



BOARD OF COUNTY COMMISSIONERS

**Planning and Development Department**

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

**STAFF COMMENTS**

**22Z00008**

**Robert F. Erario and Jeremy Sothea Sun**

**BU-1 (General Retail Use) and AU (Agricultural Residential) to all AU**

Tax Account Number: 2001826  
Parcel I.D.s: 20g-34-17-MK-\*-1.01  
Location: 4740 US Highway 1 Mims, FL (District 1)  
Acreage: 7.24 acres

Planning & Zoning Board: 4/18/2022  
Board of County Commissioners: 5/05/2022

**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>	BU-1 & AU	AU
<b>Potential*</b>	Up to 43,560 sq. ft. (1.0 FAR) in BU-1 and one single-family unit in AU	2 SF units and Agricultural Pursuits
<b>Can be Considered under the Future Land Use Map</b>	YES CC & RES 1:2.5	YES CC & RES 1:2.5

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

**Background and Purpose of Request**

The applicants are seeking a change of zoning classification from AU (Agricultural Residential) and BU-1 (General Retail Commercial) to all AU. BU-1 zoning occupies a one-acre portion of their 7.24-acre property along Highway 1. The applicant seeks to have AU across the entire parcel for agricultural purposes. The applicants would also like to have farm animals in the future (horses and goats).

The original zoning on the property was AU. The most recent zoning request, Zoning Action # **21Z00027**, was approved by the Board on November 4, 2021. The BDP stipulated that a 25-foot natural buffer along the property lines abutting residentially zoned properties would be required. However, the application was later withdrawn on February 4, 2022. The applicant stated they

couldn't meet the conditions of the proposed Binding Development Plan (BDP). Recently, four variances were approved under **21PZ00050** adopted on September 22, 2021. The variances approved were to: 1) Section 62-1334(4), to permit a variance of 27.0 feet from the required 150.0 foot minimum lot width; 2) Section 62-1334(5), to permit a variance of 9.0 feet from the required 15.0 foot side setback for an accessory structure; 3) Section 62-1334(5)(b), to permit an accessory structure located forward of the front building line of a principal structure; 4) Section 62-1334(5)(b), to permit an accessory structure located forward of the front building line of a principal structure, in an AU zoning classification. This variance approval legitimized three existing accessory buildings and allowed a reduced lot frontage along the US Highway 1 corridor. In this application the applicants stated the existing accessory structures were built by a previous owner and have been in this configuration for over 10 years. Under Zoning Resolution **Z-9116** adopted on April 26, 1993, the remaining AU western portion of the lot received a temporary Conditional Use Permit for a Security Trailer use. Under Zoning Resolution **Z-7061** adopted on April 15, 1985, the eastern portion was rezoned from AU to BU-1.

Florida Statute 570.86 defines "agritourism activity" as "any agricultural related activity consistent with a bona fide farm, livestock operation, or ranch or in a working forest which allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy activities, including farming, ranching, historical, cultural, civic, ceremonial, training and exhibition, or harvest-your-own activities and attractions." Local government is prohibited from adopting ordinances, regulations, rules, or policies that prohibit, restrict, regulate, or otherwise limit an agritourism activity on land that has been classified as agricultural land.

Wedding venues may be considered an agritourism activity. The applicant had previously submitted a site plan for a wedding/event venue (**20SP00021**), but subsequently withdrew it. Within a 500 ft. buffer area around the subject property, there are no AU zoned property with an Agricultural Exemption from the Property Appraiser.

## **Land Use**

The subject property is currently designated Community Commercial (CC) and Residential 1:2.5 (RES 1:2.5). The AU request could be considered consistent with both the Community Commercial (CC) and Residential 1:2.5 FLU designations.

## **Applicable Land Use Policies**

**FLUE Policy 1.10** The Residential 1:2.5 Future land use designation. The Residential 1:2.5 land use designation, which establishes the lowest density of all the residential future land use designations, permits a maximum density of up to one (1) unit per 2.5 acres, except as otherwise may be provided for within this element. Development in the Residential 1:2.5 land use designation should seek to maximize the integration of open space within the development and promote inter-connectivity with surrounding uses.

