

1. Resolution 2024-20, extending the commencement period for a conditional use granted for retail automotive gas/fuel sales in CC (Community Commercial District) zoning, on property located at the northeast corner of St. Johns Heritage Parkway and Emerson Drive NW (2.15 acres) (Case CU23-00005, Ascot Palm Bay Holdings, LLC).



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Lisa Frazier, Growth Management Director

DATE: June 25, 2024

RE: Resolution 2024-20, extending the commencement period for a conditional use granted for retail automotive gas/fuel sales in CC (Community Commercial District) zoning, on property located at the northeast corner of St. Johns Heritage Parkway and Emerson Drive NW (2.15 acres) (Case CU23-00005, Ascot Palm Bay Holdings, LLC).

SUMMARY:

At the July 6, 2023, Regular Council Meeting, City Council adopted Resolution 2023-19 granting a conditional use to the applicant, Ascot Palm Bay Holdings, LLC, for retail automotive gas/fuel sales in CC, Community Commercial zoning district at the northeast corner of St. Johns Heritage Parkway and Emerson Drive NW. The resolution granted a one (1) year commencement period.

At the July 20, 2023, Regular Council meeting, City Council approved Ordinance 2023-49 which amended Section 185.089, Conditional Uses; Conditions Governing Application; Procedures. Among the changes to this section, the commencement period was changed to two (2) years from the date the conditional use is granted.

Ascot Palm Bay Holdings, LLC has provided a Letter of Authorization to their engineer of record, Mr. Jarod C. Stubbs, P.E. of Kimley-Horn & Associates, Inc. Their formal site plan application was submitted for review on November 7, 2023. On May 2, 2024, the City received a request seeking an extension to the commencement period of the conditional use granted under Resolution 2023-19, which expires on July 5, 2024. This is the applicant's first request for an extension. The reason for the request is that the site plan review is approaching approval but may require more time than allotted by the conditional use approval.

If approved, the new expiration of the conditional use permit will be July 5, 2025, an extension of one (1) year, allowing a two (2) year commencement period from the date the conditional use was originally granted.

There were no adverse comments from staff.

REQUESTING DEPARTMENTS:

Growth Management

FISCAL IMPACT:

None.

STAFF RECOMMENDATION:

Motion to approve the Resolution amending Resolution 2023-19, Section 3, authorizing and extension to the conditional use through July 5, 2025.

ATTACHMENTS:

1. Applicant Extension Request
2. Resolution 2023-19 – Initial Conditional Use
3. Resolution 2024-20



May 2, 2024

City of Palm Bay
120 Malabar Rd
Palm Bay, FL 32907

Conditional Use Extension Request (Resolution 2023-19)

Project Name: Circle K – Emerson Dr & St. Johns Heritage Pkwy (SP23-00052)

To Whom it May Concern,

On behalf of the Applicant, Pursuit Development LLC, and Circle K Stores, Inc., Kimley-Horn and Associates, Inc. is requesting that the Conditional Use (approved under Resolution No. 2023-19 to allow retail automotive gas/fuel sales in CC zoning district at the northeast corner of Emerson Dr & St. Johns Heritage Pkwy) **be extended by one (1) year**. This extension is requested to ensure site plan approval can be obtained and construction commenced appropriately without allowing the conditional use to expire.

If you have questions, I can be reached by phone at 386.271.0272 or directly by email at jarod.stubbs@kimley-horn.com.

Sincerely,

Jarod C. Stubbs, P.E.

RESOLUTION 2023-19

A RESOLUTION OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, GRANTING A CONDITIONAL USE FOR RETAIL AUTOMOTIVE GAS/FUEL SALES IN CC (COMMUNITY COMMERCIAL DISTRICT) ZONING; WHICH PROPERTY IS LOCATED AT THE NORTHEAST CORNER OF EMERSON DRIVE AND ST. JOHNS HERITAGE PARKWAY, AND LEGALLY DESCRIBED HEREIN; GRANTING THE USE AS A CONDITIONAL USE; PROVIDING FOR A COMMENCEMENT PERIOD; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, application for a conditional use in CC (Community Commercial District) zoning to permit retail automotive gas/fuel sales on property legally described herein, has been made by Ascot Palm Bay Holdings, LLC, and

