



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

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**STAFF COMMENTS
23Z00049**

3955 Kings Hwy, LLC

AU (Agricultural Residential) and BU-2 (Retail, Warehousing and Wholesale Commercial) to all BU-2

Tax Account Number: 2301890
Parcel I.D.: 23-35-13-01-A-20
Location: Southeast corner of Kings Highway and Florida East Coast Railway (District 1)
Acreage: 3.46 acres

Port St. John Board: 1/03/2024
Board of County Commissioners: 2/01/2024

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	BU-2 and AU	All BU-2
Potential*	FAR of 1.0 on BU-2 portion	FAR of 1.0
Can be Considered under the Future Land Use Map	No RES 8 DIR	Yes CC

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

Background and Purpose of Request

The applicant is requesting a change of zoning classification from AU (Agricultural Residential) on 0.47 acres and BU-2 (Retail, Warehousing and Wholesale Commercial) on 2.99 acres to all BU-2 to build a mini warehouse. The AU zoning classification does not permit commercial uses. BU-2 zoning classification requires a building of at least 300 sq. ft. as their principal structure. The subject parcel has access to Kings Highway, a County maintained roadway.

There is also a Small-Scale Comprehensive Plan Amendment (SSCPA) companion application, **23SS00011** to change the Future Land Use Element from Residential 8 Directive (RES 8 DIR) and Community Commercial (CC) to all CC.

The original zoning of the BU-2 portion of the parcel was GU (General Use). On February 26, 1998, zoning action **Z-10027** rezoned this portion of the parcel from GU to BU-1 (General Retail Commercial).

On September 24, 1998, zoning action **Z-10150** rezoned the BU-1 portion to BU-2 (Retail, Warehousing and Wholesale Commercial).

The original zoning of the AU zoned portion of the parcel was GU (General Use). On August 7, 2003, zoning action **Z-10827** rezoned the GU portion to AU (Agricultural Residential).

Prior to On October 12, 2023, the parcel was two parcels, one zoned BU-2 and one zoned AU. These two parcels were combined together as one parcel per Quit Claim Deed recorded in Official Records Book 9907, Pages 2243 thru 2245.

The applicant’s request is to change the AU zoned portion to BU-2 to have a uniform zoning classification on the parcel which will permit the entire parcel to have commercial development.

The subject parcel is located on the south side of Kings Highway, a County maintained roadway.

Surrounding Area

	Existing Land Use	Zoning	Future Land Use
North	Electric Utility, across Kings Highway	IU	PUB
South	Single-Family mobile home	RRMH-1	RES 8 DIR
East	Single-family residence	GU, AU & RU-1-7	RES 8 DIR
West	Junkyard-across railroad	PIP-across railroad	PI-across railroad

The developed character of the surrounding area on the south side of Kings Highway is single-family residential abutting the east with GU, AU, and RU-1-7 (single-family residential) zoning. To the west is the Florida East Coast Railway. To the south of the subject property is a single-family mobile home with RRMH-1 zoning.

The current AU zoning classification permits single family residential development on lots of not less than two and one-half acres having a minimum width of 150 feet and a minimum depth of 150 feet. The minimum house size is 750 square feet.

The proposed BU-2 zoning classification permits retail, wholesale and warehousing commercial land uses 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. Off-site impacts such as noise, light, traffic, and other potential nuisance factors associated with BU-2 activities should be considered. The BU-2 zoning classification allows 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.

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 RU-1-7 zoning classification allows one single-family residence on minimum 5,000 square foot lots. The minimum floor area is 700 sq. ft.

The RRMH-1 zoning classification permits one single-family mobile home or detached dwelling unit of spacious character. It requires a minimum lot size of one (1) acre with a width and depth of no less than 125-feet. It requires a minimum living area of 600 sq. ft.

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

Future Land Use

The subject property is currently designated as Residencial 8 Directive (RES 8 DIR) FLUM designation on the AU zoned portion and Community Commercial (CC) on the BU-2 zoned portion. The existing AU as well as the proposed BU-2 zoning classifications can be considered consistent with the CC FLUM designation. The proposed BU-2 zoning in not consistent with the existing RES 8 DIR FLUM designation.

FLUE Policy 2.2 - 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 Retail, Warehousing and Wholesale Commercial zoning classification encompasses lands devoted to general retail and wholesale business, contracting and heavy repair services and warehousing activities. Retail items of substantial size or which of necessity must remain outside of a building may be permitted to be displayed outside the building. Storage yards must be enclosed with a six-foot wall, louvered fence or chain-link fence.

- B. Existing commercial zoning trends in the area;

Kings Highway is an existing commercial corridor located east of Florida East Coast Railway to S. Highway 1 along with residential parcels

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

The area is a mixture of commercial, single-family residential, agricultural residential and general use zoning classifications. The applicant's request can be considered compatible with the proposed uses in the area.

