



City of Danville
427 Patton Street, Suite 208
Danville VA, 24541
Phone: (434) 799-5260

Board of Zoning Appeals

OCTOBER 17, 2019
4:00 P.M.
4TH FLOOR CONFERENCE ROOM

AGENDA

- I. WELCOME AND CALL TO ORDER
- II. ROLL CALL
- III. ITEMS FOR PUBLIC HEARING
 - 1) *Appeal Application number PLAZ20190000347, filed by Shauq Qamar on behalf of Eagle Management Company LLC, requesting an appeal of a final notice of zoning violation for Speedway at 1503 N Main St, otherwise known as Grid 2818, Block, 020, Parcel 000055 of the City of Danville, Virginia Zoning District Map. The applicant is requesting an appeal of a final notice of violation issued by the Zoning Administrator that a Special Use Permit is required for Commercial Indoor Recreation when one has not been issued to operate commercial indoor recreation machines*
 - 2) *Appeal Application number PLAZ20190000348, filed by Abdul Wahid Khan on behalf of JAL Properties, requesting an appeal of a final notice of zoning violation for Liberty Sunrise at 2010 W Main St, otherwise known as Grid 0610, Block 003, Parcel 000030 of the City of Danville, Virginia Zoning District Map. The applicant is requesting an appeal of a final notice of violation issued by the Zoning Administrator that a Special Use Permit is required for Commercial Indoor Recreation when one has not been issued to operate commercial indoor recreation machines*
 - 3) *Appeal Application number PLAZ20190000349, filed by Asif Bilal Khan on behalf of W Henry Hardy Inc, requesting an appeal an appeal of a final notice of zoning violation for North Main Texaco at 2434 N Main St, otherwise known as Grid 2810, Block 003, Parcel 000006 of the City of Danville, Virginia Zoning District Map. The applicant is requesting an appeal of a final notice of violation issued by the Zoning Administrator that a Special Use Permit is required for Commercial Indoor Recreation when one has not been issued to operate commercial indoor recreation machines*



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- 4) *Appeal Application number PLAZ20190000350, filed by Inam Qazi, requesting an appeal of a final notice of zoning violation for Carter's Quick Shop at 3103 W Main St, otherwise known as Grid 0505, Block 002, Parcel 000003 of the City of Danville, Virginia Zoning District Map. The applicant is requesting an appeal of a final notice of violation issued by the Zoning Administrator that a Special Use Permit is required for Commercial Indoor Recreation when one has not been issued to operate commercial indoor recreation machines*
- 5) *Appeal Application number PLAZ20190000351, Arshad K Khan on behalf of KFG Properties LLC, requesting an appeal of a final notice of zoning violation for Skyview at 1131 South Boston Rd, otherwise known as Grid 2716, Block 008, Parcel 000006 of the City of Danville, Virginia Zoning District Map. The applicant is requesting an appeal of a final notice of violation issued by the Zoning Administrator that a Special Use Permit is required for Commercial Indoor Recreation when one has not been issued to operate commercial indoor recreation machines*

IV. APPROVAL OF THE MINUTES FROM SEPTEMBER 19, 2019

V. OTHER BUSINESS

VI. ADJOURNMENT



City of Danville
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Board of Zoning Appeals

Board of Zoning Appeals
Meeting of October 17, 2019

SUBJECT:

Appeal Application number PLAZ20190000347, filed by Shauq Qamar on behalf of Eagle Management Company LLC, requesting an appeal of a final notice of zoning violation for Speedway at 1503 N Main St, otherwise known as Grid 2818, Block, 020, Parcel 000055 of the City of Danville, Virginia Zoning District Map. The applicant is requesting an appeal of a final notice of violation issued by the Zoning Administrator that a Special Use Permit is required for Commercial Indoor Recreation when one has not been issued to operate commercial indoor recreation machines.

BACKGROUND:

Shauq Qamar on behalf of Eagle Management Company LLC, requesting an appeal of a final notice of zoning violation for Speedway at 1503 N Main St, otherwise known as Grid 2818, Block, 020, Parcel 000055 of the City of Danville, Virginia Zoning District Map. The applicant is requesting an appeal of a final notice of violation issued by the Zoning Administrator that a Special Use Permit is required for Commercial Indoor Recreation when one has not been issued to operate commercial indoor recreation machines.

The applicant received a final notice of zoning violation that state a Special Use Permit for commercial recreation is required for any gaming activities at 1503 N. Main Street, which is located in the N-C, Neighborhood Commercial District.

CONSIDERATIONS FOR AN APPEAL

The Zoning Administrator stated that the operation of gaming machines at this address requires a Special Use Permit for Commercial Recreation (Indoor). This use requires a Special Use Permit, which was not obtained. Therefore, the Zoning Administrator has found the subject property to be in violation of Article 3.M of the Zoning Ordinance, which states

ARTICLE 3.J- N-C, NEIGHBORHOOD COMMERCIAL

C.- Uses Permitted by Special Use Permit.



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Board of Zoning Appeals

2. *Commercial recreation establishments (limited to indoor uses).*
3. *Convenience stores (with gasoline sales).*

The issue of the appeal is limited to whether or not the business is conducting activities permitted within the N-C, Highway Retail Commercial District without a Special Use Permit.

The applicant is claiming that the operation of these machines is customary and incidental to the operation of a convenience store and does not require a Special Use Permit.

Article 15 of the Zoning Code defines Accessory and Accessory use:

Accessory. As applied to use or structure, means customarily subordinate or incidental to the primary use or structure, and on the premises of such primary use or structure. The phrase "on the premises of" means on the same lot or on the contiguous lot in the same ownership.

Accessory use. A use which is clearly incidental and subordinate to or customarily found in connection with and (**except where otherwise provided in the Ordinance**) is located on the same lot as the principal use on the premises. Those uses connected to the principal building by an open breezeway will be considered accessory uses.

Note the code recognizes convenience stores without gasoline sales as a use permitted by right in the N-C District. It requires the same facility (with gasoline sales) requires a Special Use Permit. Using the logic, that gasoline sale is an accessory to a convenience store, then why does it require a Special Use Permit. It does because City Council in its legislative authority requires that additional review is needed for something that can have an impact on adjacent uses. The same for Commercial Recreation.

The Code recognizes that Commercial recreation is not a standard use nor accessory as it is specifically listed in the Code to require a Special Use Permit. Special Use Permits are only to be granted by City Council per Article 6 of the Zoning Code.

The Zoning Administrator contends that City Council specifically listed this usage as not under the Accessory use definition, and requires the granting of a Special Use Permit prior to operation.

City Council has granted Special Use Permits for gaming machines at other locations. There have been the issuance of these permits at 140 Crown Drive and 618 Westover



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Drive (see attached) as examples of City Councils desire to review and approve such uses within facilities. The 140 Crown Drive is a restaurant (Kick Back Jack's) while the Westover facility is a mixed-use operation with gaming and restaurant.

CONCLUSION:

The Zoning Administrator believes the following:

1. This use is Commercial in nature as funds are exchanged for profit
2. Recreation does not distinguish between games as it is played for pleasure, or for the potential monetary gain,
3. This facility is Indoor as it is within the structure at 1503 N. Main St.

This use then requires the issuance of a Special Use Permit by Danville City Council, after review by the City Planning Commission in Accordance with Article 3.M; Section C, Item #4 of the Code of the City of Danville Virginia, 1986 as amended.

That the proper procedure for this case will be for the BZA to uphold the determination of the Zoning Administrator, and direct the applicant to apply for the required Special Use Permit.

It should be noted that the City Planning Commission has requested staff to review this section of the Zoning Code to clarify issues that have surfaced due to the large number of requests for Special Use Permits. Staff will be advertising for these code amendments to be discussed at the November Planning Commission meeting.

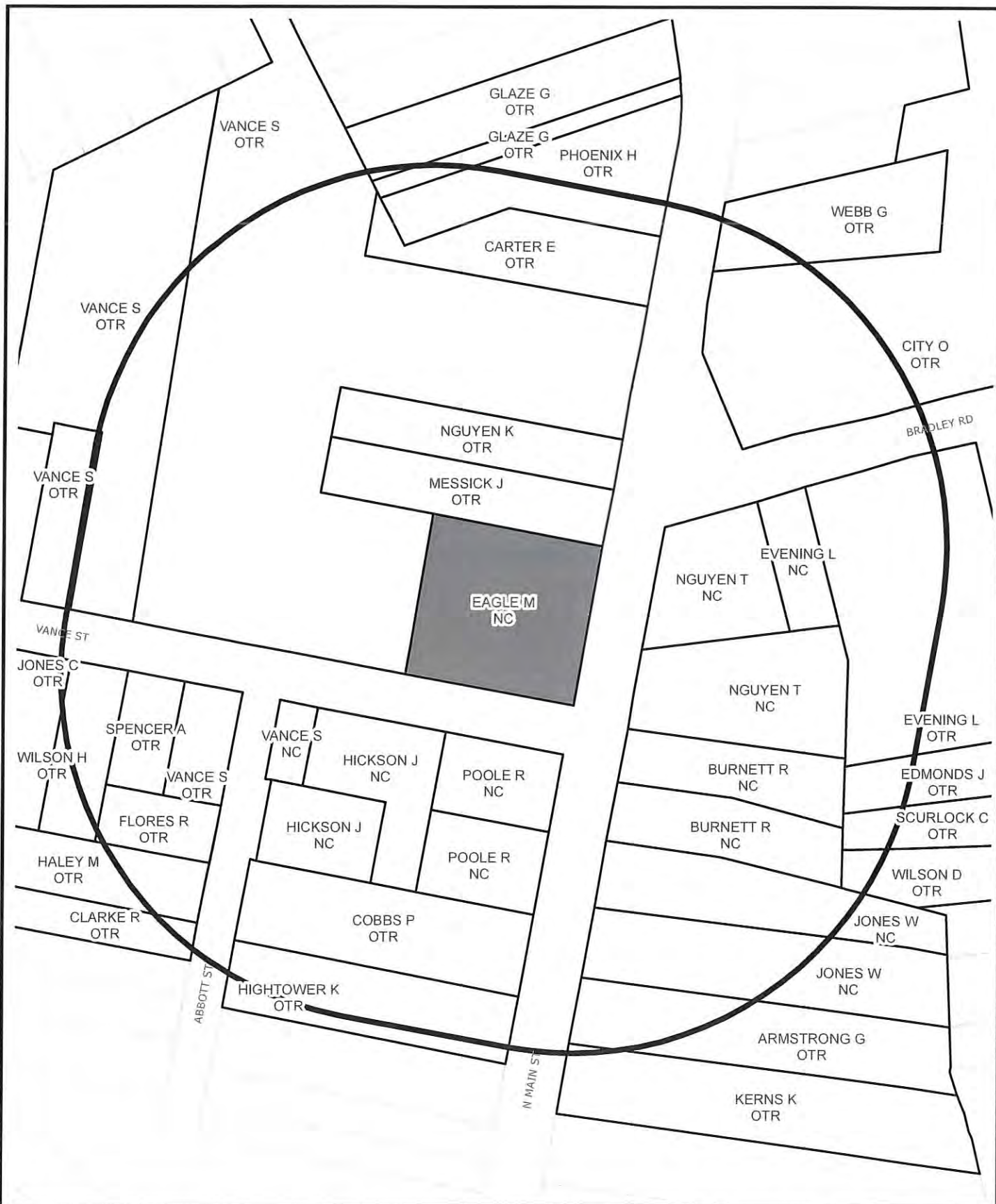
If the BZA believes there is any ambiguity in the wording of the Zoning Code, the proper procedure is to remand this case to the Planning Commission and City Council for review and clarification. Planning Commission has already requested that this be done.

Attachments:

1. Application
2. Property Ownership & Existing Zoning Map
3. Data Sheet
4. Existing Land Use Map (Aerial 2019)
5. Previously Granted Special Use Permits by City Council

APPEAL REQUEST
DATA SHEET

PUBLIC HEARING DATE:	4pm on Thursday, October 17, 2019
LOCATION OF PROPERTY:	1503 N. Main St
PRESENT ZONE:	N-C Neighborhood Commercial
ACTION REQUESTED:	Appeal from zoning violation notice regarding commercial recreation without a Special Use Permit
PRESENT USE OF PROPERTY:	Convenience Store
PROPOSED USE OF PROPERTY:	Convenience Store with indoor gaming
PROPERTY OWNER (S):	Eagle Management Company, LLC
NAME OF APPLICANT (S):	Shahuq Qamar
PROPERTY BORDERED BY:	Church and residential to the west, commercial and residential to the east and south, residential to the north.
ACREAGE:	0.48 acres
CHARACTER OF VICINITY:	Residential/Commercial
INGRESS AND EGRESS:	N. Main St. & Vance St
TRAFFIC VOLUME:	Moderate on N. Main St, Low on Vance St.



SURROUNDING PROPERTY OWNERS AND ZONING WITHIN 300 FEET OF SUBJECT PROPERTY

Prepared by:
Planning Division
8/20/2019

Disclaimer: Information contained on this map is to be used for reference purposes only. The City of Danville is not responsible for any inaccuracies herein contained. The City of Danville makes no representation of warranty as to this map's accuracy, and in particular, its accuracy in labeling, dimensions, contours, property boundaries, or placement or location of any map features thereon. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, use or misuse of the information herein provided.



