



REGULAR MEETING OF THE BOARD OF ADJUSTMENT MINUTES

Tuesday, December 4, 2018

6:30 PM

City of Margate
Municipal Building

PRESENT:

Chad Dangervil, Chair
Karl Artner, Vice Chair
Julianne Lore, Secretary
Fred Schweitzer
Patrick Laffey

City Commission

Mayor Anthony N. Caggiano
Vice Mayor Tommy Ruzzano
Antonio V. Arserio
Arlene R. Schwartz
Joanne Simone

City Manager

Samuel A. May

Interim City Attorney

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

City Clerk

Joseph J. Kavanagh

ALSO PRESENT:

Julie F. Klahr, law offices of Goren, Cherof, Doody & Ezrol, P.A.
Robert Massarelli, Director of Development Services
Andrew Pinney, Senior Planner
Alexia Howald, Associate Planner

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 6:30 p.m. on Tuesday, December 4, 2018. The Pledge of Allegiance was recited followed by a roll call of the Board members.

1) APPROVAL OF MINUTES

ID 2018-636

- 1A) APPROVAL OF MINUTES FROM THE BOARD OF ADJUSTMENT MEETING
ON JUNE 5, 2018 AND AUGUST 9, 2018

Mr. Artner made the following motion, seconded by Ms. Lore:

MOTION: SO MOVE TO APPROVE AS WRITTEN

ROLL CALL: Mr. Laffey, Yes; Mr. Schweitzer, Yes; Ms. Lore, Yes;
Mr. Artner, Yes; Mr. Dangervil, Yes. The motion passed
with a 5-0 vote

2) NEW BUSINESS

ID 2018-631

Economic Development Department

5790 Margate Boulevard, Margate, FL 33063 • Phone: (954) 935-5330 • Fax: (954) 935-5304
www.margatefl.com • econdev@margatefl.com

2A) **BA-06-18** VARIANCE REQUEST FOR PERMISSION TO ALLOW A CHILD CARE CENTER TO BE LOCATED WITHIN 1,000 FOOT OF ESTABLISHMENTS SELLING ALCOHOLIC BEVERAGES LOCATED AT 5350 WEST ATLANTIC BOULEVARD.

All those speaking on the item were duly sworn.

Ms. Alexia Howald, gave a PowerPoint presentation explaining the details of the variance. She stated that the applicants, Dean and Mercedes Fleming are seeking permission to allow a child care center to be located within one-thousand (1,000) feet of an establishment licensed to sell alcohol for consumption on the premises. Ms. Howald gave the location of the proposed daycare center as 5350 W. Atlantic Boulevard, which is currently a vet clinic. She stated that Atlantic Pho restaurant located at 5408 West Atlantic Boulevard is within one-thousand (1,000) feet of the proposed daycare center, and is licensed to sell alcohol. She explained the variance is for the distance restriction from a house of worship, school or daycare, from Section 3.2 of the Margate Code of Ordinances. Ms. Howald stated that the proposed daycare is within eight-hundred and four (804) feet of the establishment, and explained how the measurement was taken. She stated that the daycare center is a permitted use within the TOC-C zoning district. Ms. Howald went on to explain that the Board of Adjustment have three criteria to follow when granting a variance, they are:

1. Hardship
2. Granting of the variance may not be contrary to public interest or purpose of the code
3. Circumstance and conditions that constitute a hardship or practical difficulties upon the variance is based

She stated the recommendation by staff is for denial of this variance. Ms. Howald went on to explain that despite the recommendation of denial there have been past variances that have been approved for a number of businesses to waive that distance required for multiple uses such as a daycare.

Mr. Artner, commented that the code clearly says one thousand (1,000) feet and describes how to measure it. He asked why it was stated that the code is not clearly defined? Mr. Massarelli, Development Services Director, explained the code and where it was not clear is in how you measure. Mr. Artner then asked about the definition of a hardship and that it cannot be self-inflicted. Mr. Massarelli answered that the definition was to help frame what a hardship means, but when you take a strict look at the code hardship is not defined, and since it is not defined it is then up to the Board of Adjustment to make the decision. City Attorney Julie Klahr further responded to the comment stating that the issue of being self-inflicted or non-self-inflicted is not a criterion in the City Code. She explained that it is then up to the Board to make the determination. Discussion ensued. Mr. Massarelli explained the rolls of the Board of Adjustment, saying that courts have found that zoning ordinances typically cannot be applied uniformly to every piece of property. He said that occasionally there is a unique circumstance that must provide for flexibility, in which someone can ask for a variance. He stated that the roll of the board is very important to determine if there is a unique situation and if the criteria have been met.

