

MINUTES
BOARD OF ADJUSTMENT MEETING
October 21, 2024
5:30 PM

LOCATION:

City /County Meeting Room
905 West Avenue

MEMBERS PRESENT:

Curtis Baker, Sharon T. Bryant, Kyle Case, Leah Hamilton, Lucy McCarl, Tim Scobie

MEMBERS ABSENT:

STAFF PRESENT:

Hannah Williams, Lauren Hartley, Matt Duchan, City Attorney Timothy Rohr

City of Lenoir Attorney TJ Rohr explained the rules and procedures for quasi-judicial hearings.

A quorum was established and Chairperson Bryant called the meeting to order.

MINUTES:

Board Member Scobie moved approval of the meeting minutes of April 22, 2024. Board Member Hamilton seconded the motion, which was voted upon and passed by unanimous vote.

NEW BUSINESS:

1. 1810 Coyote Creek Place (NCPIN 2768135978)

Applicant: Ronald Trivett

Owner: Roland Trivett and Joseph Greer

Location: **1810 Coyote Creek Place**

V# 2-24 A variance to Section 800, Table A in the R-20 zoning district for a 5 ft. variance to the street frontage standards.

Recommended Action: Staff recommends approval of the variance request, subject to the conditions in the staff report.

Matt Duchan was placed under oath.

Planner Matt Duchan presented the variance case for 1810 Coyote Creek Place. The applicant plans to subdivide the subject property into two parcels in order to build two houses. Due to the zoning requirements of R-20, new lots must have 25 feet of street

frontage. Currently, the tract only has 45 feet of road frontage, so the two proposed lots would not have 25 feet of street frontage. The applicant is proposing two lots with 22.5 feet of public road frontage each, which would require a variance of 2.5 feet to the minimum public road frontage standards. Matt Duchan read the draft findings and staff responses for the record as follows:

1. An unnecessary hardship is created from the strict application of the ordinance.

Staff Response: The development of the property is limited to one single family house on a 27 acre tract. The strict application of the 25' minimum street frontage prohibits the owner from placing a second home, even though there is vast space for another house.

2. The unnecessary hardship is peculiar to the property.

Staff Response: Considering the property's overall size, the 45' wide road frontage is disproportionate to the total land. A property of this size would typically allow for far more than the two houses the property owner is proposing to build. Despite abutting several neighborhoods and major roads, the property can only be accessed via Lee Roy Lane at this time. The narrow access off of Lee Roy Lane causes a hardship that is peculiar to the property.

3. The hardship is not self-created.

Staff Response: The property is shaped in such a way that inhibits any development other than a single house on a 27-acre property. The property was originally intended to be developed into a major subdivision. The property owner was not the original developer of the Starcross Subdivision, and is not responsible for the inadequate access to the tract.

4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

Staff Response: The requested variance would allow for the property owner to build two houses without making substantial changes to the lot. Adjacent lots that are just a small fraction of the size are able to accomplish similar goals as is, so putting two houses on 27 acres will not be an eyesore or noticeable to the vast majority of adjacent property owners. The intent of R-20 is to have single-family residential at a lower density than that of any other residential zoning district other than R-R (rural residential). If anything, two homes on 27 acres is a comparatively sprawled arrangement than any of the homes in the surrounding area.

Mr. Duchan stated by granting the variance, substantial justice is achieved by allowing the owner to build two homes on a property that far exceeds the minimum lot size. No public safety issues should result in the construction of the two homes where there are currently zero homes.

Board Member Baker made a motion to approve the variance and adopt the staff findings as presented by staff. Board Member McCarl seconded the motion, which was voted upon and passed unanimously.

2. 117 Main Street NW - current site of Hogwaller stage

Applicant: Janet Huntsinger

Owner: Heart of Lenoir LLC

Location: **117 Main Street NW**

V# 3-24 A variance to Section 1112.1 of the sign zoning ordinance for the B-3 district for 100 SF of permanent wall signage where 50 SF is allowed, and 50 SF of event/band promotional signage in the form of various banners.

Recommended Action: Staff recommends denial of the variance request, subject to the conditions in the staff report.

Hannah Williams and Janet Huntsinger were placed under oath.

Planning Director Hannah Williams presented the variance case regarding signage for the Hogwaller Outdoor stage at 117 Main Street NW. This case is in regards to the stage that is accessible from Church Street. It is located in the B-3 zoning district in the National Register Historic District. The maximum amount of wall signage is 50 SF. The applicant is seeking to increase the amount of wall-mounted signage on the Hogwaller Stage to 100 SF, along with 50 SF of event & promotion signage. The promotional signage would be for various temporary banners specific to the performers during their actual time on stage or a festival/event banner specific to the event and posted only during the event. Mrs. Williams referenced the staff report on different sign types and other options for the applicant. Staff is not in favor of granting the variance.

Planning Director, Hannah Williams read the draft findings and staff's responses for the record as follows:

1. An unnecessary hardship is created from the strict application of the ordinance.

Staff Response: The Central Business District Sign Overlay allows for several sign types and sizes. The applicant has proposed signage that would meet these standards. Therefore, a hardship has not been created through the application of the ordinance.

