



MEMORANDUM

MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT

To: Monroe County Planning Commission

Through: Cheryl Cioffari, AICP, Acting Senior Director of Planning & Environmental Resources

From: Devin Tolpin, Senior Planner

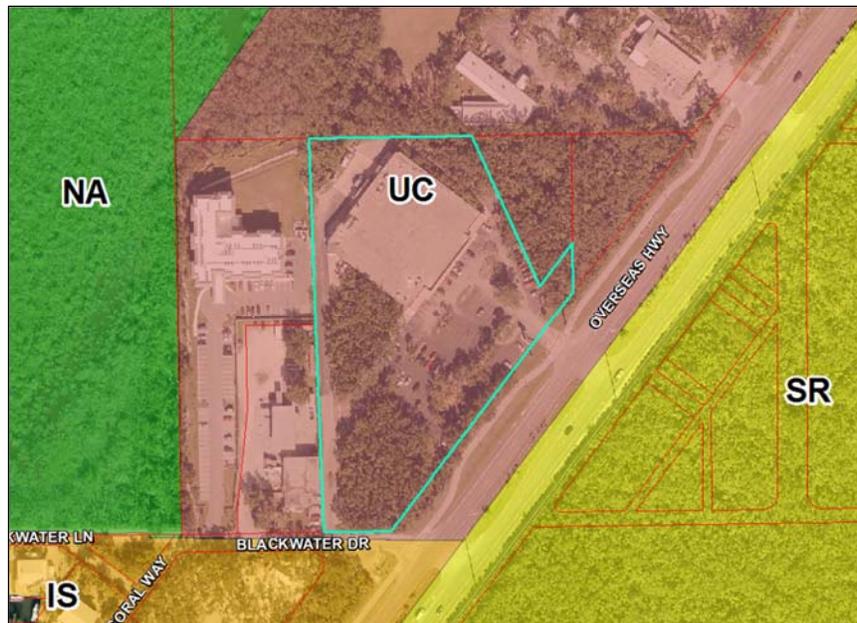
Date: August 6, 2019

Subject: *Winn-Dixie Stores Leasing, LLC, 105300 Overseas Highway, Key Largo, Mile Marker 105, Bay Side: a public hearing concerning the request for a 3BPS Alcoholic Beverage Use Permit, which would allow for beer, wine, and liquor package sales for off premises consumption. The subject property is commonly known as Winn Dixie and is legally described as a parcel of land lying in Section 1, Township 61 South, Range 39 East, Key Largo, Monroe County, Florida, being a portion of Lot 21 of the Model Land Co. plat as recorded in Plat Book 1 at Page 68 of the Public Records of Monroe County, Florida having Parcel Identification number 00084260-000300 (File 2019-120).*

Meeting: August 28, 2019

1 **I REQUEST:**

2 The applicant, Shutts & Bowen, LLP - agent for Winn Dixie Stores Leasing, LLC, requests
3 approval of a 3BPS Alcoholic Beverage Use Permit, which would allow for beer, wine, and
4 liquor package sales for off premises consumption at the Winn Dixie Grocery Store #0352
5 located on property at 105300 Overseas Highway, Key Largo (the "Property").



6
7 *Subject Property outlined in blue, with Land Use Districts Overlaid (Aerial dated 2018)*

1 **II BACKGROUND INFORMATION:**

2 **Location / Address:** 105300 Overseas Highway, Key Largo, Mile Marker 105, bayside

3 **Legal Description:** A parcel of land lying in Section 1, Township 61 South, Range 39 East,
4 Key Largo, Monroe County, Florida, being a portion of Lot 21 of the Model Land Co. plat as
5 recorded in Plat Book 1 at Page 68 of the Public Records of Monroe County, Florida

6 **Parcel Identification Number:** 00084260-0003200

7 **Applicant/Agent:** Shutts & Bowen, LLP, agent for Winn-Dixie Stores Leasing, LLC

8 **Property Owner:** Island Plaza, LLC

9 **Size of Site:** 156,000 ft² (3.58 acres)

10 **Land Use District:** Urban Commercial (UC)

