



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.2.

3/5/2020

Subject:

Hitchin Beach Development Corp. (Richard Lee) requests a CUP for Alcoholic Beverages (beer & wine only) for On-Premises Consumption in conjunction with a restaurant in a BU-1 zoning classification. (19PZ00156) (Tax Account 2434945) (District 2)

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 (Conditional Use Permit) for Alcoholic Beverages (beer and wine only) for On-Premises Consumption in conjunction with a restaurant in a BU-1 zoning classification.

Summary Explanation and Background:

The applicant is seeking a CUP for Alcoholic Beverages (beer and wine only) for on-premises consumption in conjunction with a restaurant in a 2,000 square foot unit located at 6710 North A1A, Units A & B, Cape Canaveral, in a BU-1 zoning classification. No outdoor seating is proposed, and the site plan demonstrates adequate parking.

The subject property is in a commercial plaza zoned BU-1; the abutting parcels to the north and south are also zoned BU-1; the abutting parcel to the east is zoned RU-1-11 (Single-Family Residential); and the parcels to the west of A1A are in the City of Cape Canaveral.

The Board may wish to consider the consistency and compatibility of the proposed use and the abutting residential development. Because the request is for a CUP, the Board may want to consider additional conditions beyond those cited in Sections 62-1901 and 62-1906 in order to mitigate potential impacts to the abutting community.

On February 10, 2020, the Planning and Zoning Board heard the request and unanimously recommended approval.

Clerk to the Board Instructions:

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

Resolution 19PZ00156

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

WHEREAS, Hitchin Beach Development Corp. has requested a CUP (Conditional Use Permit) for Alcoholic Beverages (beer & wine only) for On-Premises Consumption in conjunction with a restaurant, in a BU-1 (General Retail Commercial) zoning classification, on property described as Units A & B only, of Lots 9, 10, 11, and 12, less the east 10 ft. of Lot 12, Block 77, Avon By The Sea, according to the plat thereof, as recorded in Plat Book 3, Page 7, of the Public Records of Brevard County, Florida. Section 23, Township 24, Range 37. (2,000 square feet) Located on the northeast corner of N. Atlantic Ave., and Hayes Ave. (6710 N. Atlantic Ave., Cape Canaveral); 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 as recommended; now therefore,

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested CUP for Alcoholic Beverages (beer & wine only) for On-Premises Consumption in conjunction with a restaurant, in a BU-1 zoning classification, be approved as recommended. 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 March 5, 2020.

BOARD OF COUNTY COMMISSIONERS
Brevard County, Florida

Bryan Andrew Lober

Bryan Lober, Chair
Brevard County Commission
As approved by the Board on March 5, 2020.

ATTEST:

Scott Ellis

SCOTT ELLIS, CLERK

(SEAL)

Planning and Zoning Board Hearing – February 10, 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

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STAFF COMMENTS

19PZ00156

Hitchin Beach Development Corp.

CUP (Conditional Use Permit) for Alcoholic Beverages (beer & wine only) for On-Premises Consumption in Conjunction with a Restaurant in BU-1

Tax Account Number: 2434945
Parcel I.D.: Portion of 24-37-23-CG-77-9
Location: 6710 North A1A, Units A & B, Cape Canaveral (District 2)
Acreage: 2,000 square feet

Planning and Zoning Board: 02/10/20

Board of County Commissioners: 03/05/20

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	CUP for alcoholic beverage in conjunction with a restaurant (beer & wine only)
Potential*	2,000 square feet Restaurant	2,000 square feet Restaurant
Can be Considered under the Future Land Use Map	YES CC	YES CC

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

Background and Purpose of Request

The applicant is requesting a Conditional Use Permit (CUP) for Alcoholic Beverages (beer and wine only) for on-premises consumption in conjunction with a sit-down restaurant. The request is for a 2,000 square-foot unit located at the south end of the plaza encompassing units A and B and will not have outside seating.

The parcel is located on the northeast corner of N. Atlantic Ave. and Hayes Ave. and retains the original General Retail Commercial Zoning (BU-1).

There was a previous CUP for on-premises consumption of alcoholic beverages (beer and wine only) in conjunction with a restaurant (Corey's Northern Style Deli) on units A and B of the subject plaza approved via zoning action **Z-8861** on October 28, 1991. This CUP, **Z-8861** for on-premises consumption of alcoholic beverages was never used and was administratively removed via zoning action **Z-10817(50)** on May 22, 2003.

Land Use

This site retains the Community Commercial (CC) Future Land Use Designation. The BU-1 zoning classification is consistent with **Policy 2.7** of the Future Land Use Element.

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.

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 Transportation Concurrency

The subject property is on the concurrency management segment of N. Atlantic Avenue, between McKinley Avenue and Buchanan Avenue, which has a Maximum Acceptable Volume (MAV) of 39,800 trips per day, a Level of Service (LOS) of D, and currently operates at 82.81% of capacity daily. The maximum development potential from the proposed CUP does increase the percentage of MAV utilization by 00%. The corridor is anticipated to continue to operate at 82.81% 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 is a commercial development.

