



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

25Z00003

Alexis Dejesus

BU-1 (General Retail Commercial) with BDP to BU-1 (General Retail Commercial) without BDP

Tax Account Number: 2004581
Parcel I.D. 20G-35-17-AL-17-4
Location: 3755 Aurantia Rd., Mims, FL 32754 (District 1)
Acreage: 1.18 acres

Planning & Zoning Board: 11/17/2025
Board of County Commissioners: 12/11/2025

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-1 w/ BDP	BU-1
Potential*	FAR 1.00	FAR 1.00 35 dwelling units**
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).

Background and Purpose of Request

The applicant is requesting a change of zoning classification from BU-1 (General Retail Commercial) with BDP (Binding Development Plan) to BU-1 on 1.18 acres. The applicant wants to have all BU-1 uses available.

On July 30, 2007, the subject property received approval for a rezoning along with a Small-Scale Comprehensive Plan Amendment (SSCPA). The zoning classification changed from RU-

2-10 to BU-1 with a BDP to limit the uses to only the BU-1 use of grocery store with no sales of hard liquor and all BU-1-A uses. The FLU changed from NC to CC under **SSCPA 07S.9**. Both actions were approved under Resolution **Z-11358**.

On May 9, 2008, a change of occupancy was submitted changing the use from restaurant, bar, nightclub to a convenience store, and was approved on September 17, 2008, via a Certificate of Occupancy. On July 18, 2008, a minor site plan (**08AD-00602**) was submitted for review to add additional parking spaces due to the change of occupancy and was approved August 4, 2008.

On February 10, 2023, the applicant request for a zoning verification letter (**23Z00012**) was completed, thereby notifying the applicant of the subject property's zoning and a copy of the BDP.

The current BDP on the property limited the use of a grocery store (as allowed by Section 62-1482, Brevard County Code of Ordinances) and all uses allowed in BU-1-A zoning, provided there are no sales of hard liquor, pornographic materials or items associated with the taking of illegal drugs. Additionally, prior to Certificate of Occupancy for a commercial use, the Developer/Owner was to a wooden six (6) foot fence on the East and South property lines and repair the culvert located south of the subject property abutting US Highway 1.

Over the last nine (9) years there have been several code enforcement complaints on the property related to the use and other issues. The most recent code enforcement complaint (**24CE-01406**) related to unpermitted uses within the BU-1 zoning classification and other related ordinances, including, but not limited to, multiple auto sales businesses and a tire shop. Those uses also violated the recorded BDP on the subject property. The Code Enforcement Special Magistrate issued a Findings of Fact, Conclusions of Law and Order & Lien for Costs finding violations on April 17, 2025. The violation was complied on August 22, 2025, and fines and costs have since been paid.

The applicant is on notice that any change of occupancy may require a minor site plan. Additionally, per Section 62-3203(10), site plans within BU-1, BU-2, or industrial zoning classifications shall construct a minimum of a six-foot high masonry or solid wall, including, but not limited to, concrete block walls, pre-cast (solid) walls, or foam core/steel support with stucco finish, when the subject property abuts a residential zoning classification. The subject property abuts a residential zoning classification to the east and south.

The BU-1 general retail commercial zoning classification encompasses land devoted to general retail shopping, offices and personal services to serve the needs of the community. More specifically, this zoning classification permits uses such as automobile sales and storage, automobile tires and mufflers (new), sales and service, or automobile parts, if confined within a structure, and automobile repairs, minor. As an example of how removal of the BDP could impact the area. A grocery store would increase the percentage of MAV utilization by 21.98%. The corridor would be anticipated to operate at 43.82% daily. However, staff has determined, a coffee shop with a drive-thru would be the most intense use with

regards to traffic permitted with the BU-1 zoning. The use would potentially increase the percentage of MAV utilization by 124.83%. The corridor would be anticipated to operate at 146.67% of capacity daily.

The subject property is within the septic moratorium area. Any development to expand the current building or add additional buildings could potentially require the expansion or replacement of the existing septic system. Any changes in the current septic system could be affected by this moratorium. For further information regarding the septic moratorium, the property owner would need to reach out to environmental health, which issues septic permits.

