

CITY OF FORT PIERCE

PLANNING DEPARTMENT

REBECCA GROHALL, AICP, PLANNING MANAGER
COMPREHENSIVE PLANNING ◊ DEVELOPMENT REVIEW
HISTORIC PRESERVATION ◊ URBAN DESIGN ◊ URBAN FORESTRY ◊ ZONING

TO: Robert Bradshaw, City Manager
THROUGH: Rebecca Grohall, AICP, Planning Manager
FROM: Sandy Ramseth, AICP, Senior Planner
SUBJECT: Spin to Win – Conditional Use
DATE: October 10, 2014

STAFF REPORT

Owner/Applicant: Hoyt C. Murphy Inc. Realtors
2400 S. Ocean Drive, Apt. 4200D
Fort Pierce, FL 34949

Representative: Chatsarun Yoosumran and Erik Pratt
1961 NE Steven Ave.
Jensen Beach, FL 34957

Requested Action: Conditional Use approval for the Spin to Win Adult Arcade

Location: 511/513 Georgia Avenue

Parcel ID: 2415-601-0456-000-6

Current Future Land Use: GC, General Commercial; RM, Residential Medium Density

Current Zoning: C-3, General Commercial

Surrounding Zoning:

North	East	South	West
C-3 and C-1	C-3 and OS-1	C-3 and R-4	C-1 and R-4

Surrounding FLU:

North	East	South	West
GC and OP	GC and COS	RM	RM and OP

Parcel Size: 2.89 acres

Applicant Request:

The applicant is requesting Conditional Use approval for the Spin to Win Adult Arcade. The proposal is to house 50 arcade machines within two adjoining units in the existing Sunrise Plaza Shopping Center located at 511/513 Georgia Avenue.

Per Section 22-22 "Allowed Uses", arcade amusement centers are designated a "Conditional Use" in the C-3 zoning district, which necessitates this application.

The applicant states he would like to operate the 2,877sf facility from 8:00 a.m. until 12:00 midnight on weekdays, and 8:00 a.m. until 2:00 am on weekends, as permitted by Section 22-71(a)(1) of the City Code. The applicant further indicated that all requirements of Section 22-71, "Amusement Arcades and Arcade Amusement Centers", will be met and complied with. In addition, packaged snack food(s) and non-alcoholic drinks will be provided to patrons at no cost throughout their visit. A floor plan of the proposed arcade is depicted in Figure 1(below).