The subject property is served by City of Cocoa potable water and City of Cape Canaveral sewer.

Applicable Land Use Policies

The applicant is requesting a Conditional Use Permit (CUP) for Alcoholic Beverages (beer and wine only) for on-premises consumption in conjunction with a sit-down restaurant. The request is for 2,000 square foot unit located at the south end of the plaza encompassing units A and B and will have no outside seating area. The site plan provided shows there are 26 available parking spaces.

The abutting parcel to the north is zoned BU-1 and is developed with a convenience store. The BU-1 classification to the north allows retail commercial land uses on minimum 7,500 square foot lots. The abutting parcel to the east is zoned Single-Family Residential (RU-1-11) and is developed with a single-family home. The RU-1-11 classification permits single family residential development on lots of 7,500 square feet (minimum). The parcel to the south directly across Hayes Avenue is zoned BU-1. The abutting parcel to the west is North Atlantic Avenue

(Highway A1A) and does not have a zoning classification. The parcels west of North Atlantic Avenue are in the City Limits of Cape Canaveral.

There have been four zoning actions within a half-mile radius of this site within the last five years.

Zoning item **15PZ00071** adopted February 4, 2016 approved a change of zoning classification from BU-1 and Medium-Density Multiple-Family Residential (RU-2-10) to all RU-2-10. The parcel is located on the south side Harding Avenue approximately 1,960 feet south of the subject parcel. The RU-2-10 classification permits multiple-family residential development or single-family residences at a density of up to 10 units per acre on minimum lot sizes of 7,500 square feet.

Zoning item **16PZ00019** adopted July 14, 2016, approved a change of zoning classification from Medium-Density Multiple-Family Residential (RU-2-15) to Institutional Use - Low-Intensity (IN-(L) with a Binding Development Plan (BDP) limited to a monastery for retired and/or semi-retired priests and brothers. The parcel is located on the southwest corner of Winslow Circle and Azure Lane approximately 1,306 feet southeast of the subject parcel. The RU-2-15 classification permits multiple-family residential uses or single-family residences at a density of up to 15 units per acre on 7,500 square foot lots. IN(L) is an Institutional (Light) zoning classification, intended to promote low impact private, nonprofit, or religious institutional uses to service the needs of the public for facilities of an educational religious, health or cultural nature.

Zoning item **16PZ00051** adopted August 4, 2016, approved a change of zoning classification from Single-Family Residential (RU-1-9) to Medium-Density Multiple-Family Residential (RU-2-10). The parcel is located on the north side of Roosevelt Avenue approximately 1,444 feet south of the subject parcel. 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.

Zoning item **17PZ00069** adopted September 21, 2017, approved a change of zoning classification from Medium-Density Multiple-Family Residential (RU-2-10) to Medium-Density Multiple-Family Residential (RU-2-15) with a BDP limiting density to ten units. The parcel is located on the south side of Arthur Avenue approximately 665 feet southeasterly of the subject parcel.

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's Observation: A survey has been provided 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's Observation: Serving and consumption of food and beverages, alcohol or otherwise, shall be strictly prohibited outside of the existing buildings unless such areas have been designated as outdoor seating areas pursuant to Section 62-1837.9 (Outdoor restaurant seating) of Brevard County Code. The applicant proposes to have 55 seats at this location. No outside expansion is proposed by the applicant. If an outdoor seating area is proposed in the future, the owner would be required to file for an updated CUP for the alcohol expansion area as required by Section 62-1906 (6) 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: **There was a restaurant here before, so no it will not.**

Staff's Observation: *The restaurant is proposed to contain 55 seats, exclusive of any outdoor seating area. Beer and wine use is proposed. There have been numerous restaurants that have occupied Units A & B of the said Plaza similar to the applicant's restaurant. An approved CUP for on premises consumption of alcoholic beverages (beer and wine only) in conjunction with a restaurant on units A and B of the subject plaza was approved via zoning action Z-8861 on October 28, 1991. This CUP use was never used and was administratively removed via zoning action Z-10817(50) on May 22, 2003.*

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.**

Staff's Observation: *The site plan for the Plaza was approved in 1990 and is within a commercial corridor along North Atlantic Avenue. There have been numerous restaurants that have occupied Units A & B of the said Plaza similar to the applicant's restaurant.*

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 an 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 it will not.**

Staff's Observation: *This site is developed as a commercial site; alcohol use (beer/wine) as accessory to a restaurant use should not negatively impact the surrounding property values. There have been numerous restaurants that have occupied Units A & B of the said Plaza similar to the applicant's restaurant.*

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. 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: **Already built to all applicable codes.**

Staff's Observation: *The approved site plan for the Plaza was approved in 1990 and met all Brevard County Development codes when it was approved.*

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: **They will not.**

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

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

Applicant's Response: **This was a café before and there is no delivery at this time.**

