



**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>

BOARD OF COUNTY COMMISSIONERS

**STAFF COMMENTS  
 21Z00043**

**Jackson Family Trust; and C.B. Davis Family Trust**

**GU (General Use), AU (Agricultural Residential), BU-1 (General Retail Commercial), and BU-2 (Retail, Warehousing, and Wholesale Commercial) to RU-1-7 (Single-Family Residential) with a Binding Development Plan (BDP) for 199 dwelling units**

Tax Account Number: 2100183  
 Parcel I.D.: 21-34-12-00-502  
 Location: North side of Highway 46, approx. 0.25 miles west of Interstate 95 (I-95) (District 1)  
 Acreage: 73.59 acres of 118.3 total site acreage

Planning & Zoning Board: 2/14/2022  
 Board of County Commissioners: 3/03/2022

**Consistency with Land Use Regulations**

- Current zoning can be considered under the Future Land Use Designation, Section 62-1255.
- The proposed zoning cannot be considered under the Future Land Use Designation, Section 62-1255.\*\*
- The proposal would maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Zoning</b>	GU, AU, BU-1, and BU-2	RU-1-7 w/ BDP limited to 199 single-family homes
<b>Potential*</b>	23 single-family homes	199 single-family homes
<b>Can be Considered under the Future Land Use Map</b>	YES; NC, CC, and RES 2	NO; NC, CC, and RES 2 Requires RES 4 on RES 2 portion**

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

\*\* A companion application, **21PZ00089**, if approved would change the Future Land Use designation on 49.72 acres from RES 2 (Residential 2) to RES 4 (Residential 4).

**Background and Purpose of Request**

The applicants are seeking a change of zoning classification from GU (General Use), AU (Agricultural Residential), BU-1 (General Retail Commercial), and BU-2 (Retail, Warehousing, and Wholesale Commercial) to RU-1-7 (Single-Family Residential) with a Binding Development Plan (BDP) limiting development to 199 single-family homes. This request is for a 73.59-acre portion of a 118.3-acre

parcel. The applicant has also applied to rezone a 4-acre portion of this parcel adjacent to Highway 46 from GU to BU-1 as zoning action **21Z00044**.

The applicant submitted a BDP restricting the number of units to 199, even though they provided a concept plan showing 193 lots. Please note, this concept plan has not been reviewed for consistency with Land Development Regulations, nor is it binding, as it is not included within the BDP.

A companion FLU change application (**21PZ00089**) was submitted accompanying this request for a FLU change from RES 2 to RES 4 on a 49.72-acre portion of this 73.59-acre rezoning request. The RES 4 will allow up to 198 units. The remaining 23.87 acres of the lot having a FLU designation of NC or CC would allow for a density of six units per acre, resulting in 143 potential units, which would allow for 341 units on 73.59 acres without the BDP imposing a reduction of 142 units.

If the Board were not to approve the FLU change and RES 2 remains, the 49.72 acres of RES 2 has the potential for 99 units. The remaining 23.87 acres of the lot have a FLU designation of NC or CC, which would allow for a density of four units per acre, resulting in 95 potential units. In total, the subject 73.59-acre site would be limited to 194 units if the companion FLU change is not approved. Essentially, the proposal nets 5 units.

If the companion application from RES 2 to RES 4 is approved, 49.72 acres of RES 4 would have the potential for 198 units. In total, the subject 73.59-acre site would be permitted 341 units if the BDP is not memorialized. In this case, the BDP limiting the site to 199 units results in a reduction of 142 units.

GU is the original zoning of the entire parcel. Zoning action **Z-4059** rezoned 90 acres in the rear of the property from GU to AU on April 26, 1976. Zoning action **Z-3219** rezoned 18 acres from GU to BU-1 (within 150 feet of I-95) and BU-2 (on the balance) on March 26, 1973.

## **Land Use**

The subject property retains a FLU designation of Neighborhood Commercial (NC), Community Commercial (CC), and Residential 2 (RES 2). The proposed RU-1-7 zoning classification is consistent with the NC and CC FLU, but not with the RES 2. A companion application, **21PZ00089**, if approved, would change the Future Land Use designation on the RES 2 portion of the parcel to RES 4, while the NC and CC portions will remain the same. RU-1-7 is not consistent with RES 4, necessitating a BDP to limit the density to four units an acre or fewer in the RES 4 portion of the lot.

## **Applicable Future Land Use Policies**

### **Policy 1.2**

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.

