



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

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H.4.

2/3/2022

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### Subject:

KJ Group FL, LLC requests a CUP for Alcoholic Beverages (full liquor) for On-Premises Consumption in Conjunction with a Private Club, in a BU-1 zoning classification. (21PZ00074) (Tax Account 2315967) (District 1)

### Fiscal Impact:

None

### Dept/Office:

Planning & Development

### Requested Action:

It is requested that the Board of County Commissioners conduct a public hearing to consider a CUP (Conditional Use Permit) for On-Premises Consumption in Conjunction with a Private Club, in a BU-1 (General Retail Commercial) zoning classification.

### Summary Explanation and Background:

The property owner is seeking a CUP for alcoholic beverages for on-premises consumption in conjunction with a private club (AmVets) located within a shopping plaza on a 1.03-acre parcel. Since the proposed use for this site is not as a food service/restaurant use, the request exceeds staff's administrative approval authority of on-premises sale or serving of alcoholic beverages. The internal unit size is approximately 2,400 square feet.

To the north of this unit is the remainder of the shopping plaza with various commercial uses. To the east is Highway 1. To the west across Delivery Avenue are single-family residences. To the south across the right-of-way is another shopping plaza that has a CUP for beer and wine. There are some multi-family developments on the east side of the road adjacent to the river that are zoned RU-2-15 with a density cap of 12 units per acre. This CUP request, if approved, could be considered compatible with the existing commercial shopping plaza.

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

On January 5, 2022, the Port St. John Dependent Special District Board heard the request and unanimously recommended approval.

On January 10, 2022, the Planning and Zoning Board heard the request and unanimously recommended approval.

**Clerk to the Board Instructions:**

Once resolution is received, please execute and return a copy to Planning and Development.

**Resolution 21PZ00074**

On motion by Commissioner Pritchett, seconded by Commissioner Lober, the following resolution was adopted by a unanimous vote:

**WHEREAS, KJ Group FL, LLC** has requested a CUP (Conditional Use Permit) for Alcoholic Beverages (full liquor) for On-Premises Consumption in conjunction with a Private Club, in a BU-1 (General Retail Commercial) zoning classification, on property described as 686, 688, and 690 West Ave., Cocoa, as recorded in ORB 8567, Page 799 - 800, of the Public Records of Brevard County, Florida. **Section 19, Township 23, Range 36.** (2,400 sq. ft.) Located on the west side of West Ave., approx. 400 ft. north of Aron St. (686, 688, & 690 West Ave., Cocoa).

**WHEREAS,** a public hearing of the Port St. John Dependent Special District Board was advertised and held, as required by law, and after hearing all interested parties and considering the adjacent areas, the Port Saint John Dependent Special District Board recommended that the application be approved; and

**WHEREAS,** a public hearing of the Planning and Zoning Board was advertised and held, as required by law, and after hearing all interested parties and considering the adjacent areas, the Planning and Zoning Board recommended that the application be approved; and

**WHEREAS,** the Board, after considering said application and Port St. John Dependent Special District Board's and the Planning and Zoning Board's recommendations, and hearing all interested parties, and after due and proper consideration having been given to the matter, find that the application should be approved; now therefore,

**BE IT RESOLVED** by the Board of County Commissioners of Brevard County, Florida, that the requested CUP for Alcoholic Beverages (full liquor) for On-Premises Consumption in conjunction with a Private Club, in a BU-1 zoning classification, be approved. The Planning and Development Director, or designee, is hereby directed to make this change on the official zoning maps of Brevard County, Florida.

**BE IT FURTHER RESOLVED** that this resolution shall become effective as of February 3, 2022.

BOARD OF COUNTY COMMISSIONERS  
Brevard County, Florida

Curt Smith, Vice Chair  
Brevard County Commission

As approved by the Board on February 3, 2022.

ATTEST:

RACHEL M. SADOFF, CLERK

(SEAL)

Port St. John Dependent Special District Board Hearing - January 5, 2022

Planning and Zoning Board Hearing - January 10, 2022

Board of County Commissioners Hearing - February 3, 2022

Please note: A Conditional Use Permit will generally expire on the three year anniversary of its approval if the use is not established prior to that date. Conditional Use Permits for Towers and Antennas shall expire if a site plan for the tower is not submitted within one year of approval or if construction does not commence within two years of approval. **The granting of this zoning does not guarantee physical development of the property. At the time of development, said development must be in accordance with the criteria of the Brevard County Comprehensive Plan and other applicable laws and ordinances.**

## **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 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 Development 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 Development staff shall be required to present written analysis and a recommendation, which shall constitute an expert opinion, on all 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 percent 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 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 of intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, et cetera), 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 services 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, odors, 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 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 M A I 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 35 feet higher than the highest residence within 1,000 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 this section into the Zoning file and Public Record for that item.

