



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

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STAFF COMMENTS 20Z00017 SKYVIEW PLAZA LLC

Conditional Use Permit (CUP) for Alcoholic beverages for on-premises consumption (full liquor);

Tax Account Number: 2607202
Parcel I.D.: 26-37-23-00-759
Location: SW corner of Highway A1A and Ocean Boulevard (District 4)
Acreage: 3,200 square feet +/- for Unit # 220

Planning and Zoning Board: 08/24/2020
Board of County Commissioners: 09/03/2020

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
Zoning	BU-1 with CUP for beer and wine	BU-1 with CUP for full liquor
Potential*	3,000 square feet	3,200 square feet
Can be Considered under the Future Land Use Map	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 property owner is seeking to expand the existing Conditional Use Permit (CUP) for alcoholic beverages for on-premises consumption (license type) from beer and wine to a full liquor approval accessory to a proposed sports bar and to expand the (licensed area) size of the approval to include an outside seating area - existing patio located on the west side of the building/unit.

This site was granted Board approval of a CUP under zoning action **Z-7858**. **Z-7858** was adopted on August 18, 1987, limited to beer and wine only. The area this zoning action covered was identified as Unit # 220 (a 40' x 75' dimensioned area with an estimated size of 3,000 square feet).

Since this adoption, many tenants have requested state beverage license approval from the County. On March 28, 2016, a request for liquor approval was sought from the County by a business named SportsPage (Sports Paige) to increase the license capacity/type from a 2COP (beer/wine) to 4COP (liquor/beer/wine) license. It was discovered during this Division of Alcoholic Beverages and Tobacco

(ABT) review that an active State issued 4COP license (**BEV1504955**) was of record in the State's database. With that license approval, the County issued a nonconforming approval for the increased license type. Recently, that license expired; with that event, the nonconforming use lapsed pursuant to Section 62-1183 of Brevard County Code and that use could not be reissued/reinstated; therefore, the applicant is making this current CUP request for license increase from beer/wine to full liquor.

Sec. 62-1183. Abandonment.

If any nonconforming use of land or structures is abandoned or discontinued for a period of 180 consecutive days or for 18 cumulative months during any three-year period, the land or structure shall thereafter only be put to a use specifically in conformity with the provisions of the applicable zoning classification and any other provision of this article or amendment to this article, and the privileges of this subdivision shall be deemed forfeited for the land or structures. This provision shall not apply to any nonconforming residential structure in a residential or GU zoning classification, or to an agricultural use which has been seasonally discontinued as part of an on-going agricultural operation.

Currently there is a sign posted within Unit # 220 identifying an area of 3,200 square feet as available for lease.

The owner's agent states that the intent of this request is to acquire a 4COP license for a sports bar.

Land Use

The BU-1 zoning classification is 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 A1A, between Berkeley Street and Ocean 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 50.16% of capacity daily. The development potential from the proposed CUP request on the existing building mass of 3,200 square feet does increase (0.02%) the percentage of MAV utilization. The corridor is anticipated to remain operating at 50.18% 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 site is a proposed commercial development.

The subject property is served by potable water by the City of Melbourne. 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 current CUP for beer and wine is not in operation at this time. Under Section 62-1901 (e), the Board has the authority to either renew, modify or revoke the existing CUP. The owner proposes to expand the existing alcoholic beverage use (beer and wine) to a full liquor approval with outside expansion of use to include a 17.6-foot by 18-foot (316-square foot) uncovered patio located to the west of the unit.

The Board should consider the compatibility of the proposed CUP with surrounding development. To the north of this unit, within Unit 218B, is a nonconforming adult entertainment business that also has a full liquor license approved under **Z-8054**. The Board denied this request for full liquor; however, this decision was overruled by the Eighteenth Judicial Circuit Court in Case No. 88-7474-AP.

B. Existing commercial zoning trends in the area;

Staff analysis: There have been no recent commercial zoning requests within the area.

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

Staff analysis: This CUP request, if approved, could be compatible with the commercial shopping center as long as the adjacent nonconforming adult entertainment business does not expand into this unit and that the outdoor patio area proposed on the west side of the building near the abutting single-family residential uses does not become a noise and/or lighting issue. The Board may desire that additional buffering and parking be added to the property and/or use limitations created in order to reduce those concerns.

