



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

2725 Judge Fran Jamieson Way
 Building A, Room 114
 Viera, Florida 32940

(321)633-2070 Phone / (321)633-2074 Fax
<https://www.brevardfl.gov/PlanningDev>

STAFF COMMENTS

22Z00024

Evan Bales and Kelsey Godfrey

Conditional Use Permit (CUP) for a guesthouse in Single-Family Residential (RU-1-11)

Tax Account Number: 2522454
 Parcel I.D.: 25-37-22-06-CX-*-7.15
 Location: North side of Mili Ave., 151 feet east of Newfound Harbor Dr. (District 2)
 Acreage: 0.69 acres

Planning and Zoning Board: 07/18/2022
 Board of County Commissioners: 08/04/2022

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	RU-1-11	RU-1-11 with CUP for guesthouse
Potential*	One single-family home	One single-family home w/ guesthouse
Can be Considered under the Future Land Use Map	YES Residential 4	YES Residential 4

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

Background and Purpose of Request

The property owner is seeking a Conditional Use Permit (CUP) to allow a guesthouse in the RU-1-11 zoning classification as per Sec. 62-1932. The lot currently contains a single-family home and one accessory building. According to the applicant, solar panels formerly used for heating the swimming pool and visible in aerial photographs, have been removed.

Sec. 62-1932 allows an application for a CUP for guesthouses on parcels of land containing a minimum of one-half acre if the following requirements are met: (1) The structure shall contain no kitchen facilities except where consistent with paragraph (c) below; (2) The structure shall be a detached accessory structure located to the rear of the principal structure and shall not be attached to any other accessory structure; (3) The structure shall not exceed the maximum size permitted for accessory structures in the applicable zoning classification. Where there is no maximum, the structure shall not exceed 50 percent of the size of the principal structure; (4) The structure shall be used for the accommodation of family members, temporary guests (maximum six months), or

servants only; (5) The structure shall not be used for rental purposes; (6) The structure shall be set back a minimum of ten feet from the side and rear lot lines.

The original zoning of this property was GU (General Use). On February 1, 1968, it was rezoned under zoning action **Z-2210** from GU to RU-1. On June 1, 1972 the subject property was rezoned under zoning action **Z-2980** from RU-1 to RU-1-11.

The applicants included a dimensional sketch plan in their CUP application showing the proposed location and size of the structure. The dimensional sketch plan has not been reviewed for compliance with other County departments.

Land Use

The subject property is currently designated as Residential 4 (RES 4) FLU. The current RU-1-11 zoning can be considered consistent with the existing RES 4 FLU designation

Applicable Land Use Policies

Policy 1.7 –The Residential 4 Future land use designation. The Residential 4 land use designation affords an additional step down in density from more highly urbanized areas. This land use designation permits low density residential development with a maximum density of up to four (4) dwelling units per acre, except as otherwise may be provided for within the Future Land Use Element.

The Board should evaluate the compatibility of this application within the context of Administrative Policies 3 - 5 of the Future Land Use Element.

Analysis of Administrative Policy #3 - Compatibility between this site and the existing or proposed land uses in the area.

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;

The proposed CUP for guesthouse is not anticipated to 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 the surrounding area.

- B. Whether the proposed use(s) would cause a material reduction (five per cent or more) in the value of existing abutting lands or approved development.

Only a certified MAI appraisal can determine if material reduction has or will occur due to the proposed use.

C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through an analysis of:

1. historical land use patterns;

The historic land use pattern along Mili Avenue has been the development of single-family homes on lots less than one acre in size.

2. actual development over the immediately preceding three years; and

It appears no changes to the immediate area have occurred within the last three years.

3. development approved within the past three years but not yet constructed.

It appears there has been no development approved within the past three years that has not yet been constructed.

D. Whether the proposed use(s) would result in a material violation of relevant policies in any elements of the Comprehensive Plan.

