

November 13, 2014

The Board of Zoning Appeals for the Town of Sullivan's Island met on the above date at Town Hall, all requirements of the Freedom of Information Act having been satisfied.

Board members present: Elizabeth Tezza, Chair
Sarah Church
Summer Eudy
Jimmy Hiers
Delores Schweitzer
Bachman Smith, IV

Staff present: Joe Henderson
Ellen Miller

Chair Tezza called the meeting to order and stated all Freedom of Information Act requirements had been met.

Motion was made by Jimmy Hiers, seconded by Bachman Smith, to defer approval of the September minutes until the next meeting, carried unanimously. The October minutes were not available for approval.

Chair Tezza administered the applicant and participant oath, and asked for Zoning Administrator Joe Henderson to present the only application.

Chair Tezza stated that Sarah Church was recused from this application. Ms. Church sat in the audience.

Mr. Henderson stated the application is a special exception request from Beardcat's Sweet Shop located at 2063 Middle Street, currently in operation. The applicant is requesting a special exception to operate a coffee shop use in the commercial zoning district. This is in accordance with Zoning Ordinance Section 21-50 (C) (2). This

property is currently bound by a RS zoning district and single family home that fronts I'on Avenue. To the west it is bound by multi-family use and commercial zoning and also commercial zoning to the east of the property. Currently Beardcat's operates as a mercantile retail use – sells ice cream and various food types; however, they have to take the food and go – they cannot have any onsite consumption as prohibited by the ordinance. The petitioners are requesting the coffee shop use to allow inside seating and also patio seating out front. They are requesting to convert 385 square feet of their interior space for patron seating, and also 96 sq ft of patio area. In order for the petitioner to be issued a special exception they have to demonstrate compliance with Section 21-178 of the Zoning Ordinance. There are four criteria the BZA has to review, as well as Section 21-50 (C) (2) in the definition section of the ordinance, to determine their request for coffee shop use.

Step 1: Mr. Henderson led the discussion and asked Mr. Anthony Carmola from Reggie Gibson Architects, architects for the project, to comment on each standard of Section 21-178:

1. Adequate provision is made for such items as setbacks, fences, and buffered or planting strips to protect adjacent properties from possible adverse influence of the proposed use, such as noise, vibration, dust, glare, odor, traffic congestion, and similar factors.

Mr. Carmola: Setbacks, fences, buffers and plantings have already been designed and built to protect the adjacent properties as shown on the application. Mr. Henderson: As far as the proposed use, we have determined that because of a previous BZA case, the expanse of the upstairs use of the Obstinate Daughter restaurant would be prohibited in the patio space down below or within the coffee shop. The property owners and applicants are aware of the Town Attorney presentation to BZA on December 8, 2011 that there was no expanse of square footage and there was a reduction in seats.

Chair Tezza clarified that the owner of Beardcat's is the owner of the Obstinate Daughter Restaurant, but there are two separate LLC's. Mr. Henderson added that the expanse of the patio for Beardcat's as a coffee shop could be allowed; however the patio use for the Obstinate Daughter Restaurant could not be allowed.

2. Vehicular traffic and pedestrian movement on adjacent roads shall not be hindered or endangered.

Mr. Carmola: The existing vehicular traffic and pedestrian movement will not be affected – Beardcat’s Sweet Shop is currently in operation. There is as much parking on site as possible. There is a handicapped parking space, and there are three new parking spaces on the street, although the business cannot claim those spaces. Most of the coffee espresso business will take place in the morning when the Obstinate Daughter is closed.

3. Off-street parking and loading areas and the entrance and exits of these areas shall be adequate in terms of location, amount, design, and construction to serve the proposed use.

Mr. Carmola: Off-street parking and loading areas, and the entrance and exit of these areas have already been designed and built for Beardcat’s Sweet Shop – there will be no changes made to these existing parking, entrance and exit conditions. There is additional parking in the back on I’on Avenue. With only 11 seats inside and the potential for 14 outside, the proposed coffee shop will have less patrons than the restaurant. The staff does not park on site.

4. The proposed use shall be compatible with existing uses to the extent that such use will not adversely affect the level of property values, general character, or general welfare of the nearby area.

Mr. Carmola: The character of Beardcat’s Sweet Shop will remain compatible with its existing use. The activity will remain much the same and will continue to not adversely affect the surrounding area.

Step 2: Mr. Henderson led the discussion and asked to comment on each standard of Section 21-50 (C) 2.

A coffee shop by definition in Section 21-203 is a small establishment where beverages and light meals are prepared for onsite consumption and made available only by way of counter service. Light meals shall include, but not be limited to, soups, sandwiches, salads, baked goods, desserts, ice cream, cheese plates, and typical breakfast items. Sales of food and other goods shall constitute at least eight-five (85) percent of total revenue, and limit the sale of beer and wine only (per SC Code of Regulations 7-200-1 and SC Code of Laws 61-4-500), which may comprise no more than fifteen (15) percent of total revenue. Coffee shops shall meet all the requirements of Section 21-50 (C) (b).

Mr. Carmola: Light meals as listed above will only be available by counter-service at Beardcat’s Sweet Shop, and the menu is in the application. Mr. Henderson interpreted

the core business as coffee, breakfast items and ice cream, with lunch items being ancillary. Mr. Carmola agreed and stated this will not be a full service restaurant – customers will have to order and pick-up their food at the counter.

(a) Coffee shops shall only be permitted on existing lots zoned CC-Community Commercial provided, however, that no new coffee shop may be established within 300 feet of any existing coffee shop. The distance of separation between the two uses shall be measured in a straight line between the front doors of each use without regard to intervening structures or objects.

Mr. Carmola: The lot is zoned CC-Community Commercial. There are no existing coffee shops within 300 feet of Beardcat's Sweet Shop's front door as shown in application. Mr. Henderson agreed.

