

CITY COUNCIL AGENDA ITEM

Memo Date: August 22, 2024
Agenda Date: August 27, 2024
Prepared By: Lucilene Ribeiro, Planner
Through: Stockton Whitten – City Manager

Requested Action:

Consideration of an appeal of a Board of Adjustment decision approving a 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. The City Council shall conduct the appeal hearing in accordance with Appendix A, Zoning, Article XVIII, Section 1. .

BACKGROUND:

On June 13, 2024, Aleck Greenwood (“Appellant”) filed an appeal challenging the Board of Adjustment’s (BOA) decision to grant with conditions a Special Exception for 638 Brevard Ave “The Backyard”, permitting the establishment of a bar or lounge with or without a package store in the CBD-CVO and Cocoa Waterfront Overlay District, Cocoa Village Subdistrict to operate an outdoor beer and wine bar. It should be noted that the BOA approved with conditions the Special Exception application as well as an off-street parking waiver for the same property on May 15, 2024. In addition, on the same evening the BOA denied a variance request related to the erection of shade structures within the setbacks on the property. Neither the decision on the parking waiver nor the variance was included within the Mr. Greenwood’s appeal and are final decisions of the Board of Adjustment.

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. App. A, Zoning, Article V. “Bars or lounges, with or without a package store” requires a special exception permit in the CBD-CVO and Cocoa Waterfront Overlay District, Cocoa Village Subdistrict.

Appeals of BOA decisions may be made to the City Council by any party aggrieved by a final decision of the BOA by filing a timely notice of appeal, along with an administrative filing fee established by resolution. In this case, Aleck Greenwood is the appellant and has alleged that he is aggrieved by the decision approving with conditions the Special Exception for a bar or lounge for 638 Brevard Ave. The appellant timely filed the notice of appeal and paid the required fee within the designated timeframe. The appellant subsequently amended his Notice of Appeal on July 2, 2024 to clarify the scope of his appeal, his standing to appeal, and to further state his reasons and basis for the appeal. Mr. Greenwood owns property located adjacent to the subject property at 640 Brevard Avenue and resides there full time. Florida law provides that a party “aggrieved” generally means any person that can demonstrate that they may suffer special damages different in kind and degree from that of the general public at large.

Pursuant to Appendix A, Zoning, Article XVIII, Appeals from the BOA, Sec. 1(a)(3), the appeal hearing shall be conducted “de novo” or “anew” regarding the review criteria required to be applied by the Board of Adjustment and the issues presented in the notice of appeal. The city council shall hear and consider the evidence and testimony of any interested party and shall either affirm or reverse, wholly or in part, or may modify the decision appealed from and may make such decision as should be made, and to that end shall have all the powers of the Board of Adjustment from which the appeal was taken.

The City Council, like the BOA, must review this special exception by analyzing the criteria listed below. Written findings were provided by staff in the staff report dated May 15, 2024 (see attachment “A”) to the Board of Adjustment. Staff continues to recommend that the special exception application be approved with conditions for the reasons described in that staff report. Staff’s findings explain that, as conditioned, the special exception application satisfies the following criteria as established in Article XVII Section 2 Special Exception (A) - (K) of the Zoning Code of the City of Cocoa, where applicable:

- (A) Ingress and egress to 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 or catastrophe.*
- (B) Off-street parking and loading areas where required, with particular attention to the items in (A) above, and economic, noise, glare, or odor effects of the special exception on adjoining properties and properties generally in the district.*
- (C) Refuse and service areas, with particular reference to the items in (A) and (B) above.*
- (D) Utilities, with reference to locations, availability, and compatibility.*
- (E) Screening and buffering with reference to type, dimensions, and character.*
- (F) Signs, if any, and proposed exterior lighting with references to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district.*
- (G) Required yards and other open space.*
- (H) Height.*
- (I) Landscaping.*
- (J) Renewal and/or termination dates.*
- (K) That the use will be reasonably compatible with surrounding uses in its function, its hours of operation, the type and amount of traffic to be generated, and building size and setbacks, its relationship to land values, and other factors that may be used to measure compatibility.*

The Appellant claims the property owner failed to show that it would be in compliance with all above criteria prior to the granting of the special exception. The City Council is tasked with determining whether the Special Exception should be affirmed or reversed, in whole or in part, or may modify the decision in accordance with the powers of the Board of Adjustment.

SPECIAL EXCEPTION DETAILS

The subject property, “The Backyard”, a .19-acre site, contains an existing barber shop, and the new property owner Christopher Hyskell proposes a venue that will vary between hosting occasional special events and operating as a self-seating, family and pet-friendly outdoor beer garden with beer and wine sales from Wednesday thru Sunday from 10:00 am to 10:00 pm.