WHEREAS, the request was duly considered by the Planning and Zoning Board of the City of Palm Bay on June 7, 2023, which voted to recommend to the City Council approval, and

WHEREAS, all provisions applicable to the conditional use under Chapter 185, Zoning, Conditional Uses, Sections 185.085 and 185.086, and District Regulations, Sections 185.088 and 185.043, of the Palm Bay Code of Ordinances, have been addressed by the applicant, and

WHEREAS, the City Council of the City of Palm Bay has determined that such conditional use will neither be injurious to the neighborhood nor otherwise detrimental to the public welfare.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. The City Council of the City of Palm Bay hereby grants a conditional use for retail automotive gas/fuel sales on property zoned CC (Community Commercial District), which property is legally described as follows:

THE SOUTH 303.00 FEET OF THE WEST 310.00 FEET OF THAT CERTAIN PARCEL OF LAND DESCRIBED AS COMMERCIAL PARCELS C-6 THROUGH C-9, RECORDED IN OFFICIAL RECORDS BOOK 5750, PAGE 7946, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, LYING IN SECTION 21, TOWNSHIP 28S, RANGE 36E, BREVARD COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHWEST CORNER OF SAID COMMERCIAL PARCELS C-6 THROUGH C-9, (SAID POINT ALSO BEING THE INTERSECTION OF THE NORTH RIGHT-OF-WAY LINE OF EMERSON DRIVE, A 100.00 FOOT WIDE PUBLIC RIGHT-OF-WAY AS DESCRIBED IN OFFICIAL RECORDS BOOK 6149, PAGE 2602 WITH THE EAST RIGHT-OF-WAY LINE OF ST JOHNS HERITAGE PARKWAY, A 200.00 FOOT WIDE PUBLIC RIGHT-OF-WAY AS DESCRIBED IN OFFICIAL RECORDS BOOK 7491, PAGE 1713, ALL RECORDED IN THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA), AND RUN N 00°42'13" E, ALONG THE EAST RIGHT-OF-WAY LINE OF SAID ST JOHNS HERITAGE PARKWAY, A DISTANCE OF 303.00 FEET; THENCE S 89°19'54" E, PARALLEL TO AND 303.00 FEET NORTH OF, (AS MEASURED PERPENDICULARLY), THE NORTH RIGHT-OF-WAY LINE OF SAID EMERSON DRIVE, A DISTANCE OF 310.00 FEET; THENCE S 00°42'13" W, PARALLEL TO AND 310.00 FEET EAST OF, (AS MEASURED PERPENDICULARLY), THE EAST RIGHT-OF-WAY LINE OF SAID ST JOHNS HERITAGE PARKWAY, A DISTANCE OF 303.00 FEET TO THE NORTH RIGHT-OF-WAY LINE OF SAID EMERSON DRIVE; THENCE N 89°19'54" W, ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 310.00 FEET TO THE POINT OF BEGINNING; CONTAINING 2.16 ACRES, MORE OR LESS.

SECTION 2. The conditional use is granted subject to the applicant complying with the following:

- A. Constructing the structures relevant to retail automotive gas/fuel sales in accordance with the site plan which is, by reference, incorporated herein as Exhibit "A".
- B. The Land Development Division Staff Report which is, by reference, incorporated herein as Exhibit 'B'.
- C. All provisions of the Code of Ordinances of the City of Palm Bay and all other state and federal rules, regulations, and statutes.
- D. Completion of the lot split process prior to site plan approval.

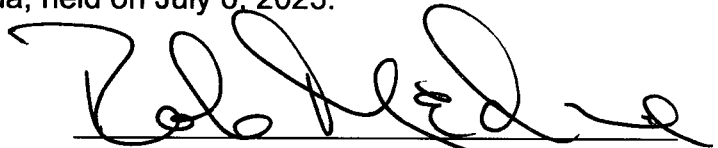
SECTION 3.

