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FLORIDA

# Special Exception Appeal for “The Backyard” August 27, 2024



# Special Exception Appeal for “The Backyard”

24-474 – 638 Brevard Ave

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# Special Exception Appeal

## 638 Brevard Ave

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### Definitions:

A Special Exception is defined as a use that would not be appropriate generally or without restriction throughout the zoning division or district but which, if controlled as to number, area, location, or relation to the neighborhood would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity or general welfare.

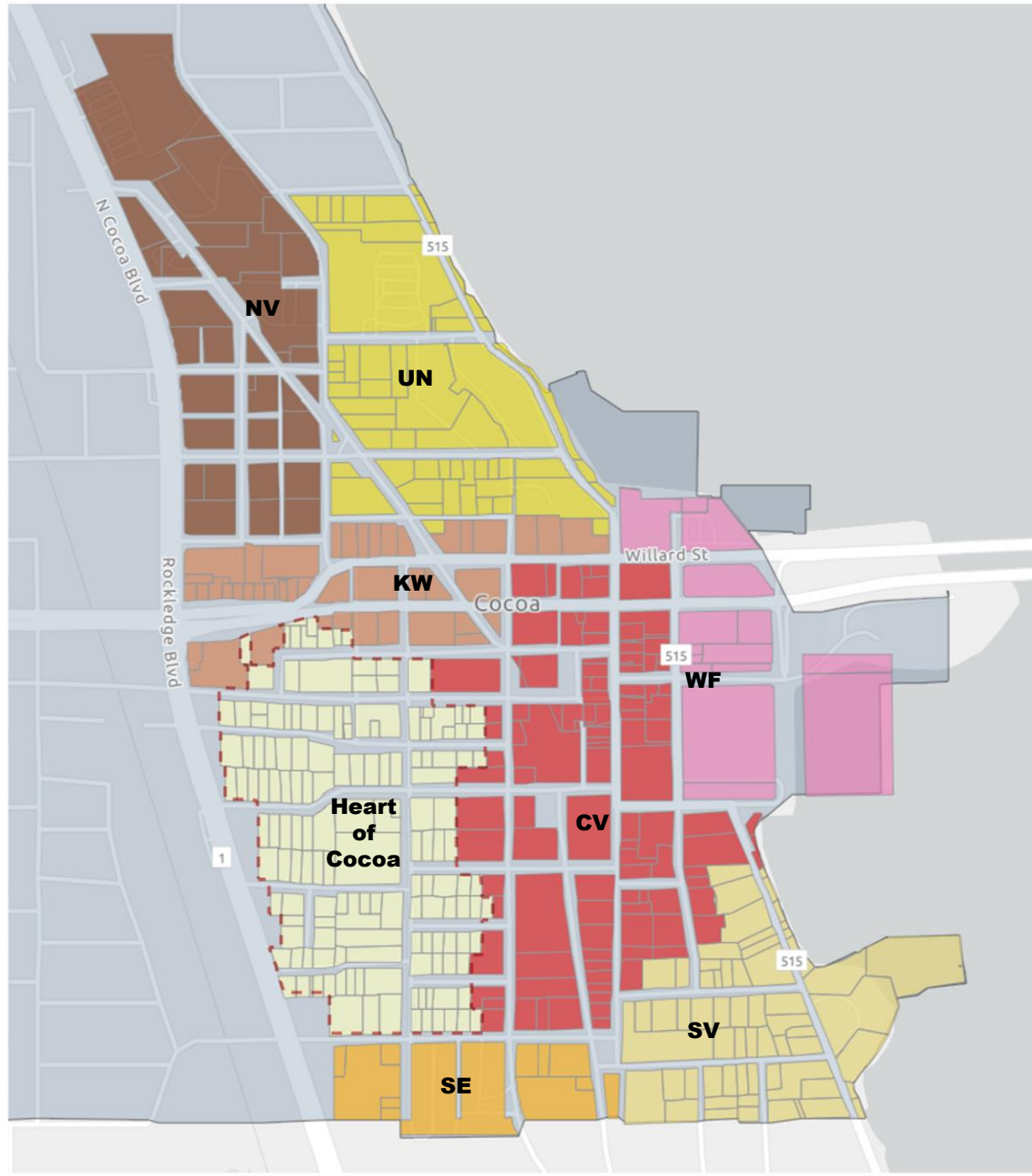
Bar is defined as a retail establishment selling alcoholic beverages for consumption on the premises or an establishment, commonly known as a "bottle club," in the business of furnishing premises where alcoholic beverages may be consumed.

