



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.1.

9/3/2020

Subject:

Skyview Plaza, LLC (Paige Lane) requests a CUP for Alcoholic Beverages (full liquor) for On-Premises Consumption in conjunction with a bar, in a BU-1 zoning classification. (20Z00017) (Tax Account 2607202) (District 4)

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

It is requested that the Board of County Commissioners conduct a public hearing to consider a CUP for Alcoholic Beverages (full liquor) for On-Premises Consumption in conjunction with a bar, in a BU-1 zoning classification.

Summary Explanation and Background:

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

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

The Board may wish to consider the compatibility of the proposed CUP and the proposed outdoor seating area with surrounding development. The Board may consider additional conditions beyond those cited in Sections 62-1901 and 62-1906 in order to mitigate potential impacts to the abutting properties such as providing a visual buffer and/or acoustically screening the proposed outdoor patio area from the nearby residential lots. In addition, the Board may wish to consider that the abutting nonconforming adult entertainment business shall not have an internal connection.

On August 24, 2020, the Planning and Zoning Board heard the request and unanimously recommended approval.

Clerk to the Board Instructions:

Upon receipt of resolution, please execute and return a copy to Planning and Development.

Resolution 20Z00017

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

WHEREAS, Skyview Plaza, LLC has requested a CUP (Conditional Use Permit) for Alcoholic Beverages (full liquor) for On-Premises Consumption in conjunction with a bar, in a BU-1 (General Retail Commercial) zoning classification on property described as Tax Parcel 759, Unit 220, as recorded in ORB 5862, Pages 8493 – 8494, and ORB 5862, Pages 8498 – 8501, of the Public Records of Brevard County, Florida. Section 23, Township 26, Range 37. (3,700 +/- Square feet) Located on the southwest corner of Ocean Boulevard and Highway A1A (220 Highway A1A, Satellite Beach); and

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

WHEREAS, the Board, after considering said application and Brevard County Planning and Zoning Board's recommendation, and hearing all interested parties, and after due and proper consideration having been given to the matter, find that the application should be approved with the added stipulation that the applicant provide a visual buffer and acoustical screening for the proposed outdoor area, separating it from the residential lots, and eliminating any possible internal connection between said property and the abutting nonconforming adult entertainment business; 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 bar, in a BU-1 zoning classification, be approved with the added stipulation that the applicant provide a visual buffer and acoustical screening for the proposed outdoor area, separating it from the residential lots, and eliminating any possible internal connection between said property and the abutting nonconforming adult entertainment business. 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 September 3, 2020.

BOARD OF COUNTY COMMISSIONERS

Brevard County, Florida

Bryan Andrew Lober

Bryan Andrew Lober, Chair

Brevard County Commission

As approved by the Board on September 3, 2020.

ATTEST

Scott Ellis
SCOTTELLIS, CLERK

(SEAL)

Planning and Zoning Board Hearing – August 24, 2020

Please note: A CUP (Conditional Use Permit) will generally expire on the three-year anniversary of its approval if the use is not established prior to that date. CUPs 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. A Planned Unit Development Preliminary Development Plan expires if a final development plan is not filed within three years. **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

20Z00017

SKYVIEW PLAZA LLC

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

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

Planning and Zoning Board: 08/24/2020

Board of County Commissioners: 09/03/2020

Consistency with Land Use Regulations

- Current zoning can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal would maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	CURRENT	PROPOSED
Zoning	BU-1 with CUP for beer and wine	BU-1 with CUP for full liquor
Potential*	3,000 square feet	3,200 square feet
Can be Considered under the Future Land Use Map	YES Community Commercial	YES Community Commercial

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

Background and Purpose of Request

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

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

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

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

Sec. 62-1183. Abandonment.

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

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

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

Land Use

The BU-1 zoning classification is consistent with the Community Commercial (CC) Future Land Use designation. The CUP request is also consistent with the CC FLU designation.

Environmental Constraints

No formal review by the Natural Resources Management Department is required for a CUP for on-premises consumption of alcoholic beverages. Natural Resources Management (NRM) reserves the right to assess consistency with environmental ordinances at all applicable future stages of development, including any land alteration permits or landscape restoration plans.

