



BOARD OF COUNTY COMMISSIONERS

## Planning and Development Department

2725 Judge Fran Jamieson Way  
Building A, Room 114  
Viera, Florida 32940  
(321)633-2070 Phone / (321)633-2074 Fax  
<https://www.brevardfl.gov/PlanningDev>

### STAFF COMMENTS 20Z00007 3101 GANNETT PLAZA AVE LLC

**Conditional Use Permit (CUP) for Alcoholic beverages for on-premises consumption; beer and wine accessory to an indoor family entertainment center**

Tax Account Number: 2602422 & 2602423  
Parcel I.D.: 26-36-13-DE-M-6 & 7  
Location: SW corner of Gannett Plaza Avenue and US Highway 1 (District 4)  
Acreage: 28.23 acres

Planning and Zoning Board: 07/06/2020  
Board of County Commissioners: 08/06/2020

#### 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 & BU-2	BU-1 & BU-2 with CUP for alcoholic beverages
<b>Potential*</b>	314,311 square feet	314,311 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 alcoholic beverages for on-premises consumption; beer and wine accessory to an indoor family entertainment center. An outdoor patio is also proposed.

This site has been zoned BU-1 and BU-2 under Use on Review (UOR) for printing, engraving and related reproduction processes as well as publishing and distribution of newspapers and printed material since adoption of Zoning Resolution **Z-6913** on November 8, 1984. The BU-1 portion is the easterly 250-foot depth of the lot with BU-2 zoning over the remainder.

#### Land Use

The BU-1 and BU-2 zoning classifications are both consistent with the Community Commercial (CC) Future Land Use designation. The CUP request is also consistent with the CC FLU designation.

## **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 U.S. Highway 1, between Pineda Causeway and Suntree 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 92.67% of capacity daily. The development potential from the proposed CUP request on the existing building mass of 170,000 square feet does increase the percentage of MAV utilization by 2.36%. The corridor is anticipated to operate at 95.03% of capacity daily (LOS D). The proposal is not anticipated to create a deficiency in LOS.

No school concurrency information has been provided as this site is a proposed commercial development.

The subject property is served by potable water by the City of Cocoa. Sewer is provided by the County.

## **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;

*Staff analysis: The alcoholic beverage use is identified as a conditional use which means should the Board allow said use, it would be permitted on the property. If the Board denied the request, it would not be allowed on the property.*

B. Existing commercial zoning trends in the area;

*Staff analysis: There have been multiple commercial requests within the area which are further identified in the Surrounding Area analysis.*

C. Compatibility of the proposed use with the area, pursuant to Administrative Policy 3;

*Staff analysis: This CUP request, if approved, is compatible with the proposed recreation activity. The outdoor patio area proposed will be used for dining.*

D. Impact upon Level of Service (LOS) standards for roads, potable water service, sanitary sewer service and solid waste disposal;

*Staff analysis: It appears no LOS has been exceeded for road capacity. Other LOS criteria will be reviewed at the site plan review stage.*

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 surrounded by right-of-way upon all four sides. To its north is Gannett Plaza Avenue. To its east is U.S. Highway 1. To its south is Aar Way. To the west is the F.E.C. railroad right-of-way. The neighboring area is under the FLUM designations of Community Commercial and Neighborhood Commercial. The commercial zoning is pre-existing; the applicant wishes to add alcoholic beverage use in conjunction to their proposed indoor recreation facility.

The applicant is proposing alcohol consumption on the northern 57,158 square feet of the existing 153,135 square foot building. The remaining area identified on the concept plan identifies a 75,858 square foot office component and a 20,119 square foot warehouse component. A use for the outbuilding has not been identified. The plan doesn't identify the size of the outdoor patio for patron use. It appears to be 1,744 square feet in area.

**Analysis of Administrative Policy #4 - Character of a neighborhood or area.** The character of the area is mostly residential. North of this property is a mixture of developed residential lots, with the eastern most lot zoned BU-1, providing commercial frontage to Highway 1. To the east of Highway 1 are single-family residential uses developed in the RU-1-7, BU-2 and RU-1-13 zoning districts. The GU and RU-2-10 zoned lots are currently unimproved. To the south is a recreational vehicle park under the zoning designation of RVP. To the west remains several undeveloped tracts zoned BU-2 or PUD; additionally, several commercial buildings have been developed within parcels zoned BU-2 or Light Industrial, IU.

