



**Planning and Development Department**

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BOARD OF COUNTY COMMISSIONERS

**STAFF COMMENTS  
21PZ00004**

**John Kroboth, Terri Kroboth and John Bradley Kroboth  
CUP for a Private Boat Dock Adjacent to a Single-Family Residence in RU-1-13**

Tax Account Number: 2953088 (dock) / 2953228 (single-family residence)  
Parcel I.D.: 29-38-03-HW-\*-2.01 / 29-38-03-50-D-1  
Location: South side of Ross Avenue, approx. 475 feet west of Lakeview Drive (dock)  
Southwest corner of Riggs Avenue and Malabar Boulevard (District 3)  
Acreage: 0.10 acres  
Planning & Zoning Board: 04/05/2021  
Board of County Commissioners: 05/06/2021

**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)

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Zoning</b>	RU-1-13	RU-1-13 with CUP
<b>Potential*</b>	1 Single-Family Home	Private Boat Dock
<b>Can be Considered under the Future Land Use Map</b>	No** RES 2	YES** 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; the parent lot is considered nonconforming to the Comprehensive Plan, therefore the CUP request can be heard.

**Background and Purpose of Request**

The applicant is requesting approval of a Conditional Use Permit (CUP) for a private residential boat dock in the RU-1-13 zoning classification for the purpose of legitimizing an existing boat dock on the parcel as an accessory use. The subject parcel was subdivided into this configuration in May, 1970 and was previously owned by the lot owners directly across Ross Avenue and was combined with that lot as one parcel until the parcel was sold to the applicant. The subject parcel was purchased by the applicant on May 01, 2017. A CUP for the existing dock was never applied for. The applicant also owns Lot 1, Block D, located in the same Crystal Lakes subdivision approximately 1,495 feet northeast of the subject waterfront lot and both parcels retain the RU-1-13 zoning classification. Of the 13 similar parcels on the south side of Ross Avenue, all but two have existing docks. There have

been nine approved CUP actions for private boat docks accessory to adjacent single-family residential lots in the immediate area of the Crystal Lakes subdivision.

## **Land Use**

The subject property retains 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 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 FLU designation of Residential 2. To the south of the subject parcel lies a canal waterway for the subdivision.

**Analysis of Administrative Policy #4 - Character of a neighborhood or area.** The character of the area is a mix of existing single-family homes and parcels with existing docks. Of the 13 similar parcels on the south side of Ross Avenue, all but two have existing docks. There have been nine approved CUP actions for Private boat docks accessory to adjacent single-family residential lots in the immediate area of the Crystal Lakes subdivision.

## **Surrounding Area**

There have been two zoning actions within a half-mile radius around this site within the last 3 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 approximately 185 feet east of the subject parcel.

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 32 feet west of the subject parcel.

## **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

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

### **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 39.71% 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 39.71% of capacity daily.

### **Applicable Land Use Policies**

The applicant is requesting approval of a Conditional Use Permit (CUP) for a private residential boat dock in the RU-1-13 zoning classification for the purpose of legitimizing an existing boat dock on the parcel. The subject parcel was subdivided into this configuration in May, 1970. The parcel was previously owned by the lot owners directly across Ross Avenue and it was combined with this lot as one parcel until the parcel was sold to the applicant on May 01, 2017. A CUP for the existing dock was never applied for. The applicant also owns Lot 1, Block D, located in the same Crystal Lakes subdivision approximately 1,495 feet northeast of the waterfront lot and both parcels retain the RU-1-13 Zoning classification. The abutting parcels, north, south, east and west for both 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. The last similar CUP action occurred on October 3, 2019 under application **19PZ00046**, for a lot approximately 32 feet west of the subject parcel on the south side of Ross Ave.

### **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.

*The applicant purchased this lot on April 27, 2017. Currently, there is an existing dock on the parcel. The subject parcel was subdivided into this configuration in May, 1970. The parcel was previously owned by the lot owners directly across Ross Avenue and it was combined with this lot as one parcel until the parcel was sold to the applicant. A CUP for the existing dock was never applied for.*

- (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. ***The applicants' residential lot is in the same subdivision, Crystal Lakes, as the dock lot.***
- (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. ***The parcel meets the minimum 30 feet of water frontage as shown on the boundary survey of subject parcel include with CUP application.***
- (3) The boat dock may contain slips for no more than two boats and shall not be used for commercial purposes. ***The existing boat dock would only permit two boats as shown on the boundary survey of subject parcel include with CUP application.***
- (4) No other accessory structures are permitted on the dock lot or parcel. ***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.