A. The conditional use must be commenced within one (1) year from the effective date of this resolution. Commencement shall mean the issuance of the appropriate permit(s) which must remain active. Failure to commence such construction within one (1) year shall void the conditional use.

B. Failure to make payment of the business tax within one (1) year shall void the conditional use.

SECTION 4. This resolution shall take effect immediately upon the enactment date.

This resolution was duly enacted at Meeting 2023-16, of the City Council of the City of Palm Bay, Brevard County, Florida, held on July 6, 2023.



Rob Medina, MAYOR



Teresa M. Jones, CITY CLERK

Applicant: Ascot Palm Bay Holdings, LLC
Case: CU23-00005

cc: Brevard County Recording
Applicant
Case File



C-STORE - ST. JOHNS HERITAGE PKWY
& EMERSON DR

CONCEPTUAL SKETCH

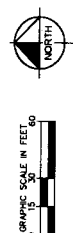
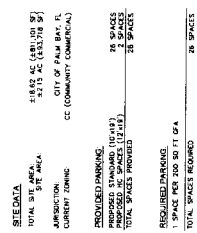
01/04/23 - CONTACT JAROD STUBBS, P.E. (407) 409-7002

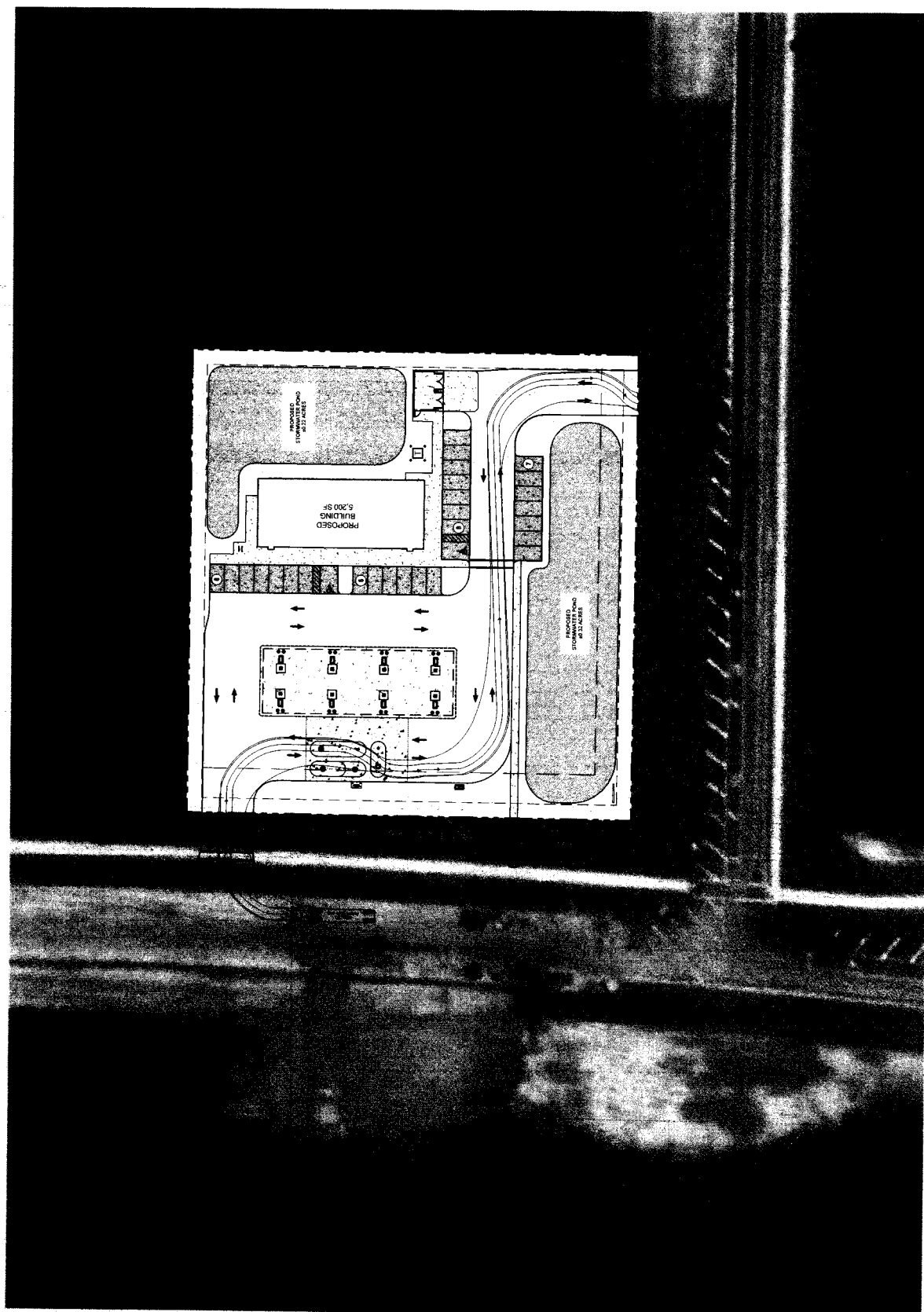
SP-05

SITE DATA	
TOTAL SITE AREA	1.1662 AC (50,810 SQ FT)
ADJACENT TO	2.215 AC (963,788 SQ FT)
ADJACENT TO	CITY OF PALM BAY FL
ADJACENT TO	CC (COMMUNITY CENTER/CLUB)
PROPOSED PARKING	
PROPOSED STANDARD (15-15)	28 SPACES
PROPOSED STANDARD (12-12)	2 SPACES
TOTAL SPACES REQUIRED	30 SPACES
REQUIRED PARKING	
1 SPACE PER 200 SQ FT OF AREA	28 SPACES
TOTAL SPACES REQUIRED	28 SPACES

GRAPHIC SCALE IN FEET/100







Kimley»»Horn



STAFF REPORT

LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: (321) 733-3042
landdevelopmentweb@palmbayflorida.org

Prepared by

Tania Ramos, Senior Planner

CASE NUMBER

CU23-00005

PLANNING & ZONING BOARD HEARING DATE

June 7, 2023

PROPERTY OWNER & APPLICANT

Ascot Palm Bay Holdings, LLC (Ana
Saunders P.E., BSE Consultants, Inc.,
Rep.)

PROPERTY LOCATION/ADDRESS

