



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

24Z00020

Walter Chlewicki

RU-1-13 to RU-2-4 with BDP

Tax Account Number: 2624912
Parcel I.D.: 26-37-19-00-34
Location: 2450 Shoff Lane Rockledge. (District 4)
Acreage: 1.77 acres

Planning and Zoning Board: 06/10/2024
Board of County Commissioners: 07/11/2024

Consistency with Land Use Regulations

- Current RU-1-13 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-1-13	RU-2-4 with BDP
Potential*	2 units	2 units
Can be Considered under the Future Land Use Map	YES Neighborhood Commercial (NC)	YES Neighborhood Commercial (NC)

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

Background and Purpose of Request

The applicant is requesting to retain a nonconforming duplex, constructed on the property in 1955. The property owner's financial institution is requiring the owner to rezone the property rather than pursue a pre-existing use (PEU). This request to rezone the property with a Binding Development Plan would limit the development of the site to the existing duplex; no additional residential units are sought. This rezoning request, if approved, would legitimize the existing duplex.

Zoning action # **Z-9993** on November 20, 1997, changed the property from General Use (GU) and Medium-Density Multi-family Residential (RU-2-10) to Single-family Residential (RU-1-13). Prior to that, under Administrative Zoning action **AZ-57**, the zoning changed from Multiple Family Residential (RU-3) to Low Density Multi-Family (RU-2-10) in July 1975.

This property is located on the west side of US Highway 1 lying 450-feet south of Allen Hill Avenue.

Surrounding Area

	Existing Use	Zoning	Future Land Use
North	Single-family residential use	RU-1-13, GU	Neighborhood Commercial
South	Single-family residential use	RU-1-13	Neighborhood Commercial
East	Single-family residential use on the east side of US Hwy 1	RU-1-13, RU-2-6	Neighborhood Commercial
West	Single-family residential use	RU-1-13	Neighborhood Commercial

Abutting this parcel are six (6) single-family residential lots which were created after the property was rezoned from GU and multi-family zoning to the current RU-1-13 zoning. Those home sites were developed in 1998 to 1999. The abutting US 1 frontage lots to the south of this request were developed in 1965 (duplex) and the other lot at the SE end of the residential development was developed as a single-family residence in 1955.

To the north and east, beyond the abutting residential lots the area is predominately developed with a mixture of commercial and single-family residential uses.

To the south, beyond the abutting residential lots the area is predominately commercial.

To the west, beyond the abutting residential lot the area has an industrial use for an asphalt plant.

Future Land Use

The subject property is currently designated with the Neighborhood Commercial (NC) FLUM designation. The current RU-1-13 zoning is consistent with the Neighborhood Commercial FLUM designation. The proposed RU-2-4 with BDP zoning request can be considered consistent with the Neighborhood Commercial FLUM designation.

FLUE Policy 2.5 – Activities Permitted in Neighborhood Commercial (NC) Future 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 2.12.

FLUE Policy 2.10 - 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. Residential development is permissible in these commercial land use designations at density of up to one category higher than the closest residentially designated area on the Future Land Use Map (FLUM) which is on the same side of the street. Increases in density beyond this allowance may be considered through a public hearing. In the CHHA, however, residential development is strictly limited to the density of the closest residentially designated area on the FLUM that is on the same side of the street. Such residential development, as described above, shall be allowed to utilize the following characteristics:

Criteria:

A. Residential uses within Neighborhood Commercial and Community Commercial designations shall be encouraged to utilize neo-traditional neighborhood development techniques, such as narrower road rights-of-way, mid-block pedestrian pass-throughs, alleys, smaller lot sizes, on-street parking, reduced lot line setbacks and public transit facilities.

The three original frontage lots were further developed into a 9 unit residential development by 1999. The residential development was allowed to create access by easements rather than required to plat the property into lots which were accessed by an internal roadway. At that time no stormwater drainage facilities were required/managed.

B. Residential density bonuses as set forth in Policy 11.2 may be considered in addition to the bonus stated in the above policy within Neighborhood Commercial and Community Commercial designations as an incentive for redevelopment and regentrification if the proposed development will address serious incompatibility with existing land uses, is adequately buffered from other uses, is located along major transportation corridors, and meets the concurrency requirements of this Comprehensive Plan.

The owner proposes the lowest intensity of multi-family zoning to facilitate compliance with duplex use. This FLU policy would allow residential density up to 15 units per acre as the previous Land Use Residential Density level for this area was established at 12 units per acre (Urbanizing).

The applicant's request can be considered consistent with the existing Future Land Use. 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.

Compatibility with existing or proposed land uses shall be a factor in determining where a rezoning or any application involving a specific proposed use is being considered. 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;

If the applicant were to redevelop the property, he would need to meet performance standards set forth in code sections 62-2251 through 62-2272 as part of a building permit review. A single duplex use is exempt from the site plan review process per Section 62-3202 (b)(1) of Brevard County Code.

