



BOARD OF COUNTY COMMISSIONERS

**Planning and Development Department**

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

**STAFF COMMENTS**

**21Z00046**

**Lance Boncek**

**GU (General Use) to AU(L) (Agricultural Residential (Low Intensity))**

Tax Account Number: 2403955  
Parcel I.D.: 24-35-11-01-6-8  
Location: South side of Angelica Street, approximately 200 feet east of Alan Shepard Avenue (District 2)  
Acreage: 1.08 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)

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Zoning</b>	GU	AU(L)
<b>Potential*</b>	1 unit**	1 unit
<b>Can be Considered under the Future Land Use Map</b>	YES RES 1:2.5	YES RES 1:2.5

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

\*\* Lot is a nonconforming lot recorded in the Canaveral Groves Subdivision Book 2 Page 62.

**Background and Purpose of Request**

The applicant requests to change the zoning classification from GU (General Use) to AU(L) (Agricultural Residential – Low Intensity) in order to construct an accessory building that would be exempted from size limitations for accessory buildings. Sec. 62-2100.5(g) states that accessory buildings in the agricultural zoning classification are exempted from this size limitation. The applicant is applying for a rezoning rather than applying for a variance to allow for a larger accessory structure.

The property is developed with a 1,632 sq. ft. single-family home and two accessory buildings that the applicant plans to move and replace should the rezoning be approved.

The site has the original 1958 zoning. A variance request submitted under **21PZ00087** was approved by the Board of Adjustment on January 19, 2022. This request was to reduce the 2.5-acre minimum

lot size required in the AU(L) zoning classification to 1.08 acres (a reduction of 1.42 acres).

The AU(L) zoning classification is a less intense classification than AU as it does not allow for commercial agricultural uses such as the packing processing, and sales of commodities raised on the premises, plant nurseries, or private camps.

## **Land Use**

The subject property is currently designated as Residential 1:2.5 (RES 1:2.5) FLU. Both the GU and AU(L) zoning classifications can be considered consistent with the Residential 1:2.5 FLU designation.

## **Applicable Land Use Policies**

**Policy 1.10** –The Residential 1:2.5 Future land use designation permits lower density residential development with a maximum density of up to one (1) dwelling unit per 2.5 acres, 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;

**AU(L) zoning classification permits non-commercial agricultural uses that are already present in the area. The applicant is not currently proposing any agricultural uses.**

- 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.

**The proposed accessory structure will still need to meet all requirements for a building permit including setbacks and height.**

- 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 single-family homes built on lots of approximately one acre. The applicant is not proposing any non-residential uses.**

- 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.**

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

**It appears there has been no development approved within the last three years.**

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

**The proposed uses would not result in a material violation in any elements of the Comprehensive Plan.**

The property is within the area known as Canaveral Groves. All parcels within this area of Canaveral Groves retain a FLU designation of RES 1:2.5. Developed parcels in the area are exclusively composed of site-built single-family homes, with some properties also containing accessory agricultural uses.

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

The developed character of the surrounding area is a mixture single-family homes and vacant lots with zoning classifications of GU and AU. A majority of lots in the area are around one-acre in size. While GU is the original zoning of the area and is still the zoning on most of the lots in the neighborhood, there is a history of parcels being rezoned to AU or AU(L). This rezoning could be considered consistent with the character of the area. The closest AU parcel to the subject property is approximately 350 feet north on the south side of Caraway Street. This is the only parcel with AU zoning in a 500-ft. radius, and it does not have an agricultural exemption.

The 500-ft. notification radius includes 28 properties, of which 19 are homesteaded.

To the south of the strip of land dedicated for drainage is a neighborhood within the jurisdiction of the City of Cocoa.

#### **Surrounding Area**

The subject property is bounded by Angelica Street to the north and an undeveloped right-of-way to the south. The parcels to the east and west of this site are both currently zoned GU with a RES 1:2.5 FLU designation. Both properties are developed with single-family homes. To the north across Angelica Street are more parcels zoned GU with a RES 1:2.5 FLU designation. The property to the south of the undeveloped ROW is in the city limits of Cocoa.

