

December 4, 2025 7:00 PM
Town of Garner
Board of Adjustment Agenda
Town Council Meeting Room
900 7th Avenue · Garner, North Carolina 27529



Conduct of the Board of Adjustment:

The Board of Adjustment is a “quasi-judicial” board that acts as a court. Its members are appointed by the Town Council to serve three-year terms. All testimony received is “sworn” testimony. At the meeting, the Secretary will read the request as written on the agenda. The Planning Staff will explain how the request does or does not meet the requirements of the code. The applicant, after being sworn, testifies and presents information regarding the case. The proponents or opponents then have the opportunity, after being sworn, to speak. The applicant can rebut any testimony given.

The Board members ask that you limit your testimony to relevant facts. If there are a number of people who are opposed to a case, they will be recognized, but speakers must not be repetitive. A spokesperson can also represent the views of a group.

I. Call to Order

II. Roll Call

III. Minutes

IV. Old/New Business:

- **Request for Rehearing of Case # VAR-25-002, 520 Powell Drive** - On June 26, 2025, the Board of Adjustment held a public hearing for VAR-25-002 520 Powell Drive which was denied. On October 23, 2025, the applicant requested a rehearing pursuant to Section V.G. of the Board of Adjustment Rules of Procedure which was continued to a date certain.
- If granted, **Rehearing of Case # VAR-25-002, 520 Powell Drive** – A variance to permit two flag lots in a six-lot major subdivision which deviates from the Residential 4 (R4) district single-family detached 60’ minimum lot width requirement of “Figure 5.6-C: Standards for Front-loaded Single-Family Detached and Duplexes” of the Town of Garner Unified Development Ordinance. The request (# VAR-25-002) accompanies permit # SB-24-002, 520 Powell Drive. The property is located at 520 Powell Drive and can further be identified as Wake County PIN 1711645806.
- **Appeal of Decision Case # AA-25-003, 1506 US Hwy 70 W** – Appeal of Decision submitted by Rowell Ordanes to permit an electronic gaming center at 1506 US Hwy 70 W which is within a ¼ mile of an existing electronic gaming center at 3909 S Wilmington Street, Raleigh, North Carolina 27603. This deviates from UDO Section

6.6.4.F.2. Use Standards: "No electronic gaming center shall be located within one quarter of a mile of another electronic gaming center." The property is located at 1506 US Hwy 70 W and can further be identified as Wake County PIN 1701580535.

V. Adjournment



BOARD OF ADJUSTMENT *MINUTES*

Thursday, October 23rd, 2025 at 7 PM
Town Council Chambers
900 7th Avenue · Garner, North Carolina 27529

I. CALL TO ORDER

Ed Salter calls the meeting to order at 7:00 p.m. on Thursday, October 23rd, in the Town Council Chambers.

Mr. Salter then asks that the Secretary call roll.

II. ROLL CALL

The Secretary, Randall Hogg, conducts a roll call.

The following members are present: Tiffany Gidley, Edwin Salter, and Richard Squires.

Randall Hogg, Planning Tech; Joseph Linsky, Planner II; and Jeff Triezenberg, Planning Director, are present representing the Planning Department. David Gadd, Attorney to the Board, is present. Worth Mills, the applicant's attorney, is also present.

III. MINUTES

- IV. September 25th, 2025 Minutes** - Mr. Salter asks if anyone has any corrections or adjustments. Hearing none, Mr. Salter asks for a motion to approve the minutes. Mr. Squires motions to approve the minutes. Ms. Gidley seconds. The minutes are approved.

V. INTRODUCTION

Mr. Salter elaborates on the functions and powers of the Board of Adjustment.

Mr. Salter calls for the first case to be presented. It is a continuation of VAR-25-002 520 Powell Drive.

VI. VAR-25-002 520 Powell Drive

Worth Mills, attorney to the applicant, approaches the podium and requests a continuation of the case on behalf of the applicant to the December 4th BOA meeting.

The applicant is seeking clarification from the USPS about the possibility of utilizing an on-street mail kiosk that would reduce the number of flag lots needed for the request.

Mr. Salter asks for a motion to approve the continuation request. Ms. Gidley motions, Mr. Squires seconds. The motion passes.

The applicant has additionally been speaking to Planning staff about the possibility of arranging the six lots in a way that would not require the use of flag lots.

Mr. Salter announces to the remaining audience that there will be no public comment portion for this meeting.

Mr. Rodney Stratton and Mr. Steve Woodall, members of the public who reside near the site, begin to give public comment on the development.

Mr. Salter and Terri Jones, town attorney, remind the gentlemen that the case has been continued to December 4th and that the public comment portion of this meeting will not take place.

Ms. Jones leads a quasi-judicial training session for the remainder of the meeting.

Mr. Salter asks for a motion to adjourn. Mr. Squires makes a motion. Ms. Gidley seconds. The meeting is adjourned at 8:40pm.

Minutes submitted by Randall Hogg



PLANNING MEMORANDUM

DATE: September 25, 2025

TO: Rowell Ordanes
7712 Silver View
Raleigh, North Carolina 27613

FROM: Jeff Triezenberg, AICP, GISP; Planning Director

SUBJECT: **Written Interpretation Request # WI-25-004, Electronic Gaming Center Use Standards**

Background and Request

On June 24, 2025, Rowell Ordanes requested a pre-application conference with the Town of Garner to discuss the possibility of opening an electronic gaming center use on the property located at 1506 US 70 Highway West in Garner, North Carolina 27529. During said conference it was noted that the property is located within ¼ mile of another electronic gaming center being operated at 3909 S Wilmington Street, Raleigh, North Carolina 27603; and that **Section 6.6.4., subsection F.2. “Use Standards”** of the Town of Garner Unified Development Ordinance (UDO) states that:

“No electronic gaming center shall be located within one quarter of a mile of another electronic gaming center. The distance shall be measured from the closest point on the perimeter of the parcel on which the described establishments are located.”

