



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

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STAFF COMMENTS

23Z00013

James H. and Kristine F. Stanford

**A CUP for Alcoholic Beverages for On-Premises Consumption accessory to a Bar
(Beer & Wine only) on 0.69 acres.**

Tax Account Number: 2316090 & 2316106
Parcel I.D.s: 23-36-19-02-*-2 & 23-36-19-02-*-2.23
Location: Northeast and Southeast corners of Highway US-1 and Cottrell Avenue
(District 1).
Acreage: 0.69 acres CUP request

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)

	CURRENT	PROPOSED
Zoning	BU-1	BU-1 with CUP for Alcoholic Beverages for On-Premises Consumption
Potential*	30,056 sq. ft. Per FAR with CC FLU	30,056 sq. ft. Per FAR with CC FLU
Can be Considered under the Future Land Use Map	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 accessory to a Bar for Beer & Wine only on 0.69 acres. This property is developed with a commercial building that was previously used as a bar and a restaurant. Since the applicant wishes to remove the abandon restaurant use, a CUP is required. The parcel to the south across Cottrell Avenue is currently vacant and will be used for overflow parking.

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

The applicant included sketch plans in their CUP application showing the proposed overall site along with parking on the parcel to the south across Cottrell Avenue. The applicant plans to access Cottrell Ave. to Highway US-1. The sketch plans have not been reviewed for compliance with other County departments except Brevard County Natural Resources Management Department. Site plan will need to demonstrate compliance with Brevard County code, Section 62-3206(f)(1) Offsite and shared parking requirements.

Parcel on Northeast corner of Highway US-1 and Cottrell Avenue:

On October 31, 1966 zoning action **Z-2001** approved a change of zoning classification from RU-3 (Multi-Family Residence) to BU-1 (Neighborhood Retail Business) with a SUP (Special Use Permit) for On Premises Consumption of Beer and Wine with Food Service only.

On February 1, 1968 zoning action **Z-2199** approved a permit for On Premises Consumption of Beer and Wine.

On August 3, 1972 zoning action **Z-3034** approved a SUP (Special Use Permit) to add Liquor to an existing for Consumption on Premises of Beer and Wine.

Brevard County Property Appraiser accessed the property use as, "Commercial Building not suitable for occupancy". The building has been in disrepair for nine years and the SUP was removed.

Parcel on Southeast corner of Highway US-1 and Cottrell Avenue:

On March 19, 1964 zoning action **Z-1304** approved a change of zoning classification from BU-1 (Neighborhood Retail Business) and RU-3 (Multi-Family Residence) to BU-2 (General Retail & Wholesale Business).

On July 03, 1975 Administrative zoning action **AZ-27** approved a change of zoning classification from BU-2 to BU-1.

Land Use

The subject properties are currently designated Community Commercial (CC). The BU-1 zoning classification can be considered consistent with the Community Commercial 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 for Beer & Wine only.

The Board should consider the compatibility of the proposed CUP with surrounding development. To the north of these parcels is Florida Power and Light Utilities Plant. To the east and south are residential units.

B. Existing commercial zoning trends in the area;

Staff analysis: 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: Due to the close proximity of the adjacent residential use, the Board may desire that additional buffering and parking be added to the property and/or use limitations created in order to reduce those concerns.

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

Staff analysis: LOS criteria will be reviewed at the site plan review stage.

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;

Regarding the hours of operation, lighting, odor, noise levels, traffic or site activity. The proposed CUP will need to comply with Brevard County's Performance Standards defined by Sections 62-2251 through 62-2272. The Board may consider other conditions to minimize off-site impacts.

- 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.

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;

The subject property is currently developed with a commercial building that was previously used as a bar and a restaurant. To the north of these parcels is Florida Power and Light Utilities Plant. To the east and south are residential houses.

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

There has not been any actual development within this area in the preceding three (3) years.

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

There has not been any development approved but not yet constructed within a half mile in 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.

No material violation of relevant policies has been identified.

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

There is an existing pattern of BU-1 zoning on parcels abutting Highway US-1 with RU-2-10 zoning east of the BU-1.

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 Highway US-1 segment between Broadway Blvd. to Fay Blvd. The maximum development potential from the proposed CUP increases the percentage of MAV utilization by 0.45%. The corridor is anticipated to operate at 71.23% of capacity daily. The request is not anticipated to create a deficiency in LOS.

Surrounding Area

	Existing Use	Zoning	Future Land Use
North	Power Utility	GML(U)	NC/RES12_DIR
South	Residential Single-Family	RU-2-12	CC
East	Residential Single-Family	RU-2-10	RES 12_DIR
West	Highway US-1	N/A	N/A

The subject property is surrounded to the north by GML(U) zoning with a use of Utility, electric power company. The parcels to the east and south is RU-2-10 (Multi-Family Residential) zoning and are being used as residential units. The parcel to the west is Highway US-1.

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.

