



DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

PLANNING AND ZONING BOARD STAFF REPORT

Venetian Arcade Delray

Meeting	File No.	Application Type
November 14, 2022	2022-231-USE-PZB	Conditional Use
Property Owner	Applicant	Authorized Agent
Shoppes of Delray AP, LLC	Randy Williams	Ricardo Oscheneek, Red and Blue Constructions

Request

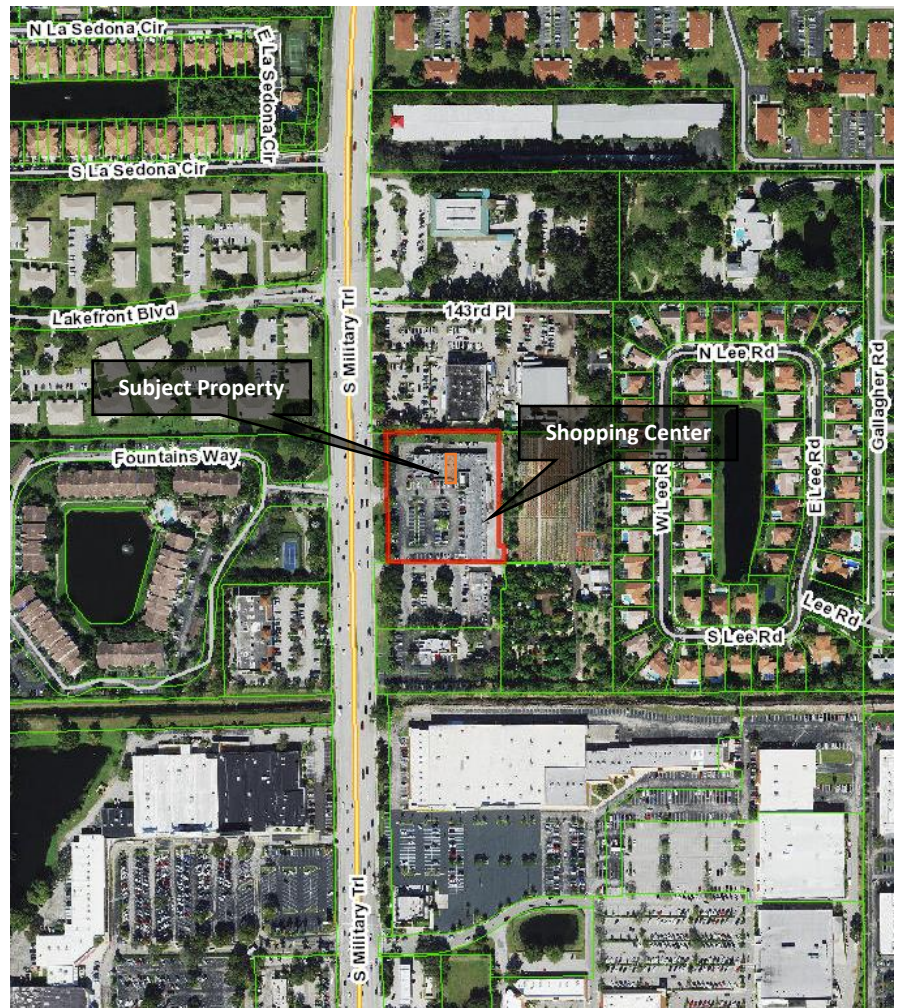
Provide a recommendation to the City Commission regarding a Conditional Use request to allow a 2,363 +/- square foot Adult Gaming Center within the Shoppes of Delray, located at 14406 South Military Trail.

Background Information

The subject property, 14406 South Military Trail, is a +/- 2,363 square foot commercial space within the Shoppes of Delray shopping center, whose main address is 14400 South Military Trail (map at right). The shopping center was constructed in 1975 on a 2.4-acre parcel with approximately 23,827 square feet of commercial space. The property is zoned General Commercial (GC) and has a Land Use Map (LUM) designation of General Commercial (GC).

The property's history is outlined below:

- **1975.** The +/- 23,827 square foot shopping center (Shoppes of Delray) was constructed.
- **1990.** The property was annexed into the City from Palm Beach County via Ordinance No. 47-90.
- **July 23, 2008.** A master sign program was established for the shopping center. The master sign program has gone through minor alterations, with the latest amendment to the program being approved on November 10, 2021.



