



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

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**STAFF COMMENTS
 24Z00021**

Alexis DeJesus

AU & BU-1 (Agricultural Residential) to all BU-2 (Retail, warehousing and wholesale commercial)

Tax Account Number: 2102561
 Parcel I.D.: 20G-34-22-AI-2-2.05
 Location: East side of Highway US 1 approximately 400 feet south of Andre Road. (District 1)
 Acreage: 2 acres
 Planning & Zoning Board: 6/10/2024
 Board of County Commissioners: 7/11/2024

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	AU and BU-1	BU-2
Potential*	FAR 1	FAR 1 60 dwelling units***
Can be Considered under the Future Land Use Map	YES NC and CC	NO** & YES NC & CC

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

Approval is pending approval of companion request **24SS00007.

*** Development potential at 30 units per acre pursuant to F.S. 125.01055 (Live Local Act).

Background and Purpose of Request

The applicant is requesting to change the zoning classification from AU (Agricultural Residential) and BU-1 (General retail Commercial) to BU-2 (Retail, warehousing and

wholesale commercial) for the purposes of a unified zoning across the entire proposed project area and to establish consistency with the proposed FLUM. The BU-1 portion includes approximately 1.9 acres and 0.1 acres of AU. The applicant proposes to develop the site for automobile and mobile home sales. The BU-2 zoning classification allows for outside storage.

The parcel has access to Highway US 1. According to the survey there least three frame buildings (one used as a single family residence), one concrete pad and two carports on the subject property.

The northerly east corner of the subject property retains the original AU zoning classification. There have been several zoning actions on different portions of the property.

West and south of the portion describe above was approved on March 10, 1966 under zoning action **Z-1865** from AU to BU-2. Subsequently the zoning was administratively changed July 3, 1975 to BU-1 under **AZ-0008**.

South of the portion describe above was approved on February 4, 1960 under zoning action **Z-290** from AU to BU-2. Subsequently the zoning was administratively changed July 3, 1975 to BU-1 under **AZ-0008**.

On November 8, 1973, the southern most portion of subject property was denied a request to change from AU to BU-2 under zoning action **Z-3434**, BU-1 was approved.

A companion application **24SS00007**, if approved, would amend the FLUM designation from CC (Community Commercial) and NC (Neighborhood Commercial) to all CC FLUM.

There is one (1) active code enforcement associated with the subject parcel: Case number 24CE-00510, opened 04/09/2024, removed vegetation without a permit.

Surrounding Area

	Existing Use	Zoning	Future Land Use
North	Single family dwellings/auto body shop	BU-1, BU-2, TR-1	CC, NC
South	undeveloped	RU-1-11	CC
East	Single family dwellings	TR-1, RRMH-1, AU, RU-1-11	RES 4
West	Highway/retail store/undeveloped	BU-1, BU-2	CC

To the north are 3 parcels; single family with BU-1 zoning, classified by Brevard County Property Appraiser as auto body shop with CC FLU designation and BU-2 zoning and single family with NC FLU designation and TR-1 zoning.

To the east is 1 parcel; 0.41-acre (unplatted residential vacant land) with RU-1-7 zoning.

To the south is 1 parcel; 30 acres vacant land with RU-1-1 zoning.

To the west is Highway 1, 0.72 acres of undeveloped land and 0.66 acres developed as a retail store, according to the Brevard County Property Appraiser.

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, fowl and beekeeping.

RRMH-1 classification permits single-family mobile homes and detached single-family residential land uses on minimum one acre lots, with a minimum width and depth of 125 feet. This classification permits horses, barns and horticulture as accessory uses. The minimum house size is 600 square feet.

TR-1 is a single family residential mobile home zoning classification which permits mobile homes or residences of standard construction on lots of 7,500 square feet (minimum) with lot width of 65 feet and lot depth of 100 feet.

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

BU-1 classification permits retail commercial land uses on minimum 7,500 square foot lots. The BU-1 classification does not permit warehousing or wholesaling.

BU-2 retail, warehousing and wholesale commercial zoning classification encompasses lands devoted to general retail and wholesale business, contracting and heavy repair services, outdoor storage yards, warehousing activities, and outside storage of retail items including, but not limited to, motor vehicles, utility sheds, nursery items such as plants and trees, boats and mobile homes on minimum 7,500 square foot lots.

BU-2 zoning is the county's most intense commercial zoning classification due to the intensive nature of commercial activities permitted such as dry cleaning plants; Seafood processing plants not located within 300 feet of any residential zone boundary; and Testing laboratories. Other activities permitted with conditions in BU-2; Establishments with drive-through lanes; Crematoriums; Manufacturing, compounding, processing, packaging, storage, treatment or assembly of certain products such as: Electronic assembly, Food, beverage and tobacco products, Pottery and figurines, Professional, scientific, photographic and optical instruments, Technical and scientific products and materials; and Recovered materials processing facility.

