



BOARD OF COUNTY COMMISSIONERS

**Planning and Development Department**

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**STAFF COMMENTS**

**23Z00008**

**FMKT Mel Owner, LLC**

**BU-1 (General Retail Commercial) and BU-2 (Retail, Warehousing and Wholesale Commercial) to PUD (Planned Unit Development)**

Tax Account Number: 3011945

Parcel I.D.: 26-36-13-WH-A-7

Location: East side of Wickham Road approximately 0.2 miles south of Pineda Court (District 4)

Acreage: 11.48 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 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 and BU-2                               | PUD (commercial)                            |
| <b>Potential*</b>  | 500,069 sf commercial<br>(based on 1.0 FAR) | 500,069 sf commercial<br>(based on 1.0 FAR) |
| <b>Can be Considered under<br/>the Future Land Use Map</b> | YES<br>CC and PI                            | YES**<br>CC                                 |

\* Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations. \*\*Approval is pending approval of companion request **23SS00002** which proposes to amend the Future Land Use designation from Planned Industrial (PI) and Community Commercial (CC) to all Community Commercial (CC).

**Background and Purpose of Request**

The applicant is requesting a change of zoning classification from BU-1 (General Retail Commercial) and BU-2 (Retail, Warehousing and Wholesale Commercial) to PUD (Planned Unit Development) on 11.48 acres to allow for the development of an additional lot within the Pineda Landings development.

As provided in the Preliminary Development Plan narrative, the applicant intends to create an additional parcel (1.27 +/- acres) within the existing 11.48 acres of Lot 7 of the Pineda Landings Plat. All infrastructure (water, sewer and stormwater) is in place to accommodate development of this new

parcel. The applicant's intent is to prepare and obtain approval of the re-plat to create a legal lot, within a plat, with legal access to Wickham Road that has no actual property road ROW frontage, which is only allowed in PUD for commercial use properties.

The 11.48-acre subject property is currently developed (approved under County No. 14SP-00455) and consists of four (4) commercial plazas, including The Fresh Market. The site has frontage along North Wickham Road and there are no active code enforcement cases associated with the site.

*The Planned Unit Development (PUD), as provided in sec. 62-1442, is a concept which encourages and permits variation in development by allowing deviation in development standards such as, but not limited to, lot size, bulk or type of dwellings, density, lot coverage and open space from that required in any one residential zoning classification under this article. The purpose of a planned unit development is to encourage the development of planned residential neighborhoods and communities that provide a full range of residence types, as well as industrial, commercial and institutional land uses. It is recognized that only through ingenuity, imagination and flexibility can residential developments be produced which are in keeping with the intent of this subdivision while departing from the strict application of conventional use and dimension requirements of other zoning districts or other land development regulations in articles II, VI, VII, VIII, IX, or XIII of chapter 62 of the Brevard County Code.*

**Applicant's response: Existing driveway connections to the neighborhood shopping center allow access to a grocery store, restaurants, and other businesses without travel on Wickham Road.**

*This subdivision is intended to establish procedures and standards for planned unit developments within the unincorporated areas of the county, in order that the following objectives may be attained:*

- *Flexibility in design to take the greatest advantage of natural land, trees, historical features and other features.*

**Applicant's response: The PUD will allow flexibility to reduce setbacks between uses to preserve perimeter vegetation and provide shared infrastructure.**

- *Allowance of sufficient freedom for the developer to take a creative approach to the use of land and related physical development, as well as utilizing innovative techniques to enhance the visual character of the county.*

**Applicant's response: Shared amenities and infrastructure, aesthetically pleasing building and landscape architecture, interconnected pathways, water features, and perimeter buffers along roadways will be designed to enhance the visual character of the area.**

- *Efficient use of land which may result in smaller street and utility networks and reduce development costs.*

**Applicant's response: Interconnected private drives with underlying utility networks located in cross access easements provide efficient transportation access and space utilization for the project (in comparison to lot and block style development).**

- *Establishment of criteria for the inclusion of compatible associated uses to complement the residential areas within the planned unit development.*

**Applicant's response: Ancillary compatible uses within the PUD will include dining areas, restaurants, and entertainment for the residents.**

- *Simplification of the procedure for obtaining approval of proposed developments through simultaneous review by the county of proposed land use, site considerations, lot and setback considerations, public needs and requirements, and health and safety factors.*

**Applicant's response: The PUD will allow for access to the proposed lot without the need for space consuming right-of-way.**

*In order to accomplish the objectives of this section, the applicant of a PUD may propose, and the county may consider, alternative development standards to any land development regulation in articles VI or VII of chapter 62 of the Brevard County Code. The applicant shall justify the proposed alternative development standard(s) by describing how it promotes a development form facilitating the goals and objectives of article VI of this chapter and does not violate the purpose of this chapter for the protection of the public health, safety and welfare in the subdivision of land.*

The Preliminary Development Plan (PDP) is a mechanism to request such waivers and is part of the zoning application for a PUD. Specific waivers to land development regulations must be stated on the PDP and must be verbally requested by the applicant at the public hearing. Unless a waiver is specifically requested by the applicant and specifically approved by the Board, it will not be assumed to have been approved.