11 **Future Land Use Map (FLUM) Designation:** Mixed Use/Commercial (MC)

12 **Tier Designation:** III (infill area)

13 **Existing Use:** Commercial retail

14 **Existing Vegetation / Habitat:** Developed land/ Hammock

15 **Community Character of Immediate Vicinity:** Institutional, Institutional Residential, Single
16 Family Residences, Conservation Land

17 **Flood Zone:** X, AE9

18
19 **III RELEVANT PRIOR COUNTY ACTIONS:**

20 On July 13, 1986, Zoning Board Resolution No. 23-86, Alcoholic Beverage Approval, was
21 recorded for a 2APS alcoholic beverage license which allowed for the package sale of beer and
22 wine for off premises consumption.

23
24 **IV REVIEW OF APPLICATION:**

25 Pursuant to Section 3-6(e) of the Monroe County, Florida, Code of Ordinances (the “Code”), the
26 Planning Commission shall give due consideration to the following factors as they may apply to
27 the particular application prior to rendering its decision to grant or deny the requested permit:

28
29 *(1) The effect of such use upon surrounding properties and the immediate neighborhood as*
30 *represented by property owners within 500 feet of the premises.*

31
32 The Property is currently developed with an approximately 38,000 square foot grocery store.
33 Surrounding properties within 500 feet of the restaurant premises include a church to the
34 northeast, a residential senior living center with a commercial apartment to the west, a
35 residential subdivision known as Paradise Point to the southwest, and Overseas Highway
36 and undeveloped conservation land to the east.

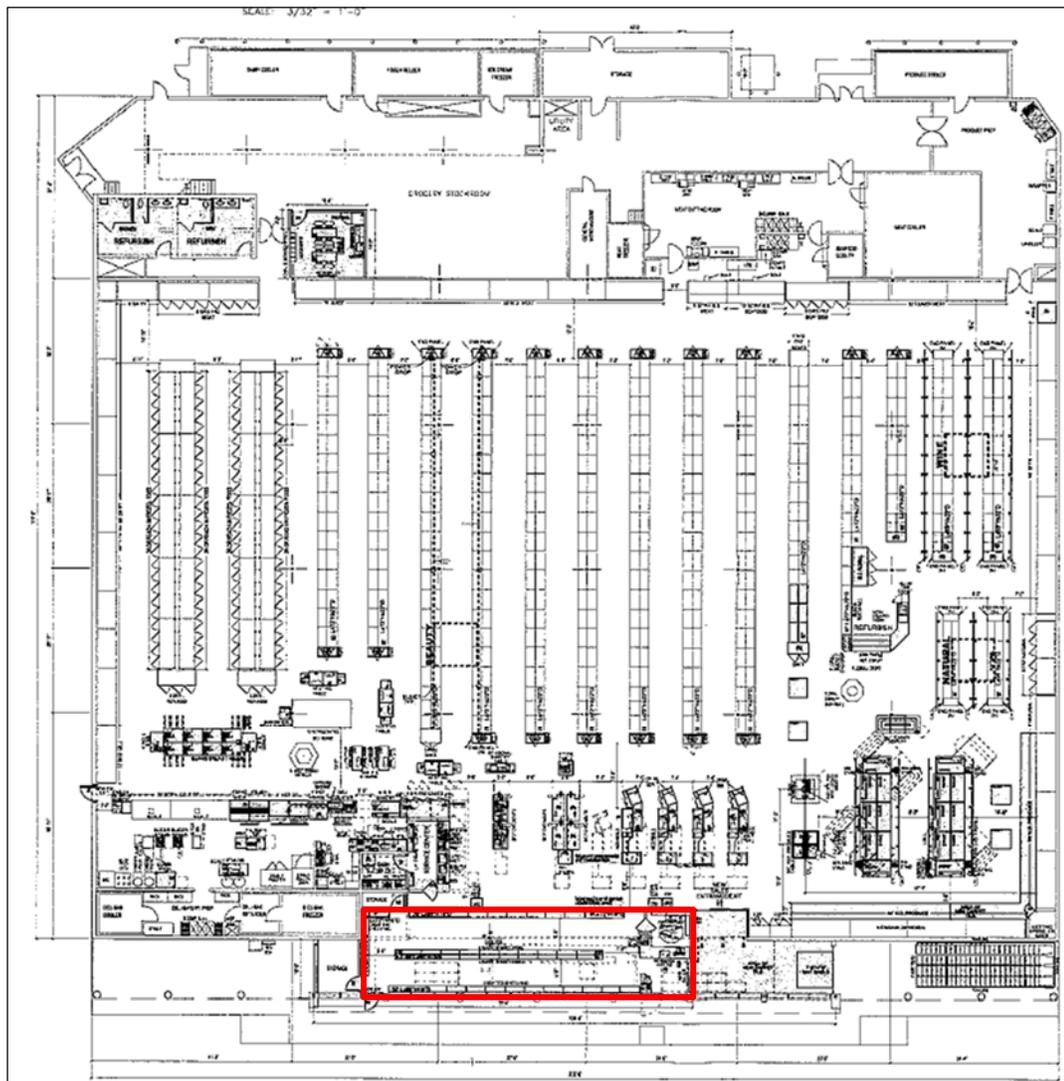
37
38 Staff does not anticipate that approval of the requested 3BPS Alcoholic Beverage Use
39 Permit would have an adverse effect on surrounding properties or the immediate
40 neighborhood.

