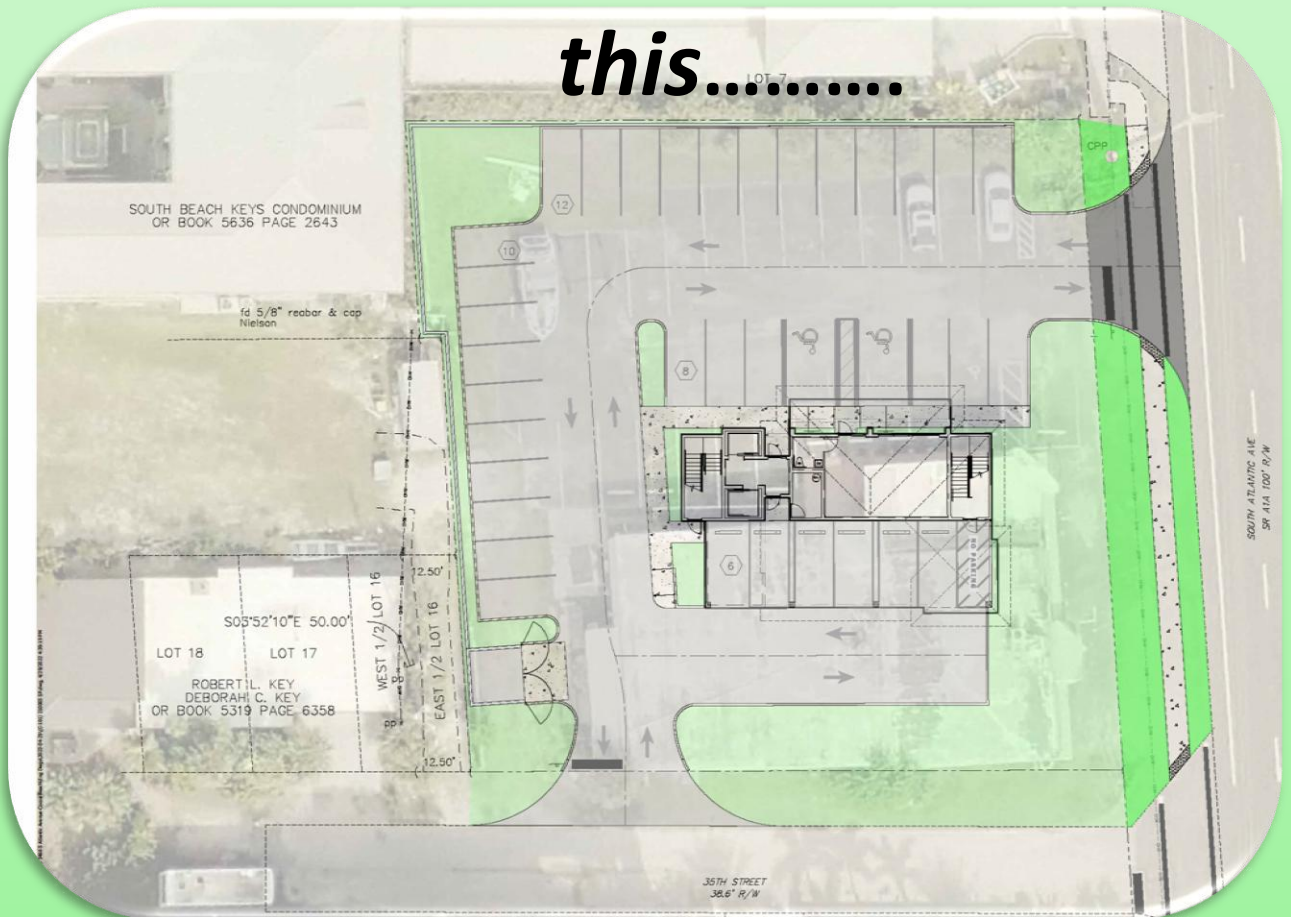


What if this...

**Could become
something
similar to**



this.....



