



**CURRITUCK COUNTY
NORTH CAROLINA**

January 14, 2016
Minutes – Regular Meeting of the Board of Adjustment

CALL TO ORDER

A. Statement

Please be advised that these minutes are not verbatim but are rather a general summary of the discussions at the meeting. A transcript of the meeting prepared by a court reporter will be provided at a later date.

Attendee Name	Title	Status	Arrived
Cameron Tabor	Vice Chairman	Present	
C. Shay Ballance	Board Member	Present	
Donna McCloud	Board Member	Present	
Michael Painter	Board Member	Present	
David Palmer	Board Member	Present	
Vivian Simpson	Board Member	Absent	

B Announce Quorum Being Met

Mr. Tabor Announced a quorum had been met.

C) Approval of Agenda

Mr. Palmer presented a revised agenda and moved that it be approved. Mr. Painter seconded the motion and the board unanimously approved the revised agenda.

D Election of Chairman and Vice-Chairman

Mr. Woody opened the nominations for chairman. Mr. Tabor nominated Mr. Palmer for chairman. Mr. Painter seconded the nomination and Mr. Palmer was unanimously voted chairman.

Chairman Palmer opened the nominations for vice-chairman. Mr. Tabor nominated Mr. Painter as vice-chairman. Mr. Painter was unanimously voted vice chairman.

E Ask for Disqualifications

No members disqualified themselves from voting on an item.

F Approval of Minutes for September 10, 2015**1. Board of Adjustment Minutes for September 10, 2015**

Mr. Tabor motioned to approve the minutes as presented. Ms. McCloud seconded the motion and the motion passed unanimously.

G Rules of Procedure**1. Proposed Amendment to Rules of Procedure**

Mr. Painter motioned to approved the amended rules of procedure. Mr. Tabor seconded the motion and the motion passed unanimously.

H Closed Session to Confer with BOA Attorney Regarding Court Orders**I Determination of Proper Meeting Advertisement**

Mr. Palmer asked if the meeting had been properly advertised.

Mr. Woody said the case had been properly advertised. The property was posted, a legal ad was in the newspaper, and adjoining property owner letters were mailed. Additionally, the agenda and staff report were posted on the county's website.

OLD BUSINESS**NEW BUSINESS****A. Public Hearing and Action: BOA 16-01 R.F. London, Inc.: Special Use Permit request for an adult and sexually oriented business (presently adult entertainment.)**

Mr. Palmer directed staff to provide court orders to the board as soon as possible. He said they were just being notified of the court order several years later. He asked about amending the Rules of Procedure to require this notification.

Mr. Woody said staff will provide orders to the board in a timely order.

Mr. McRee explained that multiple things had happened since the court order to this point. The county filed an appeal, the Board of Commissioners had to hear the case, and the timing of the Board of Adjustment meeting had to be worked out between all parties involved.

Mr. Morrison reiterated that orders regarding the Board of Adjustment must be forwarded to them promptly. The board needs to know if it is under a court order.

Mr. Palmer asked staff to provide draft language to add to the Rules of Procedure regarding court orders.

Mr. Palmer asked Mr. Woody to present the staff report.

Bryan Plumlee, attorney to the applicant, objected to the staff report. Mr. Morrison suggested that evidence be objected to as presented throughout the staff report.

Mr. Morrison said the board wants to deliberate the case carefully. The board may want to recess and come back another day to give them time to review the evidence of record.

Mr. Woody presented the staff report to the board.

Mr. Plumlee objected to staff report, studies, and other items.

Mr. Morrison explained that it was ok to introduce the entire staff report, but asked Mr. Plumlee to cite what he was objecting to.

Mr. Morrison said he can't advise the board if they do not know the specific objections within the staff report. The board may allow an opening statement to help understand the background of case, but not evidence.

Mr. McRee directed Mr. Woody to continue.

Mr. Plumlee objected to the staff report and its contents. He presented the board with binders of exhibits.

Mr. McRee said Mr. Plumlee's exhibits had not been submitted into evidence.

Ben Woody, Robert Brown, and David Paster appeared before the board and were sworn in.

