

RESOLUTION NO. 25- _____

A RESOLUTION SETTING FORTH THE FINDINGS OF FACT AND CONCLUSIONS OF THE BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS PERTAINING TO THE DENIAL OF THE REQUEST FOR A CHANGE OF ZONING FROM BU-1 (GENERAL RETAIL COMMERCIAL) TO RA-2-4 (SINGLE-FAMILY ATTACHED RESIDENTIAL) ON PROPERTY OWNED BY SCHWA INC.

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, as follows:

STATEMENT OF THE CASE AND FACTS

This item came before the North Merritt Island Dependent Special District Board (“NMIDSD Board”) on November 14, 2024, which voted unanimously to recommend denial of the request. On November 18, 2024, the Brevard County Planning and Zoning Board (“P&Z Board”) had a split vote of 5-5, failing to provide a recommendation in favor or against the request. The item then came before the Board of County Commissioners of Brevard County, Florida, on December 12, 2024, and the Board voted 3-2 to deny the request after a public hearing.

The record is attached as Exhibit “A.” It consists of documents maintained by the Brevard County Planning and Development Department as part of the official application file and provided to the P&Z Board and the Board of County Commissioners, relevant sections and provisions of the Brevard County Code of Ordinances and Comprehensive Plan, and minutes from the public hearings. The pages will be referred to as R-_____.

Description	Page Numbers
Application for Zoning Action	R-1
Staff Comments	R-23
Administrative Policies of Future Land Use Element	R-33
Supplemental Information from Applicant	R-41
Survey of Property	R-54
Minutes of the NMIDSD Board, November 14, 2024	R-55
Minutes of P&Z Board, November 18, 2024	R-63
Public Comment	R-71
GIS Maps	R-77
Agenda Report, Board of County Commissioners December 12, 2024	R-90

Transcript of Hearing, Board of County Commissioners December 12, 2024	R-92
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The applicant, Schwa Inc., has owned the subject property since 2005. (R-11 – 13; R-20). The property is a total of 2.47 acres. (R-14; R-20). The Future Land Use (FLU) designation for the property is community commercial, or CC. (R-23). In 1990, the subject property’s zoning classification was changed from Agricultural Residential (AU) to General Retail Commercial (BU-1), which is the subject property’s current zoning. (R-24). The subject property’s current BU-1 zoning classification can be considered consistent with the CC Future Land Use designation. (R-23; R-25). The applicant requested a rezoning from BU-1 to RA-2-4. (R-1). RA-2-4 is also consistent with the CC Future Land Use designation. (R-23; R-25).

At the P&Z Board Meeting on November 18, 2024, the P&Z Board considered the applicant’s request, public comment, and the documents and evidence that made up the record. The P&Z Board had a split vote of 5-5, failing to provide a recommendation in favor or against the request. (R-90 – 91).

On December 12, 2024, the Board of County Commissioners considered the applicant’s request during a public hearing. (R-90 – 91). As part of the information presented to the Board, staff with the Brevard County Planning and Development Department provided staff comments on the rezoning application request for the Board of County Commissioners to consider. (R-23 – 40). The Staff Report referenced applicable provisions of the Brevard County Code, as well as administrative policies and objectives located in the Brevard County Comprehensive Plan – Future Land Use Element (Chapter XI). (R-23 – 40). The ultimate decision-making authority as it pertains to reviewing and applying these regulations to the particular application rests with the Board of County Commissioners. The Board considered the applicant’s request, public comment, and the documents and evidence that made up the record and voted 3-2 to deny the request after a public hearing. (R-114 – 115).

Staff provided a general description of the surrounding properties as follows:

North of the subject property are 2 parcels, one parcel is 1.36 acres, vacant with BU-1 zoning designation and the second is 2.52 acres developed with a single-family residence with AU zoning designation.

South of the subject property is Egrets Landing buffer tract and Egrets Landing right of way, Norwich St., a County maintained roadway.

East of the subject property is Egrets Landing, a platted subdivision, per PB 67, PG 30 of Brevard County records.

West of the subject property is 1 parcel located across N. Courtenay Pkwy. and is 3.09 acres developed with a single-family residence, and zoning designation BU-1.

