



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

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**STAFF COMMENTS
 25Z00004**

BHAWANI 2023 LLC.

A Conditional Use Permit (CUP) for Alcoholic Beverages for On-Premises Consumption accessory to a bar and restaurant with an outdoor patio.

Tax Account Number: 2410497
 Parcel I.D.s: 24-36-02-00-259
 Location: West side of N. Courtenay Pkwy. 800ft. south of W. Hall Rd. (District 2)
 Acreage: 0.78 acres

NMI Special District Board: 04/10/2025
 Planning & Zoning Board: 04/14/2025
 Board of County Commissioners: 05/01/2025

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 4 COP for On-Premises Consumption
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 is seeking a Conditional Use Permit (CUP) for Alcoholic Beverages for On-Premises Consumption (4COP) on 0.78 acres in conjunction with a 3,719 sq. ft. bar with a restaurant and outdoor patio. The applicant states, "They are seeking a CUP for Alcoholic Beverages for On-Premises Consumption (4COP) for the establishment to operate as it has been for the last at least 30 years as a bar with restaurant and outdoor patio." The establishment previously had a Special Use Permit (SUP) for Alcoholic Beverages On-Premises Consumption (4COP), under zoning action **Z-2734**, which has expired.

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 due to the restaurant not having 51% or more food sales.

The request is for a bar and restaurant with an outdoor patio on the subject property located on the west side of N. Courtenay Pkwy. The parcel is currently zoned BU-1 with Community Commercial (CC) FLU designation.

The site has access to N. Courtenay Pkwy, a State Maintained Right-of-Way.

On-premises consumption of alcohol would be allowed on the entire property unless the Board stipulates any restrictions.

The subject property was established with AU (Agricultural Residential) zoning classification with the adoption of the Brevard County Zoning Code on May 22, 1958.

On October 4, 1962, the property had an approved rezoning under **Z-0838**, from AU to BU-1 zoning classification.

On May 7, 1964, under **Z-1345**, the establishment was approved for a SUP (Special Use Permit) for On-Premises Consumption of Beer and Wine.

On January 28, 1971, under **Z-2734**, the establishment was approved for a permit to add for On-Premises Consumption of Liquor to an existing permit for on-premises consumption of Beer and Wine.

There is one active code enforcement case under **24CT-00050** on the subject property that is related to permitting renovation work and not related to the use of the establishment.

Surrounding Area

	Existing Use	Zoning	Future Land Use
North	Autobody Shop	BU-2	CC
South	Lawn care and pest control	BU-1, BU-2	CC
East	N. Courtenay Pkwy.	N/A	N/A
West	Brevard County owned Park	AU	REC

North of the subject property is 1 parcel, 0.68 acres, commercial property developed with an autobody shop, zoned BU-2 with CC FLU.

South of the subject property is 1 parcel, 0.53 acres, commercial property developed with a lawn care and pest control services with BU-1 and BU-2 zoning classifications and CC FLU.

East of the subject property is N. Courtenay Pkwy., a State maintained Right of Way.

West of the subject property is 1 parcel, 113.85 acres, recreational property developed as a Brevard County Park, zoned AU with REC FLU.

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.

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.

BU-2 classification permits retail, wholesale and warehousing commercial land uses on minimum 7,500 square foot lots. BU-2 zoning is the county's most intense commercial zoning classification due to the intensive nature of commercial activities permitted. Off-site impacts such as noise, light, traffic and other potential nuisance factors associated with BU-2 activities should be considered. The BU-2 zoning classification allows outside storage of retail items including, but not limited to, motor vehicles, utility sheds, nursery items such as plants and trees, boats and mobile homes.

Land Use

The subject property is currently designated CC (Community Commercial). The BU-1 zoning classification can be considered consistent with the 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;

Staff analysis: The owner proposes a CUP for Alcoholic Beverages (4COP) for On-Premises Consumption for the bar and restaurant with an outdoor patio.

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

B. Existing commercial zoning trends in the area;

Staff analysis: The subject property was developed as a bar in 1958 and is located in North Merritt Island area of N. Courtenay Pkwy. Located North of the subject property is a commercial property, an autobody shop and abutting South of the subject property is a commercial property, a pest control company. East of the subject property is N. Courtenay Pkwy. and to the west, is a park owned by Brevard County.

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 subject property had a previous Special Use Permit for a 4COP that was approved in 1971 and became void when the establishment's liquor license expired recently. Based on staff analysis, the addition of a 4 COP (Full Liquor) conditional use could be considered compatible with the character of the adjacent properties.

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 no anticipated increase in LOS 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. The Board may require 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;

Staff analysis: The subject property is currently developed as a bar and restaurant with an outdoor patio which has an expired 4 COP Special Use Permit (SUP).

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

There has been one zoning action within a half-mile radius of the subject property within the last three (3) years. The zoning action includes:

21Z00006- a rezoning was approved on May 27, 2021, from AU (Agricultural Residential) to BU-1 (General Retail Commercial) on eastern 130ft. and BU-2 on the remaining western portion of the property. The property is located 420 ft. south of the subject property on the west side of N. Courtenay Pkwy.

