-4-8-2015/V-14-2015

# **Robert Loring**

From:

michael040@aol.com

Sent: To: Wednesday, June 03, 2015 1:12 PM

Subject:

Robert Loring Variance proposal

To whom it may concern,

I encourage any new business in Palm Bay; however, I have to voice a concern regarding the arcade. I own 5015 Babcock st currently operating as hurricane bingo. The previous tenant at the proposed location ran an arcade, had overflow parking problems, and used my parking spaces. There were many discussions and confrontations regarding this issue. I am not sure that the plaza can handle that type of traffic during there other tenants normal business hours. Thank you

Michael Faurot

Sent from my iPhone

### Chandra Powell

From: Patrick Murphy

**Sent:** Friday, June 05, 2015 11:21 AM

To: Chandra Powell
Cc: Dave Watkins

**Subject:** FW: Case No(s). CU-8-2015 and V-14-2015

### Chandra,

Please print this email and include in the folders of both projects when you send them up to Legislative.

Thank you, Patrick

Patrick J. Murphy, Senior Planner Growth Management Department 120 Malabar Road SE, Palm Bay, FL 32907 (321) 733-3042 Fax (321) 953-8920 Patrick.Murphy@palmbayflorida.org

From: Jean Thomas [mailto:jetdux@yahoo.com]

Sent: Friday, June 05, 2015 11:18 AM

To: Patrick Murphy

Subject: Case No(s). CU-8-2015 and V-14-2015

Dear Mr. Murphy:

I own the condominium J 108 in Country Gardens 11 and have received notice of the application for the conditional use to allow a proposed arcade amusement center and a variance to grant the proposed amusement center relief in order to reduce the minimum amount of parking space available to the facility.

Since my unit would be only 500 feet away from the proposed arcade I am very much opposed to this request being granted. The impact on property values can hardly be positive since the number of people especially those with children who would want to be living that close to an arcade would probably be very few. I also have difficulty believing that an area of 1.93 acres would be used for something small.

Palm Bay as far as I know has always been both business and family friendly but has always exercised discretion. I respectfully ask that you consider the concerns of others as well as my own before granting Arcade Games its request.

Sincerely,

Jean E. Thomas

# **RESOLUTION NO. 2015-28**

A RESOLUTION OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, GRANTING A CONDITIONAL USE FOR AN ARCADE AMUSEMENT CENTER IN HC (HIGHWAY COMMERCIAL DISTRICT) ZONING; WHICH PROPERTY IS LOCATED EAST OF AND ADJACENT TO BABCOCK STREET, IN THE VICINITY NORTH OF PORT MALABAR BOULEVARD, AND LEGALLY DESCRIBED HEREIN; GRANTING THE USE AS A CONDITIONAL USE; PROVIDING FOR CONSTRUCTION TO BE IN COMPLIANCE WITH THE SITE PLAN; PROVIDING FOR A COMMENCEMENT PERIOD; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, application for a conditional use in HC (Highway Commercial District) zoning for an arcade amusement center on property legally described herein, has been made by Arcadia Games, LLC, and

WHEREAS, the request was duly considered by the Planning and Zoning Board of the City of Palm Bay on June 3, 2015, meeting which voted to recommend to the City Council approval of the application, and

WHEREAS, all provisions applicable to the conditional use under Chapter 185, Zoning, Conditional Uses, Sections 185.085 and 185.086, and District Regulations, Section 185.044, of the Palm Bay Code of Ordinances, have been satisfied by the applicant, and

WHEREAS, the City Council of the City of Palm Bay has determined that such conditional use will neither be injurious to the neighborhood nor otherwise detrimental to the public welfare.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY

OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

**SECTION 1**. The City Council of the City of Palm Bay hereby grants a conditional use for an arcade amusement center on property zoned HC (Highway Commercial District), which property is legally described as follows:

City of Palm Bay, Florida Resolution No. 2015-28

Page 2 of 2

Tax Parcel 308.0, of the Public Records of Brevard County, Florida; Section 27, Township

28S, Range 37E; containing 1.93 acres, more or less.