2019 AERIAL VIEW OF AREA SURROUNDING SUBJECT PROPERTY

Prepared by:
Planning Division
8/20/2019

Disclaimer: Information contained on this map is to be used for reference purposes only. The City of Danville is not responsible for any inaccuracies herein contained. The City of Danville makes no representation of warranty as to this map's accuracy, and in particular, its accuracy in labeling, dimensions, contours, property boundaries, or placement or location of any map features thereon. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, use or misuse of the information herein provided.

CITY OF DANVILLE

APPEAL APPLICATION

MAKE CHECKS PAYABLE FOR \$206 TO THE CITY OF DANVILLE

IMPORTANT - PLEASE READ

Appeal application must be filed within thirty (30) days after the action being appealed.

No application for an appeal will be accepted for a Board of Zoning Appeals agenda unless the following conditions are met by the twentieth (20th) day of the month prior to a Board meeting which is held on the third Thursday of each month:

- a. All questions on this application have been fully answered.
- b. The application has been signed by the property owner or his/her agent, and property owner.
- c. A plot plan drawn to scale, showing the actual dimensions and shape of the lot, the exact size and location on the lot of all buildings and signs existing and proposed, and the location of all required parking spaces has been submitted (if applicable).

DATE FILED: _____

BZA

DATE: _____

APPLICATION NO. PL 20190000017

RECEIVED BY:

LOCATION: 1503 N Main St.

TAX MAP

NUMBER: _____

ZONING
DISTRICT: _____

1. I (we) have applied for an appeal because of/on the following interpretation/determination:

There were games of skill machines at the convenience store and I/we received a notice of zoning violation that gaming is considered commercial recreation and a special use permit was required to operate the games on the property.

2. Date of interpretation/determination that is the subject of this appeal (attach copy of referenced letter or other dated material).

See Attached final notice of zoning violation, dated July 19, 2019

3. The administrative official based this interpretation/determination on the following ruling:

The official stated there was no record of a special use permit was required in the applicable zoning district.

4. I (we) feel that the administrative official was incorrect in their ruling
based on the following:

Video games and other recreational games are common in convenience stores such as this one and the games are a very small part of the business. They are therefore allowed because they are a customary and incidental accessory use to the main and principal use as a convenience

Any additional information, documents or pictures should be submitted with the application to assist in the application process.

Please print and sign

Shahug Qamar
Applicant

1503 N. Main Street Denville Ut.
Address

434-203-4489
Phone

Email

(X) Shahug Qamar

8/15/19

Signature and Date

Property Owner (if owner is not applicant) Eagle Management Co. LLC

3006 Saint Clair Dr. Temple Hills, MD 20748
Address

301-899-2681

Phone

Email

Loof

8.16.2019

Signature and Date

Mr. Lee



City of Danville
Community Development
Planning Division

FINAL NOTICE

July 19, 2019

RE: FINAL NOTICE OF ZONING VIOLATION AT 1503 N MAIN ST

Dear EAGLE MANAGEMENT COMPANY LLC of Speedway:

It has come to our attention that your business is conducting gaming operations at 1503 N Main St. Gaming is considered commercial recreation, which is not permitted by right at your location. This business is located in the N-C, Neighborhood Commercial Zoning District, which is subject to regulations detailed in Article 3.J of the Zoning Ordinance. However, the gaming may be permitted with a Special Use Permit (permission from City Council). **Our office has no record of any such approval being granted by City Council for commercial recreation for your business.**

If you wish to obtain a Special Use Permit to allow commercial recreation, you may contact our office (info below) or visit <https://www.danville-va.gov/425/Planning-Zoning>. Special Use Permits are subject to a public hearing by Planning Commission, followed by a public hearing by City Council the following month. There is a \$360 filing fee to help cover legal advertising costs. This fee is not refundable if the City does not approve your request.

Additionally, our office has concerns that your gaming operations may constitute as illegal gambling. The Police Department has confirmed that you have 2 gaming machines, which may constitute as gambling devices. **Gambling is not a permitted use for this location.**

To comply with Zoning Code, you must **immediately stop any gaming and gambling operations. This includes removing any gaming devices.** You may choose to apply for a Special Use Permit to provide commercial recreation as part of your business. However, operation may not continue until approval is obtained.

You have the right to appeal this notification within thirty (30) days to the City of Danville Board of Zoning Appeals. Such appeal must be made to the Zoning Administrator and with the Board of Zoning Appeals in accordance with Article 13.I (2) of the Danville City Code and Section 15.2-2311 of the Code of Virginia. If this decision is not appealed within thirty (30) days, the decision shall be final and unappealable.

If you continue to illegally operate, the City has the right to void your business license and charge your business with a criminal misdemeanor. We look forward to your cooperation.

PRESENTED: March 2, 2010

ADOPTED: March 2, 2010

ORDINANCE NO. 2010- 03 .03

AN ORDINANCE GRANTING A SPECIAL USE PERMIT TO ALLOW FOR COMMERCIAL INDOOR RECREATION SUBJECT TO CONDITIONS IN ACCORDANCE WITH ARTICLE 3.N, SECTION C, ITEM 4, OF CHAPTER 41 OF THE CODE OF THE CITY OF DANVILLE, VIRGINIA, 1986, AS AMENDED, AT 140 CROWN DRIVE.

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Danville, Virginia, that the report of the City Planning Commission recommending approval, subject to conditions, of Special Use Permit Application SUP 10-002, filed by Tripps Properties, III, requesting a Special Use Permit to allow for commercial indoor recreation in accordance with Article 3.N, Section C, Item 4, of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended, at 140 Crown Drive, otherwise known as Grid 1709, Block 002, Parcel 000003 of the City of Danville, Virginia, Zoning District Map be, and the same is hereby, received and said conditions as stipulated by the Planning Commission being as follows:

1. That the number of pool tables be limited to four (4).
2. The number of video games machines be limited to twenty (20).
3. The hours of operation shall be limited to Sunday thru Saturday 7 a.m. - 2 a.m.

AND BE IT FURTHER ORDAINED that in consideration of said report and the public hearing this day held by Council,

Special Use Permit Application SUP 10-002, filed by Tripps Properties, III, requesting a Special Use Permit to allow for commercial indoor recreation in accordance with Article 3.N, Section C, Item 4, of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended, at 140 Crown Drive, otherwise known as Grid 1709, Block 002, Parcel 000003 of the City of Danville, Virginia, Zoning District Map, is hereby granted and approved subject to the following conditions:

1. That the number of pool tables be limited to four (4).
2. The number of video games machines be limited to twenty (20).
3. The hours of operation shall be limited to Sunday thru Saturday 7 a.m. - 2 a.m.

APPROVED:



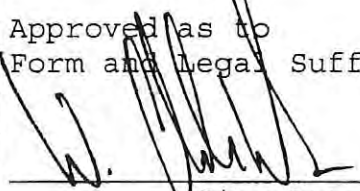
MAYOR

ATTEST:



CLERK

Approved as to
Form and Legal Sufficiency:



City Attorney

PRESENTED: January 3, 2019

ADOPTED: January 3, 2019

ORDINANCE NO. 2019 – 01.01

AN ORDINANCE GRANTING A SPECIAL USE PERMIT FOR A COMMERCIAL RECREATIONAL ESTABLISHMENT (LIMITED TO INDOOR USES) AND A RESTAURANT IN ACCORDANCE WITH ARTICLE 3:J SECTION C, ITEM 2 AND ITEM 13 OF THE CODE OF THE CITY OF DANVILLE, VIRGINIA 1986, AS AMENDED AT 760, 762, 764 WESTOVER DRIVE, OTHERWISE KNOWN AS GRID 0715, BLOCK 003, PARCEL 000007 OF THE CITY OF DANVILLE, VIRGINIA ZONING DISTRICT MAP.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Danville, Virginia, that the report of the Planning Commission recommending approval of Special Use Permit application PLSUP20180000310, filed by James C. Shaw, requesting Special Use Permits to operate a commercial recreational establishment (limited to indoor uses) and a restaurant in accordance with Article 3:J Section C, Item 2 and Item 13 of the Code of the City of Danville, Virginia 1986, as amended at 760, 762, 764 Westover Drive, otherwise known as Grid 0715, Block 003, Parcel 000007 of the City of Danville, Virginia Zoning District Map, is hereby received, subject to the following conditions:

1. Applicant must obtain all required building permits for the work that has been performed on the interior of the building and provide all required documentation and plans necessary for the issuance of said permits.
2. Applicant must obtain approvals and a certificate of occupancy prior to operation and occupancy of any sort which includes, but is not limited to private, invitation only events, private system testing, game burn in and tabletop playtesting / evaluations, and any other event held on site.
3. The buildings occupancy for the retail, restaurant, and gaming is set at a maximum of 80 persons per the building code.
4. A parking lot drawing, showing the location and dimensions of the minimum number of required spaces – which is 27, based on the buildings occupancy of 80 (1 space for every 3 persons) – must be provided and approved. All spaces must be appropriately striped and marked to meet code and the handicap accessible space must meet the ADA requirements.
5. There shall be no consumption or sale of alcohol on site, the condition being originally and voluntarily offered by the applicant.

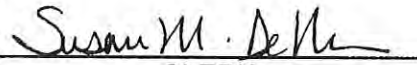
AND BE IT FURTHER ORDAINED THAT in consideration of said report and the public hearing this day held by Council, PLSUP20180000310, filed by James C Shaw, requesting Special Use Permits to operate a commercial recreational establishment (limited to indoor uses) and a restaurant in accordance with Article 3:J Section C, Item 2 and Item 13 of the Code of the City of Danville, Virginia 1986, as amended at 760, 762, 764 Westover Drive, otherwise known as Grid 0715, Block 003, Parcel 000007 of the City of Danville, Virginia Zoning District Map, is hereby granted and approved, subject to the following conditions:

1. Applicant must obtain all required building permits for the work that has been performed on the interior of the building and provide all required documentation and plans necessary for the issuance of said permits.
2. Applicant must obtain approvals and a certificate of occupancy prior to operation and occupancy of any sort which includes, but is not limited to private, invitation only events, private system testing, game burn in and tabletop playtesting / evaluations, and any other event held on site.
3. The buildings occupancy for the retail, restaurant, and gaming is set at a maximum of 80 persons per the building code.
4. A parking lot drawing, showing the location and dimensions of the minimum number of required spaces – which is 27, based on the buildings occupancy of 80 (1 space for every 3 persons) – must be provided and approved. All spaces must be appropriately striped and marked to meet code and the handicap accessible space must meet the ADA requirements.
5. There shall be no consumption or sale of alcohol on site, the condition being originally and voluntarily offered by the applicant.

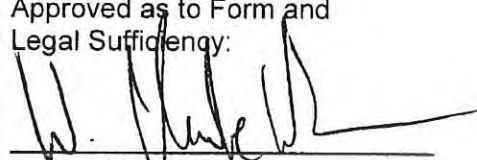
APPROVED:


MAYOR

ATTEST:


CLERK

Approved as to Form and
Legal Sufficiency:



City Attorney



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Board of Zoning Appeals

Board of Zoning Appeals
Meeting of October 17, 2019

SUBJECT:

Appeal Application number PLAZ20190000348, filed by Abdul Wahid Khan on behalf of JAL Properties, requesting an appeal of a final notice of zoning violation for Liberty Sunrise at 2010 W Main St, otherwise known as Grid 0610, Block 003, Parcel 000030 of the City of Danville, Virginia Zoning District Map. The applicant is requesting an appeal of a final notice of violation issued by the Zoning Administrator that a Special Use Permit is required for Commercial Indoor Recreation when one has not been issued to operate commercial indoor recreation machines.

BACKGROUND:

Abdul Wahid Khan on behalf of JAL Properties, requesting an appeal of a final notice of zoning violation for Liberty Sunrise at 2010 W Main St, otherwise known as Grid 0610, Block 003, Parcel 000030 of the City of Danville, Virginia Zoning District Map. The applicant is requesting an appeal of a final notice of violation issued by the Zoning Administrator that a Special Use Permit is required for Commercial Indoor Recreation when one has not been issued to operate commercial indoor recreation machines.

The applicant received a final notice of zoning violation that state a Special Use Permit for commercial recreation is required for any gaming activities at 2010 W Main St, which is located in the HR-C, Highway Retail Commercial District.

CONSIDERATIONS FOR AN APPEAL

The Zoning Administrator stated that the operation of gaming machines at this address requires a Special Use Permit for Commercial Recreation (Indoor). This use requires a Special Use Permit, which was not obtained. Therefore, the Zoning Administrator has found the subject property to be in violation of Article 3.M of the Zoning Ordinance, which states

ARTICLE 3.- HR-C, HIGHWAY RETAIL COMMERCIAL

C.- Uses Permitted by Special Use Permit.

4. Commercial recreation facilities (indoor and outdoor).



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Board of Zoning Appeals

The issue of the appeal is limited to whether or not the business is conducting activities permitted within the HR-C, Highway Retail Commercial District without a Special Use Permit.

The applicant is claiming that the operation of these machines is customary and incidental to the operation of a convenience store and does not require a Special Use Permit.

Article 15 of the Zoning Code defines Accessory and Accessory use:

Accessory. As applied to use or structure, means customarily subordinate or incidental to the primary use or structure, and on the premises of such primary use or structure. The phrase "on the premises of" means on the same lot or on the contiguous lot in the same ownership.

Accessory use. A use which is clearly incidental and subordinate to or customarily found in connection with and (**except where otherwise provided in the Ordinance**) is located on the same lot as the principal use on the premises. Those uses connected to the principal building by an open breezeway will be considered accessory uses.