The proposed use would not result in a material violation of relevant policies in any elements of the Comprehensive Plan.

Analysis of Administrative Policy #4 - Character of a neighborhood or area.

The developed character of the surrounding area consists of lots less than 1-acre in size zoned RU-1-11 developed with single-family homes. A CUP for guesthouse was approved on a 0.96 acre parcel located approximately 1,275 feet southwest of the subject property on the west side of Newfound Harbor Drive.

Surrounding Area

	Existing Use	Zoning	Future Land Use
North	Single-family residence	RU-1-11	RES 4
South	Single-family residence (across Mili Avenue)	RU-1-11	RES 4
East	Single-family residence	RU-1-11	RES 4
West	Single-family residences	RU-1-11	RES 4

The subject property is surrounded to the north, south, east and west by single-family homes on one-quarter acre to one acre lots with RU-1-11 zoning, which is consistent with the FLU designation of RES 4.

RU-1-11 classification permits single family residences on minimum 7,500 square foot lots, with a minimum width and depth of 75 feet. The minimum house size is 1,100 square feet. RU-1-11 does not permit horses, barns or horticulture.

There have been three zoning actions within a half-mile radius around this site within the last 3 years:

19PZ00139 – 05/05/2020; a CUP for a guesthouse was approved on a 0.96 acre parcel located approximately 1,275 feet southwest of the subject property on the west side of Newfound Harbor Drive.

20Z00009 – 08/06/2020; a CUP for a commercial/recreational and commercial/industrial marina was approved on a 7.08 acre parcel located approximately 1,280 feet southeast of the subject property on the east and west side of Banana River Drive.

20Z00010 – 02/04/2021; a CUP for alcoholic beverages (full liquor) for on-premises consumption in conjunction with a private club in a BU-2 zoning classification was approved on a 7.08 acre parcel located approximately 1,825 feet southeast of the subject property on the east side of Banana River Drive.

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 62-1932** which outlines conditions for guesthouses or servants' quarters which states:

(a) Guesthouses or servants' quarters are subject to the following minimum requirements:

- (1) The structure shall contain no kitchen facilities except where consistent with paragraph (c) below.*

Staff's Observation: Guesthouse will not have a kitchen, see (c) below.

- (2) The structure shall be a detached accessory structure located to the rear of the principal structure and shall not be attached to any other accessory structure.*

Staff's Observation: Proposed guesthouse will be located to the rear of the principal structure and shall not be attached to any other accessory structure.

- (3) *The structure shall not exceed the maximum size permitted for accessory structures in the applicable zoning classification. Where there is no maximum, the structure shall not exceed 50 percent of the size of the principal structure.*

Staff's Observation: The existing single-family house has 1,833 sq. ft. of living area. Each detached accessory building or structure shall not exceed 600 square feet or 50 percent of the living area of the principal building, whichever is greater. Per the proposed plan the Guesthouse will be 712 sq. ft. and will meet accessory size requirement.

- (4) *The structure shall be used for the accommodation of family members, temporary guests (maximum six months), or servants only.*

Staff's Observation: The guesthouse will be for family members.

- (5) *The structure shall not be used for rental purposes.*

Staff's Observation: The guesthouse will be for family members and not rented.

- (6) *The structure shall be set back a minimum of ten feet from the side and rear lot lines.*

Staff's Observation: Proposed site plan shows guesthouse will be setback 20 feet off rear and side (west) property lines.

- (b) *This conditional use shall not be granted on a parcel of land containing less than one-half acre. A conditional use permit shall not be required on parcels equal to or exceeding one acre in size.*

Staff's Observation: The parcel contains 0.69 acre which requires the CUP.

