



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

19PZ00139

Beatrice A. Akman

CUP (Conditional Use Permit) for Guesthouse in an RU-1-11 (Single-Family Residential) Zoning Classification

Tax Account Number: 2514604
Parcel I.D.: 25-37-06-CX-*-15.03
Location: west side of Newfound Harbor Dr., approximately 150 ft. north of Jaren Ave. (1291 Newfound Harbor Dr., Merritt Island) (District 2)
Acreage: 0.96 acres

Planning and Zoning Board: 01/13/20

Board of County Commissioners: 02/06/20

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
Zoning	RU-1-11	RU-1-11 and Guesthouse
Potential*	One Unit	Two Units
Can be Considered under the Future Land Use Map	Yes RES 4 (Residential 4)	Yes RES 4 (Residential 4)

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

Background and Purpose of Request

The applicant is seeking a Conditional Use Permit (CUP) to build a proposed 1,188 square-foot guesthouse. The site is currently developed with a 4,250 square-foot single-family home which has 3,549.7 square feet of living area and a 482.8 square-foot detached garage on 0.96 acres. As the size of the site is not one acre in size, a CUP is required for the proposed guesthouse. Per Sec. 62-1932(b), "A conditional use permit shall not be required on parcels equal to or exceeding one acre in size." The proposed guesthouse will be used by the applicant's family and not rented.

The parcel contains 0.96 acres which permits four detached accessory structures. Each detached accessory building or structure shall not exceed 600 square feet or 50 percent of the

living area of the principal building, whichever is greater. All detached accessory buildings shall not exceed the floor area of the principal structure. Per the proposed plan, the guesthouse will be 1,188 square feet and will meet accessory structure size requirements.

The original zoning of the site was GU (General Use) and RU-1 (Single Family Residential), which was changed to RU-1-13 per Resolution No. **Z-2980** in 1972. The single-family home on the parcel was constructed in 1987.

Land Use

This site retains the Residential 4 (RES 4) Future Land Use (FLU) designation. The current zoning classification of RU-1-11 is consistent with the Future Land Use designation.

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.

The Board should evaluate the compatibility of this application within the context of the Board's Administrative Policies 1 through 8 of the Future Land Use Element, outlined in the Administrative Policies.

Environmental Constraints

Natural Resource Management Department has listed Hydric Soils, Aquifer Recharge Soils, Floodplain, Coastal High Hazard Area, State Surface Waters, Indian River Lagoon Septic Overlay, Heritage Specimen Trees and Protected Species as a summary of mapped resources and noteworthy land use issues on the subject parcel.

Preliminary Transportation Concurrency

The subject property is on the concurrency management segment of Newfound Harbor Drive, between Highway 520 and the west end of Newfound Harbor Drive, which has a Maximum Acceptable Volume (MAV) of 15,600 trips per day, a Level of Service (LOS) of E, and currently operates at 45.13% of capacity daily. The maximum development potential from the proposed CUP does increase the proposed trip generation by 0.06 percentage points. The corridor is anticipated to operate at 45.19% of capacity daily (LOS C). The trips anticipated from this CUP activity will not 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 existing house is not connected to sewer; however, Brevard County sewer is located running along the east side of Newfound Harbor Drive directly in front of the parcel.

The parcel is serviced by City of Cocoa water.

Applicable Land Use Policies

The applicant is seeking a Conditional Use Permit (CUP) to build a proposed 1,188 square-foot guesthouse. The site is currently developed with a 4,250 square-foot single-family home which has 3,549.7 square feet of living area and a 482.8 square-foot detached garage on 0.96 acres. The proposed guesthouse will be 1,188 square feet and will not have a kitchen but will have a wet bar. Per Sec. 62-1932(c), "A guesthouse or servants' quarters may contain kitchen facilities on parcels of at least one acre in size where the resulting density of the lot including the guesthouse or servants' quarters is consistent with the zoning regulation and comprehensive plan density designation."

The current zoning of the property is 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. RU-1-11 does not permit horses, barns or horticulture.

The developed character of the area along both sides of Newfound Harbor Drive is RU-1-11 single-family residentially-zoned lots with a RES 4 FLU designation.

The abutting parcels to the north of the subject property are zoned RU-1-11 with a FLU designation of RES 4 on 0.76 acres and 0.41 acres. To the east of the property is Newfound Harbor Drive. The abutting parcels to the south are zoned RU-1-11 with a RES 4 FLU designation on 0.43 acres and 0.48 acres. To the west of the property is Newfound Harbor waterway.

