

ORDINANCE NO. 6529-08

AN ORDINANCE GRANTING CONDITIONAL USE PERMIT NUMBER CU-08-252 FOR THE HEREINAFTER DESCRIBED PROPERTY FOR THE PURPOSE OF OPERATING AN AMUSEMENT ARCADE ON A SITE ZONED C1 RETAIL COMMERCIAL DISTRICT.

WHEREAS, application number CU-08-252 has been made by **HUSSEY ASSOCIATES AND HIDEN ASSOCIATES** for a conditional use permit for the hereinafter described property for the purpose of operating an amusement arcade on a site zoned C1 Retail Commercial District; and

WHEREAS, the application has been referred to the Planning Commission of the City of Newport News for recommendation and has been duly advertised as required by law and the said Planning Commission has made its recommendation.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Newport News:

(a) That conditional use permit number CU-08-252 is hereby granted for the property described in paragraph (b) hereof for the purpose of operating an amusement arcade on a site zoned C1 Retail Commercial District; and

(b) That the property, hereinafter referred to as the "Property," to which the conditional use permit applies is particularly described below:

All that certain lot, piece or parcel of land, situate, lying and being in the City of Newport News, Virginia, known and designated as "Parcel C. N." including, without limitation, the property labeled "Buffer Zone" as shown on that certain plat known and designated as "Property of the Estate of P. W. Hiden, deceased, Hidenwood, C. N. & C.S.," (the Plat) made by Murray and Dischinger, Engineers, dated October 27, 1968, a copy of which is attached to Deed from Robert M. Saunders, et. al., Trustees, to Hussey Associates, dated September 20, 1996, duly recorded in the Clerk's Office of the Circuit Court of the City of Newport News, Virginia, in Deed Book 1448, page 579, together with all and singular the buildings and improvements thereon, hereditaments and appurtenances thereunto belonging or in anywise appertaining, being bounded on the North by property now or formerly owned by John E. Mallicotte, on the East by U.S. Rout 60, known as Warwick Boulevard, on the South by Hiden Boulevard, and on the West by property known as Hidenwood, Section 3, all as more particularly shown on the Plat.

(That portion of the property to which the conditional use permit will apply is identified on Exhibit 1, attached hereto and made a part hereof. The property has a common street address of 2 Hiden Boulevard, Unit 17. The parcel is assigned Real Estate Assessor's Tax I.D. #220.00-02-12.)

(c) That this conditional use permit is granted subject to the following conditions, each of which shall be implemented upon approval of this ordinance:

1. The use shall be limited to the 1,760 square feet of space identified as Unit 17 within the shopping center at 2 Hidenwood Boulevard.
2. The use of the amusement arcade shall be limited to computer gaming and high speed internet access.
3. The amusement arcade shall only operate from 12:00 p.m. to 12:00 a.m. Monday through Friday and 10:00 a.m. to 12:00 a.m. Saturday and Sunday.
4. Signage placed in or on any window of the building shall be limited to no more than 25 percent of each window.
5. The applicant shall cause a plan ("the Plan") to be prepared for the installation and operation of video equipment (the "Equipment") with recording devices and capability sufficient to include date and time the recording is made. The Equipment shall provide surveillance coverage encompassing the front, side and rear exteriors of the use permitted by this ordinance. The Plan shall be submitted for review and approval by the Police Department. The Plan shall include an operational period for the Equipment, which shall include all operating hours of the business and one hour or more after the close of business. Once the Plan is approved, the applicant shall install the Equipment in accord with the provisions of the Plan; and operate, record, and maintain the Equipment to provide for the required surveillance coverage. The Equipment and recordings made thereby shall be subject to periodic inspection by the Police Department at reasonable times. Commencement of the use authorized by this conditional use permit shall constitute acceptance of the conditions of this permit, including consent for such inspections. Surveillance tapes or recorded data must be maintained in a condition permitting review of the information recorded or stored therein or thereon for a period of time no less than thirty days.
6. The applicant, as well as successors, assigns and agents, if any, shall comply with all of the conditions stated herein, as well as all codes, ordinances and regulations of federal, state and local governments.

7. The applicant, as well as successors, assigns, and agents, if any, shall obtain all necessary licenses, approvals, conditional approvals, and permits prior to commencing any use, which is authorized by this conditional use permit or law. Furthermore, the applicants, as well as successors, assigns, and agents shall maintain all necessary licenses, approvals, conditional approvals, and permits for the entire period of time during which the real property, whether improved or otherwise is put to a use which is authorized by this conditional use permit.
8. Violation of any of the above conditions or safeguards attached thereto shall be deemed a violation of the Zoning Ordinance, and, in addition, and notwithstanding any other provision of law, shall serve as grounds for revocation of the conditional use permit by City Council.
9. A Certificate of Use and Occupancy shall be obtained prior to the occupancy of, or the operation of, any use of the Property. If applicable, the use approved by this conditional use permit shall not begin until a site plan is approved and fully implemented. If applicable, any landscaping component of the site plan shall be maintained in a healthy condition for the duration of the use authorized by this permit.
10. Notwithstanding any other provision of law, this conditional use permit is being approved due, in part, to the mitigating effects of each and every condition attached hereto; therefore, the conditions contained in this conditional use permit are not severable; in the event that any condition contained herein, or part thereof, is found by a court of competent jurisdiction to be invalid, unconstitutional, or otherwise unenforceable, then this conditional use permit shall be void and the use permitted by this conditional use permit shall cease. If this conditional use permit becomes void as a result of a condition or a part thereof, or conditions therein, being ruled invalid, unconstitutional or otherwise unenforceable, the property owner shall be afforded the right to reapply for a conditional use permit.
11. Notwithstanding any other provision of law, this conditional use permit is being approved due, in part, to the mitigating effects of each and every condition contained herein; as such, in the event an amendment to the zoning of the property described in Section (b) hereof is produced by a comprehensive implementation of a new or substantially revised Zoning Ordinance, the conditions imposed by the conditional use permit shall continue in effect.