The existing GU classification is a holding category, allowing single-family residences on five acre lots with a minimum width and depth of 300 feet. The minimum house size in GU is 750 square feet. Section 62-1188(8) permits consideration of rezoning of non-conforming lots of record to classifications that are consistent with the density allowances of the Comprehensive Plan. On parcels over 5.0 acres in area, agricultural pursuits are permitted with conditions found in Section 62-1904 of Brevard County Code. Properties less than 5.0 acres in area could request a conditional use permit will still zoned GU.

The proposed AU(L) zoning classification permits single-family residences and non-commercial agricultural uses on 2.5 acre lots, with a minimum lot width and depth of 150 feet. The minimum house size in AU(L) is 750 square feet.

There have 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 Canaveral Groves Boulevard between Lee Street and Grissom Parkway, which has a Maximum Acceptable Volume (MAV) of 15,600 trips per day, a Level of Service (LOS) of E, and currently operates at 48.27% of capacity daily. The maximum development potential from the proposed rezoning does not increase the percentage of MAV utilization. The corridor is anticipated to operate at 48.27% 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 and utilizes septic.

### **Environmental Constraints**

- Hydric Soils/Wetlands
- Aquifer Recharge Soils
- Land Clearing and Landscape Requirements
- Protected Species

The subject parcel contains mapped hydric soils, indicating that wetlands may be present. A wetland delineation will be required prior to any land clearing activities or building permit application submittal. Per Section 62-3694(c)(2), 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 would render a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. Application of the one-unit-per-five-acres limitation shall limit impacts to wetlands for single family residential development on a cumulative basis, to not more than 1.8% of the total property acreage. Any permitted wetland impacts must meet the requirements of Sections 62-3694(e), including avoidance of impacts, and will require mitigation in accordance with 62-3696.

Pursuant to the Florida Agricultural Lands and Practices Act (Chapter 163.3162(4), Florida Statutes), any activity of a Bona Fide Agricultural Use on land classified as agricultural land pursuant to Section 193.461, Florida Statute is exempt. **The Brevard County Property Appraiser Office establishes Bona Fide Agricultural land classification and should be contacted at 321-264-6700 for classification requirements.** If Bona Fide Agriculture classification is not established, then land clearing activities and accessory structures, including barns, sheds and other detached structures, are not permitted in wetlands. Section 62-3694(a)(1) states that non-bonafide agricultural and forestry operations utilizing best management practices shall be permitted in wetlands provided they do not result in permanent degradation or destruction of wetlands.

Historical aerials indicate that unpermitted land clearing activities may have occurred between 2017 and 2018. The discovery of unpermitted wetland impacts and/or land clearing activities may result in code enforcement action.

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 requested rezoning action is consistent and compatible with the surrounding area. The Board may also wish to consider the potential effects of Agritourism.

**NATURAL RESOURCES MANAGEMENT DEPARTMENT**  
**Rezoning Review & Summary**  
**Item # 21Z00046**

**Applicant:** Lance Boncek

**Zoning Request:** GU to AU(L)

**Notes:** Applicant wants an accessory structure.

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

**Tax ID No:** 2403955

- 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
- Land Clearing and Landscape Requirements
- Protected Species

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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.

### **Land Use Comments:**

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

The subject parcel contains mapped hydric soils (Basinger sand), as shown on the USDA Soil Conservation Service Soils Survey map; an indicator that wetlands may be present on the property. A wetland delineation will be required prior to any land clearing activities or building permit application submittal. Per Section 62-3694(c)(2), 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 would render a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. Application of the one-unit-per-five-acres limitation shall limit impacts to wetlands for single family residential development on a cumulative basis, to not more than 1.8% of the total property acreage. Any permitted wetland impacts must meet the requirements of Sections 62-3694(e), including avoidance of impacts, and will require mitigation in accordance with 62-3696.

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Historical aerials indicate that unpermitted land clearing activities may have occurred between 2017 and 2018. The discovery of unpermitted wetland impacts may result in code enforcement action.

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.

#### **Aquifer Recharge Soils**

Basinger sand may also function as an aquifer recharge soil. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

## **Land Clearing and Landscape Requirements**

Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4331(3), the purpose and intent of the ordinance is to encourage the protection of Heritage Specimen trees. 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 unpermitted land clearing activities may have occurred between 2017 and 2018. Discovery of unpermitted land clearing activity may result in code enforcement action. 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.