These staff comments contain references to Policies of the 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 TPO (Transportation Planning Organization) 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 (CURRENT LOS):** The Level of Service at which a roadway is currently operating.

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



BOARD OF COUNTY COMMISSIONERS

**Planning and Development Department**

2725 Judge Fran Jamieson Way

Building A, Room 114

Viera, Florida 32940

(321)633-2070 Phone / (321)633-2074 Fax

<https://www.brevardfl.gov/PlanningDev>

**STAFF COMMENTS**

**21PZ00074**

**KJ Group, FL**

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

Tax Account Number: 2315967  
Parcel I.D.: 23-36-19-BE-2-9  
Location: West side of West Avenue approximately 409 feet north of Aron Street (District 1)  
Acreage: 0.055 acres  
  
Port Saint John Meeting: 01/05/2022  
Planning and Zoning Board: 01/10/2022  
Board of County Commissioners: 02/03/2022

**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)

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Zoning</b>	BU-1	BU-1 with CUP for beer/wine
<b>Potential*</b>	2,400 sq. ft.	2,400 sq. ft.
<b>Can be Considered under the Future Land Use Map</b>	YES Community Commercial	YES Community Commercial

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

**Background and Purpose of Request**

The property owner is seeking a Conditional Use Permit (CUP) for alcoholic beverages for on-premises consumption in conjunction with a private club (AmVets) that is located within a shopping plaza on a 1.03-acre parcel. The proposed use for this site is not as a food service/restaurant use. The internal unit size is approximately 2,400 square feet. The club is already operating in the unit without serving alcohol. The location does not meet the classification of a restaurant and therefore cannot apply for administrative approval (AA) of on-premise sale or serving of alcoholic beverages.

The original zoning of this property was GU. It was rezoned to BU-1 as part of zoning action **Z-354** on May 25, 1960.

## **Land Use**

The BU-1 zoning classifications can be considered 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 (2,400 sq. ft.).*

The Board should consider the compatibility of the proposed CUP with surrounding development. To the north of this unit is the remainder of the shopping plaza with various commercial uses. To the east is Highway 1. To the west across Delivery Avenue are single-family residences. To the south across the right-of-way is another shopping plaza that has a CUP for beer and wine.

##### *B. Existing commercial zoning trends in the area;*

*Staff analysis: There have been no commercial zoning requests within this area in the last 3 years. Much of the area is already zoned for commercial land uses.*

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

*Staff analysis: This CUP request, if approved, could be considered compatible with the existing commercial shopping plaza.*

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

*Staff analysis: It appears that no LOS will be exceeded.*

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 along N Highway 1 in an already-developed Community Commercial node. In this area, there is CC FLU to the north and south on both sides of N Highway 1, though the existing

development on the eastern side of the road is residential on lots of an acre or more. The majority of lots on the western side of N Highway 1 have a FLU designation of CC.

To the west of the subject property across Delivery Avenue is a large residential neighborhood with a Residential 8 Directive FLU designation. The neighborhood expands to the west and north and typifies residential development in the Port Saint John area.

#### **Analysis of Administrative Policy #4 - Character of a neighborhood or area.**

The site is located in one of many shopping plazas located on the western side of N Highway 1 in this area. Like this one, most of these shopping plazas have a zoning classification of BU-1 and contain commercial uses that serve the residential neighborhoods. The residential lots are almost exclusively zoned RU-1-9. There are some multi-family developments on the east side of the road adjacent to the river that are zoned RU-2-15 with a density cap of 12 units per acre.

There is a shopping plaza directly to the south that has a CUP for on-premise consumption of beer and wine. There is an additional shopping plaza to the north that contains a bar and has a CUP for on-premise consumption of alcohol.