(R-24).

The Staff Report generally explained the differences in the development potential between the existing zoning classification (BU-1) and the requested zoning classification (RA-2-4).

The current BU-1 classification allows retail commercial land uses on minimum 7,500 square foot lots. The BU-1 classification does not permit warehousing or wholesaling.

The proposed RA-2-4 classification is a four unit per acre multiple-family attached 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. RA-2-4 classification does not permit apartments.

(R-24).

The Staff Report goes on to reference various provisions of the Brevard County Code and Comprehensive Plan that the Board of County Commissioners is to consider when evaluating a rezoning application. (R-25 – 30). For example, the Staff Report incorporated Policy 2.10 of the Future Land Use Element (Chapter XI) of the Brevard County Comprehensive Plan entitled “Residential Development in Neighborhood Commercial and Community Commercial Land Use Designations.” (R-25). This Policy applies to the requested rezoning because the community commercial future land use designation allows the owner of the subject property to effectively utilize a density bonus to permit additional units of development. In this particular case, the subject property could be rated up to four (4) units per acre as the closest residential future land use designation is RES 2 and the CC future land use allows for one density higher than the closest residential density. (R-25 – 26). This density bonus, however, is subject to certain restrictions and limitations. Specifically, Policy 2.10 of the Future Land Use Element of the Comprehensive Plan provides, in pertinent part, as follows:

Residential development . . . shall be permitted in the . . . Community Commercial land use designations, provided that the scale and intensity of the residential . . . 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. . . . Such residential development, as described above, shall be allowed to utilize the following characteristics:

Criteria:

- A. Residential uses within . . . Community Commercial designation[] 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.
- 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 . . . Community Commercial designation[] 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.

(R-25 – 26).

The Staff Report also referenced Administrative Policies 2 through 8 of the Future Land Use Element (providing specific analysis pertaining to Administrative Policies 3 and 4 identified in ***bold and italics***) and the agenda packet provided to the Board of County Commissioners included these Administrative Policies. (R-26).

Administrative Policy 3

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 foresee ably be affected by the proposed use:

The applicant intends to build nine attached residential townhomes on the subject parcel. The request would be a down zoning to the intensity of the current commercially zoned use for the parcel. The request is not anticipated to diminish the enjoyment of, safety or quality of life in the existing commercial and residential area.

- 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;

The historical land use patterns of the surrounding development can be characterized as a commercial and residential area located along N. Courtenay Pkwy. The developed character of the surrounding area on the East side of N. Courtenay Pkwy. to the North is vacant land zoned commercial with CC FLUM, single-family residence on agriculturally zoned land with NC FLUM. South on N. Courtenay Pkwy is a professional office on commercially zoned land with CC FLUM. Further South along N. Courtenay Pkwy. is a parcel developed as a mobile home park with RES 2 FLUM. Abutting the subject property to the East is a subdivision of single-family residences that has RES 2 FLUM. West side of N. Courtenay Pkwy. is a single-family residence on commercial land with CC FLUM.

The prominent FLU designations in this area include Neighborhood Commercial (NC), Community Commercial (CC), and Residential 4 (RES 4).

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

In Egrets Landing which abuts the subject parcel, 33 single-family residences were developed which completed the subdivision's Phase I, II and III portions.

North Island Villas located North of the subject property along N. Courtenay Pkwy., currently has 48 townhomes being constructed.

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. There have been multiple zoning actions.

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

- 22Z00033: Approximately 0.5 miles from the subject property on N. Tropical Trail is RU-1-13 zoning which was rezoned from AU to RU-1-13 with Binding Development Plan (BDP) to limit the maximum density to two lots with one house on each lot, on 10/12/2022.***
- 23Z00030: South of the subject property on the West side of N. Courtenay Pkwy. is GML zoning which was rezoned on 07/13/2023 from AU to GML to build a new fire station for Brevard County Fire Rescue.***
- 21Z00047: Approximately 0.17 miles (directly North of the subject property N. Courtney Pkwy. is RU-2-4 zoning which was rezoned on 03/03/2022 from BU-1 and RU-2-30 to RU-2-4.***
- 21Z00042: Approximately 0.17 miles South of the subject property on the West side of N. Courtenay Pkwy. is RU-2-4 zoning which was rezoned on 05/31/2022 from AU to RU-2-4 with BDP.***

- 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.

