

---

**CITY OF COLUMBIA**  
**BOARD OF ZONING APPEALS MINUTES**  
**April 12, 2016 - 10:00 AM**

**City Council Chambers**  
**1737 Main Street, 3<sup>rd</sup> Floor • Columbia, SC**

---

**In attendance:** Chuck Salley, Pat Hubbard, Reggie McKnight, Calhoun McMeekin, Regina Williams, Preston Young

**Absent:** Tyler Gregg

**Staff:** Brian Cook, Andrew Livengood, Andrea Wolfe

**I. CALL TO ORDER and DETERMINATION OF QUORUM**

Brian Cook, Zoning Administrator, presented a plaque to Ernest Cromartie, III, past Board member and chairperson in appreciation for his years of service. Welcomes were given to Chuck Salley, new chairperson, and new BOZA member Regina Williams was welcomed.

Chuck Salley, chairperson, called the meeting to order at 10:00 AM, introduced the members of the Board of Zoning Appeals (BOZA), and introduced staff.

Mr. Cook confirmed quorum and proceeded with review of the Consent Agenda.

**II. CONSENT AGENDA**

**A. APPROVAL OF MINUTES**

**1. Approve March 8, 2016 Minutes**

**B.**

**C.**

**Motion by Mr. Hubbard to approve the March 8, 2016 Minutes; motion seconded by Mr. McKnight. Minutes approved 6-0.**

**B. OLD BUSINESS**

**None.**

**C. NEW BUSINESS**

**2. 16-013-SE Dist. 1 5239 Farrow Road (TMS# 11607-06-12) Special Exception to establish a day care facility (Normadean Rodriguez) (RS-3)**

No one spoke in favor or opposition of the requests, or requested removal for discussion.

**Motion by Mr. Hubbard to approve the Consent Agenda subject to any exhibits and conditions that may be found within the case summary for that application and to adopt as the findings of the Board, those findings in each case prepared by Staff, also found within each case summary; motion seconded by Mr. Young.**

**Motion approved 6-0.**

### III. REGULAR AGENDA

#### A. OLD BUSINESS

None.

#### B. NEW BUSINESS

3. **16-010-AA Dist. 3 4716 Devine Street (TMS# 13814-09-02)** Appeal of the Zoning Administrator's determination regarding a sexually oriented business (Cricket Store 17, LLC) (C-3, -FP)

Mr. Cook stated the request is an Appeal for Administrative Review. Rules of procedure for conduct of hearing are as follows: an introduction of applicant who presents on the request; staff presents; and the appellant has the opportunity to rebut.

Verbatim from the applicant: The applicant does allege in their application for administrative appeal that the Zoning Administrator did err by:

*Arbitrarily requiring Taboo to comply strictly with ordinance regulations or face immediate penalties of fines and/or imprisonment rather than to allow Taboo continued operation as a nonconforming use. The City is electing to enforce a provision of its ordinance for "Sexually Oriented Businesses" despite Taboo's record of compliance and compatibility with the surrounding uses in the vicinity of its property.*

The applicant, Thomas R. Goldstein, attorney for Cricket Store 17, LLC aka Taboo Adult Superstore presented on the request for Review of Administrative Appeal.

Mr. Goldstein felt Taboo Adult Superstore was not operating in violation of City Ordinances.

Mr. Cook was sworn in and requested that the determination made in the letter of January 28, 2016 that Taboo Adult Superstore is operating as a sexual device shop in violation of the zoning ordinance be upheld.

No additional persons spoke in favor or opposition of the request. Testimony closed for Board discussion.

**Motion made by Mr. Hubbard to deny the appeal of the decision by the Zoning Administrator. The facts and legal issues have been explored and the decision the Zoning Administrator made was correct based on the facts. There is ample evidence that sexual devices were indeed shown, and appeared to be regularly shown there. The legal issues have been addressed and the Zoning Administrator correctly decided.**

**Motion seconded by Mr. McKnight. Motion to deny passes 6-0,** and the determination of the Zoning Administrator was upheld.

4. **16-011-AA Dist. 3 4716 Devine Street (TMS# 13814-09-02)** Appeal of the Zoning Administrator's determination regarding an application for special exception (Cricket Store 17, LLC) (C-3, -FP)

Mr. Cook stated the request is an Appeal for Administrative Review.

The applicant does allege in their application for administrative appeal that the Zoning Administrator did err by:

*Refusing to accept Taboo's application for special exception, the granting of which the Board of Zoning Appeals is authorized under §6-29-800 (a)(3); and also by the Zoning Administrator's refusal to schedule a pre-hearing conference, which is prerequisite to such applications, per his letter dated February 26, 2016: "Pleased be advised that neither a Variance nor a Special Exception is applicable in the case, and applications for same cannot be processed. City Code §17-374(a)." See also Zoning Administrator's email dated February 26, 2016: "Your administrative appeal request before the Board of Zoning Appeals will be scheduled for April 12th 2016 at 10:00 at 1737 Main Street (Council Chambers). A pre-hearing conference is not required."*

The applicant, Thomas R. Goldstein, attorney for Cricket Store 17, LLC aka Taboo Adult Superstore presented on the request for Review of Administrative Appeal.