Lounge or cocktail lounge is defined as a retail establishment selling alcoholic beverages for consumption on the premises or an establishment, commonly known as a "bottle club," in the business of furnishing premises where alcoholic beverages may be consumed.








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# Cocoa Village Waterfront Overlay District



## Cocoa Waterfront Districts

-  Cocoa Village (CV)
-  Heart of Cocoa (HC)
-  King/Willard Corridor (KW)
-  Uptown Neighborhood (UN)
-  South of the Village (SV)
-  South End (SE)
-  Waterfront (WF)
-  North of Village (NV)

## Cocoa City Boundary



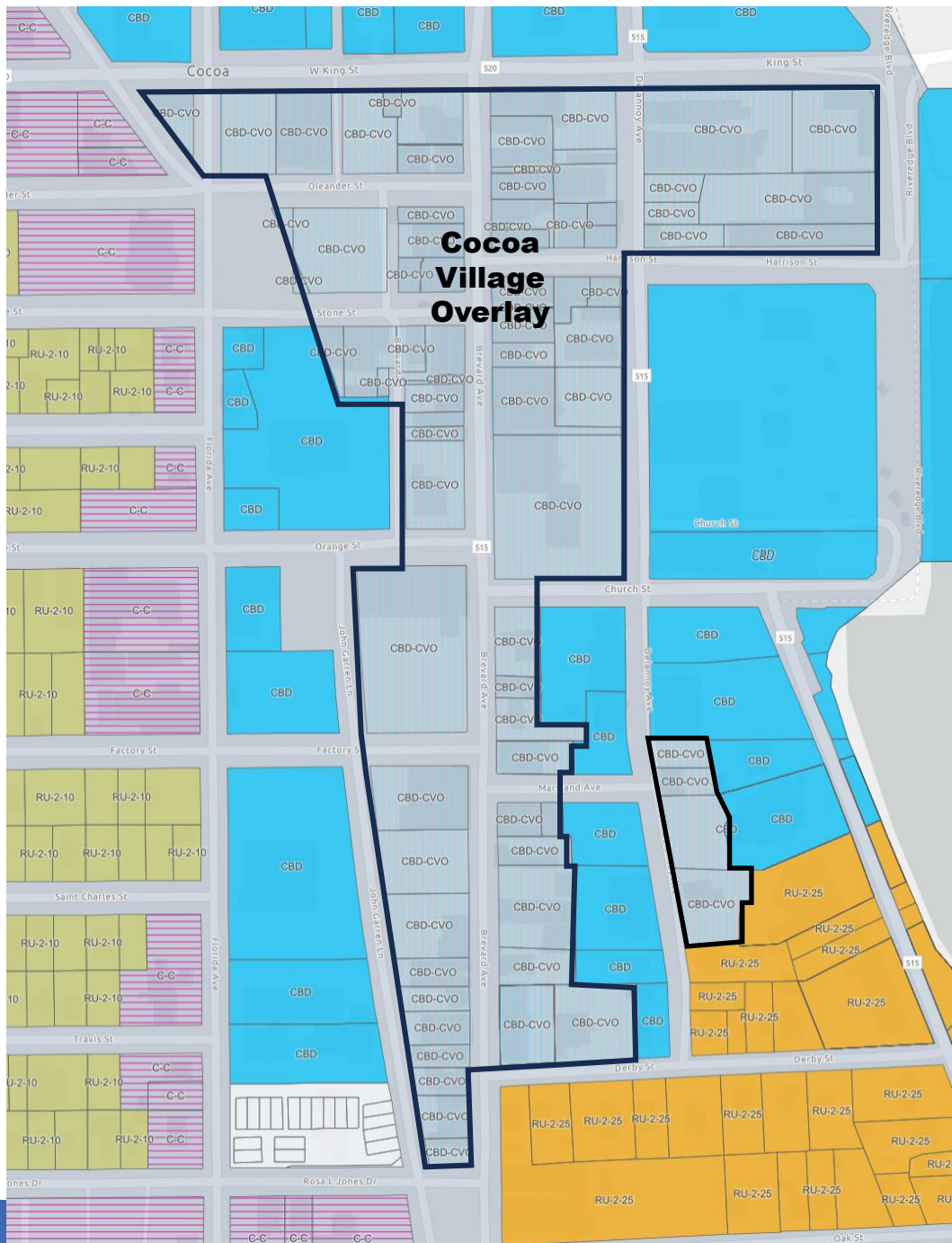


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## Cocoa Village Overlay (CVO)

### Central Business District

The permitted uses and design and development standards are intended to promote high quality development compatible with a Central Business District location. It is intended that "performance standards" control the permissible type, density and intensity, mix of development and design and development standards in order to assure and promote the development and redevelopment of property in the central business district in a manner compatible with comprehensive and redevelopment plan objectives.



