



BOARD OF COUNTY COMMISSIONERS

## Planning and Development Department

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

### STAFF COMMENTS

20Z00005

Daren T. Dempsey Revocable Trust

RR-1 (Rural Residential) to AU (Agricultural Residential)

Tax Account Number: 2316704  
Parcel I.D.: 23-36-25-00-759  
Location: South side of Bishop Road, approximately 935 feet west of Board Acres Street (District 2)  
Acreage: 3.07 acres

North Merritt Island Board: 07/16/2020

Board of County Commissioners: 08/06/2020

### 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>	RR-1	AU
<b>Potential*</b>	One single-family unit	One single-family
<b>Can be Considered under the Future Land Use Map</b>	YES RES 1	YES RES 1

\* 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 RR-1 (Rural Residential) to AU (Agriculture Residential) for the purpose of having a plant nursery business. The parcel is an approved flag lot per Administrative Action **AA-11** and is developed with a single-family home that is the applicants' homestead along with residential amenities. The flag stem for the subject parcel is approximately 665 feet long and is located on the south side of Bishop Road a 50 feet wide public Right-of-Way. The portion of Bishop Road that the flag stem is accessed from is unpaved but is maintained by Brevard County Public Works Department. The applicant did not provide staff with a proposed development plan submitted with this application for the nurseries.

January 8, 1989, zoning action **Z-8307** changed the zoning from AU to RR-1. This zoning action was on the subject parcel which also included the abutting 2.5 acre parcel to the east that was all one parcel at the time of this rezoning.

March 7, 1974, zoning action **Z-3565** approved a CUP (Conditional Use Permit) for a temporary trailer for caretaker/watchman in an AU zoning for five years.

## **Land Use**

The subject property retains the RES 1 (Residential 1) Future Land Use designation. The existing zoning classification RR-1 and the proposed AU are consistent with the RES 1 Future Land Use designation.

## **Environmental Constraints**

The subject property is located on North Merritt Island in the area from Hall Road, north to State Road 405 (Area), and is subject to floodplain and land alteration requirements. Per Section 62 3724(4), development within the Area shall provide compensatory storage. Per Section 62 4421(a)(5), any land alteration, including grading, excavation and any amount of fill brought onsite will require a Minor Land Alteration Permit. Details of requirements are provided in the staff report. NRM (Natural Resources Management Department) reserves the right to assess consistency with environmental ordinances at all applicable future stages of development. Please see NRM comments at the end of this report for further details.

## **Preliminary Transportation Concurrency**

The closest concurrency management segment to the subject property is North Courtenay Parkway, between Hall Road and North Tropical Trail, which has a Maximum Acceptable Volume of 41,790 trips per day, a Level of Service (LOS) of D, and currently operates at 35.64% of capacity daily. The maximum development potential from the proposed rezoning does increase the percentage of MAV utilization by 00.79%. The corridor is anticipated to continue to operate at 36.43% of capacity daily (LOS D). 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 serviced by Brevard County sewer. The closest available Brevard County sewer line is located directly across North Courtenay Parkway along the west side of North Courtenay Parkway approximately 1.8 miles west of the parcel.

The parcel is serviced by City of Cocoa water.

## **Applicable Land Use Policies**

**FLUE Policy 1.9** – The Residential 1 Future land use designation. The Residential 1 land use designation permits low density residential development with a maximum density of up to one (1) dwelling unit 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 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.** The subject property is a developed flag lot with a single-family

home and residential amenities and lies within the Residential 1 Future Land Use designation. The parcel abuts AU zoning along its southern and western boundaries and against an existing private road (Bishop Road) along the north of the parcel and west of the parcel's 665 feet flag stem. The abutting parcels along the east of the parcel are zoned RR-1. The applicant is proposing a future plant nursery. The proposed AU zoning is compatible with the Residential 1 Future Land Use designation.

**Analysis of Administrative Policy #4 - Character of a neighborhood or area.** The developed character of the surrounding area along Bishop Road is RR-1 (Rural Residential) and AU which are developed with single-family houses. The subject parcel and the surrounding area along Bishop Road have a Future Land Use (FLU) designation of RES 1 which is compatible with the current RR-1 zoning and the proposed AU.

### **Surrounding Area**

The developed character of the surrounding area south of Bishop Road is RR-1 (Rural Residential) and AU (Agriculture Residential) which are developed with single-family houses. The subject parcel and the surrounding area along Bishop Road have a Future Land Use (FLU) designation of RES 1 which is compatible with the AU and RR-1 zonings. The proposed AU zoning is consistent with the Future Land Use designation RES 1.

The current RR-1 classification permits single-family residential land uses on minimum one acre lots, 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.

The proposed 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, fowl and beekeeping. Plant nurseries are a permitted use in AU zoning.

The abutting parcel to the north is zoned AU and is the private drive, Bishop Road, which allows access to the three AU parcels to the west of the subject parcel and are developed with single-family homes on 2.5 acre parcels. The abutting parcels along the east are zoned RR-1 and are developed with single-family homes. The abutting parcel to the south is zoned AU and is developed with a single-family home. The abutting parcel to the west is zoned AU and is developed with single-family homes on a 2.5 acre parcel.