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

Section 62-1901(c)(2)(d) 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: **No it will not.**

Staff's Observation: *There have been numerous restaurants that have occupied Units A & B of the said Plaza similar to the applicant's restaurant.*

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: **No it will not.**

Staff's Observation: *There have been numerous restaurants that have occupied Units A & B of the said Plaza similar to the applicant's restaurant.*

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: **Same style of café from before. It will not.**

Staff's Observation: *No additional screening or buffering was required as part of the approved site plan for the development of this use. There have been numerous restaurants that have occupied Units A & B of the said Plaza similar to the applicant's restaurant.*

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 lights, so no it will not.**

Staff's Observation: *Commercial signage requirements are found in Section 62-3316 of the Code of Ordinance of Brevard County. Lighting standards are found in Section 62-2257 of the Code of Ordinance of Brevard County.*

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: **open from 8 a.m. to 8 p.m., so no it will not.**

Staff's Observation: *The hours of operation at such a licensed premises that are permitted:*

- (1) *Every day: beginning at 7:00 a.m. and ending at 2:00 a.m. on the following day.*
- (2) *Extended hours for New Year's Eve: beginning at 7:00 a.m. and ending at 4:00 a.m. on January 1.*

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 new building same as before.**

Staff's Observation: *The existing plaza is one story.*

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: **parking will not be a problem, so no it will not.**

Staff's Observation: *Per the site plan included for the Plaza, there are 26 available parking spaces. When the site plan was approved in 1990, the parking code required one parking*
Page 7

space for every three seats for a restaurant. Ordinance No. 14-16 changed this parking requirement to one parking space per 100 sq. ft. of a restaurant on May 15, 2014. The 26 available parking spaces exceed the current requirement of 20 parking spaces. There have been numerous restaurants that have occupied Units A & B of the said Plaza similar to the applicant's restaurant.

For Board Consideration

The applicant is requesting a Conditional Use Permit (CUP) for Alcoholic Beverages (beer and wine only) for on-premises consumption in conjunction with a sit-down restaurant. The request is for 2,000 square foot unit located at the south end of the plaza encompassing units A and B and will not have outside seating.

An approved CUP for on premises consumption of alcoholic beverages (beer and wine only) in conjunction with a restaurant (Corey's Northern Style Deli) on units A and B of the subject plaza was approved via zoning action Z-8861 on October 28, 1991. This CUP use was never used and was administratively removed via zoning action **Z-10817(50)** on May 22, 2003.

The Board should consider the compatibility of the proposed CUP with surrounding development.

Such CUP may be: 1.) approved subject to the conditions of Section 62-1906; 2.) approved subject to the conditions of 62-1906 and conditions imposed by the Board above and beyond the requirements of Section 62-1906; or 3.) denied.

LOCATION MAP
HITCHIN BEACH DEVELOPMENT CORP.
19PZ00156



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.