Mr. Ordanes has subsequently requested a formal written interpretation of the preceding section of the UDO regarding whether the use standard applies to circumstances when one of the electronic gaming centers in question is located within the zoning jurisdiction of a neighboring municipality – in this case, the City of Raleigh.

Interpretation

The property located at 1506 US 70 Highway West is zoned by the Town of Garner as Commercial Mixed Use (CMX) and within the Commercial Highway Overlay (CHO) district.

Electronic gaming centers are permitted via a Special Use Permit from the Town Council within the CMX zoning district and subject to the standards of Section 6.6.4., subsection F. The CHO does not further restrict electronic gaming centers as a use.

The property located at 3909 S Wilmington Street is zoned by the City of Raleigh as Industrial Mixed Use 3 with no overlays. Site visits and online research note that the use of the property is an electronic gaming center known as DJ’s Blue Room.



Utilizing publicly available digital tax maps, the distance between the closest points of each gaming center’s property is approximately 521.29 feet (0.10 miles), which is less than the one quarter mile required by **Section 6.6.4., subsection F.2.** of the Garner UDO.

Section 1.3. of the Garner UDO states that “This UDO shall apply to all land within the Town of Garner municipal limits and its municipal extraterritorial jurisdiction (ET)...”. 1506 US 70 Highway West is located within the Town of Garner municipal limits. 3909 S Wilmington Street is not located within either the Town of Garner municipal limits or its ETJ; however, said property is not the subject of the use application, and Garner staff maintains that any parcel or use being referenced for distance separation requirements are not bound to being only within Garner’s municipal limits or ETJ.

Separation requirements are typically adopted to mitigate conflicts between incompatible uses or to mitigate the cumulative negative effects of a particular use clustering in a single area. A citizen’s sense of community and neighborhood does not necessarily stop at an unseen boundary line where two jurisdictions come together. For this reason as well, staff maintains that the required separation between electronic gaming centers applies in this case.

Right to Appeal

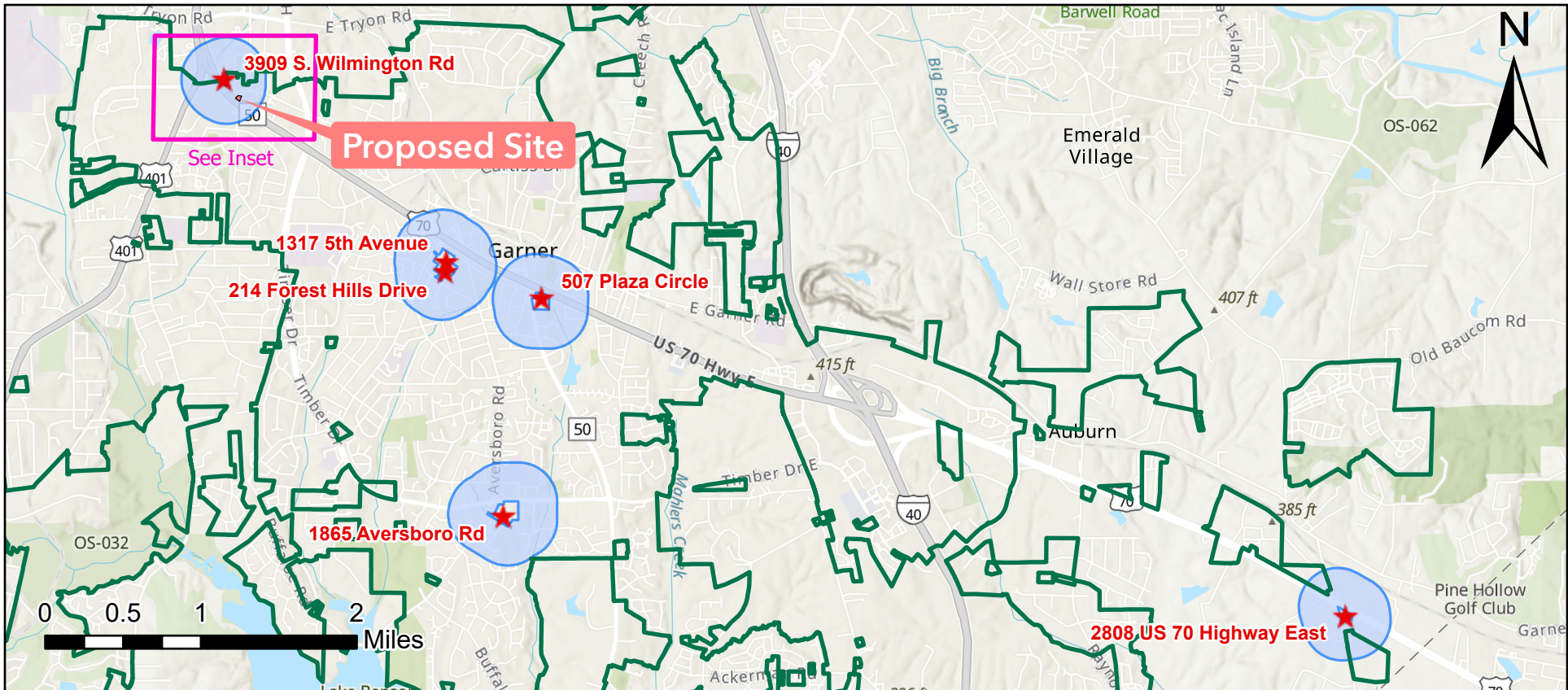
Pursuant to G.S. § 160D-405, as may be amended from time to time, the preceding Written Interpretation may be appealed by the aggrieved party to the Garner Board of Adjustment by submitting a written petition (request) to the Garner Town Clerk **within 33 days of the date of this notice** which is being provide primarily by first-class mail but also through the Town’s permitting portal.

