



BOARD OF COUNTY COMMISSIONERS

## Planning and Development Department

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### STAFF COMMENTS

**22Z00062**

#### **NDA Merritt Project Zenith, LLC and SES Merritt Project Zenith, LLC**

#### **BU-1 (General Retail Commercial) and BU-2 (Retail, Warehousing and Wholesale Commercial) with BDPs to PUD (Planned Unit Development) with removal of BDPs and a CUP for Commercial Entertainment and Amusement Enterprises**

Tax Account Number(s): 2428002, 2428163, 2428157, 2428161

Parcel I.D.: 24-36-36-00-518, 24-36-36-00-549, 24-36-36-00-543, 24-36-36-00-547

Location: South side of Fortenberry Road approximately 640 feet east of S. Plumosa Street (District 2)

Acreage: 15.11 acres

Planning & Zoning Board: 1/09/2023

Board of County Commissioners: 2/02/2023

#### **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)

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Zoning</b>	BU-1, BU-2	PUD
<b>Potential*</b>	4 SF units	370 MF units
<b>Can be Considered under the Future Land Use Map</b>	YES CC	YES CC

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

#### **Background and Purpose of Request**

The applicant is requesting a change of zoning classification from BU-1 (General Retail Commercial) and BU-2 (Retail, Warehousing and Wholesale Commercial) to PUD (Planned Unit Development) on 15.11 acres to build a luxury rental apartment community consisting of 370 multifamily units with associated club house, amenities, and parking.

The 15.11-acre subject property consists of four (4) contiguous parcels located within the Merritt Island Redevelopment Agency (MIRA). The site is currently developed with one commercial building and a warehouse. The site has frontage along two Brevard County maintained road right-of-ways: Fortenberry Road (to the north) and S. Plumosa Street (to the west). The proposed PDP does not

show a connection to S. Plumosa Street at this time. The PDP also shows a connection to Harbor Woods Boulevard, which **is not** a County maintained roadway.

*The Planned Unit Development (PUD), as provided in sec. 62-1442, is a concept which encourages and permits variation in development by allowing deviation in development standards such as, but not limited to, lot size, bulk or type of dwellings, density, lot coverage and open space from that required in any one residential zoning classification under this article. The purpose of a planned unit development is to encourage the development of planned residential neighborhoods and communities that provide a full range of residence types, as well as industrial, commercial and institutional land uses. It is recognized that only through ingenuity, imagination and flexibility can residential developments be produced which are in keeping with the intent of this subdivision while departing from the strict application of conventional use and dimension requirements of other zoning districts or other land development regulations in articles II, VI, VII, VIII, IX, or XIII of chapter 62 of the Brevard County Code.*

*In order to accomplish the objectives of this section, the applicant of a PUD may propose, and the county may consider, alternative development standards to any land development regulation in articles VI or VII of chapter 62 of the Brevard County Code.*

*The applicant shall justify the proposed alternative development standard(s) by describing how it promotes a development form facilitating the goals and objectives of article VI of this chapter and does not violate the purpose of this chapter for the protection of the public health, safety and welfare in the subdivision of land.*

#### **Applicant's response:**

**The redevelopment concept meets the future vision of developing high-quality multifamily residential that could serve as a catalyst to the Merritt Island Town Center area. The PUD encourages the development of a planned "Luxury Apartment Community" that will serve the local community by providing a full range of rental apartments. The increased flexibility, as shown in the PDP, will allow for the best resident experience and exceptional design of the proposed Apartment Community elements while remaining consistent with the future land use map of the Brevard County Comprehensive Plan. The setback waiver for building number five is necessary to accommodate the residential building design within the limited available space.**

*The PDP is a mechanism to request such waivers. The applicant shall specifically include the alternative development standard(s) in the preliminary development plan, and shall present its justification to the planning and zoning board and board of county commissioners in public hearing.*

*Substantial (major) changes to the PDP require Board approval. As provided in sec. 62-1448(c): If, after the initial approval of the PUD preliminary development plan, should the owner or applicant or his successors desire to make any changes to the preliminary development plan, such changes shall first be submitted to the county. If the zoning official deems there is a substantial change or deviation from that which is shown on the preliminary development plan, the owner or applicant shall be requested to return to the board of county commissioners where it is determined that the public interest warrants such procedure. For purposes of this subsection, a substantial change shall be defined as any change which increases the density or intensity of the project or decreases the amount of buffer areas from adjacent property or decreases the amount of common open space. The*

*zoning official shall have the authority to approve minor changes not determined by the director to be substantial as defined in this subsection.*

The Preliminary Development Plan (PDP) is part of the zoning application for a PUD, which depicts the use and intensity of the project. It is not intended to be specific with respect to engineering details that are normally reviewed at the Final Development Plan (site plan) stage of review. Design elements shown as on the Preliminary Development Plan are required to meet code, unless a waiver has been granted by the Board. Substantial changes would require Board approval.

