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|  | DEVELOPMENT REVIEW COMMITTEE REPORT AND RECOMMENDATION |
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Subject/Agenda Item:

Resolution 2022-47: Special Exception for Indoor Recreation Amusement Use

Consideration of Approval: A request from Aaron Taylor, agent for 3757 Military Trail LLC, for Special Exception approval for an Indoor Recreation Amusement use. The proposed use is within the Warbanks Plaza, at 3757 South Military Trail.

Recommendation to APPROVE

Recommendation to DENY

Quasi-Judicial

Legislative

Public Hearing

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| <p>Originating Department:</p> <p>Planning, GIS & Engineering</p> <p>Project Manager</p> <p>_____</p> <p>Caryn Gardner-Young, AICP Zoning Administrator</p> | <p>Reviewed By:</p> <p>Interim Director Development and Neighborhood Services</p> <p>_____</p> <p>Denise Malone</p> |
| <p>Approved By:</p> <p>City Manager</p> <p>_____</p> <p>Andrea McCue</p> | <p>Public Notice:</p> <p><input checked="" type="checkbox"/> Required <input type="checkbox"/> Not Required</p> <p>Dates:</p> <p>Paper: Lake Worth Herald</p> <p>Mailing</p> <p><input checked="" type="checkbox"/> Required <input type="checkbox"/> Not Required</p> <p>Notice Distance: <u>300'</u></p> |

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| <p>Attachments:</p> <ul style="list-style-type: none"> • Resolution 2022-47 • Site Plan / Floor Plan | <p>City Council Action:</p> <p><input type="checkbox"/> Approval <input type="checkbox"/> Approve with conditions <input type="checkbox"/> Denial <input type="checkbox"/> Continued to: _____</p> |
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I. Executive Summary

The applicant is requesting a Special Exception approval to allow the relocation and expansion of an internet café/arcade use from a 1,700 square foot inline bay to an existing 2,016 square foot inline bay in the same plaza - Warbanks Plaza (SE-22-02). The use most similar to the proposed use, video game arcade, is included within the definition of an Indoor Recreational Amusement in Sections 16-1 of the City Code.

II. Site Data:

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| Existing Use: | Commercial |
| Proposed Use: | Indoor Recreational Amusement |
| Parcel Control Number: | 18-42-44-24-00-000-7150 |
| Parcel Size: | 1.04 acres |
| Future Land Use Designation: | Commercial (CM) |
| Zoning District: | Commercial Intensive (CI) |

| Direction | Existing Land Use | Future Land Use | Zoning District |
|------------------|---|---|--|
| <i>North</i> | Offices | City Commercial (CM) | City Commercial Intensive (CI) |
| <i>South</i> | Retail | City Commercial (CM) | City Commercial Intensive (CI) |
| <i>East</i> | Commercial, Vacant | Village of Palm Springs (COM) | Village of Palm Springs (CG) |
| <i>West</i> | Multi-family development (Whispering Winds) | City Residential Medium Density (RS-MD) | City Residential Medium Density (RM-2) |

III. Annexation/Zoning History:

The Palm Beach County Property Appraiser’s Office indicates that the existing commercial building was built in 1984 and that it is currently 10,465 square feet. The subject property was annexed into the City of Greenacres as petition ANX-10-03 on November 1, 2010, through Ordinance 2010-28. At the same time, the City Council approved a future land use designation of Commercial (CM) as petition CPA-10-07 through Ordinance 2010-29 and a zoning designation of Commercial Intensive (CI) as petition ZC-10-07 through Ordinance 2010-30. In conjunction with the annexation, the existing approved Palm Beach County site plan was accepted as a valid City site plan and a case number of SP-10-05 assigned for filing and tracking purposes. On October 16, 2016, a Special Exception to allow an Indoor Recreational Amusement use, under the name Get Hooked Arcade, was approved by the City Council (SE 16-02). This approval was for only 1,700 square feet.