Administrative Policy 4

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.

Staff analysis indicates the request is located along a commercial and residential area of character along N. Courtenay Pkwy. Since 1990, the subject property has had a commercial zoning designation, BU-1. BU-1 can be considered the predominant zoning classification in the area.

Per Section 62-1343 of Brevard County Code, RA-2-4 is intended to provide a transition between single-family detached zoning classifications and multiple-family zoning classifications, permitting fee simple ownership of individual attached units. RA-2-4 does not permit apartments. Under RA-2-4 zoning designation, the parcel will be required to be platted and have a site plan.

The parcels current BU-1 zoning classification permits the use of short-term rentals and is also permissible under RA-2-4. Short-term rentals are categorized under Resort Dwellings, per Section 62-1102 of Brevard County Code. Generally, Resort Dwellings means any single-family dwelling or multifamily dwelling unit which is rented for periods of less than 90 days or three calendar months.

Within the search radius, there are no additional RA-2-4 properties, however just outside the search radius approximately 1 mile to the South of the subject property on the same side of N. Courtenay Pkwy at Gator Dr. is a property with RA-2-10(4) zoning that is capped at 4 units to the acre.

The request is not anticipated to impact the surrounding established area of commercial and residential uses materially or adversely.

At the time of the submitted request, the applicant has not provided a concept plan.

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 is located within an established corridor of commercial and residential uses along with vacant land situated along N. Courtenay Pkwy. There are clearly established roads and lot 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 adjacent area is both commercial and residential uses along with vacant land along N. Courtenay Pkwy.

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 along a commercial, residential with vacant land corridor. The subject parcel is proposed to be rezoned from BU-1 to RA-2-4 which is considered a transitional zoning. The proposed use provides a buffer from high intensity to low intensity uses.

The closest parcel with RA-2-4 zoning is North of the subject property and West across N. Courtenay Pkwy. approximately 0.23 miles from the subject property.

There is one residential subdivision, Egrets Landing, that abuts the subject property to the East and a mobile home park, Sun Island Lakes which is located South of the subject property on the same side of N. Courtenay Pkwy.

Administrative Policy 5

In addition to the factors specified in Administrative Policies 2, 3, and 4, in reviewing a rezoning, conditional use permit or other application for development approval, the impact of the proposed use or uses on transportation facilities either serving the site or impacted by the use(s) shall be considered. In evaluating whether substantial and adverse transportation impacts are likely to result if an application is approved, the staff shall consider the following:

Criteria:

- A. Whether adopted levels of service will be compromised;
- B. Whether the physical quality of the existing road system that will serve the proposed use(s) is sufficient to support the use(s) without significant deterioration;
- C. Whether the surrounding existing road system is of sufficient width and construction quality to serve the proposed use(s) without the need for substantial public improvements;
- D. Whether the surrounding existing road system is of such width and construction quality that the proposed use(s) would realistically pose a potential for material danger to public safety in the surrounding area;
- E. Whether the proposed use(s) would be likely to result in such a material and adverse change in traffic capacity of a road or roads in the surrounding area such that either design capacities would be significantly exceeded or a de facto change in functional classification would result;
- F. Whether the proposed use(s) would cause such material and adverse changes in the types of traffic that would be generated on the surrounding road system, that physical deterioration of the surrounding road system would be likely;
- G. Whether projected traffic impacts of the proposed use(s) would materially and adversely impact the safety or welfare of residents in existing residential neighborhoods.

Administrative Policy 6

The use(s) proposed under the rezoning, conditional use or other application for development approval must be consistent with (a) all written land development policies set forth in these administrative policies; and (b) the future land use element, coastal management element, conservation element, potable water element, sanitary sewer element, solid waste management element, capital improvements element, recreation and open space element, surface water element and transportation elements of the comprehensive plan.

Administrative Policy 7

Proposed use(s) shall not cause or substantially aggravate any (a) substantial drainage problem on surrounding properties; or (b) significant, adverse and unmitigatable impact on significant natural wetlands, water bodies or habitat for listed species.