#### **Surrounding Area**

The abutting parcel to the north is zoned BU-1; it is utilized as a credit union. The property to the east beyond West Avenue is zoned BU-1. The property to the south is a shopping plaza zoned BU-1. To the west is a residential neighborhood exclusively zoned RU-1-9.

The BU-1 classification allows retail commercial land uses on minimum 7,500 square foot lots. The BU-1 classification does not permit warehousing, wholesaling, or outdoor storage.

The RU-1-9 classification permits single family residential development on lots of 6,600 square feet (minimum). The minimum house size is 900 square feet.

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

**19PZ00143** – 05/02/2019; A CUP was approved for on-premise consumption of alcoholic beverages in conjunction with a bar in a BU-1 zoning classification. Located approximately 0.28 miles south of the subject property on the western side of N Highway 1.

#### **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 a 400 feet buffer area.*

- 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 marked units.*

### **General Standards of Review**

Section 62-1901(c)(1)(a): The proposed conditional use will not result in a substantial and adverse impact on adjacent and nearby properties due to: (1) the number of persons anticipated to be using, residing or working under the conditional use; (2) noise, odor, particulates, smoke, fumes and other emissions, or other nuisance activities generated by the conditional use; or (3) the increase of traffic within the vicinity caused by the proposed conditional use.

Applicant's Response: The use of our business having a CUP license will not cause or have any effect on the adjacent business of the shopping center at all.

*Staff analysis: The site is a private club and therefore limits the number of persons attending. The club is currently open and in use without serving alcohol. The previous tenant was also a private club.*

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: Yes. Building size is 2,400 sq. ft. and consists of 3 units in the shopping plaza. We will be maintaining operating hours from 10 AM to 11:00 PM Monday – Sunday (7 days a week).

*Staff analysis: The site is part of a developed shopping plaza. The other tenants include a pet groomer, a hair studio, a laundromat, and a chiropractor. There is a residential neighborhood to the west behind the plaza and across Delivery Avenue.*

Section 62-1901(c)(1)(c): The proposed use will not cause a substantial diminution in value of abutting residential property. A substantial diminution shall be irrebutably presumed to have occurred if abutting property suffers a 15 percent reduction in value as a result of the proposed conditional use. A reduction of ten percent of the value of abutting property shall create a reputable presumption that a substantial diminution has occurred. The board of county commissioners carries the burden to show, as evidenced by either testimony from or an appraisal conducted by a MAI certified appraiser, that a substantial diminution in value would occur. The applicant may rebut the findings with his own expert witnesses.

Applicant's Response: No diminution will occur within the shopping plaza or adjacent property.

*Staff analysis: Evidence from an 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: Located within a large shopping plaza with adequate parking.

*Staff analysis: This project has two access points identified on the site plan. Adding on-premise consumption of alcohol will not change the current parking requirement of one space per 200 square*

*feet of floor area for a private club.*

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, not at all. No fumes or odor will be in the air. No additional noise to the plaza.

*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: We do not expect or accept any additional noise.

*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)(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: We use standard weekly waste service from Waste Management in Cocoa.

*Staff analysis: The use is not anticipated to cause a substantial increase in solid waste disposal.*

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: Serviced by the City of Cocoa sewer/water.

*Staff analysis: The plaza is serviced by Brevard County sewer and City of Cocoa water.*

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: Located within shopping plaza. No additional lights or noise pollution.

*Staff analysis: The project covers only a small portion of an already developed overall site and is not anticipated to create substantial adverse nuisance, sight, or noise impacts on adjacent or nearby properties.*



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.*

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 use is consistent with shopping plaza rules and adjacent businesses. (10:00 AM-11:00 PM)

*Staff analysis: The use could be considered consistent with the area.*

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: None.

*Staff analysis: The site is developed and the structure is already built. No height increases are proposed.*

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: Plenty of parking and loading area within parking lot and out back of the shopping plaza.

*Staff analysis: The site plan parking calculation was done at one space per 200 square feet, which is also the requirement for private clubs. Based on the 2,400 sq. ft. size of the project, there are 12 spaces required by Section 62-3206(d)(18) of the Brevard County Code. The site plan shows 59 existing spaces.*

## **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  
Page 7

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 US Highway 1, between SR 528 and Fay Boulevard, which has a Maximum Acceptable Volume (MAV) of 41,790 trips per day, a Level of Service (LOS) of D, and currently operates at 68.01% of capacity daily. The CUP is not anticipated to increase the MAV utilization. The corridor is anticipated to operate at 68.05% of capacity daily (LOS D). The proposal is not anticipated to create a deficiency in LOS.