Town Clerk’s Office
Garner Town Hall
900 Seventh Ave.
Garner, NC 27529

Sincerely,

Jeffrey S. Triezenberg, AICP, GISP;
Planning Director

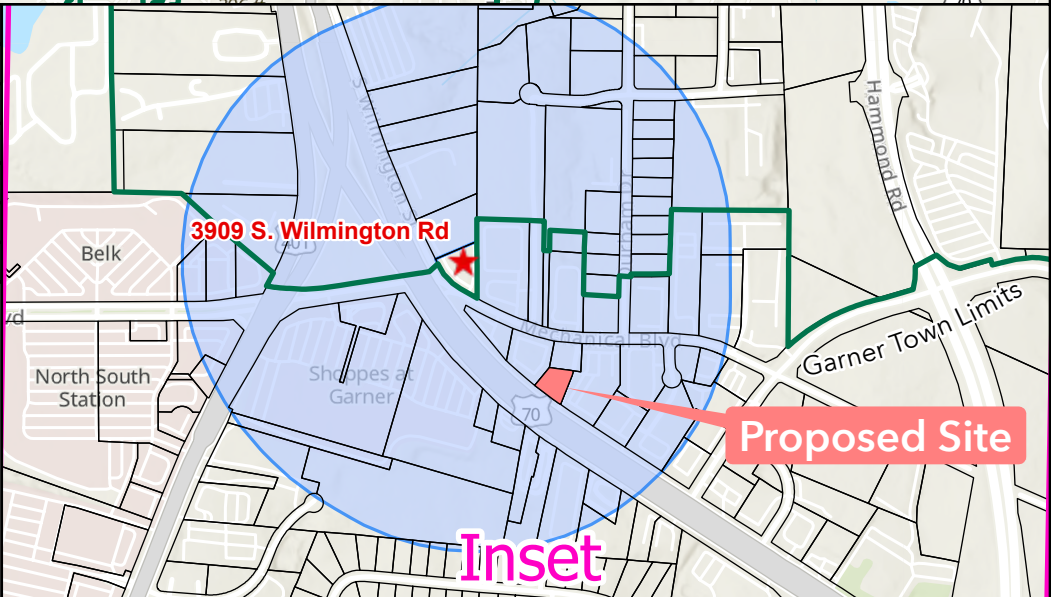
cc: Town of Garner Attorney’s Office
Town of Garner Clerk’s Office
Moghadass Inc., PO Box 78534, Charlotte, NC 28271-7035



Address	Name	Case Number
2808 US 70 Highway East	L&A Cafe	ZCP-GEN-24-018
1865 Aversboro Rd	Timber Landing Business Center	ZCP-GEN-11-063
507 Plaza Circle	Raleigh Business Center	ZCP-GEN-11-015
214 Forest Hills Drive	Lucky Duck Cafe	ZCP-GEN-10-043
1317 5th Avenue	B&L Management	ZCP-GEN-09-54
3909 S. Wilmington Rd	DJ's Blue Room	

- ★ Electronic Gaming Centers
- 1/4 Mile Buffer
- ▭ Garner Corporate Limits
- ▭ Proposed Site

Date Updated: 12/2/2025
 Produced by: Garner Planning Dept.



From: [Jeff Triezenberg](#)
To: [Joseph Linsky](#); [Randall Hogg](#)
Cc: [Nick Tafelsky](#)
Subject: FW: Sweepstake Cafe Information
Date: Monday, December 1, 2025 2:20:36 PM
Attachments: [image001.png](#)

From: Cheryl Matter <cmatter@garnernc.gov>
Sent: Thursday, October 20, 2016 1:23 PM
To: Brandon Zuidema <bzuidema@garnernc.gov>
Cc: Lorie Smith <lsmith@garnernc.gov>
Subject: Sweepstake Cafe Information

Chief,

Below is the information you requested for the Internet Café locations within Garner from Jan 2014 – October 2016. The Incident information is listed first for each café and the table includes the count of the incidents INC and the counts for CFS at these locations. Please let me know if you need any further information.

