

**MINUTES OF THE REGULARLY SCHEDULED MEETING OF:
THE ROCKINGHAM COUNTY PLANNING BOARD**



**BOARD OF COMMISSIONERS CHAMBERS
ROCKINGHAM COUNTY GOVERNMENTAL CENTER
371 NC HIGHWAY 65, REIDSVILLE (WENTWORTH), NC
MAY 13TH, 2019 AT 7:00 PM**

MEMBERS PRESENT: Ann Cunningham
Jim Fink
James Harris
Paul Ksieniewicz
Mike Lee
Phillip Stone
Julie Talbert

MEMBERS ABSENT: T. Matt Cardwell
Timothy Wyatt

STAFF PRESENT: Lynn Cochran, Planner
John Morris, Attorney
Emily Bacon, Associate Planner
Roy Sawyers, A/V Tech
Bricen Wall, Code Enforcement Officer

I. CALL TO ORDER

**VICE CHAIRPERSON CUNNINGHAM CALLED TO ORDER THE
REGULARLY SCHEDULED MEETING OF THE ROCKINGHAM COUNTY
PLANNING BOARD AT 7:00 PM.**

II. INVOCATION

Mr. Harris conducted the invocation.

III. APPROVAL OF MINUTES

**MRS. CUNNINGHAM OPENED THE FLOOR FOR DISCUSSION AND
REVIEW OF THE APRIL 8, 2019 PLANNING BOARD MEETING MINUTES.
AS THERE WAS NONE, MRS. TALBERT MOTIONED TO APPROVE THE
MINUTES AS WRITTEN AND MR. LEE SECONDED. THE BOARD VOTED
UNANIMOUSLY TO APPROVE THE MINUTES (7-0).**

IV. MOTION TO CONVENE AS BOARD OF ADJUSTMENT

MRS. CUNNINGHAM OPENED THE FLOOR TO CONVENE AS THE BOARD OF ADJUSTMENT. MS. TALBERT MOTIONED, AND MR. LEE SECONDED. THE BOARD VOTED UNANIMOUSLY TO CONVENE AS THE BOARD OF ADJUSTMENT (7-0).

V. PROCEDURES

- Mr. Lee read and reviewed the meeting procedures.
- Mrs. Cunningham swore in individuals signed up to speak.

VI. Case Hearings

1. Case 2019-005: Appeal of Notice of Violation for Operating an Electronic Gaming Operation without a Special Use Permit.

Mr. Cochran presented the case. He reviewed the pertinent Zoning Ordinance sections and findings of fact, recommending denial of the appeal. He stated that on January 17, 2019 Ben Curry, a Rockingham County Code Enforcement Officer, became aware of a potential Electronic Gaming Operation that was operating in Ruffin on US Highway 29 Business. Mr. Cochran testified that Mr. Curry's investigation indicated that there was an Electronic Gaming Operation in place without a special use permit. Mr. Cochran confirmed that the establishment did not have the necessary special use permit before Mr. Curry issued the notice of violation on January 23, 2019.

Mr. Cochran stated that this violation is a use violation and that there was a large amount of evidence compiled by Mr. Curry to show the applicant was operating an electronic gaming establishment. He explained the location of the establishment is not suitable to meet the development standards necessary for the necessary special use permit, particularly regarding the required setbacks from protected facilities/residences and the number of machines in operation. He also noted that he spoke extensively when he met with Mr. Ferguson, Abchara and Office Ben Curry that date that Mr. Ferguson filed the appeal of notice of violation.

Mr. Ksieniewicz asked what the protected facility located within 1500 feet of the established was.

Mr. Cochran replied that area residences are the protected facilities.

Mrs. Cunningham asked how many protected facilities were in the 1500 feet.

Mr. Cochran replied that he did not know the exact number of protected residences but there was at least one present, the minimum necessary.

Mrs. Talbert asked how many machines were in operation at the establishment, she noted that the notice of violation stated that "more than 25 machines were in operation".

Mr. Cochran stated that he did not recall that Ben Curry listed a machine count in his notes just that there were more than 25 were in operation. (Later on Mr. Lee clarified that Mr. Curry reported that 138 machines were in operation.)

All submitted hearing material is available upon request at Rockingham County's Planning Department.

Mr. Stone asked about the two zoning districts included in the parcel.

Mr. Cochran explained that the parcel includes two zoning districts: Highway Commercial and Residential Agriculture. The section of the parcel that includes the gaming establishment is zoned Highway Commercial.

The Board posed no additional questions to Mr. Cochran

The applicant Mr. Thomas Ferguson, of 312 Walter Chambers Street Eden, NC, took the stand. He stated that several of the homes located in 1/10th of a mile from the business are condemned or abandoned. The homes that are occupied are across the train tracks and have low property values. He reported that he had a lawyer look up the average home value of the residences in the 1,500 setback, they have an average value of \$35000. He stated that the 1,500 buffer was unfair.

Mrs. Cunningham asked if he operates the business.

Mr. Ferguson stated that he leases the property to a Mr. Abchara, whom he does not know well.

Mr. Ksieniewicz asked if he had any financial interest in the business and if knew what type of business was to be operated.

Mr. Ferguson stated that he has no other financial interest in the business aside from rental income. He did know what type of business was going to be operated by Mr. Abchara.

Mrs. Talbert asked what the original intent of the building was.

Mr. Ferguson stated that the building was originally a "Mexican night club." The club closed down in 2016 and has been vacant prior to operation of the electronic gaming establishment.

Mrs. Talbert asked why they did not stop business operations after getting the notice of violation. She asked if he had researched the Rockingham County ordinance to see if an Electronic Gaming operation was an allowed use when he agreed to lease the building. She asked if he knew how many machines were in operation.

