



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

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STAFF COMMENTS

25Z00021

5125 South LLC.

**A Conditional Use Permit (CUP) for Alcoholic Beverages for On-Premises Consumption
accessory to a bar and game hall in Suite # 3**

Tax Account Number: 2512007
Parcel I.D.s: 25-36-35-00-1 (Suite 3)
Location: 5125 South Highway 1. East side of South Highway 1, approximately 402
feet North of Rockledge Dr. (District 2)
Acreage: 1.64 acres

Planning & Zoning Board: 08/18/2025
Board of County Commissioners: 09/04/2025

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)

	CURRENT	PROPOSED
Zoning	BU-1	BU-1 with CUP for 2 COP for On-Premises Consumption in Suite 3
Potential*	FAR 1.0	FAR 1.0
Can be Considered under the Future Land Use Map	YES Community Commercial	YES Community Commercial

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

Background and Purpose of Request

The applicant's request is for a Conditional Use Permit (CUP) for Alcoholic Beverages for On-Premises Consumption for a 2COP (beer and wine) license in Suite 3, containing an area of 3,000 square feet of the approximately 13,200 square foot commercial flex space building. This location is the southern suite within the building complex. The applicant is projecting 100 occupants maximum.

The other businesses in the building include Brevard Business Telephone (hours are Monday – Friday 8:00 am to 5:00 pm) and a used furniture sales office, which based on information from the applicant, is more storage than an actual office. The applicant's proposed operating hours are from 5:00 pm to 11:00 pm.

Section 62-1906 (3) expressly states: "Except for restaurants with more than 50 seats, no alcoholic beverages shall be sold or served for consumption on the premises from any building that is within 300 feet from the lot line of a school or church if the use of the property as a school or church was established prior to the commencement of the sale of such alcoholic beverages. For the purposes of this subsection, a school shall include only grades kindergarten through 12. For the purpose of establishing the distance between the proposed alcoholic beverage use and churches and schools, a certified survey shall be furnished from a registered engineer or surveyor. Such survey shall indicate the distance between the front door of the proposed place of business and all property lines of any church or school within 400 feet. Each survey shall indicate all such distances and routes." **Staff analysis has determined the provided survey shows that there are no churches or schools within 300 feet from the bar to the lot line of a school or church and 400 feet between the front door of the proposed place of business and all property lines of any church or school within the area of this CUP request.**

ZONING HISTORY:

Based on the best available data from the Brevard County Property Appraiser, the lot appears to have been created on September 1, 1974, with a zoning classification of Agricultural Residential (AU).

On May 21, 1990, the Board approved zoning action **Z-8599**, which changed the zoning classification from AU to BU-1. The property retains the original FLU designation of Community Commercial (CC). The property was site-planned under the name Brevard Business Telephone Inc. The site plan number was SP# 96-03-002. This property was developed in 1996, according to the Brevard County Property Appraiser's website.

The applicant states this a new establishment to the area to help meet the growing demand for interactive entertainment.

The site has access to Highway 1, a State Maintained Right-of-Way.

No code enforcement cases active on the subject property.

Surrounding Area

	Existing Use	Zoning	Future Land Use
North	Undeveloped land	BU-1	CC
South	Multi-family residential	RU-2-10(8)	NC
East	Undeveloped land	AU	NC
West	Highway 1	N/A	N/A

North of the subject property is a 1.77-acre parcel, undeveloped land, zoned BU-1 with CC FLU.

South of the subject property a 1.34-acre parcel, developed with 3 triplex multi-family residential buildings (approximately 9 units), zoned RU-2-10(8) with NC FLU.

East of the subject property is a 1.72-acre parcel, undeveloped land, zoned AU with NC FLU.

West of the subject property is Highway 1, a state-maintained roadway.

BU-1 classification allows retail commercial land uses on minimum 7,500 square foot lots. The BU-1 classification does not permit warehousing or wholesaling.

RU-2-10 classification medium-density multiple-family residential zoning classifications encompass lands devoted to medium-density multifamily residential purposes, together with such accessory uses as may be necessary or are normally compatible with residential surroundings. RU-2-10 permits multiple-family residential development or single-family residences at a density of up to 10 units per acre on minimum lot sizes of 7,500 square feet.

AU zoning classification encompasses lands devoted to agricultural pursuits and single-family residential development of spacious character on 2.5 acre lots, with a minimum lot width and depth of 150 feet. The minimum house size in AU is 750 square feet. The AU classification also permits the raising/grazing of animals, fowl and beekeeping.

Land Use

The existing BU-1 zoning can be considered consistent with the existing Community Commercial (CC) 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;

Billiard rooms and electronic game arcades (soundproofed) are a permitted use in BU-1. Alcoholic Beverages for On-Premises Consumption is a conditional use in the BU-1 zoning classification.

The Board should consider the compatibility of the proposed 2COP CUP with the surrounding area.

