

Appeal

Hearing Request Application - Form 1
Zoning Board of Adjustment
City of Charlotte

Sonda Kennedy
ZBA Clerk

Date Filed: 9/12/12

Case Number: 08-044-
~~22012005649~~

Received by:

Instructions

This form must be filed out completely. Please attach the appropriate additional form depending on your request type along with required information as outlined in the appropriate checklist. Please type or print legibly. All property owners must sign and consent to this application, attach additional sheets if necessary. If the applicant is not the owner, the owners must sign the Designation of Agent section at the bottom of this form.

The Applicant Hereby (check all that apply):

- Requests a variance from the provisions of the zoning ordinance as stated on Form 2
- Appeals the determination of a zoning official as stated on Form 3
- Requests an administrative deviation as stated on Form 4

Applicant or Agent's Name: JAMES L BLANE

Mailing Address: 1507 E MOREHEAD ST, SUITE 100

City, State, Zip: CHARLOTTE, NC 28204

Daytime Telephone: 704-331-0030 Home Telephone:

Interest in this Case (please circle one): Owner Adjacent Owner ATTORNEY
Other

Property Owner(s) [if other than applicant/agent]: JAMES ALLEN SMITH

Mailing Address: 1903 MEADOWOOD LN

City, State, Zip: CHARLOTTE, NC 28211

Daytime Telephone: 704-236-0036 Home Telephone:

Property Address: 3425 DAVID COX RD, CHARLOTTE 28269

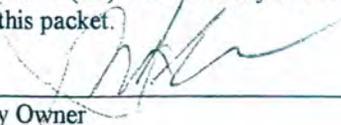
Tax Parcel Number: 02713211 Zoning District: B-1 SLD

Subdivision Name: Conditional District: YES NO

Applicant Certification and Designation of Agent

I (we) certify that the information in this application, the attached form(s) and documents submitted by me (us) as part of this application are true and correct. In the event any information given is found to be false, any decision rendered may be revoked at any time. I (we) hereby appoint the person named above as my (our) agent to represent me (us) in this application and all proceedings related to it. I (we) further certify to have received, read and acknowledged the information and requirements outlined in this packet.

Date: 9/12/12

Property Owner: 

Date:

Property Owner:

Appeal Application - Form 3
Zoning Board of Adjustment
City of Charlotte

Date Filed: _____ **Case Number:** _____ **Fee Collected:** _____

Has work started on this project? YES NO
 If yes, Did you obtain a building permit? YES NO If yes, attach a copy.
 Have you received a Notice of Violation for this project? YES NO If yes, attach a copy.
 Has this property been rezoned? YES NO If yes, Petition Number: _____

(1) What zoning ordinance section numbers do you allege were applied in error? Please list each section, the requirement and the requested variance.

Item	Code Section	Code Requirement
<i>Example</i>	9.205 (1)(g)	45 foot rear yard
A	9.801(1)	Permitted Uses for Business Center for retailing of merchandise
B	9.802(49)	Permitted uses include indoor recreation
C	9.802(60)	Permitted uses include neighborhood food and beverage service
D	9.802(77)	Permitted uses include Restaurants
E	9.802(79)	Permitted uses include Retail Establishments...recreation services
F	9.804(1)	Permitted uses include Accessory uses incidental & related to...

(2) Please describe why you feel the code sections listed above where applied in error. Tell the Board what you feel is the appropriate application of each code section.

(a) Code Section: 9.801(1)

The permitted uses for B-1SCD include all those uses for a business center for retailing of merchandise. Appellant has conformed to the uses permitted, having been a restaurant/bar/game venue for neighborhood residents and others visiting the City of Charlotte since 1998 (under prior ownership until 2010). The uses of the facility have not changed since inception.

(b) Code Section: 9.802(49)

Permitted uses include indoor recreation. As an adjunct to Appellant's restaurant/bar business, Appellant has always had vending machines, electronic games, pool tables, and nighttime entertainment. All of these uses are permitted within the existing zoning and none of the uses have changed.