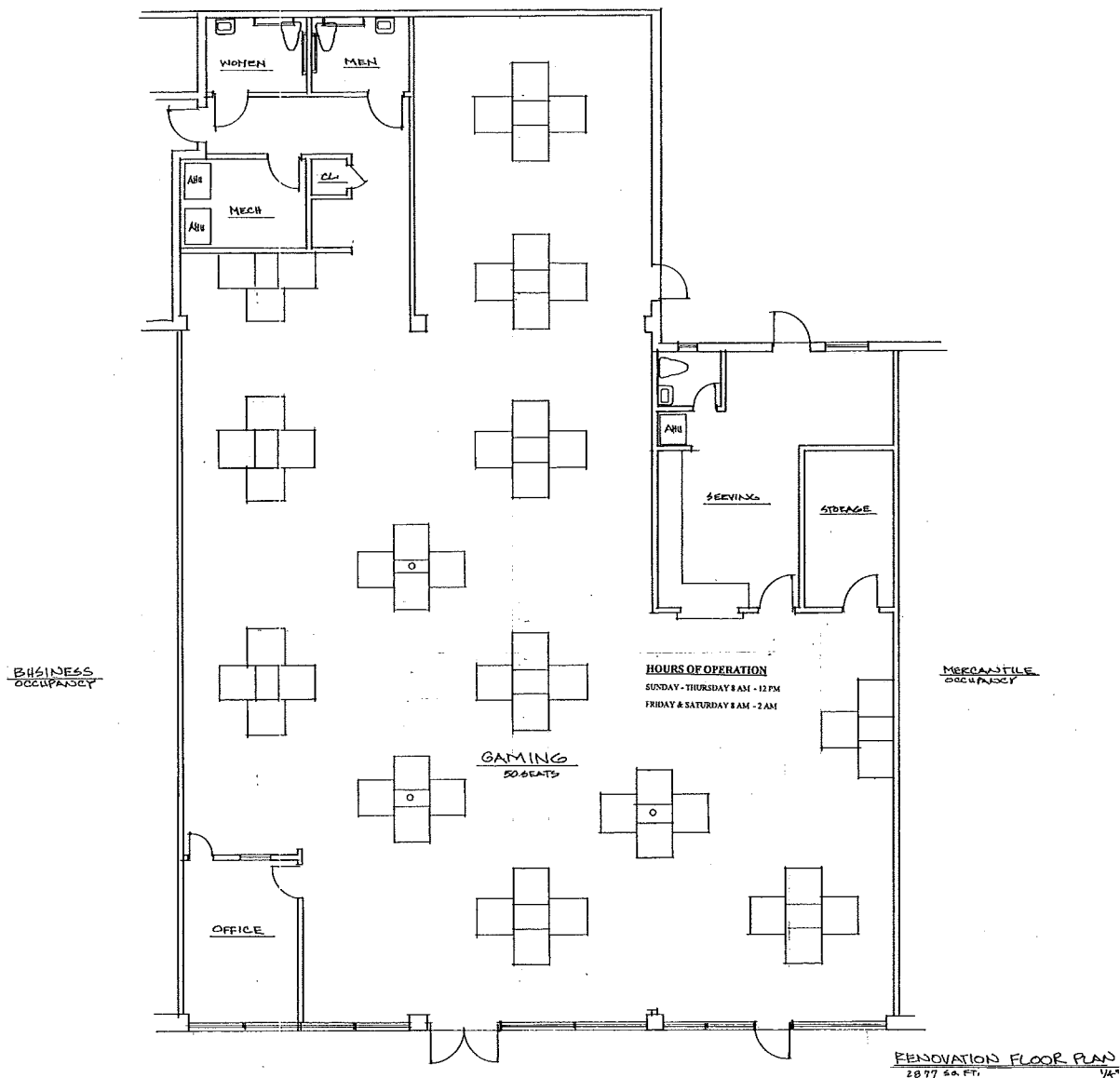


Figure 1

The Applicant has provided the following narrative:

Spin to Win Arcade is first and foremost an entertainment facility. It will be a place for people to gather and socialize in a safe and secure environment free from alcohol, smoking, and children.

The arcade games are games of skill that award prizes in a point based system that are redeemable for merchandise. The points based rewards system is modeled after the rewards system found in Chucky Cheese or a carnival fairway.

We will serve free sodas and coffee to our patrons, and occasionally we will serve free snacks as well.

We look forward to serving the people of this community and we look forward to a long relationship with the city of Ft. Pierce.

Hoyt Murphy, the building owner, will be adding trees as required. Hoyt will provide payment in lieu of the sidewalk requirement. All lighting upgrades needed to bring everything up to code will be done prior to opening.

Staff Analysis:

The purpose of the conditional use process is to allow, when desirable, uses that would not be appropriate generally or without restriction throughout the particular zoning district, but which, if controlled as to number, area, location or relation to the neighborhood, would not adversely affect the public health, safety, comfort, good order, appearance, convenience and the general welfare.

In addition to the standard City regulations that any business must comply with, an Arcade establishment has a whole section of the City Code, Section 22-71, devoted just to the regulation of this type of business. It establishes hours of operation; age limits; prohibition of smoking, alcohol and the like; lighting and landscaping requirements; employee requirements; and several other regulations that the City adopted to ensure the safety, comfort, and general welfare of the business' patrons as well as neighboring businesses and residents. A complete copy of Section 22-71 is attached as Exhibit 1.

