



BOARD OF COUNTY COMMISSIONERS

**Planning and Development Department**

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**STAFF COMMENTS  
 24Z00047**

**The Viera Company**

**CUP for Commercial Entertainment and Amusement Enterprises**

Tax Account Number: 2631510, a portion of  
 Parcel I.D.: 26-36-09-VH-A-2  
 Location: North end of Bromley Drive (District 4)  
 Acreage: CUP request 11.67 acres

Planning & Zoning Board: 11/18/2024  
 Board of County Commissioners: 12/12/2024

**Consistency with Land Use Regulations**

- Current zoning can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal would maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Zoning</b>	PUD-DRI	PUD-DRI with CUP for Commercial Entertainment and Amusement Enterprises
<b>Potential*</b>	FAR 1.0	FAR 1.0
<b>Can be Considered under the Future Land Use Map</b>	YES DRI3	YES DRI3

\* Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations.

**Background and Purpose of Request**

The applicant is seeking a Conditional Use Permit (CUP) for Commercial Entertainment and Amusement Enterprises on 11.67 acres; a portion of Parcel 3 known as Parcel 3A. The applicant proposes an outdoor golf venue with 64 hitting bays located east of the AMC movie theatre. This CUP application is supported by a companion application for Alternative Development Standards (ADS). The ADS submittal is under zoning action **24PUD0005**. Sections 62-1921 Commercial entertainment and amusement enterprise use and the ADS submittal will grant certain alternative development standards. The applicant is requesting alternative development standards to increase fence height, increase wall signage, and reduce/remove current lighting performance standards.

The site abuts the north end of Bromley Drive lying east of Lake Andrew Drive.

The CUP application includes a site plan meeting various county standards.

On December 15, 2009, zoning action **Z-11529** approved a change of zoning classification from PUD/DRI (Planned Unit Development/Development of Regional Impact) & AU (Agricultural Residential) to PUD-DRI (Planned Unit Development/Development of Regional Impact).

## **Land Use**

The subject property is currently designated Viera DRI (Development of Regional Impact). The PUD zoning classification can be considered consistent with the Viera DRI FLU designation.

## **Applicable Land Use Policies**

### **FLUE Policy 2.2 – Role of Zoning Regulations in the Designation of Commercial Lands**

The zoning process regulates the types and intensities of uses for a parcel of land. Criteria which aid in assessing zoning compatibility, shall include consideration of the following standards:

#### **Criteria:**

A. Permitted/prohibited uses;

**Staff analysis: The owner proposes a CUP for Commercial Entertainment and Amusement Enterprises (outdoor golf venue with 64 hitting bays) in conjunction with an Alternative Development Standards (ADS) package which contains several alternative development standardss to county codes identified in Chapter 62, Article VI and Article IX. The Central Viera PUD allows a mixture of uses within Parcel #3. Those uses are transferred from The Viera Company to individual lots via an Entitlement Letter. The current available uses noted for Parcel #3 include hotel, retail and light industrial uses. Parcel #3 also contains an existing attraction use for a 16 screen theatre.**

**The Board should consider the compatibility of the proposed CUP with surrounding development.**

B. Existing commercial zoning trends in the area;

**Staff analysis: The property is surrounded by an area within the Central Viera PUD that allows commercial uses and abuts the west side of Highway I-95.**

C. Compatibility of the proposed use with the area, pursuant to Administrative Policy 3;

**Staff analysis: This CUP request for commercial entertainment and amusement enterprises, if approved, could be considered compatible with the adjacent commercial uses located to the west and south of this site.**

D. Impact upon Level of Service (LOS) standards for roads, potable water service, sanitary sewer service and solid waste disposal;

**Staff analysis: Based on preliminary review no LOS will be exceeded for road capacity, potable water service, sanitary sewer service and solid waste disposal.**

The Board should evaluate the compatibility of this application within the context of the Board's Administrative Policies 1 through 8 of the Future Land Use Element, outlined in the Administrative Policies.

