



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

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STAFF COMMENTS

21PZ00012

The Suntree Business Center, LLC

Conditional Use Permit (CUP) for Alcoholic beverages for on-premises consumption of beer/wine in conjunction with a playground for dogs

Tax Account Number: 2602736
Parcel I.D.: 26-36-13-00-7
Location: NW corner of FEC railroad and Suntree Boulevard (District 4)
Acreage: 0.09 acres for Suite # 102 and adjacent area to the north

Planning and Zoning Board: 04/05/2021

Board of County Commissioners: 05/06/2021

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-2	BU-2 with CUP for beer/wine
Potential*	2,800 square feet of building area	4,000 square feet of building and fenced outdoor use
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 a Conditional Use Permit (CUP) for alcoholic beverages for on-premises consumption accessory to a playground for dogs. The request is for beer and wine with internal office and manufacturing space together with an external area located to the north of the northern building, Unit #102 (east end of building). The proposed use for this site is not as a food service/restaurant use. The internal unit size is approximately 2,800 square feet and the outside fenced dog area is 1,200 square feet for a total area of 4,000 square feet.

This site was administratively rezoned from IU to BU-2 under zoning action **Z-9418**. **Z-9418** was adopted on November 29, 1994.

Located at the NW corner of the site is an approved tower consistent with approval of **Z-10182**. **Z-10182** was adopted on December 3, 1998 and approved a 120-foot tall monopole tower. Variance

action, **V-1019**, adopted February 18, 1981 reduced the northern (rear) setback from 50-feet to 20-feet. The new dog play area would utilize this 20-foot deep perimeter area as a fenced yard for dogs.

Land Use

The BU-2 zoning classification is consistent with the Community Commercial (CC) Future Land Use designation. The CUP request can be considered consistent with the CC FLU designation.

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 proposed CUP for beer and wine includes a portion of an existing building (Unit # 102) together with an outside fenced area as a play yard for dogs.

The Board should consider the compatibility of the proposed CUP with surrounding development. To the north of this unit, is a retention pond. To the west is a storage/warehouse facility and to the east beyond the railroad tracks is a multiple office/business establishments extending south to Suntree Boulevard.

B. Existing commercial zoning trends in the area;

Staff analysis: There have been six recent commercial zoning requests within the area within the last three years. More information has been provided below in the surrounding area analysis section.

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 existing commercial office/warehouse center. The Board may desire buffering be added to the property in order to reduce potential noise and provide for a visual buffer.

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 located within a large Community Commercial node. To the east, west and south, the area is under the FLU designation of Community Commercial. The commercial zoning is pre-existing. To the north lies the Public Facility FLU designation which supports a retention pond servicing Wickham Road.

Analysis of Administrative Policy #4 - Character of a neighborhood or area. The character of the area is a complex mix of existing commercial development. This use will be located at the rear of the project away from Suntree Boulevard traffic near a communication tower, offsite retention and the FEC railway.

Surrounding Area

The abutting parcel to the north is zoned Government Managed Land (GML); it is utilized as a retention pond. The property to the east beyond the FEC railroad is zoned BU-2 and Light Industrial (IU); this area is developed as an office complex. The properties to the south across Suntree Boulevard are zoned General Retail Commercial (BU-1) and BU-2; they are developed with a commercial strip center and office space. To the west is a parcel zoned BU-2; this area is developed with a warehouse/storage facility with abutting retention pond.

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.

The IU zoning classification permits light industrial land uses within enclosed structures. The minimum lot size is 20,000 square feet, with a minimum width of 100 feet and a minimum depth of 200 feet.

The GML government managed lands zoning classification is used to recognize 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.

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

20Z00014 – 9/30/2020; PUD and PIP to all PUD with retention of the CUP for alcoholic beverages (full-liquor) at an Assisted Living Facility (ALF) with waiver for building separation between existing and proposed ALF expansion. Located upon the east half of the Brevard Medical City site 2,500 feet south at the intersection of Pineda Court and Wickham Road.

20Z00007 – 8/05/2020; Conditional Use Permit (CUP) for Alcoholic beverages for on-premises consumption; beer and wine accessory to an indoor family entertainment center. Located 1,050 feet in a SE direction lying 900 feet south of Suntree Boulevard on the west side of Highway 1.

19PZ00035 – 8/21/2019; Rezoning from GU to BU-2 with a BDP recorded in ORB 8521 Pages 1208-1244. Located 1,160 feet in a NW direction lying east of Waelti Drive and on the north side of Freeman Lane.