Specific waivers to land development regulations must be stated on the preliminary development plan and must be verbally requested by the applicant at the public hearing. Unless a waiver is specifically requested by the applicant and specifically approved by the Board, it will not be assumed to have been approved.

In this case, the applicant has requested two waivers for additional building setbacks, generally described below, which based upon the **revised PDP are not needed** to facilitate the proposed uses. These waivers will be included in the Board's approval unless declined by the Board.

The applicant has requested the following waivers to Chapter 62, Article VI (Zoning Regulations) for the PUD:

- 1) Sec. 62-2101.5 (a) (2); Additional Building Height Setback; A waiver for a 25 ft. reduction in the 2:1 setback requirement to RU-2-30 residential zoning boundary along the south interior property line: Required: 57 ft. / Proposed: 95 ft.

***Staff comment: PDP has been revised to meet the setback requirements of 62-2101.5 which shows 95 feet setback for Building #5.***

- 2) Sec. 62-2101.5 (a) (2); Additional Building Height Setback for Building #4 A waiver reduction in the 2:1 setback requirement to RU-2-30 residential zoning boundary along the south interior property line: Required: 57 ft. / Proposed:  $\geq 217$  ft.

***Staff comment: PDP has been revised to meet the setback requirements of 62-2101.5 which shows  $\geq 217$  ft.***

The applicant has not requested the following waiver to Chapter 62, Article VI (Zoning Regulations), regarding open space/recreation for the PUD, but it should be included in the request as follows:

- 3) Sec. 62-1446(c); *Minimum common recreation and open space*. A portion of the gross site acreage shall be delineated as tracts for common recreation and open space to be weighted based upon the mixture of residential uses in the PUD according to the following schedule: Multi-family at 25% and Regardless of the above, common recreation open space shall be provided at a minimum rate of 1.5 acres per 100 residential units, regardless of type. Required open space may be satisfied by either active recreation or passive recreation open space, as defined in Sec. 62-1102.

***Staff comment: Based on the above criteria, a minimum of 5.5 acres open space/recreation is required. The PDP states 4.45 acres, which is deficient.***

The subject property contains two zoning classifications, BU-1 and BU-2, received under zoning actions: **Z-11144**, **Z-10173**, **Z-10775(16)**, **Z-10546**, **Z-8577** and **Z-7216**.

There are two existing BDPs associated with the subject property. The first BDP, recorded in ORB 4321, Pages 948 - 951 and approved under **Z-10546** on December 7, 2000, retained a Conditional Use Permit (CUP) for commercial entertainment and amusement enterprises – which is no longer allowed (prior use).

The other BDP, recorded in ORB 5607, Pages 5085 - 5089 and approved under **Z-11144** on November 3, 2005, binds the subject property to the following conditions:

- limits the BU-2 zoning to a portion of the property (tax parcel #547);
- limits the uses under the BU-2 zoning to only mini-warehouse (self-storage) use and other BU-1 permitted uses; and
- restricts conducting business from within the storage units.

Additional prior zoning actions include two variances approved under V-2970 and, V-2228 which reduced setbacks for the commercial entertainment and amusement enterprise CUP use.

The applicant has requested removal of the BDPs and the CUP associated with the subject property.

## **Land Use**

The subject property is currently designated as Community Commercial (CC) FLU. The existing BU-1 and BU-2 zoning classifications can be considered consistent with the CC FLU designation.

The proposed PUD zoning classification can be considered consistent with the existing CC FLU.

