



Planning & Development Department  
2725 Judge Fran Jamieson Way  
Building A, Room 114  
Viera, Florida 32940  
(321) 633-2069

**BOARD OF COUNTY COMMISSIONERS**

TO: Planning & Zoning Board Members  
FROM: Cindy Fox, Planning & Zoning Manager  
SUBJ: Administrative Rezoning Planning and Zoning Staff Comments  
March 9, 2015  
DATE: February 5, 2015

Brevard County is seeking the administrative rezoning of the following properties to achieve consistency with the Future Land Use Element of the Comprehensive Plan. Pursuant to Objective 15 of the Future Land Use Element, "Brevard County shall eliminate inconsistencies between the Comprehensive Plan and the zoning regulations of the Land Development Regulations", and pursuant to Policies 15.1, 15.2, and 15.3

**DISTRICT 2**

**III.C.1. (15PZ00012) Section 35, Township 24, Range 36, Sub. 30, Parcel C, C.01 and 269  
Tax ID #s 2426933, 2444628 & 2444798**

CURRENT ZONING: PUD (Planned Unit Development)

PROPOSED ZONING: GML(H) (Government Managed Lands – High Intensity)

The subject property is designated "Public Facility" on the Future Land Use Map. The existing zoning classification of PUD is not consistent with the Future Land Use Designation and requires rezoning to GML(H) pursuant to Policies 15.1-15.3 of the Future Land Use Element of Brevard County's Comprehensive Plan.

The GML (H) designation permits ports and related activities. The subject property is part of the Stan Mayfield Working Waterfronts program of the State of Florida

"Working Waterfront" is defined in Chapter 380.503(18) Florida Statutes as: (a) A parcel or parcels of land directly used for the purposes of the commercial harvest of marine organisms or saltwater products by state-licensed commercial fishermen, aquaculturists, or business entities, including piers, wharves, docks, or other facilities operated to provide waterfront access to licensed commercial fishermen, aquaculturists, or business entities; or (b) A parcel or parcels of land used for exhibitions, demonstrations, educational venues, civic events, and other purposes that promote and educate the public about economic, cultural, and historic heritage of Florida's traditional working waterfronts, including the marketing of the seafood and aquaculture industries.

**III. PUBLIC HEARINGS  
B. PORT ST. JOHN AGENDA**

**WEDNESDAY, MARCH 11, 2015 – 6:00 P.M.**

Port St. John Library  
6500 Carole Ave., Port St. John, Florida

&

**BOARD OF COUNTY COMMISSIONERS  
THURSDAY, APRIL 2, 2015 – 5:00 P.M.**

at the  
Brevard County Government Center  
2725 Judge Fran Jamieson Way, Bldg. C, Viera, FL

The Board of County Commissioners may approve or deny the requested classification, or may approve a classification of lesser intensity than that requested.

**DISTRICT 1**

**III.B.1. (14PZ-00122) – GLEN E. AND DAWN M. SPACE – (Krupal Patel) – request a CUP (Conditional Use Permit) for Alcoholic Beverages (beer & wine only) for On Premises Consumption in Conjunction with a Restaurant, in a BU-1-A (Restricted Neighborhood Retail Commercial) zoning classification, on 0.8 acres, Located on the northwest corner of Fay Blvd., and Arabella Lane (926 Fay Blvd., Port St. John)**

PSJ Recommendation:

**BCC ACTION:**

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The following comments are compiled by the Planning and Zoning staff and are reflections of a combination of technical reviews. These are presented to the Planning and Zoning Board and the Board of County Commissioners as a collection of known facts surrounding each proposal and their relationship to the policies of the Comprehensive Plan. It is hoped that these known facts and policy statements will assist each member in their individual decision-making efforts as additional information is received through the public hearing process. The material contained in these comments will be provided to the Commissioners in staff briefings. Any matter discussed in staff briefings not contained in this review will be disclosed at the Board of County Commissioners meeting.

**STAFF COMMENTS PREPARED BY:**

Planning & Zoning Office  
NATURAL RESOURCES MANAGEMENT DEPARTMENT

**Legend of Terms:**

FLU Map - Future Land Use Map of Comprehensive Plan  
FLUE - Future Land Use Element

## **ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT**

Administrative Policies in the Future Land Use Element establish the expertise of staff with regard to zoning and land use issues and set forth criteria when considering a rezoning action or request for Conditional Use Permit, as follows:

### **Administrative Policy 1**

The Brevard County zoning official, planners and the director of the planning and zoning staff, however designated, are recognized as expert witnesses for the purposes of Comprehensive Plan amendments as well as zoning, conditional use, special exception and variance applications.

### **Administrative Policy 2**

Upon Board request, members of the Brevard County planning and zoning staff shall be required to present written analysis and a recommendation, which shall constitute an expert opinion, on all applications for zoning, conditional uses, comprehensive plan appeals, vested rights or other applications for development approval that come before the Board of County Commissioners for quasi-judicial review and action. The Board may table an item if additional time is required to obtain the analysis requested or to hire an expert witness if the Board deems such action appropriate. Staff input may include the following:

#### **Criteria:**

- A. Staff shall analyze an application for consistency or compliance with comprehensive plan policies, zoning approval criteria and other applicable written standards.
- B. Staff shall conduct site visits of property which are the subject of analysis and recommendation. As part of the site visit, the staff shall take a videotape or photographs where helpful to the analysis and conduct an inventory of surrounding existing uses. Aerial photographs shall also be used where they would aid in an understanding of the issues of the case.
- C. In cases where staff analysis is required, both the applicant and the staff shall present proposed findings of fact for consideration by the Board.
- D. For re-zoning applications where a specific use has not been proposed, the worst case adverse impacts of potential uses available under the applicable land use classification shall be evaluated by the staff.

### **Administrative Policy 3**

Compatibility with existing or proposed land uses shall be a factor in determining where a rezoning or any application involving a specific proposed use is being considered. Compatibility shall be evaluated by considering the following factors, at a minimum:

#### **Criteria:**

- A. Whether the proposed use(s) would have hours of operation, lighting, odor, noise levels, traffic, or site activity that would significantly diminish the enjoyment of, safety or quality of life in existing neighborhoods within the area which could foreseeably be affected by the proposed use;

- B. Whether the proposed use(s) would cause a material reduction (five per cent or more) in the value of existing abutting lands or approved development.
- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through an analysis of:
  - 1. historical land use patterns;
  - 2. actual development over the immediately preceding three years; and
  - 3. development approved within the past three years but not yet constructed.
- D. Whether the proposed use(s) would result in a material violation of relevant policies in any elements of the Comprehensive Plan.

