

# Sumter City-County Board of Zoning Appeals

July 11, 2012

## BOA-12-11, 3789 Thomas Sumter Hwy. (County)

The applicant is requesting Special Exception approval for an Electronic Gaming Establishment as required per Article 3, Section 3.i.4.j Electronic Gaming Establishments (SIC 7999), Article 3, Exhibit 5 and Article 5, Section 5.b.3.k. Special Design Review Criteria. The property is located at 3789 Thomas Sumter Hwy. and is represented by Tax Map # 189-00-02-001. These businesses are referred to as Internet cafes, cybercafés, or sweepstakes parlors and include sweepstakes promotions using simulated gambling devices.



Appeals - Variance - Special Exception

# Sumter City-County Board of Appeals

July 11, 2012

BOA-12-11, 3789 Thomas Sumter Hwy. (County)

## I. THE REQUEST

**Applicant:** Charles Ward

**Status of the Applicant:** Business Operator

**Request:** Special Exception approval for an Electronic Gaming Establishment (SIC 7999). These businesses are often called Internet cafes, cybercafés, or sweepstakes parlors and include sweepstakes promotions using simulated gambling devices.

**Location:** 3789 Thomas Sumter Hwy.

**Present Use/Zoning:** Vacant Commercial Building/General Commercial (GC)

**Tax Map Reference:** 189-00-02-001

## II. BACKGROUND

The applicant is requesting special exception approval to open an Electronic Gaming Establishment (SIC 7999) at 3789 Thomas Sumter Hwy. in Sumter County, shown in the photograph to the right.

Electronic gaming operations are defined as, “*Any business enterprise, whether as a principal use or an accessory use, where persons use electronic machines, including but not limited to computers and gaming terminals, to conduct games of chance, actual or simulated, including sweepstakes, and where cash, merchandise or other items of value are redeemed or otherwise distributed, whether or not the value of such distribution is*



*determined by electronic games played or by predetermined results. This term includes, but is not limited to internet cafes, internet sweepstakes, cybercafés, sweepstakes promotions, or sweepstakes parlors. This does not include any lottery approved by the State of South Carolina.”*

The Applicant hopes to locate in a vacant 3845 sq. ft. commercial building on a 1.36 acre site.

The Applicant has not indicated a total number of terminals for this location. In any event, the total parking spaces available will influence the final number of terminals permitted and also the APZ2 (Accident Potential Zone) Overlay District of Shaw AFB. This location has a total of 26 parking spaces and 2 HC paved parking spaces.

This property is also located within the Airfield Compatibility Districts of Shaw AFB specifically the APZ 2 (Accident Potential Zone) Overlay District. County Council is reviewing third and final reading of an Ordinance Amendment on July 10, 2012 and if approved will allow these type of businesses in the APZ2 overlay district with certain conditions. This request was put on hold pending the outcome of County Council. This added use to the APZ 2 will be restricted to the condition listed in the County Zoning Ordinance Exhibit 7, Footnote (1) which states: Uses compatible as long as they do not produce a large concentration of people. A large concentration of people is defined as a gathering of people in an area resulting in an average density of 25 people per acre per hour during a 24 hour period or a single event which results in a gathering of 50 people per acre at any time.

After applying the mathematical formula as shown in Article 3, Exhibit 6, this establishment can have a maximum of 46 terminals.

The striping in certain parking lot areas is extremely worn and faded. (Photo on Right). We recommend at a minimum the lot be restriped to accurately reflect the total parking count.

The site was developed prior to 1999 and the landscaping appears to be a pre-existing nonconforming component. Any site upgrades will depend on building permit cost in relation to the assessed value of the building.



According to the Official Zoning Map for Sumter County, the property is zoned as General Commercial (GC) and is located within the Highway Corridor Overlay District. The purpose of the GC zoning district is to accommodate the broadest possible range of commercial uses, determined principally by market conditions, while protecting adjacent property owners from potentially objectionable uses.