Off-site impacts such as noise, light, traffic and other potential nuisance factors associated with BU-2 activities should be considered.

Future Land Use

The subject property is currently designated as Community Commercial (CC) and Neighborhood Commercial (NC) on the FLUM. The existing BU-1 cannot be considered consistent with the existing CC FLU designation. The AU zoning can be considered consistent with the existing and Neighborhood Commercial (NC) FLU designation. The proposed BU-2 zoning classification can be considered consistent with the existing CC FLU designation, however, cannot be consider with the existing NC FLU designation.

Applicable Land Use Policies

FLUM Policy 2.2 Role of Zoning Regulations in the Designation of Commercial Lands

The zoning process regulates the types and intensities of uses for a parcel of land. Criteria which aid in assessing zoning compatibility, shall include consideration of the following standards:

Criteria:

A. Permitted/prohibited uses;

BU-2 zoning classification permits outdoor storage yards, wholesale and warehousing uses on minimum 7,500 square feet 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 (auto-repair facilities, paint and body shops, and contractor storage yards).

B. Existing commercial zoning trends in the area;

The existing commercial uses are sparse in this area. Most commercial development is located along Highway 1. There are some single-family residential located along this segment of Highway 1. The west side of Highway 1 and to the North are developed with commercial uses. All of the commercial uses in the area have been established for at least 2 years. Commercial uses in the area includes, but not limited to a garage and auto body shop, a small light manufacturing plant, warehousing and truck terminal, a retail store, fraternal organization clubhouse and vacant commercial land.

C. Compatibility of the proposed use with the area, pursuant to Administrative Policy 3;

The proposed use will need to comply with Brevard County Performance Standards noted within Section 62-1483, 62-1833.5, and 62-2251-62-2272 of Brevard County Code and subject to a site plan review.

- D. Impact upon Level of Service (LOS) standards for roads, potable water service, sanitary sewer service and solid waste disposal;

The proposed development increases the percentage of MAV utilization by 6.90%. The corridor is anticipated to operate at 34.19% of capacity daily. The proposed development will not 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.

Potable water service may be provided by Brevard County Utility Water service. A Brevard County water node and line is located directly fronting the property on Highway 1. The closest Brevard County sewer line is approximately one and one-third (1.3) miles west across other properties to Indian River Parkway. An approved Concurrency Application, including potable water service capacity, Sanitary sewer service capacity and solid waste capacity is required upon a formal site plan submission.

- E. Impact upon natural resources, including wetlands, floodplains, and endangered species; and

None identified.

- F. Other issues which may emerge specific to a particular property which may be addressed through performance-based zoning criteria.

This property will need to comply with Brevard County Performance Standards noted within Section 62-1483 and 62-1833.5 of Brevard County Code.

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 has not provided hours of operation, a lighting plan, or a traffic analysis.

The Board should consider the array of intense uses permitted under the BU-2 zoning classification and the potential impacts to the abutting residential lots to the north and east.

Performance standards within Sections 62-2251 through 62-2272 will be reviewed at the site plan stage should the zoning and Future Land Use change be approved.

- 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 (Master Appraisal Institute) 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;

There are three (3) FLU designations within 500 feet of the subject site: CC, NC and RES 4. Predominant FLU designations CC and RES 4.

Within this segment of Highway 1, CC extends at least a quarter mile to the north and south of the subject. Located along the west side of Highway 1 is a mix of smaller clusters of land uses including CC, NC AND RES 4.

FLUM amendments within one-half mile within the past three years:

- **22SS00007 request to amend FLUM designation from REC to RES 4 on 2.12 acres, approved 09/01/2022 located approximately 735 feet east of the subject property.**

Zoning actions within one-half mile within the past three years:

- **22Z00029 – RU-1-11 with BDP, SR with BDP, GML & AU to RU-1-7 with BDP on 76.52 acres, approved 09/01/2022 located approximately 735 feet east of the subject property.**
- **21Z00026 – AU to SR on 0.5 acres, approved 11/04/2021 located approximately .25 mile north west of the subject property**

- **21Z00025 – AU to RR-1 on 1.15 acres, approved 03/03/2022 located approximately 652 feet north west of the subject property**
- **There are no pending zoning actions within one-half mile of the subject property.**

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

Construction of one single family home has occurred within the immediate preceding three years approximately 625 feet north west of the subject property.

