

# Sumter City-County Board of Zoning Appeals

November 12, 2014

## BOA-14-23, 4888 Broad Street (County)

The applicant is requesting Special Exception approval for a Drinking Place as required per Article 3, Section 3.i.4.d. *Drinking Places (SIC Code 5813)*, Article 3, Exhibit 5 and Article 5, Section 5.b.3.e. Special Design Review Criteria.



Appeals - Variance - Special Exception

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## BOA-14-23, Drinking Place – 4888 Broad St. (County)

### I. THE REQUEST

**Applicant:** Michael Alston

**Status of the Applicant:** Business Owner

**Request:** Special Exception approval for a Drinking Place, under SIC Code 5813.

**Location:** 4888 Broad St.

**Present Use/Zoning:** Existing Commercial Building/GC/HCPD

**Tax Map Reference:** 155-00-01-011



### II. BACKGROUND

The applicant desires to reopen a drinking place at 4888 Broad St. shown in the photograph to the left.

Historically, this location has been used for such purposes and until March of 2014 was properly licensed and operating as a night club/bar.

Because the facility has been closed

for more than six (6) months, in accordance with Article 1, Section 1.i.8 “Expiration of variance or special exception,” the Special Exception approval has expired. In order to legally reopen, the site must receive a new approval for the Board of Zoning Appeals.

Drinking Places (SIC Code 5813) are required to be reviewed and approved as a Special Exception. Special Exceptions are to be evaluated in accordance with Article 1, Section 1.h.4.c and Article 3, Section 3.i.4.d and in accordance with Article 5, Section 5.b.3.e in the Sumter County Zoning & Development Standards Ordinance.

The site is the location of Club Mi Ami, closed in March 2014 after a history of nuisance claims, police activity, and a deadly shooting in March 2014. According to the Sheriff’s Department,

Deputy's were called to the site over 400 times in a seven year period; 116 times between 2012-2014. The Department, in a joint operation with the County Building Department, SLED, and the State Department of Revenue, took action to close the business and revoke its alcohol license after the shooting. On March 27, 2014, the Club Mi Ami Closed.

The property is owned by William J. McCarthy listed in the County Tax records of 5553 Broad St. Ext. However, the Application form lists the owner, McCarthy, of Raleigh, North Carolina.

**Article 5 Section 5.b.3.e Drinking Places (SIC 5813):**

1. *This use shall not be within 300 feet (measured in a straight line from structure to structure) of a residential use, church, school, or public playground on a separately plotted parcel.*
2. *A six-foot fence that is a visual screen will be installed to separate this use from residential uses.*

As shown in the buffer map below, the proposed location is not within 300 feet of any prohibited uses, as measured from structure to structure. In addition, there are no adjacent residential uses that require buffering.



**Article 1 Section 1.h.4.c Special Exceptions:**

1. *Special exceptions are subject to the terms and conditions for the use set forth for such uses in the Zoning Ordinance.*
2. *Permits for Special Exceptions shall be evaluated by the Board of Zoning Appeals on the basis of the following criteria:*

- a. *That the Special Exception complies with all applicable development standards contained elsewhere in this Ordinance, including landscaping and bufferyards, off-street parking, and dimensional requirements.*

The site is grandfathered non-conforming with respect to parking, landscaping, and buffering. Although the special exception has expired, the site has not been vacant for more than 36 months. Therefore it is not subject to a discontinuance for non-conforming sites as outlined in *Article 6, Section 6.a.2.* and *Article 6, Section C: Nonconforming Sites.*

- b. *That the special exception will be in substantial harmony with the area in which it is located.*

This portion of Broad Street is dominated by small-scale commercial uses such as restaurants, gas station/convenience stores, small scale strip retail businesses, and automotive sales. It lies directly across US 378 from Shaw AFB. This site has been used for a bar/club with a history of nuisance complaints and police activity. The nearest residential units are within approximately 800-1,000 ft.

The Applicant has not provided any new information (as of date of publication) which would suggest a new management approach to the business. How will this new business ensure the safety of its patrons and Sumter citizens? This is not clear and there is no indication that the character of the business will be different than the version closed by the joint operation led by the Sheriff's Department in March of this year.