Prior to Spin to Win Adult Arcade proposing to locate in the Sunrise Plaza, these two units were occupied by a fraternal organization for several years. This organization had a full liquor license and also held bingo and other events that were similar in use to the proposed adult arcade, without issue. However, unlike the former tenant, the new proposed use will not serve liquor, nor will it be permitted, per Section 22-71(b)(5)e.

With the set of regulations put forth by Section 22-71, it would seem this use will be no more disruptive or invasive than any other entertainment establishment allowed in the C-3 zoning district.

TRC Recommendations/Comments:

City Engineering:

The City Engineering Department recommends approval with the following comments:

Developer, Owner, Engineer, Contractor and other members of the Development Team must be aware, the above recommendation is based only on the construction requirements of the engineering plans and other engineering documentation approved by this department. The Development Team shall be responsible for the compliance with other City department

requirements and all approved documents, as well as Local, State and Federal regulations. The development requirements for this project may necessitate additional construction requirements that are not subject to this department's review for approval.

Applicant Response:

So noted by the Applicant.

City Planning:

The following are advisory comments from the Planning Department's review of the application for Conditional Use:

1) What is the square footage of the Arcade floor space? Please provide it on the plans.

2) What are the hours of operation? Please provide it in a narrative.

The proposed Adult Arcade must comply with all regulations in Section 22-71, Amusement arcades and arcade amusement centers, of the Fort Pierce City Code, with particular attention to the following:

3) Per Section 22-71(b)(1), No sign, display, or merchandise, shall be placed on or adjacent to any window if such placement would interfere with the clear and unobstructed view of the entire interior of the establishment from ground level through exterior windows.

4) Per Section 22-71(b)(3), Window tinting, mirrored windows, or other obscuring elements are prohibited

5) Per Section 22-71(b) (5), all amusement arcades or arcade amusement centers must post at least two conspicuous signs within the premises, and one conspicuous sign at the entrance, stating the following:

- a. Minimum age requirements as described above.
- b. School hours use restrictions as described above.
- c. No smoking.
- d. No drugs.
- e. No alcohol.

6) Per Section 22-71(b)(6), Amusement arcades or arcade amusement centers shall provide bicycle racks within enough stalls to accommodate one bicycle for each five (5) game machines located within the premises. Bicycle racks shall be located as close as practical to the entrance of the facility and shall not be located in a manner that obstructs any entrances, exits, sidewalks, driveways, or parking areas.

Please show the Bike racks on the Site Plan.

7) Per Section 22-71(c) (5), Amusement arcades or arcade amusement centers that serve food or provide catering services on premises must be licensed by the Department of Health, Department of Business Professional Regulation, or Department of Agriculture and Consumer Services.

8) The Arcade must comply with Section 22-71(d) (1-6) for machine registration requirements.

Additional Planning Comments:

1) Section 22-71(b)(9) states: "Landscaping must comply with requirements of the City's landscaping ordinance prior to the issuance of a business tax receipt.

2) In addition, as discussed during your pre-app meeting with the Planning Department, a sidewalk must be installed along South 6th Street as required by Sec. 22-62(b), OR as we had discussed, more likely a payment in lieu. This is required per Section 22-62(b).

Applicant Response:

The information requested by the Planning Department was provided on revised site plans, and a narrative was provided.

Hoyt Murphy, the building owner, will be adding trees as required. Hoyt will provide "payment in lieu" of the sidewalk requirement. These items will be accomplished prior to final inspection. All lighting upgrades needed to bring everything up to code will be done prior to opening per the FPPD.

All other Planning Department comments were advisory.

Other TRC Departments:

All other TRC reviewing Departments either had no comment, or expressed approval without conditions.

Planning Board Comments/Discussion:

There was concern raised regarding the legality of this type of business and whether this type of business has been outlawed. Spin to Win is regulated by Chapter 849.161 FS (attached), whereas:

Amusement games or machines means games which operate by means of the insertion of a coin, and which by application of skill may entitle the person playing or operating the game or machine to receive points or coupons, the cost value of which does not exceed 75 cents on any game played, which may be exchanged for merchandise. The term does not include casino-style games in which the outcome is determined by factors unpredictable by the player or games in which the player may not control the outcome of the game through skill.