(c) Code Section 9.802(60)

Permitted uses under the existing zoning include the sale of neighborhood food and beverage services. This has not changed since inception. The facility was formerly named Midtown Sundries, and the name changed to Fanz Restaurants, LLC in early 2011 but no uses have changed.

(d) Code Section 9.802(77)

Permitted uses within the existing zoning include restaurants. Because of the size of the structure and the tremendous pressure upon restaurants to survive during the existing economic downturn, it is encumbering upon an owner to maximize revenues in order to remain viable. The overhead and physical size and enormity of the debt structure upon the existing facility is so large that food sales alone have never been able to carry the debt. Accordingly, the auxiliary uses of nightly entertainment and the availability of entertainment helps to increase appellant's potential to survive. Though the auxiliary uses simply augment the sales of food and beverages, they are integral to the overall viability of Appellant's

business.

(e) Code Section 9.802(79)

The permitted uses within the existing zoning include retail establishments...and recreational services. It was always anticipated that indoor recreational games would be available in facilities similar to that owned and operated by appellant, and this is a basis upon which appellant's business remains viable. Fanz Sports Grill, appeals to all ages, all classes, all interest and may have the most diversified constituency in the city. There are over fifty television screens, multiple choices and level of games, including the traditional game of billiards and the more modern games of chance. All of this supplements a varied menu enabling parents to bring their children and children are entertained while they await their food and after they eat so that parents can visit and talk and on several nights each week, live entertainment is provided to foster those seeking new relationships. Fanz seeks to be a melting pot and a meeting place serving the northeast Charlotte Community.

(f) Code Section 9.804(1)

Permitted uses in the existing zoning include accessory uses incidental and related to the principal use. Appellant is doing no more than appellant has always done, which is to serve its diversified constituency in its diversified way, providing multiple opportunities for relaxation, enjoyment, nourishment and entertainment. It is inconceivable to Appellant that it was cited for now being in violation of the zoning ordinance when it has never previously been in violation and it has not changed its available offering, but simply rearranged its furniture.

(g) Code Section 9.803(19)

Permitted uses in the existing zoning include nightclubs, bars and lounges, which Fanz has been since its inception without change. Fanz has entertainment several nights a week to appeal to those seeking to enjoy music, meet others, and relax.

Code Enforcement Division
Northeast Service Area
5727-A N. Sharon Amity Rd.
Charlotte NC 28215



8/16/2012

Fanz Sports Grill
3425 David Cox Road
Charlotte NC 28269

ZONING NOTICE OF VIOLATION

Case Number: Z20120036089 Document # 7803

Property Address: DAVID COX RD CHARLOTTE NC 28269

Zoning Classification: B-1SCD

Tax Parcel No.: 02713211

Violation Summary:

Property owner/tenant must cease the sweepstakes establishment use within 30 days to avoid monetary citations. A business license was issued for a restaurant use and the sweepstakes use is not allowed as a principle or accessory use at this location.

Please immediately correct the violation(s). If the violation(s) are not corrected within 30 days from the date of this Notice of Violation, and there is no appeal to the Zoning Board of Adjustment, the City reserves the right to exercise any one or all of the following remedies outlined in Chapter 8 of the City of Charlotte Zoning Ordinance:

- * Issuance of criminal summons for failure to comply with the City of Charlotte Zoning Ordinance.
 - * Escalating monetary citations
 - * Civil judicial remedies to include: court order to vacate occupancy and/or use of premises;
- Injunction to correct violation abatement order
- * Revocation of certificate of occupancy

The Zoning Board of Adjustment is empowered to rule on the interpretation of the Zoning Ordinance and to grant variances when a difficulty or hardship exists. Appeals will not be heard by the Board unless an application is properly filed in the Zoning Administrator's office within 30 days of the date of this Notice of Violation. Once the deadline has passed, your right of appeal is forfeited. Forms are available at the office address below and online at <http://charmeck.org/city/charlotte/planning/AboutUs/Pages/FeesApplications.aspx>.

If you have any questions as to what is required by this notice, please contact me at the number below.



