

**Planning Board Meeting**  
**April 15, 2019**  
**Minutes**

**Members Present:** Errol Briggerman, Victoria Curtis, Joe DeLoach, Lloyd Lancaster, Jonathan Olson, Terry Allen Swaim, and Ryan Zakany

**Members Absent:** All Present

**Staff Present:** Planning Director David Bergmark, Jeannine Ngwira, and Linda Barbour

**Guests Present:** Regina Harmon, Kathy Dara, Lesia McKenzie, and Levin Jones

**1. Meeting Called to Order**

Chairman Terry “Allen” Swaim called the meeting to order at 7:01 pm and recognized that a quorum (minimum of 5 members) was present.

**2. Welcome and Recognition of Guests**

Chairman Swaim welcomed guests in attendance.

**3. Chairman and Board Members’ Comments**

Chairman Swaim apologized for being late to last planning board meeting and mentioned that it was Tax Day today.

**4. Adjustment and Approval of Agenda**

Chairman Swaim asked if there were any adjustments to the agenda; as there were none, he then asked for a motion to approve. Jonathan Olson made a motion to approve the agenda; Lloyd Lancaster seconded the motion and it was approved unanimously.

**5. Public Comments**

None at this time.

**6. Approval of Minutes**

Chairman Swaim referred the members of the Planning Board to the minutes that the staff had prepared and asked if there were any needed revisions. - **Joe DeLoach said that he was listed on page 14 as the person who asked if the town could get a sense from DOT about what they would require ensuring safe traffic flow, He said he thought the cul-de-sac looked odd, but it made sense to him give the location of the railroad track and floodplain. It was not he who said that but Jonathan Olsen. This error on the minutes will be corrected.** Chairman Swaim asked for a motion to approve the revised minutes. Lloyd Lancaster made a motion and Victoria Curtis seconded and they were approved unanimously.

**7. Discussion, Consideration, and Action on the Following Items:**

**A. Zoning Text Amendment to Section 17.17 of the UDO and Section 3.04d of the Town’s Standards and Specifications Manual as they relate to guarantee of required improvements and warranties against defects**

Mr. Bergmark, Planning Director, presented the following staff report and background information shown in *italics* below.

**Specific Action Requested:**

*That the Planning Board consider the proposed Zoning Text Amendment request and make a recommendation to the Board of Commissioners, to include a statement of comprehensive plan consistency and reasonableness.*

*Applicant: Town of Wendell*

*Petition: Section 17.17 of the UDO contains the Town’s general provisions for guarantees of required improvements and warranties against defects. House Bill 721 (Session Law 2015-187) put in place new regulations regarding the types and amount of performance guarantees local jurisdictions may use. Three specific types of guarantees are listed as acceptable. Additionally, it clarifies that performance guarantees must relate to the completion of improvements, NOT maintenance of improvements already completed (with the exception of stormwater facilities). The Town’s current codes do not match the warranty types outlined and include a requirement for a warranty against defects. As a result, the language in the UDO and the Town’s Standards and Specifications Manual pertaining to warranties and performance guarantees must be amended to conform to House Bill 721.*

**David Bergmark referenced the Existing Language for Section 17.17 of the UDO (Guarantee of Required Improvements and Warranty Against Defects)**

**He then out-lined the Proposed Amendment**

*The proposed text amendment modifies Section 17.17 of the UDO and Section 3.04d of the Town’s Standards and Specifications Manual to limit the requirement for Warranties Against Defects to stormwater facilities only, change the types of performance guarantees required to match House Bill 721, change the approval authority for guarantees from the Town Board to the Zoning Administrator or the Town Manager, and specify at what stage of development required improvements may be completed. By delaying the final lift of asphalt until 70 percent of the lots have been completed, the Town reduces the risk of construction damage occurring to roads that have been accepted by the Town.*

