



BOARD OF COUNTY COMMISSIONERS

**Planning and Development Department**

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**STAFF COMMENTS  
 23Z00018**

**CP Venture Five-AMC, LLC**

**A CUP for Alcoholic Beverages (full liquor) for On-Premises Consumption in Conjunction with a Bar in a PUD (Planned Unit Development) Zoning Classification**

Tax Account Number: 2627467 (Unit 108)  
 Parcel I.D.s: 26-36-09-01-A-1 (Unit 108)  
 Location: East side of Colonade Ave., 995 ft. east of Lake Andrew Drive  
 Acreage: CUP request 0.05 acres

Planning & Zoning Board: 06/12/2023  
 Board of County Commissioners: 07/13/2023

**Consistency with Land Use Regulations**

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

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Zoning</b>	PUD	PUD with CUP for Alcoholic Beverages for On-Premises Consumption
<b>Potential*</b>	2,000 sq. ft.	2,000 sq. ft.
<b>Can be Considered under the Future Land Use Map</b>	YES CC	YES CC

\* 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 (Full Alcohol) on 0.05 acres in conjunction with a bar that the applicant describes as “a cigar bar.” The request is for unit #108 of an existing commercial retail shopping mall that is part of The Avenue’s Shopping Mall and a 400 sq. ft. outdoor seating area. The parcel is currently zoned PUD (Planned Unit Development) and is in the Viera DRI (Development of Regional Impact).

Section 62-1906 requires an application for a CUP for Alcoholic Beverages for On-Premises Consumption in conjunction with a bar.

The applicant included a site plan with the CUP application showing the overall developed site along with parking, ingress/egress on the parcel and the existing shopping mall.

On May 18, 2004 zoning action **Z-10918** approved a change of zoning classification from AU (Agricultural Residential), PUD (Planned Unit Development), BU-1 General Retail Commercial), PBP (Planned Business Park), PIP (Planning Industrial Park), and IU-1 (Heavy Industrial) to PUD-DRI (Planned Unit Development-Development of Regional Impact).

On February 07, 2019 zoning action **18PZ00124** approved a CUP for Alcoholic Beverages for On-Premises Consumption in conjunction with a family entertainment center, located in the same commercial building approximately 283 feet to east.

## **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 to a Bar (Full Alcohol). The parcel is unit 108 of the commercial shopping mall, The Avenues Shopping Mall.***

***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 developed as commercial shopping mall. There have been no recent commercial zoning requests within the 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.***

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

***Staff analysis: It appears no LOS will be exceeded for road capacity.***

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.**

- 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: The subject property is currently developed as commercial shopping mall.**

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

**Staff analysis: The Avenue Shopping Mall is an existing development and there has not been any actual expansion of the mall in the preceding three (3) years.**

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

**Staff analysis: The Avenue Shopping Mall is an existing development and there has not been any development approved but not yet constructed within the preceding 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.**

The property is in the existing Viera PUD with commercial development surrounding the area.

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

*The proposed CUP will access Lake Andrew Drive segment between Wickham Road to The Avenue Main Entrance. The maximum development potential from the proposed CUP increases the percentage of MAV utilization by 0.05%. The corridor is anticipated to operate at 46.78% of capacity daily. The request is not anticipated to create a deficiency in LOS.*

**Administrative Policy #6 - application for development approval must be consistent with (a) all written land development policies set forth in these administrative policies; and (b) the future land use element, coastal management element, conservation element, potable water element, sanitary sewer element, solid waste management element, capital improvements element, recreation and open space element, surface water element and transportation elements of the comprehensive plan.**

*The proposed CUP appears to meet Land Development policies noted above.*

**Surrounding Area**

	<b>Existing Use</b>	<b>Zoning</b>	<b>Future Land Use</b>
<b>North</b>	Shopping Mall	PUD	DRI 3
<b>South</b>	Shopping Mall	PUD	DRI 3
<b>East</b>	Shopping Mall	PUD	DRI 3
<b>West</b>	Shopping Mall	PUD	DRI 3

The subject property is surrounded by PUD zoning with a use of a shopping mall.

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 zoning actions within a half-mile radius of the subject property within the last three years.

## Preliminary Concurrency

The closest concurrency management segment to the subject property is Lake Andrew Drive, between Wickham Road to The Avenue Main Entrance., which has a Maximum Acceptable Volume (MAV) of 39,800 trips per day, a Level of Service (LOS) of D, and currently operates at 46.73% of capacity daily. The maximum development potential from the proposed CUP increases the percentage of MAV utilization by 0.05%. The corridor is anticipated to operate at 46.78% 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 400 feet of the area within 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 (Full Alcohol) in conjunction with a 1,600 sq. ft. bar with 400 sq. ft. outdoor seating. The bar is located in an existing commercial shopping mall that is part of The Avenue's Shopping Mall.***

### **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 condition use does not impact adjacent and nearby properties because the use is located within a multi-tenant existing retail shopping center.*

**Staff analysis: The use is located in a developed retail shopping mall and will include 400 sq. ft. outdoor seating area. 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 condition use meets with this section requirement because the conditional use is located within an existing multi-tenant retail shopping center.*

**Staff analysis: The parcel is located in a developed retail shopping mall and should not affect parking and traffic of the mall.**

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 condition use meets with this section requirements because the conditional use is located within an existing multi-tenant retail shopping center.*

**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 requested CUP does not affect the ingress and egress of the existing shopping center. The proposal use is a cigar bar lounge occupying 1,600 square feet in a 91,086 square foot retail shopping center, nor burden the adjacent and nearby uses.*

**Staff analysis: This property has ingress and egress to Lake Andrew Drive thru the existing shopping mall.**

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 requested CUP for the sale of alcohol for on premises consumption will not affect or cause noise, glare, odor, particulates, smoke, fumes or other emissions nor interfere with the use or enjoyment of the adjacent and nearby properties.*

**Staff analysis: The CUP must be in compliance with Brevard County's Performance Standards defined by Sections 62-2251 through 62-2272.**

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

*Applicant's Response: The proposed condition use meets with this section requirements because the conditional use is located within an existing multi-tenant retail shopping center.*

**Staff analysis: Proposed CUP includes a 400 sq. ft. outdoor seating area 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: The proposed CUP use does not and will not exceed the adopted level of service for solid waste disposal for the property and area covered by such level of service.*

**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 proposed CUP use will not cause the adopted level of service for potable water or wastewater for the property or the area covered by such level to exceed the adopted level.*

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

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

*Applicant's Response: The proposed conditional use conforms to this section requirements where applicable.*

**Staff analysis: The proposed CUP is in an existing shopping mall and includes a 400 sq. ft. outdoor seating area. 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: The proposed conditional use conforms to this section requirements where applicable.*

**Staff analysis: The proposed CUP is in an existing shopping mall and meets these requirements.**

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 conditional use conforms to this section requirements where applicable.*

**Staff analysis: The hours of operation has been addressed.**

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: This section is non-applicable; condition use is located within an existing multi-tenant retail shopping center.*

**Staff analysis: The existing commercial building appears to be constructed as a single story structure.**

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: This section is non-applicable; condition use is located within an existing multi-tenant retail shopping center.*

**Staff analysis: The parcel is located in a developed retail shopping mall and should not affect parking.**

## **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 potential offsite impacts to the abutting properties.