



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

2725 Judge Fran Jamieson Way
Building A, Room 114
Viera, Florida 32940

(321)633-2070 Phone / (321)633-2074 Fax
<https://www.brevardfl.gov/PlanningDev>

**STAFF COMMENTS
22Z00054**

Austin & Kailey R. Mahan

AU (Agricultural Residential) to BU-2 (Retail, Warehousing & Wholesale Commercial)

Tax Account Number: 3030132
Parcel I.D.: 21-35-06-00-289
Location: West of US Highway 1 and north of E R Smyth Drive (District 1)
Acreage: 0.77 acres

Planning & Zoning Board: 4/17/2023
Board of County Commissioners: 5/04/2023

Consistency with Land Use Regulations

- Current zoning can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal cannot 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	AU	BU-2
Potential*	1 SF unit	33,541 sq. ft.
Can be Considered under the Future Land Use Map	YES NC	YES** CC

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

Approval is pending approval of companion request **22SS00013 which proposes to change the Future Land Use Designation from Residential Neighborhood Commercial (NC) to Community Commercial (CC).

Background and Purpose of Request

The applicants are seeking a change of zoning classification from AU (Agricultural Residential) to BU-2 (Retail, Warehousing & Wholesale Commercial) for the purpose of allowing outdoor equipment storage as well as sell wholesale/retail items for his kayak business. The subject parcel is currently undeveloped.

The subject parcel was recorded into the current configuration per Official Records Book 9456, Page 2390, on March 28, 2022. The subject parcel has frontage on E R Smyth Drive and US Highway 1. The parcel is zoned AU (Agricultural Residential) since its formation.

The AU (Agricultural Residential) zoning classification allows for the sales of commodities raised on the premises in line with all agricultural pursuits. BU-2 (Retail, Warehousing & Wholesale Commercial) zoning classification would allow for both outdoor storage.

Land Use

The subject property is currently designated as Neighborhood Commercial (NC) FLU. The proposed BU-2 zoning is not consistent with the existing NC FLU designation. A companion application, **22SS00013**, if approved, would change the Future Land Use designation on the parcel to Community Commercial (CC) FLU.

Residential development or the integration of residential development with commercial development can be permitted in the Community Commercial (CC) land use designation, provided that the scale and intensity of the residential/mixed use development is compatible with abutting residential development and area designated for residential use on the Future Land Use Map.

Activities permitted in Community Commercial (CC) Future Land Use designations Policy 2.7 are intended to serve several neighborhoods, sub-regional and regional areas and provide an array of retail, personal and professional uses. Residential, Institutional and Transient commercial uses are just a few of permitted development activities that are permitted.

Applicable Land Use Policies

FLU Policy 2.2 – Role of Zoning Regulations in the Designation of Commercial Lands

The zoning process regulates the types and intensities of uses for a parcel of land. Criteria which aid in assessing zoning compatibility, shall include consideration of the following standards:

Criteria:

- A. Permitted/prohibited uses;
The applicant proposes to use the subject parcel to house his company's kayaks and conduct warehouse/retail business. Section 62-1483 provides that retail sales, warehousing and wholesale commercial may be permitted in BU-2 zoning in areas designated as Community Commercial on the Future Land Use Map.
- B. Existing commercial zoning trends in the area;
There have been two (2) zoning actions within 0.5-mile over the past 3 years. 20Z00003 took place August 5, 2020 to rezone a parcel from AU (Agricultural Residential) to BU-1 (General Retail Commercial). 19PZ00127 was to rezone from AU (Agricultural Residential) to RR-1 (Rural Residential) with a BDP (Binding Development Plan) to restrict density to one single-family residence on April 8, 2020.
- C. Compatibility of the proposed use with the area, pursuant to Administrative Policy 3;
This zoning classification change could be considered to be consistent with the immediate surrounding area zonings.

- D. Impact upon Level of Service (LOS) standards for roads, potable water service, sanitary sewer service and solid waste disposal;
The preliminary concurrency analysis did not indicate that the proposed development has the potential to cause a deficiency in the transportation adopted level of service. The subject site is on well water. The closest connection for potable water is located east across US Highway 1 approximately 250-feet away. The subject parcel does not have access to central sewer, they would be on septic.
- E. Impact upon natural resources, including wetlands, floodplains, and endangered species; and
The following land use issues were identified: wetlands protection, floodplain protection, aquifer/hydric soil, protected and specimen trees and protected species. Prior to the allowance of any wetland impacts or building on the subject property the applicants shall complete High Function and Landscape Level wetlands assessments according to Natural Resources.
- F. Other issues which may emerge specific to a particular property which may be addressed through performance-based zoning criteria.
This property will need to comply with Brevard County Performance Standards noted within Section 62-2251 through 62-2272 of Brevard County Code.