Preliminary Concurrency

The closest concurrency management segment to the subject property is U.S. Highway A1A, between Berkeley Street and Ocean Boulevard, which has a Maximum Acceptable Volume (MAV) of 41,790 trips per day, a Level of Service (LOS) of D, and currently operates at 50.16% of capacity daily. The development potential from the proposed CUP request on the existing building mass of 3,200 square feet does increase (0.02%) the percentage of MAV utilization. The corridor is anticipated to remain operating at 50.18% of capacity daily (LOS C). The proposal is not anticipated to create a deficiency in LOS.

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

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

Applicable Land Use Policies

FLUE Policy 2.2 – Role of Zoning Regulations in the Designation of Commercial Lands

The zoning process regulates the types and intensities of uses for a parcel of land. Criteria which aid in assessing zoning compatibility, shall include consideration of the following standards:

Criteria:

A. Permitted/prohibited uses;

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

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

B. Existing commercial zoning trends in the area;

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

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

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

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

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

The Board should evaluate the compatibility of this application within the context of the Board's Administrative Policies 1 through 8 of the Future Land Use Element, outlined in the Administrative Policies.

Analysis of Administrative Policy #3 - Compatibility between this site and the existing or proposed land uses in the area. This site is surrounded by right-of-way upon the north, east and west sides. To its north is Ocean Boulevard. To its east is U.S. Highway A1A. To its west is

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

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

Surrounding Area

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

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

Special Considerations for CUP (Conditional Use Permit)

The Board should consider the compatibility of the proposed CUP pursuant to Section 62-1151(c) and to Section 62-1901, as outlined on pages 6 – 8 of these comments. Section 62-1901 provides that the approval of a conditional use shall authorize an additional use for the affected parcel of real property in addition to those permitted in the applicable zoning classification. **The initial burden is on the applicant to demonstrate that all applicable standards and criteria are met. Applications which do not satisfy this burden cannot be approved.** The applicant's responses and staff observations, if any, are indicated below.

Section 62-1151(c) directs the Board to consider the character of the land use of the property and its surroundings; changes in the conditions of the land use being considered; impact upon infrastructure; compatibility with land use plans for the area; and appropriateness of the CUP based upon consideration of applicable regulations relating to zoning and land use within the context of public

health, safety and welfare. The applicant has submitted documentation in order to demonstrate consistency with the standards set forth in Section 62-1901 and Section 62-1906, on-premises consumption of alcohol.

This request should be evaluated in the context of **Section 62-1906** which governs alcoholic beverages for on-premises consumption which states in, specifically 62-1906 (3) and (5):

- 3) Except for restaurants with more than 50 seats, no alcoholic beverages shall be sold or served for consumption on the premises from any building that is within 300 feet from the lot line of a school or church if the use of the property as a school or church was established prior to the commencement of the sale of such alcoholic beverages. For the purposes of this subsection, a school shall include only grades kindergarten through 12. For the purpose of establishing the distance between the proposed alcoholic beverage use and churches and schools, a certified survey shall be furnished from a registered engineer or surveyor. Such survey shall indicate the distance between the front door of the proposed place of business and all property lines of any church or school within 400 feet. Each survey shall indicate all such distances and routes.

Staff analysis: The owner/applicant has not provided a survey which states that there are no churches or schools within 400 feet of the area within this CUP request.

- 5) Imposition of additional operational requirements. When deemed appropriate, as based upon circumstances revealed through the general and specific standards of review set forth in this division, the Board shall have the option of imposing operational requirements upon an establishment approved for a conditional use for alcoholic beverages for on-premises consumption. Requirements may include, but are not limited to, the following: maximum number of patrons; hours of operation; limitations upon outdoor seating and service of alcoholic beverages; limitations upon outside music and/or public address systems; additional buffering requirements; additional parking requirements; internal floor plan arrangement; or other specific restrictions based upon special neighborhood considerations. Additional requirements shall not exceed the limits of regulatory authority granted to local governments in the State Beverage Law, F.S. § 562.45.

Staff analysis: Serving and consumption of food and beverages, alcohol or otherwise, shall be strictly prohibited outside of the existing buildings except as has been identified on the outdoor patio pursuant to Section 62-1837.9 (Outdoor restaurant seating) of Brevard County Code.

General Standards of Review

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

Applicant's Response: The use will be consistent with the historical uses of the property. A 4COP has been located at the property since 1999.