**Analysis of Administrative Policy #3 - Compatibility between this site and the existing or proposed land uses in the area.**

Compatibility shall be evaluated by considering the following factors, at a minimum:

Criteria:

- A. Whether the proposed use(s) would have hours of operation, lighting, odor, noise levels, traffic, or site activity that would significantly diminish the enjoyment of, safety or quality of life in existing neighborhoods within the area which could foreseeably be affected by the proposed use;

**Staff analysis: Regarding the hours of operation, odor, noise levels, traffic or site activity, the proposed CUP will need to comply with Brevard County's Performance Standards defined by Sections 62-2251 through 62-2272. The Board may require additional conditions and/or limitations. The applicant is seeking alternative development standards to the lighting performance standards noted in Section 62-2257, fence height limits in Section 62-2109, and additional signage in Section 62-3316 under companion application 24PUD00005.**

- B. Whether the proposed use(s) would cause a material reduction (five per cent or more) in the value of existing abutting lands or approved development.

**Staff analysis: Only a certified MAI appraisal can determine if material reduction has or will occur due to the proposed request.**

- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through an analysis of:

1. historical land use patterns;

**Staff analysis: This area is currently developed with multiple restaurants, various retail establishments, a 49 unit multi-family development use to the north, and automotive sales within the platted area.**

2. actual development over the immediately preceding three years; and

**Staff analysis: The surrounding area has been under continuous retail development for the past three years.**

3. development approved within the past three years but not yet constructed.

**Staff analysis: There has been a proposed 112 unit hotel project which has been preliminary reviewed under site plan number 21SP00043.**

- D. Whether the proposed use(s) would result in a material violation of relevant policies in any elements of the Comprehensive Plan.

**Staff analysis: No material violation of relevant policies has been identified.**

#### **Analysis of Administrative Policy #4 - Character of a neighborhood or area.**

Character of a neighborhood or area shall be a factor for consideration whenever a rezoning or any application involving a specific proposed use is reviewed. The character of the area must not be materially or adversely affected by the proposed rezoning or land use application. In evaluating the character of an area, the following factors shall be considered:

##### **Criteria:**

- A. The proposed use must not materially and adversely impact an established residential neighborhood by introducing types or intensity of traffic, parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.

**The property is within the existing Viera PUD with commercial development surrounding the area. Staff analysis indicates the request is located in a commercial area and will not materially and adversely impact any established residential neighborhoods. The closest residential development is located approximately 770 feet north of the subject parcel.**

- B. In determining whether an established residential neighborhood exists, the following factors must be present:

1. The area must have clearly established boundaries, such as roads, open spaces, rivers, lakes, lagoons, or similar features.

**The area has development of roads, open spaces, and similar existing features. It is not located in a residential neighborhood or subdivision but is in a platted commercial subdivision.**

2. Sporadic or occasional neighborhood commercial uses shall not preclude the existence of an existing residential neighborhood, particularly if the commercial use is non-conforming or pre-dates the surrounding residential use.

**Staff analysis indicates that the area is not residential in character.**

3. An area shall be presumed not to be primarily residential but shall be deemed transitional where multiple commercial, industrial or other non-residential uses have been applied for and approved during the previous five (5) years.

**The subject parcel is located in a commercial area.**

**Administrative Policy #5 - the impact of the proposed use or uses on transportation facilities either serving the site or impacted by the use(s) shall be considered.**

The proposed CUP will access Lake Andrew Drive segment between Judge Fran Jamieson Way to Wickham Road. The maximum development potential from the proposed CUP increases the percentage of MAV utilization by 4.14%. The Lake Andrew Drive corridor is anticipated to operate at 39.86% of capacity daily. The request is not anticipated to create a deficiency in LOS.

**Surrounding Area**

	<b>Existing Use</b>	<b>Zoning</b>	<b>Future Land Use</b>
<b>North</b>	retention pond	PUD-DRI	DRI 3
<b>South</b>	retention pond	PUD-DRI	DRI 3
<b>East</b>	I-95	PUD-DRI	DRI 3
<b>West</b>	retail complex	PUD-DRI	DRI 3

The subject property is surrounded by PUD zoning with commercial uses.

The Planned Unit Development (PUD) zoning encourages and permits variation in development by allowing deviation in lot size, bulk or type of dwellings, density, lot coverage and open space from that required in any one residential zoning classification. The purpose of a PUD is to encourage the development of planned residential neighborhoods and communities that provide a full range of residence types, as well as industrial, commercial and institutional land uses.

There have been no changes to the PUD within a half-mile radius of the subject property within the last three years.