Mr. Woody introduced the staff report into the record in its entirety. (County Exhibit #1)

Mr. Plumlee objected because the report lacks a proper foundation, much of it not relevant to the case, hearsay, and it is not competent evidence. He would be objecting to findings, recommendations, conclusions, etc. He asked to give an opening statement. Among other things, he said latches do apply as do secondary effects. He handed out Judge Hight's order, July 2012, and the board's previous order, February 2011. If the Doctrine of Latches are not acted upon in a timely manner, you have lost the ability to enforce the zoning ordinance in this matter. He summarized the court orders and explained secondary effects.

Mr. McRee said the opening statement was not accurate or relevant and was argumentative.

Mr. Morrison said the board cannot decide latches. That motion should be addressed to Judge Hight in Superior Court and not the Board of Adjustment.

Mr. Palmer asked if Mr. Plumlee gave an opening statement or a motion.

Mr. McRee cited General Statute that explains competent evidence. The board is not required to comply with Rules of Evidence.

Mr. Morrison explained a quasi-judicial hearing.

Mr. Woody again introduced the staff report into evidence. (County Exhibit # 1) He gave a summary of the facts of the report. He said the 1999 order asked the board to consider a special use permit application under the ordinance in effect at that time. He explained the findings of fact that had to be considered. Mr. Woody introduced Mr. London's February 7, 2000 application into evidence.

Mr. Woody said the first finding the board had to consider is if the special use permit application was complete. The application stated the use was a nightclub offering comedy, pool tables, video games, musicians, dancing, topless dancing, and organized parties for businesses or groups. He said the February 7, 2000 application was considered complete.

Mr. Woody said the second finding was if the use is listed in the Table of Permissible Uses as a special use indicated with a "S." Staff's preliminary find is that the use is not listed in the Table of Permissible Uses with an "S."

Mr. Plumlee objected because the report is coming to the board 17 years after the 1999 Tillett order. He said it was not acted on forth with as Judge Hight's 2012 order directed. He said findings coming from staff are untimely and; therefore, he will continue to object to all findings.

Mr. McRee said the board is doing what the judge ordered by using the ordinance in affect at that time.

Mr. Morrison said the board can't make ruling on latches and sophisticated legal actions and suggested the objection be overruled.

The objection was overruled.

Mr. Woody said that in 2000 and today, the Board of Adjustment does not have the authority to consider and issue permits for sexually oriented businesses. The amended use, an adult and sexually oriented business, is within the jurisdiction of the Board of Commissioners according to Section 1310, use number 37.000. An adult and sexually oriented business is allowed in the Heavy Manufacturing (HM) zoning district, not in the General Business (GB) zoning district. The subject property is zoned General Business (GB) and the applicant has not applied for a zoning map amendment.

Mr. Plumlee objected because of timeliness.

Mr. Morrison suggested that the board was in an awkward position because they don't have the authority to consider this special use permit, but the Judge Tillett had ordered that they do.

Mr. McRee agreed that the board cannot consider or grant a special use permit.

Mr. Plumlee said the board had judicial authority to grant the special use permit.

The board asked for copy of Judge Tillett's order.

Mr. Morrison asked Mr. Woody the difference in special use permits and a conditional use permits.

Mr. Woody explained that the procedure is the same; however, the boards are different. In 2000 the Board of Adjustment had authority to issue a conditional use permit for nightclub, not including topless dancing. A special use permit was heard by the Board of Commissioners and a conditional use permit was heard by the Board of Adjustment, per ordinance.

Mr. Plumlee objected to Mr. Woody responding with some authority to the board of adjustment because he was a sophomore in college in 1999.

Mr. Morrison asked Mr. Woody if he was familiar with what the ordinances were then by virtue of his qualification.

Mr. Woody said he was.

The objection was overruled.

Mr. Morrison stated a conditional use permit could have been issued for a nightclub, but not a topless nightclub. Only the Board of Commissioners could have considered a special use permit for a topless night club.

Mr. Palmer asked if primary and secondary use comes into play. He asked is serving alcohol, food, and games was a primary use and the topless dancing a secondary use.

Mr. Woody said the primary use is an adult establishment.

Mr. Morrison considered Judge Tillett's order. All involved agreed that the board must consider the special use permit application. He asked if the board has no authority to consider a special use permit, can Judge Tillett order the board to do so and become legislature to Currituck County? He said authority comes from the Board of Commissioners and a judge cannot legislate.

Mr. Plumlee said the board must consider secondary affects as ordered by Judge Tillett.

Mr. Morrison confirmed with Mr. Woody that Section 1304 of the UDO was the Table of permissible uses and that a special use permit could only be considered by the Board of Commissioners.