Note the except "where otherwise provided in the Ordinance" Article 3.M., Subsection C. – Uses Permitted by Special Use Permit. Item 4 reads as follows

C. - Uses Permitted by Special Use Permit.

An individual use otherwise permitted hereinabove by-right in the HR-C District, but having greater than 60,000 square feet gross floor area, **or any of the following uses:**

4. Commercial recreation facilities (indoor and outdoor).

The Code recognizes that Commercial recreation is not a standard use nor accessory as it is specifically listed in the Code to require a Special Use Permit. Special Use Permits are only to be granted by City Council per Article 6 of the Zoning Code.

The Zoning Administrator contends that City Council specifically listed this usage as not under the Accessory use definition, and requires the granting of a Special Use Permit prior to operation.

City Council has granted Special Use Permits for gaming machines at other locations. There have been the issuance of these permits at 140 Crown Drive and 618 Westover Drive (see attached) as examples of City Councils desire to review and approve such



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uses within facilities. The 140 Crown Drive is a restaurant (Kick Back Jack's) while the Westover facility is a mixed-use operation with gaming and restaurant.

CONCLUSION:

The Zoning Administrator believes the following:

1. This use is Commercial in nature as funds are exchanged for profit
2. Recreation does not distinguish between games as it is played for pleasure, or for the potential monetary gain,
3. This facility is Indoor as it is within the structure at 2010 W Main St.

This use then requires the issuance of a Special Use Permit by Danville City Council, after review by the City Planning Commission in Accordance with Article 3.M; Section C, Item #4 of the Code of the City of Danville Virginia, 1986 as amended.

That the proper procedure for this case will be for the BZA to uphold the determination of the Zoning Administrator, and direct the applicant to apply for the required Special Use Permit.

It should be noted that the City Planning Commission has requested staff to review this section of the Zoning Code to clarify issues that have surfaced due to the large number of requests for Special Use Permits. Staff will be advertising for these code amendments to be discussed at the November Planning Commission meeting.

If the BZA believes there is any ambiguity in the wording of the Zoning Code, the proper procedure is to remand this case to the Planning Commission and City Council for review and clarification. Planning Commission has already requested that this be done.

Attachments:

1. Application
2. Property Ownership & Existing Zoning Map
3. Data Sheet
4. Existing Land Use Map (Aerial 2019)
5. Previously granted Special Use Permits for Indoor Recreation

CITY OF DANVILLE

APPEAL APPLICATION

MAKE CHECKS PAYABLE FOR \$206 TO THE CITY OF DANVILLE

IMPORTANT - PLEASE READ

Appeal application must be filed within thirty (30) days after the action being appealed.

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- a. All questions on this application have been fully answered.
- b. The application has been signed by the property owner or his/her agent, and property owner.
- c. A plot plan drawn to scale, showing the actual dimensions and shape of the lot, the exact size and location on the lot of all buildings and signs existing and proposed, and the location of all required parking spaces has been submitted (if applicable).

DATE FILED: _____ BZA

DATE: Sept. 19 348

APPLICATION NO. PLA220190000047 RECEIVED BY: _____

LOCATION: ~~1225 Franklin Tpke~~ 2010 W. Mc L St

TAX MAP
NUMBER: 02878 54539

ZONING
DISTRICT: _____

1. I (we) have applied for an appeal because of/on the following interpretation/determination:

There were games of skill machines at the convenience store and I/we received a notice of zoning violation that gaming is considered commercial recreation and a special use permit was required to operate the games on the property.

2. Date of interpretation/determination that is the subject of this appeal (attach copy of referenced letter or other dated material).

See Attached final notice of zoning violation, dated July 19, 2019

3. The administrative official based this interpretation/determination on the following ruling:

The official stated there was no record of an special use permit was required in the applicable zoning district.

4. I (we) feel that the administrative official was incorrect in their ruling
based on the following:

*Video games and other recreational games are common in
convenience stores such as this one and the games are a very
small part of the business. They are therefore allowed because
they are a customary and incidental accessory use to
the main and principal use as a convenience store.*

Any additional information, documents or pictures should be submitted with
the application to assist in the application process.

Please print and sign

Abdure Wahid Khan
Applicant

1225 Frank Tpk & Danville 92452c
Address

434-441-7013
Phone

DF9958@yahoo.com
Email

[Signature]
Signature and Date

Property Owner (if owner is not applicant)

22 Peformane Drive Stewart VA 24171

Address 276-694-7000

~~Street~~

Phone

Tin.hutchens@hutchensPet.com

Email

Tina Hutchens

Signature and Date



FINAL NOTICE

July 19, 2019

RE: FINAL NOTICE OF ZONING VIOLATION AT 2010 W MAIN ST

Dear JAL PROPERTIES LLC of Liberty Sunrise:

It has come to our attention that your business is conducting gaming operations at 2010 W Main St. Gaming is considered commercial recreation, which is not permitted by right at your location. This business is located in the HR-C, Highway Retail Commercial Zoning District, which is subject to regulations detailed in Article 3.M of the Zoning Ordinance. However, the gaming may be permitted with a Special Use Permit (permission from City Council). **Our office has no record of any such approval being granted by City Council for commercial recreation for your business.**

If you wish to obtain a Special Use Permit to allow commercial recreation, you may contact our office (info below) or visit <https://www.danville-va.gov/425/Planning-Zoning>. Special Use Permits are subject to a public hearing by Planning Commission, followed by a public hearing by City Council the following month. There is a \$360 filing fee to help cover legal advertising costs. This fee is not refundable if the City does not approve your request.

Additionally, our office has concerns that your gaming operations may constitute as illegal gambling. The Police Department has confirmed that you have 2 gaming machines, which may constitute as gambling devices. **Gambling is not a permitted use for this location.**

To comply with Zoning Code, you must **immediately stop any gaming and gambling operations. This includes removing any gaming devices.** You may choose to apply for a Special Use Permit to provide commercial recreation as part of your business. However, operation may not continue until approval is obtained.

You have the right to appeal this notification within thirty (30) days to the City of Danville Board of Zoning Appeals. Such appeal must be made to the Zoning Administrator and with the Board of Zoning Appeals in accordance with Article 13.1 (2) of the Danville City Code and Section 15.2-2311 of the Code of Virginia. If this decision is not appealed within thirty (30) days, the decision shall be final and unappealable.

If you continue to illegally operate, the City has the right to void your business license and charge your business with a criminal misdemeanor. We look forward to your cooperation.

APPEAL REQUEST
DATA SHEET

PUBLIC HEARING DATE: 4pm on Thursday, October 17, 2019

LOCATION OF PROPERTY: 2010 W. Main St

PRESENT ZONE: HR-C Highway Retail Commercial

ACTION REQUESTED: Appeal from zoning violation notice regarding commercial recreation without a Special Use Permit

PRESENT USE OF PROPERTY: Convenience Store

PROPOSED USE OF PROPERTY: Convenience Store with indoor gaming

PROPERTY OWNER (S): JAL Properties, LLC

NAME OF APPLICANT (S): Abdul Wahid Khan

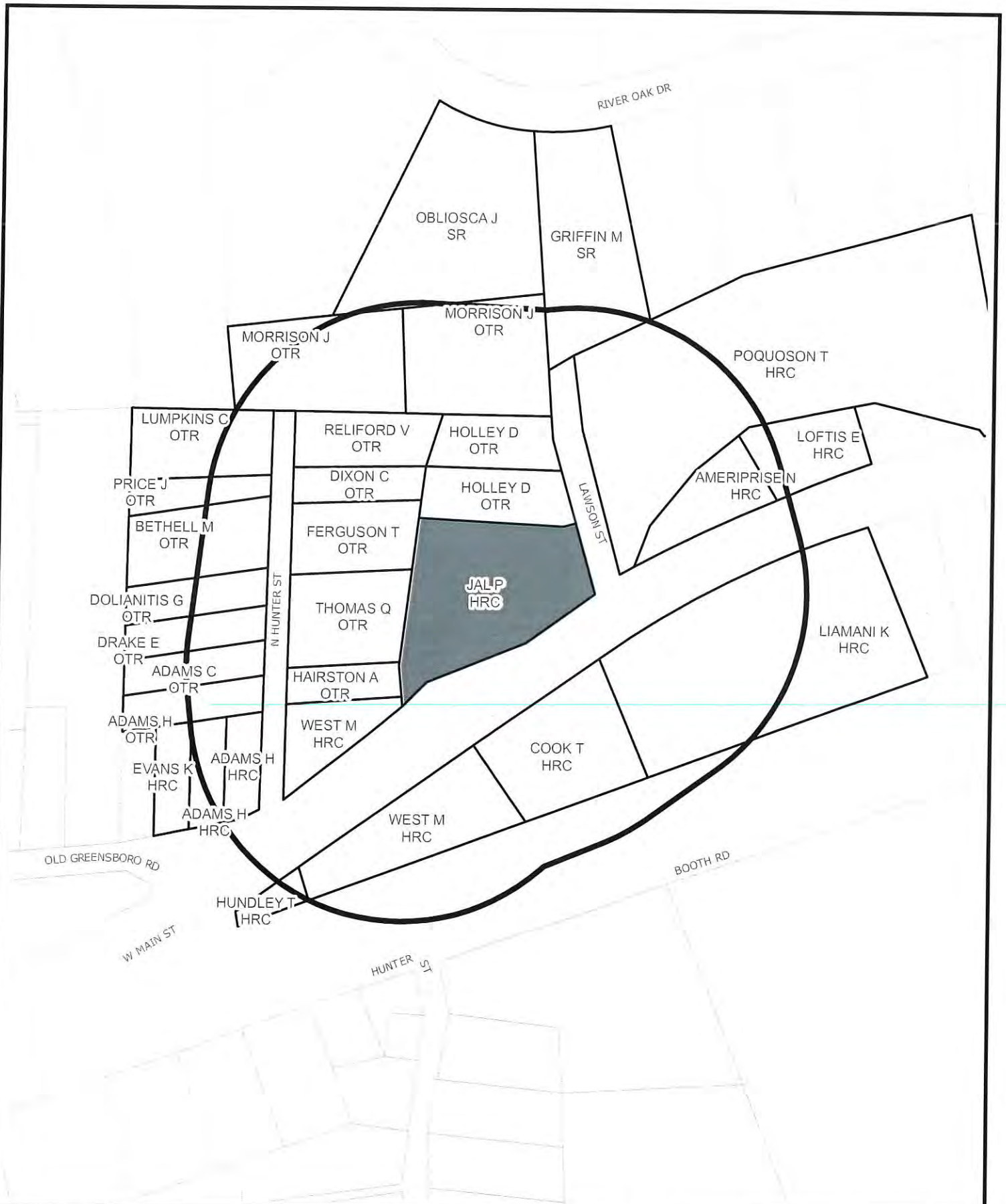
PROPERTY BORDERED BY: Residential to the north and west, commercial and residential to the east and south

ACREAGE: 1.23 acres

CHARACTER OF VICINITY: Residential/Commercial

INGRESS AND EGRESS: W. Main St.

TRAFFIC VOLUME: Moderate on W. Main St.



SURROUNDING PROPERTY OWNERS AND ZONING WITHIN 300 FEET OF SUBJECT PROPERTY



Prepared by:
Planning Division
9/27/2019

Disclaimer: Information contained on this map is to be used for reference purposes only. The City of Danville is not responsible for any inaccuracies herein contained. The City of Danville makes no representation of warranty as to this map's accuracy, and in particular, its accuracy in labeling, dimensions, contours, property boundaries, or placement or location of any map features thereon. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, use or misuse of the information herein provided.



2019 AERIAL VIEW OF AREA SURROUNDING SUBJECT PROPERTY

Prepared by:
Planning Division
9/27/2019

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PRESENTED: March 2, 2010

ADOPTED: March 2, 2010

ORDINANCE NO. 2010- 03 . 03

AN ORDINANCE GRANTING A SPECIAL USE PERMIT TO ALLOW FOR COMMERCIAL INDOOR RECREATION SUBJECT TO CONDITIONS IN ACCORDANCE WITH ARTICLE 3.N, SECTION C, ITEM 4, OF CHAPTER 41 OF THE CODE OF THE CITY OF DANVILLE, VIRGINIA, 1986, AS AMENDED, AT 140 CROWN DRIVE.

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Danville, Virginia, that the report of the City Planning Commission recommending approval, subject to conditions, of Special Use Permit Application SUP 10-002, filed by Tripps Properties, III, requesting a Special Use Permit to allow for commercial indoor recreation in accordance with Article 3.N, Section C, Item 4, of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended, at 140 Crown Drive, otherwise known as Grid 1709, Block 002, Parcel 000003 of the City of Danville, Virginia, Zoning District Map be, and the same is hereby, received and said conditions as stipulated by the Planning Commission being as follows:

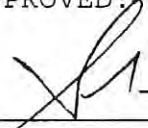
1. That the number of pool tables be limited to four (4).
2. The number of video games machines be limited to twenty (20).
3. The hours of operation shall be limited to Sunday thru Saturday 7 a.m. - 2 a.m.