(b) Contains no more than twenty-five (25) seats with no more than seven hundred (700) square feet of floor area devoted to patron seating.

Mr. Carmola: The indoor floor area devoted to patron seating is 385 square feet. There will be no more than 25 seats provided. Mr. Henderson stated the plan shows 11 seats inside at 326 sq ft and 14 seats outside at 96 sq ft. Mr. Carmola stated that the patron use area is highlighted – they want to use some of the waiting bench outside to make outdoor seating for Beardcat's. The way it was previously designed was 3 foot sections of benches that go around the curve, so they have 12 linear feet of bench, and per building code one person per two feet of linear bench seat.

Chair Tezza inquired if the bench outside was waiting area for the restaurant. Mr. Carmola stated it partially is, and the restaurant also has another bench downstairs, and one bench upstairs. Chair Tezza stated it is really a communal waiting area for Beardcat's and Obstinate Daughter. Mr. Henderson stated that while there are no pending applications or legal actions from the Obstinate Daughter, his office has been contacted about the use of that area for the restaurant.

Chair Tezza stated that submitting this waiting area as part of the seating for Beardcat's would seem to preclude Obstinate Daughter from pursuing anything to do with that seating. Bachman Smith expressed concern with the analogy of a property owner who was granted a variance because they wanted a pool in their front yard; instead of in the backyard as the ordinance permits. After completing the front pool, the property owner applied for a pool in his backyard, and received it because the ordinance allows pools in the backyard. This situation is one owner and two companies. There are gray areas, and it is hard to regulate something that is not known. Mr. Henderson stated that it

was a concern, and a formal statement was issued that no expansion of the Obstinate Daughter restaurant outside of the walls will be allowed, so they cannot set up any kind of tables out on the patio, parking lot, or anywhere. It will be an enforcement issue for the Zoning and Building officials.

Although it has been established that seating will not be allowed outside of Obstinate Daughter's four walls, Summer Eudy pointed out that the Board can place conditions on the special exception, such as a condition that the seats are being permitted but if something changes the special exception is revoked and they have to reapply to the Board of Zoning Appeals.

Mr. Henderson stated he wanted to note that he just noticed on the plan there was a modification to the access on the sidewalk. Mr. Carmola responded in order provide an adequate area for the outside seating, they wanted to move the entry into the area centered on the door into Beardcat's. Mr. Carmola stated there will be four tables with eight chairs under the tree as opposed to four tables crowded into 96 sq ft on a huge patio. If the tables were split up – 15 sq ft one place, 25 sq ft in another, etc., it would not make good design sense. The managers and owners are responsible for ensuring customers are not out there having cocktails. Mr. Henderson stated if the 96 sq ft is moved around, as long as it is only 96 sq ft, it should be fine. Chair Tezza expressed concern that the large patio is not being used, perhaps because there is possibly another potential use that the Board does not know about. She also asked, if there were two owners instead of one, to which owner would the tree and bench belong? Mr. Henderson stated a special exception is given to that specific business, so the new owner would. If the Board approves this plan, the seats belong to Beardcat's and the Obstinate Daughter restaurant cannot use them.

(c) Outdoor patios, porches, and decks are permitted provided such outdoor space does not exceed twenty-five (25) percent of the coffee shop's available floor area devoted to patron seating. The total number of patron seats, inclusive of outdoor patios, porches and decks, shall not exceed twenty-five (25).

(This information was addressed in item (b) above.)

(d) The hours of operation shall be limited to 6:00am to 10:00pm.
Mr. Carrmola: Beardcat's Sweet Shop will have hours 6:00am – 10:00pm.

(e) **No outdoor entertainment or speaker system is permitted, but this shall not prevent the service of food and beverages on porches, decks, patios.** Mr. Carmola: No outdoor speaker system will be provided.

(f) **Coffee shop uses shall be limited to preparing light meals with appliances which do not require Type I or Type II kitchen exhaust hood system inspections per SCDHEC Section 6-8-20; Subsection 8-400.**

Mr. Carmola: The light meals that are prepared will not require the use of a Type I or II hood. Beardcat's does not serve any item that would need a hood. The hood that is downstairs is for Obsolete Daughter. Chair Tezza expressed concern about the shared space with a hood. Mr. Henderson explained that if a coffee shop began selling a type of food, or have food brought in from a restaurant such as hamburgers, he would inform them he believed they were in violation, and they would come before the Board to explain what they are doing.

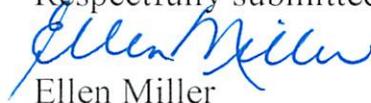
(g) **Sales of food and other goods shall constitute at least eight-five (85) percent of total revenue, and limit alcohol sales to beer and wine only (per SC Code of Regulations 7-200-1 and SC Code of Laws 61-4-500), which may comprise of no more than fifteen (15) percent on-site consumption of alcohol.**

Mr. Carmola: No alcohol or wine will be sold at Beardcat's Sweet Shop. If Beardcat's decides to sell alcohol, they will have to come before the Board and request it.

Motion was made by Summer Eudy, seconded by Bachman Smith, to grant the special exception to Beardcat's Sweet Shop, LLC with the condition that should the owner, who also owns the adjacent restaurant the Obsolete Daughter, attempt in any way through application or litigation to obtain seating on the patio, that this special exception will be revoked and Beardcat's Sweet Shop, LLC would have to come back to the Board to seek the special exception, and they are bound by the written application and the representations made tonight. Any changes would need to come back before the Board, carried unanimously.

Motion was made by Jimmy Hiers, seconded by Bachman Smith, to adjourn at 6:40 p.m., carried unanimously.

Respectfully submitted,


Ellen Miller