RU-2-10 classification permits multiple-family residential development or single-family residences at a density of up to 10 units per acre on minimum lot sizes of 7,500 square feet.

The purpose of the GML government managed lands zoning classification is to recognize the presence of lands and facilities which are managed by federal, state and local government, special districts, nongovernmental organizations (NGOs) providing economic, environmental and/or quality of life benefits to the county, electric, natural gas, water and wastewater utilities that are either publicly owned or regulated by the Public Service Commission, and related entities.

The GML(U) the utility designation shall include electric, natural gas, water and wastewater utilities that are either publicly owned or regulated by the Public Service Commission.

There has been one (1) zoning action within a half-mile radius of the subject property within the last three years.

20Z00036, July 08, 2021, rezoned from RU-1-11, TR-2 & BU-1 to TR-1 with BDP limited to 150 units.

Preliminary Concurrency

The closest concurrency management segment to the subject property is Highway US-1, between Broadway Blvd. to Fay Blvd., which has a Maximum Acceptable Volume (MAV) of 41,790 trips per day, a Level of Service (LOS) of D, and currently operates at 70.78% of capacity daily. The maximum development potential from the proposed CUP increases the percentage of MAV utilization by 0.45%. The corridor is anticipated to operate at 71.23% 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 not serviced by Brevard County sewer. The closest Brevard County sewer line to the parcel is approximately 0.3 miles away to the northwest on the west side of Highway US-1, along the south side of the Winn-Dixie shopping plaza.

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 outdoor seating area as shown on their site plan.

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: Prior to purchase, this property was a bar with a full liquor license. Currently, the property is under renovation, proposed to become a beer and wine garden with limited seating capacity of 30 people and maximum capacity of 75 people. It will also be a plant boutique for retail plant and garden related décor sales. This will be a relaxed setting with the intent for patrons to sit in a beautiful garden while enjoying a glass of wine or a beer. There will be no loud outdoor music. No fumes, smoke, particulates, or odor will be created. The property is located on US 1. There will be a negligible increase to traffic as the traffic passing the building currently is greater than 20,000 cars/day. There is a gas station/convenience store across US 1 to the west, a power plant to the north and a vacant lot to the south. There are 10 houses to the east which are on a dead-end road. Therefore, this change will not negatively impact the neighbors.

Staff analysis: The owner/applicant states there will be no adverse impacts such as noise, odor, particulates, smoke, fumes and other emissions, or other nuisance activities generated by the conditional use. The applicant also states the number of patrons has been identified and should not affect the traffic parameters. The Board may desire that additional buffering be added to the property and/or use limitations created in order to reduce those concerns.

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: This property is US 1 frontage. The adjacent property to the north is a power plant. There is a gas station/convenience store across US 1 to the west. There is a vacant lot to the south, also owned by the applicants. There are 10 houses to the east which are on a dead-end road. Traffic will not impact these homeowners as this is a dead end and no patrons of the business will have to drive past those homes to reach the location.

Staff analysis: The parcel is a commercial property that is bounded by right-of-way Highway US-1 and Cottrell Ave. with residential abutting the parcel to the east. During site plan review, the proposed outdoor patio will need to comply with the noise ordinance. Noise alleviation measures may be required to meet these standards.

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: Currently, the building is in disrepair and has been sitting vacant for 9 years. Vandals had poured paint on the roof and busted the front glass door out. The windows were all boarded up. Since the purchase, we have removed invasive Brazilian pepper trees that were growing through the roof of the building, cleaned the property of trash and debris, and removed the boards covering the windows. There was absolutely no landscaping on the property, only 1 palm tree. We are in the process of planting trees and palms and landscaping the entire property with the intent of making it an inviting tropical paradise. An 8-foot vinyl, permitted, fence has been installed. A new, permitted, septic tank has been installed. The building is under renovation to include new paint, new roof, new windows and doors, and an entire interior remodel. From an aesthetic perspective, the entire property will be landscaped. The proposed use will significantly increase the property value of the abutting residential property.

Staff analysis: Competent and substantial evidence by a MAI certified appraiser has not been provided by the applicant.

Section 62-1901(c)(2)(a): Ingress and egress to the property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire and catastrophe, shall be: (1) adequate to serve the proposed use without burdening adjacent and nearby uses, and (2) built to applicable county standards, if any.

Note: Burdening adjacent and nearby uses means increasing existing traffic on the closest collector or arterial road by more than 20 percent, or ten percent if the new traffic is primarily comprised of heavy vehicles, except where the affected road is at level of service A or B. New traffic generated by the proposed use shall not cause the adopted level of service for transportation on applicable roadways, as determined by applicable county standards, to be exceeded. Where the design of a public road to be used by the proposed use is physically inadequate to handle the numbers, types or weights of vehicles expected to be generated by the proposed use without damage to the road, the conditional use permit cannot be approved without a commitment to improve the road to a standard adequate to handle the proposed traffic, or to maintain the road through a maintenance bond or other means as required by the Board of County Commissioners.