ANTHONY SALAS

Zoning Code Inspector
(704)336-7619

asalas@ci.charlotte.nc.us

City of Charlotte Zoning Office
700 N. Tryon Street, Charlotte, NC 28202

Violations

9.804 (1)

9.804. Permitted accessory uses and structures. (1) Accessory uses and structures clearly incidental and related to the permitted principal use or structure on the lot.

4.104. Zoning review.

Engineering and Property Management shall conduct reviews and make approvals of zoning compliance under these regulations for the issuance of zoning permits, change of use permits, and sign permits related to planned multi-family projects and commercial projects, including office, institutional, retail and industrial projects. Neighborhood Development shall conduct reviews and make approvals of zoning compliance under these regulations for the issuance of zoning permits, change of use permits, and sign permits related to all other residential projects, and all existing land uses. (Petition No. 2005-78 §4.104, 06/20/05)

4.103

4.103 Certificate of occupancy required. It is illegal for any person to occupy or use any land, building, or structure or change the use of any land, building, or structure, except for land used for agricultural purposes, without first obtaining a certificate of occupancy.

2.201. Definitions. Accessory structure or use.

2.201. Definitions. Accessory structure or use. A use or structure that is customarily or typically subordinate to and serves a principal use or structure; is clearly subordinate in area, extent, or purpose to the principal use or structure served; and is located on the same lot as the principal use or structure. In no event shall "accessory use" or "accessory structure" be construed to authorize a principal use or structure not otherwise permitted in the district in which the use is located.

Attachments:

Section 8.105. Citations. (1) The zoning administrator, individually, or by and through his or her authorized designees, including the professional staff identified in part 5, chapter 3, is authorized to issue citations to any person if there is a reasonable cause to believe that the person has violated any provision of these regulations. A violator shall be deemed to be the owner of the premises, the agent of the owner authorized to be responsible for the premises, or the occupant of the premises. Citations may be directly issued to the occupant, lessee, or person having immediate beneficial use of the property. The non-occupant owner or agent responsible for the premises each has a duty to maintain the premises in compliance with these regulations. A citation shall not be issued to a non-occupant owner, agent or occupant for those premises unless there has been written notice delivered to the owner, agent, or occupant, or mailed to the last known mailing address as shown by public records, or by making other reasonable efforts to communicate the existence of the violation to the owner, agent, or occupant. (2) The initial citation for each violation shall be fifty dollars (\$50.00). The issuance of a second citation for any violation that has not been corrected shall be in an amount up to two hundred dollars (\$200.00) upon the day of issuance, up to five hundred dollars (\$500.00) for the third citation, and up to five hundred dollars (\$500.00) thereafter. Any unpaid citations and delinquency charges shall be cumulative and shall subject the violator to a possible civil penalty to be recovered in a civil action in the nature of debt. The citations may be delivered in person to the violator or, if the violator cannot be readily found, then the citation may be mailed. (3) The citation shall direct the violator to make payment to neighborhood development within fifteen (15) days of the date of the citation, or alternatively pay the citation by mail. If the violator does not make such payment or does not mail the citation and payment within fifteen (15) days of the issuance, a delinquency charge of ten dollars (\$10.00) shall be added to the amount shown on the citation. The citation shall inform the violator that a civil complaint or criminal summons may be filed if the citation and delinquency charge is not paid within fifteen (15) days from the date of delinquency. Further, the citation shall state that the violation is a continuing violation and additional citations may be issued with escalating amounts for a continuing violation.