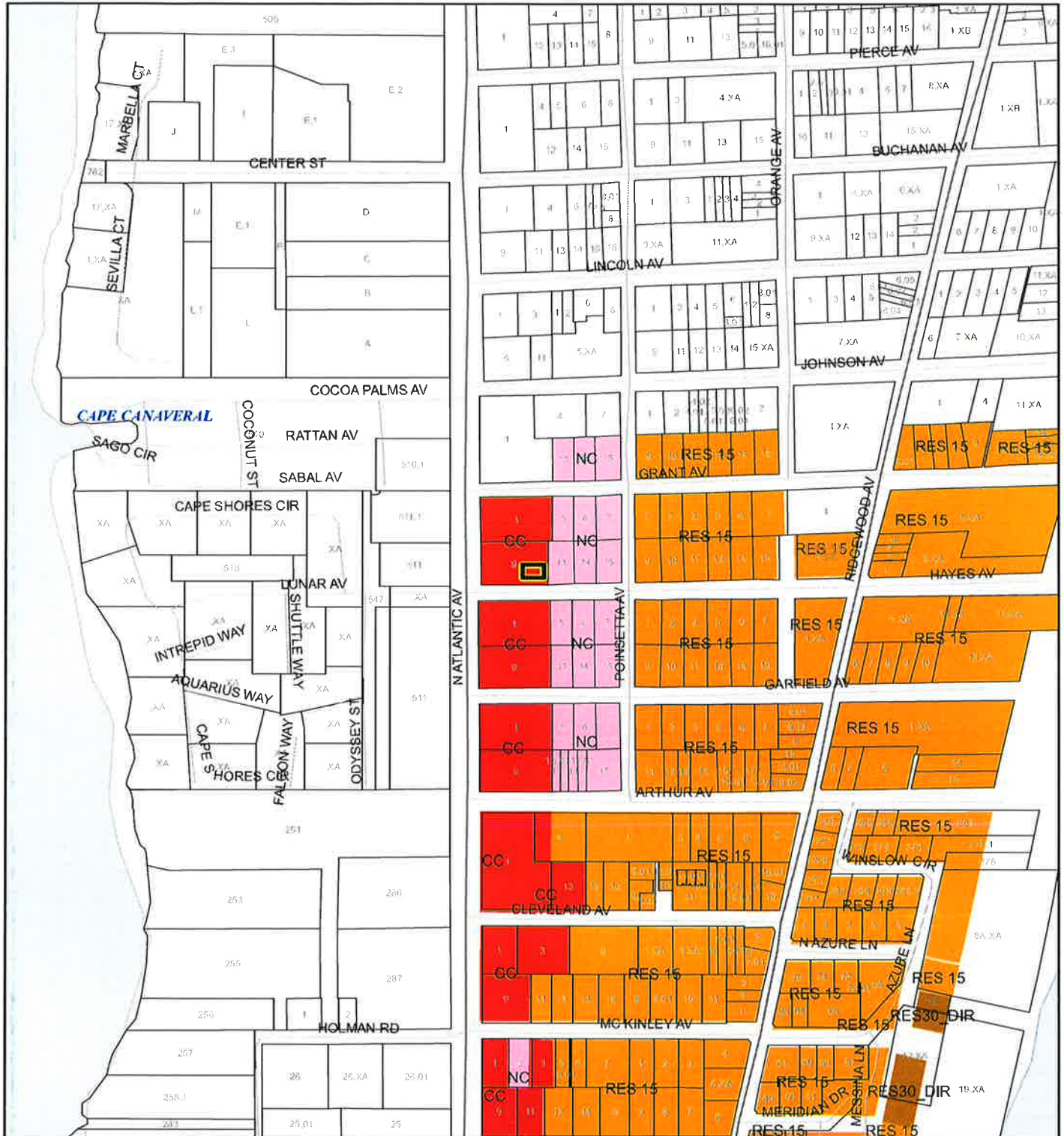
Produced by BoCC - GIS Date: 12/9/2019

Buffer
Subject Property

FUTURE LAND USE MAP

HITCHIN BEACH DEVELOPMENT CORP.

19PZ00156



1:4,800 or 1 inch = 400 feet

— Subject Property
□ Parcels

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AERIAL MAP
HITCHIN BEACH DEVELOPMENT CORP.
19PZ00156



1:1,200 or 1 inch = 100 feet

PHOTO YEAR: 2019

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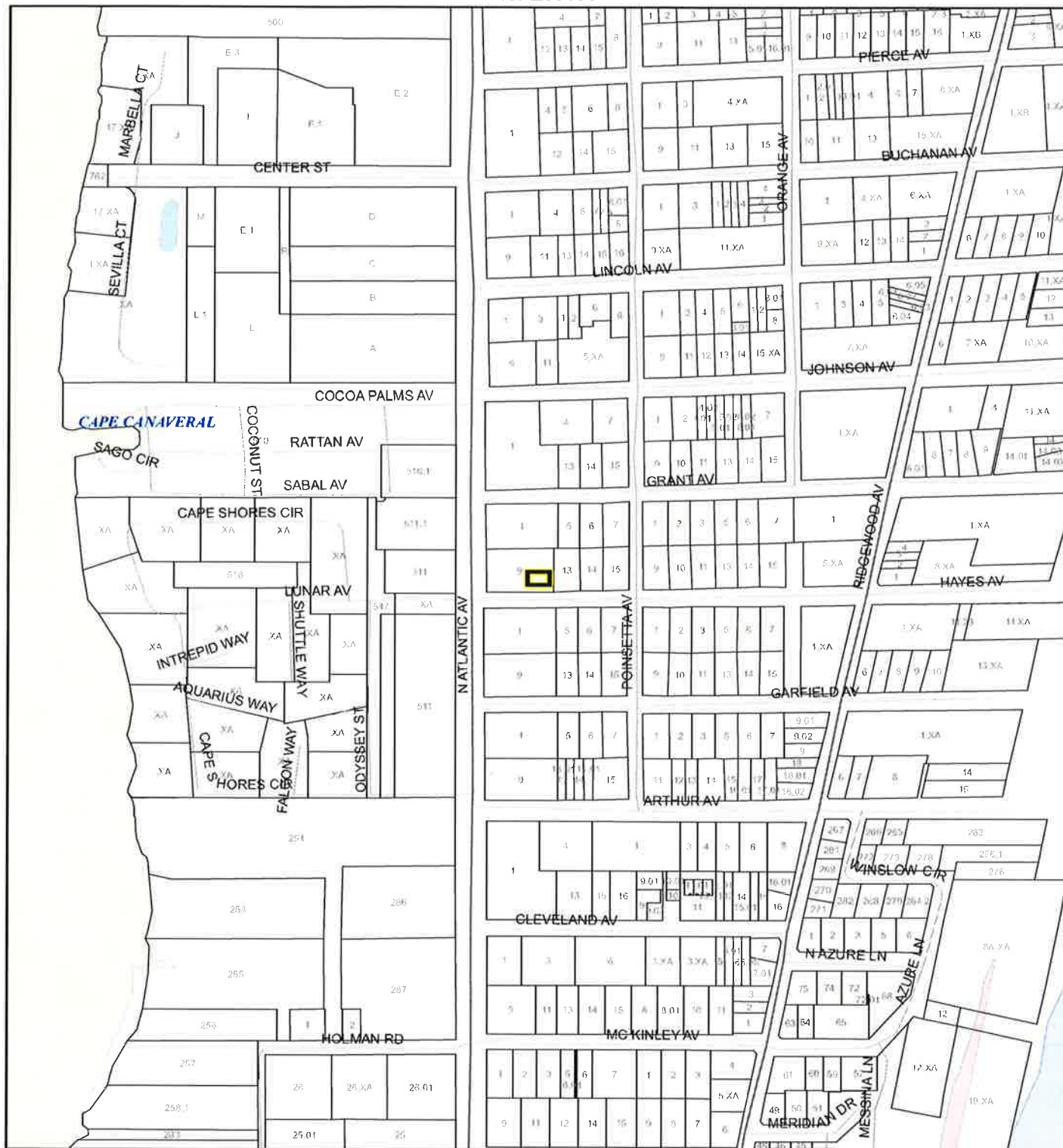
Produced by BoCC - GIS Date: 12/9/2019

