



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**

**21PZ00059**

**Derosa Holdings, LLC**

**Amendment to an Existing Binding Development Plan (BDP) in RU-2-12**

Tax Account Number: 2534267  
Parcel I.D.: 25-37-26-25-H-2.01  
Location: 2050 S Atlantic Ave Cocoa Beach FL 32931; West side of S. Atlantic Avenue, 83.62 feet south of 20<sup>th</sup> Street and S. Atlantic Avenue, Cocoa Beach (District 2)  
Acreage: 0.24 acres  
Planning and Zoning Board: 11/15/2021  
Board of County Commissioners: 12/02/2021

**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)

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Zoning</b>	RU-2-12 with BDP	RU-2-12 with removal of existing BDP with new BDP
<b>Potential*</b>	2-units (attached on 2-lots)	2-units (detached on 1-lot)
<b>Can be Considered under the Future Land Use Map</b>	YES CC	YES CC

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

**Background and Purpose of Request**

The applicant's request to remove the existing BDP recorded in ORB 5422, Pages 5613 – 5619 and create a new BDP to restrict the property to two (2) detached residential units for residency or rental. The existing BDP allows for the development of a luxury townhouse project of 13-units upon 1.41 acres; this lot area represents only a fraction of the overall BDP area. Remaining lots within this block would remain bound to the existing BDP restrictions. A prior zoning action request was denied on August 2, 2012 under **12PZ-00038**. That request attempted to change the RU-2-12 with BDP zoning to BU-1-A (Restricted Neighborhood Retail Commercial) with removal of the existing BDP.

Development under the current BDP would require the development of a townhouse project on this 0.24-acre lot which would require that the owner subdivide this parcel into two platted lots each limited to the development of one attached living unit per lot. If allowed to amend the BDP stipulation, the owner proposes to develop two detached living units upon the existing parcel and not to require a new subdivision plat/review.

The current BDP was approved as part of Zoning action **Z-11033** on May 25, 2005 and provided a development limitation of thirteen (13) luxury townhome lots upon 1.41 acres. Under this BDP, this lot (0.24 acres) would be allowed to develop two attached units.

### **Land Use**

The subject property is currently designated as Community Commercial FLU. The RU-2-12 zoning classification is consistent with the Community Commercial FLU designation. The amendment of the BDP does not impact the FLU designation and does not increase the development density of this site.

### **Applicable Land Use Policies**

The Board should evaluate the compatibility of this application within the context of Administrative Policies 3 - 5 of the Future Land Use Element.

### **Public Facilities and Services Requirements**

#### **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:**

- E. 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.
- F. 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.
- G. 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.
- H. 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.

*As the project's intensity is 12 units per acre, connection to centralized sewer and potable water is required under Criterion E, above. Site is currently unimproved and not connected to utilities. Without*

*connection to sewer, this site should limit development to 4-units per acre, which would limit the site development potential to 1-unit.*

## **Residential Development in Neighborhood Commercial and Community Commercial Land Use Designations**

### **Policy 2.13**

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:

- a) Residential uses within Neighborhood Commercial and Community Commercial designations shall be encouraged to utilize neotraditional 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.
- 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.

*Although the RU-2-12 zoning classification is consistent with the Community Commercial FLU designation, the proposed development of this lot will be out of character with the abutting lots still constrained by the current BDP condition requiring townhouse style development.*

### **Analysis of Administrative Policy #3 - Compatibility between this site and the existing or proposed land uses in the area.**

The subject property lies within the Community Commercial Future Land Use (FLU) designation. With nearby Residential 15 FLU in the area, this site can utilize the same residential density allowance (15 units per acre) based upon Policy 2.13 stated above. The current RU-2-12 zoning density is established at 12-units per acre which is less than the current Residential 15 FLU designation. Due to that factor, the amendment of the current BDP remains compatible and consistent with the residential density allowance under the current FLU designation.

