

Karen J. Rutherford
BZA 13-95
Page 2

If you or anyone receiving a copy of this letter have any questions about this matter, please feel free to call me at 268-4421.

Sincerely,



Louise Olivarez, Secretary
Board of Zoning Appeals

cc:

Kurt Schroeder, Superintendent of Central Inspection
Patrick Kelly, Exec. V.P./General Manager, Miner Mike's Adventure Zone, Inc.,
Route 3, Box 4776 B, Osage Beach, MO 65065
Roger Sherwood, Attorney, 833 N. Waco, 67203
Walz, Harman, & Huffman, Attn: Greg Harman, P.O. Box 8849, 67208-0849
Baughman Co., Attn: Phil Meyer, 315 Ellis, 67211
Pat Burnett, Deputy City Clerk
J. R. Cox, OCI
Paul Hays, OCI
Ray Sledge, OCI

THE CITY OF WICHITA

RECEIVED

OCT 02 1995

METROPOLITAN PLANNING
ROUTE *DP, lot file*



OFFICE OF CENTRAL INSPECTION
CITY HALL — SEVENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202
FAX (316) 268-4663

September 28, 1995

Mr. Greg Harman
Walz, Harman, Huffman Construction, Inc.
5615 East 61st St. North
Wichita, Kansas 67208-0849

RE: Recision of Miner Mike's Conditional Building Permit
9000 W. 21st St., Wichita, KS
Permit No. 95-006415-0201

Dear Mr. Harman:

This is a follow-up to our phone conversation yesterday about recision of the conditional building permit for Miner Mike's Adventure Zone at 9000 W. 21st St.

On September 26, 1995, the City's Board of Zoning Appeals (BZA) heard an appeal of my May 9, 1995, interpretation that the intended use of the Miner Mike's Adventure Zone was not a substantial deviation from the allowed uses listed in the Sterling Farms Commercial Community Unit Plan (DP-177) for Parcel 2. The BZA voted 4-3 to overturn my May 9, 1995, interpretation.

The BZA ruling therefore disallows continued construction of this project for the intended use as the Miner Mike's Adventure Zone. By this letter, I am officially notifying you that the conditional building permit issued for site work, grading, footings, foundation and slab work for this project (Permit No. 95-006415-0201) is hereby recinded, and that all work should immediately stop on this construction. You should also take immediate steps to secure the site from vagrants and other passerbys.

You indicated yesterday that you were taking steps to immediately secure the site with fencing and to store all your equipment and materials temporarily within the foundation walls of the building.

SUPERINTENDENT OF CENTRAL INSPECTION268-4460
BUILDING CODE ADMINISTRATOR268-4463
PLAN EXAMINATION.....268-4477

HOUSING.....268-4481
ZONING.....268-4479
SIGNS.....268-4475

BUILDING & CONSTRUCTION.....268-4461
PLUMBING & MECHANICAL268-4471
ELECTRICAL & ELEVATOR.....268-4465



Made with Recycled Paper

Please feel free to contact me at 268-4460 should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Kurt Schroeder", written over a horizontal line.

Kurt Schroeder
Superintendent of Central
Inspection

CC: Patrick Kelly, Miner Mike's
Chris Cherches, City Manager
Joe Lang, First Asst. City Attorney
Marvin Krout, Planning Director
Ray Sledge, Construction Inspection Supervisor
Paul Hays, Senior Plans Examiner

SEDGWICK COUNTY



**METROPOLITAN AREA PLANNING
DEPARTMENT**

CITY HALL — TENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202-1898
(316) 268-4421
FAX (316) 268-4390

September 28, 1995

Ms. Karen J. Rutherford
2318 Watersedge Circle
Wichita, KS 67205

Re: BZA 13-95: Appeal of the Zoning Administrator's interpretation that Miner Mike's Adventure Zone is a use permitted in Parcel 2 of DP-177, Sterling Farms Commercial Community Unit Plan, located on the north side of 21st Street in an area west of Tyler Road.

Dear Ms. Rutherford:

At the regular meeting of the Board of Zoning Appeals on September 26, 1995, your appeal of the Zoning Administrator's interpretation, as referenced above, was considered. It was the action of the Board to reverse the decision of the Zoning Administrator which means the Board ruled that Miner Mike's Adventure Zone is NOT a use permitted in Parcel 2 of DP-177. A resolution setting forth the official action of the Board is being prepared and a copy will be mailed to you in a few days.