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

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

Section 62-1901(c)(1)(b): The proposed use will be compatible with the character of adjacent and nearby properties with regard to use, function, operation, hours of operation, type and amount of traffic generated, building size and setback, and parking availability.

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

Staff analysis: The parcel is a portion of a developed commercial property that is bounded by right-of-way (not adjacent to residential development). During site plan review, the proposed outdoor patio will need to comply with the noise ordinance.

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

Applicant's Response: No value reduction is anticipated as this property has been the location of a 4COP since 1999. No real change will occur.

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

Section 62-1901(c)(2)(a): Ingress and egress to the property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire and catastrophe, shall be: (1) adequate to serve the proposed use without burdening adjacent and nearby uses, and (2) built to applicable county standards, if any.

Note: Burdening adjacent and nearby uses means increasing existing traffic on the closest collector or arterial road by more than 20 percent, or ten percent if the new traffic is primarily comprised of heavy vehicles, except where the affected road is at level of service A or B. New traffic generated by the proposed use shall not cause the adopted level of service for transportation on applicable roadways, as determined by applicable county standards, to be exceeded. Where the design of a public road to be used by the proposed use is physically inadequate to handle the numbers, types or weights of vehicles expected to be generated by the proposed use without damage to the road, the conditional use permit cannot be approved without a commitment to improve the road to a standard adequate to handle the proposed traffic, or to maintain the road through a maintenance bond or other means as required by the Board of County Commissioners.

Applicant's Response: No increase in traffic is anticipated.

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

Section 62-1901(c)(2)(b): The noise, glare, odor, particulates, smoke, fumes or other emissions from the conditional use shall not substantially interfere with the use or enjoyment of the adjacent and nearby property.

Applicant's Response: No interference is anticipated.

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

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

Applicant's Response: Noise levels will be consistent with historical use of the property.

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

Section 62-1901(c)(2)(d): The proposed conditional use shall not cause the adopted level of service for solid waste disposal applicable to the property or area covered by such level of service, to be exceeded.

Applicant's Response: Solid waste disposal will be consistent with historical use of the property.

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

Section 62-1901(c)(2)(e): The proposed conditional use shall not cause the adopted level of service for potable water or wastewater applicable to the property or the area covered by such level of service, to be exceeded by the proposed use.

Applicant's Response: Potable water and waste water use will not change from the historical use of the property.

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

Section 62-1901(c)(2)(f): The proposed conditional use must have existing or proposed screening or buffering, with reference to type, dimensions and character to eliminate or reduce substantial, adverse nuisance, sight, or noise impacts on adjacent and nearby properties containing less intensive uses.

Applicant's Response: These conditions will not vary from the historical use of the property.

Staff analysis: As the project is buffered by right-of-way, minimal screening or buffering has been identified on the concept plan. Note, the outdoor patio area is nearby an access point which will have no screening or buffer when seen from the public roadway. Should the Board determine that additional measures become necessary, the Board may wish to request the applicant submit a Binding Development Plan (BDP) to provide for those additional measures.

Section 62-1901(c)(2)(g): Proposed signs and exterior lighting shall not cause unreasonable glare or hazard to, traffic safety, or interference with the use or enjoyment of adjacent and nearby properties.

Applicant's Response: Signage will remain the same with respect to impact on traffic safety and nearby properties.

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

Section 62-1901(c)(2)(h): Hours of operation of the proposed use shall be consistent with the use and enjoyment of the properties in the surrounding residential community, if any. For commercial and industrial uses adjacent to or near residential uses, the hours of operation shall not adversely affect the use and enjoyment of the residential character of the area.

Applicant's Response: Hours of operation will remain consistent with the historic use of the property.

Staff analysis: The hours of operation (for any proposed business) has not been addressed. Should the Board determine that additional measures become necessary, the Board may wish to request the applicant submit a Binding Development Plan (BDP) to provide for those additional measures.

Section 62-1901(c)(2)(i): The height of the proposed use shall be compatible with the character of the area, and the maximum height of any habitable structure shall be not more than 35 feet higher than the highest residence within 1,000 feet of the property line.

Applicant's Response: No changes will be made to the property in respect to height.

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

Section 62-1901(c)(2)(j): Off-street parking and loading areas, where required, shall not be created or maintained in a manner which adversely impacts or impairs the use and enjoyment of adjacent and nearby properties. For existing structures, the applicant shall provide competent, substantial evidence to demonstrate that actual or anticipated parking shall not be greater than that which is approved as part of the site plan under applicable county standards.

