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Mayor

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TOWN OF HOLLY RIDGE BOARD OF ADJUSTMENT MEETING MINUTES September 28th, 2021 6:00 P.M.

Call to Order

The meeting was called to order at 6:00 PM. Board members present were Chairwoman Toni Hardin, Verne Jones, and Dave Mosey. Also present were Nathan Rhue, Community Development Director and Marsha-Gray Kircher from the Community Development Department. Applicants Marc Caldwell and Joseph Szostak were also present.

Pledge of Allegiance

Chairwoman Toni Hardin led the Pledge of Allegiance.

Adoption of Agenda (Additions and/or Deletions)

A motion was made by *Verne Jones* and seconded by *Dave Mosey* to adopt the agenda as is. *All Agreed.*

Adoption of Minutes (Additions and/or Deletions)

A motion was made by *Dave Mosey* and seconded by *Verne Jones* to adopt the minutes from August 21, 2021, with corrections mentioned. *All Agreed.*

New Business

Special Use Permit : 1100 NC Highway 50 – Drinking Establishment

Chairwoman Toni Hardin announced the case for Marc Caldwell and Joseph Szostak and the request for a Special Use Permit. Chairwoman Toni Hardin explained that the hearing on this request is quasi-judicial in nature and will be conducted in accordance with special due process safeguards. Chairwoman Toni Hardin asked all persons wishing to testify in this case to sign the sign-in sheet, and anyone wishing to testify to go to come up to the front to be sworn in and then return to their seat.

Applicants Marc Caldwell and Joseph Szostak, and Nathan Rhue were sworn in before hearing, administered by Board Chairwoman Toni Hardin.

Chairwoman Toni Hardin gave all Board members the opportunity to reveal possible conflicts and to withdraw from the proceeding if necessary. There were no Board members with any conflicts. All Board members were then asked by the Chairwoman if any of them had any information or special knowledge about the case that may come out at the hearing, and if so to please describe that information for the record so that any interested parties will know and can respond. There were no Board members with any information or special knowledge about the case.

Chairwoman Toni Hardin stated that in this hearing, we will first hear from the Staff and other Town witnesses, then from the applicant and their witnesses, and then from opponents to the request, if any. Parties may cross-examine witnesses after the witness testifies when questions are called for. Chairwoman Toni Hardin explained that if anyone wants the Board to see written evidence, such as reports, maps, or exhibits, the witness who is familiar with the evidence should ask that it be introduced during or at the end of his or her testimony. Chairwoman Toni Hardin expressed that the Board cannot accept reports from persons who are not present to testify. It was also expressed that if any Attorneys who speak should not give factual testimony but may summarize their client's case.

Chairwoman Toni Hardin opened the hearing on case Marc Caldwell and Joseph Szostak – request for special use permit for a drinking establishment. Nathan Rhue stated that he had an addition to add to the staff packet; the factors as part of the special use permit four standards that were provided by the applicants via email. Chairwoman Toni Hardin asked the applicants to verify that they did submit these factors. Both applicants Marc Caldwell and Joseph Szostak replied yes, they did. Nathan Rhue requested that the previously submitted staff packet to both the board and the applicant be submitted into evidence as 'Exhibit A'. Chairwoman Toni Hardin asked if there was anyone present that would like to object to its submission. There were none. Chairwoman Toni Hardin submitted staff report and factors of the four standards as 'Exhibit A' into evidence without objection.

Nathan Rhue presented the Board with the staff packet explaining that applicants Marc Caldwell and Joseph Szostak are applying for a Special Use Permit associate with the property located at 1100 NC Highway 50. The current owners of said property being Holdens Unlimited, LLC, with the property owners' consent to the application of the Special Use Permit, as included in the staff packet. The property is also identified as parcel number 011445 or map number 735-15, for a total of 9 acres that is currently zoned Commercial. Nathan Rhue explained that the

request for the Special Use Permit pertains to the applicants wishing to operate a drinking establishment which in accordance with the Town's ordinance would be permitted within the commercial district with an approved special use permit. Nathan Rhue explained to the Board that the proposal is for a restaurant style building that will contain food and beverages, an outdoor recreational area, and an area for food trucks to operate.

Nathan Rhue stated that within the commercial district the setbacks associated with it would be the front having zero setbacks, the rear traditionally would have zero but this particular property would have a 15 foot rear setback and a 10 foot side setback because it abuts residential, per the Town's ordinance. Minimum lot size for commercial district is a minimum of 15,000 sq ft, all utility confirmation will be required before the issuance of permits. Nathan Rhue mentioned that notifications were sent to adjoining property owners, and posted as required per Town Ordinance and General Statutes. Nathan Rhue explained that this property is located on Highway 50, across from Greg's Outboard. This particular property is zoned commercial with surrounding properties on the rear and side zoned R-15A hence the setbacks requirements and across the street there is some commercial and R-10A.

