

DRAFT MINUTES PROPOSED FOR ADOPTION BY THE BOARD OF ADJUSTMENT
APRIL 26, 2012

The Greenville Board of Adjustment met on the above date at 7:00 PM in the City Council Chamber of City Hall.

Scott Shook, Chairman*

Charles Ewen *	John Hutchens *
Linda Rich *	Sharon Ferris *
Justin Mullarkey *	Bill Fleming *
Wiley Carraway X	Tom Taft, Jr. X
Claye Frank*	

The members present are denoted by an “*” and those absent are denoted by an “X”.

VOTING MEMBERS: Shook, Ewen, Ferris, Rich, Fleming, Hutchens, Mullarkey

OTHERS PRESENT: Mr. Mike Dail, Planner
Mr. Wayne Harrison, Planner
Mrs. Elizabeth Blount, Secretary
Mr. Bill Little, Assistant City Attorney
Mr. Jonathan Edwards, Communications Technician

MINUTES

Ms Ferris made a motion to approve the minutes as presented, Mr. Mullarkey seconded and the motion passed unanimously.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT FOR STEPHEN KOZIKOWSKI-APPROVED

The applicant, Stephen Kozikowski, desires a special use permit to operate a game center pursuant to Appendix A, Use (6)d. of the Greenville City Code. The proposed use is located at 703-D SE Greenville Boulevard. The property is further identified as being tax parcel number 32694.

Mr. Dail delineated the area on the map. He stated that the property is located in the Kmart shopping center. The applicant wishes operate an Internet Café at the proposed location.

Zoning of Property: CG (General Commercial)

Surrounding Zoning:

North: CG (General Commercial)
South: CG (General Commercial)
East: CG (General Commercial)
West: CG (General Commercial)

Surrounding Development:

North: Kmart, Hancock Fabrics, Office Depot, Pizza Hut
South: WITN, Brite Signs, Our House Home Care
East: Homesmart
West: Sherwin Williams

Description of Property:

The subject property contains a 2,422 square foot commercial building, is 0.37 acres in size and is interior to and part of the larger Kmart Shopping Center located on the northwest corner of SE Greenville Boulevard. and Arlington Boulevard.

Comprehensive Plan:

The property is located within Vision Area “D” as designated by the Comprehensive Plan. The proposed use is in general compliance with the Future Land Use Plan which recommends commercial development for the subject property.

Notice:

Notice was mailed to the adjoining property owners on April 12, 2012. Notice of the public hearing was published in the Daily Reflector on April 16, 2012 and April 23, 2012.

Related Zoning Ordinance Regulations

The definition of a game center

Staff Recommended Conditions

- No loitering permitted outside of the establishment
- Trash receptacle must be placed outside of the establishment

Mr. Fleming asked what the operating hours would be.

Mr. Dail stated that he would allow the applicant to answer that question.

Mr. Fleming asked does the city have any laws regarding operation of a game center.

Mr. Dail answered no.

Mr. John Day, leasing agent for the property owner, Miller Warren, spoke in favor of the application. He stated that the property has adequate egress and ingress. It is a vacant freestanding building. The proposed use of the building is an Internet Café with proposed operating hours from 9 or 10 am to 12 midnight or later. The applicant is anticipating a maximum number of 20 customers and 2-3 employees. The facility has adequate parking spaces and additional parking is located in the rear of the building. The applicant currently lives and operates cafés in Fayetteville but will move to Greenville to operate this one. The center will be self parking. The game center will not adversely impact adjacent businesses.

Mr. Stephen Kozikowski, applicant, spoke in favor of the application. He stated that he is the co-owner of four locations in Hope Mills and Fayetteville and that the Greenville location will be the first one he will own and operate

by himself.

Mr. Mullarkey asked for a description of the activities within the establishment.

Mr. Kozikowski stated that they have computer terminals with access to the Internet. Customers purchase time and the establishment gives them credit to play sweepstakes online. The establishment will cash out their winnings.

Mr. Mullarkey asked if the sweepstakes software could only be played at the establishment.

Mr. Kozikowski answered yes.

Mr. Mullarkey asked was there a maximum winning.

Mr. Kozikowski answered that the highest jackpot was \$5,000.

Mr. Mullarkey asked were there any problems at the applicant's other four locations.

Mr. Kozikowski answered no. He stated that he normally employees security to stay from 6 pm to closing and will have security cameras.

Mr. Mullarkey asked will the establishment serve alcohol.

Mr. Kozikowski answered no.

Mr. Hutchens asked about age restrictions for the establishment.

Mr. Kozikowski answered customers must be eighteen years old or older.

Chairman Shook asked for the hours of operation.

Mr. Kozikowski stated the hours vary for different locations but normal operation time is 10 am to 2 am. They will close earlier if no one is playing.

Chairman Shook asked if the establishment had cash on hand.

Mr. Kozikowski stated that the establishment does have some cash on hand but they limit it and also limit the amount of money that people can have access to.

