



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

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STAFF COMMENTS

19PZ00156

Hitchin Beach Development Corp.

CUP (Conditional Use Permit) for Alcoholic Beverages (beer & wine only) for On-Premises Consumption in Conjunction with a Restaurant in BU-1

Tax Account Number: 2434945
Parcel I.D.: Portion of 24-37-23-CG-77-9
Location: 6710 North A1A, Units A & B, Cape Canaveral (District 2)
Acreage: 2,000 square feet

Planning and Zoning Board: 02/10/20
Board of County Commissioners: 03/05/20

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	CUP for alcoholic beverage in conjunction with a restaurant (beer & wine only)
Potential*	2,000 square feet Restaurant	2,000 square feet Restaurant
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 requesting a Conditional Use Permit (CUP) for Alcoholic Beverages (beer and wine only) for on-premises consumption in conjunction with a sit-down restaurant. The request is for a 2,000 square-foot unit located at the south end of the plaza encompassing units A and B and will not have outside seating.

The parcel is located on the northeast corner of N. Atlantic Ave. and Hayes Ave. and retains the original General Retail Commercial Zoning (BU-1).

There was a previous CUP for on-premises consumption of alcoholic beverages (beer and wine only) in conjunction with a restaurant (Corey's Northern Style Deli) on units A and B of the subject plaza approved via zoning action **Z-8861** on October 28, 1991. This CUP, **Z-8861** for on-premises consumption of alcoholic beverages was never used and was administratively removed via zoning action **Z-10817(50)** on May 22, 2003.

Land Use

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

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.

Preliminary Transportation Concurrency

The subject property is on the concurrency management segment of N. Atlantic Avenue, between McKinley Avenue and Buchanan Avenue, which has a Maximum Acceptable Volume (MAV) of 39,800 trips per day, a Level of Service (LOS) of D, and currently operates at 82.81% of capacity daily. The maximum development potential from the proposed CUP does increase the percentage of MAV utilization by 00%. The corridor is anticipated to continue to operate at 82.81% 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 and City of Cape Canaveral sewer.

Applicable Land Use Policies

The applicant is requesting a Conditional Use Permit (CUP) for Alcoholic Beverages (beer and wine only) for on-premises consumption in conjunction with a sit-down restaurant. The request is for 2,000 square foot unit located at the south end of the plaza encompassing units A and B and will have no outside seating area. The site plan provided shows there are 26 available parking spaces.

The abutting parcel to the north is zoned BU-1 and is developed with a convenience store. The BU-1 classification to the north allows retail commercial land uses on minimum 7,500 square foot lots. The abutting parcel to the east is zoned Single-Family Residential (RU-1-11) and is developed with a single-family home. The RU-1-11 classification permits single family residential development on lots of 7,500 square feet (minimum). The parcel to the south directly across Hayes Avenue is zoned BU-1. The abutting parcel to the west is North Atlantic Avenue

(Highway A1A) and does not have a zoning classification. The parcels west of North Atlantic Avenue are in the City Limits of Cape Canaveral.

There have been four zoning actions within a half-mile radius of this site within the last five years.

Zoning item **15PZ00071** adopted February 4, 2016 approved a change of zoning classification from BU-1 and Medium-Density Multiple-Family Residential (RU-2-10) to all RU-2-10. The parcel is located on the south side Harding Avenue approximately 1,960 feet south of the subject parcel. The 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.

Zoning item **16PZ00019** adopted July 14, 2016, approved a change of zoning classification from Medium-Density Multiple-Family Residential (RU-2-15) to Institutional Use - Low-Intensity (IN-(L) with a Binding Development Plan (BDP) limited to a monastery for retired and/or semi-retired priests and brothers. The parcel is located on the southwest corner of Winslow Circle and Azure Lane approximately 1,306 feet southeast of the subject parcel. The RU-2-15 classification permits multiple-family residential uses or single-family residences at a density of up to 15 units per acre on 7,500 square foot lots. IN(L) is an Institutional (Light) zoning classification, intended to promote low impact private, nonprofit, or religious institutional uses to service the needs of the public for facilities of an educational religious, health or cultural nature.

Zoning item **16PZ00051** adopted August 4, 2016, approved a change of zoning classification from Single-Family Residential (RU-1-9) to Medium-Density Multiple-Family Residential (RU-2-10). The parcel is located on the north side of Roosevelt Avenue approximately 1,444 feet south of the subject parcel. 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.

Zoning item **17PZ00069** adopted September 21, 2017, approved a change of zoning classification from Medium-Density Multiple-Family Residential (RU-2-10) to Medium-Density Multiple-Family Residential (RU-2-15) with a BDP limiting density to ten units. The parcel is located on the south side of Arthur Avenue approximately 665 feet southeasterly of the subject parcel.

Special Considerations for CUP (Conditional Use Permit)

The Board should consider the compatibility of the proposed CUP pursuant to Section 62-1151(c) and to Section 62-1901, as outlined on pages 6 – 8 of these comments. Section 62-1901 provides that the approval of a conditional use shall authorize an additional use for the affected parcel of real property in addition to those permitted in the applicable zoning classification. **The initial burden is on the applicant to demonstrate that all applicable standards and criteria are met. Applications which do not satisfy this burden cannot be approved.** The applicant's responses and staff observations, if any, are indicated below.