## **Applicable Land Use Policies**

### **FLUE Policy 2.7 – Activities Permitted in Community Commercial (CC) Future Land Use Designations**

Community Commercial (CC) development activities are intended to serve several neighborhoods, sub-regional and regional areas and provide an array of retail, personal and professional uses. Development activities which may be considered within the Community Commercial (CC) Future Land Use designation, provided that listed criteria are met, include the following:

- a) Professional offices (no drive through lanes permitted);
- b) Personal Services (no drive through lanes permitted);
- c) Convenience stores (no drive through lanes permitted);
- d) Residential uses;
- e) Institutional uses;
- f) Recreational uses;
- g) Public facilities; and
- h) Transitional uses pursuant to Policy 2.11.

### **FLUE Policy 2.10 – Residential Development in Neighborhood Commercial and Community Commercial Land Use Designations**

Residential development or the integration of residential development with commercial development shall be permitted in the Neighborhood Commercial and Community Commercial land use designations, provided that the scale and intensity of the residential/mixed use development is compatible with abutting residential development and areas designated for residential use on the Future Land Use Map. Residential development is permissible in these commercial land use designations at density of up to one category higher than the closest residentially designated area on the Future Land Use Map (FLUM) which is on the same side of the street. Increases in density beyond this allowance may be considered through a public hearing. In the CHHA, however, residential development is strictly limited to the density of the closest residentially designated area on the FLUM that is on the same side of the street. Such residential development, as described above, shall be allowed to utilize the following characteristics:

**Criteria:**

- A. Residential uses within Neighborhood Commercial and Community Commercial designations shall be encouraged to utilize neo-traditional neighborhood development techniques, such as narrower road rights-of-way, mid-block pedestrian pass-throughs, alleys, smaller lot sizes, on-street parking, reduced lot line setbacks and public transit facilities.

**The proposed PDP does not utilize neo-traditional neighborhood development techniques. The closest multi-family residential development is a condominium complex located immediately south of the subject property which retains RES 15 FLU designation and RU-2-30 (20) zoning that limits density to 20 units per acre. This request is for 25 units per acre. The Board shall determine whether the scale and intensity of the residential development is compatible with abutting residential development to the South and the surrounding area.**

- B. Residential density bonuses as set forth in Policy 11.2 may be considered in addition to the bonus stated in the above policy within Neighborhood Commercial and Community Commercial designations as an incentive for redevelopment and gentrification if the proposed development will address serious incompatibility with existing land uses, is adequately buffered from other uses, is located along major transportation corridors, and meets the concurrency requirements of this Comprehensive Plan.

**Applicant is not requesting a density bonus.**

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 applicant proposes to rezone 15.11 acres to the PUD zoning classification for the purpose of developing an apartment complex with 370 residential units. Development would need to meet performance standards set forth in code sections 62-2251 through 62-2272 and will be reviewed at the site plan review stage. The proposed density of 25 units per acre has the potential to increase the noise levels and traffic to and from the subject property.**

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 request.**

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 surrounding area is generally commercial with residential to the south. There are five (5) FLU designations within 500 feet of the subject site: NC, CC, RES 6, RES 15, and PUB. The predominant FLU designation along this section of Fortenberry Road, an Urban Major Collector roadway, is CC. RES 15 FLU designation is located immediately south of the subject property. Veterans Memorial Park is to the east.**

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

**There has not been any actual development within this area in the preceding three (3) years.**

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

**There has not been any development approved but not yet constructed within this area in the preceding three (3) years.**

**While there has not been any actual development within this area in the preceding three (3) years, two zoning actions has been approved within one-half mile:**

**22PUD0001**, approved by the Board on July 18, 2022, was a request to rezone to PUD with waivers on 15.05 acres located approximately 1,860 feet north of the subject property on E. Merritt Island Causeway (SR 520) for a hospital and medical village.

**21Z00004**, approved by the Board on July 7, 2022, was a request to rezone from RU-1-9 (Single-Family Residential) to BU-2 (Retail, Warehousing and Wholesale Commercial) with a Binding Development Plan on 0.53 acres located approximately 1,665 feet southwest of the subject property on Cone Road.

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

**If the Board approves the waiver request, it would set a precedent for other such requests.**

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

The developed character of the surrounding area is commercial, multi-family residential and single-family residential. The closest multi-family residential development is a condominium complex located immediately south of the subject property which retains RU-2-30 (20) zoning that limits density to 20 units per acre. Except for the GU-zoned lot to the south, the multi-family use proposed in the PUD appears to buffer the adjacent commercial from the multi-family use to the south.