*Proposed Amendments to Section 17.17 of the UDO (new text is underlined)*

*17.17 - Guarantee of Required Improvements and Warranty Against Defects*

*A. Financial Guarantee in Lieu of Immediate Installation for Approval: In lieu of requiring the completion, installation and inspection of all or any part of the required improvements as described in this Ordinance prior to Final Plat approval, the Town may require and approve a financial guarantee whereby the developer shall agree to complete all required improvements. The timing of said improvements shall adhere to the Town's adopted Standards and Specifications Manual. Once said financial guarantee is approved by ~~the Board of Commissioners~~ Zoning Administrator and the security required herein is provided, the Final Plat may be approved if all other requirements of the Ordinance are met. To secure this agreement, the developer shall provide either of, or a combination of, the following guarantees to cover the costs of the proposed improvements:*

*1. ~~Cash or Equivalent Security~~ Surety Bond: The developer shall deposit a surety bond with the Zoning Administrator ~~Town Manager~~. ~~The use of any instrument other than cash shall be subject to the approval of the Town.~~ The amount of the bond deposit shall be equal to 125 percent of the estimated cost as approved by the Zoning Administrator ~~Town Manager~~, of installing all required improvements. The initial cost estimate shall be the responsibility of the developer and certified by his engineer, but the approval of the final cost estimate shall be made by the Zoning Administrator ~~Town Manager~~.*

*2. Letter of Credit: The developer shall deposit a letter of credit issued by a financial institution licensed to do business in this State with the Zoning Administrator. The amount of the letter of credit shall be equal to 125 percent of the estimated cost as approved by the Zoning Administrator.*

*3. Other form of guarantee: The developer shall deposit any other form of guarantee that, in the opinion of the Administrator, provides equivalent security to a surety bond or letter of credit. The amount of this guarantee shall be equal to 125 percent of the estimated cost, as approved by the Zoning Administrator.*

*4. Governmental Guarantee: In any case where a required improvement is to be provided by the State of North Carolina or any local government other than the Town, the developer may provide, in lieu of the types of financial guarantee as provided for above, a letter from the appropriate State or local government official guaranteeing the installation of the improvement in the required manner and within the time allotted. Provided, however, in any case where the cost of such improvement exceeds \$10,000.00 as determined by the Town, such governmental guarantee shall be in form of an approved*

*Project Budget Ordinance where local government is to be the provider and an equivalent document where the State is to be the provider.*

**B. Duration of Financial Guarantees**

1. The duration of a financial guarantee shall be of a reasonable period to allow for completion and acceptance of improvements. In no case shall the duration of the financial guarantee for improvements exceed 24 18 months unless extended by the ~~Board of Commissioners~~ Town Manager.

2. All subdivisions whose public improvements are not completed and accepted at least 30 calendar days prior to the expiration of the financial guarantee shall be considered to be in default, unless said guarantee is extended with the consent of the ~~Board of Commissioners~~ Town Manager to a future date certain not to exceed ~~six months~~ 12 months. In order for an extension to be granted, a developer shall demonstrate reasonable, good faith progress toward completion of the required improvements that are the subject of the performance guarantee or any extension. The form of any extension shall remain at the election of the developer.

**C. Default**

1. Upon default, meaning failure on the part of the developer to complete the required improvements in a timely manner as specified in the financial agreement, the Town may expend said funds as deemed necessary to complete all or any portion of the required improvements.

2. Default on a project does not release the developer from liability/responsibility, financial or otherwise, for the completion of the improvements.

**D. Release of Guarantee Security**

1. The Town Manager may release a portion or all of any security posted as the improvements are completed. Prior to such release the developer shall provide the Administrator with a set of 'as built' drawings certified by his engineer.

**E. Warranty Against Defects**

1. Prior to the ~~approval of the Final Plat~~ or acceptance by the Town of any improvements in any subdivision, the developer shall furnish to the Town a written warranty against defects which shall guarantee the material and workmanship of required stormwater improvements for a period of not less than one year from the date of such acceptance. Such warranty shall be accompanied by a financial guarantee payable to the Town equal to at least ten percent of the cost of the installation of such stormwater improvements as determined by the Town Manager. Such financial guarantee shall be in the form of financial guarantee as provided for in Section 17.17.A of this Chapter.

The financial guarantee will be renewable, in one year terms, until 50 percent of certificates of occupancy have been issued within the applicable phase. When 50 percent of certificates of occupancy have been issued in a particular phase, the developer may petition the town to take over ownership and maintenance of the streets and infrastructure within the phase.

