



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

23Z00011

Rebecca and Allen Potter

**RR-1 (Rural Residential) & AU (Agricultural Residential)**

**to all AU (Agricultural Residential)**

Tax Account Number: 3006359 & 3006357 (inactive)  
Parcel I.D.: 30-38-11-00-265  
Location: East and West of Highway 1, approximately 1,265-feet north of Barefoot Bay Blvd. (District 3)  
Acreage: 3.53 acres  
Planning & Zoning Board: 6/12/2023  
Board of County Commissioners: 7/13/2023

### 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)

	CURRENT	PROPOSED
<b>Zoning</b>	AU & RR-1	AU
<b>Potential*</b>	1 SF unit	1 SF unit
<b>Can be Considered under the Future Land Use Map</b>	YES RES 4 & NC	YES RES 4 & NC

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

### Background and Purpose of Request

The applicants are seeking a change of zoning classification from AU (Agricultural Residential) and RR-1 (Rural Residential) to all AU (Agricultural Residential) for the purpose of combining parcels to build a family farm. The subject parcel zoned RR-1 is currently undeveloped; the AU zoned parcel has a single-family residence.

The subject parcel was recorded originally in Official Records Book 1319, Page 55 in February 1973. The parcel was then changed into the current configuration per Official Records Book 9676, Page 823, on December 13, 2022. The subject lots are 3.53-acres in size and have frontage on both Highway 1 and the Indian River Lagoon. The parcel was zoned AU (Agricultural Residential) since its formation.

The AU (Agricultural Residential) zoning classification allows for the sales of commodities raised on the premises along with agricultural pursuits. RR-1 (Rural Residential) zoning permits single-family residential land uses on a minimum one-acre lot encompassing lands devoted to development of spacious character, together with accessory uses as may be necessary or are normally compatible with residential surroundings, and at the same time permits uses which are conducted in such a way as to minimize possible incompatibility with residential development.

There are zero (0) properties classified as bona fide agricultural with the Brevard County Property Appraiser's office located within 500-feet of the subject property.

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.

## **Land Use**

The subject property is currently designated as Residential 4 (RES 4) and Neighborhood Commercial (NC) FLU. Both the current AU and RR-1 zoning classifications are consistent with the RES 4 and NC FLU designation. The proposed all AU zoning can be considered consistent with the existing RES 4 and NC FLU designation. There are three (3) Future Land Use Designations, RES 4, Community Commercial (CC) and Neighborhood Commercial (NC), within 500-feet of the subject property.

Residential development or the integration of residential development with commercial development shall be permitted in the Neighborhood Commercial and Community Commercial land use designations, 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. The abutting residential development to the west is RES 4.

This request could be considered downzoning going from a higher intensity zoning classification to a lower intensity classification.

## **Applicable Land Use Policies**

**FLUE Policy 1.7** –The Residential 4 Future land use designation affords an additional step down in density from more highly urbanized areas. This land use designation permits a maximum density of up to four (4) units per acre, except as otherwise may be provided for within the Future Land Use Element.

**FLUE Policy 2.5** – Neighborhood Commercial (NC) development activities are intended to be low-impact in nature and serve the needs of the immediate residential area. Existing BU-1-A uses, which were established as of the adoption date of this provision shall be considered consistent with this policy. Development activities which may be considered within Neighborhood Commercial (NC) Future Land Use designation, provided that listed criteria are met include: Professional offices (no

drive through lanes permitted), Personal Services (no drive through lanes permitted), Residential uses and more.

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 the development of a family farm. The northern parcel, 3006359, is currently the only parcel within 500-feet that has the AU zoning classification. Rezoning the south parcel, 3006357, could be considered an introduction of the AU zoning classification. While the request is generally considered a down zoning, the AU zoning classification could introduce agritourism. It also has permitted uses of all agricultural pursuits, including the packing, processing and sales of commodities raised on the premises; raising and grazing of animals; plant nurseries; as well as fowl raising and beekeeping.**