#### **Surrounding Area**

	<b>Existing Use</b>	<b>Zoning</b>	<b>Future Land Use</b>	<b>Density</b>
<b>North</b>	Retail Commercial	BU-1	CC	N/A
<b>South</b>	Stormwater pond; Multi-Family Residential; Single-Family Residential	GML; RU-2-30 (20); GU	PUB; RES 15; NC	20 units per acre
<b>East</b>	Stormwater pond	BU-1	PUB	N/A
<b>West</b>	Commercial; Single-Family Residential	BU-1-A; RU-1-9	NC; RES 6	6 units per acre

To the north, across Fortenberry Road, is a 55.06-acre parcel developed as a commercial shopping mall with BU-1 zoning.

To the south is an 8.5-acre parcel with GML zoning utilized as a stormwater retention; three parcels (2.8 acres, 2.16 acres, and 1.8 acres) developed as multi-family condominiums with RU-2-30 (20) zoning; and a 0.98-acre parcel developed as a single-family residence with GU zoning.

To the east a 6.85-acre parcel with BU-1 zoning utilized as a stormwater retention.

To the west, abutting a portion of the subject site, are two parcels (1.32 acres and 4.5 acres) developed as a commercial credit union with BU-1 zoning. To the west, across South Plumosa Street, is a 1.21-acre parcel developed as a commercial plaza with BU-1-A zoning; and two parcels (0.24 acres and 0.3 acres) developed as single-family residences with RU-1-9 zoning.

The current The BU-1 classification encompasses land devoted to general retail shopping, offices and personal services to serve the needs of the community and allows for retail commercial land uses on minimum 7,500 square foot lots. The BU-1 classification does not permit warehousing or wholesaling. The BU-1 classification allows for the outdoor storage of retail items that may include but are not limited to motor vehicles, utility sheds, nursery items such as plants and trees, and boats.

The current BU-2 classification permits retail, wholesale and warehousing commercial land uses on minimum 7,500 square foot lots. Possible incompatibilities are due to the intensive nature of commercial activities permitted by the BU-2 classification and possible noise, light, traffic and other nuisance factors potentially associated with BU-2 activities. Resort dwelling use is allowed as a permitted use in the BU-2 classification.

RU-2-30 classification permits high density multi-family residential development of up to 30 unit per acre. Multiple-family residential structures may be constructed on a minimum lot size of 10,000 square feet, with at least 100' of lot width and 100' of lot depth. Single-family residences are also permitted on minimum lot sizes of 7,500 square feet with at least 75' of lot width and 75' of lot depth.

The RU-1-9 classification permits single family residential development on lots of 6,600 square feet (minimum). The minimum house size is 900 square feet.

The GU classification is a holding category, allowing single-family residences on five acre lots with a minimum width and depth of 300 feet. The minimum house size in GU is 750 square feet.

GML government managed lands zoning classification recognizes the presence of lands and facilities which are managed by federal, state and local government, special districts, nongovernmental organizations (NGOs) providing economic, environmental and/or quality of life benefits to the county, electric, natural gas, water and wastewater utilities that are either publicly owned or regulated by the Public Service Commission, and related entities.

Planned Unit Development (PUD) encourages and permits variation in development by allowing deviation in lot size, bulk or type of dwellings, density, lot coverage and open space from that required in any one residential zoning classification. The purpose of a PUD is to encourage the development of planned residential neighborhoods and communities that provide a full range of residence types, as well as industrial, commercial and institutional land uses.

## **Preliminary Development Plan**

In addition of Administrative Policies #3 and #4, the Preliminary Development Plan should be evaluated in the context of **Section 62-1448 (b) (5)** of the Zoning code:

*Review criteria.* The decision of the planning and zoning board on the preliminary development plan application shall include the findings of fact that serve as a basis for its recommendation. In making its recommendation, the planning and zoning board shall consider the following facts:

- a. Degree of departure of the proposed planned unit development from surrounding residential areas in terms of character and density.

*Applicant response:* The character of the surrounding area is substantially commercial with uses such as, the Merritt Square Mall to the north, Veterans Memorial Park to the East, Harbor Woods Condominiums to the south and a variety of retail uses to the west defining this neighborhood. The luxury apartment community focused character of the proposed PUD will compliment and support the surrounding area.