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

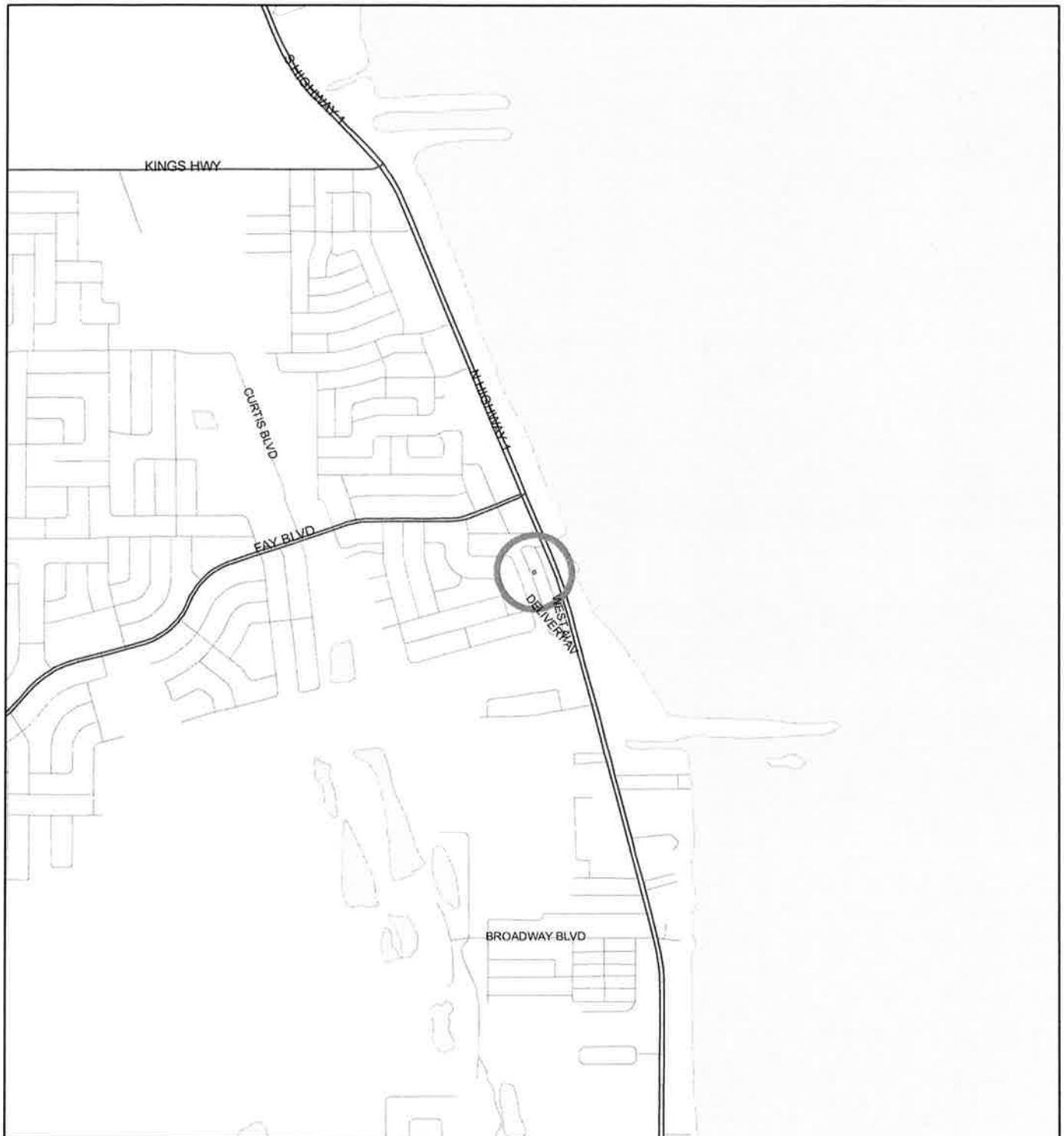
The subject property is served by potable water by the City of Cocoa. Sewer is provided by the County.