41
42 Please note that no members of the community, either in support or opposition to the
43 application, contacted the Planning and Environmental Resources Department as of the date
44 of this report.

1 IN COMPLIANCE

2
3 (2) *The suitability of the premises in regard to its location, site characteristics and intended*
4 *purpose. Lighting on the permitted premises shall be shuttered and shielded from*
5 *surrounding properties, and construction of such permitted properties shall be*
6 *soundproofed. In the event music and entertainment are permitted, the premises shall be air*
7 *conditioned:*

8
9 Given the property's location within the Urban Commercial (UC) Land Use District, which
10 permits commercial retail uses, the subject premises would be suitable. The establishment
11 that is the subject of this application is currently operating as a 38,000 square foot grocery
12 store. According to the Fixture Plan dated 10/25/18 submitted with this application, it
13 appears that the south eastern portion of the structure will be remodeled to serve as a liquor
14 store. See snapshot of the submitted Fixture Plan below. I have highlighted in red the area of
15 the existing structure that is proposed to be remodeled to serve as the liquor store.
16



17
18

1 Lighting on the premises is subject to the County Land Development Code. If necessitated
2 by a future substantial improvement or a change of use or expansion of use, any
3 nonconforming lighting would have to be brought into compliance to the greatest extent
4 practical pursuant to LDC Section 114-164. Any new outdoor lighting installed in the future
5 would be subject to LDC Chapter 114, Article VI.

6
7 No music or entertainment is proposed by the applicant.

8
9 IN COMPLIANCE

10
11 *(3) Access, traffic generation, road capacities, and parking requirements:*

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13 The existing structure is oriented towards the Overseas Highway with one existing vehicular
14 access point to U.S. 1. No changes to access or parking are proposed by the applicant as part
15 of the subject application, and none would be required by the Land Development Code at
16 this time. The proposed use is not anticipated to have an impact on traffic generation or road
17 capacities due to the use being the same use as currently approved and allowed on the
18 property.

19
20 The application included a boundary survey that indicates the location of existing parking
21 spaces. The site was designed to accommodate the existing commercial retail structure and
22 its intended uses. The granting of a 3BPS Alcohol Beverage Special Use Permit would not
23 increase the parking requirements for the site.

24
25 IN COMPLIANCE

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27 *(4) Demands upon utilities, community facilities and public services:*

28
29 It is not anticipated that the approval of the requested 3BPS alcohol beverage use permit
30 would increase demands upon any utilities, community facilities or public services.

31
32 *(5) Compliance with the county's restrictions or requirements and any valid regulations:*

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34 As of the date of this report, there are not any open code compliance cases related to the
35 Property.

