



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
 24Z00063**

The Mohan Trust

RU-1-11 (Single-Family Residential) to BU-1-A (Restricted Neighborhood Retail Commercial)

Tax Account Number: 2426731
 Parcel I.D.: 24-36-35-01-D-11.02
 Location: 375 E. Merritt Ave. (District 2)
 Acreage: 0.34 acres

MIRA: 01/23/2025
 Planning & Zoning Board: 02/17/2025
 Board of County Commissioners: 03/13/2025

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	RU-1-11	BU-1-A***
Potential*	1 Single-family residential	FAR 0.75
Can be Considered under the Future Land Use Map	YES NC**	YES NC

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

** Yes, classification may be considered, if permitted by Policy 2.10 of the Future Land Use (FLU) Element.

*** 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 a change of zoning classification from RU-1-11 (Single-family Residential) to BU-1-A (Restricted Neighborhood Retail Commercial) to allow for a single-family residence to be converted for commercial use allowable within the BU-1-A zoning classification. The subject property is located directly on E. Merritt Ave., a county-maintained

roadway. BU-1-A zoning classification is established on the property abutting to the east (gift shop) and west (dog grooming and boarding). The property on the west side is bifurcated by a vacant residential common area containing less than the required width and depth of RU-1-11.

The BU-1-A zoning 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. Conditional uses such as childcare centers and private clubs are also permitted in this classification.

An example of one of the most intense uses allowable within the BU-1-A zoning is a donut/coffee shop without a drive through and an example of a low intense use would be a medical clinic.

On May 22, 1958, Brevard County adopted the zoning code, and the subject property was established with the zoning classification of RU-1, Single-family residential. Based on the best available data from the Brevard County Property Appraiser, the lot was created on January 7, 1955 as part of Replat of Merritt Lakes Estate.

The subject property contains two parcels all within Lot 11 Block D, Replat of Merritt Lakes Estates according to Quit Claim Deed, recorded in ORB 9300, PG 368 on 10/21/2021.

On June 1, 1972, zoning action **Z-2980** administratively rezoned the subject property from RU-1 to RU-1-11.

On April 19, 2023, action **22V00021**, approved a variance to the BU-1-A front setback requirements which was needed for rezoning of the subject property to BU-1-A.

Surrounding Area

	Existing Land Use	Zoning	Future Land Use
North	Northside of E. Merritt Ave. is single-family residential	RU-1-9	RES 6
South	Vacant Land	RU-1-11	NC
East	Commercial business, gift shop	BU-1-A	NC
West	Private lake and residential common area	RU-1-11	NC

North of the subject property across E. Merritt Ave., are 2 parcels, each approximately 0.25 acres, developed with single-family residences, RU-1-9 zoning and Residential 6 (RES 6) FLU designation.

South of the subject property is 1 parcel, 0.87 acres of vacant land, RU-1-11 zoning and Neighborhood Commercial FLU designation.

East of the subject property is 1 parcel, 0.24 acres, developed with single-family residence converted to a commercial retail business (currently a gift shop), BU-1-A zoning and NC FLU designation.

West of the subject property is 1 parcel, 3.88 acres, is a lake privately owned and vacant privately owned residential common area, RU-1-11 zoning and NC FLU designation.

The RU-1-9 classification encompasses lands devoted to single-family residential development of spacious character, together with such accessory uses as may be necessary or are normally compatible with residential surroundings on lots of 6,600 square feet (minimum). The minimum house size is 900 square feet.

The RU-1-11 classification encompasses lands devoted to single-family residential development of spacious character, together with such accessory uses as may be necessary or are normally compatible with residential surroundings 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.

Future Land Use

The subject property is currently designated as Neighborhood Commercial (NC) Future Land Use (FLU) designation. The current RU-1-11 zoning can be considered consistent with the existing NC FLU designation if permitted by FLUE Policy 2.10.

The proposed BU-1-A zoning designation can be considered consistent with the existing NC FLU designation under Sec. 62-1255.

Applicable Land Use Policies

The Board should evaluate the compatibility of this application within the context of Administrative Policies 2 – 8 of the Future Land Use Element.

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

The zoning process regulates the type 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;

Permitted uses include retail shopping and personal services to serve the needs of nearby low-density residential neighborhoods. Drive through lanes are prohibited in NC designations.

B. Existing commercial zoning trends in the area;

Staff analysis has determined that most of the commercial development has been established since approximately 1965.

However, recent trends suggest the area may be undergoing redevelopment. There have been four single-family residential properties that have been rezoned to BU-1-A since the establishment of the residential area within Merritt Lakes Estates in 1955.