- 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 (Master Appraiser 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 general area is residential in character with single-family homes on lots ranging in size from approximately 0.18-acres to 5.67-acres. There are also two (2) parcels in the immediate area that are zoned BU-1 (General Retail Commercial) that are 0.3-acres, which is the parcel abutting the subject parcel to the east off Highway 1, and the parcel approximately 320-feet south of the subject parcel that is 4.72-acres.**

**While one of the subject parcels contain Agricultural Residential (AU), the rest of the area is a mixture of: Rural Residential (RR-1), Single-family mobile home (TR-1), Institutional Use – Light (IN(L)), General Retail Commercial (BU-1) and Retail, Warehousing & Wholesale Commercial (BU-2). zoning classifications in the**

**general area. There are three (3) FLU designations RES 4, NC and CC within 500-feet of this site.**

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

**There have been no new developments within 0.5-miles in the preceding three (3) years.**

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

**There is one pending rezoning application, 22Z00060, rezoning from BU-1 (General Retail Commercial) to BU-2 (Retail, Warehousing & Wholesale Commercial). This property is approximately 900-feet south of the subject property on Highway 1. If the application is approved they plan to offer boat and RV covered outdoor storage.**

- 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.

**There is an existing pattern of residential land uses surrounding the subject parcel. Depending on the uses of the subject parcels, the proposed request of a family farm could create some inconsistencies with the surrounding established neighborhood to the north and west. The current parcel that is zoned AU, 3006359, is developed with a single-family residence on land that is spacious in character. The undeveloped parcel that is zoned RR-1 remains undeveloped and is also spacious in character.**

**The developed character of the surrounding area is low-density residential. Most parcels in the immediate area are 0.18-acres or larger in size and developed with single-family homes. To the north are two parcels (0.24-acre and 0.44-acre) each developed with a single-family residence and zoned TR-1. To the south is a 5.46-acre parcel that is undeveloped and**

**zoned IN(L). To the east is Highway 1. To the west are two parcels (0.75-acre and 0.99-acre) each developed with a single-family mobile home and zoned TR-1.**

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.

**These parcels, the north is developed and the south is undeveloped are west of Highway 1. Within 500-feet there are six (6) zoning classifications: Agricultural Residential (AU), Rural Residential (RR-1), Single-family mobile home (TR-1), Institutional Use – Light (IN(L)), General Retail Commercial (BU-1) and Retail, Warehousing & Wholesale Commercial (BU-2). The closest AU zoning classification is approximately 450-feet to the southeast across ROW 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 request is not for commercial use. It is located in an existing residential area.**

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.

**There is one pending rezoning application, 22Z00060, rezoning from BU-1 (General Retail Commercial) to BU-2 (Retail, Warehousing & Wholesale Commercial). This property is approximately 900-feet south of the subject property on Highway 1. If the application is approved they plan to offer boat and RV covered outdoor storage.**

**There is transitional zoning of Institutional Use – Light (IN(L)), General Retail Commercial (BU-1) and Retail, Warehousing & Wholesale Commercial (BU-2) to the south of the subject property. To the north and west of the subject property is single-family mobile home (TR-1) zoning classification.**

## Surrounding Area

	Existing Land Use	Zoning	Future Land Use
<b>North</b>	SF residences	TR-1	CC and RES 4
<b>South</b>	Undeveloped	IN(L)	NC
<b>East</b>	Undeveloped across Highway 1	AU and RR-1	NC and RES 4
<b>West</b>	SF residences	TR-1	RES 4

The AU zoning classification permits single-family residences and agricultural uses on 2.5-acre lots, with a minimum lot width and depth of 150 feet. The minimum house size in AU is 750 square feet. The AU classification also permits the raising/grazing of animals and plants nurseries. Conditional uses in AU include hog farms, zoological parks, and land alteration.

The current partial 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. Keeping of horses and agricultural uses are accessory to a principal residence within RR-1 zoning.

The TR-1 single-family mobile home zoning classification permits single family mobile home units with a minimum floor area of 600 square feet. The lot size is a minimum of 7,500 square feet with a lot width of 65-feet and lot depth of 100-feet.