**SECTION 2.** The conditional use is granted subject to the applicant complying with

the following:

1) Constructing the arcade amusement center in accordance with the site plan

which is, by reference, incorporated herein as Exhibit "A";

2) The Land Development Division Staff Report which is, by reference,

incorporated herein as Exhibit "B".

3) All provisions of the Code of Ordinances of the City of Palm Bay and all other

state and federal rules, regulations, and statutes.

**SECTION 3**. The conditional use must be commenced within one (1) year from the

effective date of this resolution. Commencement shall mean the issuance of the

appropriate permit(s) which must remain active. Failure to commence within one (1) year

of issuance of the first permit shall void the conditional use.

**SECTION 4**. This resolution shall take effect immediately upon the enactment date.

This resolution was duly enacted at Meeting No. 2015-, of the City Council of the

City of Palm Bay, Brevard County, Florida, held on

William Capote, MAYOR

, 2015.

ATTEST:

\_\_\_\_\_

Terese M. Jones, CITY CLERK

Applicant: Arcadia Games, LLC

Case No.: CU-8-2015

cc: (date) Applicant

Case File B/C Recording **MEMO TO**: Honorable Mayor and Members of City Council

FROM: Terese M. Jones, City Clerk

**DATE:** July 2, 2015

**SUBJECT:** Variance Request – Arcadia Games, LLC

Arcadia Games, LLC (Giuseppe Puglisi) has submitted an application for a variance to provide relief from Section 185.088 (K)(5), Palm Bay Code of Ordinances, in order to reduce the minimum amount of "available" parking spaces for an Arcade Amusement Center in HC (Highway Commercial District) zoning. The property is located east of and adjacent to Babcock Street, in the vicinity north of Port Malabar Boulevard, and contains 1.93 acres, more or less.

# Staff Findings:

The Planning and Zoning Board must determine, based on the facts presented, to what degree, if any, of minimal relief is required to meet the needs of the variance being requested as required under Section 169.009 of the City of Palm Bay Code of Ordinances, and make recommendations to City Council for a final review.

# Planning and Zoning Board Recommendation:

Approval of the request, by a vote of 3 to 2.

The subject matter is scheduled for public hearing purposes at tonight's meeting. If you should have any questions, please advise.

/tjl Attachments

Case No. V-14-2015



Land Development Division 120 Malabar Road Palm Bay, FL 32907 321-733-3042 Landdevelopment@palmbayflorida.org

## VARIANCE APPLICATION

This application must be completed, legible, and returned, with all enclosures referred to herein, to the Land Development Division, Palm Bay, Florida, prior to 5:00 p.m. on the first day of the month to be processed for consideration by the Planning and Zoning Board the following month. The application will then be referred to the Planning and Zoning Board for study and recommendation to the City Council. You or your representative are required to attend the meeting(s) and will be notified by mail of the date and time of the meeting(s). The Planning and Zoning Board holds their regular meeting the first Wednesday of every month at 7:00 p.m. in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida, unless otherwise stated.