Within the 0.5 mile radius of the subject property, off E. Merritt Island Cswy., there is a hotel that has plans to be converted to 190 multi-family residences, pending a rezoning action under 24Z00066 to change from a commercial zoning BU-2 to RU-2-30, a high density multi-family zoning. A pending companion FLU amendment application under 24SS00015 request a change from CC to RES 30. Concurrently, there has been an approved Planned Unit Development (PUD), on E. Merritt Ave. and Borman Dr., from July 2022, known as the Health First PUD, 22PUD00001, for building a new hospital under application 22P.

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

The proposed rezoning will have single-family residential zoning RU-1-9 to the north, across E. Merritt Ave., a 6-lane divided roadway. East of the subject property has BU-1-A zoning classification and currently has restricted neighborhood retail and services use. South and west of the subject property is vacant land, zoned RU-1-11.

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

Roadway LOS for the proposed will increase the percentage of MAV utilization by 3.09% based on the most intense use in the proposed BU-1-A zoning classification. Specific concurrency issues will be addressed at the time of site plan review. This is only a preliminary review and is subject to change.

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

No impacts are anticipated as this is an existing structure with no proposed expansion to the structure.

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

No other issues are anticipated to emerge. There is an existing structure on the property and no expansion has been proposed. There are multiple BU-1-A properties already established throughout the surrounding area of the subject property.

FLUE Policy 2.5 Activities Permitted in Neighborhood Commercial Land Use Designations

Neighborhood Commercial (NC) development activities are intended to be low impact in nature and serve the needs of the immediate residential area. Intrusion of these land uses into surrounding residential areas shall be limited. Existing BU-1-A uses, which were established as of the adoption date of this provision shall be considered consistent with this policy. Development activities which may be considered within Neighborhood Commercial (NC) Future Land Use designation, provided that listed criteria are met, include the following:

- a) Professional offices (no drive through lanes permitted);
- b) Personal Services (no drive through lanes permitted);
- c) Convenience stores (no drive through lanes permitted);
- d) Residential uses;
- e) Institutional uses;
- f) Recreational uses;
- g) Public facilities; and
- h) Transitional uses pursuant to Policy 2.11.

Staff analysis have determined that the area is residential in nature, however, it is not a residential neighborhood. Within the area there are four properties that are zoned BU-1-A. The uses of those properties are related to restricted neighborhood commercial retail and personal services after conversion from a single-family residence.

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:

Any proposed commercial use shall be subject to compliance with all performance standards within Sec. 62-2251 through Sec. 62-2257.

- 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:

There are six (6) FLU designations within a half mile of the subject property: NC and Community Commercial (CC) are on the southside of E. Merritt Ave. and RES 6 is north of the subject property on the northside of E. Merritt Ave. Public-Conservation (PUB-CONS) and Recreation (REC) designations are located east of the subject property on the north side of E. Merritt Ave. and Borman Dr. West of the subject property on the northside of E. Merritt Ave. is PUBLIC (PUB) designation.

CC is the predominant FLUM designation on the southside of E. Merritt Ave. and RES 6 is the predominant FLUM designation on the northside of E. Merritt Ave.

The area is highly developed, with commercial, multi-family and single-family residential properties. There are approximately four BU-1-A commercial lots already in place, the nearest of which is abutting the subject property to the east. Staff analysis indicates that there is an existing pattern of redevelopment in the vicinity. The most recent improvement in the area occurred in 2022, with approval of the Health First PUD.

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

Staff analysis has determined that there has been no actual development within 0.5 miles of the subject property within the past three years.

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

There has been no development approved and not constructed within the past three years. While there have been no FLUM amendments, there have been multiple zoning actions within one-half mile within the past three years:

- **24Z00066: Approximately a tenth of a mile from the subject property on E. Merritt Island CSWY., is a pending rezoning from BU-1 to RU-2-30 for the development of 190 multi-family residences. Also included with the rezoning is a companion application for a FLU change from CC to RES 30 under 24SS00015.**
- **24Z00040: Southwest of the subject property on Palmetto Ave. and Lejeune Dr., is a pending rezoning request from RU-1-11 to RU-2-8.**
- **22PUD00001: On E. Merritt Ave. and Borman Dr., approved on 07/19/2022 the Health First PUD.**

- 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:

- E. 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.

Staff analysis indicates the request is located in a highly developed area of commercial properties situated along both the northside and southside of E. Merritt Ave. Multi-family properties are located south of E. Merritt Ave along Palmetto Ave. Single-family residential properties located along E. Merritt Ave at Hampton Way to the north. There are more single-family properties situated south along N. Plumosa St and Lejeune Dr.

