



DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

PLANNING AND ZONING BOARD STAFF REPORT

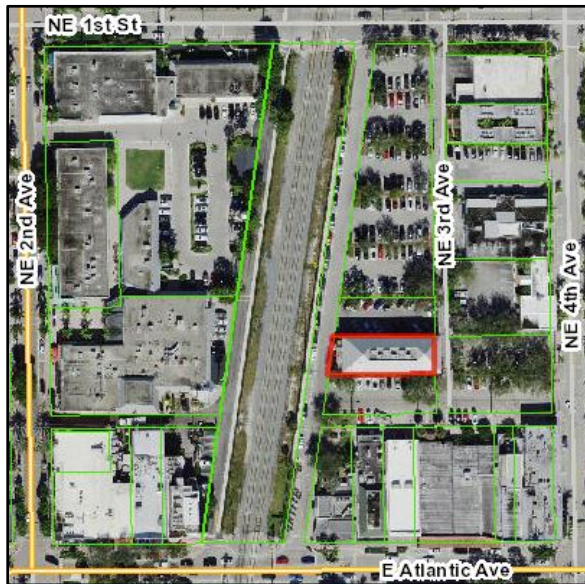
Silverball Museum

Meeting	File No.	Application Type
May 17, 2021	2019-182-USE-PZB	Modification of Conditional Use (Commercial Recreation)
Applicant	Owner	Authorized Agent
Silverball Museum FL LLC	Silverball Museum FL LLC	Betsy Chavez, Rick Brautigan Architecture

Request

Review and consider a modification to an existing conditional use approval for the Silverball Museum, a Commercial Recreation Facility, located at 19 NE 3rd Avenue.

Background Information



The subject property is a two-story building located at 19 NE 3rd Avenue, on the west side of NE 3rd Avenue, between East Atlantic Avenue and NE 1st Street, within the Central Business District (CBD), Central Core Sub-District. The site has a Land Use Designation of Central Core (CC). The Silverball Museum, a vintage arcade game museum, has been operating at the subject site since early 2016.

In October 2016, Silverball Museum received conditional use approval to expand the business from vintage arcade games to include a full liquor bar, food service, occasional on-site entertainment and event hosting, either during normal operations or through rental of the entire facility. Silverball Museum operates from 11:00 AM to 12:00 AM, Sunday through Thursday and 11:00 AM to 2:00 AM, Friday and Saturday. Food and bar service is limited to specific areas on both floors of the building. The approved conditional use is for 7,697 square feet of building floor area, with a total of 1,337 square feet (17.4 percent) of the total area dedicated to food and beverage service and seating. Food is not permitted in the game area and is limited to the bar/café areas.

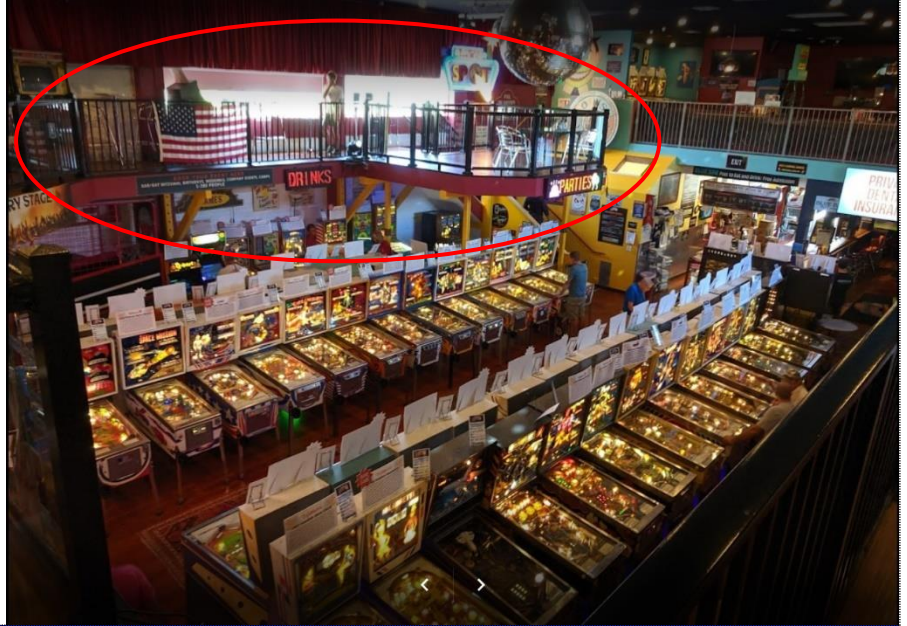
The establishment was only required to provide off-street parking for the restaurant and lounge portion of the business, pursuant to Land Development Regulations (LDR) Section 4.4.13(I)(2)(d) that exempts properties less than 65 feet in width (the property is approximately 45 feet in width) from providing parking, except for restaurant and lounge uses. Table 4.4.13(L) of the LDRs requires that six spaces per 1,000 square feet of gross floor area be provided for restaurants and lounges not located in the Atlantic Avenue Parking District. The designated café/bar portion of the business was approved to occupy a total of 1,339 square feet. While food is not permitted in the pinball machine area, drinks are allowed throughout the building. The applicant estimated that up to 10 percent of the floor area outside of the café/bar could be utilized for drink service. To account for this use in the parking calculations, the required parking was calculated as the sum of the 1,339 square foot café / bar, plus 10 percent of the remaining 6,358 square feet of floor area (636 square feet) for a total of 1,975 square feet. Pursuant to LDR Section 4.6.9(E)(3), the total required parking for cafe / bar use areas was 12 off-street parking spaces. This parking requirement was addressed via the In-Lieu of Parking and Public Parking Fee option, that required a fee of \$10,140 per parking space for a total contribution of \$121,680. The executed agreement is provided as an attachment.