1)	NAME OF APPLICANT (Type or print) Giuseppe Puglisi ARCADIA GAMES UC								
	ADDRESS 105 CROWN AVE NE								
	CITY PALM BAY STATE FL ZIP 32907								
	PHONE # 321-961-9580 FAX #								
	E-MAIL ADDRESS giusjoey27@yahoo.it								
2)	COMPLETE LEGAL DESCRIPTION OF PROPERTY COVERED BY APPLICATION								
	28-37-27-00-00308.0-0000.00, Tax ID #2835610								
	SECTION 27 TOWNSHIP 28 RANGE 37								
3)	STREET ADDRESS OF PROPERTY COVERED BY APPLICATION: 5055 Babcock St, NE,								
4)	SIZE OF AREA COVERED BY THIS APPLICATION (calculate acreage): 1.93 acres								
5)	EXISTING ZONING CLASSIFICATION OF PROPERTY (ex.: RS-2, CC, etc.):C-Retail, Multiple Units								
6)	ARE THERE ANY STRUCTURES ON THE PROPERTY NOW?: X YES NO								
7) HAS A VARIANCE APPLICATION PREVIOUSLY BEEN FILED FOR THIS PROPERTY?:									
	IF SO, STATE THE NATURE OF THE PREVIOUS APPLICATION, WHETHER THE REQUEST WAS APPROVED OR DENIED, AND DATE OF ACTION:								
8)	DESCRIBE THE EXTENT OF THE VARIANCE REQUESTED AND THE INTENDED USE OF THE PROPERTY IF THE VARIANCE IS GRANTED (SPECIFY NUMBER OF INCHES/FEET ENCROACHING INTO SPECIFIC REQUIRED YARD SETBACK OR REQUIRED HEIGHT RESTRICTIONS): Relief from Section 185.088 (K) (5), by granting a variance to reduce the minimum amount of								
	required "available" parking from 25 spaces to 13 space.								

# CITY OF PALM BAY, FLORIDA VARIANCE APPLICATION PAGE 2 OF 3

(a)	buildings in	volved and	which are	e not app	nces exist w licable to oth					
(b)	applicant.									
(c)										
(d)	unnecessary and undue hardship on the applicant.  That if granted, the variance is the minimum variance necessary to make possible the reasonable use									
(e)	That granti		ance requ		Il not confer					
(f)	denied by the development code to other lands, buildings, or structures in the same land use category, zoning district, or situation.  That granting the requested variance will be in harmony with the general intent and purpose of this code, and will not be injurious to the surrounding properties or detrimental to the public welfare.									
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9) CITE THE APPLICABLE SECTION(S) OF THE ZONING ORDINANCE AND ITS REQUIREMENT

FROM WHICH VARIANCE IS REQUESTED (ex.: 185.034(f)(7)): 185.088 (K) (5)

# CITY OF PALM BAY, FLORIDA VARIANCE APPLICATION PAGE 3 OF 3

11)	EVIDENCE MUST BE PROVIDED TO CONSIDER VARIANCES BASED ON THE FOLLOWING CLAIMS:						
	BERT J. HARRIS PRIVATE PROPERTY RIGHTS PROTECTION ACT, Chapter 95-181, Laws of Florida.  Provide a copy of one of the following:  Special master appointed in accordance with the act.  Court order as described in the act.						
	AMERICANS WITH DISABILITIES ACT. Cite the section of the act from which the variance request will provide relief:						
12)	THE FOLLOWING PROCEDURES AND ENCLOSURES ARE REQUIRED TO COMPLETE THIS APPLICATION:						
	*\$300.00 Application Fee. Make check payable to "City of Palm Bay."						
	A listing of legal descriptions of all properties within a 500 foot radius of the boundaries of the property covered by this application, together with the names and mailing addresses (including zip codes) of all respective property owners within the above referenced area. (This can be obtained from the Brevard County Planning and Zoning Department at 633-2060, or on the Internet at www.brevardpropertyappraiser.com) List shall be legible and the source of that information stated here:						
	Sign(s) posted on the subject property. Refer to Section 51.07(C) of the Legislative Code for guidelines.						
	A site plan drawn to scale which shows all property and yard dimensions, its structures (if any) and the variance desired, including abutting highway or road boundaries. Submit in electronic or PDF format.						
	A survey prepared by a registered surveyor showing all property lines and structures.						
	WHERE PROPERTY IS NOT OWNED BY THE APPLICANT, A <u>LETTER</u> MUST BE ATTACHED GIVING THE NOTARIZED CONSENT OF THE OWNER FOR THE APPLICANT TO REQUEST THE VARIANCE.						
	IN ORDER TO DISCLOSE ALL PARTIES SEEKING THIS APPROVAL, COMPLETE THE ATTACHED DISCLOSURES OF OWNERSHIP INTERESTS FORMS FOR PROPERTY OWNERS AND/OR APPLICANTS IN REFERENCE TO RESOLUTION 2008-19.						
I, THE UNDERSIGNED UNDERSTAND THAT THIS APPLICATION MUST BE COMPLETE AND ACCURATE BEFORE CONSIDERATION BY THE PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY, AND CERTIFY THAT ALL THE ANSWERS TO THE QUESTIONS IN SAID APPLICATION, AND ALL DATA AND MATTER ATTACHED TO AND MADE A PART OF SAID APPLICATION ARE HONEST AND TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.							
UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING VARIANCE APPLICATION AND THAT THE FACTS STATED IN IT ARE TRUE.							
Signature of Applicant Light State 5-12-15							
Printe	ed Name of Applicant GIUSERE PUGLISI						