Arcade amusement center means a place of business having at least 50 coin-operated amusement games or machines on premises which are operated for the entertainment of the general public and tourists as a bona fide amusement facility.

Merchandise means noncash prizes, including toys and novelties. The term does not include cash or any equivalent thereof, including gift cards or certificates, or alcoholic beverages.

Surrounding Property Summary:

85 Letters of Conditional Notice were sent to surrounding property owners within 500' of the subject property. As of October 10, 2014 the following responses were received:

2 approved

8 opposed

13 returned undeliverable

Planning Board Recommendation:

The Planning Board forward to the City Commission a recommendation of APPROVAL with the following condition: *That all landscaping, lighting and payment in lieu for the sidewalks are completed prior to final inspection.*

City Commission Recommendation:

A recommendation of **APPROVAL with the following condition:** That all landscaping, lighting and payment in lieu for the sidewalks are completed prior to final inspection.

Select Year:

The 2014 Florida Statutes

[Title XLVI](#)
CRIMES

[Chapter 849](#)
GAMBLING

[View Entire Chapter](#)

849.161 Amusement games or machines; when chapter inapplicable.—

(1) As used in this section, the term:

(a) “Amusement games or machines” means games which operate by means of the insertion of a coin, and which by application of skill may entitle the person playing or operating the game or machine to receive points or coupons, the cost value of which does not exceed 75 cents on any game played, which may be exchanged for merchandise. The term does not include casino-style games in which the outcome is determined by factors unpredictable by the player or games in which the player may not control the outcome of the game through skill.

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

(c) “Game played” means the event occurring from the initial activation of the machine until the results of play are determined without payment of additional consideration. Free replays do not constitute additional consideration.

(d) “Merchandise” means noncash prizes, including toys and novelties. The term does not include cash or any equivalent thereof, including gift cards or certificates, or alcoholic beverages.

(e) “Truck stop” means any dealer registered pursuant to chapter 212, excluding marinas, which:

1. Declared its primary fuel business to be the sale of diesel fuel;
2. Operates a minimum of six functional diesel fuel pumps; and
3. Has coin-operated amusement games or machines on premises which are operated for the entertainment of the general public and tourists as bona fide amusement games or machines.

(2) Nothing contained in this chapter shall be taken or construed to prohibit an arcade amusement center or truck stop from operating amusement games or machines in conformance with this section.

(3) This section applies only to games and machines which are operated for the entertainment of the general public and tourists as bona fide amusement games or machines.

(4) This section shall not be construed to authorize any game or device defined as a gambling device in 15 U.S.C. s. 1171, which requires identification of each device by permanently affixing seriatim numbering and name, trade name, and date of manufacture under s. 1173, and registration with the United States Attorney General, unless excluded from applicability of the chapter under s. 1178, or video poker games or any other game or machine that may be construed as a gambling device under Florida law.

(5) This section does not apply to a coin-operated game or device designed and manufactured only for bona fide amusement purposes which game or device may by application of skill entitle the player to replay the game or device at no additional cost, if the game or device: can accumulate and react to no more than 15 free replays; can be discharged of accumulated free replays only by reactivating the game or device for one additional play for such accumulated free replay; can make no permanent record, directly or indirectly, of free replays; and is not classified by the United States as a gambling device in 15 U.S.C. s. 1171, which requires identification of each device by permanently affixing seriatim numbering and name, trade name, and date of manufacture under s. 1173, and registration with the United States Attorney General, unless excluded from applicability of the chapter under s. 1178.

This subsection shall not be construed to authorize video poker games, or any other game or machine that may be construed as a gambling device under Florida law.

History.—s. 3, ch. 84-247; s. 159, ch. 96-320; ss. 69, 79, ch. 96-323; s. 5, ch. 2013-2.

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