Note: for existing structures, the applicant shall provide competent, substantial evidence to demonstrate that actual or anticipated parking shall not be greater than that which is approved as part of the site plan under applicable county standards.

Applicant's Response: No additional loading areas will be created.

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

For Board Consideration

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

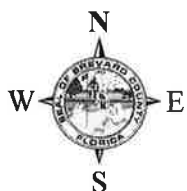
The Board may wish to consider the compatibility of the proposed CUP with surrounding development. The Board may consider additional conditions beyond those cited in Sections 62-1901 and 62-1906 in order to mitigate potential impacts to the abutting properties such as: provide a visual buffer and/or acoustically screen the proposed outdoor patio area from the nearby residential lots.

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

LOCATION MAP

SKYVIEW PLAZA, LLC

20Z00017





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: 8/5/2020

-  Buffer
-  Subject Property

ZONING MAP

SKYVIEW PLAZA, LLC

20Z00017



1:4,800 or 1 inch = 400 feet

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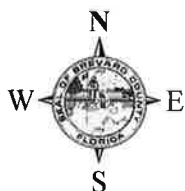
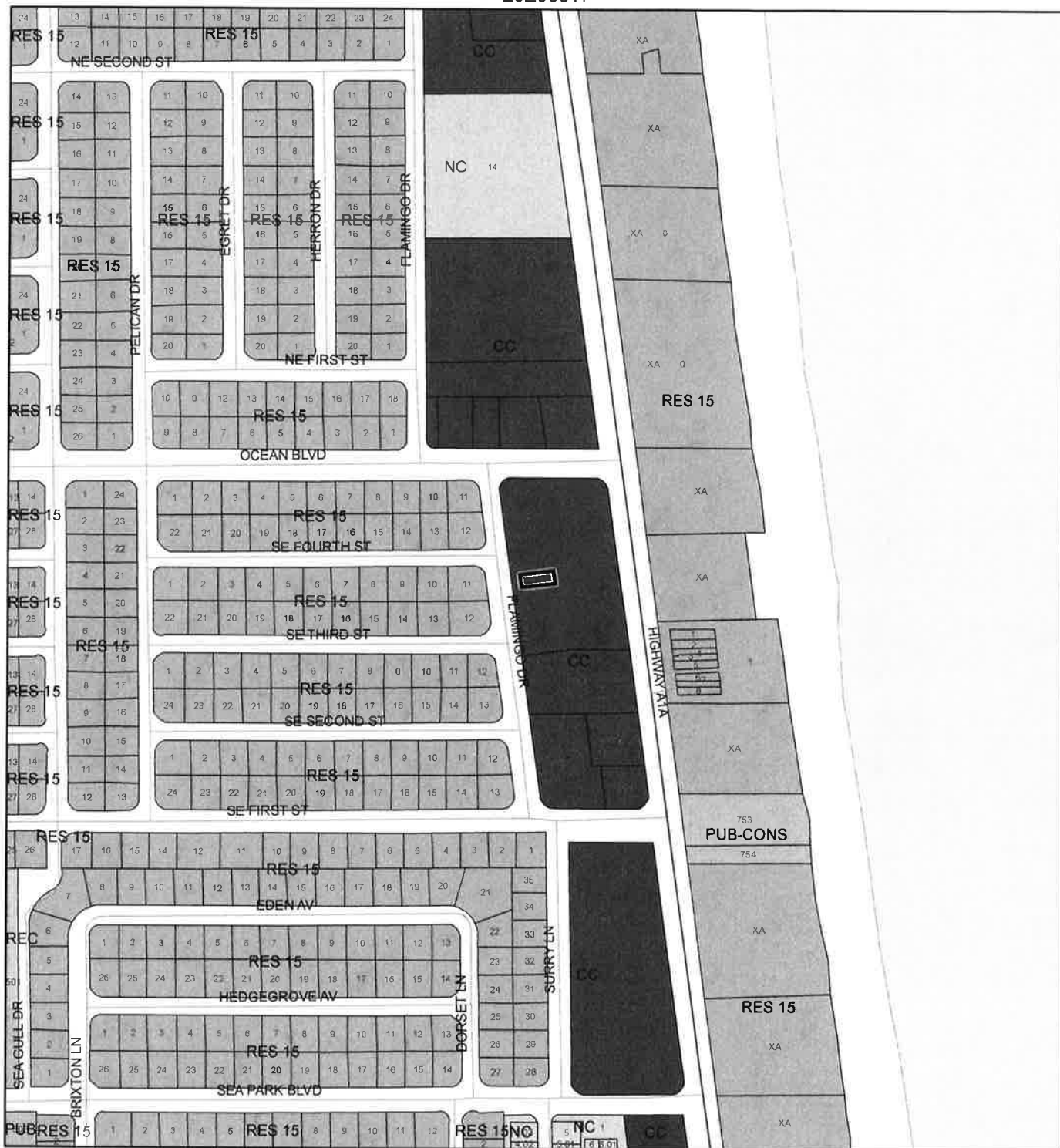
Subject Property

