



BOARD OF COUNTY COMMISSIONERS

**Planning and Development Department**

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

**STAFF COMMENTS**

**23Z00079**

**Anabeth Nazario**

**RU-1-9 (Single-Family Residential) to RU-1-11 (Single-Family Residential)**

Tax Account Number: 2320163 and 2320164 (Parcels have been combined per Quit Claim Deed recorded on October 31, 2023)  
Parcel I.D.: 23-35-21-LJ-D-7 and 23-35-21-LJ-D-8 (Parcels have been combined per Quit Claim Deed recorded on October 31, 2023)  
Location: North side of Aspen Lane, approximately 125 feet west of Leonard Avenue (District 1)  
Acreage: 0.47 acres  
Port St. John: 01/03/2024  
Board of County Commissioners: 02/01/2024

**Consistency with Land Use Regulations**

- Current zoning cannot 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>	RU-1-9	RU-1-11
<b>Potential*</b>	1 single family	1 single family
<b>Can be Considered under the Future Land Use Map</b>	NO RES 4	YES RES 4

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

**Background and Purpose of Request**

The applicant is requesting to rezone the property from RU-1-9 (Single-Family Residential) to RU-1-11 (Single-Family Residential) to have the zoning classification consistent and compatible with the Residential 4 (RES 4) Future Land Use Map (FLUM) designation.

The parcel is currently vacant. The parcel is a portion of Tract "D", First Replat in Port St. John Unit Six, Plat Book 24, Page 137.

On May 22, 1958, Brevard County adopted the zoning code, and the subject area was established with the zoning classification of GU (General Use).

On October 6, 1960, Zoning action Z-414 rezoned the Port St. John area from GU to the zoning classification RU-1, Single-Family Residential Zone.

On June 1, 1972, the zoning classification RU-1 was replaced with the RU-1-9, Single-Family Residential zoning classification.

On September 8, 1988, Brevard County established the Comprehensive Plan and the Future Land Use Map (FLUM) and Tract "D" was established with the RES 4 Future Land Use. The RES 4 FLU is not consistent/compatible with the RU-1-9 zoning classification. Per section 62-1188(5) Tract "D" was considered nonconforming to the RES 4 FLU as the Tract was of record in the Official Record Books of the County when the Comprehensive Plan was established.

On January 14, 1998, Tract "D" was split per Official Records Book 3768, page 1796 which split off two parcels of Tract "D", called Parcel No. 7, and Parcel No. 8 per ORB 3768, page 1796. This lot split created these two parcels to lose the nonconforming status to the RES 4 Future Land Use. Further, per Section 62-2102: No person shall sever any lot in such a manner that a violation of any of the provisions of this chapter would be created on any new or altered lot, including their uses or structures.

On October 31, 2023, the two parcels were combined together as one parcel per Quit Claim Deed recorded in Official Records Book 9920, Pages 1367 thru 1368. Combining the two parcels was required to meet the 0.25-acre size requirement for RES 4 FLU.

The applicant's request to change the zoning from RU-1-9 to RU-1-11 will provide consistency with the Residential 4 (RES 4) Future Land Use Map (FLUM) designation.

The subject is located on the north side of Aspen Lane, a County maintained roadway.

### **Surrounding Area**

	<b>Existing Land Use</b>	<b>Zoning</b>	<b>Future Land Use</b>
<b>North</b>	Undeveloped property	RU-1-9	RES 4
<b>South</b>	Single-family residence across Aspen Lane	RU-1-9	RES 4
<b>East</b>	Single-family residence	RU-1-9	RES 4
<b>West</b>	Undeveloped property	RU-1-9	RES 4

The current RU-1-9 classification permits single family residential development on lots of 6,600 square feet (minimum) with a minimum width of 66 feet and depth of 100 feet. The minimum house size is 900 square feet.

The proposed RU-1-11 classification permits single family residences on minimum 7,500 square foot lots, with a minimum width and depth of 75 feet. The minimum house size is 1,100 square feet.

### **Future Land Use**

The subject property is currently designated as Residential 4 (RES 4) FLUM designation. The current RU-1-9 zoning is not consistent with the existing RES 4 FLUM designation. The proposed RU-1-11 zoning is consistent with the existing RES 4 FLUM designation.