 Subject Property
 Parcels

NWI WETLANDS MAP

HITCHIN BEACH DEVELOPMENT CORP.

19PZ00156



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

HITCHIN BEACH DEVELOPMENT CORP.

19PZ00156



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

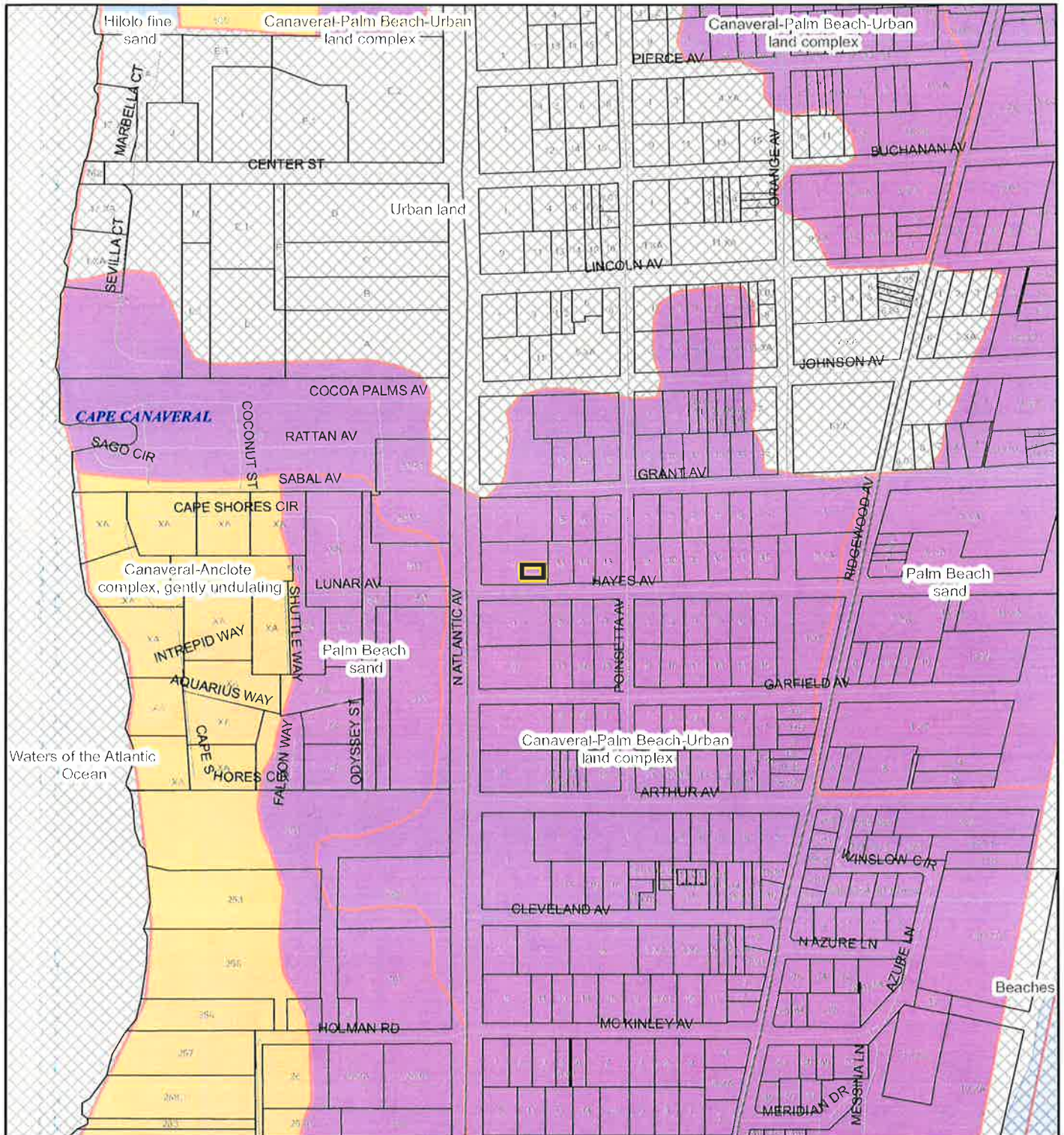
Subject Property

Parcels

USDA SCSSS SOILS MAP

HITCHIN BEACH DEVELOPMENT CORP.

