



BOARD OF COUNTY COMMISSIONERS

## Planning and Development Department

2725 Judge Fran Jamieson Way  
Building A, Room 114  
Viera, Florida 32940  
(321)633-2070 Phone / (321)633-2074 Fax  
<https://www.brevardfl.gov/PlanningDev>

### STAFF COMMENTS

21PZ00074

KJ Group, FL

#### Conditional Use Permit (CUP) for Alcoholic beverages for on-premises consumption of beer/wine in conjunction with a private club

Tax Account Number: 2315967  
Parcel I.D.: 23-36-19-BE-2-9  
Location: West side of West Avenue approximately 409 feet north of Aron Street (District 1)  
Acreage: 0.055 acres

Port Saint John Meeting: 01/05/2022  
Planning and Zoning Board: 01/10/2022  
Board of County Commissioners: 02/03/2022

#### 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>	BU-1	BU-1 with CUP for beer/wine
<b>Potential*</b>	2,400 sq. ft.	2,400 sq. ft.
<b>Can be Considered under the Future Land Use Map</b>	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 property owner is seeking a Conditional Use Permit (CUP) for alcoholic beverages for on-premises consumption in conjunction with a private club (AmVets) that is located within a shopping plaza on a 1.03-acre parcel. The proposed use for this site is not as a food service/restaurant use. The internal unit size is approximately 2,400 square feet. The club is already operating in the unit without serving alcohol. The location does not meet the classification of a restaurant and therefore cannot apply for administrative approval (AA) of on-premise sale or serving of alcoholic beverages.

The original zoning of this property was GU. It was rezoned to BU-1 as part of zoning action **Z-354** on May 25, 1960.

## Land Use

The BU-1 zoning classifications can be considered consistent with the Community Commercial (CC) Future Land Use designation. The CUP request 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 proposed CUP for beer and wine includes a portion of an existing building (2,400 sq. ft.).*

The Board should consider the compatibility of the proposed CUP with surrounding development. To the north of this unit is the remainder of the shopping plaza with various commercial uses. To the east is Highway 1. To the west across Delivery Avenue are single-family residences. To the south across the right-of-way is another shopping plaza that has a CUP for beer and wine.

##### *B. Existing commercial zoning trends in the area;*

*Staff analysis: There have been no commercial zoning requests within this area in the last 3 years. Much of the area is already zoned for commercial land uses.*

##### *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 existing commercial shopping plaza.*

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

*Staff analysis: It appears that no LOS will be exceeded.*

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.**

This site is located along N Highway 1 in an already-developed Community Commercial node. In this area, there is CC FLU to the north and south on both sides of N Highway 1, though the existing

development on the eastern side of the road is residential on lots of an acre or more. The majority of lots on the western side of N Highway 1 have a FLU designation of CC.

To the west of the subject property across Delivery Avenue is a large residential neighborhood with a Residential 8 Directive FLU designation. The neighborhood expands to the west and north and typifies residential development in the Port Saint John area.

#### **Analysis of Administrative Policy #4 - Character of a neighborhood or area.**

The site is located in one of many shopping plazas located on the western side of N Highway 1 in this area. Like this one, most of these shopping plazas have a zoning classification of BU-1 and contain commercial uses that serve the residential neighborhoods. The residential lots are almost exclusively zoned RU-1-9. There are some multi-family developments on the east side of the road adjacent to the river that are zoned RU-2-15 with a density cap of 12 units per acre.

There is a shopping plaza directly to the south that has a CUP for on-premise consumption of beer and wine. There is an additional shopping plaza to the north that contains a bar and has a CUP for on-premise consumption of alcohol.

#### **Surrounding Area**

The abutting parcel to the north is zoned BU-1; it is utilized as a credit union. The property to the east beyond West Avenue is zoned BU-1. The property to the south is a shopping plaza zoned BU-1. To the west is a residential neighborhood exclusively zoned RU-1-9.

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

The RU-1-9 classification permits single family residential development on lots of 6,600 square feet (minimum). The minimum house size is 900 square feet.

There has been one zoning actions within a half-mile radius around this site within the last 3 years. The zoning changes identify:

**19PZ00143** – 05/02/2019; A CUP was approved for on-premise consumption of alcoholic beverages in conjunction with a bar in a BU-1 zoning classification. Located approximately 0.28 miles south of the subject property on the western side of N Highway 1.

#### **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 62-1906, 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.

