



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

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STAFF COMMENTS

21Z00047

Brad A. Lange

BU-1 (General Retail Commercial) and RU-2-30 (High-Density Multi-Family Residential) to RU-2-4 (Low-Density Multi-Family Residential)

Tax Account Number: 2318704
Parcel I.D.: 23-36-35-00-260
Location: 4910 N. Courtenay Parkway Merritt Island, FL 32953 (District 2)
Acreage: 2.00 acres

North Merritt Island Board: 2/10/2022

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	BU-1 & RU-2-30**	RU-2-4
Potential*	43,560 sq. ft. commercial 8 residential units	8 residential units
Can be Considered under the Future Land Use Map	YES CC & NC	YES CC & NC

* Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations. **The RU-2-30 zoning is nonconforming to the 1988 Comprehensive Plan's Future Land Use Map.

Background and Purpose of Request

The applicant requests to change a portion of the 2.75-acre property from BU-1 (General Retail Commercial) and RU-2-30 (High-Density Multi-Family Residential) to RU-2-4 (Low-Density Multi-Family Residential) in order to subdivide the property into a commercial portion and a residential portion. The existing RU-2-30 zoned portion (allows up to 30 units per acre) is nonconforming to the Future Land Use Map and is not connected to centralized sewer. Variance action # **21PZ00094** heard by the Board of Adjustment on January 19, 2022 was approved. The variance reduced the lot width required from 75 feet down to 50 feet within the RU-2-4 zoning classification.

The applicant wishes to retain multi-family use and is down zoning the intensity to four (4) units per

acre to be consistent with the Community Commercial FLU residential density limitation. The western portion of the lot that is not part of this zoning request is developed as a CBS building. The owner wishes to retain the BU-1 zoning on that portion of the parcel. There are three residential structures and one accessory building within the RU-2-30 area. One commercial building is located within the BU-1 portion of the overall site.

The lot received both the BU-1 and RU-2-30 zoning designations under Zoning Resolution **Z-2407** adopted on April 3, 1969. The BU-1 portion covered the western 225 feet of lot depth. The RU-3 (now RU-2-30) zoning covered the eastern remainder depicted as three parcels in that zoning file. A conditional use permit for beer/wine on-premises alcoholic beverage consumption was approved under Zoning Resolution **14PZ-00098** adopted on February 5, 2015 for the previous bait and tackle shop over the BU-1 zoned area of the lot. Prior to that was a prior approval for a CUP for beer/wine accessory to a restaurant under **Z-11028** adopted on March 3, 2005.

Land Use

The subject property is currently designated as Community Commercial (CC) and Neighborhood Commercial (NC) FLU. The proposed RU-2-4 zoning is consistent with both the existing Community Commercial (CC) and Neighborhood Commercial (NC) FLU designations. The existing BU-1 zoned portion is consistent with the CC FLU designation.

Applicable Land Use Policies

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.

Policy 1.8 –The Residential 2 Future land use designation permits lower density residential development with a maximum density of up to two (2) units per acre, except as otherwise may be provided for within the Future Land Use Element.

The Board should evaluate the compatibility of this application within the context of Administrative Policies 3 - 5 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 proposed zoning change is a down zoning and reduces the development potential from 30 to 4 units per acre. It is anticipated that offsite impacts will be reduced accordingly. The effects of lighting, site activity and traffic will be evaluated at the time of site plan review.

- 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 appraisal can determine if material reduction has or will occur due to the proposed intensity to 4 units per acre.

- 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 strip commercial development along the N. Courtenay Parkway corridor with single-family zoning beyond the frontage lots. This site contains a developed commercial building along N. Courtenay Parkway.

- 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, east and south of this site.

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

To the west across N. Courtenay Parkway was a 48-unit attached (townhouse) residential development site planned under 18SD00016. This project has not received final plat approval and will expire in June, 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 was previously developed and the uses are consistent with the BU-1 and RU-2-30 zoning classifications and those uses are also conforming or considered to be

nonconforming (predating) the 1988 Comprehensive Plan, no material violation of relevant policies have been identified.

The subject property was not affected by the **2018 North Merritt Island Small Area Study (SAS)** boundary. The recommendation of the 2018 North Merritt Island SAS was for all parcels 2.5 acres in size designated as Residential 1 (RES 1) Future Land Use with Agricultural Residential (AU) zoning have their Future Land Use Map designation decreased to Residential 1:2.5 (RES 1:2.5). While the Board acknowledged the Recommendations of the 2018 North Merritt Island SAS, staff was not directed to implement this recommendation. This lot is not affected by the Report as this property is neither zoned AU nor has a Residential FLU.

