

# Sumter City-County Board of Zoning Appeals

May 9, 2012

## BOA-12-23, 1236 Peach Orchard Rd. (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 1236 Peach Orchard Rd. and is represented by Tax Map # 132-09-02-059. 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

May 9, 2012

BOA-12-23, 1236 Peach Orchard Rd. (County)

## I. THE REQUEST

**Applicant:** John Fannin

**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:** 1236 Peach Orchard Rd.

**Present Use/Zoning:** Tenant Space, In-line Retail/General Commercial (GC)

**Tax Map Reference:** 132-09-02-059

## II. BACKGROUND

The applicant, is requesting special exception approval to open an Electronic Gaming Establishment (SIC 7999) at 1236 Peach Orchard Rd. 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 multi-tenant, inline commercial space shared with Family Dollar and several other tenants—there appears to be a vacant, approximately 1,500 sq. ft. space available. Other tenants include a Family Dollar, a florist, and a financial office.

The Applicant has not indicated a total number of terminals for this location. In any event, the existing uses and total parking spaces available will influence the final number of terminals permitted. This is a newer retail location with a total of 66 total paved parking spaces. The site meets the parking, landscaping, and development standards of the Zoning Ordinance.

With a maximum of 66 spaces, 46 which are accounted for with the current uses, a total of 20 spaces are available. Thus, this Gaming Establishment, if approved, is limited to a maximum of 38 terminals at this time.

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.

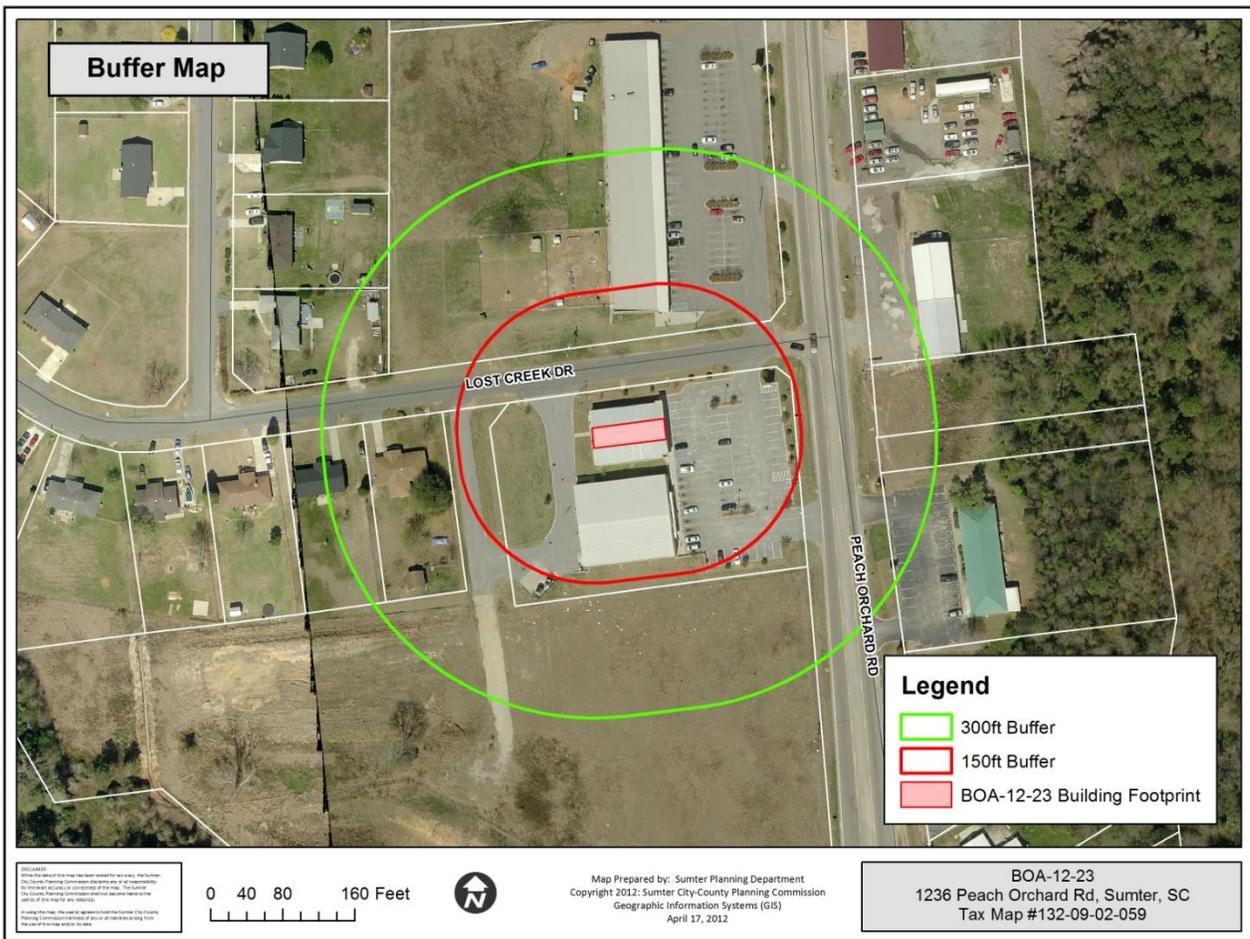
**Article 5 Section 5.b.3.k Electronic Gaming Establishments:**

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 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 66. The existing uses at this retail center account for 46 spaces, leaving 20 spaces available for the proposed use. Thus, the establishment must be capped at 38 terminals where all 66 parking spaces on site would be in use.



- 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 parking, bufferyard and landscaping requirements contained in the County Zoning Ordinance.
- 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.

We note for the record that the final special exception criteria adopted by County Council did not include a separation requirement from residential property. There is a subdivision to the west of the proposed location and off of Lost Creek Dr.

- 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 development is modern, meeting all current zoning and development standards. The proposal contained herein also meets all relevant special exception criteria.

**III. STAFF RECOMMENDATION**

Staff recommends approval of BOA-12-23 *subject to a maximum 38 terminals.*

**IV. DRAFT MOTIONS for BOA-12-23**

- A. I move that the Sumter Board of Appeals approve BOA-12-23, subject to the findings of fact and conclusions contained in draft order, dated May 9, 2012 attached as Exhibit 1.
- B. I move that the Sumter Board of Appeals enter an alternative motion for BOA-12-23.

**V. ZONING BOARD OF APPEALS – MAY 9, 2012**

The Sumter City-County Board of Appeals at its meeting on Wednesday, May 9, 2012, voted to deny this request based on the findings of fact and conclusions listed on Exhibit 1.

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

**BOA-12-23, 1236 Peach Orchard Rd., Sumter, SC**  
**May 9, 2012**

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Date Filed: May 9, 2012

Permit Case No. BOA-12-23

The Board of Zoning Appeals held a public hearing on Wednesday, May 9, 2012 to consider the request of John Fannin, 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 38 terminals
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 use is in close proximity to an existing child care center.
  - b. The proposed use is in close proximity to the Lost Creek residential subdivision.
  - c. The proposed location will not be in substantial harmony with the area in which the proposed facility would be located.

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 Board received testimony from several citizens opposed to the use in this location, including a citizen petition from the Lost Creek subdivision.

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.**

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