

COUNTY OF CLEVELAND, NORTH CAROLINA
AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

June 28, 2018

4:00 PM

Commissioner's Chamber

Call to order and Establishment of a Quorum

Invocation and Pledge of Allegiance

Approval of Minutes

Cases

Case 18-05: Request for Video Gaming Establishment at 2305 South Post Road

Miscellaneous Business

Adjournment

COUNTY OF CLEVELAND, NORTH CAROLINA

AGENDA ITEM SUMMARY

minutes

Department:

Agenda Title:

Agenda Summary:

Proposed Action:

ATTACHMENTS:

File Name	Description
<input type="checkbox"/> 4-26-18_BOA_minutes_.pdf	Minutes



MINUTES
CLEVELAND COUNTY BOARD OF ADJUSTMENT
Commission Chambers – County Administrative Building
311 East Marion St., Shelby, North Carolina
Regular Meeting - 4:00 p.m.
April 26, 2018

Members Present

Jeff Ward, Chairman
Joyce Coleman, Vice Chairman
Doug Lawing
Bobby Watson
Paul Aulbach

Members Absent

Thomas Fletcher
Tommy Brooks

Others Present

Chris Martin, Senior Planner
Henry Earle, Planner
Teresa Caldwell
Phillip Caldwell

CALL TO ORDER

Jeff Ward called the meeting to order at 4:00 pm.

PLEDGE OF ALLEGIANCE AND INVOCATION

Paul Aulbach led the Invocation and **Chairman Ward** led the Pledge of Allegiance.

ROLL CALL TO ESTABLISH QUORUM

Chairman Ward stated quorum was established. Alternate member Tommy Brooks left at this time.

APPROVAL OF CORRECTIONS TO FEBRUARY 22, 2018 MINUTES

Paul Aulbach made the motion to approve the February 22, 2018 minutes. It was seconded by Joyce Coleman and unanimously carried.

CASE #18-04 CONDITIONAL USE PERMIT: RETAIL GAMING

Applicant: Teresa Caldwell

Location: 5110 E. Dixon Blvd. Units 1 & 2

Parcel #: 59646

Chris Martin was sworn in to present a Staff Report on case 18-04. Teresa Caldwell, the applicant, wants to operate a retail gaming store. The location is between Kings Mountain and Shelby on Hwy. 74. This property was just re-zoned General Business in May. It is surrounded by Industrial Zoning. The area was also approved as a Future Business Corridor in May. There are a few residences in this area, and there are commercial uses to the east and west, including auto sales and repairs and tanning. There is also an auto auction to business the rear of the property. All adjoining property owners have been notified.

The Board may consider applying conditions if they approve this permit. The applicant submitted a site plan showing the existing driveway and parking, and the interior of the store showing 50 computer stations and 38 parking spaces. This is for two units within the location shown on the site plan. If another business opens in the third unit, that business will need to apply for the appropriate permit.

Chairman Ward opened the opened the Public hearing at 4:10 pm.

Teresa Caldwell was sworn in. She responded about the third unit and stated it is currently used for storage. The hours of operation they are requesting are from 9 am to 11 pm, seven days a week. They would be a retail store that customers can purchase items with coupons they purchase. When they purchase coupons they get points, and they can log into a computer to play games and see if they win any cash with the points, and they have the item they purchased regardless of winning the game. They are promotional games.

Paul Aulbach wanted to know if this was considered gambling. Ms. Caldwell said it is not since the customer is purchasing a product. They will have 50 machines and 5 employees, working one at a time. This one employee will cover both units, as there is no wall dividing them.

Joyce Coleman wanted to know what the difference with this and gambling. Ms. Caldwell said they do not fall under the specific definition of gambling or all of the three elements – chance, consideration, and, and prize.

Phillip Caldwell was sworn in. He addressed the three elements of gambling that Ms. Caldwell pointed out. In this promotion, “consideration” is eliminated because you are not paying to play the game. You are only buying a product, and the game comes free. So no matter what happens, you always have a product. You cannot come in and pay just to play. NC Statute 14.306.04 outlines that it excludes games of skills and dexterity.