Applicant's Response: The impact on the percentage of traffic will be minimal as to be unmeasurable. The property is located on the corner of US-1 and Cottrell Ave. From Cottrell, patrons can park directly in the parking area without passing any home on Cottrell. There is vacant land to the south which is also owned by the applicants which can be used for overflow parking without burdening adjacent homes.

Staff analysis: This property has access to Highway US-1 from Cottrell Ave. as identified on the concept plan. If needed, additional improvements can be addressed at the site plan review stage for the outdoor patio inclusion.

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: There will be no odor, particulates, smoke, or fumes from the property. The only emissions that will be present is the Oxygen emitted from all of the beautiful trees and plants that will be growing. The power plant emits CO2 from its stacks. The plants and trees will also be beneficial as they will help to absorb this CO2. The building was built in 1954 and is a block building with a high peaked roof construction. It will be well insulated per county code which will reduce noise within the building. An 8-foot vinyl privacy fence has been installed to the south, east, and west. A 12-foot concrete fence is currently in place to the north as the property barrier of the FPL power plant. There will be a border of various trees and palms along the fence lines that will additionally absorb any potential noise.

Staff analysis: This project must be 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 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: The intended use of the building is a relaxed setting where patrons can come to sit and relax while sipping a glass of wine or a beer. There will be a beautiful garden with pathways, fountains, archways, and pergolas with relaxed seating scattered throughout. There will be no loud music. The noise levels will not exceed allowable levels. The construction of the building is block and will be insulated well to reduce noise levels within the building. An 8-foot vinyl privacy fence has been installed to the south, east, and west. A 12-foot concrete fence is currently in place to the north as the property barrier of the FPL power plant. There will be a border of various trees and palms along the fence lines that will additionally absorb any potential noise.

Staff analysis: The concept plan's "noise standards" will be reviewed as part of the site plan review process. Proposed outside seating 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 solid waste disposal will not be exceeded. A new, permitted septic system has been installed to meet the max capacity load. A business account with Brevard County Waste Management will be obtained and a dumpster will be onsite to meet the needs of the business will meeting alt county regulations. The dumpster will be placed in an inconspicuous place as far from homes as possible.

Staff analysis: The adopted level of service for solid waste disposal will be reviewed as part of the site plan review process.

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 level of service for potable water or wastewater for the property will not be

exceeded. A new, permitted septic system has been installed to meet the max capacity load. The landscaping on the property has been designed to ensure water is directed to landscaped areas to prevent any runoff to adjacent properties.

Staff analysis: The adopted level of service for potable water or wastewater will be reviewed by utilities as part of the site plan review process.

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: An 8 foot vinyl privacy fence has been installed to the south, east, and west. A 12-foot concrete fence is currently in place to the north as the property barrier of the FPL power plant. There will be a border of various trees and palms along the fence lines that will additionally absorb any potential noise. From an aesthetic perspective, the entire property will be landscaped. In addition, the remodel of the building with a new roof, new paint, new windows, and new doors will improve the property aesthetically.

Staff analysis: The project is buffered by two right-of-way's, screening or buffering has been identified on the concept plan. Note, the outdoor patio area will have screening or buffer when seen from the public roadway. Should the Board determine that additional measures become necessary, the Board may wish additional conditions as part of the request.

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 exterior lighting will not cause a hazard to traffic. Once permitted, a new sign will be installed and will be a backlit sign that will meet all current county codes. The external lighting will be in place to provide safe conditions for patrons and security for the building. All county codes will be met. There will be no lights directed toward house or directed into traffic.

Staff analysis: A sign has been identified on the concept plan will require a separate permit. No exterior lighting has been identified on the concept plan. Should the Board determine that additional measures become necessary, the Board may wish to request the applicant submit a Binding Development Plan (BDP) to provide for those additional measures.

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 building was formerly a bar with hours of 11a.m.-2a.m. The proposed plan is to open at 10 a.m. and close at midnight or before.

Staff analysis: The hours of operation has been addressed. Should the Board determine that additional measures become necessary, the Board may wish additional conditions 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: The structure of the existing building will not change. There will only be improvements made to the existing building which will not affect the height.

Staff analysis: The existing commercial building appears to be constructed as a single floored 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: The parking area as drawn on the sketch, will be the same as the previous business. There will be additional overflow parking in the vacant lot, also owned by the applicants, to the south.

Staff analysis: The CUP concept plan has 15 parking spaces with an additional 30 parking spaces on the south parcel for a total of 45 parking spaces. Site plan will need to demonstrate compliance with Brevard County code, Section 62-3206(f)(1) Offsite and shared parking requirements.

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 plans.

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.

Such as:

- No amplified sound system.
- Limit the hours of operation.
- Additional buffering to adjacent residential property.
- Site plan shall comply with Brevard County code and regulations.
- Limit the consumption of alcoholic beverages to the northern parcel only (Tax Account 2316090).