**Staff comment: The developed character of the surrounding area is commercial, multi-family residential and single-family residential. The closest multi-family residential development is a condominium complex located immediately south of the subject property and retains RU-2-30 (20) zoning that limits density to 20 units per acre. This request is 25 units per acre.**

- b. Compatibility within the planned unit development and relationship with surrounding neighborhoods.

*Applicant response: The proposed development is compatible within the PUD and with the surrounding neighborhoods which are substantially commercial in nature.*

**Staff comment: Except for the GU-zoned lot, the multi-family use proposed in the PUD appears to buffer the commercial from pre-existing multi-family use with comparable density to the south.**

- c. Prevention of erosion and degrading of surrounding area.

*Applicant response: Erosion and degradation of the surrounding area will be prevented by stabilization of unpaved areas by landscaping. The property is part of the Fortenberry Regional Stormwater Management System and is tributary to Alum Pond to the South of the Property. This investment will very likely serve as a catalyst for future investments along this corridor.*

**Staff comment: If stormwater storage is not allowed to occur offsite, a large portion of the site needs to be altered to provide wet pond storage and treatment, and the PDP will need to be revised.**

- d. Provision for future public education and recreation facilities, transportation, water supply, sewage disposal, surface drainage, flood control and soil conservation as shown in the preliminary development plan.

*Applicant response: No public education facilities (schools) public recreation facilities are proposed with this development. Water supply will be provided with on-site water distribution system connected to the City of Cocoa water mains. Sewage disposal will be provided by on-site gravity sewer mains connected to the Brevard County Utilities sewer mains. The property is part of the Fortenberry Regional Stormwater Management System and is tributary to Alum Pond to the South of the Property. Surface drainage and flood control will be provided by an onsite stormwater management system. Soil conservation of unpaved areas will be provided by landscaping. These provisions are shown on the PDP.*

**Staff comment: The school concurrency indicates there is enough capacity for the total of projected and potential students from the proposed development. While the maximum development potential of the proposal is not anticipated to create a deficiency in LOS of Fortenberry Road, any addition of access points on other County maintained right-of-ways would require further concurrency evaluation and review. A Traffic Impact Analysis (TIA) has been submitted for review on January 3<sup>rd</sup>, 2023 to determine if any operational roadway improvements are needed. When staff has completed its review, those comments will be published. The applicant has not provided verification of the ability to connect to existing stormwater system.**

- e. The nature, intent and compatibility of common open space, including the proposed method for the maintenance and conservation of the common open space.

*Applicant response: This information is shown on the PDP. The natural wetland preserves will be maintained and are at the center of the aesthetics of the project. Maintenance shall be retained by Owner. Control and maintenance of common open space and facilities by the Developer.*

**Staff comment: The minimum common recreation open space required for the proposed project is 5.55 acres per Sec. 62-1446(c). The PDP states 4.45 acres provided.**

- f. The feasibility and compatibility of the specified stages contained in the preliminary development plan to exist as an independent development.

*Applicant response: The property owner intends to construct the project in one stage (phase), with the buildings to be sequenced in construction.*

**Staff comment: Open space requirements are deficient without a waiver.**

- g. The availability and adequacy of water and sewer service to support the proposed planned unit development.

*Applicant response: There is available water and sewer service existing on-site. This infrastructure has the capacity to support the proposed development, with modifications that may be required to the locations and alignment of water and sewer mains based on the proposed development.*

**Staff comment: A connection to water and sewer facilities is proposed.**

- h. The availability and adequacy of primary streets and thoroughfares to support traffic to be generated within the proposed planned unit development.

*Applicant response: The proposed PUD is located adjacent to Fortenberry Road. Included in the application is a Traffic Impact Analysis presenting existing traffic counts and existing roadway segment conditions along with a trip generation summary of the proposed land uses, as provided by the ITE Trip Generation Manual. The trip generation summary provides peak hour and daily trip generation estimates. As summarized in section 6.0 of the Traffic Impact Analysis: A roadway segment capacity analysis was performed for the study area roadway segments for existing, background, and buildout conditions. The Daily and PM peak hour two-way analysis identified no roadway segment capacity deficiencies within the study area. An operational analysis for the existing and future conditions was performed at the study area intersections. All study intersections were found to operate at an acceptable LOS and v/c ratio in the AM and PM peak hour with proposed minor signal timing improvements with the exception of some of the minor approaches at the intersections on SR 520, due to the prioritization of green time on SR 520. No new deficiencies were identified as a result of the proposed development. The need for exclusive ingress right-turn lanes and left-turn lanes at the full access project driveways on Fortenberry Road was evaluated on the National Cooperative Highway Research Program (NCHRP) Report 457 thresholds. No ingress turn lanes are warranted at the project driveways on Fortenberry Road.*

