



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

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**STAFF COMMENTS
 23Z00067**

Villas at River Palms, LLC

BU-2 (Retail, Warehousing and Wholesale Commercial) to RU-1-7 (Single-family Residential)

Tax Account Number: 2438912, 2438913, 2438914, 2438915, 2438917 and 2438918
 Parcel I.D.s: 24-37-31-01-* -40, 41, 42, 43, 44, 45, 46, 47, 48, 49 and 49.01
 Location: 120, 140, 150, 160, 180 and 190 S. Banana River Drive, Merritt Island)
 (District 2)
 Acreage: 2.7 acres

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

Consistency with Land Use Regulations

- Current zoning can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal would maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	CURRENT	PROPOSED
Zoning	BU-2	RU-1-7
Potential*	FAR of 1.0 81 residential units**	16 Single-family
Can be Considered under the Future Land Use Map	YES CC	YES*** CC

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

** Development potential at 30 units per acre pursuant to F.S. 125.01055 (Live Local Act).

***Classification may be considered, if permitted by Policy 2.10 of the Future Land Use Element.

Background and Purpose of Request

The applicant is requesting a change of zoning classification from BU-2 (Retail, Warehousing and Wholesale Commercial) to RU-1-7 (Single-family Residential) on approximately 2.7 acres. The applicant proposes to develop a single-family residential subdivision containing eleven (11) lots.

Building permits #: **23BC09709, 24BC20363, and 24BC20364** to remove various existing structures from the properties under this review have been completed.

The subject property has been zoned BU-2 under several Zoning actions # **Z-283, Z-300 and Z-685**. **Z-283** was approved by the Board on December 10, 1959. **Z-300** was approved by the Board on February 4, 1960. **Z-685** was approved by the Board on April 5, 1962.

Surrounding Area

	Existing Land Use	Zoning	Future Land Use
North	Vacant	RU-2-15	CC
South	Nonconforming mobile home park	RU-1-9	RES 6
East	Banana River	N/A	N/A
West	Retail, Repair/Service, and Mini-warehouse	BU-2	CC

North of the subject property is a 1.6 acre vacant lot once proposed for a 24 unit condominium (not constructed). The condo was noted as Delano on The River under Site Plan # SP# 05-04-003.

South of the subject property is a 14.45 acre parcel developed with a nonconforming mobile home park under the designation of NMH-82. The park’s name is River Palms Trailer Park. The park capacity is 146 units.

West of the subject property are three commercial properties developed with multiple commercial uses including a gun range, auto repair and mini-warehousing.

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

RU-2-15 classification medium-density multiple-family residential zoning classifications encompass lands devoted to medium-density multifamily residential purposes, together with such accessory uses as may be necessary or are normally compatible with residential surroundings. RU-2-15 permits multiple-family residential uses or single-family residences at a density of up to 15 units per acre on 7,500 square foot lots.

The BU-2 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.

Land Use

The subject property is currently designated on the FLUM as Community Commercial (CC). The current BU-2 zoning classification is consistent with the CC FLU designation. The proposed RU-1-7 zoning classification can be considered consistent with the existing Community Commercial (CC) FLU designation if it meets the criteria of FLUE Policy 2.10.

Applicable Land Use Policies

The Board should evaluate the compatibility of this application within the context of the Future Land Use Element.

Policy 1.2

Minimum public facilities and services requirements should increase as residential density allowances become higher. The following criteria shall serve as guidelines for approving new residential land use designations:

Criteria:

- A. Adequate roadways, solid waste disposal, drainage and recreation facilities to serve the needs of associated development shall be available concurrent with development in all residential land use designations.

S. Banana River Drive is two-laned Brevard County maintained roadway.

Preliminary concurrency analysis indicates the proposal would not create a deficiency in Adopted Level of Service (LOS). The corridor is anticipated to operate at 19.19% of capacity daily. Specific concurrency issues will be addressed during the site plan review stage. This is only a preliminary review and is subject to change.

The subject property has access to potable water from the City of Cocoa and access to Brevard County's sanitary sewer.

Drainage plans will be reviewed at the site plan review stage.

Public recreation facilities to serve the needs of the associated development are located approximately one (1) mile from the subject property.

- B. Fire and police protection and emergency medical services to serve the needs of associated development shall be available concurrent with development in all residential land use designations in accordance with policies set forth in the 'Service Delivery, Concurrency and Growth' section of this Future Land Use Element.

