



Michael L. Thurmond
Chief Executive Officer

DeKalb County Zoning Board of Appeals

Department of Planning & Sustainability
330 Ponce De Leon Avenue, Suite 300
Decatur, GA 30030



Wednesday, January 9, 2019 at 1:00 PM

Planning Department Staff Analysis

D.2 Case No: A-18-1242986 **Parcel ID(s): 18-015-01-022**

Commission District: 04 Super District 07

Applicant: Misrak Wolde
4583 Rockbridge Road
Stone Mountain, Georgia

Owner: Shao Jon
8730 Islesworth Court
Duluth, Georgia 30097

Project Name: 4583 Rockbridge Road

Location: The property is located on the southside of Rockbridge Road, approximately 494 feet east of Allgood Road, at 4583 Rockbridge Road, Stone Mountain, Georgia.

REQUEST: An appeal to an administrative decision regarding Section 27-9.1.3 of the DeKalb County Zoning Ordinance related to a proposed establishment selling hookah products beer and wine until midnight; appeal concerns the definition of Late Night Establishment, that which requires a Special Land Use Permit.

Staff Recommendation: **“AS THE BOARD DESIRES”**

STAFF FINDINGS:

Table 1: Surround Zoning and Land Use

	Adjacent Zoning	Adjacent Land Use
North	City of Pine Lake	
East	City of Pine Lake	
South	R-75	Detached single family homes
West	City of Pine Lake	
Northeast	City of Pine Lake	
Northwest	City of Pine Lake	
Southeast	R-75	Detached single family homes
Southwest	City of Pine Lake	
Street Type		Minor Arterial

Site Location: The property is located on the southside of Rockbridge Road, approximately 494 feet east of Allgood Road, at 4583 Rockbridge Road, Stone Mountain, Georgia. The site is currently developed as a shopping center. The property fronts Rockbridge Road which is classified as a minor arterial street.

Appeal request: The applicant is requesting a reversal of an administrative decision regarding Section 27-9.1.3 of the DeKalb County Zoning Ordinance as it pertains to proposed hookah and beer and wine sales until midnight appeal concerns the definition of Late Night Establishment, that which requires a Special Land Use Permit.

Appeal Analysis: Applicant proposes an establishment that operates the sales and consumption of tobacco products as the primary use in a C-1 district (allowed by right) with accessory uses of limited food sales and alcohol for consumption on site no later than 12:30a.m.

Two separate codes address this set of uses – Chapter 16, Division 2.-Clean Indoor Air and Chapter 27 of the DeKalb County Zoning Ordinance. Each has distinct definitions and limitations for selling alcohol for consumption and the operations of restaurants.

Within to Chapter 27, there exists no provision that cleanly aligns with the provisions of Chapter 16. Chapter 16 prohibits smoking in “restaurants”. However it explicitly exempts “free standing bars” from this prohibition, as long as food sales are less than the total receipts of alcohol. That is, hookah is allowed in “free standing bars” and free standing bars allow some food sales (if less than 50% of receipts).

Chapter 27 has no provision for a “free standing bar” or limited-hours of operating a bar; it provides for **either** restaurants with alcohol, **or** “late night entertainment” for selling alcohol until 2:30 a.m. Since the code is silent on early closing, the Director determined a) applicant is prohibited by zoning to sell alcohol with her hookah establishment without a SLUP, and b) she cannot prepare and serve food if there is smoking as apparently intended by Chapter 16

Applicant is appealing the determination that she is a “Late Night Establishment”, and if her appeal is successful therefore does not need a SLUP because she is proposing to close by 12:30. Further, she asserts her business is not a restaurant because her sales will come from Hookah and prepared foods, as allowed by Chapter 16 for “free standing bar.” She further requests that she be allowed to sell a limited amount of food, and will meet the threshold allowed by Chapter 16 to demonstrate she is NOT “primarily devoted to the serving of food” by : a) restricting food sales to less than 50% of total receipts and b) she will not have a dining area but lounge area for hookah smokers.

For reference, we have provided three Attachments to this report: 1) the complete Chapter 16; 2) a memo from the legal department pertaining to a separate establishment that was determined to in fact operate as a restaurant (although a different case, it may offer a relevant reasoning that may assist the ZBoA in its deliberation), and 3) a public notice to all hookah establishments raising awareness of Chapter 16.

Associated definitions and restrictions from Chapter 16 and 27 respectively:

Chapter 16, Division 2.-Clean Indoor Air-

Freestanding bar means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and which derives at least fifty (50) percent of its total annual gross food and beverage sales from the sale of beverages, including but not limited to taverns, nightclubs, cocktail lounges, and cabarets.

Restaurant means any establishment or area which is primarily devoted to the serving of food to the public or guests and which contains a dining area. The term "restaurant" shall not include a cocktail lounge or tavern if said cocktail lounge or tavern is a freestanding bar area as previously defined. The term "restaurant" shall include any dining area located within a health care, educational, or childcare facility. Food courts within enclosed shopping malls shall be treated as restaurants under this division.

Sec. 16-103. - Prohibited smoking-

Except as allowed in this division, smoking is prohibited in all public places, outdoor recreational public places, common areas, and places of employment.

Sec. 16-106. - Exceptions

(a) The smoking prohibition **shall not apply** in the following areas: (1) "**Freestanding bar**" areas; (2) Retail tobacco stores; (3) Adult entertainment establishments, as defined by this Code; (4) Private residences, including private residences which may serve as an office workplace, except if used as a childcare, an adult day care or a health care facility; (5) Any property owned or leased by municipalities, the State of Georgia, or the federal government; (6) Designated smoking rooms in hotels and motels rented by guests provided that such designated smoking rooms shall not comprise more than twenty-five (25) percent of the total number of rooms available for rent; and (7) Outdoor areas of places of employment, except where an owner or employer declares that the outdoor area is a smokefree environment, as provided in this division.

(b) Notwithstanding any other provision of this division, any owner, operator, manager or other person who controls any establishment described in this division may declare that the entire establishment is a non-smoking establishment

Chapter 27 Section 27-9.1.3 Definitions-

Late-night establishment: Any establishment licensed to dispense alcoholic beverages for consumption on the premises where such establishment is open for use by patrons beyond 12:30 a.m.

Special land use permit: The approval of a use of land that the board of commissioners is authorized to decide as specified within a zoning district pursuant to the procedures and criteria contained in article 7 of this chapter.

Restaurant: An establishment where food and drink are prepared, served, and consumed primarily within the principal building.

FINAL STAFF ANALYSIS:

The Zoning Board of Appeals is charged with hearing appeals of administrative decisions and variances when adherence to the strict requirements of the Zoning Code would result in exceptional and undue hardship upon the owner of such property. Usually, the ZBOA is prohibited from allowing a structure or use not listed as a permitted use or a special use in the applicable zoning district or a density of development that is not authorized within such district. However, this prohibition does not apply to any variance from the supplemental regulations of Article 1 of this Zoning Ordinance or from any other accessory feature or characteristic of a permitted or special use, unless said variance is otherwise prohibited by the regulations of this chapter. The Department of Planning and Sustainability recommends that the application be considered "As the Board desires".

STAFF RECOMMENDATION: "As the Board desires"

Attachments:

1. *Chapter 16. Article VI.-Offenses Against Public Health-Division 2.-Clean Indoor Air Ordinance*
2. *Pubic Reminder Notice*