19PZ00156



1:4,800 or 1 inch = 400 feet

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USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

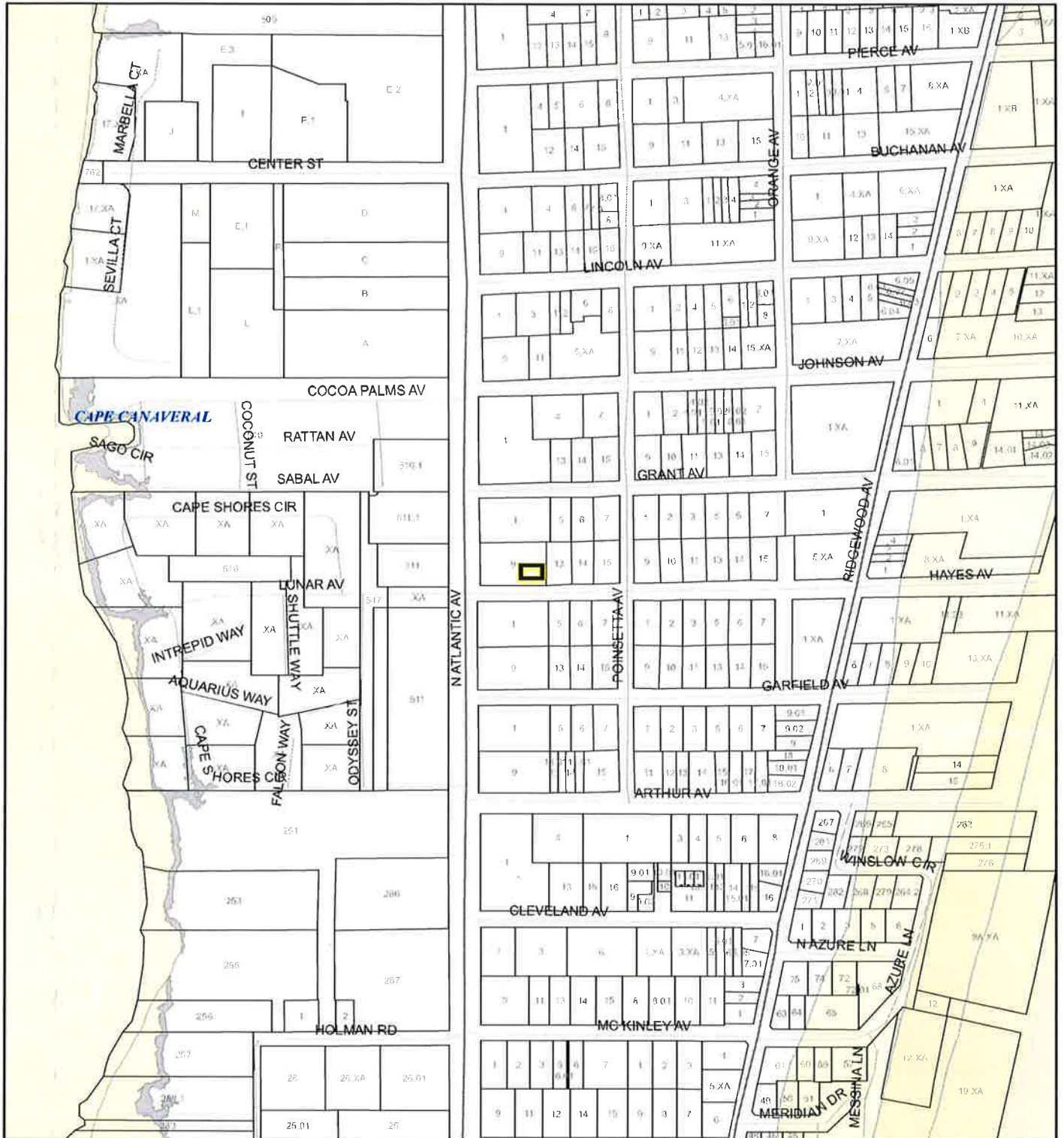
Subject Property

Parcels

FEMA FLOOD ZONES MAP

HITCHIN BEACH DEVELOPMENT CORP.

19PZ00156



1:4,800 or 1 inch = 400 feet

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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

HITCHIN BEACH DEVELOPMENT CORP.