B. Existing commercial zoning trends in the area;

Staff analysis: The subject property was developed as a warehouse flex space in 1996.

Located North of the subject property is an undeveloped BU-1 zoned commercial property. Other commercial zoning trends in the area include an air conditioning company taking over the Goodwill store and the Peddler's Village, which has been in existence for over 60 years. To the South, on the same side of the highway, is a convalescent home constructed in 2019 and a realtor's office constructed over 30 years ago. Commercial activity has progressed slowly in this area.

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

Staff analysis: The subject property needs to comply with the Brevard County Performance Standard defined by Sections 62-2251 through 62-2272 for hours of operations, lighting, noise levels, traffic, and site activity to not cause any violations with the residential areas.

This CUP request, if approved, can be considered compatible based on the subject property being in a commercial area of character and not in a residential neighborhood.

The applicant proposes hours of operation to be 5 pm to 11 pm. These hours are outside the operating hours of the other business on site as the applicant has stated the telephone business operates 8 am to 5 pm, Monday through Friday, while the used furniture sales do not have any customers and have no business hours.

The establishment is proposed to be all indoors with no outdoor seating or patio.

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

Staff analysis: Based on a preliminary review, there is an increase for service, however, it is not anticipated to create a deficiency in LOS standards 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, lighting, odor, noise levels, traffic, or site activity, the proposed CUP must comply with Brevard County's Performance Standards defined by Sections 62-2251 through 62-2272.

Brevard County Code of Ordinances states within Chapter 6, Section 6-3. - Hours of sale: Unless otherwise prohibited, in the unincorporated area of the county, alcoholic beverages may be sold, consumed, served, or permitted to be served or consumed in any place holding a license under the division of alcoholic beverages and tobacco 24 hours a day, seven days a week.

The Board may consider additional conditions and/or limitations.

- B. Whether the proposed use(s) would cause a material reduction (five percent 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;

There are six (6) FLU designations within a half-mile radius of the subject property. They include RES 4, RES 15, Recreation (REC), Community Commercial (CC), and Neighborhood Commercial (NC). Res 4 is the predominant FLU designation in the area on the same side of Highway 1. IND is the predominant FLU designation west of Highway 1.

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

There has been no new development within a half-mile radius of the subject property within the last three (3) years.

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

Staff Analysis: There have been no zoning approvals in the past three (3) years.

- 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.

Based on staff analysis, the requested CUP are not anticipated to materially or adversely impact the surrounding residential area. Appears to be a vegetative buffer of at least 25 feet separating the proposed area from the residential area to the south.

- 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 well-established boundaries, roads, and open spaces. The subject property is not located in a residential neighborhood. However, there are residential areas to the south and east at a depth approximately 300 feet..

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.

The proposed request is not considered a neighborhood commercial use, and it is not located in an existing residential neighborhood.

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.

There have been no other commercial, industrial or other non-residential uses applied for and approved during the previous five (5) years. Staff analysis has determined the area is not primarily residential.

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 US 1 segment between Viera Blvd. and Barnes Blvd. The maximum development potential from the proposed CUP increases the percentage of MAV utilization by 0.31%. The US 1 corridor is anticipated to operate at 68.46% of capacity daily. The request is not anticipated to create a deficiency in LOS.

Preliminary Concurrency

The closest concurrency management segment to the subject property is US 1 between Viera Blvd. and Barnes Blvd., which has a Maximum Acceptable Volume (MAV) of 41,790 trips per day, a Level of Service (LOS) of D, and currently operates at 68.15% of capacity daily. The maximum development

potential from the proposed CUP increases the percentage of MAV utilization by 0.31%. The US 1 corridor is anticipated to operate at 68.46% 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 use 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 62-1936, Land Alteration.

This request should be evaluated in the context of **Section 62-1906** which governs alcoholic beverages for on-premises consumption which states in, specifically 62-1906 (3) and (5):

- 3) Except for restaurants with more than 50 seats, no alcoholic beverages shall be sold or served for consumption on the premises from any building that is within 300 feet from the lot line of a school or church if the use of the property as a school or church was established prior to the commencement of the sale of such alcoholic beverages. For the purposes of this subsection, a school shall include only grades kindergarten through 12. For the purpose of establishing the distance between the proposed alcoholic beverage use and churches and schools, a certified survey shall be furnished from a registered engineer or surveyor. Such survey shall indicate the distance between the front door of the proposed place of business and all property lines of any church or school within 400 feet. Each survey shall indicate all such distances and routes.

Staff analysis: The owner/applicant has provided a survey, with a radius of 500 feet, which states that there are no churches or schools within 300 feet from the bar to the lot line of a school or church and 400 feet between the front door of the proposed place of business and all property lines of any church or school within the area of this CUP request.

- 5) Imposition of additional operational requirements. When deemed appropriate, as based upon circumstances revealed through the general and specific standards of review set forth in this division, the Board shall have the option of imposing operational requirements upon an establishment approved for a conditional use for alcoholic beverages for on-premises consumption.