Project Planner:

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Attachments:

- Resolution No. 181-22
- Applicant Justification Statement
- Property Survey
- Floor Plan
- Traffic Performance Standards (TPS) Letter
- Traffic Impact Analysis

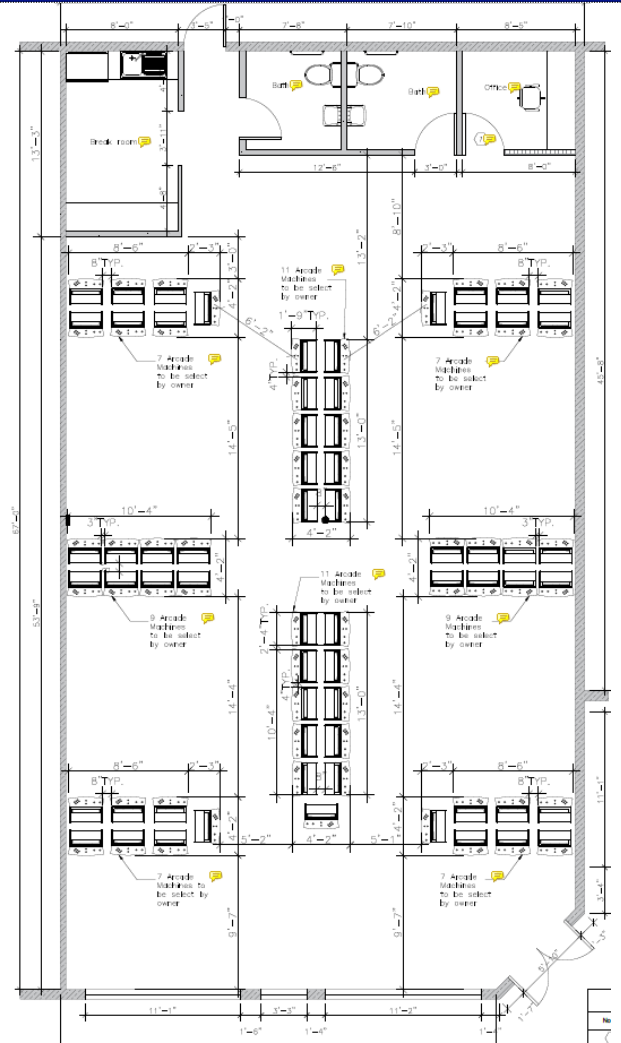
Project Description

The applicant is requesting Conditional Use approval to establish a +/- 2,363 square foot Adult Gaming Center at 14406 South Military Trail. Pursuant to LDR Section 4.4.9(D)(16), Adult Gaming Centers are permitted subject to the approval of a conditional use. Adult gaming centers are defined as “any place or premises catering to persons 18 and over that mimic the look and feel of gambling venues where there are more than six (6) amusement games or machines which operate by the means of the insertion of a coin and which by means of skill may entitle the person playing or operating the game or machine to receive points or coupons which may be exchanged for merchandise only, excluding cash and alcoholic beverages, provided the cost value of the merchandise or prize awarded in exchange for such points or coupons does not exceed 75 cents on any game played are available to the public” (LDR Appendix D, Definitions).

The Venetian Arcade intends to provide 65 video skill games for customers to play, between the hours of 9:00 AM and 11:00 PM. Cold refreshments and snacks will also be available for customers for purchase; however, no food will be prepared on site and all beverages will be non-alcoholic.

All business operations are indoors, and no changes are proposed to the outside façade of the commercial space. The floor plan to the right (and attached) depicts the location of the video skill games, bathrooms, break room, and office.

Adult Gaming Centers are subject to locational, operational, and regulatory requirements in **LDR Section 4.3.3(AAA)**. The proposed Adult Gaming Center complies with these requirements, which are discussed in detail in Appendix A of this report.



Review and Analysis

LDR Section 2.4.5(E)(1), Rule

The City Commission, by motion, after review and recommendation for approval by the Planning and Zoning Board may approve or reject a request for a Conditional Use.

If the Board provides a recommendation of approval, the request will be scheduled for an upcoming City Commission meeting. However, if the Board does not provide a recommendation of approval, the application would not move forward with the review process to the City Commission. If there are concerns with the request, conditions may be imposed in accordance with the following provisions.

LDR Section 2.4.5(E)(4), Establishment of a Conditional Use: Conditions

Conditions may be imposed pursuant to Section 2.4.4(C). In addition, limitations on the hours of operation and/or the longevity of the use may be imposed.