- 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 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 existing land use pattern appears to have not changed since 2010. The property is within an area with a mix of residential, commercial and industrial uses.

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

No external development noted.

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

There have been four (4) zoning actions that have been approved within one-half mile of this site. The first is 21Z00003, a rezoning from BU-1 to BU-2 approved by the Board on

April 15, 2021. That site lies 1,280-feet north of the application site on the west side of Highway 1 290-feet south of Anderson Way. The second action approved under 21Z00012, a rezoning from BU-1 with BDP to BU-2 with amended BDP approved by the Board on October 13, 2021. That site lies 1,320-feet northwest of the application site on the east side of Wickham Road, 740-feet south of Jordan Blass Drive. The third action approved under 22Z00047, a rezoning from RU-1-9, RU-1-13 and IN(H) with BDP to IN(L) with replacement BDP approved by the Board on January 25, 2023. That site lies 1,580-feet south of the application site on the west side of Highway 1, just north of the Pineda Causeway exit ramp. The fourth action approved under 22Z00048, a rezoning from General Use (GU) and BU-1 to all BU-1 approved by the Board on December 1, 2022. That site lies 1,580-feet south of the application site on the west side of Highway 1, abutting the south side of Otter Creek Lane just west of the 3rd zoning action noted above.

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 of the Comprehensive Plan 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 (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.

The character of the area is a mixture of residential, commercial and heavy industrial uses. This request would allow resort dwelling use for short term rentals as a permitted use.

- 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 property has been established as a mix of residential uses since 1999. The request to return to a multi-family zoning classification is desired by this owner and their financial institution to bring the existing use back into compliance with a residential classification consistent with duplex use. This property provides access to US Highway 1 to the adjacent residential lots.

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.

This request for a multi-family zoning classification could be considered spot zoning; however, by reinstating a multi-family zoning classification onto this property which it held prior to 1997, the existing duplex use can reacquire legitimacy and no longer be perceived as a pre-existing or nonconforming use.

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 noted zoning changes within the area were primarily commercial to commercial uses. One action that contained residential zoning changed to IN(L) Low-Intensity Institutional use.

Zoning classifications within this area include RU-1-13, BU-1, GU, BU-2, IU, IU-1, RU-2-6, TU-1 and GML. The applicant has requested the RU-2-4 with BDP to limit development to the existing duplex use.

RU-2-4 classification is a four unit per acre multiple-family residential zoning classification. It permits multi-family residential development or single-family residences at a density of up to four units per acre on 7,500 square foot lots.

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. RU-1-13 does not permit horses, barns or horticulture.

Preliminary Concurrency

The closest concurrency management segment to the subject property is US Highway 1, between Pineda Cswy. to Suntree Blvd., which has a Maximum Acceptable Volume (MAV) of 41,790 trips per day, a Level of Service (LOS) of D, and currently operates at 81.89% of capacity daily. The maximum development potential from the proposed rezoning does not increase the percentage of MAV utilization. The corridor is anticipated to continue to operate at 81.89% of capacity daily (LOS C). The proposal is not anticipated to create a deficiency in LOS.

No School concurrency information has been provided as the project is below the threshold of reporting.

The subject property is served by potable water provided by the City of Cocoa. The subject property is on septic.

Environmental Constraints

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.

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

For Board Consideration

The Board should consider whether the request is consistent and compatible with the surrounding area and the BDP addresses any off-site impacts.

**NATURAL RESOURCES MANAGEMENT DEPARTMENT
Zoning Review & Summary**

Item No. 24Z00020

Applicant: Walter Chlewicki (Owner: Walter Chlewicki)

Zoning Request: RU-1-13 to RU-2-4 with BDP

Note: to develop single duplex

Zoning Hearing: 06/10/2024; **BCC Hearing:** 07/11/2024

Tax ID No.: 2624912

- 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.**

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- Aquifer Recharge Soils
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Land Use Comments:

Aquifer Recharge Soils

The property contains Paola fine sand, 0 to 8 percent slopes; Candler fine sand; and St. Lucie fine sand, 0 to 5 percent slopes; classified as aquifer recharge soils. Mapped topographic elevations indicate the soils may consist of Type 3 Aquifer Recharge soils that have impervious area restrictions.

The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

Protected and Specimen Trees

Protected and Specimen Trees likely exist on the parcel. Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4331(3), encourages the protection of Specimen Trees. 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

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 (FWC), and/or U.S. Fish and Wildlife Service, as applicable. The applicant is advised to call Valeria Guerrero at 561-882-5714 (O) or 561-365-5696 (C) with the FWC to obtain any necessary permits or clearance letters for Gopher Tortoises.