



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

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STAFF COMMENTS

19PZ00137

Holly Enterprises of Brevard, Inc.

GU (General Use) and BU-1 (General Retail Commercial) to BU-1-A (Restricted Neighborhood Commercial), and CUP (Conditional Use Permit) for Alcoholic Beverages (full-liquor) for On-Premises Consumption in Conjunction with a Snack Bar or Restaurant

Tax Account Number: 2862242, 2704571, 2744610
Parcel I.D.: 28-36-05-00-255; 27-36-32-00-500; 27-36-31-00-750
Location: South side of Highway 192, approximately 2.08 miles south of Simon Road, Melbourne. (6901 Highway 192. In the Melbourne area.)
(District 5)
Acreage: 2.4 acres

Planning and Zoning Board: 01/13/20

Board of County Commissioners: 02/06/20

Consistency with Land Use Regulations

- Current zoning can be considered under the Future Land Use Designation, Section 62-1255 pursuant to Section 62-1188(9) (b) of Brevard County Code.
- 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	GU & BU-1	BU-1-A with CUP for Alcoholic Beverages for on-premises consumption (full liquor) in conjunction with a snack bar or restaurant
Potential*	20,909 square feet	20,909 square feet
Can be Considered under the Future Land Use Map	YES** NC	YES NC

* Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations. **The current BU-1 zoning was adopted on June 4, 1959 and is nonconforming to the Future Land Use designation NC. As an existing use, Section 62-1188(9) (b) of Brevard County Code allows the current zoning to remain functional until/unless rezoned by the Board.

Background and Purpose of Request

The applicant is seeking a change in zoning from General Retail Commercial (BU-1) and General Use (GU) zoning to Restricted Neighborhood Retail Commercial (BU-1-A) together with a Conditional Use Permit (CUP) for alcoholic beverages (full-liquor) for on-premises consumption in conjunction with a snack bar/restaurant. The site is known as the Camp Holly Fish Camp which offers airboat rides, a gift shop, music, and tiki bar. The earliest mention of the nonconforming fish camp use can be found under **Z-2632** adopted on May 28, 1970. Preexisting Use file **PEU-0024** contains an affidavit which describes the fish camp use has been in operation for over 50 years.

Previous zoning actions for this site include: **Z-10775(2)** which was for the removal of a CUP for RV's at a fish camp (February 2003). **Z-6307** was a CUP approval of RV's at a fish camp (April 1983). **Z-2632** was for a temporary trailer and has since expired (May 1970). **Z-198** changed the GU zoning to BU-1 with a beer permit (June, 1959).

Land Use

The existing BU-1 zoning is not consistent with the Neighborhood Commercial (NC) Future Land Use Designation; however, this zoning predates the adoption of the Comprehensive Plan and is nonconforming to it. The proposed BU-1-A zoning maybe considered with the NC FLUM designation, based on the Board's determination of **FLUE Policy 2.2**.

In accordance with **FLUE Policy 2.5'** NC development activities are intended to be low impact in nature and serve the needs of the immediate residential area. The existing BU-1-A uses of a gift shop, restaurant, and snack bar, were established as of the adoption date of this provision and shall be considered consistent with this policy.

The Board should evaluate the compatibility of this application within the context of the Board's Administrative Policies 1 through 8 of the Future Land Use Element, outlined in the Administrative Policies.

Environmental Constraints

Natural Resources Management Office (NRMO) has identified the presence of the following constraints: wetlands and hydric soils, floodplain, the adjacency to the St. Johns River, and the potential for Protected Species on the property. NRMO reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

Preliminary Transportation Concurrency

The closest concurrency management segment to the subject property is U.S. 192, between Osceola County and Simon Road, which has a Maximum Acceptable Volume (MAV) of 49,600 trips per day, a Level of Service (LOS) of C, and currently operates at 17.47% of capacity daily. The maximum development potential from the proposed rezoning does not increase the proposed trip generation. The corridor is anticipated to continue to operate at 17.47% of capacity daily (LOS C). The proposal is not anticipated to create a deficiency in LOS.

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

The subject property is served by private well and septic.

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.

A survey has been provided 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.

