



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

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STAFF COMMENTS
24Z00054

Jorge & Olga Carolina Tabush (Clayton A. Bennett, P.E.)
GU (General Use) to EU (Estate Use Residential)

Tax Account Number: 2605989
Parcel I.D.: 26-37-18-00-512
Location: East side of N. Highway US-1, approximately 1,030 feet north of Portofino Lane (District 2)
Acreage: 0.72 acres
Planning & Zoning Board: 11/18/2024
Board of County Commissioners: 12/12/2024

Consistency with Land Use Regulations

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

Table with 3 columns: Zoning, CURRENT, PROPOSED. Rows include Zoning (GU to EU), Potential* (0 single family to 1 single family), and Can be Considered under the Future Land Use Map (YES** to YES**, NC to NC).

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

** NC may be considered consistent per Policy 2.10.

Background and Purpose of Request

The applicant is requesting to rezone the property from GU (General Use) to EU (Estate Use Residential) on 0.72 acre parcel to have the zoning classification consistent with the parcel's lot size. The applicant has applied for a demo permit, 24BC17962, to demo the existing residences and structures on the parcel and plans to build a new single-family residence.

The GU zoning is the original zoning for the parcel. The parcel was subdivided into its current configuration on February 01, 2005 making the parcel substandard. The current GU zoning requires a minimum lot size of five acre and a minimum lot width and lot depth of 300 feet. The proposed EU zoning requires an area of not less than 15,000 sq. ft., having a lot width and depth not less than 100 feet. The current lot configuration meet's the EU zoning classification lot size requirement. The request would allow for reconstruction of one single-family residence.

The subject parcel is located on the east side of N. Highway US-1, a FDOT maintained roadway.

Surrounding Area

	Existing Land Use	Zoning	Future Land Use
North	Single-family residence	EU	NC
South	Single-family residence	RU-1-13	RES 4
East	Indian River	N/A	N/A
West	West across Highway US-1 Commercial dog kennel.	BU-1	CC

North of the subject property is a single-family residence with EU zoning.

South of the subject property is a single-family residence with RU-1-13 zoning.

East of the subject property is the Indian River.

West of the subject property across Highway US-1 is a commercial property, developed with a dog kennel and BU-1 zoning.

The current GU classification is a holding category, allowing single-family residences on five acre lots with a minimum width and depth of 300 feet. The minimum house size in GU is 750 square feet.

The proposed EU classification is an estate single family residential zoning classification. The minimum lot size is 15,000 square feet with a minimum lot width and depth of 100 feet. The minimum living area is 2,000 square feet.

Future Land Use

The subject property is currently designated as Neighborhood Commercial (NC) FLUM designation. The current GU zoning and the proposed EU zoning may be considered consistent with the existing NC FLUM designation.

FLUE Policy 2.10 - Residential Development in Neighborhood Commercial and Community Commercial Land Use Designations

Residential development or the integration of residential development with commercial development shall be permitted in the Neighborhood Commercial and Community Commercial land use designations, provided that the scale and intensity of the residential/mixed use development is compatible with abutting residential development and areas designated for residential use on the Future Land Use Map. Residential development is permissible in these commercial land use designations at density of up to one category higher than the closest residentially designated area on the Future Land Use Map (FLUM) which is on the same side of the street. Increases in density beyond this allowance may be considered through a public hearing. In the CHHA, however, residential development is strictly limited to the density of the closest residentially designated area on the FLUM that is on the same side of the street. Such residential development, as described above, shall be allowed to utilize the following characteristics:

Criteria:

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

The parcel is located on N. Highway US-1, a major arterial road. The parcel abuts a platted residential subdivision to the south and EU zoned parcels to the north which have access to N. Highway US-1. To the east is the Indian River.

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

The parcel has direct access to Highway US-1, a major arterial road. The abutting subdivision to the south has a Residential 4 (RES 4) FLU. The EU zoned parcels to the north have the same NC FLU designation as the subject parcel.

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 build and have only one single-family residence on the parcel. Since granting the EU zoning Classification allows the replacement of an existing home, it is neutral in regards to 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 2.5 acres to 0.19 acre in size.

There are seven (7) FLU designations (CC, NC, RES 4, RES 15, PI, IND and REC) within a 0.5-mile radius of the subject property. NC is the prominent FLU in this area.