**Connection to centralized potable water and wastewater treatment is required. The nearest potential potable water and sanitary sewer connections are located approximately 800 feet to the south of the subject property south along State Road 46.**

#### **Residential 4 (maximum of 4 units per acre)**

##### **Policy 1.7**

The Residential 4 land use designation affords an additional step down in density from more highly urbanized areas. This land use designation permits a maximum density of up to four (4) units per acre, except as otherwise may be provided for within this element. The Residential 4 land use designation may be considered for lands within the following generalized locations, unless otherwise limited by this Comprehensive Plan:

##### **Criteria:**

- A. Areas adjacent to existing Residential 4 land use designation; or

**The subject site is not immediately adjacent to RES 4 land use designation. In the general vicinity is a manufactured housing subdivision with one-quarter (1/4) acre lots platted prior to the adoption of the 1988 Comprehensive Plan.**

**The closest RES 4 is located approximately 290 feet to the west (within Cambridge Park Phase 2 manufactured housing subdivision).**

- B. Areas which serve as a transition between existing land uses or land use designations with density greater than four (4) units per acre and areas with density of less than four (4) units per acre; or

**The subject site does not serve as a transition between densities greater than four (4) units per acre and areas with density of less than four (4) units per acre.**

- C. Unincorporated areas which are adjacent to incorporated areas and may be considered a logical transition for Residential 4.

**The subject site is not adjacent to an incorporated area.**

- D. Up to a 25% density bonus to permit up to five (5) units per acre may be considered with a Planned Unit Development where deemed compatible by the County with adjacent development, provided that minimum infrastructure requirements set forth in Policy 1.2 are available. Such higher densities should be relegated to interior portions of the PUD tract, away from perimeters, to enhance blending with adjacent areas and to maximize the integration of open space within the development and promote inter-connectivity with surrounding uses. This density bonus shall not be utilized for properties within the CHHA.

**The applicant is not proposing a Planned Unit Development.**

**Policy 2.13 – Residential Development in Neighborhood Commercial and Community Commercial Land Use Designations**

Residential development or the integration of residential development with commercial development shall be permitted in the Neighborhood Commercial and Community Commercial land use designations, provided that the scale and intensity of the residential/mixed use development is compatible with abutting residential development and areas designated for residential use on the Future Land Use Map.

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.**

**Criteria:**

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 has been a historical pattern of residential development along State Road 46 to the west the subject site.**

**The subject property is located within the boundaries of the 2007 Mims Small Area Study. Recommendations of the Study note development in residential areas with density of two units per acre and higher should be encouraged to cluster development and to leave portions of each site open, with particular attention to reducing environmental impacts, to maintaining recreation space, and to preserving the area's agricultural landscapes when possible. There was no change to the Future Land Use of the subject property as a result of the 2007 Mims Small Area Study.**

**The proposed residential use appears consistent with the historical and existing pattern of surrounding development that transitions from more intense commercial uses near the I-95 interchange to residential uses west of the subject site.**

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

**There has not been any development immediately adjacent to the subject parcel in the preceding three (3) years. However, southeast of the subject property (along State Road 46), two commercial parcels have been developed: a truck stop (Love's Travel Stops and Country Stores, Inc.) and a retail store (Dollar General).**

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

**There have not been any development approvals immediately adjacent to the subject parcel within the past three (3) years that have not been constructed.**

**However, in January 2022, a binding development plan for a 198 unit single-family subdivision was approved on a 79.16-acre parcel southwest of the subject property (across State Road 46).**

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

The subject property is located in an area west of I-95 and north of SR 46. The developed character of the surrounding area is a mix of commercial and residential development. Continuing west from I-95, the area transitions to entirely residential zoning classifications. Residential lot sizes range from a quarter acre to one acre in size. The homes in these residential neighborhoods are mostly manufactured homes located in platted subdivisions.

Residential zoning classifications in the area include: TR-1, RRMH-1, RU-1-11, and GU.

The proposed 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.

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

The 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.

The 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.

#### **Surrounding Area**

The abutting parcel to the north is owned by St. Johns River Water Management District (SJRWMD) and has a zoning classification of GU and a FLU designation of Public – Conservation. The abutting parcels to the east include a vacant 12.24-acre parcel with GU zoning and a RES 4 FLU designation and a 14.08-acre parcel zoned BU-2 with a CC FLU designation that is a Love's Travel Stop (a large convenience store with gas pumps). Abutting the property to the south is Highway 46. To the west of the subject property is a 75-foot wide strip of land that is owned by SJRWMD. Beyond this is a subdivision with TR-1 zoning and FLU designations of RES 2 and RES 4.