Upon successful performance of the improvements, as determined by the Town Manager, the financial guarantee shall be returned to the developer. Upon the failure of an improvement to perform within the generally accepted standards for the type improvement as determined by the

*Town Manager, the developer shall be notified and given a reasonable period of time to correct the defects. Should the developer fail to act, fail to act in a timely manner, or otherwise fail to correct the defect(s), the Town Manager shall find the developer in default and proceed in the same manner as provided for in Section 17.17.C of this Chapter. ~~Although other utilities and services as are set forth in Section 17.13 are not included in this warranty against defects, any grading, boring, cutting or other disturbances in public easements or rights-of-way associated with the installation or such facilities shall be restored prior to the release of this financial guarantee.~~*

*Proposed Amendments to Section 3.04d of the Standards and Specifications Manual (Inspection and Acceptance)*

***d. Acceptance***

*The final lift of bituminous surface course is to be delayed until such time as its placement is approved by the Town Representative in order to allow for initial residential construction activity to conclude and not damage the road surface. ~~Generally Unless otherwise approved by the Town Board as part of a Conditional District, Planned Unit Development, or Development Agreement, the final lift shall be installed after 70% of the lots have received certificates of occupancy. the petition to the Town for acceptance of roads within a phase of development may be submitted once 70% of the lots have been constructed and occupied and the final lift shall be installed after 80% of the lots have been constructed and occupied, unless otherwise specified by the Town Representative.~~ If future phases of development are proposed, installation of the final lift can be delayed further as approved by the Town Representative. Following the installation of the final surface course, a final inspection by Town staff shall be conducted and a punch list generated of items required to be repaired. Final acceptance shall be subject to satisfactory correction of any defects in the facilities and provisions to the Town of as-built plans.*

***Statement of Plan Consistency and Reasonableness***

- *Any recommended change to the zoning text should be accompanied by a statement explaining how the change is consistent with the comprehensive plan and is reasonable in nature.
  - o *In staff's opinion, the requested zoning text amendment is consistent with Principle # 8 of the Wendell comprehensive plan and is reasonable in order to conform to new legislative requirements while protecting the town from undue financial burdens associated with developer installed infrastructure improvements.*
  - *Principle # 8: Ensure local and regional transportation interconnectivity and options while also maintaining and enhancing Wendell as a walkable community.**

***Staff Recommendation:***

*Staff recommends approval of the text amendment request.*

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**Discussion following Mr. Bergmark’s presentation:**

- Chairman Swaim asked if there were questions or comments would we have any recourse?
- David answered yes. The Board of Adjustment
- Lloyd asked why are there 3 types that are acceptable, can’t we take one of these away? We should eliminate the letter of credit.
- David said the law gives 3 no leeway.
- Lloyd said a Surety Bond would be the best choice.
- Jonathan referenced page 6, and asked how much would you delay finished streets? Would David let this go?
- David Bergmark said it was open to interpretation now.
- Chairman Swaim asked for a motion. Lloyd made a motion to accept. Errol seconded this motion and it was unanimously approved.

**Item 7B**

**ZTA19-03 – Discussion and Action on a Zoning Text Amendment to Sections 3.3 and 19.3 of the UDO as it relates to Indoor Amusements to include specific standards for Game Rooms and Pool Halls.**

**Mr. Bergmark, Planning Director, presented the information shown in italics below.**

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**Specific Action Requested:**

- *That the Planning Board consider the proposed text amendment request and make a recommendation to the Board of Commissioners, to include a statement of comprehensive plan consistency and reasonableness.*

**Applicant:**

*Town of Wendell.*

**Petition:**

*Staff is requesting to delete Chapter 6, Article III- Game Rooms and Pool Halls, of the Code of Ordinances in its entirety and add the relevant language from Article III to the chapters of the UDO that cover Indoor Amusements and Billiard/Pool Hall.*

**Item Summary:**

*Game Rooms and Pool Halls are permitted in the UDO within select districts, but there are requirements in the Code of Ordinances that cannot be complied with since there no longer exists a means of carrying them out. Previously the Town required businesses to obtain a Privilege License, but now according to GS 106-65.40 a city may not levy a privilege license tax on persons engaged in business, therefore the Town of Wendell no longer issues the licenses. Since much of the language in the ordinance regarding game rooms and pool halls pertains to the requirements of obtaining a privilege license, staff is requesting to delete Article III- Game Rooms and Pool Halls from Chapter 6 of the Code of Ordinances and to add any relevant language to the UDO for these uses.*

