



BOARD OF COUNTY COMMISSIONERS

**Planning and Development Department**

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**STAFF COMMENTS  
 24Z00026**

**Curtis McKinney (Owners: Timothy Stickrath Developer, Inc.)**

**BU-2 (Retail, Warehousing and Wholesale Commercial) to AU (Agricultural Residential)**

Tax Account Number: 2601599  
 Parcel I.D.: 26-36-12-DE-34-4  
 Location: West of Hwy. 1, approximately 485 feet and 415 feet north of Friendship Lane (District 4)  
 Acreage: 2.60 acre portion of the 10.68 acre site  
 Planning & Zoning Board: 10/14/2024  
 Board of County Commissioners: 11/07/2024

**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>	BU-2	AU
<b>Potential*</b>	FAR 1.0 80 Dwelling Units**	Goat rescue***
<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.

\*\* Development potential at 30 units per acre pursuant to F.S. 125.01055 (Live Local Act).

\*\*\* BDP to limit use of the AU zoning to goat rescue use only, may be desired.

## Background and Purpose of Request

The applicant is requesting a change of zoning classification from BU-2 (Retail Wholesale and Warehousing) to AU (Agricultural Residential) for the purpose of legitimizing a goat rescue facility located on a 2.60-acre portion of a 10.39 acre commercial site. This facility will not be open to the public and access to this portion of the property will be restricted to ensure the safety and well-being of both humans and animals.

The subject property is located on US Highway 1 approximately 0.5 mile north of Suntree Boulevard. The goat rescue area is located along the FEC railway corridor at the west end of the wholesale/retail operation.

This rezoning request is a result of **Code Enforcement Case No. 24CE-00566**. The owners were cited for having goats on a parcel that is not appropriately zoned for livestock. The 10.39-acre property is developed as a landscape and hardscape wholesaler/retailer (Landscape Depot of Brevard, Inc.). This rezoning request will remedy the C.E. case.

This proposed rezoning request may be considered an introduction into the surrounding area and a down-zoning.

The subject property was recorded in Plat Book 1, Page 41 as a portion of the Plan of the Town of Pineda dated September 22, 1894.

The following actions constitute the zoning history of the property:

- **Resolution Z-91** – Changed zoning from GU (General Use) to IU (Industrial Zone), December 1958.
- **Resolution AZ-55** - Changed zoning from BU-1 (General Retail Commercial), back to GU, July 1975.
- **Resolution Z-5217**- Board denied a zoning change from GU to IU (Industrial Use), March 1980.
- **Resolution Z-5666**- Changed zoning from BU-1 to GU and approved a Conditional Use Permit (CUP) for the purpose of digging a borrow pit on the site, June 1981.
- **Resolution Z-10499** – Changed zoning from GU to AGR (Agricultural) on 5.9 acres and changed zoning from GU to BU-2 (Retail, Warehousing & Wholesale Commercial) on 4 acres of the site. This approval was conditioned with a Binding Development Plan recorded in OR Book 4257 at Page 1414, December 2000.
- **Resolution Z11405B** – approved a Small-Scale Amendment to the Future Land Use designation of the property from NC (Neighborhood Commercial) to CC (Community Commercial); and a companion zoning action **Z11405A**, changing the zoning classification from AGR to BU-2 and removed the Binding Development Plan recorded in December 2000, May 2008.

The access to the proposed 2.60 acre goat farm is through the commercial site’s parking lot and gravel interior driveways.

**Surrounding Area**

	<b>Existing Land Use</b>	<b>Zoning</b>	<b>Future Land Use</b>
<b>North</b>	Vacant land	BU-1	CC
<b>South</b>	Outdoor storage	BU-2	CC
<b>East</b>	Vacant land	BU-2	CC
<b>West</b>	Florida East Coast Railroad	N/A	N/A

The property to the north of the subject is vacant land encumbered with a large borrow pit. It is zoned BU-1 and has a land use designation of Community Commercial (CC). The BU-1 zoning classification allows retail commercial uses on minimum 7,500 square foot lots. It does not permit warehousing or wholesaling like the adjacent property zoned BU-2.

The property to the south is owned by the same owner and is zoned BU-2. The BU-2 classification permits retail, wholesale and warehousing uses on minimum 7,500 square foot lots. BU-2 zoning is the county’s most intense commercial zoning classification due to the intensive nature of commercial activities permitted such as contracting and heavy repair services. The underlying land use is CC (Community Commercial).

The property to the east is owned by the same owner. It also has BU-2 zoning with a CC land use designation. The property currently houses sheds and outdoor landscape materials for the business located on the site. A proposed site plan under **24SP00003** proposes to add a 6,400 square foot warehouse facility under the name of North Pineda Warehouse Center.

The FEC Railway ROW is located to the west and adjacent to the subject property. The character of the neighborhoods west of the FEC railway transitions from commercial, retail, and light industrial to the planned neighborhood communities of Suntree and Viera.

The proposed AU zoning classification permits single-family residential development of spacious character. The minimum house size in the AU zoning district is 750 square feet. The classification is divided into two types, AU and AU(L). AU is the standard agricultural residential classification, while the AU(L) is a low intensity sub-classification more suited to smaller lots where the neighborhood has a more residential than agricultural character.