**Administrative Policy 4**

Character of a neighborhood or area shall be a factor for consideration whenever a rezoning or any application involving a specific proposed use is reviewed. The character of the area must not be materially or adversely affected by the proposed rezoning or land use application. In evaluating the character of an area, the following factors shall be considered:

**Criteria:**

- A. The proposed use must not materially and adversely impact an established residential neighborhood by introducing types or intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, etc.), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.
- B. In determining whether an established residential neighborhood exists, the following factors must be present:
  - 1. The area must have clearly established boundaries, such as roads, open spaces, rivers, lakes, lagoons, or similar features.
  - 2. Sporadic or occasional neighborhood commercial uses shall not preclude the existence of an existing residential neighborhood, particularly if the commercial use is non-conforming or pre-dates the surrounding residential use.
  - 3. An area shall be presumed not to be primarily residential but shall be deemed transitional where multiple commercial, industrial or other non-residential uses have been applied for and approved during the previous five (5) years.

**Administrative Policy 5**

In addition to the factors specified in Administrative Policies 2, 3, and 4, in reviewing a rezoning, conditional use permit or other application for development approval, the impact of the proposed use or uses on transportation facilities either serving the site or impacted by the use(s) shall be considered. In evaluating whether substantial and adverse transportation impacts are likely to result if an application is approved, the staff shall consider the following criteria:

**Criteria:**

- A. Whether adopted levels of service will be compromised;
- B. Whether the physical quality of the existing road system that will serve the proposed use(s) is sufficient to support the use(s) without significant deterioration;
- C. Whether the surrounding existing road system is of sufficient width and construction quality to serve the proposed use(s) without the need for substantial public improvements;
- D. Whether the surrounding existing road system is of such width and construction quality that the proposed use(s) would realistically pose a potential for material danger to public safety in the surrounding area;
- E. Whether the proposed use(s) would be likely to result in such a material and adverse change in traffic capacity of a road or roads in the surrounding area such that either design capacities would be significantly exceeded or a de facto change in functional classification would result;
- F. Whether the proposed use(s) would cause such material and adverse changes in the types of traffic that would be generated on the surrounding road system, that physical deterioration of the surrounding road system would be likely;
- G. Whether projected traffic impacts of the proposed use(s) would materially and adversely impact the safety or welfare of residents in existing residential neighborhoods.

#### **Administrative Policy 6**

The use(s) proposed under the rezoning, conditional use or other application for development approval must be consistent with (a) all written land development policies set forth in these administrative policies; and (b) the future land use element, coastal management element, conservation element, potable water element, sanitary sewer element, solid waste management element, capital improvements element, recreation and open space element, surface water element and transportation elements of the comprehensive plan.

#### **Administrative Policy 7**

Proposed use(s) shall not cause or substantially aggravate any (a) substantial drainage problem on surrounding properties; or (b) significant, adverse and unmitigatable impact on significant natural wetlands, water bodies or habitat for listed species.

#### **Administrative Policy 8**

These policies, the staff analysis based upon these policies and the applicant's written analysis, if any, shall be incorporated into the record of every quasi-judicial review application for development approval presented to the Board including rezoning, conditional use permits and vested rights determinations."

Section 62-1151 (c) of the Code of Ordinances of Brevard County directs ..... "The planning and zoning board shall recommend to the board of county commissioners the denial or approval of each application for amendment to the official zoning maps based upon a consideration of the following factors:

- (1) The character of the land use of the property surrounding the property being considered.
- (2) The change in conditions of the land use of the property being considered and the surrounding property since the establishment of the current applicable zoning classification, special use or conditional use.
- (3) The impact of the proposed zoning classification or conditional use on available and projected traffic patterns, water and sewer systems, other public facilities and utilities and the established character of the surrounding property.
- (4) The compatibility of the proposed zoning classification or conditional use with existing land use plans for the affected area.
- (5) The appropriateness of the proposed zoning classification or conditional use based upon a consideration of the applicable provisions and conditions contained in this article and other applicable laws, ordinances and regulations relating to zoning and land use regulations and based upon a consideration of the public health, safety and welfare.

The minutes of the planning and zoning board shall specify the reasons for the recommendation of approval or denial of each application."

### **CONDITIONAL USE PERMITS (CUPs)**

In addition to the specific requirements for each Conditional Use Permit (CUP), Section 62-1901 provides that the following approval procedure and general standards of review are to be applied to all CUP requests, as applicable.

- (b) *Approval procedure.* An application for a specific conditional use within the applicable zoning classification shall be submitted and considered in the same manner and according to the same procedure as an amendment to the official zoning map as specified in section 62-1151. 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. If the applicant meets its initial burden, then the Board has the burden to show, by substantial and competent evidence, that the applicant has failed to meet such standards and the request is adverse to the public interest. As part of the approval of the conditional use permit, the Board may prescribe appropriate and reasonable conditions and safeguards to reduce the impact of the proposed use on adjacent and nearby properties or the neighborhood. A nearby property, for the purpose of this section, is defined as any property which, because of the character of the proposed use, lies within the area which may be substantially and adversely impacted by such use...

...In stating grounds in support of an application for a conditional use permit, it is necessary to show how the request fulfills both the general and specific standards for review. The applicant must show the effect the granting of the conditional use permit will have on adjacent and nearby properties, including, but not limited to traffic and pedestrian flow and safety, curb-cuts, off-street loading and parking, off-street pickup of passengers, odor, glare and noise, particulates, smoke, fumes and other emissions, refuse and service areas, drainage, screening and buffering for protection of adjacent and nearby properties, and open space and economic impact on nearby properties. The applicant, at his discretion, may choose to present expert testimony where necessary to show the effect of granting the conditional use permit.

- (c) *General standards of review.*

- (1) The planning and zoning board and the board of county commissioners shall base the denial or approval of each application for a conditional use based upon a consideration of the factors specified in section 62-1151(c) plus a determination that the following general standards are satisfied. The Board shall make the determination whether an application meets the intent of this section.
- 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.
  - 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.

- c. The proposed use will not cause a substantial diminution in value of abutting residential property. A substantial diminution shall be irrebuttably presumed to have occurred if abutting property suffers a 15% reduction in value as a result of the proposed conditional use. A reduction of 10% of the value of abutting property shall create a rebuttable 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.
- (2) The following specific standards shall be considered, when applicable, in making a determination that the general standards specified in subsection (1) of this section are satisfied:
- 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. Burdening adjacent and nearby uses means increasing existing traffic on the closest collector or arterial road by more than 20%, or 10% 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 Brevard 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.
  - 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.
  - c. Noise levels for a conditional use are governed by section 62-2271.
  - 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.
  - 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.
  - 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.

- 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.
- 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.
- 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 thirty-five (35) feet higher than the highest residence within 1000 feet of the property line.
- 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.