*Under the UDO, Game Rooms would be classified as a type of Indoor Amusements, which is defined as “establishments that provide commercial recreation activities completely within an enclosed structure such as video arcades, skating rinks, roller rinks, and bowling alleys.” Currently, the only use standard for Indoor Amusement is that no audio system may be permitted that can be heard beyond the property. Staff’s proposal adds several additional supplemental use standards to the Indoor Amusement use, based on the language currently located in Article III for game rooms.*

*Similarly, staff’s proposal moves relevant standards from Article III of the Code of Ordinances pertaining to Pool Halls/Billiard Rooms to Section 3.3 of the UDO. Currently there are no supplemental standards attached to Pool Halls in the UDO, beyond that which is captured by its definition. In staff’s opinion, the existing definition for a pool hall which states that any business establishment that has a single pool table is a pool hall, is excessive. Therefore, staff is proposing to update the threshold to 2 or more pool tables. This would allow a restaurant, bar, or civic organization to have a single pool table without being subject to these regulations.*

**Key Questions:**

1. *Where should Indoor Amusements/Game Rooms and Pool Halls be permitted to operate?*
2. *What supplemental use standards should apply to them?*
3. *Is there justification for keeping these two uses separate, or should Pools Halls be included as a type of Indoor Amusement*
  - a. *Staff’s draft language maintains them as separate uses as that is their current status, but in staff’s opinion, it would be more appropriate to include pool halls within Indoor Amusements, subject to the same standards. If this change were made, Pool Halls would*

*become 'Permitted with Additional Standards (PS)' rather than requiring a Special Use Permit (SUP).*

***Districts Where Pool Halls & Indoor Amusements are Allowed:***

***Indoor Amusements*** – Permitted with Additional Standards (PS) in the CMX, CC, DMX, and CH zoning districts.

***Billiard/Pool Hall*** – Permitted with a Special Use Permit (SUP) in the NC, CMX, CC, DMX, and CH zoning districts.

***Proposed Amendments to the UDO:***

*The following proposed text amendment will be added to Chapter 19.3 (Definitions) & Chapter 3.3 (Additional Standards by Use):*

***19.3 – Definitions***

*Billiard/Pool Hall generally means any place where one two or more billiard or pool tables are operated or maintained, except for private family use, whether such place is a social club or a business enterprise operated for profit.*

***3.3 - Additional Standards by Use***

***D. Amusements, Indoor (CMX, CC, DMX, CH).***

- 1. No outdoor public address or audio system shall be permitted which can be heard beyond the boundaries of the property.*
- 2. Shall be closed from ~~12:00 midnight~~ 11:00 PM until ~~6:00~~ 8:00 a.m. Monday through ~~Saturday~~ Sunday.*
- 3. Shall not be permitted to operate above a separate use within a multi-story structure.*
- 4. No curtains, screens, blinds, partitions, or other obstructions shall be placed between the entrance to the business and the rear walls of the building so that a clear view of the interior may be had from the street.*
- 5. No loud noises shall be allowed to emanate beyond the premises.*

6. *There must be an adult person, 18 years of age or older, managing the business on the premises during hours of operation at all times.*
7. *Any person who is a registered sex offender or who has been convicted of a gambling violation may not be employed in the business.*
8. *Any person who has been convicted of unlawfully selling or possessing alcoholic beverages or narcotic drugs, may not be employed in a supervisory capacity;*
9. *Prior to operation, business owner must provide documentation demonstrating the following:*
  - a. *That he or she is at least 21 years old*
  - b. *That he or she is a resident of the state unless:*
    - i. *He or she is an officer, director or stockholder of a corporate applicant or permittee and is not a manager or otherwise responsible for the day-to-day operation of the business;*  
*or*
    - ii. *He or she has executed a power of attorney designating a qualified resident of the state to serve as attorney in fact for the purposes of receiving service of process and managing the business for which permits are sought;*
  - c. *That he or she has not been convicted of a felony and has not had their citizenship restored, been convicted of unlawfully selling or possessing alcoholic beverages or narcotic drugs, or within the past two years been convicted of any other misdemeanor-controlled substance offense or crime of moral turpitude*