Mr. Ferguson stated that he did not research to see if this type of operation was allowed. He did not know how many machines were in operation. He added that Mr. Cochran told him that they could remain in operation after the filing of the appeal application.

Mr. Harris asked why home value was relevant when discussing homes within the 1500 ft. setback.

Mr. Ferguson stated that Mrs. Talbert made a comment about home values in the area. He wanted it known that he did have someone look into the home values.

Mrs. Talbert asked if he owned any of the surrounding property.

Mr. Ferguson stated that he has no financial interests in surrounding properties.

Mr. George Daniel, legal counsel, took the stand. He stated that the property is separated from the homes within the 1500 foot setback by the highway. Could this provide enough separation? Can the number of machines be definitively proven to be more than 25 machines since Mr. Curry's report is unclear and he is not present? What are the rights of the applicant and can they choose to pursue an alternative action to still keep the business in operation?

Mr. Ksieniewicz asked the county attorney Mr. Morris if right party was at the hearing, should the business operator be here instead? Are we looking to the owner to enforce the ordinance against Mr. Abchara?

Mr. Morris stated that the owner would need to be present. Even though Mr. Abchara is operating the business and is the main party; it is still pertinent to involve the owner. Mr. Morris has not seen the lease agreement. Mr. Cochran added that the primary responsible party for adhering to the law, is the property owner. He stated that Mr. Abchara was made aware of the hearing date.

Mrs. Cunningham asked if Mr. Abchara intends to abide by the Board of Adjustment's decision.

Mr. Cochran stated that yes he has expressed a desire to adhere to the board's decision.

Mr. Cochran stated that there is a secondary issue - in probability that not all of the proper building permits were obtained, specifically electrical permits. Following the Board hearing the owner would have 30 days from this hearing date to apply for any electrical permits that may be necessary. If electrical permits were necessary but not obtained, the building inspector would have the right to discontinue electrical service to the building, unless otherwise appealed.

Mr. Lee noted that in Mr. Curry's report it does state that there are 138 gaming machines in operation at the business.

Mrs. Talbert asked what specifically the Board of Adjustment was deciding tonight.

Mrs. Cunningham stated that they are determining whether the business is in violation of the UDO.

Mr. Daniel asked Mr. Cochran to clarify the building code violation.

Mr. Cochran stated that if new wiring or circuitry is installed then an electrical permit needs to be obtained. Mr. Daniel stated that Mr. Cochran was assuming that new wiring or circuitry had been added and did not definitively know. Mr. Cochran stated that a building inspector would need to see the site to confirm if any new electrical components had been added.

Mrs. Talbert asked if Mr. Daniel had any financial interests in the business.

Mr. Daniel stated that he did not have any financial interests in the business. He stated that he has been retained by Mr. Ferguson and Mr. Abchara.

Mr. Stone asked Mr. Cochran what exactly they were voting on.

Mr. Cochran stated that the Board was voting only on the question of if the business is in operation without the necessary Special Use Permit. He clarified that the secondary information presented tonight was for informational purposes. To come into compliance, the owner would need to request and be granted variances as well as the necessary Special Use Permit to come into compliance.

VICE CHAIRPERSON CUNNINGHAM OPENED THE FLOOR FOR A VOTE. MR. LEE MOTIONED TO DENY THE APPEAL. MRS. TALBERT SECONDED THE MOTION. THE BOARD VOTED (7-0) TO DENY THE APPEAL OF THE ZONING ADMINISTRATORS DECISION.

VICE CHAIRPERSON CUNNINGHAM OPENED THE FLOOR FOR MOTIONS TO ADJOURN AS THE BOARD OF ADJUSTMENT AND TO CONVENE AS THE PLANNING BOARD. MRS. TALBERT MOTIONED AND MR. LEE SECONDED TO RECONVENE AS THE PLANNING BOARD. THE BOARD UNANIMOUSLY (7-0) TO DO SO.

V. OTHER BUSINESS

a. Old Business:

- Case # 2019-003 follow-up, HDR-Duke conducted the requested ground survey of their substation property in Reidsville and found additional grave sites, but all remained outside of the proposed footprint of their expansion.

b. New Business:

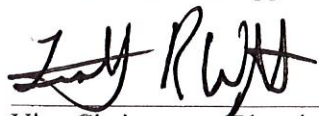
- Revision of the Board bylaws is needed to correct the quorum needed to decide appeal cases.
- Land Use Plan status report: Planning staff met with municipal leaders to identify priorities and needs. The commissioners will meet for a work session before their upcoming meeting to give their input to existing conditions report. This is the last step before the existing conditions report is published. The process will continue with public engagement starting in mid-summer. The final update is scheduled to be out late summer or early fall.
- Mr. Cochran mentioned potential text amendments that could be coming in the near future, regarding Bona Fide farms and an amendment to plat requirements. Surveyors have requested that plats no longer require notarization.


VII. ADJOURN

AS THERE WAS NO FURTHER BUSINESS, VICE CHAIRPERSON CUNNINGHAM OPENED THE FLOOR FOR MOTIONS TO ADJOURN. MR. STONE MOTIONED TO ADJOURN AND MR. LEE SECONDED. THE BOARD VOTED UNANIMOUSLY TO ADJOURN (7-0) at 7:52 PM.

Minutes Read and Approved,

Respectfully submitted,


Zolt R. White 24 Jun 2019
Vice Chairperson, Planning Board Date


June 24, 2019
Planning Staff Date

All submitted hearing material is available upon request at Rockingham County's Planning Department.