**Comprehensive Plan Amendment
Consistency and Justification Report
OBC, LLC
Brevard County
Rochelle W. Lawandales, FAICP**

MEMORANDUM

DATE: May 4, 2022
TO: Mr. Jack Kirschenbaum, Esquire
GrayRobinson, P.A.
RE: Consistency and Compatibility Report-OBC Realty, LLC

Property Location: Atlantic Avenue and 35th Street, South Cocoa Beach in Unincorporated Brevard County
Existing Use: Vacant parking lot and former Bar
Existing Land use: Residential 15
Existing Zoning: BU-1
Proposed/Requested Land Use: Community Commercial, to make the BU-1 consistent with the Future Land Use Map

INTRODUCTION

The Brevard County staff report states: "The applicant is requesting to amend the Future Land Use designation from Residential 15 (RES 15) to Community Commercial (CC) on 0.52 acres to allow for redevelopment of the subject property with a mixed use building, that would include commercial retail, resort dwellings, and a restaurant. The applicant has provided a concept plan which has not been vetted by staff for meeting Land Development Regulations and is for discussion purposes only.

The subject property currently has a Future Land Use designation of RES 15 and is developed with one structure (built in 1958) that was formerly utilized as a nightclub/bar (a non-conforming use). The original future land use that was adopted with the Comprehensive Plan in September of 1988 was Residential land use and Urban residential density (30 dwelling units per acre maximum) which did not take into account the existing development on the subject property."

I have been asked to evaluate the Future Land Use Map amendment against the appropriate and relevant policies in the Comprehensive plan to render an opinion as to the consistency and compatibility of the request with the Comprehensive Plan and the surrounding community. To do that, I have visited the site and prepared a series of maps and figures to demonstrate existing conditions and compatibility with the area with the proposed redevelopment project.

Map 1 is a 2 part composite map that shows the existing uses and commercial zoning along the AIA corridor within proximity to the subject property. The County's Land Use Map and Zoning Map, both found in the staff report to the Local Planning Agency/Planning Board for this item, are incorporated by reference.

MAP 1 **GENERALIZED LOCATION AND SURROUNDING COMMUNITY**



Legend

- 1 Banana River Resort Rentals (Commercial use)**
- 2 Former Dry Cleaners/Surf Shop (BU-1 Zoning)**
- 3 Cocoa Beach Riverfront Resort rental (Commercial use)**
- 4 Subject property (BU-1 Zoning)**
- 5 Anthony's Hotel (Commercial use)**

Legend

- 6 Rentals (Commercial use)**
- 7 Vacant (BU-1A zoning)**
- 8 Mixed Use store and 2 residents (BU-1 Zoning)**

Source: Google Maps, April, 2022



Legend

- 9 Taco City Restaurant (BU-1 Zoning) and parking**
- 10 Lost in Paradise Resort Hotel (Commercial Use)**
- 11 Restaurant/Commercial building (BU-1 Zoning)**
- 12 Fat Snook Restaurant (BU-1A Zoning)**
- 13 Commercial Building (BU-1 Zoning)**
- 14 Rentals (Commercial use)**

Source: Google Maps, April, 2022

EXISTING CONDITIONS

This area of State Road AIA began to develop as Brevard County gave birth to the space program. During that time, most of the lands along the frontage were developing with a mix of commercial and residential uses. Much of the residential development was in the form of both single family and apartments as rental housing for the flood of employees coming to the Space Center and to the new businesses that were erupting in the area. For years, these forms of development peacefully co-existed, with few conflicts. They still do today.

The entire AIA artery still contains a mix of uses, restaurants that serve alcohol, offices, surf shops, fitness, and diverse housing types. The long history of this segment of AIA into and through Cocoa Beach is a testament to the ability of various uses to be compatible with each other.

As the area grew and the state became more sophisticated in its planning for growth and development, new statutes required local comprehensive planning. There are many 'spots' and 'lots' across the county and cities that were designated for a particular land use on the future land use map (FLUM), but the actual current use did not 'match'. If the uses did not match,

the existing use became non-conforming, as the Future Land Use Map is the governing document.