Administrative Policy 8

These policies, the staff analysis based upon these policies and the applicant's written analysis, if any, shall be incorporated into the record of every quasi-judicial review application for development approval presented to the Board including rezoning, conditional use permits and vested rights determinations.

Section 62-1151, Brevard County Code, establishes the requirements for property owner-requested amendments to the County's official zoning map. (R-36). Pursuant to Section 62-1151(d), Brevard County Code, the Board of County Commissioners is to consider the following factors enumerated in Section 62-1151(c):

- (1) The character of the land use of the property surrounding the property being considered.
- (2) The change in conditions of the land use of the property being considered and the surrounding property since the establishment of the current applicable zoning classification, special use or conditional use.
- (3) The impact of the proposed zoning classification or conditional use on available and projected traffic patterns, water and sewer systems, other public facilities and utilities and the established character of the surrounding property.
- (4) The compatibility of the proposed zoning classification or conditional use with existing land use plans for the affected area.
- (5) The appropriateness of the proposed zoning classification or conditional use based upon a consideration of the applicable provisions and conditions contained in this article and other applicable laws, ordinances and regulations relating to zoning and land use regulations and based upon a consideration of the public health, safety and welfare.

The meeting minutes from the P&Z Board and the NMIDSD Board were both provided in the agenda packet for the Board of County Commissioners' meeting on December 12, 2024. The following concerns were raised before the NMIDSD Board and the P&Z Board, respectively, regarding the potential impacts of the requested zoning change:

NMIDSD Board (11/14/24)

S. Alvonellos: "We live by that lake or pond. All the storm water from the Egrets Landing houses comes to that pond. We have to pump 10 to 12 days every time we have rainfall or a storm. What's going to happen now if all that drainage is going to go toward the right side of my property, going toward the pond. We're going to get flooded even more. . . . [W]e pump [the water] to the street drainage. My neighbors and I have to get out hoses and pumps, and man them day and night. If we don't do that before a hurricane comes, we're done. . . ." (R-55 – 56).

Volland: ". . . The roads on North Courtenay are becoming worse with all the space traffic. . . . The roads are a concern. We have U-turns, right across the street the townhomes, it's getting dangerous by the day for those of us that live on North Courtenay to try to make a left to go south with all the [C]ape traffic coming. . . . Storm runoff, flooding to the lower properties, it's not just us, the people across the street from us, the people on either side of us that are built low are suffering. . . ." (R-56).

W. Alvonellos: ". . . First year we were here the flooding wasn't too bad. Then Egrets Landing developed behind our pond, that year we had alligators at our back door. We have to spend our own money on hoses and pumps, it's a joint effort, we all have to get out there and pump this out every time we know a storm's coming. It's irritating. I always have to hear this thing running. . . ." (R-57).

Smith: ". . . [The rezoning request] would diminish enjoyment of and quality of life of existing neighborhoods. Why should buyers pay the same for properties next to the apartment complex when they can go somewhere else. . . . More traffic impacting road safety and road services. . . . Higher density exacerbates flooding. Contributes to traffic problems. . . . Developers are required to hold all their stormwater on the property as they develop it. They'll have retention[] ponds, and they have requirements by the [C]ounty to hold the stormwater there. Typical summer and fall rains, and one big storm after that all these requirements go out the window and the water starts overflowing. It doesn't stay in these retention areas, it floods onto the surrounding properties, especially the older properties and lower properties. . . . The runoff from these types of buildings, the hardening of the area, this is not a good place to have apartments and townhouses." (R-57).

The NMIDSD Board unanimously recommended denial of the rezoning request based on Administrative Policies 3a, 3b, 3c, 4a, and 5c. (R-61).

P&Z Board (11/18/24)

Ratterman: “. . . What we’re looking at administrative policy 3A diminished quality of life, administrative policy 3B diminished property values, and administrative policy 3C which is noncompatible with the local land use. . . .” (R-65 – 66).