### **For Board Consideration**

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

# LOCATION MAP

KJ GROUP FL, LLC  
21PZ00074



1:24,000 or 1 inch = 2,000 feet

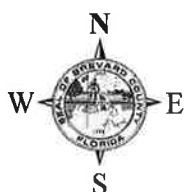
Buffer Distance: 500 feet

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 11/22/2021

— Buffer  
■ Subject Property

KJ GROUP FL, LLC  
21PZ00074

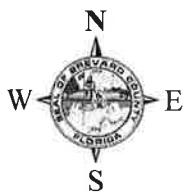


This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

 Subject Property  
 Parcels  
 Zoning

# FUTURE LAND USE MAP

KJ GROUP FL, LLC  
21PZ00074



1:4,800 or 1 inch = 400 feet

— Subject Property

□ Parcels

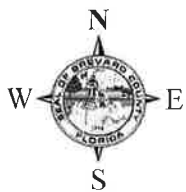
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# AERIAL MAP

KJ GROUP FL, LLC

21PZ00074



1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2021

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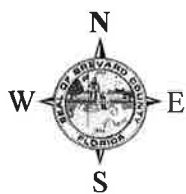
— Subject Property

□ Parcels



# NWI WETLANDS MAP

KJ GROUP FL, LLC  
21PZ00074



1:4,800 or 1 inch = 400 feet

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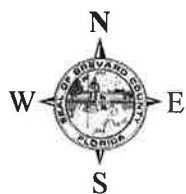
## National Wetlands Inventory (NWI)

Estuarine and Marine Deepwater	Freshwater Pond
Estuarine and Marine Wetland	Lake
Freshwater Emergent Wetland	Other
Freshwater Forested/Shrub Wetland	Riverine
	Subject Property
	Parcels

# SJRWMD FLUCCS WETLANDS - 6000 Series MAP

KJ GROUP FL, LLC

21PZ00074



1:4,800 or 1 inch = 400 feet

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## SJRWMD FLUCCS WETLANDS

- Wetland Hardwood Forests - Series 6100
- Wetland Coniferous Forest - Series 6200
- Wetland Forested Mixed - Series 6300
- Vegetated Non-Forested Wetlands - Series 6400
- Non-Vegetated Wetland - Series 6500

Subject Property

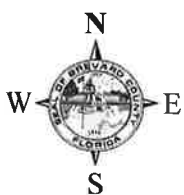
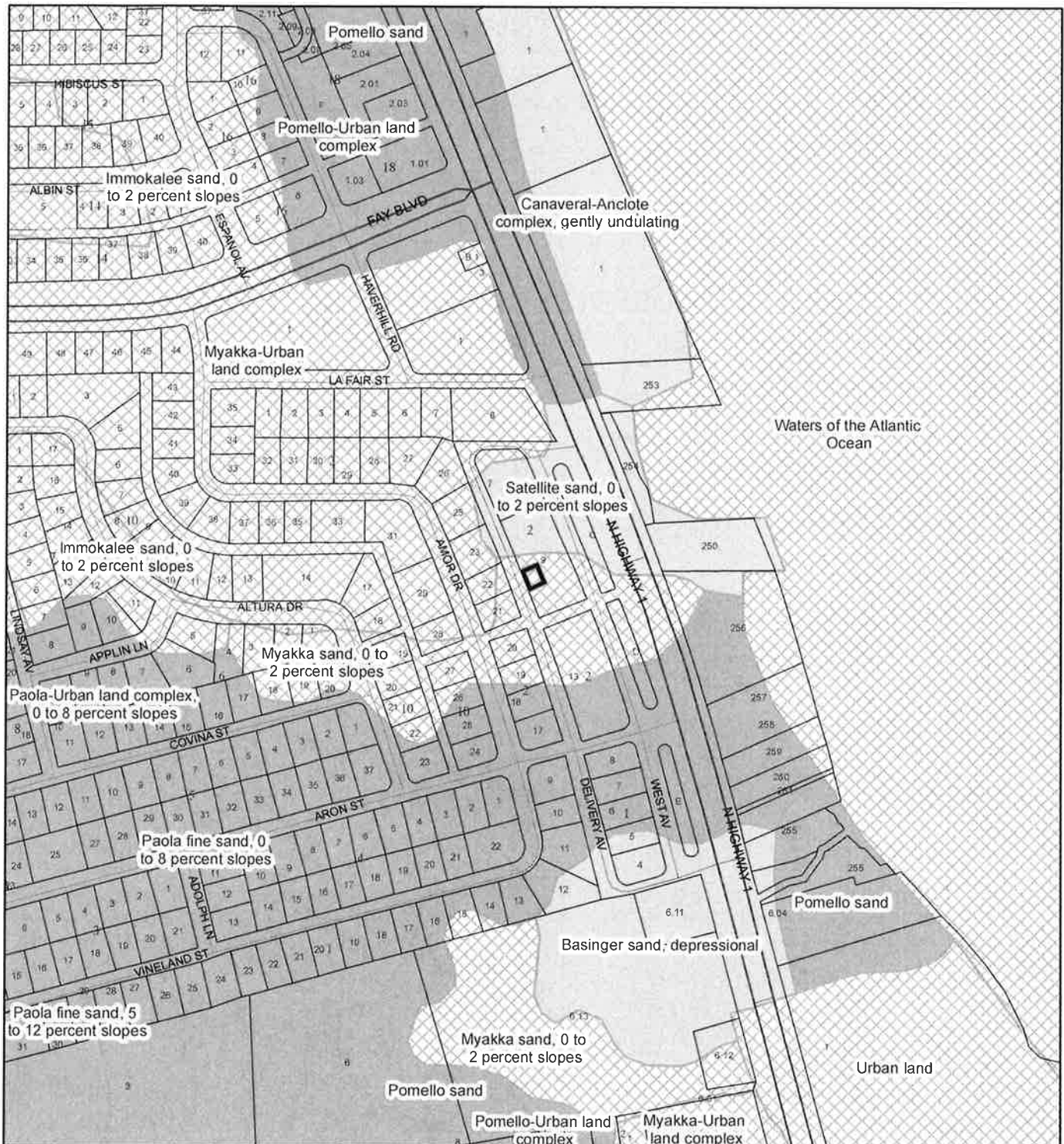
Parcels



