



BOARD OF COUNTY COMMISSIONERS

## Planning and Development Department

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### STAFF COMMENTS

20PZ00040

Ziffer Investments, LLC

**CUP (Conditional Use Permit) for Alcoholic Beverages (full-liquor) for On-Premises Consumption in Conjunction with a Private Club in a BU-1 (General Retail Commercial) zoning classification**

Tax Account Number: 3006387  
Parcel I.D.: 30-38-11-00-520  
Location: North side of Micco Road, approximately 0.37 mile west of U.S. Highway 1 (District 3)  
Acreage: 2.79 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
<b>Zoning</b>	BU-1	CUP for alcoholic beverages (full liquor)
<b>Potential*</b>	24,306 square feet	24,306 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 a Conditional Use Permit, CUP for full liquor in conjunction with a private club (Fraternal Order of Eagle's Aerie #4527). They intend to relocate from their existing location at 8820 US Highway 1 in Micco which is about 1.25 miles south of this location.

This site has been zoned BU-1 since adoption of Zoning Resolution **Z-4981** on July 12, 1979. The property was previously zoned AU and remains unimproved.

### Land Use

The BU-1 zoning classification is consistent with the Community Commercial Future Land Use and the proposed CUP would also be consistent.

## **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;
- C. Compatibility of the proposed use with the area, pursuant to Administrative Policy 3;
- D. Impact upon Level of Service (LOS) standards for roads, potable water service, sanitary sewer service and solid waste disposal;
- E. Impact upon natural resources, including wetlands, floodplains, and endangered species; and
- F. Other issues which may emerge specific to a particular property which may be addressed through performance based zoning criteria.

### **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 Micco Road, between Fleming Grant Road and US Highway 1, which has a Maximum Acceptable Volume (MAV) of 17,700 trips per day, a Level of Service (LOS) of D, and currently operates at 45.54% of capacity daily. The maximum development potential from the proposed rezoning does increase the percentage of MAV utilization by 1.51%. The corridor is anticipated to continue to operate at 47.05% 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 can be served by potable water and sewer by Brevard County Utilities. A 6-inch water line is located approximately 150 feet west of the property line on the north side of Micco Road. There is a potential access to a 12-inch gravity main 800 feet west of this parcel on the north side of Micco Road.

## Applicable Land Use Policies

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 BU-1 with a FLUM of Community Commercial. The abutting parcel to the north is also unimproved and has the same zoning and FLUM. The abutting parcel to the east is developed as a Florida Power and Light substation zoned Agricultural Residential, AU and carries the NC FLUM designation. That zoning was approved under **Z-2761** on March 11, 1971. The parcels to the south across Micco Road is zoned Rural Residential Mobile Home RRMH-1 and carries a FLUM of Residential 1. The parcels are developed with residential structures and have been zoned since adoption of **Z-3646** on May 16, 1974. The parcels to the west are zoned Single-family Mobile Home Cooperative, TRC-1 and carry a FLUM of Residential 4. The parcels are developed with manufactured structures and have been zoned since adoption of **Z-2402** on February 27, 1969.

**Analysis of Administrative Policy #4 - Character of a neighborhood or area.** The character of the area has been stable with a mixture of zonings. The area contains single-family zonings, various commercial and even the heaviest industrial zoning classification, IU-1.

## Surrounding Area

There have been two zoning actions within a half-mile radius around this site within the last 3 years. Zoning item **19PZ00100** adopted November 4, 2019 rezoned the parcel 2,042 feet in a SW direction (located on the east side of Brown Street) from AU to Rural Residential, RR-1 zoning. The second zoning action, Zoning item **19PZ0104** was denied. That request was to change the zoning from BU-1 to Retail, Warehousing and Wholesale Commercial, BU-2 and was also heard on November 4, 2019. That parcel is located 512 feet north of this site (located on the south side of Barefoot Boulevard).

Zoning classifications found in the general vicinity include: BU-1, AU, IU-1, GML, TRC-1, RRMH-1 and BU-2.

