



BOARD OF COUNTY COMMISSIONERS

**Planning and Development Department**

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

**STAFF COMMENTS**

**23Z00017**

**Stephen J. and Pacharee Ellison**

**RU-1-7 (Single-Family Residential) to SR (Suburban Residential)**

Tax Account Number: 3008319  
Parcel I.D.: 30-38-24-HH-D-2  
Location: 8999 Highway 1, Micco, FL 32976; East of Highway 1 directly across 10<sup>th</sup> Street. (District 3)  
Acreage: 0.78 acres  
  
Planning & Zoning Board: 6/12/2023  
Board of County Commissioners: 7/13/2023

**Consistency with Land Use Regulations**

- Current zoning is not consistent with 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>	RU-1-7	SR
<b>Potential*</b>	0	Single-family residence
<b>Can be Considered under the Future Land Use Map</b>	No RES 2	YES RES 2

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

**Background and Purpose of Request**

The applicants are requesting a change of zoning classification from RU-1-7 (Single-family Residential) to SR (Suburban Residential) for the purpose of building a single-family residence. The current zoning classification cannot be considered consistent with the Future Land Use designation according to Sec. 62-1255. The subject parcel is currently undeveloped.

The subject parcel was originally recorded in Plat Book 8, Page 15A as part of Tract D in September 1928. The parcel went through an Administrative Rezoning to a new classification, RU-1 to RU-1-7, which took effect June 1, 1972. The Comprehensive Plan took effect in 1988 giving this parcel and others on the east of Highway 1 corridor a Future Land Use designation of Residential 2 units per acre (RES 2). October 9, 1990 the property was split/sold as two parcels, Parcel No. 1 and No. 2, per Official Record Book 3088, Page 1270. The property was subdivided and sold on August 22, 1994 per Official Record Book 3415, Page 3373. Since the lot split occurred after the zoning actions and

the adoption of the Comprehensive Plan, the property it is not eligible to be considered as a nonconforming lot or record.

## **Land Use**

The subject property is currently designated as Residential 2 (RES 2) FLU. The proposed SR zoning can be considered consistent with the existing Residential 2 FLU designation per Sec. 62-1255.

## **Applicable Land Use Policies**

**FLUE Policy 1.8** –The Residential 2 Future land use designation. The Residential 2 land use designation permits lower density residential development with a maximum density of up to two (2) dwelling units 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.

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.**

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 proposed single-family residence is not anticipated to have hours of operation, lighting, odor, noise levels, traffic or site activity that would diminish the enjoyment of, safety or quality of life in existing neighborhoods within the area.**

- 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 Master Appraiser Institute (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;

**East of Highway 1 is single-family residential in character with homes on lots ranging in size from approximately 0.24-acres to 0.78-acres. Across Highway 1**

**the lots range from 0.23-acres to one (1) acre in size and are both commercial and residential.**

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

**There have been several residential developments within this area over the preceding three (3) years:**

- **20BC15335 was a single-family residence completed June 15, 2021, approximately 960-feet to the southwest of the subject property.**
- **20BC17069 was a single-family residence completed April 14, 2021, approximately 0.4-miles to the southwest of the subject property.**
- **20BC18995 was a single-family residence completed October 21, 2021, approximately 1,685-feet to the northwest of the subject property.**
- **21BC03183 was a single-family residence completed February 18, 2022, approximately 1,860-feet to the southwest of the subject property.**
- **21BC11773 was a mobile home installation completed January 24, 2022, approximately 1,162-feet to the northwest of the subject property.**
- **21BC19327 was a single-family residence completed February 8, 2023, approximately 1,672-feet to the southwest of the subject property.**
- **22BC17334 was a single-family residence completed May 15, 2023, approximately 300-feet south of the subject property.**

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 yet 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.

**There is an existing pattern of residential land uses surrounding the subject parcel. We do not conduct a concurrency analysis on a single-family residence.**

**The developed character of the surrounding area is low-density residential. Most parcels in the immediate area are 0.23-acres or larger in size and developed with single-family homes to the east of Highway 1. To the north is a 0.43-acre parcel developed with a single-family residence zoned RU-1-7. To the south is a 0.69-acre parcel developed with a single-family residence zoned RU-1-7. To the east is the Intercoastal Waterway. To the west is Highway 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.

**This undeveloped parcel is directly east of Highway 1 and 10<sup>th</sup> Street. Within 500-feet there are three (3) zoning classifications: RU-1-7 (Single-family Residential), BU-1-A (Restricted Neighborhood Retail Commercial and BU-1 (Retail Commercial). The closest SR zoning classification is approximately 1,050-feet to the north.**

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.

