

Sumter City-County Board of Zoning Appeals

April 11, 2012

BOA-12-17, 302 N. Lafayette Dr. (City)

The applicant is requesting Special Exception approval for a Liquor Store, under SIC Code 592 and Variance from 5.b.3.n.1 to reduce the separation requirement from a residential use from 300 ft. to 30 ft. The property is located at 302 N. Lafayette Dr. and is represented by Tax Map # 249-08-04-049.



Appeals - Variance - Special Exception

Sumter City-County Board of Appeals

April 11, 2012

BOA-12-17, 302 N. Lafayette Dr. (City)

I. THE REQUEST

Applicant: Minal Patel

Status of the Applicant: Business Operator

Request: Special Exception approval for a Liquor Store, under SIC Code 592; Variance from 5.b.3.n.1 to reduce the separation requirement from a residential use from 300 ft. to 30 ft.

Location: 302 N. Lafayette Dr. (7-A Myrtle St.)

Present Use/Zoning: Unoccupied Tenant Space in Multi-tenant Building/General Commercial (GC)

Tax Map Reference: 249-08-04-049

II. BACKGROUND

The applicant, is requesting approval to open a Liquor Store (SIC Code 592) at 302 N. Lafayette Dr. in the City of Sumter, shown in the photograph below.



Currently, the subject property is the site of a multi-tenant building that currently houses a tobacco store. Based on Business License records, the remaining tenant spaces are unoccupied. The site is non-conforming relative to curbing and landscaping, among other site development standards.

Additionally, the site is located within 30 feet of at least one residential structure; thus the site does not meet the separation requirement of 300 feet from a residential use. The applicant requests a 270 foot variance from this standard, addressed in Section IV of this report.

III. LAND USE & ZONING COMPATIBILITY

According to the Official Zoning Map for the City, the property is zoned as General Commercial (GC) and is located within the Highway Corridor Overlay District. The purpose of the GC zoning district is to accommodate the broadest possible range of commercial uses, determined principally by market conditions, while protecting adjacent property owners from potentially objectionable uses. In addition, the City’s 2030 Land Use Plan shows the subject parcel being designated as Priority Commercial Corridor in the Suburban Development Planning Area. Priority Corridors focus on existing corridors across the community. These locations have been designated to protect against undesirable uses such as industrial, automotive repair, or uses primarily engaged in outdoor storage. These locations encourage both destination retail uses and neighborhood commercial uses as appropriate which support surrounding neighborhoods.

It must be noted that this portion of the N. Lafayette Dr. commercial corridor is abutted by residential R-9 zoning to the west as shown in the map to the right. Thus, GC uses will impact the surrounding neighborhoods. Good land use policy efforts to locate uses compatible with and supportive of surrounding residential neighborhoods.



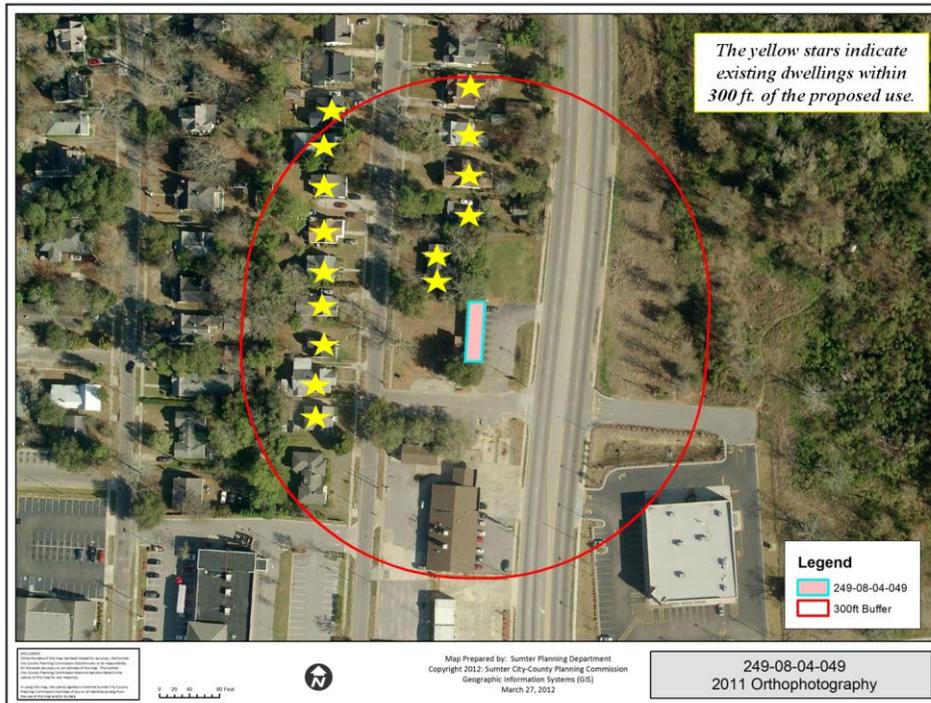
Under the GC district, (Liquor Stores, SIC Code 592) are considered a Special Exception which requires the review and approval of the Sumter Board of Appeals. In particular, special exceptions for liquor stores are to be evaluated in accordance with Article 1, Section 1.h.4.c and Article 3, Section 3.i.4.f and in accordance with Article 5, Section 5.b.3.n of the City Zoning & Development Standards Ordinance.