AND BE IT FURTHER ORDAINED that in consideration of said report and the public hearing this day held by Council,

Special Use Permit Application SUP 10-002, filed by Tripps Properties, III, requesting a Special Use Permit to allow for commercial indoor recreation in accordance with Article 3.N, Section C, Item 4, of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended, at 140 Crown Drive, otherwise known as Grid 1709, Block 002, Parcel 000003 of the City of Danville, Virginia, Zoning District Map, is hereby granted and approved subject to the following conditions:

1. That the number of pool tables be limited to four (4).
2. The number of video games machines be limited to twenty (20).
3. The hours of operation shall be limited to Sunday thru Saturday 7 a.m. - 2 a.m.

APPROVED:



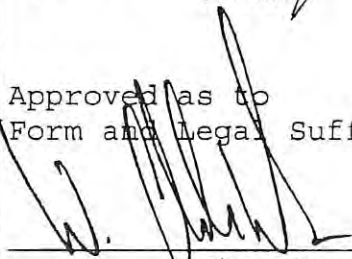
MAYOR

ATTEST:



CLERK

Approved as to
Form and Legal Sufficiency:



City Attorney

PRESENTED: January 3, 2019

ADOPTED: January 3, 2019

ORDINANCE NO. 2019 – 01.01

AN ORDINANCE GRANTING A SPECIAL USE PERMIT FOR A COMMERCIAL RECREATIONAL ESTABLISHMENT (LIMITED TO INDOOR USES) AND A RESTAURANT IN ACCORDANCE WITH ARTICLE 3:J SECTION C, ITEM 2 AND ITEM 13 OF THE CODE OF THE CITY OF DANVILLE, VIRGINIA 1986, AS AMENDED AT 760, 762, 764 WESTOVER DRIVE, OTHERWISE KNOWN AS GRID 0715, BLOCK 003, PARCEL 000007 OF THE CITY OF DANVILLE, VIRGINIA ZONING DISTRICT MAP.

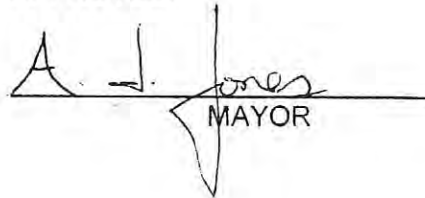
NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Danville, Virginia, that the report of the Planning Commission recommending approval of Special Use Permit application PLSUP20180000310, filed by James C. Shaw, requesting Special Use Permits to operate a commercial recreational establishment (limited to indoor uses) and a restaurant in accordance with Article 3:J Section C, Item 2 and Item 13 of the Code of the City of Danville, Virginia 1986, as amended at 760, 762, 764 Westover Drive, otherwise known as Grid 0715, Block 003, Parcel 000007 of the City of Danville, Virginia Zoning District Map, is hereby received, subject to the following conditions:

1. Applicant must obtain all required building permits for the work that has been performed on the interior of the building and provide all required documentation and plans necessary for the issuance of said permits.
2. Applicant must obtain approvals and a certificate of occupancy prior to operation and occupancy of any sort which includes, but is not limited to private, invitation only events, private system testing, game burn in and tabletop playtesting / evaluations, and any other event held on site.
3. The buildings occupancy for the retail, restaurant, and gaming is set at a maximum of 80 persons per the building code.
4. A parking lot drawing, showing the location and dimensions of the minimum number of required spaces – which is 27, based on the buildings occupancy of 80 (1 space for every 3 persons) – must be provided and approved. All spaces must be appropriately striped and marked to meet code and the handicap accessible space must meet the ADA requirements.
5. There shall be no consumption or sale of alcohol on site, the condition being originally and voluntarily offered by the applicant.

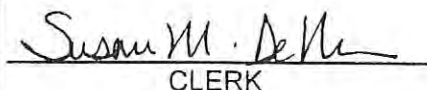
AND BE IT FURTHER ORDAINED THAT in consideration of said report and the public hearing this day held by Council, PLSUP20180000310, filed by James C Shaw, requesting Special Use Permits to operate a commercial recreational establishment (limited to indoor uses) and a restaurant in accordance with Article 3:J Section C, Item 2 and Item 13 of the Code of the City of Danville, Virginia 1986, as amended at 760, 762, 764 Westover Drive, otherwise known as Grid 0715, Block 003, Parcel 000007 of the City of Danville, Virginia Zoning District Map, is hereby granted and approved, subject to the following conditions:

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2. Applicant must obtain approvals and a certificate of occupancy prior to operation and occupancy of any sort which includes, but is not limited to private, invitation only events, private system testing, game burn in and tabletop playtesting / evaluations, and any other event held on site.
3. The buildings occupancy for the retail, restaurant, and gaming is set at a maximum of 80 persons per the building code.
4. A parking lot drawing, showing the location and dimensions of the minimum number of required spaces – which is 27, based on the buildings occupancy of 80 (1 space for every 3 persons) – must be provided and approved. All spaces must be appropriately striped and marked to meet code and the handicap accessible space must meet the ADA requirements.
5. There shall be no consumption or sale of alcohol on site, the condition being originally and voluntarily offered by the applicant.

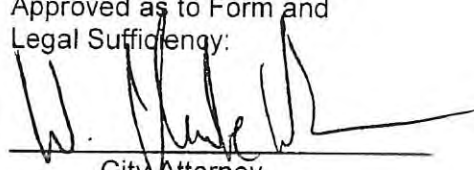
APPROVED:


MAYOR

ATTEST:


CLERK

Approved as to Form and
Legal Sufficiency:


City Attorney



City of Danville
427 Patton Street, Suite 208
Danville VA, 24541
Phone: (434) 799-5260

Board of Zoning Appeals

Board of Zoning Appeals
Meeting of October 17, 2019

SUBJECT:

Appeal Application number PLAZ20190000349, filed by Asif Bilal Khan on behalf of W Henry Hardy Inc, requesting an appeal an appeal of a final notice of zoning violation for North Main Texaco at 2434 N Main St, otherwise known as Grid 2810, Block 003, Parcel 000006 of the City of Danville, Virginia Zoning District Map. The applicant is requesting an appeal of a final notice of violation issued by the Zoning Administrator that a Special Use Permit is required for Commercial Indoor Recreation when one has not been issued to operate commercial indoor recreation machines.

BACKGROUND:

Appeal Application number PLAZ20190000349, filed by Asif Bilal Khan on behalf of W Henry Hardy Inc, requesting an appeal an appeal of a final notice of zoning violation for North Main Texaco at 2434 N Main St, otherwise known as Grid 2810, Block 003, Parcel 000006 of the City of Danville, Virginia Zoning District Map. The applicant is requesting an appeal of a final notice of violation issued by the Zoning Administrator that a Special Use Permit is required for Commercial Indoor Recreation when one has not been issued to operate commercial indoor recreation machines.

The applicant received a final notice of zoning violation that state a Special Use Permit for commercial recreation is required for any gaming activities at 2010 W Main St, which is located in the HR-C, Highway Retail Commercial District.

CONSIDERATIONS FOR AN APPEAL

The Zoning Administrator stated that the operation of gaming machines at this address requires a Special Use Permit for Commercial Recreation (Indoor). This use requires a Special Use Permit, which was not obtained. Therefore, the Zoning Administrator has found the subject property to be in violation of Article 3.M of the Zoning Ordinance, which states

ARTICLE 3.- HR-C, HIGHWAY RETAIL COMMERCIAL

C.- Uses Permitted by Special Use Permit.



City of Danville
427 Patton Street, Suite 208
Danville VA, 24541
Phone: (434) 799-5260

Board of Zoning Appeals

4. Commercial recreation facilities (indoor and outdoor).

The issue of the appeal is limited to whether or not the business is conducting activities permitted within the HR-C, Highway Retail Commercial District without a Special Use Permit.

The applicant is claiming that the operation of these machines is customary and incidental to the operation of a convenience store and does not require a Special Use Permit.

Article 15 of the Zoning Code defines Accessory and Accessory use:

Accessory. As applied to use or structure, means customarily subordinate or incidental to the primary use or structure, and on the premises of such primary use or structure. The phrase "on the premises of" means on the same lot or on the contiguous lot in the same ownership.

Accessory use. A use which is clearly incidental and subordinate to or customarily found in connection with and (**except where otherwise provided in the Ordinance**) is located on the same lot as the principal use on the premises. Those uses connected to the principal building by an open breezeway will be considered accessory uses.

Note the except "where otherwise provided in the Ordinance" Article 3.M.: Subsection C. – Uses Permitted by Special Use Permit. Item 4 reads as follows

C. - Uses Permitted by Special Use Permit.

An individual use otherwise permitted hereinabove by-right in the HR-C District, but having greater than 60,000 square feet gross floor area, **or any of the following uses:**

4. Commercial recreation facilities (indoor and outdoor).

The Code recognizes that Commercial recreation is not a standard use nor accessory as it is specifically listed in the Code to require a Special Use Permit. Special Use Permits are only to be granted by City Council per Article 6 of the Zoning Code.

The Zoning Administrator contends that City Council specifically listed this usage as not under the Accessory use definition, and requires the granting of a Special Use Permit prior to operation.

City Council has granted Special Use Permits for gaming machines at other locations. There have been the issuance of these permits at 140 Crown Drive and 618 Westover



City of Danville
427 Patton Street, Suite 208
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Phone: (434) 799-5260

Board of Zoning Appeals

Drive (see attached) as examples of City Councils desire to review and approve such uses within facilities. The 140 Crown Drive is a restaurant (Kick Back Jack's) while the Westover facility is a mixed-use operation with gaming and restaurant.

CONCLUSION:

The Zoning Administrator believes the following:

1. This use is Commercial in nature as funds are exchanged for profit
2. Recreation does not distinguish between games as it is played for pleasure, or for the potential monetary gain,
3. This facility is Indoor as it is within the structure at 2434 N Main St.

This use then requires the issuance of a Special Use Permit by Danville City Council, after review by the City Planning Commission in Accordance with Article 3.M; Section C, Item #4 of the Code of the City of Danville Virginia, 1986 as amended.

That the proper procedure for this case will be for the BZA to uphold the determination of the Zoning Administrator, and direct the applicant to apply for the required Special Use Permit.

It should be noted that the City Planning Commission has requested staff to review this section of the Zoning Code to clarify issues that have surfaced due to the large number of requests for Special Use Permits. Staff will be advertising for these code amendments to be discussed at the November Planning Commission meeting.

If the BZA believes there is any ambiguity in the wording of the Zoning Code, the proper procedure is to remand this case to the Planning Commission and City Council for review and clarification. Planning Commission has already requested that this be done.

Attachments:

1. Application
2. Property Ownership & Existing Zoning Map
3. Data Sheet
4. Existing Land Use Map (Aerial 2019)
5. Previously granted Special Use Permits for Indoor Recreation

CITY OF DANVILLE

APPEAL APPLICATION

MAKE CHECKS PAYABLE FOR \$206 TO THE CITY OF DANVILLE

IMPORTANT - PLEASE READ

Appeal application must be filed within thirty (30) days after the action being appealed.

No application for an appeal will be accepted for a Board of Zoning Appeals agenda unless the following conditions are met by the twentieth (20th) day of the month prior to a Board meeting which is held on the third Thursday of each month:

- a. All questions on this application have been fully answered.
- b. The application has been signed by the property owner or his/her agent, and property owner.
- c. A plot plan drawn to scale, showing the actual dimensions and shape of the lot, the exact size and location on the lot of all buildings and signs existing and proposed, and the location of all required parking spaces has been submitted (if applicable).

DATE FILED: _____

BZA

DATE: Sept. 19, 2019

APPLICATION NO. PLA22018000349

RECEIVED BY:

LOCATION: 2434 N Main St.

TAX MAP
NUMBER: 51115

ZONING

DISTRICT: _____

1. I (we) have applied for an appeal because of/on the following interpretation/determination:

There were games of skill machines at the convenience store and I/we received a notice of zoning violation that gaming is considered commercial recreation and a special use permit was required to operate the games on the property.

2. Date of interpretation/determination that is the subject of this appeal (attach copy of referenced letter or other dated material).

See Attached final notice of zoning violation, dated July 19, 2019

3. The administrative official based this interpretation/determination on the following ruling:

The official stated there was no record of an special use permit was required in the applicable zoning district.

4. I (we) feel that the administrative official was incorrect in their ruling
based on the following:

*Video games and other recreational games are common in
convenience stores such as this one and the games are a very
small part of the business. They are therefore allowed
because they are a customary and incidental accessory
use to the main and principal use as a convenience
store*

Any additional information, documents or pictures should be submitted with
the application to assist in the application process.

Please print and sign

ASIF BILAL KHAN
Applicant

2434 N.M. St. Danville, VA. 24540
Address

(434) 203-6095
Phone

sacredheart313@yahoo.com
Email


Signature and Date

08/15/2019

Property Owner (if owner is not applicant)

W. Henry Hardy Inc

Address

1912 Westover Drive Danville VA 24541

434-822-2691

Phone

hardy.petro1@gmail.com

Email

W. O. Hardy

8-15-19

Signature and Date



City of Danville
Community Development
Planning Division

FINAL NOTICE

July 19, 2019

RE: FINAL NOTICE OF ZONING VIOLATION AT NORTH MAIN TEXACO

Dear HARDY W HENRY INC of Pure Gas Station:

It has come to our attention that your business is conducting gaming operations at 2434 N Main St. Gaming is considered commercial recreation, which is not permitted by right at your location. This business is located in the HR-C, Highway Retail Commercial Zoning District, which is subject to regulations detailed in Article 3.M of the Zoning Ordinance. However, the gaming may be permitted with a Special Use Permit (permission from City Council). **Our office has no record of any such approval being granted by City Council for commercial recreation for your business.**

If you wish to obtain a Special Use Permit to allow commercial recreation, you may contact our office (info below) or visit <https://www.danville-va.gov/425/Planning-Zoning>. Special Use Permits are subject to a public hearing by Planning Commission, followed by a public hearing by City Council the following month. There is a \$360 filing fee to help cover legal advertising costs. This fee is not refundable if the City does not approve your request.