The action of the Board of Zoning Appeals can be appealed to District Court. As stated in K.S.A. 12-759(f): "Any person, official or governmental agency dissatisfied with any order or determination of the board may bring an action in the district court of the county to determine the reasonableness of any such order or determination. Such appeal shall be filed within 30 days of the final decision of the board." Any such appeal must be filed within 30 days of September 26, 1995.

community unit plan"; and

b. The basis for decision on fitness centers, movie theaters, and other interpretations is not appropriate due to the fact that the purpose of a CUP (community unit plan) is to specify and narrow the uses intended. The approved community unit plan, DP-177, lists only the following uses as proposed uses in Parcel 2: "Neighborhood shopping center uses including grocery, furniture, theaters, restaurants, retail shops, offices, medical and dental clinics, clothing stores, pharmacies, dry cleaning, laundry, barber shops, beauty shops, tailors, studios, shoe stores, hardware and appliance stores, small animal clinics, tire, battery and accessory store and fitness centers"; and

3. The Board further finds that the decision of the Zoning Administrator as set forth in his letter of May 9, 1995, making the interpretation that Miner Mike's Adventure Zone is a use permitted in Parcel 2 of DP-177, Sterling Farms Commercial Community Unit Plan, located on the north side of 21st Street in an area west of Tyler Road, does constitute a substantial deviation from, and is not in conformity with, the approved development plan for this CUP, and further, the appellant has sustained the burden of proof to show that the use is a substantial deviation therefrom.

THEREFORE, BASED UPON THE FOREGOING, THE INTERPRETATION OF THE ZONING ADMINISTRATOR AS TO THE USE OF THE LAND HEREIN IS REVERSED.

ADOPTED AT WICHITA, KANSAS THIS 26TH DAY OF SEPTEMBER, 1995.



Keith Alter, President

ATTEST:



Louise Olivarez, Secretary

BZA RESOLUTION NO. 13-95

WHEREAS, Karen J. Rutherford, pursuant to Section 2.12.590.A, Code of the City of Wichita, appeals the interpretation and decision of the Zoning Administrator that Miner Mike's Adventure Zone is a use permitted on a portion of Parcel 2 of DP-177, Sterling Farms Commercial Community Unit Plan, zoned the "LC" Light Commercial District and legally described as follows:

Commencing at the Northeast corner of Lot 4, Block 6, Sterling Farms, an Addition to Wichita, Sedgwick County, Kansas, thence bearing N 89 degrees 39' 46" W along the north line of said Lot 4, 300 feet for a point of beginning; thence bearing S 00 degrees 20' 14" W, 577.11 feet to a point on the north line of Lot 5 in said Block 6; thence bearing S 89 degrees 12' 08" W, 99.94 feet to the Northwest corner of Lot 5 in said Block 6; thence bearing S 00 degrees 20' 14" W a distance of 220.00 feet to the Southwest corner of said Lot 5 and to a point in the south line of said Lot 4; thence along said south line bearing S 89 degrees 12' 08" W a distance of 265.96 feet; thence bearing N 00 degrees 20' 14" E a distance of 384.36 feet; thence bearing S 89 degrees 39' 46" E a distance of 103.71 feet; thence bearing N 00 degrees 20' 14" E a distance of 420.00 feet to a point in the north line of said Lot 4; thence bearing S 89 degrees 39' 46" E along said north line 262.12 feet to the point of beginning (now platted as Lot 1, Sterling Farms 5th Addition, Wichita, Sedgwick County, Kansas).

WHEREAS, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

WHEREAS, the Board of Zoning Appeals did, at the meeting of September 26, 1995, consider said appeal.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita that, having considered the entire record regarding this matter and having heard the evidence as presented to the Board on September 26, 1995, the Board makes the following findings:

1. That the Board of Zoning Appeals has jurisdiction to hear this appeal, pursuant to K.S.A. 12-759(d), and to Section 2.12.590 of the Code of the City of Wichita, Kansas; and

2. That the Board concurs with the following findings of fact as presented in the record here today:

a. The Zoning Regulations of the City of Wichita, in Section 28.04.190.B.4.a., state that "All uses permitted in the zoning classification in which the development is proposed shall be permitted as specified on the approved