**Preliminary Concurrency**

The closest concurrency management segment to the subject property is Lake Andrew Drive between Wickham Road to The Avenues Entrance, which has a Maximum Acceptable Volume (MAV) of 39,800 trips per day, a Level of Service (LOS) of E, and currently operates at 49.71% of capacity daily. The maximum development potential from the proposed CUP increases the percentage of MAV utilization by 2.19%. The Lake Andrew Drive corridor is anticipated to operate at 51.90% of capacity daily. The request is not anticipated to create a deficiency in LOS.

No school concurrency information has been provided as the development proposal is for commercial and not residential use.

The parcel is serviced by the City of Cocoa Utilities for public water. The property is serviced by Brevard County utilities for sewer.

## Special Considerations for CUP (Conditional Use Permit)

The Board should consider the compatibility of the proposed CUP pursuant to Section 62-1151(c) and to Section 62-1901, as outlined on pages 6 – 8 of these comments. Section 62-1901 provides that the approval of a conditional use shall authorize an additional use for the affected parcel of real property in addition to those permitted in the applicable zoning classification. **The initial burden is on the applicant to demonstrate that all applicable standards and criteria are met. Applications which do not satisfy this burden cannot be approved.** The applicant's responses and staff observations, if any, are indicated below.

Section 62-1151(c) directs the Board to consider the character of the land use of the property and its surroundings; changes in the conditions of the land use being considered; impact upon infrastructure; compatibility with land use plans for the area; and appropriateness of the CUP based upon consideration of applicable regulations relating to zoning and land use within the context of public health, safety and welfare. The applicant has submitted documentation in order to demonstrate consistency with the standards set forth in Section 62-1901 and Section 62-1921 which governs commercial entertainment and amusement enterprises.

This applicant states that this request will be developed consistent with the criteria noted within Section 62-1921 except for several requested alternative development standards which are identified in concurrent zoning application **24PUD00005**. The applicant is requesting alternative development standards to increase fence height, increase wall signage, and reduce/remove current lighting performance standards.

## General Standards of Review

Section 62-1901(c)(1)(a): The proposed conditional use will not result in a substantial and adverse impact on adjacent and nearby properties due to: (1) the number of persons anticipated to be using, residing or working under the conditional use; (2) noise, odor, particulates, smoke, fumes and other emissions, or other nuisance activities generated by the conditional use; or (3) the increase of traffic within the vicinity caused by the proposed conditional use.

*Applicant's Response: We do not anticipate the proposed conditional use will generate a substantial and adverse impact on adjacent nearby properties due to the criteria listed above.*

**Staff analysis: The proposed 64 hitting bay golf venue will need to comply with Brevard County's Performance Standards defined by Sections 62-2251 through 62-2272. The request is not anticipated to create a deficiency in Lake Andrew Drive, traffic Level of Service (LOS).**

Section 62-1901(c)(1)(b): The proposed use will be compatible with the character of adjacent and nearby properties with regard to use, function, operation, hours of operation, type and amount of traffic generated, building size and setback, and parking availability.

*Applicant's Response: The proposed use will be compatible with the character of the adjacent and nearby properties. The outdoor recreation and sports entertainment facility proposed will complement the growing entertainment facilities within Viera that include the Avenues and the USSSA Space Coast Complex. The anticipated hours of operation for the facility will be from Sunday-Thursday from*

*9:00 am -12:00 am and Friday and Saturday from 9:00 am- 2:00 am. Traffic generated by the facility will not generate an adverse impact. A traffic study will be provided at time of site plan review. Site design including setbacks and parking will meet Brevard Code and the Central Viera Non-Residential Design Guidelines.*

**Staff analysis: The parcel is located in a Commercial area and is not adjacent to any residential development.**

Section 62-1901(c)(1)(c): The proposed use will not cause a substantial diminution in value of abutting residential property. Note: A substantial diminution shall be irrebutably presumed to have occurred if abutting property suffers a 15 percent reduction in value as a result of the proposed conditional use. A reduction of ten percent of the value of abutting property shall create a reputable presumption that a substantial diminution has occurred. The board of county commissioners carries the burden to show, as evidenced by either testimony from or an appraisal conducted by a MAI certified appraiser, that a substantial diminution in value would occur. The applicant may rebut the findings with his own expert witnesses.