Additionally, our office has concerns that your gaming operations may constitute as illegal gambling. The Police Department has confirmed that you have 2 gaming machines, which may constitute as gambling devices. **Gambling is not a permitted use for this location.**

To comply with Zoning Code, you must **immediately stop any gaming and gambling operations. This includes removing any gaming devices.** You may choose to apply for a Special Use Permit to provide commercial recreation as part of your business. However, operation may not continue until approval is obtained.

You have the right to appeal this notification within thirty (30) days to the City of Danville Board of Zoning Appeals. Such appeal must be made to the Zoning Administrator and with the Board of Zoning Appeals in accordance with Article 13.I (2) of the Danville City Code and Section 15.2-2311 of the Code of Virginia. If this decision is not appealed within thirty (30) days, the decision shall be final and unappealable.

If you continue to illegally operate, the City has the right to void your business license and charge your business with a criminal misdemeanor. We look forward to your cooperation.

APPEAL REQUEST
DATA SHEET

PUBLIC HEARING DATE: 4pm on Thursday, October 17, 2019

LOCATION OF PROPERTY: 2434 N. Main St

PRESENT ZONE: HR-C Highway Retail Commercial

ACTION REQUESTED: Appeal from zoning violation notice regarding commercial recreation without a Special Use Permit

PRESENT USE OF PROPERTY: Convenience Store

PROPOSED USE OF PROPERTY: Convenience Store with indoor gaming

PROPERTY OWNER (S): Henry W. Hardy, Inc.

NAME OF APPLICANT (S): Asif Balai Khan

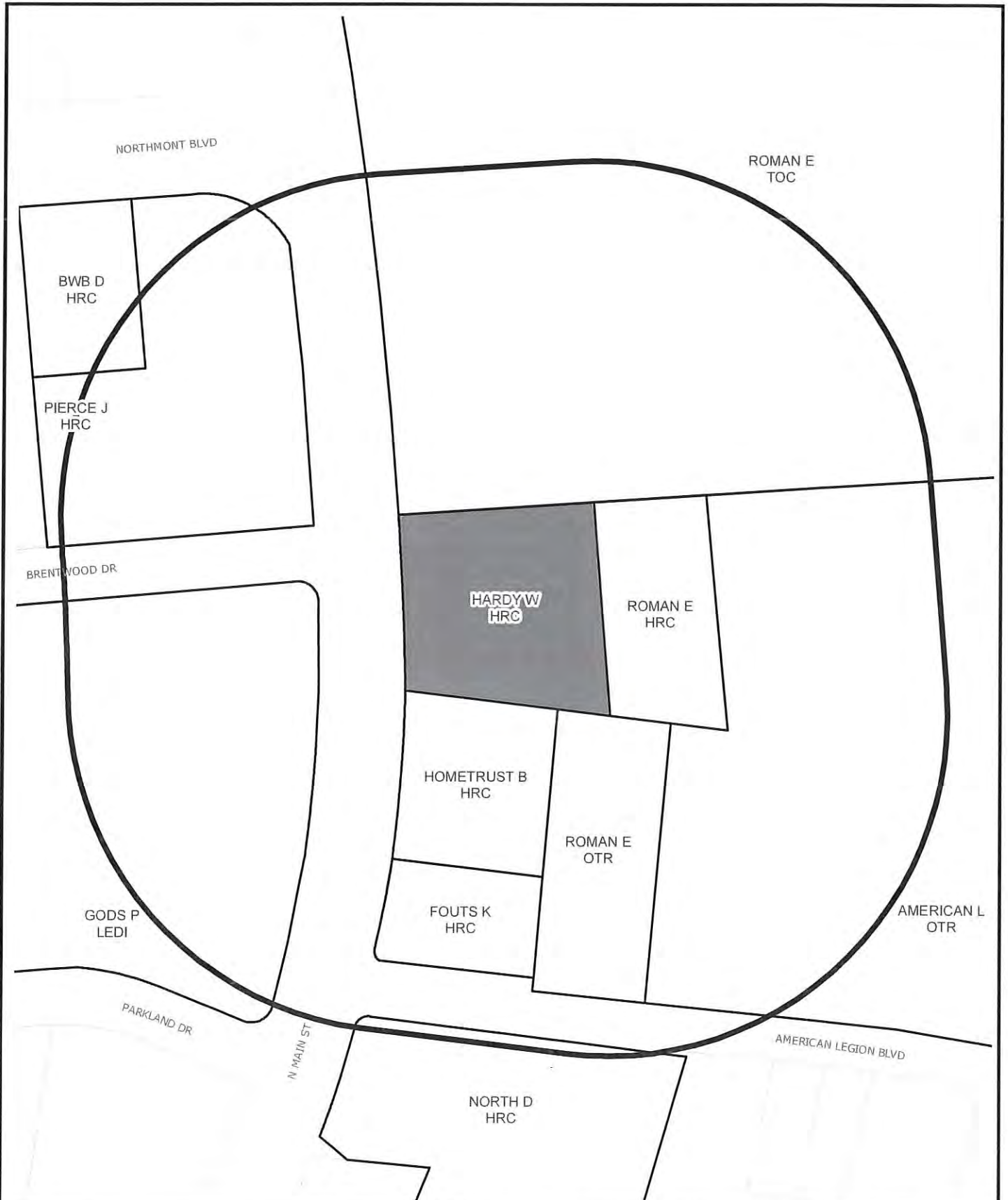
PROPERTY BORDERED BY: Nursing Home and commercial to the north, vacant land and American Legion to the east, commercial to the south, commercial and residential to the west.

ACREAGE: 0.61 acres

CHARACTER OF VICINITY: Commercial

INGRESS AND EGRESS: N. Main St.

TRAFFIC VOLUME: Moderate on N. Main St



SURROUNDING PROPERTY OWNERS AND ZONING WITHIN 300 FEET OF SUBJECT PROPERTY



Prepared by:
Planning Division
8/14/2019

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2019 AERIAL VIEW OF AREA SURROUNDING SUBJECT PROPERTY



Prepared by:
Planning Division
8/14/2019

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PRESENTED: March 2, 2010

ADOPTED: March 2, 2010

ORDINANCE NO. 2010- 03 . 03

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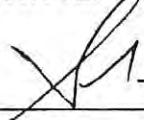
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3. The hours of operation shall be limited to Sunday thru Saturday 7 a.m. - 2 a.m.

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1. That the number of pool tables be limited to four (4).
2. The number of video games machines be limited to twenty (20).
3. The hours of operation shall be limited to Sunday thru Saturday 7 a.m. - 2 a.m.

APPROVED:



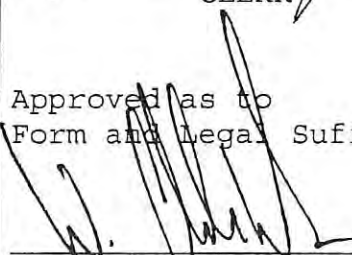
MAYOR

ATTEST:



CLERK

Approved as to
Form and Legal Sufficiency:



City Attorney

PRESENTED: January 3, 2019

ADOPTED: January 3, 2019

ORDINANCE NO. 2019 – 01.01

AN ORDINANCE GRANTING A SPECIAL USE PERMIT FOR A COMMERCIAL RECREATIONAL ESTABLISHMENT (LIMITED TO INDOOR USES) AND A RESTAURANT IN ACCORDANCE WITH ARTICLE 3:J SECTION C, ITEM 2 AND ITEM 13 OF THE CODE OF THE CITY OF DANVILLE, VIRGINIA 1986, AS AMENDED AT 760, 762, 764 WESTOVER DRIVE, OTHERWISE KNOWN AS GRID 0715, BLOCK 003, PARCEL 000007 OF THE CITY OF DANVILLE, VIRGINIA ZONING DISTRICT MAP.

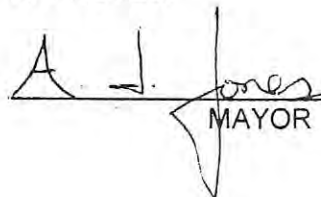
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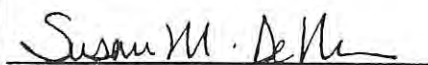
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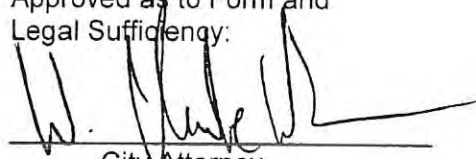
APPROVED:


MAYOR

ATTEST:


CLERK

Approved as to Form and
Legal Sufficiency:



City Attorney



City of Danville
427 Patton Street, Suite 208
Danville VA, 24541
Phone: (434) 799-5260

Board of Zoning Appeals

Board of Zoning Appeals

Meeting of October 17, 2019

SUBJECT:

Appeal Application number PLAZ20190000350, filed by Inam Qazi, requesting an appeal of a final notice of zoning violation for Carter's Quick Shop at 3103 W Main St, otherwise known as Grid 0505, Block 002, Parcel 000003 of the City of Danville, Virginia Zoning District Map. The applicant is requesting an appeal of a final notice of violation issued by the Zoning Administrator that a Special Use Permit is required for Commercial Indoor Recreation when one has not been issued to operate commercial indoor recreation machines.

BACKGROUND:

Appeal Application number PLAZ20190000350, filed by Inam Qazi, requesting an appeal of a final notice of zoning violation for Carter's Quick Shop at 3103 W Main St, otherwise known as Grid 0505, Block 002, Parcel 000003 of the City of Danville, Virginia Zoning District Map. The applicant is requesting an appeal of a final notice of violation issued by the Zoning Administrator that a Special Use Permit is required for Commercial Indoor Recreation when one has not been issued to operate commercial indoor recreation machines.

The applicant received a final notice of zoning violation that state a Special Use Permit for commercial recreation is required for any gaming activities at 2010 W Main St, which is located in the HR-C, Highway Retail Commercial District.

CONSIDERATIONS FOR AN APPEAL

The Zoning Administrator stated that the operation of gaming machines at this address requires a Special Use Permit for Commercial Recreation (Indoor). This use requires a Special Use Permit, which was not obtained. Therefore, the Zoning Administrator has found the subject property to be in violation of Article 3.M of the Zoning Ordinance, which states

ARTICLE 3.- HR-C, HIGHWAY RETAIL COMMERCIAL

C.- Uses Permitted by Special Use Permit.

4. Commercial recreation facilities (indoor and outdoor).



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Board of Zoning Appeals

The issue of the appeal is limited to whether or not the business is conducting activities permitted within the HR-C, Highway Retail Commercial District without a Special Use Permit.

The applicant is claiming that the operation of these machines is customary and incidental to the operation of a convenience store and does not require a Special Use Permit.

Article 15 of the Zoning Code defines Accessory and Accessory use:

Accessory. As applied to use or structure, means customarily subordinate or incidental to the primary use or structure, and on the premises of such primary use or structure. The phrase "on the premises of" means on the same lot or on the contiguous lot in the same ownership.

Accessory use. A use which is clearly incidental and subordinate to or customarily found in connection with and (**except where otherwise provided in the Ordinance**) is located on the same lot as the principal use on the premises. Those uses connected to the principal building by an open breezeway will be considered accessory uses.

Note the except "where otherwise provided in the Ordinance" Article 3.M.; Subsection C. – Uses Permitted by Special Use Permit. Item 4 reads as follows

C. - Uses Permitted by Special Use Permit.

An individual use otherwise permitted hereinabove by-right in the HR-C District, but having greater than 60,000 square feet gross floor area, **or any of the following uses:**

4. Commercial recreation facilities (indoor and outdoor).

The Code recognizes that Commercial recreation is not a standard use nor accessory as it is specifically listed in the Code to require a Special Use Permit. Special Use Permits are only to be granted by City Council per Article 6 of the Zoning Code.

The Zoning Administrator contends that City Council specifically listed this usage as not under the Accessory use definition, and requires the granting of a Special Use Permit prior to operation.

City Council has granted Special Use Permits for gaming machines at other locations. There have been the issuance of these permits at 140 Crown Drive and 618 Westover Drive (see attached) as examples of City Councils desire to review and approve such



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Board of Zoning Appeals

uses within facilities. The 140 Crown Drive is a restaurant (Kick Back Jack's) whiles the Westover facility is a mixed-use operation with gaming and restaurant.

CONCLUSION:

The Zoning Administrator believes the following:

1. This use is Commercial in nature as funds are exchanged for profit
2. Recreation does not distinguish between games as it is played for pleasure, or for the potential monetary gain,
3. This facility is Indoor as it is within the structure at 3103 W Main St.

This use then requires the issuance of a Special Use Permit by Danville City Council, after review by the City Planning Commission in Accordance with Article 3.M; Section C, Item #4 of the Code of the City of Danville Virginia, 1986 as amended.

That the proper procedure for this case will be for the BZA to uphold the determination of the Zoning Administrator, and direct the applicant to apply for the required Special Use Permit.