A Portion of Block 501, Section 21, Township 28, Range
36, Brevard County, Florida, containing approximately
2.16 acres, located at the intersection of St. Johns
Heritage Parkway and Emerson Drive NW. Tax Account
2862659

SUMMARY OF REQUEST

A Conditional Use to allow retail automotive gas/fuel sales in the
Community Commercial District, in accordance with Section
185.043(D)(3) of the Palm Bay Code of Ordinances.

Current Zoning

CC, Community Commercial District

Current Land Use

COM, Commercial

Site Improvements

Vacant Land

Site Acreage

Approximately 2.16 acres

SURROUNDING ZONING & USE OF LAND**North**

CC, Community Commercial District; Vacant Land

East

CC, Community Commercial District; Vacant Land

South

CC, Community Commercial District; Vacant Land

West

CC, Community Commercial District; Vacant Land

**COMPREHENSIVE PLAN
COMPATIBILITY**

Yes, Commercial Use

BACKGROUND:

The subject property is an 18.62-acre parcel located at the northeast corner of St. Johns Heritage Parkway and Emerson Drive NW. Specifically, this request includes approximately 2.16 acres of the total 18.62 acres. The applicant has provided a survey and legal description and will complete a parcel split with Brevard County Property Appraiser's office to carve out a 2.16-acre lot. The request is to allow retail automotive gas/fuel sales to be developed on vacant land.

The proposed use is a 5,200 SF Circle K gas station.

ANALYSIS:

Section 185.043(D)(3) of the Code of Ordinances establishes retail automotive gas/fuel sales as a conditional use in the Community Commercial District and provides specific requirements to be met before permitting this use. A conceptual plan has been provided illustrating that the site can meet these requirements. However, an administrative site plan review will be required to ensure compliance with Section 185.043(D)(3).