# Special Exception Request

## 638 Brevard Ave

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**Appellant:** Aleck Greenwood

**Property:** 638 Brevard Avenue, 0.19-acre site

**Proposed Use:** Outdoor beer garden with beer and wine sales

**Respondent:** Christopher Hyskell, Farm Bar Inc.

**SPX:** Establishment of a bar or lounge with or without a package store

**BOA Actions:** Approved Special Exception with conditions on May 15, 2024

According to Appendix A, Zoning, Article XVIII, Appeals from the BOA, Sec. 1(a)(3), City Council members will review the appeal as if it is a new case. Please listen to all evidence and testimony and decide whether to affirm or reverse, wholly or in part or may modify the Board of Adjustment's original decision.

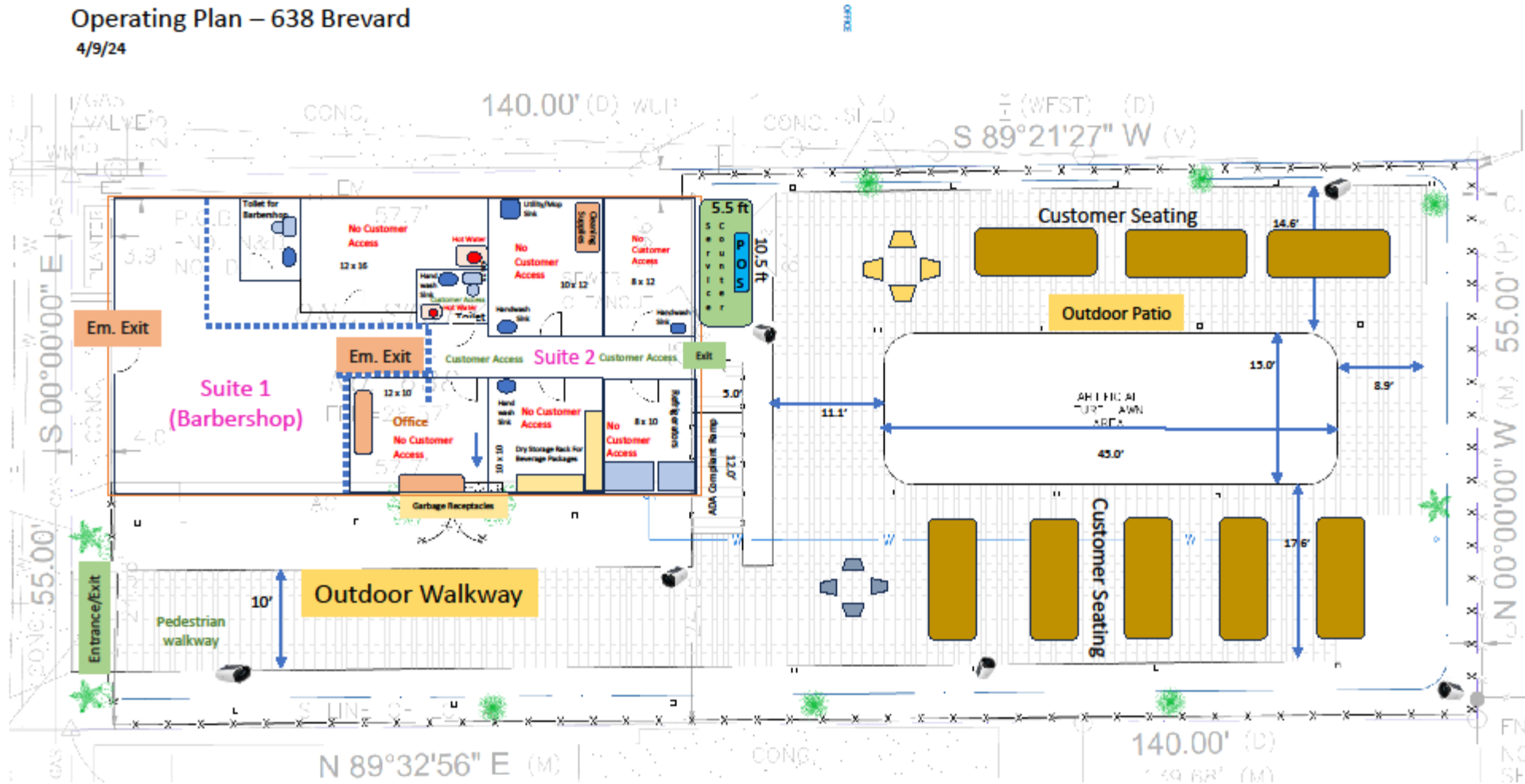
# Special Exception Request

## 638 Brevard Ave

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Operating Plan – 638 Brevard  
4/9/24



