

Sumter City-County Board of Zoning Appeals

July 11, 2012

BOA-12-33, 3525 Camden 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 3525 Camden Hwy and is represented by Tax Map # 189-03-03-001. These businesses are often called 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-12-33, 3525 Camden Hwy. (County)

I. THE REQUEST

Applicant: Terry Land

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: 3525 Camden Hwy.

Present Use/Zoning: Commercial structure/church--General Commercial (GC)

Tax Map Reference: 189-03-03-001

II. BACKGROUND

The applicant is requesting special exception approval to open an Electronic Gaming Establishment (SIC 7999) with 52 sweepstakes terminals at 3525 Camden 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.”

Currently, the subject property is the site of a 4477 sq. ft. commercial building that has a church occupying this space under a temporary lease. We understand that the church is aware that the property owner has this building on the market to sale. If this proposed use is approved, the applicant plans to purchase the building and the church will relocate. In any event, no permit for the Gaming Establishment can be issued if the church is present.

According to the Official Zoning Map for Sumter County, the property is zoned as General Commercial (GC). 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.

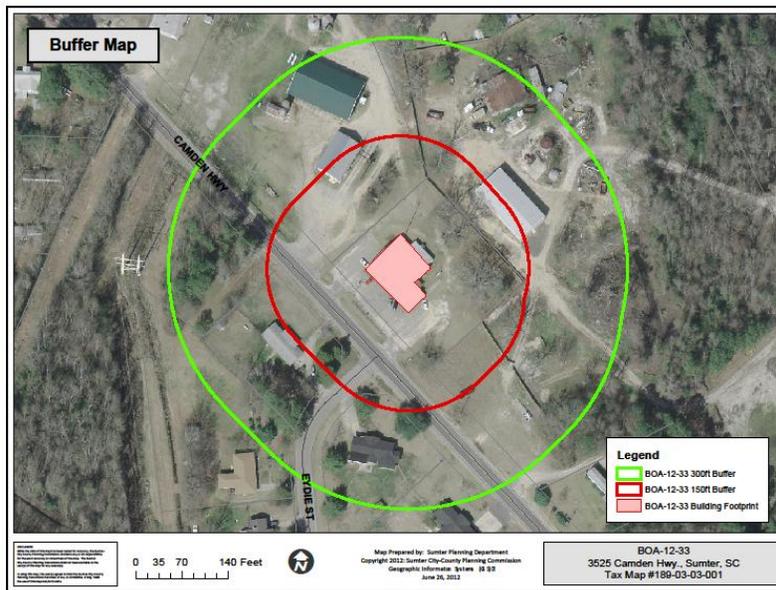
Under the GC district, Electronic Gaming Establishments (SIC 7999) are considered a Special Exception which requires the review and approval of the Sumter Board of Appeals. In particular, special exceptions for electronic gaming establishments are to be evaluated in accordance with Article 1, Section 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 below, staff concludes the proposed location meets the Ordinance separation requirement of 300 ft. from structure to structure of a school and the 150 ft. separation requirement from a park, liquor store or bar. There is an existing church occupying this building. We understand from the Applicant, the church will relocate prior to the Gaming Establishment being established. The proposed use could not operate if the church remained. Additionally, this location is not within 150 ft. of any other proposed or approved Electronic Gaming/Sweepstakes establishment.



- As shown in the 2007 Orthophotography image of the site below, there appears to be sufficient space to meet the parking requirement but the parking spaces on site are not currently delineated, do not meet parking requirements as far as concrete curbing & guttering, HC parking, landscaping or buffering. Although this building is currently occupied by the church, the church does not have any zoning conditional approval therefore, this cannot be considered a grandfathered nonconforming site. Site upgrades will be required according to the costs of building upgrades.