Many of those non-conforming uses continued to operate for many years after adoption of the FLUM. Others converted to different uses or sit vacant and deteriorating, presenting potential blighted conditions in the area. Figure 1 shows what the existing building looked like in 2012 and Figure 2 shows the current location and site conditions in 2022 demonstrating the deterioration occurring on the site.

The Comprehensive Plan and Land Development Codes will govern the development of the site. The County's comprehensive Plan, adopted in 1988, changed over time, and this parcel has a



Figure 1 Site from 2012 from Brevard County Property Appraiser, April 2022



Figure 2 Current Location Map and Site from 2022 from Brevard County Property Appraiser, April 2022

land use that doesn't allow for the zoning. As the zoning and use of the property has remained unchanged, the request is to amend the land use to 'match' the zoning. This will make the land use and zoning consistent, enabling the owners to development the property and bring it back to life in a new form, meeting all current environmental, building, aesthetic, and other contemporary codes.

The owners' desire to demolish existing pavement and structures and replace with a new mixed use product that would house multi-family units, a small retail area, and a restaurant in a new vertically mixed use structure. The project would have to comply and conform to the County's land development code for uses that are allowed in the Community Commercial Land Use category and standards set forth in the BU-1 Zoning District. With the BU-1 zoning in place, no rezoning is necessary. The project will have to go through site plan and administrative approvals, as well as outside agency permitting. A site plan was submitted for demonstrative purposes, and is being used by me to analyze other pertinent consistency and compatibility factors required by the Comprehensive Plan.

Existing site conditions are substandard at best. Figure 3 provides a graphic example.



Figure 3 Existing site conditions

The site cannot be redeveloped without the land use amendment being approved so that the zoning and Future Land Use are consistent. The owners site plan is indicative of the numerous upgrades that would result of the land use amendment. These are conceptualized in Figure 4. The owners have several conceptual elevations, but are not provided for the requested amendment as they are subject to change.

Conceptualized Project

Any new project will be required at a minimum to provide:

1. Stormwater treatment for pre and post
2. New defined access management on AIA and 35th street
3. New site landscaping and green space for example shown in green
4. New waste management
5. AIA Sidewalk with raised curb at corners for pedestrian safety

