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**FUQUAY-VARINA BOARD OF ADJUSTMENT**  
**MEMORANDUM**

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**To:** Paul Sherman, Chair and Members of the Board of Adjustment  
**From:** Kari Terwilliger, Planner I  
**Subject:** BOA-SE-2010-01 – 213 Fayetteville Street  
**Date:** February 8, 2010

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**Request:** In this case the petitioner is requesting a special exception to expand the Varina Sports Bar located at 213 Fayetteville Street in Downtown Varina. This expansion will include a new door leading to an outdoor patio which will be enclosed by a fence. The petitioner is making this request so that patrons of his establishment may take an alcoholic beverage which they have purchased inside out onto the patio in order to smoke. Due to the recent smoking ban legislature, patrons of bars and restaurants are no longer allowed to smoke indoors. The fence around the patio will ensure that patrons of the Varina Sports Bar who wish to smoke and drink at the same time will not be out in the street as well as ensuring that the patio will not provide an additional point of entry; thus aiding in the reduction possible public safety hazards.

The building where the Varina Sports Bar is located previously received a Special Exception for the sale and consumption of alcohol is owned by Akins Properties, LLC. The property is 0.26 acres and is in a CDF I- Downtown Fringe Commercial I District. This establishment is not a restaurant. Its primary function is the sale and consumer consumption of malt beverages (alcohol). The sale of and consumer consumption of alcohol in a Commercial District is a permitted use only if the establishment's primary function is that of a restaurant. Otherwise a Special Exception is required in order to sell and allow the public to consume alcohol on the premises when the primary function is not the sale of food. Rezoning of this property would not allow the petitioner to avoid the need for a Special Exception.

This Special Exception would not be unique to this section of Broad Street. There are three establishments which currently sell alcohol in this section of downtown, one of which is not classified as a restaurant. The Aviator Brewing Company Tap House located at 600 E Broad Street received a Special Exception on July 13, 2009 for the sale and consumption of alcohol. Both Monte's Sports Grille at 525 E Broad Street and J & S New York Pizza located at 500 E Broad Street are restaurants in this section of downtown which serve alcohol. They did not need to request a Special Exception because their primary business is the sale of food in the form of a restaurant. J & S New York Pizza and the Aviator Brewing Company Tap House are in a CD Downtown Commercial District. Monte's Sports Grille is in a CDF I-Downtown Fringe Commercial I District which is the same as the petitioner's property. Both zoning districts (as outlined below) require a Special Exception in order to sell or consume alcohol in an establishment which is not a restaurant.

**Background:** Sections 9-4068 (page 69), 9-4069 (page 71), Article L Section 9-4123 (page 117) and 9-4091 (page 102) are pertinent to this case:

Section 9-4069 CDFI Downtown Fringe Commercial I. (applicable sections)

The purpose of this district is to provide convenient shopping and service facilities for automobile traffic by promoting a low density development of commercial uses, by insuring that all parking facilities shall be off-street, and by insuring proper buffering to keep nonconformity to a minimum, and to provide for the minimization of blight, and to require that buildings will be located and constructed in a manner which reflects an appropriate appearance and aesthetic taste.

(1) Permitted Uses:

b. Consumer Services:

41. Indoor and outdoor recreation establishments and clubs serving and consuming non-alcoholic beverages only.

**Staff Comment:** ***A Special Exception is required in order for the petitioner to sell and allow the public to consume alcohol on his premises. The previously granted Special Exception was for the current building, any addition to the building requires another Special Exception.***

Section 9-4068 CD Downtown Commercial. (applicable sections)

The purpose of this district is to provide convenient shopping and service facilities for pedestrian traffic by promoting a compact development of commercial uses and by insuring that off-street and on-street parking and traffic will be controlled, that pedestrian walkways and suitable landscaping will be developed, and that buildings will be located and constructed in a manner which reflects on appropriate appearance and aesthetic taste.

(1) Permitted Uses:

b. Consumer Services:

39. Indoor recreation establishments serving and consuming non-alcoholic beverages only and meeting the parking requirements of Article L.
40. Clubs serving and consuming non-alcoholic beverages only and meeting the parking requirements of Article L.

**Staff Comment:** ***This section was included to illustrate that the existing Aviator Brewing Company Tap House (CD) in this section of downtown had the same requirements as the petitioner's property despite the different zoning classifications. The Tap House also needed a Special Exception in order to sell and serve alcohol.***

Article L Off-Street Parking and Service Requirements  
Section 9-4123 MINIMUM NUMBER OF OFF-STREET PARKING SPACES. (applicable sections)

**Commercial**

(17) General retail uses not listed: One space for each 200 sq. ft. of net sales area.

**Staff Comment:** *No additional parking is required for this addition to the building.*

Section 9-4091 GENERAL RESTRICTIONS.

Permission may be granted for the establishment of uses listed as special exceptions if the Board of Adjustment finds from the evidence produced after a study of the complete records that:

- (1) The proposed use does not affect adversely the general plans for the physical development of the Town as embodied in these regulations or in any plan or portion thereof adopted by the Planning Board;
- (2) The proposed use will not be contrary to the purposes stated in these regulations;
- (3) The proposed use will not affect adversely the health and safety of residents and workers in the Town;
- (4) The proposed use will not be detrimental to the use or development of adjacent properties or other neighborhood uses;
- (5) The proposed use will not be affected adversely by the existing uses;
- (6) The proposed use will be placed on a lot of sufficient size to satisfy the space requirements of said use;
- (7) The proposed use will not constitute a nuisance or hazard because of the number of persons who will attend or use such facility, vehicular movement, noise or fume generation, or type of physical activity;
- (8) The standards set forth for each particular use for which a permit may be granted have been met;
- (9) The proposed use shall be subject to the minimum area, set-back, and other locational requirements of the zoning district in which it will be located; and
- (10) The proposed use shall be subject to the off-street parking and service requirements of these regulations.

The following are items which need to be considered by the Board before a decision is made for this case:

- Would the use be permitted if the petitioner was selling or serving only non-alcoholic beverages?

**Staff Comment: Yes.**

- Are there other similar establishments in the area which received a Special Exception in order to sell or serve alcohol?

**Staff Comment: Yes, the Aviator Brewing Company Tap House received a Special Exception in order to sell and serve alcohol for a non-restaurant use.**

- Does the property meet the minimum parking requirements?

**Staff Comment: Yes, no additional parking is required for this addition to the building.**

**Required Findings of Fact:**

- The proposed use does not affect adversely the general plans for the physical development of the Town as embodied in these regulations or in any plan or portion thereof adopted by the Planning Board;
- The proposed use will not be contrary to the purposes stated in these regulations;
- The proposed use will not affect adversely the health and safety of residents and workers in the Town;
- The proposed use will not be detrimental to the use or development of adjacent properties or other neighborhood uses;
- The proposed use will not be affected adversely by the existing uses;
- The proposed use will be placed on a lot of sufficient size to satisfy the space requirements of said use;
- The proposed use will not constitute a nuisance or hazard because of the number of persons who will attend or use such facility, vehicular movement, noise or fume generation, or type of physical activity;
- The standards set forth for each particular use for which a permit may be granted have been met;
- The proposed use shall be subject to the minimum area, set-back, and other locational requirements of the zoning district in which it will be located; and
- The proposed use shall be subject to the off-street parking and service requirements of these regulations