#### **FACTORS TO CONSIDER FOR A REZONING REQUEST**

Section 62-1151(c) sets forth factors to consider in connection with a rezoning request, as follows:

“...The planning and zoning board shall recommend to the board of county commissioners the denial or approval of each application for amendment to the official zoning maps based upon a consideration of the following factors:

- (1) The character of the land use of the property surrounding the property being considered.
- (2) The change in conditions of the land use of the property being considered and the surrounding property since the establishment of the current applicable zoning classification, special use or conditional use.
- (3) The impact of the proposed zoning classification or conditional use on available and projected traffic patterns, water and sewer systems, other public facilities and utilities and the established character of the surrounding property.
- (4) The compatibility of the proposed zoning classification or conditional use with existing land use plans for the affected area.
- (5) The appropriateness of the proposed zoning classification or conditional use based upon a consideration of the applicable provisions and conditions contained in this article and other applicable laws, ordinances and regulations relating to zoning and land use regulations and based upon a consideration of the public health, safety and welfare...”

These staff comments contain references to zoning classifications found in the Brevard County Zoning Regulations, Chapter 62, Article VI, Code of Ordinances of Brevard County. These references include brief summaries of some of the characteristics of that zoning classification. Reference to each zoning classification shall be deemed to incorporate the full text of the section or sections defining and regulating that classification into the Zoning file and Public Record for that item.

These staff comments contain references to sections of the Code of Ordinances of Brevard County. Reference to each code section shall be deemed to incorporate the section into the Zoning file and Public Record for that item.

These staff comments contain references to Policies of the Brevard County Brevard County Comprehensive Plan. Reference to each Policy shall be deemed to incorporate the entire Policy into the Zoning file and Public Record for that item.

These staff comments refer to previous zoning actions which are part of the Public Records of Brevard County, Florida. These records will be referred to by reference to the file number. Reference to zoning files are intended to make the entire contents of the cited file a part of the Zoning file and Public Record for that item.

#### DEFINITIONS OF CONCURRENCY TERMS

**Maximum Acceptable Volume (MAV):** Maximum acceptable daily volume that a roadway can carry at the adopted Level of Service (LOS).

**Current Volume:** Building permit related trips added to the latest MPO traffic counts.

**Volume with Development (VOL W/DEV.):** Equals Current Volume plus trip generation projected for the proposed development.

**Volume/Maximum Acceptable Volume (VOL/MAV):** Equals the ratio of current traffic volume to the maximum acceptable roadway volume.

**Volume/Maximum Acceptable Volume with Development (VOL/MAV W/DEV):** Ratio of volume with development to the Maximum Acceptable Volume.

**Acceptable Level of Service (ALOS):** Acceptable Level of Service currently adopted by the County.

**Current Level of Service (CURRENT LOS):** The Level of Service at which a roadway is currently operating.

**Level of Service with Development (LOS W/DEV):** The LOS that a proposed development may generate on a roadway.

**III.B.2.**

**Commission District # 2 (15PZ00004)**  
**Initial Hearing Dates: P&Z 03/09/15 BCC 04/02/15**

**REZONING REVIEW WORKSHEET**

**Applicant Name: PRN INVESTMENTS**

**Request: CUP for Alcoholic Beverages (beer & wine only) for On-Premises Consumption in Conjunction with a Restaurant in a BU-2 zoning classification**

**Subject Property:**

**Parcel ID#: 24-36-36-25-00-10.01**  
**Tax Acct#: 2428256**  
**Location: North side E. Merritt Island Cswy., approx. 0.18 mile east of Plumosa St.**  
**Address: 700 E. Merritt Island Cswy., Ste 205, Merritt Island**  
**Acreage: 0.06 acres**

**Consistency with Land Use Regulations**

- YES Current zoning can be considered under the Future Land Use Designation. Sec. 62-1255
- YES Proposal can be considered under the Future Land Use Designation. Sec. 62-1255
- YES Would proposal maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Zoning</b>	BU-2	BU-2 with CUP for on-premises consumption of Alcohol
<b>Potential*</b>	2,346 s.f. 88 Seat Restaurant	2,346 s.f. 68 Seat Restaurant
<b>Can be Considered under FLU MAP</b>	YES COMMUNITY COMMERCIAL	YES

\*Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations.

	<b>ADT</b>	<b>PM Peak</b>		
Trips from Existing Zoning	425	36	Segment Number	110
Trips from Proposed Zoning	328	28	Segment Name	Plumosa to Sykes Creek Pkwy
Maximum Acceptable Volume (MAV)	31,255	2,844.2	Acceptable LOS	E
Current Volume	14,410	1,311.3	Directional Split	
Volume With Proposed Development	14,313	1,302.5	ITE CODE 932 68 seat restaurant	
Current Volume / MAV	46.10%	46.1%		
Volume / MAV with Proposal	45.79%	45.8%		
Current LOS	D	D		
LOS With Proposal	D	D		

## Land Use Compatibility

FLUE Policy 1.1 requires consideration of land use compatibility and character of the area.

This request is for a Conditional Use Permit for the on-premises consumption of alcohol in conjunction with a restaurant in the BU-2 zoning classification. The BU-2 zoning classification permits retail, wholesale and warehousing commercial land uses on minimum 7,500 square foot lots. The surrounding properties are also zoned BU-2 with BU-1 zoning to the north. 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. This area of Merritt Island is characterized by commercialized S.R. 520 corridor. The Board should evaluate the compatibility of this application within the context of Administrative Policies 2 - 8 of the Future Land Use Element, as outlined on pages 2 through 5 of these staff comments.

## Environmental Constraints

NA

**Other Considerations:** This request is for a Conditional Use Permit (CUP) for the on-premises consumption of alcohol (beer and wine) accessory to a 62 seat restaurant. The proposed restaurant will occupy unit #205, approximately 2,346 square feet, of the existing 15,910 square foot retail strip center located on the north side of S.R. 520 constructed in 1983.

The applicant indicated that there will be 62 seats inside and has provided an exhibit showing the proposed layout seating arrangement. The Land Development Regulations require one parking space for every 100 square feet of the establishment. Therefore, the proposed restaurant square footage requires 23 parking spaces. Consistency with this requirement is attainable since the existing strip center has approximately 80 parking spaces. Section 62-1906 requires that no alcoholic beverages shall be served within 300 feet of a church or school. There are no churches or schools within 300 feet of the proposed restaurant.

Historically, one unit of this five unit retail strip center had a Conditional Use Permit for the on-premises consumption of alcohol approved in August 1994 (Z-9356). It was removed after the restaurant closed in 2003 [Z-10847(10)].

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 6-9 of these comments. 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. The applicant's responses are indicated in **bold** and staff observations are provided in *italics*.

### Section 62-1901(c)(1)(a) Impact upon adjacent and nearby properties from the proposed use:

Number of persons using property;  
Noise, odor, particulates, smoke, fumes and other emissions; and  
Increase in traffic within the vicinity.

**The conditional use permit is not going to impact the area because everything is going to be inside. No noise, odor, smoke fumes will impact people in the area. It is a family restaurant.**

### Section 62-1901(c)(1)(b) Compatibility with the character of adjacent and nearby properties with regard to use:

Adjacent properties;  
Operating hours;  
Amount of traffic generated;  
Building size and setbacks; and

Parking availability.

