



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

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STAFF COMMENTS

23Z00001

Morris M. Taylor Revocable Living Trust (Chelsea Anderson, Esq.)

SEU (Suburban Estate Use), EA (Environmental Areas) and BU-1-A (Restricted Neighborhood Retail Commercial) to AU (Agricultural Residential and BU-1-A (Restricted Neighborhood Retail Commercial)

Tax Account Number: 3008434

Parcel I.D.: 30-39-07-00-13

Location: West side of Highway A1A, approximately 1,885 feet north of River Oaks Road (District 3)

Acreage: 3 acres +/-

Planning and Zoning Board: 03/13/2023

Board of County Commissioners: 04/06/2023

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)

	CURRENT	PROPOSED
Zoning	SEU, EA, BU-1-A	AU and BU-1-A
Potential*	1 unit	1 unit
Can be Considered under the Future Land Use Map	YES RES 1	YES RES 1

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

Background and Purpose of Request

The applicant is requesting to change the zoning classification from SEU (Suburban Estate Use), EA (Environmental Areas), and BU-1-A (Restricted Neighborhood Retail Commercial) to AU (Agricultural Residential and BU-1-A (Restricted Neighborhood Retail Commercial) to allow for expansion of an Aquaculture Case II use on the current SEU portion of the parcel. The BU-1-A portion of the parcel to remain BU-1-A. There was a Conditional Use Permit (CUP) for the use of Aquaculture Case II that was approved on the SEU portion of the parcel per zoning action **Z-9871** on April 24, 1997. On March 19, 2002, Ordinance **No. 02-014** removed the CUP use for Aquaculture Case II from the SEU zoning classification. On October 02, 2003, **CUP Z-9871** was administratively removed from the parcel per zoning action **Z-10847(19)**. The subject parcel has continued an established non-conforming Aquaculture Case II commercial use.

Section 62-1102. Definitions and rules of construction:

Aquaculture means the cultivation, production, and raising of the natural products of water, including associated activities such as landing, processing and transporting of shellfish. For the purposes of this chapter, aquaculture shall be divided into three categories:

Case I. Product is brought on-shore (landed) from a lease and transferred from that point to an off-site market.

Case II. Product is grown on site (i.e., hatchery or nursery) and transferred to the property owner's lease. On parcels having a commercial or industrial zoning classification as described below, the product may also be sold to the customer directly from the site.

Case III. Product is brought on-shore and then is further processed on site (depuration) before being transferred off site.

Aquaculture Case I and Case III are permitted in BU-2 or industrial classifications. Aquaculture, Case II is permitted in BU-1, BU-2 or industrial zoning classifications. All cases are permitted in AU, PA and AGR classifications.

The property is developed with a 2,156 sq. ft. single-family home and accessory structures for aquaculture use.

The original zoning of the subject property was GU (General Use). The parcel was rezoned to RU-3 (Multi-Family Residential) and BU-1 (Neighborhood Retail Business on the east 400 feet) on May 07, 1964 per zoning action **Z-1393**.

The RU-3 zoning on the parcel was Administratively replaced with the new zoning classification RU-2-10 (Medium-Density Multi-Family) in 1973 per Ordinance **73-13**.

The RU-2-10 portion of the parcel was Administratively rezoned from RU-2-10 to RU-2-4 (Low-Density Multi-Family) and the BU-1 portion to BU-1-A (Restricted Neighborhood Retail Commercial) on March 04, 1985 per zoning action **Z-6977**.

The parcel was rezoned from RU-2-4 and BU-1-A to SEU and BU-1-A on March 28, 1994 per zoning action **Z-9290**.

A CUP for Aquaculture Case II on the SEU zoned portion of the parcel was approved on April 24, 1997 per zoning action **Z-9871**.

On March 19, 2002, Ordinance **No. 02-014** removed the CUP use for Aquaculture Case II from the SEU zoning classification.

The parcel was denied a rezoned from SEU and BU-1-A to AU with a Binding Development Plan (BDP) with removal of existing CUP for Aquaculture Case II on February 07, 2002 per zoning action **Z-10668**.

The **CUP Z-9871** for Aquaculture Case II on the SEU zoned portion of the parcel was Administratively remove on October 02, 2003 per zoning action **Z-10847(19)**.

Land Use

The subject property is currently designated as Residential 1 (RES 1) FLU. Both the AU and BU-1-A zoning classifications may be considered consistent with the Residential 1 FLU designation.

Applicable Land Use Policies

Policy 1.9 –The Residential 1 Future land use designation. The Residential 1 land use designation permits low density residential development with a maximum density of up to one (1) dwelling unit 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;

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. AU zoning permits all agricultural pursuits, including the packing, processing, and sales of commodities raised on the premises, also permits the raising/grazing of animals, fowl and beekeeping. The agricultural/aquaculture commercial use would need to meet performance standards set forth in code sections 62-2251 through 62-2272 for hours of operation, lighting, odor, noise levels, traffic, or site activity.