Mr. McRee said Section 1304 is actually an introductory paragraph to the table.

Mr. Morrison said someone should have filed a motioned to amend the order. Since the order was not appealed, the board must make findings that it doesn't have authority to issue the permit.

Mr. Plumlee said Judge Hight's order reviewed this issue. Judge Hight ruled to follow Judge Tillett's order. The Board of Commissioners had 30 days to issue the special use permit and adhere to the order.

Mr. Morrison said the board cannot do anything about that.

Mr. McRee said the board considered Judge Tillett's order in 2000 and made a finding that it would look at secondary impacts, but the land was not zoned properly for the use, so the board could not hear the case. He summarized Judge Hight's order and said Judge Hight ordered the case to be started over.

Mr. Palmer asked if the board should consider the application or just secondary effects.

Mr. Morrison said the board must consider the application.

Mr. Woody said that finding three is if the conditions proposed meet or exceed the minimum requirements of ordinance. The preliminary staff finding is that the conditions proposed do not meet or exceed the minimum requirements of the ordinance. He said Sections 808 and 1310 of the Unified Development Ordinance, adopted September 19, 1994, classifies topless nightclubs as "Adult and Sexually Oriented Business" which requires such businesses to locate in a Heavy Manufacturing zoning district with a special use permit and be located a minimum of 1,000 feet from any dwelling or R and RA zoning district, among other things. The property on which Mermaids (Headlights) is located, US Highway 158, Point Harbor, Tax Map 132, Lot 133A, Poplar Branch Township, is zoned General Business. Further, the building in which Mermaids (Headlights) is located is within 1,000 feet of 17 residential dwellings (in the year 2000) and immediately adjacent to an R zoning district.

Mr. Woody said that finding four is that the special use will not endanger the public health or safety. The preliminary staff finding is that the use will materially endanger the public health or safety.

Mr. Plumlee objected because staff was using old reports that are not relevant and not about this location. He said the reports are hearsay, not competent, not founded, and not peer reviewed studies.

Mr. McRee said the studies are relied upon by staff and other communities across the country. An individual locality does not have to do its own study. You can rely on studies from other communities.

Mr. Plumlee objected to methodology.

Mr. Palmer said the business has been operating for 20+ years and asked Mr. Woody if he had any evidence from this business.

Mr. Morrison said that since Mr. Woody didn't author or talk to the author of any of the documents, and the fact that the board can't ask the authors questions, the studies should be considered hearsay and they should sustain the objection.

The objection was sustained.

Ms. McCloud said the board should only consider evidence from this location.

The collection of studies will not be considered as evidence.

Mr. Woody said the order did not ask for secondary effects for Mermaids, but for the use. He said he cannot provide evidence for the original use because the business never operated as a night club without topless dancing.

Mr. Morrison said the board can consider that Statue says that sexually oriented businesses can cause secondary effects on neighboring property values, if not in a proper location.

Mr. Plumlee objected because it was a partial reading of the Statute and Judge Tillett was aware of the Statue when he made his ruling in 1999.

Mr. Woody said that the burden of persuasion on the issue of whether the development, if completed as proposed, will comply with the requirements of the ordinance remains at all times on the applicant. The special use permit application does not address the public health or safety impacts that may occur outside of the building. It is staff's opinion that the evidence in the record, prepared in absence of testimony presented at a public hearing, supports the preliminary staff findings that the proposed use will materially endanger the public health or safety.

Mr. Plumlee objected saying this was a matter of law that Mr. Woody was reading.

Mr. Woody said finding five is if the special use will injure the value of adjoining or abutting property and will be in harmony with the area in which it is located. The preliminary staff finding is that the proposed use will substantially injure the value of adjoining or abutting property and will not be in harmony with the particular neighborhood or area in which it is to be located.

Mr. Plumlee objected because the tax accessor is not here to testify.

Mr. McRee said county records created by county officials can be used and relied upon in performing a zoning official's job. General Statue allows the board to consider evidence that is trustworthy.

Mr. Plumlee said the North Carolina Supreme Court in Mebane has specifically stated that a tax assessor's appraisal could not be used as evidence.

Mr. Morrison suggested a recess.

Upon returning from recess Mr. Morrison said he had an opportunity to read the case Cardwell vs. Mebane from 1873 and summarized that tax lists were not competent to show the value of the land as the accessors were not witnesses of the case sworn to be cross examined. He said the tax value from the tax accessor is hearsay.