IV. Applicable City Code Provisions:

Sec. 16-1 pertaining to Definitions

Sec. 16-171 through 16-178 pertaining to Special Exceptions

Sec. 16-496 through 16-506 pertaining to the Commercial Intensive (CI) zoning district

Sec. 16-736 through 16-737 pertaining to Transitional Areas

Sec. 16-1241 through 16-1312 pertaining to landscaping

Sec. 16- 1331 through 16-1340 pertaining to off-street parking

V. Staff Analysis:

Background:

The proposed Special Exception is to move an existing Indoor Recreational Amusement use from a 1,700 square foot inline bay to an existing 2,016 square foot inline bay in the same plaza - Warbanks Plaza. The applicant is not proposing any changes to the exterior of the building nor is the applicant adding additional machines (Maintaining a maximum of 50 machines). Indoor Recreational Amusement use is an allowed use as a Special Exception in the CI district per Section 16-499(20). The use most similar to the proposed use, video game arcade, is included within the definition of an Indoor Recreational Amusement in Section 16-1 of the City Code:

“Indoor recreational amusement shall mean establishments engaged in providing entertainment indoors for a fee or admission charge, including such activities as bowling, pool, billiards, arcades which feature coin or token-operated devices or similar devices, such as pinball and video games, with three (3) or more devices, and bingo halls.”

“Arcade, game / video shall mean any establishment, room, place or business location in which there are available to the public more than three (3) coin- or token-operated amusement devices which are coin- or token-operated or where a fee is charged for the operation of such devices.”

“Amusement device / coin- or token-operated shall mean any amusement machine or device operated by means of insertion of a coin, token, or similar object for the purpose of amusement or skill, or for the playing of which, a fee is charged...”

Chapter 546.10 of the Florida Statutes clarifies the operation and use of amusement games or machines and provides regulations to distinguish the use from prohibited gambling:

(3)(a) “Amusement game or machine” means a game or machine operated only for the bona fide entertainment of the general public which a person activates by inserting or using currency or a coin, card, coupon, slug, token, or similar device, and, by the application of skill, with no material element of chance inherent in the game or machine, the person playing or operating the game or machine controls the outcome of the game....

(3)(b) “Arcade amusement center” means a place of business having at least 50 amusement games or machines on premises which is operated for the entertainment of the general public and tourists as a bona fide amusement facility.

The applicant has stated the amusement center will cater to adults over 18 years of age. The center will have fifty (50) amusement machines in a combination of traditional arcade equipment and/ or computerized games which, as stated by the applicant, the games allow the player to influence the results through the application of skills. Winnings are paid out in the form of printed vouchers, which can be redeemed for prizes such as merchandise or for additional games; these vouchers cannot be redeemed for cash.

According to Section 16-737(2) f, video game arcades are prohibited within the Transitional Area where CI zoning abuts residential zoning. The subject bay lies outside the Transitional Area but the existing building is located within the Transitional Area. While the proposed use is most similar to a video game arcade, it has a few substantial differences. The proposed use, as conditioned below, will be for adults only rather than the children typically present at video game arcades and the machines used by the business are quieter than typical video game arcade machines. In reviewing the basis for prohibiting video game arcades in the Transitional Area, the analysis and public hearing minutes associated with the most recent relevant code amendment (ZTA-93-02, Ordinance 93-22) are instructive. The main factors used to determine which uses would be prohibited in the Transitional Area were noise, alcoholic beverage sales, and late hours. The proposed use, as presented by the applicant and as conditioned below, adequately distinguishes itself from the prohibited uses by being for adults, thus avoiding noisy teen crowds and child-oriented machines, and by having no alcohol and not having late hours. Thus, the prohibition in Section 16-737(2)f should not apply.

A similar Special Exception request was filed in 2021. The petition was recommended for approval by the Planning and Zoning Board of Appeals. When it came before the City Council, questions arose in regard to the condition of the site and whether the property owner obtained required building permits for the new tenant space. The actions that have been taken since the last attempt to obtain this Special Exception are as follows:

1. Permit for Interior Electrical & Sign Electrical has been issued. Final Inspection was passed on September 14, 2022. A sign permit for a new sign will have to be pulled. The owner has contacted 3 different sign companies and none of them will do As-Built drawing and pull a permit for a sign they did not fabricate or install. The existing sign has been removed, until a sign company can provide permit plans and submit a permit for a brand-new sign.
2. Agent has sent an email to the Landlord and informed him of the city's concerns for the Plaza's maintenance.

On September 9, and 15, 2022, the Development Review Committee reviewed this petition and recommended approval subject to the conditions contained in this staff report.

Development Review Committee Comments:

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| Planning, GIS, and Engineering Division: | Incorporated into Staff Report |
| Building Department: | Incorporated into Staff Report |
| Fire Rescue Department: | No objections. |
| Public Works Department: | No objections. |
| PBSO District 16: | No objections. |
| Community & Rec Services Department: | No objections |

Plan Details:

The petitioner's concept plan stamp-dated August 11, 2022, depicts the following:

1. A floor area of 2,016 square feet.
2. Floor Plan indicating a Game Room containing a total of 50 amusement machines.
3. Two restrooms.