The proposed Adult Gaming Center use has requirements specific to the use; additional conditions may be proposed.

LDR Section 2.4.5 (E)(5), Establishment of a Conditional Use: Findings

In addition to provisions of Chapter 3, the City Commission must make findings that establishing the conditional use will not:

- (a) *Have a significantly detrimental effect upon the stability of the neighborhood within which it will be located;*
- (b) *Hinder development or redevelopment of nearby properties.*

The proposed Adult Gaming Center does not generate additional traffic or parking demands, and the use complies with the development standards and conditional use criteria for Adult Gaming Centers in **LDR Section 4.3.3(AAA)**, which restricts the hours of operation, prohibits patrons under 18 years of age, and prohibits the sale alcoholic beverages on premises, among other requirements. A complete discussion of the standards and criteria is provided as Appendix A.

The surrounding zoning, land use, and uses are outlined in the table below:

Adjacent Zoning, Land Use, and Use			
	Zoning Designation	Land Use	Use
North	GC	GC	Commercial – Grocery Store
South	GC	GC	Commercial - Stores
East	Agriculture (A)	Transitional (TRN)	Agriculture
West	Multi-Family Medium Density (RM)	Medium Density Residential, 5-12 du/acre (MD)	Multi-family – The Fountains at Delray

The residential development to the west is separated by Military Trail, and all other surrounding uses are similar in use type. The proposed use is not anticipated to have a detrimental effect upon the stability of the neighborhood or hinder development or redevelopment of nearby properties.

LDR Section 3.1.1, Required Findings. *Prior to the approval of development applications, certain findings must be made in a form which is part of the official record. This may be achieved through information on the application, the staff report, or minutes. Findings shall be made by the body which has the authority to approve or deny the development application.* These findings relate to the following four areas:

- (c) Land Use Map
- (d) Concurrency
- (e) Consistency
- (f) Compliance with the LDR

(A) Land Use Map. *The resulting use of land or structures must be allowed in the zoning district within which the land is situated and said zoning must be consistent with the applicable land use designation as shown on the Land Use Map.*

The subject property is zoned GC, which is a preferred zoning district under the GC land use designation. The GC zoning district permits the establishment of Adult Gaming Centers through a conditional use process. As part of the conditional use review, the Board shall find that all applicable LDR requirements are satisfied.

(B) Concurrency. *Concurrency as defined by Objective NDC 3.1 of the Neighborhoods, Districts, and Corridors Element of the adopted Comprehensive Plan must be met and a determination made that the public facility needs, including public schools, of the requested land use and/or development application will not exceed the ability of the City and The School District of Palm Beach County to fund and provide, or to require the provision of, needed capital improvements in order to maintain the Levels of Service Standards established in Table CIE, Level of Service Standards, of the Capital Improvements Element of the adopted Comprehensive Plan of the City of Delray Beach.*

Schools. Commercial development is not subject to school concurrency evaluation.

Water and Sewer. The site is currently serviced by municipal water and sewer. As the proposed conditional use does not involve major structural changes or an increase in building area, no change in water and sewer services are anticipated as a result of the request.

Solid Waste. The subject site is within an existing shopping center. Wase generation for shopping centers is calculated based on the area of the shopping center. Therefore, the anticipated waste generation rate will not change as a result of the proposed Adult Gaming Center. Based on the Palm Beach County Waste Generation Rates, a shopping center produces 7.3 pounds of solid waste per square foot per year. Therefore, the shopping center is anticipated to generate approximately 173,937 pounds of solid waste per year. The Solid Waste Authority has indicated that its facilities have sufficient capacity to accommodate all development proposals until 2047.

Drainage. Drainage will be accommodated on site as existing. The establishment of an adult gaming center is not expected to pose negative drainage impacts on neighboring properties.

Traffic. The submitted Traffic Performance Standards (TPS) letter provided by the Palm Beach County Traffic Division and the Traffic Impact Analysis, dated January 7, 2022, and conducted by JFO Group Inc., state that the proposed project meets the traffic performance standards for the County and that no additional trips are anticipated as a result of the proposal.