There has been one zoning action within a half-mile of the subject property in the last 5 years. On September 05, 2019, application **19PZ00080** replaced existing CUP for mitigating a nonconforming use (marina) with modified CUP for the marina on 7.06 acre parcel located approximately 710 feet east of the subject property.

Special Considerations for CUP (Conditional Use Permit)

The Board may consider the compatibility of the proposed CUP pursuant to Section 62-1151(c) and to Section 62-1901, as outlined on pages 6 – 8 of these comments. Section 62-1901 provides that the approval of a conditional use shall authorize an additional use for the affected parcel of real property in addition to those permitted in the applicable zoning classification. **The initial burden is on the applicant to demonstrate that all applicable standards and criteria are met. Applications which do not satisfy this burden cannot be approved.** The applicant's responses and staff observations, if any, are indicated below.

Section 62-1151(c) directs the Board to consider the character of the land use of the property and its surroundings; changes in the conditions of the land use being considered; impact upon infrastructure; compatibility with land use plans for the area; and appropriateness of the CUP based upon consideration of applicable regulations relating to zoning and land use within the context of public health, safety and welfare. The applicant has submitted documentation in order to demonstrate consistency with the standards set forth in Section 62-1901 and Section 62-1932, guesthouses or servants' quarters.

This request should be evaluated in the context of Section 62-1932 which outlines conditions for guesthouses or servants' quarters which states:

(a) *Guesthouses or servants' quarters are subject to the following minimum requirements:*

- (1) *The structure shall contain no kitchen facilities except where consistent with paragraph (c) below.*

Staff's Observation: Guesthouse will not have a kitchen, see (c) below.

- (2) *The structure shall be a detached accessory structure located to the rear of the principal structure and shall not be attached to any other accessory structure.*

Staff's Observation: Parcel is a double frontage lot with frontage on Newfound Harbor Drive and Newfound Harbor a major water way. The owner has elected the Newfound Harbor water line as the front property line of parcel. Proposed guesthouse will be located to the rear of the principal structure and shall not be attached to any other accessory structure.

- (3) *The structure shall not exceed the maximum size permitted for accessory structures in the applicable zoning classification. Where there is no maximum, the structure shall not exceed 50 percent of the size of the principal structure.*

Staff's Observation: The existing single-family house has 3,549.7 sq. ft. of living area. Each detached accessory building or structure shall not exceed 600 square feet or 50 percent of the living area of the principal building, whichever is greater. Per the proposed plan the Guesthouse will be 1,188 sq. ft. and will meet accessory size requirement.

- (4) *The structure shall be used for the accommodation of family members, temporary guests (maximum six months), or servants only.*

Staff's Observation: The guesthouse will be for family members.

- (5) *The structure shall not be used for rental purposes.*

Staff's Observation: The guesthouse will be for family members and not rented.

- (6) *The structure shall be set back a minimum of ten feet from the side and rear lot lines.*

Staffs Observation: Proposed site plan shows guesthouse will be setback 31 feet off south side property line.

- (b) *This conditional use shall not be granted on a parcel of land containing less than one-half acre. A conditional use permit shall not be required on parcels equal to or exceeding one acre in size.*

Staff's Observation: The parcel contains 0.96 acre which requires the CUP.

- (c) *A guesthouse or servants' quarters may contain kitchen facilities on parcels of at least one acre in size where the resulting density of the lot including the guesthouse or servants' quarters is consistent with the zoning regulation and comprehensive plan density designation. All other conditions enumerated above shall apply.*

Staff's Observation: Per the proposed plan provided the guesthouse will not have a kitchen, but will have a wet bar. Per Definitions and rules of construction in section 62-1102: Kitchen means a room or area within a room whose primary purpose is to store, prepare and cook food. A kitchen will have a refrigerator to store food, counter space and a sink to prepare food, and a stove and/or range to cook food.

General Standards of Review

Section 62-1901(c)(1)(a): The proposed conditional use will not result in a substantial and adverse impact on adjacent and nearby properties due to: (1) the number of persons anticipated to be using, residing or working under the conditional use; (2) noise, odor, particulates, smoke, fumes and other emissions, or other nuisance activities generated by the conditional use; or (3) the increase of traffic within the vicinity caused by the proposed conditional use.

Applicant's Response: None of them would be affected by the project.

Staff's Observation: Proposed guesthouse should not affect these or cause a deficiency in LOS trips.

Section 62-1901(c)(1)(b): The proposed use will be compatible with the character of adjacent and nearby properties with regard to use, function, operation, hours of operation, type and amount of traffic generated, building size and setback, and parking availability.

Applicant's Response: Yes.

Staff's Observation: Will meet setbacks and building size per proposed plans.