Capital Skill Center 128 US 70 HWY E

7/13/2016	16001295	BURGLARY - FORCIBLE ENTRY
7/18/2016	16001334	BURGLARY - FORCIBLE ENTRY
8/1/2016	16001443	BURGLARY - FORCIBLE ENTRY

TYPE	NATURE	COUNT
INC	BURGLARY - FORCIBLE ENTRY	3
CFS	911 HANGUP CALL	1
CFS	911 HANGUP CALL - NO	1
CFS	ANIMAL VICIOUS	1
CFS	B&E NONRESIDENCE/EAR	3
CFS	SECURITY CHECK	4
CFS	TRAFFIC STOP	5

Sweepstakes 1317 FIFTH AVE

1/4/2014	14000024	ROBBERY
1/7/2014	14000039	ROBBERY
11/16/2014	14002384	LARCENY - THEFT FROM BUILDING

TYPE	NATURE	COUNT
INC	LARCENY - THEFT FROM BUILDING	1
INC	ROBBERY	2
CFS	ARMED ROBBERY	2
CFS	CALL BY PHONE	3
CFS	CHECK ON WELFARE	1
CFS	FOLLOW-UP INVESTIGAT	1
CFS	LARCENY - EARLIER	1
CFS	REQUEST FOR SERVICE	1
CFS	SECURITY CHECK	16
CFS	SUSPICIOUS PERSON	2
CFS	SUSPICIOUS VEHICLE	1

Biz Center 1865 AVERSBORO RD

1/25/2014	14000161	ROBBERY
12/15/2014	14002604	ROBBERY
6/19/2015	15001166	ROBBERY
8/31/2016	16001626	EMBEZZLEMENT - ALL OTHER
9/10/2016	16001709	DRUG OFFENSE - NARCOTIC BUY/POSSESS

TYPE	NATURE	COUNT
INC	DRUG OFFENSE - NARCOTIC BUY/POSSESS	1
INC	EMBEZZLEMENT - ALL OTHER	1
INC	ROBBERY	3
CFS	911 HANGUP CALL	2
CFS	911 HANGUP CALL - NO	1
CFS	ALARM-HOLDUP	1
CFS	ARMED ROBBERY	1
CFS	ARMED ROBBERY/ATTEMP	1
CFS	CALL BY PHONE	5
CFS	DRUG LAW VIOLATION	1
CFS	FOLLOW-UP INVESTIGAT	4
CFS	HIT & RUN EARLIER	1
CFS	LARCENY - EARLIER	1
CFS	PARKING VIOLATION/HA	1
CFS	SECURITY CHECK	43
CFS	STRONG ARM ROBBERY	1
CFS	SUSPICIOUS VEHICLE	2

A1A (RCB) 214 FOREST HILLS DR

1/13/2015	15000082	ROBBERY
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TYPE	NATURE	COUNT
INC	ROBBERY	1
CFS	ARMED ROBBERY	1
CFS	FOLLOW-UP INVESTIGAT	2
CFS	SECURITY CHECK	6

Friends Internet Café 225 TIMBER DR

8/20/2014	14001668	ROBBERY
11/18/2014	14002393	ROBBERY
8/3/2016	16001451	ROBBERY
9/9/2016	16001707	ROBBERY
9/13/2016	16001737	LARCENY - THEFT FROM BUILDING
10/7/2016	16001907	ASSAULT - PHYSICAL, NON-AGGRAVATED

TYPE	NATURE	COUNT
INC	ASSAULT - PHYSICAL, NON-AGGRAVATED	1
INC	LARCENY - THEFT FROM BUILDING	1
INC	ROBBERY	4
CFS	44/NON-RESIDENTIAL	2
CFS	911 HANGUP CALL	2
CFS	ALARM-HOLDUP	4
CFS	ARMED ROBBERY	4
CFS	ASSAULT/OTHER	1
CFS	BANK ESCORT	1
CFS	DISTURBANCE	1
CFS	DRUG LAW VIOLATION	1
CFS	ESCORT-OTHER/EXPLAIN	7
CFS	FOLLOW-UP INVESTIGAT	4
CFS	LARCENY - EARLIER	1
CFS	PARKING VIOLATION	1
CFS	REQUEST FOR SERVICE	38
CFS	SECURITY CHECK	68
CFS	SUSPICIOUS PERSON	6
CFS	SUSPICIOUS VEHICLE	3

Galaxy Internet Café 507 PLAZA CIR

8/18/2014	14001650	EMBEZZLEMENT - ALL OTHER
9/4/2014	14001776	COUNTERFEITING - BUYING / RECEIVING
8/17/2015	15001555	GAMBLING OFFENSE - EQUIP VIOL - POSSESS/CONCEALING
7/19/2016	16001343	LARCENY - THEFT FROM BUILDING
9/15/2016	16001750	LARCENY - THEFT FROM BUILDING

TYPE	NATURE	COUNT
INC	COUNTERFEITING - BUYING / RECEIVING	1
INC	EMBEZZLEMENT - ALL OTHER	1
INC	GAMBLING OFFENSE - EQUIP VIOL - POSSESS/CONCEALING	1
INC	LARCENY - THEFT FROM BUILDING	2
CFS	44/NON-RESIDENTIAL	1
CFS	ANIMAL WILD	1
CFS	BANK ESCORT	2
CFS	DISTURBANCE	1
CFS	ESCORT-OTHER / EXPLA	1
CFS	ESCORT-OTHER/EXPLAIN	40
CFS	FOLLOW-UP INVESTIGAT	3
CFS	FOOT PATROL	1
CFS	FRAUD-EARLIER	1
CFS	LARCENY - EARLIER	1
CFS	LARCENY/FROM EMPLOYE	1
CFS	LOST PROPERTY	1
CFS	OTHER CALL/EXPLAIN I	1
CFS	REFUSAL TO LEAVE	1
CFS	REQUEST FOR SERVICE	109
CFS	SECURITY CHECK	13
CFS	SUSPICIOUS PERSON	1
CFS	TRESPASSING	1

