



BOARD OF COUNTY COMMISSIONERS

## Planning and Development Department

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<https://www.brevardfl.gov/PlanningDev>

### STAFF COMMENTS

**22Z00052**

**Kanes Furniture, LLC**

**RU-1-7 (Single-Family Residential) and BU-1 ( General Retail Commercial) with a BDP to RU-2-15 (Medium-Density Multi-Family Residential) and removal of BDP**

Tax Account Numbers: 2800342 and 2800116

Parcel I.D.: 28-36-01-50-D and 28-36-01-00-751

Location: South side of West New Haven Av., approximately 300 feet east of Seminole Blvd. (District 5)

Acreage: 12.59 acres

Planning & Zoning Board: 01/09/2023

Board of County Commissioners: 02/02/2023

### Consistency with Land Use Regulations

- Current zoning cannot 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
<b>Zoning</b>	BU-1 RU-1-7	RU-2-15
<b>Potential*</b>	1 SF unit BU-1 0 SF units RU-1-7	188 multi-family units
<b>Can be Considered under the Future Land Use Map</b>	NO CC and RES 4	YES** RES 15

\* Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations. \*\*Approval is pending approval of companion request 22SS00012 which proposes to amend the Future Land Use designation from Residential 4 (RES 4) and Community Commercial (CC) to Residential 15 (RES 15).

### Background and Purpose of Request

The applicant is requesting a change of zoning classification from RU-1-7 (Single-Family Residential) and BU-1 ( General Retail Commercial) with a BDP to RU-2-15 (Medium-Density Multi-Family Residential) and removal of BDP on 12.59 acres to develop the site as an apartment complex with up to 188 multi-family residential units. The 12.59-acre subject property is currently undeveloped. The site has frontage on W. New Haven Avenue (US 192).

The original zoning of the subject property was RU-1 which was administratively rezoned to RU-1-7 on June 1, 1972 as zoning action **Z-2980**.

A portion of the subject property was rezoned from RU-1-7 to BU-1 with a Binding Development Plan on June 21, 1999, as zoning action **Z-10260**. The BDP, recorded in ORB 4028, Pages 1061 – 1064, limits development of a portion of the subject property as support facilities (such as stormwater retention and septic drainfields) only.

**Please note:** The concept plan included in the application was provided as a courtesy. This is not a requirement for rezoning and has not been reviewed for compliance with the land development codes and other County departments. The concept plan is non-binding.

## **Land Use**

The subject property is currently designated as Community Commercial (CC) and Residential 4 (RES 4) FLU. The existing BU-1 zoning can be considered consistent with the existing CC FLU designation; however, the existing RU-1-7 zoning may not be considered consistent with the existing RES 4 FLU, as provided in Sec. 62-1255.

A companion application, **22SS00012**, if approved, would amend the Future Land Use designation from Community Commercial (CC) and Residential 4 (RES 4) to Residential 15 (RES 15).

The proposed RU-2-15 zoning can be considered consistent with the proposed Residential 15 (RES 15) FLU designation.

Residential development or the integration of residential development with commercial development can be permitted in the Community Commercial (CC) land use designation, provided that the scale and intensity of the residential/mixed use development is compatible with abutting residential development and area designated for residential use on the Future Land Use Map, as provided in FLUE Policy 2.10. 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.

The existing FLU CC and RES 4 designations would allow for 58 units under FLUE Policy 2.10 if the Board deemed the scale and intensity as compatible with the abutting residential development.

When considering the existing development potential of the subject site, this request actually represents an increase of approximately 130 units.

## **Applicable Land Use Policies**

### **FLUE Policy 1.4 – Residential 15 (maximum of 15 dwelling units per acre)**

The Residential 15 land use designation affords the second highest density allowance, permitting a maximum density of up to fifteen (15) units per acre, except as otherwise may be provided for within the Future Land Use Element.

## **FLUE Policy 1.2 - Public Facilities and Services Requirements**

Minimum public facilities and services requirements should increase as residential density allowances become higher. The following criteria shall serve as guidelines for approving new residential land use designations:

### **Criteria:**

- C. In the Residential 30, Residential 15, Residential 10, Residential 6 and Residential 4 land use designations, centralized potable water and wastewater treatment shall be available concurrent with the impact of the development.
- D. Where public water service is available, residential development proposals with densities greater than four units per acre shall be required to connect to a centralized sewer system.