*Applicant's Response: We do not anticipate the proposed conditional use will cause a substantial diminution in value of abutting residential property.*

**Staff analysis: Competent and substantial evidence by a MAI certified appraiser has not been provided by the applicant.**

Section 62-1901(c)(2)(a): Ingress and egress to the property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire and catastrophe, shall be: (1) adequate to serve the proposed use without burdening adjacent and nearby uses, and (2) built to applicable county standards, if any.

Note: Burdening adjacent and nearby uses means increasing existing traffic on the closest collector or arterial road by more than 20 percent, or ten percent if the new traffic is primarily comprised of heavy vehicles, except where the affected road is at level of service A or B. New traffic generated by the proposed use shall not cause the adopted level of service for transportation on applicable roadways, as determined by applicable county standards, to be exceeded. Where the design of a public road to be used by the proposed use is physically inadequate to handle the numbers, types or weights of vehicles expected to be generated by the proposed use without damage to the road, the conditional use permit cannot be approved without a commitment to improve the road to a standard adequate to handle the proposed traffic, or to maintain the road through a maintenance bond or other means as required by the Board of County Commissioners.

*Applicant's Response: Vehicular and pedestrian access will be designed to meet Brevard County Code and the Central Viera non-residential design guidelines. Traffic generated by the facility is not anticipated to generate an adverse impact. A traffic study will be provided at time of site plan review.*

**Staff analysis: This property has ingress and egress to Lake Andrew Drive from Bromley Drive and Napolo Drive; county-maintained roads.**

Section 62-1901(c)(2)(b): The noise, glare, odor, particulates, smoke, fumes or other emissions from the conditional use shall not substantially interfere with the use or enjoyment of the adjacent and

nearby property.

*Applicant's Response: We do not anticipate the proposed use will generate a substantial adverse impact on adjacent properties from noise, glare, odor, particulates, smoke, fumes or other emissions.*

**Staff analysis: The CUP must be in compliance with Brevard County's Performance Standards defined by Sections 62-2251 through 62-2272. The applicant has proposed an ADS alternative development standards for proposed outdoor lighting and other alternative development standardss.**

Section 62-1901(c)(2)(c): Noise levels for a conditional use are governed by section 62-2271.

*Applicant's Response: Noise levels shall comply with maximum permitted for commercial uses.*

**Staff analysis: Proposed CUP includes outdoor areas and must comply with noise ordinance.**

Section 62-1901(c)(2)(d) The proposed conditional use shall not cause the adopted level of service for solid waste disposal applicable to the property or area covered by such level of service, to be exceeded.

*Applicant's Response: A Concurrency application has been submitted to the service provider to confirm the proposed use will not cause the adopted level of service to be exceeded.*

**Staff analysis: The adopted level of service for solid waste disposal should not be affected by the CUP.**

Section 62-1901(c)(2)(e): The proposed conditional use shall not cause the adopted level of service for potable water or wastewater applicable to the property or the area covered by such level of service, to be exceeded by the proposed use.

*Applicant's Response: A Concurrency application has been submitted to the service provider to confirm the proposed use will not cause the adopted level of service to be exceeded.*

**Staff analysis: The CUP should not exceed the adopted level of service for potable water or wastewater.**

Section 62-1901(c)(2)(f): The proposed conditional use must have existing or proposed screening or buffering, with reference to type, dimensions and character to eliminate or reduce substantial, adverse nuisance, sight, or noise impacts on adjacent and nearby properties containing less intensive uses.

*Applicant's Response: Screening and buffering for the proposed use will be provided per Brevard County Code requirements and the Central Viera Non-Residential Design Guidelines.*

**Staff analysis: The proposed site plan demonstrates compliance of county codes and regulations for landscaping purposes; however, glare from external lighting sources may be an issue for the neighbors and to south bound I-95 traffic. If the proposed alternative development standards in the ADS package successfully addresses the glare issue, by the**



**use of high fencing to retain stray golf balls the plan should meet these requirements. The applicant must demonstrate during the site plan process and provide applicable permits prior to approval that the lighting configuration does not create a safety issue**

Section 62-1901(c)(2)(g): Proposed signs and exterior lighting shall not cause unreasonable glare or hazard to, traffic safety, or interference with the use or enjoyment of adjacent and nearby properties.