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

The preliminary concurrency analysis did not indicate that the proposed development has the potential to cause a deficiency in the transportation adopted level of service.

The subject property has access to the City of Cocoa for potable water and on septic.

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

The following land use issues were identified:

No noteworthy land use issues were 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 62-1482 of Brevard County Code. The proposed use is not anticipated to require performance standards beyond the zoning criteria.

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 is requesting a change of zoning classification of AU (Agricultural Residential) and of BU-2 (Retail, Warehousing and Wholesale Commercial) to all BU-2 to build a mini warehouse. The hours of operation, lighting and traffic is not anticipated to affect the quality of life in the existing neighborhood. There is no anticipation of odor, noise level or site activity more so than already exists. However, CC FLU allows for an array of light manufacturing, warehouse, retail, personal and professional uses which may.

- 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 (Member 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 undeveloped and developed single-family residential and commercial parcels in the surrounding area along the Kings Highway corridor from the Railroad tracks to S. Highway 1. The developed character of the surrounding area on the south side of Kings Highway is single-family residential abutting the east. To the west is the Florida East Coast Railway. To the south of the subject property is a single-family mobile home. To the north across Kings Highway is Electric Utility.

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

There has been one new development within 0.5 miles of the subject property within the last three years.

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

There has not been any development approved within this area in the preceding three (3) years that has yet to be constructed.

- D. Whether the proposed use(s) would result in a material violation of relevant policies in any elements of the Comprehensive Plan.

Only a certified MAI (Member Appraisal Institute) appraisal can determine if material reduction has or will occur due to the proposed request.

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 not located within an existing neighborhood. However, there is a pattern of existing single-family residential surrounding the property to the east and south. The subject property could be considered as transitional use with buffering from the Florida East Coast Railway property along the west.

The BU-2 zoning classification is the county’s most intense commercial zoning classification due to the intensive nature of commercial activities permitted (i.e., major auto-repair facilities, paint and body shops, and contractor storage yards). Off-site impacts such as noise, light, traffic, and other potential nuisance factors associated with BU-2 activities should be considered.

A preliminary concurrency evaluation did not indicate that the proposal has the potential to cause a deficiency in the transportation adopted level of service; however, the maximum development potential from the proposed rezoning increases the percentage of MAV by 0.12%.

- 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, and similar existing features. It is not located in a neighborhood or subdivision but is along a commercial corridor.

- 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 surrounding area to the east is residential in character.

- 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 commercial corridor along with residential uses. The subject parcel is proposed to be rezoned from BU-2 and AU to all BU-2. As the immediate area is commercial the proposed uses maintain the commercial integrity of the area.

The closest BU-2 zoning classification is located approximately 815-feet east of the subject property, along the south side of Kings Highway.

Preliminary Concurrency

The closest concurrency management segment to the subject property is Kings Highway, between Grissom Pkwy. and Highway 1, which has a Maximum Acceptable Volume (MAV) of 15,600 trips per day, a Level of Service (LOS) of D, and currently operates at 34.29% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.12%. The corridor is anticipated to operate at 34.41% of capacity daily. The maximum development potential of 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.

No school concurrency information has been provided as the proposed project is a commercial development and not intended for residential uses.

The subject property has access to the City of Cocoa potable water and on septic.

Environmental Constraints

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

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

For Board Consideration

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

**NATURAL RESOURCES MANAGEMENT DEPARTMENT
Land Use Review & Summary**

Item # 23Z00049

Applicant: Tannath Design (Owner: Zinser Properties LLC)

Zoning Request: AU to BU-2

Note: Consistent zoning with surrounding property and allowance of parking.

PSJ Board: 8/9/2023; **BCC Hearing Date:** 9/7/2023

Tax ID No: 2323666

- 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 and Specimen Trees
- Protected Species

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 parcel contains mapped aquifer recharge soils (Pomello Sand) as shown on the USDA Soil Conservation Service Soils Survey map. Mapped topographic elevations (~22 to 26 feet

NAVD) indicate the soils may consist of Type 2 or Type 3 Aquifer Recharge soils, which have impervious area restrictions. A topographic survey should be completed prior to development to confirm elevations. The development and impervious area restrictions can be found in Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

Protected and Specimen Trees

Protected (≥ 10 inches in diameter) and Specimen (≥ 24 inches in diameter) trees likely exist on the parcel. Per Section 62-4341(18) of the Brevard County Landscaping, Land Clearing, and Tree Protection ordinance, Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for preservation and canopy coverage requirements. Applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities.

Protected Species

Information available to NRM indicates that federally and/or state protected species may be present on the property. There is a large area of mapped Florida Scrub Jay habitat west of the property, and there is potential for existence of Gopher Tortoises on site. 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.