A fire, police and emergency medical services level of service analysis has not been conducted. However, Brevard County Fire Station 42 is located approximately one mile north of the subject property and Health First Hospital is also located within two miles east. Specific concurrency issues will be addressed during the site plan review stage.

- C. In the Residential 30, Residential 15, Residential 10, Residential 6 and Residential 4 land use designations, centralized potable water and wastewater treatment shall be available concurrent with the impact of the development.

Pursuant to FLUE Policy 2.10, staff analysis has determined the density for this development would be limited to RES 6 due to the property is mapped within the CHHA and is strictly limited to the density of the closest residentially designated area on the FLUM that is on the same side of the street. Specific concurrency issues will be addressed during the site plan review stage.

- D. Where public water service is available, residential development proposals with densities greater than four units per acre shall be required to connect to a centralized sewer system.

The proposed residential development is limited to six units per acre. Public water service is available; therefore, the applicant shall connect to a centralized sewer system.

- E. Where public water service is not available, residential development proposals with densities greater than two units per acre shall be required to connect to a centralized sewer system.

Not applicable. The subject property has access to potable water from the City of Cocoa and access to Brevard County's sanitary sewer. The proposed development also falls within the Indian River Lagoon Septic Overlay area and Banana River Lagoon Basin Management Action Plan which requires an advanced septic system for new construction to reduce the total maximum daily loads (TMDLs) of nitrogen and phosphorus.

- F. The County shall not extend public utilities and services outside of established service areas to accommodate new development in Residential 2, Residential 1 and Residential 1:2.5 land use designations, unless an overriding public benefit can be demonstrated. This criterion is not intended to preclude acceptance of dedicated facilities and services by the County through MSBU's, MSTU's and other means through which the recipients pay for the service or facility.

Not applicable. The proposed development land use designation is CC with RES 6 being the underlying residential density pursuant to Policy 2.10.

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.

A conceptual plan was not submitted with this request and not required. Development techniques of the proposal will be evaluated during the site plan review stage.

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.

Staff analysis has determined density bonuses within the CHHA, if requested, shall be approved by the Board of County Commissioners and shall be subject to environmental constraints.

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;

This request is not anticipated to significantly diminish the enjoyment or safety or quality of life.

Development would need to meet Brevard County's Performance Standards defined by Sections 62-2251 through 62-2272 for hours of operations, lighting, odor, noise levels, traffic, or site activity.

- 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 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 six (6) FLUM designations (RES 4, RES 6, RES 15, NC, CC and REC) within a half-mile radius of the subject property. The subject property is within the CC FLU designation with RES 6 to the south.

The character of the area is a mix of commercial and residential. The commercial and retail uses are predominately located along the State Road 520 corridor and extends slightly down both North and South Banana River Drive which then transitions to a mix of residential types.

Existing uses in the immediate surrounding area includes a nonconforming mobile home park with a capacity of 146 units, a gun range, auto repair, mini-warehousing, and vacant land.

Staff analysis has determined that the proposed residential use may be considered an encroachment into the existing commercial to the west across S. Banana River Drive.

Within the past three years there have been no FLUM changes within the defined radius.

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

No new development has been noted.

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

No actions were identified.

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 maximum development potential from the proposed FLUM amendment increases the percentage of MAV utilization by 1.5%. The corridor is anticipated to operate at 19.19% of capacity daily. The proposal would not 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 commercial or industrial activity is proposed with this application.

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.

There is no established residential neighborhood with clearly established roads, open spaces, or similar features. The nonconforming mobile park south of the subject can be considered residential in nature and the area is bounded by the Banana River to the east.

2. Sporadic or occasional neighborhood commercial uses shall not preclude the existence of an existing residential neighborhood, particularly if the commercial use is non-conforming or pre-dates the surrounding residential use.

The proposed is not a request for a neighborhood commercial 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.

There have been no commercial, industrial or other non-residential uses applied for and approved during the previous five years.

Admin Policy 7

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

- **The entire property is mapped within the estuarine floodplain as identified by FEMA and as shown on the FEMA SFHA Map. The property is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance. Chapter 62, Article X, Division 6 states, "No site alteration shall adversely affect the existing surface water flow pattern." Chapter 62, Article X, Division**

5, Section 62-3723 (2) states, "Development within floodplain areas shall not have adverse impacts upon adjoining properties."