Activities Permitted in the Community Commercial (CC) Future Land Use Designations

FLUE Policy 2.7

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, provided that the guidelines listed in Table 2.2 are met, include the following:

- a) Existing strip commercial;
- b) Transient commercial uses;
- c) Tourist commercial uses;
- d) Professional offices;
- e) Personal service establishments;
- f) Retail establishments;
- g) Non-retail commercial uses;
- h) Residential uses;
- i) Institutional uses;
- j) Recreational uses;
- k) Public facilities;
- l) Transitional uses pursuant to Policy 2.11; and
- m) Planned Industrial Park development (as permitted by PIP zoning).

The applicant's proposed use can be considered consistent with these commercial and residential uses.

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 applicant proposes to utilize the subject parcel for outdoor equipment storage and wholesale/retail items for their business. The hours of operation, lighting and traffic is not anticipated to affect the quality of life in the existing neighborhood. There is no anticipation of odor, noise level or site activity more so than already exists. However, CC FLU allows for an array of retail, personal and professional uses which may.

Per Brevard County Code of Ordinances, Section 62-1483 all business uses and all materials and products shall be confined within substantial buildings completely enclosed with walls and a roof, however, retail items of substantial size or which of necessity must remain outside of a building may be permitted to be displayed outside the building.

- 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 (Member Appraisal Institute) 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;

The developed character of the surrounding area along Highway 1 corridor from Mc Cullough Road to the north down to Gloria Ave. to the south east. To the immediate north and south across E R Smyth Drive is Community Commercial (CC) FLU. Across US Highway 1 is also Community Commercial (CC) land use. All immediate surrounding areas to the north, south and east of US Highway 1 are commercial uses within 500-feet of this site.

The latest FLU amendment was approved under 20S.04, 20PZ00051, which changed the FLU from NC to CC on August 6, 2020 (Ordinance 20-11) roughly 650-feet to the northeast of the subject properties.

The subject site is located within the Mims Small Area Study, which was accepted by the Board on April 10, 2007. Recommendations of the Study recognized the Highway 1 corridor as a primary commercial area, particularly south of Grantline Road, which includes the area where the subject site is located. The Study recommendations also highlighted that commercial development should generally focus on providing goods and services to Mims residents, as opposed to larger regional markets.

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

There have been six commercial and residential developments within this area over the past three (3) years:

- 19PZ00127 was a rezoning from AU to RR-1 (Rural Residential) approved April 9, 2020 located approximately 0.5-miles from the subject property to legitimize the undersized lot to build a SFR.
- 20Z00003 was an approved rezoning from AU to BU-1 (General Retail Commercial) approximately 960-feet north of the subject property for future commercial development effective August 6, 2020.
- Indian River Preserve Estates is an ongoing project for a Planned Unit Development (PUD), 22PUD00005, as of April 11, 2022, adding 1,375 single-family residential units.
- A 9,100 square-foot retail commercial store was constructed, 21BC10252, across the ROW of US Highway 1 in February 2022.
- 22Z00018 was a rezoning from AU to RR-1 approved November 2, 2022 located approximately 650-feet east of the subject property with the purpose of subdividing the property into two lots.
- 22Z00050 was a rezoning from AU and RU-1-9 (Single-family Residential) to SR (Suburban Residential). The location is 0.5-miles from the subject property and the purpose was to legitimize the lot size to build a SFR.

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

There has not been any approved development within this area in the preceding three (3) years that has not been constructed.

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

No material violation of relevant policies has been identified.

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

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 or intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, etc.), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.

Parcels in the surrounding area range from 0.43-acres to 11.15-acres. The parcel to the north is zoned BU-2 (Retail, Warehousing & Wholesale Commercial) on 2.98-acres and is a motel. The parcels to the west and southwest across E R Smyth Drive are zoned RR-1 (Rural Residential), both single-family residences on 1-acre. The parcel to the south is vacant commercial land zoned BU-1 (General Retail Commercial) on 5.54-acres. Across the ROW US Highway 1 is a retail store zoned BU-1 on 1.48-acres.

- 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.

The parcel is located in a residential and commercial area directly west of Highway 1.

- 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.

The subject property is requesting to be rezoned for commercial uses. The parcel to the north and parcels across ROW Highway 1 are also zoned for commercial use.

There were two zoning actions within a half-mile radius of the subject properties within the last three years. 20Z00003, approved by the Board on August 6, 2020, was a request to change AU (Agricultural Residential) to BU-1 (General Retail Commercial) on 1.32 acres located at the northwest corner of US Highway 1 and McCullough Road. 19PZ00127, approved April 9, 2020, was a request to change AU (Agricultural Residential) to RR-1 (Rural Residential) on 2-acres located on the south side of Richy Road and west of US Highway 1.

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.

The subject parcel is located to the east of a residential neighborhood. The parcel is located on a commercial corridor directly off Highway 1.

Administrative Policy #6 –

The uses proposed under the rezoning for development approval must be consistent with:

- (a) all written land development policies set forth in these administrative policies**

The applicants have met with our Land Development team to speak about the process of site planning.

- (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.**

The applicants have met with our Land Development team to speak about the process of site planning. The site planning process includes the departments listed to ensure the applicants will have consistency within those elements as well as the findings from Natural Resources.