36
37 **V RECOMMENDATION:**

38
39 Staff recommends **APPROVAL** to the Planning Commission of the requested 3 BPS Alcoholic
40 Beverage Use Permit, which would allow for beer, wine, and liquor package sales for off
41 premises consumption, with the following conditions (however, valid objections from
42 surrounding property owners at the public hearing may lead the Planning and Environmental
43 Resources Department to reevaluate the recommendation or suggested conditions):

- 44
45 1. Alcoholic Beverage Use Permits issued by virtue of Code Section 3-6 shall be deemed to be
46 a privilege running with the land. The sale of the real property that has been granted an
47 Alcoholic Beverage Use Permit shall automatically vest the purchaser thereof with all rights

1 and obligations originally granted or imposed to or on the applicant. Such privilege may not
2 be separated from the fee simple interest in the realty.

3
4 2. Alcohol service sales and consumption shall occur only within areas allowed for such use
5 and approved by the Monroe County Planning & Environmental Resources Department.

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7 3. In the event that the holder's license by the Florida Department of Business and Professional
8 Regulation (DBPR) expires and lapses, this Alcoholic Beverage Use Permit approval shall
9 be null and void as of the date of the DBPR license expiration. Additional approval by the
10 Planning Commission shall be required to renew the Alcoholic Beverage Use Permit.

11
12 **VI ATTACHMENTS:**

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14 Attachment 1: Monroe County Code Section 3-6, Regulation and control over sale

Sec. 3-6. - Regulation and control over sale.

- (a) *Establishment of use permit procedure.* This section is designed and intended to provide for reasonable regulation and control over the sale of alcoholic beverages within the unincorporated areas of the county by establishing an alcoholic beverage use permit procedure and providing criteria to be used to ensure that all future proliferation of alcoholic beverage use enterprises within the unincorporated areas of the county be compatible with adjoining and surrounding land uses and the county's comprehensive plan, and that alcoholic beverage use permits not be granted where such uses will have an adverse impact upon the health, safety and welfare of the citizens and residents of the county. All persons, firms, partnerships or corporations who have received approval from the zoning board or board of county commissioners under the former provisions of section 19-218 of the Monroe County Code, as same heretofore existed, shall retain all rights and privileges heretofore granted under such section.
- (b) *New applicants for permit.* All persons desiring to sell alcoholic beverages upon any premises located within the unincorporated areas of the county and who desire to do so upon a premises not heretofore approved by the zoning board or board of county commissioners under the former section 19-218, shall obtain an alcoholic beverage use permit using the procedure outlined in subsection (d) of this section.
- (c) *Classifications.* Corresponding to those alcoholic beverage license classifications as heretofore and hereafter adopted by the state, alcoholic beverage use permits hereafter issued pursuant to this chapter shall be classified as follows:
- (1) 1APS: Beer, package only;
 - (2) 1COP: Beer, on-premises and package;
 - (3) 2APS: Beer and wine, package only;
 - (4) 2COP: Beer and wine, on-premises and package;
 - (5) 6COP: Beer, wine and liquor, on-premises and package;
 - (6) 6COP SRX: Restaurant, no package sales;
 - (7) 6COP SR: Restaurant, package sale;
 - (8) 6COP S: Motel, package sales;
 - (9) 6COP SBX: Bowling, no package sales;
 - (10) 6COP SPX: Boat, no package sales;
 - (11) 3BPS: Beer, wine and liquor, package sales only;
 - (12) 3M: Additional license for 6COP, over three bars; and
 - (13) 12RT: Racetrack, liquor, no package sales.
- (d) *Procedure.* The following procedure shall be followed on any application for an alcoholic beverage use permit hereafter made:
- (1) Applications for alcoholic beverage use permits shall be submitted to the director of planning in writing on forms provided by the director. Such applications must be signed by the owner of the real property for which the permit is requested. Lessees of the premises may apply for such permits, provided that proper authorization from the owner of the premises is given and the application for permit is cosigned by such owner.
 - (2) Upon receipt of a properly completed and executed application for an alcoholic beverage use permit stating the exact classification requested along with the necessary fee, the director of planning shall schedule a public hearing before the planning commission and shall advise the applicant of the date and place of the public hearing.