Because the proposal requires a Special Use Permit, additional considerations must be considered by the Board of Adjustment. Per Section 7-5-10, the Board must make an affirmative finding of each of the following items prior to issuance of the Special Use Permit. Staff has provided some guidance for each item; however, the applicant is responsible for the burden of proof in establishing each item below has been duly addressed. Section 7-5-10 (B) The Board of Adjustment shall issue a Special Use Permit only when the Board makes an affirmative finding for each of the following:

- (1) That the use will not materially endanger the public health or safety, if located where proposed and developed according to the plan submitted and approved;

Per the applicant - This establishment will not materially endanger the public. Its intended use is for our community to have a safe place for all ages to spend time, enjoy food, beverage, and local entertainment. Per Staff – Being that it is located on Hwy 50 and currently zoned commercial, it appears that the use would not endanger the public health of safety, if located where proposed and developed according to the plan submitted and approved.

- (2) That the use meets all required standards set forth in this Ordinance;

Per the applicant -Both owners are familiar with the Town of Holly Ridge code of ordinances and will ensure that this establishment adheres to all required standards set forth in the code. Per Staff - Drinking establishments are permitted within the Commercial District with an approved Special Use Permit. If developed according to plans received, the use will meet required standards.

- (3) That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity;

Per the applicant - The owners have an accurate, up to date plot survey and will follow all guidelines/requirements throughout the entire building process. They will have running water and sewer which will benefit other businesses or future builds. With a modern

design, they intend to add value to our community and hope to appeal to people of all surrounding areas. Per Staff – Based on current zoning of the properties around this property, they include commercial zoning and commercial uses.

(4) That the location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with the Holly Ridge Comprehensive Plan.

Per the applicant - The structure will be a modern design and visually appealing. The outdoor recreational area will be well maintained and inviting. The establishment will provide residents of Holly Ridge a place large enough to bring family and friends while still maintaining an upscale, hometown feel. Not only will this establishment operate in harmony with the area, they believe it will add value by being large enough and popular enough to draw interest from people of surrounding cities and towns. Per Staff – The Town's future land use map contained in the comprehensive growth strategy plan identifies this property for commercial use, and additionally the surrounding properties are also designated for future commercial uses.

Nathan Rhue reminded the Board that in reference to the plan, in the staff packet received there was a survey plan as well as a sketch of the proposal for this project. Nathan Rhue explained that if the special use permit, if approved it would have to be recorded with the register of deeds within 90 days, work must start within 12 months, and if work is started and ceases to continue within 12 months, these would void the special use permit. Nathan Rhue mentioned that if the applicant fails to comply with the terms would also cause the special use permit to be void.

Chairwoman Toni Hardin asked if the applicant had any questions for staff. There were none. Chairwoman Toni Hardin asked if the Board had any questions for staff. Verne Jones asked if this property is the one on the left-hand side of the road with the For Sale sign for 9 acres. Nathan Rhue and Marc Caldwell answered yes, it is. Verne Jones asked if they are buying the property now. Marc Caldwell responded yes sir. Dave Mosey asked for clarification about the single abandoned building mentioned on page one of the staff packet; but it appears that there is another building there also. Marc Caldwell responded that it is gone, no longer there, that the only building remaining on the property is the one on the right-hand side. Chairwoman Toni Hardin asked if there were any additional questions for Staff, the Board, or other present parties. There were none.

Chairwoman Toni Hardin stated that it was time to hear from the applicant and other proponents of the request. If there were any attorneys or other representatives to give a summary of the client's position, to go first, but with only the applicants being present, they shall go first.

Applicants Marc Caldwell, 317 Edgewater Way Surf City, and Joseph Zsostak, 339 Belvedere Drive, Holly Ridge. Applicants passed out handouts to the Board and staff. Marc Caldwell mentioned to the Board that Joseph Zsostak is his business partner that he has known for 11 years, both Marine Corps veterans. Marc Caldwell expressed that they moved to Holly Ridge originally with the thought process that they would not stay there for a considerable amount of time, but both moved here and fell in love with the area. Marc Caldwell explained that they both came up with the idea to maintain an establishment in this area, and further their lives here; they own the Burrito Shak in Surf City. Once the Burrito Shak was opened and they were able to step back a little bit, the what next was the next thing in their thought process. Marc

Caldwell explained that they put their heads together and came up with the idea for this Tap House.