In early 2019, the City became aware that the Silverball Museum had made interior expansions beyond the 7,697 square feet approved in the 2016 conditional use request. In order to prevent code enforcement action against the unapproved interior expansion, Silverball

Museum submitted a Conditional Use Modification request to amend the existing conditional use approval. A code enforcement violation was issued to Silverball Museum by the City of Delray Beach Code Enforcement Division in November 2020, after submittals of incorrect plans in May 2019, October 2019, and November 2020 did not provide adequate documentation. Upon receipt and review of corrected plans in March 2021, the request is now presented for Board consideration.

Description of Proposal

The request is for retroactive approval to amend the existing conditional use for the Silverball Museum, a Commercial Recreation Facility located at 19 NE 3rd Avenue, for an interior expansion that increased the building square footage from 7,697 square feet to 8,325 square feet; see area identified in the photo to the right. The site modifications include a 628 square foot addition to the 2nd floor, which patrons use as a walkway, observation area, and gathering spot, with occasional use as a dance area. The food and bar area remain at 1,339 square feet or 16.08 percent of the total square footage of the building. The City has determined that the occupancy load cannot be increased beyond the approved occupancy load of 280, without the construction of additional restroom facilities.



Review and Analysis

Pursuant to **LDR Section 2.4.5(E)(7), Establishment of a Conditional Use: Modification of a Conditional Use Approval**, an approved Conditional Use may be modified. If the modification involves only the implementation or compliance with conditions of approval, the modification may be approved by the Director. If the modification involves intensity of use or hours of operation, the modification must be approved by The Planning and Zoning Board. If the Board finds that the requested modification is significant, then the modification must be heard as a new Conditional Use application. Any request for a modification may be denied.”

The requested modification represents an increase in the use intensity, therefore, action by the Planning and Zoning is required. If the Board finds that the modification is significant, then the modification must be heard as a new Conditional Use application subject to final approval by the City Commission.

Pursuant to **LDR Section 2.4.5(E)(5), Establishment of a Conditional Use: Required Findings**, in addition to provisions of Chapter 3 (discussed below), 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.

Municipal parking facilities are located to the north, south, and east; on-street parking within the NE 3rd Avenue right-of-way is located to the west, adjacent to the Florida East Coast Railway right-of-way. A negative impact on the surrounding properties is not anticipated from the expansion of the interior space as site improvements, such as the provision of off-street parking spaces, are not required by the request. Additionally, the increase in floor area does not increase the facility capacity, because the occupancy load prior to the interior expansion is capped by the Building Department at 280 persons due to the capacity of the current restroom facilities.

Required Findings: LDR Section 3.1.1

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 Land Use Map, Concurrency, Consistency, and Compliance with the LDRs.

(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 designated Commercial Core (CC) on the Land Use Map, and zoned CBD; CBD zoning and the CC land use designation are considered consistent. The primary use of the Silverball Museum is a Commercial Recreational facility, which is permissible as a conditional use in the CBD district, per LDR Table 4.4.13(A). The facility's accessory uses include the café/bar, on-site entertainment and event rental are permitted uses within the CBD zoning district.