Surrounding Area

	Existing Land Use	Zoning	Future Land Use
North	Motel	BU-2	CC
South	Vacant	BU-1	CC
East	(across ROW US Hwy. 1) Retail Store	BU-1	CC
West	Single-family	RR-1	NC

The current 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.

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.

The proposed BU-2 zoning classification permits retail, wholesale and warehousing commercial land uses on minimum 7,500 square foot lots. Possible incompatibilities are due to the intensive nature of commercial activities permitted by the BU-2 classification and possible noise, light, traffic and other nuisance factors potentially associated with BU-2 activities.

The RR-1 classification permits one single-family dwelling on an area of not less than one (1)-acre having a width and depth of not less than 125-feet. The minimum floor area is 1,200 square feet. The RR-1 classification also permits the raising/grazing of animals including horses.

Preliminary Concurrency

The closest concurrency management segment to the subject property is US Highway 1, between SR 46 to Lionel Road, which has a Maximum Acceptable Volume (MAV) of 41,790 trips per day, a Level of Service (LOS) of D, and currently operates at 24.93% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.03%. The corridor is anticipated to operate at 24.96% 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.

Environmental Constraints

- Wetlands Protection
- Aquifer Recharge
- Protected and Specimen Trees
- Protected Species

The subject property contains a small area of hydric soils (St. Johns sand, 0 to 2 percent slopes), an indicator that wetlands may be present on the property. A wetland delineation will be required prior to any land clearing activities. The wetland delineation shall be verified at time of site plan submittal.

Approximately 75% of the Pine flatwoods property was cleared in 2021/2022. The parent parcel was split, leaving the subject property in violation of Chapter 62, Article XIII, Division 2, entitled Landscaping, Land Clearing & Tree Protection.

For Board Consideration

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

**NATURAL RESOURCES MANAGEMENT (NRM) DEPARTMENT
Zoning Review & Summary**

Item #22Z00054

Applicant: Austin Mahan

Zoning Request: AU to BU-2

Note: Request to make property consistent with BU-2 zoning requirements.

LPA Hearing Date: 04/17/23; **BCC Hearing Date:** 05/04/23

Tax ID Nos: 3030132

- 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 Protection
- Aquifer Recharge
- Protected and Specimen Trees
- Protected Species

The subject property contains a small area of hydric soils (St. Johns sand, 0 to 2 percent slopes), an indicator that wetlands may be present on the property. A wetland delineation will be required prior to any land clearing activities. The wetland delineation shall be verified at time of site plan submittal.

Approximately 75% of the Pine flatwoods property was cleared in 2021/2022. The parent parcel was split, leaving the subject property in violation of Chapter 62, Article XIII, Division 2, entitled Landscaping, Land Clearing & Tree Protection.

Land Use Comments:

Wetlands

The subject property contains a small area of hydric soils (St. Johns sand, 0 to 2 percent slopes), an indicator that wetlands may be present on the property. A wetland delineation will be required prior to any land clearing activities. The wetland delineation shall be verified at time of site plan submittal.

Section 62-3694(c)(3)b has allowances for wetland impacts for commercial land development activities along Mitigation Qualified Roadways (MQRs). U.S. Highway 1 is an MQR in this location. E. R. Smyth Drive is not an MQR. An amendment to the Comprehensive Plan shall be required to add a mitigation qualified roadway to Map 8 and the associated table. For a project that encompasses multiple properties assembled under one site plan development order, wetland impacts for those properties without direct frontage on the mitigation qualified roadway may be permitted only if the properties are combined so that any proposed wetland impact is contained within a property with direct frontage on the mitigation qualified roadway. The assemblage shall be deed restricted for commercial or industrial use.

Wetlands proposed for impact shall be assessed using methodologies established in the Countywide Wetlands Study, prepared BKL, Inc. Consulting Ecologists (September 30, 2013) to determine if they meet the criteria of High Functioning Wetlands or Landscape Level Wetlands. Impacts to high functioning and/or landscape level wetlands shall be prohibited unless the proposed impacts are found to be in the public interest, or of overriding public benefit. Approval by the Brevard County Board of County Commissioners may be required for impacts.

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. Any unpermitted wetland impacts 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.

Aquifer Recharge Soils

St. Johns sand, 0 to 2 percent slopes, can 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.

Protected and Specimen Trees

Approximately 75% of the property was cleared in 2021/2022. The parent parcel was split, leaving the subject property in violation of Chapter 62, Article XIII, Division 2, entitled Landscaping, Land Clearing & Tree Protection. The property is mapped as Pine flatwoods. Protected (≥ 10 inches in diameter) and Specimen (≥ 24 inches in diameter) trees may exist on the parcel. The applicant shall perform a tree survey prior to any site plan design in order to incorporate the remaining valuable vegetative communities or robust trees into the design. Per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. 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 preservation and canopy coverage requirements. Applicant should contact NRM at 321-633-2016 prior to performing any more 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.