Mr. McRee said it is relevant and acceptable to say it appears that this is the value on the tax card.

The objection to valuation was sustained.

Mr. Woody stated that the amended use, an adult and sexually oriented business, is immediately adjacent to a residential subdivision known as Old Oak Estates, which contains 14 dwellings (in the year 2000). Old Oak Estates is zoned R "Residential". The amended use, an adult and sexually oriented business, does not meet the locational, nor the spacing requirements of Section 808 established for adult and sexually oriented businesses. The burden of persuasion on the issue of whether the development, if completed as proposed, will comply with the requirements of the ordinance remains at all times on the applicant. The special use permit application states that lots behind the property have been sold for building purposes and concludes that because of this there has not been a substantial injury to adjoining properties. This statement does not provide the rate and value of comparable building activity on lots not adjoining the subject property and therefore does not provide a basis to support the statement. It is staff's opinion that the evidence in the record, prepared in absence of testimony presented at a public hearing, supports the preliminary staff findings that the proposed use will substantially injure the value of adjoining or abutting property and will not be in harmony with the particular neighborhood or area.

Mr. Plumlee objected.

The objection was overruled.

Mr. Woody said the sixth finding is if the special use will be in conformity with the Land Use Plan or other officially adopted plan. It is the preliminary staff finding that the proposed use is not consistent with the 1990 Land Use Plan because the establishment of an adult and sexually oriented business will detract from the quality of life in Currituck County (Goal 6.1) and the Limited Transition classification of the subject property is characterized by residential development which is not compatible with an adult and sexually oriented business.

Mr. Plumlee objected because there was not sufficient foundation or relevant findings relevant to this establishment.

Mr. Morrison said Mr. Woody had testified earlier that the property is surrounded by residential property.

Mr. Palmer said Mr. Woody is discussing if it will detract from the quality of life.

Mr. Plumlee objected because Mr. Woody has not been qualified as an expert in the subject of quality of life.

Mr. McRee questioned Mr. Woody to proffer that he is an expert in planning and zoning including interpreting the land use plan and zoning map, department operation, plan development and implementation, etc.

Mr. Morrison said Mr. Plumlee could cross examine Mr. Woody to determine if he is an expert witness in planning and zoning. An expert can render an opinion in his field of expertise.

Mr. Plumlee asked Mr. Woody what work he had done to determine quality of life in this

particular neighborhood concerning this particular business.

Mr. Woody said businesses have closed and relocated, but he couldn't determine if it was because of this business.

Mr. Plumlee continued to question Mr. Woody.

Mr. McRee said Mr. Plumlee had strayed from the intent of qualifying Mr. Woody as an expert witness in planning and zoning.

Mr. Morrison suggested that he get back to training and education.

Mr. Plumlee said Mr. Woody is not an expert of quality of life as it pertains to this establishment.

Mr. Palmer said he believed that Mr. Woody was an expert in his field, but had no psychological or health background to speak to quality of life. He motioned that Mr. Woody was not an expert in planning and zoning as it relates to quality of life for the surrounding neighborhood as it relates to an adult business. Mr. Tabor seconded the motion and the motion passed with Mr. Ballance and Ms. McCloud voting no. Mr. Woody was disqualified as an expert in planning and zoning as it relates to quality of life and land use.

Mr. McRee asked for clarification as to what was allowed to be admitted and what was not.

Mr. Plumlee said he is not objecting to Mr. Woody as an expert witness with the land use plan.

Mr. Woody clarified what language was his and what was from the land use plan.

Mr. McRee submitted the 1990 Land Use Plan into evidence. (County Exhibit #2)

Mr. Woody said the proposed use is not consistent with the 1990 Land Use Plan because the establishment of an adult and sexually oriented business will detract from the quality of life in Currituck County (Goal 6.1) and the Limited Transition classification of the subject property is characterized by residential development which is not compatible with an adult and sexually oriented business. The burden of persuasion on the issue of whether the development, if completed as proposed, will comply with the requirements of the Ordinance remains at all times on the applicant. The special use permit application does not reference a policy from a county plan and therefore has not demonstrated general conformity with a plan adopted by the Board of Commissioners.