Cheryl Matter
Crime Analyst
Garner Police Department
919-772-8810 Ext: 6977
cmatter@garnernc.gov



Current Electronic Gaming Center Operations In and Near Garner

Address/Location	Case #	Approval Date	Subsequent Case #'s Old Rules
1317 Fifth Ave	ZCP-GEN-09-54	6/25/2009	ZCP-GEN-19-040
214 Forest Hills Drive	ZCP-GEN-10-043	6/4/2010	ZCP-GEN-11-048
1865 Aversboro Road	ZCP-GEN-11-063	9/29/2011	
507 Plaza Circle	ZCP-GEN-11-015	3/3/2011	ZCP-GEN-12-022
<i>Separation ordinance (#3673) adopted October 1, 2012</i>			
2808 US 70 Highway East	ZCP-GEN-24-018	8/27/2024	

Other Locations Near Garner

3909 S. Wilmington Road Raleigh

Former Locations in Garner - No Longer in Operation

225 Timber Drive	ZCP-GEN-09-32	5/1/2009
904-B Fifth Ave	ZCP-GEN-09-33	5/11/2009
215 Aversboro Road	ZCP-GEN-11-050	8/2/2011
1345 W. Garner Road	ZCP-GEN-12-029	5/3/2012
8805 Old Stage Road	ZCP-GEN-17-035	5/26/2017

ORDINANCE NO. (2012) 3673

AN ORDINANCE TO AMEND ORDINANCE NO. (2003) 3250 ENTITLED "THE GARNER UNIFIED DEVELOPMENT ORDINANCE FOR THE TOWN OF GARNER AND ITS EXTRATERRITORIAL JURISDICTION" BY AMENDING VARIOUS SECTIONS IN ORDER TO ESTABLISH REGULATIONS FOR ELECTRONIC GAMING CENTERS

Section One. Amend Section 11.2 entitled "Defined terms" by revising it to add a new definition for Electronic gaming centers to read as follows:

Electronic gaming centers. A business enterprise, as a principle use or as an accessory use where persons utilize more than six (6) electronic machine(s), including, but not limited to computers and gaming terminals, to conduct games including but not limited to sweepstakes, lotteries games, and or games of chance, and where cash, merchandise, or 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, which have a finite pool of winners. The term includes, but is not limited to internet sweepstakes, video sweepstakes or cybercafés. This definition does not include any lottery endorsed, approved or sponsored by the State of North Carolina or arcade games of skill.

Section Two. Amend Section 5.1 entitled "Use tables" by adding electronic gaming centers as a permitted use in certain zoning districts to read as follows:

USE		RESIDENTIAL DISTRICTS							NONRESIDENTIAL DISTRICTS									
P = Permitted by right		P* = Permitted subject to standards							S = Special use permit required									
Use Category	Specific Use	R-40	R-20	R-15	R-12	R-9	RMH	MF-1	MF-2	NO	NC	CB/D	OI	CR	SB	I-1	I-2	Notes
COMMERCIAL, OFFICE, RETAIL																		
Entertainment (see 5.2F.1)	Indoor Entertainment Facility													P*	P*	P*	P*	5.3C.6
	Electronic Gaming Centers													P*	P*	P*	P*	5.3C.17
	Outdoor Athletic or Entertainment Facility, Private														S	S		
	Sexually Oriented Business														S			5.3C.10
	Theater												S	P	P			

<u>TABLE OF PARKING REQUIREMENTS</u>		
<u>Use Category</u>	<u>Specific Use</u>	<u>Requirement</u>
	Outdoor Athletic Facility, Private	1 per 3 fixed seats, plus 1 per 25 square feet of gross floor area of exhibit or portable seating space.
	Sexually Oriented Business	1 per 100 square feet of gross floor area, or 1 per each 4 permanent seats, plus 1 space per 200 square feet of gross floor area
	Theater	1 space for every four seats
	Theater, Drive-In	1 space per speaker outlet
	Water Slide	1 space for every 3 persons that the facilities are designed to accommodate when fully utilized
	Other	1 space for every 200 square feet of gross floor area

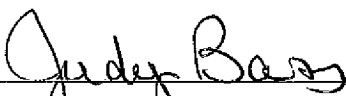
Section Four. Ordinance No. (2012) 3672 entitled Garner Unified Development Ordinance and Its Extraterritorial Jurisdiction as noted for deletion where applicable in Section One are hereby appealed.


Section Five. All ordinances or portions thereof in conflict with this ordinance are hereby appealed.

Duly adopted this 1st day of October, 2012.



MAYOR

ATTEST: 
TOWN CLERK

APPROVED AS TO FORM 
TOWN ATTORNEY

Section Three. Amend Section 5.3 C. by adding a new subsection 17. to read as follows:

17. Electronic gaming center. No electronic gaming center shall be located within ¼ mile of another electronic game center. The distance shall be measured from the closest point on the perimeter of the parcel on which the described establishments are located.

Section Four. Amend Section 7.4. B entitled "Table of parking requirements" by adding a new category electronic gaming centers to read as follows:

- B. Table of parking requirements. The Town Council recognizes that the table of parking requirements cannot cover every possible situation that may arise. Therefore, in cases not specifically covered, the permit-issuing authority is authorized to determine the parking requirements, using this table as a guide.