19PZ00156



1:4,800 or 1 inch = 400 feet

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— Subject Property

□ Parcels

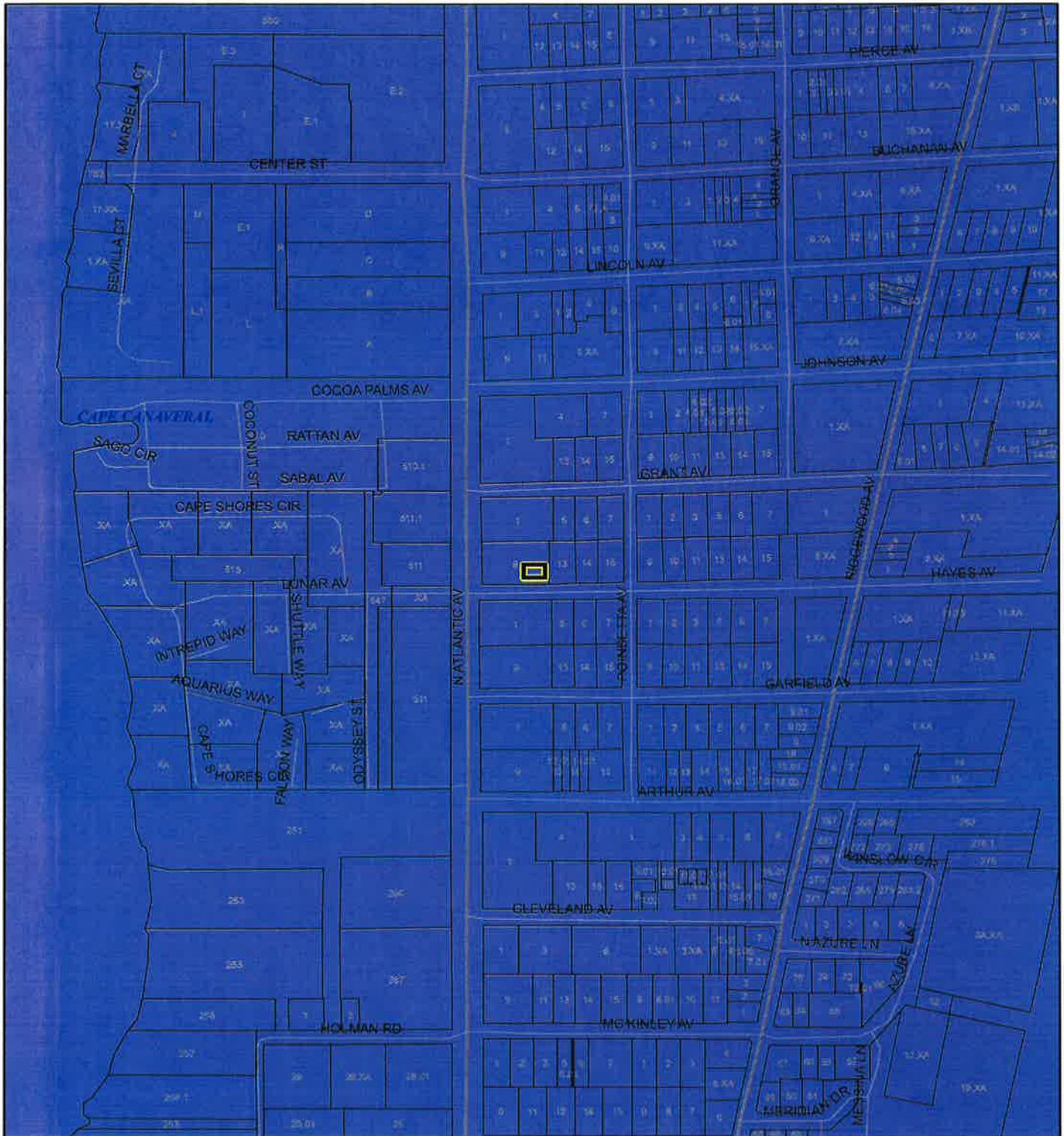
Coastal High Hazard Area

■ SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

HITCHIN BEACH DEVELOPMENT CORP.

19PZ00156



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

HITCHIN BEACH DEVELOPMENT CORP.