Section 8.106. Civil judicial remedies. (1) If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure or land is used in violation of these regulations or other regulation made under authority conferred thereby, the city, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate the violation, to prevent occupancy of the building, structure or land, or to prevent any illegal act, conduct, business or use in or about the premises. The General Court of Justice shall have jurisdiction to issue such orders as may be appropriate. (2) If the zoning ordinance makes unlawful a condition existing upon or use made of real property, then the zoning ordinance may be enforced by injunction and order of abatement and the General Court of Justice shall have jurisdiction to issue such orders. When a violation of such an ordinance occurs the City may apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and order of abatement commending the defendant to correct the unlawful condition upon or cease the unlawful use of the property. (3) In addition to an injunction, the court may enter an order of abatement as a part of the judgment in the cause. An order of abatement may direct that buildings or other structures on the property be closed, demolished, or removed or that any other action be taken that is necessary to bring the property into compliance with the ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt, and the city may execute the order of abatement. The city shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and material man's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the clerk of superior court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

Section 13.113. Enforcement. (1) Inspections and investigations. (a) Neighborhood development will periodically inspect signs in order to determine whether there are any violations of this ordinance. (b) Neighborhood development shall have the power to conduct such investigations as it may reasonably deem necessary to carry out its duties as prescribed in these regulations, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting signs. No person shall refuse entry or access to any authorized representative of neighborhood development or engineering and property management who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper, or interfere with any such representative while in the process of carrying out his official duties. (c) Neighborhood development may require written statements, or the filing of reports with respect to pertinent questions relating to signs. (2) Citations. If, through inspection, it is determined that a person has failed to comply with the provisions of these regulations, neighborhood development shall issue a warning citation to the violator. Violations shall be corrected within ten (10) days of the issuance of such citation. If the violation is not corrected within the specified time period, the violator is subject to section 8.105, 'Citations', of this ordinance, which is incorporated by reference herein as if fully stated. (3) Other enforcement methods. In addition to the civil penalties, the provisions of these regulations may be enforced by one or more of the methods described in Chapter 8 of the Zoning Ordinance.

THIS AGREEMENT, Made this 10th day of June, 2011, by and between
 K & K MUSIC COMPANY OF BLUEFIELD, INC., a West Virginia corporation (hereinafter called
 "Company") and Paul B. Little whose premises are located at
1135 Ohio Ave. Box 600, Co. H. H. Co. D-2500 (hereinafter called "Proprietor");

WITNESSETH:

In consideration of the mutual promises and provisions hereinafter set forth, the parties agree as follows:

A. All coin or currency operated video lottery machines and/or amusement devices (Equipment) installed by Company and all contents of cash boxes therein shall remain the property of Company, and neither Proprietor nor any third party shall have any right or claim thereto, except the right of Proprietor to share in the contents of the cash boxes as hereinafter provided. All said Equipment so placed with Proprietor shall bear the name or identification mark of Company and shall state thereon that said Equipment is the sole property of Company.

B. This Agreement shall be binding upon the parties hereto, their heirs, administrators, executors, successors and assigns, for the term hereinafter agreed to, and in the event Proprietor sells or assigns his interest in the premises, his successor shall be fully bound by the terms of the Agreement. This Agreement shall not be considered to create a joint venture between the parties hereto.

C. Company shall have the right to cancel this Agreement at any time within the term hereinafter agreed to, without any written notice to Proprietor, if, in the option of Company, the gross collection from the use and operation of said machines and devices have proven unprofitable or Company feels that the Equipment may be in danger upon Proprietor's premises.

D. This Agreement shall be for a term of 90 months commencing on the above date. Further, this Agreement shall automatically continue from year to year thereafter, unless (1) Owner determines to cancel, in which no notice is necessary to Proprietor or (2) Proprietor shall furnish written notice of termination to Company no less than thirty days prior to the end of the original term or any year-to-year extension term. Owner, upon receiving such written notice from Proprietor or upon a cancellation such as that contemplated in Paragraph C above, shall have the right to enter immediately upon the said premises of Proprietor and remove any and all of Company's Equipment.

E. In the event this Agreement is breached by Proprietor for any reason whatsoever, all sums which Company could have reasonably expected to collect in the remainder of the then current term of this Agreement (which shall be calculated based on the average collections for the previous six full months prior to the month of such breach) shall immediately become owed and payable by Proprietor to Company without offset, which is hereby agreed to be reasonable liquidated damages, and not as a penalty, for early termination by Proprietor, if being recognized and agreed that Company would suffer substantial damages from such termination of this agreement which would be difficult to measure. In such event, it is further agreed that Company shall have no duty to mitigate damages.

F. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

G. Except as provided herein and except for a breach hereof, this Agreement shall be irrevocable by the parties hereto. The terms of this agreement may not be modified except by written instrument signed by the parties. Any variance in performance of the obligations pursuant hereto shall not constitute a waiver nor shall the same be deemed a modification of the terms hereof.

II.

PROPRIETOR PROMISES AND AGREES:

- A. To provide exclusive rights with sufficient floor space and all necessary electrical outlets, power and connections for the placement of the Equipment to be provided by Company.
- B. To make the Equipment available for public use during all normal business hours.

C. To return all said Equipment to Company in the same condition as received, reasonable wear and tear excepted. Proprietor further agrees to be responsible for any and all damages to said Equipment from, but not limited to, negligence or contributory negligence of Proprietor and/or his or its employees, fire, smoke, flood, windstorm or other acts of God. Proprietor agrees to be responsible for 50% of any and all damages to said Equipment from, but not limited to, robbery, theft, vandalism or assault on the Equipment by customers, unless same have resulted due to the negligence of Proprietor or his or its employees, in which event Proprietor shall be responsible for 100 % of all such damages. Any sums owed by Proprietor to Company as a result of damage to the Equipment for any reason whatsoever, shall become immediately due and payable by Proprietor to Company upon presentation of a bill for same. If Proprietor fails to pay same in full immediately to Company, then Proprietor agrees that Company may deduct same from future collections from the Equipment, if any, until paid in full. This does not preclude Company from otherwise proceeding with collection of monies owed it by Proprietor through legal means or remedies.

D. To allow no other person or business to place competitive equipment on Proprietor's said premises during the term of this Agreement.

E. To refrain from giving or offering to give cash, prizes or other items of value to users of the machines based upon any machine score obtained by user, other than the monetary lottery winnings disbursed by the machines themselves during the regular course of a game played thereon as may be now or in the future permitted by the West Virginia State Lottery Commission or a successor commission.

F. To abide by all rules, regulations and policies in effect by the West Virginia State Lottery Commission or any other state agency during the time Equipment is on the premises, including securing and maintaining any necessary licenses.

G. To apply this Agreement to any new location to which Proprietor's business may be moved. Proprietor will not sell his business without requiring the purchaser or transferee to agree in writing to continue this Agreement to its expiration and assume Proprietor's obligations.

III.

COMPANY PROMISES AND AGREES:

A. To install, service and maintain such number of models of Equipment as Company determines would be profitable to place in Proprietor's premises, and Company is the sole judge as to the number and models of same. *(first 12 months limited - 60/40 - fees Long redemption 20/30/100)*

B. To pay to the Proprietor 50 % of net collections after deduction for required taxes or other fees owing to the West Virginia State Lottery Commission or any other state governing body. Company reserves the right to pay to Proprietor a different percentage in the case of certain Equipment whose expense of installation and operation requires a greater rate of return. Each such different percentage payment machine or device is listed, together with its applicable percentage, on a Special Percentage Schedule attached, if applicable, which may be amended from time to time by the parties.

This agreement constitutes the entire agreement of the parties hereto and all previous communications between the parties whether written or oral with reference to the subject matter of this agreement are canceled and superseded.

WITNESS the following signatures and seals as of the 16th day of June, 192011.

K & K MUSIC COMPANY OF BLUEFIELD, INC.

PROPRIETOR:

By: *Car Kelly* (SEAL)

[Signature]

_____ (SEAL)

_____ (SEAL)

_____ (SEAL)

*INCLUDING
Attached Addendum "A"
OK*

Telephone No. _____

June 10, 2011

ADDENDUM "A"

Agreement between K&K & Fanz Restaurants, LLC

Hello Allen,

Thank you for taking time to speak with me regarding your existing amusement equipment.