Serving and consumption of food and beverages, alcohol or otherwise, shall be strictly prohibited outside of the existing buildings unless such areas have been designated as

outdoor seating areas pursuant to Section 62-1837.9 (outdoor restaurant seating) of Brevard County Code. The applicant proposes to have 12-50 seats at this location. On-premise signage has identified Music as a potential/existing use. Alcohol use is to support the existing bar and snack bar and restaurant. No outside expansion is proposed by the applicant. If an outdoor seating area is proposed in the future, the owner would be required to file for an updated CUP for the alcohol expansion as required by Section 62-1906 (6) 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: No adverse effect as outlined in the above 3 items. Operative gift shop, airboat tours and tiki bar.

Staff's Observation: The immediate area is undeveloped.

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: Correct, currently operating as a bar with 2COP license, upgrading to liquor license only.

Section 62-1901(c)(1)(c): The proposed use will not cause a substantial diminution in value of abutting residential property. A substantial diminution shall be irrebutably presumed to have occurred if abutting property suffers a 15 percent reduction in value as a result of the proposed conditional use. A reduction of ten percent of the value of abutting property shall create a reputable presumption that a substantial diminution has occurred. The board of county commissioners carries the burden to show, as evidenced by either testimony from or an appraisal conducted by an MAI certified appraiser, that a substantial diminution in value would occur. The applicant may rebut the findings with his own expert witnesses.

Applicant's Response: No financial impact or reduction in land property value with abutting properties.

Section 62-1901(c)(2)(a): Ingress and egress to the property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire and catastrophe, shall be: (1) adequate to serve the proposed use without burdening adjacent and nearby uses, and (2) built to applicable county standards, if any. Burdening adjacent and nearby uses means increasing existing traffic on the closest collector or arterial road by more than 20 percent, or ten percent if the new traffic is primarily comprised of heavy vehicles, except where the affected road is at level of service A or B. New traffic generated by the proposed use shall not cause the adopted level of service for transportation on applicable roadways, as determined by applicable county standards, to be

exceeded. Where the design of a public road to be used by the proposed use is physically inadequate to handle the numbers, types or weights of vehicles expected to be generated by the proposed use without damage to the road, the conditional use permit cannot be approved without a commitment to improve the road to a standard adequate to handle the proposed traffic, or to maintain the road through a maintenance bond or other means as required by the Board of County Commissioners.

Applicant's Response: No traffic related impact to area; adequate ingress/egress remaining and provided.

Staff's Observation: With no expansions proposed, CUP approval should not increase site impacts.

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 impact to adjacent areas from above listed items, i.e. glare, odor, smoke, fumes so forth.

Staff's Observation: Adjacent areas are undeveloped.

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

Applicant's Response: Agreed, limited operating times 9:00 AM to 9:00 PM.

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: No impact to waste recovery, will not exceed service limit.

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: No impact to potable water and wastewater. Hours of operation.

Staff's Observation: Site is served by private well and septic.

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: No adjacent neighbors on all four sides of property.

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: Agreed, no adjacent neighbors in area, no traffic.

Staff's Observation: Site has existing signage and no new permit has been proposed.

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: Agreed, no adjacent neighbors. Open 9:00 AM Close 9:00 PM.

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: Agreed, single story structures only exist on site. No adjacent neighbors.

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: Agreed, site parking layout attached for review parking provided.

Staff's Observation: Plan depicts 92 standard parking spaces and 8 boat trailer parking spaces.

Parking – Brevard County land development regulations require that, for restaurants, cocktail lounges and other eating and drinking establishments, one space for every 100 square feet of gross floor area of the building be provided to meet the minimum spaces required by Section 62-3206(d)(29). The concept plan identifies 100 parking spaces. Based upon the current building mass of 4,000-5,000 square feet, required parking is designated between 40-50 parking spaces.

For Board Consideration

The applicant is seeking a change in zoning from General Retail Commercial (BU-1) and General Use (GU) zoning to Restricted Neighborhood Retail Commercial (BU-1-A) together with a Conditional Use Permit (CUP) for alcoholic beverages (full-liquor) for on-premises consumption in conjunction with a snack bar or restaurant. The site is known as the Camp Holly Fish Camp which offers airboat rides, a gift shop, music, and tiki bar.

Pre-existing use file # **PEU-0024** contains an affidavit which describes the fish camp use has been in operation for over 50 years and is considered a pre-existing use since it pre-dates the Comprehensive Plan. The BU-1A zoning classification is considered to be consistent with the

NC FLU and removes the inconsistency between BU-1 and NC. Since the camp is in close proximity to the St. John's River, it may raise environmental concerns. Natural Resources Management indicates the presence of wetlands and hydric soils, floodplain, and the potential for Protected Species on the property. The Applicant does not propose to make any further improvements to the property.