**The subject site is within the City of Melbourne's service area for potable water. The closest centralized sewer line (City of West Melbourne) is located on the north side of W. New Haven Avenue (US 192). Connection to centralized sewer and potable water is required under Criterion C, above.**

The Board should evaluate the compatibility of this application within the context of Administrative Policies 2 – 8 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 12.59 acres to RU-2-15 zoning classification and remove an existing BDP for the purpose of developing an apartment complex with up to 188 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.**

- 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 character of the area is commercial along West New Haven Avenue (US 192) with residential land uses in the surrounding areas. There are five (5) FLU designations within 500 feet of the subject site: CC, NC, RES 4, RES 6 and RES 15. The predominant FLU designation along this section of W. New Haven Avenue is CC.**

**This request can be considered an introduction of RES 15 into the area along West New Haven Avenue (US 192). The closest RES 15 FLU designation is located approximately 415 feet north of the subject property on Gray Road, north of W. New Haven. That parcel is currently undeveloped.**

**The most recent FLU amendment (14S.08) in this area was adopted February 5, 2015 by Ordinance 15-01 to change the FLU designation from NC and RES 4 to CC on 3.44 acres 375 feet to the west of the subject property on West New Haven Avenue.**

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

**Two single-family residences were developed within one-half mile of the subject property in the preceding three (3) years: a SFR (20BC23362) was constructed adjacent to the west of the subject property on the west side of Seminole Boulevard; and a SFR (18BC25010) was constructed on the east side of Seminole Boulevard adjacent to south of the subject property.**

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

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

**22Z00044, approved by the Board on November 3, 2022, was a request to rezone from RU-1-7 (Single-Family Residential) to RU-1-11 (Single-Family Residential) on 1.76 acres located approximately 1,945 feet south of the subject property.**

**21Z00040, approved by the Board on February 2, 2022, was a request to rezone from BU-1 (General Retail Commercial) to BU-2 (Retail, Warehousing and Wholesale Commercial) on 2.11 acres located approximately 2,015 feet northwest of the subject property.**

**21Z00010, approved by the Board on May 26, 2021, was a request to rezone from AU (Agricultural Residential) to RU-1-13 (Single-Family Residential) on 0.67 acres located approximately 2,325 feet southeast of the subject property.**

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

**No material violation of relevant policies has been identified.**

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

The developed character of the area is commercial along West New Haven Avenue (US 192) which transitions to residential zoning towards the back half of the property. The residential zoning in the area is RU-1-7 single-family residential which allows one quarter (1/4) acre lots; however, rural residential and agricultural residential zoning classifications are also located in the vicinity.

There is one multi-family zoning classification within a one-half mile radius of the subject property: a vacant 6.08-acre parcel with RU-2-6 zoning located approximately 420 feet to the northwest. This request can be considered an introduction of RU-2-15 zoning classification into the area.

As provided in FLUE Policy 2.10, residential development or the integration of residential development with commercial development can be permitted in the Community Commercial (CC) land use designation, provided that the scale and intensity of the residential/mixed use development is compatible with abutting residential development and area 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.

The existing FLU CC and RES 4 designations would allow for 58 units under FLUE Policy 2.10 if the Board deemed the scale and intensity as compatible with the abutting residential development.

When considering the existing development potential of the subject site, this request represents an increase of approximately 130 units.

The City of West Melbourne's municipal boundary is located approximately 525 feet to the east of the subject property.

### Surrounding Area

	Existing Use	Zoning	Future Land Use
<b>North</b>	Retail	BU-1	CC
<b>South</b>	Single-family residences	RU-1-7 AU	RES 4
<b>East</b>	Retail; Single-family residences	BU-1 RU-1-7	CC RES 4
<b>West</b>	Single-family residences	BU-1 RU-1-7 RR-1	CC RES 4

To the north, across W. New Haven Avenue, is a 0.96-acre parcel and a 0.73-acre parcel, each with BU-1 zoning and developed as retail commercial.

To the south is a 0.42-acre parcel developed as a single-family residence with RU-1-7 zoning; a 2.0-acre undeveloped parcel with AU zoning; and a 5.69-acre parcel developed as a single-family residence with AU zoning.

To the east, across Seminole Boulevard, is a 1.09-acre parcel developed as retail commercial with BU-1 zoning; a 0.38-acre vacant commercial lot with BU-1 zoning; a 1.09-acre parcel developed as a single-family residence with BU-1 zoning; and six (6) parcels developed as single-family residences with RU-1-7 zoning on lots greater than 1-acre in size.

To the west are single-family residences, including a 0.44-acre parcel with RR-1 zoning and five (5) parcels developed as single-family residences with RU-1-7 zoning 0.25-acre or greater in size. A 3.93-acre parcel with BU-1 zoning developed as commercial retail (Kane's Furniture) is immediately west of the subject site on West New Haven Avenue.

The current 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 proposed RU-2-15 classification permits multiple-family residential uses or single-family residences at a density of up to 15 units per acre on 7,500 square foot lots.