It should be noted that the City Planning Commission has requested staff to review this section of the Zoning Code to clarify issues that have surfaced due to the large number of requests for Special Use Permits. Staff will be advertising for these code amendments to be discussed at the November Planning Commission meeting.

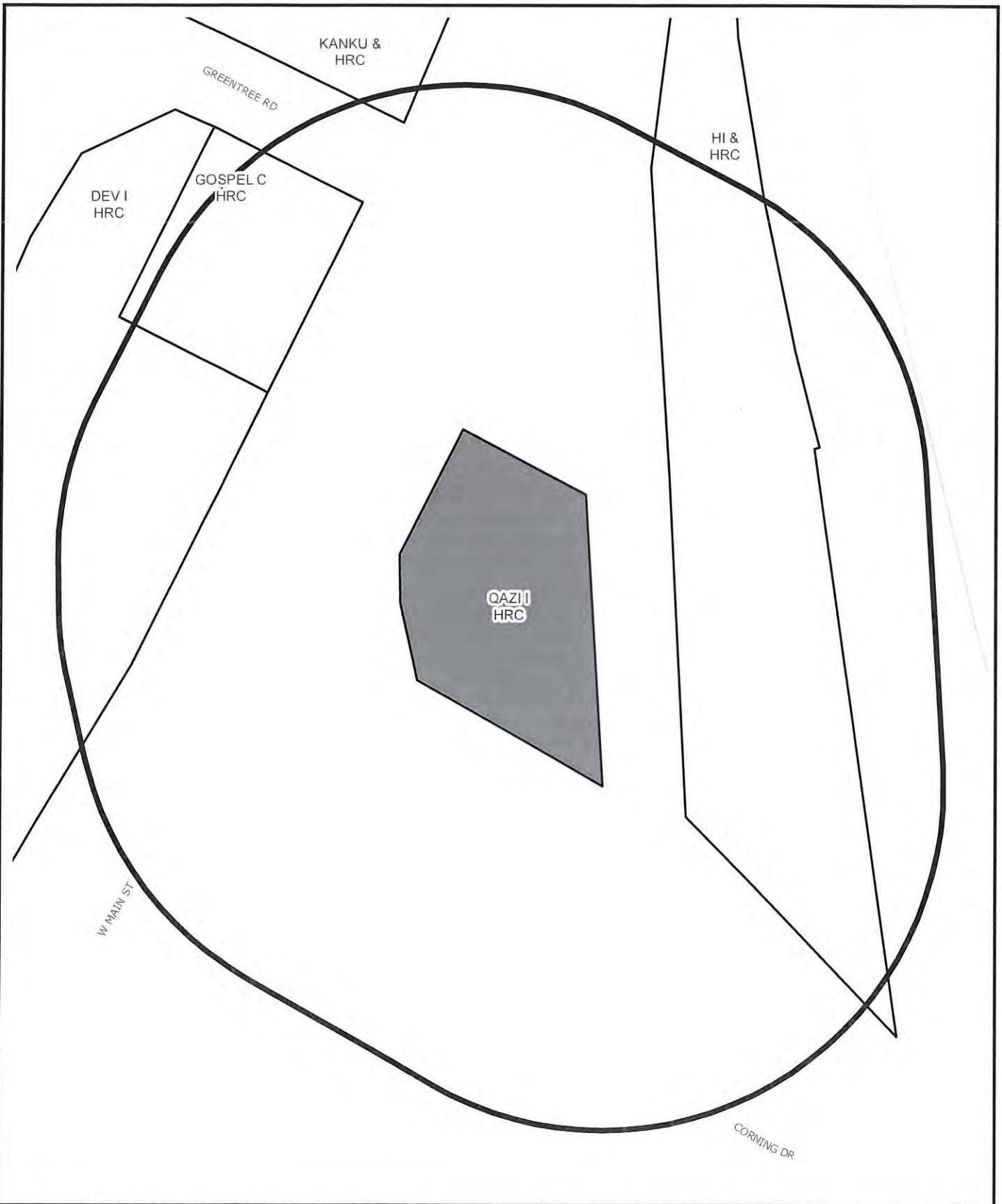
If the BZA believes there is any ambiguity in the wording of the Zoning Code, the proper procedure is to remand this case to the Planning Commission and City Council for review and clarification. Planning Commission has already requested that this be done.

Attachments:

1. Application
2. Property Ownership & Existing Zoning Map
3. Data Sheet
4. Existing Land Use Map (Aerial 2019)
5. Previously granted Special Use Permits for Indoor Recreation

APPEAL REQUEST
DATA SHEET

PUBLIC HEARING DATE:	4pm on Thursday, October 17, 2019
LOCATION OF PROPERTY:	3103 W. Main St
PRESENT ZONE:	HR-C Highway Retail Commercial
ACTION REQUESTED:	Appeal from zoning violation notice regarding commercial recreation without a Special Use Permit
PRESENT USE OF PROPERTY:	Convenience Store
PROPOSED USE OF PROPERTY:	Convenience Store with indoor gaming
PROPERTY OWNER (S):	Inam Qazi
NAME OF APPLICANT (S):	same
PROPERTY BORDERED BY:	Commercial to the north, east, and west, US29 ramp to the south
ACREAGE:	.83 acres
CHARACTER OF VICINITY:	Commercial
INGRESS AND EGRESS:	Corning Dr.
TRAFFIC VOLUME:	Low



SURROUNDING PROPERTY OWNERS AND ZONING WITHIN 300 FEET OF SUBJECT PROPERTY



Prepared by:
Planning Division
8/20/2019

Disclaimer: Information contained on this map is to be used for reference purposes only. The City of Danville is not responsible for any inaccuracies herein contained. The City of Danville makes no representation of warranty as to this map's accuracy, and in particular, its accuracy in labeling, dimensions, contours, property boundaries, or placement or location of any map features thereon. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, use or misuse of the information herein provided.



2019 AERIAL VIEW OF AREA SURROUNDING SUBJECT PROPERTY



Prepared by:
Planning Division
8/20/2019

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CITY OF DANVILLE
APPEAL APPLICATION

MAKE CHECKS PAYABLE FOR \$206 TO THE CITY OF DANVILLE

IMPORTANT - PLEASE READ

Appeal application must be filed within thirty (30) days after the action being appealed.

No application for an appeal will be accepted for a Board of Zoning Appeals agenda unless the following conditions are met by the twentieth (20th) day of the month prior to a Board meeting which is held on the third Thursday of each month:

- a. All questions on this application have been fully answered.
- b. The application has been signed by the property owner or his/her agent, and property owner.
- c. A plot plan drawn to scale, showing the actual dimensions and shape of the lot, the exact size and location on the lot of all buildings and signs existing and proposed, and the location of all required parking spaces has been submitted (if applicable).

DATE FILED: _____ BZA

DATE: Sept 19, 2019

APPLICATION NO. PLA22019000350 RECEIVED BY:
Sept. 19, 2019

LOCATION: 3103 W Main St

TAX MAP
NUMBER: 75363

ZONING
DISTRICT: _____

1. I (we) have applied for an appeal because of/on the following interpretation/determination:

There were games of skill machines at the convenience store and I/we received a notice of zoning violation that gaming is considered commercial recreation and a special use permit was required to operate the games on the property.

2. Date of interpretation/determination that is the subject of this appeal (attach copy of referenced letter or other dated material).

See Attached final notice of zoning violation, dated July 19, 2019

3. The administrative official based this interpretation/determination on the following ruling:

The official stated there was no record of a special use permit was required in the applicable zoning district.

4. I (we) feel that the administrative official was incorrect in their ruling
based on the following:

Video games and other recreational games are common in convenience stores such as this one and the games are a very small part of the business. They are therefore allowed because they are a customary and incidental accessory use to the main and principal use as a convenience store

Any additional information, documents or pictures should be submitted with the application to assist in the application process.
Please print and sign

Inam Qazi
Applicant

3103 W. Main Street Danville VA 24541
Address

732-423-8505
Phone

Inam Qazi 44 @ hotmail.com
Email


Signature and Date

8-15-19

Property Owner (if owner is not applicant)

Address

Phone

Email

Signature and Date



City of Danville
Community Development
Planning Division

FINAL NOTICE

July 19, 2019

RE: FINAL NOTICE OF ZONING VIOLATION AT 3103 W MAIN ST

Dear QAZI INAM U of Carters Quick Shop:

Phone # 732-423-8505

It has come to our attention that your business is conducting gaming operations at 3103 W Main St. Gaming is considered commercial recreation, which is not permitted by right at your location. This business is located in the HR-C, Highway Retail Commercial Zoning District, which is subject to regulations detailed in Article 3.M of the Zoning Ordinance. However, the gaming may be permitted with a Special Use Permit (permission from City Council). **Our office has no record of any such approval being granted by City Council for commercial recreation for your business.**

If you wish to obtain a Special Use Permit to allow commercial recreation, you may contact our office (info below) or visit <https://www.danville-va.gov/425/Planning-Zoning>. Special Use Permits are subject to a public hearing by Planning Commission, followed by a public hearing by City Council the following month. There is a \$360 filing fee to help cover legal advertising costs. This fee is not refundable if the City does not approve your request.

Additionally, our office has concerns that your gaming operations may constitute as illegal gambling. The Police Department has confirmed that you have 1 gaming machines, which may constitute as gambling devices. **Gambling is not a permitted use for this location.**

To comply with Zoning Code, you must **immediately stop any gaming and gambling operations. This includes removing any gaming devices.** You may choose to apply for a Special Use Permit to provide commercial recreation as part of your business. However, operation may not continue until approval is obtained.

You have the right to appeal this notification within thirty (30) days to the City of Danville Board of Zoning Appeals. Such appeal must be made to the Zoning Administrator and with the Board of Zoning Appeals in accordance with Article 13.I (2) of the Danville City Code and Section 15.2-2311 of the Code of Virginia. If this decision is not appealed within thirty (30) days, the decision shall be final and unappealable.

If you continue to illegally operate, the City has the right to void your business license and charge your business with a criminal misdemeanor. We look forward to your cooperation.

PRESENTED: March 2, 2010

ADOPTED: March 2, 2010

ORDINANCE NO. 2010- 03 . 03

AN ORDINANCE GRANTING A SPECIAL USE PERMIT TO ALLOW FOR COMMERCIAL INDOOR RECREATION SUBJECT TO CONDITIONS IN ACCORDANCE WITH ARTICLE 3.N, SECTION C, ITEM 4, OF CHAPTER 41 OF THE CODE OF THE CITY OF DANVILLE, VIRGINIA, 1986, AS AMENDED, AT 140 CROWN DRIVE.

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Danville, Virginia, that the report of the City Planning Commission recommending approval, subject to conditions, of Special Use Permit Application SUP 10-002, filed by Tripps Properties, III, requesting a Special Use Permit to allow for commercial indoor recreation in accordance with Article 3.N, Section C, Item 4, of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended, at 140 Crown Drive, otherwise known as Grid 1709, Block 002, Parcel 000003 of the City of Danville, Virginia, Zoning District Map be, and the same is hereby, received and said conditions as stipulated by the Planning Commission being as follows:

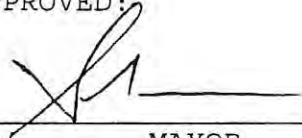
1. That the number of pool tables be limited to four (4).
2. The number of video games machines be limited to twenty (20).
3. The hours of operation shall be limited to Sunday thru Saturday 7 a.m. - 2 a.m.

AND BE IT FURTHER ORDAINED that in consideration of said report and the public hearing this day held by Council,

Special Use Permit Application SUP 10-002, filed by Tripps Properties, III, requesting a Special Use Permit to allow for commercial indoor recreation in accordance with Article 3.N, Section C, Item 4, of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended, at 140 Crown Drive, otherwise known as Grid 1709, Block 002, Parcel 000003 of the City of Danville, Virginia, Zoning District Map, is hereby granted and approved subject to the following conditions:

1. That the number of pool tables be limited to four (4).
2. The number of video games machines be limited to twenty (20).
3. The hours of operation shall be limited to Sunday thru Saturday 7 a.m. - 2 a.m.

APPROVED:



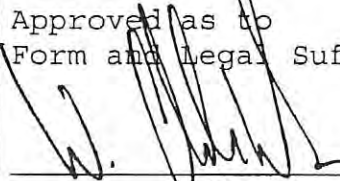
MAYOR

ATTEST:



CLERK

Approved as to
Form and Legal Sufficiency:



City Attorney

PRESENTED: January 3, 2019

ADOPTED: January 3, 2019

ORDINANCE NO. 2019 – 01.01

AN ORDINANCE GRANTING A SPECIAL USE PERMIT FOR A COMMERCIAL RECREATIONAL ESTABLISHMENT (LIMITED TO INDOOR USES) AND A RESTAURANT IN ACCORDANCE WITH ARTICLE 3:J SECTION C, ITEM 2 AND ITEM 13 OF THE CODE OF THE CITY OF DANVILLE, VIRGINIA 1986, AS AMENDED AT 760, 762, 764 WESTOVER DRIVE, OTHERWISE KNOWN AS GRID 0715, BLOCK 003, PARCEL 000007 OF THE CITY OF DANVILLE, VIRGINIA ZONING DISTRICT MAP.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Danville, Virginia, that the report of the Planning Commission recommending approval of Special Use Permit application PLSUP20180000310, filed by James C. Shaw, requesting Special Use Permits to operate a commercial recreational establishment (limited to indoor uses) and a restaurant in accordance with Article 3:J Section C, Item 2 and Item 13 of the Code of the City of Danville, Virginia 1986, as amended at 760, 762, 764 Westover Drive, otherwise known as Grid 0715, Block 003, Parcel 000007 of the City of Danville, Virginia Zoning District Map, is hereby received, subject to the following conditions:

1. Applicant must obtain all required building permits for the work that has been performed on the interior of the building and provide all required documentation and plans necessary for the issuance of said permits.
2. Applicant must obtain approvals and a certificate of occupancy prior to operation and occupancy of any sort which includes, but is not limited to private, invitation only events, private system testing, game burn in and tabletop playtesting / evaluations, and any other event held on site.
3. The buildings occupancy for the retail, restaurant, and gaming is set at a maximum of 80 persons per the building code.
4. A parking lot drawing, showing the location and dimensions of the minimum number of required spaces – which is 27, based on the buildings occupancy of 80 (1 space for every 3 persons) – must be provided and approved. All spaces must be appropriately striped and marked to meet code and the handicap accessible space must meet the ADA requirements.
5. There shall be no consumption or sale of alcohol on site, the condition being originally and voluntarily offered by the applicant.

