

**TOWN OF SILER CITY BOARD OF ADJUSTMENTS**

The Siler City Board of Adjustments met in Regular Session on **Monday, April 10, 2017** at 6:30pm in City Hall Courtroom with Vice Chair Brown presiding. Andrews gave the invocation with the recitation of the Pledge of Allegiance following. Meadows recited the Town of Siler City Mission Statement and Vision Statement.

**MEMBERS PRESENT:** Albert Alston, Darrell Andrews, Curtis Brown, Mary Harris, Linda Kolpack-Martindale, Randy Parks, Ann Radcliffe

**MEMBERS ABSENT:** Steve Crotts and Butch Hudson

**TOWN STAFF PRESENT:** Town Attorney William Morgan, Planning Director Jack Meadows, and Town Clerk Jenifer Everage.

**AGENDA ADJUSTMENTS/APPROVAL OF AGENDA**

The Board had no adjustments to the agenda.

**CONSENT**

*A motion to approve the consent agenda which includes September 12, 2016 Minutes was made by Parks, seconded by Harris and unanimously approved.*

**OLD BUSINESS**

none

**NEW BUSINESS**

**Opening Statement and Procedure for Holding a Public Hearing**

Meadows read the following open statement:

The Zoning Board of Adjustment handles four types of matters. It hears applications for variances, requests for special use permits, review for special exception permits, and appeals from decisions by Town staff.

A hearing before the Zoning Board of Adjustment is quasi-judicial in that the Board functions much like a court of law. Witnesses appearing before the Board will be sworn in and, being under oath, will be held accountable.

The purpose of an evidentiary hearing is to gather facts, not to solicit citizen opinions. The Board of Adjustment must do two things. First, it must determine the facts of the case. Second, it must apply the standards in the Unified Development Ordinance, sometimes referred to as the UDO, to those facts.

In quasi-judicial decisions, this Board must act much like a court to apply the UDO to the facts of a specific case. The purpose of the hearing is to gather legally acceptable evidence in order to establish sufficient facts to apply the appropriate ordinances. The questions before the Board will be whether the proposal or zoning administrator's decision meets the standards in the ordinance, not whether it is popular among the citizenry.

Although a hearing before this Board is somewhat less formal than a courtroom trial, it is expected that all participants will observe the basic decorum one would expect in a court of law, showing respect for the Board and all other participants. The Board chair can terminate the testimony of anyone who violates this principle, or who is offering immaterial, irrelevant, redundant or legally impermissible testimony.

All witnesses desiring to offer testimony before the Board must have standing. Standing refers to who has the right to participate in the hearing and support or contest the issuance of a permit. Not all persons in the community automatically have standing just because they happen to be residents, know the applicant or have an opinion on the case. The North Carolina General Statutes specify three categories of persons or entities with standing: (1) Those who applied for approval or who have a property interest in the project or property, including, but not necessarily limited to: the applicant; owners, lease holders, and option holders; (2) the local government's staff; and (3) other persons who will suffer special damages as a result of the decision, such as an adjacent property owner who contends the decision will adversely affect the value of his or her property.

Finally, persons with standing may be allowed to call expert witnesses in appropriate cases. For example, the General Statutes now require expert testimony on the issues of the effect of a development on neighborhood property values and on the effects of traffic. As to these two issues, the Board cannot rely on the opinion testimony of lay witnesses.

Following the public hearing, the Board will deliberate and announce its decision. Later, that decision will be reduced to writing and distributed to the applicant and others who have requested a copy in writing with the Department of Planning and Community Development.

Special Use Permit – 125 Siler Crossing – video game room (adult skills games)

Brown requested a motion to declare the public hearing open.

*A motion to open the public hearing for Special Use Permit for 125 Siler Crossing for a video game room (adult skills games) was made by Andrews, second by Kolpack-Martindale and unanimously approved.*

Brown stated since we have at least six Board of Adjustment members present, therefore we have a quorum.

Brown read the legal notice of the subject case.

Brown stated that the public was notified by ads in the Chatham News two weeks prior to the hearing, adjoining property owners received letters, and a sign was posted if applicable.

Brown asked if there any exparte communication disclosures from Board members? All present answered no.

Brown asked if there are any possible conflicts and do all Board members think they can rule fairly and impartially? All present answered no.

Brown stated if the Board of Adjustment is interrupted, disturbed, or disrupted, then the Board of Adjustment by majority vote can order the person to leave the room.