**Staff comment: A Traffic Impact Analysis (TIA) has been submitted for review on January 3<sup>rd</sup>,**

**2023 to determine if any operational roadway improvements are needed. When staff has completed its review, those comments will be published. Transportation impacts are typically addressed during the site plan review, unless the Board determines the study is necessary to evaluate the PUD rezoning.**

- i. The benefits within the proposed development and to the general public to justify the requested departure from the standard land use requirements inherent in a planned unit development classification.

*Applicant response: The proposed development will not only provide much needed housing for the community but also provide a significant amount of jobs throughout construction and ongoing property management and contribute significant impact fee revenue and tax revenue to the community.*

**Staff comment: The applicant is proposing to develop the site at a density of 25 dwelling units per acre (a total of 370 multi-family apartment units). The applicant has not proposed school busing or S.C.A.T. service to alleviate potential traffic burden along Fortenberry Road.**

- j. The conformity and compatibility of the planned unit development with any adopted development plan of the county.

Applicant response: The PUD is compatible with Brevard County's Comprehensive Plan and the vision set forth for the Merritt Island Redevelopment Agency.

**Staff comment: The applicant is seeking waivers for setbacks which are not needed. A waiver request for open space/recreation should be considered as part of this request and has not been requested by the applicant. The Board will need to determine if the request is compatible.**

- k. The conformity and compatibility of the proposed common open space, primary residential and secondary nonresidential uses with the proposed planned unit development.

Applicant response: This information is shown on the PDP and described in the narrative above. We are requesting a waiver to the common open space requirement. The project site area is restricted in order to maintain and preserve the natural wetlands environmental areas, as well as the location of the project adjacent to the newly renovated Veterans Memorial Park.

**Staff comment: The proposed Preliminary Development Plan (PDP) states that the applicant has provided 4.45 acres of common open space of which 1.19 acres is active open space. This does not meet code as 5.5 acres are required.**

#### **Preliminary Development Plan Agency Review Comments:**

Brevard County Public Works Engineering:

1. This drainage plan is missing an onsite stormwater management system. The drainage plan shows the south basin of the site routing drainage to the "Exist. Outfall to Alum Pond." Per the Stormwater Calculations report for the Fortenberry Regional Stormwater Management System

(Revised January 24, 2011), "the Alum Pond provides minimal treatment prior to discharge to Newfound Harbor which is an "Outstanding Florida Water" or Class II water body." The alum pond cannot be used to meet the stormwater treatment requirements for this site. If the intent is to use the Fortenberry Regional system to meet the onsite stormwater requirements, the stormwater drainage will need to be routed to the pipe conveyance system in Fortenberry Road to the north, and an application to connect to the regional system will need to be completed with Natural Resources. If an onsite stormwater system will be provided, please ensure the onsite system meets the requirements of the Code of Ordinances of Brevard County, Section 62-3751, Exhibit A – Stormwater Management Criteria.

2. a. Harbor Woods Boulevard not a County Maintained right-of-way. Please provide title opinion and documentation with rights to access through this property. If access is not granted through this property, please remove the proposed driveway connection and any notes regarding access through Harbor Woods Boulevard.

2. b. One access point to a County maintained right-of-way – Fortenberry Road - is shown on the plan. The proposed development includes 370 dwelling units which requires three(3) entrances per the Code of Ordinances of Brevard County, Section 62-2957. Please provide two(2) additional entrances connected to the county roadway system. Please address previous comment concerning access through "Harbor Woods Boulevard."

2. c. O.R. Book 3056, Page 2495 notes the drainage and utilities easement is reserved for the grantors and Brevard County. This document will need to be reviewed by the County and may affect the proposed improvements in this area.

