



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

21PZ00091

Michael R. & Malena C. Stewart

Removal of an Existing Binding Development Plan (BDP) in RU-2-12

Tax Account Number: 2521132
Parcel I.D.: 25-37-26-25-H-1.01
Location: 2060 S Atlantic Ave Cocoa Beach FL 32931; West side of S. Atlantic Avenue, at the NW corner of Summer Street and S. Atlantic Avenue, Cocoa Beach (District 2)
Acreage: 0.23 acres
Planning and Zoning Board: 2/14/2022
Board of County Commissioners: 3/03/2022

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	RU-2-12 with BDP	RU-2-12 with removal of existing BDP
Potential*	2-units (attached)	2-units
Can be Considered under the Future Land Use Map	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 is to develop one single-family residence upon the lot and requests that the Board remove the existing BDP limitations recorded in ORB 5422, Pages 5613 – 5619. The existing BDP limits development to 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.

Zoning action # **21PZ00059**, to remove the adjacent lot to the north from the BDP, was approved at the Board's January 11th, 2022 meeting.

The original 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. The removal of this BDP would allow the development of up to two residential units upon this lot. As the applicant is proposing only one unit (single-family residence) to be developed, the Board may decide to request that the applicant/owner propose such BDP amendment to further limit the residential development potential of this site or any other restrictions.

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.

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.

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 is proposing the development of one single-family residence.

- 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.

A MAI appraisal has not been provided to the County on this site.

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 historic land use pattern has been a mixture of multi-family and commercial uses. The placement of single-family residences, a density reduction, would be new to the character of the area.

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

It appears no changes to the immediate area have occurred within the last three years. This parcel is adjacent to unimproved parcels lying both north and west of this site.

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

To the northwest of this site on the west side of S. Orlando Avenue a warehouse was proposed under 18SP00021 which is set to expire on October 9, 2022.

D. Whether the proposed use(s) would result in a material violation of relevant policies in any elements of the Comprehensive Plan.

As this site is undeveloped, any proposed plan will need to comply with the 1988 Brevard County Comprehensive Plan and its amendments.

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 an institutional use to the north. The property to the west remains an undeveloped lot. To the east, across highway A1A is an undeveloped recreational parcel 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.

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. Removing the property from the BDP does not increase the development density of the property; however, it does not restrict the use to luxury townhomes. The applicant proposes to limit development to one single-family residence.

Surrounding Area

	Existing Land Use	Zoning	Future Land Use
North	Undeveloped Land	RU-2-12 with BDP	CC
South	18-unit Parking garage	BU-1	CC
East	Undeveloped park	GML	Recreation (REC)
West	Undeveloped Land	RU-2-12 with BDP	CC

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 have been two zoning actions within a half-mile radius of the subject property within the last three years. The first, **21PZ00059**, is located adjacent and due North of this property. The second action immediately west of this proposed site is under Zoning action # **21PZ00090** which is seeking the same request to remove the existing BDP upon that property.

Preliminary Concurrency

The closest concurrency management segment to the subject property is north-bound traffic on 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 47.00% 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 47.06% 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 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 Septic Overlay
- Land Clearing and Landscape Requirements
- 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 whether the requested action to remove the existing BDP is consistent and compatible with the surrounding area.

NATURAL RESOURCES MANAGEMENT DEPARTMENT
Zoning Review & Summary

Item # 21PZ00091

Applicant: McCarty for Stewart

Zoning Request: Remove BDP from RU-2-12

Notes: Applicant wants to remove BDP which limits lot to attached townhouse use, and build a single-family home.

P&Z Hearing Date: 02/14/22; **BCC Hearing Date:** 03/03/22

Tax ID No: 2521132

- 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:

- Aquifer Recharge Soils
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Land Clearing and Landscape Requirements
- 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.

Land Use Comments:

Aquifer Recharge Soils

The subject parcel contains mapped aquifer recharge soils (Canaveral-Palm Beach-Urban land complex) as shown on the USDA Soil Conservation Service Soils Survey map. 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 Overlay

The entire parcel is mapped within the Indian River Lagoon Nitrogen Reduction Overlay per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay. If sewer 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.

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 tree preservation and canopy coverage requirements. Information available to NRM indicates that recent, unpermitted land clearing and filling activities may have occurred. Discovery of unpermitted land clearing and filling may result in code enforcement action. Land clearing is not permitted without prior authorization by NRM. The applicant is encouraged to contact NRM at (321) 633-2016 prior to any to any land clearing activities, site plan design or building permit submittal.

Protected Species

Information available to NRM indicates that 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 and/or U.S. Fish and Wildlife Service, as applicable.