\*NOTE: APPLICATION FEE IS NON-REFUNDABLE UPON PAYMENT TO THE CITY



May 12, 2015

City of Palm Bay Planning & Zoning Board 120 Malabar Road Palm Bay, FL 32907

RE: Letter of Authorization

To Whom It May Concern,

As the property owner of the property legally described as parcel ID #28-37-27-00-00308.0-0000.00, Tax ID #2835610 located at 5055 Babcock Street, NE, I hereby authorize Giuseppe Puglisi to submit a conditional use and variance applications for the ability to open an Arcade Amusement Center at the address mentioned above.

Respectfully,

Don Facciobene

R&J Enterprises of Brevard, LLLP

STATE OF FLORIDA COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of May, 2015 by Don Facciobene who is personally known by me.

Donna W. Lindsay

Notary Public



DONNA W. LINDSAY

Notary Public - State of Florida
My Comm. Expires Sep 2, 2018



DATE: June 3, 2015 CASE #: V-14-2015

CITY OF PALM BAY

# LAND DEVELOPMENT DIVISION STAFF REPORT

# **APPLICATION**

PROPOSAL: A Variance is requested to provide relief from Section 185.088 (K)(5), Palm Bay Code of

Ordinances, in order to reduce the minimum amount of "available" parking spaces for an Arcade

Amusement Center in an HC, Highway Commercial Zoning District.

LOCATION: The property is located east of and adjacent to Babcock Street, approximately 2,000 feet north of

Port Malabar Boulevard. Specifically; the property is Tax Parcel 308.0, Section 27, Township 28

South, and Range 37 East, located at 5055 Babcock Street NE.

APPLICANT: Arcadia Games, LLC (Giuseppe Puglisi, Owner)

### SITE DATA

PRESENT ZONING: HC, Highway Commercial Zoning District

ACREAGE: 1.93 Acres +/-

**DENSITY:** N/A

ADJACENT ZONING N -- HC, Highway Commercial; Hurricane Bingo

& LAND USE: E -- RR, Rural Residential; Low-Density Single Family Homes

S -- HC, Highway Commercial; Vacant Land
 W -- HC, Highway Commercial; Babcock Street

WATER & SEWER: City Water & Sewer Available & Required

TRAFFIC COUNTS: 32,000 ADT as of 11/14 (Babcock St., from Palm Bay Rd. to Port Malabar Blvd.)

FLOOD ZONE: Zone "X" – area outside the 500 year flood zone

**COMPLIANCE WITH THE** 

COMPREHENSIVE PLAN: Not specifically addressed

### BACKGROUND:

- 1. The property is located east of and adjacent to Babcock Street, approximately 2,000 feet north of Port Malabar Boulevard NE. Specifically; the property is Tax Parcel 308.0, Section 27, Township 28 South, and Range 37 East, located at 5055 Babcock Street NE.
- 2. The current zoning is HC, Highway Commercial and the property is bordered by HC zoning on the north, south and west. RR, Rural Residential zoning exists to the east. The particular land uses of the adjacent properties are as follows:

NORTH:

HC, Highway Commercial; Hurricane Bingo

SOUTH:

HC, Highway Commercial; Vacant Land

EAST: WEST:

RR, Rural Residential; Single Family Homes HC, Highway Commercial; Babcock Street NE

2. A Variance is requested to provide relief from Section 185.088 (K)(5), Palm Bay Code of Ordinances, in order to reduce the minimum amount of "available" parking spaces for an Arcade Amusement Center in an HC, Highway Commercial Zoning District.