Parcels

Zoning

FUTURE LAND USE MAP

SKYVIEW PLAZA, LLC
20Z00017



1:4,800 or 1 inch = 400 feet

Subject Property
 Parcels

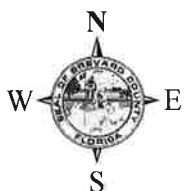
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 8/5/2020

AERIAL MAP

SKYVIEW PLAZA, LLC

20Z00017



1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2020

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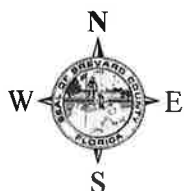
 Subject Property

 Parcels

NWI WETLANDS MAP

SKYVIEW PLAZA, LLC

20Z00017



1:4,800 or 1 inch = 400 feet

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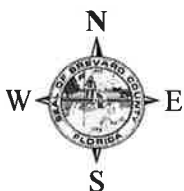
National Wetlands Inventory (NWI)

	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

SKYVIEW PLAZA, LLC

20Z00017



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 8/5/2020

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

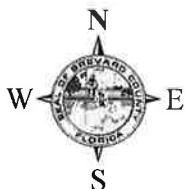
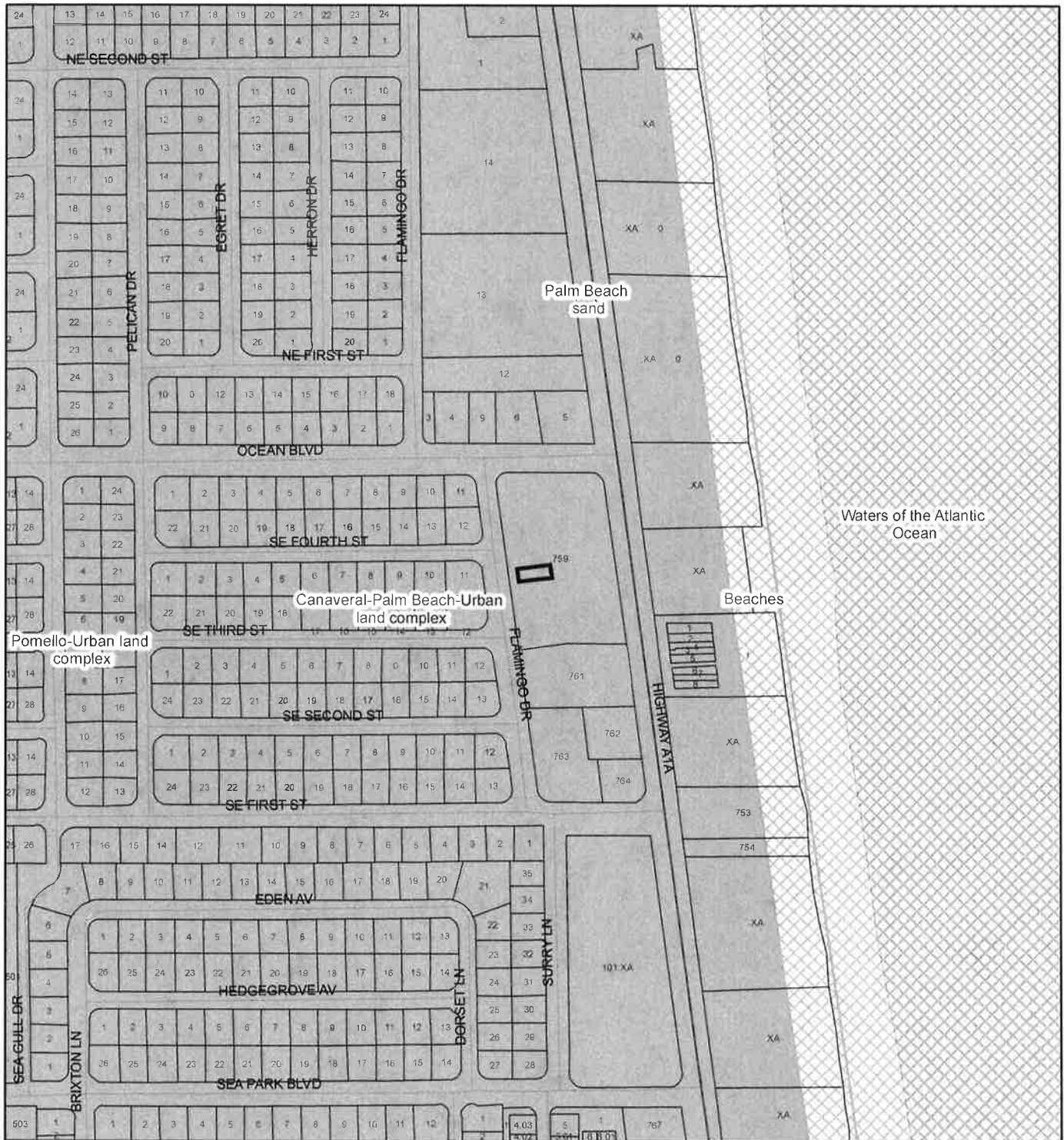
Subject Property