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 AU zoning classification permits single-family residences and agricultural uses on 2.5 acre lots, with a minimum lot width and depth of 150 feet. The minimum house size in AU is 750 square feet. The AU classification also permits the raising/grazing of animals, fowl and beekeeping.

The IU-1 classification is the heaviest industrial zoning classification in the Code. It permits heavy manufacturing, including outside activities such as livestock yards and commercial incinerators. The minimum lot size is 40,000 square feet with a minimum width and depth of 200 feet.

The GML government managed lands zoning classification recognizes 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 TRC-1 classification 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.

The RRMH-1 classification permits single-family mobile homes and detached single-family residential land uses on minimum one acre lots, with a minimum width and depth of 125 feet. This classification permits horses, barns and horticulture as accessory uses. The minimum house size is 600 square feet.

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 10,000 square foot private club with an 800 square foot outside screened enclosure built at this location which could support up to 56 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 108 parking spaces. This parking requirement would equate to 58-108 persons should every patron drive themselves to the club. The 800 square foot screened enclosure is proposed along the western exterior of the proposed building (20 x 40 foot dimensions).*

## **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 proposed location would provide a relocation for the Eagles Club, moving from their current location on US Highway 1 in Micco. Nationally, the Fraternal Order of Eagles (F.O.E.) donates more than \$10 million a year to local communities. As part of its philosophy, the F.O.E. gives back 100 percent of monies raised. Fundraisers are conducted for eight major charities including kidney, heart, diabetes, cancer, spinal cord injury funds and the Golden Eagle Fund. This site proposes to meet all setbacks and there are no adverse impacts proposed for adjacent properties from the conditional use. The Eagles are requesting both the interior of the building and the enclosed patio in the rear of the building for as part of the licensed premises sought.

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 use is compatible with the character of nearby properties, including function, operation, traffic generated, building setback and will provide ample on-site parking.

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 use will not cause a substantial diminution, this property is currently vacant and located to the west of an existing electrical substation.

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: All ingress/egress to the site will meet Brevard County's standards for vehicular and pedestrian safety, traffic flow and emergency response. The AADT on Micco Road at Location ID 518 is 8,060. Micco is functionally a Major Collector (Urban) by TPO classification. The proposed traffic impact from the development using the 10<sup>th</sup> Edition of the ITE is 210 new daily trips, this equates to a 2.6% change in traffic.

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 noise, glare, odor, particulates, smoke, fumes or other emissions shall not interfere with the use or enjoyment of the adjacent properties.

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

Applicant's Response: The F.O.E. will comply with all applicable noise standards outlined in Section 62-2271. In most cases, their operating hours are 11:00 AM – 10:00 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: The proposed conditional use shall not impact the adopted level of service or cause it to be exceeded for solid waste disposal. This site will have a dumpster for solid waste.

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 conditional use shall not exceed the adopted level of service for potable water or wastewater. While concurrency is not vested until site plan approval, both water and wastewater have available capacity for this project.

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: The proposed building and site plan will meet the buffer and screening requirements, eliminating adverse impacts of sight, noise or other adverse impacts.

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: All lighting will be shielded/skirted to prevent impacts onto adjacent properties. Additionally, signage will not be a hazard to traffic safety or interfere with the use and enjoyment of the adjacent properties.

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: Hours of operation will be consistent with the use and enjoyment of surrounding properties. In most cases, their operating hours are 11:00 AM – 8:00 PM Sunday – Thursday, and Friday and Saturday 11:00 AM – 10:00 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: The height of the proposed structure will not exceed 35 feet higher than the closest residential structure.

Staff's Observation: The attached site plan states the building height is limited to 35 feet.

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 offsite parking and loading areas will be wholly on the site, and not create an adverse impact to the site.

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 identifies that 56 parking spaces will be provided, it appears the code will require more parking spaces - 108 spaces.*

### **For Board Consideration**

The applicant is seeking a Conditional Use Permit, CUP for full liquor in conjunction with a private club (Fraternal Order of Eagle's Aerie #4527). They intend to relocate from their existing location at 8820 US Highway 1 in Micco which is about 1.25 miles south of this location.

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.