



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

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STAFF COMMENTS

19PZ00141

Barefoot Bay Recreation District

CUP (Conditional Use Permit) for Alcoholic Beverages (beer & wine only) for On-Premises Consumption in Conjunction with a Restaurant

Tax Account Number: 3004299
Parcel I.D.: 30-38-10-JT-B – Unit C
Location: 937-C Barefoot Boulevard, Micco (District 3)
Acreage: 1,500 square feet; a portion of NW building addressed as 937 Barefoot Boulevard

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.
- 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-A	BU-1-A with a CUP for on-premises consumption of alcohol (Beer and Wine only)
Potential*	1,500 square feet	1,500 square feet
Can be Considered under the Future Land Use Map	Yes Neighborhood Commercial	YES Neighborhood Commercial

* Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations.

Background and Purpose of Request

The applicant is seeking a CUP for on-premises consumption of alcoholic beverages (beer and wine only) in conjunction with an existing restaurant located within a Restricted Neighborhood Commercial (BU-1-A) zoning classification.

The applicant currently operates an existing 1,500 square-foot restaurant on the subject property located within the shopping plaza in the Barefoot Bay mobile home community. The property is owned by the Barefoot Bay Recreation District and the applicant's request is to add beer and wine to the menu.

The original zoning for Barefoot Bay was split between General Use (GU) and Agricultural (AU). In January, 1969, zoning action **Z-2390** Special Use Permit (SUP) was approved to allow individual ownership. On February 24, 1969, zoning action **Z-2402** was approved to change zoning from AU and GU with a Special Use Permit (SUP) allowing individual ownership to Single-Family Mobile Home Cooperative (TRC-1). On October 27, 1969, zoning action **Z-2528** was approved to change the zoning on the subject property from TRC-1 to BU-1-A, as part of an 8.96-acre parcel that is now five separate parcels, including the 3.76-acre parcel upon which a three-building commercial center was constructed in the 1970's, one of which contains the 1,500 square foot bay for which the subject CUP is requested.

Land Use

This site retains the Neighborhood Commercial (NC) Future Land Use (FLU) designation. The BU-1-A zoning classification is consistent the NC FLU and with **Policy 2.5** of the Future Land Use Element.

Neighborhood Commercial (NC) development activities are intended to be low-impact in nature and serve the needs of the immediate residential area. Intrusion of these land uses into surrounding residential areas shall be limited. Existing BU-1-A uses, which were established as of the adoption date of this provision shall be considered consistent with this policy. Development activities which may be considered within Neighborhood Commercial (NC) Future Land Use Designation, provided that listed criteria are met, include the following:

- a) Professional offices (no drive through lanes permitted);*
- b) Personal Services (no drive through lanes permitted);*
- c) Convenience stores (no drive through lanes permitted);*
- d) Residential uses;*
- e) Institutional uses;*
- f) Recreational uses;*
- g) Public facilities; and*
- h) Transitional uses pursuant to Policy 2.14.*

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

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 plan.

Preliminary Transportation Concurrency

The closest concurrency management segment to the subject property is on U.S. 1, between Micco Road and First Street, which has a Maximum Acceptable Volume (MAV) of 41,790 trips per day, a Level of Service (LOS) of D, and currently operates at 39.21% of capacity daily. The maximum development potential from the proposed rezoning is not anticipated to change the percentage of available capacity. The corridor is anticipated to still operate at 39.21% 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 property is served by central potable water and central sanitary sewer services provided by the Barefoot Bay Water and Sewer District.

Applicable Land Use Policies

“Snack bar and restaurant” is listed as a permitted use with conditions in the BU-1-A zoning classification. The conditions for this use contained in Section 62-1842 read as follows: “Snack bars and restaurants must comply with the applicable parking requirements, and the establishment shall not have more than 49 seats.” The seating diagram submitted with the CUP application depicts 46 seats within the existing restaurant. “Alcoholic beverages for on-premises consumption accessory to a snack bar or restaurant” is listed as a conditional use in the BU-1-A zoning classification. This conditional use can be applied for pursuant to Sections 62-1151 (c) and 62-1906.

The subject property is unit 937-C in one of three commercial buildings on Parcel B within the Barefoot Bay Unit 1, Part 2, Subdivision. The entire Parcel B retains the BU-1-A zoning classification. This parcel abuts three parcels to the northwest and one parcel to the south, all of which also retain BU-1-A zoning. To the northeast Parcel B abuts Barefoot Boulevard, and to the east the parcel abuts Midway Street. The properties on the other side of these roads retain TRC-1 zoning, as do the vast majority of the properties within the Barefoot Bay community, which the neighborhood commercial center on Parcel B serves.

The BU-1-A classification permits restricted neighborhood retail and personal service uses to serve the needs of nearby low-density residential neighborhoods. Minimum lot size of 7,500 square feet is required with minimum width and depth of 75 feet.

TRC-1 encompasses lands devoted to planned single-family mobile home development which permits mobile homes or residences on lots of minimum 6,500 square feet with a lot width of 65 feet and a lot depth of 80 feet.

There have been no zoning actions within a half-mile of the subject property within the last five years. The most recent zoning change/CUP in the vicinity of the property was approved on November 4, 2004. That application, **Z-10968**, changed the zoning from GU, AU, and TRC-1 to Government Managed Lands – High Intensity (GML(H)) with a Conditional Use Permit for a Water and Sewer Treatment Facility for Barefoot Bay Water and Sewer District, on multiple parcels totaling 373.79 acres and located approximately 3,940 feet west northwest from the subject property.