AND BE IT FURTHER ORDAINED THAT in consideration of said report and the public hearing this day held by Council, PLSUP20180000310, filed by James C Shaw, requesting Special Use Permits to operate a commercial recreational establishment (limited to indoor uses) and a restaurant in accordance with Article 3:J Section C, Item 2 and Item 13 of the Code of the City of Danville, Virginia 1986, as amended at 760, 762, 764 Westover Drive, otherwise known as Grid 0715, Block 003, Parcel 000007 of the City of Danville, Virginia Zoning District Map, is hereby granted and approved, subject to the following conditions:

1. Applicant must obtain all required building permits for the work that has been performed on the interior of the building and provide all required documentation and plans necessary for the issuance of said permits.
2. Applicant must obtain approvals and a certificate of occupancy prior to operation and occupancy of any sort which includes, but is not limited to private, invitation only events, private system testing, game burn in and tabletop playtesting / evaluations, and any other event held on site.
3. The buildings occupancy for the retail, restaurant, and gaming is set at a maximum of 80 persons per the building code.
4. A parking lot drawing, showing the location and dimensions of the minimum number of required spaces – which is 27, based on the buildings occupancy of 80 (1 space for every 3 persons) – must be provided and approved. All spaces must be appropriately striped and marked to meet code and the handicap accessible space must meet the ADA requirements.
5. There shall be no consumption or sale of alcohol on site, the condition being originally and voluntarily offered by the applicant.

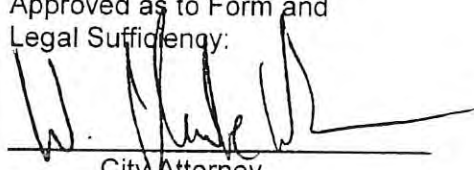
APPROVED:


MAYOR

ATTEST:


CLERK

Approved as to Form and
Legal Sufficiency:



City Attorney



City of Danville
427 Patton Street, Suite 208
Danville VA, 24541
Phone: (434) 799-5260

Board of Zoning Appeals

Board of Zoning Appeals
Meeting of October 17, 2019

SUBJECT:

Appeal Application number PLAZ20190000351, Arshad K Khan on behalf of KFG Properties LLC, requesting an appeal of a final notice of zoning violation for Skyview at 1131 South Boston Rd, otherwise known as Grid 2716, Block 008, Parcel 000006 of the City of Danville, Virginia Zoning District Map. The applicant is requesting an appeal of a final notice of violation issued by the Zoning Administrator that a Special Use Permit is required for Commercial Indoor Recreation when one has not been issued to operate commercial indoor recreation machines.

BACKGROUND:

Arshad K Khan on behalf of KFG Properties LLC, is requesting an appeal of a final notice of zoning violation for Skyview at 1131 South Boston Rd, otherwise known as Grid 2716, Block 008, Parcel 000006 of the City of Danville, Virginia Zoning District Map. The applicant is requesting an appeal of a final notice of violation issued by the Zoning Administrator that a Special Use Permit is required for Commercial Indoor Recreation when one has not been issued to operate commercial indoor recreation machines.

The applicant received a final notice of zoning violation that state a Special Use Permit for commercial recreation is required for any gaming activities at 1311 South Boston Road, which is located in the HR-C, Highway Retail Commercial District.

CONSIDERATIONS FOR AN APPEAL

The Zoning Administrator stated that the operation of gaming machines at this address requires a Special Use Permit for Commercial Recreation (Indoor). This use requires a Special Use Permit, which was not obtained. Therefore, the Zoning Administrator has found the subject property to be in violation of Article 3.M of the Zoning Ordinance, which states

ARTICLE 3.- HR-C, HIGHWAY RETAIL COMMERCIAL

C.- Uses Permitted by Special Use Permit.

4. Commercial recreation facilities (indoor and outdoor).



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Board of Zoning Appeals

The issue of the appeal is limited to whether or not the business is conducting activities permitted within the HR-C, Highway Retail Commercial District without a Special Use Permit.

The applicant is claiming that the operation of these machines is customary and incidental to the operation of a convenience store and does not require a Special Use Permit.

Article 15 of the Zoning Code defines Accessory and Accessory use:

Accessory. As applied to use or structure, means customarily subordinate or incidental to the primary use or structure, and on the premises of such primary use or structure. The phrase "on the premises of" means on the same lot or on the contiguous lot in the same ownership.

Accessory use. A use which is clearly incidental and subordinate to or customarily found in connection with and (**except where otherwise provided in the Ordinance**) is located on the same lot as the principal use on the premises. Those uses connected to the principal building by an open breezeway will be considered accessory uses.

Note the except "where otherwise provided in the Ordinance" Article 3.M., Subsection C. – Uses Permitted by Special Use Permit. Item 4 reads as follows

C. - Uses Permitted by Special Use Permit.

An individual use otherwise permitted hereinabove by-right in the HR-C District, but having greater than 60,000 square feet gross floor area, **or any of the following uses:**

4. Commercial recreation facilities (indoor and outdoor).

The Code recognizes that Commercial recreation is not a standard use nor accessory as it is specifically listed in the Code to require a Special Use Permit. Special Use Permits are only to be granted by City Council per Article 6 of the Zoning Code.

The Zoning Administrator contends that City Council specifically listed this usage as not under the Accessory use definition, and requires the granting of a Special Use Permit prior to operation.

City Council has granted Special Use Permits for gaming machines at other locations. There have been the issuance of these permits at 140 Crown Drive and 618 Westover Drive (see attached) as examples of City Councils desire to review and approve such



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Board of Zoning Appeals

uses within facilities. The 140 Crown Drive is a restaurant (Kick Back Jack's) while the Westover facility is a mixed-use operation with gaming and restaurant.

CONCLUSION:

The Zoning Administrator believes the following:

1. This use is Commercial in nature as funds are exchanged for profit
2. Recreation does not distinguish between games as it is played for pleasure, or for the potential monetary gain,
3. This facility is Indoor as it is within the structure at 1131 South Boston Road.

This use then requires the issuance of a Special Use Permit by Danville City Council, after review by the City Planning Commission in Accordance with Article 3.M; Section C, Item #4 of the Code of the City of Danville Virginia, 1986 as amended.

That the proper procedure for this case will be for the BZA to uphold the determination of the Zoning Administrator, and direct the applicant to apply for the required Special Use Permit.

It should be noted that the City Planning Commission has requested staff to review this section of the Zoning Code to clarify issues that have surfaced due to the large number of requests for Special Use Permits. Staff will be advertising for these code amendments to be discussed at the November Planning Commission meeting.

If the BZA believes there is any ambiguity in the wording of the Zoning Code, the proper procedure is to remand this case to the Planning Commission and City Council for review and clarification. Planning Commission has already requested that this be done.

Attachments:

1. Application
2. Property Ownership & Existing Zoning Map
3. Data Sheet
4. Existing Land Use Map (Aerial 2019)
5. Previously granted Special Use Permits for Indoor Recreation

CITY OF DANVILLE

APPEAL APPLICATION

MAKE CHECKS PAYABLE FOR \$206 TO THE CITY OF DANVILLE

IMPORTANT - PLEASE READ

Appeal application must be filed within thirty (30) days after the action being appealed.

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- a. All questions on this application have been fully answered.
- b. The application has been signed by the property owner or his/her agent, and property owner.
- c. A plot plan drawn to scale, showing the actual dimensions and shape of the lot, the exact size and location on the lot of all buildings and signs existing and proposed, and the location of all required parking spaces has been submitted (if applicable).

DATE FILED: _____

BZA

DATE: Sept. 19, 2015

APPLICATION NO. PLA22014000351

RECEIVED BY:

LOCATION: 1131 South Boston Rd.

TAX MAP

NUMBER: _____

ZONING
DISTRICT: _____

1. I (we) have applied for an appeal because of/on the following interpretation/determination:

There were games of skill machines at the convenience store and I/we received a notice of zoning violation that gaming is considered commercial recreation and a special use permit was required to operate the games on the property.

2. Date of interpretation/determination that is the subject of this appeal (attach copy of referenced letter or other dated material).

See Attached final notice of zoning violation, dated July 19, 2019

3. The administrative official based this interpretation/determination on the following ruling:

The official stated there was no record of an special use permit was required in the applicable zoning district.

4. I (we) feel that the administrative official was incorrect in their ruling based on the following:

Video games and other recreational games are common in convenience stores such as this one and the games are a very small part of the business. They are therefore allowed because they are a customary and incidental Accessory use to the main and principal use as a convenience store.

Any additional information, documents or pictures should be submitted with the application to assist in the application process.

Please print and sign

ARSHAD K KHAN

Applicant

1131 South Boston RD Danville VA 24540

Address

(434) 770-9974

Phone

Arshad_Hajikh@Yahoo.com

Email

Arshad Khan

8/14/2019

Signature and Date

Property Owner (if owner is not applicant)

1225 Front Stre Danville VA 24540
Address

434-441-7013
Phone

m791958@yahoo.com
Email


Signature and Date

8/4/19



ARSHAD K KHAN
(434) 770 9974

2364 AFTON RD
DANVILLE VA 24540

City of Danville
Community Development
Planning Division

FINAL NOTICE

July 19, 2019

RE: FINAL NOTICE OF ZONING VIOLATION AT 1131 SOUTHBOSTON RD

Dear KFG PROPERTIES LLC of Skyview:

It has come to our attention that your business is conducting gaming operations at 1131 Southboston Rd. Gaming is considered commercial recreation, which is not permitted by right at your location. This business is located in the HR-C, Highway Retail Commercial Zoning District, which is subject to regulations detailed in Article 3.M of the Zoning Ordinance. However, the gaming may be permitted with a Special Use Permit (permission from City Council). **Our office has no record of any such approval being granted by City Council for commercial recreation for your business.**

If you wish to obtain a Special Use Permit to allow commercial recreation, you may contact our office (info below) or visit <https://www.danville-va.gov/425/Planning-Zoning>. Special Use Permits are subject to a public hearing by Planning Commission, followed by a public hearing by City Council the following month. There is a \$360 filing fee to help cover legal advertising costs. This fee is not refundable if the City does not approve your request.

Additionally, our office has concerns that your gaming operations may constitute as illegal gambling. The Police Department has confirmed that you have 1 gaming machines, which may constitute as gambling devices. **Gambling is not a permitted use for this location.**

To comply with Zoning Code, you must **immediately stop any gaming and gambling operations. This includes removing any gaming devices.** You may choose to apply for a Special Use Permit to provide commercial recreation as part of your business. However, operation may not continue until approval is obtained.

You have the right to appeal this notification within thirty (30) days to the City of Danville Board of Zoning Appeals. Such appeal must be made to the Zoning Administrator and with the Board of Zoning Appeals in accordance with Article 13.I (2) of the Danville City Code and Section 15.2-2311 of the Code of Virginia. If this decision is not appealed within thirty (30) days, the decision shall be final and unappealable.

If you continue to illegally operate, the City has the right to void your business license and charge your business with a criminal misdemeanor. We look forward to your cooperation.

APPEAL REQUEST
DATA SHEET

PUBLIC HEARING DATE: 4pm on Thursday, October 17, 2019

LOCATION OF PROPERTY: 1131 S. Boston Rd.

PRESENT ZONE: HR-C Highway Retail Commercial

ACTION REQUESTED: Appeal from zoning violation notice regarding commercial recreation without a Special Use Permit

PRESENT USE OF PROPERTY: Convenience store

PROPOSED USE OF PROPERTY: Convenience store with indoor gaming

PROPERTY OWNER (S): KFG Properties LLC

NAME OF APPLICANT (S): Arshad Khan

PROPERTY BORDERED BY: Residential to the north, church to the east, mixed commercial and residential to the south, and residential and vacant land to the west.

ACREAGE: .45 Acres

CHARACTER OF VICINITY: Mixed commercial and residential

INGRESS AND EGRESS: South Boston Road

TRAFFIC VOLUME: Heavy



SURROUNDING PROPERTY OWNERS AND ZONING WITHIN 300 FEET OF SUBJECT PROPERTY

Prepared by:
Planning Division
8/19/2019

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2019 AERIAL VIEW OF AREA SURROUNDING SUBJECT PROPERTY



Prepared by:
Planning Division
8/19/2019

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PRESENTED: March 2, 2010

ADOPTED: March 2, 2010

ORDINANCE NO. 2010- 03 . 03

AN ORDINANCE GRANTING A SPECIAL USE PERMIT TO ALLOW FOR COMMERCIAL INDOOR RECREATION SUBJECT TO CONDITIONS IN ACCORDANCE WITH ARTICLE 3.N, SECTION C, ITEM 4, OF CHAPTER 41 OF THE CODE OF THE CITY OF DANVILLE, VIRGINIA, 1986, AS AMENDED, AT 140 CROWN DRIVE.