First I would like to tell you a little about our company. K&K Music has been a family owned and operated business since 1926 and currently services four states which are WV, VA, KY, and NC. We also service several franchise stores such as Pizza Hut, Quaker Steak, Texas Steakhouse, TGIF Applebees, and Buffalo Wild Wings. I would certainly love to add your Fanz Sports Grill store as one of our business partners and feel we could increase your restaurants revenue by using K&K Music.

We would supply top of the line equipment and back our equipment with excellent service. If you have equipment that is down your restaurant is not generating revenue and neither are we, so I will provide same day service to repair the equipment. K&K Music will also extend the same contract offer we have used to successfully develop long lasting partnerships with our other key franchise stores. We will offer a 60-40% split for one year in which Fanz Sports Grill will receive 60% of the revenue (excluding Touch Tunes jukeboxes due to licensing fees, we would receive 60%) if we were to install any self merchandising style machines we split on a 70-30% basis due to the fact we supply all of the prizes. We are authorized to carry NFL, NBA, and NCAA logo merchandise.

Revenue results vary by location and many games do not have the same success rate in every location so making an estimate on how much each machine will earn is nearly impossible, however we have recently acquired a new partner in the Uptown Charlotte area and by adding two new pieces of highly demanded equipment we have seen a first week increase of nearly \$400 in that location! We feel that by providing you the equipment your patrons are requesting and making a few additions we could easily expect the same results in your location! Due to our size we have the ability to rotate equipment from location to location so if we install a Machine that simply does not meet your restaurants needs we can easily exchange it for something that will.

We will provide the following to increase your revenue:
Flat screen Golden Tee 11 (1 only)
Big Buck World or Boxing game (1 only)
Touch Tunes Jukebox (1 only)
New counter top Pot o Gold games (Up to 4) (65% Fanz/35% K&K split)
Stand alone Pot o Gold games (up to 12) (65% Fanz/35% K&K split)
Sweepstakes games with Figure 8 software (up to 30) (65% Fanz/35% K&K split)
New Hyosung ATM with blue lit topper (we will increase you current earnings by at least .25 per transaction with no minimum transactions)
We will be able to maintain your TapTV system.

We will cover your pool tables one time at no charge using our standard commercial grade felt. if you would like any other type of felt you would be responsible for purchasing the felt and we would provide the labor to cover the table.

Please keep in mind that we can supply ANYTHING. So, if there is something that I did not list feel free to ask me and we can try whatever you would like. We are a very aggressive company and what we have found in North Carolina so far is that many of the amusement companies are simply not as aggressive and do not keep up with new products as they come out. As one of the larger operators we have the ability to rotate equipment from location to location, so if we have a machine not earning revenue we can easily exchange it for a different item in order to increase revenue. Let me know if you have any additional questions and I or our General Manager Jim Knowles Jr. will be happy to discuss them with you.
I look forward to doing business with your company.

ADDENDUM 1/1

PAGE 2

Sincerely,

Chris Hollyfield
NC Regional V.P of Sales
704-241-4567 cell
Or
Jim Knowles Jr.
General Manager
K&K Music Company
(304) 327-9309 - Office
(800) 70-JUKEBOX

