



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

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<https://www.brevardfl.gov/PlanningDev>

STAFF COMMENTS

25Z00012

Eduardo Bertot & Brett Bertot

BU-1 (General Retail Commercial) and RU-2-10 (Medium-Density Multiple-Family Residential) to all RU-2-10 (Medium-Density Multiple-Family Residential)

Tax Account Number: 2301472
Parcel I.D.s: 23-35-12-02-2-16.01
Location: East side of US Hwy 1, approx. 1,610 ft. northeast of Kings Hwy. (District 1)
Acreage: 0.69 acres

Planning & Zoning Board: 06/16/2025

Board of County Commissioners: 07/17/2025

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** & RU-2-10	All RU-2-10
Potential*	1 Multi-Family Residence (Triplex) or 18 Multi-family Units**	2 Multi-Family Residences (Triplex)
Can be Considered under the Future Land Use Map	NO & YES RES 15	YES RES 15

* 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 to change the zoning from BU-1 (General Retail Commercial) and RU-2-10 (Medium-Density Multi-Family Residential) to all RU-2-10 (Medium-Density Multi-Family Residential) on 0.69 acres, providing a consistent zoning classification across the entire property. The subject property is currently developed with one triplex. The applicant intends to add another triplex. The zoning classification, RU-2-10 (Medium-Density Multi-Family Residential), allows multi-family residences. The subject property was subdivided from an approximate 2.18-acre parent property, and the current configuration was recorded on October 01, 1971, as recorded in ORB 1199, Page 788, of the Public Records of Brevard County, Florida. The original parent property was recorded as part of the Town of Bellwood, January 1923, in PB 3, Page 25, of the Public Records of Brevard County, Florida.

The subject meets the proposed RU-2-10, and the zoning classification is established in the area.

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 0.69 acres with approximately 0.60 acres zoned BU-1 commercial, would currently allow for the development of 18 multi-family units as stipulated by the Live Local Act.

Zoning History Actions:

The RU-1 was established on the subject property upon the adoption of the Brevard County Zoning Regulations on May 22, 1958. At such time, the subject property measured 100 ft. in width, and 938 ft. in depth.

Under **Z-310** (March 10, 1960), the subject property was rezoned to BU-1 from the property line fronting the right-of-way for a depth of 300 ft., and the remaining portion was rezoned RU-3 under the same action.

On October 13, 1962, the zoning classification was administratively changed under action **AZ-23** to RU-2-10 from the RU-3 designation.

The subject property has frontage on US Hwy 1, which is a FDOT-maintained right-of-way.

There are currently no open Code Enforcement cases noted on the property.

Surrounding Area

	Existing Land Use	Zoning	Future Land Use
North	Two Single-family residences	BU-1-A	RES 15
South	Single-family residence	BU-1	RES 15
East	Two Single-family residences	RU-2-10	RES 15
West	ROW, Utilities Plant	IU	PUB

The property to the north of the subject property is a 2.26-acre lot improved with two single-family homes built in 1927; zoned BU-1-A. To the east of the subject property, under the same ownership, is a 1.54-acre parcel developed with two single-family homes built in 1964 and 2021, respectively; zoned RU-2-10.

The property to the south is a 2.09-acre parcel developed with a single-family home built in 1960; zoned BU-1 and RU-2-10.

To the west of the subject property, across US Hwy. 1 is an 85-acre parcel, developed with a Utilities Plant owned by the City of Orlando, zoned IU.

All of the properties described are within the RES 15 and PUB FLUM designations.

RU-2-10 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-2-10 permits multiple-family residential development or single-family residences at a density of up to 10 units per acre on minimum lot sizes of 7,500 square feet.

The BU-1-A classification permits restricted neighborhood retail and personal service uses to serve the needs of nearby low-density residential neighborhoods. Minimum lot size of 7,500 square feet is required with minimum width and depth of 75 feet.

The 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 IU zoning classification permits light industrial land uses within enclosed structures. The minimum lot size is 20,000 square feet, with a minimum width of 100 feet and a minimum depth of 200 feet.