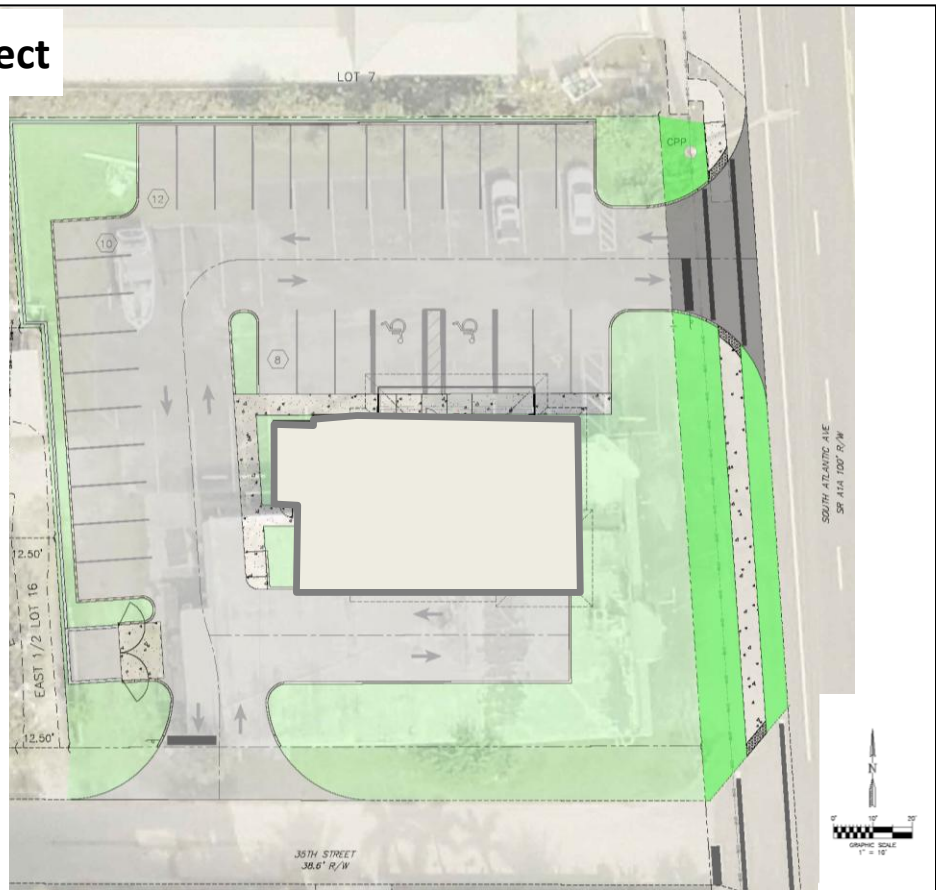


Figure 4 Conceptual project

Once redeveloped, the site will provide economic benefits to the community through renewed use of a thriving business which has a new taxable value, and potentially add considerable sales taxes, resort taxes/fees, and the like rippling through the Brevard County economy. Coupled with the environmental sustainability measures and new stormwater treatment, the new site and building will be a positive community contributor.

FINDINGS OF FACT

The staff provided findings of fact for the Local Planning Agency/Planning Board to consider when making a recommendation to the County Commission. The County Commission will also consider these same factors in their decision making. The following discussion provides my expert opinion on how this proposed plan amendment, project plan and subsequent intended development will adhere to, implement, and be consistent with the Brevard County Comprehensive Plan as a supplement to the staff report.

Administrative Policy 3

Compatibility with existing or proposed land uses shall be a factor in determining where a rezoning or any application involving a specific proposed use is being considered. 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.

Response: The proposed land use amendment will enable the owners to demolish the existing aging structure and remove asphalt, to redevelop the site with a vertical mixed-use project. The building had been a 'Strip Club' for some say almost 40 years or more since 1958, and converted to a nightclub/bar until it closed around 2018. New residential projects have been built over the years adjacent to the site. Clearly, the business location has not had any effect on adjacent properties as their values and demand for the lands continued to rise. The project will have to meet current regulations and the conceptual site plan shows they can meet the BU-1 land development standards. The new users will also be governed by noise decibel level standards.

On site lighting will directed on the site only, with no spillage off site. Modern kitchens have air filtering systems to eliminate odors. During the site plan and administrative review process, the owner will formally demonstrate through engineering and architectural plans how they meet the codes.

The main improvement will be in how stormwater treatment is handled. While there are some green spaces on the current site, they're mostly compacted dirt, which along with the completely paved portions of the site, cause untreated water to pool and then drain untreated into the nearby Indian River.

The new project is designed to fit within the confines of the site and neighborhood. The proposed project as currently designed will be similar in size, scale, and mass as adjacent properties. This project is compatible and will not diminish safety, health, quality of life or welfare of surrounding properties. To the contrary, the amendment and new project will be an improvement.



Figure 5 Brevard County Property Appraiser 2022

B. Whether the proposed use(s) would cause a material reduction (five percent or more) in the value of existing abutting lands or approved development.

Response: History and experience has shown that redevelopment of aging or derelict sites/structures will increase the values of the subject property and therefore, not cause any diminution of values of adjacent lands. A rising tide lifts all boats, and improvements to one site will help stimulate overall improvements to other sites and future values in the area.

C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through analysis of:

1. historical land use patterns;

Response: Historically, AIA has been an eclectic mix of diverse and divergent uses that have peacefully co-existed with each other from the time of the space race. Single family, rentals, condominiums, surf shops, fine dining and casual restaurants, water dependent uses, bars, and hotels have created the overall ambiance and development pattern of the south Cocoa Beach/ North Patrick community. This proposed amendment will enable redevelopment of the property under the BU-1 zoning category which allows an array of commercial, residential, or mixed use projects. The area is already a mix of single, multi-family, duplex structures of varying heights and sizes. A new development on this site, will be compatible with the surrounding neighbors, enhanced by up to date landscape, stormwater, access management, and other zoning requirements. Figure 6 provides an aerial view of the existing properties surrounding the subject site.