# USDA SCSSS SOILS MAP

KJ GROUP FL, LLC

21PZ00074



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 11/19/2021

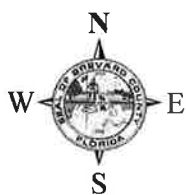
## USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

- Subject Property
- Parcels

# FEMA FLOOD ZONES MAP

KJ GROUP FL, LLC  
21PZ00074



1:4,800 or 1 inch = 400 feet

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## FEMA Flood Zones

- |                  |            |   |
|------------------|------------|---|
| A                | AO         | X |
| AE               | Open Water |   |
| AH               | VE         |   |
| Subject Property | Parcels    |   |

# COASTAL HIGH HAZARD AREA MAP

KJ GROUP FL, LLC  
21PZ00074



1:4,800 or 1 inch = 400 feet

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 Subject Property

 Parcels

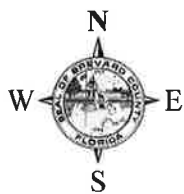
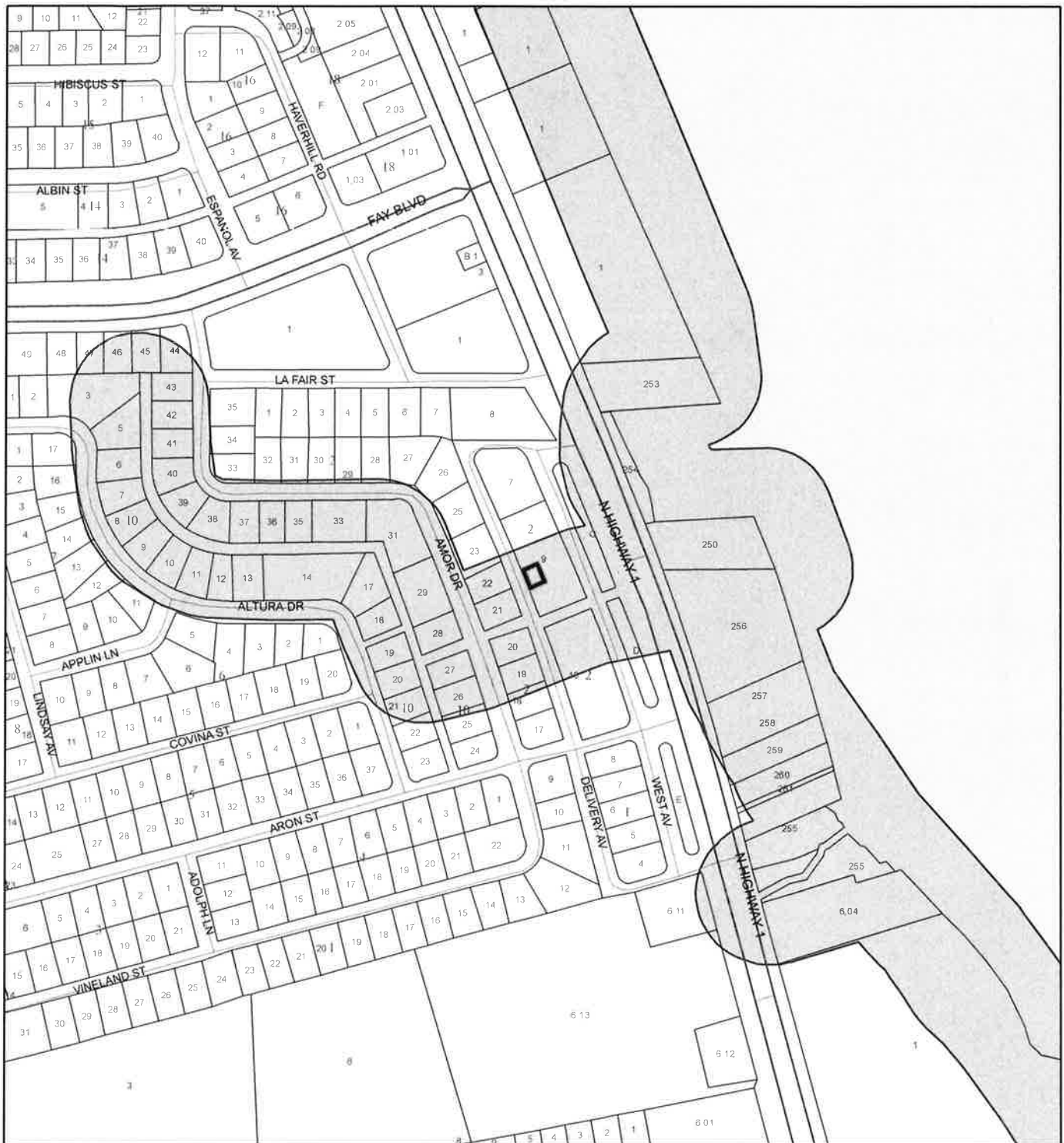
**Coastal High Hazard Area**

 SurgeZoneCat1

# INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

KJ GROUP FL, LLC

21PZ00074



1:4,800 or 1 inch = 400 feet

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 Subject Property

 Parcels

## Septic Overlay

 40 Meters

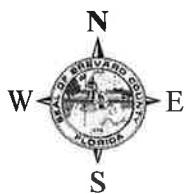