**This is an existing building. Surrounded by commercial businesses. My unit is a restaurant. We just want to be able to serve alcohol for customers to come in to have a nice dinner and enjoy a glass of wine with their meal.**

Section 62-1901(c)(1)(c) Impact upon property values of abutting residential properties:  
**Restaurant use of alcohol should not impact property value.**

Section 62-1901(c)(2)(a) Adequacy of ingress and egress to serve the use without burdening adjacent and nearby uses:  
**Access points are existing and abut Highway 520.**

Section 62-1901(c)(2)(b) Noise, glare, odor, particulates, smoke, fumes, etc.:  
**This will be inside restaurant so it's should not have noise, glare, odor and smoke.**

Section 62-1901(c)(2)(c) Actual Noise Levels:  
**Everything will be inside noise level will be low.**

Section 62-1901(c)(2)(d) Impact upon solid waste disposal level of service:  
**We are not expecting anymore garbage odor existing use of the restaurant.**

Section 62-1901(c)(2)(e) Impact upon potable water and waste water levels of service:  
**We're not expecting any extra water than normal.**

Section 62-1901(c)(2)(f) Screening and buffering:  
**This is existing restaurants that in front of the highway 520 and we are not proposing anything to be outside.**

Section 62-1901(c)(2)(g) Signage and glare from lighting:  
**New sign will be county code and we are not having any exterior light.**

Section 62-1901(c)(2)(h) Hours of operation:  
**Monday through Saturday 11-3 p.m. and 4-10 p.m.; Sunday 12-9 p.m.**

Section 62-1901(c)(2)(l) Height of proposed use:  
**Using existing building.**  
*The existing building is one story.*

Section 62-1901(c)(2)(J) Impact of off-street parking and loading areas upon adjacent properties:  
**Using existing parking lot all on site.**

This request should be evaluated in the context of **Section 62-1906** which governs alcoholic beverages for the on-premises consumption of alcohol 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 certified survey has been provided by the Applicant demonstrates that there are no schools, churches or daycares within 400' of the establishment.*

- 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 on-premises consumption of alcoholic beverages. 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.

**Summary:** The request is for a Conditional Use Permit (CUP) for the on-premises consumption of alcohol (beer and wine) accessory to a 62 seat restaurant. The proposed restaurant will occupy unit #205, approximately 2,346 square feet, of the existing 15,910 square foot retail strip center located on the north side of S.R. 520 constructed in 1983.

The applicant indicates that there will be 62 seats inside and has provided an exhibit showing the proposed layout seating arrangement. The Land Development Regulations require one parking space for every 100 square feet of the establishment. Therefore, the proposed restaurant square footage requires 23 parking spaces. Consistency with this requirement is attainable since the existing strip center has approximately 80 parking spaces. Section 62-1906 requires that no alcoholic beverages shall be served within 300 feet of a church or school. There are no churches or schools within 300 feet of the proposed restaurant.

Historically, one unit of this five unit retail strip center had a Conditional Use Permit for the on-premises consumption of alcohol approved in August 1994 (Z-9356). It was removed after the restaurant closed in 2003 [Z-10847(10)].

**III.B.3.**

**Commission District # 2 (14PZ-00110)**  
**Initial Hearing Dates: P&Z 03/09/15 BCC 04/02/15**

**REZONING REVIEW WORKSHEET**

**Applicant Name: SHIRLEY P. & CLARENCE E. WATKINS, AND GEORGE E. (JR.) & MELODY M. MORSE**

**Request: GU to RU-1-11 with BDP limited to 14 Single-Family Homes**

**Subject Property:**

**Parcel ID#: 24-37-30-00-1**  
**Tax Acct#: 2437347**  
**Location: Terminus of Yount Dr., approx. 0.12 mile east of N. Banana River Dr.**  
**Address: 1580 Carmen St., Merritt Island**  
**Acreage: 15.2 acres.**

**Consistency with Land Use Regulations**

- YES Current zoning can be considered under the Future Land Use Designation. Sec. 62-1255
- YES Proposal can be considered under the Future Land Use Designation. Sec. 62-1255
- YES Would proposal maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Zoning</b>	GU	RU-1-11
<b>Potential*</b>	3 Units	14 SFR dwellings
<b>Can be Considered under FLU MAP</b>	YES RESIDENTIAL 1	YES

\*Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations.

	<b>ADT</b>	<b>PM Peak</b>		
Trips from Existing Zoning	9.57	1.01	Segment Number	107
Trips from Proposed Zoning	134	14.14	Segment Name	Sykes Creek Pkwy to Bayside
Maximum Acceptable Volume (MAV)	15,600	1,419.6	Acceptable LOS	D
Current Volume	12,110	1,102	Directional Split	
Volume With Proposed Development	12,244	1,116.14	ITE CODE 210 Increase from 1 SFR dwelling unit to 14 SFR dwelling units	
Current Volume / MAV	77.62%	77.62%		
Volume / MAV with Proposal	78.48%	78.62%		
Current LOS	D	D		
LOS With Proposal	D	D		

**Land Use Compatibility**

FLUE Policy 1.1 requires consideration of land use compatibility and character of the area.

The request is for the RU-1-11 zoning classification. The RU-1-11 classification permits single family residences on minimum 7,500 square foot lots, with a minimum width and depth of 75 feet. The minimum house size is 1,100 square feet. RU-1-11 does not permit horses, barns or horticulture. The surrounding properties are zoned GU to the north and south with the Banana River to the east and RU-1-11 to the west. The GU classification is a holding category, allowing single-family residences on five acre lots with a minimum width and depth of 300 feet. The minimum house size in GU is 750 square feet. This area of east Merritt Island is characterized by single-family development on lots consisting of .20 acre or more in area. The Board should evaluate the compatibility of this application within the context of Administrative Policies 2 - 8 of the Future Land Use Element, as outlined on pages 2 through 5 of these staff comments.

**Environmental Constraints**

\* Does the project appear to meet county use or density restrictions based upon:  
 \* Refer to NRM's comments following these staff comments.

The following environmental factors may affect development potential (Policies 1.1.A, II.2.E, and 3.1.F, of the Future Land Use Element):

Environmental Factor	Preliminary Assessment of Factor	Environmental Factor	Preliminary Assessment of Factor
Hydric Soils	NMI/SJRWMD Wetlands Mapped	Coastal Protection	NA
Aquifer Recharge Soils	Mapped	Surface Water Protection	Aquatic Preserve/Class III
Floodplains	Mapped	Habitat for Protected Species	Potential

Note: This is a preliminary review based upon environmental maps available to the Natural Resources Management Department (NRM) at the time of this review and does not include a site inspection to verify the accuracy of this information. This review does not ensure whether a proposed use or development of the property can be permitted under current federal, state or local regulations. Hydric Soils may be associated with wetlands. If applicable, the full text of NRM's comments follow these staff comments.

**Other Considerations:** This request represents the applicants' desire to develop the subject property with 14 single-family homes. The subject property is a 15.2 acre portion of a 26 acre parent parcel located on the east side of Merritt Island near the Banana River where the overall character of the area is single-family home development.