Retail automotive gas/ fuel sales establishments shall be located on arterial roadways or on corner lots at the intersection of collector streets or higher functional classification as identified in the adopted Palm Bay Comprehensive Plan. No more than two (2) corner lots at any intersection shall be used for retail gasoline or automotive fuel sales. The site meets this requirement as Emerson Drive is currently listed as a major collector roadway in the adopted Palm Bay Comprehensive Plan Maps and Figures and St. Johns Heritage Parkway is an arterial roadway based on the NW Traffic Study 2011 Map of Functional Classifications. The proposed project will be the first development at this intersection. There are no other retail gasoline or automotive fuel sales in the vicinity.

A minimum street frontage of one hundred and fifty (150) feet on each abutting street is required. The survey provided shows approximately three hundred three (303) feet along St. Johns Heritage Parkway, and approximately three hundred ten (310) feet along Emerson Drive. In addition, no driveway or access shall be permitted within one hundred (100) feet from an intersection of collector streets or higher functional classification. The conceptual plan shows the proposed development with driveways situated furthest from the intersection.

Gasoline, fuel pumps, storage tanks and other service island equipment are required be at least twenty (20) feet from all property lines, fifteen (15) feet from any building, and one hundred (100) feet from the nearest residentially owned land. No gasoline fuel pump, storage tank or other equipment shall be located closer than one thousand (1,000) feet from any municipal or public supply well. The underground storage tanks and service island appear to meet the required separations on the conceptual site plan, although adjustments may be

necessary during the administrative site plan review. The site is surrounded by commercially zoned land. There is no residentially owned land within one hundred (100) feet.

Underground storage is required for all receptacles for combustible materials in excess of two hundred (200) gallons. Although capacity is not indicated on the conceptual plan, underground storage tanks are shown. Development and operation of the fuel pumps and attendant storage tanks shall be in compliance with §§ 176.01 et seq. of the code of ordinances. This will also be reviewed in detail during the administrative site plan review.

CODE REQUIREMENTS:

To be granted conditional use approval, requests are evaluated upon items (A) through (H) of the General Requirements and Conditions of Section 185.087 of the Code of Ordinances. A review of these items is as follows:

Item (A): Adequate ingress and egress may be obtained to and from the property, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or other emergencies.

Ingress and egress are provided on both St. Johns Heritage Parkway and Emerson Drive. No driveway or access shall be permitted within one hundred (100) feet from an intersection of collector streets or higher functional classification, and the conceptual plan provided shows the proposed development will meet these requirements. An auto-turn exhibit showing that larger vehicles can navigate the site has also been provided. For pedestrian safety, Public Works has indicated that on and off-site sidewalks will be required along both frontages with on-site to off-site connections meeting City requirements. Currently, there is an existing sidewalk along St. Johns Heritage Parkway, and the conceptual plan shows a sidewalk connection providing pedestrians a safe path to the proposed building.

Item (B): Adequate off-street parking and loading areas may be provided, without creating undue noise, glare, odor, or other detrimental effects upon adjoining properties.

Section 185.140(G)(10) of the Code of Ordinances establishes parking requirements for food stores at one (1) space for each two hundred (200) square feet of gross floor area. The proposed building is 5,200 square feet, which will require twenty-six (26) parking spaces. The conceptual plan provides twenty-nine (29) parking spaces.

Section 185.141(D)(1) requires buildings or structures containing retail, food store, or similar retail or service uses which have an aggregate gross floor area of over five thousand (5,000) square feet, but not over twenty-five thousand (25,000) square feet to provide one (1) off-street loading space of at least fourteen (14) feet wide, forty-five (45) feet long, and having fourteen (14) feet of vertical clearance. This space has not been shown on the conceptual plan, but the site will be required to meet all requirements during the administrative site plan

review.

Item (C): Adequate and properly located utilities are available or may be reasonably provided to serve the proposed development.

Any necessary upgrades will be required to be designed, permitted, installed, and inspected at the developer's cost.

Item (D): Adequate screening and/or buffering will be provided to protect and provide compatibility with adjoining properties.

The conceptual plan shows the project oriented to St. Johns Heritage Parkway, with Emerson Drive as a side corner yard. The project will be required to meet all landscaping requirements during the administrative site plan review. The stormwater pond is also shown behind the building, which will create additional buffering between adjoining properties.

