

Sumter City-County Board of Zoning Appeals

February 8, 2012

BOA-11-28 Internet Sweepstakes 5664 Broad St. (County)

I. THE REQUEST

Applicant: MJ Enterprises d/b/a Palmetto Internet Center

Status of the Applicant: Appellant

Request: An Appeal of the Zoning Administrator's determination that proposed use is classified as Amusement and Recreation Services not elsewhere classified.

Location: 5664 Broad St.

Present Use/Zoning: Commercial Tenant Space/General Commercial (GC)

Tax Map Reference: 131-00-02-024

Adjacent Property Land Use and Zoning: North – Commercial/GC
South – Undeveloped/HI
East – Industrial/HI
West – Commercial/GC/HI

II. BACKGROUND

On September 8, 2011, MJ Enterprises d/b/a Palmetto Internet Center, LLC ("Applicant"), submitted a Business License application to operate a business at 5664 Broad St. The business was described in the application as "Sale of office supplies Internet time with promotional sweepstakes" (sic).

The Zoning Administrator (responsible for zoning approval of all business license applications) found this description unclear and ambiguous. On September 26, 2011, the Zoning Administrator sent the Applicant a letter requesting more information on the proposed use.

The law firm of Land, Parker & Welch, on behalf of the Applicant, responded to the Staff inquiry in a letter dated October 5, 2011.

On November 22, 2011, Zoning Enforcement personnel visited a similar site, recommended by the Applicant, in Manning, SC.

Finally, in a letter dated November 28, 2011, the Zoning Administrator determined that the proposed use was not specifically defined in Article Three of the Zoning Ordinance. A review concluded that the use was most similar to recreation and amusement uses, yet not specifically classified according to the Standard Industrial Classification Manual (a manual used to specifically define land uses). Therefore SIC 7999, Amusement and Recreation not elsewhere classified, was applied to this use. This use is permissible in the General Commercial zoning district, upon special exception review and approval.

III. APPEAL

Zoning Administrator Position

The Applicant has offered the following explanations for the proposed use:

- *Palmetto Internet Center, LLC will have paper, staples, pens, and staple guns for sale, as well as offering printer, fax, and copy services. They will sale internet time at the rate of Twenty cents (\$0.20) per minute. In order to promote the sale of internet time sweepstakes entries will be given away with the purchase of internet time (Applicant Letter October 5, 2011)*
- *The Applicants customers can choose to reveal his or her entries using a “quick reveal” option, which instantly shows whether or not he or she is a winner of the sweepstakes or may allow results to be displayed using various entertainment games (Applicant Appeal December 21, 2011.)*
- *We print,copy,fax,office supplies (sic). You can reveal sweepstakes. You can win cash from \$1.00 to \$13,600 dollars. You get 100 sweepstakes daily free. (Facebook Page for Palmetto Internet Centers).*

Some of the entertainment games witnessed at the Manning location and, as referenced in the “*complete list of prizes and odds of winning for each sweepstakes*”:

Smokin 7’s
Super Bonus Kangaroo Keno
Royal Poker, Luck Shamrocks 7’s Poker
Piggy Banks
Okie Oil
Money Bunny
Luck Classic
Mr. Money Man
Mrs. Money Man
American 7’s

We would describe the use as a place where customers come, pay a fee to play games on a computer customarily found in a Casino, in the hopes of winning a cash sweepstakes prize. It’s a sweepstakes parlor, if you will; an establishment where people gather to try and win money. The idea that the Internet is available to surf or that copies can be made or that faxes can be sent is an

afterthought from a **land use perspective**. These are clearly NOT primary functions of the proposed business.

Rooms are set up with multiple computer stations that look like this:



Photo #1: Manning, SC (Photo taken by Sumter Police Department)

Or this:



Photo #2: Indianapolis, IN (Indyweek.com, December 2010)

Zoning Enforcement visited the Manning, SC location of Palmetto Internet Centers shown in Photo #1 above. We understand from the Applicant that this location is similar in type and function to the proposed business at 5664 Broad St. Jerome Robinson, enforcement officer, offers this observation from his experience at the Manning, SC Palmetto Internet Center on November 22, 2011:

*When I entered the location I observed about 15 computers in the main lobby as well as additional 5-10 computers in a separate room. The business advertises sweepstakes, copies, faxes and other office related services. All of the copy and faxes services are handled over a counter with salesmen similar to Staples. When I inquired about the sweepstakes advertisement, one of the guys told me I could spend money for a chance to win prizes (money or additional internet time), as well as use the internet. I filled out an application (name, address, phone number, etc) and was required to make a copy of my driver's license for my file. The application states in bold print "**You are not gambling.**"*

I put \$10.00 in a machine and it gave me a number and password for a computer to use. I played a slot machine type game called "Mr. Money Maker." Each time I spent money for a chance to win sweepstakes, I automatically got an additional 100 points to use. The \$10.00 allowed me to spin about 40 times. Each spin breaks down to \$.25/ spin. The additional 100 points equal about \$1.00. The additional points gave me 4 additional spins. I played the spins (see attached picture) for about 15 minutes. A few times during the spins, I would win \$.15 or \$.25, but ultimately did not increase my money or number of spins at the end of the game. Once I was down to \$.60, I asked the guy what I needed to do to use the internet. He helped me log on to the internet, and it appeared I could use the internet for a charge of \$.01/ minute. After completing my sweepstakes spins, copies and internet usage, the manager invited me back on following night. He stated they would have free pizza and soda for all customers using the computers.

The Sumter County Zoning and Development Standards Ordinance ("**Zoning Ordinance**") uses the *Standard Industrial Classification Manual* to define land uses. Once the use is defined, the Zoning Ordinance dictates whether or not a use is permitted, permitted by conditional review, permitted by special exception review, or not permitted at all.