The GU (General Use) zoning classification would allow three single-family homes to be constructed. Since, the applicants are proposing 14 single-family homes to be built on the subject property, the applicants indicate that the proposed development of homes will be similar to those that exist on the western portion of Yount Drive with similar lot sizes and setbacks.

As part of this request, a School Facility Planning and Concurrency Application for the subject property has been made to the Brevard County School Board, however the School Board's adopted Public School District ILA does not require the applicant to submit a preliminary review under the De Minimus exemption (less than 50 units potential increase and not a large scale amendment). The applicant will be required to submit a school concurrency application when they apply for a site plan, plat, or other specific development plan.

**Summary:** The applicants are requesting rezoning to RU-1-11 for the purposes of developing 14 single-family homes at the terminus of Yount Drive. The applicants indicate that the proposed development will be similar to the single-family home development that exists on the western portion of Yount Drive.

A School Facility Planning and Concurrency Application for the subject property has been made to the Brevard County School Board, however the School Board's adopted Public School District ILA does not require the applicant to submit a preliminary review under the De Minimus exemption (less than 50 units potential increase

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March 9, 2015  
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and not a large scale amendment). The applicant will be required to submit a school concurrency application when they apply for a site plan, plat, or other specific development plan.

This area of east Merritt Island is characterized by single-family development on lots consisting of .20 acre or more in area. RU-1-11 zoning classification is prevalent in this area.

**NATURAL RESOURCES MANAGEMENT DEPARTMENT**  
**Rezoning Review**  
**SUMMARY**

<b>Item #: 14PZ-00110</b>	<b>Owner: Shirley &amp; Clarence Watkins</b>
<b>Zoning Request: Res-1 to Res-4 and GU to RU-1-11</b>	
<b>P &amp; Z Hearing Date: 02/09/15</b>	<b>BCC Hearing Date: 03/05/15</b>

This is a preliminary review based on environmental maps available to the Natural Resources Management Department (NRM) at the time of this review and does not include a site inspection to verify the accuracy of this information. This review does not ensure whether or not a proposed use, specific site design, or development of the property can be permitted under current Federal, State, or County Regulations. In that this process is not the appropriate venue for site plan review, specific site designs that may be submitted with the rezoning will be deemed conceptual and any comments or omissions relative to specific site design do not provide vested rights or waivers from these regulations, unless specifically requested by the owner and approved by the Board of County Commissioners. If the owner has any questions regarding this information, he/she is encouraged to contact NRM prior to submittal of any development or construction plans.

Natural Resource	Preliminary Assessment	Natural Resource	Preliminary Assessment
Wetlands Potential/Hydric Soils	NWI/SJRWMD wetlands mapped	Coastal Protection	N/A
Aquifer Recharge Soils	Mapped	Surface Waters	Aquatic Preserve/Class III
Floodplains	Mapped	Wildlife	Potential

**Comments:**

**This review relates to a portion of the following property: Twp. 24, Rng. 37, Sec. 30; Tax ID No. 2437347**

The subject parcel contains mapped NWI and SJRWMD wetlands, an indicator that wetlands may be present on the property. Per Section 62-3694(c)(1), residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. For subdivisions greater than five acres in area, the preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total non-commercial and non-industrial acreage on a cumulative basis as set forth in Sec. 65-3694(c)(6). The applicant is encouraged to contact NRM prior to any plan or permit submittal.

The subject parcel contains mapped aquifer recharge soils. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

A portion of the property is mapped as being within floodplain as identified by the Federal Emergency Management Agency; and is subject to the development criteria in Conservation Objective 4, its subsequent policies, and the Floodplain Ordinance.

The property is located on an Aquatic Preserve/Outstanding FL Water on the eastern shoreline; and Class III waters on the north and south dredged canal shorelines. A 50-foot surface water protection buffer is required on the Aquatic Preserve/Outstanding FL Water; and a 25-foot buffer along the Class III shorelines. Certain development is permissible in the buffer with engineered stormwater management. The applicant is encouraged to contact NRM prior to any plan or permit submittal.

Information available to NRM indicates that federally and/or state protected species may be present on the properties. The applicant should obtain any necessary permits from the U.S. Fish and Wildlife Service (904-232-2580) and the Florida Fish and Wildlife Conservation Commission (352-732-1225).

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The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for preservation and canopy coverage requirements. Land clearing is not permitted without prior authorization by NRM.



**Planning & Development Department**  
2725 Judge Fran Jamieson Way  
Building A, Room 114  
Viera, Florida 32940  
(321) 633-2069

**BOARD OF COUNTY COMMISSIONERS**

TO: Port St. John Dependent Special District Board Members

FROM: Cindy Fox, Planning & Zoning Manager

SUBJ: Planning and Zoning Staff Comments  
March 11, 2015

DATE: February 10, 2015

The following comments are compiled by the Planning and Zoning staff and are reflections of a combination of technical reviews. These are presented to the Port S. John Dependent Special District Board and the Board of County Commissioners as a collection of known facts surrounding each proposal and their relationship to the policies of the Comprehensive Plan. It is hoped that these known facts and policy statements will assist each member in their individual decision-making efforts as additional information is received through the public hearing process. The material contained in these comments will be provided to the Commissioners in staff briefings. Any matter discussed in staff briefings not contained in this review will be disclosed at the Board of County Commissioners meeting.

**STAFF COMMENTS PREPARED BY:**

Planning & Zoning Office  
NATURAL RESOURCES MANAGEMENT DEPARTMENT

**Legend of Terms:**

FLU Map - Future Land Use Map of Comprehensive Plan  
FLUE - Future Land Use Element

## **ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT**

Administrative Policies in the Future Land Use Element establish the expertise of staff with regard to zoning and land use issues and set forth criteria when considering a rezoning action or request for Conditional Use Permit, as follows:

### **Administrative Policy 1**

The Brevard County zoning official, planners and the director of the planning and zoning staff, however designated, are recognized as expert witnesses for the purposes of Comprehensive Plan amendments as well as zoning, conditional use, special exception and variance applications.

### **Administrative Policy 2**

Upon Board request, members of the Brevard County planning and zoning staff shall be required to present written analysis and a recommendation, which shall constitute an expert opinion, on all applications for zoning, conditional uses, comprehensive plan appeals, vested rights or other applications for development approval that come before the Board of County Commissioners for quasi-judicial review and action. The Board may table an item if additional time is required to obtain the analysis requested or to hire an expert witness if the Board deems such action appropriate. Staff input may include the following:

#### **Criteria:**

- A. Staff shall analyze an application for consistency or compliance with comprehensive plan policies, zoning approval criteria and other applicable written standards.
- B. Staff shall conduct site visits of property which are the subject of analysis and recommendation. As part of the site visit, the staff shall take a videotape or photographs where helpful to the analysis and conduct an inventory of surrounding existing uses. Aerial photographs shall also be used where they would aid in an understanding of the issues of the case.
- C. In cases where staff analysis is required, both the applicant and the staff shall present proposed findings of fact for consideration by the Board.
- D. For re-zoning applications where a specific use has not been proposed, the worst case adverse impacts of potential uses available under the applicable land use classification shall be evaluated by the staff.