The current RU-1-7 classification permits single family residences on minimum 5,000 square foot lots with minimum widths of 50 feet and depth of 100 feet. The minimum house size is 700 square feet.

RR-1 zoning classification permits single-family residential land uses on a minimum one-acre lot, with a minimum lot width and depth of 125 feet. The RR-1 classification permits horses, barns and horticulture as accessory uses to a single-family residence. The minimum house size is 1,200 square feet. Keeping of horses and agricultural uses are accessory to a principal residence within RR-1 zoning.

The AU zoning classification permits single-family residences and agricultural uses on 2.5 acre lots, with a minimum lot width and depth of 150 feet. The minimum house size in AU is 750 square feet. The AU classification also permits the raising/grazing of animals and plants nurseries.

### **Preliminary Concurrency**

The closest concurrency management segment to the subject property is US 192, from John Road to Wickham Road, which has a Maximum Acceptable Volume (MAV) of 39,800 trips per day, a Level of Service (LOS) of D, and currently operates at 76.36% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 4.50%. The corridor is anticipated to operate at 80.85% 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 school concurrency indicates there is enough capacity for the total of projected and potential students from the proposed development. There is sufficient capacity at Meadowlane Elementary School, Central Middle School, and Melbourne High School for the total of projected and potential students from this development.

The parcel is within the City of Melbourne utilities service area for public water. The closest centralized sewer line (City of West Melbourne) is located on the north side of W. New Haven Avenue (US 192).

## **Environmental Constraints**

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

Per the applicant-provided Environmental Impact Report (EIR), the property contains approximately 0.75 acres of Freshwater Forested Wetlands. The wetland delineation will require agency verification. Section 62-3694(c)(3)b has allowances for wetland impacts for commercial land development activities along Mitigation Qualified Roadways (MQRs). West New Haven Avenue is designated as an MQRs in this location.

Prior to the allowance of any wetland impacts, the applicant shall complete High Function and Landscape Level wetlands assessments. Approval by the Brevard County Board of County Commissioners may be required for impacts. 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 site 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 with the introduction of RU-2-15 zoning.

**NATURAL RESOURCES MANAGEMENT (NRM) DEPARTMENT**  
**Zoning Review & Summary**  
**Item #22Z00052**

**Applicant:** Bruce Moia for Kanes Furniture

**Zoning Request:** BU-1/RU-1-7 w/BDP to RU-2-15 & remove BDP

**Note:** Current zoning and land use does not fit with the intended desired use of property by the developer.

**Zoning Hearing Date:** 01/09/23; **BCC Hearing Date:** 02/02/2023

**Tax ID Nos:** 2800342 & 2800116

- 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
- Protected and Specimen Trees
- Protected Species
- Indian River Lagoon Nitrogen Reduction Septic Overlay

Per the applicant-provided Environmental Impact Report (EIR), the property contains approximately 0.75 acres of Freshwater Forested Wetlands. The wetland delineation will require agency verification. Section 62-3694(c)(3)b has allowances for wetland impacts for commercial land development activities along Mitigation Qualified Roadways (MQRs). West New Haven Avenue is designated as an MQRs in this location.

Prior to the allowance of any wetland impacts, the applicant shall complete High Function and Landscape Level wetlands assessments. Approval by the Brevard County Board of County Commissioners may be required for impacts. 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 site plan design or permit submittal.

**Land Use Comments:**

**Wetlands**

The subject property contains hydric soils (Hydric soils Malabar sand, high; Malabar, Holopaw, and Pineda soils; and Pineda sand, 0 to 2 percent slopes), an indicator that wetlands may be present on



the property. The southern one-third of the property has mapped hydric pine flatwoods. The applicant provided a wetlands delineation depicting 0.75 acres of Freshwater Forested Wetlands on the southwestern portion of the property. The wetland delineation will require agency verification.

Section 62-3694(c)(3)b has allowances for wetland impacts for commercial land development activities along MQRs. West New Haven Avenue is designated as an MQRs in this location.

Wetlands proposed for impact shall be assessed using methodologies established in the Countywide Wetlands Study, prepared BKL, Inc. Consulting Ecologists (September 30, 2013), to determine if they meet the criteria of High Functioning Wetlands or Landscape Level Wetlands. Impacts to high functioning and/or landscape level wetlands shall be prohibited unless the proposed impacts are found to be in the public interest, or of overriding public benefit. Approval by the Brevard County Board of County Commissioners may be required for impacts. 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. Any unpermitted wetland impacts may result in Code Enforcement action. The applicant is encouraged to contact NRM at (321) 633-2016 prior to any site plan design or permit submittal.

### **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. Per the applicant-provided Environmental Impact Report (EIR), the property contains Gopher Tortoises. 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.

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

A very small portion of the northeast corner of 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.