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 the north, east and west sides. To its north is Ocean Boulevard. To its east is U.S. Highway A1A. To its west is

Flamingo Drive. The south property line abuts an adjacent convenience store with gasoline sales. The entire block is under the FLUM designation of Community Commercial. The commercial zoning is pre-existing. The residential areas to the east and west are under the Residential 15 FLUM designation. This property offers a vegetative roadway buffer along its west property line to buffer the view from nearby residential lots; palm trees and sod are within the eastern roadway buffer allowing views into the site.

Analysis of Administrative Policy #4 - Character of a neighborhood or area. The character of the area is commercial development fronting Highway A1A with single-family uses lying to the west. The east side of Highway A1A is developed with multi-family apartments/condominiums identified as the Sandpiper Towers Condominium, Flores De La Playa Condominium and Ocean Residence North. North of this property is a mixture of BU-1 and BU-2 commercial zoning classifications, with the property lying east of Highway A1A being zoned for RU-2-15. To the south is a continuation of commercial development zoned BU-1. To the west lies single-family zoning under the RU-1-11 designation.

Surrounding Area

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

- Zoning item (**17PZ00037**) adopted on July 26, 2017, rezoned 0.66 acres from BU-1 to BU-2 with a Binding Development Plan recorded in ORB 7946, Pages 375-377, which allows all BU-1 uses and limited the BU-2 uses to dog boarding, grooming, training and retail sales of related products; This site is located on the north side of Ocean Boulevard about 360 feet north of front door of Unit #220.
- Zoning Item (**19PZ00060**) adopted on October 25, 2019, updated the BDP on 8.49 acres from 155 to 188 multi-family units under the RU-2-30 zoning classification and was recorded in ORB 8572, Pages 318-322; This site is located on the west side of Highway A1A about ½-mile south of Unit #220.
- Zoning item (**19PZ00103**) adopted on November 7, 2019, denied rezoning of a 0.52-acre site from BU-1 to RU-2-15; This site is located on the west side of Highway A1A about 460 feet south of Unit #220.

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: The owner/applicant has not provided a survey 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 use will be consistent with the historical uses of the property. A 4COP has been located at the property since 1999.

Staff analysis: The owner/applicant has not addressed the adverse impacts such as noise, odor, particulates, smoke, fumes and other emissions, or other nuisance activities generated by the

conditional use nor has the number of patrons been identified nor has the traffic parameters been addressed.

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: Another bar is located adjacent to the property with the same 4COP license in place. No changes will be made to the historical use of the property.

Staff analysis: The parcel is a portion of a developed commercial property that is bounded by right-of-way (not adjacent to residential development). 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: No value reduction is anticipated as this property has been the location of a 4COP since 1999. No real change will occur.

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: No increase in traffic is anticipated.

Staff analysis: This project has multiple access points identified on the concept plan. The change of use will not substantially increase parking and traffic needs for this site. If needed, additional improvements can be addressed at the site plan review stage for the outdoor patio inclusion.

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 interference is anticipated.

Staff analysis: This project must be compliance with Brevard County's Performance Standards defined by Sections 62-2251 through 62-2272. Any proposed outdoor lighting and noise standards should remain within code parameters or a violation will be created.

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 consistent with historical use of the property.

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: Solid waste disposal will be consistent with historical use of the property.

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: Potable water and waste water use will not change from the historical use of the property.

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: These conditions will not vary from the historical use of the property.

Staff analysis: As the project is buffered by right-of-way, minimal screening or buffering has been identified on the concept plan. Note, the outdoor patio area is nearby an access point which will have no screening or buffer when seen from the public roadway. 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: Signage will remain the same with respect to impact on traffic safety and 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: Hours of operation will remain consistent with the historic use of the property.

Staff analysis: The hours of operation (for any proposed business) has not been addressed. 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: No changes will be made to the property in respect to height.

Staff analysis: The existing commercial complex appears to be constructed as a single floored structure.

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: No additional loading areas will be created.

Staff analysis: The CUP concept plan has been updated to add 8 additional parking spaces to the project which identifies 143 parking spaces for a new total of 151 parking spaces.

For Board Consideration

The property owner is seeking to expand the existing Conditional Use Permit (CUP) for alcoholic beverages for on-premises consumption (license type) from beer and wine to a full liquor approval accessory to a proposed sports bar and to expand the (licensed area) size of the approval to include an outside seating area - existing patio located on the west side of the building/unit.

The Board may wish to consider the compatibility of the proposed CUP with surrounding development. 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 such as: provide a visual buffer and/or acoustically screen the proposed outdoor patio area from the nearby residential lots.

The Board may also wish to consider that the abutting nonconforming adult entertainment business shall not have an internal connection.