



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

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STAFF COMMENTS

19PZ00138

Reagan & McKinley, LLC

CUP (Conditional Use Permit) for Alcoholic Beverages (beer & wine only) for On-Premises Consumption in Conjunction with a Restaurant

Tax Account Number: 2626895
Parcel I.D.: 28-36-04-75-A-1 – Unit 105
Location: 2348 Citadel Way, Unit 105, Melbourne, north unit of southern building labeled Building “A” on site plan (District 4)
Acreage: .06 acres / 2,800 square feet

Planning and Zoning Board: 01/13/20

Board of County Commissioners: 02/06/20

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	PUD-DRI	CUP for alcoholic beverage in conjunction with a restaurant (beer & wine only)
Potential*	2,800 square feet Restaurant	2,800 square feet Restaurant
Can be Considered under the Future Land Use Map	YES DRI	YES DRI

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

Background and Purpose of Request

The applicant is requesting a Conditional Use Permit (CUP) for Alcoholic Beverages (beer and wine only) for on-premises consumption in conjunction with a high turnover sit-down restaurant. The request is for 2,800 square-foot unit located at the north end of the southernmost building in the three-building MRG Plaza and will not have outside seating. Site plan provided shows there is adequate parking.

The parcel is bounded by Pentland Lane to the north, Citadel Way to the south, Colonnade Avenue to the east, and Lake Andrew Drive to the west in the town center of The Central Viera

Planned Unit Development (PUD). The south unit of said southernmost building, a CUP for on premises consumption of alcoholic beverages (beer and wine only) in conjunction with a 2,800 square-foot restaurant was approved on the subject site via **18PZ00110** on 12/06/18. Also, in the building to the north within the same plaza, a CUP for on premises consumption of alcoholic beverages (beer and wine only) in conjunction with a 1,820 square-foot restaurant was approved via **17PZ00149** on 02/01/18.

Land Use

This site retains the Development of Regional Impact 3 (DRI3) Future Land Use designation and is within the Central Viera PUD. It is in a Commercial section (Parcel 3) of the Central Viera PUD. The zoning and the proposed CUP are consistent with the DRI Future Land Use.

FLUE 2.1 outlines the role of the Comprehensive Plan in the designation of commercial land.

FLUE 8.1.3 outlines activities permitted in areas with the DRI3 FLU designation.

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.

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, including any land alteration permits or landscape restoration plan.

Preliminary Transportation Concurrency

The subject property is on the concurrency management segment of Lake Andrew Drive, between The Avenue Main Entrance 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 48.24% of capacity daily. The maximum development potential from the proposed CUP does not increase the proposed trip generation. The corridor is anticipated to continue to operate at 48.24% of capacity daily (LOS C). The proposal is not anticipated to create a deficiency in LOS.

No school concurrency information has been provided as this is a commercial development.

The subject property is served by City of Cocoa potable water and Brevard County sewer.

Applicable Land Use Policies

The subject property is classified as PUD-DRI zoning and is part of the Central Viera PUD.

The proposed business is located in the MRG Plaza in the Viera Town Center section of the Central Viera PUD. The proposed restaurant will be an upscale burger restaurant and is located in the southern most building of the three-building center and adjacent to The Avenue at Viera. The property on all four sides of this center retains the same FLU of DRI3 and zoning

classification of PUD-DRI as the subject property and is limited to the commercial uses per Amendment 11 of the Central Viera PUD Preliminary Development Plan (PDP) per **Z-11529**, 11/16/2009.

There have been two zoning actions within one half mile of the subject property in the last six years. That is the CUP for on premises consumption of alcoholic beverages (beer and wine only) in conjunction with a 1,820 square-foot restaurant in the adjacent building to the north in the same plaza approved via **17PZ00149** on 02/01/18. There is also a second CUP for on premises consumption of alcoholic beverages (beer and wine only) in conjunction with a 2,800 square-foot restaurant in the southern most unit of same building in the same plaza approved via **18PZ00110** on 12/06/18.

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 6-9 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 are indicated in bold and staff observations, if any, are provided in italics.