Section 62-1151(c) directs the Board to consider the character of the land use of the property and its surroundings; changes in the conditions of the land use being considered; impact upon infrastructure; compatibility with land use plans for the area; and appropriateness of the CUP

based upon consideration of applicable regulations relating to zoning and land use within the context of public health, safety and welfare. The applicant has submitted documentation in order to demonstrate consistency with the standards set forth in Section 62-1901 and Section 62-1906, on-premises consumption of alcohol.

This request should be evaluated in the context of **Section 62-1906** which governs alcoholic beverages for on-premises consumption which states in, specifically 62-1906 (3) and (5):

- 3) Except for restaurants with more than 50 seats, no alcoholic beverages shall be sold or served for consumption on the premises from any building that is within 300 feet from the lot line of a school or church if the use of the property as a school or church was established prior to the commencement of the sale of such alcoholic beverages. For the purposes of this subsection, a school shall include only grades kindergarten through 12. For the purpose of establishing the distance between the proposed alcoholic beverage use and churches and schools, a certified survey shall be furnished from a registered engineer or surveyor. Such survey shall indicate the distance between the front door of the proposed place of business and all property lines of any church or school within 400 feet. Each survey shall indicate all such distances and routes.

Staff's Observation: 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.

Staff's Observation: 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 55 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 area 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 was a restaurant here before, so no it will not.**

Staff's Observation: *The restaurant is proposed to contain 55 seats, exclusive of any outdoor seating area. Beer and wine use is proposed. There have been numerous restaurants that have occupied Units A & B of the said Plaza similar to the applicant's restaurant. An approved CUP for on premises consumption of alcoholic beverages (beer and wine only) in conjunction with a restaurant on units A and B of the subject plaza was approved via zoning action Z-8861 on October 28, 1991. This CUP use was never used and was administratively removed via zoning action Z-10817(50) on May 22, 2003.*

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.**

Staff's Observation: *The site plan for the Plaza was approved in 1990 and is within a commercial corridor along North Atlantic Avenue. There have been numerous restaurants that have occupied Units A & B of the said Plaza similar to the applicant's restaurant.*

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 it will not.**

Staff's Observation: *This site is developed as a commercial site; alcohol use (beer/wine) as accessory to a restaurant use should not negatively impact the surrounding property values. There have been numerous restaurants that have occupied Units A & B of the said Plaza similar to the applicant's restaurant.*

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: **Already built to all applicable codes.**

Staff's Observation: *The approved site plan for the Plaza was approved in 1990 and met all Brevard County Development codes when it was approved.*

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: **They will not.**

Staff's Observation: *The property is subject to the performance standards found in sections 62-2251 through 2271 of the Zoning regulations.*

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

Applicant's Response: **This was a café before and there is no delivery at this time.**

Staff's Observation: *The property is subject to the performance standards found in sections 62-2251 through 2271 of the Zoning regulations.*

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 it will not.**

Staff's Observation: *There have been numerous restaurants that have occupied Units A & B of the said Plaza similar to the applicant's restaurant.*

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 it will not.**

Staff's Observation: *There have been numerous restaurants that have occupied Units A & B of the said Plaza similar to the applicant's restaurant.*

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: **Same style of café from before. It will not.**

Staff's Observation: *No additional screening or buffering was required as part of the approved site plan for the development of this use. There have been numerous restaurants that have occupied Units A & B of the said Plaza similar to the applicant's restaurant.*

Section 62-1901(c)(2)(g): Proposed signs and exterior lighting shall not cause unreasonable glare or hazard to, traffic safety, or interference with the use or enjoyment of adjacent and nearby properties.

Applicant's Response: **No new signs or lights, so no it will not.**

Staff's Observation: *Commercial signage requirements are found in Section 62-3316 of the Code of Ordinance of Brevard County. Lighting standards are found in Section 62-2257 of the Code of Ordinance of Brevard County.*

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: **open from 8 a.m. to 8 p.m., so no it will not.**

Staff's Observation: *The hours of operation at such a licensed premises that are permitted:*

- (1) Every day: beginning at 7:00 a.m. and ending at 2:00 a.m. on the following day.*
- (2) Extended hours for New Year's Eve: beginning at 7:00 a.m. and ending at 4:00 a.m. on January 1.*

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: **No new building same as before.**

Staff's Observation: *The existing plaza is one story.*

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: **parking will not be a problem, so no it will not.**

Staff's Observation: *Per the site plan included for the Plaza, there are 26 available parking spaces. When the site plan was approved in 1990, the parking code required one parking*
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space for every three seats for a restaurant. Ordinance No. 14-16 changed this parking requirement to one parking space per 100 sq. ft. of a restaurant on May 15, 2014. The 26 available parking spaces exceed the current requirement of 20 parking spaces. There have been numerous restaurants that have occupied Units A & B of the said Plaza similar to the applicant's restaurant.

For Board Consideration

The applicant is requesting a Conditional Use Permit (CUP) for Alcoholic Beverages (beer and wine only) for on-premises consumption in conjunction with a sit-down restaurant. The request is for 2,000 square foot unit located at the south end of the plaza encompassing units A and B and will not have outside seating.

An approved CUP for on premises consumption of alcoholic beverages (beer and wine only) in conjunction with a restaurant (Corey's Northern Style Deli) on units A and B of the subject plaza was approved via zoning action Z-8861 on October 28, 1991. This CUP use was never used and was administratively removed via zoning action **Z-10817(50)** on May 22, 2003.

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.