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 46-49 seats at this location and no outdoor seating. 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 obtain site plan approval and 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: There is no outside seating. Part of strip mall considerable distance from homes. The proposed use is a restaurant with on-premises sales of beer and wine. The site is located on platted commercial property located in the BFB recreational district having been located here for 17 years. Passes all fire, and bldg. codes. Restaurant is in character of shopping center.

Staff's Observation: On-premises consumption of beer and wine are to be accessory within a snack bar/restaurant. The CUP is for an existing restaurant in a developed and occupied multi-tenant commercial building. Neither the existing site nor the requested CUP proposes out-door seating and no site plan changes are proposed by the request. The current and proposed use for the center requires 103 spaces. There are 120 spaces provided, including 11 handicap accessible spaces.

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: See attached documentation (survey). Survey records acceptable setbacks from adjacent buildings and businesses with no changes to allowable parking.

Staff's Observation: The center in which the CUP is proposed is well-established and compatible with the Barefoot Bay residential community it serves.

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: N/A there will be no reduction of value of abutting property [that] shall create a rebuttable [diminution in value of 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: N/A This restaurant was established over 17 years ago and remains same. Roads and parking were designed to support the shopping center.

Staff's Observation: Staff has verified there is adequate on-site parking to support the proposed use. 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: Noise/glare/odor – smoke/fumes or other emissions from the conditional use shall not substantially interfere with the use or enjoyment of adjacent and nearby property... bench outside with "no smoking" sign

Staff's Observation: Since the proposed use is in an entirely enclosed building, and no outdoor seating is proposed, it would not appear there would be any glare, odor, smoke/fumes or other emissions that would impact adjacent or nearby property.

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

Applicant's Response: We will comply with this regulation.

Staff's Observation: Regulation establishes maximum allowable sound pressure level for commercial properties as 65 dB(A) (A-weighted decibels) between 7:00 am and 10:00 pm and 55 dB(A) between 10:00 pm and 7:00 am.

Section 62-1901(c)(2)(d) The proposed conditional use shall not cause the adopted level of service for solid waste disposal for the property.

Applicant's Response: The proposed conditional use shall not impact any service of solid waste the adopted level of service for solid waste disposal applicable to the property or area covered by such level of service, to be exceeded.

Staff's Observation: 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. There are two dumpster enclosures and two loading zones on site to serve the commercial

center in which the subject property is located. The restaurant is an existing use. The request is not projected to significantly increase solid waste generation.

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 conditional use service will not affect service of potable water or waste water for the property or any other public level of service area.

Staff's Observation: The site is served by central potable water and central sanitary sewer. The restaurant is an existing use and the proposed CUP would just add beer and wine to the menu. The request is not projected to significantly increase demands on potable water or sanitary sewer systems.

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: There are several feet from other buildings as well as noise reduced walls to adjoining areas.

Staff's Observation: The existing neighborhood commercial center and restaurant that is applying to use the CUP are well-established and buffered from the nearby residences and the residential community it serves. The applicant indicated in response to 62-1901(c)(2)(c) above that the proposed use will comply with noise requirements set forth in Section 62-2271, and the hours of operation committed to in the applicant's response to 62-1901(c)(2)(h) below, are conducive with Section 62-2271 compliance.

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: Plan was permitted years ago. No changes proposed. There will be no unreasonable glare or hazard to traffic safety or interference with the [use] of [or] enjoyment of adjacent and nearby properties.

Staff's Observation: The site has existing signage and no new signage is being 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: The hours of operation are limited and will not affect adjacent to or near residential properties.

Staff's Observation: In a phone conversation on December 4, 2019, with business owner for the restaurant on the subject property, owner Robert John indicated that the operating hours are Monday through Saturday from 8:00 am to 8:00 pm and Sunday from 8:00 am to 2:00 pm. Mr. John further

indicated that he has no intention of changing said hours of operation. The Clerk for the Barefoot Bay Recreation District that owns and manages the commercial center in which the property is located indicates that the District does not limit the hours of operation of businesses in the center, but leaves the hours of operation up to the discretion of their tenants (the business owners).

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: Survey shows height of adjacent buildings and properties within 1000 feet of property lines. Does not propose changes to structures. Structure is less than 35 feet high.

Staff's Observation: The existing building is less than 35 feet high and no alterations to the building shell 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: Per survey, parking shall not be greater than that approved as part of the site under applicable county standards.

Staff's Observation: The required number of spaces for all uses in this three-building commercial center to comply with Section 62-3206 of Brevard County Site Plan Regulations is 103 spaces. This includes 15 required spaces for the 1,500 square foot restaurant that is the subject of this request. There are 120 spaces currently provided on the property, including 11 handicap accessible spaces. The subject request, therefore, meets code requirements for parking.

For Board Consideration

The applicant is seeking a CUP for on-premises consumption of alcoholic beverages (beer and wine only) in conjunction with an existing restaurant located within a Restricted Neighborhood Commercial (BU-1-A) zoning classification.

The existing building is located within a commercial node zoned BU-1A. Beyond this area, the vast majority of properties have the TRC-1 (Mobile Home Cooperative) zoning classification and developed with mobile homes.

The Board may wish to consider the consistency and compatibility of the proposed use and the surrounding area. The CUP should be: 1) approved subject to the conditions of Section 62-1901 and Section 62-1906; 2) approved subject to the conditions of 62-1901, 62-1906, and conditions imposed by the Board above and beyond the requirements of Sections 62-1901 and 62-1906; or 3) denied.