Section 62-1901(c)(1)(c): The proposed use will not cause a substantial diminution in value of abutting residential property. A substantial diminution shall be irrebutably presumed to have occurred if abutting property suffers a 15 percent reduction in value as a result of the proposed conditional use. A reduction of ten percent of the value of abutting property shall create a reputable presumption that a substantial diminution has occurred. The board of county commissioners carries the burden to show, as evidenced by either testimony from or an appraisal conducted by an MAI certified appraiser, that a substantial diminution in value would occur. The applicant may rebut the findings with his own expert witnesses.

Applicant's Response: Does not apply.

Staff's Observation: Proposed guesthouse should not reduce values of abutting properties. Parcel is 0.96 acres, if parcel was one acre applicant would not need CUP for a guesthouse.

Section 62-1901(c)(2)(a): Ingress and egress to the property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire and catastrophe, shall be: (1) adequate to serve the proposed use without burdening adjacent and nearby uses, and (2) built to applicable county standards, if any. Burdening adjacent and nearby uses means increasing existing traffic on the closest collector or arterial road by more than 20 percent, or ten percent if the new traffic is primarily comprised of heavy vehicles, except where the affected road is at level of service A or B. New traffic generated by the proposed use shall not cause the adopted level of service for transportation on applicable roadways, as determined by applicable county standards, to be exceeded. Where the design of a public road to be used by the proposed use is physically inadequate to handle the numbers, types or weights of vehicles expected to be generated by the proposed use without damage to the road, the conditional use permit cannot be approved without a commitment to improve the road to a standard adequate to handle the proposed traffic, or to maintain the road through a maintenance bond or other means as required by the

Board of County Commissioners.

Applicant's Response: Will not cause any additional traffic.

Staff's Observation: Proposed guesthouse should not affect these or cause a deficiency in LOS trips.

Section 62-1901(c)(2)(b): The noise, glare, odor, particulates, smoke, fumes or other emissions from the conditional use shall not substantially interfere with the use or enjoyment of the adjacent and nearby property.

Applicant's Response: Will not interfere adjacent property.

Staff's Observation: Proposed guesthouse should not create these.

Section 62-1901(c)(2)(c): Noise levels for a conditional use are governed by section 62-2271.

Applicant's Response: Don't apply.

Staff's Observation: Proposed guesthouse should not create high noise levels.

Section 62-1901(c)(2)(d) The proposed conditional use shall not cause the adopted level of service for solid waste disposal applicable to the property or area covered by such level of service, to be exceeded.

Applicant's Response: Don't apply.

Staff's Observation: Proposed guesthouse should not exceeded level of service.

Section 62-1901(c)(2)(e): The proposed conditional use shall not cause the adopted level of service for potable water or wastewater applicable to the property or the area covered by such level of service, to be exceeded by the proposed use.

Applicant's Response: Will not apply.

Staff's Observation: Proposed guesthouse should not exceeded level of service.

Section 62-1901(c)(2)(f): The proposed conditional use must have existing or proposed screening or buffering, with reference to type, dimensions and character to eliminate or reduce substantial, adverse nuisance, sight, or noise impacts on adjacent and nearby properties containing less intensive uses.

Applicant's Response: Will not apply.

Staff's Observation: Proposed CUP does not require these.

Section 62-1901(c)(2)(g): Proposed signs and exterior lighting shall not cause unreasonable glare or hazard to, traffic safety, or interference with the use or enjoyment of adjacent and nearby properties.

Applicant's Response: Not applicable

Staff's Observation: Proposed CUP does not require these.

Section 62-1901(c)(2)(h): Hours of operation of the proposed use shall be consistent with the use and enjoyment of the properties in the surrounding residential community, if any. For commercial and industrial uses adjacent to or near residential uses, the hours of operation shall not adversely affect the use and enjoyment of the residential character of the area.

Applicant's Response: Not applicable.

Staff's Observation: Not applicable to this CUP.

Section 62-1901(c)(2)(i): The height of the proposed use shall be compatible with the character of the area, and the maximum height of any habitable structure shall be not more than 35 feet higher than the highest residence within 1,000 feet of the property line.

Applicant's Response: See attached plan.

Staff's Observation: Proposed guesthouse will be one story high per proposed plans.

Section 62-1901(c)(2)(j): Off-street parking and loading areas, where required, shall not be created or maintained in a manner which adversely impacts or impairs the use and enjoyment of adjacent and nearby properties. For existing structures, the applicant shall provide competent, substantial evidence to demonstrate that actual or anticipated parking shall not be greater than that which is approved as part of the site plan under applicable county standards.