Joyce Coleman inquired about the type of items for sale. Mr. Caldwell said there is a wide selection from toasters, beds, sporting goods, videos, jewelry, as well as phone cards (international and domestic) and rent computer work stations to utilize high speed internet at about half the price of Kinko’s.

Chairman Ward closed the Public Hearing at 4:18 pm as there was no further public comment.

Chairman Ward opened discussion among the Board. Doug Lawing reviewed conditions of the number of machines (50 requested), parking spaces (38 requested), and employees (5 requested), and stated that would not work according to the Staff requirements.

Mr. Martin addressed this- the parking was not in the Ordinances. Several years ago, these conditions were applied according to the Board at that time when these types of cases were more frequent. The Board now may or may not choose to apply the parking condition. There is not a specific Ordinance for Gaming.

Paul Aulbach inquired about a renewal date. Chairman Ward said the Board can choose to appoint a renewal date, and Staff had provided examples of dates/ number of years used in the past. Mr. Martin stated that typically they used the one year renewal in the past. Mr. Aulbach also asked if other establishments such as this have had problems with criminal activity inside the store or the vicinity. Mr. Martin said it had been so long since there has been a case. The last may have been in operation about 3 years ago on South Post Rd. The applicant has run this type of store before.

Chairman Ward discussed the four required criteria with the Board and they unanimously determined the following:

- (1) Will it materially endanger the public health or safety- No.
- (2) Will it substantially injure the value of adjoining or abutting property- No.
- (3) Will it be in harmony with the area in which it is to be located- Yes.
- (4) Will it be in general conformity with the land use plan, thoroughfare plan, or other plan officially adopted by the board of commissioners- Yes, it is in general conformity with the land use plan.

Doug Lawing made a motion to approve the conditional use permit case 18-04 for a Retail Gaming store with the said conditions as follows:

1. Complete strictly according to site plan on file with the Planning Department
2. No tinted, blocked or otherwise obscured windows
3. No Exterior flashing lights
4. No illegal activities allowed on the premises.
5. Exterior lighting shall illuminate total property, but shall not illuminate surrounding property or roadways in any way or amount.
6. A minimum of one properly marked parking place for each sweepstakes machine inside the business shall be provided, and one parking space for every two employees to be completed no later than thirty (30) days from issuance of permit
7. Cars shall be prohibited from parking within the public right-of-way.
8. The applicant must obtain any and all necessary permits from county, state and federal agencies prior to beginning operation.
9. No one under the age of 18 shall be allowed on the premises. Operator must check ID's.
10. Hours of operation 9 am to 11 pm seven days a week.
11. Obtain NCDOT driveway permit for any new driveway construction.
12. Site must be kept clean and neat, and must not become a public nuisance.
13. Keep in harmony with surrounding community.
14. Any sign construction must meet sign requirements per Section 12-285 of the County Code.
15. Provide a dumpster by an approved trash hauler.
16. Limited to 50 sweepstakes gaming devices.
17. Permit must be renewed by April 26, 2021 to maintain and regulate complaints, law regulation changes, etc.
18. Permit is not transferable and becomes null and void if there is a change of occupancy.
19. If any of the conditions or activities affixed hereto, or any part thereof, shall be held invalid or void, then this permit shall be void and of no effect.

It was seconded by Bobby Watson and unanimously carried.

MISCELLANEOUS BUSINESS

No Miscellaneous Business.

ADJOURNMENT

Chairman Ward entertained a motion to adjourn.

<p>Bobby Watson made the motion to adjourn the meeting. The motion was seconded by Doug Lawing and unanimously carried to adjourn at 4:30 pm.</p>
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Jeff Ward, Chairman

Anna Parker, Administrative Assistant

COUNTY OF CLEVELAND, NORTH CAROLINA

AGENDA ITEM SUMMARY

Case 18-05

Department:

Agenda Title: Case 18-05: Request for Video Gaming Establishment at 2305 South Post Road

Agenda Summary:

Proposed Action:

ATTACHMENTS:

File Name	Description
<input type="checkbox"/> 18-05_Staff_Report_CUP_2305_South_Post_Road.pdf	Staff Report
<input type="checkbox"/> Site_Plan_BOA_Case_18-05.pdf	Site Plan
<input type="checkbox"/> 18-05_Future_Land_Use_2305_S._Post_Rd_Gaming.pdf	Future Land Use Plan
<input type="checkbox"/> 18-05_Aerial_2305_S._Post_Rd_Gaming.pdf	Aerial Map

STAFF REPORT

To: Board of Adjustment

Date: June 28, 2018

From: Chris Martin, Senior Planner

Subject: Conditional Use Permit Application 18-05

Summary Statement: Richard Gordon Jones is requesting a Conditional Use Permit to operate a video gaming store on parcel 3441. He has submitted a completed application and a site plan.