Brevard County Natural Resources Management Department comments:

1. Mapped NWI/SJRWMD wetlands and/or hydric soils are present, indicating the potential presence of wetlands. The presence (or not) of wetlands shall be determined by a professional environmental consultant. This information is subject to confirmation by SJRWMD. Once lines are approved by SJRWMD, please have all the wetlands delineated by bearings and distances tied to the boundary lines.

2. Per Section 62-3694(c)(1), residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. The preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total non-commercial and non-industrial acreage on a cumulative basis as set forth in Section 65-3694(c)(6), for subdivisions and multi-family parcels greater than 5 acres in area, New Town Overlays, PUDs and if applicable, mixed-use land development activities as specified in Section 65-3694(c)(5). Any permitted wetland impacts must meet the requirements of Sections 62-3694(e) and 62-3696.

Brevard County Utilities Department comment:

System upgrades may be required to the existing system in order for it to handle the increase in proposed flows. Per Brevard County Utility Services Department (BCUSD) 1.1.14, this would be the responsibility of the developer and would need to be determined during the design process.

### **Preliminary Concurrency**

The closest concurrency management segment to the subject property is Fortenberry Road, from S. Plumosa Street to Sykes Creek Parkway, which has a Maximum Acceptable Volume (MAV) of 15,600 trips per day, a Level of Service (LOS) of E, and currently operates at 25.58% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 22.33%. The corridor is anticipated to operate at 47.91% of capacity daily. The maximum development potential of the proposal is not anticipated to create a deficiency in LOS. Specific concurrency issues will be address at the time of site plan review. This is only a preliminary review and is subject to change.

The preliminary school concurrency review indicates there is enough capacity for the total of projected and potential students from the proposed development. There is sufficient capacity at Tropical Elementary School Jefferson Middle School and Merritt Island Sr High School for the total of projected and potential students from this development.

The parcel has access to Cocoa City Water Distribution per information provided by the City of Cocoa. The closest Brevard County sewer lines are located on Fortenberry Road and on S. Plumosa Street.

### **Environmental Constraints**

- Wetlands
- Floodplain
- Aquifer Recharge
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Protected and Specimen Trees
- Protected Species

The subject property contains wetlands as depicted on applicant's submittal. The wetland delineation requires state agency verification. Per Section 62-3694(c)(1), residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. For PUD's, the preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total non-commercial and non-industrial acreage on a cumulative basis as set forth in Section 65-3694(c)(6). Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts, and will require mitigation in accordance with Section 62-3696. The applicant is encouraged to contact NRM at 321-633-2016 prior to any plan design or permit submittal.

Please refer to all comments provided by the Natural Resource Management Department at the end of this report.

## **For Board Consideration**

The Board may wish to consider if the request is consistent and compatible with the surrounding area and whether the waiver requests are appropriate.

The Board may wish to consider the following conditions to mitigate potential impacts of the development:

- 1) Prior to site plan approval, the applicant shall demonstrate the site has the ability to use the alum pond/regional stormwater system. Should the site not be able to use said pond, site shall be redesigned to accommodate on-site retention, as required by Code of Ordinances of Brevard County, Section 62-3751, Exhibit A – Stormwater Management Criteria as well as the St. Johns River Water Management District;
- 2) Prior to site plan approval, the applicant shall depict three entrances connected to the county roadway system on the PDP, as required per Sec. 62-2957(c)(1);
- 3) If the waiver is not approved, the applicant shall depict a minimum of 5.55 acres of Common Recreation Open Space on the approved site plan, as required per Sec. 62-1446(c) and meeting the definitions in Sec. 62-1102.
- 4) Prior to site plan approval, applicant to provide a traffic study demonstrating any necessary roadway improvements based on anticipated traffic volumes;
- 5) All design elements shown on the PDP require conformance with Brevard County code and requires permits;
- 6) Provide an updated PDP depicting the correct waivers granted; and
- 7) Should any of the aforementioned redesign be deemed a substantial change by the zoning official, a PDP Amendment would require Board Approval.

