



BOARD OF COUNTY COMMISSIONERS

## Planning and Development Department

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<https://www.brevardfl.gov/PlanningDev>

### STAFF COMMENTS

24Z00030

#### Borrow West Hotel Developers, LLC

#### A CUP for Alcoholic Beverages for On-Premises Consumption accessory to a Hotel

#### (4 COP, with full liquor) on 5.78 acres

Tax Account Number: 3030319

Parcel I.D.s: 25-36-33-XE-D-2.01

Location: East end of Porada Drive, 1,220 feet south of Viera Blvd. (District 4)

Acreage: CUP request 5.78 acres

Planning & Zoning Board: 08/12/2024

Board of County Commissioners: 09/05/2024

#### 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)

	CURRENT	PROPOSED
<b>Zoning</b>	PUD	PUD with CUP for Alcoholic Beverages for On-Premises Consumption
<b>Potential*</b>	FAR 1.75	FAR 1.75
<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 Alcoholic Beverages for On-Premises Consumption (4COP) on 5.78 acres in conjunction with a 123,265 sq. ft., six floor hotel with 208 guest rooms and roof top bar/restaurant. The applicant states, "they are seeking a CUP for Alcoholic Beverages for On-Premises Consumption (4COP) for the entire hotel including the roof-top bar/restaurant, guest rooms and any outdoor areas such as swimming pool areas, outdoor bars, and any other areas around the Hotel".

The hotel's restaurant was Administratively Approved for Alcoholic Beverages for On-Premises Consumption in conjunction to a restaurant use only, per zoning application 24AA00021. Brevard County code allows restaurants with 51% or more from food sales to be administratively approved. Section 62-1906 requires an application for a CUP for Alcoholic Beverages for On-Premises Consumption in conjunction with a bar. This CUP request exceeds the Administrative approval authority by staff.

The request is for 5.78 acres being a part of Lot 2, Block B, Viera Boulevard Commercial Center I-Phase 1 as recorded in Plat Book 67, Pages 46-52 and a Part of Lot 3 Block D, Viera Boulevard Commercial Center II as recorded in Plat Book 68, Page 67. The parcel is currently zoned PUD (Planned Unit Development) and is in the Viera DRI (Development of Regional Impact).

The site has access to Fresh Springs Lane a Tract/Right-of-Way which has access to Lake Andrew Drive a County Maintained Right-of-Way.

The applicant included the approved site plan, 21SP00019, with the CUP application showing the overall developed site along with parking, ingress/egress on the parcel. On premises consumption of alcohol would be allowed on the entire property unless the Board stipulates any restrictions.

The hotel will also include outdoor swimming pool with pool deck area, fitness room and roof-top bar/restaurant areas.

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 Alcoholic Beverages for On-Premises Consumption accessory (4COP) for the entire hotel including the roof-top bar/restaurant, guest rooms and any outdoor areas such as swimming pool areas, outdoor bars, and any other areas around the hotel.***

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

B. Existing commercial zoning trends in the area;

***Staff analysis: The subject property is currently under development as a hotel within the Viera PUD. The surrounding area has been under development for a restaurant, bar, and hotel for the past year. The surrounding area is within a commercial area***

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

***Staff analysis: This CUP request, if approved, could be considered compatible with the PUD zoning with the adjacent commercial uses.***

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, lighting, 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.***

- 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 being developed with a restaurant, bar, hotel, and commercial office center within the platted area.**

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

**Staff analysis: The surrounding area has been under development for a restaurant, bar, and hotel for the past two years.**

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

**Staff analysis: There is restaurant, bar and hotel development approved in this area under construction for the past two 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.

**The property is within the existing Viera PUD with commercial development surrounding the area. Staff analysis indicates the request is located in a commercial platted subdivision and will not materially and adversely impact any established residential neighborhoods. The closest residential development is located north of Viera Blvd., approximately 1,970 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 platted subdivision.**

**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 Viera Blvd. to Judge Fran Jamieson Way. 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>	Vacant Commercial	PUD	DRI 3
<b>South</b>	Vacant Commercial	PUD	DRI 3
<b>East</b>	Retention Pond Common Area	PUD	DRI 3
<b>West</b>	Vacant Commercial	PUD	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 Viera Blvd. to Judge Fran Jamieson Way, which has a Maximum Acceptable Volume (MAV) of 39,800 trips per day, a Level of Service (LOS) of D, and currently operates at 35.72% of capacity daily. 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.

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 62-1936, 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 which states that there are no churches or schools within 300 feet from the hotel building 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: The applicant is requesting a CUP (Conditional Use Permit) for Alcoholic Beverages for On-Premises Consumption (4COP) on 5.78 acres in conjunction with a 123,265 sq. ft. six floor hotel with 208 guest rooms and roof top bar/restaurant. The applicant states, "they are seeking a CUP for Alcoholic Beverages for On-Premises Consumption (4COP) for the entire hotel including the roof-top bar/restaurant, guest rooms and any outdoor areas such as swimming pool areas, outdoor bars, and any other areas around the hotel".***

#### **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: The proposed building and site development was previously approved via site plan permit # 22BC23633.*

**Staff analysis: The proposed CUP 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 building and site development was previously approved via site plan permit # 22BC23633. The proposed building meets all applicable regulations for size, setback, and required parking.*

**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: The proposed use does not abut 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: The proposed building and site development approved site plan 22BC23633. .*

**Staff analysis: This property has ingress and egress from Fresh Springs Lane to Lake Andrew Drive.**

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: This will not negatively affect adjacent properties.*

**Staff analysis: The CUP must be in compliance 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: Use will meet the noise Code requirements.*

**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: Waste disposal has been adequately planned.*

**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: The use will not exceed the proposed use.*

**Staff analysis: The CUP should not exceed the adopted level of service for potable water or wastewater. Potable water and sewer capacity were approved during building permit (22BC23633) review.**

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: Building and site development approved site plan permit #22BC23633.*

**Staff analysis: An approved site plan demonstrated compliance of county codes and regulations. The CUP will need to meet these requirements.**

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: Building and site development approved site plan 22BC23633.*

**Staff analysis: The parcel has an approved site plan, 22SP00019 which meet current 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 hours are consistent with the County Code.*

**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.

*Applicant's Response: Building and site development approved site plan permit # 22BC23633.*

***Staff analysis: The hotel is six floors high 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: Building and site development approved site plan permit # 22BC23633.*

***Staff analysis: The parcel has an approved site plan 22SP00019 and impacts to parking should not be affect.***

### **Environmental Constraints**

No formal review by the Natural Resources Management Department is required for a CUP for on-premises consumption of alcoholic beverages. 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 62-1906 in order to mitigate any offsite impacts.