The PDP depicts the use and intensity of the project. It is not intended to be specific with respect to engineering details that are normally reviewed at the Final Development Plan (site plan) stage of review. Design elements shown as on the Preliminary Development Plan are required to meet code, unless a waiver has been granted by the Board.

*Substantial (major) changes to the PDP require Board approval. As provided in sec. 62-1448(c): If, after the initial approval of the PUD preliminary development plan, should the owner or applicant or his successors desire to make any changes to the preliminary development plan, such changes shall first be submitted to the county. If the zoning official deems there is a substantial change or deviation from that which is shown on the preliminary development plan, the owner or applicant shall be requested to return to the board of county commissioners where it is determined that the public interest warrants such procedure. For purposes of this subsection, a substantial change shall be defined as any change which increases the density or intensity of the project or decreases the amount of buffer areas from adjacent property or decreases the amount of common open space. The zoning official shall have the authority to approve minor changes not determined by the director to be substantial as defined in this subsection.*

**The applicant has not requested waivers to Chapter 62, Article VI (Zoning Regulations) for the PUD.**

The subject property was rezoned from PIP to BU-1 (7.444 acres) and BU-2 (9.957 acres) on May 7, 2015 under zoning action **15PZ00003**. The subject property was rezoned from IU to PIP on January 8, 1990 under zoning action **Z-8534(a)**. The subject property was rezoned from GU and AU to IU on March 16, 1987 under zoning action **Z-7748**. The subject property was rezoned from GU to IU on December 4, 1980 under zoning action **Z-5468**. The subject property was rezoned from GU to IU with a Special Use Permit for Asphalt Plant on March 7, 1963 under zoning action **Z-940**.

An Administrative Approval for on-premises consumption of alcohol in conjunction with a restaurant (unit 107) was approved January 27, 2023 under **23AA00004**.

Additional prior zoning actions associated with the subject property include removal of a Conditional Use Permit (CUP) for additional building height under **Z-10817(9)**, approval of a CUP for Alcoholic Beverages for On-Premise Consumption for parcel 267 under **Z-9704**, and approval of a CUP for Towers and Antennas for parcel 254 under **Z-10297**.

## **Land Use**

The subject property is currently designated as Community Commercial (CC) FLU and Planned Industrial (PI) FLU. The existing BU-1 zoning classification can be considered consistent with the existing CC FLU, and the existing BU-2 zoning classification can be considered consistent with the existing PI FLU designation.

The proposed PUD zoning classification may be considered consistent with the existing CC FLU, however, PUD zoning cannot be considered consistent with the existing PI FLU designation, as provided in Sec. 62-1255.

A companion application, **23SS00002**, if approved, would amend the Future Land Use designation from Planned Industrial (PI) and Community Commercial (CC) to all Community Commercial (CC), establishing a consistent FLU for the entire 11.48-acre parcel.

The proposed PUD zoning classification may be considered consistent with the requested CC Future Land Use designation.

## **Applicable Land Use Policies**

### **FLUE Policy 2.7 – Activities Permitted in Community Commercial (CC) Future Land Use Designations**

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 listed criteria are met, include the following:

- a) Professional offices (no drive through lanes permitted);
- b) Personal Services (no drive through lanes permitted);
- c) Convenience stores (no drive through lanes permitted);
- d) Residential uses;
- e) Institutional uses;
- f) Recreational uses;

- g) Public facilities; and
- h) Transitional uses pursuant to Policy 2.11.

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 applicant proposes to rezone 11.48 acres to the PUD zoning to allow for the development of an additional parcel (1.27 +/- acres) within Lot 7 of the Pineda Landings platted development. Development would need to meet performance standards set forth in code sections 62-2251 through 62-2272 and will be reviewed at the site plan review stage.**

- 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;

**The surrounding area is generally commercial along North Wickham Road. There are five (5) FLU designations within 500 feet of the subject site: NC, CC, RES 15, IND, and PI. The predominant FLU designation along this section of North Wickham Road, an Urban Principal Arterial roadway, is CC.**

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

**19BC23447 was a building permit for a Commercial Addition-Alteration on 5.94-acres located adjacent to the north of the subject parcel.**

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

**Two zoning actions has been approved within one-half mile:**

- **21Z00003, approved by the Board on April 15, 2021, was a request to rezone from BU-1 to BU-2 on 1.34 acres located approximately 832 feet west of the subject property**

on N. Highway 1.

