



BOARD OF COUNTY COMMISSIONERS

## Planning and Development Department

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

### STAFF COMMENTS

**21Z00042**

**Carter Hayes and Jessica Hayes**

**AU (Agricultural Residential) to RU-2-4 (Multi-Family Residential)**

Tax Account Number: 2318403 and 2318404  
Parcel I.D.: 23-36-34-00-761 and 23-36-34-00-762  
Location: West side of N. Courtenay, 2,006 feet north of Hall Road (District 2)  
Acreage: 2.79 acres

North Merritt Island Board: 1/06/2022  
Planning & Zoning Board: 1/10/2022  
Board of County Commissioners: 2/03/2022

### Consistency with Land Use Regulations

- Current zoning can be considered under the Future Land Use Designation, Section 62-1255.
- The proposed zoning 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
<b>Zoning</b>	AU	RU-2-4
<b>Potential*</b>	1 single-family unit**	10 multi-family units
<b>Can be Considered under the Future Land Use Map</b>	YES, RES 4	YES, RES 4

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

\*\* The two parcels combined have the potential for one single family resident.

### Background and Purpose of Request

The applicants are seeking a change of zoning classification from AU (Agricultural Residential) to RU-2-4 (Low-Density Multiple-Family Residential) for the purpose to be able to construct ten units on the combined parcels for the purpose of renting out the individual units. The applicants did not provide a site plan with the application.

The subject parcels were recorded into the current configuration per Official Records Book 523, Page 523, on September 01, 1962. There is an existing single-family residence on the south parcel built in 1966. The north parcel is vacant. In 1962 AU zoning required a minimum lot size of one acre and

having a minimum width of 125 feet and a minimum depth of 125 feet. The AU zoning today requires a minimum lot size of 2.5 acres, a minimum width of 150 feet, and a minimum depth of 150 feet. The

AU is the original zoning of the parcels.

### **Land Use**

The subject properties retain a FLU designation of Residential 4 (RES 4). Both the AU and the proposed RU-2-4 zoning classification maybe considered with RES 4 FLU.

### **Applicable Policies**

**FLUE Policy 1.7** – The Residential 4 Future land use designation affords an additional step down in density from more highly urbanized areas. This land use designation permits a maximum density of up to four (4) units per acre, except as otherwise may be provided for within the Future Land Use Element. Connection to water and sewer is required.

**Conservation Policy 5.2 E(1)(a)** – Residential land uses within wetlands, that are a part of a formal subdivision or site plan, on properties containing wetlands shall be limited to the following: a. 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. The preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total non-commercial and non-industrial acreage on a cumulative basis as set forth in Policy 5.2.E (7), for subdivisions and multi-family parcels greater than five acres in area, New Town Overlays, PUDs, and if applicable, mixeduse land development activities as specified in Policy 5.2.E (6).

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.**

The subject parcels lie within the Residential 4 FLU designation. The lot to the north of the parcels is designated Residential 4. The lot to the south of the property is designated Residential 4. The lots to the west of the parcels are designated Residential 4. To the east is N. Courtenay Parkway. The mobile home park located across N. Courtenay Parkway on the eastside is designated Residential 2. The Residential 4 FLU is consistent with both the existing AU zoning and proposed RU-2-4 zoning.

### **Analysis of Administrative Policy #4 - Character of a neighborhood or area.**

The developed character of the surrounding area west of N. Courtenay Parkway is low-density residential along with commercial development abutting N. Courtenay Parkway. The residentially developed parcels in the area are developed with single-family homes and exceed one half-acre lot size.

To the north is an undeveloped 1.38 acre parcel that is zoned AU. To the south is a 2.86 acre parcel undeveloped that is zoned AU. To the west is a subdivision, Citrus River Groves, that is developed

with single-family homes on half acre parcels or larger which is zoned SR (Suburban Residential). There is no RU-2-4 zoning in the surrounding area. A multi-family use may be considered a transitional from N. Courtenay to the single-family residential to the west.

**Analysis of Administrative Policy #6** The use(s) proposed under the rezoning, conditional use or other application for development approval must be consistent with (a) all written land development policies set forth in these administrative policies; and (b) the future land use element, coastal management element, conservation element, potable water element, sanitary sewer element, solid waste management element, capital improvements element, recreation and open space element, surface water element and transportation elements of the comprehensive plan. Development of this site is limited to 1.8% wetland impacts. Based on the mapped area of the wetlands, it encompasses a significant area of the property.

## **Surrounding Area**

The abutting parcels to the north and south have the County zoning classification AU. The abutting parcels to the west are zoned SR (Suburban Residential). To the east is N. Courtenay Parkway (State Road 3).

The current AU zoning classification permits single-family residences and agricultural uses 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.

The proposed RU-2-4 classification is a four unit per acre multiple-family residential zoning classification. It permits multi-family residential development or single family residences at a density of up to four units per acre on 7,500 square foot lots. RU-2-4 allows apartments or it can be developed as townhomes (single-family attached) in accordance with RA-2-4 zoning standards, which requires site planning and platting pursuant to article VII of this chapter, pertaining to subdivisions.

There have been two rezoning applications in the surrounding area in the past 5 years.

On July 26, 2018, application **18PZ00018** changed the zoning classification from AU to EU (Estate Use) with a Binding Development Plan (BDP) limiting density to 34 units. This parcel is located on the north side of E. Hall Road, 2,675 feet east of the subject property.

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.

On October 12, 2017, application **17PZ00072** changed the zoning classification from AU and BU-1 to RA-2-4 with a Binding Development Plan (BDP) limiting density to 48 units. This parcel is located on the southwest corner of N. Courtenay Parkway and Porcher Road, 1,754 feet north of the subject property.