***I. Billiard/Pool Hall (NC, CMX, CC, DMX, CH).***

1. *Shall be closed from 12:00 midnight until 8:00 a.m. Monday through Sunday*
2. *Shall not be permitted to operate above a separate use within a multi-story structure.*
3. *No curtains, screens, blinds, partitions, or other obstructions shall be placed between the entrance to the business and the rear walls of the building so that a clear view of the interior may be had from the street.*
4. *No loud noises shall be allowed to emanate beyond the premises.*

5. *There must be an adult person, 18 years of age or older, managing the business on the premises during hours of operation at all times.*
6. *Any person who has been convicted of unlawfully selling or possessing alcoholic beverages or narcotic drugs, may not be employed in a supervisory capacity;*
7. *Any person who is a registered sex offender or who has been convicted of a gambling violation may not be employed in the business.*
8. *Prior to operation, business owner must provide documentation demonstrating the following:*
  - a. *That he or she is at least 21 years old*
  - b. *That he or she is a resident of the state unless:*
    - i. *He or she is an officer, director or stockholder of a corporate applicant or permittee and is not a manager or otherwise responsible for the day-to-day operation of the business; or*
    - ii. *He or she has executed a power of attorney designating a qualified resident of the state to serve as attorney in fact for the purposes of receiving service of process and managing the business for which permits are sought;*
  - c. *That he or she has not been convicted of a felony and has not had their citizenship restored, been convicted of unlawfully selling or possessing alcoholic beverages or narcotic drugs, or within the past two years been convicted of any other misdemeanor-controlled substance offense or crime of moral turpitude.*

***Statement of Plan Consistency and Reasonableness***

- *Any recommended change to the zoning text should be accompanied by a statement explaining how the change is consistent with the comprehensive plan and is reasonable in nature.*
  - O *In staff's opinion, the requested zoning text amendment is consistent with Principle #5 of the Wendell comprehensive plan and is reasonable in order to promote Wendell's attractiveness to business.*
    - *Principle # 5: Promote Wendell's attractiveness to business and people of all walks of life. Emphasize the strengths of the Town's diverse population.*

***Staff Recommendation:***

*Staff recommends approval of the text amendment request but asks the board to consider whether Pool Halls need to be a separate use from Indoor Amusements.*

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**Discussion following staff report:**

- Jonathan Olson said the rules were antiquated concerning the standards for employees.
- Lloyd Lancaster said creating a higher standard for our code was not a good idea and asked if this was necessary?
- Errol Briggerman asked if this language was existing? If not, what part is new?
- David answered the sex offender portion was the only part regarding background information that was new, based on police comments.
- Jonathan asked if we have any other businesses where we limit their hours of operation?
- David answered yes, some, such as Sweepstakes.
- Jonathan asked if the police could enforce “nuisances”? If so, he said he does not feel we need to double duty our ordinances when there are already laws in place.
- Lloyd asked David which items on the list he would want in place?
- Chairman Swaim inquired as to why can’t a business owner make a business private?
- David replied that it looks more appealing to have an open view from the street. He said there were also safety concerns.
- Lloyd asked in regard to these types of businesses running another business on another floor, is that the same case for any other type of businesses? Lloyd would like to cut that part out of the rules. He wanted to know why we can’t zone these types of businesses the same as other types of businesses?
- Chairman Swaim introduced guest Regina Harmon, Owner of Wendell General Store and the Total Connection.

