



BOARD OF ADJUSTMENT

Development Services

112 Goldsboro Street E, Wilson, NC 27893

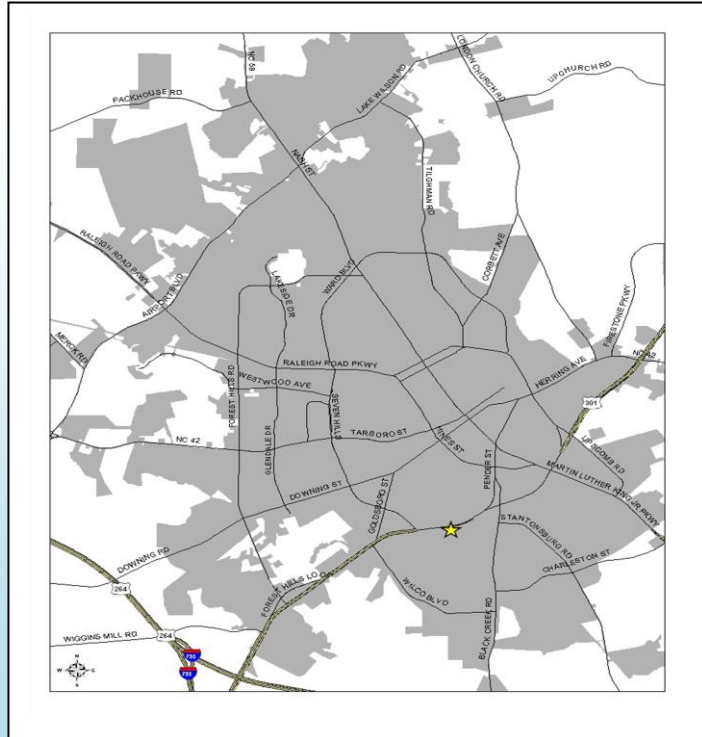
PO Box 10, Wilson, NC 27894-0010

(252) 399-2220

www.WilsonNC.org

PROJECT: 21-475
AGENDA ITEM # 1
PIN # 3721-42-7947.000
DATE: December 21, 2021

DESCRIPTION:
A request by James O. and Evelyn J. Ward for a Special Use Permit to allow a Sweepstakes Facility/Adult Arcade at 1730 Black Creek Rd, S in a HI (Heavy Industrial) zone.



STAFF ANALYSIS:

In its review of the request, the Land Development Staff made the following “findings of fact” and suggests that the Board, likewise, include these among any specific “findings of fact” that they make regarding this case. Any such “findings of fact” should be made by separate motion(s) and vote(s) prior to any motion and vote to grant or deny the permit.

Board of Adjustment – Special Use Permit
1730 Black Creek Road – Sweepstakes Facility/Adult Arcade
December 21, 2021

Photos of Property





STAFF FINDINGS

FACT 1: The property in question is located at 1730 Black Creek Road, S,

in Wilson County, North Carolina.

FACT 2: The property is also known as 3721-42-7947.000 (PIN).

FACT 3: The property is zoned HI (Heavy Industrial).

The surrounding properties are zoned:

North: HI (Heavy Industrial) and HC (Highway Commercial)

South: HI (Heavy Industrial)

East: HI (Heavy Industrial) and LI (Light Industrial)

West: HI (Heavy Industrial)

FACT 4: Section 2.7.3 of the City of Wilson Unified Development Ordinance (UDO) includes a “Use Table”. That table lists a “Sweepstakes Facility/Adult Arcade”, subject to a special use permit, and subject to the requirements of Section 3.5.5 as a use permitted in the HI zone.

FACT 5: Section 17.3 of the City of Wilson UDO is entitled “Definitions, Use Types.” It includes the following definition for “Sweepstakes Facility and Adult Arcade”

SWEEPSTAKES FACILITIES Any business enterprise where persons utilize computers, gaming terminals, or other electronic machines to conduct games of chance, including sweepstakes, and where cash, merchandise or other items of value are redeemed or otherwise distributed, whether or not the value of such distribution is determined by electronic games played or by predetermined odds. This does not include any lottery approved by the State of North Carolina.

ADULT ARCADES Any business enterprise, whether as a principal or accessory use, where persons utilize computers, gaming terminals, or other electronic machines to conduct games of skill, and where cash, merchandise or other items of value are redeemed or otherwise distributed, whether or not the value of such distribution is determined by electronic games played or by predetermined odds, and where the maximum value earned by any play of the game may exceed the cost for that play of the game. This does not include any lottery approved by the State of North Carolina or traditional claw-type games. For purposes of this definition, a game of skill is one in which the element of skill is the dominating element that determines the result of the game. For purposes of this ordinance, ADULT ARCADES shall be regulated similarly to SWEEPSTAKES FACILITIES

FACT 6: Sweepstake Facilities/Adult Arcades are also subject to the requirements of Section 3.5.5 of the UDO which states:

3.5.5 SWEEPSTAKES FACILITY/ADULT ARCADE

A. General Standards

1. Selling and/or consuming alcoholic beverages are prohibited in sweepstakes facilities.

This condition applies to this request. Selling/consumption of alcohol on the premises is not permitted.