(C) Consistency. The following Comprehensive Plan objectives and policies are relevant to the Conditional Use request:

Neighborhoods, Districts, and Corridors Element

Objective NDC 1.3 *Apply the mixed-use land use designations of Commercial Core, General Commercial, Transitional, Congress Mixed-Use, and Historic Mixed-Use to accommodate a wide range of commercial and residential housing opportunities appropriate in scale, intensity, and density for the diverse neighborhoods, districts, and corridors in the city.*

Policy NDC 1.3.10: *Use the General Commercial land use designation to accommodate a wide range of non-residential and mixed-use development, and limited stand-alone residential development, along major corridors and in certain districts in the city.*

Policy ECP 3.3.9: *Encourage business and commercial growth to better distribute the tax burden from the residential community.*

The subject property's GC land use and GC zoning support a wide range of non-residential uses. The proposed +/- 2,363 square foot Adult Gaming Center contributes to the range of activities within the shopping center and along the corridor. The LDR allows Adult Gaming Centers in the GC and Planned Commercial (PC) zoning districts, which are concentrated in pockets along Military Trail, Congress Avenue, and Federal Highway. As the use is proposed within an existing commercial space, the scale and intensity of the structure will remain harmonious with the surrounding development.

(D) Compliance with the LDRs. *Whenever an item is identified elsewhere in the LDR, it shall specifically be addressed by the body taking final action on a land development application/request. Such items are found in Section 2.4.5 and in special regulation portions of individual zoning district regulations.*

LDR Section 4.3.3(AAA), Adult Gaming Centers

It is the intent of this section to regulate adult gaming centers that mimic the look and feel of gambling venues but are operated in accordance with Florida State Statute Chapter 849 (Gambling). Regulation of these venues ensures that they are permitted as conditional uses in the appropriate compatible designation within the City and that appropriate police powers are established to ensure reduction of any secondary effects.

LDR Section 4.3.3(AAA)(1) provides Development Standards for Adult Gaming Centers to ensure that proper and sufficient measures are taken to mitigate impacts on adjacent properties and surrounding neighborhoods, and LDR Section 4.3.3(AAA)(2) provides the conditional use criteria. The proposed Adult Gaming Center complies. The requirements, compliance with them, and required conditional use findings pursuant to LDR Section 4.3.3(AAA)(1) and (2) are outlined in Appendix A.

Technical Notes

1. Prior to the issuance of a building permit, all window coverings shall be removed to allow clear visibility into the establishment.
2. Prior to the issuance of a building permit, all utility provider sign-off/approvals shall be provided to staff.

Options for Board Action

- A. Move to recommend **approval** to the City Commission of a Conditional Use request for **Venetian Arcade Delray** to allow an Adult Gaming Center at the property located at **14406 South Military Trail**, finding that the request is consistent with Comprehensive Plan and meets the criteria in the Land Development Regulations.
- B. Move to recommend **approval** to the City Commission of a Conditional Use request for **Venetian Arcade Delray** to allow an Adult Gaming Center at the property located at **14406 South Military Trail**, finding that the request is consistent with the Land Development Regulations, **subject to conditions**.

C. Move to **deny** the Conditional Use request for **Venetian Arcade Delray** to allow an Adult Gaming Center at the property located at **14406 South Military Trail**, finding that the request is inconsistent with respect to Land Development Regulations.

D. **Continue with direction.**

Public and Courtesy Notices

X Courtesy Notices were provided to the following neighborhood associations:

- Lee's Crossing
- High Point of Delray
- The Fountains at Delray

X Public Notice was posted at the property 7 calendar days prior to the meeting.

X Public Notice was mailed to property owners within a 500' radius 10 days prior to the meeting.

X Public Notice was posted to the City's website 10 calendar days prior to the meeting.

X Public Notice was posted in the main lobby at City Hall 10 working days prior to the meeting.

X Agenda was posted at least 5 working days prior to meeting.

APPENDIX A

LDR Section 4.3.3(AAA), Adult gaming centers. It is the intent of this section to regulate adult gaming centers that mimic the look and feel of gambling venues but are operated in accordance with Florida State Statute Chapter 849 (Gambling).

