

**ZONING BOARD OF ADJUSTMENT - APRIL 28, 1992 - CONTINUED**

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observe the spirit of the Zoning Ordinance and substantial justice is done. If the requested variance of 198 feet was granted, the Board's actions would be in direct conflict with a specific provision of the Zoning Ordinance that would have the affect of unlawfully amending the City's Zoning Ordinance.

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The Board entered into open session.

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**CASE #92-31 - INTERPRETATION - 4117 Glenwood Drive - Gene Oats/Minute Grill & Sports Bar - Tax Parcel Number 065-071-17 - requesting to reverse the Zoning Administrator's interpretation that Minute Grill & Sports Bar is a night club, bar or lounge. Code Section 9.803(19) B-1 & B-2 requires that any structure in which a nightclub, bar or lounge is located shall be at least 400 feet from any residential use or residential district.**

Mr. Robert Brandon, Zoning Administrator, testified that the subject property is zoned B-1 (Neighborhood Business) and is located within 400 feet of a residential district. He submitted to the Board a copy of the City of Charlotte Zoning Map indicating the B-1 Zoning District and the proximity of the R-6 Residential Zoned District. (Exhibit #1)

Effective January 1, 1992, with the implementation of the new Zoning Ordinance, principal uses such as Nightclubs, Bars and Lounges are required to be located at least 400 feet from any residential use or residential district. The use proposed at 4117 Glenwood Drive is for a Restaurant and Bar or Lounge. Both uses are considered as a principal use.

Code § 9.803(19) lists Bars and Lounges as principal uses under prescribed conditions. Code § 2.201(A3) defines Accessory Use as a use that is customarily or typically subordinate to and serves a principal use; and, is clearly subordinate in area, extent, or purpose to the principal use.

It is the Staff's conclusion that the proposed facility to be known as Minute Grill will consist of two principal uses, a restaurant and a bar. The primary function of the bar is to serve alcoholic beverages. The bar portion of the facility is not minor or incidental to the restaurant. It has eight(8) to ten (10) bar stools which could serve alcoholic beverages without serving food which may be done at the tables.

He stated that this office has determined the bar use at 4117 Glenwood Drive is not permitted due to the use being within 400 feet of a residential district.

Mr. Brandon stated that certain establishments were "grandfathered" when the new Ordinance

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was adopted in January 1992, according to their operations, but this location was not operating as a bar prior to this date, therefore, the bar as a primary use is not allowed.

Mr. Dave Smith, Assistant City Attorney, stated that if the bar is used as a service bar for the restaurant, then it is permitted within 400 feet of a residential district.

Mr. Jim Millard, representing the Applicant, testified that as part of the Innkeeper Motel, this structure had originally housed a lounge and a restaurant. They closed the lounge and renovated the restaurant with a portion of this restaurant having a bar with approximately eight bar stools. The restaurant will seat eighty (80) people. He stated the restaurant does not require anyone to order food with an alcoholic beverage. Two meals are served each day, six days each week according to a lease with the owner of the building. He stated the operation of the business is a restaurant serving alcoholic beverages. The restaurant does have dart boards and is experimenting with a band on Friday nights.

**OPPOSITION**

No one appeared in opposition.

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The public hearing was declared closed, and the Board proceeded to deliberate the remaining cases.

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**CASE NO. 92-31 - INTERPRETATION - 4117 GLENWOOD DRIVE - REVERSED**

**FINDINGS OF FACT**

Following an investigation of the property in question and its immediate surroundings and on the evidence presented, the Board makes the following Findings of Fact:

1. The structure has only nine (9) bar stools as an accessory to the occupancy.
2. The lessee of the structure has a lease which requires two (2) meals per day, six (6) days per week to be served.
3. The lessee receives 50% of the sales in food.

**DECISION OF THE BOARD**

The decision of the Board was expressed in a motion by Board Member Watson and seconded by Board Member Hutchins to **reverse the interpretation of the Zoning Administrator that Minute Grill & Sports Bar is a night club, bar or lounge and to further conclude that the principal use is a restaurant at 4117 Glenwood Drive.**

AYES: Carter, Johnson, Mitchell, Watson, Hutchins  
NAYS: NONE

**CONCLUSION OF THE LAW**

Based on the Board's findings of fact, the Board's conclusion is that Minute Grill & Sports Bar is a restaurant, not a night club, bar or lounge and reversing this interpretation will observe the spirit of the Zoning Ordinance and substantial justice is done.

**CASE NO. 92-40 - INTERPRETATION - 531 EAST WORTHINGTON AVENUE - REVERSED**