



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

2725 Judge Fran Jamieson Way
 Building A, Room 114
 Viera, Florida 32940
 (321)633-2070 Phone / (321)633-2074 Fax
<https://www.brevardfl.gov/PlanningDev>

STAFF COMMENTS

24Z00044

Ross and Dawn Buck (Steve & Penny DeFillps)

CUP for a Private Boat Dock Adjacent to a Single-Family Residence in RU-1-13

Tax Account Number: 2953085 (dock parcel) / 2953257 (single-family residence)
 Parcel I.D.: 29-38-03-HW-*-1.05 (dock parcel).
 29-38-03-50-E-12 (single-family residence parcel)
 Location: North side of Ross Avenue, approx. 460 feet west of Seiler Street (dock parcel)
 North side of Atlantic Drive approx. 75 feet east of Seiler Street (Single-family residence parcel)
 District 3
 Acreage: 0.02 acres (dock parcel)
 Planning & Zoning Board: 11/18/2024
 Board of County Commissioners: 12/12/2024

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
Zoning	RU-1-13	RU-1-13 with CUP
Potential*	1 Single-family home	Private boat dock
Can be Considered under the Future Land Use Map	NO** RES 2	NO** RES 2

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

** The RU-1-13 zoning classification is not consistent with the Future Land Use designation of Residential 2.

Background and Purpose of Request

The applicant is requesting approval of a Conditional Use Permit (CUP) per **Section 62-1943.3** for a private residential boat dock accessory to adjacent single-family residential lot for the purpose of replacing an existing boat dock on the parcel as an accessory use.

The subject dock parcel was subdivided into this configuration on May 01, 1987. Currently, there is an existing dock on the parcel. On May 07, 2009, **CUP Z-11487** was approved by the County Commission per section 62-1943.3 for a Private boat docks accessory to adjacent single-family residential lots for the previous owner of the dock parcel. The dock parcel was sold to the applicants on September 29, 2017, and there for a new CUP is required to associate the dock parcel with the new owners' parent parcel. The applicants reside in the same Crystal Lakes Subdivision and request the new CUP to replace the existing dock with a new dock on the parcel.

The applicant also owns Lot 12, Block E, located in the same Crystal Lakes subdivision with a single-family home that was built on the parcel in 1996 which is approximately 572 feet southeasterly of the subject waterfront parcel. Both the dock parcel and parent parcel retain the RU-1-13 Zoning classification. Of the nine similar parcels on the north side of Ross Avenue, all but one have existing docks. There have been eleven approved CUP actions for private boat docks accessory to adjacent single-family residential lots within the Crystal Lakes subdivision.

Section 62-1943.3. Private boat docks accessory to adjacent single-family residential lots.

A *private boat dock*, for the purposes of this section, is a boat dock that is used in connection with a waterfront lot or parcel which may be undersized for the residential zoning classification in which it is located and is therefore associated with and considered part of an adjacent residential lot. The term *adjacent*, for the purposes of this section, means any lot within the same neighborhood as described below in paragraph (1).

A conditional use for a private boat dock on a waterfront lot or parcel may be considered as an accessory use to an adjacent developed or undeveloped buildable residential lot in any residential zoning classification under the following conditions. Owners of docks established prior to November 17, 2008, as evidenced by a certified survey or other irrefutable evidence, may request a waiver of any of the below conditions as part of the conditional use permit review process.

- (1) The lot or parcel upon which the dock is to be constructed must be owned and used by the owner of a residential lot or parcel (or residential tenant of said lot or parcel) located within either the same platted subdivision or within 1,000 feet of the dock parcel. The owner of the dock lot or parcel and the residential lot shall maintain fee simple ownership to both properties at all times.
- (2) The lot or parcel shall have at least 30 feet of water frontage, except where located on the Indian or Banana River Lagoons, where it shall have river frontage equal to or exceeding the minimum lot width requirement of the parcel's zoning classification.
- (3) The boat dock may contain slips for no more than two boats and shall not be used for commercial purposes.
- (4) No other accessory structures are permitted on the dock lot or parcel.
- (5) The dock lot or parcel shall not be used to store a boat trailer, nor shall it be used to launch a boat.
- (6) The dock shall meet all applicable development standards described in section 62-2118.

