



BOARD OF COUNTY COMMISSIONERS

## Planning and Development Department

2725 Judge Fran Jamieson Way

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

### STAFF COMMENTS

22Z00036

Mark & Rebecca Oostdyk

#### RR-1 (Rural Residential) to AU (Agricultural Residential)

Tax Account Number: 2405176

Parcel I.D.: 24-35-14-00-769

Location: 2030 Cox Rd., Cocoa, FL 32926 (District 1)

Acreage: 10.89 acres

Planning & Zoning Board: 9/12/2022

Board of County Commissioners: 10/06/2022

#### 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
<b>Zoning</b>	RR-1	AU
<b>Potential*</b>	2 SF unit	1 SF unit
<b>Can be Considered under the Future Land Use Map</b>	YES RES 1	YES RES 1

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

#### Background and Purpose of Request

The applicant is requesting to rezone the property from RR-1 (Rural Residential) to AU (Agricultural Residential). The applicant is proposing to build one single-family detached residential dwelling on the property as well as using it for personal and commercial agricultural pursuits. Applicants would like to raise and graze farm animals including fowl as well as beekeeping and growing fruit trees. The subject parcel is undeveloped.

The subject parcel was recorded into the Official Record Book in June 1982. The easement over the north 50 feet of the east 149.66 feet was recorded in Official Record Book (ORB) 2779, Page 1737 dated March 3, 1987. A revision to the easement was made through an Administrative Action (**AA-485**) on March 15, 1990.

The applicants would need to obtain flag lot approval prior to applying for Building Permits or demonstrate easement access satisfies Section 62-102.

## **Land Use**

The subject property is currently designated as Residential 1 (RES 1) FLU. The proposed AU zoning is consistent with the existing RES 1 FLU designation.

**FLUE Policy 1.9** –The Residential 1 Future land use designation. The Residential 1 land use designation permits low density residential development with a maximum density of up to one (1) dwelling unit per acre, except as otherwise may be provided for within the Future Land Use Element.

The applicant's request can be considered consistent with the existing Future Land Use.

## **Applicable Land Use Policies**

The Board should evaluate the compatibility of this application within the context of Administrative Policies 2 – 8 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:**

The applicant proposes to build a single-family home as well as conduct personal agriculture and commercial ventures. It is not anticipated to diminish the enjoyment of, safety or quality of life in existing neighborhoods within the area.

There is one (1) FLU designation (RES 1) within 500-feet of this site. There have been no FLU changes within 500-feet. 10 out of 44 parcels within ½ mile are undeveloped. Properties to the east, located on the east side of Cox Rd. is City of Cocoa and is zoned as RR-1; the properties to the southeast are also located in the City of Cocoa and are zoned RU-1-7. Property sizes range from 0.5-acres to 5.29-acres. The closest parcel with AU zoning is 642 feet to the north; there are others to the west that are 700 feet away.

All immediate surrounding parcels are single-family residential or undeveloped. Several parcels in the immediate area have horses but there was no observation of agricultural use when a recent site visit was performed. On Rayburn, a street south of the subject parcel, is Rudy Ranch and they have cattle.

There has not been any actual development within this area in the preceding three (3) years. There has not been any approved development within 500-feet in the preceding three (3) years.

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

Zoning Resolution **Z-2219**, changed the parcel's zoning from GU (General Use) to RR-1 (Rural Residential) in 1968. The general area is residential in character with single-family homes on lots ranging in size from approximately one (1) to five (5) acres.

There is a mixture of GU and RR-1 zoning classifications in the general area. There is an existing pattern of consistent zoning in the area surrounding the subject parcel. The closest parcel with AU zoning, as mentioned, is 641 feet north.

The proposed AU zoning may be considered to be consistent with RES 1 as AU has a minimum required lot area of 2.5-acres. The AU (Agricultural Residential) zoning classification is generally intended to encompass lands devoted to agricultural pursuits and single-family residential development of spacious character. The classification is divided into two types, AU and AU(L). The AU is the standard agricultural residential classification, while the AU(L) is a low intensity sub-classification more suited to smaller lots where the neighborhood has a more residential than agricultural character.

Most parcels in the immediate area are one (1) acre or larger in size and developed with single-family homes. To the north are two developed parcels, 1.58-acres and the other 3.16-acres with a single-family residence zoned RR-1. To the south are four (4) parcels (5.29-acre, 2.19-acre, 2.63-acre and 3.78-acre), each developed with a single-family residence and zoned RR-1. To the east is an undeveloped 4.7-acre parcel with RR-1 zoning. Also, to the east is a developed parcel with a single-family residence on 3.69-acres. Directly to the east from the easement, across Cox Rd., are what appear to be single-family residences but are under the City of Cocoa's jurisdiction and their confirmed zoning is RR-1. To the west are two (2) undeveloped utility owned 3.42-acre parcels zoned GU. To the southwest are four (4) undeveloped parcels zoned GU ranging from 0.63-acres – 0.88-acres.

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. Within a 500-foot radius there are no parcels that have an Agricultural exemption.