**NATURAL RESOURCES MANAGEMENT (NRM) DEPARTMENT**  
**Zoning Review & Summary**  
**Item #22Z00062**

**Applicant:** Ross Abramson

**Zoning Request:** BU-1; BU-2 to PUD

**Note:** Applicant wants to redevelop with multifamily use and rental apartments

**P&Z Hearing Date:** 01/09/2023; **BCC Hearing Date:** 02/02/2023

**Tax ID No:** 2428163, 2428002, 2428157, 2428161

- This is a preliminary review based on best available data maps reviewed by the Natural Resources Management Department (NRM) and does not include a site inspection to verify the accuracy of the mapped information.
- In that the rezoning process is not the appropriate venue for site plan review, specific site designs submitted with the rezoning request will be deemed conceptual. Board comments relative to specific site design do not provide vested rights or waivers from Federal, State or County regulations.
- **This review does not guarantee whether or not the proposed use, specific site design, or development of the property can be permitted under current Federal, State, or County Regulations.**

**Summary of Mapped Resources and Noteworthy Land Use Issues:**

- Wetlands
- Floodplain
- Aquifer Recharge
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Protected and Specimen Trees
- Protected Species

The subject property contains wetlands as depicted on applicant's submittal. The wetland delineation requires state agency verification. Per Section 62-3694(c)(1), residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. For PUD's, the preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total non-commercial and non-industrial acreage on a cumulative basis as set forth in Section 65-3694(c)(6). Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts, and will require mitigation in accordance with Section 62-3696. The applicant is encouraged to contact NRM at 321-633-2016 prior to any plan design or permit submittal.

A portion of the property is located within an area mapped as FEMA Special Flood Hazard Area (SFHA) AE, as identified by the Federal Emergency Management Agency, and as shown on the FEMA Flood Map.

The entire parcel is mapped within the Indian River Lagoon Nitrogen Reduction Overlay. If adequate sewer for the development is not available, then the use of an alternative septic system, designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes, shall be required.

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

### **Land Use Comments:**

#### **Wetlands**

The subject parcel contains mapped NWI and SJRWMD wetlands and hydric soils (Canaveral Anclote complex and Anclote sand) as shown on the NWI Wetlands, SJRWMD Florida Land Use & Cover Codes and USDA Soil Conservation Service Soils Survey maps, respectively. The applicant provided a wetlands delineation depicting two Freshwater Forested Wetlands with a total of 3.29 acres of the property. The wetland delineation requires state agency verification.

Per Section 62-3694(c)(1), residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. The preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total non-commercial and non-industrial acreage on a cumulative basis as set forth in Section 65 3694(c)(6), for PUDs and if applicable, mixed-use land development activities as specified in Section 65-3694(c)(5). Any permitted wetland impacts must meet the requirements of Sections 62-3694(e) and 62-3696. The applicant is encouraged to contact NRM at 321-633-2016 prior to any plan or permit submittal.

#### **Floodplain**

A large portion of the property is within an area mapped as SFHA AE, as identified by the Federal Emergency Management Agency, and as shown on the FEMA Flood Map. The property is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance. Additional impervious area, often associated with increased density, increases stormwater runoff that can adversely impact nearby properties unless addressed on-site. Chapter 62, Article X, Division 6 states, "No site alteration shall adversely affect the existing surface water flow pattern." Chapter 62, Article X, Division 5, Section 62-3723 (2) states, "Development within floodplain areas shall not have adverse impacts upon adjoining properties."

#### **Aquifer Recharge Soils**

The subject parcel contains mapped aquifer recharge soils (Canaveral Anclote complex) as shown on the USDA Soil Conservation Service Soils Survey map. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

#### **Indian River Lagoon Nitrogen Reduction Overlay**

The property is mapped within the Indian River Lagoon Nitrogen Reduction Overlay per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay. Should this area be utilized for septic, and if adequate sewer for the development is not available, then the use of an alternative septic system,



designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes, shall be required. NRM requires a Septic Maintenance Notice be filed with the Brevard Clerk of Courts.

### **Protected and Specimen Trees**

Protected ( $\geq 10$  inches in diameter) and Specimen ( $\geq 24$  inches in diameter) trees may exist on the parcel. A tree survey will be required at time of a site plan submittal. The applicant is encouraged to perform a tree survey prior to any site plan design in order to incorporate valuable vegetative communities or robust trees into the design. Per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for preservation and canopy coverage requirements. Applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities.

### **Protected Species**

Information available to NRM indicates that federally and/or state protected species may be present on the property. Prior to any plan, permit submittal, or development activity, including land clearing, the applicant should obtain any necessary permits or clearance letters from the Florida Fish and Wildlife Conservation Commission and/or U.S. Fish and Wildlife Service, as applicable.