 60 Meters

 All Distances

# EAGLE NESTS MAP

KJ GROUP FL, LLC

21PZ00074



1:4,800 or 1 inch = 400 feet

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 Subject Property

 Parcels

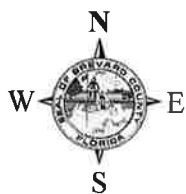


Eagle Nests  
FWS 2010



# SCRUB JAY OCCUPANCY MAP




KJ GROUP FL, LLC  
21PZ00074



1:4,800 or 1 inch = 400 feet

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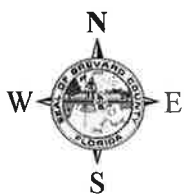
Produced by BoCC - GIS Date: 11/19/2021

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

# SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

KJ GROUP FL, LLC

21PZ00074



1:4,800 or 1 inch = 400 feet

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 11/19/2021

## SJRWMD FLUCCS Upland Forests

- Upland Coniferous Forest - 4100 Series
- Upland Hardwood Forest - 4200 Series
- Upland Mixed Forest - 4300 Series
- Tree Plantations - 4400 Series

Subject Property

Parcels

## **PORT SAINT JOHN DEPENDENT SPECIAL DISTRICT BOARD MINUTES**

The Port St. John Dependent Special District Board met in regular session on Wednesday, January 5, 2022, at 6:00 p.m., at the Port St. John Library, 6500 Carole Ave., Port St. John, Florida.

