

..TITLE

Vote on a request to approve Chatham County Board of Commissioners to amend Sections 7.2, Definitions; 10.13, Table of Permitted Uses; and 17.8, Standards for Sexually Oriented Businesses (new section) to add standards for Sexually Oriented Businesses.

..ABSTRACT

Action Requested:

A request by the Chatham County Board of Commissioners to amend Sections 7.2, Definitions; 10.13, Table of Permitted Uses; and 17.8, Standards for Sexually Oriented Businesses (new section) to add standards for Sexually Oriented Businesses. A public hearing was held on this request on June 6, 2016 and the Planning Board discussed it during their July 12, 2016 meeting.

Introduction & Background:

During the April 18, 2016 Board of Commissioners meeting a public hearing was scheduled to amend the Zoning Ordinance to include standards for sexually oriented businesses. Currently, sexually oriented businesses (SOB.) are only permitted in the unzoned parts of the County. However, when those areas are zoned as R-1 and R-5, the Zoning Ordinance must be amended to reflect the new county-wide zoning; the County cannot prohibit sexually oriented businesses outright, but is afforded the opportunity to regulate their location and certain operational characteristics in an effort to ensure identified negative secondary impacts are mitigated.

As defined within N.C.G.S. 14-202.10, sexually oriented businesses are, "Any businesses, or enterprises that have as one of their principal business purposes, or as a significant portion of their business, an emphasis on matter and conduct depicting, describing, or related to anatomical areas and sexual activities."

The proposed amendments to the Zoning Ordinance establish criteria for such businesses including separation requirements from identified uses such as places of worship, schools, parks, and residentially zoned properties. The proposed amendments would allow for their development consistent with applicable State and Federal requirements.

Discussion & Analysis:

In support of recommended land use regulations, staff offers the following information with respect to addressing identified secondary impacts. A summary authored by David Owens of the UNC School of Government (available at <https://www.sog.unc.edu/resources/legal-summaries/regulating-sexually-oriented-businesses>) provides background information, an overview of constitutional issues, and considerations for implementing regulations for sexually oriented businesses. Additional

information is also provided in Chapter 26, Regulation of Adult Businesses in Land Use Law in North Carolina, Second Edition, also authored by Mr. Owens.

Several studies have also been prepared evaluating the secondary impacts of sexually oriented businesses and have found that these businesses can negatively affect surrounding properties. The secondary effects can result in increased crime rates, prostitution, illegal drug sales, and depreciation in property values. Additionally, the negative impacts of sexually oriented businesses can increase when they are located in close proximity to other businesses that serve alcohol. The following is a list of studies that have evaluated these impacts:

- A 2013 study completed for Louisville Kentucky by Eric S. McCord and Richard Tewksbury evaluated the secondary effects of sexually oriented businesses and found that these uses increase crime levels and negatively impact surrounding property. The study can be viewed by utilizing the following link:
<http://secondaryeffectsresearch.com/files/McCord%20and%20Tewksbury,%202013.pdf>.
- A 2011 study, entitled The Association of Adult Businesses with Secondary Effects: Legal Doctrine, Social Theory, and Empirical Evidence authored by Alan C. Weinstein and Richard McCleary also evaluated the negative secondary impacts of the sexually oriented businesses. This study can be viewed at:
<http://secondaryeffectsresearch.com/files/Cardozo%20Law%20Review.pdf>.
- 1996 report completed by the American Center for Law and Justice, NLC Summaries of "SOB Land Use" Studies, provides a historic overview of these businesses and their effects covering several years and multiple jurisdictions throughout the United States. The evaluation found that these uses have negative secondary impacts on surrounding communities and can be exacerbated when located near other businesses that serve alcohol. A summary of this report can be viewed at:
<http://secondaryeffectsresearch.com/files/Land%20Use%20summary%202005.pdf> .
- A 2005 report completed by Duncan and Associates for Kenton and Campbell Counties in Kentucky, as well as the Northern Kentucky Area Planning Commission, Recommendation: Zoning for Sexually Oriented Entertainment & Related Businesses, was the second phase of an evaluation of these uses. The report provided a framework and recommendations for implementing zoning regulations for sexually oriented businesses. This report can be viewed at:
<http://secondaryeffectsresearch.com/files/Zoning%20for%20Sexually%20Oriented%20Entertainment%20and%20Related%20Businesses.pdf>.
- A 2008 study, Survey of Appraisers: Secondary effects of sexually oriented businesses on market values. Report submitted to the Texas City Attorneys Association, completed by C.B. Cooper and E.D. Kelly, found that these uses have a