Parcels

USDA SCSSS SOILS MAP

SKYVIEW PLAZA, LLC

20Z00017



1:4,800 or 1 inch = 400 feet

USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

- Subject Property
- Parcels

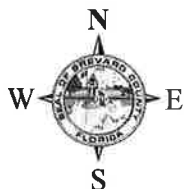
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 8/5/2020

FEMA FLOOD ZONES MAP

SKYVIEW PLAZA, LLC

20Z00017



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 8/5/2020

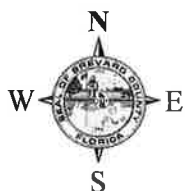
FEMA Flood Zones

- | | | |
|---|------------|----------------------|
| A | AO | X |
| AE | Open Water | X Protected By Levee |
| AH | VE | |
| 0.2 Percent Annual Chance Flood Hazard | | |
| 0.2 Percent Annual Chance Flood Hazard Contained in Channel | | |
| Subject Property | Parcels | |

COASTAL HIGH HAZARD AREA MAP

SKYVIEW PLAZA, LLC

20Z00017



1:4,800 or 1 inch = 400 feet

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— Subject Property

□ Parcels

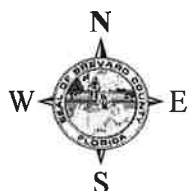
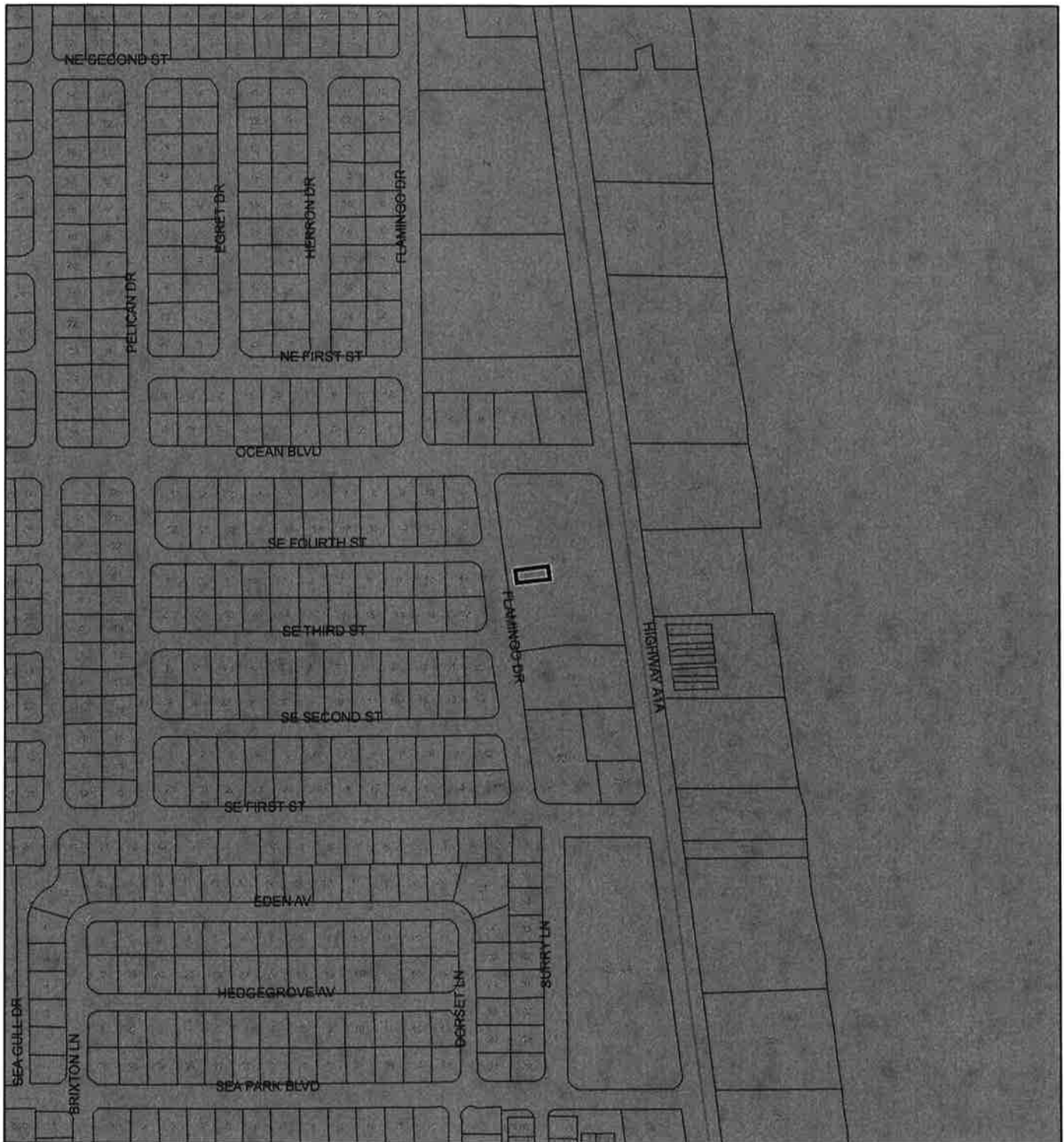
Coastal High Hazard Area

■ SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

SKYVIEW PLAZA, LLC

20Z00017



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 8/5/2020

 Subject Property

 Parcels

Septic Overlay

 40 Meters

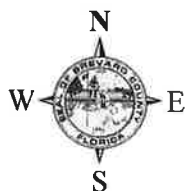
 60 Meters

 All Distances

EAGLE NESTS MAP

SKYVIEW PLAZA, LLC

20Z00017