There has been one rezoning application in the surrounding area in the past 5 years. On June 6, 2019, **18PZ00161** changed the zoning classification of the 16.4-acre parcel abutting the subject property from BU-1, BU-2, and GU to all BU-2 with a BDP limiting the use to a fast food restaurant, convenience store, tire care center, and hotel with no more than 120 rooms.

#### **Environmental Constraints**

Mapped resources and noteworthy land use issues include Hydric Soils/Wetlands, Floodplain, Land Clearing and Landscape Requirements and Protected Species.

- Wetlands
- Aquifer Recharge Soils
- Floodplain
- Protected and Specimen Trees
- Protected Species

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

### **Preliminary Concurrency**

The closest concurrency management segment to the subject property is Highway 46, between Fawn Lake Blvd. and Interstate I-95, which has a Maximum Acceptable Volume of 14,160 trips per day, a Level of Service (LOS) of D, and currently operates at 66.24% of capacity daily. The maximum development potential from the proposed rezoning does increase the level of MAV utilization by 6.69%. The corridor is anticipated to operate at 72.93% of capacity daily. The proposal is not anticipated to create a deficiency in LOS.

There is a school concurrency letter dated December 1, 2021, confirming there is sufficient capacity at Mims Elementary School, Madison Middle School, and Astronaut High School for the total of projected and potential students from this development. At the time this letter was drafted, only 180 units were proposed. An email from the School Board on January 10, 2022, confirmed that the additional increase of 19 units is acceptable without the need for a new school concurrency.

There is both a sewer line and water line running along Highway 46.

### **For Board Consideration**

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

**NATURAL RESOURCES MANAGEMENT DEPARTMENT**  
**Rezoning Review & Summary**  
**Item # 21Z00043**

**Applicant:** Rezanka for Jackson Family Trust

**Zoning Request:** AU, GU, BU-1 & BU-2 to RU-1-7 with BDP

**Notes:** Applicant wants subdivision with 180 single-family residential units.

**P&Z Hearing Date:** 01/10/22; **BCC Hearing Date:** 02/03/22

**Tax ID No:** 2100183

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

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

Historical aerials indicate that unpermitted land clearing activities may have occurred. The discovery of unpermitted wetland impacts or land clearing activities 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.

## **Land Use Comments:**

### **Wetlands**

The subject parcel contains mapped National Wetland Inventory (NWI), SJRWMD wetlands, and hydric soils (Samsula muck, Tomoka muck, Anclote sand, and Basinger sand), as shown on the NWI Wetlands, SJRWMD Florida Land Use & Cover Codes, and USDA Soil Conservation Service Soils Survey maps, respectively; indicators that wetlands may be present on the property. A wetland delineation will be required prior to any land clearing activities or building permit application submittal. Per Section 62-3694(c)(2), residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. The preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total property. Any permitted wetland impacts must meet the requirements of Sections 62-3694(e), including avoidance of impacts, and will require mitigation in accordance with 62-3696.

Historical aerials indicate that unpermitted land clearing and filling activities may have occurred. The discovery of unpermitted wetland impacts may result in code enforcement action.

### **Aquifer Recharge Soils**

The subject parcel contains mapped aquifer recharge soils (Pomello sand, Paola fine sand and Basinger sand). The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

### **Floodplain**

Portions of the property are mapped as being within the floodplain, potentially isolated, as identified by FEMA, and as shown on the FEMA Flood Zones Map. The portion of the property located within the floodplain is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance. Per Section 62-3724(3)(d), compensatory storage shall be required for fill in excess of that which will provide an upland buildable area within an isolated floodplain greater than one third (1/3) acre in size. Chapter 62, Article X, Division 5, Section 62\_3723 (2) states, "Development within floodplain areas shall not have adverse impacts upon adjoining properties."

### **Protected and Specimen Trees**

A portion of the subject property is overlaid with mapped polygon SJRWMD FLUCCS code 4340-Upland Mixed Coniferous/Hardwood trees. Protected Trees (greater than or equal to 10 inches in diameter) and Specimen Trees (greater than or equal to 24 inches in diameter) are included in this FLUCCS code and are likely found on the project area. Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4331(3), the purpose and intent of the ordinance is to encourage the protection of Heritage Specimen trees. In addition, per Section 62-4341(18), Specimen Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Per Section 62-4332, Definitions, 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. A tree survey will be required at time of site plan submittal, and is recommended prior to any site plan design. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing,



Landscaping, and Tree Protection, for specific requirements for tree preservation and canopy coverage requirements. Land clearing is not permitted without prior authorization by NRM.

**Protected Species**

Information available to NRM indicates that 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 and/or U.S. Fish and Wildlife Service, as applicable.