Mr. Wood said the seventh finding of fact is if the use will exceed the county's ability to provide adequate public facilities. It is staff's preliminary finding that the use is commercial and will not exceed the county's ability to provide other public facilities.

Mr. Plumlee asked to call his witnesses out of order because Ms. McCloud had to leave

and his expert witness was from Oklahoma and could not come back.

Mr. Paster was determined to be an expert witness regarding secondary impacts of adult businesses. He gave testimony about studies he had done and establishments he had visited, etc. He spoke to geography special analysis, a census taken by the business owner, etc. He determined that the establishment has no secondary effects on the area.

Mr. McRee objected to expert using a citizen survey performed by the business owner and not by himself.

Mr. McRee objected to what was said to Mr. London in census as hearsay.

The objection was sustained.

Mr. McRee asked Mr. Paster how long he had been in Currituck.

Mr. Paster answered two days and that he had not been in Currituck before.

Mr. McRee asked if Mr. Paster had a written report based on his analysis and study?

Mr. Paster said no.

Mr. Mcree asked Mr. Paster if he had done interviews with the surrounding owners or the sheriff; reviewed communication records; seen the business in operation; or study the property values.

Mr. Paster said no.

Mr. Mcree said all of the information presented came from the owner and transcripts.

Mr. Plumlee said this was a members only club, so patrons could be quickly identified. He said this was different from a bar. He said Lauren Berry, Appraiser, had studied market values and determined that market values were higher than other similar properties on mainland and the county had presented no evidence of secondary effects.

RESULT:

RECESS WITH NO VOTE

Next: 1/28/2016 5:30 PM

RECESS

The board recessed this case until January 28, 2016 at 5:30.

County Exhibit #1- BOA 16-01 R.F. London, Inc. Staff Report

County Exhibit #2 - 1990 Currituck County Land Use Plan (Hard copy to be stored with minutes from this meeting.)



**CURRITUCK COUNTY
NORTH CAROLINA**

September 10, 2015
Minutes – Regular Meeting of the Board of Adjustment

CALL TO ORDER

A Roll Call

Attendee Name	Title	Status	Arrived
Donna McCloud	Board Member	Present	
Theresa Dozier	Chairman	Absent	
Cameron Tabor	Vice Chairman	Present	
C. Shay Ballance	Board Member	Present	
David Palmer	Board Member	Present	
Michael Painter	Board Member	Absent	
Vivian Simpson	Board Member	Present	
Tammy Glave	Board Clerk	Present	
Ben Woody	Planning and Community Development Director	Present	
Jason Litteral	Planner	Present	
Ben Gallop	BOA Attorney	Present	

B Approval of Agenda

Ben Woody, Ben Gallop, and Gregg Wills (Applicant's Attorney) requested that BOA 15-07 Mancuso - variance be tabled until either party places it on a future agenda.

Mr. Ballance moved to approve the agenda as amended by tabling BOA 15-07 as requested by applicant. Mr. Palmer seconded the motion and motion carried unanimously.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	C. Shay Ballance, Board Member
SECONDER:	David Palmer, Board Member
AYES:	McCloud, Tabor, Ballance, Palmer, Simpson

- BOA 15-07 Mancuso - Variance: Bernie Mancuso, of Mancuso Development Inc., is requesting a variance to allow a structure to be issued a certificate of compliance while having its lowest horizontal structural member below the Regulatory Flood Protection Elevation required by the Unified Development Ordinance. The property is located at 1061 Lighthouse Drive, Whalehead Subdivision, in Corolla.**

C Ask for Disqualifications

Vice Chairman Tabor asked for disqualifications. None of the members disqualified themselves from voting on the agenda item.

D Announce Quorum Being Met

Vice Chairman Tabor announced a quorum had been met with both alternates sitting as voting members.

APPROVAL OF MAY 14, 2015 MINUTES

RESULT:	APPROVED [UNANIMOUS]
MOVER:	David Palmer, Board Member
SECONDER:	Vivian Simpson, Board Member
AYES:	McCloud, Tabor, Ballance, Palmer, Simpson

OLD BUSINESS

None.

NEW BUSINESS

None.

ANNOUNCEMENTS

None.

ADJOURNMENT

There being no further business to discuss, Mr. Ballance motioned to adjourn. Ms. McCloud second the motion and the meeting adjourned at 7:15 p.m.