Burns: “. . . Basically, they’re going to dig a hole, all the water slopes down from Courtenay, right to my house. I have an embankment. That water’s going to go in that hold, and it doesn’t go anywhere. . . . The other thing is . . . my neighbors, they’re not in Egrets Landing, they’re constantly pumping water before a hurricane, they have to pump down their lake probably for about a week. It’s so noisy. All you hear is that water pump. And that’s all they need is more flooding going into there. They have some real problems right there and they drain it up to the street. . . . They don’t need anymore water coming down that hill, filling up their ponds. The traffic was already mentioned. . . .” (R-65 – 66).

The P&Z Board had a split vote of 5-5 with no recommendation in favor or against the rezoning request. (R-70).

During the Board of County Commissioners Zoning Meeting, citizens raised concerns regarding the rezoning request:

Ratterman: “. . . Island Lakes are an example [of a development] right there next to [the applicant]. Egret’s Landing moved in. Now all these folks in Island Lakes they’re looking at the bottom of the house pads of Egret’s Landing. So, every time it rains just a little bit, they flood, and these people, they’re going to do the same thing. . . .” (R-97).

S. Alvenellos: “. . . the reality is, all of that Egret’s Landing building, before that we had no flooding, especially not like that. We had to pump out, and we currently pump out, every single time that there’s rain, and also, if there’s a hurricane, and we don’t pump out of that pond . . . then we’re going to flood. And the flooding comes nearly 15 yards to the pool, to our home, so all of that water from Egret’s is coming, all of that water is coming right down here, and it floods this whole . . . tree area over here, and whatever overflows then goes into the pond, and then that goes into our property. . . . And, um, this will aggravate it even more because there’s two retention ponds, I believe, put there, and you got to wonder, those ponds are not that big, where’s all that water going to go? . . . We will not be able to walk out of our garage . . . door by the time this is over. So, we don’t really know if we can survive the elevation. . . . I live with flooding. . . .” (R-98).

Hillberg: “. . . I speak for the North Merritt Island special advisory board, which is an elected . . . zoning advisory board specifically for the North Merritt Island area concerning this rezoning request by Schwa Inc. . . . All were very concerned that an increased residential density . . . would negatively impact them in terms of stormwater flooding, traffic congestion also in their main entrance and reduction of property values. . . . I would also like to ask you if you’re aware of the latter. . . study that was done in 2008, 2009 after Tropical Storm Fay, because we used to be all X, which is designated X, which is non-flood zone, you never get a flood. Well, obviously, that was an incorrect designation for North Merritt Island. So, um, they did a study. The light green is a trough that goes through the middle, and they don’t want to call it a trough, they like to call it a bowl, but it’s really a trough. And this goes all the way down here. This property is on the edge of that. That’s why everybody there is going to flood. If it’s overdeveloped, it will flood. . . .” (R-100 – 101).

Burns: “. . . The last two meetings I argued how the rezoning and proposed development would affect me and my neighbors. This included flooding, traffic, wildlife, to name a few. I realized that all of these issues are important, especially the increased water drainage that will affect me and my neighbors to the north. . . .” (R-101).

W. Alvonellos: “. . . We had no idea, just as, as normal citizens to go to the building department and find out how high they’re going to build these houses on this other street. Because we are right there in the center of that. . . we have the pond and the two houses on the piece of property, his property connects to ours, too. Those pictures of my yard when it rains hard. That’s not a hurricane. They first come in with Egret’s Landing, this way to my house. Okay, these houses are built up here. Mine’s here. Got a little bit of flood, not much. They finished that last L going across going across the back side. That’s what it looked like when it rains. If we have a hard rain or all day rain, that’s what it looks like . . . but every time we’re going to have a hard rain we have to watch that pond, along with our other neighbors, there’s two houses on five acre tract there, and all of us have to get out there and haul this heavy pump down to the lake, hook up fireman hoses to a ditch that runs up their side all the way to the road to that ditch, and we have to pump this pond down in order to have it not flood our house. . . .” (R-103).