### **Administrative Policy 3**

Compatibility with existing or proposed land uses shall be a factor in determining where a rezoning or any application involving a specific proposed use is being considered. Compatibility shall be evaluated by considering the following factors, at a minimum:

#### **Criteria:**

- A. Whether the proposed use(s) would have hours of operation, lighting, odor, noise levels, traffic, or site activity that would significantly diminish the enjoyment of, safety or quality of life in existing neighborhoods within the area which could foreseeably be affected by the proposed use;

- B. Whether the proposed use(s) would cause a material reduction (five per cent or more) in the value of existing abutting lands or approved development.
- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through an analysis of:
  - 1. historical land use patterns;
  - 2. actual development over the immediately preceding three years; and
  - 3. development approved within the past three years but not yet constructed.
- D. Whether the proposed use(s) would result in a material violation of relevant policies in any elements of the Comprehensive Plan.

#### **Administrative Policy 4**

Character of a neighborhood or area shall be a factor for consideration whenever a rezoning or any application involving a specific proposed use is reviewed. The character of the area must not be materially or adversely affected by the proposed rezoning or land use application. In evaluating the character of an area, the following factors shall be considered:

##### **Criteria:**

- A. The proposed use must not materially and adversely impact an established residential neighborhood by introducing types or intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, etc.), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.
- B. In determining whether an established residential neighborhood exists, the following factors must be present:
  - 1. The area must have clearly established boundaries, such as roads, open spaces, rivers, lakes, lagoons, or similar features.
  - 2. Sporadic or occasional neighborhood commercial uses shall not preclude the existence of an existing residential neighborhood, particularly if the commercial use is non-conforming or pre-dates the surrounding residential use.
  - 3. An area shall be presumed not to be primarily residential but shall be deemed transitional where multiple commercial, industrial or other non-residential uses have been applied for and approved during the previous five (5) years.

#### **Administrative Policy 5**

In addition to the factors specified in Administrative Policies 2, 3, and 4, in reviewing a rezoning, conditional use permit or other application for development approval, the impact of the proposed use or uses on transportation facilities either serving the site or impacted by the use(s) shall be considered. In evaluating whether substantial and adverse transportation impacts are likely to result if an application is approved, the staff shall consider the following criteria:

##### **Criteria:**

- A. Whether adopted levels of service will be compromised;
- B. Whether the physical quality of the existing road system that will serve the proposed use(s) is sufficient to support the use(s) without significant deterioration;
- C. Whether the surrounding existing road system is of sufficient width and construction quality to serve the proposed use(s) without the need for substantial public improvements;
- D. Whether the surrounding existing road system is of such width and construction quality that the proposed use(s) would realistically pose a potential for material danger to public safety in the surrounding area;
- E. Whether the proposed use(s) would be likely to result in such a material and adverse change in traffic capacity of a road or roads in the surrounding area such that either design capacities would be significantly exceeded or a de facto change in functional classification would result;
- F. Whether the proposed use(s) would cause such material and adverse changes in the types of traffic that would be generated on the surrounding road system, that physical deterioration of the surrounding road system would be likely;
- G. Whether projected traffic impacts of the proposed use(s) would materially and adversely impact the safety or welfare of residents in existing residential neighborhoods.

**Administrative Policy 6**

The use(s) proposed under the rezoning, conditional use or other application for development approval must be consistent with (a) all written land development policies set forth in these administrative policies; and (b) the future land use element, coastal management element, conservation element, potable water element, sanitary sewer element, solid waste management element, capital improvements element, recreation and open space element, surface water element and transportation elements of the comprehensive plan.

**Administrative Policy 7**

Proposed use(s) shall not cause or substantially aggravate any (a) substantial drainage problem on surrounding properties; or (b) significant, adverse and unmitigatable impact on significant natural wetlands, water bodies or habitat for listed species.

**Administrative Policy 8**

These policies, the staff analysis based upon these policies and the applicant's written analysis, if any, shall be incorporated into the record of every quasi-judicial review application for development approval presented to the Board including rezoning, conditional use permits and vested rights determinations."

Section 62-1151 (c) of the Code of Ordinances of Brevard County directs ..... "The planning and zoning board shall recommend to the board of county commissioners the denial or approval of each application for amendment to the official zoning maps based upon a consideration of the following factors:

- (1) The character of the land use of the property surrounding the property being considered.
- (2) The change in conditions of the land use of the property being considered and the surrounding property since the establishment of the current applicable zoning classification, special use or conditional use.
- (3) The impact of the proposed zoning classification or conditional use on available and projected traffic patterns, water and sewer systems, other public facilities and utilities and the established character of the surrounding property.
- (4) The compatibility of the proposed zoning classification or conditional use with existing land use plans for the affected area.
- (5) The appropriateness of the proposed zoning classification or conditional use based upon a consideration of the applicable provisions and conditions contained in this article and other applicable laws, ordinances and regulations relating to zoning and land use regulations and based upon a consideration of the public health, safety and welfare.

The minutes of the planning and zoning board shall specify the reasons for the recommendation of approval or denial of each application."

### **CONDITIONAL USE PERMITS (CUPs)**

In addition to the specific requirements for each Conditional Use Permit (CUP), Section 62-1901 provides that the following approval procedure and general standards of review are to be applied to all CUP requests, as applicable.

- (b) *Approval procedure.* An application for a specific conditional use within the applicable zoning classification shall be submitted and considered in the same manner and according to the same procedure as an amendment to the official zoning map as specified in section 62-1151. 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. If the applicant meets its initial burden, then the Board has the burden to show, by substantial and competent evidence, that the applicant has failed to meet such standards and the request is adverse to the public interest. As part of the approval of the conditional use permit, the Board may prescribe appropriate and reasonable conditions and safeguards to reduce the impact of the proposed use on adjacent and nearby properties or the neighborhood. A nearby property, for the purpose of this section, is defined as any property which, because of the character of the proposed use, lies within the area which may be substantially and adversely impacted by such use...

...In stating grounds in support of an application for a conditional use permit, it is necessary to show how the request fulfills both the general and specific standards for review. The applicant must show the effect the granting of the conditional use permit will have on adjacent and nearby properties, including, but not limited to traffic and pedestrian flow and safety, curb-cuts, off-street loading and parking, off-street pickup of passengers, odor, glare and noise, particulates, smoke, fumes and other emissions, refuse and service areas, drainage, screening and buffering for protection of adjacent and nearby properties, and open space and economic impact on nearby properties. The applicant, at his discretion, may choose to present expert testimony where necessary to show the effect of granting the conditional use permit.