Figure 6 Compatibility

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

Response: This area of the county has not had much development as most of the new development has gone to green fields or established redevelopment districts. However, there are signs of some new projects where existing buildings are being demolished and replaced with new similarly scaled projects.

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

Response: Unknown

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

Response: This project will further the goals, objectives, and policies of the Comprehensive Plan specifically, renewal and replacement of existing resources, sustainable development, placement of stormwater management systems where there are none to help with conditions in the Indian River and create the required consistent relationship between the comprehensive plan future land use map and zoning.

Administrative Policy 4

Character of a neighborhood or area shall be a factor for consideration whenever a rezoning or any application involving a specific proposed use is reviewed. The character of the area must not be materially or adversely affected by the proposed rezoning or land use application. In evaluating the character of an area, the following factors shall be considered:

Criteria:

A. The proposed use must not materially and adversely impact an established residential neighborhood by introducing types of intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, et cetera), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.

Response: The area surrounding the subject property is a mix of uses, including commercial and tourist or transient related residential facilities and condominiums. The numerous rental facilities are a commercial use. Concurrency will be formally evaluated at the time of site plan and building permit. However, the staff has done a preliminary review and find no reduction in the level of service, stating: *"The subject site is within the City of Cocoa service area for potable water and within the City of Cocoa Beach service area for wastewater treatment.*

The preliminary concurrency analysis did not indicate that the proposed development would cause a deficiency in the transportation adopted level of service."(Source: Brevard County Staff Report included in LPA/PZ May 9, 2022 Agenda Packet)

The amount of trip generation from the proposed facilities will not be much different than the nightclub/bar that previously existed on the site for years. The retail shop will be mainly used by the neighborhood and welcomed because there is no 'bodega' anywhere in the vicinity. People from the neighborhood will walk to the store for sundries, ice cream or a sandwich. The trips generated are anticipated to be easily absorbed into the current AIA traffic pattern.

B. In determining whether an established residential neighborhood exists, the following factors must be present:

1. The area must have clearly established boundaries, such as roads, open spaces, rivers, lakes, lagoons, or similar features.

Response: This is not a residential neighborhood. It is a narrow, mixed use, linear neighborhood that is bordered by the Indian River on one side and the Atlantic Ocean on the other. Map 1 shows the existing development pattern and locations of properties within that are zoned BU-1 or BU-1A. The County land use and zoning maps show a large portion of the lands are designated for neighborhood and community commercial land uses and BU-1 zoning. The remainder is higher density multi-family in the form of RES-15, RES 30, and contains mainly transient or rentals in low to high-rise residential structures, which are de facto commercial uses. This proposed project, with a mix of uses, will be a perfect fit for the site and current development landscape.

2. Sporadic or occasional neighborhood commercial uses shall not preclude the existence of an existing residential neighborhood, particularly if the commercial use is non-conforming or pre-dates the surrounding residential use.

Response: This building and use have been here since 1958. The residences have come and gone and changed over the years up and down AIA. The use is allowed under the BU-1 Zoning district. The County's actions to change the land use map years ago created an inconsistency that will be rectified by this action.

3. An area shall be presumed not to be primarily residential but shall be deemed transitional where multiple commercial, industrial or other non-residential uses have been applied for and approved during the previous five (5) years.

Response: This area has been 'forgotten' for many years. It is only recently that redevelopment has begun, and the area is now ripe for new development and redevelopment.

Administrative Policy 5

In addition to the factors specified in Administrative Policies 2, 3, and 4, in reviewing a rezoning, conditional use permit or other application for development approval, the impact of the proposed use or uses on transportation facilities either serving the site or impacted by the use(s) shall be considered. In evaluating whether substantial and adverse transportation impacts are likely to result if an application is approved, the staff shall consider the following:

Criteria:

- A. Whether adopted levels of services will be compromised;
- B. Whether the physical quality of the existing road system that will serve the proposed use(s) is sufficient to support the use(s) without significant deterioration;
- C. Whether the surrounding existing road system is of sufficient width and construction quality to serve the proposed use(s) without the need for substantial public improvements;
- D. Whether the surrounding existing road system is of such width and construction quality that the proposed use(s) would realistically pose a potential for material danger to public safety in the surrounding area;
- E. Whether the proposed use(s) would be likely to result in such a material and adverse change in traffic capacity of a road or roads in the surrounding area such that either design capacities would be significantly exceeded or a de facto change in functional classification would result;
- F. Whether the proposed use(s) would cause such material and adverse changes in the types of traffic that would be generated on the surrounding road system, that physical deterioration of the surrounding road system would be likely;
- G. Whether projected traffic impacts of the proposed use(s) would materially and adversely impact the safety or welfare of residents in existing residential neighborhoods.

Response to A-G: The County staff has evaluated the proposed request and development. Their determination was that the size and uses to be located within the structure will not cause any diminution of levels of service for water, wastewater, or the transportation network.

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.

Response: The proposed land use change will enable redevelopment of this site which currently is a solid sheet of asphalt, having been built when very few if any environmental, building, landscape, or development regulations were adopted. The redevelopment and infill project will have to meet current codes and as such, will now provide pre-post stormwater treatment, more pervious area, more green spaces for landscaping, better construction materials and techniques, better defined site access, and further the goals, objectives and policies for all those elements.

Administrative Policy 7

Proposed use(s) shall not cause or substantially aggravate any, (a), substantial drainage problem on surrounding properties; or (b), significant, adverse and unmitigatable impact on significant natural wetlands, water bodies or habitat for listed species.

Response: To the contrary, the redevelopment of this site will now include stormwater management systems, reducing or eliminating the 'sheet flow' of run-off into the Indian River from practically 'wall to wall' impervious surface parking area. There will also be green or pervious spaces for landscape and attenuation prior to outfall into the FDOT stormwater or other systems. The site is completely disturbed with no wetlands or habitat.

The staff evaluated and I have considered other policies of the Comprehensive Plan in this evaluation. The staff's discussion on the "Role of the Comprehensive Plan in the Designation of Commercial Lands and Policy 2.1" considers the criteria for evaluating commercial land use requests. At a minimum, these criteria address the following:

Criteria:

A. Overall accessibility to the site;

Response: The site has had access on AIA from the time it was a 2-lane road, and also on 35th street. These 2 access points will be enhanced by the development of the site. Pedestrian safety is also enhanced with designated cross-walks, raised pavers at the driveway curb, and sidewalks for life safety.

B. Compatibility and inter-connectivity with adjacent adopted Future Land Use designations and land uses;

Response: The owner of this site owns an adjacent property. That property along with another property will have continued access through a perpetual easement. No one will be blocked off.

C. Existing commercial development trend in the area;

Response: Three corners at 35th street and AIA are commercial uses: this site, the Hotel on the NE side of AIA and 35th street and the former surf shop, now studio on the SE corner. Two (2) are zoned BU-1. The County made them all inconsistent with the Future Land Use Map in 1988. However, they continued to operate as have numerous other commercial properties within 1 mile of the project site. Those properties to the north were given commercial land uses. The same should be extended to these properties at this location. There has been no interest in converting them to other non-commercial uses, and in fact, as evidenced by this request, the market shows continued interest in maintaining commercial uses in this area.

D. Fundamental changes in the character of an area prompted by infrastructure improvements undertaken by the County;

Response: None. The development pattern has continued from the adoption of the plan.

E. Availability of required infrastructure at/above adopted levels of service;

Response: The staff stated: "The subject site is within the City of Cocoa service area for potable water and within the City of Cocoa Beach service area for wastewater treatment.

The preliminary concurrency analysis did not indicate that the proposed development would cause a deficiency in the transportation adopted level of service."

F. Spacing from other commercial activities;

Response: Map 1 shows their locations.

G. Size of proposed commercial designation compared with current need for commercial lands;

Response: This property has functioned as commercial and there is a current need to continue that use through the requested land use amendment.

H. Adherence to the objectives/policies of the Conservation Element and minimization of impacts upon natural resources and systems;

Response: The project will have to meet current policies and regulations. The project's planned enhancements to create more green/open space, install exfiltration systems for stormwater management, and add landscaping, will be a fundamental improvement to the existing conditions.