Land Use

The subject dock parcel and the parent property retain the RES 2 (Residential 2) Future Land Use designation. Per section 62-1255 Exhibit "A" the RU-1-13 zoning classification is not consistent with the Residential 2 Future Land Use.

Applicable Land Use Policies

FLUE Policy 1.8 –The Residential 2 Future land use designation permits lower density residential development with a maximum density of up to two (2) units per acre, except as otherwise may be provided for within the Future Land Use Element.

The Board should evaluate the compatibility of this application within the context of Administrative Policies 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.

This dock site is located within a large Residential 2 node. To the east, west and the parcels to the north across Ross Avenue are under the same FLU designation of Residential 2. To the north of the subject parcel lies Lake Devon, a waterway with a canal for the subdivision.

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 parcel has an existing CUP for a boat dock and is in an area with other parcels with CUPs for boat docks. The request is not anticipated to diminish the enjoyment of safety or quality of life in existing residential area. The proposed CUP will need to comply with Brevard County's Performance Standards defined by Sections 62-2251 through 62-2272.

- 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 Appraiser 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;

The historical land use of the area can be characterized as existing parcels along Ross Avenue with CUPs for docks and size range from approximately 30 feet wide to 78 feet wide with a lot depth of approximately 13 feet to 63 feet.

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

There has been no new development within 0.5 miles.

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

There has been no new development approved within the past 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, parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.

Staff analysis indicates the request is located in an area mixed of existing single-family homes and parcels with existing dock parcels. Of the nine similar parcels on the north side of Ross Avenue, all but one have existing docks. There have been eleven approved CUP actions for private boat docks accessory to adjacent single-family residential lots within the Crystal Lakes subdivision. The existing dock parcels along Ross Avenue range from approximately 30 feet wide to 78 feet wide with a lot depth of approximately 13 feet to 63 feet.

- 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 has development of roads, open spaces, lagoons and similar existing features. It is located in a residential platted subdivision.

- 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.

Staff analysis indicates that the area is residential in character and not commercial uses.

- 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 is located in a residential platted subdivision.

Surrounding Area

	Existing Use	Zoning	Future Land Use
North	Lake	N/A	N/A
South	Across Ross Ave. single-family residence	RU-1-13	RES 2
East	Dock parcels	RU-1-13	RES 2
West	Dock parcels	RU-1-13	RES 2

The abutting parcels, north, south, east and west of the dock parcel and the residential parcels are zoned RU-1-13.

RU-1-13 permits single-family residences on minimum 7,500 square foot lots, with minimum widths and depths of 75 feet. The minimum house size is 1,300 square feet.

There have been four zoning actions within a half-mile radius around this site within the last 6 years.

On May 24, 2018, application **18PZ00016** approved a CUP for a Private Boat Dock Accessory to a Single-Family Residential Lot. This site is located on the south side of Ross Avenue abutting the subject dock parcel to the east.

On October 03, 2019, application **19PZ00046** approved a CUP for a Private Boat Dock Accessory to a Single-Family Residential Lot. This site is located on the south side of Ross Avenue approximately 256 feet west of the subject dock parcel.

On May 06, 2021, application **21PZ00004** approved a CUP for a Private Boat Dock Accessory to a Single-Family Residential Lot. This site is located on the south side of Ross Avenue approximately 134 feet west of the subject dock parcel.

On October 07, 2021, application **21PZ00038** approved a CUP for a Private Boat Dock Accessory to a Single-Family Residential Lot. This site is located on the north side of Ross Avenue approximately 1,285 feet northeast of the subject dock parcel.

Special Considerations for CUP (Conditional Use Permit)

The Board should consider the compatibility of the proposed CUP pursuant to Section 62-1151(c) and to Section 62-1901, as outlined on pages 6 – 8 of these comments. Section 62-1901 provides that the approval of a conditional use shall authorize an additional use for the affected parcel of real property in addition to those permitted in the applicable zoning classification. **The initial burden is on the applicant to demonstrate that all applicable standards and criteria are met. Applications which do not satisfy this burden cannot be approved.** The applicant's responses and staff observations, if any, are indicated below.