Attorney Jerry Eatmon, representative of H.J. Brody, owner of the Kmart shopping center, spoke in opposition of the application. He stated that the proposed establishment would have an impact on the surrounding properties. The owner is concerned about the use of cross parking and the traffic in and out of the establishment. The shopping center has an existing Internet Café tenant on a short term lease with strict controls over traffic, trash, use, etc. The owner is concerned that the proposed establishment would be detrimental to surrounding property and future development along with creating a problem for health and safety. He asked the board to deny the special use permit or apply the following conditions if it is approved: employ security from 6 pm to closing, ensure that the establishment will not be a 24 hour facility, and prohibit the use of the easement for parking.

Mr. Hutchens asked why the parking and egress and ingress will have a negative impact on surrounding property.

Attorney Eatmon stated that the overflow parking will interfere with the shopping center's parking. The center is already tight on parking and it is typical for a game center establishment to need additional parking.

Mr. Hutchens asked for supporting evidence.

Attorney Eatmon quoted a study done by Elon College for the governor's crime commission. It recorded the number of sheriff's calls near Internet Cafés.

Mr. Ewen asked how the owner of the shopping center could rationalize not wanting the applicant to rent when the center currently has an Internet café as a tenant.

Attorney Eatmon stated that there is no objection to the business but to the location of the business.

Chairman Shook asked what specific evidence warrants the board to deny the application.

Attorney Eatmon stated that the proposed use would be a detriment to the use and the development of the adjoining property. The anticipated increase in vehicular traffic and the safe and convenient location of on-site parking and drives is a problem to the shopping center owner.

Chairman Shook asked if the information given was opinion or evidence.

Attorney Eatmon said based on the evidence presented about the way the establishments are treated in other jurisdictions because of the heavy traffic associated with them it is evident that the proposed establishment will cause the same problem here.

Ms Ferris asked for traffic numbers from the existing Internet Café tenants.

Attorney Eatmon stated that the owner has not done a study but that the operator of the existing Internet Café could state the number of clients she has.

Mr. Mullarkey asked if there was a shared maintenance agreement for the roads.

Attorney Eatmon answered no.

Chairman Shook asked how long has the existing Internet Café been in the shopping center.

Attorney Eatmon stated for two years.

Mr. Hutchens asked was the establishment an unsavory business.

Attorney Eatmon said he did not want to suggest that notion. Other communities have taken the position of closely regulating and classifying them as adult establishments.

Mr. Fleming asked what business is stating that the proposed establishment will cause a parking problem.

Attorney Eatmon stated that Kmart had complained before when a previous entity tried to move in the shopping center.

Ms Connie Langley, part owner and operator of Emerald City Business Services, spoke in opposition of the application. She stated that the proposed establishment would be detrimental to her business because of the close proximity.

Ms Ferris asked for Emerald City's hours of operation.

Ms Langley stated that they are open 24 hours.

Mr. Mullarkey asked how long does a customer stay in the establishment.

Ms Langley stated that it varies from 10 minutes to 4-6 hours.

Chairman Shook asked was security provided at the establishment.

Ms Langley stated that the facility is hardwired to the Police Station and a security person is at the facility at all times.

Mr. Kozikowski spoke in rebuttal to the opposition. He stated that he contacted the adjacent business to the proposed location and they agreed to allow the applicant to use their parking for overflow. He also stated that the lease agreement made the applicant responsible for the landscape of the property and the maintenance of the parking lot. A person is employee to be on staff during operating hours to handle people inside and an additional person is hired from 6 pm to closing to help with security inside and outside. Cameras will be located on the facility and people that may park in the Kmart parking spots will be asked to move.

Ms Ferris asked the applicant if he would oppose adding the conditions to his special use permit.

Mr. Kozikowski stated they were going to meet the conditions anyway and did not see the need to add them to the special use permit. He did state that the condition concerning the facility not operating 24 hours can be added.

Chairman Shook asked city attorney for clarity concerning adding the condition to the permit.

Attorney Little stated that the board would have to state the specific operating hours in the motion to be able to add it as a condition.

Mr. Hutchens asked the applicant to comment on the proposed establishment being an unsavory or adult business.

Mr. Kozikowski stated that he disagrees with the title because he runs very clean businesses.

Attorney Eatmon spoke in response to the rebuttal to the opposition. He stated that he wanted the self park to be a condition because historically the facility has the right to cross park.

Chairman Shook asked how the parking would be enforced.

Attorney Eatmon stated like most zoning conditions.

Attorney Little stated that the property is private so the city has not judicial right to enforce the parking. The overflow parking is not a land use issue.

Mr. Dail stated that staff had no objection to the request.

Chairman Shook closed the public hearing and asked for board discussion.

Commission members further discussed parking, conditions for the permit and issues with the business being unsavory. Following the conclusion of discussion, Chairman Shook read the criteria.

Mr. Hutchens made a motion to approve the finding of facts as presented, Ms Rich seconded and the motion passed unanimously.

Mr. Fleming made a motion to approve the petition request, Mr. Ewen seconded and the motion passed unanimously.

With no further business, Mr. Mullarkey made a motion to adjourn, Ms Ferris seconded, and it passed unanimously. Meeting adjourned at 8:06 p.m.

Respectfully Submitted

Michael R. Dail, II
Planner