(c) *General standards of review.*

- (1) The planning and zoning board and the board of county commissioners shall base the denial or approval of each application for a conditional use based upon a consideration of the factors specified in section 62-1151(c) plus a determination that the following general standards are satisfied. The Board shall make the determination whether an application meets the intent of this section.
- 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.
  - 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.

- c. The proposed use will not cause a substantial diminution in value of abutting residential property. A substantial diminution shall be irrebuttably presumed to have occurred if abutting property suffers a 15% reduction in value as a result of the proposed conditional use. A reduction of 10% of the value of abutting property shall create a rebuttable 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.
- (2) The following specific standards shall be considered, when applicable, in making a determination that the general standards specified in subsection (1) of this section are satisfied:
- 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. Burdening adjacent and nearby uses means increasing existing traffic on the closest collector or arterial road by more than 20%, or 10% 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 Brevard 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.
  - 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.
  - c. Noise levels for a conditional use are governed by section 62-2271.
  - 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.
  - 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.
  - 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.

- 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.
- 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.
- 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 thirty-five (35) feet higher than the highest residence within 1000 feet of the property line.
- 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.

#### **FACTORS TO CONSIDER FOR A REZONING REQUEST**

Section 62-1151(c) sets forth factors to consider in connection with a rezoning request, as follows:

“...The planning and zoning board shall recommend to the board of county commissioners the denial or approval of each application for amendment to the official zoning maps based upon a consideration of the following factors:

- (1) The character of the land use of the property surrounding the property being considered.
- (2) The change in conditions of the land use of the property being considered and the surrounding property since the establishment of the current applicable zoning classification, special use or conditional use.
- (3) The impact of the proposed zoning classification or conditional use on available and projected traffic patterns, water and sewer systems, other public facilities and utilities and the established character of the surrounding property.
- (4) The compatibility of the proposed zoning classification or conditional use with existing land use plans for the affected area.
- (5) The appropriateness of the proposed zoning classification or conditional use based upon a consideration of the applicable provisions and conditions contained in this article and other applicable laws, ordinances and regulations relating to zoning and land use regulations and based upon a consideration of the public health, safety and welfare...”

These staff comments contain references to zoning classifications found in the Brevard County Zoning Regulations, Chapter 62, Article VI, Code of Ordinances of Brevard County. These references include brief summaries of some of the characteristics of that zoning classification. Reference to each zoning classification shall be deemed to incorporate the full text of the section or sections defining and regulating that classification into the Zoning file and Public Record for that item.

These staff comments contain references to sections of the Code of Ordinances of Brevard County. Reference to each code section shall be deemed to incorporate the section into the Zoning file and Public Record for that item.

These staff comments contain references to Policies of the Brevard County Brevard County Comprehensive Plan. Reference to each Policy shall be deemed to incorporate the entire Policy into the Zoning file and Public Record for that item.

These staff comments refer to previous zoning actions which are part of the Public Records of Brevard County, Florida. These records will be referred to by reference to the file number. Reference to zoning files are intended to make the entire contents of the cited file a part of the Zoning file and Public Record for that item.

#### DEFINITIONS OF CONCURRENCY TERMS

**Maximum Acceptable Volume (MAV):** Maximum acceptable daily volume that a roadway can carry at the adopted Level of Service (LOS).

**Current Volume:** Building permit related trips added to the latest MPO traffic counts.

**Volume with Development (VOL W/DEV):** Equals Current Volume plus trip generation projected for the proposed development.

**Volume/Maximum Acceptable Volume (VOL/MAV):** Equals the ratio of current traffic volume to the maximum acceptable roadway volume.

**Volume/Maximum Acceptable Volume with Development (VOL/MAV W/DEV):** Ratio of volume with development to the Maximum Acceptable Volume.

**Acceptable Level of Service (ALOS):** Acceptable Level of Service currently adopted by the County.

**Current Level of Service (CURRENT LOS):** The Level of Service at which a roadway is currently operating.

**Level of Service with Development (LOS W/DEV):** The LOS that a proposed development may generate on a roadway.

**III.B.1.**

**Commission District # 1 (14PZ-00122)**  
**Initial Hearing Dates: PSJ 03/11/15 BCC 04/02/15**

**REZONING REVIEW WORKSHEET**

**Applicant Name: GLENN E. AND DAWN M. SPACE**

**Request: CUP for Alcoholic Beverages (beer & wine only) for On-Premises Consumption in Conjunction with a Restaurant in a BU-1-A zoning classification**

**Subject Property:**

**Parcel ID#: 23-35-13-BE-A**  
**Tax Acct#: 2301514**  
**Location: Located on the northwest corner of Fay Blvd. and Arabella Ln.**  
**Address: 926 Fay Blvd., Port St. John**  
**Acreage: 0.8 acres.**

**Consistency with Land Use Regulations**

YES Current zoning can be considered under the Future Land Use Designation. Sec. 62-1255  
YES Proposal can be considered under the Future Land Use Designation. Sec. 62-1255  
YES Would proposal maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Zoning</b>	BU-1-A	BU-1-A with CUP (beer & wine)
<b>Potential*</b>	1,315 s.f. 34 seat restaurant	1,315 s.f. 34 seat restaurant
<b>Can be Considered under FLU MAP</b>	YES NEIGHBORHOOD COMMERCIAL	YES

\*Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations.

	<b>ADT</b>	<b>PM Peak</b>		
Trips from Existing Zoning	164	14	Segment Number	210
Trips from Proposed Zoning	No Change	No Change	Segment Name	Carole - U.S. 1
Maximum Acceptable Volume (MAV)	33,900	3,089	Acceptable LOS	E
Current Volume	15,228	1,385.7	Directional Split	
Volume With Proposed Development	No Change	No Change	ITE CODE 932 34 seat restaurant	
Current Volume / MAV	44.92%	44.86%		
Volume / MAV with Proposal	No Change	No Change		
Current LOS	D	D		
LOS With Proposal	D	D		

## Land Use Compatibility

FLUE Policy 1.1 requires consideration of land use compatibility and character of the area.

This request is for a Conditional Use Permit for the on-premises consumption of alcohol in conjunction with a restaurant in the BU-1-A zoning classification. The BU-1-A classification permits restricted neighborhood retail and personal service uses to serve the needs of nearby low-density residential neighborhoods. Minimum lot size of 7,500 square feet is required with minimum width and depth of 75 feet. The surrounding zoning classifications are BU-1-A to the north, RP to the south across Fay Blvd., RU-1-9 to the east across Arabella Lane, with FEC Rail Road tracks abutting the property to the west. Across the train tracks is a BU-2 shopping center. This area of Port St. John is characterized by a mixture of commercial and residential uses. The Board should evaluate the compatibility of this application within the context of Administrative Policies 2 - 8 of the Future Land Use Element, as outlined on pages 2 through 5 of these staff comments.

## Environmental Constraints

NA

**Other Considerations:** The request is for a Conditional Use Permit (CUP) for the on-premises consumption of alcohol (beer and wine) accessory to a 34 seat restaurant. The existing restaurant consists of 1,315 square feet including the kitchen and employee only areas and was constructed in 1960. This site was previously occupied by the restaurant "Rax by the Traxs".