The CUP may be approved subject to the conditions of 62-1906 and conditions imposed by the Board above and beyond the requirements of Section 62-1906. The Board should consider the compatibility of the proposed CUP with surrounding environmental sensitive lands with conditioning the approval to no expansion to the existing site.

NATURAL RESOURCES MANAGEMENT DEPARTMENT
Rezoning & CUP Review & Summary

Item # 19PZ00137

Applicant: Curt McKinney, Camp Holly

Rezoning & CUP Request: Applicant desires to have on-premise alcoholic consumption in conjunction with existing snack bar and restaurant.

P&Z Hearing Date: 01/13/20; **BCC Hearing date:** 02/06/20

Tax ID Nos: 2862242, 2704571, & 2744610

- This is a preliminary review based on best available data maps reviewed by the Natural Resources Management (NRM) Department and does not include a site inspection to verify the accuracy of the mapped information.
- In that the rezoning process is not the appropriate venue for site plan review, specific site designs submitted with the rezoning request will be deemed conceptual. Board comments relative to specific site design do not provide vested rights or waivers from Federal, State or County regulations.
- **This review does not guarantee whether or not the proposed use, specific site design, or development of the property can be permitted under current Federal, State, or County Regulations.**
- The applicant is encouraged to contact NRM at 321-633-2016 prior to any land clearing activities, plan or permit submittal.

Summary of Mapped Resources and Noteworthy Land Use Issues:

- Wetlands & Hydric Soils
- Floodplain
- Surface Water Classification
- Landscape & Land Clearing
- Protected Species

Land Use Comments:

Wetlands & Hydric Soils

The subject property contains mapped areas of NWI and SJRWMD wetlands, and hydric soils (Everglades mucky peat) as shown on the NWI Wetlands, SJRWMD Florida Land Use & Cover Codes, and USDA Soil Conservation Service Soils Survey maps, respectively; indicators that wetlands may be present on the property. Per Section 62-3694(c)(3), commercial and industrial land development activities shall be prohibited in wetlands contained in properties designated on the Future Land Use Map as

commercial or industrial, and in surrounding upland buffers for such wetlands, except as provided for I-95 interchanges, mitigation qualified roadways, abutting properties, and access to uplands. In no instance shall a proposed land development activity result in increased flooding on adjacent properties. Any permitted wetland impacts must meet the requirements of Section 62-3694(e), including avoidance of impacts, and Section 62-3696.

The proposed activities involved with the rezoning and the CUP do not impact potential wetland areas.

Floodplain

The subject parcel is located within the riverine floodplain as identified by FEMA, and as shown on the FEMA Flood Map. The floodplain area is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance. Chapter 62, Article X, Division 6 states, "No site alteration shall adversely affect the existing surface water flow pattern." Chapter 62, Article X, Division 5, Section 62-3723 (2) states, "Development within floodplain areas shall not have adverse impacts upon adjoining properties."

Surface Water Classification

Excluding the boat ramp and waterfront parking area, the property is located on surface waters designated by the State as Class 1, and have a 200-foot surface water protection buffer (Buffer). Surface waters adjacent to the boat ramp and waterfront parking area are classified as Class III with a 25-foot Buffer.

Per Section 62-3666(17), for structures and impervious areas that existed prior to September 8, 1988, and exceed the allowable impervious impact criteria established herein, remodeling and other types of development which do not increase the amount of impervious surfaces within or threaten the integrity of the surface water protection buffer will be allowed. Proposed redevelopment may occur in the existing vertical envelope or may be relocated within the surface water protection buffer to achieve a net impact reduction. Proposed activities involved with the rezoning and the CUP are consistent with footprint impacts dating as far back as 1986, prior to Brevard County's establishment of surface water protection buffers.

Applicant is currently working with FDEP to improve shoreline stabilization on the southeast portion of property.

Landscape & Land Clearing

At time of building permit, landscape requirement of Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, shall be met. Land clearing is not permitted without prior authorization by NRM.

Protected Species

Information available to NRM indicates that federally and/or state protected species may be present on the property. Prior to any plan, permit submittal, or development activity, including

land clearing, the applicant should obtain any necessary permits or clearance letters from the Florida Fish and Wildlife Conservation Commission and/or U.S. Fish and Wildlife Service, as applicable.