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 62-1906, on-premises consumption of alcohol.

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.

A certified survey provided by the Applicant demonstrates that there are no schools, churches or daycares within 400' of the establishment.

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.

Serving and consumption of food and beverages, alcohol or otherwise, shall be strictly prohibited outside of the existing building. All operations are to be contained within a completely enclosed building. The Board may wish to consider whether any additional operational requirements should be imposed as a part of this request.

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 use is a restaurant with on premises sale of alcohol beverage. The site is located along a major commercial corridor. There is a mix of existing retail, office, service and restaurant businesses located in close proximity to an open-air format mall/power center.**

Staff's Observation: *The restaurant is proposed to contain 50+ seats, exclusive of any outdoor seating area. Beer and wine use is proposed.*

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 site is strongly compatible with the surrounding properties with regard to use, function, operation, hours of operation, type and amount of traffic generated, building size and setback, and parking availability.**

Staff's Observation: *Use is proposed within a commercial tract of the PUD compatible with adjacent retail and office establishments.*

Section 62-1901(c)(1)(c): The proposed use will not cause a substantial diminution in value of abutting residential property. 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 an 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 property as approved, is a preferred location for commercial businesses, and serves to support and increase the values of the other commercial properties in the area.**

Staff's Observation: *This site is developed as a commercial site; alcohol use (beer/wine) as accessory to a restaurant use should not negatively impact the surrounding property values.*

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. 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 site plan and project has recently been approved by Brevard County and meets all listed items.**

Staff's Observation: *The site plan was approved in 16SP00015 and amended in 17ER00014 under the name of Viera Colonnade.*

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: **The property will be compatible with adjacent uses as explained in the previous questions.**

Staff's Observation: *The property is subject to the performance standards found in sections 62-2251 through 2271 of the zoning regulations.*

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

Applicant's Response: **The proposed use will be within the permitted noise level.**

Staff's Observation: *The property is subject to the performance standards found in sections 62-2251 through 2271 of the zoning regulations.*

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 sale of alcoholic beverages for on premise use will not cause the adopted level of service for solid waste disposal for the property or area covered by such level of service to be exceeded.**

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 sale of alcoholic beverages for on premise use will not cause the adopted level of service for potable water or wastewater for the property or the area covered by such level of service, to be exceeded.**

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 site plan is recently approved by Brevard County and meets all county screening/buffering code requirements.**

Staff's Observation: *No additional screening or buffering was required as part of the approved site plan for the development of this use.*

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: **The project signage will be new and meet all current county codes and ordinances.**

Staff's Observation: *Commercial signage requirements are found in Section 62-3316 of the Code of Ordinance of Brevard County.*

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 of use will be in accordance with all current county codes and ordinances.**

Staff's Observation: The hours of operation at such a licensed premises that are permitted:

- (1) Every day: beginning at 7:00 a.m. and ending at 2:00 a.m. on the following day.
- (2) Extended hours for New Year's Eve: beginning at 7:00 a.m. and ending at 4:00 a.m. on January 1.

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 building height is compatible with surrounding structures.**

Staff's Observation: *The existing shopping center is one story.*

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: **All parking and loading areas will be met on site per County codes and ordinances.**

Staff's Observation: *The shopping center has 228 existing parking spaces. Site plan with parking is shown on page 75 of application.*

For Board Consideration

The applicant is requesting a Conditional Use Permit (CUP) for Alcoholic Beverages (beer and wine only) for on-premises consumption in conjunction with a high-turnover sit-down restaurant. The request is for a 2,800 square-foot unit located at the north end of the southernmost building in the three-building MRG Plaza and will not have outside seating.

There are several restaurants in adjacent shopping centers that are also in the Central Viera PUD that are permitted to serve alcoholic beverages in conjunction with a restaurant. The Board should consider the compatibility of the proposed CUP with surrounding development.

Such CUP may be: 1) approved subject to the conditions of Section 62-1906; 2) approved subject to the conditions of 62-1906 and conditions imposed by the Board above and beyond the requirements of Section 62-1906; or 3) denied.