Review: The property for consideration is located at 2305 South Post Road and is owned by David Morrow. The property is currently zoned General Business as are parcels directly across the street along South Post Road as well as continuing south along South Post road. Other surrounding parcels are a mix of Neighborhood Business, Manufactured Home Parks and Residential. Surrounding uses are business in nature, including auto sales, a restaurant and a gas station. Video gaming is listed in the zoning table of uses as a conditional use permit in the General Business zoning district.

When issuing conditional use permits, the Board must consider the following four findings;

- (1) Will not materially endanger the public health or safety;
- (2) Will not substantially injure the value of adjoining or abutting property;
- (3) Will be in harmony with the area in which it is to be located; or
- (4) Will be in general conformity with the land use plan, thoroughfare plan, or other plans officially adopted by the board of commissioners.

In the past, the Board of Adjustment has applied the following conditions to Gaming Businesses:

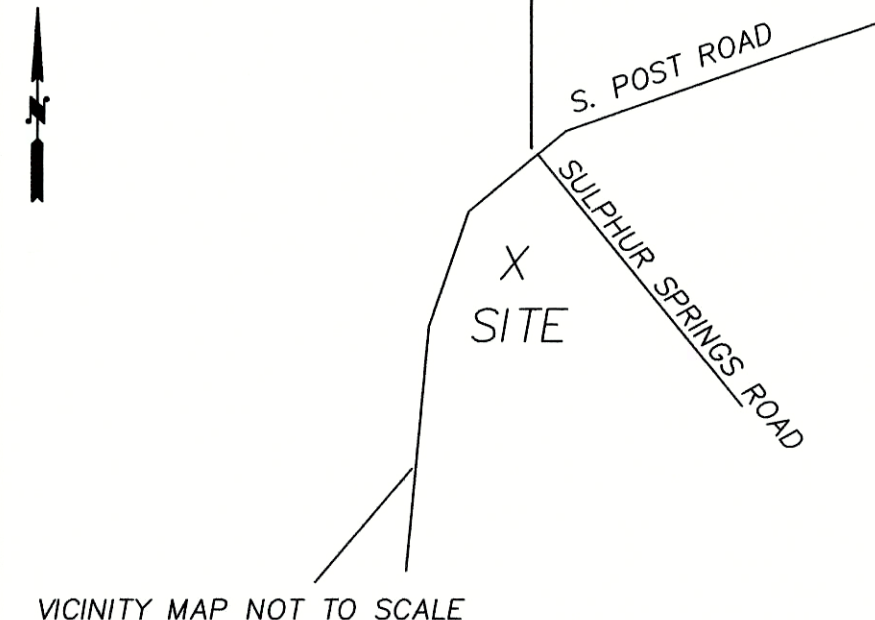
1. The applicant shall complete the development strictly in accordance with the site plan approved by this Board, a copy of which is on file with the Cleveland County Planning Department.
2. No tinted, blocked or otherwise obscured windows.
3. No exterior flashing lights.
4. No illegal activities allowed on the premises.
5. Exterior lighting shall illuminate total property, but shall not illuminate surrounding property or roadways in any way or amount.
6. A minimum of one properly marked parking place for each sweepstakes machine inside the business shall be provided, and one parking space for every two employees to be completed no later than thirty (30) days from issuance of permit.
7. Cars shall be prohibited from parking within the public right-of-way.