**FLUE Policy 1.4** – Community Commercial (CC) development activities are intended to serve several neighborhoods, sub-regional and regional areas and provide an array of retail, personal and professional uses. Development activities which may be considered within the Community

Commercial (CC) Future Land Use designation. 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 owners state the existing use/business is in operation and will continue to be an 8-5 (5-days a week, M-F) wholesale operation. Expansions of use may require site plan review. Development will need to be in compliance with Brevard County's Performance Standards identified in Sections 62-2251 – 62-2271 of Brevard County Code.**

- 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 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;

**All of the parcels directly adjacent to Highway 1 have a FLU designation of CC or Neighborhood Commercial (NC). There are two convenience stores on the southwest and southeast corners of Aurantia and Highway 1, but otherwise the only commercial use is a retail building currently used for used motorcycle sales. The rest of the parcels adjacent to the highway are currently vacant or contain site-built or manufactured homes. Review of the 2018 – 2021 aerials do not indicate any properties in the area utilizing agricultural pursuits.**

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

**There has not been any actual development within this area in the preceding three (3) years.**

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

**There has not been any actual development within this area in the preceding three (3) years.**

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

**With the approval of the recent variance request, no material violation of relevant policies have been identified.**

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

In general, lots fronting Highway 1 have a mix of residential and commercial zoning classifications. Zoning classifications along the highway include AU, RRMH-1, BU-1, and SR. There is BU-1 zoning adjacent to Highway 1 directly south of the subject property. There is AU zoning directly across the highway to the east, approximately 388 feet to the south, and approximately 550 feet to the north on the same side of the road as the subject property.

Many of the residential lots along Aurantia Road obtain access through flag lots and/or access easements. While the subject property has a 75-foot wide flag “stem” going from the interior north toward Aurantia Road, it does not have approval as a flag lot and therefore must continue to use Highway 1 for access. Flag stem access per Section 62-102 (b) is to provide access for residential building permit purposes and is not to be utilized for commercial purposes.

#### **Surrounding Area**

	<b>Existing Land Use</b>	<b>Zoning</b>	<b>Future Land Use</b>
<b>North</b>	SF residence	AU	RES 1:2.5
<b>South</b>	SF residence	AU	RES 1:2.5
<b>East</b>	SF residence	SR & BU-1	NC & CC
<b>West</b>	Vacant	AU & RRMH-1	RES 1:2.5

The 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 and plants nurseries. Conditional uses in AU include hog farms, zoological parks, and land alteration.

The RRMH-1 classification permits single-family mobile homes and detached single-family residential land uses on minimum one acre lots, with a minimum width and depth of 125 feet. This classification permits horses, barns and horticulture as accessory uses. The minimum house size is 600 square feet.

The SR classification permits single family residences on minimum half acre lots, with a minimum width of 100 feet and a depth of 150 feet. The minimum house size in SR is 1,300 square feet.

The GU classification permits allows 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.

SR classification permits single family residences on minimum half acre lots, with a minimum width of 100 feet and a depth of 150 feet. The minimum house size in SR is 1,300 square feet.

The current 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-1 permits plant nurseries with no outside bulk storage of mulch, topsoil, etc. BU-1 does not permit the raising and grazing of animals.

There was one zoning action within a half-mile radius of the subject property within the last three years. That action was **21Z00019** which was approved by the Board on February 3, 2022. The request was to change RRMH-2.5 (Rural Residential Mobile Home) to RRMH-1 (Rural Residential Mobile Home) on a 3.48-acre lot. This lot is located 1,560 feet in a southwest direction abutting the end/terminus (east side) of Springfield Avenue.

### **Preliminary Concurrency**

The closest concurrency management segment to the subject property is US Highway 1, between Burkholm Road to the Volusia County line, which has a Maximum Acceptable Volume (MAV) of 40,300 trips per day, a Level of Service (LOS) of C, and currently operates at 10.16% of capacity daily. The maximum development potential from the proposed rezoning decreases the percentage of MAV utilization by 1.16%. The corridor is anticipated to operate at 9.00% 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.

Public water or centralized sewer is not available. The applicants will be required to utilize onsite well and septic system. The closest water line to the parcel is approximately 2.06 miles to the south on Highway 1, while the closest sewer line is approximately 4.6 miles south on Highway 1.