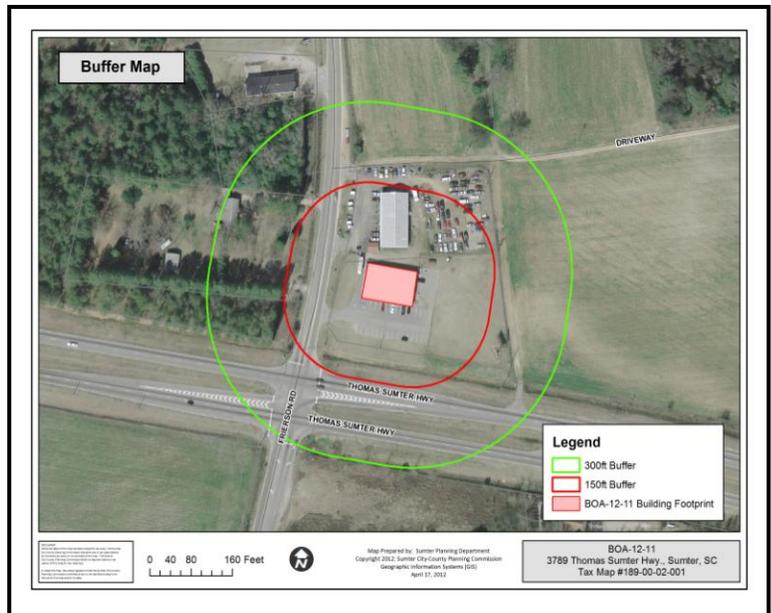
Under the GC district, Electronic Gaming Establishments (SIC 7999) are considered a Special Exception which requires the review and approval of the Sumter Board of Appeals. In particular, special exceptions for electronic gaming establishments are to be evaluated in accordance with Article 1, Section 1.h.4.c and Article 3, Section 3.i.4.j and in accordance with Article 5, Section 5.b.3.k of the Sumter County – Zoning & Development Standards Ordinance.

**Article 5 Section 5.b.3.k Electronic Gaming Establishments:**

1. *The use shall not be located within 300 ft., measured from structure to structure, from any church or school; and shall not be located within 150 ft. from a park, liquor store or bar; and shall not be located within 150 ft. from any other Electronic Gaming/sweepstakes establishment.*
2. *Hours of operation shall be limited in the following manner:*
  - a. *Monday to Friday – 9:00 a.m. to 2:00 a.m.*
  - b. *Saturday – 9:00 a.m. to 12:00 a.m.*
  - c. *Sunday – Prohibited*
3. *Parking required: 1 space per 2 sweepstakes terminals and 1 employee space*
4. *The minimum number of terminals per establishment: 20  
The maximum number of terminals per establishment: 75*
5. *No one under 18 years of age permitted*
6. *No alcohol shall be consumed, served or available for purchase on premises*
7. *A primary use is a sweepstakes establishment with 20 or more machines. A primary use must meet all of the requirements of this section. Machines shall not be permitted as an accessory use.*

The following can be determined based on 5.b.3.k:

- As shown in the buffer map to the right, staff concludes the proposed location meets the Ordinance separation requirement of 300 ft. from structure to structure of a church or school and the 150 ft. separation requirement from a park, liquor store or bar. Additionally this location is not within 150 ft. of any other proposed Electronic Gaming/Sweepstakes establishment.



As shown in the graphic below, the total number of existing on-site parking spaces is 28 spaces. There are sufficient spaces for the 46 terminals.



- All other development criteria from this section have been or can be satisfied.

**Article 1, Section 1.h.4.c Special Exceptions:**

1. *Special exceptions are subject to the terms and conditions for the use set forth for such uses in the Zoning Ordinance.*
2. *Permits for Special Exceptions shall be evaluated by the Board of Zoning Appeals on the basis of the following criteria:*
  - a. *That the Special Exception complies with all applicable development standards contained elsewhere in this Ordinance, including landscaping and bufferyards, off-street parking, and dimensional requirements;*
  - b. *That the special exception will be in substantial harmony with the area in which it is located;*
  - c. *That the special exception will not discourage or negate the use of surrounding property for use(s) permitted by right.*

The following can be determined based on 1.h.4.c.2:

1. Overall, as conditioned, the site complies with the applicable development standards contained in the County Zoning Ordinance.
  - a. Site complies with the parking. According to Business License records, the last active license was December 2007. This exceeds the 3 year grandfathering period of time so therefore any site upgrade requirements will be based on the construction costs to the building.
2. Staff finds that the proposed Special Exception request is in substantial harmony with the surrounding area based on the following conclusions:
  - a. The proposed location meets all separation criteria developed by Sumter County Council and reflected in 5.b.3.k. The proposed site is designed to accommodate retail and business tenants of all types and is located in the General Commercial Zoning District.
3. Staff finds that the proposed Special Exception request will not discourage and negate the use of surrounding property for use(s) permitted by right based on the following conclusions:
  - a. The property is zoned for a wide variety of General Commercial uses. The proposal contained herein also meets all relevant special exception criteria.