### ANALYSIS:

1. Variances from the terms of the Land Development Code may be granted when special conditions exist that would result in unnecessary hardship if the provisions of the land development code were enforced. However, a variance may not be granted when the public health and safety would be compromised as a result of the variance. An application must demonstrate that items 1 through 7 of Section 169.009 of the Code of Ordinances have been met. A review of these items is as follows:

<u>Item 1</u> - "Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, buildings or structures in the same land use category, zoning district or situation."

The applicant has submitted a conditional use request to operate an Arcade Amusement Center from the northern-most unit of the Gulfstream Center, located at 5055 Babcock Street NE. This request (discussed in depth via Case No. CU-8-2015) includes a parking requirement of one (1) space for every two (2) machines – which would require the arcade's patrons to have access to at least 25 parking spaces. While the site contains parking spaces in excess of this requirement, the above code citation further restricts these types of facilities from occupying more spaces than the percentage of leasable space that their business contains. The Gulfstream Center was constructed long before these stringent parking regulations were adopted and met the Land Development Regulations at the time it was issued a Certificate of Occupancy. Moreover, there are only a few shared parking facilities in Palm Bay that can meet this requirement. This may present a hardship for the Planning and Zoning Board and City Council to consider.

<u>Item 2</u> - "The special conditions and circumstances identified in <u>Item 1</u> above are not the result of the actions of the applicant".

While the applicant is responsible for choosing this particular commercial plaza with which to run its business, and thus the parking areas associated with it, it may be viewed that the hardship is not with the business or the particular site but with the code itself. With this approach in mind, the hardship would not be self-induced. The applicant has informed staff that they contacted the few plazas that would meet the city's parking code and was told that the property owner would not lease to an Arcade Amusement Center due to it similarities to Sweepstakes Facilities.

<u>Item 3</u> – "Literal interpretation and enforcement of the land development code regulations would deprive the applicant of rights commonly enjoyed by other properties in the same land use category, zoning district or situation under the terms of the land development code, and would work unnecessary and undue hardship on the applicant."

Under literal interpretation and enforcement of the Land Development Regulations, the applicant would be required to lease much more of a plaza in order to off-set the percentage calculation built into the Arcade Amusement Center code. These facilities are unique in that they do not need a lot of space to accommodate their patrons and still be successful. Having to rent additional space to meet this code may be considered an unnecessary or undue hardship. The Board and Council will need to decide, based upon the testimony given by the applicant, if a hardship does indeed exist.

<u>Item 4</u> – "The variance, if granted, is the minimum variance necessary to make possible the reasonable use of the land, building or structure."

The minimum amount of Variance needed in order to accommodate the proposed facility would be a reduction of 12 parking stalls from the number of available parking spaces.

<u>Item 5</u> – "Granting of the variance request will not confer on the applicant any special privilege that is denied by the development code to other lands, buildings or structures in the same land use category, zoning district, or situation."

Granting this variance may confer a special privilege to the applicant that is denied to other lands, building or structures in the same district since this code would apply to any Arcade Amusement Center proposed within any shared parking commercial facility. However, a review of Analysis Items 1 through 3 of this report may cause a hardship that the Board and Council should consider.

<u>Item 6</u> – "The Granting of the variance will be in harmony with the general intent and purpose of this code, and will not be injurious to the surrounding properties or detrimental to the public welfare."