Currituck County Agenda Item Summary Sheet

Agenda ID Number – (ID # 1338)

Agenda Item Title

Proposed Amendment to Rules of Procedure

Brief Description of Agenda Item:

Board Action Requested

Action

Person Submitting Agenda Item

Susan Tanner, Administrative Assistant

Presenter of Agenda Item

Tammy Glave



Currituck County

Planning and Community Development Department
Planning and Zoning Division
153 Courthouse Road, Suite 110
Currituck, North Carolina 27929
252-232-3055 FAX 252-232-3026

To: Board of Adjustment

From: Tammy D. Glave, CZO
Senior Planner

Date: October 30, 2015

Subject: Updated Rules of Procedure

Please find the attached proposed amendment to the Board of Adjustment Rules of Procedure. The amendments are necessary to bring the rules into compliance with the UDO and common practice.

Please let me know if you have any questions. Thank you.

Attachment: Memo Amended BOA ROP Oct 2015 (1338 : Rules of Procedure)

CURRITUCK COUNTY BOARD OF ADJUSTMENT RULES OF PROCEDURE

I. General Rules

- A. The Board of Adjustment shall be governed by the terms of Article 18 of Chapter 153A-345 of the General Statutes of North Carolina. All members of the board shall familiarize themselves with these laws.

II. Powers and Duties of the Board of Adjustment

- A. Application Review and Decision:
1. Variances
 2. Appeals of administrative decisions by the Planning Director or the Technical Review Committee.
- B. Other Powers and Duties:
The board is authorized by the Unified Development Ordinance (UDO) to carry out any other powers and duties delegated to it by the Board of Commissioners, consistent with state law.

III. Appointment and Terms

- A. The Board of Adjustment shall consist of five regular members and two alternate members appointed by the Board of Commissioners. Each commissioner may appoint one member from any electoral district in the county, two of which shall be alternate members.
- B. Regular members leaving the board shall be replaced by existing alternate members. Newly appointed members shall be assigned as alternate members, when practicable. In situations when this cannot be met, seats shall be determined by the Board of Commissioners.
- C. Board of Adjustment members shall reside within the county. A change in residence to a location outside the county shall constitute a resignation from the Board of Adjustment, effective upon the date a replacement is appointed.
- D. An alternate member may sit in-lieu of a regular member upon recusal by a regular member and assignment by the chairman. When seated as a regular member, an alternate member shall have the same powers and duties as the regular member he replaces.
- E. Board of Adjustment members shall be appointed for three year staggered terms. Members shall continue to serve until their successors are appointed. Members may be appointed to a maximum of two successive terms.
- F. Vacancies occurring for reasons other than expiration of terms shall be filled for the period of the unexpired term only.

IV. Rules of Conduct for Members of the Board

- A. A board member may be removed by the Board of Commissioners for cause, including violation of the rules stated below.
- B. Faithful attendance at all board meetings and conscientious performance of the duties required of board members shall be considered a prerequisite of continuing membership on the board.
- C. A board member shall not take part in the hearing, consideration, or determination of any case that the member is personally or financially interested.
- D. A board member shall not vote on any matter that decides an application or appeal unless the member has attended the public hearing on that application or appeal.

- E. A board member shall not vote on any matter when said member has such close personal ties to the applicant that the member cannot reasonably be expected to exercise sound judgement in the public interest.
- F. A board member shall not vote on a matter if participation in the matter might violate the letter or spirit of the member's code of professional responsibility.
- G. A board member may be allowed to withdraw from the entire remainder of the meeting by majority vote of the members present for a good and sufficient reason other than the member's desire to avoid voting on matters to be considered at the meeting.
- H. A board member shall not discuss any case with any parties before the public hearing on that case; however, members may receive and/or seek information pertaining to the case from any other member of the board, the secretary, or clerk or staff. (Common practice)
- I. Members of the board shall not express individual opinion on the proper judgement of any case with any parties before that case has been determined. Violation of this rule shall be cause for dismissal from the board.