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 8/5/2020

 Subject Property

 Parcels

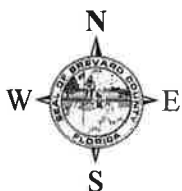


Eagle Nests
FWS 2010

SCRUB JAY OCCUPANCY MAP

SKYVIEW PLAZA, LLC




20Z00017



1:4,800 or 1 inch = 400 feet

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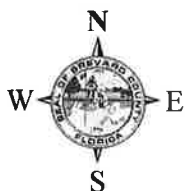
Produced by BoCC - GIS Date: 8/5/2020

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

SKYVIEW PLAZA, LLC

20Z00017







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: 8/5/2020

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

Flores de la Playa Condominium
245 Highway A1A, Satellite Beach, Florida 32937

August 14, 2020

Brevard County Planning and Zoning Board
Brevard County Government Center – Building A
2725 Judge Fran Jamieson Way Viera, Florida 32940

Re: ID# 20Z00017

Dear Board Members:

Thank you for the courtesy notice, advising that application for a Conditional Use Permit for use in a 3,700 SF establishment with full liquor license, within 500 feet of our property has been submitted to the County. For clarity, our homes are not just within 500 feet of the property; we are within 100 feet of the property. Skyview Plaza is located directly across the street from our condominium and spans the entire width of our condominium building. We already endure three establishments that serve alcohol.