Requirements may include, but are not limited to, the following: maximum number of patrons; hours of operation; limitations upon outdoor seating and service of alcoholic beverages; limitations upon outside music and/or public address systems; additional buffering requirements; additional parking requirements; internal floor plan arrangement; or other specific restrictions based upon special neighborhood considerations. Additional requirements shall not exceed the limits of regulatory authority granted to local governments in the State Beverage Law, F.S. § 562.45.

Staff analysis: Serving and consumption of food and beverages, alcohol or otherwise, shall be strictly prohibited outside of the existing buildings as no outdoor seating is proposed, pursuant to Section 62-1837.9 (Outdoor restaurant seating) of Brevard County Code.

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: (1) The anticipated number of patrons, employees, and service personnel will be appropriately managed in accordance with local occupancy limits and fire code regulations. The space is designed to accommodate a moderate number of guests, ensuring safe and controlled operations without creating undue congestion or disruption to neighboring businesses or residents.

(2) The space will be sound-insulated to limit noise impact on adjacent units, and all entertainment equipment will operate within county-approved decibel levels. No offensive odors, smoke, or fumes will be produced, and proper ventilation will ensure a clean and compliant indoor environment.

(3) Traffic increase will be moderate and mainly during off-peak hours. On-site parking is adequate and will be monitored to ensure availability for all tenants and patrons.

Staff analysis: The proposed CUP must 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 Highway 1 traffic Level of Service (LOS) standard.

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 is compatible with nearby properties in terms of use, function, hours, traffic, building size, setback, and parking availability.

Staff analysis: The subject property is located in an area of mixed commercial and residential uses. The proposed establishment is located indoors within a commercial building with no outdoor seating or outdoor patio proposed. There is vegetative buffering around the property to separate the commercial uses from residential uses. The applicant also states that he will be installing sound proofing to further limit any issues with the surrounding properties.

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 irrebuttably 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: The proposed use will not reduce the value of adjacent residential properties.

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: Ingress and egress to the property and structures will be adequate for the proposed use, ensuring safe and convenient vehicular and pedestrian access, smooth traffic flow, and emergency response access, all built to applicable county standards without burdening nearby properties.

Staff analysis: This property has ingress and egress directly on Highway 1.

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: Noise, glare, odor, smoke, fumes, and other emissions from the proposed use will be controlled to prevent substantial interference with the use and enjoyment of adjacent and nearby properties.

Staff analysis: The proposed must comply with Brevard County's Performance Standards defined by Sections 62-2251 through 62-2272. Any proposed outdoor lighting and noise standards should remain within code requirements, or a violation will be created.

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

Applicant's Response: Noise levels from the conditional use will comply with Section 62-2271 of the Code, ensuring all sound emissions meet the required standards.

Staff analysis: The proposed CUP does not include outdoor areas. The site must comply with the 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: The proposed use will not exceed the approved solid waste disposal capacity for the property or surrounding area.

Staff analysis: The adopted level of service for solid waste disposal will increase but is not anticipated to affect the disposal capacity for the subject property or surrounding area.

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: The proposed use will not exceed the approved potable water or wastewater service capacity for the property, occupancy, or surrounding area.

Staff analysis: The CUP should not exceed the adopted level of service for potable water or wastewater. The establishment is connected to public sewer system.

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: The proposed use will include existing or planned screening and buffering designed to minimize nuisance, sight, and noise impacts on nearby properties with less intensive uses.

Staff analysis: The property was developed in 1996, according to the Brevard County Property Appraiser's website. This is a new establishment to the area and will need to ensure it meets the Brevard County Performance Standards.

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 be designed to prevent glare, traffic hazards, and interference with the use or enjoyment of nearby properties.

Staff analysis: Any new signage for the proposed establishment on the subject property would need to meet the current Brevard County Code.

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 proposed hours of operation will be set to ensure they do not negatively impact the use and enjoyment of nearby residential properties, maintaining the residential character of the area.

Staff analysis: After speaking with the applicant regarding hours of operation, it appears to be outside the hours of operation of the two other businesses on the subject property, with potential hours from 5pm to 11pm. The Board may determine that additional measures may be necessary, and the Board may require 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.

Applicant's Response: The height of the proposed use is compatible with the area's character and will not exceed 35 feet above the tallest residence within 1,000 feet of the property line.

Staff analysis: The establishment is a single-story building and meets the height requirements.

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 will be designed and maintained to avoid any negative impact on the use and enjoyment of nearby properties.

Staff analysis: The applicant states it will operate in accordance with all Brevard County Code regulations to enhance the overall appeal of the building with the surrounding area.

For Board Consideration

The Board should consider the compatibility of the proposed Conditional Use Permit (CUP) for Alcoholic Beverages for On-Premises Consumption, a 2COP (beer and wine) license with the surrounding area.