



BOARD OF COUNTY COMMISSIONERS

**Planning and Development Department**

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<https://www.brevardfl.gov/PlanningDev>

**STAFF COMMENTS**

**19PZ00143**

**Port St. John Station, LLC**

**CUP (Conditional Use Permit) for Alcoholic Beverages (full liquor) for On-Premises Consumption in Conjunction with a Bar**

Tax Account Number: 2322430  
Parcel I.D.: 23-36-19-02-\*-6.13 Units 6201 - 6209  
Location: 6201, 6203, 6205, 6207, & 6209 U.S. Highway 1, Cocoa (District 1)  
Acreage: .08 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.
- The proposal can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal would maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Zoning</b>	BU-1	BU-1 with CUP for Alcoholic Beverages for on-premises consumption (full liquor) in conjunction with a sports bar
<b>Potential*</b>	3,750 square feet	3,750 square feet
<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 applicant is seeking to add a Conditional Use Permit (CUP) for alcoholic beverages (full-liquor) for on-premises consumption in conjunction with a sports bar. The sports bar space encompasses the southeast portion of the building, 75 feet in width by 50 feet in depth, within an existing shopping center. The applicant is proposing a 168-seat bar with no outside seating within units addressed as: 6201, 6203, 6205, 6207 and 6209 U.S. Highway 1, a 3,750 square-foot retail space.

This property was originally zoned General Use in 1958. An attempt to rezone to Single-family Mobile Home (TR-1) under zoning action **Z-2058** was denied on March 30, 1967. This parcel

was successfully rezoned to General Retail Commercial (BU-1) under zoning action **Z-5803**, adopted on October 8, 1981.

### **Land Use Compatibility**

This site retains the Community Commercial (CC) Future Land Use Designation. The BU-1 zoning classification is consistent with **Policy 2.7** of the Future Land Use Element.

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**

This CUP application for Alcoholic Beverages (full liquor) for On-Premises Consumption has been exempted from review. Natural Resources Management 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 US-1, between Broadway Boulevard 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 68.13% 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 68.13% 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 City of Cocoa potable water well and Brevard County sewer.

### **Applicable Land Use Policies**

The applicant is seeking to add a Conditional Use Permit (CUP) for alcoholic beverages (full-liquor) for on-premises consumption in conjunction with a sports bar. The sports bar space encompasses the southeast portion of the building, 75 feet in width by 50 feet in depth, within an existing shopping center. The applicant is proposing a 168-seat bar with no outside seating within units addressed as: 6201, 6203, 6205, 6207 and 6209 a 3,750 square foot retail space.

The parcel's east property line abuts two developed commercial BU-1 zoned outparcels and frontage along U.S. Highway 1. The zoning to the north is developed Single-Family Residential (RU-1-9). 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. The zoning to the west is vacant BU-1 zoned property. The zoning to the south is a combination of Single-Family Mobile Home (TR-1) and Government Managed Lands (GML-U).

TR-1 is a single family residential mobile home zoning classification which permits mobile homes or residences of standard construction on lots of 7,500 square feet (minimum) with lot width of 65 feet and lot depth of 100 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) zoning classification allows electric, natural gas, water and wastewater utilities that are either publicly owned or regulated by the Public Service Commission. The adjacent property is part of the main switchyard for the Florida Power and Light Company's Cape Canaveral Energy Center (CCEC) power plant.

There has been one zoning action within a half-mile radius around this site within the last 3 years. Zoning item **15PZ00067** adopted February 4, 2016 approved a CUP for alcoholic beverages for the Kelsey's restaurant located at 6811 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.

*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 168 seats at this location. 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: Our use will not cause any adverse effects to the shopping center or adjacent businesses.

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 3,750 square feet consists of 5 units in the shopping center. We will maintain operating hours of 11AM – midnight during the week and 2AM on the weekends.

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 diminution will occur within the shopping center or adjacent property.

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: Located with large shopping center with adequate parking.

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: Sports bar and grill should not create any additional noise, glare, or odor/fumes. Non-smoking and next to KFC.

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

Applicant's Response: We are in commercial and do not expect any additional noise.

Staff's Observation: If a billiard room or electronic game arcades are proposed, the unit will need to be soundproofed.

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.

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 City of Cocoa Utilities.

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 center. No additional light or noise pollution.

Staff's Observation: Applicant states all uses will be performed from within the existing building.

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: One external sign installed professionally by Kendal Sings Inc. Permitted installation over 100 feet from US Hwy 1.

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: Use is consistent with shopping center rules and adjacent businesses 11AM – 2AM.

Staff's Observation: Applicant states they will limit the operating hours from 11AM – midnight during the week and 2AM on the weekends.

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: N/A

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 areas within shopping center.

Staff's Observation: *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). Although the plan does not identify the specific amount of parking that the site would provide, based upon a building mass of 3,750 square feet, required parking would be 38 parking spaces.*

## **For Board Consideration**

The applicant is seeking to add a Conditional Use Permit (CUP) for alcoholic beverages (full-liquor) for on-premises consumption in conjunction with a sports bar. The sports bar space encompasses the southeast portion of the building, 75 feet in width by 50-foot in depth, within an existing shopping center. The applicant is proposing a 168-seat bar with no outside seating within units addressed as: 6201, 6203, 6205, 6207 and 6209 U.S. Highway 1, a 3,750 square-foot retail space.

The Board should consider the compatibility of the proposed CUP with surrounding development.

Such CUP may be: 1.) approved subject to the conditions of Section 62-1906; 2.) approved subject to the conditions of 62-1906 and conditions imposed by the Board above and beyond the requirements of Section 62-1906; or 3.) denied.