Within the search radius, there are several BU-1-A properties, with the closest being the abutting property to the east and is a gift shop.

The request is not anticipated to impact the surrounding established area of commercial, multi-family and single-family residential uses materially or adversely as there are already multiple BU-1-A properties in the area.

At the time of the submitted request, the applicant has not provided a concept plan for the conversion of the property for a commercial use.

A preliminary concurrency evaluation did not indicate that the proposal has the potential to cause a deficiency in the transportation adopted level of service. The maximum development potential from the proposed rezoning increases the percentage of MAV by 3.09%.

- F. 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 this area is not an established neighborhood with clearly established boundaries. .

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 proposed use is not located in an existing residential neighborhood. .

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.

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

•24Z00066: Approximately a tenth of a mile from the subject property on E. Merritt Island CSWY., is a pending rezoning from BU-1 to RU-2-30 for the development of 190 multi-family residences. Also included with the rezoning is a companion application for a FLU change from CC to RES 30 under 24SS00015.

•24Z00040: Southwest of the subject property on Palmetto Ave. and Lejeune Dr., is a pending rezoning request from RU-1-11 to RU-2-8.

•22PUD00001: On E. Merritt Ave. and Borman Dr., approved on 07/19/2022 the Health First PUD to build a new hospital.

•21Z00015: Southwest of the subject property on Palmetto Ave., approved on 08/05/2021 a rezoning from BU-1 to RU-2-15 for a 13 unit townhome development.

Preliminary Concurrency

The closest concurrency management segment to the subject property is e. Merritt Ave. from N. Courtenay Pkwy. (S.R. 3) to Plumosa St., which has a Maximum Acceptable Volume (MAV) of 33,800 trips per day, an acceptable Level of Service (LOS) of E, and currently operates at 38.53% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 3.06%. The corridor is anticipated to operate at 41.59% of capacity daily. This is only a preliminary review and is subject to change. This concurrency is based on if the applicant were to have a donut/coffee shop without a drive through which would be the most intense use allowed within the BU-1-A zoning classification. No school concurrency information has been provided as the development proposal is for commercial and not residential use.

The subject property has access to potable water through the City of Cocoa Utility Services. Sewer service is available in the area through Brevard County Utilities.

Environmental Constraints

Summary of Mapped Resources and Noteworthy Land Use Issues:

- Wetlands
- Floodplain Protection
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Land Clearing and Landscape Requirements
- Potential Code Enforcement

Refer to the complete NRM report on the following page.

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. 24Z00063

Applicant: Kamaldi Mohan(Owners: Mohan Family Trust)

Zoning Request: RU-1-11 to BU-1-A

Note: for commercial use (beauty/spa)

Zoning Hearing: 01/13/2025; **BCC Hearing:** 02/06/2025

Tax ID Nos.: 2426731 (0.34 ac)

- 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
- Floodplain Protection
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Land Clearing and Landscape Requirements
- Potential Code Enforcement

Land Use Comments:

Wetlands

There were no mapped hydric soils or wetlands identified. A review of historical aerials indicates that there is vegetation along the shoreline of the stormwater pond that could be an indicator of wetlands. The applicant provided an environmental assessment (Andrew Conklin Environmental Services, LLC, October 21, 2024) identifying a small area of wetlands along the pond shoreline. The wetland assessment shall be verified prior to any land clearing activities, site plan design, or building permit submittal. The report indicates that there is little to no likelihood of the need to impact the wetlands. Note that the property does not meet the criteria in Section 62-3694(c)(3)b to impact and mitigate wetlands for a commercial use. **The applicant is encouraged to contact NRM at 321-633-2016 prior to any plan or permit submittal.**

Floodplain Protection

This property is located within an area mapped as FEMA Special Flood Hazard Area (SFHA) AE, as identified by the Federal Emergency Management Agency, and as shown on the

FEMA Flood Map. The parcel 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."

Indian River Lagoon Nitrogen Reduction Septic Overlay

The property 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.

Land Clearing and Landscape Requirements

The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for Protected (≥ 10 inches in diameter) and Specimen (≥ 24 inches in diameter) tree preservation. Land clearing is not permitted without prior authorization by NRM. **Applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities.**

Potential Code Enforcement

Information available to NRM indicates that unpermitted land alteration activities may have occurred on this parcel between 2023 and 2024. The confirmation of unpermitted land alteration activities may result in code enforcement action.