- **20Z00014, approved by the Board on October 1, 2020, was a request to rezone from PIP and PUD to all PUD, retaining an existing CUP for alcoholic beverages for on-premises consumption on 16.34 acres located adjacent to the north of the subject property on N. Wickham Road.**

**There are no pending zoning actions within one-half mile of the subject property.**

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 of the Comprehensive Plan 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.

**The developed character of the surrounding area is commercial with a multi-family residential development located immediately south of the subject property. The commercial use of the subject property may be considered compatible with the existing pattern of surrounding development.**

#### **Surrounding Area**

|              | <b>Existing Use</b>            | <b>Zoning</b> | <b>Future Land Use</b> |
|--------------|--------------------------------|---------------|------------------------|
| <b>North</b> | Commercial                     | PUD;<br>PIP   | CC;<br>PI              |
| <b>South</b> | Residential (multi-family)     | RU-2-15       | RES 15                 |
| <b>East</b>  | Residential (mobile home park) | TR-3          | NC                     |
| <b>West</b>  | Commercial                     | BU-1          | CC                     |

To the is a developed commercial complex (Brevard Medical City) with PUD zoning (approximately 16.2 acres) and PIP zoning (approximately 9.2 acres).

To the south is a 26.76-acre parcel with RU-2-15 zoning developed as multi-family condominiums.

To the east, across Florida East-Coast Railway, is a residential mobile home park with TR-3 zoning.

To the west, across N. Wickham Road, is a 1.0-acre parcels with BU-1 zoning developed as a commercial bank and a 0.98-acre parcel with BU-1 zoning developed as a commercial fast-food restaurant.

The current The BU-1 classification encompasses land devoted to general retail shopping, offices and personal services to serve the needs of the community and allows for retail commercial land uses on minimum 7,500 square foot lots. The BU-1 classification does not permit warehousing or wholesaling. The BU-1 classification allows for the outdoor storage of retail items that may include but are not limited to motor vehicles, utility sheds, nursery items such as plants and trees, and boats.

The current BU-2 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. Resort dwelling use is allowed as a permitted use in the BU-2 classification.

The proposed Planned Unit Development (PUD) encourages and permits variation in development by allowing deviation in lot size, bulk or type of dwellings, density, lot coverage and open space from that required in any one residential zoning classification. The purpose of a PUD is to encourage the development of planned residential neighborhoods and communities that provide a full range of residence types, as well as industrial, commercial and institutional land uses.

RU-2-15 classification permits multiple-family residential uses or single-family residences at a density of up to 15 units per acre on 7,500 square foot lots.

IU zoning classification permits light industrial land uses within enclosed structures. The minimum lot size is 20,000 square feet, with a minimum width of 100 feet and a minimum depth of 200 feet.

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 also permits the raising/grazing of animals and plants nurseries.

RVP recreational vehicle park zoning classification encompasses lands devoted for recreation vehicle, tent, park trailer and cabin uses together with such ancillary structures as allowed to promote a recreational type atmosphere for both park owners and/or their guests. Minimum park size shall be five acres. Recreational vehicle sites shall have a minimum area of 2,000 square feet, and shall have a minimum width of 30 feet and minimum depth of 60 feet.

GML government managed lands zoning classification recognizes the presence of lands and facilities which are managed by federal, state and local government, special districts, nongovernmental

organizations (NGOs) providing economic, environmental and/or quality of life benefits to the county, electric, natural gas, water and wastewater utilities that are either publicly owned or regulated by the Public Service Commission, and related entities.

### **Preliminary Development Plan**

In addition of Administrative Policies #3 and #4, the Preliminary Development Plan should be evaluated in the context of **Section 62-1448 (b) (5)** of the Zoning code:

*Review criteria.* The decision of the planning and zoning board on the preliminary development plan application shall include the findings of fact that serve as a basis for its recommendation. In making its recommendation, the planning and zoning board shall consider the following facts:

- a. Degree of departure of the proposed planned unit development from surrounding residential areas in terms of character and density.

*Applicant response:* *The Pineda Landing PUD has the same commercial building square footage density as under the engineering construction plans approved under County No. 14SP-00455.*

**Staff comment:** *The developed character of the surrounding area is commercial and multi-family residential.*

- b. Compatibility within the planned unit development and relationship with surrounding neighborhoods.