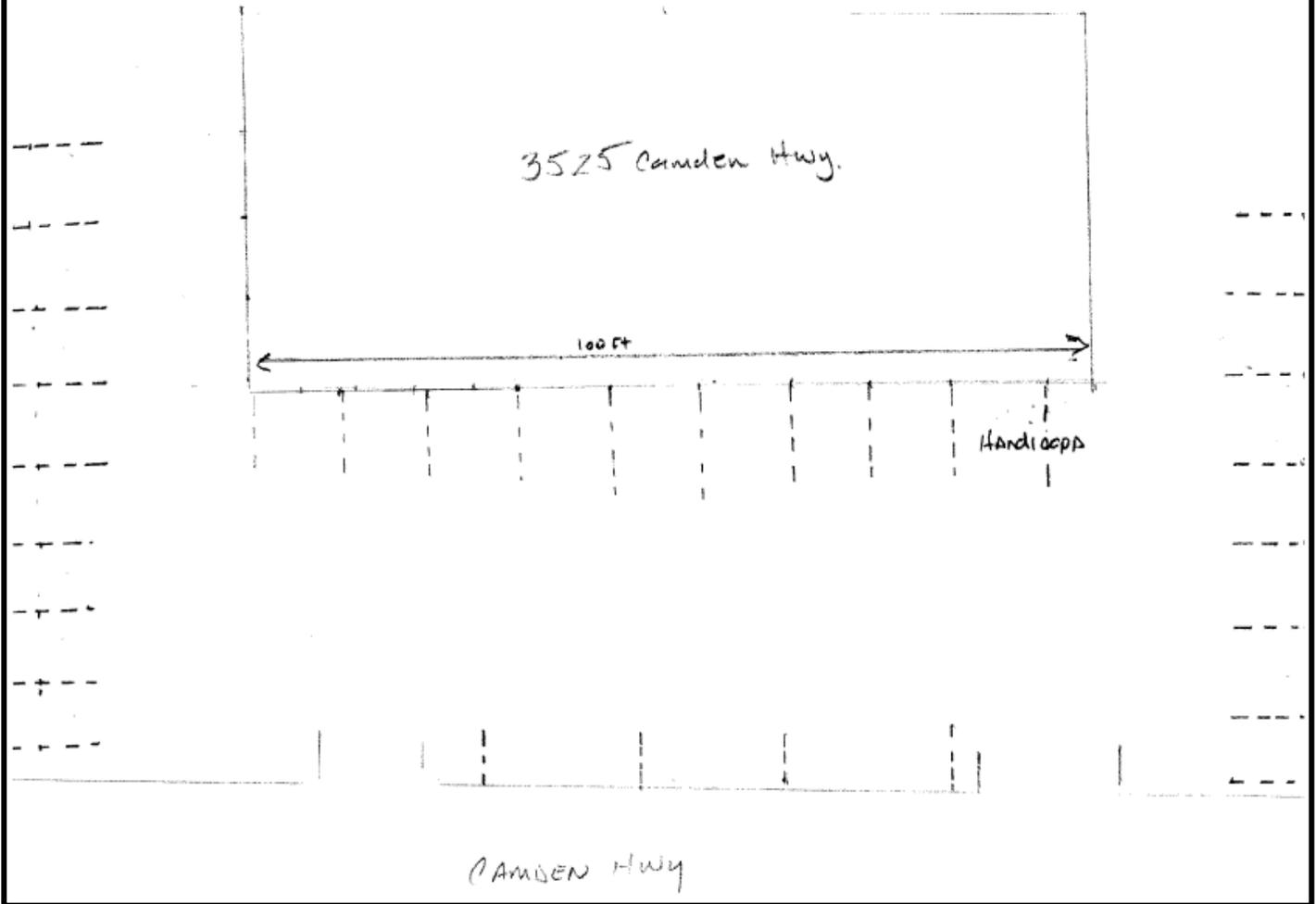
Total Number On-Site Parking Spaces: 27

Total Number of Parking Spaces Available for Proposed
Electronic Gaming Establishment: 27



- Based upon the noted deficiencies above, the Applicant has submitted a new parking lot layout/stripping plan that shows 23 regular 9'x19' 90 degree parking spaces, 3 parallel parking spaces (9 feet wide) and 1 handicap van accessible space in order to provide the minimum number of required spaces for an Electronic Gaming Establishment with 52 terminals. The striping plan shown on the following page once implemented will provide the adequate number of spaces for the proposed establishment. There are two existing driveways. They will be required to be one way drives due to not having sufficient distance to provide 19 foot long parking spaces adjacent to the building front, a 25 foot width driving aisle to access these spaces and 9 more feet in width for the parallel parking spaces along the front property line.

Received: June 29, 2012 by Terry Land



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, the site does not comply with the parking lot bufferyards and landscaping requirements contained in the County Zoning Ordinance. Site upgrades are required based on costs of building upgrades. Today, the parking spaces on site are not delineated so the applicant has submitted a new striping plan that remedies this issue.
 - a. Notwithstanding the previous, the property was developed under the pre-1999 County standards with different regulations for parking lots and bufferyards. The site has been vacant for more than 36 months and is subject to discontinuance as defined in Article 6. As a result, parking lot construction, the landscaping and bufferyards are no longer considered to be legal non-conforming features. Site upgrades beyond restriping the parking lot will be tied to cost of investment in the structure—if investment in the structure does not exceed the 25% of the assessed value of the structure then no site upgrades are required by Ordinance, however; should investment in the structure exceed the 25% threshold, additional site upgrades in compliance with Article 6 shall be necessary.
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 special exception is not within 300 ft. of a church (church is relocating if proposed use is approved) or school. Nor is it within 150 ft. of a park, liquor store or bar. Additionally, this location is not within 150 ft. of any other proposed or approved Electronic Gaming/Sweepstakes establishment.
 - b. It has been shown that the proposed location meets all the separation criteria outlined in the Ordinance as well as the additional development standards stipulated for the proposed number of sweepstakes terminals.
3. Staff finds that the proposed Special Exception request will not discourage or negate the use of surrounding property for use(s) permitted by right based on the following conclusions:
 - a. The established uses in the vicinity are, or can be, compatible with the proposed use through appropriate site development standards. It is also inferred from the Special Exception criteria found in 5.b.3.k, that Electronic Gaming Establishments have not been considered to be incompatible with residential uses as noted by the absence of a specific separation requirement as part of the Special Exception review criteria. However, we note for the record that there is an existing neighborhood directly across the street. (Eydie St. and Georgia St.).