V. Meetings

- A. Regular meetings of the board shall be held on the second Thursday of each month at 7:30 7:00 p.m. (Board changed in 2013) in the Historic Courthouse boardroom; however, that meeting may be held at some other convenient location in the county if directed by the chairman before the meeting.
- B. Special meetings of the board may be called by the chairman at any time. At least 48 hours written notice of the time and the place of the meeting shall be given, by the clerk to the board or the chairman, to each member of the board.
- C. If there are no applications for an appeal, variance, or other business for the board, or if so many regular and alternate members notify the clerk that they cannot attend and that a quorum will not be available, the chairman may dispense with a regular meeting by giving written or oral notice to all members not less than 24 hours before the time set for the meeting.
- D. A quorum shall consist of four members of the board. No official business of the board shall be conducted without a quorum present.
- E. All meetings shall be open to the public. The order of business at a regular meeting shall be as follows:
 1. Roll Call
 2. Approval of the minutes from the previous meeting
 3. Hearing of applications
 - a. Presentation by planning staff
 - b. Applicant presentation
 - c. Public comment
 - d. Applicant response to comment
 - e. Staff response to comment
 - f. Closing of hearing
 - g. Board review and decision
 4. Other business
- F. All regular members may vote on any issue unless they have disqualified themselves. If a member does not disqualify himself or withdraw from the meeting, subsequent failure to vote shall be recorded as an affirmative vote.
- G. Alternate members shall be called on to vote on cases only during those meetings and hearings at which one or more regular members are absent or unable to participate.

- H. Except at the election of officers, at no time shall more than five members participate in any meeting or hearing. A non-voting alternate member shall sit in the audience and may participate as a member of the audience during the public hearing.
- I. Regular board members may be removed by the Board of Commissioners at any time for failure to attend three consecutive meetings or for failure to attend 30% or more of the meetings within any 12 month period.

VI. HEARINGS

- A. Appeal and variance applications received prior to the cutoff date for the next regularly scheduled board meeting shall be heard during said meeting. If deemed necessary and required notification given, a special meeting may be called by the chairman.
- B. The board shall give public notification of hearings as required by the Unified Development Ordinance and North Carolina General Statutes. by the following means:
 - ~~1. Appeal Applications: Published notice of the hearing once a week for two successive calendar weeks, with the first notice between 10 and 25 days before the hearing, in a newspaper having general circulation in the country.~~
 - ~~2. Mailed written notice of the hearing to the owner, applicant, owners of land within 200 feet of the property lines of the land subject to the application, and commanders of military bases within 5 miles of the land subject to the application, between 10 and 25 days prior to the hearing. This provision applies to variance and appeal applications in cases where the appeal pertains to a specific parcel of land.~~
 - ~~3. Posted notice of the hearing shall be given at least 10 days prior to the hearing. This provision applies to variance and appeal applications in cases where the appeal pertains to a specific parcel of land.~~
- C. Any person filing an application to be heard by the board shall be required to attend the hearing or have an agent or attorney appear on his behalf.
- D. An application for a rehearing may be made in the same manner as provided for an original hearing. Evidence in support of the application shall initially be limited to what is necessary to enable the board to determine whether there has been substantial change in the facts, evidence, or condition of the case. The board shall deny the application for rehearing if, from the record, it finds that there has been no substantial change in facts, evidence, or conditions. If the board finds that substantial change has occurred, it shall treat the request in the same manner as a new application.

VII. Decisions

- A. Action shall be taken as promptly as possible in consideration of the interests of the applicant, the citizens of the county, and shall include a decision of approval, approval with conditions, disapproval, or other appropriate action.
- B. The final disposition of the case shall be recorded in the minutes of the board and signed by the chairman and the clerk. *(Procedure changed under previous UDO)* Such record shall show the reasons for the determination with a summary of the evidence introduced and the findings of fact made by the board. Written notification of the final disposition of a case shall also be mailed to the applicant as soon as practicable after the case has been decided.

VIII. Amendments

- A. These rules may, within the limits allowed by law, be amended at any time by an affirmative vote by a majority of the members of the Board of Adjustment, provided that such amendment is presented in writing at a regular or special meeting, proceeding which the vote may be taken.

Date Presented to the Board of Adjustment: _____

DATE Adopted: _____

Board of Adjustment Chairman

Attachment: BOA ROP October 2015 (1338 : Rules of Procedure)



Currituck County Agenda Item Summary Sheet

Agenda ID Number – (ID # 1412)

Agenda Item Title

Public Hearing and Action: BOA 16-01 R.F. London, Inc.:

Brief Description of Agenda Item:

Special Use Permit request for an adult and sexually oriented business (presently adult entertainment.)

Board Action Requested

Action

Person Submitting Agenda Item

Susan Tanner, Administrative Assistant

Presenter of Agenda Item

Ben Woody