- (c) *A guesthouse or servants' quarters may contain kitchen facilities on parcels of at least one acre in size where the resulting density of the lot including the guesthouse or servants' quarters is consistent with the zoning regulation and comprehensive plan density designation. All other conditions enumerated above shall apply.*

Staff's Observation: Per the proposed plan provided the guesthouse will not have a kitchen. Per Definitions and rules of construction in section 62-1102: Kitchen means a room or area within a room whose primary purpose is to store, prepare and cook food. A kitchen will have a refrigerator to store food, counter space and a sink to prepare food, and a stove and/or range to cook food.

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: The guesthouse will be occupied by the elderly mother of the Home Owner. As her health is failing, she needs to be close to family.

Staff analysis: The CUP will not permit the guesthouse to be used for any commercial purposes. The CUP is not anticipated to result in excessive noise, odor, or traffic.

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: The guesthouse serves as a residential unit. There is no difference between use or function of surrounding homes and the proposed unit.

Staff analysis: Guesthouse will meet setbacks and building size per proposed plans.

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 a 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: The guesthouse should not cause any negative change to surrounding properties. The proposed site for the unit is near the middle of the yard and near completely hidden due to foliage and trees on the property (see picture).

Staff analysis: Evidence from an appraiser has not been provided by the applicant.

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.

Note: 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: The guesthouse is for one (1) person - the owner's ailing mother.

Staff analysis: This property will remain residential and therefore is not anticipated to cause an increase of any traffic.

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: The guesthouse will not create loud noises, glare, odor particulates, smoke, fumes or any emissions.

Staff analysis: This project shall comply with Brevard County's Performance Standards defined by Sections 62-2251 through 62-2272.

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

Applicant's Response: The guesthouse will adhere to the noise levels mandated.

Staff analysis: This project shall comply with Brevard County's Performance Standards defined by Sections 62-2251 through 62-2272. Any proposed outdoor lighting and noise standards should remain within code parameters or a violation will be created.

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: The guesthouse will not affect the above services in such a way to require a change in service.

Staff analysis: Proposed guesthouse is not anticipated to exceed level of service.

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: The guesthouse will not affect the above services in such a way to require a change in service.

Staff analysis: The subject property is within the City of Cocoa's service area for potable water and within Brevard County's service area for sewer.

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: The proposed area for the guesthouse is to be built is surrounded with foliage and trees. (see picture)

Staff analysis: Proposed CUP does not require these.

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: The guesthouse will not have any signs and the only lighting will be per code at exterior doors.

Staff analysis: No signage or exterior lighting have been proposed.

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: The guesthouse is a residential unit. There is no difference between use or function of surrounding homes and the proposed unit.

Staff analysis: The proposed guesthouse will need to comply with noise level performance standards.

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: The guesthouse is drawn as a 6/12 pitch and the height of the roof is 14'-5" above finish floor.

Staff analysis: The proposed guesthouse will be one story high per proposed plans.

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: There will not be any concrete added for a driveway. What is existing is more than enough for the (3) occupants.

Staff analysis: Additional parking is not required for a guesthouse beyond the minimum requirements of two spaces per unit for single-family residential cited in Ch. 62-3206(d)(32).

Preliminary Concurrency

The closest concurrency management segment to the subject property is Newfound Harbor, between End and SR 520, which has a Maximum Acceptable Volume (MAV) of 15,600 trips per day, a Level of Service (LOS) of E, and currently operates at 40.11% of capacity daily. The CUP is not anticipated to increase the MAV utilization. The corridor is anticipated to operate at 40.11% of capacity daily (LOS D). The proposal is not anticipated to create a deficiency in LOS.

No school concurrency information has been provided as this proposal is below the minimum number of new residential lots that would require formal review.

The subject property is within the City of Cocoa's service area for potable water and within Brevard County's service area for sewer.

Environmental Constraints

NRM reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

For Board Consideration

The Board may wish to consider the compatibility of the proposed CUP with the surrounding area. The Board may also wish to consider additional conditions beyond those cited in Sections 62-1901 and 62-1906 in order to mitigate potential offsite impacts to the abutting properties.