VI. Special Exception Criteria and Findings of Fact:

1. The proposed use complies with all relevant elements of the Comprehensive Plan;

Finding: The proposed Indoor Recreation Amusement center complies with Future Land Use Element Objectives 1 and 6; Intergovernmental Element Objective 3; and Transportation Element Goal 1, Objective 4 of the City of Greenacres' Comprehensive Plan. The request complies with the objectives and policies of the City of Greenacres' Comprehensive Plan directing commercial activities to appropriate areas. An Indoor Recreational Amusement is allowed subject to Special Exception approval in the Commercial Intensive (CI) zoning district.

2. Ingress and egress to the property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe will not be adversely affected by the proposed special exception;

Finding: The proposed Special Exception is to relocate and convert the tenant space within an existing commercial building to an Indoor Recreational Amusement. As such, no changes are being proposed for the existing vehicular circulation of the subject site. A traffic study demonstrates that the impacts of the change in use of part of the plaza and increase in square footage for the use will not result in additional traffic so roadway capacity is adequate.

3. Off-street parking and loading is provided where required, with particular attention to the items in (2) above will not adversely affect public health and safety;

Finding: The building was originally approved for retail uses. Per Table 16-1336(B) of the Zoning Code, Retail and Indoor Recreational Amusement have similar parking requirements. Therefore, there will be no impact on the required parking and an additional loading space is not necessary.

4. Refuse and service areas provided with particular reference to items (2) & (3) above will not adversely affect public health and safety.

Finding: The City's franchise hauler will serve the site for all refuse collection. Trash generation by the proposed use is not expected to be excessive in comparison to retail uses. One dumpster is located to the rear of the building that will provide an adequate storage area for refuse and will not adversely affect public health and safety.

5. The proposed use will not create a nuisance factor detrimental to adjacent and nearby properties and the City as a whole;

Finding: The proposed development as conditioned below will not create a nuisance factor that is detrimental to adjacent and nearby properties. The building is located along Military Trail. This Palm Beach County Urban Principal Arterial is a major commercial thoroughfare in the local area, with commercial uses occupying both sides of the road. The proposed use is located adjacent to Offices to the north which are located at the northwest corner of Bowman Street and Military Trail. Immediately south of the proposed use is a commercial property with Retail uses and a multi-family development to the west. Across Military Trail to the east is a commercial building (vacant) in the Village of Palm Springs. The proposed use is being relocated closer to Military Trail and further away from the residential properties immediately to the west of the shopping center. However, the residential properties will still be separated from the tenant space by a 6-foot-high masonry wall, an approximately 5-foot-wide landscape buffer, and a 20-foot-wide drive aisle area. With the separation and buffering described, and the conditions listed below, the proposed use will not create any off-site impacts in excess of the existing retail approval.

6. The location, availability, and compatibility of utilities for the requested use will not adversely affect public health and safety;

Finding: The plaza already exists and is served by utilities; therefore, the proposal will not adversely affect public health and safety in this regard.

7. The screening and buffering of the requested use are consistent with the applicable zoning requirements relative to type, dimension, and character;

Finding: The proposed Special Exception is to convert approximately 2,016 sq. ft. of existing inline retail space to an Indoor Recreational Amusement use. The existing setbacks are adequate for the existing plaza and for the proposed use as described in criterion number (5) above and as conditioned below. As such, no changes are being proposed for the existing setbacks. The landscape buffers along the rights-of-way are existing and are not being modified as part of this request.

8. Signs and proposed exterior lighting is provided with reference to glare, traffic safety and economic effect, and compatibility and harmony with properties in the district;

Finding: All building identification signs shall meet the requirements of the City's Zoning Code. All exterior lighting shall meet City code requirements for limiting spill onto adjacent neighboring residential areas and onto major roads.

9. The requested use appears to meet the required yards and other open space;

Findings: Warbanks Plaza has an approved site plan and contains legal non-conforming structures in regard to yard and open space requirements. No exterior modifications are proposed, and thus there is no impact on required setbacks and lot coverage.

10. Proposed general use is compatible with adjoining properties and other property in the district;

Finding: The proposed Indoor Recreational Amusement as described in this staff report, and as conditioned below, is compatible with the uses in the surrounding area, is consistent with the prevailing commercial character of the area and is allowed as a Special Exception under the Commercial Intensive (CI) zoning district regulations. Off-site impacts greater than those associated with other uses permitted in the CI district are not expected.