*Staff analysis: The owner/applicant has provided a survey which states that there are no churches or schools within a 400 feet buffer area.*

- 5) Imposition of additional operational requirements. When deemed appropriate, as based upon circumstances revealed through the general and specific standards of review set forth in this division, the Board shall have the option of imposing operational requirements upon an establishment approved for a conditional use for alcoholic beverages for on-premises consumption. Requirements may include, but are not limited to, the following: maximum number of patrons; hours of operation; limitations upon outdoor seating and service of alcoholic beverages; limitations upon outside music and/or public address systems; additional buffering requirements; additional parking requirements; internal floor plan arrangement; or other specific restrictions based upon special neighborhood considerations. Additional requirements shall not exceed the limits of regulatory authority granted to local governments in the State Beverage Law, F.S. § 562.45.

*Staff analysis: Serving and consumption of beverages, alcohol or otherwise, shall be strictly prohibited outside of the marked units.*

## **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 use of our business having a CUP license will not cause or have any effect on the adjacent business of the shopping center at all.

*Staff analysis: The site is a private club and therefore limits the number of persons attending. The club is currently open and in use without serving alcohol. The previous tenant was also a private club.*

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: Yes. Building size is 2,400 sq. ft. and consists of 3 units in the shopping plaza. We will be maintaining operating hours from 10 AM to 11:00 PM Monday – Sunday (7 days a week).

*Staff analysis: The site is part of a developed shopping plaza. The other tenants include a pet groomer, a hair studio, a laundromat, and a chiropractor. There is a residential neighborhood to the west behind the plaza and across Delivery Avenue.*

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 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: No diminution will occur within the shopping plaza or adjacent property.

*Staff analysis: Evidence from an 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: Located within a large shopping plaza with adequate parking.

*Staff analysis: This project has two access points identified on the site plan. Adding on-premise consumption of alcohol will not change the current parking requirement of one space per 200 square*

*feet of floor area for a private club.*

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: No, not at all. No fumes or odor will be in the air. No additional noise to the plaza.

*Staff analysis: This project shall comply with Brevard County's Performance Standards defined by Sections 62-2251 through 62-2272. Any proposed outdoor lighting and noise standards should remain within code parameters 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: We do not expect or accept any additional noise.

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

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: We use standard weekly waste service from Waste Management in Cocoa.

*Staff analysis: The use is not anticipated to cause a substantial increase in solid waste disposal.*

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: Serviced by the City of Cocoa sewer/water.

*Staff analysis: The plaza is serviced by Brevard County sewer and City of Cocoa water.*

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: Located within shopping plaza. No additional lights or noise pollution.

*Staff analysis: The project covers only a small portion of an already developed overall site and is not anticipated to create substantial adverse nuisance, sight, or noise impacts on adjact or nearby properties.*

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: No new signs or lighting are proposed as a result of the proposed conditional use.

*Staff analysis: No signage or exterior lighting has been identified.*

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 use is consistent with shopping plaza rules and adjacent businesses. (10:00 AM-11:00 PM)

*Staff analysis: The use could be considered consistent with the area.*

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: None.

*Staff analysis: The site is developed and the structure is already built. No height increases are proposed.*

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: Plenty of parking and loading area within parking lot and out back of the shopping plaza.

*Staff analysis: The site plan parking calculation was done at one space per 200 square feet, which is also the requirement for private clubs. Based on the 2,400 sq. ft. size of the project, there are 12 spaces required by Section 62-3206(d)(18) of the Brevard County Code. The site plan shows 59 existing spaces.*

## **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

Page 7

right to assess consistency with environmental ordinances at all applicable future stages of development, including any land alteration permits or landscape restoration plans.

### **Preliminary Concurrency**

The closest concurrency management segment to the subject property is US Highway 1, between SR 528 and Fay Boulevard, which has a Maximum Acceptable Volume (MAV) of 41,790 trips per day, a Level of Service (LOS) of D, and currently operates at 68.01% of capacity daily. The CUP is not anticipated to increase the MAV utilization. The corridor is anticipated to operate at 68.05% of capacity daily (LOS D). The proposal is not anticipated to create a deficiency in LOS.

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

The subject property is served by potable water by the City of Cocoa. Sewer is provided by the County.

### **For Board Consideration**

The Board may wish to consider the compatibility of the proposed CUP with surrounding development. The Board may consider additional conditions beyond those cited in Sections 62-1901 and 62-1906 in order to mitigate potential impacts to the abutting properties.