



BOARD OF COUNTY COMMISSIONERS

**Planning and Development Department**

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**STAFF COMMENTS**

**23Z00084**

**Christopher H Griffin**

**RU-1-9 (Single-Family Residential) to RU-1-11 (Single-Family Residential)**

Tax Account Number: 2864401  
Parcel I.D.: 28-36-02-50-5-2  
Location: South side of Miami Avenue, approximately 116 feet west of  
Arizona Street (District 5)  
Acreage: 0.39 acres

Planning & Zoning Board: 01/08/2024

Board of County Commissioners: 02/01/2024

**Consistency with Land Use Regulations**

- Current zoning cannot be considered under the Future Land Use Designation, Section 62-1255.
- The proposal can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal would maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Zoning</b>	RU-1-9	RU-1-11
<b>Potential*</b>	1 single family	1 single family
<b>Can be Considered under the Future Land Use Map</b>	NO RES 4	YES RES 4

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

**Background and Purpose of Request**

The applicant is requesting to rezone the property from RU-1-9 (Single-Family Residential Use) to RU-1-11 (Single-Family Residential) to have the zoning classification consistent and compatible with the Residential 4 (RES 4) Future Land Use Map (FLUM) designation.

The parcel was developed with a single-family residence in 1946. When the parcel was developed, the parcel included all of Lot 3, the west 28.94 feet of lot 2 and the east 16 feet of lot 4, Addition Number 2 to City Acres in Plat Book 4, Page 82A.

On May 22, 1958, Brevard County adopted the zoning code, and the subject parcel was established with the zoning classification of RU-1, Single-Family Residential Zone.

On June 1, 1972, the zoning classification RU-1 was replaced with the RU-1-9, Single-Family Residential zoning classification.

On September 8, 1988, Brevard County established the Comprehensive Plan and the Future Land Use Map (FLUM) and the parcel was established with the RES 4 Future Land Use. The RES 4 FLU is not consistent/compatible with the RU-1-9 zoning classification. Per section 62-1188(5) the parcel was considered nonconforming to the RES 4 FLU as the parcel was of record in the Official Record Books of the County when the Comprehensive Plan was established.

On August 9, 2006, the parcel was split per Official Records Book 5692, page 2747 which split off the south 13.75 feet from the parcel. This lot split caused the parcel to lose its nonconforming status to the RES 4 Future Land Use. Further, per Section 62-2102: No person shall sever any lot in such a manner that a violation of any of the provisions of this chapter would be created on any new or altered lot, including their uses or structures.

The applicant's request to change the zoning from RU-1-9 to RU-1-11 will provide consistency with the Residential 4 (RES 4) Future Land Use Map (FLUM) designation.

The subject is located on the south side of Miami Ave., a County maintained roadway.

### **Surrounding Area**

	<b>Existing Land Use</b>	<b>Zoning</b>	<b>Future Land Use</b>
<b>North</b>	Single-family residence across Miami Ave.	RU-1-7	NC
<b>South</b>	Undeveloped property	RU-1-11	RES 4
<b>East</b>	Undeveloped property	RU-1-11	RES 4
<b>West</b>	Single-family residence	RU-1-9	RES 4

The current RU-1-9 classification permits single family residential development on lots of 6,600 square feet (minimum) with a minimum width of 66 feet and depth of 100 feet. The minimum house size is 900 square feet.

The proposed RU-1-11 classification permits single family residences on minimum 7,500 square foot lots, with a minimum width and depth of 75 feet. The minimum house size is 1,100 square feet.

## Future Land Use

The subject property is currently designated as Residential 4 (RES 4) FLUM designation. The current RU-1-9 zoning is not consistent with the existing RES 4 FLUM designation. The proposed RU-1-11 zoning is consistent with the existing RES 4 FLUM designation.

**FLUM Policy 1.7** – The Residential 4 Future land use designation affords an additional step down in density from more highly urbanized areas. This land use designation permits a maximum density of up to four (4) units per acre, except as otherwise may be provided for within the Future Land Use Element.

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 shall be evaluated by considering the following factors, at a minimum:

Criteria:

- A. Whether the proposed use(s) would have hours of operation, lighting, odor, noise levels, traffic, or site activity that would significantly diminish the enjoyment of, safety or quality of life in existing neighborhoods within the area which could foreseeably be affected by the proposed use;

**The applicant intends to maintain the existing single-family residence as well as an accessory structure and to add a detached garage to the site. The request is not anticipated to diminish the enjoyment of safety or quality of life in existing 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 single-family residences on properties 0.32 acres to 1.70 acres in size.**

**There are four (4) FLU designations (RES 4, NC, CC, and RES 6) within a 0.5-mile radius of the subject property. RES 4 is the prominent FLU in this area.**

**There are multiple zoning classifications within a 0.5-mile radius of the subject. They include RU-1-7 and AU residential zones, BU-1 and BU-2 commercial zoning classifications and TR-1 single family mobile home classification. The city limits of West Melbourne are approximately 435 feet north and 1,975 feet to the west of the subject. To the east and south of the subject the property is zoned RU-1-11 with RES 4 FLUM. To the north across Miami Ave. is RU-1-7 and to the west is RU-1-9.**