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

There has been one multi-family development within 0.5 miles.

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

There has been one 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.

Staff analysis has determined the area can be categorized as single-family residential which features one acre or larger lots.

There are multiple zoning classifications within a 0.5 mile radius of the subject. They include EU, EU-2, RU-13, GU single-family residential zone; RU-2-15, RU-2-6 multi-family residential zone; PUD a Planned Unit Development, RVP recreational vehicle park; BU-1, BU-2 commercial zones, PIP, IU, IU-1 industrial zone. To the north of the subject the property is zoned EU with NC FLUM. To the south of the subject the property is zoned RU-1-13 with RES 4 FLUM. To the West across N. Highway US-1 is BU-1 with CC FLUM.

EU has been established zoning classification in the surrounding area. The closest parcels with EU zoning are located abutting the subject parcel to the north and are developed with single-family residence.

The request provides consistency with the proposed zoning classification lot size and FLUM. It will also recognize existing development trends.

EU zoning classification is an estate single family residential zoning classification. The minimum lot size is 15,000 square feet with a minimum lot width and depth of 100 feet. The minimum living area is 2,000 square feet.

RU-1-13 permits single-family residences on minimum 7,500 square foot lots, with minimum widths and depths of 75 feet. The minimum house size is 1,300 square feet. RU-1-13 does not permit horses, barns or horticulture.

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

- 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 residential area. There are clearly established roads, residential lot boundaries and the parcel abuts the Indian River along the east of the parcel.

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 along the east side of N. Highway US 1 is primarily single-family residential with commercial zoning on the west side of N. Highway US 1.

Preliminary Concurrency

The closest concurrency management segment to the subject property is N. Highway US-1 located between Pineda Cswy. and Suntree Blvd., which has a Maximum Acceptable Volume (MAV) of 41,790 trips per day, a Level of Service (LOS) of C, and currently operates at 84.30% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.00%. The corridor is anticipated to operate at 84.30% 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 has access to the City of Cocoa's public potable water and Brevard County sewer.

Environmental Constraints

Summary of Mapped Resources and Noteworthy Land Use Issues:

- Hydric Soils
- Aquifer Recharge Soils
- Coastal High Hazard Area
- Floodplain Protection
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Surface Waters of the State
- Land Clearing and Landscape Requirements
- Protected Species

For Board Consideration

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

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

Item No. 24Z00054

Applicant: Clayton Bennett (Owners: Jorge R. and Olga C. Tabush)

Zoning Request: GU to EU

Note: Currently non-conforming GU lot (undersized); Proposed EU would match adjacent EU zoning

Zoning Hearing: 11/18/2024; **BCC Hearing:** 12/12/2024

Tax ID No.: 2605989

- This is a preliminary review based on best available data maps reviewed by the Natural Resources Management Department (NRM) and does not include a site inspection to verify the accuracy of the mapped information.
- In that the rezoning process is not the appropriate venue for site plan review, specific site designs submitted with the rezoning request will be deemed conceptual. Board comments relative to specific site design do not provide vested rights or waivers from Federal, State or County regulations.
- **This review does not guarantee whether or not the proposed use, specific site design, or development of the property can be permitted under current Federal, State, or County Regulations.**

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Land Use Comments:

Hydric Soils

The subject parcel contains mapped hydric soils (Anclote sand, frequently ponded, 0 to 1 percent slopes; and Pompano sand, 0 to 2 percent slopes); indicators that wetlands may be present on the property. However, an Environmental Assessment report, dated September 2, 2024, provides that a field review of the site found no indicators of wetlands above the ordinary high water line. This determination is subject to verification.

Aquifer Recharge Soils

This property contains Candler fine sand, classified as an aquifer recharge soil. Pompano sand, 0 to 2 percent slopes may also function as aquifer recharge soils. Mapped topographic

elevations indicate the soils may consist of Type 3 Aquifer Recharge soils that have impervious area restrictions. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

Coastal High Hazard Area

The eastern portion of this property, on the IRL shoreline, 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 eastern portion of this property, on the IRL shoreline (A majority of the area within the Surface Water Protection Buffer) is mapped within 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 majority of this 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 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.

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.