



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

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STAFF COMMENTS

20Z00002

Roundabout Partners, LLC

CUP (Conditional Use Permit) for Alcoholic Beverages (full-liquor) for On-Premises Consumption in Conjunction with a Restaurant in a PUD (Planned Unit Development) zoning classification

Tax Account Number: 3021659
Parcel I.D.: 25-36-34-XG-A-3
Location: SE corner of Viera Boulevard and Star Rush Drive (District 4)
Acreage: 2.19 acre

Planning and Zoning Board: 06/15/20

Board of County Commissioners: 07/09/20

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	PUD	CUP for alcoholic beverages (full liquor)
Potential*	19,079 square feet	19,079 square feet
Can be Considered under the Future Land Use Map	YES DRI	YES DRI

* 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 full liquor in conjunction with a restaurant. A site plan (**19SP00010**) is under review for the proposed construction of a 7,163 square foot sit-down restaurant with 281 seats. The plan includes an exterior covered waiting area. Outside alcoholic beverage consumption has not been proposed at this time.

This site has been zoned PUD since adoption of Zoning Resolution **Z-10249** on May 20, 1999. It is part of Parcel # P in the Viera North PUD.

Land Use

The PUD zoning classification is consistent with the DRI Future Land Use and the proposed CUP would also be consistent.

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 Concurrency

The closest concurrency management segment to the subject property is Viera Boulevard, between Stadium Parkway and Murrell Road, which has a Maximum Acceptable Volume (MAV) of 39,800 trips per day, a Level of Service (LOS) of D, and currently operates at 44.74% of capacity daily. The maximum development potential from the proposed rezoning does increase the percentage of MAV utilization by 4.32%. The corridor is anticipated to continue to operate at 49.06% of capacity daily (LOS C). The proposal is not anticipated to create a deficiency in LOS.

No school concurrency information has been provided as the development potential of this site does not include residential development.

The subject property (under development) can be served by potable water by the City of Cocoa and sewer by Brevard County Utilities.

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;
- B. Existing commercial zoning trends in the area;

Staff finds that the alcoholic beverage CUP request is compatible with restaurant use and the commercial character of the adjacent area. Additionally, the recent development trends in this area have been exclusively of commercial interests as denoted within the Preliminary Development Plan as designated for this tract.

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. This site is an unimproved commercial site zoned PUD with a FLUM of Development of Regional Impact (DRI). This site is surrounded by proposed or existing retail commercial activities.

Analysis of Administrative Policy #4 - Character of a neighborhood or area. The character of the area has been transitioning from undeveloped lands to developed commercial uses.

Surrounding Area

All abutting property carries the same zoning and FLUM designation. The parcel to the north of Viera Boulevard is developed as a restaurant adjacent to a small retail center. The abutting parcel to the east is the proposed location for a car wash under site plan (**20SP00009**). The parcel to the south is the proposed location for the thrift retail store under site plan (**19SP00011**). The parcel to the west is currently undeveloped but according to the Preliminary Development Plan of the Viera North PUD is allowed to support commercial and office uses.

There has been one recent zoning action approval within a half-mile radius around this site within the last 3 years. Zoning item (**18PZ00031**) adopted on May 30, 2018 rezoned a portion of the parent parcel lying 179 feet in the easterly direction from PUD to retail, warehouse and wholesale (BU-2) zoning limited under a Binding Development Plan (BDP) recorded in ORB 8176 PGs 2727 – 2731 which allows the use of a self-storage mini-warehouse while retaining without limitation all uses, rights, provisions and activities allowed under the BU-1 zoning classification.

Zoning classifications found in the general vicinity include: PUD, BU-1 and BU-2.

The Planned Unit Development (PUD) classification encourages and permits variation in development by allowing deviation in lot size, bulk or type of dwellings, density, lot coverage and open space from that required in any one residential zoning classification. The purpose of a PUD is to encourage the development of planned residential neighborhoods and communities that provide a full range of residence types, as well as industrial, commercial and institutional land uses.

The 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.

The BU-2 zoning classification permits retail, wholesale and warehousing commercial land uses on minimum 7,500 square foot lots. Possible incompatibilities are due to the intensive nature of commercial activities permitted by the BU-2 classification and possible noise, light, traffic and other nuisance factors potentially associated with BU-2 activities.

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 a 7,163 square foot 281-seat restaurant built at this location which will support 146 parking spaces.

Restaurants, cocktail lounges and other eating and drinking establishments require one parking space for every 100 square feet of gross floor area of the building – equating for up to 73 parking spaces. Additional parking has been provided to exceed this requirement.

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: The Texas Roadhouse was reviewed and approved as part of Major Site Plan 19SP00010. As such the County determined the use to be permitted as part of the PUD zoning and in compliance with the Future Land Use District. Therefore, the intended use does not result in nor create any adverse impacts to adjacent or nearby properties. Rather, the intended use will create jobs for County residents.

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: The proposed restaurant is compatible with the Goodwill and car wash which are part of this development. Goodwill had review rights of other tenants as part of an underlying reciprocal document as such they approved the elevations and location of the building on site which was designed and approved in accordance with Brevard County Land Development Regulations.

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: This proposed restaurant is not directly adjacent to any residential developments.

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: Texas Roadhouse's ingress/egress were reviewed as part of the major site plan submission. Reviews were conducted by County Engineering, Traffic Engineering and Operations. In which the engineers reviewed and comment on the design of the site as it relates to

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vehicular traffic flow, emergency access, pedestrian safety and ADA requirements. All divisions granted approval which was in accordance with Brevard County standards.

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: The proposed restaurant use will not substantially interfere with the use or enjoyment of the adjacent and nearby properties.

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

Applicant's Response: The standard hours of operation fall within the ambient noise range of 55-65 dB.

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 proposed capacities of solid waste disposal were reviewed and approved as part of the major site plan process. Therefore, the use will not cause the adopted level of service for solid waste disposal to be exceeded.

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 proposed capacities of water and waste water were reviewed and approved as part of the major site plan process. Therefore, the use will not cause the adopted level of service for potable water or wastewater to be exceeded.

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: As required as part of the major site plan review, the site was required to provide Type B buffer along Viera Blvd. which consists of 382 LF – (24 LF) ingress/egress = 358 LF of trees and shrubs. The Type B buffer is required to be a minimum 15' wide. A Type B buffer is also required along Star Rush Drive. The buffer length is 208 LF and 15' wide.

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 signage and exterior lighting photometric light levels has been reviewed and approved in accordance with Brevard County standards, therefore not causing any unreasonable glare or hazards to traffic safety.

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 standard hours of operation are predominately evening hours M-TH: 4 – 10; Friday: 4pm – 11pm and Saturday: 11am – 11pm and Sunday: 11am – 10pm. These hours are compatible with the other commercial users within the development.

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 height of the building is 27' 6" to the top of the towers which is in compliance with the maximum height noted above.

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 off-street parking design was reviewed as part of the major site plan and approved in accordance with Brevard County standards. A copy of the plan is attached for reference.

For Board Consideration

The applicant is seeking a Conditional Use Permit, CUP for full liquor in conjunction with a restaurant. The applicant proposes to develop a 7,163 square foot sit-down restaurant with 281 seats. The plan includes an exterior covered waiting area. Outside alcoholic beverage consumption has not been proposed at this time.

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.