Drinking establishments on the subject property generated over 400 police calls in the last seven years. In March 2014, in a news event widely covered in the region, a man was murdered in the parking lot.

According to Shaw AFB, this property has been deemed "off-limits" to Shaw personnel.

- c. *That the special exception will not discourage or negate the use of surrounding property for use(s) permitted by right.*

There is no indication of what type of bar/club the new management intends to operate. The Club most recently closed by the Sheriff had a negative impact on the surrounding area, based on the catalogue of police activity.

### **III. STAFF RECOMMENDATION**

It appears that the Applicant intends to open Club Mi Ami under different management and name. The recent history of drinking establishments at this location is one of police activity, nuisance, and murder. Staff is not prepared to recommend approval at this time. There is a host of other commercial uses listed under the General Commercial Zoning District use list which are permitted or permitted by conditional review on this property.

#### **IV. DRAFT MOTIONS**

- A.** I move that the Sumter Board of Appeals deny BOA-14-23 subject to the findings of fact and conclusions contained in the draft order dated November 12, 2014, attached as Exhibit 1.
  
- B.** I move that the Sumter Board of Appeals approve BOA-14-23 on the following findings of fact and conclusions:

#### **V. BOARD OF ZONING APPEALS – November 12, 2014**

The Sumter City-County Board of Appeals at its meeting on Wednesday, November 12, 2014, voted to deny this request subject to the findings of fact and conclusions contained in the draft order, dated November 12, 2014.

**Exhibit 1**  
**Order on Special Exception Application**  
**Sumter Board of Appeals**

**BOA-14-23, 4888 Broad Street (County)**  
**November 12, 2014**

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Date Filed: November 12, 2014

Permit Case No. BOA-14-23

The Board of Zoning Appeals held a public hearing on Wednesday, November 12, 2014 to consider the request of Michael Alston, 4035 Furman Field Rd., Rembert, SC 29158 for a special exception which may be permitted by the Board pursuant to Sections Article 1.h.4.c, Article 3.i.4.d and Article 5.b.3.e of the Sumter County – Zoning & Development Standards Ordinance as set forth on Form 4 for the property described on Form 1 to be used for: Drinking Place (SIC Code 5813).

After the consideration of the evidence and arguments presented, the Board makes the following findings of fact and conclusions.

1. The Board concludes that the standards in Sections 5.b.3.e of the Sumter County – Zoning & Development Standards Ordinance which are applicable to the proposed special exception of the Zoning Ordinance  **have** -  **have not** been met based on the following findings of fact:
  - a. The Board finds the location of the proposed Drinking Place meets the Ordinance separation requirement of 300 ft. from structure to structure from a residential use, church, school, or public playground.
  
2. The Board concludes that the special exception  **does** -  **does not** comply with all other applicable development standards contained elsewhere in the Sumter City Zoning Ordinance, including landscaping and bufferyards, off-street parking, and dimensional requirements based on the following findings of fact:
  - a. The property owner is not required to upgrade the site or submit a site plan as the location has not be subject to a discontinuance as outlined in Article 6;
  
3. The Board concludes that the proposed special exception  **will** -  **will not** be in substantial harmony with the area in which it is located based on the following findings of fact:
  - a. The previous drinking establishments located on this property generated over 400 calls for police service in a seven year period as reported by the Sumter County Sheriff's Department. In March of 2014, a shooting at the address resulted in the death of one bar patron and a gun shot wound to another. The Applicant, Mr.

Alston has not provided convincing evidence that the new bar/club will be managed in a different manner.

4. The Board concludes the special exception  **will** -  **will not** discourage or negate the use of surrounding property for uses(s) permitted by right based on the following findings of fact:
- a. The proposed use will discourage or negate the use of surrounding property for uses permitted by right in the general commercial zoning district. The history and documented catalogue of police activity at the location indicates that the use has had a negative impact on surrounding properties.

THE BOARD, THEREFORE, ORDERS that the special exception is  **DENIED** –  **GRANTED with the following conditions:**

Approved by the Board by majority vote.

Date issued: \_\_\_\_\_

\_\_\_\_\_  
Chairman

Date mailed to parties in interest: \_\_\_\_\_

\_\_\_\_\_  
Secretary

**Notice of appeal to Circuit Court must be filed within 30 days after date this Order was mailed.**

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