**The area is primarily single-family residential along with commercial uses across Highway 1. Zoning Resolution Z-9874 was approved by the Board taking effect April 24, 1997, rezoning from BU-1 to RR-1, on 0.33 acres, located approximately 1,050-feet north of the subject property.**

## **Surrounding Area**

	<b>Existing Land Use</b>	<b>Zoning</b>	<b>Future Land Use</b>
<b>North</b>	SF residence	RU-1-7	RES 2
<b>South</b>	SF residences	RU-1-7	RES 2
<b>East</b>	Intercoastal Waterway	N/A	N//A

<b>West</b>	Highway 1	N/A	N/A
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The existing RU-1-7 zoning classification permits single-family residences on 5,000 sq. ft. lots, with a minimum lot width of 50-feet and depth of 100 feet. The minimum house size in RU-1-7 is 700 square feet.

The proposed SR zoning classification permits single-family residences of relatively spacious land character, together with such accessory uses as may be necessary or are normally compatible with residential surroundings. Must meet a minimum lot size of 0.5 acres, with a minimum lot width of 100 feet and depth of 150 feet. The minimum house size in SR is 1300 square feet. SR may be considered less intense since it requires a larger lot and dwelling requirements.

### **Preliminary Concurrency**

The closest concurrency management segment to the subject property is US Highway 1, between Indian River County Line and Micco 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 51.64% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.02%. The corridor is anticipated to operate at 51.66% 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 applicants will be using a deep well and septic tank.

### **Environmental Constraints**

- Floodplain Protection
- Coastal High Hazard Area (CHHA)
- Surface Waters of the State
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Wetlands Protection
- Aquifer Recharge Soils
- Protected and Specimen Trees
- Protected Species – Florida Scrub Jay

The property is mapped as being within Special Flood Hazard Areas VE and AE, as identified by the Federal Emergency Management Agency, and as shown on the FEMA Flood Map. The parcel is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance. Chapter 62, Article X, Division 6 states, "No site alteration shall adversely affect the existing surface water flow pattern." Chapter 62, Article X, Division 5, Section 62-3723 (2) states, "Development within floodplain areas shall not have adverse impacts upon adjoining properties."

The property is located within the Coastal High Hazard Area (CHHA) as defined by Florida Statute 163.3178(2)(h), and as shown on the CHHA Map. The Coastal Management Element of the Comprehensive Plan, Policy 6.1, designates Coastal High Hazard Areas to be those areas below the elevation of the Category 1 storm surge elevation as defined in Chapter 163, Florida Statute. The parcel may be susceptible to nuisance flooding.

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. The removal of native vegetation located within the Buffer shall be avoided. Temporary impacts to native vegetation require in-kind restoration.

Unpermitted clearing of the property, including the Buffer, occurred in 2021/2022. NRM met with the applicant on March 31, 2023, to discuss the activity and compliance options. A restoration plan meeting Chapter 62, Article XIII, Division 2, entitled Landscaping, Land Clearing & Tree Protection, and Article X, Division 3, entitled Surface Water Protection shall be provided during the Building Permit review.

Shoreline hardening (e.g., revetments) requires a NRM Surface Water Permit. The Florida Department of Environmental Protection (FDEP) also regulates shoreline activities, and can be reached at 407-897-4101. The applicant is encouraged to contact NRM at 321-633-2016 prior to any additional activities, plan, or permit submittal.

The entire parcel is 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.

Protected ( $\geq 10$  inches in diameter) and Specimen ( $\geq 24$  inches in diameter) trees may have existed on the parcel. Unpermitted clearing of the property occurred in 2021/2022. NRM met with the applicant on March 31, 2023, to discuss the activity and compliance options. A restoration plan meeting Chapter 62, Article XIII, Division 2, entitled Landscaping, Land Clearing & Tree Protection; and Article X, Division 3, entitled Surface Water Protection shall be provided during the Building Permit review.

### **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 #23Z00017**

**Applicant:** Stephen J. Ellison

**Zoning Request:** RR-1-7 to SR

**Note:** To allow permit for single-family residence

**Zoning Hearing Date:** 06/12/2023; **BCC Hearing Date:** 07/13/2023

**Tax ID No:** 3008319

- 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:**

- Floodplain Protection
- Coastal High Hazard Area (CHHA)
- Surface Waters of the State
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Wetlands Protection
- Aquifer Recharge Soils
- Protected and Specimen Trees
- Protected Species – Florida Scrub Jay

The property is mapped as being within Special Flood Hazard Areas VE and AE, as identified by the Federal Emergency Management Agency, and as shown on the FEMA Flood Map. The parcel is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance. Chapter 62, Article X, Division 6 states, "No site alteration shall adversely affect the existing surface water flow pattern." Chapter 62, Article X, Division 5, Section 62-3723 (2)

states, "Development within floodplain areas shall not have adverse impacts upon adjoining properties."