Marc Caldwell mentioned that their thought process was what does the community want, and what does the community need. Being that there are bars already around the area, they did not want to replicate something that was already here, rather get something that is different, something that is better for the community. Marc Caldwell expressed that they wanted to bring something different here, something that brings more of a community feel together with a relaxing, social, entertaining place that is surrounded by what this Town is known for; a beachy type vibe. Marc Caldwell explained that the concept they came up with is of a large tap house that would offer a large outdoor area for both Holly Ridge and Surf City to enjoy. Marc Caldwell explained that they would have an opportunity to have a wide range of entertainment for all ages, not just looking to cater to adults only, they know there are single parents here, and that there are people here that are married and have kids. Marc Caldwell expressed that they want to have a place that everyone can come to, we can have the community come together, we can build a better business model to bring more folks to the area because they know it is part of the growth plan for the Town; they are trying to help the growth process.

Marc Caldwell explained that their vision of this tap house would offer 30 to 50 types of beers or wines, as there is not a wine facility here in the area. Marc Caldwell mentioned that their goal isn't necessarily to have liquor because with that comes a lot of other things, but they want to have beer and wine available to folks that way they can bring their kids. Marc Caldwell stated that they would have food and beverages for the kids also, maybe a playground area. Marc Caldwell explained that they will have an indoor area so the folks that want to be inside can stay inside, and they will have a patio area that is covered, and they will also have picnic tables and a recreation area for friends, families, and/or pets, there are a lot of folks that are attached to their animals and we do not want to prohibit them, or leave them out.

Marc Caldwell explained that the décor of the tap house would be a modern coastal theme, beachy and comfortable, and that way it would be enticing for everyone who comes this way to head to the beach anyway, they want to stay along with that theme that the Town already offers. Marc Caldwell stated that being this is going to provide a perfect backdrop for spending time with family, friends, a date night, business meetings, it will quickly become a gathering place and a favorite community destination. Marc Caldwell described the outdoor area as having an outdoor atmosphere unlike anything the area has to offer right now, there will be shaded patios with fans and misters in the summer, and heaters, fire pits and heated table areas in winter; this way when it is cold outside, they do not have to shut their doors like folks on the island do, they shut shop up – this would be enticing for anyone to come any time, any season.

Marc Caldwell stated that they would also potentially like to offer live music, because the closest place to do anything like that right now would be Charlotte, or Raleigh, maybe Wilmington. Marc Caldwell explained that they are going to have food inside the business, and snack foods and drinks for kids, but also bring food trucks in so they can offer a variety of services for other vendors to bring more business to the area. Marc Caldwell stated that they do not want to limit to just that, that they were thinking outside the box, and will have a large open area with the land all cleared so they would have the potential for having pilates, or yoga, or dance. Marc Caldwell mentioned that they would not be against having a festival there, things that would bring more community, more business, more things to the area that we do not already have. Marc Caldwell stated that they want to do it so it will be family friendly and an enjoyable

experience for everybody.

Marc Caldwell mentioned the potential layout provided in the handout and the staff packet that gives everyone an idea of where they are going to potentially situate the building on the property, and a large outdoor area where they can have picnic areas, have music come in, room for festivals, business events, it would be all inclusive for not only family and friends, but also businesses, there is no limit. Joseph Szostak explained that the idea is basically having an area where families can meet up besides the beach, where the kids can run around and the adults can socialize. Joseph Szostak expressed that if you have ever been to a big brewery up in Northern Virginia or near Asheville, they are looking to replicate that but it would be just a tap house versus a brewery with a big outdoor area for families and kids, and a nice indoor area for people that want to hang out inside. Marc Caldwell mentioned that they would keep it a coastal feel so it does not take away from the Town, it would add to the perception of what we are already, they would make an extension of that, as classy as we can. Marc Caldwell stated that they do not want to stay open terribly late, because when you stay open really late, it lends itself to a different crowd, and that is not the crowd they will be catering to. Marc Caldwell expressed that some of the local establishments stay open until around 10pm, and they are looking at the same closing time because after 10 not a lot of good things happen. Verne Jones stated that he notices there is a stage so you can have music, is that for dancing or just listening to music. Joseph Szostak stated that is just a rough design, but it would be of stage for having bands come in. Marc Caldwell expressed that he would not discourage anyone from dancing while a band is there, but it would probably be on the grass.