*Applicant response:* *The Pineda Landing PUD is planned to fit well into the surrounding neighborhoods.*

**Staff comment:** *The commercial use proposed in the PUD may be considered compatible with the surrounding area.*

- c. Prevention of erosion and degrading of surrounding area.

*Applicant response:* *The Pineda Landing has been constructed with a modern surface water management system and FDEP NPDES Erosion Controls.*

**Staff comment:** *The PDP includes stormwater management.*

- d. Provision for future public education and recreation facilities, transportation, water supply, sewage disposal, surface drainage, flood control and soil conservation as shown in the preliminary development plan.

*Applicant response:* *The Pineda Landing PUD will provide all infrastructure, utilities, and common area improvements as required by code.*

**Staff comment:** *The proposal is not anticipated to create a deficiency in LOS. Specific concurrency issues will be address at the time of site plan review. No school concurrency information has been provided as the development proposal is for commercial and not*



***residential use. The parcel is within the City of Cocoa utilities service area for public water and within the Brevard County utilities service area for sanitary sewer.***

- e. The nature, intent and compatibility of common open space, including the proposed method for the maintenance and conservation of the common open space.

*Applicant response: No response.*

***Staff comment: No common recreation open space is required under Sec. 62-1446(c) for the proposed project as it is for commercial and not residential.***

- f. The feasibility and compatibility of the specified stages contained in the preliminary development plan to exist as an independent development.

*Applicant response: No response.*

***Staff comment: The subject property is developed.***

- g. The availability and adequacy of water and sewer service to support the proposed planned unit development.

*Applicant response: The Pineda Landing PUD has existing connections to County Sanitary Sewer and Cocoa Water utility services.*

***Staff comment: Connection to potable water and sanitary sewer facilities has already been established.***

- h. The availability and adequacy of primary streets and thoroughfares to support traffic to be generated within the proposed planned unit development.

*Applicant response: The Pineda Landing PUD will not generate any additional traffic than generated under the engineering construction plans approved under County No. 14SP-00455.*

***Staff comment: The proposal is not anticipated to create a deficiency in LOS.***

- i. The benefits within the proposed development and to the general public to justify the requested departure from the standard land use requirements inherent in a planned unit development classification.

*Applicant response: The benefit to the development and the public by the PUD vs. standard land use requirements lies in the space utilization of common infrastructure, and the symbiotic relationship of the PUD with surrounding and nearby services. Local Suntree, Viera, and beachside families have access to additional shopping and businesses.*

***Staff comment: The applicant is not requesting waivers.***

- j. The conformity and compatibility of the planned unit development with any adopted development plan of the county.

*Applicant response: The PUD will be consistent with future land use objectives. There are no special area plans in this location.*

**Staff comment: There are no special areas plans associated with the site.**

- k. The conformity and compatibility of the proposed common open space, primary residential and secondary nonresidential uses with the proposed planned unit development.

*Applicant response: We believe the features of the Pineda Landing PUD to be a perfect fit with the proposed nonresidential component uses, which is a shopping center and commercial outparcels.*

**Staff comment: There are no residential uses proposed.**

### **Preliminary Concurrency**

The closest concurrency management segment to the subject property is Wickham Road (an urban principal arterial roadway), from Pineda Causeway to Jordan Blass Drive, which has a Maximum Acceptable Volume (MAV) of 39,800 trips per day, a Level of Service (LOS) of D, and currently operates at 65.70% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.0%. The corridor is anticipated to operate at 65.70% of capacity daily. The maximum development potential of the proposal is not anticipated to create a deficiency in LOS. Specific concurrency issues will be address at the time of site plan review. This is only a preliminary review and is subject to change.

No school concurrency information has been provided as the development proposal is for commercial and not residential use.

The parcel is within the City of Cocoa utilities service area for public water and within the Brevard County utilities service area for sanitary sewer.

### **Environmental Constraints**

- Site impacted under previous development orders.

No noteworthy land use issues were identified. NRM reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

Please refer to all comments provided by the Natural Resource Management Department at the end of this report.

### **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 #23Z00008**

**Applicant:** MBV PUD

**Zoning Request:** BU-1 & BU-2 to PUD

**Note:** Require zero frontage to sell a piece of the property.

**P&Z Hearing Date:** 04/13/23; **BCC Hearing Date:** 05/04/2023

**Tax ID No:** 3011945

- 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:**

- Site impacted under previous development orders.

No noteworthy land use issues were identified. NRM reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

**Land Use Comments:**

Site impacted under previous development orders. NRM reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.