<u>TABLE OF PARKING REQUIREMENTS</u>		
<u>Use Category</u>	<u>Specific Use</u>	<u>Requirement</u>
Entertainment	Golf Course or Country Club, Private	1 space per 200 square feet of area within enclosed building, plus 1 space for every 3 persons that the outdoor facilities are designed to accommodate when used to the maximum capacity
	Gym, Spa, Indoor Tennis Court or Pool, Private	1 space for every 3 persons that the facilities are designed to accommodate when fully utilized, plus 1 space per 200 square feet of gross floor area used in a manner not susceptible to such calculation
	Horse Stables	1 space per 2 horses at maximum capacity
	<u>Electronic Gaming Centers</u>	<u>1 space for every 3 persons that the facilities are designed to accommodate when fully utilized (if they can be measured in such a fashion) plus 1 space per 200 square feet of gross floor area used in a manner not susceptible to such calculation</u>
	Indoor Entertainment Facility	1 space for every 3 persons that the facilities are designed to accommodate when fully utilized (if they can be measured in such a fashion) plus 1 space per 200 square feet of gross floor area used in a manner not susceptible to such calculation

LYNCH & EATMAN, L.L.P.

LAWYERS
SUITE 100, GLENLAKE SIX
4130 PARKLAKE AVENUE
RALEIGH, NORTH CAROLINA 27612
919/571-3332
FAX 919/571-9983

MARIA M. LYNCH *
JEROME R. EATMAN, JR.
JAMES A. EATMAN
MEGHAN N. KNIGHT
CAROL W. EXUM

*Board Certified Specialist in Estate
Planning and Probate Law

MAILING ADDRESS:
POST OFFICE BOX 30515
RALEIGH, NC 27622-0515

WRITER'S DIRECT DIAL:
919/571-9714
jeatman@lyncheatman.com

October 8, 2025

VIA FEDERAL EXPRESS:

Town Clerk's Office
Garner Town Hall
900 Seventh Avenue
Garner, NC 27529
Attn: Garner Town Clerk

Re: Written Interpretation Request #WI-25-004, Electronic Gaming Center Use Standards

Dear Sir or Madam:

As counsel to Moghadass Inc. (the "Property Owner"), this letter constitutes notice, pursuant to G.S. § 160D-405 of appeal of the Written Interpretation referenced above.

The Town of Garner at this time has not established a specific form for notice of appeals of written interpretation. Accordingly, please note the following in connection with this appeal and in support thereof:

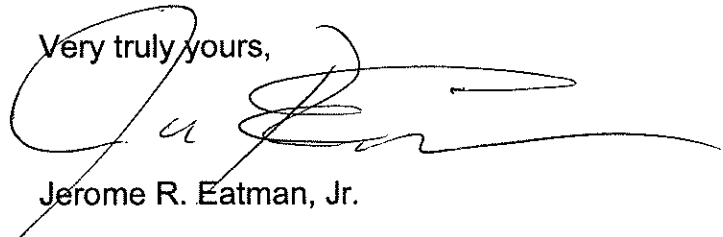
1. See attached Written Interpretation #WI-25-004 dated September 11, 2025.
2. Property location: 1506 US 70 Highway West, Garner, NC 27529.
3. Property Owner: Moghadass Inc., c/o Rowell Ordanes, 919-961-3140, rrordanes@gmail.com.
4. Current Zoning of Property: Commercial Mixed Use (CMX); property is also located within the Commercial Highway Overlay (CHO) District.
5. Applicable provisions of the UDO: Section 6.6.4, Subsection F.2 "Use Standards."

6. See attached copy of the deed recorded at Book 17695, Page 1927 of the Wake County, North Carolina Registry.
7. Acreage of property: 0.50 acres.
8. See attached Argument in support of appeal.
9. Enclosed check for \$500 fee.

Pursuant to Section 160D-1402(c) of the North Carolina General Statutes, the Applicant has standing to bring this appeal. Similarly, pursuant to Section 160D-405 of the North Carolina General Statutes, this letter constitutes adequate notice and petition for purposes of appeal to the Board of Adjustment.

If you have any questions concerning the enclosed, please do not hesitate to contact the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jerome R. Eatman, Jr.", written over a horizontal line.

Jerome R. Eatman, Jr.

JRE:elp
Enclosures

cc: Rowell Ordanes (via electronic mail)
Moghaddass Inc. (via USPS regular mail to: PO Box 78534, Charlotte, NC 28271)



PLANNING

MEMORANDUM

DATE: September 11, 2025

TO: Rowell Ordanes
7712 Silver View
Raleigh, North Carolina 27613

FROM: Jeff Triezenberg, AICP, GISP; Planning Director

SUBJECT: **Written Interpretation Request # WI-25-004, Electronic Gaming Center Use Standards**

Background and Request

On June 24, 2025, Rowell Ordanes requested a pre-application conference with the Town of Garner to discuss the possibility of opening an electronic gaming center use on the property located at 1506 US 70 Highway West in Garner, North Carolina 27529. During said conference it was noted that the property is located within ¼ mile of another electronic gaming center being operated at 3909 S Wilmington Street, Raleigh, North Carolina 27603; and that **Section 6.6.4., subsection F.2. “Use Standards”** of the Town of Garner Unified Development Ordinance (UDO) states that:

“No electronic gaming center shall be located within one quarter of a mile of another electronic gaming center. The distance shall be measured from the closest point on the perimeter of the parcel on which the described establishments are located.”

Mr. Ordanes has subsequently requested a formal written interpretation of the preceding section of the UDO regarding whether the use standard applies to circumstances when one of the electronic gaming centers in question is located within the zoning jurisdiction of a neighboring municipality – in this case, the City of Raleigh.