11. The change suggested is not out-of-scale with the needs of the neighborhood or the City;

Finding: The proposed Indoor Recreational Amusement is in scale with the surrounding needs of the neighborhood. The applicant has stated that the use will provide a recreational opportunity for the senior and retiree community.

12. The requested use and structure is consistent with any special requirements set out in the Schedule of District Regulations for the particular use and structure involved;

Finding: There are no special requirements for an Indoor Recreational Amusement in a Commercial Intensive (CI) zoning district, and the proposal meets the intent of the Transitional Area requirements by restricting access to adults 18 years of age or older and prohibiting alcohol sales as conditioned below.

VII. Staff Recommendation:

Approval of SE-22-02 through adoption of Resolution 2022- 47 with the following conditions:

1. The most stringent requirements of Exhibit "A" Development Review Committee Staff Report and Recommendation dated September 15, 2022, as amended, and Exhibit "B" Site and Development Plan stamp-dated August 11, 2022, as hereafter defined shall apply. (Planning)
2. The Special Exception is limited to the described Indoor Recreational Amusement operation. Changes to another type of Indoor Recreational Amusement will require a new Special Exception. (Planning)
3. Hours of operation shall be limited to between 10:00 a.m. and 12:00 midnight, seven days a week. (Building)
4. In accord with the requirements of 546.10(3), (5)(b), (6)(a) and (7) of the Florida Statutes, the Indoor Recreational Amusement shall comply with the following (Building and PBSO):
 - a. All games shall be activated by inserting or using currency or a coin, card, coupon, slug, token, or similar device;
 - b. All games shall require the application of skill in order to win, with no material element of chance inherent in the game or machine;
 - c. All games shall award points or coupons only; machines shall not pay out in cash;
 - d. Points or coupons may be exchanged for merchandise only, excluding cash, gift

- cards and certificates, alcoholic beverage, tobacco products, an item or device that can be used to activate an amusement game or machine, and coupons or points with a value greater than the amount in F.S. 646.10(7) (currently \$5.25);
- e. The wholesale cost of the merchandise or prize awarded in exchange for accumulated points or coupons shall not exceed 100 times the amount in 546.10(7) (currently calculates to \$525.00);
 - f. Merchandise for redemption shall be maintained on the premises and the redemption shall take place on site;
 - g. A maximum of 50 amusement games or machines shall be on the premises;
 - h. The business shall be operated for the entertainment of the general public and tourists as a bona fide amusement facility.
5. No outdoor speakers shall be permitted. (Building)
 6. No noise from inside the tenant space shall be audible at the west property line of Warbanks Plaza. (Building)
 7. The special exception is limited to the approved 2,016 square feet of area, in the location known as 3757 South Military Trail. Any increase in the size of the area or change in location will require a modification of this Special Exception. (Planning)
 8. Access to the business shall be limited to those eighteen (18) years of age and older only. A sign to this effect shall be posted on the entry door. (Building)
 9. All customer access shall be from the front (east-side) of the bay only. (Building)
 10. No alcohol shall be sold or otherwise dispensed on the premises. (Building)
 11. Interior aisles shall be a minimum of 44” wide and maintained free and clear of obstructions such as games, chairs, etc. at all times. (Fire Rescue and Building)
 12. The property owner and tenant shall indemnify the City of Greenacres from damages resulting from law enforcement action. (PBSO and City Attorney)
 13. Temporary use permits are necessary for any outside activities or events over and above the normal operations of the described indoor recreational amusement operation. (Planning)
 14. The applicant shall submit for and obtain a City Business Tax Receipt upon approval of this petition business. The issuance, continuation, and renewal of the Business Tax Receipt is conditioned upon the strict conformance of the operation of the proposed use with the above listed conditions of approval. Failure to comply with the conditions of approval shall be cause for revocation of the Business Tax Receipt. (Building)
 15. All advertisements and legal addresses on insurance policies and business correspondence shall clearly state that the project is located within the “City of Greenacres”. (Planning)
 16. Non-compliance with any of the conditions of approval will result in withholding of the issuance of building permits or certificates of completion and/or occupancy. (Building)

17. In the event that a court determines that activity of the sort proposed is illegal under the statutes of the State of Florida, this Special Exception approval shall be null and void. (Planning and City Attorney)

PZAB RECOMMENDATION –October 13, 2022

The Planning and Zoning Board of Appeals on a motion made by Board Member Emily Robarts and seconded by Board Member Betty Litowsky, voting five (5) to zero (0), ***recommended approval*** of Special Exception ***SE-22-02***, as presented by staff.

CITY COUNCIL ACTION – November 7, 2022