**FLUM 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.

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 applicant intends to build single-family residence on the site. The request is not anticipated to diminish the enjoyment of safety or quality of life in existing residential 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 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 historical land use patterns of the surrounding development can be characterized as single-family residences on properties 0.23 acres to 0.92 acres in size.**

**There are four (4) FLU designations (RES 4, RES 2, REC, and PUB CONS) within a 0.5-mile radius of the subject property. RES 4 is the prominent FLU in this area.**

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

**There is one development within 0.5 miles for a proposed single-family residence, located 280 feet to the north of the subject parcel.**

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

**There has been no development approved within the past three years.**

- 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.

**The closest parcel with RU-1-11 zoning is located 280 feet to the north of the subject parcel. This parcel was rezoned from RU-1-9 to RU-1-11 on 2/02/2023 per zoning action 22Z00061.**

**This request provides consistency with the FLUM and zoning classification. It will also recognize existing development trends.**

**Since RU-1-11 has larger lot and dwelling standards and contains the same uses, it is not anticipated to materially or adversely impact the surrounding established RU-1-9 residential neighborhood.**

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 property is located in an existing platted residential neighborhood. There are clearly established roads and residential lot boundaries.**

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 single-family residential neighborhood.**

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 with no commercial zoning nearby.**

### **Analysis of Administrative Policy #7**

Proposed use(s) shall not cause or substantially aggravate any (a) Substantial drainage problem on surrounding properties; or (b) significant, adverse and unmitigatable impact on significant natural wetlands, water bodies or habitat for listed species.

**Per Natural Resource Management Department: A wetland delineation will be required prior to any land clearing activities, site plan design, or building permit submittal and meet all Natural Resource Management Department codes.**

### **Preliminary Concurrency**

The closest concurrency management segment to the subject property is Fay Blvd. located between Golfview Avenue and Homestead Avenue, which has a Maximum Acceptable Volume (MAV) of 15,600 trips per day, a Level of Service (LOS) of D, and currently operates at 21.86% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.06%. The corridor is anticipated to operate at 21.92% 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 subject property has access to the City of Cocoa potable water and on septic.

## **Environmental Constraints**

### **Summary of Mapped Resources and Noteworthy Land Use Issues:**

- Wetlands and Hydric Soils
- Aquifer Recharge Soils
- Protected and Specimen Trees
- Protected Species

A majority of the subject parcel contains mapped wetlands and hydric soils; indicators that wetlands may be present on the property. **A wetland delineation will be required prior to any land clearing activities, site plan design, or building permit submittal.**

**Per Section 62-3694(c)(1), residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres** unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. **This density may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total residential acreage as set forth in Section 65-3694(c)(6).**

Because the lot was subdivided into its current configuration after September 9, 1988, and the property is less than 5 acres, **wetland impacts shall not exceed 1.8% of project area. This equates to a total of approximately 369 square feet of permissible wetland impacts on the properties' combined 20,473 square feet.**

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.**

## **For Board Consideration**

The Board may wish to consider if the request is consistent and compatible with the surrounding area and to recognize existing development trends. The Board may also wish to consider any impacts on any significant natural wetlands, water bodies or habitat for listed species.

**NATURAL RESOURCES MANAGEMENT DEPARTMENT**  
**Zoning Review & Summary**  
**Item No. 23Z00079**

**Applicant:** Anabeth Nazario (Owner: Anabeth Nazario)

**Zoning Request:** RU-1-9 to RU-1-11

**Note:** Combining parcels - PAO application 10/31/2023

**PSJ Hearing:** 01/03/2024; **BCC Hearing:** 02/01/2024

**Tax ID Nos:** 2320163 & 2320164

- 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 and Hydric Soils
- Aquifer Recharge Soils
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### **Land Use Comments:**

#### **Wetlands and Hydric Soils**

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#### **Aquifer Recharge Soils**

Basinger sand can also function as an aquifer recharge soil. Mapped topographic elevations indicate the soils may consist of Type 3 Aquifer Recharge soils that have impervious area restrictions. A topographic survey should be completed prior to development to confirm elevations. 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 and Specimen Trees may exist on the parcel. Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4331(3), encourages the protection of Specimen Trees. 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.

#### **Protected Species**

Federally and/or state protected species may be present on properties with aquifer recharge soils and/or wetlands. Specifically, there is potential for existence of Gopher Tortoises on site. Should any protected species be present, 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 prior to any plan, permit submittal, or development activity, including land clearing, as applicable.