Applicant's Response: Do not apply.

Staff's Observation: Parcel is 0.96 acres and will have adequate parking.

For Board Consideration

The applicant is seeking a Conditional Use Permit (CUP) to build a proposed 1,188 square-foot guesthouse and will not have a kitchen, but will have a wet bar. The site is currently developed with a 4,250 square-foot single-family home which has 3,549.7 square feet of living area and a 482.8 square-foot detached garage on 0.96 acres. As the size of the site is not one acre in size, a CUP is required for the proposed guesthouse. Per Sec. 62-1932(b), "A conditional use permit shall not be required on parcels equal to or exceeding one acre in size." The proposed guesthouse will be used by the applicant's family and not rented.

The Board may consider whether the use of a guesthouse is compatible with the abutting lots and surrounding area, which are developed with single-family residences. There are no other guesthouses within a half-mile of the subject property. The parcel abuts the natural waterbody Newfound Harbor. The Board may consider that the guesthouse be connected to Brevard County sewer and not be on septic. The Board may also consider the restriction that the guesthouse be not rented out.

CUP may be: 1) approved subject to the conditions of Section 62-1932; 2) approved subject to the conditions of 62-1932 and conditions imposed by the Board above and beyond the requirements of Section 62-1932; or 3) denied.

**NATURAL RESOURCES MANAGEMENT DEPARTMENT
CUP Review & Summary**

Item # 19PZ00139

Applicant: Beatrice Akman

CUP Request: Applicant desires to build a guesthouse

P&Z Hearing Date: 01/13/20; **BCC Hearing date:** 02/06/20

Tax ID No: 2514604

- This is a preliminary review based on best available data maps reviewed by the Natural Resources Management (NRM) Department 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:

- Hydric Soils
- Aquifer Recharge Soils
- Floodplain
- Coastal High Hazard Area
- State Surface Waters
- Indian River Lagoon Septic Overlay
- Heritage Specimen Trees
- Protected Species

The entire property is mapped within the Indian River Lagoon Septic Overlay. If sewer is not available, the conditional use to allow for a guesthouse may require septic system modifications designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay. If sewer is not available, the applicant shall contact the Florida Department of Environmental Health at 321-633-2100.

Land Use Comments:

Hydric Soils

The subject parcel contains a small area of mapped hydric soils (Turnbull and Riomar soils, tidal) on the northwest portion of the property, as shown on the USDA SCSSs soils map; an indicator that hydric soils and wetlands may be present on the property. Per Section 62-3694(c)(2), 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 would render a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. Application of the one-unit-per-five-acres limitation shall limit impacts to wetlands for single family residential development on a cumulative basis, to not more than 1.8% of the total property as defined in Sec. 65-694(c)(6). Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts, and Section 62-3696.

Aquifer Recharge Soils

The subject parcel contains mapped aquifer recharge soils (Paola fine sand) as shown on the USDA SCSSs soils map. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance

Floodplain

The subject parcel contains an area of mapped floodplain as identified by FEMA, and as shown on the FEMA Flood Map. The floodplain area 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

A portion of the property is in the Coastal High Hazard Area (CHHA). Objective 7.0 of the Brevard County Comprehensive Plan, Coastal Management Element is to, "Limit densities within the coastal high hazard zone **and direct development outside of this area.**"

Surface Water Classification

The property is located on surface waters designated by the State as an Aquatic Preserve and Outstanding Florida Waters. A 50-foot surface water protection buffer (Buffer) is required. Except as allowable under Section 62-3668(7), primary structures shall be located outside of the Buffer. Accessory structures within the Buffer are permissible provided that stormwater management is provided, impervious areas do not exceed 30% of Buffer area, and avoidance/minimization of Buffer impacts is followed so that surface water quality and natural habitat is not adversely affected.

Indian River Lagoon Septic Overlay

The entire property is mapped within the Indian River Lagoon Septic Overlay. If sewer is not available, the conditional use to allow for a guesthouse may require septic system modifications designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay. If applicable, the applicant shall contact the Florida Department of Environmental Health at 321-633-2100.

Heritage Specimen Trees

Aerials indicate the subject property may contain Heritage Specimen trees (greater than or equal to 24 inches in diameter), or Protected trees (greater than or equal to 10 inches in diameter). Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4331(3), the purpose and intent of the ordinance is to encourage the protection of Heritage Specimen and Protected trees. In addition, per Section 62-4341(18), Specimen Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Per Section 62-4332, Definitions, 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.

Protected Species

Information available to NRM indicates that federally and/or state protected species may be present on the property. Specifically, gopher tortoises can be found in areas of 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.