The intent and purpose of the leasable space calculation (which is the nexus of this variance request) was made a part of the code so as to protect the other businesses within a shared parking commercial establishment from parking 'saturation' by one particular business. At the time the Arcade

Amusement Center code was created, these facilities were an unknown entity to Palm Bay (and Brevard County as well). The thought was that they would be wildly popular and their patrons would use up all, or at least the majority of, the parking spaces within smaller commercial plazas. The result would be a hardship for the other businesses in that plaza, as their patrons would have no place to park. Staff has found over time that these arcades have not resulted in this outcome. The Board and Council should consider this discussion when making their decision.

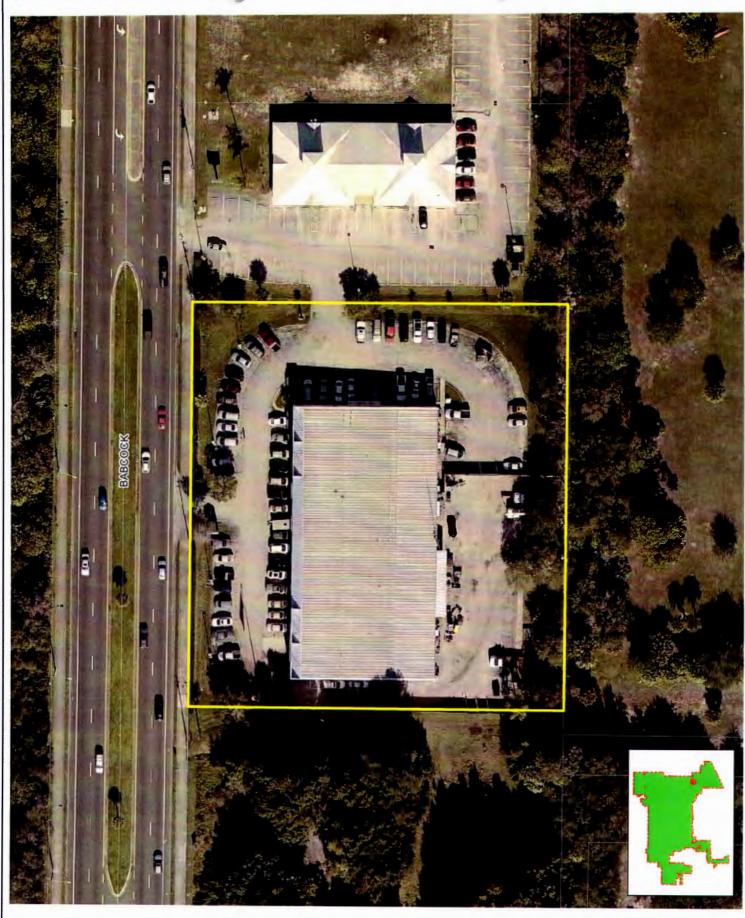
<u>Item 7</u> – "The variance represents a reasonable disposition of a claim brought under the Bert J. Harris Private Property Rights Protection Act, chapter 95-181, Laws of Florida, that a development order of the city has reasonably burdened the applicant's property, based on the recommendations of the special master appointed in accordance with the act, or the order of a court as described in the act.

Staff has not received a claim made upon this property, with respect to the "Bert J. Harris Act," or any development order, as indicated above. Therefore, Item 7 is not applicable to the variance request.

### STAFF FINDINGS:

The Planning and Zoning Board must determine, based on the facts presented, to what degree, if any, of minimal relief is required to meet the needs of the variance being requested, as required under Section 169.009 of the City of Palm Bay Code of Ordinances and make recommendations to City Council for a final review. As provided for in Section 59.05(A)(14) of the City of Palm Bay Code of Ordinances:

"The quasi-judicial body shall direct the clerk or [city] attorney acting as the body's legal counsel to prepare the necessary and appropriate written order in accordance with the purpose of the hearing and findings of the quasi-judicial body. Pursuant to Florida Statutes, in the event relief is denied to the applicant, the specific provision of statute or code that was deficient shall be stated for record."



Map for illustrative purposes only. Not to be construed as binding or as a survey.

Map created by the Lend Development Division



**CASE NO. V-14-2015** 