Article 5 Section 5.b.3.n Liquor Stores (SIC Code 592):

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 platted parcel.*
2. *A six-foot fence that is a visual screen will be installed to separate this use from residential uses.*

The following can be determined based on 5.b.3.n:

1. Staff concludes the proposed location of the liquor store does not meet the Ordinance separation requirement of 300 ft. from structure to structure of a residential use, church, school or public playground on a separately platted parcel. It is noted that the applicant has requested a variance from this standard. Analysis of whether the request meets the state enabled four part test can be found later in this report.
2. This 2011 aerial photograph of the subject property and adjacent properties depicts a minimum of fifteen (15) residential uses, on separately platted parcels, within 300 ft. of the proposed liquor store:



3. No fence exists today on the rear (western property line) adjacent to the most immediate residential use. A six foot privacy fence in need of repair is present on the western property line.

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;*
 - b. *That the special exception will be in substantial harmony with the area in which it is located;*
 - c. *That the special exception will not discourage or negate the use of surrounding property for use(s) permitted by right.*

The following can be determined based on 1.h.4.c.2:

1. Overall, the site does not comply with the parking lot, bufferyards and landscaping requirements contained in the City Zoning Ordinance.

Notwithstanding the previous, the property was developed under the pre-1999 City Ordinance with different regulations for parking lots and bufferyards. In addition, the property has maintained an active business license since its inception. As a result, the parking lot, landscaping and bufferyards are legal non-conforming features to the property.

Finally, if the special exception is granted, the applicant is required to provide off-street parking in accordance with the Article 8, Exhibit 23 of the City Ordinance. This requires one (1) parking space per 250 sq. ft. gross floor area (GFA).

2. Staff finds that the proposed Special Exception request is not in substantial harmony with the surrounding area based on the following conclusions:
 - a. The proposed special exception is within 300 ft. of at least thirteen (13) single-family residential dwellings and one (1) duplex dwelling based on the 2011 aerial and Staff site visit; We find no justification for a reduction in this separation requirement.
 - b. The proposed liquor store would be oriented toward N. Lafayette Dr. with access from both Lafayette Dr, and Myrtle St. The existing neighborhood along N. Magnolia St. is accessed from Myrtle St. Overall the neighborhood is a well maintained downtown neighborhood. The introduction of a liquor store into this dynamic would, in our opinion, not be compatible with the existing residential uses. This finding is consistent with that made by Staff and by the Board of Zoning Appeals in BOA-08-16 for a Liquor Store at the intersection of Broad St. and Highland Ave. and BOA-10-16 for a Liquor Store at the intersection of W. Liberty and Blanding St.