The IN(L) zoning classification is for the purpose of institutional use for private, nonprofit or religious uses which are intended to service the needs of the public for facilities of an educational, religious, health or cultural nature. In the low intensity institutional zoning classification, where low intensity uses are permitted or permitted with conditions, the scale and impact of such uses shall be limited so that they are consistent in character and scope with the surrounding neighborhood.

## Preliminary Concurrency

The closest concurrency management segment to the subject property is Highway 1, between Micco to First Street., which has a Maximum Acceptable Volume (MAV) of 41,790 trips per day, a Level of Service (LOS) of D, and currently operates at 37.11% 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 37.11% 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 parcel is not within any public potable water or sewer lines. The applicant uses a well for potable water and septic for sewer.

### **Environmental Constraints**

- Wetlands
- Aquifer Recharge Soils
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Surface Waters of the State
- Protected and Specimen Trees
- Protected Species

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

### **For Board Consideration**

The Board may wish to consider if the request is consistent and compatible with the surrounding area recognizing existing development trends and the potential that agritourism could affect the surrounding area.

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

**Item #23ZS00011**

**Applicant:** Allen & Rebecca Potter

**Land Use Request:** AU & RR-1 to AU

**Note:** Make zoning consistent with a mini farm.

**P&Z Hearing Date:** 04/17/23; **BCC Hearing Date:** 05/04/202

**Tax ID No:** 3006357 & 3006359

- 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
- Aquifer Recharge Soils
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Surface Waters of the State
- Protected and Specimen Trees
- Protected Species

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:**

### **Wetlands**

The subject parcel contains mapped NWI wetlands along the eastern Indian River Lagoon shoreline. A wetland determination will be required prior to any land clearing activities, site plan design or building permit submittal in these areas. Section 62-3694 states that non-bona fide agricultural and forestry operations utilizing best management practices are permitted in wetlands provided they do not result in permanent degradation or destruction of wetlands, or adversely affect the functions of the wetlands. Pursuant to the Florida Agricultural Lands and Practices Act (Chapter 163.3162(4), Florida Statutes), any activity of a Bona Fide Agricultural Use on land classified as agricultural land pursuant to Section 193.461, Florida Statute is exempt. **The Brevard County Property Appraiser's Office establishes Bona Fide Agricultural land classification.** Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts, and will require mitigation in accordance with Section 62-3696. The applicant is encouraged to contact NRM at 321-633-2016 prior to any site plan design or permit submittal.

### **Aquifer Recharge Soils**

The entirety of the subject parcels contain mapped aquifer recharge soils (Candler fine sand) as shown on the USDA Soil Conservation Service Soils Survey map. Mapped topographic elevations indicate the soils may consist of Type 3 Aquifer Recharge soils that have impervious area restrictions. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance

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

The eastern portions of the parcels are mapped within the Indian River Lagoon Nitrogen Reduction Overlay. If adequate sewer for the development is not available, then the use of an alternative septic system, designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes, shall be required.

### **Surface Waters of the State**

The subject property is located on the Indian River Lagoon, designated as a Class II Water, Outstanding FL Water (OFW), and Aquatic Preserve in this location. A 50-foot Surface Water Protection Buffer is required. Primary structures shall be located outside the Buffer. Accessory structures are permissible within the Buffer with conditions (e.g., storm water management is provided, avoidance/minimization of impacts, and maximum 30% impervious). The removal of native vegetation located within the Buffer shall be avoided. Temporary impacts to native vegetation require in-kind restoration. The Florida Department of Environmental Protection (FDEP) regulates mangrove trimming, and can be reached at 407-897-4101. The applicant is encouraged to contact NRM at 321-633-2016 prior to any activities, plan, or permit submittal.

## Protected and Specimen Trees

Protected ( $\geq 10$  inches in diameter) and Specimen ( $\geq 24$  inches in diameter) trees likely exist on the parcel. A tree survey will be required at time of a site plan submittal. The applicant is encouraged to perform a tree survey prior to any site plan design in order to incorporate 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. Per Section 62-4334 and 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 are exempt. **The Brevard County Property Appraiser's Office establishes Bona Fide Agricultural land classification.** 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 land clearing activities.

## Protected Species

Information available to NRM indicates that federally and/or state protected species may be utilize 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.