In the November 28, 2011 Zoning Determination, the Zoning Administrator opined:

*The zoning ordinance does not specifically identify the proposed use. Based on a review of the zoning ordinance, the description offered by the applicant, and direct site experience, we find that the proposed use is most similar to several uses described under the **Standard Industrial Code Major Group 79—Amusement and Recreation Services** and most specifically in the category of 7999 Amusement and recreation Services not elsewhere classified.*

Industry Group 7999 contains "Establishments primarily engaged in the operation of sports, amusement, and recreation services, not elsewhere classified." We find no classification for Sweepstakes Parlors, Internet Sweepstakes, Internet Usages, or Internet Cafés in the SIC or the

Zoning Ordinance. We do opine however, that the act of customers participating in the sweepstakes, either for free or through the purchase of internet time are in fact actively engaged in an amusement activity. It appears the primary function of the business. That games of chance (whether consideration exists or not) are offered as entertainment and resemble games associated with gambling like Poker, Slots, and Keno, only buoys our position that this use should be categorized in the Amusement 7999 group.

Gambling machines which are not coin operated and Gambling Establishments are included in this Industry Group. Game Parlors, where customers gather in a room to participate in various game activities, also reside in this classification.

For the record, the Applicant's business license was not denied. The Zoning Administrator simply opined that the business license could not be approved because a special exception review and approval process was required. To be clear, we take no position on whether this use is legal in South Carolina or not. We do however acknowledge that this issue of Internet Sweepstakes has garnered the attention of State and Local Governments nationwide.

With that said, we stress that this Appeal is quite narrow in focus: whether or not the Zoning Administrator is correct when categorizing this proposed Internet Sweepstakes or Sweepstakes Parlor use in 7999 of the SIC.

In the appeal submission, the Applicant argues that there is other SIC descriptions more appropriate, including but not limited to: "Printing & Publishing SIC Code 27", "Communications SIC Code 48", or "Business Services SIC Code 5999." We find this approach unconvincing. The Applicant has offered no pro forma evidence that the use functions as one or any of the uses proffered. Moreover, the Zoning Administrator requested information from the Applicant relative to expected income or sales for office supplies etc... In response to the Zoning Administrator's inquiry to provide a breakdown of sales by product, the Applicant stated, "*At this time Palmetto Internet Center, LLC cannot estimate the percentage of office supplies to be sold versus other services provided*" (Applicant Letter dated October 5, 2011). The business floor layout in Manning, SC—an room filled with computer terminals with visible simulated or gambling-type entertainment games—betrays the applicant's argument.

Finally, in an effort to provide context and background on the issue, we have attached an extensive article on the Sweepstakes Industry from Bloomberg Business Week published in April 2011.

Applicant Position

See Attachment

IV. DRAFT MOTIONS for BOA-11-28, Internet Sweepstakes

I move that the Zoning Board of Appeals deny BOA 11-28, based on the Staff Report dated February 8, 2011 and the findings of fact and conclusions of law attached in the draft Order on Appeal, identified as Exhibit_1.

V. BOARD OF ZONING APPEALS – FEBRUARY 8, 2012

The Sumter City-County Board of Appeals at its meeting on Wednesday, February 8, 2012, voted to deny BOA-11-28, based on the Staff Report dated February 8, 2012, and the findings of fact and conclusions of law attached in the draft Order on Appeal.

BOA 11-28, Internet Sweepstakes

List of Attachments

1. Zoning Determination Letter w/Attachments dated November 28, 2011
2. Zoning Enforcement Affidavit/Memorandum dated January 31, 2012
3. Applicant Appeal Submission dated December 21, 2011
4. *“Strip-Mall Casinos Multiply Across Nation”*, *Bloomberg Business Week* April 22, 2011, Felix Gillette.

EXHIBIT 1

**DRAFT Order on Appeal
Sumter Board of Appeals**

**BOA-11-28, Internet Sweepstakes
Appeal from the Interpretation of the Zoning Administrator
February 8, 2012**

Date Filed: February, 2012

Permit Case No. BOA-11-28

The Sumter Board of Appeals held a public hearing on Wednesday, February 8, 2012 to consider the appeal of MJ Enterprises d/b/a Palmetto Internet Center, LLC for an appeal of the interpretation of the Zoning Administrator as set forth on the Form 1 and 2. After consideration of the evidence and arguments presented, the Board makes the following findings of fact and conclusions:

Facts:

- Appellant proposes to open a business at 5664 Broad St. in Sumter County, SC. On property zoned General Commercial (GC).
- The Applicant submitted business license clearance form and described the proposed business as “*sale of office supplies Internet time with promotional sweepstakes*” (sic).
- The Zoning Administrator opined that the proposed use is classified in the Standard Industrial Classification Manual (SIC) as an establishment in Industry Group 7999, Amusement and Recreation not elsewhere classified
- Uses in the 7999 Industry Group Classification are listed as a Special Exception in the GC zoning district and set forth in *Exhibit 5 of the Zoning Ordinance, Permitted and Conditional Uses in the Commercial, Industrial, Agricultural, and Conservation Districts.*

Conclusions:

- Zoning Administrator is correct in her interpretation of Exhibit 5 and other relevant sections of the Sumter County Zoning and Development Standards Ordinance.
- The proposed use is appropriately classified under Industry Group 7999 as set forth in the Standard Industrial Classification Manual.
- In the GC zoning district, uses classified as 7999 require a special exception review and approval prior to the issuance of a business license.
- The business license for the proposed use shall not be issued until such time as this process is completed.

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

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.