The subject property is not located in the recommended FLUM density reduction area adopted within the 2007 Mims Small Area Study on April 10, 2007.

In 2023, the Live Local Act was enacted and was revised in 2024. The Act is intended to address the state's growing housing affordability crisis through significant land use, zoning, and tax benefits. Pursuant to Florida Statute 125.01055, a county must authorize multifamily and mixed-use as allowable uses in any area zoned for commercial, industrial, or mixed use if at least 40 percent of the residential units in a proposed multifamily rental development. In unincorporated Brevard County, the Live Local Act effectively allows for the development of up to 30 dwelling units per acre. The subject property, encompassing 1.18 acres with approval of rezoning to BU-1, allows for development options that include either commercial use with a Floor Area Ratio (FAR) of 1.00 or 35 multi-family units as stipulated by the Live Local Act.

On August 18, 1916, the subject property was platted as a Replat of Section 17 of Indian River Park Subdivision of The Bernardo Segui Grant in Plat Book 2, Page 75.

Historical Zoning History:

May 22, 1958, the Brevard County Zoning Code was established with the subject property having the GU (General Use) zoning classification.

May 5, 1960, zoning classification from GU to BU-1 approved under zoning action **Z-0337**.

July 12, 1979, zoning classification from BU-1 to RU-2-10 (Medium-Density Multiple-family Residential) approved under zoning action **Z-4960**.

The subject property has direct access off Highway 1, a state-maintained roadway.

Surrounding Area

	Existing Land Use	Zoning	Future Land Use
North	Undeveloped	AU	NC
South	Single-family residence	AU	NC
East	Single-family residence	AU	RES 1

West	Highway 1	N/A	N/A
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North of the subject property is a 2.25-acre parcel, undeveloped, which has AU zoning classification with NC FLU designation.

Both South and East of the subject property is a 6.74-acre parcel, developed with two (2) single-family residences with AU zoning classification and NC and RES 1 FLU designation.

West of the subject property is Highway 1, a four-lane divided roadway.

AU (Agricultural Residential) zoning classification encompasses lands devoted to agricultural pursuits and single-family residential development of spacious character on 2.5-acre lots, with a minimum lot width and depth of 150 feet. The minimum house size in AU is 750 square feet. The AU classification also permits the raising/grazing of animals, fowl, and beekeeping.

Future Land Use

The subject property's BU-1 zoning classification can be considered consistent with the CC Future Land Use designation provided on the FLUM series contained within Chapter XI – Future Land Use Element of Brevard County's Comprehensive Plan. The proposed removal of the BDP does not affect the zoning and FLU consistency.

The Board should evaluate the compatibility of this application within the context of Administrative Policies 2 – 8 of the Future Land Use Element.

FLUE Policy 2.2 - The zoning process regulates the types and intensities of uses for a parcel of land. Criteria which aid in assessing zoning compatibility, shall include consideration of the following standards:

Criteria:

A. Permitted/prohibited uses;

BU-1, General Retail Commercial zoning classification encompasses lands devoted to general retail shopping, offices and personal services to serve the needs of the community. BU-1 requires a minimum 7,500 square foot lot. The BU-1 classification does not permit warehousing or wholesaling. Where the property abuts a residential zoning classification, the maximum height threshold of any building or structure shall be 35 feet. Where a side lot line abuts a residential zone, such side setback shall be a minimum of 15 feet. Where a side lot line abuts a non-residential zone, such side setback shall be 5 feet.

The Board should consider ensuring the development will need to comply with buffering criteria in Section 62-4342 and 62-3203(10). The purpose of the

landscape buffers is to provide visual and physical screening and buffering between potentially incompatible uses and to reduce the effects of glare, noise, and incompatible activities, including commercial, institutional, public, and industrial uses, when they abut existing residential uses and Site plans within BU-1, BU-2, or industrial zoning classifications shall construct a minimum of a six-foot high masonry or solid wall, including, but not limited to, concrete block walls, pre-cast (solid) walls, or foam core/steel support with stucco finish, when the subject property abuts a residential zoning classification, respectively.