Brown asked all persons who have standing in the subject case and wish to testify please come to the front of the room.

The following came forward:

Mark Weitzel 5120 Roswell Crest Court Apex, NC  
Lynda Smith 5120 Roswell Crest Court Apex, NC

Brown then administered the following oath:

“Do you solemnly swear or affirm that the testimony and information you are about to give is true and accurate to the best of your knowledge?”

Brown asked the Town of Siler City Director of Planning and Community Development to present a summary of the case.

Meadows stated that Mark Weitzel requests a special use permit to operate a video game room (adult skills games). The subject property is identified as 125 Siler Crossing and parcel # 64578. The subject property is:

1. owned by BVC Siler LLC;
2. located within the Highway-Commercial (H-C) zoning district;
3. located inside the Town’s Corporate Limits;
4. located within Central Chatham fire district;
5. located within the Duke Energy Progress electric service district;
6. not located within a watershed protection area; and
7. not located within a special flood hazard area.

Meadows shared the size of tract:

1. Subject tract is 15.997 acres and includes 1 property owner and 1 tax parcel
2. Size of surrounding tracts is an average of 6.75 acres

Meadows shared the compatibility with existing Comprehensive Land Development Plan:

1. General commercial for the subject property.
2. Commercial goals, objectives, and strategies:
  - a. These areas are generally located along major thoroughfares that contain a variety of commercial uses. Retail uses include shopping centers, convenience stores, restaurants and services catering to the traveling public. Heavier uses may include automobile dealerships and repair shops, min-warehouses and contractor’s yards with appropriate landscaping and buffer requirements.
  - b. Encourage attractive commercial development in appropriate locations suitable for commercial purposes.

- c. Encourage the continued commercial, retail, services, and office development of the central business district.
- d. Improve the appearance of commercial properties abutting major thoroughfares by providing landscaping to buffer parking lots and service areas and by controlling signs.
- e. Encourage the continued development of major shopping centers along major thoroughfares.
- f. Improve vehicular access to commercial areas through the development of driveway standards.
- g. Preserve the general character and intensity of the central business district by excluding land uses which require large amounts of outdoor use areas, allowing residential and mixed-use developments, and permitting common and shared off-street parking. Develop flexible zoning standards which accommodate the wide variety of land uses in the CBD which will assist in the adaptive reuse of buildings as well as insure quality development through landscaping, lighting, parking, and signage standards.
- h. Encourage through zoning requirements, planned general commercial development rather than small, individual lot development.
- i. Develop driveway regulations to require access from service drives, prevent multiple driveways on a single lot, and control the spacing of driveways.
- j. Improve the aesthetics of general commercial areas by adopting zoning regulations governing landscaping and buffering in parking and service areas. Develop specific zoning standards for those properties abutting major highway corridors which would place more stringent controls on building setback and height, vehicular access, sign size and location, and buffering of parking and service areas.
- k. Require that as a condition of receiving Town water and / or sewer service, all new commercial developments be incorporated into the Town limits.
- l. Increase pedestrian safety in the downtown area through improvement of sidewalks and handicapped accessibility.
- m. Modify the development ordinances to be more user friendly where possible.
- n. Look at planting plan for street trees along public rights-of-way.

Meadows stated that the property is served by (8") public water and sewer. Street/road frontage:

Street/Road	Road Frontage (feet)	Travel Lanes	Pavement Width (feet)	Maintenance	Speed Limit (mph)	Average Daily Trips
E. 11 <sup>th</sup> St.	230	5	60	State	45	19,000

Meadows shared the impact on landowners, immediate neighbors, and the surrounding community: The proposed unit contains 3,170 square feet of floor area. The space accommodates up to 30 people and 25 game terminals. Building upfit:

- Remove existing half walls;
- Carpet floor & paint; and
- Install fire extinguishers, exit signs, alarm system, & security system.

Operating Hours:

- Monday – Saturday: 9am – 1am

- Sunday: 11am – 12am

7.5 parking spaces required. Maximum daily driveway volume for the proposed development is 116 vehicles. The proposed development is exempt from screening and trees.

The business will employ 25 people including independent security guards. The total cost of the project is estimated at \$5,000. Proposed water and sewer use is less than 300 gallons per month.

Meadows shared the relationship of uses:

1. Current use of subject property is shopping center.
2. Surrounding land uses include; church, cemetery, vacant, bank, restaurant, telecommunication facility, auto repair, utility facility, and auto sales.
3. Surrounded by H-C (Highway-Commercial) and A-R (Agricultural-Residential) zoning.