III. STAFF RECOMMENDATION

Staff recommends approval of BOA-12-33 with the understanding that the proposed use cannot operate until it meets the separation requirement of 300 ft. of any church. With implementation of the proposed striping plan and one way driveways for the parking lot, the proposed site meets applicable standards.

IV. DRAFT MOTIONS for BOA-12-33

- A. I move that the Sumter Board of Appeals approve BOA-12-33, subject to 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-12-33.

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 deny this request subject to the findings of fact and conclusions as listed on Exhibit 1.

Exhibit 1

Order on Special Exception and Application

Sumter Board of Appeals

BOA-12-33, 3525 Camden Hwy, Sumter, SC
July 11, 2012

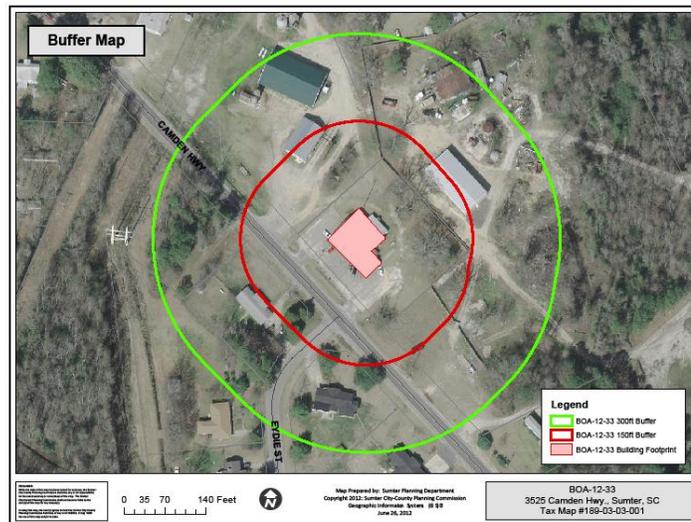
Date Filed: July 11, 2012

Permit Case No. BOA-12-33

The Board of Zoning Appeals held a public hearing on Wednesday, July 11, 2012 to consider the request of Terry Land, 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 Establishments (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. As shown in the buffer map below, the proposed special exception is not within 300 ft. of a church (only if the church relocates) or school. Nor is it within 150 ft. of a park, liquor store or bar. Additionally, this location is not within 150 ft. of any other proposed Electronic Gaming/Sweepstakes.



- b. The location meets all the specific separation criteria outlined in the Ordinance as well as the following: Hours of operation shall be limited to Monday-Friday – 9:00 a.m. to 2:00 a.m.; Saturday – 9:00 a.m. to 12:00 a.m.; Sunday – No operation.

Number of terminals: 52; Number of on-site parking spaces: 27; No one under 18 years of age will be admitted; No alcohol will be consumed, served or available for purchase on premises.

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. Although the site has been subject to a 36 month discontinuance as defined in Article 6, the site is not required to conform to all applicable development standards of the current Sumter County – Zoning & Development Standards Ordinance related to buffering and landscaping unless investment in the structure exceed the 25% threshold. If this is the case then additional site upgrades in compliance with Article 6 shall be necessary. As designed today, the parking spaces on site are not delineated-- the applicant shall implement the submitted parking lot striping plan that remedies these safety issues and use driveways as one way traffic drives.

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 special exception is not within 300 ft. of a church (Church will relocate) or school. Nor is it within 150 ft. of a park, liquor store or bar. Additionally, this location is not within 150 ft. of any other proposed Electronic Gaming/Sweepstakes establishment.
 - b. It has been shown that the proposed location meets all the specific separation criteria outlined in the Ordinance as well as the additional development standards stipulated for the proposed number of sweepstakes terminals.

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. Six residents spoke against the request, citing the following concerns as reasons for opposition:
 - i. Location is in close proximity of Dalzell United Methodist Church and church members will have to pass a gambling establishment traveling to and from church.
 - ii. Potential traffic hazards for a 35 mile per hour two lane road right near a curve.
 - iii. The location is a nice residential area that does not need a gambling establishment in it. A large subdivision is directly across the street and children are present.

- iv. One resident has a lot he wants to sell and feels it will be hard to do so with a gambling establishment that close by.
 - v. The current tenant, which is a church, will be put out.
 - vi. Larger businesses coming in and pushing churches out.
 - vii. Bad location because it is so close to the highway.
- b. Due to the traffic patterns and road conditions of the neighborhood, the established pattern of development in the vicinity and negative impact from increased on and offsite traffic this use is found not to be in substantial harmony with the area and may discourage uses permitted by right on adjacent parcels.

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

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.