Marc Caldwell asked if the handout could be submitted as evidence. Chairwoman Toni Hardin asked if there was anyone present that would like to object to its submission. There were none. Chairwoman Toni Hardin submitted the concept plan handout from applicant as 'Exhibit B' into evidence without objection.

Chairwoman Toni Hardin asked if the Board had any questions for the applicant, there were none. Chairwoman Toni Hardin asked if the Board has any questions for Staff. There were none. Chairwoman Toni Hardin asked if there was anyone opposing the request that would like to speak. There were none. Chairwoman Toni Hardin announced that the Board would move into deliberation.

Chairwoman Toni Hardin asked for discussion on the first standard; that the use will not materially endanger the public health or safety, if located where proposed and developed according to the plan as submitted and approved. Chairwoman Toni Hardin stated that from the testimony from the applicant that this establishment will not materially endanger the public. Its intended use is for our community to have a safe place for all ages to spend time, enjoy food, beverage, and local entertainment; and staff testimony stated that it is located on Hwy 50 and currently zoned commercial, it appears that the use would not endanger the public health or safety, if located where proposed and developed according to the plan submitted and approved.

Chairwoman Toni Hardin asked if there was a motion for the first standard; that the use will not materially endanger the public health or safety, if located where proposed and developed according to the plan submitted and approved.

A motion was made by *Dave Mosey* and seconded by *Verne Jones* that all criteria was satisfied for an affirmative vote on the first standard. *All Agreed.*

Chairwoman Toni Hardin asked for discussion for the second standard; that the use meets all required standards set forth in this ordinance. Chairwoman Toni Hardin stated the from the testimony received from the applicant that both owners are familiar with the Town of Holly Ridge code of ordinances and will ensure that this establishment adheres to all required standards set forth in the code; and staff testimony stated that drinking establishments are permitted within the Commercial District with an approved Special Use Permit. If developed according to plans received, the use will meet required standards.

Chairwoman Toni Hardin asked if there was a motion for the second standard; that the use meets all required standards set forth in this ordinance.

A motion was made by *Verne Jones* and seconded by *Dave Mosey* that all information provided has satisfied the requirement for an affirmative vote on the second standard. *All Agreed.*

Chairwoman Toni Hardin asked for discussion for the third standard; that the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity. Chairwoman Toni Hardin stated the from the testimony received from the applicant that the owners have an accurate, up to date plot survey and will follow all guidelines/requirements throughout the entire building process. They will have running water and sewer which will benefit other businesses or future builds. With a modern design, they intend to add value to our community and hope to appeal to people of all surrounding areas; and staff testimony stated that based on current zoning of the properties around this property, they include commercial zoning and commercial uses.

Chairwoman Toni Hardin asked if there was a motion for the third standard; that the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity.

A motion was made by *Verne Jones* and seconded by *Dave Mosey* that the criteria was satisfied for an affirmation vote on the third standard. *All Agreed.*

Chairwoman Toni Hardin asked for discussion for the fourth standard; that the location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with the Holly Ridge Comprehensive Plan. Chairwoman Toni Hardin stated the from the testimony received from the applicant that the structure will be a modern design and visually appealing. The outdoor recreational area will be well maintained and inviting. The establishment will provide residents of Holly Ridge a place large enough to bring family and friends while still maintaining an upscale, hometown feel. Not only will this establishment operate in harmony with the area, they believe it will add value by being large enough and popular enough to draw interest from people of surrounding cities and towns; and staff testimony stated that the Town's future land use map contained in the comprehensive growth strategy plan identifies this property for commercial use, and additionally the surrounding properties are also designated for future commercial uses.

Chairwoman Toni Hardin asked if there was a motion for the fourth standard; that the location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with the Holly Ridge Comprehensive Plan.

A motion was made by *Dave Mosey* and seconded by *Verne Jones* that all requirements have

been met for an affirmative vote on the fourth standard. *All Agreed.*

Chairwoman Toni Hardin closed the hearing. Chairwoman Toni Hardin asked if there was a motion to approve the Special Use permit as provided in the staff report and to direct staff to prepare and issue the Special Use permit for a drinking establishment.

A motion was made by *Dave Mosey* and seconded by *Verne Jones* to approve the Special Use permit for a drinking establishment and direct staff to prepare and issued the Special Use Permit. *All Agreed.*

Board Questions/Comments

There were none.

Adjourn

A motion was made by *Dave Mosey* and seconded by *Verne Jones* to adjourn the meeting at 6:40 PM. *All Agreed.*



Toni Hardin
Chairwoman



Marsha-Gray Kircher
Community Development Department