Application No.: PZ-24-00000009
Property Owner: Christopher Hyskell
 30 Lime Ave
 Cocoa, FL 32955
Company: Farm Bar Inc. – “The Backyard”
Future Land Use: Mixed Use
Zoning District: CBD-CVO
Existing Land Use: Personal service establishment- barber shop
Council District: District 1 – Councilmember Goins

Overview of Surrounding Area:

	Future Land Use Designation	Zoning District	Land Use
North	Mixed Use	CBD-CVO	Commercial and Residential
South	Mixed Use	CBD-CVO	Residential
East	Mixed Use	CBD	Residential
West	Mixed Use	CBD-CVO	Residential

Staff Analysis

As stated in the Letter of Appeal, dated July 1, 2024 (see attachment “B”), the Appellant claims in the Amended Notice of Appeal that the BOA erred in granting the special exception to 638 Brevard Avenue, on the factual and legal basis which includes, but not limited to, the following items A-D, which are reproduced below with a response from staff:

- 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 ESCEPTIONS [sic] (A)-(K) of the Zoning Code of the City of Cocoa.*

Staff Response: as stated in the original staff report findings, City Planning Staff determined that the respondent met the criteria to be granted the special exception. City planning staff makes the same recommendation to the City Council as was made to the BOA. Further, it should be noted that the burden of proof is generally not carried by the applicant/owner for special exception applications. Florida law provides that, in the case of a special exception, where the applicant has otherwise complied with those conditions set forth in the zoning code, the burden is upon the zoning authority to demonstrate by competent substantial evidence that the special exception is adverse to the public interest. A special exception is a permitted use to which the applicant is entitled *unless* the zoning authority determines according to the standards of the zoning ordinance that such use would adversely affect the public interest. In staff's view, imposing the recommended conditions (including prohibiting amplified music and requiring compliance with the City of Cocoa's noise ordinances) upon the special exception use is anticipated to greatly reduce or eliminate the adverse impacts to the public interest.

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."

Staff Response: The City has not received any competent, substantial evidence that the business operations have or will adversely affect the nearby property owners or the general public interest. As stated above, the conditions of approval recommended for the special exception were designed to greatly reduce or eliminate potential adverse impacts to the public interest and surrounding property owners.

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.

Staff Response: As mentioned previously, City Planning Staff based their recommendation on the analysis of the required criteria, and recommended approval to the BOA and provided written findings to the BOA for each special exception criteria in its written Staff Report. The BOA adopted and included the written findings of the Staff Report in its motion to approve with conditions the special exception application. The draft minutes for the BOA's meeting on May 15, 2024 have been included as an attachment for the City Council's review. The BOA has not held a meeting since May 15th in order to formally approve the minutes.

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.

Staff Response: The BOA considered the potential impact of the new bar on surrounding residential uses, including traffic, noise, and property values. The BOA, at Staff's recommendation, imposed special conditions to the Special Exception approval to address community concerns with noise in the area. Such as, Mr. Hyskell shall conform to the City of Cocoa noise ordinances ensuring 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. No amplified music is permitted. Also, the hours of operation are limited to 10 a.m. to 10 p.m, safeguarding the neighbors and protecting their interest from negative effects of the operation of an outdoor bar during afternoon and evening hours. The bar and lounge is also limited to selling beer and wine only as opposed to liquor. Finally, the Special Exception conditions limit the outdoor seating capacity to 49 people based upon the site plan and seating plan provided by the applicant, which is also binding upon the property. Expansions or enlargements of this seating capacity will require additional special exception approval.

Conclusion and Recommendations

The BOA's decision to grant the special exception was based on consideration of the evidence presented at the hearing. Specific concerns raised in the appeal regarding noise, traffic, and property values were not fully addressed in the application, though staff recommended conditions be imposed as described above. Given the concerns raised by the appellant regarding compatibility with residential uses, the City Council in affirming the special exception may affirm the conditions recommended by staff and adopted by the BOA or may consider imposing additional conditions or safeguards to mitigate potential negative impacts and to ensure community standards. These may include:

- Specific additional restrictions on operating hours and noise levels.
- Enhanced screening and buffering to minimize impacts on residential properties.

Based on the appeal, staff recommends that the City Council review the specific concerns raised by the appellant, consider additional conditions or modifications to the special exception as necessary, and ensure that the decision aligns with the intent of the zoning code to protect the public interest and compatibility with surrounding uses.

STRATEGIC PLAN CONNECTION:

N/A

BUDGETARY IMPACT:

N/A

PREVIOUS ACTION:

May 15, 2024 - Special Exception approved by the Board of Adjustment.

August 13, 2024 – City Council postponed appeal hearing to date certain of August 27, 2024.

RECOMMENDED MOTION:

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:

1. 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.
2. 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.
3. 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 shall be permitted.
4. Hours of operation shall be limited to 10 a.m. to 10 p.m.
5. 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.
6. The approval shall be limited to the sale of beer and wine only.

Any other conditions deemed necessary by the City Council.