8. The applicant must obtain any and all necessary permits from county, state and federal agencies prior to beginning operation.
9. No one under the age of 18 shall be allowed on the premises. Operator must check ID's.
10. Hours of operation _____ to _____ Monday through Saturday.
 - a. Sunday: _____ to _____.
11. Obtain NCDOT driveway permit for any new driveway construction.
12. Site must be kept clean and neat, and must not become a public nuisance.
13. Keep in harmony with surrounding community.
14. Any sign construction must meet sign requirements per Section 12-285 of the County Code.
15. Provide a dumpster by an approved trash hauler.
16. Limited to _____ sweepstakes gaming devices.
17. Permit must be renewed by _____, 20_____ to maintain and regulate complaints, law regulation changes, etc.
18. Permit is not transferable and becomes null and void if there is a change of occupancy.
19. If any of the conditions or activities affixed hereto, or any part thereof, shall be held invalid or void, then this permit shall be void and of no effect.



E. STEVE SMITH
LAND SURVEYING
3520 MCKINNEY ROAD
MOORESBORO, NC 28114
ssmithpls@carolina.rr.com
704-434-5369
704-434-6682(fax)

DEED BOOK 14C, PAGE 472



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Reproduction of this drawing, in whole or part
without the written consent of the Professional
Land Surveyor is prohibited. Only copies from the
original document that are signed and sealed
are valid.

NOTES

SURVEY BASED ON PHYSICAL EVIDENCE FOUND ON DATE OF SURVEY

THIS PROPERTY () IS (X) IS NOT LOCATED WITHIN 2000 FEET
OF A N.C.G.S./U.S.G.S. MONUMENT.

THIS PROPERTY MAY BE SUBJECT TO RECORDED OR UNRECORDED
RIGHTS-OF-WAYS OR EASEMENTS NOT OBSERVED.

THIS PROPERTY () IS (X) IS NOT LOCATED WITHIN A SPECIAL FLOOD
HAZARD AREA AS DETERMINED BY THE DEPARTMENT OF HOUSING
URBAN DEVELOPMENT.

ALL DISTANCES ARE HORIZONTAL IN FEET.

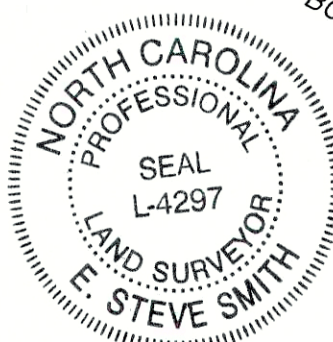
THIS IS A PROPOSED SITE PLAN FOR A CONDITIONAL USE PERMIT.

POWER POLES WITHOUT FLOOD LIGHTS WILL HAVE FLOODLIGHTS
INSTALLED.

"I certify that this map was drawn under my supervision from
an actual survey made under my supervision (deed description
recorded in Book 14C, page 472, or other source _____
that the boundaries not surveyed are indicated as drawn from
information in Book _____, page _____, or other reference
source _____: that the ratio of precision or
positional accuracy is greater than 1:10,000; and that this
map meets the requirements of the Standards of Practice
for Land Surveying in North Carolina(21NCAC56.1600)."

This 13 day of JUN, 2018.

E. Steve Smith, PLS L-4297



SCALE: 1"=30 FEET
0 15 30 60

LEGEND

- | | |
|-------------------|------------------------|
| □W | WATER METER |
| ○P | POWER POLE |
| ● | (IPF) IRON PIN FOUND |
| ⊙ | (IPS) IRON PIN SET |
| ⊖ | (PNF) POINT NOT FOUND |
| ⊕ | (CM) CONCRETE MONUMENT |
| ○ | (UMP) UNMARKED POINT |
| — | BOUNDARY LINE |
| - - - | CENTERLINE |
| - - - | EASEMENT LINE |
| - - - | RIGHT OF WAY |
| - - - | UNSURVEYED LINE |
| - P - P - P - P - | POWER LINE |