(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-2, Level of Service Standards, of the Capital Improvements Element of the adopted Comprehensive Plan of the City of Delray Beach.*

Compliance with traffic, schools, utilities, parks, solid waste, and drainage is described below:

Traffic. A traffic impact statement was submitted by the applicant. The interior expansion is estimated to generate an additional 37 daily trips. The subject property is located within the City's Traffic Concurrency Exception Area (TCEA) within the Central Business District. This designation allows the city to develop and redevelop without being constrained by the capacity standards of Palm Beach County's Transportation Performance Standards Ordinance. The TCEA provides alternatives to expanding roadway capacity that benefit overall mobility. Also of note, because the occupancy is fixed at 280 persons, the facility will not see an increase in traffic associated with the expansion unless the restrooms are expanded to serve a higher occupancy load.

Schools. Non-residential development is not subject to school concurrency evaluation.

Water & Sewer. The site is already served by City water and sewer, which has capacity to City build-out.

Parks and Recreation Facilities. Park dedication requirements to not apply to non-residential uses.

Solid Waste. The proposed modification to the conditional use increases the building square footage by 628 square feet. Because the additional floor area will be used as a walkway, observation area, and gathering spot, and the occupant load remains fixed at 280 persons, the impact on solid waste generation is negligible. The Solid Waste Authority has facilities sufficient capacity to accommodate all development proposals through 2054.

Drainage. There will be no impact on the site drainage – all improvements are interior to the building.

(C) Consistency. *Compliance with performance standards set forth in Chapter 3 and required findings in LDR Section 2.4.5(D)(5) for the Rezoning request shall be the basis upon which a finding of overall consistency is to be made. Other objectives and policies found in the adopted Comprehensive Plan may be used in making a finding of overall consistency.*

The following policies are applicable to the request:

Policy NDC 1.3.5 Use the Commercial Core land use designation to stimulate the vitality and economic growth of the city while simultaneously enhancing and preserving the cultural and historic downtown area.

Objective ECP 6.5 Small Business Growth *Support the growth and development of small businesses that enhance the vitality and quality of life in Delray Beach neighborhoods.*

Expansion of the interior space at the subject property supports a local small business by enhancing the existing approved Commercial Recreation facility. The use compliments adjacent development and furthers the intent of the downtown area.

(D) Compliance with the LDRs. *Whenever an item is identified elsewhere in these Land Development Regulations (LDRs), 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*

Pursuant to **LDR Section 4.6.9(B)(1)(c)**, off-street parking facilities shall be provided "for any addition or enlargement of an existing building or use." The interior improvements are limited to expansion of the café / bar area and, pursuant to Section 4.4.13(1)(2)(d), parking is only required for the café / bar use area. The 2016 Conditional Use approval established that parking was required at a rate

of 6 spaces per 1,000 square feet for the 1,339 bar / café area, plus 10 percent of the remaining 6,358 square feet of floor area (636 square feet) for a total of 1,975 square feet. The applicant previously paid an In-Lieu of Parking and Public Parking Fee of \$10,140 per parking space for a total contribution of \$121,680 (12 parking spaces), pursuant to LDR Section 4.6.9(E)(3). The 1,975 square feet, previously approved, plus 62.8 square feet (10 percent of the 628 square foot addition, for drink service outside of the designated café bar areas) results in a total of 2,038 square feet that is subject to the parking requirement of 6 spaces per 1,000 square feet; Silverball Museum's obligation is for 12.22 spaces. Per LDR Section 4.6.9, fractional obligations are rounded down. Therefore, an additional in lieu parking contribution is not required as part of this modification as a result of the interior expansion.

Review By Others

The request will be reviewed by the **Downtown Development Authority (DDA)** at its June 14, 2021 meeting, and the recommendation will be presented to the Planning and Zoning Board on June 21, 2021.

Board Action Options

- A. **Approve** the request to modify a Conditional Use approval for the **Silverball Museum** located at **19 NE 3rd Avenue** to allow the expansion of the approved Commercial Recreation use, finding that the request is consistent with the Land Development Regulations and the policies of the Comprehensive Plan.
- B. **Approve, with conditions**, the request to modify a Conditional Use approval for the **Silverball Museum** located at **19 NE 3rd Avenue** to allow the expansion of the approved Commercial Recreation use, finding that the request is consistent with the Land Development Regulations and the policies of the Comprehensive Plan.
- C. **Deny** the request to modify a Conditional Use approval for the **Silverball Museum** located at **19 NE 3rd Avenue** to allow the expansion of the approved Commercial Recreation use, finding that the request is inconsistent with respect to Land Development Regulations and the policies of the Comprehensive Plan.
- D. **Continue with direction.**

Public and Courtesy Notices

X Courtesy Notices were sent to the following:

- Chamber of Commerce

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.