- (3) Notice of the application and of the public hearing thereon shall be mailed by the director of planning to all owners of real property within a radius of 500 feet of the affected premises. In the case of a shopping center, the 500 feet shall be measured from the perimeter of the entire shopping center itself rather than from the individual unit for which approval is sought. Notice shall also be provided in a newspaper of general circulation in the manner prescribed in section 110-5. For the purposes of this section, the term "shopping center" means a contiguous group of individual units, in any combination, devoted to commercial retail low-intensity uses, commercial retail medium-intensity uses, commercial retail high-intensity uses, and office uses, as those phrases are defined in section 101-1, with immediate off-street parking facilities, and originally planned and developed as a single project. The shopping center's single project status shall not be affected by the nature of the ownership of any of the individual office or commercial retail units, within the shopping center.
- (4) At the hearing before the planning commission, all persons wishing to speak for or against the application shall be heard. Recommendations or other input from the director of planning may also be heard prior to any decision by the planning commission.
- (e) *Criteria.* The planning commission shall give due consideration to the following factors as they may apply to the particular application prior to rendering its decision to grant or deny the requested permit:
 - (1) The effect of such use upon surrounding properties and the immediate neighborhood as represented by property owners within 500 feet of the premises. For the purposes of this section, the term "premises" means the entire project site of a shopping center;
 - (2) The suitability of the premises in regard to its location, site characteristics and intended purpose. Lighting on the permitted premises shall be shuttered and shielded from surrounding properties, and construction of such permitted properties shall be soundproofed. In the event music and entertainment are permitted, the premises shall be air conditioned;
 - (3) Access, traffic generation, road capacities, and parking requirements;
 - (4) Demands upon utilities, community facilities and public services; and
 - (5) Compliance with the county's restrictions or requirements and any valid regulations.
- (f) *Approval by planning commission.* The planning commission may grant approval based on reasonable conditions considering the criteria outlined herein.
- (g) *Where permitted.* Alcoholic beverage use permits may be granted in the following land use districts: urban commercial; suburban commercial; suburban residential where the site abuts U.S. 1; destination resort; mixed use; industrial and maritime industries. Notwithstanding the foregoing, alcoholic beverage sales may be permitted at restaurants, hotels, marinas and campgrounds regardless of the land use district in which they are located. Nothing contained herein shall exempt an applicant from obtaining a major or minor conditional use approval when such is otherwise required by the county development regulations in part II of this Code.
- (h) *Transferability.* Alcoholic beverage use permits issued by virtue of this section shall be deemed to be a privilege running with the land. The sale of the real property that has been granted an alcoholic beverage use permit shall automatically vest the purchaser thereof with all rights and obligations originally granted or imposed to or on the applicant. Such privilege may not be separated from the fee simple interest in the realty.
- (i) *Appeals.* All persons aggrieved by the actions of the planning commission in granting or denying requested alcoholic beverage permits may request an appeal hearing before a hearing officer under chapter 102, article VI, division 2 by filing the notice required by that article within 30 days after the date of the written decision of the planning commission.
- (j) *Successive applications.* Whenever any application for alcoholic beverage approval is denied for failure to meet the substantive requirements of these regulations, an application for alcoholic beverage approval for all or a portion of the same property shall not be considered for a period of two years unless a super-majority of the planning commission decides that the original decision was

based on a material mistake of fact or that there exists changed conditions and new facts, not existing at the time of the original decision, that would justify entertaining a new application before the expiration of the two-year period. However, in the case of a shopping center, as defined in subsection (d)(3) of this section, this subsection shall only apply to the commercial retail unit within the shopping center for which approval was sought and not the entire shopping center site itself.

(Code 1979, § 19-218; Ord. No. 1-1973, § 1(art. XI, § 5); Ord. No. 5-1974, § 27; Ord. No. 20-1975, § 67; Ord. No. 29-1978, § 1; Ord. No. 5-1979, § 1; Ord. No. 17-1980, § 12; Ord. No. 4-1985, §§ 1, 2; Ord. No. 39-1986, § 2; Ord. No. 55-1987, §§ 1—3; Ord. No. 19-1993, § 14)