Volland: “. . . I’m here this evening to voice my opposition to the building of the townhome complex, which would be located front, the front left side . . . of our residence, and I’d like to touch on some key points. I think we’ve talked about the flooding quite a bit, but the opening of Egret’s Landing was the first issue that significantly flooded the residents nearby. . . . As we spoke, most residential properties in this vicinity sit lower. Ours are lower than Egret’s, thereby causing a

lot of issues with water placement. . . . The other topic I want to talk about is infrastructure. At the last meeting that I attended where this topic was presented, they stated that there was a traffic study that was done in 2021. Well, we're almost at 2025, and I can attest, the traffic flow is significantly increased. This is not due to just the residents that live in this area. . . . So, in closing, I understand and appreciate that the individual who owns this land desires to utilize it. However, townhome complex is not fit or appropriate for this small lot, which is embedded in primarily single-family homes. I believe a townhome dwelling such as this would potentially cause more flooding to our house, traffic congestion, disruption in privacy, noise levels, visual obstruction, and potential devaluation of our property value. Therefore, I oppose it. . . ." (R-104 – 105).

Murphy: ". . . I'm primarily concerned about the traffic. . . . I'm a little concerned about crashes. There've been a lot of crashes on Courtenay recently, some deadly, and it's really, really scary. . . . So, I'm really freaked out driving every day on Courtenay with my kids going to the Kennedy Space Center daycare, and I'm worried about the additional . . . number of folks living here, and not just for us, but for the people who could potentially live in those condos or townhomes. . . . It's not safe for the folks that are exiting from our neighborhood. Um, a lot of folks have to turn north and then do a U-turn, which is incredibly dangerous. . . . And if the driveway is right next to ours, I'm worried about . . . visibility, cars pulling out right in front of you. . . ." (R-107).

N. Minerva: ". . . So much history of flooding, and any time there . . . we've had tours of the flooding areas, we've had tours of how the water flows, we've had people from Public Works come up and work with us . . . I know that all the residents would show you all the flooding that's happened. We've . . . collected photos, we've done all kinds of stuff. So again I just want to ask you to please make good decisions, and if I'm asking for a Policy, . . . Administrative Policy 7, that the proposed use shall not cause, or substantially aggravate any substantial drainage problem. . . ." (R-108).

C. Minerva: ". . . That's right, well, the North Merritt Island Homeowners position on this rezoning is to object the request because under these Brevard County Administrative Policies, this rezoning would . . . I mean, it's a little 3A diminishing enjoyment of quality of life surrounding existing neighborhoods . . . picture putting apartments next to your home. Um 3B cause and material reduction in existing, abutting properties. Why should future buyers pay the same amount of property next to an apartment complex? Just common sense. Uh, Section 3C, inconsistent with the local land use patterns. Section 4, inconsistent with decades of rural character of the surrounding areas; and, . . . 5G, generally cause more traffic impacting road safety and road services. . . . Merritt Island is also being as low as

it is, is already flood prone, as everyone said, is much more environmentally-sensitive and not the place for apartments and townhouses. We keep hearing the argument from developers that their stormwater will be, by law, fall, held on their property more and more when experience out typical summer and fall rains and then big storms come in, all those promises go out of the retention areas and flood our streets and our properties while new developments sit up higher and runs more water onto us.” (R-108 – 109).

As it pertains to comments by the Board, flooding was a key consideration when the rezoning request was denied:

Commissioner Delaney: “This is for staff. . . . Did Egret’s Landing have a . . . civil . . . plan to make sure that water stayed on their property. . .?” (R-100).

Commissioner Goodson: “Chair . . . [during] a hurricane we all suffer flooding because the ponds fill up and overflow, and then water finds the lowest point to go to. Would you agree to that?” (R-100).

Commissioner Goodson: “. . . A lot of times in Florida people don’t want to spend money for dirt to raise their house, but then as things change and laws change, and other developments have to raise up by law, it causes problems for everybody. So, I’m sorry. . . .” (R-103).

Commissioner Delaney: “. . . [M]y biggest concern is that . . . Egret’s Landing, the engineers had to certify that there would be no flooding, and here we go . . . well, regardless, they had to . . . basically give the County plans that said that there would be no flooding . . . and we see this time and time again in our County. It’s part of the reason why I’m up here is because developers get to come in and they get to do whatever they please on their property because of their own property rights, and it doesn’t matter what happens to the existing homeowners. And we can’t continue to, to do this. . . .” (R-114).

The Board of County Commissioners then voted 3-2 against the requested rezoning.