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

Staff Analysis: There have been no development approvals in the past three (3) years that have not been developed.

- 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 establishment was developed as a bar was in 1958. Prior to their 4 COP SUP expiring, the 4COP had been approved since 1971. Based on staff analysis, the requested CUP is not anticipated to materially or adversely affect the surrounding developments as this establishment has been operating in the same manner for at least the last 30 years per statements from the applicant.

- 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 or subdivision but is located between N. Courtenay Pkwy., which is a commercial corridor, and a park owned by Brevard County.

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. The westside of N. Courtenay Pkwy. surrounding the subject property has a commercial nature as there is an autobody shop and lawn care business with a Brevard County park.

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.

Staff analysis has determined the subject parcel is located directly on N. Courtenay Pkwy. which primarily has commercial uses abutting the roadway.

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 N. Courtenay Pkwy. (S.R.3) segment between N. Ramps and Hall Rd. The maximum development potential from the proposed CUP increases the percentage of MAV utilization by 0.0%. The N. Courtenay Pkwy. (S.R.3) corridor is anticipated to operate at 52% 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 N. Courtenay Pkwy. (S.R.3) between N. Ramps and Hall Rd., which has a Maximum Acceptable Volume (MAV) of 41,790 trips per day, a Level of Service (LOS) of D, and currently operates at 52% of capacity daily. The maximum development potential from the proposed CUP increases the percentage of MAV utilization by 0.0%. The N. Courtenay Pkwy. (S.R.3) corridor is anticipated to operate at 52% 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 which states that there are no churches or schools within 300 feet from the bar and restaurant with an outdoor patio 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 states, "They are seeking a CUP for Alcoholic Beverages for On-Premises Consumption (4COP) for the establishment to operate as it has been for the last at least 30 years as a bar with restaurant and outdoor patio."

Serving and consumption of food and beverages, alcohol or otherwise, shall be strictly prohibited outside of the existing building except as has been identified on the outdoor patio 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: The premises is a 50 seat restaurant and bar that will operate as it has been for at least the last 30 years. Food and liquor is also intended to be served by owner on the patio. Premises will operate using a 4 COP license. The east side of the property is bound by N. Courtenay Pkwy and the west side an undeveloped wooded area that abuts a public park. To the north is a car repair shop and to the south is a landscaping business.

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 N. Courtenay Pkwy. 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: Premises has adequate parking with 44 parking spots. The area has a commercial zoning of BU-2 and is abutting an auto repair shop to the north and a landscaping business to the south. Business hours are intended to be 10:00am to Midnight 7days a week. Premises will be operated as a restaurant with bar.

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 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: There will be no diminution in value of abutting residential property. Property is located in a commercially zoned area that does not abut any residential neighborhoods.

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: Premises has two access points to N. Courtenay Pkwy. and does not burden the adjacent businesses. Premises will be operated in a manner consistent with historical use.

Staff analysis: This property has ingress and egress directly on N. Courtenay Pkwy.

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: Premises will not have noise, glare, odor, particulates, smoke, fumes or other emissions that will substantially interfere with the surrounding businesses.

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: Restaurant and bar intend to operate from 10:00am to 12:00am seven days a week. Business operation will not exceed maximum permissible sound levels for commercial use at any point for my operation.

Staff analysis: The proposed CUP includes outdoor areas that 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: Premises will have waste disposal service consistent with historical use and the adopted level of service will not be exceeded.

Staff analysis: The adopted level of service for solid waste disposal is not anticipated to be affected.

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: Premises will utilize potable water and wastewater consistently with historical use and the adopted level of service will not be exceeded. The property is on public sewer system.

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: Premises has been substantially improved by the current owner including landscaping, painting, installation of new privacy fence, including fencing the vicinity of the dumpster. Property is not visible to the west due to heavily wooded area.

Staff analysis: The establishment was built in 1958 per the Brevard County Property Appraiser. The site had a SUP previously approved in 1971 for on-premises consumption of liquor, beer, and wine (4COP), under Z-2734 which is now expired. The property has 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: All signage is consistent with historical use and does not pose any hazard to traffic safety nor does it interfere with the use or enjoyment of adjacent properties.

Staff analysis: The establishment was built in 1958 per the Brevard County Property Appraiser. Any new signage 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: Premises will have business hours of 10am to 12:00am, 7days a week. Such business hours shall not adversely affect any residential property as the property is not in close proximity to any residential neighborhood.

Staff analysis: The hours of operation appear to be in line with the historical use of the property. 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: Premises was built in 1958 and is a single-story building. There have been no significant alterations, and no additions planned.

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: The submitted survey shows there are 44 parking spots. Premises does not share parking with any other business and loading and unloading will not impact another property.

Staff analysis: The establishment was developed in 1958. The applicant states it will operate in the same historical manner. Any new additions and alterations to increase patronage will have to meet current Brevard County Code.

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 should consider the compatibility of the proposed CUP with the surrounding area. The Board may consider additional conditions beyond those cited in Sections 62-1901 and 62-1906 in order to mitigate any offsite impacts.