Section 62-1151(c) directs the Board to consider the character of the land use of the property and its surroundings; changes in the conditions of the land use being considered; impact upon infrastructure; compatibility with land use plans for the area; and appropriateness of the CUP based upon consideration of applicable regulations relating to zoning and land use within the context of public health, safety and welfare. The applicant has submitted documentation in order to demonstrate consistency with the standards set forth in Section 62-1901 and Section 62-1943.3, Private Boat Dock Accessory to a Single-Family Residential Lot.

This request should be evaluated in the context of Section **62-1943.3**, governing private boat docks accessory to adjacent single family residential lots, as follows:

A private boat dock, for the purposes of this section, is a boat dock that is used in connection with a waterfront lot or parcel which may be undersized for the residential zoning classification in which it is located, and is therefore associated with and considered part of an adjacent residential lot. The term "adjacent", for the purposes of this section, means any lot within the same neighborhood as described below in paragraph (1).

A conditional use for a private boat dock on a waterfront lot or parcel may be considered as an accessory use to an adjacent developed or undeveloped buildable residential lot in any residential zoning classification under the following conditions. Owners of docks established prior to November 17, 2008, as evidenced by a certified survey or other irrefutable evidence, may request a waiver of any of the below conditions as part of the conditional use permit review process.

Staff analysis: The subject dock parcel was subdivided into this configuration on May 01, 1987. Currently, there is an existing dock on the parcel. On May 07, 2009, CUP Z-11487 was approved by the County Commission for a Private boat docks accessory to adjacent single-

family residential lots for a previous owner of the dock parcel. The dock parcel was sold to the applicants on September 29, 2017. The applicants reside in the Crystal Lakes Subdivision and desire the new CUP to rebuild a new dock on the parcel.

- (1) The lot or parcel upon which the dock is to be constructed must be owned and used by the owner of a residential lot or parcel (or residential tenant of said lot or parcel) located within either the same platted subdivision or within 1000' of the dock parcel. The owner of the dock lot or parcel and the residential lot shall maintain fee simple ownership to both properties at all times.

Staff analysis: The applicants' residential lot is in the same subdivision, Crystal Lakes, as the dock parcel.

- (2) The lot or parcel shall have at least 30 feet of water frontage, except where located on the Indian or Banana River Lagoons, where it shall have river frontage equal to or exceeding the minimum lot width requirement of the parcel's zoning classification

Staff analysis: The parcel meets the minimum 30 feet of water frontage as shown on the boundary survey of subject parcel included with CUP application.

- (3) The boat dock may contain slips for no more than two boats and shall not be used for commercial purposes.

Staff analysis: The existing and proposed boat dock will only have two boats as shown on the boundary surveys of subject parcel included with CUP application.

- (4) No other accessory structures are permitted on the dock lot or parcel.

Staff analysis: There are no accessory structures other than the existing dock on the parcel.

- (5) The dock lot or parcel shall not be used to store a boat trailer, nor shall it be used to launch a boat.

Staff analysis: Owner will only be parking vehicle on parcel only be while boat is in use.

- (6) The dock shall meet all applicable development standards described in Section 62-2118.

Staff analysis: The proposed replacement dock appears to meet the requirements of Section 62-2118(d) Residential Boat Docks and Piers as shown on the boundary survey of subject parcel included with CUP application. At the time of issuing a building permit, the applicant will need to demonstrate compliance with section 62-2118.

The existing dock parcel and the residential lot appears to meet conditions (1) to (6) above.

The Board should consider the compatibility of the proposed CUP pursuant to Section 62-1151(c) and to Section 62-1901. Section 62-1151(c) directs the Board to consider the character of the land use of the property and its surroundings; changes in the conditions of the land use being considered; impact upon infrastructure; compatibility with land use plans for the area; and appropriateness of the CUP based upon consideration of applicable regulations relating to zoning and land use within the context of public health, safety and welfare. The applicant has submitted documentation in order to demonstrate consistency with the standards set forth in Section 62-1901.

The applicant's responses are indicated in **bold** and staff observations are provided in *italics*.