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

The developed character of the surrounding area is a mixture of BU-1 and BU-2 commercial zonings along N. Courtenay Parkway with abutting single-family residential zonings to the east. Abutting property to the north, south and west are currently unimproved. Property on the west side of N. Courtenay Parkway is zoned RA-2-4. A 48-unit townhouse development was proposed for that lot. Project was reviewed under **18SD00016**. This lot's BU-1 zoned frontage is developed. The building is currently vacant. Additionally, zoning action # **21Z00042**, a recent request to change 2.79-acres from AU to RU-2-4, was heard by the North Merritt Island Special Dependent Board on January 06, 2022 and by the Planning and Zoning Board on January 10, 2022 and is planned to be heard by the Board on February 3, 2022. This property is located south of the current zoning request approximately 1,790 feet and lies on the west side of N. Courtenay Parkway.

The request to reduce the zoning residential density from 30 units per acre to 4 units per acre is consistent with the current Future Land Use designations (NC & CC) as connection to centralized sewer is not desired by the applicant. Three residential units exist on the property today and the density limitation will limit future growth to a total of 8-residential units.

Surrounding Area

	Existing Land Use	Zoning	Future Land Use
North	Undeveloped Land	AU	NC
South	Undeveloped Land	BU-1	CC
East	Single-family residence	AU	RES 2
West	Undeveloped Land	RA-2-4 with BDP	CC, NC and RES 4

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.

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.

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.

RA-2-4 classification permits single-family attached development at a density of up to 4 units per acre. RA-2-4 is intended to provide a transition between single-family detached zoning classifications and multiple-family zoning classifications, permitting fee simple ownership of individual attached units.

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.

There has been one zoning action within a half-mile radius of the subject property within the last three years. The request was heard under **18PZ00018** on July 26, 2018 and approved a zoning change from AU to EU, with a BDP recorded in ORB 8222, Pages 98 - 101, dated July 26, 2018, stipulating a conservation easement over the wetlands on the eastern portion of the property, limiting density to a maximum of 34 units, and limiting ingress and egress to one (1) access point. The site is located SE of the current track 2,050 feet to the east located on the north side of E. Hall Road. No recent development trends have been identified in this area.

Preliminary Concurrency

The closest concurrency management segment to the subject property is N Courtenay Parkway, between Hall Road to N. Tropical Trail, which has a Maximum Acceptable Volume (MAV) of 41,790 trips per day, a Level of Service (LOS) of D, and currently operates at 37.36% of capacity daily. The maximum development potential from the proposed rezoning does increase the percentage of MAV utilization by 0.11%. The corridor is anticipated to operate at 37.47% 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 is connected to City of Cocoa water. The parcel is not connected to sanitary sewer.

Environmental Constraints

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

- Protected Species

The subject parcel contains mapped hydric soils. A wetland determination/delineation will be required prior to any site plan design, land clearing activities, 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. 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) for multi-family parcels greater than five acres in area, and if applicable, mixed-use land development activities as specified in Section 62-3694(c)(5). 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 site plan design or permit submittal.

For Board Consideration

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

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

Item # 21Z00047

Applicant: Lange

Zoning Request: BU-1 & RU-2-30 to RU-2-4

Note: Applicant wants to split lot and develop 8 multi-family units on east portion.

Tax ID No: 2318704

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

The subject parcel contains mapped hydric soils. A wetland determination/delineation will be required prior to any site plan design, land clearing activities, 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. 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) for multi-family parcels greater than five acres in area, and if applicable, mixed-use land development activities as specified in Section 62-3694(c)(5). 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 site plan design or permit submittal.

Land Use Comments:

Hydric Soils/Wetlands

The subject parcel contains mapped hydric soils (Basinger sand and St. Johns sand depressional) as shown on the USDA Soil Conservation Service Soils Survey maps; an indicator 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. 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. 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) for multi-family parcels greater than five acres in area, and if applicable, mixed-use land development activities as specified in Section 62-3694(c)(5). 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.

Aquifer Recharge Soils

Basinger sand and St. Johns sand-depressional may also function as aquifer recharge soils. 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 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

Aerials indicate mature canopy trees exist onsite. Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4331(3), a purpose and intent of the ordinance is to encourage the protection of Specimen Trees. 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 the time of any future site plan submittal. 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. The applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities. 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. The entire subject property is mapped within a Florida Scrub Jay polygon as shown on the Scrub Jay Occupancy Map. 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.