In considering the request, it is important to note that the proposed AU zoning allows for the use called, 'agritourism'. There are no properties within a 500 ft. radius of the subject-property zoned AU. The closest AU zoning is 1,770 feet to the NW abutting the west side of the FEC Railway ROW. That property is developed with a 200' lattice wireless communications tower and does not support an agricultural exemption.

**There have been three zoning actions within a half-mile radius of the subject property within the last three (3) years.**

- **23Z00009 approved on August 30, 2023, amending an existing BDP for property buffers and design standards for a RV-Boat storage facility located approximately 1,000 feet SW of Freeman Lane. A formal site plan has been submitted for approval on this parcel, but no permits have been issued (23SP00017).**
- **21PZ00012 was approved May 8, 2021, for a CUP (Conditional Use Permit) to allow alcoholic beverages (beer & wine only) in connection with a pet kennel located on Suntree Boulevard.**
- **There is a pending zoning action (24Z00024) to rezone a parcel from RU-2-10 to BU-2. The property, 7235 Waelti Drive, is located just west of the subject site in the largely heavy commercial-light industrial corridor between US Highway 1 and the FEC Railway corridor.**

### **Future Land Use**

The subject property has a Future Land Use designation of CC (Community Commercial). Both the current BU-2 and proposed AU zoning can be considered compatible with the CC Future Land Use Designation pursuant to Section 62-1255.

### **Applicable Land Use Policies**

Per **FLUM Policy 2.10** residential development or the integration of residential development with commercial development shall be permitted in the Neighborhood Commercial (NC) and Community Commercial (CC) 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 FLUM. 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 FLUM which is on the same side of the street.

#### **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.

**This application is a request to re-zone a 2.60 acre portion of the most northwestern area of the 10.68 acre property for an agricultural, not residential use. The FLU remains CC and is bounded by commercial zonings BU-1 and BU-2. The surrounding area is not appropriate for residential use.**

**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 proposed use is in an area with heavy commercial use. Therefore, the request is not anticipated to diminish the enjoyment of safety or quality of life in the surrounding 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 a 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 area is commercial in character on the west side of US Highway 1. The uses east of Highway 1 along the Indian River corridor in the proximate area are residential and recreational uses.**

**There are no agricultural uses nor property zoned as AU in the area.**

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

**There has been no new development within 0.5 miles of the subject-property within the last three years.**

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

**There are two projects undergoing site plan review currently. The first is a site plan for Ranger Storage, located approximately 1,000 feet to the south of the subject parcel, on the south side of Freeman Lane under 23SP00017.**

**This project proposes three (3) buildings with a total of 32 units and 26,168 square feet of internal storage. The second project for North Pineda Warehouse Center, located directly east of this zoning request, proposes to develop two (2) 3,200 square foot buildings which totals 6,400 square foot of internal warehouse facility use under site plan under 24SP00003.**

- 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.

**This location is not within an established residential neighborhood or area. The site under consideration is more than 600 linear ft. from any residential zoned property and can be considered an introduction of AU into the area. While AU zoning does allow residential, the applicant is proposing a goat rescue to remedy a Code Enforcement action. Staff analysis indicates that the residential use is incompatible with the surrounding 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.

**This subject area is clearly defined by US Highway 1 to the east, and the Florida East Coast Railway ROW corridor to the west. This request is within an established commercial corridor bounded by commercial and industrial zoning in all directions. There is not an established residential neighborhood adjacent to this request across the railroad.**

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 adjacent area is commercial in nature not residential.**

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 commercial in nature. Residential development is east of US Highway 1 adjacent to the Indian River to the east, and west of US Highway 1 in the planned community of Suntree.**

### **Preliminary Concurrency**

The closest concurrency management segment to the subject property is US Highway 1 between Suntree Boulevard and Viera Boulevard, which has a Maximum Acceptable Volume (MAV) of 41,790 trips per day, a Level of Service (LOS) of D, and currently operates at 60.64% of capacity daily. The maximum development potential from the proposed rezoning does not increase the percentage of MAV utilization.

No school concurrency information has been provided as the development potential of this site (1 residential unit/2.5 acres) falls below the minimum number of new residential lots that would require a formal review.

The parcel is within the City of Cocoa limits for potable water. The property does not have access to Brevard County sanitary sewer.

### **Environmental Constraints**

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

- Aquifer Recharge Soils
- Coastal High Hazard Area
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Protected Species

No noteworthy land use issues were identified. NRM reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

### **For Board Consideration**

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

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

**Item No. 24Z00026**

**Applicant:** Curtis McKinney (Owners: Timothy Stickrath Developer, Inc.)

**Zoning Request:** BU-2 to AU

**Note:** for agricultural use (goat sanctuary)

**Zoning Hearing:** 10/14/2024; **BCC Hearing:** 11/07/2024

**Tax ID No.:** 2601599 (portion of)

- 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:**

### **Aquifer Recharge Soils**

The entire property contains St. Lucie fine sand, 0 to 5 percent slopes; and Pomello sand, classified as aquifer recharge soils. Mapped topographic elevations indicate the soils may consist of Type 2 and/or 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**

A few small, spotty areas adjacent to the existing pond are mapped as 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. However, these areas appear to be associated with the pond edges and the connection of the pond to the Indian River Lagoon (IRL) through the culvert under U.S. 1, and not in the property uplands.

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

A 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 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.