(d) That this conditional use permit shall be deemed to have been abandoned and shall

be revoked:

1. If the construction of the improvements or occupancy authorized by this conditional use permit has not commenced within twenty-four (24) months of September 23, 2008, or,
2. In the event of the continuous nonuse of the property as herein permitted for a period of twelve (12) months.

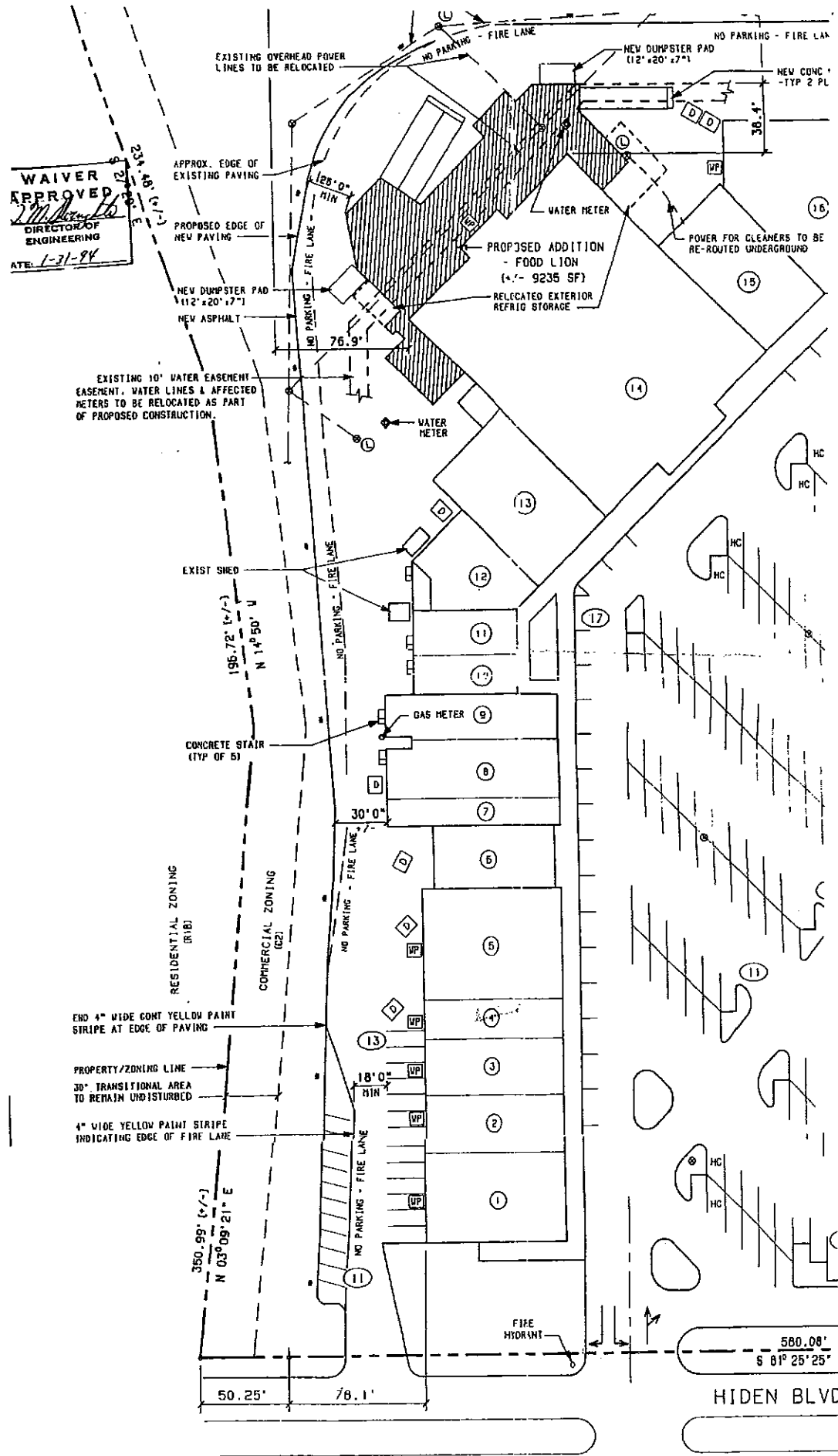
PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON
SEPTEMBER 23, 2008

Mabel V. Washington, CMC
City Clerk

Joe S. Frank
Mayor

A true copy, teste:

City Clerk



WAIVER APPROVED
 DIRECTOR OF ENGINEERING
 DATE: 1-31-94

Unit #4 to be used for Cyber Nutt Video Game and Internet Cafe, LLC
 (Unit #4 is now commonly known as Unit #17)