

Sumter City-County Board of Zoning Appeals

June 20, 2012 – Special Meeting

BOA-12-29, 1217-B & 1219 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 1217-B and 1219 Peach Orchard Rd. and is represented by Tax Map # 132-00-02-028 & 132-00-02-029. 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

June 20, 2012 – Special Meeting

BOA-12-29, 1217-B & 1219 Peach Orchard Rd. (County)

I. THE REQUEST

Applicant: Buddy 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: 1217-B & 1219 Peach Orchard Rd.

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

Tax Map Reference: 132-00-02-028 & 132-00-02-029

II. BACKGROUND

The applicant is requesting special exception approval to open an Electronic Gaming Establishment (SIC 7999) at 1217-B & 1219 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 two other tenants—there appears to be a vacant, approximately 2,200 sq. ft. space available. Other tenants include a hair salon and an Asian grocery store.

The Applicant has indicated a total number of terminals for this location to be 31 total. The existing uses and total parking spaces available will influence the final number of terminals permitted. This is a retail location with a total of 28 total paved parking spaces. The site meets the parking, landscaping, and development standards of the Zoning Ordinance as a legal non-conforming site.

With a maximum of 28 spaces, 12 which are accounted for with the current uses, a total of 16 spaces are available. Thus, this Gaming Establishment, if approved, is limited to a maximum of 31 terminals at this time. The Applicant has indicated that there is a possibility to add several additional spaces in the future.

NOTE: This site is across Peach Orchard Rd. from BOA 12-23, an Electronic Gaming Establishment denied by the Board on May 9, 2012. The Applicant in BOA 12-23 has appealed the decision. Measured from structure to structure, the distance is approximately 320 ft.

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.

The property also falls within the Shaw AFB Noise Attenuation Area and within Day-Night Noise Level- Zone 1. No additional zoning restrictions are applicable to this existing, built structure.

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:

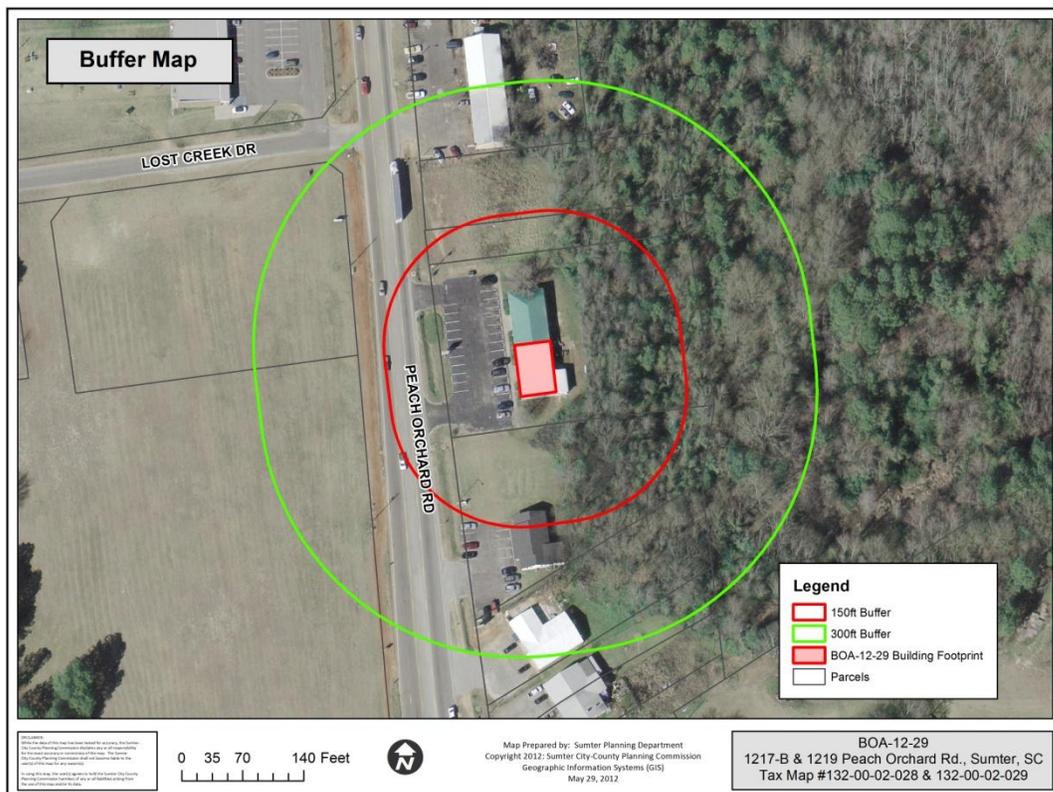
- 1. The use shall not be located within 300 ft., measured from structure to structure, from any church or school; and shall not be located within 150 ft. from a park, liquor store or bar; and shall not be located within 150 ft. from any other Electronic Gaming/sweepstakes establishment.*
- 2. Hours 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. There is a day care center in the retail space north of Lost Creek Dr. However, we note for the record that the day care is separated from the proposed gaming establishment by a distance of approximately 387 ft.



- As shown in the graphic below, the total number of existing on-site parking spaces is 28. The existing uses at this retail center account for 12 spaces, leaving 16 spaces available for the proposed use. Thus, the establishment must be capped at 31 terminals where all 28 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. The nearest residential use is 580 feet away.

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 inline location is appropriate. The proposal contained herein also meets all relevant special exception criteria. The location, on the east side of Peach Orchard is well away from any residential uses.

III. STAFF RECOMMENDATION

Staff recommends approval of BOA-12-29 *subject to a maximum 31 terminals*.

IV. DRAFT MOTIONS for BOA-12-29

- A. I move that the Sumter Board of Appeals approve BOA-12-29, subject to the findings of fact and conclusions contained in draft order, dated June 20, 2012 attached as Exhibit 1.
- B. I move that the Sumter Board of Appeals enter an alternative motion for BOA-12-29.

V. ZONING BOARD OF APPEALS – JUNE 20, 2012

The Sumter City-County Board of Appeals at its meeting on Wednesday, June 20, 2012, voted to accept staff recommendation and approve this request.

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

BOA-12-29, 1217-B and 1219 Peach Orchard Rd., Sumter, SC
June 20, 2012

Date Filed: June 20, 2012

Permit Case No. BOA-12-29

The Board of Zoning Appeals held a special public hearing on Wednesday, June 20, 2012 to consider the request of Buddy 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 31 terminals based on current parking. The site is a legal site, non-conforming as to landscaping and curb and gutter paving.
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 located in the General Commercial Zoning District.
 - b. The proposed use is separated by a distance of over 500 feet from the nearest residential property and over 380 from the nearest day care center.
 - c. Peach Orchard Rd. is overwhelmingly commercial in nature, with a variety of retail, service, and business uses in the vicinity.

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 surrounding uses are 100% commercial in nature. The location is an in-line commercial tenant space. There are no residential or otherwise sensitive uses surrounding the property.

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.