### **Surrounding Area**

There have been numerous zoning actions within a half-mile radius around this site within the last 3 years. The three zoning changes include:

- Zoning item (**17PZ00109**) adopted on April 25, 2018, rezoned 30.7 acres from PIP to RU-2-15 to allow for a 450-unit multi-family development under a Binding Development Plan recorded in ORB 8148, Pages 974-982, dated April 25, 2018; This site is located on the east side of Wickham Road about 350 feet south of Jordan Blass Drive.
- Zoning Item (**18PZ00059**) adopted on January 9, 2019, rezoned 3.43 acres (western portion of 17PZ00109) from RU-2-15 to BU-1 to allow for commercial development under a Binding Development Plan recorded in ORB 8345, Pages 662-666, dated January 9, 2019; This site is also located on the east side of Wickham Road about 350 feet south of Jordan Blass Drive.
- Zoning item (**18PZ00104**) adopted on December 6, 2018, rezoned 3.33 acres from BU-1 and IU to BU-2; This site is located on the east side of Wickham Road at the NE corner of Waelti Drive and Wickham Road.

This area has also received multiple CUP requests under the following items:

- **17PZ00104** adopted on November 2, 2017, allowed beer/wine accessory to a restaurant.
- **18PZ00113** adopted on December 6, 2018, allowed beer/wine accessory to a vape store.
- **19PZ00004** adopted on April 4, 2019, allowed full liquor accessory to an assisted living facility – limited to the dining areas, lounge, courtyard and residences.
- **19PZ00064** adopted on August 1, 2019, allowed mitigation for a mobile home park to replace mobile home sites with recreational vehicles.

### **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 analysis: 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 analysis: Serving and consumption of food and beverages, alcohol or otherwise, shall be strictly prohibited outside of the existing buildings except as has been identified on the outdoor patio pursuant to Section 62-1837.9 (Outdoor restaurant seating) 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: The premises is a family-oriented entertainment destination all under roof (i.e. arcades, video games and go-karts, ninja course and mini-bowling). The establishment will only be offering beer and wine for guests.

*Staff analysis: The concept plan identifies the location of the proposed amusement uses within the primary building, as well as noting that the remainder of the primary building is supporting warehouse and office uses. The site does not identify what is occurring within the small outbuilding.*

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 location lies within the BU-2/BU-1 Zoning district with the rear of the building facing US-1. Recreation is a prioritized use in these zoning districts. The conditional use to allow for onsite consumption of beer and wine with the permitted indoor recreational development is compatible with the character of adjacent and nearby properties.

*Staff analysis: The parcel is a developed commercial property that is bounded by right-of-way (not adjacent to residential development). Indoor recreation use should be compatible; however, the proposed activity has the potential for higher traffic generation than standard office or warehouse use drawing more of the public to this site. During site plan review, the proposed outdoor patio will need to comply with the noise ordinance.*

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 a 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: The proposed use as a family-oriented entertainment destination all under roof, is a permissible use in the current zoning district and will be operated out of an existing warehouse building. Only interior modifications to the existing building are proposed other than conforming signing and painting to the exterior. The conditional use for the onsite consumption of beer and wine only to these families patronizing the family-oriented entertainment destination.

*Staff analysis: Competent and substantial evidence by a MAI certified appraiser has not been provided by the applicant.*

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: The property is currently developed as a warehouse and office building which has ample parking and convenient flow as well as adequate ingress and egress. No new construction is being proposed. The indoor family entertainment destination will be using 57,158 square feet of an existing warehouse building. The on-site consumption of beer and wine will be limited to the same.

*Staff analysis: This project has two access points identified on the concept plan. The change of use will substantially increase parking and traffic needs for this site. If needed, additional improvements will be addressed at the site plan review stage.*

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: No new construction is proposed. The entertainment facility will be using 57,158 square feet of existing WHH1 (northern 428 feet of main building). There will be no audible noise from the premises. The use is totally enclosed except for an outdoor patio to be used for eating by attendees. We will utilize an outdoor patio for eating. Beer and wine consumption are not the primary use of the proposed building.