negative effect on single family home and community shopping center values. This report can be viewed at:

<http://www.stillwater.org/agendas/ccagendas/2009/031609/TXSurveyto49.pdf> .

- The 2000 publication “Everything You Always Wanted to Know About Regulating Sex Businesses” by The American Planning Association (Report Number 495/196) provides an another overview of the issues that must be considered with respect to the regulation of sexually oriented businesses.

Staff’s review of this background information and studies finds that the secondary effects of sexually oriented businesses have negative impacts on the surrounding area, including additional crime and property devaluation, which will be addressed by the proposed regulations.

A public hearing was held on June 6, 2016 to receive comments on the proposed amendment and one person spoke stating that the Commissioners should regulate or minimize these uses.

There were several questions from the Commissioners focusing on the following:

- The draft language allows SOB’s as a permitted use in Heavy Industrial districts. Can these uses be restricted to a conditional use permit?
- The proposed separation requirement is 1,000 feet between the identified uses. Can the separation be increased and to what extent? Also, can the list of uses triggering the separation be expanded?
- Can the types of activities listed as SOB’s be further limited so that some of them are prohibited and not be in violation of state or federal laws/case law? Also, do any uses need to be added to ensure the county is fully protected?

Staff forwarded these concerns to the County Attorney for review and the following is summary of his comments. Restricting these uses to a conditional use permitting process includes discretionary standards that have been looked upon unfavorably by the courts for these types of activities. A 1,000’ separation requirements is acceptable and could be increased, however the distance could not be used to exclude all possible areas for a SOB. Another consideration for keeping the 1,000’ separation is that the possible locations for these uses is concentrated in one portion of the county. An increase in the separation requirement could be viewed as exclusionary. The list of activities could be reviewed further, but appears to be complete and includes activities with some element of a constitutionally protected activity.

The Planning Board had a brief discussion about the proposed text amendment and made a recommendation for approval by a vote of 11-0. The Planning Board also recommended adoption of the following consistency statement by a vote of 11-0: “The

Land Conservation and Development Plan seeks to protect the county from uses and activities that can have a negative effect on the surrounding community. The Plan also promotes establishing clear guidelines for the protection of residential areas and preservation of community character.”

After the Planning Board meeting, staff contacted the County Attorney to discuss some additional items related to the text amendment. One of those items was consideration of a revision to the proposed text. The proposed revision is to section 17.8(B)(ii) to read “*Residential zoning district or any residential land use including any open space established as part of the residential subdivision approval process.*” This would establish two criteria for measuring the 1,000’ separation. One measurement would be taken from the boundary of any residential zoning district to the structure where the sexually oriented business is located. The second measurement would be taken from any residential land use, such as a dwelling. This would also cover residential uses located on non-residentially zoned properties.

Recommendation:

The Planning Board recommended approval by a vote of 11-0.

The Planning Board also recommended adoption of the following consistency statement by a vote of 11-0: “The Land Conservation and Development Plan seeks to protect the county from uses and activities that can have a negative effect on the surrounding community. The Plan also promotes establishing clear guidelines for the protection of residential areas and preservation of community character.”

The Board will also need to discuss whether to revise section 17.8(B)(ii) to read “*Residential zoning district or any residential land use including any open space established as part of the residential subdivision approval process.*”