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Danville, Virginia, that the report of the City Planning Commission recommending approval, subject to conditions, of Special Use Permit Application SUP 10-002, filed by Tripps Properties, III, requesting a Special Use Permit to allow for commercial indoor recreation in accordance with Article 3.N, Section C, Item 4, of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended, at 140 Crown Drive, otherwise known as Grid 1709, Block 002, Parcel 000003 of the City of Danville, Virginia, Zoning District Map be, and the same is hereby, received and said conditions as stipulated by the Planning Commission being as follows:

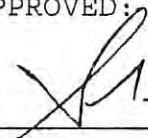
1. That the number of pool tables be limited to four (4).
2. The number of video games machines be limited to twenty (20).
3. The hours of operation shall be limited to Sunday thru Saturday 7 a.m. - 2 a.m.

AND BE IT FURTHER ORDAINED that in consideration of said report and the public hearing this day held by Council,

Special Use Permit Application SUP 10-002, filed by Tripps Properties, III, requesting a Special Use Permit to allow for commercial indoor recreation in accordance with Article 3.N, Section C, Item 4, of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended, at 140 Crown Drive, otherwise known as Grid 1709, Block 002, Parcel 000003 of the City of Danville, Virginia, Zoning District Map, is hereby granted and approved subject to the following conditions:

1. That the number of pool tables be limited to four (4).
2. The number of video games machines be limited to twenty (20).
3. The hours of operation shall be limited to Sunday thru Saturday 7 a.m. - 2 a.m.

APPROVED:



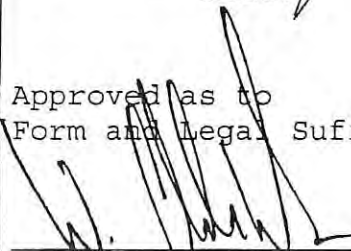
MAYOR

ATTEST:



CLERK

Approved as to
Form and Legal Sufficiency:



City Attorney

PRESENTED: January 3, 2019

ADOPTED: January 3, 2019

ORDINANCE NO. 2019 – 01.01

AN ORDINANCE GRANTING A SPECIAL USE PERMIT FOR A COMMERCIAL RECREATIONAL ESTABLISHMENT (LIMITED TO INDOOR USES) AND A RESTAURANT IN ACCORDANCE WITH ARTICLE 3:J SECTION C, ITEM 2 AND ITEM 13 OF THE CODE OF THE CITY OF DANVILLE, VIRGINIA 1986, AS AMENDED AT 760, 762, 764 WESTOVER DRIVE, OTHERWISE KNOWN AS GRID 0715, BLOCK 003, PARCEL 000007 OF THE CITY OF DANVILLE, VIRGINIA ZONING DISTRICT MAP.

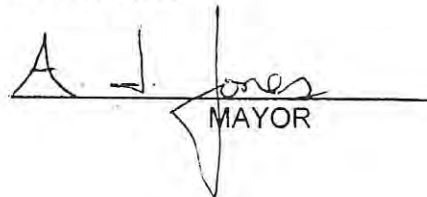
NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Danville, Virginia, that the report of the Planning Commission recommending approval of Special Use Permit application PLSUP20180000310, filed by James C. Shaw, requesting Special Use Permits to operate a commercial recreational establishment (limited to indoor uses) and a restaurant in accordance with Article 3:J Section C, Item 2 and Item 13 of the Code of the City of Danville, Virginia 1986, as amended at 760, 762, 764 Westover Drive, otherwise known as Grid 0715, Block 003, Parcel 000007 of the City of Danville, Virginia Zoning District Map, is hereby received, subject to the following conditions:

1. Applicant must obtain all required building permits for the work that has been performed on the interior of the building and provide all required documentation and plans necessary for the issuance of said permits.
2. Applicant must obtain approvals and a certificate of occupancy prior to operation and occupancy of any sort which includes, but is not limited to private, invitation only events, private system testing, game burn in and tabletop playtesting / evaluations, and any other event held on site.
3. The buildings occupancy for the retail, restaurant, and gaming is set at a maximum of 80 persons per the building code.
4. A parking lot drawing, showing the location and dimensions of the minimum number of required spaces – which is 27, based on the buildings occupancy of 80 (1 space for every 3 persons) – must be provided and approved. All spaces must be appropriately striped and marked to meet code and the handicap accessible space must meet the ADA requirements.
5. There shall be no consumption or sale of alcohol on site, the condition being originally and voluntarily offered by the applicant.

AND BE IT FURTHER ORDAINED THAT in consideration of said report and the public hearing this day held by Council, PLSUP20180000310, filed by James C Shaw, requesting Special Use Permits to operate a commercial recreational establishment (limited to indoor uses) and a restaurant in accordance with Article 3:J Section C, Item 2 and Item 13 of the Code of the City of Danville, Virginia 1986, as amended at 760, 762, 764 Westover Drive, otherwise known as Grid 0715, Block 003, Parcel 000007 of the City of Danville, Virginia Zoning District Map, is hereby granted and approved, subject to the following conditions:

1. Applicant must obtain all required building permits for the work that has been performed on the interior of the building and provide all required documentation and plans necessary for the issuance of said permits.
2. Applicant must obtain approvals and a certificate of occupancy prior to operation and occupancy of any sort which includes, but is not limited to private, invitation only events, private system testing, game burn in and tabletop playtesting / evaluations, and any other event held on site.
3. The buildings occupancy for the retail, restaurant, and gaming is set at a maximum of 80 persons per the building code.
4. A parking lot drawing, showing the location and dimensions of the minimum number of required spaces – which is 27, based on the buildings occupancy of 80 (1 space for every 3 persons) – must be provided and approved. All spaces must be appropriately striped and marked to meet code and the handicap accessible space must meet the ADA requirements.
5. There shall be no consumption or sale of alcohol on site, the condition being originally and voluntarily offered by the applicant.

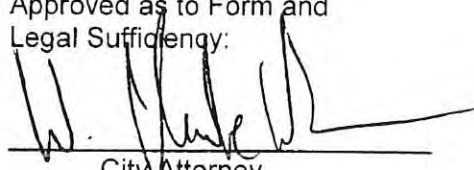
APPROVED:


MAYOR

ATTEST:


CLERK

Approved as to Form and
Legal Sufficiency:


City Attorney

BOARD OF ZONING APPEALS MEETING

September 19, 2019

Members Present

Gus Dolianitis
Ann Sasser Evans
John Hiltzheimer
Gus Dyer
Lawrence Meder
Nicole Garrison

Members Absent

Michael Nicholas

Staff

Ken Gillie
Bonnie Case
Clarke Whitfield

Chairman Dyer called the meeting to order at 4:00 p.m.

I. ITEMS FOR PUBLIC HEARING

- 1) *Appeal Application Number PLAZ20190000305, filed by Eric Sherrell on behalf of PN Trading VA LLC, requesting an appeal of zoning violation notice and revocation of business license clearance effective July 17, 2019 for PN Trading VA LLC at 1311 Piney Forest Rd Suite E, otherwise known as Grid 1808, Block 101, Parcel 000001 of the City of Danville, Virginia Zoning District Map. The applicant is requesting an appeal of a final notice of violation issued by the Zoning Administrator that the operation is a commercial indoor recreation facility and requires a Special Use Permit when one has not been issued.*

Mr. Dyer opened the Public Hearing.

The applicant was not present.

Mr. Dyer asked if there were any questions for staff.

Ms. Evans asked about the photo of the promissory note.

Mr. Gillie stated the applicant claimed they were a financial institution and the promissory notes constituted that being a financial institution. Staffs argument is that it is a type of recreation because just like the other games you are still playing to obtain these so it is commercial because they make money at it and it's recreation because it's a game that's indoors and thus requires a special use permit.

Mr. Dyer opened the Public Hearing.

William Shewmake from Woods Rogers law firm in Richmond spoke and stated that I do not represent anyone here at all. What I would like to do if I could is hopefully provide a preview of something that's coming down the pipe. I represent a number of convenience

stores that are attempting to file an appeal of zoning violations coming up with several games. What I am trying to point out today is that I understand what is happening here is this was a room dedicated to games of skill, which would be principal use of what you'll hear in a couple of weeks. There is a legal distinction between a convenience store which is attempting to have one or two and a room which is attempting to have principal use of those types of issues. There is a concept called customary incidental accessory use. We believe what you will be hearing in the future is that machines at a convenience store is a customary incidental accessory use and is much like any other video game would be or an ATM machine would be. Included in our appeal is a brief memorandum which has a number of case cited in it for both Virginia and elsewhere.

Mr. Dyer closed the Public Hearing.

Mr. Dyer stated that I think it is important that we need to make sure that we are not judging whether this is gambling or not. We are here to determine whether this is commercial indoor recreation which does require a Special Use Permit. Since there was not anyone here that wanted to make an argument that it is not commercial indoor recreation simply by stating what it is, it is indoors, it is commercial, they make money off of it and it is recreation.

Ms. Garrison asked for clarification on what did the applicant other than a financial institution say this business was. Did they just indicate the games were not games?

Mr. Gillie stated they never indicated the games were not games. They claimed they got a zoning clearance that was for that facility and it was a financial institution. When we went there, the argument was these games are not illegal, this is not gambling. I'm not here to argue whether they are gambling or not. You've got recreational facilities inside, it's commercial, it's indoors and it's recreation. Your own sign on the wall says these are games. You can't have it. You don't have a Special Use Permit and you should not be operating.

Ms. Garrison stated she wondered if they had an alternate suggestion for what they were.

Mr. Gillie stated they were notified to come to this meeting. They received letters and everything else.

Mr. Dyer stated I also want to make the distinction that this is not just the principal occupation in this space. They don't sell snacks, sell gas or do anything else other than provide these games. Is that correct?

Mr. Gillie stated that's all that is there.

Ms. Evans stated does a business license not require that you state what type of business it is?

Mr. Gillie stated I wasn't the one that issued the business license. One of my staff did. My staff conveyed to me that they were financial services. Financial Services are permitted in that district and they were given a zoning clearance. We then subsequently

received complaints about the operations at the facility and investigated and found all these and advised them that this is not what you said. This is commercial indoor recreation and requires a Special Use Permit.

Ms. Evans stated I'm assuming there is a form that you complete.

Mr. Gillie stated no, the applicant just comes down and notifies us of what they will be doing. We wouldn't have known about this if we didn't received complaints about the operation facility.

Ms. Evans stated so the application received stated financial services.

Mr. Gillie stated they came and spoke to us. They don't have to turn in an application. They meet face to face with staff. Then a staff member asks what are you doing and where at.

Mr. Dyer stated they did obtain a business license. What staff is saying is that their description of what the business is does not match the reality of what their business model is.

Mrs. Evans made a motion to uphold the decision of the Zoning Administrator that this is indoor commercial recreation for Appeal Application PLAZ20190000305. Mrs. Garrison seconded the motion. The motion was approved by a 6-0 vote.

- 2) *Appeal Application Number PLAZ20190000341, filed by Gentry Locke on behalf of Queen of Virginia Skill & Entertainment, LLC on behalf of PFJ Southeast LLC Store #256, requesting an appeal of a zoning violation notice effective July 19, 2019 on PFJ Southeast LLC Store #256 at 110 River Point Dr, otherwise known as Grid 3713, Block 006, Parcel 000001 of the City of Danville, Virginia Zoning District W-1. The applicant is requesting an appeal of a final notice of violation issued by the Zoning Administrator that a Special Use Permit is required for Commercial Indoor Recreation when one has not been issued to operate commercial indoor recreation machines.*

Present to speak on behalf of this request was Max Weigard, attorney with Gentry Locke. Mr. Weigard stated I'm just here to clarify my client's position. I represent Queen of Virginia Skill & Entertainment, LLC. Pilot, which is the owner and operator of the truck stop and travel center where they have two games received a notice of violation. My client in working with Pilot elected to submit an appeal simply to preserve certain rights. Since we have filed that appeal within that thirty day window that we had to do so, my client submitted a Special Use Permit application and when we did so we asked to continue the Board of Zoning appeals hearing and if we are successful with our Special Use Permit application, the appeal will not be necessary. I have sent emails to Mr. Gillie clarifying our position that we did not want to withdraw our application but do wish to have it postponed while the Special Use Permit application runs its course.

Mr. Gillie stated that all the neighbors have been notified that they had withdrawn and they are just going a different route.

Mr. Weigard clarified they are not operating games at this point.

Ms. Evans made a motion to continue with Appeal Application Number PLAZ20190000341. Ms. Garrison seconded the motion. The motion was approved with a 6-0 vote.

II. APPROVAL OF MINUTES

The June 20, 2019 minutes were approved by a unanimous vote.

III. OTHER BUSINESS

Ms. Evans asked if there are any cases for next month.

Mr. Gillie stated yes so plan on having a meeting next month on October 17th.

With no further business, the meeting adjourned at 4:20 p.m.

APPROVED