Meadows shared the following Staff recommendations:

The application is complete. The proposal meets the development criteria of the Unified Development Ordinance. If the Board grants the application, then Staff recommends the following conditions:

1. The applicant shall complete the development strictly in accordance with the plans submitted to and approved by the Board, a copy of which is filed in the City Hall; and
2. If any of the conditions affixed hereto or any part thereof shall be held invalid or void, then this permit shall be void and of no effect; and
3. Prior to any work applicant must record the written decision with the Chatham County Register of Deeds, obtain amusement operator approval, obtain site plan review approval, obtain zoning permit approval, and obtain sign permit approval.

Brown stated that the applicant and applicant's witnesses may present testimony and evidence.

Lynda Smith shared the following information with the Board and stated that she was there to answer any questions:

Smith stated as you can see from our mission statement that their philosophy is to provide an environment for adults to have fun and test their skill levels with various types of games and give back to the community and hire within the community. One thing they have done in the past is during Thanksgiving, so people don't have any family and can't go anywhere, so we provide Thanksgiving dinner and have it catered locally. Security is very important, they will hire independent security guards to make sure people are safe at all times.

Brown stated that any opposing parties may cross examine the applicant and witnesses after the witness's testimony. No one came forward.

Brown stated that the Board of Adjustment Members may ask questions of opponent and each witness after the witness's testimony. The Board asked questions the following questions:

1. What kind of games are these? Smith: It is not gambling, it is skill games. You would sit at a terminal and shoot fish and get points.

2. Will people be hanging out in the parking lot? Smith: If I see a problem, we will have the security guard and cameras. I don't want it to become a place where people just hang out.
3. Do you have an age requirement? Smith: Yes, you must be 18 or older.
4. Do you have any pictures of what the games terminals look like? Smith: No I don't have any with me, but I can get some. One game is shooting at fish, another is a memory game.
5. Are the games online or they a game system, like a arcade? Smith: Its not like a arcade, I don't want to say they are online. We have a server that goes to all the terminals. Sit down computer.
6. Do you put money in to play them or do you run a credit card? Smith: You will go to the cashier and show your id and just say I want to play 5 dollars at what game you want to play. You will then pick out a place to sit and play. You will earn points, which will go onto your account, if you win, then you can redeem the points for cash.
7. How is this different than the places that had been open that the state decided that were gambling, what makes this different than gambling? Smith: Gambling is a game of chance, sweepstakes, which is what was shut down, was a finite system. Skill games is not and the person has to influences the outcome.
8. Are you going to serve alcohol? Smith: No alcohol, we do provide coffee, soda, and snacks free of charge.
9. Where else do you have businesses located? Smith: Rockingham County.
10. How many security guards will you have? Smith: That will depend on the volume of the players, will always have at least 2 workers, if I don't have a security guard, but at night I will have 2 security guards.
11. How many can play at one time? Smith: There are 25 terminals, but we have a limit of 30 in the space.

Brown asked if there were any opposing parties present. No one came forward.

Brown asked if there were any more questions from the Board of Adjustment Members.

Brown requested a motion to declare the public hearing closed.

***A motion to close the public hearing for Special Use Permit for 125 Siler Crossing for a video game room (adult skills games) was made by Radcliff, second by Andrews and unanimously approved.***

Brown directed the Board of Adjustment Members to the worksheets.

***A motion that the application for a Special Use Permit for 125 Siler Crossing for a video game room (adult skills games) is complete was made by Andrews, seconded by Radcliffe and unanimously approved.***

***A motion that the application for a Special Use Permit for 125 Siler Crossing for a video game room (adult skills games) complies with all applicable requirements of the Unified Development Ordinance was made by Parks, seconded by Kolpack-Martindale and unanimously approved.***

***A motion that the application for a Special Use Permit for 125 Siler Crossing for a video game room (adult skills games) is granted, subjected to the following conditions: the applicant shall complete the***

*development strictly in accordance with the plans approved by the Board, a copy of which is filed in City Hall, if any conditions affixed hereto or any part thereof shall be held invalid or void and of no effect, and the conditions recommended by Staff was made by Andrews, seconded by Harris and unanimously approved.*

**BOARD MEMBER COMMENTS**

None

**ADJOURNMENT**

With no further business the Planning Board adjourned.



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Curtis Brown, Vice Chair

**ATTEST:**



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Jenifer J Everage, Town Clerk