Section 62-1901(c)(1)(a) The proposed conditional use will not result in a substantial and adverse impact on adjacent and nearby properties due to: (1) the number of persons anticipated to be using, residing or working under the conditional use; (2) noise, odor, particulates, smoke, fumes and other emissions, or other nuisance activities generated by the conditional use; or (3) the increase of traffic within the vicinity caused by the proposed conditional use.

Applicant's Response: No additional impact will result. To be used by owner only to dock a boat.

Staff analysis: The subject property is one of many dock lots subdivided from a waterfront tract of the Crystal Lake Subdivision. Residential docks are permitted to have no more than two vessels moored and vessels must meet the setback requirement off the projection of the side property lines into the waterway.

Section 62-1901(c)(1)(b) The proposed use will be compatible with the character of adjacent and nearby properties with regard to use, function, operation, hours of operation, type and amount of traffic generated, building size and setback, and parking availability.

Applicant's Response: The property will be used for a boat dock, the same as adjacent properties.

Staff analysis: The subject property is one of many dock lots subdivided from a waterfront tract of the Crystal Lake Subdivision.

Section 62-1901(c)(1)(c) The proposed use will not cause a substantial diminution in value of abutting residential property.

Note: A substantial diminution shall be irrebuttably presumed to have occurred if abutting property suffers a 15% reduction in value as a result of the proposed conditional use. A reduction of 10% of the value of abutting property shall create a rebuttable presumption that a substantial diminution has occurred.

Applicant's Response: The proposed boat dock will be in compliance with current building code regulations.

Staff analysis: Competent and substantial evidence by a MAI certified appraiser has not been provided by the applicant.

Specific Standards

Section 62-1901(c)(2)(a) Ingress and egress to the property and proposed structures (including vehicular and pedestrian safety and convenience, traffic flow and control, and emergency response access) shall be: (1) adequate to serve the proposed use without burdening adjacent and nearby uses, and (2) built to applicable county standards, if any.

Note: Burdening adjacent and nearby uses is defined as increasing existing traffic on the closest collector or arterial road by more than 20%, or 10% if the new traffic is primarily comprised of heavy vehicles, except where the affected road is at Level of Service A or B. New traffic generated by the proposed use shall not cause the adopted level of service for transportation on applicable roadways to be exceeded. Where the design of a public road to be used by the proposed use is physically inadequate to handle the numbers, types or weights of vehicles expected to be generated by the proposed use without damage to the road, the conditional use permit cannot be approved without a commitment to improve the road to a standard adequate to handle the proposed traffic, or to maintain the road through a maintenance bond or other means as required by the Board of County Commissioners.

Applicant's Response: The ingress and egress is adequate. The owner is the only anticipated traffic. Owner to park on lot (daytime only) not in the street.

Staff analysis: The dock parcel abuts the County maintain right-of-way of Ross Avenue.

Section 62-1901(c)(2)(b) The noise, glare, odor, particulates, smoke, fumes or other emissions from the conditional use shall not substantially interfere with the use or enjoyment of the adjacent and nearby property.

Applicant's Response: There will be no substantial disturbance to the neighbors from the boat dock or boat.

Staff analysis: Any outdoor lighting and noise standards will need to meet code parameters per Brevard County's Performance Standards defined by Sections 62-2251 through 62-2272 or a violation will be created.

Section 62-1901(c)(2)(c) Noise levels for a conditional use shall comply with Section 62-2271 of the Code, which includes the following:

Applicant's Response: Noise levels will comply with section 62-2271 for residential use.

Staff analysis: Any outdoor noise standards will need to meet code parameters per Brevard County's Performance Standards defined by Sections 62-2251 through 62-2272 or a violation will be created.

Section 62-1901(c)(2)(d) The proposed conditional use shall not cause the adopted level of service for solid waste disposal for the property or area covered by such level of service, to be exceeded.

Applicant's Response: No additional waste will be generated.

Staff analysis: the adopted level of service for solid waste disposal not anticipated to be exceeded.

Section 62-1901(c)(2)(e) The proposed conditional use shall not cause the adopted level of service for potable water or wastewater for the property or the area covered by such level of service, to be exceeded by the proposed use.

Applicant's Response: None will be required.