### **III. STAFF RECOMMENDATION**

Staff recommends approval of BOA-12-11 **subject to the following conditions:**

1. The establishment be limited to a maximum 46 terminals.
2. The parking lot be restriped prior to occupancy

### **IV. DRAFT MOTIONS for BOA-12-11**

- A. I move that the Sumter Board of Appeals approve BOA-12-11, subject to the staff recommended conditions above, the findings of fact and conclusions contained in draft order, dated July 11, 2012 attached as Exhibit 1.
- B. I move that the Sumter Board of Appeals enter an alternative motion for BOA-12-11.

### **V. ZONING BOARD OF APPEALS – July 11, 2012**

The Sumter City-County Board of Appeals at its meeting on Wednesday, July 11, 2012, voted to approve this request subject to staff's recommendation as listed on the Order on Special Exception and Application.

**Exhibit 1**  
**Order on Special Exception and Application**  
**Sumter Board of Appeals**

**BOA-12-11, 3789 Thomas Sumter Hwy., Sumter, SC**  
**July 11, 2012**

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Date Filed: July 11, 2012

Permit Case No. BOA-12-11

The Board of Zoning Appeals held a public hearing on Wednesday, July 11, 2012 to consider the request of Charles Ward, the Applicant for a special exception which may be permitted by the Board pursuant to Sections 1.h.4.c, 3.i.4.j, and 5.b.3.k of the Sumter County Zoning & Development Standards Ordinance as set forth on Form 4 for the property described on Form 1 to be used for: Electronic Gaming Establishment (SIC Code 7999).

After the consideration of the evidence and arguments presented, the Board makes the following findings of fact and conclusions.

1. The Board concludes that the standards in Sections 5.b.3.k of the Sumter County Zoning & Development Standards Ordinance which are applicable to the proposed special exception of the Zoning Ordinance  **have** -  **have not** been met based on the following findings of fact:
  - a. The separation criteria from schools, churches, other establishments, liquor stores, bars, and parks have been met as depicted on the map contained in the Staff Report, along with the other standards.
2. The Board concludes that the special exception  **does** -  **does not** comply with all applicable development standards contained elsewhere in the Sumter County Zoning Ordinance, including landscaping and bufferyards, off-street parking, and dimensional requirements based on the following findings of fact:
  - a. All development standards have been satisfied with the establishment limited to 46 terminals and the implementation of the one other development condition related to parking lot striping.
3. The Board concludes that the proposed special exception  **will** -  **will not** be in substantial harmony with the area in which it is located based on the following findings of fact:
  - a. The proposed location meets all separation criteria developed by Sumter County Council and reflected in 5.b.3.k. The proposed site is designed to accommodate retail

and business tenants of all types and is located in the General Commercial Zoning District.

4. The Board concludes the special exception  will - will not discourage or negate the use of surrounding property for uses(s) permitted by right based on the following findings of fact:
- a. The property is zoned for a wide variety of General Commercial uses. The proposal contained herein also meets all relevant special exception criteria.

THE BOARD, THEREFORE, ORDERS that the special exception is  DENIED –  GRANTED

- Number of sweepstakes terminals is limited to 46 based on the 28 available parking spaces for the use and restrictions of the Shaw APZ2 Overlay District.
- The parking lot be restriped prior to occupancy

Approved by the Board by majority vote.

Date issued: \_\_\_\_\_

\_\_\_\_\_  
Chairman

Date mailed to parties in interest: \_\_\_\_\_

\_\_\_\_\_  
Secretary

**Notice of appeal to Circuit Court must be filed within 30 days after date this Order was mailed.**

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