Interpretation

The property located at 1506 US 70 Highway West is zoned by the Town of Garner as Commercial Mixed Use (CMX) and within the Commercial Highway Overlay (CHO) district.

Electronic gaming centers are permitted via a Special Use Permit from the Town Council within the CMX zoning district and subject to the standards of Section 6.6.4., subsection F. The CHO does not further restrict electronic gaming centers as a use.

The property located at 3909 S Wilmington Street is zoned by the City of Raleigh as Industrial Mixed Use 3 with no overlays. Site visits and online research note that the use of the property is an electronic gaming center known as DJ’s Blue Room.

Utilizing publicly available digital tax maps, the distance between the closest points of each gaming center's property is approximately 521.29 feet (0.10 miles), which is less than the one quarter mile required by **Section 6.6.4., subsection F.2.** of the Garner UDO.

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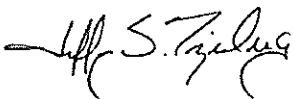
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Right to Appeal

Pursuant to G.S. § 160D-405, as may be amended from time to time, the preceding Written Interpretation may be appealed by the aggrieved party to the Garner Board of Adjustment by submitting a written petition (request) to the Garner Town Clerk **within 33 days of the date of this notice** which is being provide primarily by first-class mail but also through the Town's permitting portal.

Town Clerk's Office
Garner Town Hall
900 Seventh Ave.
Garner, NC 27529

Sincerely,



Jeffrey S. Triezenberg, AICP, GISP;
Planning Director

cc: Town of Garner Attorney's Office
Town of Garner Clerk's Office
Moghadass Inc., PO Box 78534, Charlotte, NC 28271-7035

ARGUMENT IN SUPPORT OF APPEAL

Moghadass Inc. ("Petitioner"), as the owner of the property located at 1506 US 70 Highway West in Garner, North Carolina (the "Property") is appealing the written interpretation by the Town of Garner (the "Town") set forth in Written Interpretation Request #WI-25-004, Electronic Gaming Center Use Standards, determining that the Property would not meet the standards for a special use permit because it violates the separation requirements of Section 6.6.4, subsection F.2 of the Garner Unified Development Ordinance (the "UDO").

The "Use Standards" of the UDO provide, in Section 6.6.4, subsection F, that "no electronic gaming center shall be located within one quarter mile of another electronic gaming center. The distance shall be measured from the closest point on the perimeter of the parcel on which the described establishments are located." In the case of the Property, the Town is taking the position that it could not meet the requirements of the UDO because it is located approximately 529.29 feet from an electronic gaming center located outside of the Town's jurisdiction. The property on which the Town staff has identified another electronic gaming center is located at 3909 South Wilmington Street, which is within the zoning jurisdiction of the City of Raleigh. The Town has interpreted Section 6.6.4 of the UDO to include properties outside of the Town's zoning jurisdiction for purposes of the separation requirements. Petitioner argues that this interpretation is inconsistent with the law in North Carolina in determining the proper scope of local zoning regulations and would result in an impermissible expansion of the Town's regulatory authority.

North Carolina Courts have long held that governmental restrictions on the use of the land are to be construed strictly in favor of the free use of real property. *Westminster Homes, Inc. v. Town of Cary Zoning Bd. of Adjustment*, 354 N.C. 298, 554 S.E.2d 634 (2001); *Yancey v. Heafner*, 268 N.C. 263, 266, 150 S.E.2d 440 (1966). In determining the proper scope of Section 6.6.4 of the UDO, any ambiguity must be resolved in favor of the Petitioner. *Ashe Cnty. v. Ashe Cnty. Plan. Bd.*, 387 N.C. 159, 913 S.E.2d 212 (2025). The Town's interpretation of the scope of Section 6.6.4 is excessively broad and inconsistent with decades of case law in North Carolina.

The power of the Town to regulate land uses within its borders is derived from the North Carolina Legislation. See, N.C. Gen. Stat. § 160A-174. This power is limited to the borders of the Town and its ETJ and is subject to limitations regarding the arbitrary or capricious use thereof. Section 1.3 of the Town's UDO states that "this UDO shall apply to all land within the Town of Garner municipal limits and its municipal extraterritorial jurisdiction (ETJ). . ." Accordingly, when Section 6.6.4 refers to "another electronic gaming center" it can only mean another electronic gaming center within the Town's zoning jurisdiction. To apply the provisions of the UDO to uses outside of the jurisdiction of the Town, even if only for the purpose of disqualifying other uses within the Town, constitutes an impermissibly broad interpretation of the Town's Ordinance. In addition, the normal interpretation of the terms of Section 6.6.4 would be limited to electronic gaming centers within the Town. See, *Morris Commc'ns Corp. v. City of Bessemer City Zoning Bd. of*

Adjustment, 365 N.C. 152, 712 S.E.2d 868 (2011) (citing *Westminster Homes*, 354 N.C. at 303, 554 S.E.2d at 639) (When interpreting a municipal ordinance, the courts of North Carolina apply the same principles of construction to interpret statutes).

The Town's argument that separation requirements are typically used to mitigate conflicts between land uses ignores the inherent limitation of the Town's regulatory authority to the land uses within its borders. The Town has the right to regulate, by separation requirements and otherwise, incompatible uses within its jurisdiction. The provisions of Section 6.6.4, subsection F.2, were not intended to restrict a landowner in Garner from an otherwise permissible use of his property based solely on the way a parcel of land in Raleigh is being utilized.