The property is located within the Coastal High Hazard Area (CHHA) as defined by Florida Statute 163.3178(2)(h), and as shown on the CHHA Map. The Coastal Management Element of the Comprehensive Plan, Policy 6.1, designates Coastal High Hazard Areas to be those areas below the elevation of the Category 1 storm surge elevation as defined in Chapter 163, Florida Statute. The parcel may be susceptible to nuisance flooding.

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. The removal of native vegetation located within the Buffer shall be avoided. Temporary impacts to native vegetation require in-kind restoration.

Unpermitted clearing of the property, including the Buffer, occurred in 2021/2022. NRM met with the applicant on March 31, 2023, to discuss the activity and compliance options. A restoration plan meeting Chapter 62, Article XIII, Division 2, entitled Landscaping, Land Clearing & Tree Protection, and Article X, Division 3, entitled Surface Water Protection shall be provided during the Building Permit review.

Shoreline hardening (e.g., revetments) requires a NRM Surface Water Permit. The Florida Department of Environmental Protection (FDEP) also regulates shoreline activities, and can be reached at 407-897-4101. The applicant is encouraged to contact NRM at 321-633-2016 prior to any additional activities, plan, or permit submittal.

The entire parcel is 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.

Protected ( $\geq 10$  inches in diameter) and Specimen ( $\geq 24$  inches in diameter) trees may have existed on the parcel. Unpermitted clearing of the property occurred in 2021/2022. NRM met with the applicant on March 31, 2023, to discuss the activity and compliance options. A restoration plan meeting Chapter 62, Article XIII, Division 2, entitled Landscaping, Land Clearing & Tree Protection; and Article X, Division 3, entitled Surface Water Protection shall be provided during the Building Permit review.

### **Land Use Comments:**

#### **Floodplain Protection**

The property is mapped as being within Special Flood Hazard Areas VE and AE, as identified by the Federal Emergency Management Agency, and as shown on the FEMA Flood Map. The parcel is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance. Chapter 62, Article X, Division 6 states, "No site alteration shall adversely affect the existing surface water flow pattern." Chapter 62, Article X, Division 5, Section 62-3723 (2)



states, "Development within floodplain areas shall not have adverse impacts upon adjoining properties."

### **Coastal High Hazard Area**

The property is located within the Coastal High Hazard Area (CHHA) as defined by Florida Statute 163.3178(2)(h), and as shown on the CHHA Map. The Coastal Management Element of the Comprehensive Plan, Policy 6.1, designates Coastal High Hazard Areas to be those areas below the elevation of the Category 1 storm surge elevation as defined in Chapter 163, Florida Statute. The parcel may be susceptible to nuisance flooding.

### **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.

Unpermitted clearing of the property, including the Buffer, occurred in 2021/2022. NRM met with the applicant on March 31, 2023, to discuss the activity and compliance options. A restoration plan meeting Chapter 62, Article XIII, Division 2, Landscaping, Land Clearing & Tree Protection; and Article X, Division 3, Surface Water Protection shall be provided during the Building Permit review.

Shoreline hardening (e.g., revetments) requires a NRM Surface Water Permit. The Florida Department of Environmental Protection (FDEP) also regulates shoreline activities, 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.

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

The entire parcel is mapped within the Indian River Lagoon Nitrogen Reduction Overlay per Chapter 46, Article II, Division IV - 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. NRM requires a Septic Maintenance Notice be filed with the Brevard Clerk of Courts.

### **Wetlands Protection**

The subject parcel contains mapped NWI wetlands along the eastern shoreline, in/east of the Buffer.

### **Aquifer Recharge Soils**

The entire subject parcel contains mapped aquifer recharge soils (Paola fine sand, 0 to 8 percent slopes) 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.

## **Protected and Specimen Trees**

Protected ( $\geq 10$  inches in diameter) and Specimen ( $\geq 24$  inches in diameter) trees may have existed on the parcel. Unpermitted clearing of the property occurred in 2021/2022. NRM met with the applicant on March 31, 2023, to discuss the activity and compliance options. A restoration plan meeting Chapter 62, Article XIII, Division 2, Landscaping, Land Clearing & Tree Protection; and Article X, Division 3, Surface Water Protection shall be provided during the Building Permit review.

## **Protected Species**

Information available to NRM indicates that federally and/or state protected species may be present on the property. Specifically, nearby the property is adjacent to a mapped Florida Scrub Jay occupancy polygon. Additionally, gopher tortoises can be found in aquifer recharge soils. 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.