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

**There have been no development within 0.5 miles.**

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

**There has been no development approved within the past three years.**

- 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.**

#### **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 closest parcels with RU-1-11 zoning are located abutting the subject parcel to the east and south. These two abutting RU-1-11 properties are both undeveloped and were rezoned from RU-1-9 to RU-1-11 on 11/06/2023 per zoning action 23Z00074. The request provides consistency with the FLUM and zoning classification. It will also recognized existing development trends.**

**The request is not anticipated to materially or adversely impact the surrounding established residential neighborhood.**

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 in an existing platted residential neighborhood. There are clearly established roads and residential 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 request is not for commercial use. It is located in an existing single-family residential neighborhood.**

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 area is primarily single-family residential with no commercial zoning nearby.**

### **Preliminary Concurrency**

The closest concurrency management segment to the subject property is W. New Haven Avenue located between S. John Roads Blvd. and S. Wickham Road, which has a Maximum Acceptable Volume (MAV) of 39,800 trips per day, a Level of Service (LOS) of D, and currently operates at 76.36% of capacity daily. The parcel is developed with a single-family home and developed to the maximum potential from the proposed rezoning. The proposed rezoning does not increase the percentage of MAV utilization. The corridor is anticipated to operate at 76.36% of capacity daily. The proposal is not anticipated to create a deficiency in LOS.

No school concurrency information has been provided as the development potential of this site falls below the minimum number of new residential lots that would require a formal review.

The parcel is not within any public potable water or sewer lines. The existing house is on well for potable water and on septic.

## **Environmental Constraints**

### **Summary of Mapped Resources and Noteworthy Land Use Issues:**

- Hydric Soils
- Aquifer Recharge Soils
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Protected and Specimen Trees
- Protected Species

All of Parcel No. 2864401 are mapped within the Indian River Lagoon Nitrogen Reduction Overlay. Any portion of a septic system within the mapped Overlay is subject to 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.

Hydric soils are noted for this area and a wetland delineation is required for land clearing. The Hydric soils specifically Basinger soils can be indicative of an Aquifer Recharge area and a topographical survey may be required prior to development.

The subject site is cleared and developed and natural resource restrictions may not apply.

### **For Board Consideration**

The Board may wish to consider if the request is consistent and compatible with the surrounding area and to recognize existing development trends.

**NATURAL RESOURCES MANAGEMENT DEPARTMENT**  
**Zoning Review & Summary**  
**Item No. 23Z00074**

**Applicant:** Clayton Bennett (Owners: Nancy and Frances Santoriello - 2162 Arizona St. and James and Jennifer Straight - 4215 Miami Ave.)

**Zoning Request:** RU-1-9 to RU-1-11

**Note:** rezoning both parcels to have zoning consistent with FLU

**Zoning Hearing:** 10/16/2023; **BCC Hearing:** 11/02/2023

**Tax ID Nos:** 2863326 & 2801026

- 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
- Aquifer Recharge Soils
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Protected and Specimen Trees
- Protected Species

All of Parcel No. 2801026 and the eastern half of Parcel No. 2863326 are mapped within the Indian River Lagoon Nitrogen Reduction Overlay. Any portion of a septic system within the mapped Overlay is subject to 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.

**Land Use Comments:**

**Hydric Soils**

Both parcels are mapped with hydric soils (Basinger sand) as shown on the USDA Soil Conservation Service Soils Survey map; an indicator that wetlands may be present on the property. A wetland delineation will be required prior to any land clearing activities, site plan design or building permit submittal. Per Section 62-3694(c)(2), residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict

application of this policy would render a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. Application of the one-unit per-five-acres limitation shall limit impacts to wetlands for single family residential development on a cumulative basis, to not more than 1.8% of the total property acreage. Any permitted wetland impacts must meet the requirements of Section 62 3694(e) including avoidance of impacts and will require mitigation in accordance with Section 62-3696. The applicant is encouraged to contact NRM at (321) 633-2016 prior to any plan or permit submittal.

### **Aquifer Recharge Soils**

Basinger sand can also function as an aquifer recharge soil. Mapped topographic elevations indicate the soils may consist of Type 3 Aquifer Recharge soils that have impervious area restrictions. A topographic survey should be completed prior to development to confirm elevations. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

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

All of Parcel No. 2801026 and the eastern half of Parcel No. 2863326 are mapped within the Indian River Lagoon Nitrogen Reduction Overlay. Any portion of a septic system within the mapped Overlay is subject to 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.

### **Protected and Specimen Trees**

Protected and Specimen Trees likely exist on the parcels. 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.

Information available to NRM indicates that unpermitted land clearing activities may have occurred on Parcel No. 2801026. The discovery of unpermitted land clearing activities may result in code enforcement action.

### **Protected Species**

Federally and/or state protected species may be present on properties with aquifer recharge soils and/or wetlands. Specifically, there is potential for existence of Gopher Tortoises in recharge soils. Should any protected species be present, 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 prior to any plan, permit submittal, or development activity, including land clearing, as applicable.