*Applicant's Response: Proposed signs and exterior lighting will not cause unreasonable glare or hazard to traffic safety or interfere with use and enjoyment of adjacent properties.*

**Staff analysis: The parcel has a proposed ADS alternative development standards for wall signage and external lighting. If the ADS request is approved, the site will be in compliance.**

Section 62-1901(c)(2)(h): Hours of operation of the proposed use shall be consistent with the use and enjoyment of the properties in the surrounding residential community, if any. For commercial and industrial uses adjacent to or near residential uses, the hours of operation shall not adversely affect the use and enjoyment of the residential character of the area.

*Applicant's Response: The anticipated hours of operation for the facility will be from Sunday-Thursday from 9:00 am - 12:00 am and Friday and Saturday from 9:00 am- 2:00 am. The hours of operation are not anticipated to adversely affect the use and enjoyment of adjacent residential properties.*

**Staff analysis: The hours of operation have been addressed. The Board may determine that additional measures may be necessary, the Board may wish additional stipulations as part of the request.**

Section 62-1901(c)(2)(i): The height of the proposed use shall be compatible with the character of the area, and the maximum height of any habitable structure shall be not more than 35 feet higher than the highest residence within 1,000 feet of the property line.

\*Note: A survey of building heights within 1,000 feet of the property lines should be furnished for applicants requesting a Conditional Use Permit for additional building height.

*Applicant's Response: The maximum height of any habitable structure shall be no taller than 35 feet higher than the highest residence within 1,000 feet of the proposed property line.*

**Staff analysis: The building that supports the proposed golf venue meets the height requirements. A alternative development standards for fencing height is proposed under the companion application 24PUD00005 to increase fence height from 8' in height to 165' in height.**

Section 62-1901(c)(2)(j): Off-street parking and loading areas, where required, shall not be created or maintained in a manner which adversely impacts or impairs the use and enjoyment of adjacent and nearby properties. For existing structures, the applicant shall provide competent, substantial evidence to demonstrate that actual or anticipated parking shall not be greater than that which is approved as part of the site plan under applicable county standards.

\*Note: for existing structures, the applicant shall provide competent, substantial evidence to demonstrate that actual or anticipated parking shall not be greater than that which is approved as part of the site plan under applicable county standards.

*Applicant's Response: Off-street parking and loading areas shall not adversely impact or impairs the use and enjoyment of adjacent and nearby properties and will meet Brevard County code.*

**Staff analysis: The proposed plan demonstrates adequate parking to meet code.**

### **Environmental Constraints**

Natural Resources Management (NRM) reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

### **For Board Consideration**

The Board may wish to consider the compatibility of the proposed CUP with the surrounding area. The Board may also wish to consider additional conditions beyond those cited in Sections 62-1901 and 62-1921 in order to mitigate any offsite impacts.

The Board may also consider including a condition that the applicant will provide signed and sealed documents by a Professional Engineer (P.E.) demonstrating that the lighting configuration does not adversely affect conditions for traffic traveling along I-95 during the site plan process. Applicant shall meet all local, state, and federal regulations regarding lighting, unless expressly waived.

**NATURAL RESOURCES MANAGEMENT DEPARTMENT  
Zoning Review & Summary**

**Item No. 24Z00047**

**Applicant:** Joey Pazmino (Owner: The Viera Co.)

**Zoning Request:** CUP for Commercial Entertainment and Amusement (Sec. 62-1921)

**Note:** for outdoor recreational use

**Zoning Hearing:** 11/18/2024; **BCC Hearing:** 12/12/2024

**Tax ID No.:** 2631510 (11.67 ac portion of)

- This is a preliminary review based on best available data maps reviewed by the Natural Resources Management Department (NRM) and does not include a site inspection to verify the accuracy of the mapped information.
- In that the rezoning process is not the appropriate venue for site plan review, specific site designs submitted with the rezoning request will be deemed conceptual. Board comments relative to specific site design do not provide vested rights or waivers from Federal, State or County regulations.
- **This review does not guarantee whether or not the proposed use, specific site design, or development of the property can be permitted under current Federal, State, or County Regulations.**

**Summary of Mapped Resources and Noteworthy Land Use Issues:**

- Hydric Soils
- Aquifer Recharge Soils
- Floodplain Protection
- Protected Species

**Land Use Comments:**

The property is located within the Viera Central PUD/Master Drainage Plan (Plan No. SD011005). The property is also served by reuse water. The mapped resources are all addressed within the PUD documents.