- c. While the property is zoned and designated for a wide variety of commercial type uses, it is the policy of the GC zoning district to protect adjacent properties from potentially objectionable uses. In this particular case, the proposed special exception would be located in an in urban environment that has thirteen (13) single-family residential dwellings and one (1) duplex dwelling within 300 ft. of the proposed structure.
3. Staff finds that the proposed Special Exception request will discourage or negate the use of surrounding property for use(s) permitted by right based on the following conclusions:
- a. Special exception approval for a liquor store at this location will have negative impacts and consequences on the surrounding residential area to the immediate south. As previously stated, the purpose of the GC zoning district is to accommodate a wide variety of commercial uses while at the same time protecting the surrounding environment from objectionable type uses;
 - b. Establishing a liquor store at this location may have undesirable effects on property values for adjacent landowners and businesses. Undoubtedly, the presence of a liquor store at this location would have an impact on the value of the adjacent residential dwelling to the immediate west, especially considering the use would be within 30 ft. of their structure.

IV. FOUR-PART TEST

The Applicant requests a variance from **Article 5 Section 5.b.3.n.1. Liquor Stores (SIC Code 592)** which states specifically:

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 platted parcel.

The zoning ordinance states that a variance may be granted in an individual case of unnecessary hardship if the Board finds and explains all of the following:

1. *There are extraordinary and exceptional conditions pertaining to the particular piece of property.*

There are no extraordinary conditions pertaining to this property. The expressed intent of the ordinance separation requirement was to distance objectionable or potentially objectionable uses from residential uses.

2. *These conditions do not generally apply to other property in the vicinity.*

There are no extraordinary conditions.

3. *Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.*

There are no extraordinary conditions.

4. *The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the granting of the variance will not harm the character of the district.*

Granting a 270 foot variance from the required 300 foot separation would indeed be a substantial detriment to adjacent property owners. The intent of the ordinance is to separate objectionable or potentially objectionable uses from houses, churches, and playgrounds. In the first place, as detailed above, Staff finds that the special exception request is unsupported and fails to meet the established review criteria. With that, and in addition, reducing the separation distance between a liquor store and residential uses in this location is bad public policy and likely will harm the character of the nearby residential district.

V. STAFF RECOMMENDATION

Staff recommends denial of BOA-12-17, a special exception request for a liquor store and a variance request from the separation requirements for liquor stores at 302 N. Lafayette Dr., based on the evaluation contained in this Staff report and the following summary conclusions:

1. The request does not meet the minimum 300 ft. separation requirement from residential uses;
2. The request is not in substantial harmony with the surrounding residential and business environment.
3. The request fails to meet the four-part test as required under South Carolina State law for variances from the Zoning Ordinance.

VI. DRAFT MOTIONS for BOA-12-17

- A. I move that the Sumter Board of Appeals deny BOA-12-17, subject to the findings of fact and conclusions contained in draft order, dated April 11, 2012 attached as Exhibit 1 and Exhibit 2.
- B. I move that the Sumter Board of Appeals enter an alternative motion for BOA-12-17.

VII. ZONING BOARD OF APPEALS – APRIL 11, 2012

The Sumter City-County Board of Appeals at its meeting on Wednesday, April 11, 2012, voted to deny this request subject to the findings of fact and conclusions as shown on Exhibit 1.

Exhibit 1

Order on Special Exception and Application

Sumter Board of Appeals

BOA-12-17, 302 N. Lafayette Dr., Sumter, SC
April 11, 2012

Date Filed: April 11, 2012

Permit Case No. BOA-12-17

The Board of Zoning Appeals held a public hearing on Wednesday, April 11, 2012 to consider the request of Minal Patel, the Applicant for a special exception which may be permitted by the Board pursuant to Sections 1.h.4.c, 3.n.4.f, and 5.b.3.n of the Sumter City Zoning & Development Standards Ordinance as set forth on Form 4 for the property described on Form 1 to be used for: a Liquor Store (SIC Code 592).

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 City 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 liquor store does not meet the Ordinance separation requirement of 300 ft. from structure to structure of a residential use, church, school or public playground on a separately platted parcel.
 - b. Based on a measurement obtained from the below 2011 aerial photograph and a physical site inspection conducted by the Sumter Planning Department, the Board finds the proposed use encroaches onto thirteen (13) single-family residential dwellings and one (1) duplex dwelling. The closest dwelling measured +/- 30 ft. from the proposed liquor store.