*Staff analysis: This project must be compliance with Brevard County's Performance Standards defined by Sections 62-2251 through 62-2272.*

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

Applicant's Response: Noise levels will be within the permissible ranges as set forth in the applicable county code.

*Staff analysis: The concept plan's "noise standards" will be reviewed as part of the site plan review process. Proposed outside seating must comply with noise ordinance.*

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 will not cause the level of solid waste service for the property or the area to be exceeded.

*Staff analysis: The adopted level of service for solid waste disposal will be reviewed as part of the site plan review process.*

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 will not cause the level of potable water service for the property or the area to be exceeded.

*Staff analysis: The adopted level of service for potable water or wastewater will be reviewed by utilities as part of the site plan review process.*

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 conditional use being requested for on-site sales and consumption of beer and wine only for patrons coming to the fully enclosed family-oriented entertainment destination. An outdoor patio, as depicted on the sketch enclosed is located approximately 417 feet from the nearest neighboring property and is currently buffered/screened by trees and Aar Way then additional trees. All activities for the family-oriented entertainment destination with the exception of the patio, which due to distance (i.e. 417 feet) is adequately buffered from neighboring properties to prevent adverse nuisance, sight or noise impacts.

*Staff analysis: As the project is buffered by right-of-way, no screening or buffering has been identified on the concept plan. Should the Board determine that additional measures become necessary, the Board may wish to request the applicant submit a Binding Development Plan (BDP) to provide for those additional measures.*

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: Proposed signs and exterior lighting will not cause unreasonable glare, hazard to traffic safety or interference with the use or enjoyment of adjacent or nearby properties.

*Staff analysis: No signage or exterior lighting has been identified on the concept plan. Should the Board determine that additional measures become necessary, the Board may wish to request the applicant submit a Binding Development Plan (BDP) to provide for those additional measures.*

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 proposed hours of operation are Monday – Thursday 11AM – 9PM; Friday – 10AM – 11PM; Saturday – 9AM – 11PM; Sunday – 10AM – 6PM, which is consistent with use and enjoyment of the properties in the surrounding areas.

*Staff analysis: The hours of operation of the commercial indoor recreational uses appear to be consistent with normal commercial operations. Should the Board determine that additional measures become necessary, the Board may wish to request the applicant submit a Binding Development Plan (BDP) to provide for those additional measures.*

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 within the stated limits.

*Staff analysis: The applicant states that no new buildings are proposed; existing buildings appear to be in compliance with county height standards which would allow up to a 60-foot tall building. No roof has been identified to cover the outside patio area.*

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 CUP for the on-site sales and consumption of beer and wine is within the 57,158 square foot existing warehouse building. There are currently 200 on-site spaces provided on property for the current warehouse (331 spaces are provided for the overall business center). The



commercial use of 57,158 square feet requires a minimum of 149 on-site parking spaces. There is and will continue to be sufficient on-site parking with the requested CUP.

*Staff analysis: It appears the applicant has submitted different parking data in two different places within the application. Within the CUP worksheet in response to item (Section 62-1901 (c)(2)(j)), the applicant states there are 331 on-site parking spaces provided for the overall business center; however, the CUP concept plan identifies 358 existing parking spaces. Staff has reviewed the parking calculations and has ascertained that the number of parking spaces has not included the out-building and the exterior patio seating parking allotment. In order to be in compliance with county code, a total of 577 parking spaces will need to be provided. The applicant only proposes a total of 573 parking spaces (4-spaces short of what is required by Code).*

### **For Board Consideration**

The applicant is seeking a Conditional Use Permit (CUP) for alcoholic beverages for on-premises consumption; beer and wine accessory to an indoor family entertainment center. An outdoor patio is also proposed.

The Board may wish that the applicant visually buffer and/or acoustically screen the outdoor patio area from the nearby residential lots. The Board may also wish to limit alcoholic beverage to indoor areas only and/or require the applicant to increase the parking requirement to 577 total parking spaces; which is 4 additional spaces over the concept plans depicted 573 parking count. Applicant states that there are 358 existing parking spaces currently provided.

The Board should consider the compatibility of the proposed CUP with surrounding development. This is a request for CUP, the Board may consider additional conditions beyond those cited in Sections 62-1901 and 62-1906 in order to mitigate potential impacts to the abutting properties.