### **Environmental Constraints**

- Hydric Soils/Wetlands
- Aquifer Recharge Soils
- Floodplain
- Indian River Lagoon Nitrogen Reduction Overlay
- Protected Species
- Land Clearing and Landscape Requirements

The portion of parcel requesting the rezoning to AU contains mapped hydric soils, an indicator that wetlands may be present on the property. A wetland determination was performed by Toland Environmental Consulting (TEC) on the subject parcel eastern portion, and no wetlands were found. The remaining portion of the parcel has mapped National Wetland Inventory (NWI) wetlands,

SJRWMD wetlands, and hydric soils, and will require a wetland determination prior to any land clearing activities, site plan design, or building permit submittal. The applicant is encouraged to contact NRM at 321-633-2016. 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.

### **For Board Consideration**

The Board may wish to consider whether the request is consistent and compatible with the surrounding area. The Board may also wish to consider the potential impacts of agritourism activities in the area.

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

**Item #22Z00008**

**Applicant:** Robert Erario

**Zoning Request:** BU-1 and AU to all AU

**Note:** Applicant wants entire parcel for agricultural pursuits.

**P&Z Hearing Date:** 04/18/22; **BCC Hearing Date:** 05/05/22

**Tax ID No:** 2001826 – east portion

- 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
- Floodplain
- Indian River Lagoon Nitrogen Reduction Overlay
- Protected Species
- Land Clearing and Landscape Requirements

The portion of parcel requesting the rezoning to AU contains mapped hydric soils, an indicator that wetlands may be present on the property. A wetland determination was performed by Toland Environmental Consulting (TEC) on the subject parcel eastern portion, and no wetlands were found. The remaining portion of the parcel has mapped National Wetland Inventory (NWI) wetlands, SJRWMD wetlands, and hydric soils, and will require a wetland determination prior to any land clearing activities, site plan design, or building permit submittal. The applicant is encouraged to contact NRM at 321-633-2016. 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.

## **Land Use Comments:**

### **Hydric soils/Wetlands**

The portion of parcel requesting the rezoning to AU contains mapped hydric soils (Tomoka muck) as shown on the USDA Soil Conservation Service Soils Survey map, an indicator that wetlands may be present on the property. A wetland determination was performed by Toland Environmental Consulting (TEC) on the subject parcel portion, and no wetlands were found. The remaining portion of the parcel has mapped National Wetland Inventory (NWI) wetlands, SJRWMD wetlands, and hydric soils, and will require a wetland determination prior to any land clearing activities, site plan design or building permit submittal. The applicant is encouraged to contact NRM at 321-633-2016. 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.

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's Office establishes Bona Fide Agricultural land classification, and should be contacted at 321-264-5393 for specific requirements to meet this classification.**

Section 62-3694 states that non-bona fide agricultural and forestry operations utilizing best management practices are permitted in wetlands provided they do not result in permanent degradation or destruction of wetlands, or adversely affect the functions of the wetlands. 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.

### **Aquifer Recharge Soils**

The subject parcel contains mapped aquifer recharge soils (Pomello sand) 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.

### **Floodplain**

The entire parcel is mapped as being within an isolated floodplain as identified by the Federal Emergency Management Agency and as shown on the FEMA Flood Map. The property is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance. Per Section 62-3724(3)(d), compensatory storage shall be required for fill in excess of that which will provide an upland buildable area within the isolated floodplain greater than one third (1/3) acre in size.

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

Portions of the parcel that are not included in the rezoning are mapped within the Indian River Lagoon Nitrogen Reduction Overlay per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay. If adequate sewer for any future development within the overlay 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**

Information available to NRM indicates that federally and/or state protected species may be present on the property. The subject property has mapped Florida Scrub Jay polygon onsite 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.

### **Land Clearing and Landscape Requirements**

Aerials show the parcel to be wooded. Per Section 62-4339, the parcel has requirements for Canopy, Protected and Specimen tree(s) preservation. 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. 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. Information available to NRM indicates that recent, unpermitted land clearing activities may have occurred along U.S. Highway 1. The discovery of unpermitted land clearing activities may result in enforcement action. Land clearing is not permitted without prior authorization by NRM.