2. The Board concludes that the special exception **does** - **does not** comply with all applicable development standards contained elsewhere in the Sumter County Zoning Ordinance, including landscaping and bufferyards, off-street parking, and dimensional requirements based on the following findings of fact:
 - a. The site is not required to conform to all applicable development standards of the current City Zoning & Development Standards ordinance since this property was development under previous development standards and has maintained an active business license;
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 proposed special exception is within 300 ft. of at least thirteen (13) single-family residential dwellings and one (1) duplex dwelling.
 - b. The proposed liquor store would be oriented toward N. Lafayette Dr. with access from both Lafayette Dr, and Myrtle St. The existing neighborhood along N. Magnolia St. is accessed from Myrtle St. Overall the neighborhood is a well maintained downtown neighborhood. The introduction of a liquor store into this dynamic is not compatible with the existing residential uses. This finding is consistent with that made by the Board of Zoning Appeals in BOA-08-16 for a Liquor Store at the intersection of Broad St. and Highland Ave. and BOA-10-16 for a Liquor Store at the intersection of W. Liberty and Blanding St.
 - c. While the property is zoned and designated for a wide variety of commercial type uses, it is the policy of the GC zoning district to protect adjacent properties from potentially objectionable uses. In this particular case, the proposed special exception would be located in an in urban environment that has thirteen (13) single-family residential dwellings and one (1) duplex dwelling within 300 ft. of the proposed structure.
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. Special exception approval for a liquor store at this location will have negative impacts and consequences on the surrounding residential area to the immediate south. The purpose of the GC zoning district is to accommodate a wide variety of commercial uses while at the same time protecting the surrounding environment from objectionable type uses;
 - b. Establishing a liquor store at this location may have undesirable effects on property values for adjacent landowners and businesses. Undoubtedly, the presence of a

liquor store at this location would have an impact on the value of the adjacent residential dwelling to the immediate west, especially considering the use would be within 30 ft. of their structure.

THE BOARD, THEREFORE, ORDERS that the special exception is **DENIED** – **GRANTED**.

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.

Order on Variance Application Sumter Board of Appeals

**BOA-12-17, 302 N. Lafayette Dr., Sumter, SC.
April 11, 2012**

Date Filed: April 11, 2012

Permit Case No. BOA-12-17

The Board of Zoning Appeals held a public hearing on Wednesday, April 11, 2012 to consider the request of Minal Patel, the Applicant for a variance from the strict application of the Zoning Ordinance, Section 5.b.3.m.1, as set forth on the Form 3 affecting the property described on Form 1 filed herein. After consideration of the evidence and arguments presented, the Board makes the following findings of fact and conclusions.

1. The Board concludes that the Applicant has - does not have an unnecessary hardship because there are extraordinary and exceptional conditions pertaining to the particular piece of property based on the following findings of fact:

There are no exceptional conditions pertaining to this piece or property. This is an ordinary commercial property, +/-0.41 acres in size, zoned General Commercial.

2. The Board concludes that these conditions do - do not generally apply to other property in the vicinity based on the following findings of fact:

There are no exceptional conditions. The Lafayette Dr. commercial corridor contains dozens of similarly zoned parcels.

3. The Board concludes that because of these conditions, the application of the ordinance to the particular piece of property would - would not effectively prohibit or unreasonable restrict the utilization of the property based on the following findings of fact:

The property is not unreasonable restricted. There are a variety of commercial uses permitted in the General Commercial Zoning district that can be accommodated at this location without any special exception or conditional use review needed.

4. The Board concludes that authorization of the variance will - will not be of substantial detriment to adjacent property or to the public good, and the character of the district will - will not be harmed by the granting of the variance based on the following findings of fact:

The strict separation requirement of 300 feet between liquor stores and residential uses is intended to limit or eliminate adverse impacts on residences, churches, parks, or schools

surrounding the liquor store use. Enabling a significant, 270 foot variance from this requirement would be of substantial detriment to adjacent property owners and the neighborhood. Liquor stores are often incompatible with residential uses and neighborhoods. Moving the potentially adverse use closer to a residential area than proscribed by the ordinance is in conflict with the public health, safety and welfare.

THE BOARD, THEREFORE, ORDERS that the variance is DENIED GRANTED, subject to 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.