

BOARD OF ZONING APPEALS MEETING

September 19, 2019

Members Present

Gus Dolianitis
Ann Sasser Evans
John Hiltzheimer
Gus Dyer
Lawrence Meder
Nicole Garrison

Members Absent

Michael Nicholas

Staff

Ken Gillie
Bonnie Case
Clarke Whitfield

Chairman Dyer called the meeting to order at 4:00 p.m.

I. ITEMS FOR PUBLIC HEARING

- 1) *Appeal Application Number PLAZ20190000305, filed by Eric Sherrell on behalf of PN Trading VA LLC, requesting an appeal of zoning violation notice and revocation of business license clearance effective July 17, 2019 for PN Trading VA LLC at 1311 Piney Forest Rd Suite E, otherwise known as Grid 1808, Block 101, Parcel 000001 of the City of Danville, Virginia Zoning District Map. The applicant is requesting an appeal of a final notice of violation issued by the Zoning Administrator that the operation is a commercial indoor recreation facility and requires a Special Use Permit when one has not been issued.*

Mr. Dyer opened the Public Hearing.

The applicant was not present.

Mr. Dyer asked if there were any questions for staff.

Ms. Evans asked about the photo of the promissory note.

Mr. Gillie stated the applicant claimed they were a financial institution and the promissory notes constituted that being a financial institution. Staffs argument is that it is a type of recreation because just like the other games you are still playing to obtain these so it is commercial because they make money at it and it's recreation because it's a game that's indoors and thus requires a special use permit.

Mr. Dyer opened the Public Hearing.

William Shewmake from Woods Rogers law firm in Richmond spoke and stated that I do not represent anyone here at all. What I would like to do if I could is hopefully provide a preview of something that's coming down the pipe. I represent a number of convenience

stores that are attempting to file an appeal of zoning violations coming up with several games. What I am trying to point out today is that I understand what is happening here is this was a room dedicated to games of skill, which would be principal use of what you'll hear in a couple of weeks. There is a legal distinction between a convenience store which is attempting to have one or two and a room which is attempting to have principal use of those types of issues. There is a concept called customary incidental accessory use. We believe what you will be hearing in the future is that machines at a convenience store is a customary incidental accessory use and is much like any other video game would be or an ATM machine would be. Included in our appeal is a brief memorandum which has a number of case cited in it for both Virginia and elsewhere.

Mr. Dyer closed the Public Hearing.

Mr. Dyer stated that I think it is important that we need to make sure that we are not judging whether this is gambling or not. We are here to determine whether this is commercial indoor recreation which does require a Special Use Permit. Since there was not anyone here that wanted to make an argument that it is not commercial indoor recreation simply by stating what it is, it is indoors, it is commercial, they make money off of it and it is recreation.

Ms. Garrison asked for clarification on what did the applicant other than a financial institution say this business was. Did they just indicate the games were not games?

Mr. Gillie stated they never indicated the games were not games. They claimed they got a zoning clearance that was for that facility and it was a financial institution. When we went there, the argument was these games are not illegal, this is not gambling. I'm not here to argue whether they are gambling or not. You've got recreational facilities inside, it's commercial, it's indoors and it's recreation. Your own sign on the wall says these are games. You can't have it. You don't have a Special Use Permit and you should not be operating.

Ms. Garrison stated she wondered if they had an alternate suggestion for what they were.

Mr. Gillie stated they were notified to come to this meeting. They received letters and everything else.

Mr. Dyer stated I also want to make the distinction that this is not just the principal occupation in this space. They don't sell snacks, sell gas or do anything else other than provide these games. Is that correct?

Mr. Gillie stated that's all that is there.

Ms. Evans stated does a business license not require that you state what type of business it is?

Mr. Gillie stated I wasn't the one that issued the business license. One of my staff did. My staff conveyed to me that they were financial services. Financial Services are permitted in that district and they were given a zoning clearance. We then subsequently

received complaints about the operations at the facility and investigated and found all these and advised them that this is not what you said. This is commercial indoor recreation and requires a Special Use Permit.

Ms. Evans stated I'm assuming there is a form that you complete.

Mr. Gillie stated no, the applicant just comes down and notifies us of what they will be doing. We wouldn't have known about this if we didn't received complaints about the operation facility.

Ms. Evans stated so the application received stated financial services.

Mr. Gillie stated they came and spoke to us. They don't have to turn in an application. They meet face to face with staff. Then a staff member asks what are you doing and where at.

Mr. Dyer stated they did obtain a business license. What staff is saying is that their description of what the business is does not match the reality of what their business model is.

Mrs. Evans made a motion to uphold the decision of the Zoning Administrator that this is indoor commercial recreation for Appeal Application PLAZ20190000305. Mrs. Garrison seconded the motion. The motion was approved by a 6-0 vote.

2) Appeal Application Number PLAZ20190000341, filed by Gentry Locke on behalf of Queen of Virginia Skill & Entertainment, LLC on behalf of PFJ Southeast LLC Store #256, requesting an appeal of a zoning violation notice effective July 19, 2019 for PFJ Southeast LLC Store #256 at 110 River Point Dr, otherwise known as Grid 3713, Block 006, Parcel 000001 of the City of Danville, Virginia Zoning District Map. The applicant is requesting an appeal of a final notice of violation issued by the Zoning Administrator that a Special Use Permit is required for Commercial Indoor Recreation when one has not been issued to operate commercial indoor recreation machines.

Present to speak on behalf of this request was Max Weigard, attorney with Gentry Locke. Mr. Weigard stated I'm just here to clarify my client's position. I represent Queen of Virginia Skill & Entertainment, LLC. Pilot, which is the owner and operator of the truck stop and travel center where they have two games received a notice of violation. My client in working with Pilot elected to submit an appeal simply to preserve certain rights. Since we have filed that appeal within that thirty day window that we had to do so, my client submitted a Special Use Permit application and when we did so we asked to continue the Board of Zoning appeals hearing and if we are successful with our Special Use Permit application, the appeal will not be necessary. I have sent emails to Mr. Gillie clarifying our position that we did not want to withdraw our application but do wish to have it postponed while the Special Use Permit application runs its course.

Mr. Gillie stated that all the neighbors have been notified that they had withdrawn and they are just going a different route.

Mr. Weigard clarified they are not operating games at this point.

Ms. Evans made a motion to continue with Appeal Application Number PLAZ20190000341. Ms. Garrison seconded the motion. The motion was approved with a 6-0 vote.

II. APPROVAL OF MINUTES

The June 20, 2019 minutes were approved by a unanimous vote.

III. OTHER BUSINESS

Ms. Evans asked if there are any cases for next month.

Mr. Gillie stated yes so plan on having a meeting next month on October 17th.

With no further business, the meeting adjourned at 4:20 p.m.

APPROVED