19PZ00156



1:4,800 or 1 inch = 400 feet

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 Subject Property

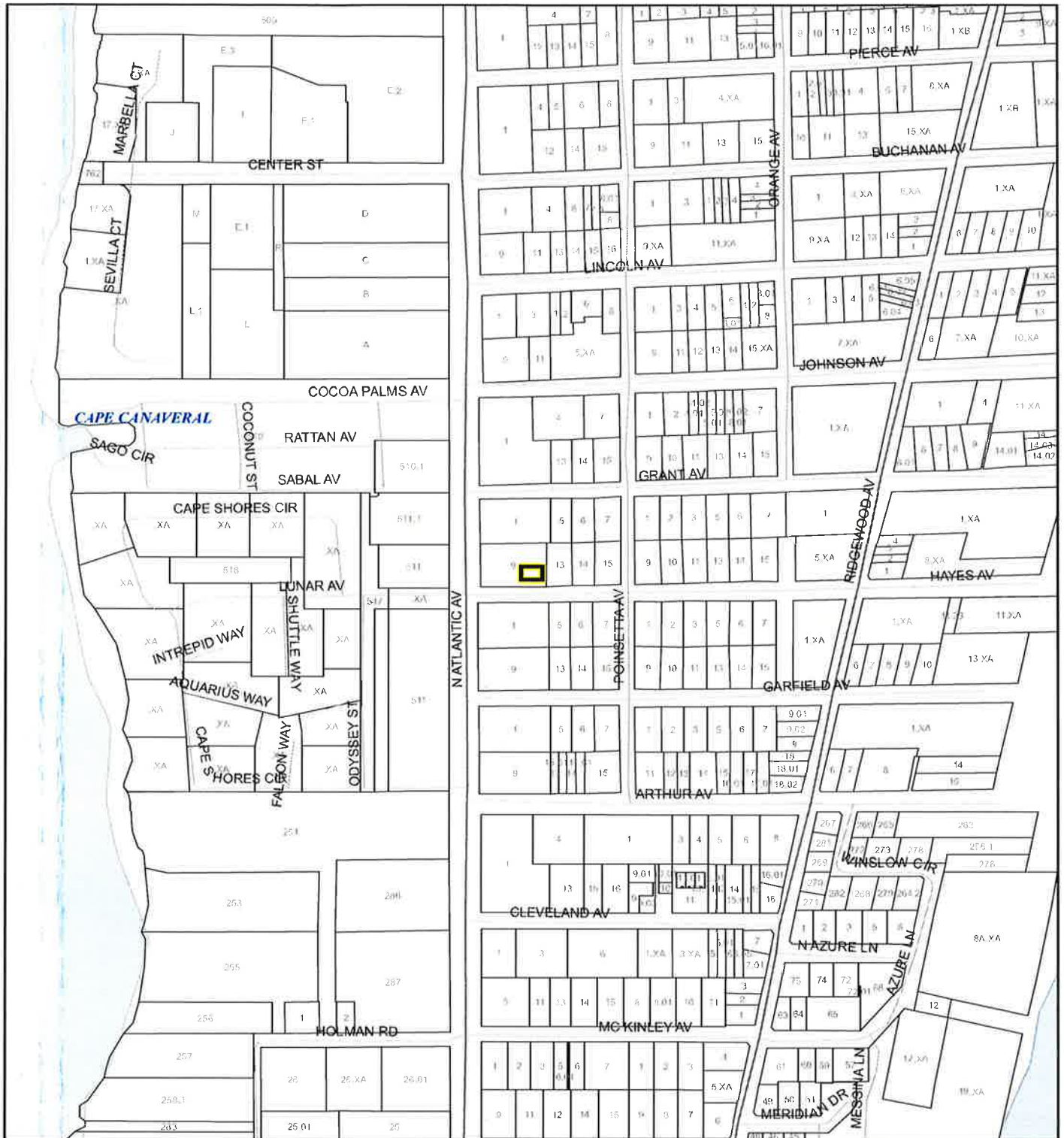
 Parcels

 Eagle Nests
FWS 2010

SCRUB JAY OCCUPANCY MAP

HITCHIN BEACH DEVELOPMENT CORP.




19PZ00156



1:4,800 or 1 inch = 400 feet

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-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

HITCHIN BEACH DEVELOPMENT CORP.

19PZ00156



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 12/9/2019

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

PLANNING AND ZONING BOARD MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, February 10, 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 at 3:00 p.m.

Board members present were: Ron Bartcher; Brian Woltz; Brian Hodgers; Harry Carswell; Ben Glover; Mark Wadsworth, Chair; Bruce Moia; Peter Filiberto, Vice Chair; and Dane Theodore.

Staff members present were: Rebecca Ragain, Assistant Director, Planning and Development; Jad Brewer, Assistant County Attorney; Paul Body, Planner II; and Jennifer Jones, Special Projects Coordinator.

Excerpt of Complete Agenda

2. Hitchin Beach Development Corp. (Richard Lee)

A CUP (Conditional Use Permit) for Alcoholic Beverages (beer & wine only) for On-Premises Consumption in conjunction with a restaurant in a BU-1 (General Retail Commercial) zoning classification. The property is 2,000 square feet, located on the northeast corner of North Atlantic Avenue and Hayes Avenue. (6710 North Atlantic Avenue, Units A & B, Cape Canaveral) (19PZ00156) (Tax Account 2434945)

Richard Lee, 6710 North Atlantic Avenue, Cape Canaveral – I'd like to sell beer, wine, and sake at my Hawaiian café I opened in November.

No public comment.

Motion by Brian Hodgers, second by Bruce Moia, to approve the CUP for Alcoholic Beverages (beer & wine only) for On-Premises Consumption in conjunction with a restaurant in a BU-1 (General Retail Commercial) zoning classification. The motion passed unanimously.