2. The unnecessary hardship is peculiar to the property.

Staff Response: While the Hogwaller stage is a unique site in downtown, there are no peculiarities that would require more signage than other downtown businesses. The stage, and therefore the proposed signage, is visible from the public right-of-way. There is no hardship peculiar to the property.

3. The Hardship is not self-created.

Staff Response: The hardship is related to the desire of the applicant to have more signage than currently allowed by code. Therefore, the hardship is self-created.

4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

Staff's Response: The intent of the B-3 sign ordinance is to enhance and protect the physical appearance of Downtown Lenoir, and to provide fair, equitable, and predictable sign standards. Predictable sign standards promotes an attractive streetscape and enjoyable sense of place. Limiting the applicant's signage to the ordinance standards, to what other downtown properties are allowed, is equitable and just. The applicant's proposed increase in signage does not meet these intents of the zoning ordinance's sign

standards.

Applicant, Janet Huntsinger at 3340 Plateau Road, Newton NC approached the board. She stated the ordinance does not allow enough signage for the size of the building, which is 29,000 SF and the number of small businesses within the building. It's a hardship for the other businesses that cannot display their signage.

Board Member McCarl asked the applicant why they need so much signage since the main entrance for the businesses are in the front of the building.

Janet Huntsinger stated people also enter through the back entrance at the stage.

Board discussion ensued about the allowed signage in the B-3 district.

Board Member Hamilton made a motion to approve the variance as requested by the applicant. Board Member Scobie seconded the motion, which was voted upon with a vote of 0-6 with Baker, Hamilton, McCarl, Bryant, Case, and Scobie voting against.

Board Member McCarl made a motion to adopt the staff findings in full as presented by staff. Board Member Case seconded the motion, which was voted upon and passed unanimously.

3. 312 Morganton Blvd SW-Beach Bingo business

Applicant: Amanda Moser & Rochelle Dula

Owner: R&R Enterprises

Location: **312 Morganton Blvd SW**

AP# 1-24 A appeal to Section 611 of the zoning ordinance for Adult Gaming Establishments.

Recommended Action: Staff recommends denial of the appeal request.

Hannah Williams, Rochelle Dula, and Amanda Moser were placed under oath.

Planning Director Hannah Williams presented the appeal case AP# 1-24. She stated staff made the determination that M&R Beach Bingo is an Adult Gaming Establishment because of the \$10.00 cash reward given to the winners. Adult Gaming Establishments must meet standards from the City of Lenoir ordinance as follows:

Separation Standards:

- Separated from residential by at least 350 ft
- Separated from any school, youth day care, church, park, or playground by 1,000 ft
- Separated from other adult gaming establishment, adult use, liquor store, or addiction treatment and recovery facility by 1,000 ft

Performance Standards:

- Alcohol Sales are prohibited.
- Hours of operation are limited to the hours between 11 a.m. and 12:00 midnight.
- Adult Gaming Establishments are limited to 1,500 sq. ft. of floor area dedicated to gaming operations and must provide 1 parking space for every 150 sq. ft. of floor area.
- A zoning permit issued by the Planning and Community Development department is required prior to the establishment of any Adult Gaming Establishment within the City.

Their proposed location at 312 Morganton Blvd does not meet these standards because of being too close to a residential area and an addiction treatment facility. The applicants do not feel they should be classified as an Adult Gaming Establishment. Hannah Williams read the definition for Adult Gaming Establishment and General Gaming for the record:

Adult Gaming Establishment

Any establishment deemed legal by state law, featuring one or more stand-alone electronic or conventional gaming units, skill-based or otherwise, or serving one or more patrons in such a capacity at any one time, which also rewards patrons with cash or other monetary payments, goods or certificates for services which are redeemable for cash or other monetary payment on or off premise and including on-line redemptions, as well as any rewards which cannot be legally obtained, consumed, or otherwise used by minors. This term includes, but is not limited to, internet cafes, internet sweepstakes, beach sweepstakes, and cyber cafes.

General Gaming

Any establishment deemed legal by state law, excluding billiards halls, adult gaming establishments and any others similarly defined in this chapter, whose primary use is to provide entertainment services to the general public in the form of electronic or conventional gaming units which provide either no reward to patrons or rewards of limited value such as children's toys, games, and novelties when all of said rewards can be legally obtained and used by all ages and are not redeemable for cash or any other kind of compensation or services on or off premises, including on-line redemptions. This term includes, but is not limited to, traditional video game arcades and children's and family game centers, whether stand-alone or in conjunction with a restaurant or other permissible uses.

Planning Director Hannah Williams stated a zoning permit issued by the Planning Department is required prior to the establishment of any Adult Gaming Establishment within the City.

The appellants have informed staff they have obtained a license from ALE to operate their Beach Bingo business and were told they would not need local permission. Hannah Williams stated a zoning permit is required to operate any adult gaming establishment.