Staff analysis: potable water and wastewater will not be required for a dock permit.

Section 62-1901(c)(2)(f) The proposed conditional use must have existing or proposed screening or buffering, in terms of type, dimensions and character to eliminate or reduce substantial, adverse nuisance, sight, or noise impacts on adjacent and nearby properties containing less intensive uses.

Applicant's Response: The property is the same type of property as the neighbors.

Staff analysis: The subject property is one of many dock lots subdivided from a waterfront tract of the Crystal Lake Subdivision.

Section 62-1901(c)(2)(g) Proposed signs and exterior lighting shall not cause unreasonable glare or hazard to traffic safety, or interference with the use or enjoyment of adjacent and nearby properties.

Applicant's Response: None will be used.

Staff analysis: No sign will be needed. Any Lighting will need to meet Lighting Standards in section 62-2257.

Section 62-1901(c)(2)(h) Hours of operation of the proposed use shall be consistent with the use and enjoyment of the properties in the surrounding residential community, if any. For commercial and industrial uses adjacent to or near residential uses, the hours of operation shall not adversely affect the use and enjoyment of the residential character of the area.

Applicant's Response: Hours will be the same as neighboring properties.

Staff analysis: There are no restrictions as to the hours of operation. The Board may choose additional restrictions.

Section 62-1901(c)(2)(i) The height of the proposed use shall be compatible with the character of the area, and the maximum height of any habitable structure shall be not more than thirty-five (35) feet higher than the highest residence within 1,000 feet of the property line.

Note: A survey of building heights within 1,000 feet of the property lines should be furnished for applications requesting a CUP for additional building height.

Applicant's Response: The dock height will be compatible with the character and codes of the area.

Staff analysis: A new boat dock replacing the existing dock will have to meet the dock height requirements in section 62-2118 Residential boat docks and piers.

Section 62-1901(c)(2)(j) Off-street parking and loading areas, where required, shall not be created or maintained in a manner which adversely impacts or impairs the use and enjoyment of adjacent and nearby properties.

Note: For existing structures, the applicant shall provide competent, substantial evidence to demonstrate that actual or anticipated parking shall not be greater than that which is approved as part of the site plan under applicable county standards.

Applicant's Response: None will be required. Any parking will be on the property. Parking will only be while boat is in use.

Staff analysis: Owner will only be parking vehicle on parcel only be while boat is in use.

Environmental Constraints

Summary of Mapped Resources and Noteworthy Land Use Issues:

- Hydric Soils/Wetlands
- Aquifer Recharge Soils
- Coastal High Hazard Area
- Floodplain
- Surface Waters of the State
- Indian River Lagoon Nitrogen Reduction Overlay
- Land Clearing and Landscape Requirements
- Protected Species

Information available to NRM indicates that recent, unpermitted land clearing activities may have occurred in the Surface Water Protection Buffer. The discovery of unpermitted land clearing activities may result in enforcement action.

Preliminary Transportation Concurrency

The subject property is closest to the concurrency management segment of Highway A1A, between Heron Dr. and Mar-Len Dr., which has a Maximum Acceptable Volume (MAV) of 24,200 trips per day, a Level of Service (LOS) of D, and currently operates at 34.43% of capacity daily. The maximum development potential from the proposed CUP does not increase the proposed trip generation on the corridor and will not create a deficiency in LOS which operates at 34.43% of capacity daily.

For Board Consideration

The Board may wish to consider the compatibility of the proposed CUP with surrounding development.

Since the request is a CUP, the Board may consider additional conditions to those identified in Section 62-1943.3, to help mitigate potential site impacts.

Item No. 24Z00044

Applicant: Steve and Penny Defillips (Owners: Ross and Dawn Buck)

Zoning Request: CUP for Private Boat dock accessory to adjacent single-family residential lot

Note: to build new dock

Zoning Hearing: 10/14/2024; **BCC Hearing:** 11/07/2024

Tax ID No.(s): 2953085 (dock); 2953257 (house)

- 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:

- Surface Waters of the State

Land Use Comments:

Surface Waters of the State

The subject property is located on the Indian River Lagoon, designated as a Class III Water in this location. A 25-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 is prohibited unless approved through an active development order. 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.