Item (E): Signs, if any, and proposed exterior lighting will be so designed and arranged to promote traffic safety and to eliminate or minimize any undue glare, incompatibility, or disharmony with adjoining properties.

A monument sign is shown on the conceptual plan at the intersection of St. Johns Heritage Parkway and Emerson Drive. Signage, lighting, and photometric plans will be required for administrative site plan review. It shall be noted that City codes require any lighting to be shielded and/or directed downward to avoid creating a nuisance to adjacent properties.

Item (F): Yards and open spaces will be adequate to properly serve the proposed development and to ensure compatibility with adjoining properties.

The conceptual plan includes the required yards and landscape buffers. The project will be required to meet all landscaping requirements during the administrative site plan review.

Item (G): The proposed use will not constitute a nuisance or hazard because of the number of persons who will attend or use the facility, or because of vehicular movement, noise, fume generation, or type of physical activity. The use as proposed for development will be compatible with the existing or permitted uses of adjacent properties.

The proposed project is located at the intersection of a major collector roadway and will be the first site used for the purpose of a retail gasoline or automotive fuel sales at this intersection. A traffic signal has already been warranted for the intersection and is currently in design. Public Works has indicated they will require a traffic study during the administrative site plan review. The project has been designed with sufficient drive aisles, and the conceptual plan includes an auto-turn exhibit showing that larger vehicles can navigate the site.

It is bordered by vacant commercial land to the north, south, west, and east.

Item (H): Development and operation of the proposed use will be in full compliance with any additional conditions and safeguards which the City Council may prescribe, including, but not limited to, a reasonable time limit within which the action for which special approval is requested shall be begun or completed, or both.

The Board and Council have the authority and right to impose any additional and justifiable safeguards, and/or conditions, to ensure that the facility operates safely and harmoniously with its surroundings.

STAFF FINDINGS:

Case CU23-00005 meets the minimum requirements for approval of a conditional use, subject to the staff comments contained in this report and completion of the lot split process prior to site plan approval.



Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



AERIAL LOCATION MAP CASE: CU23-00005

Subject Property

Northeast corner of St. Johns Heritage Parkway NW and Emerson Drive NW



September 21, 2023

Gary Smigiel
Ascot Palm Bay Holdings, LLC
7965 Lantana Road
Lake Worth, FL 33467

Dear Mr. Smigiel:

Enclosed is a certified copy of Resolution 2023-19, granting a conditional use to allow proposed retail automotive gas/fuel sales in CC (Community Commercial District) zoning on property located at the northeast corner of Emerson Drive and St. Johns Heritage Parkway.

The City Council approved the resolution at Regular Council Meeting 2023-16, held on July 6, 2023, subject to the applicant complying with the following:

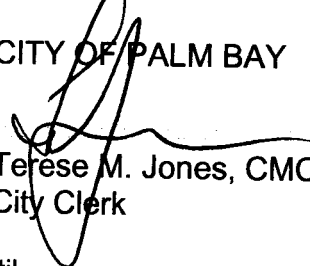
- A. Constructing the structures relevant to retail automotive gas/fuel sales in accordance with the site plan.
- B. The Land Development Division Staff Report.
- C. All provisions of the Code of Ordinances of the City of Palm Bay and all other state and federal rules, regulations, and statutes.
- D. Completion of the lot split process prior to site plan approval.

If the need should arise in the future for an extension to the commencement period of the conditional use, a written request must be submitted to the Growth Management Department within sixty days (60) prior to the expiration date.

If you should have any questions or require additional information, please contact Ms. Lisa Frazier, AICP, Growth Management Director, at (321) 733-3042.