The Plaza is a constant source of noise from cars, motorcycles, especially during the later night hours. Often we hear loud music from vehicles, and on occasion from the establishments; and altercations by patrons, verbal and physical.

In addition, it has been noted that the Skyview Plaza parking lot has become a gathering spot for the homeless and the associated “pan handling” activities.

We respectfully ask the Board not to support the approval of this Conditional Use Permit.

Signatures on Page 2

Letter dated August 14, 2020 – Brevard Planning and Zoning Board

Signed: Flores de la Playa Residents

David Baranek, 404
Chaim Maypole 304
Carolyn Barry 202
Herin Barry 202
Pat + Ben Traana 201

Demetrius T. 302
Lee & Lynn Brown 601

Willie E. Felt 501
Debbie Macken 401
DAN MACKEN 401
Claudia Cane 503
CIRDA DUARTE 301
Lloyd Gutierrez 501

LOCAL PLANNING AGENCY/PLANNING AND ZONING BOARD MINUTES

The Brevard County Local Planning Agency/Planning & Zoning Board met in regular session on Monday, August 24, 2020, at 3:00 p.m., in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

The meeting was called to order by Chair Mark Wadsworth, at 3:00 p.m.

Board members present were: Ron Bartcher; Brian Woltz; Brian Hodgers; Harry Carswell; Mark Wadsworth, Chair; Peter Filiberto, Vice Chair; Bruce Moia; and Joe Buchanan. Bruce Moia's presence was noted at 3:11 p.m.

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; Abigail Jorandby, Assistant County Attorney; and Jennifer Jones, Special Projects Coordinator.

Excerpt of Complete Minutes

1. Skyview Plaza (Paige Lane)

A request for CUP (Conditional Use Permit) for Alcoholic Beverages (full liquor) for On-Premises Consumption in conjunction with a bar, in a BU-1 (General Retail Commercial) zoning classification. The property is 3,700 +/- square feet, located on the southwest corner of Ocean Boulevard and Highway A1A (220 Highway A1A, Satellite Beach) (20Z00017) (Tax Account 2607202) (District 4)

Paige Lane, 440 South Waterway Drive, Satellite Beach, stated in 1998 he placed a liquor license in Unit 220, and through a clerical error at that time, it was only approved for beer and wine consumption. The license was in continual use until last year when the bar was sold by the person he sold it to, and now he represents the shopping center as a realtor, and there is a tenant who would like to continue using the space as a full liquor bar. He stated during the process of applying for a new liquor license in that unit it has been discovered that the use is still considered beer and wine only because of the clerical error in 1998 and again in 2016. He said the unit has been historically used as a full liquor bar, and the new tenant would like to continue that operation.

Joe Buchanan stated he visited the site, and the property offers a vegetative roadway buffer behind the plaza, and across Flamingo Road, some of the residents have a large wooden fence that provides additional buffering. He asked if the new expansion for outdoor dining will continue throughout the week.

Mr. Lane replied he is not asking for outdoor seating, he is only asking for the same footprint as the previous bar. He said if the potential tenants want to expand the footprint, that would be another process and the request would have to come back to the board.

Mr. Buchanan stated the outdoor area is approximately 300 square feet, so 15 – 17 people would be the maximum. Mr. Lane stated for the purpose of the request today, he is not asking for any outdoor seating. The previous owner set up an area outside where people could smoke, but there are no liquor sales in that area; the new tenant will keep it as a smoking area.

Mr. Buchanan asked if the outdoor seating would be included in the total seating for the inside and outside. Jeffrey Ball replied the application indicates there is a request for an outdoor seating area of approximately 200 square feet to the rear of the property.

Mr. Lane stated the previous owner might have expanded the footprint; he included all of the areas on the drawings he provided for the application, so the drawing may include the back area for smoking, but there is no bar in that area.

Mr. Buchanan stated the abutting adult entertainment needs to be separated. Mr. Lane stated there is a separation between the two units, and the units are not connected in any way.

Peter Filiberto stated the request appears to be a housekeeping item, and it appears the two businesses are separated.

Motion by Peter Filiberto, seconded by Joe Buchanan, to approve the requested CUP for Alcoholic Beverages (full liquor) for On-Premises Consumption in conjunction with a bar, in a BU-1 zoning classification. The motion passed unanimously. Bruce Moia absent.