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.

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.

Criteria:

A. The proposed use must not materially and adversely impact an established residential neighborhood by introducing types or intensity of traffic, parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.

Staff analysis indicates the subject property is not located within an established residential neighborhood or area. The applicant has not provided hours of operation, a lighting plan, or a traffic analysis. The proposed development increases the percentage of MAV utilization by 6.90%. The corridor is anticipated to operate at 34.19% of capacity daily. The proposed development 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.

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.

Staff analysis indicates the subject property is not located in an established residential neighborhood or area.

- 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 east side corridor of Highway 1 has existing FLU designation of commercial. This request does not encroach into the existing the residential area.

- 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.

Along the east side of Highway 1 is a mix of commercial uses, single-family residential and vacant land.

Administrative Policy 7

Proposed use(s) shall not cause or substantially aggravate any (a) substantial drainage problem on surrounding properties; or (b) significant, adverse and unmitigatable impact on significant natural wetlands, water bodies or habitat for listed species.

Based on Natural Resources analysis, the proposed use is not anticipated to cause or substantially aggravate any (a) substantial drainage problem on surrounding properties; or (b) significant, adverse and unmitigatable impact on significant natural wetlands, water bodies or habitat for listed species. However, development of the property may be limited due to Type 2 Aquifer Recharge soils that have impervious area restrictions.

Preliminary Concurrency

The closest concurrency management segment to the subject property is US Hwy 1, from Lionel Rd. to State Road 46, which has a Maximum Acceptable Volume (MAV) of 41,790 trips per day, a Level of Service (LOS) of D, and currently operates at 27.29% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 6.90%. The corridor is anticipated to operate at 34.19% of capacity daily. 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 concurrency analysis provided above is preliminary and represents an estimate of impacts resulting from the proposed uses. However, if a site plan for the property is submitted and the development proposal will cause a deficiency of the above mentioned levels of service, then the County reserves the right to exercise the following options: deny or defer the proposal; cause the proposal to be modified to achieve consistency with the minimum LOS; or process the proposal as a conditional development permit pursuant to Section 62-604 of the Brevard County Code of Ordinances.

No school concurrency information has been provided as the development proposal is for commercial and not residential use.

The subject parcel is within the Brevard County Water utilities service area for potable water. A Brevard County water node and line is located directly fronting the property on Highway 1. The closest Brevard County sewer line is approximately one and one-third (1.3) miles west across other properties to Indian River Parkway. An approved Concurrency Application, including potable water service capacity, Sanitary sewer service capacity and solid waste capacity is required upon a formal site plan submission.

Environmental Constraints

Summary of Mapped Resources and Noteworthy Land Use Issues:

- Aquifer Recharge Soils
- Protected Species
- Protected and Specimen Trees
- Enforcement

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.

NATURAL RESOURCES MANAGEMENT DEPARTMENT
Zoning Review & Summary

Item No. 24Z00021

Applicant: Alexis DeJesus (Owners: Alexis DeJesus, Rosemary DeJesus, Brandon DeJesus)

Zoning Request: BU-1 & AU to all BU-2

Note: To sell mobile homes and automobiles

Zoning Hearing: 06/10/2024; **BCC Hearing:** 07/11/2024

Tax ID No.: 2102561

- 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:

- Aquifer Recharge Soils
- Protected Species
- Protected and Specimen Trees
- Enforcement

No noteworthy land use issues were identified. NRM reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

Land Use Comments:

Aquifer Recharge Soils

This property contains Pomello sand and Orsino fine sand, classified as aquifer recharge soils. Mapped topographic elevations indicate the soils may consist of Type 2 Aquifer Recharge soils that have impervious area restrictions. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

Protected and Specimen Trees

Protected and Specimen Trees likely exist on the parcel. Brevard County Landscaping, Land Clearing and Tree Protection ordinance Section 62-4337, entitled Permit

Application Requirements and Review Process, states that a permit shall be required prior to any land clearing activities unless exempt. 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. The confirmation of unpermitted land clearing activities may result in code enforcement action. **Applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities.**

Protected Species

Federally and/or state protected species may be present on the property. Specifically, Gopher Tortoises can be found in areas of aquifer recharge soils. 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 (FWC), and/or U.S. Fish and Wildlife Service, as applicable. The applicant is advised to call Valeria Guerrero at 561-882-5714 (O) or 561-365-5696 (C) with the FWC to obtain any necessary permits or clearance letters for Gopher Tortoises.

Enforcement

There is an active Code Enforcement case (24CE-00510) for unpermitted land clearing on the property in 2023/2024. The case is pending.