**Analysis of Administrative Policy #4 - Character of a neighborhood or area.** The character of the surrounding area is a mixture of commercial and residential uses. Surrounding commercial uses

are mixed with a self-storage mini-warehousing and a church to the north. The property to the west across Atlantic Avenue is developed as a Condominium and to the east, across highway A1A is an undeveloped recreational land zoned GML and owned by Brevard County. The character of the area is mostly multi-family residential use with supportive commercial establishments servicing the area.

## **Surrounding Area**

The adjacent lots within this block all carry the same RU-2-12 with BDP restrictions. RU-2-12 zoning classification is a 12 unit per acre multiple-family residential zoning classification. It permits multi-family residential development or single-family residences at a density of up to 12 units per acre on 7,500 square foot lots. The BDP restriction requires that the development style for this area is to be as attached luxury townhouses (fee-simple ownership). In this scenario, the BDP doesn't require all buildings to be attached in one building, only that thirteen (13) such units can be created over the property. It is unknown whether a site plan will be submitted for individual attached duplex style townhomes or whether a single 11-unit townhouse building will be proposed upon the remaining lot area.

Across the street to the north is BU-2 zoning developed as a self-storage mini-warehouse facility. To the east lying east of S. Atlantic Avenue is vacant property zoned Government Managed Lands (GML) and owned by Brevard County. To the south across Summer Street is another storage facility. To the west across of S. Orlando Avenue is a 77-unit residential condominium called Magnolia Bay.

RU-2-15 classification 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.

RU-2-30 classification permits high density multi-family residential development of up to 30 unit per acre. Multiple-family residential structures may be constructed on a minimum lot size of 10,000 square feet, with at least 100' of lot width and 100' of lot depth. Single-family residences are also permitted on minimum lot sizes of 7,500 square feet with at least 75' of lot width and 75' of lot depth.

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.

BU-2 zoning classification permits retail, wholesale and warehousing commercial land uses on minimum 7,500 square foot lots. Possible incompatibilities are due to the intensive nature of commercial activities permitted by the BU-2 classification and possible noise, light, traffic and other nuisance factors potentially associated with BU-2 activities.

GML zoning is to recognize the presence of lands and facilities which are managed by federal, state and local government, special districts, nongovernmental organizations (NGOs) providing economic, environmental and/or quality of life benefits to the county, electric, natural gas, water and wastewater utilities that are either publicly owned or regulated by the Public Service Commission, and related entities. This site is undeveloped at this time but may be utilized for its beach frontage as a passive park.

There has been no zoning actions within a half-mile radius of the subject property within the last three years.

## **Preliminary Concurrency**

The closest concurrency management segment to the subject property is US Highway A1A, between South end of One-way pairs to Minutemen Causeway, which has a Maximum Acceptable Volume (MAV) of 19,440 trips per day, a Level of Service (LOS) of D, and currently operates at 48.08% of capacity daily. The maximum development potential from the proposed rezoning does increase the percentage of MAV utilization by 0.06%. The corridor is anticipated to operate at 48.14% 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 public water by the City of Cocoa and centralized sewer may be available from the City of Cocoa Beach. Without connection to sewer, this site should limit development to 4-units per acre which would limit the site development potential to 1-unit. A septic system would need to meet FDOH requirements. Additionally, the septic system would need to utilize the more stringent system capable of limiting the nitrogen level output into the ground water table.

## **Environmental Constraints**

- Aquifer Recharge Soils
- Indian River Lagoon Nitrogen Reduction Overlay

The subject parcel appears to contain aquifer recharge soils and is located within the Indian River Lagoon Septic Overlay Map. 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 and/or U.S. Fish and Wildlife Service, as applicable.

No formal review by the Natural Resources Management Department is required for this change to Binding Development Plan (BDP). Natural Resources Management (NRM) reserves the right to assess consistency with environmental ordinances at all applicable future stages of development, including any land alteration permits or landscape restoration plans.

## **For Board Consideration**

The Board may wish to consider whether the requested action to remove the existing BDP and replace it with a new BDP is consistent and compatible with the surrounding area.