Land Use

The subject property's BU-1 zoning classification cannot be considered consistent with the RES 15 Future Land Use designation provided on the FLUM series contained within Chapter XI – Future Land Use Element of Brevard County's Comprehensive Plan. The subject property's RU-2-10 zoning classification can be considered consistent with RES 15.

Applicable Land Use Policies

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 proposes to add another tri-plex to the property. Any new development 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. Additional RU-2-10 zoning classification has a maximum lot coverage of 40 percent as noted in Section 62-1372 (4)(e). During site plan review, the applicant will need to demonstrate that the proposed addition will meet this criterion along with all of the RU-2-10 requirements. A preliminary concurrency analysis does not indicate that the proposed request would impact the surrounding established 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 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 seven (7) FLUM designations within a half-mile radius of the subject property. They include RES 8_DIR, RES 12_DIR, RES 15, Community Commercial (CC), Neighborhood Commercial (NC), PI (Planned Industrial), and PUB (Public Facilities). The subject property is surrounded RES 15 and is the predominant FLUM designation.

There have been no FLUM changes within the defined radius within the last three years.

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

Within the half-mile radius of the subject property zoning action 23Z00049, AU and BU-2 to all BU-2, approved February 1, 2024, a site plan application is under review.

22Z00049, BU-1 to RU-2-10, approved March 2, 2023, encompassed two parcels, both of which have duplexes under construction.

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

Staff analysis has determined there is no approved development that has not yet been constructed within one-half mile over the immediately preceding 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 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 character of the surrounding area east and northeast of US Hwy 1 is mostly single-family, multi-family residential, and a mobile home park, with lots ranging in size from 0.64 acres to 12.14 acres. Industrial uses are present to the west across US Hwy 1 and south. Zoning classifications in the area include RU-1-11, TR-3, RVP, RU-2-10, BU-1, BU-1-A, BU-2, and IU. There is a hodge-podge of zoning classifications in the area. However, IU is the predominant zoning classification in the area.

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 subject property is located on the east side of US Hwy 1, which is an existing residential area. 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 within an existing multi-family 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.

The subject parcel is not requesting to be rezoned for commercial, industrial, or other non-residential uses.

Preliminary Concurrency

The closest concurrency management segment to the subject property is US Hwy. 1, between SR 405 and Kings Hwy., which has a Maximum Acceptable Volume (MAV) of 41,790 trips per day, a Level of Service (LOS) of D, and currently operates at 54.23% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.03%. The corridor is anticipated to operate at 54.26% of capacity daily. The proposed development is not anticipated to 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 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 subject property has access to potable water and city sewer connection through the City of Titusville.

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
- 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 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. 25Z00012

Applicant: Brett Bertot and Eduardo Bertot (Owners: Brett Bertot and Eduardo Bertot)

Zoning Request: BU-1 & RU-2-10 to all RU-2-10

Note: to build triplex

Zoning Hearing: 06/16/2025; **BCC Hearing:** 07/03/2025

Tax ID No.: 2301472

- 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
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- Protected Species
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Land Use Comments:

Hydric Soils

A portion of the subject parcel contains mapped hydric soils (Satellite sand, 0 to 2 percent slopes); an indicator that wetlands may be present on the property. **A wetland delineation may be required prior to any land clearing activities, site plan design, or building permit submittal.**

Per Section 62-3694(c)(1), 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 renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. **Per Section 62-3694(e), any wetland impact, authorized under this division, for residential use shall be limited to the structural building area requirements for the primary use as defined by the zoning code, on-site disposal system requirements, and the 100-year flood elevation requirement for first floor elevations, and necessary ingress and egress.** 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

This property contains Satellite sand, 0 to 2 percent slopes which may also function as highly permeable soils. Additionally, the mapped topographic elevations show that the property falls within a Type 3 Aquifer Recharge area, which is 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.

Indian River Lagoon Nitrogen Reduction Septic Overlay

The southeastern portion 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.

Protected and Specimen Trees

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 activities may have occurred on this parcel between 2021 and 2023. The confirmation of unpermitted land clearing activities may result in code enforcement action.