B. Existing commercial zoning trends in the area;

The closest commercial zoning classification is directly west of the subject property across Highway 1 at the Aurantia and Highway 1 intersection, which has BU-1 zoning approved in 1970. Another BU-1 zoned property is also located on the west side of Highway 1, approximately 500 feet southwest of the subject property, with a retail store developed in 1976. Commercial and institutional zoned properties, within the segment of Aurantia to Burkholm, are predominantly located along the west side of Highway 1.

There was an approved rezoning in 2023 of a commercial property from BU-1 to BU-2, approximately 0.5 miles south of the subject property on the west side of Highway 1. Even though the property was rezoned, it remains undeveloped. The most recent commercial development occurred in 2020, outside the search radius, approximately 2.1 miles southwest of the subject property, just north of Richy Road and Highway 1 intersection, with the development of a flex warehouse building.

The most recent residential developments occurred in 2025 with two (2) single-family residences. In addition, in 2024, two (2) single-family residences were developed. The most recent residential rezoning occurred in 2022 for a residential property, which was approved for BU-1 and AU to all AU.

C. Compatibility of the proposed use with the area, pursuant to Administrative Policy 3;

Staff analysis has determined that the surrounding area north, east and south of the subject property is single-family residences mixed with agricultural pursuits and vacant lands.

The applicant has not proposed a use to for Staff to make a determination of compatibility. Staff analysis has determined the recent use would not be compatible with the area based on the existing BDP which was approved in July 2007. The Board shall consider whether any change of occupancy will be compatible with the area.

D. Impact upon Level of Service (LOS) standards for roads, potable water service, sanitary sewer service and solid waste disposal;

Staff cannot accurately make a determination of impact to LOS for roads because the applicant has not proposed a use for the subject property. Therefore, the preliminary concurrency analysis is based on the potential use with the highest impact to the LOS standards for roads.

The subject property is currently developed with a commercial building previously site planned for a grocery store. However, removal of the BDP would allow for uses that would have greater impact to LOS standards for roads, such as a Coffee shop with a drive thru. Additionally, water and sewer will continue to be provided by the property owner, as centralized water and sewer services are not provided in this area.

- E. Impact upon natural resources, including wetlands, floodplains, and endangered species; and the following land use issues were identified:

The mapped topographic elevations show that the property falls within Type 2 and/or Type 3 Aquifer Recharge areas, which are subject to 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.

Federally and/or state-protected species may be present on the property. Specifically, Gopher Tortoises can be found in areas of aquifer recharge soils. Federally and/or state-protected species may be present on the property.

- F. Other issues which may emerge specific to a particular property which may be addressed through performance-based zoning criteria.

The applicant may be required to comply with submittal of a minor site plan. Additionally, compliance with regulations of Section 62-1482, 62-2251 through 62-2272 and 62-4342 of Brevard County Code is required and should be reviewed at the request for change of occupancy should the zoning change be approved.

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.

Any change of occupancy from the approved uses listed in the BDP could be

considered incompatible with existing residential land uses in the area. However, any new development or change in occupancy would need to meet 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 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 predominantly single-family residences. Properties range in size from approximately 0.5 acres to 10.44 acres. There are at least nine properties surrounding the subject property with lot sizes larger than 0.5 acres.

There are several FLU designations in the area: CC, NC, RES 1, RES 1:2.5. The predominant FLU designation is RES 1.

The predominant zoning classification is AU on the east side of Highway 1. The predominant zoning on the west side of Highway 1 is RRMH-1.

There are multiple parcels with BU-1 zoning located within a 0.5-mile radius of the subject property. The closest parcel with this zoning classification is located on the west side of Highway 1 at Aurantia Road, approximately 150 feet from the subject property.

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

There have been four developments, all single-family residences, within a 0.5-mile radius during the preceding three years.

Zoning actions during the preceding three years:

- 22Z00008 is an approved rezoning from BU-1 and AU to all AU on 05/05/2022 for a nursery.**

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

There has been one development approved within the past three years that has not been constructed.