# Special Exception Request

## 638 Brevard Ave

### Analysis

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- Based on Appendix A Zoning, Art. XII, Sec. 1(d) (45), the unchanged **building** gross floor area exempts the applicant from needing to provide additional parking spaces.
- The City of Cocoa's noise ordinance provides sound level limits between 7:00 pm and 7:00 am, which has been considered by staff due to its proximity to a residential area.
- No impact on the existing refuse and service areas is expected.
- The outdoor beer garden will be consistent with the entertainment, bar, and nearby uses and is expected to complement and facilitate the economic vitality of the Cocoa Waterfront Overlay District, Cocoa Village Subdistrict



# Special Exception Request

## 638 Brevard Ave

### Appeal Process

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In the Letter of Appeal dated July 1, 2024, the appellant argues in the Amended Notice of Appeal that the BOA wrongly granted the special exception based on the following:

- A. *The applicant owner of 638 Brevard Avenue for the SPECIAL EXCEPTION to said property failed to carry its burden showing that it would be in compliance with all applicable rules to the granting of same, as set forth in Article XVII Section 2 SPECIAL EXCEPTIONS [sic] (A)-(K) of the Zoning Code of the City of Cocoa.*
- B. *The granting by the BOA of this SPECIAL EXCEPTION adversely affects the public interest, especially of the contiguous property owners, in Violation of ARTICLE XVII, Section 2 (D) which states "in no case shall (the BOA) grant a SPECIAL EXCEPTION that in ANY WAY ADVERSELY AFFECTS THE PUBLIC INTEREST (emphasis supplied), adversely affecting nearby property owners by negatively impacting their quality of life and lowering property values is adverse to the public interest."*

# Special Exception Request

## 638 Brevard Ave

### Appeal Process

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- C. *The BOA failed to make written findings certifying compliance with the specific rules governing SPECIAL EXCEPTIONS as set forth in the City of Cocoa's Zoning Code Article XVII Section 2 (A)-(K) also set forth on the application for SPECIAL EXCEPTION required to be properly completed by the applicant.*
- D. *The BOA has failed to consider the matters set forth herein by the aggrieved party appellant and surrounding residents and property owners that expressed at the May 15th hearing by failing to prescribe appropriate conditions and safeguards to protect their interests to protect them from the negative effects of the operation of an outdoor bar during afternoon and evening hours affecting the City's residents. This includes the fact that the City has failed on numerous occasions to enforce the noise ordinances when complaints have been made by more than several residents and property owners with regard to other bars in Cocoa Village. Yet the BOA disregarded this issue when granting this property at 638 Brevard, (which is in a previously quiet area for many years of South Brevard Avenue), to operate with live entertainment and mechanical music in an outside environment during early afternoon hours, early evening hours and late nighttime hours disturbing the peace for the City's residents.*

# Special Exception Request

## 638 Brevard Ave

### Staff Recommendation

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Staff recommends that the City Council affirm the BOA's approval of the Special Exception for a bar or lounge in the CBD-CVO zoning district and the Cocoa Village Subdistrict in accordance with Appendix A, Zoning, Article XI, Section 13(C) and Section 22 (F) of the City of Cocoa Code, with the following original conditions:

- The Special Exception shall not be effective until the applicant has secured all the permits and approvals necessary for any development related to the Special Exception, such as site plan approval. Such permits shall be obtained within six (6) months of the Board's approval unless the Board grants the applicant additional time.
- If the use is extended, enlarged, or expanded, additional special exception approval shall be required. The outdoor capacity authorized by this approval is limited to 49 people. The site plan included as Exhibit E shall be binding upon the applicant, except that minor modifications may be made during the site plan review process to conform to the City Code or life safety requirements.

# Special Exception Request

## 638 Brevard Ave

### Staff Recommendation

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- The applicant shall conform to the City of Cocoa noise ordinances. The maximum permissible sound level in a commercial area is 65 dBA between 7:00 a.m. and 7:00 p.m. and 60 dBA between 7:00 p.m. and 7:00 a.m. Sixty (60) dBA is the volume of normal conversation. Therefore, no amplified music should be permitted.
- Hours of operation shall be limited to 10 a.m. to 10 p.m.
- The Special Exception shall not be effective until the applicant has secured a waiver for the six (6) existing parking spaces located on the property.
- The approval shall be limited to the sale of beer and wine only.

Any other conditions deemed necessary by the Board of Adjustment