2. Persons under the age of 16 are prohibited from entering the premises during regular school hours as defined by the Wilson County Board of Education.

This condition applies to this request and must be enforced.

- #### **B. Separation Requirement: All sweepstakes facilities shall be located at least 250 feet from any school, church, or residential use.**

This condition applies to this request. According to the city's records, this facility is at least 250 feet from any school, church, or residential use.

- #### **C. Hours of Operation: In issuing a Special Use Permit for this use, the Board shall consider the surroundings and restrict the hours of operation of the business if they deem it warranted.**

This condition applies to this request. The Board may impose hours of operation if deemed warranted by the Board. No hours of operation have been imposed on existing sweepstakes facilities due to the isolation of the use in only the HI zones.

- #### **D. Amortization of Existing Uses: All uses meeting the definition of Sweepstakes Facilities as defined in Chapter 17 of this ordinance that were legitimately established prior to December 11, 2009 shall cease operations and close or be brought into compliance with the provisions of this ordinance by midnight, December 31, 2012.**

This condition does not apply to this request.

FACT 7: Section 9.4.1 of the UDO lists the parking requirements for Sweepstakes Facilities/Adult Arcades. One parking space per simultaneous players is required.

A site plan must be submitted to the Technical Review Committee for review and approval prior to issuance of any development permits.

FACT 8: Construction Standards and Fire have indicated that the proposed use will be a change of use of the structure. Construction Plans will be required prior to issuance of any permits for the improvements.

FACT 9: This property is not located within the FEMA designated floodway and 100-year floodplain.

FACT 10: Section 15.10.2.E of the UDO, pertaining to the issuance of special use permits, reads as follows:

1. That the proposed special use conforms to the character of the neighborhood, considering the location, type and height of buildings or structures and the type and extent of landscaping on the site;
2. That adequate measures will be taken to provide ingress and egress so designed as to minimize traffic hazards and to minimize traffic congestion on the public roads;
3. That adequate utilities (water, sewer, drainage, electric, etc.) are available for the proposed use;
4. That the proposed use will not be noxious or offensive by reason of vibration, noise, odor, dust, smoke or gas;
5. That the establishment of the proposed use will not impede the orderly development and improvement of surrounding property for uses permitted within the land development district;
6. That the establishment, maintenance and/or operation of the proposed use will not be detrimental to or endanger the public health, safety or general welfare; and
7. That the establishment will be operated in compliance with all local, state and federal laws and will not become a nuisance by creating criminal activity or public disturbance.

PROCEDURE: The Board must proceed in accordance with Section 15.10.2.E as quoted in Fact 10.

RECOMMENDATION: Staff recommends the Board proceed as follows:

- Move that Facts 1-10 in the staff findings be adopted as “findings of fact” of the Board (motion-second-and vote).

- Move to Conclude:
 1. that the requested permit is within the jurisdiction of the Board to issue;
 2. that the application is complete; and
 3. that if completed as proposed in the application and in compliance with the recommended conditions, the development will comply with the requirements of the Unified Development Ordinance.

- Move to grant the Special Use Permit subject to the following conditions:
 1. The applicant and operator of the establishment shall fully comply with all of the requirements of the order, including, but not limited to, any other applicable state or local rules, ordinances, laws and regulations of whatever nature.
 2. If any of the conditions affixed to the permit or any part thereof shall be held invalid or void, then the permit shall become void and of no effect.
 3. The applicant shall comply with all applicable requirements of Section 3.5.5 of the Unified Development Ordinance.
 4. All signs shall comply with Section 11 of the Unified Development Ordinance and acquire a sign permit. Please contact the Permit Desk for additional information at (252)399-2220.
 5. A site plan is required to be submitted to the Technical Review Committee. The Special Use Permit is granted for a Sweepstakes Facility/Adult Arcade with an equal ratio of parking spaces to simultaneous player(s) on premise as shown on the most recently approved Technical Review Committee (TRC) site plan, ONLY.
 6. Any gaming units not in use cannot be stored on site except, with prior notification to Land Development in cases where existing machines are switched out or replaced. This process from notification to removal shall not exceed 7 calendar days.
 7. Architectural plans shall be submitted to Construction Standards and Fire for review and approval. The Fire Marshal and Construction Standards staff must conduct inspections of the

improvements of the premises prior to the opening of business. Please contact the Permit Desk for additional information at (252)399-2220.

8. The applicant does agree that he/she has read and understood the above-listed information, and does hereby expressly reaffirm, consent to, agree to abide by, and remain in compliance with the plan(s), requirements and/or conditions listed therein and that he/she shall conduct such business in full compliance with all local, state, and federal laws and regulations applicable thereto. The applicant further acknowledges and agrees that the City of Wilson makes no representation or acknowledgement that the business is in compliance with said laws and regulations.
9. The Special Use Permit will expire on third Tuesday of March 2024. The applicant must submit an application for renewal to the Development Services Department by the third Tuesday in January 2024.