The Town's interpretation of the separation requirements for electronic gaming centers also fails for a number of practical reasons. Based on the Town's reasoning, the permitting of a new gaming center in Raleigh could cause an existing gaming center in Garner to fail to meet its Special Use Permit Requirements if it were located within the proscribed buffer. The use standards incorporated into a Special Use Permit are typically perpetual, and any failure in the future to meet these standards can result in loss of the Permit. At best this would make the existing gaming center a "non-conforming use" based solely on the permitting decisions of the City of Raleigh. Neither of these results can reasonably be argued as being what was intended in the drafting of Section 6.6.4.

There is also the inherent potential for unfairness in conflicting definitions and use standards under the zoning ordinances of different jurisdictions. What Garner considers an "electronic gaming center" may not be the same for the City of Raleigh, and even if it is, the use standards may be markedly different. The underlying premise in a separation requirement for certain uses is that the uses are all subject to the same definitions and use standards.

Petitioner respectfully requests that the Board of Adjustment determine that the Written Interpretation set forth in #WI-25-004 is overly broad and the separation requirements in section 6.6.4 regarding electronic gaming centers should not apply to gaming centers outside of the Town of Garner municipal limits and its municipal extraterritorial jurisdiction.

NORTH CAROLINA QUITCLAIM DEED

Excise Tax: \$0.00

Parcel Identifier No. 0067537 Verified by _____ County on the ____ day of _____, 20____
By: _____

Mail/Box to: Grantee

This instrument was prepared by: The Law Office of Jonathan W. Anderson, PLLC (w/o title exam) (a licensed NC attorney)

Delinquent taxes, if any, to be paid by the closing attorney to the county tax collector upon disbursement of closing proceeds.

Brief description for the Index: Lot 1, Prop Mamie Stephenson BM1987-1188

THIS DEED made this 19th day of December, 2019, by and between

GRANTOR	GRANTEE
Masoud Moghadass, unmarried	Moghadass, Inc., a North Carolina corporation 5040 Isabella Cannon Drive Raleigh, NC 27612

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in City of Garner, Wake County, North Carolina and more particularly described as follows:

See attached Exhibit A.

The property hereinabove described was acquired by Grantor by deed of record in Book 14233, Pages 1381.

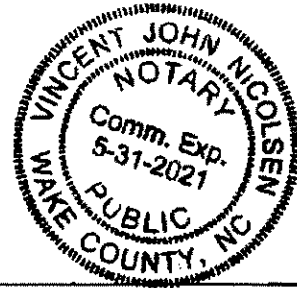
All or a portion of the property herein conveyed does not include the primary residence of Grantor.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

The Grantor makes no warranty, express or implied, as to title to the property hereinabove described.

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

X JWA AIF (SEAL)
Masoud Moghadass by Jonathan W. Anderson, Attorney in Fact



State of North Carolina - County of Wake

I, Vincent John Nicolsen, do hereby certify that Jonathan W. Anderson, attorney-in-fact for Masoud Moghadass personally appeared before me this day, and being by me duly sworn, says that he executed the foregoing and annexed instrument for and on behalf of Masoud Moghadass and that his authority to execute and acknowledge said instrument is contained in an instrument duly executed and acknowledged on April 15th, 2016, and recorded in the office of Wake County Registry, on the 20th day of December, 2019 in Book 17693, Page 2291 and that this instrument was executed under and by virtue of the authority given by said instrument granting him power of attorney; that the said Jonathan W. Anderson acknowledged the due execution of the foregoing and annexed instrument for the purposes therein expressed for and on behalf of the said Masoud Moghadass.

Witness my hand and Notarial stamp or seal this 19 day of December 2019.

My Commission Expires:

5/31/21

(Affix Seal)

[Signature]
Notary Public

EXHIBIT A

TRACT I: 1506 US 70 Hwy (Tax ID# 0067537)

BEGINNING at an existing iron pipe in the westerly property line of Mamie H. Stephenson, said corner being South 10 degrees 50' 07" West 139.18 feet of a "Control Corner" located on the southerly right-of-way line of Mechanical Boulevard, said control corner having N.C. Grid Coordinates as follows: N=718,683.05, E=2,104,916.57 and said control corner being located North 21 degrees 49' 47" West 739.44 feet from N.C.G.S. Monument "Norris" as shown on followed described map:

FROM SAID EXISTING IRON PIPE, the point of beginning thus established, thence South 39 degrees, 07' 18" West 119.87 feet to an existing iron pipe on the northerly right-of-way line of U.S. Highway 70, thence along and with said right-of-way line of U.S. Highway 70, thence along and with said right-of-way South 52 degrees 29' 15" East 114.38 feet and South 55 degrees 27' 53" East 52.81 feet through an existing iron pipe to a new iron pipe set in said right-of-way, commencing, thence North 21 degrees 46' 00" East 164.93 feet to a new iron pipe and North 12 degrees 16' 42" East 23 feet to another new iron pipe and North 82 degrees 13' 55" West 125.73 feet to the point and place of Beginning, containing .50 acres and designated as Tract No. 2A according to a survey entitled "Property of Mamie H. Stephenson", by Linwood E. Byrd, Registered Land Surveyor, dated Feb. 1, 1985, revised March 4, 1985.

Together with all right and easements held by and accruing to the Grantor pursuant to the terms of a Deed of Easement For Private Driveway dated June 30, 1987, and recorded in Book 4086, Page 762, Wake County Registry.