18PZ00113 – 9/05/2018; CUP for alcoholic beverages for on-premises consumption beer and wine only in conjunction with a vapor store. Located 380 feet in a SW direction in the shopping center at the SE corner of Suntree Boulevard and Wickham Road.

18PZ00104 – 12/05/2018; Rezoning from BU-1 & IU to all BU-2. Located 600 feet to the west at the NE corner of Waelti Drive and Wickham Road.

18PZ00055 – 8/01/2018; Rezoning from General Use, GU to Single-family residential, RU-1-7. Located 1,300 feet north along the south side of Ernest Sands Road between U.S. Highway 1 and the FEC railroad.

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 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 beverages, alcohol or otherwise, shall be strictly prohibited outside of the existing building and the proposed fenced yard.

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 project will not cause adverse impacts to the adjacent properties with respect to the above described items.

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.

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 adjacent properties with regard to function.

Staff analysis: The parcel is a portion of a developed commercial property that is not adjacent to residential development. During site plan review, the proposed fenced doggy play area will need to comply with the county's 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 should not cause diminution in value.

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 proposed property has existing ingress/egress facilities that were certified to meet county standards with respect to vehicular circulation, emergency response, and pedestrian safety.

Staff analysis: This project has two access points identified on the concept plan. The change of use is anticipated to increase traffic needs for this site.

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 adverse impacts to the adjacent properties is expected due to the proposed conditional use.

Staff analysis: This project shall comply 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: Proposed use shall comply with all noise ordinances.

Staff analysis: The concept plan's "noise standards" will be reviewed as part of the site plan review process. Proposed outside fenced doggy play area must comply with the 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 require the level of service to increase.

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 exceed the allotted design service level for potable water or waste water.

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 proposed conditional use is part of an existing commercial complex, the buffering and landscaping are existing and will not cause adverse impacts with regard to lighting or noise.

Staff analysis: As the project covers only a small portion of the overall site and is located at the extreme northern end behind the existing building and abutting an existing retention pond no screening or buffering has been identified on the concept plan, just a fenced area placed to the property line. 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: No new signs or lighting are proposed as a result of the proposed conditional use.

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 hours of operation are consistent with the existing commercial complex.

Staff analysis: The hours of operation has not been specified. 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 additional mitigation for offsite impacts.

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 structure is existing. The proposed conditional use will not modify the existing structure height.

Staff analysis: The existing commercial complex and the proposed fence doggy play area appear to meet height limitations identified in the Code.

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 parking modifications are proposed. The existing and permitted use requires 22 parking spaces. The proposed conditional use proposes +/- 700 square feet of office space (3-spaces), +/- 1,900 square feet of cocktail/entertainment space (19-spaces) and +/- 1,200 square feet of dog park (no spaces). There are no spaces assigned to the dog park since the patrons utilizing the dog park shall utilize the cocktail (sitting) area as well. Total spaces for the proposed conditional use is 22-parking spaces which is congruent with the existing permitted use.

Staff analysis: The CUP concept plan does not identify the total number of existing parking spaces. Parking for warehouse use is calculated in Section 62-3206 (d) (18) of Brevard County Code. This section states: "Lumber yards, manufacturing and warehouses: One space per each 500 square feet of floor space. Building units having a minimum of 50 square feet and not exceeding 200 square feet, whose primary purpose is to provide an address for a business tax receipt, parking shall be one space per unit." Section 62-3206 (d) (6) states: "Business complex: Consisting of a mix of office, retail, wholesale stores, recreational areas, warehousing, manufacturing, light industrial, or scientific research functions shall provide one space per 325 square foot total." Section 62-3206 (d) (29) states: "Restaurants, cocktail lounges and other eating and drinking establishments: one space for every 100 square feet of gross floor area of the building including outdoor seating." Based upon a 2,800 square foot unit, the proposed parking threshold would be for 28 parking spaces. The Board may require that the applicant obtain a shared parking agreement with the owner to verify that available parking needs have been met.

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 Suntree, between Wickham Road and U.S. Highway 1, which has a Maximum Acceptable Volume (MAV) of 19,451 trips per day, a Level of Service (LOS) of E, and currently operates at 86.01% of capacity daily. The maximum development potential from the proposed CUP request increases the percentage of MAV utilization by 0.02%. The corridor is anticipated to operate at 86.03% of capacity daily (LOS E). 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.

For Board Consideration

The Board may wish to consider parking requirements and 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.