(6) The dock shall meet all applicable development standards described in Section 62-2118. ***The existing dock appears to meet the requirements of Section 62-2118(d) Residential Boat Docks and Piers.***

***The existing parcel and existing 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.

**The dock lot will be used in similar fashion as the surrounding lots. Family and friends will use the lot with no activities that will generate adverse conditions to the surrounding area.**

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.

**The use of the dock lot will be the same as the adjacent dock lots with regard to function, operation, traffic and other parameters.**

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.

**The value of the lot will remain the same or increase with upgrades to the existing dock.**

### **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.

**The ingress and egress to the property will not be affected. The use of the lot is for personal use and will not raise the level of traffic for the area.**

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.

**The use of the lot will not involve activities that will produce noise, glare, odor, particulates, smoke, fumes or emissions that will interfere with the nearby properties.**

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:

**The noise levels from the use of the lot will be well below the permissible levels stated above.**

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.

**There will not be a need for solid waste services at the lot.**

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.

**There will be no potable water or wastewater requirements on the lot.**

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.

**There will not be a need for screening or buffering on the lot due to no actions that would generate a nuisance.**

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.

**There are no proposed signs or unreasonable lighting.**

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.

**The lot will be used in the same fashion as the surrounding lots. There will be no commercial use of this lot.**

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 1000 feet of the property line.

Note: A survey of building heights within 1000 feet of the property lines should be furnished for applications requesting a CUP for additional building height.

**There is no proposed structure at this time.**

*There is an exist dock located at the subject parcel.*

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.

**There are no requirements for parking or loading areas at this lot.**

### **For Board Consideration**

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

The Board may also wish to consider additional conditions beyond those cited in Sections 62-1901 and 62-1906 in order to mitigate potential impacts to the abutting properties.

**NATURAL RESOURCES MANAGEMENT DEPARTMENT**  
**Conditional Use Permit (CUP) Review & Summary**  
**Item # 21PZ00004**

**Applicant:** John, Terri & John Bradley Kroboth

**CUP Request:** Applicant wants a private boat dock accessory to their SFR parcel.

**P&Z Hearing Date:** 04/05/21; **BCC Hearing Date:** 05/06/21

**Tax ID Nos:** 2953088 & 2953228

- 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:**

- 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

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:**

**Hydric Soils/Wetlands**

The subject parcel contains mapped hydric soils (Canaveral-Anclote complex) as shown on the USDA Soil Conservation Service Soils Survey map; an indicator that wetlands may be present on the property. 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 site plan design or permit submittal.

**Aquifer Recharge Soils**

Canaveral-Anclote complex may also function as an aquifer recharge soil. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.



### **Coastal High Hazard Area**

The parcel is within the CHHA as shown on the CHHA Map. The Coastal Management Element of the Comprehensive Plan, Policy 6.1, designates coastal high hazard areas to be those areas below the elevation of the Category 1 storm surge elevation as defined in Chapter 163, Florida Statute.

### **Floodplain**

The parcel is located within the floodplain as identified by the Federal Emergency Management Agency as shown on the FEMA Flood Zones Map. The property is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance.

Additional impervious area increases stormwater runoff that can adversely impact nearby properties unless addressed on-site. 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."

### **Surface Waters of the State**

The parcel is located on Class III surface waters of the State. A 25-foot Surface Water Protection Buffer (Buffer) is required. Except as allowable under Section 62-3668 (7), primary structures shall be located outside the Buffer. Alteration or construction of accessory structures is allowable within the Buffer provided that stormwater management is provided, and the alteration occurs in accordance with all other applicable federal, state, and local regulations. All alterations shall demonstrate avoidance and minimization of Buffer impacts, including the location of the alteration within the most landward portion of the Buffer, as practicable. The remainder of the Buffer shall be maintained in unaltered vegetation, except for non-native invasive plants.

### **Indian River Lagoon Nitrogen Reduction Overlay**

The parcel is mapped within the Indian River Lagoon Nitrogen Reduction Overlay per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay. If applicable, the use of alternative septic systems designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes shall be required if sewer is not available. NRM requires a Septic Maintenance Notice be filed with the Brevard Clerk of Courts. Per Section 62-3666 (14), all onsite sewage treatment and disposal systems (OSTDS) shall be set back at least 100 feet from the buffer establishment line, the safe upland line, mean high water line or ordinary high-water line.

### **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 tree preservation and canopy coverage requirements. Land clearing or tree removal in the Buffer 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. 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.