- Regina Harmon said one of her concerns was the hours of operation being 5pm to 11pm, three nights a week. She thinks it should be open on Saturday and Sunday days to make it more family friendly. She said that an arcade on Main Street might have the potential for noise, safety concerns, and loitering. She had issues with theft in the past and does not want to have that problem again. She said we could lose good businesses by bringing in a business that encourages trouble.
- Ryan Zakany asked Regina what rules were important to her.
- Regina replied rules 2, 4, and 5. (see information above)
- Lloyd asked If when she first opened her business if someone told her that her hours would be restricted what would she have done?
- Regina closed by saying we should have our town be filled with love for the town and keep it family friendly.
- Chairman Swaim introduced the next guest Kathy Dara owner of 41 North and KD Designs.
- Kathy said that her concern is not that is it a game room but the proposed hours of operation. She also said that the rules that are in place because of the of issues that this type of business can bring as it has the propensity to do this. A game room would be ok but the hours should be family friendly. She is concerned that a late-night business would bring the wrong crowd hanging out on Main Street.
- Ryan asked Kathy which rules were most important to her.
- She replied that it is most important rule to her is to have the game room close by 10pm.
- Lloyd Lancaster said that restaurants that serve alcohol could cause issues, he asked Kathy if she agreed. Kathy said big changes could take this town in the wrong direction.
- Chairman Swaim asked if there is anything for 17-20-year-olds to do in this town?
- Erroll Briggerman asked if they will be coming here from other towns to hang out.
- Chairman Swaim introduced guest Lesia McKenzie Financial Advisor at Edward Jones.
- Leisa McKenzie said that her husband has a business too and that she wants businesses to open in Wendell. If a game room opens she would like it to have daytime hours, not late hours that would have kids hanging out at night unsupervised. She said that we should

grow downtown with businesses that are open during daytime hours. Places to eat and shop and if there is an arcade it should be open during the day.

- Lloyd asked Lesia if she was ok with rule # 4 (no curtains, blinds etc.)? She said it would be ok to have some privacy but not to have windows blocked all of the time.
- Ryan asked which rule was most important to Lesia? She said it was the hours, that the DMX needs to be updated and that rules 6,7, and 8 are a concern that should be in the UDO.
- Jonathan Olson asked Lesia what her hours were and what governed her hours? Lesia said her hours are geared to accommodate her clients but thinks hours are conducive to downtown area.
- Lloyd said he has heard the phrase “the right kind of grow” He asked for clarity. Lesia said bright shops, restaurants, places for people to walk around and have it be pleasant.
- Victoria Curtis asked if we should force someone to be open when they will not be doing any business?
- Lesia replied that this type of business should not be on Main Street if it is not a part of downtown day traffic.
- Joseph DeLoach said we are only talking about downtown, but we are here to make a decision for all of Wendell. He brought up that this is a catch 22, we want businesses open days but need night time businesses too.
- David said there were other restricted businesses that had to be closed by certain times. He also said that the town could make the Indoor Amusement use require a Special Use Permit (SUP) in the DMX district if it wished to. The Town could also have certain supplemental standards only apply in the DMX.
- Ryan said do these standards apply to other businesses. David said yes a few concerning hours, noise, etc.
- Lloyd asked if they removed items and came back again next month?
- David asked can they make their recommendations tonight?
- Jonathan asked if these rules apply to any other businesses and do they have to adhere to these standards?
- Ryan asked if they could separate pool hall from game room rules?

- Jonathan said made a motion to classified Billiard as more than 2 tables.
- Lloyd seconded, and it was unanimously approved.
- Lloyd made a motion to combine Amusements, Indoor & Billiard/Pool Hall.
- Ryan seconded the motion and it was unanimously approved.
- Victoria Curtis made a motion to table the issue until next month Lloyd seconded the motion and the motioned was passed unanimously.
- Lloyd made a motion to table 7c until next month and Victoria Curtis seconded it but then changed the motion to hear a short presentation of 7c.

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**David Bergmark gave a short presentation after saying that someone inquired about opening a Bed and Breakfast/Home Stay in Wendell.**

**He talked about the pros and cons and compared what other nearby towns rules and regulations are.**

**He said staff would like to Amend our rules to make some separation of 500 feet for Home Stays.**

**David said he would like to have some parameters on Bed & Breakfasts**

**David said there would be more restrictive rules for Whole House Lodging, compared to Home Stays.**

- Chairman Swaim asked if motion to table this issue still stands? All agreed unanimously to table Item 7c.

## **8. Adjourn to Next Regularly Scheduled Meeting**

Chairman Swaim asked for a motion to adjourn. Lloyd Lancaster made a motion to adjourn the meeting, Ryan Zakany seconded the motion. The motion passed unanimously, and the meeting adjourned at approximately 9:10 PM.