SITE DATA

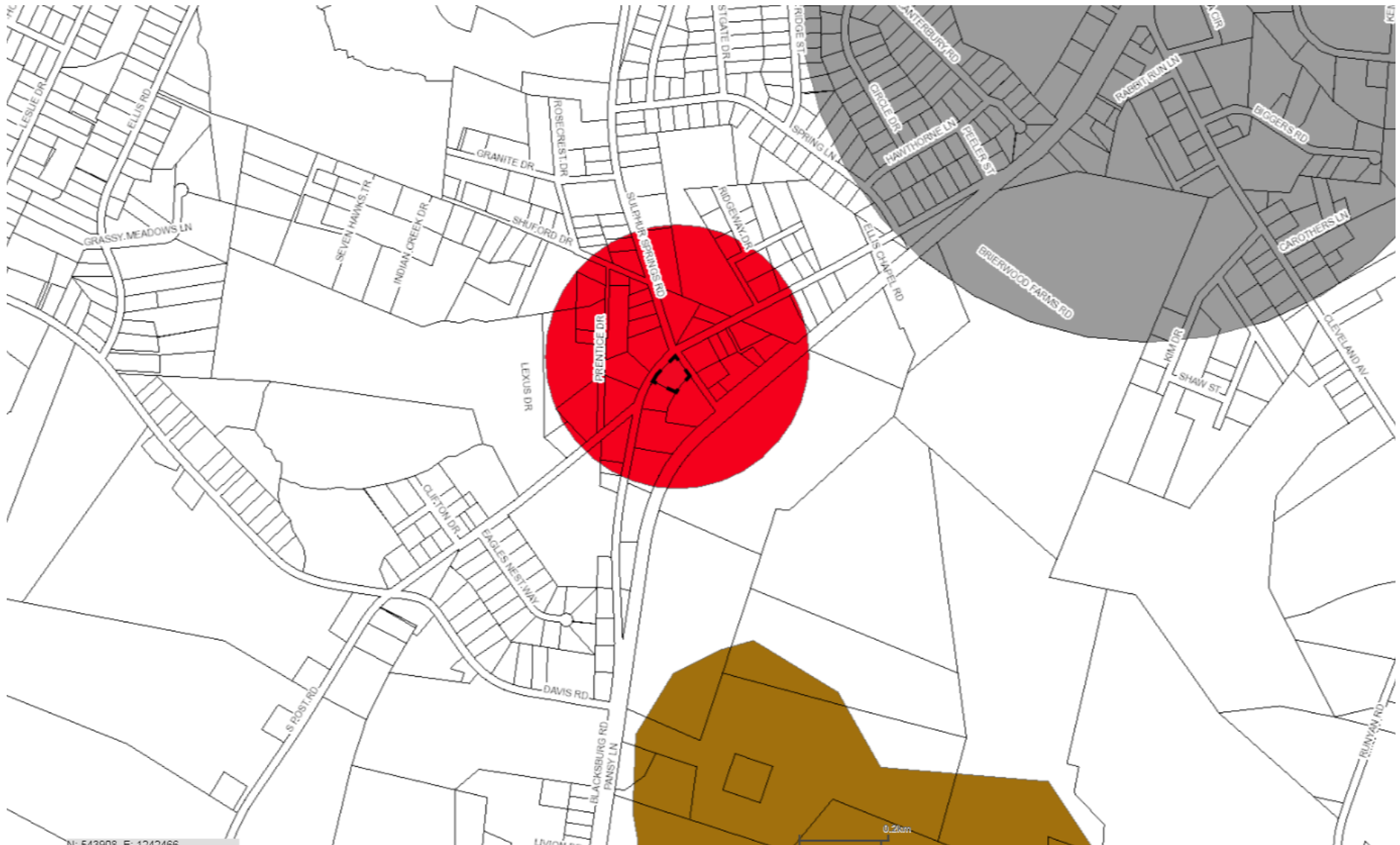
TOTAL AREA -0.972 ACRES
PARKING SPACES - 55

CLEVELAND COUNTY, NORTH CAROLINA
FORMERLY TOWNSHIP #3

PROPOSED SITE PLAN
FOR: RICHARD GORDON JONES
2305 S. POST ROAD

DEED BOOK 14C, PAGE 472
TAX MAP 3-9-2-1
ZONE GENERAL BUSINESS
JUNE 13, 2018

Industrial Municipal- Patterson Springs Commercial



Case 18-05: CUP for Gaming

Parcel# 3441: 2305 S. Post Rd.

Applicant: Richard Jones