- **The entire property is mapped within the Indian River Lagoon Nitrogen Reduction Overlay. Per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay, if adequate sewer for the development is not available, then the use of an alternative septic system, designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes, shall be required.**
- **The subject property is located on the Indian River Lagoon, designated as a Class II Water, Outstanding FL Water, and Aquatic Preserve in this location. A 50-foot Surface Water Protection Buffer is required. Primary structures shall be located outside the Buffer. Accessory structures are permissible within the Buffer with conditions (e.g., storm water management is provided, avoidance/minimization of impacts, and maximum 30% impervious). The removal of native vegetation located within the Buffer is prohibited unless approved through an active development order. Temporary impacts to native vegetation require in-kind restoration.**

Preliminary Concurrency

The closest concurrency management segment to the subject property is South Banana River Drive, between SR 520 and the southern end of South Banana River Drive which has a Maximum Acceptable Volume (MAV) of 12,480 trips per day, a Level of Service (LOS) of E, and currently operates at 17.69% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 1.5%. The corridor is anticipated to operate at 19.19% of capacity daily. The proposal is not anticipated to create a deficiency in LOS.

The school concurrency information provided under CD-2023-19 dated August 14, 2023 (one year ago) notes that there is sufficient capacity for the number of proposed students generated by the 11 single-family home lots which are serviced by Tropical Elementary School, Jefferson Middle School and Merritt Island Senior High School.

The subject property has access to potable water from the City of Cocoa and access to Brevard County's sanitary sewer.

Environmental Constraints

Summary of Mapped Resources and Noteworthy Land Use Issues:

- **Coastal High Hazard Area**
- Floodplain Protection
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Surface Waters of the State
- Protected and Specimen Trees
- Potential Code Enforcement

For Board Consideration

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

NATURAL RESOURCES MANAGEMENT DEPARTMENT
Zoning Review & Summary
Item No. 23Z00067

Applicant: Edward Fleis (Owner: Villas at River Palms, LLC)

Zoning Request: BU-2 to RU-1-7

Note: to develop 11 single family homes

Zoning Hearing: 02/17/2025; **BCC Hearing:** 03/13/2025

Tax ID No.(s): 2438912, 2438913, 2438914, 2438915, 2438917 and 2438918

- 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:

- Coastal High Hazard Area
- Floodplain Protection
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Surface Waters of the State
- Protected and Specimen Trees
- Potential Code Enforcement

Land Use Comments:

Coastal High Hazard Area

Nearly the entirety of these properties is located within the Coastal High Hazard Area (CHHA) as defined by Florida Statute 163.3178(2)(h), and 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. The parcel may be susceptible to nuisance flooding.

Floodplain Protection

The entire property is mapped within the estuarine floodplain as identified by FEMA and as shown on the FEMA SFHA Map. The property is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance. Chapter 62, Article X,

Division 6 states, "No site alteration shall adversely affect the existing surface water flow pattern." Chapter 62, Article X, Division 5, Section 62-3723 (2) states, "Development within floodplain areas shall not have adverse impacts upon adjoining properties."

Indian River Lagoon Nitrogen Reduction Septic Overlay

The entire property is mapped within the Indian River Lagoon Nitrogen Reduction Overlay. Per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay, if adequate sewer for the development is not available, then the use of an alternative septic system, designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes, shall be required. NRM requires a Septic Maintenance Notice be filed with the Brevard Clerk of Courts.

Surface Waters of the State

The subject property is located on the Indian River Lagoon, designated as a Class II Water, Outstanding FL Water, and Aquatic Preserve in this location. A 50-foot Surface Water Protection Buffer is required. Primary structures shall be located outside the Buffer. Accessory structures are permissible within the Buffer with conditions (e.g., storm water management is provided, avoidance/minimization of impacts, and maximum 30% impervious). The removal of native vegetation located within the Buffer is prohibited unless approved through an active development order. Temporary impacts to native vegetation require in-kind restoration. The Florida Department of Environmental Protection (FDEP) regulates mangrove trimming and can be reached at 407-897-4101. **The applicant is encouraged to contact NRM at 321-633-2016 prior to any activities, plan, or permit submittal.**

Protected and Specimen Trees

Protected (≥ 10 inches in diameter) and Specimen Trees (≥ 24 inches in diameter) may exist on the parcel. 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.**

Potential Code Enforcement

Information available to NRM indicates that unpermitted land clearing and land alteration activities may have occurred on this property between 2021 and 2023. This includes impacts in the surface water protection buffer. The confirmation of unpermitted land clearing activities may result in code enforcement action.