- 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 historic land use pattern has been single-family homes built on lots of approximately two acres or more 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 last three years.

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.

Character of a neighborhood or area shall be a factor for consideration whenever a rezoning or any application involving a specific proposed use is reviewed. The character of the area must not be materially or adversely affected by the proposed rezoning or land use application. In evaluating the character of an area, the following factors shall be considered:

Criteria:

- A. The proposed use must not materially and adversely impact an established residential neighborhood by introducing types or intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, etc.), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.

The applicant proposes expanding the existing Aquaculture Case II use on the parcel. The commercial nature of the activity may impact the abutting parcels to the south with SEU zoning.

- B. In determining whether an established residential neighborhood exists, the following factors must be present:

1. The area must have clearly established boundaries, such as roads, open spaces, rivers, lakes, lagoons, or similar features.

The area is established by existing developed parcels with established roads and river.

2. Sporadic or occasional neighborhood commercial uses shall not preclude the existence of an existing residential neighborhood, particularly if the commercial use is non-conforming or pre-dates the surrounding residential use.

The subject parcel has an established non-conforming Aquaculture Case II commercial use. The proposed request could be considered and introduction of AU zoning.

3. An area shall be presumed not to be primarily residential but shall be deemed transitional where multiple commercial, industrial or other non-residential uses have been applied for and approved during the previous five (5) years.

The subject parcel has an established non-conforming Aquaculture Case II commercial use. The surrounding area is could be classified as residential on lots greater than one acre (1.0) and does not have commercial or industrial uses.

Surrounding Area

	Existing Use	Zoning	Future Land Use
North	Vacant land	GML & EA	PUB-CONS
South	Single-Family	SEU, BU-1-A & EA	RES 1
East	Right-of-Way	none	none
West	River	none	none

The subject property is bounded by a 6.59 undeveloped parcel to the north with GML (Government Managed Lands) zoning. To the east is Highway A1A. To the south is a 3.36-acre parcel developed with a single-family residence with SEU, BU-1-A and EA zoning.

The existing SEU zoning permits suburban estate residential uses on lots of one acre (minimum) with a width of 125 feet and a depth of 200 feet. Minimum floor area is 2,000 square feet of living area.

The existing BU-1-A classification permits restricted neighborhood retail and personal service uses to serve the needs of nearby low-density residential neighborhoods. Minimum lot size of 7,500 square feet is required with minimum width and depth of 75 feet.

The existing EA environmental area zoning classification recognizes the natural resource components as defined and provided for by the provisions of the Comprehensive Plan. The purpose of this classification is to conserve natural resource functions and features by retaining lands and waters in their pristine character and condition, but permit uses which are compatible with or which shall enhance or restore the functions and features of such natural resources. The EA classification permits single-family detached residential dwellings units and passive recreation. Minimum lot area is ten (10) acres with width and depth of 125 feet. This classification includes wetlands identified on the National Wetlands Inventory Maps, naturally formed or man-made islands and the dune beach.

The proposed 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 zoning classification also permits all agricultural pursuits, including the raising/grazing of animals, plants nurseries, and the packing and processing of commodities raised on site.

Florida Statute 570.86 defines “agritourism activity” as “any agricultural related activity consistent with a bona fide farm, livestock operation, or ranch or in a working forest which allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy activities, including farming, ranching, historical, cultural, civic, ceremonial, training and exhibition, or harvest-your-own activities and attractions.” Local government is prohibited from adopting ordinances, regulations, rules, or policies that prohibit, restrict, regulate, or otherwise limit an agritourism activity on land that has been classified as agricultural land.

The purpose of the GML government managed lands zoning classification is to recognize 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.

There are no agritourism activity currently within a 500 feet radius.

There are 11 single-family residences currently within a 500 feet radius.

There have been no zoning actions within a half-mile radius of the subject property within the last three years.

Preliminary Concurrency

The closest concurrency management segment to the subject property is Highway A1A between Strawberry Lane and Heron Drive, which has a Maximum Acceptable Volume (MAV) of 24,200 trips per day, a Level of Service (LOS) of D, and currently operates at 17.23% of capacity daily. The maximum development potential from the proposed rezoning does not increase the percentage of MAV utilization. The corridor is anticipated to operate at 17.23% of capacity daily. The proposal is not anticipated to create a deficiency in LOS.

No school concurrency information has been provided as the development potential of this site falls below the minimum number of new residential lots that would require a formal review.

The parcel is not service the Brevard County utilities service area for public water or sewer. The closest Brevard County sewer line is approximately 9.4 miles north of the parcel at the west end of Glengarry Avenue. The closest Brevard County water line is approximately 9.4 miles north of the parcel at the south end of MacFarlane Street.

Environmental Constraints

Summary of Mapped Resources and Noteworthy Land Use Issues:

- Wetlands/Hydric Soils
- Floodplain Protection
- Surface Waters of the State
- Coastal High Hazard Area
- Aquifer Recharge Soils
- Indian River Lagoon Nitrogen Reduction Overlay
- Protected and Specimen Trees

For Board Consideration

The Board may wish to consider whether the requested rezoning action is consistent and compatible with the surrounding area.