Staff recommends that the Board of Adjustment uphold staff interpretation that Beach Bingo is an Adult Gaming Establishment and must conform to the required separation standards in the City of Lenoir ordinance.

Board Member Hamilton asked how staff determined that Beach Bingo was an Adult Gaming Establishment. Mrs. Williams answered that they will be rewarding with a cash prize.

Hannah Williams asked the board to adopt the appeal packet as part of the record.

Board Member Case made a motion to adopt the appeal packet as presented for the record. Board Member Hamilton seconded the motion, which was voted upon and passed unanimously.

Applicant, Amanda Moser at 158 Cedar Ave, Hudson NC approached the board. She stated they are not trying to do anything illegal. When they first wanted to start the business they went to zoning, but were put under Adult Gaming Establishment. She explained why their business should not fall under this definition. Mrs. Moser stated if you search for a Beach Bingo ordinance, there are no results. She explained they have received their license from the state stating it is open to the general public of all ages and this was not an Adult Gaming Establishment. As of now, there are 47 active licenses for Beach Bingos in the state of North Carolina. They have tried to find another location that meets the standards, but have not been successful. She spoke about the location being too close to a methadone clinic to meet standards, but that clinic is very close to a CBD store, which should not be allowed. Mrs. Moser stated she can provide the letter from ALE showing their license.

Attorney, TJ Rohr stated the letter that was provided is hearsay and cannot be considered.

Amanda Moser answered questions from the board on the operation of Beach Bingo and the cash prize that is involved.

Board Member McCarl stated, the City of Lenoir is not saying it's illegal but the building site does not meet the zoning standards for adult gaming. The board has to determine if this case complies with our zoning ordinance.

Mrs. Moser stated the property owner told her they could operate this business from the location. If they would have known it wasn't allowed, they would have not made it this far.

City Attorney TJ Rohr stated the Lenoir City Council approved what is in the City ordinance for Adult Gaming Establishments, which the Planning Department has to go by. This could be changed if brought through the Planning Department and then City Council.

Applicant, Rochelle Dula at 405 Connelly Springs Road, Lenoir NC stated the business is not an Adult Gaming Establishment, which is considered stand up games, casino games, or adult content which they do not have. She stated if it was adult gaming they could not allow kids under 18 years old. The license they received says Beach Bingo, not Adult Gaming Establishment. She stated Hannah Williams did speak with the lady that issued the state license and hung the phone up on her. She stated Mrs. Williams had met with the board without their knowledge, and they did not get a chance to speak.

Planning Director, Hannah Williams stated for the record she has not spoken to any member of the Board of Adjustment about this issue before this meeting. Planning staff does email the board the agenda packet prior to the meeting for review. Staff makes their own interpretation of the zoning ordinance. The applicants were informed by letter that Beach Bingo was not allowed at this site because of it being adult gaming and did not meet the separation standards. This is the third scheduled meeting time, due to heavy caseloads and the state of emergency from hurricane Helene, which required re-advertising and re-mailed letters. Mrs. Williams stated she did receive a call from Kathleen Poole at the Department of Public Safety. They spoke about the general statutes and the City of Lenoir ordinances and why we could not issue a zoning permit. Mrs. Williams stated she did not hang up the phone and completed the conversation.

Jimmy Moser was placed under oath.

Jimmy Moser at 158 Cedar Ave Hudson, NC spoke to the board. He asked if they are going by the general statutes for zoning.

Board Member Case replied, the Planning staff goes by the local City of Lenoir ordinance that is passed by the City of Lenoir City Council. The general statutes are broadened state laws. Each local jurisdiction can pass more restricted rules, which is what staff is going by.

Attorney TJ Rohr stated the board is not questioning if this is legal, it is if the business and location meets the City of Lenoir zoning ordinance standards.

Mr. Moser stated they have documents showing Beach Bingo is not an Adult Gaming Establishment.

Board Member Hamilton stated since you are providing a cash reward that is putting the business under Adult Gaming Establishment.

Roxie Watson was placed under oath.

Roxie Watson at 416 Nuway Circle #10 Lenoir, NC stated she has been a widow for 25 years and now sitting at home with nothing to do. She has played bingo since the early 70's and has never seen anything wrong with it. She feels if we shut this down we are shutting senior citizens off from anything.

Attorney TJ Rohr stated this statement is not relevant to the case, this case is about the facts for the board to consider.

Chairperson Bryant asked the board to look at the zoning ordinance for Adult Gaming Establishment to make the decision. Mrs. Bryant stated to the applicants, if you do not agree with the Lenoir City Council's approval of the ordinance you can approach the Lenoir City Council or the Planning Department to change. If you choose to do this, it will come before the Planning Board then to City Council.

Board Member McCarl made a motion to deny the zoning application because it is an Adult Gaming Establishment that rewards with cash prizes, also it is located too close to a residential area and an addiction treatment facility. Board Member Case seconded the motion, which was voted upon and passed unanimously.

ADJOURNMENT:

There being no further business to be brought before the Board, Chairperson Bryant adjourned the meeting at 7:30 p.m.

Sharon T. Bryant, Chair

**Hannah Williams
Planning Director**