

SUP10-2, Mr. Karl Bakken Special Use Permit Application for a Amusement Center in a B1 Zoning District

Location and Proposed Use

The applicant, Mr. Karl Bakken, has applied for a special use permit to operate an “amusement center” in a B1 zoning district. Presently, in the B1 zoning district “*public billiard parlors and poolroom, bowling alleys, dance halls, and similar forms of public amusement*” require a special use permit.

The proposed business is to be located at 32 East Main Street, suite B, the former location of “Cravings” ice cream parlor. For several months the applicant has been renovating the location so to be suitable for his desired use.

Background

On, or around, March 1st, 2010 Mr. Bakken approached the Town Planner to receive feedback concerning his proposed use on a business zoned site located at East Main Street. Mr. Bakken gave a brief description of the use (amusement center), and the Town Code was referenced. In the B1 zoning district “commercial recreation” is listed as a “by right” use; being that an official definition for “commercial recreation” does not exist, it was determined that the proposed use was a like/similar use to “commercial recreation”.

In mid-April 2010 Mr. Bakken returned and applied for a business license for his proposed business. Also, written on the back of the business license was a brief description of the proposed use. This description detailed the type of amusements available, and listed the specific type of amusements – two of which were to be pool/billiards tables. (Note: the proposed business will contain a total of 24 amusement devices, two (2) of which are pool tables)

Upon receiving the business license, it was brought to the attention of the Town Planner that “billiard rooms and poolrooms” require a special use permit in the B1 zoning district. Additionally, billiard rooms and poolrooms are subject to additional regulations as well. For Mr. Bakken, one of the more problematic additional regulations states that minors cannot patronize a billiard room or poolroom. Unless changed, Mr. Bakken’s establishment would not be able to offer billiards/pool as an amusement to minors. Although Town Staff believed that the presence of one (or two) pool tables does not constitute a “billiards room” or “poolroom”, no formal definitions of the two terms exist in the Town Code – therefore no additional guidance was provided.

Mr. Bakken consulted with members of the Town staff and the following items were determined: 1) several months prior to the tentative opening date (July 3, 2010) of the proposed business, Mr. Bakken put forth a high degree of due diligence to determine if the proposed use conformed to the Town Code, 2) confusion in regard to the proposed business was exacerbated because the Town Code does not contain definitions for several key terms related to the proposed use, and 3) Town staff would work in conjunction with the Planning Commission in order to define several key terms in order to decrease confusion (and differences in interpretation) related to the proposed use.

Planning Commission Recommendations

In May of 2010 the Planning Commission met and reviewed the issues/facts surrounding Mr. Bakken's use. Several members of the Planning Commission noted that in the past all forms of public recreation/amusement had been required to receive a special use permit. Therefore it was determined that this proposed use should also receive a special use permit under the existing provision in the B1 zoning district requiring a special use permit for "similar forms of public amusement". Mr. Bakken agreed to apply for a special use permit.

Therefore, the Planning Commission recommended that definitions for the following terms be formulated and added to the Town Code: 1) amusement or recreation center, 2) commercial recreation, and 3) poolroom or billiard room. Because the term "amusement or recreation center" does not currently exist - in addition to being formally defined - it would also be needed to be added to the Town Code. It was also determined that all three terms should be "uses allowable by special permit" in the B1 zoning district; therefore the term "commercial recreation" would need to be moved as a "by right" use in the B1 zoning district, to a "use permitted by special permit" in the B1 zoning district. It is believed that defining the subject uses and making each use a "use allowable by special permit" would be an appropriate action so to retain consistency and oversight, and reduce future confusion.

Lastly, the Planning Commission formulated the following definitions for the terms described above:

***Amusement or Recreation Center** - Any room, place or space available for public patronage, operated as a business which utilizes in its operation five or more pieces of equipment or games, including, but not limited to the following: two (2) or fewer pool/billiard tables, ping-pong tables, foosball tables, video game machines, pinball machines, or any arcade-style mechanical or electronic amusement device.*

***Poolroom or Billiard Room** - An establishment open to the public containing amusements devices devoted to or used in connection with the playing of pool, billiards or snooker where a fee is charged which is directly or indirectly conditioned upon or related to the playing of any such game. Establishments which provide three (3) or more pool, billiards or snooker tables shall be considered a poolroom or billiards room.*

***Commercial Recreation** - An activity conducted wholly or partially for the purpose of sport, entertainment, education, or recreation which is carried out on a commercial/fee basis.*

Because the above terms are not presently in the Town Code, Mr. Bakken is technically applying for a special use permit under section 406.2 (uses permitted by special permit) of the B1 zoning district which states "public billiard parlors and poolroom, bowling alleys, dance halls, and similar forms of public amusement".

If the Town Code is amended by the Town Council (to include the above definitions) before the special use permit is considered, Mr. Bakken's use will meet the criteria of an "amusement or recreation center" under the newly amended code – therefore the existence of two (2) or fewer pool tables would be allowable.

Conditions of the Special Use Permit

Mr. Bakken has clearly stated on multiple occasions the desire to operate a "fun, clean, and safe environment", which is conducive to a "respectable and family oriented establishment".

The current code restrictions related to billiard rooms and poolrooms were based upon observed activities and nuisances related to such operations.

Although (provided the above terms are added to the Town Code) Mr. Bakken's operation will not be considered to be a billiard room or poolroom, he has proffered the following conditions as part of his special use permit application:

1) Patrons will not be allowed to participate in gambling or betting on any of the amusements. Any patron found doing so, will be asked to leave the premises immediately and risk being permanently banned.

2) There will be no unnecessary loitering in, or around, the establishment.

3) Minors will be required to adhere to the established Town curfew.

4) The establishment will be staffed by an adult attendant at all times.

5) Any patron suspected to be under the influence of alcohol or drugs will be asked to leave the establishment.

6) Patrons will be required to wear a shirt and shoes in order to enter, and remain, in the establishment.

7) Any patron using profane or vulgar language will be asked to immediately leave the establishment.

I understand that my business will be required to adhere to the conditions detailed above, and a violation of any of these conditions could result in my Town special use permit and/or business license being revoked or suspended.

Summary

Local governments look to zoning ordinances for guidance when evaluating a land use related proposals. Even the most sophisticated and well-written zoning ordinances likely contain some “grey area”, which will either need interpretation or clarification. It is believed that Mr. Bakken’s request fell into a “grey area” in the Town Code, so to say. The Town Planner firmly believes that the applicant, and the proposed use, will be an asset to the Town. The proposed use is a popular form of recreation and it will likely be patronized by locals and tourists alike.

The Planning Commission’s recommendations related to this request will allow Mr. Bakken the ability to operate the use as proposed, but it does not amend the Town Code in a fashion which diminishes the Town’s ability to exert oversight over this, or similar, uses. Additionally, Mr. Bakken has voluntarily proffered a list of conditions which should alleviate any concerns or apprehensions related to the proposed use. If issued a special use permit, the list of proffered conditions will be binding and can be enforced by Town staff.

It is believed the proposed use will be compatible with nearby uses, and be an asset to the Town and its business community.