Mr. Dangervil asked staff to confirm that the applicant does not meet any of the criteria? Mr. Massarelli answered that it is staff's recommendation to deny because it does not meet the criteria.

Mercedes Fleming applicant, introduced herself to the board and gave a brief overview of her business and why she is looking to relocate. She stated that currently her business is located on the corner of Banks Road and Coconut Creek Parkway. She explained that the property has been sold twice since they opened business and they recently received news that they had to move. Ms. Fleming said that they had to find a property that would accommodate the preschool as well as a playground area. She explained that the need to find a new location is not only for her and her husband it is also for the teachers, because if they close then they would all be out of a job. She said that she visited the restaurant and they do not even have alcohol on the menu and after speaking with staff was told that they do not have a happy hour and they are considered to be a family restaurant, with customers rarely ordering a beer.

Mr. Dangervil asked for clarification on the current location and if they are selling the property. Ms. Fleming said that her current location has been sold and if they do not find a new location they will go out of business. She said that she has been in Margate since 2007 and they do not want to move to another city.

Mr. Artner asked when the business first opened? Ms. Fleming responded that they opened their first location in 2003 in the City of Coconut Creek.

Ms. Lore asked for confirmation that the restaurant has a license to sell alcohol but there is no alcohol on the menu? Ms. Fleming answered "yes".

Mr. Artner asked if someone from the restaurant is present in the audience. Ms. Fleming answered "no".

Mr. Schweitzer commented that there is a street going into a housing development and two rows of buildings that is separating the properties. He stated that they are not connected in anyway except for Atlantic Boulevard and there is quite a distance between those two properties.

Public Comment:

Richard Zucchini, 380 Lakewood Circle East, stated that he would implore the board to accept this variance. He stated that the property is almost encapsulated with landscaping and separated from traffic, and is adjacent to a church. He said that it is a perfect location for a daycare center.

Dean Fleming, 343 NW 36th Avenue, Deerfield Beach, thanked both Melissa Miller and Alexia Howald for helping him during the variance process. He then stated that he is here representing the children and parents of his school. He explained the issues he has been facing with leaving his current location and looking for a new location for his preschool. Mr. Fleming also mentioned other preschools that have been approved which are close to restaurants that sell alcohol for consumption on premises.

Ms. Lore asked Mr. Fleming how many people are employed at his preschool. Mr. Fleming answered there are a total of fifteen (15) employees including him and his wife.

Mr. Dangervil wanted to remind the board members to keep into consideration that they need to follow the code. He also mentioned that if the situation was reversed the restrictions will be in the same category.

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

MOTION: MOTION TO APPROVE

ROLL CALL: Mr. Laffey, Yes; Mr. Schweitzer, Yes; Ms. Lore, Yes; Mr. Artner, Yes; Mr. Dangervil, Yes. The motion passed with a 5-0 vote.

ID 2018-631

2A) APPROVAL OF 2019 MEETING CALENDAR

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

Mr. Artner asked why August was "TBD". Staff responded that this was due to National Night Out. Mr. Schweitzer mentioned that a date can be chosen closer to that month.

MOTION: APPROVE THE 2019 CALENDAR AS WRITTEN.

ROLL CALL: Mr. Laffey, Yes; Mr. Schweitzer, Yes; Ms. Lore, Yes; Mr. Artner, Yes; Mr. Dangervil, Yes. The motion passed with a 5-0 vote.

3) **GENERAL DISCUSSION**

Mr. Dangervil commented that it is nice to see all the board members present as well as members of the audience, and also wanted to wish everyone Happy Holidays.

There being no further business, the meeting was adjourned at 7:05 p.m.

Respectfully submitted,

Prepared by Melissa M. Miller

Chad Dangervil, Chair