Mr. Cook stated that based on the facts presented, the Board of Zoning Appeals has no authority to accept or hear an application for special exception for the operation of a sexually oriented business at 4716 Devine Street, as the Zoning Ordinance does not grant authority for the use to be permitted as a special exception. The Zoning Administrator requested that the determination not to accept an application for special exception be upheld.

No additional persons spoke in favor or opposition of the request. Testimony closed for Board discussion.

**Motion made by Mr. Hubbard to deny the appeal of the decision by the Zoning Administrator. The most correct interpretation of the language at issue about the special exception is very clear, in that the BOZA cannot even consider a special exception to establish a sexually oriented business as the Board cannot grant it.**

**Motion seconded by Mr. Young and Mr. McMeekin. Motion to deny passes 6-0**, and the determination of the Zoning Administrator was upheld.

Brief recess taken at 11:20AM with the meeting resumed at 11:28AM.

- 5. 16-012-V Dist. 3 206 South Saluda Avenue (TMS# 11310-17-06)** Variance to the lot coverage requirements for an addition to a single family residence (Judy K and Francis Patrick Hubbard) (RS-3, -CC1)

Mr. Salley noted that Pat Hubbard recused himself from the request as he is a member of the Board of Zoning Appeals, as well as the applicant for the request.

Patrick Hubbard and Judy Hubbard, property owners, and Michael Haigler, architect for the project, were sworn in.

Mr. Hubbard presented on the request for a variance to the lot in order to construct an addition and a one-car garage for a single family residence. Lot coverage of 30% is permitted and the applicant is requesting up to 36% coverage of the lot instead.

Mr. Hubbard reviewed the criteria required for a variance:

**Extraordinary and exceptional conditions pertain to the subject property** – the area was established pre-zoning, and many of the existing houses, either as a result of variances or having been there as non-conforming exceed the 30% already. Therefore this would be an extraordinary and difficult condition to try to come in to improve and add to the home that others have been able

to do already.

**The conditions noted above do not generally apply to other property in the area** – Many of the homes in the area currently exceed the 30% coverage as they have two-car garages. The coverage limitations applicable to the lot do not generally apply to other residences in the neighborhood.

**Because of the conditions noted above, the requirements of the Zoning Ordinance effectively prohibit or unreasonably restrict the use of the property** – *The Comprehensive Plan for Columbia, South Carolina: 2008-2018* recently adopted, expresses a need to address the needs of its “growing and aging” population as well as the need to live on one floor. In addition, prospective buyers would expect certain things in the house for the amount of money that would be spent in resale.

**Approval of the variance would not be of substantial detriment to the adjacent property or to the public good, and the character of the district would not be harmed** – it would not be inconsistent with existing character of the neighborhood, and would be consistent with *The Comprehensive Plan* that the City “permit an encourage contextual” infill development, new construction or expansion of new construction.

**The variance is the minimum necessary.**

**It is in harmony with the purpose and intent of the Ordinance, and will not be injurious to the neighborhood or public welfare.** The look of the house will be preserved as the Hubbards are very into historic preservation.

The proposal was presented to the Hollywood – Rose Hill Neighborhood Association who voted unanimously in favor of the request, and provided a letter of support. Neighbors along South Saluda also provided letters of support, and e-mails were sent to surrounding property owners who voiced support of the project. Contact was made or attempted with all surrounding property owners in the area.

There is an existing house on the property which was built in 1935, and the footprint of the current house will basically remain the same. The additions are primarily on the back, and an entry area will be created within the footprint in the front. The covered one-car garage and greenhouse are included within the footprint and lot coverage.

As no one spoke in favor or against the request, testimony was closed for Board discussion.

**Mr. McMeekin complemented the design of the home and spoke in favor of the request.**

**Motion by Mr. McMeekin to approve the application for variance for 206 South Saluda. This is a smaller lot in the Hollywood Rose Hill area; it will not be a detriment to the neighborhood; to deny would prohibit the right to utilize the property; and the percentage requested is the minimum required. Motion seconded by Mr. McKnight.**

*Motion seconded by Mr. Young. Motion approved 4-0.*

6. 16-014- Dist. 2 522 Devine Street (TMS# 08914-01-02) Special Exception to  
**Deferred** expand a drinking place (Anthony Fusaro, Tapped out of S.C.  
Inc., d/b/a Uncle Fester's) (MX-2, -ID)

#### **IV. OTHER BUSINESS**

#### **V. ADJOURNMENT**

**There being no further business, Mr. Hubbard adjourned the March 8, 2016 Board of**

**Zoning Appeals meeting at 12:23PM.**

Respectfully submitted by Andrea Wolfe

Sr. Admin. Secretary

Planning and Development Services Department

City of Columbia