children. Mr. Wherry answered that there will be a keyless pass-card system that will allow the employees to come and go into the building, once in the building they will be behind a secured door. He stated that there will be a reception window where secured pick-up will occur. Mr. Laffey then questioned the amount of cars that will be coming and going and if there will be an area for them during drop-off of children. Mr. Wherry answered that since this is already an established shopping center which is designed to accommodate vehicular and pedestrian movement, there is ample parking around the proposed structure. He stated that there should be no conflict with vehicular movement and that pedestrian movement will be governed in the same way that is normal for a parking lot in a shopping center.

Mr. Dangervil asked where the entrance to the day care center will be located. Mr. Wherry responded that the entrance is located on the south side of the building.

Mr. Laffey asked what research was done when choosing this site for the project. Mr. Wherry answered that the tenant was interested in this particular location within Peppertree Plaza. He stated that it was based on their assessment of the market and where they think Margate is headed with more residents and more families, reflective of a need to have this type of infrastructure in place to support those families.

Mr. Artner asked the petitioner to prove their hardship for the daycare center at this location. Mr. Wherry answered that the suggestion for a daycare center at this location is something that will bring balance to the shopping center. He also pointed out that when looking at a variance the focus is on the land itself, he went on to say that in this case it is the shopping center, which will work together in a certain way to provide a wide range, varied, and customer responsive shopping experience to residents. He said that there is a particular design and operational aspect of shopping centers that basically create a need for a balanced approach in terms of a mix of businesses but with a variety of types of services. He stated that this is a good convenient location for those who may work in the shopping center or surrounding area.

Mr. Dangervil asked what safety precautions will be in place for the parents who leave their care to bring their children inside the facility. Mr. Wherry responded that there will be bollards set up in the area that is surrounding the structure. He explained that the outdoor play area will have a 5-foot thickened sidewalk in addition to the bollards that will create protection for pedestrians.

Mr. Dangervil then asked about the traffic flow from the daycare center throughout the parking area. Mr. Wherry pointed out on the map provided the location of the roads surrounding the daycare center. Mr. Dangervil explained that his concern is for the flow of traffic and depending on the time of day when alcohol is being served will there be anything to prevent speeding vehicles throughout the parking area, particularly around the daycare. Mr. Wherry explained that the daycare center will require the parents to park their vehicles for both drop-off and pick-up of their children. He stated that the only time that there may be potential for pedestrian/vehicle conflict will be when parents are crossing the road to the daycare.

Mr. Artner asked how many children will be in attendance at the daycare center. Mr. Wherry answered that he was unsure of the number of children, he went on to explain that daycare centers are regulated by the state which determines the number of children according to the size of the facility.

### **Public Comment:**

Manny Lugo, 1129 East River Drive, asked if the board votes against this variance, can the applicant go to the Margate City Commission to appeal? Mr. Dangervil answered "yes". Mr. Lugo then asked the board if the applicant complied with the public notice mailing per city ordinance 31.55? Mr. Dangervil

referred to city staff to answer this question. Mr. Pinney answered "yes", stating that staff received an affidavit from the applicant swearing that they mailed out notices to the appropriate property owners.

Mr. Lugo then commented on the decision making process of the board suggesting that this should be a matter for the Margate City Commission.

Donald Stiller, 3200 N. Military Trail, Boca Raton, gave a brief history of the shopping center and the decision for the daycare center being built in the center.

Arlene Schwartz, 7800 NW 1<sup>st</sup> Street, spoke about the popularity of the shopping center and that it has a great deal of traffic. She said that her concern is for the building, stating that it is not a secure location and is concerned with the fact that it is located in the middle of a parking lot.

Steven Wherry, stated that the purview of this board is to approve this type of variance and that they are not taking away any authority from the City Commission. He said that the job of the Board of Adjustment is to consider variances. He asked that the members of the board consider the testimony that was given tonight and approve the variance request.

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

**MOTION:** SO MOVE TO APPROVE

**ROLL CALL:** Mr. Laffey, Yes; Mr. Schweitzer, Yes;  
Mr. Artner, No; Mr. Dangervil, No. The motion failed  
with a 2-2 vote.

### 3) **GENERAL DISCUSSION**

Mr. Artner asked that staff stop bringing cases with hardship that was created by the applicant. He asked that staff be more diligent in the upcoming cases.

Mr. Wherry asked for clarification on the motion, asking if it was denied.

Attorney Bridgeman answered for the chair stating that it was a 2-2 vote. Explaining that a majority of the members need to be present in order to approve the variance that has been requested, the motion to approve has failed, therefore the variance is not approved.

Mr. Chitepu responded to Mr. Artner stating that staff looked at this application through the Development Review Committee (DRC) process and this applicant met all the requirements. He said that one of the conditions not met was the zoning distance requirement. The recommendation was made to appear in front of the Board of Adjustment, explaining that at that time the hardship was not discussed. Staff has no way to stop the application because staff has no authority to deny the applicant's due process. Mr. Artner asked if DRC has the responsibility to verify the hardship. Mr. Chitepu answered that DRC looks to see if the applicant meets the code. Mr. Artner then asked who approves the application and who checks

on proof of hardship? Mr. Chitepu responded that staff looks at the application but they cannot deny it at that point because it has to go through the process of going in front of the board. The applicant is responsible to present the hardship in front of the board.

Mr. Schweitzer commented that he likes the way staff does their job. He said that staff presents them with facts, and gives reasons why to approve or why not to approve. Explaining that it is then up to the board to make the decision, and up to the plaintiff to convince them one way or another. He stated that the problem is that at times the board member's personal feelings get involved in some of these discussions. He went on to say that we have to divorce ourselves with personal prejudices and look at the facts. Mr. Schweitzer stated that he appreciates the hard work of the staff and would like to compliment them for it.

Mr. Dangervil agreed with Mr. Schweitzer stating that the staff does great work. He then asked that in the future if there is any possibility the board can vote on special meetings. Attorney Bridgeman responded that this is not provided for under the rules and regulations of this board. She said that meetings are set monthly and that the Chair can call a meeting if he decides to call a meeting.

Mr. Schweitzer spoke about the board, stating that the members are volunteers and that their service is for the good of the city.

**Public Comment:**

Manny Lugo, 1129 East River Drive, asked when the Development Review Committee (DRC) offers a conditional approval will that require the stopping of the developer from continuing to build his project?

Mr. Chitepu answered that when DRC approves with conditions it is then up to the applicant, and with that the applicant can go ahead and build it if they get a permit. He explained that in this case the building was built for a separate use and then it was later changed to a daycare. He said that any changes the applicant has to make to convert into a daycare will be done as a part of this.

There being no further business, the meeting was adjourned at 8:01 p.m.

Respectfully submitted,

Prepared by Melissa M. Miller

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Chad Dangervil, Chair