

**BOARD OF ZONING APPEALS
MINUTES
JUNE 5, 2008
6:00 P.M.**

The Board of Zoning Appeals of the Town of Rocky Mount, Virginia met at the Rocky Mount Municipal Building on Thursday, June 5, 2008, at 6:00 p.m., with Chairman Charles L. Hutto, Jr. presiding.

The following members were present:

Chairman Charles L. Hutto, Jr., and Vice Chair Susan Hapgood; Board of Zoning Appeals (BZA) Members Sanford "Lyn" Robertson, Lucas Tuning, and John Speidel; Staff members present included Town Manager C. James Ervin, Assistant Town Manager and Community Development Director Matthew C. Hankins, Planning & Zoning Administrator Paul D. Stockwell, Town Attorney John Boitnott, Police Chief Erik Mollin, Town Clerk Patricia H. Keatts, and Deputy Clerk Stacey B. Sink.

Let the record show that the newly-appointed Board of Zoning Appeals Alternate Member, Maceo C. Toney, was not present.

APPROVAL OF AGENDA

- Motion was made by BZA Member Tuning to approve the agenda as presented, with motion on the floor being seconded by BZA Member Speidel. There being no discussion, let the record show that the motion on the floor passed unanimously.

APPROVAL OF MINUTES

Prior to the meeting, the BZA members received the following draft minutes for review and consideration of approval:

- Draft March 6, 2008
- Motion was made by BZA Member Speidel to approve the minutes as presented, with motion on the floor being seconded by Vice Chair Hapgood. There being no discussion, let the record show that the motion on the floor passed unanimously.

PUBLIC HEARING

Chairman Hutto recessed the meeting to hold the following public hearing:

◆ Michael Kennedy's Appeal of the Zoning Administrator's Denial of a Zoning Permit for a Retail Lingerie, Adult Video, and Sexual Novelty Store

After being duly advertised, the Board of Zoning Appeals held a public hearing to consider Michael Kennedy's appeal of the Planning and Zoning Administrator's denial of a zoning permit for a retail lingerie, adult video, and sexual novelty store to be located at 934 Tanyard Road on Franklin County Tax Map and Parcel Number 2030002900. The reason for the denial was that, due to the nature of the items planned to be sold at the store, the permit would have violated the Town of Rocky Mount Ordinance Regulating Sexually Oriented Businesses.

Chairman Hutto opened the floor to anyone wishing to speak in regards to Mr. Kennedy's appeal.

Let the record show that no one came forward to speak, and there was no one present in the audience other than staff members and media representatives.

The Town Attorney gave a brief history of Mr. Kennedy's Zoning Permit application and the subsequent appeal: The Planning & Zoning Administrator received Mr. Kennedy's application for a zoning permit, and before rendering his opinion on the application, the Rocky Mount Town Council passed the ordinance that was previously mentioned. Under the provisions of the Zoning and Development Ordinance, the Planning and Zoning Administrator is not only required to enforce the provisions of that ordinance, but also any other ordinances that may be more strict or more regulatory in their application to the particular use of the property. In applying the new ordinance to the application, it was determined that the Planning & Zoning Administrator could not issue the zoning permit, and that resulted in his decision. The Town Attorney believes that the decision would withstand scrutiny and he asks that the BZA uphold the Planning & Zoning Administrator's decision.

Chairman Hutto opened the floor to discussion by the BZA members:

- BZA Member Speidel questioned if Mr. Kennedy's appeal is based on the timing of the denial, with the Town Attorney confirming that his interpretation of the appeal is that it is based on timing; however, the appeal is vague.
- BZA Member Robertson noted that the application for the zoning permit was first filed on April 18, 2008, and the appeal was filed on May 13, 2008. The ordinance went into effect on May 12, 2008. The Planning & Zoning Administrator did not get the necessary paperwork done until after the new ordinance went into effect. The Town Attorney confirmed this, stating that the application was received, the new ordinance was adopted, and then the Planning & Zoning Administrator issued the opinion thereafter.
- The Town Attorney further stated that it is the Town's position that the only basis for a grievance would be if there was some substantial affirmative act

- on behalf of the applicant that was based on a Town decision. The only thing that had been done prior to the enactment of the ordinance was the application to the zoning permit. There was no affirmative act of Town staff, administration, or the zoning department, and the Planning & Zoning Administrator was required to apply the law in effect at the time of his decision.
- BZA Member Speidel confirmed that the State Code requires that there be an affirmative action of some type taken. The Town Attorney informed the BZA that the State Code provision (§15.2-2309 and §15.2-2307) which the BZA members were provided, applies to vested rights within the concept of a zoning ordinance. The ordinance that controlled the outcome of the Planning & Zoning Administrator's decision was not a zoning ordinance but a Town-wide ordinance. It is more strict than the zoning ordinance, and in considering the use of a particular property, the Planning & Zoning Administrator must consider the provisions of the zoning ordinance, as well as all Town ordinances. He must apply the more strict ordinance in determining whether or not to issue the zoning permit.
 - BZA Member Speidel questioned again if the issue is the timing, with the Town Attorney stating that he can not speak on behalf of the applicant, but it would appear based on the notice of appeal that timing is the basis.
 - BZA Member Robertson read aloud from the appeal letter signed by Michael Kennedy, which stated that his appeal was "based on the zoning laws prior to, and including, the date of application." BZA Member Robertson further added that under amendments, he believes the governing board, which in this case would be Town Council, has the right to change amendments if it sees fit, and if it benefits the health and welfare of the overall public. The Town Attorney confirmed that Town Council would have such a right.
 - Chairman Hutto read, for the record, two letters from citizens regarding the appeal (*copies attached.*) The letters were from Tony and Shellie Leete of 185 Claiborne Avenue and Bobby C. Taylor of 205 Cherokee Hills Road, Bassett, Virginia. Both letters expressed opposition to the requested type of business in the specified area.
 - Vice Chair Hapgood advised the BZA that she received a telephone call from Mike Carter who is a merchant and Town citizen. He is also opposed to this business.
 - Vice Chair Hapgood question if Mr. Kennedy has a business history with the Town, with the Planning & Zoning Administrator advising not to his knowledge.

There being no further discussion, Chairman Hutto reconvened the meeting back into regular session and entertained a motion.

- Motion was made by BZA Member Robertson to deny Michael Kennedy's request to overturn the Planning & Zoning Administrator's denial of his permit, with motion on the floor being seconded by Vice Chair Haggood. There being no further discussion, let the record show that the motion on the floor passed unanimously.

OLD/NEW BUSINESS

Let the record show there was no old or new business to discuss at this time.

ADJOURNMENT

There being no further business to discuss, Chairman Hutto entertained a motion to adjourn at 6:15 p.m., with motion being made by BZA Member Robertson, seconded by BZA Member Speidel, and carried unanimously.

Charles L. Hutto, Jr., Chairman

ATTEST:

Stacey B. Sink, Deputy Clerk

/sbs