The applicants indicate that there are 62 seats inside the restaurant and has provided an exhibit showing the floor plan. The Land Development Regulations require one parking space for every 100 square feet of the establishment including any outside seating areas. Therefore, the existing restaurant square footage requires 14 parking spaces. However, it appears that the existing site has approximately 9 improved parking spaces. If the kitchen and employee areas were removed from the total square footage, it appears that the restaurant serving area is approximately 850 square feet. This square footage would require only 9 parking spaces.

Additionally, section 62-1906 requires that no churches or schools be within 300 feet of the restaurant. Although there are no churches or schools within 400 feet of the restaurant, there is a daycare to the east across Arabella Lane.

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 6-9 of these comments. 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. The applicant's responses are indicated in **bold** and staff observations are provided in *italics*.

### Section 62-1901(c)(1)(a) Impact upon adjacent and nearby properties from the proposed use:

Number of persons using property;  
Noise, odor, particulates, smoke, fumes and other emissions; and  
Increase in traffic within the vicinity.

### **No it will not result in substantial and adverse impact on adjacent properties nearby.**

*The existing restaurant consists of 1,315 square feet including the kitchen and employee only areas. This site was previously occupied by the restaurant "Rax by the Trax's". The proposed restaurant will have 34 seats with no outside seating.*

### Section 62-1901(c)(1)(b) Compatibility with the character of adjacent and nearby properties with regard to use:

Adjacent properties;

Operating hours;  
Amount of traffic generated;  
Building size and setbacks; and  
Parking availability.

**Yes it will.**

*The surrounding area has a mixture of zoning classifications and uses. To the east, across Arabella is a day care zoned BU-1. To the south, across Fay Blvd. is an office building zoned RP. To the west is a retail strip center zoned BU-2.*

*The applicants indicate the hours of operation will be from 10:30 a.m. to 9 p.m., seven days a week*

*There are 62 seats inside the restaurant. The applicant has provided an exhibit showing the floor plan.*

*The existing restaurant square footage requires 14 parking spaces. However, it appears that the existing site has approximately 9 improved parking spaces. If the kitchen and employee areas were removed from the total square footage, it appears that the restaurant serving area is approximately 850 square feet. This square footage would require only 9 parking spaces.*

Section 62-1901(c)(1)(c) Impact upon property values of abutting residential properties:

**No it will not.**

Section 62-1901(c)(2)(a) Adequacy of ingress and egress to serve the use without burdening adjacent and nearby uses:

**Yes it will.**

Section 62-1901(c)(2)(b) Noise, glare, odor, particulates, smoke, fumes, etc.:

**No it will not.**

*The property is subject to the performance standards found in sections 62-2251 through 2271 of the Zoning regulations.*

Section 62-1901(c)(2)(c) Actual Noise Levels:

**It is.**

*The property is subject to the performance standards found in sections 62-2251 through 2271 of the Zoning regulations.*

Section 62-1901(c)(2)(d) Impact upon solid waste disposal level of service:

**It will not.**

Section 62-1901(c)(2)(e) Impact upon potable water and waste water levels of service:

**It will not.**

Section 62-1901(c)(2)(f) Screening and buffering:

**There are no noise or nuisance to be produced.**

Section 62-1901(c)(2)(g) Signage and glare from lighting:

**It will not. No glare.**

*The property is subject to the performance standards found in sections 62-2251 through 2271 of the Zoning regulations.*

Section 62-1901(c)(2)(h) Hours of operation:

**It is.**

*The applicants indicate the hours of operation will be from 10:30 a.m. to 9 p.m., seven days a week.*

Section 62-1901(c)(2)(i) Height of proposed use:

**It is.**

*The existing structure constructed in 1960 is one story.*

Section 62-1901(c)(2)(j) Impact of off-street parking and loading areas upon adjacent properties:

**It will not.**

*Although the improved paving appears to be sufficient for the restaurant. There is a potential for adjacent properties to be impacted with overflow parking if the restaurant holds special events or other activities that would draw a larger number of patrons to the restaurant.*

This request should be evaluated in the context of **Section 62-1906** which governs alcoholic beverages for the on-premise consumption of alcohol 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 certified survey has been provided by the applicants that demonstrates that there are no schools or churches within 400' of the establishment. However, there is an existing daycare center to the east, across Arabella Lane.*

- 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 on-premises consumption of alcoholic beverages. 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.

**Summary:** The request is for a Conditional Use Permit (CUP) for the on-premises consumption of alcohol (beer and wine) in conjunction with a restaurant with 34 seats. This site was previously occupied by "Raxs by the Traxs" restaurant. The existing building consists of 1,315 square feet including the kitchen and employee only areas and was constructed in 1960.

Section 62-1906 requires that no churches or schools be within 300 feet of the restaurant. Although there are no churches or schools within 400 feet of the restaurant, there is a daycare to the east across Arabella Lane. This area of Port St. John is characterized by a mixture of commercial and residential uses, with BU-1, RP and BU-2 zoning classifications adjacent to the subject property.

The Land Development Regulations require one parking space for every 100 square feet of the establishment including any outside seating areas. Therefore, the existing restaurant square footage requires 14 parking spaces. However, it appears that the existing site has approximately 9 improved parking spaces. If the kitchen and employee areas were removed from the total square footage, it appears that the restaurant serving area is approximately 850 square feet. This square footage would require only 9 parking spaces.

Although the improved paving appears to be sufficient for the restaurant. There is a potential for adjacent properties to be impacted with overflow parking if the restaurant holds special events or other activities that would draw a larger number of patrons to the restaurant.

III. PUBLIC HEARINGS

A. Tabled Items

B. P&Z Recommendations of February 9, 2015, and NMI Recommendations of February 12, 2015

**DISTRICT 2**

**III.B.1. (14PZ-00118) – RO1, LLC –** (Kim Rezanka, Dean Mead) – requests removal of a BDP (Binding Development Plan) in a BU-2 (Retail, Warehousing, and Wholesale Commercial) zoning classification, on 3.44 acres, located on the east side of N. Courtenay Pkwy., approx. 420 ft. north of E. Crisafulli Rd. (No assigned address. In the N. Merritt Island area)

**NMI Recommendation: Cook/Balke – Denied. Vote was unanimous.**

**DISTRICT 4**

**III.B.2. (14PZ-00082) – EAGLE PROPERTIES OF VIERA, LLC, AND ANNA JACKOWSKA –** (Jake Wise, P.E.) – requests a change of classification from PIP (Planned Industrial Park) to PUD (Planned Unit Development) and removal of existing BCP's (Binding Concept Plan), on 45.37 acres +/-, located on the south side of Viera Blvd., approx. 0.15 mile west of U.S. Hwy 1. (No assigned address. In the Viera area)

**P&Z Recommendation: Aydelotte/Lawandales – Approved. Vote was unanimous.**