- **23Z00069 is an approved rezoning from BU-1 to BU-2 on 12/7/2023 to provide outdoor storage of general contractor equipment as noted in the staff comments for the zoning action.**

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 proposed use can be considered compatible with the existing character of the area. Preliminary concurrency indicates a 21.98% increase in MAV utilization with the current BDP limit of a grocery store. However, the maximum development potential, with regards to traffic activity, from the proposed rezoning would be a coffee shop with a drive thru. For this potential use, preliminary concurrency indicates a 124.83% increase in MAV utilization.

- 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 area should be considered a residential area with established roads. The area is not considered an established residential neighborhood with established 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 to remove the BDP on the property will expand the uses available to the property owner. Surrounding the subject property is considered a residential area, not a residential neighborhood. The Board should determine whether the removal of the BDP would preclude the existence of the existing residential area.

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.

This area is presumed to be predominantly residential. The proposed zoning would be the second commercial zoning to be approved in the area within at least the past five years.

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 unmitigable impact on significant natural wetlands, water bodies or habitat for listed species.

The subject property contains mapped topographic elevations that show that the property falls within Type 2 and/or Type 3 Aquifer Recharge areas, which are subject to impervious area restrictions. Federally and/or state-protected species may be present on the property. Specifically, Gopher Tortoises can be found in areas of aquifer recharge soils.

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

Preliminary Concurrency

The closest concurrency management segment to the subject property is U.S.1 from Burkholm Rd. to Volusia County Line, which has a Maximum Acceptable Volume (MAV) of 21,800 trips per day, an Acceptable Level of Service (ALOS) of C, and currently operates at 22.0% of capacity daily. The BDP permit use would be a grocery store, which would increase the percentage of MAV utilization by 21.98%. The corridor would be anticipated to operate at 43.82% daily. Staff analysis concludes that a coffee shop with a drive-thru would be the most intense use permitted with the BU-1 zoning, which has the potential to increase the percentage of MAV utilization by 124.83%. The corridor would be anticipated to operate at 146.67% of capacity daily. The removal of the current BDP has potential for a significant increase the ALOS.

No school concurrency information has been provided, as this is a commercial property.

The property owner would have to continue to provide water and sewer service, as the

property does not have centralized water and sewer services available.

Environmental Constraints

Summary of Mapped Resources and Noteworthy Land Use Issues:

- Aquifer Recharge Soils
- Land Clearing and Landscape Requirements
- Protected Species
- Potential Code Enforcement

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 proposed request to remove the current BDP is consistent and compatible with the surrounding area.

The Board may consider whether a new BDP would be required to mitigate potential impacts to the area due to permitted uses allowed in the BU-1 zoning classification, and to ensure the subject property will comply with buffering criteria in Section 62-4342 and 62-3203(10) to provide visual and physical screening and buffering between potentially incompatible uses and to reduce the effects of glare, noise, and incompatible activities allowed with the BU-1 commercial zoning and the existing residential use to the east and south.

NATURAL RESOURCES MANAGEMENT DEPARTMENT
Zoning Review & Summary
Item No. 25Z00003

Applicant: Alexis Dejesus (Owners: Alexis & Rosemary Dejesus)

Zoning Request: BU-1 with BDP to BU-1 with removal of BDP

Note: to remove BDP so all BU-1 uses are available

Zoning Hearing: 11/17/2025; **BCC Hearing:** 12/11/2025

Tax ID No.: 2004581

- 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:

- Aquifer Recharge Soils
- Land Clearing and Landscape Requirements
- Protected Species
- Potential Code Enforcement

Land Use Comments:

Aquifer Recharge Soils

This property contains Candler fine sand, classified as an aquifer recharge soil. Additionally, the mapped topographic elevations show that the property falls within Type 2 and/or Type 3 Aquifer Recharge areas, which are subject to 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.

Land Clearing and Landscape Requirements

The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for Protected (≥ 10 inches in diameter) and Specimen (≥ 24 inches in diameter) tree preservation. Land clearing is not permitted without prior authorization by NRM. **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.

Potential Code Enforcement

Information available to NRM indicates that unpermitted land clearing and land alteration activities may have occurred on this parcel between 2021 and 2022. The confirmation of unpermitted land clearing or land alteration activities may result in code enforcement action.