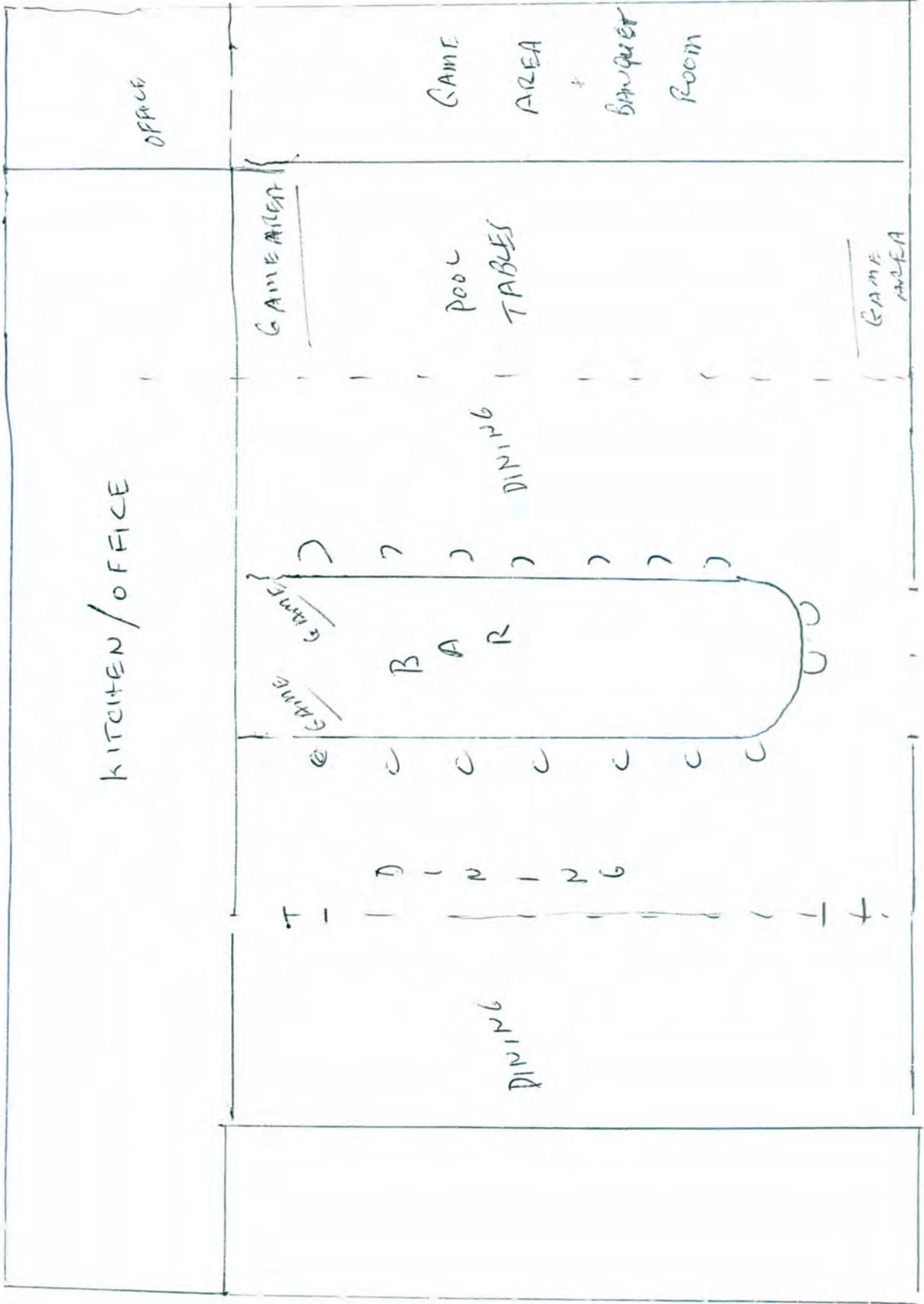
Chris Holly 6-10-11

[Signature] 6-10-11

ATM LOCATION INFORMATION

LOCATION NAME FANZ SPORTS GRILL
LOCATION TYPE RESTAURANT
LOCATION BUSINESS HOURS 11 - 1 AM
ADDRESS:
STREET 3425 DAVID COX RD
CITY CHARLOTTE, NC
STATE NC
ZIP CODE 28269
CONTACT PERSON CLIFF CAUDUE
BUSINESS TELEPHONE # 704-597-7413
TELEPHONE # FOR ATM _____
NAME ON RECEIPT _____
SEND LOCATION CHECK TO:
NAME FANZ SPORTS GRILL
MAILING ADDRESS: 3425 DAVID COX RD
CHARLOTTE, NC 28269
TOTAL SURCHARGE: \$3.00
PLIT BETWEEN YOU AND LOCATION
OWNER: \$2.00
LOCATION: \$1.00

FANZ SPORTS GALL





3425 David Cox Road





POOL TABLE AREA



BAR AREA



PRIVATE DINING AREA