Board members present were: Randy Rodriguez; Wendy Porter-Hyde; Maureen Rupe; Greg Messer; Carmella Chinaris; and Kevin Shropshire.

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; and Jennifer Jones, Special Projects Coordinator.

The meeting was called to order at 6:00 p.m.

### **Excerpt from Complete Minutes**

**(21PZ00074) KJ GROUP FL, LLC** requests a CUP (Conditional Use Permit) for Alcoholic Beverages (full liquor) for On-Premises Consumption in conjunction with a Private Club, in a BU-1 (General Retail Commercial) zoning classification. The property is 2,400 sq. ft., located on the west side of West Ave., approx. 400 ft. north of Aron St. (686, 688, & 690 West Ave., Cocoa).

Jeffrey Ball clarified for the board and the audience that the staff comments refer to the request as being for beer and wine only, but it is actually for full liquor and was advertised as such.

Tom Taylor, representing AmVets, stated the AmVets Post in Port St. John was started to help veterans in the community.

Randy Rodriguez asked if the unit is the same unit the Eagles were previously located. Mr. Taylor replied yes, it is the same unit. Mr. Rodriguez asked about the smoking regulations in the proposed bar location. Mr. Taylor replied smoking will be allowed, and 'smoke eaters' will be installed.

Wendy Porter-Hyde asked staff about the sentence in the staff comments that states, "The location does not meet the classification of a restaurant and therefore cannot apply for administrative approval of on-premises sale or serving of alcoholic beverages." Mr. Ball replied that because the code changed in the last year and a half, allowing restaurants that serve food to apply administratively for the on-premises consumption of alcoholic beverages as long as they sign an affidavit confirming that at least 51% of their revenue is from food. The applicant is proposing a bar, without food service, and therefore need to apply for a Conditional Use Permit and go through the public hearing process.

Kathy Stenger, KJ Group, FL, stated it is an honor to have the AmVets in their plaza, and they really help the veterans in the community.

Motion by Maureen Rupe, seconded by Carmella Chinaris, to recommend approval of the request for a CUP for Alcoholic Beverages (full liquor) for On-Premises Consumption in conjunction with a Private Club, in a BU-1 zoning classification. The motion passed unanimously.



## **PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY MINUTES**

The Brevard County Planning & Zoning Board met in regular session on **Monday, January 10, 2022**, at **3:00 p.m.**, in the Florida Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

The meeting was called to order at 3:00 p.m.

At the outset of the meeting, nine Board members were present and voted on all items on the agenda: Henry Minneboo (D1); Ron Bartcher (D1); Robert Sullivan (D2); Ben Glover (D3); William Capote (D3); Mark Wadsworth, Chair (D4); Liz Alward (D4); Peter Filiberto, Vice Chair (D5); and John Hoppengarten (BPS).

Bruce Moia (D5) was present for Items H.14 & H.15 only.

Lorraine Koss (D2 - Alt) was present, but did not participate from the dais.

Staff members present were: Tad Calkins, Planning & Development Director; Jeffrey Ball, Planning and Zoning Manager; George Ritchie, Planner III; Kyle Harris, Associate Planner; Virginia Barker, Natural Resources Management Director; Amanda Elmore, Natural Resources Management Deputy Director; Darcie McGee, Natural Resources Management Assistant Director; Alex Esseeese, Assistant County Attorney; and Jennifer Jones, Special Projects Coordinator.

### **Excerpt from Complete Minutes**

#### **KJ Group FL, LLC**

A CUP (Conditional Use Permit) for Alcoholic Beverages (full liquor) for On-Premises Consumption in conjunction with a Private Club, in a BU-1 (General Retail Commercial) zoning classification. The property is 2,400 square feet, located on the west side of West Ave., approx. 400 ft. north of Aron St. (686, 688, & 690 West Ave., Cocoa) (District 1)

Jeffrey Ball clarified that the staff comments reflect the request as beer and wine, but it is for full liquor and was advertised as such.

Lawrence Lytleville stated an AmVets Post 2450 is being established in Port St. John, it is a nonprofit organization that raises money for the community and helps veterans get off the street.

No public comment.

Motion by Peter Filiberto, seconded by William Capote, to recommend approval of a CUP for Alcoholic Beverages (full liquor) for On-Premises Consumption in conjunction with a Private Club, in a BU-1 zoning classification. The motion passed unanimously.