NATURAL RESOURCES MANAGEMENT (NRM) DEPARTMENT
Zoning Review & Summary
Item #23Z00001

Applicant: Chelsea Anderson, Esq.

Zoning Request: SEU, EA, & BU-1-A to AU & BU-1-A

Note: Wants to expand aquaculture use on property.

P&Z Hearing Date: 03/13/23; **BCC Hearing Date:** 04/06/2023

Tax ID No: 3008434

- 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.**

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Wetlands/Hydric Soils

The subject parcel contains mapped National Wetlands Inventory (NWI) wetlands along the property shoreline. Additionally, most of the parcel is mapped with hydric soils as shown on the USDA Soil Conservation Service Soils Survey map. These are indicators that wetlands may be present on the property. A wetland determination will be required prior to any land clearing activities, site plan design, or building permit submittal.

Section 62-3694 states that non-bona fide agricultural and forestry operations utilizing best management practices are permitted in wetlands provided they do not result in permanent degradation or destruction of wetlands, or adversely affect the functions of the wetlands. Pursuant to the Florida Agricultural Lands and Practices Act (Chapter 163.3162(4), Florida Statutes), any activity of a Bona Fide Agricultural Use on land classified as agricultural land pursuant to Section 193.461, Florida Statute is exempt. The Brevard County Property Appraiser's Office establishes Bona Fide Agricultural land classification. The applicant is encouraged to contact NRM at 321-633-2016 prior to any site plan design or permit submittal.

Floodplain Protection

Nearly the entirety of the parcel is mapped within the estuarine floodplain as identified by the Federal Emergency Management Agency (FEMA) and as shown on the FEMA Flood Zones Map. FEMA Special Flood Hazard Area (SFHA) VE is mapped along the shoreline, and SFHA AE on the uplands. The property is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance. 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."

Surface Waters of the State

The subject property is located on the Indian River Lagoon, designated as a Class II Water, Outstanding FL Water (OFW), and Aquatic Preserve in this location. A 50-foot Surface Water Protection Buffer is required. Primary structures shall be located outside the Buffer. Accessory structures are permissible within the Buffer with conditions (e.g., storm water management is provided, avoidance/minimization of impacts, and maximum 30% impervious). The removal of native vegetation located within the Buffer shall be avoided. Temporary impacts to native vegetation require in-kind restoration. The Florida Department of Environmental Protection (FDEP) regulates mangrove trimming, and can be reached at (407) 897-4101. The applicant is encouraged to contact NRM at 321 633 2016 prior to any activities, plan, or permit submittal.

Coastal High Hazard Area

Nearly the entire property is located within the Coastal High Hazard Area (CHHA) as defined by Florida Statute 163.3178(2)(h), and as shown on the CHHA Map. The Coastal Management Element of the Comprehensive Plan, Policy 6.1, designates Coastal High Hazard Areas to be those areas below the elevation of the Category 1 storm surge elevation as defined in Chapter 163, Florida Statute.

Protected and Specimen Trees

Protected (≥ 10 inches in diameter) and Specimen (≥ 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.

Land Use Comments:

Wetlands/Hydric Soils

The subject parcel contains mapped NWI wetlands (Estuarine and Marine Deepwater) along the property shoreline. Additionally, most of the parcel is mapped with hydric soils (Bessie muck, tidal, and Canaveral-Anclote complex, gently undulating) as shown on the USDA Soil Conservation Service Soils Survey map. These are indicators that wetlands may be present on the property. A wetland determination will be required prior to any land clearing activities, site plan design, or building permit submittal.

Section 62-3694 states that non-bona fide agricultural and forestry operations utilizing best management practices are permitted in wetlands provided they do not result in permanent degradation or destruction of wetlands, or adversely affect the functions of the wetlands. Pursuant to the Florida Agricultural Lands and Practices Act (Chapter 163.3162(4), Florida Statutes), any activity of a Bona Fide Agricultural Use on land classified as agricultural land pursuant to Section 193.461, Florida Statute is exempt. The Brevard County Property Appraiser's Office establishes Bona Fide Agricultural land classification. The applicant is encouraged to contact NRM at 321-633-2016 prior to any site plan design or permit submittal.

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Aquifer Recharge Soils

The subject parcel contains mapped aquifer recharge soils (Palm Beach sand) as shown on the USDA Soil Conservation Service Soils Survey map. Canaveral-Anclote complex, gently undulating, may also function as aquifer recharge soil. 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 entire parcel is mapped within the Indian River Lagoon Nitrogen Reduction Overlay per Chapter 46, Article II, Division IV - 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 requires a Septic Maintenance Notice be filed with the Brevard Clerk of Courts.

Protected and Specimen Trees

Protected (≥ 10 inches in diameter) and Specimen (≥ 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

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.