I. Integration of open space; and

Response: The conceptual plan indicates there will now be about 27% open space and pervious area.

J. Impacts upon strip commercial development.

Response: Not applicable.

Additionally, the proposed amendment meets the qualifications for Comprehensive Plan Policy 2.7 Activities and Uses in Community Commercial designated lands and Policy 2.8 Location criteria for the following reasons:

1. The area is a narrow linear strip with frontage on AIA that has been developed since the late 1950, with not much change, other than infill and redevelopment of existing sites and similar uses. Commercial lands have stayed along the frontage and corners on the west side with the residential uses (new and old) to the rear. A few are located on the east, but predominately on the west.
2. There are several established commercial locations that are neither nodes nor in strip form. They are neighborhood sized and scaled buildings and uses that provide community services to the people living in proximity or those passing by.
3. The size and scale of the proposed development is in a form that fits beautifully on the site and is compatible and consistent with the surrounding area.
4. Development of infill sites such as this are encouraged, particularly when they can replace old structures and provide stormwater management where there was not any or it was limited before.
5. The concept plan shows how the project is compatible and consistent with the Comprehensive Plan.

CONCLUSION

From a planning perspective, this proposed amendment and subsequent redevelopment project is the type of development that local governments would welcome. It is a disturbed and developed site, which does not meet current environmental standards or building codes. The site will be demolished and on it, a new, modern development, with modern amenities, stormwater management, parking, landscaping, and infrastructure will arise.

Many improvements will come from the redevelopment project:

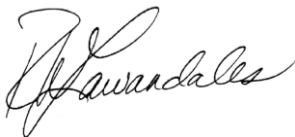
- The most important improvement will be the inclusion of an exfiltration vault underground, with weirs and control structures to provide pre and post treatment of stormwater which currently sheet flows into the Indian River Lagoon. The new system will have 2 to 3 inlets and will outfall into the FDOT system after being attenuated and treated.
- The current site has approximately 75% impervious area. Pervious surface will increase under a new development scenario.
- Landscape buffers will line the east and south sides of the property greatly improving the aesthetics and permeability or treatment of stormwater.
- Trash collection will be organized and managed into a modern container for regular pickup.
- Parking will be defined by raised curb on a newly paved surface. The parking and building are co-dependent. A building's size will be somewhat controlled by the limited area for parking.
- An wall will separate the site from the neighboring residential properties.
- Site access will be better defined, but generally in the same locations since 1958, and new safety crosswalks will be part of the sidewalks on the east property line along the AIA right-of-way.

- Lighting will be focused directly on the site so to not affect anyone off-site.

This site is no different than the other commercial properties that sit on many corners or on the frontage of AIA from Patrick Air Force Base to Cocoa Beach. They nestle in among the single and multi-family uses, each compatible with the other due to size, landscape, setbacks, parking area separation and other features. The conceptual site plan and existing development pattern are clear indicators that the project meets the requirements for being designated as "Community Commercial" on the County's Future Land Use Map. The proposed amendment is not only consistent and compatible with the immediate area, but moreover the proposed infill project will be consistent and compatible with the surrounding community. The amendment removes a non-conformity, allowing for redevelopment of this property through a consistency between Land Use and Zoning. This argument is strengthened by the numerous environmental and aesthetic enhancements that result from the proposed project. The project can only be constructed if the future land use map is amended.

It is my expert opinion that the request meets the requirements for recommendation of approval by the Local Planning Agency/Planning Board and approval by the County Commission as demonstrated by the findings herein and from the Brevard County Staff report as the request is consistent with the Comprehensive Plan, current development pattern, and compatible with the community. To not approve this request will result in leaving a site that negatively contributes untreated stormwater into the Indian River Lagoon and leaves a failing building as a public nuisance. Redevelopment will improve the economic, environmental, and aesthetic values for the County, implementing many policies of the County Comprehensive Plan, with an overall positive benefit to the community.

With kindest regards,



Rochelle W. Lawandales, FAICP
Planning Consultant
PLANNING FOR COMMUNITY