Requirement	Provided
(1) Development standards for adult gaming centers.	
(a) No adult gaming center shall be located within 1,000 feet of or in the same block as, whichever distance is greater, an existing adult gaming center, measured from lot line to lot line in a straight line.	The subject location is greater than 1,000 feet from another existing adult gaming center and not within the same block as another existing adult gaming center.
(b) Location: No adult gaming center shall be located within an historic district, on an historic site, on properties listed on the Local or National Register of Historic Places or in any Redevelopment Area.	The subject location is not within a historic district and is not listed on the Local or National Register of Historic Places. Further, the property is not in an area identified for stabilization pursuant to the Always Delray Comprehensive Plan.
(c) Adult gaming center requirements: <ol style="list-style-type: none"> 1. An attendant must be provided on the premises during all hours of operation. 2. The hours of operation shall be limited to 9:00 a.m. to 11:00 p.m., seven days a week. 3. No one under 18 years of age shall be allowed in the Adult Gaming Center 4. The consumption and/or possession of alcohol shall be prohibited on the premises. 5. The license for each machine shall be attached thereto. 6. The use of gift certificates, gift cards, credit cards or other cash substitutes shall be prohibited. 7. Prizes shall be limited to \$.75 retail value per game played. 8. Any machine on the premises of the enterprise or business shall not violate the State's laws against slot machines and shall be in full compliance with Section 849.16, Florida Statutes. 9. The enterprise or business shall permit unlimited access to law/code enforcement officials to enter the premises and inspect any machine at any time to ensure that the provisions of this Ordinance are in compliance. 	The applicant has provided a justification statement demonstrating compliance with the criteria. The hours of operation will be 9:00 am to 11:00 pm, Monday through Sunday.

APPENDIX B

LDR Section 4.3.3(AAA), Adult gaming centers. It is the intent of this section to regulate adult gaming centers that mimic the look and feel of gambling venues but are operated in accordance with Florida State Statute Chapter 849 (Gambling).

Requirement	Provided
(2) Conditional Use Criteria	
<p>(a) Application. No person shall operate or conduct an adult gaming center for use by the general public in the City for the reward of prizes without first applying for a conditional use and stating in the application, at a minimum, the following:</p> <ol style="list-style-type: none"> 1. The name under which the enterprise or business is to be conducted; 2. The location at which the enterprise or business is to be carried on; 3. The name, address and principal occupation of every person with an interest in the enterprise or business. 4. The number of machines to be exhibited; 5. The manufacturer, serial numbers, name of each machine, name of actual owner of each machine with address and phone numbers; and, 6. Whether the applicant has ever been engaged in operating a gaming center, of whatsoever type or nature, and when, where and how long in each place within five years preceding the date of application. 7. A conditional use shall not be approved if a person with an interest in the adult gaming center, or an employee of the adult gaming center, has been convicted of a violation of a Federal or State statute or any local ordinance pertaining to gambling or any other crime involving moral turpitude. 8. The applicant shall be 18 years of age or more and provide proof thereof. 	<p>The applicant has provided a justification statement including the required information and demonstrating compliance with the criteria. The gaming center will have 65 video skill games. The manufacturer, serial numbers, name of the machines, and owners of each machine is provided as an attachment.</p>
<p>(b) Inspection. As a prerequisite to the continuation of the granting of a conditional use within six months and periodically thereafter during the operation of the adult gaming center, the Chief Building Official, or designee, the City Fire Inspector or designee and the Delray Beach Police Department shall have the right to inspect the premises certifying that the adult gaming establishment is operating in accordance with the requirements of law and this ordinance.</p>	<p>The applicant and owner understand that the Chief Building Official, or designee, the City Fire Inspector or designee and the Delray Beach Police Department has the right to inspect the premises certifying that the adult gaming establishment is operating in accordance with the requirements of law and this ordinance</p>

(c) Registration. Upon approval of a conditional use, registration for each coin operated amusement gaming device, however operated, shall be required. For each machine registered, a numbered metal tag or plastic decal shall be issued to the applicant for each machine so covered. Application for machine registration stickers must disclose the location where the machine is to be operated, the manufacturer of the machine, the manufacturer's serial number, and the software version, if any. Registration stickers are not transferable from person to person, place to place, or machine to machine. No machine will be eligible for a registration sticker if its operation involves any material elements of chance, unless:

1. The applicant submits with the application, satisfactory proof that the applicant has registered with the United States Department of Justice pursuant to 15 United States Code 1171, and
2. The applicant submits with the application, the records required under Federal law to be maintained by those who register under 15 United States Code 1171, and certifies the machine bears the permanent marking required by Federal law.
3. The applicant shall keep the registered machines, the records of acquisition, location and disposition required by Federal law, and records of prize awards open to law/code enforcement inspection at any time.

The applicant understands that upon approval of the conditional use, registration for each coin operated amusement gaming device, however operated, is required.