The current trend along the west corridor of N. Courtenay Parkway has been a mix of commercial development along with residential development.

## **Environmental Constraints**

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

- Wetlands/Hydric Soils
- Floodplain
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Protected and Specimen Trees
- Protected Species

The subject parcels contain mapped wetlands and hydric soils. A wetland determination/delineation will be required prior to any site plan design, land clearing activities, or building permit submittal. Information available to NRM indicates that unpermitted impacts to wetland may have occurred. The discovery of unpermitted wetland impacts may result in enforcement action. 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. For multi-family parcels greater than five acres in area, the preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total non-commercial and non-industrial acreage on a cumulative basis as set forth in Section 65-3694(c)(6). 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 subject parcels are located within an area mapped as FEMA Special Flood Hazard Area (SFHA) AE. Per Section 62-3724(4) of the Floodplain Protection ordinance, any development, land alteration, or grading on North Merritt Island in the area from Hall Road, north to State Road 405, herein after referred to as "Area," is subject to compensatory storage, and written certification from the engineer of record that there will be no adverse flooding impacts upon properties within the Area resulting from the proposed development.

The applicant is encouraged to contact NRM at 321-633-2016 prior to any site plan design or permit submittal.

## **Preliminary Concurrency**

The closest concurrency management segment to the subject property is N. Courtenay Parkway (State Road 3), between Hall Road and N. tropical Trail, which has a Maximum Acceptable Volume of 41,790 trips per day, a Level of Service (LOS) of D, and currently operates at 37.35% of capacity daily. The maximum development potential from the proposed rezoning does increase the level of MAV utilization by 0.14%. The corridor is anticipated to operate at 37.49% of capacity daily. The proposal is not anticipated to create a deficiency in LOS.

At this time, Lewis Carroll Elementary School, Jefferson Middle School and Merritt Island High School are projected to have enough capacity for the total of the projected and potential students from the proposed request.

The parcels can be serviced by Brevard County sewer. The Brevard County sewer line runs along the west side of N. Courtenay Parkway directly in front of the parcels. The parcels are serviced by City of Cocoa water.

### **For Board Consideration**

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

## Item # 21Z00042

**Applicant:** Hayes

**Zoning Request:** AU to RU-2-4

**Note:** Applicant wants to develop 10 townhouses.

**Tax ID Nos:** 2318403 & 2318404

- 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:**

- Wetlands/Hydric Soils
- Floodplain
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Protected and Specimen Trees
- Protected Species

The subject parcels contain mapped wetlands and hydric soils. A wetland determination/delineation will be required prior to any site plan design, land clearing activities, or building permit submittal. Information available to NRM indicates that unpermitted impacts to wetland may have occurred. The discovery of unpermitted wetland impacts may result in enforcement action. 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. For multi-family parcels greater than five acres in area, the preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total non-commercial and non-industrial acreage on a cumulative basis as set forth in Section 65-3694(c)(6). 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.

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The applicant is encouraged to contact NRM at 321-633-2016 prior to any site plan design or permit submittal.

### **Land Use Comments:**

#### **Wetlands/Hydric Soils**

The subject parcel contains mapped National Wetland Inventory (NWI) and SJRWMD wetlands, and hydric soils (Samsula Muck) as shown on the NWI Wetlands, SJRWMD Florida Land Use & Cover Codes, and USDA Soil Conservation Service Soils Survey maps, respectively; indicators that wetlands may be present on the property. A wetland determination/delineation will be required prior to any site plan design, land clearing activities, or building permit submittal. Information available to NRM indicates that unpermitted impacts to wetland may have occurred. The discovery of unpermitted wetland impacts may result in enforcement action. 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. For multi-family parcels greater than five acres in area, the preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total non-commercial and non-industrial acreage on a cumulative basis as set forth in Section 65-3694(c)(6). 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.

#### **Floodplain**

The subject parcels are located within an area mapped as FEMA Special Flood Hazard Area (SFHA) AE. Per Section 62-3724(4) of the Floodplain Protection ordinance, any development, land alteration, or grading on North Merritt Island in the area from Hall Road, north to State Road 405, herein after referred to as "Area," is subject to compensatory storage, and written certification from the engineer of record that there will be no adverse flooding impacts upon properties within the Area resulting from the proposed development.

Delineation of floodplains, shall use best available pre-alteration ground elevation data. Sealed pre-existing topographic survey or engineered site plan delineating floodplain limits on the property, if any, with base flood elevation using best available flood elevation data. The engineer shall provide a report that includes full engineering data and analysis, including the hydraulic and hydrologic modelling and analysis demonstrating that there is no impact. The NMI Flood Study may be applicable depending on submittal date. Engineered compensatory storage shall be maintained by the owner in perpetuity. Please call NRM prior to any grading, filling or land alteration activities.

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

The entire parcel is mapped within the Indian River Lagoon Nitrogen Reduction Septic 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. If applicable, NRM requires a Septic Maintenance Notice be filed with the Brevard Clerk of Courts at time of building permit.

#### **Protected and Specimen Trees**

The property contains mapped polygon of SJRWMD FLUCCS code 4340-Upland Mixed Coniferous/Hardwood trees. Protected Trees (greater than or equal to 10 inches in diameter) and Specimen Trees (greater than or equal to 24 inches in diameter) are included in this FLUCCS code and are likely found on the project area. Per Section 62-4341(18), Protected and Specimen Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Per Section 62-4332, Definitions, Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. A tree survey will be required at time of site plan submittal, and is recommended prior to any site plan design. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for tree preservation and canopy coverage requirements. Land clearing is not permitted without prior authorization by NRM.

### **Protected Species**

Information available to NRM indicates that federally and/or state protected species may be present on the property. 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.