FINDINGS

The Board of County Commissioners finds:

1. The subject property was purchased by the applicant in 2005 per the Trustee's Deed recorded in Brevard County Official Records at Book 5500, Page 8201.
2. The subject property totals 2.47 acres.
3. The subject property is currently zoned General Retail Commercial, or BU-1.
4. The applicant requested a zoning change from BU-1 to Single-Family Attached Residential, or RA-2-4.
5. The subject property has a Future Land Use designation of community commercial, or CC.
6. The CC Future Land Use designation is compatible with both the BU-1 and RA-2-4 zoning classifications.
7. The surrounding area is characterized as a mix of both commercial and residential, with residences being located within 500 feet of the subject property.
8. Applicable provisions of the Brevard County Code require certain factors be considered by the Board when determining the appropriateness of a rezoning request, including, but not limited to, Section 62-1151, Brevard County Code, and Administrative Policies 2 – 8 of the Brevard County Comprehensive Plan.
9. Section 62-1151(c), Brevard County Code, identifies the following relevant factors to be considered by the Board when evaluating a rezoning request:
 - (1) The character of the land use of the property surrounding the property being considered;
 - (2) The change in conditions of the land use of the property being considered and the surrounding property since the establishment of the current applicable zoning classification, special use or conditional use;
 - (3) The impact of the proposed zoning classification or conditional use on available and projected traffic patterns, water and sewer systems, other public facilities and utilities and the established character of the surrounding property;
 - (4) The compatibility of the proposed zoning classification or conditional use with existing land use plans for the affected area.
 - (5) The appropriateness of the proposed zoning classification or conditional use based upon a consideration of the applicable

provisions and conditions contained in this article and other applicable laws, ordinances and regulations relating to zoning and land use regulations and based upon a consideration of the public health, safety and welfare.

10. The requested rezoning, combined with the density bonus of the CC Future Land Use designation, would create incompatibility with the nature and condition of the surrounding area as it would significantly increase the number of single-family attached residences that could be developed on the property.
11. While the surrounding development can be characterized as a commercial and residential area, the developed character of the surrounding area does not exist at the level or density that the requested rezoning would allow on the subject property. Specifically, the developed character of the surrounding area on the east side of N. Courtenay Parkway to the north are two single-family residences (one on BU-1 zoned property with CC Future Land Use designation and one on AU zoned property with NC Future Land Use designation); to the south is a spite strip and Norwich Street, a County maintained ROW; to the east is the Egrets Landing subdivision with 33 single-family residences for Phase I, II, and III portions on EU-2 zoned property with RES 2 Future Land Use designation; and, on the west side of N. Courtenay Parkway is a single-family residence on BU-1 zoned property with CC Future Land Use designation.
12. Administrative Policy 5 (5c and 5d) of the Comprehensive Plan requires a determination be made as to the substantial and adverse transportation impacts that are likely to result if the requested rezoning is granted. Testimony presented relating to increased traffic impacts and potential safety conditions support the denial of the requested rezoning.
13. The proposed rezoning to RA-2-4 would allow for additional units and additional development impacts in an area already subject to drainage issues. Administrative Policy 7 of the Brevard County Comprehensive Plan provides that a proposed use “shall not cause or substantially aggravate any (a) substantial drainage problem on surrounding properties; or (b) significant, adverse and unmitigatable impact on significant natural wetlands, water bodies or habitat for listed species.” Based on the testimony provided, drainage concerns exist and will likely be exacerbated by the granting of the requested rezoning based on the increasing number of development units.

CONCLUSION

Based on the foregoing, the Board of County Commissioners hereby finds the request to rezone the subject property from BU-1 to RA-2-4 is incompatible and inconsistent with the Future Land Use Element of the Brevard County Comprehensive Plan and the Land Development Regulations located in the Brevard County Code of Ordinances. Accordingly, the requested rezoning is denied.

DONE AND RESOLVED this ____ day of _____, 2025.

ATTEST:

BOARD OF COUNTY
COMMISSIONERS OF BREVARD
COUNTY, FLORIDA

Rachel Sadoff, Clerk

Rob Feltner, Chair
As approved by the Board on: _____