Sincerely,

CITY OF PALM BAY


Terese M. Jones, CMC
City Clerk

/tjl

Enclosure: Resolution 2023-19

Case CU23-00005

Legislative Department



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Jesse Anderson, Acting Growth Management Director

DATE: 7/6/2023

RE: Resolution 2023-19, granting a conditional use to allow proposed retail automotive gas/fuel sales in CC (Community Commercial District) zoning on property located at the northeast corner of Emerson Drive and St. Johns Heritage Parkway (2.16 acres) (Case CU23-00005, Ascot Palm Bay Holdings, LLC). (Quasi-Judicial Proceeding)

The subject property is an 18.62-acre vacant unimproved parcel located at the northeast corner of St. Johns Heritage Parkway and Emerson Drive NW. Specifically, this conditional use request applies only to approximately 2.16 acres of the total 18.62 acres. The applicant has provided a survey and legal description and has submit a lot split with Brevard County to carve out a 2.16-acre lot. The conditional use request is to allow retail automotive gas/fuel sales to be developed on the 2.16-acre lot. The proposed use is a 5,200 SF Circle K gas station.

The staff report notes that a traffic methodology and study will be required prior to site plan approval and on-site and off-site sidewalks will be required along both frontages of St. Johns Heritage Parkway and Emerson Drive. (Please note that a traffic signal is triggered at the intersection of St. Johns Heritage Parkway and Emerson Drive by other unrelated subdivision projects. City staff is currently working through the necessary drafts of proportionate fair share agreements with those subdivision project developers and will present the agreements to City Council at a future Council meeting.)

City Council has the authority to request additional and reasonable conditions and safeguards associated with this conditional use.

REQUESTING DEPARTMENT:

Growth Management

RECOMMENDATION:

Motion to approve conditional use CU23-00005, subject to the staff comments and completion of the lot split with Brevard County prior to site plan approval.

Planning and Zoning Board Recommendation:

Motion to submit Case CU23-00005 to City Council for approval subject to staff comments.

Motion by Mr. Weinberg, seconded by Mr. McLeod. Motion carried with members voting as follows:

Aye: Jordan, Weinberg, Boerema, McLeod

ATTACHMENTS:

Description

CU23-00005 Staff Report

CU23-00005 Survey

CU23-00005 Site Sketch

CU23-00005 Citizen Participation Plan

CU23-00005 Application

CU23-00005 Letter of Authorization

CU23-00005 Acknowledgement

CU23-00005 Legal Ad

Resolution 2023-19

RESOLUTION 2024-20

A RESOLUTION OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING RESOLUTION 2023-19, SECTION 3, BY EXTENDING THE COMMENCEMENT PERIOD OF THE CONDITIONAL USE GRANTED FOR RETAIL AUTOMOTIVE GAS/FUEL SALES IN CC (COMMUNITY COMMERCIAL DISTRICT) ZONING, WHICH PROPERTY IS LOCATED AT THE NORTHEAST CORNER OF ST. JOHNS HERITAGE PARKWAY AND EMERSON DRIVE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on July 6, 2023, the City of Palm Bay granted a conditional use through Resolution 2023-19 to Ascot Palm Bay Holdings, LLC for retail automotive gas/fuel sales in CC (Community Commercial District) zoning, and

WHEREAS, Ascot Palm Bay Holdings, LLC has provided a Letter of Authorization for Jarod C. Stubbs, P.E., of Kimley-Horn & Associates, Inc., and

WHEREAS, an additional one (1) year extension to the commencement period for the conditional use is being requested by Jarod C. Stubbs, P.E.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, that:

SECTION 1. The City Council of the City of Palm Bay hereby amends Resolution 2023-19, Section 3, to read as follows:

"Section 3. The conditional use must be commenced within two (2) years from the effective date of this resolution. Commencement shall mean the issuance of site plan approval. Failure to obtain site plan approval within two (2) years shall void the conditional use."

SECTION 2. The effective date of the commencement period, as amended, for the conditional use shall be determined from the effective date of Resolution 2023-19, enacted on July 6, 2023.

SECTION 3. This Resolution shall be recorded in the Public Records of Brevard County at the applicant's expense.

SECTION 4. This resolution shall take effect immediately upon the enactment date.

This resolution was duly enacted at Meeting 2024-XX, of the City Council of the City of Palm Bay, Brevard County, Florida, held on _____, 2024.

Rob Medina, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK

Applicant: Ascot Palm Bay Holdings, LLC
Case: CU23-00005

cc: Brevard County Recording
Applicant
Case File