Should the Board be concerned with compatibility and consistency of agricultural activities, on a commercial level, they may consider a lower intensity zoning classification such as AU(L) may consider a lower intensity zoning classification such as AU(L). It is a lower intensity sub-classification of AU. The AU(L) classification allows the raising/grazing of animals, fowl and beekeeping for personal use, while prohibiting the more intense "commercial" agricultural activities. Should the Board consider AU(L) zoning be a more appropriate zoning classification in order to protect the existing residential designation of the neighborhood.

### **Analysis of Administrative Policy #7 – Significant Adverse Environmental Impacts**

The Environmental Constraints section of the reports identify several environment limitations effecting the development potential of the property. The top half of the property is in a flood zone. There is also Hydric Soil by Parcel in the north east corner of the property.

## Surrounding Area

	Existing Land Use	Zoning	Future Land Use
<b>North</b>	SF Residences	RR-1	RES 1
<b>South</b>	SF Residences	RR-1	RES 1
<b>East</b>	SF Residences	RR-1	RES 1
<b>West</b>	Undeveloped	GU	RES 1

RR-1 zoning classification permits single-family residential land uses on a minimum one-acre lot, with a minimum lot width and depth of 125 feet. The RR-1 classification permits horses, barns and horticulture as accessory uses to a single-family residence. The minimum house size is 1,200 square feet.

City of Cocoa RR-1 zoning classification permits single-family residential land uses on a minimum one-acre lot, with a minimum lot width of 125 feet and minimum lot depth of 200 feet. Their RR-1 classification permits as accessory uses horses, cattle and other farm animals for personal use provided there is a minimum of 20,000 sq. ft of land for each animal.

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.

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 permits the raising/grazing of animals and plant nurseries. Conditional uses in AU include hog farms, zoological parks, and land alteration.

The AU(L) zoning classification permits single-family residences and agricultural pursuits on 2 ½ acre lots for personal use, with a minimum lot width and depth of 150 feet. The minimum house size in AU(L) is 750 square feet. The AU(L) classification also permits the raising/grazing of animals, fowl and beekeeping for personal use but mitigates commercial agricultural activities.

## Preliminary Concurrency

The closest concurrency management segment to the subject property is Cox Rd., between SR 524 to James Rd., which has a Maximum Acceptable Volume (MAV) of 17,700 trips per day, a Level of Service (LOS) of D, and currently operates at 14.32% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.76%. The

corridor is anticipated to operate at 15.08% 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 closest City of Cocoa utilities service area for public water is 0.4 miles away at the intersection of SR 524 and Cox Rd. Potable water is available through the City of Cocoa and is servicing the immediate neighbors.

### **Environmental Constraints**

- Wetlands/Hydric Soils
- Floodplain
- Protected and Specimen Trees
- Protected Species

The subject parcel contains mapped hydric soils, National Inventory Wetland (NWI) wetlands, and hydric pine flatwoods indicators 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. 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.

### **For Board Consideration**

The Board may wish to consider if the request is consistent and compatible with the surrounding area. The Board may consider whether the potential of Agritourism activities adversely affect the surrounding area.

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

**Item # 22Z00036**

**Applicant:** Mark & Rebecca Oostdyk

**Zoning Request:** RR-1 to AU

**Notes:** Applicant wants agricultural uses

**P&Z Hearing Date:** 09/12/22; **BCC Hearing Date:** 10/06/22

**Tax ID No:** 2405176

- 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:**

- Wetlands/Hydric Soils
- Floodplain
- Protected and Specimen Trees
- Protected Species

The subject parcel contains mapped hydric soils, National Inventory Wetland (NWI) wetlands, and hydric pine flatwoods indicators 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.

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### **Land Use Comments:**

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

The subject parcel contains mapped hydric soils (Anclothe sand), hydric pine flatwoods, and NWI wetlands (freshwater forested/shrub wetland) as shown on the USDA Soil Conservation Service Soils Survey and NWI Wetlands maps, respectively; indicators 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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#### **Floodplain**

Approximately half of the property is mapped as being within the isolated floodplain as identified by FEMA and as shown on the FEMA Flood Zones Map. The portion of the property located within the floodplain 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 an isolated floodplain greater than one third (1/3) acre in size. Chapter 62, Article X, Division 5, Section 62-3723 (2) states, "Development within floodplain areas shall not have adverse impacts upon adjoining properties."

## **Land Clearing and Landscape Requirements**

The entire parcel is mapped with SJRWMD FLUCCS code 4100-Pine Flatwoods. Protected Trees ( $\geq 10$  inches in diameter) and Specimen Trees ( $\geq 24$  inches in diameter) are likely found on the parcel. A tree survey of Protected and Specimen Trees is required prior to any land clearing activities, site plan design or building permit submittal. At time of building permit submittal, the applicant is encouraged incorporate valuable vegetative communities or robust trees into the site plan design. 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. In addition, per Section 62-4341(18), 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. 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. Land clearing is not permitted without prior authorization by NRM. The applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities.

## **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.