### **For Board Consideration**

The Board may wish to consider whether the request is consistent and compatible with the surrounding RR-1 single-family residences and AU zoning Classifications. The Board may also wish to consider if Agricultural pursuits are appropriate for this parcel since it is a flag lot on an unpaved section of roadway through a residential neighborhood.

The Board may also wish to consider the effect of Agritourism adjacent to single-family residential.

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

**Item # 20Z00005**

**Applicant:** Dempsey

**Zoning Request:** RR-I to AU

**Note:** Applicant wants a plant nursery, and to operate a plant nursery business.

**NMI Hearing Date:** 07/16/20; **BCC Hearing date:** 08/06/20

**Tax ID No:** 2316704

- 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.**
- If the owner/applicant has questions regarding any potential limitations, s/he is encouraged to contact NRM at 321-633-2016 prior to any design of plans and land clearing/filling activities.

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

- Wetlands/Hydric Soils
- Indian River Lagoon Septic Overlay
- Floodplain
- Land Alteration
- Protected Species
- Heritage Specimen Trees

The subject property is located on North Merritt Island in the area from Hall Road, north to State Road 405 (Area), and is subject to floodplain and land alteration requirements. Per Section 62-3724(4), development within the Area shall provide compensatory storage. Per Section

62-4421(a)(5), any land alteration, including grading, excavation and any amount of fill brought onsite will require a Minor Land Alteration Permit. Details of requirements are provided in the staff report. NRM reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

## **Land Use Comments:**

### **Wetlands/Hydric Soils**

The entire parcel is mapped with hydric soils (Copeland-Bradenton-Wabasso complex-limestone substratum) as shown on the USDA SCSSs soils map. A wetland delineation was completed on July 27, 2017, by Andrew Conklin Environmental Services, LLC, and confirmed the presence of wetlands onsite. An area of approximately 1.12 acres exists along the northwest corner of the property. Aerials indicate that a small portion of the wetland area may have been cleared recently. The discovery of unpermitted wetland impacts may result in enforcement action. 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 and should be contacted at 321-264-5393 for further requirements related to obtaining this classification.** 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. Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts, and Section 62-3696. The applicant is encouraged to contact NRM at 321-633-2016 prior to any plan design, land clearing or permit submittal.

### **Indian River Lagoon Septic Overlay**

The site is located in the Indian River Lagoon Septic Overlay per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay. Replacement of the current septic system will require use of an alternative septic system designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes. NRM requires a Septic Maintenance Notice to be completed and filed with the Clerk of Courts at the time of permitting the septic system.

### **Floodplain**

Portions of the subject parcel are located within a mapped isolated 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. It is recommended to keep fill out of the isolated floodplain areas in order to avoid requirements of Section 62-3724(4) as follows:

*Development, land alteration, or grading on North Merritt Island in the area from Hall Road, north to State Road 405, are subject to the following requirements:*

- (a) *Compensatory storage; and*
- (b) *Written certification from the engineer of record that there will be no adverse flooding impacts upon properties within the Area resulting from the proposed development. Written certification shall be required prior to issuance of a land alteration permit, building permit, site plan, preliminary plat approval, or any other authorization for grading or drainage modifications. The engineer of record shall certify that the proposed development will not increase flood stages, and will not increase the duration of the peak flood stages within the Area. Such certification shall be accompanied by a report supporting the certification. This report shall include full engineering data and analysis, in compliance with good engineering practices, and any and all applicable standards, criteria, and regulatory requirements, including the hydraulic and hydrologic modelling and analysis demonstrating that there is no impact; and*
- (c) *Sealed pre-existing topographic survey or engineered site plan delineating floodplain limits on the property, if any, with base flood elevation using best available flood elevation data. Delineation of floodplains shall use best available pre-alteration ground elevation data.*
- (d) *A waiver from the compensatory storage requirement may be granted by the county manager or designee where the engineer of record certifies that the proposed design does not increase peak flood stage or duration, based on a stormwater model accepted by the board of county commissioners. Any such stormwater model shall be based on best available data addressing, at minimum; water storage, water volume, groundwater elevations, peak stages, and peak rates for the Area...*
- (g) *An as-built survey shall be submitted to the County within 60 days of project completion.*
- (h) *Any engineered compensatory storage approved by the county shall be maintained by the owner in perpetuity. Any modifications to the system require approval under this section.*
- (i) *Land alteration and grading in the Area are prohibited unless reviewed and approved under this subsection and Sec. 62-4421 (a)(5).*

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."

## **Land Alteration**

Per Section Sec. 62-4421(a)(5), a Minor Land Alteration Permit will be required for any pre-approved land alteration activities, including excavation, filling and grading **less than ¾ acre** on the entire subject property as it is located on North Merritt Island in the area from Hall Road, north to State Road 405.

## **Protected Species**

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

### **Heritage Specimen Trees**

The applicant should contact NRM at 321-633-1016 prior to any land clearing activities. Per Section 62-4339, the lot shall meet preservation requirements for canopy, Protected trees and Specimen trees. Aerials indicate that Heritage Specimen Trees (greater than or equal to 24 inches in diameter) may reside on the parcel. Per Section 62-4341(18), Specimen and Protected 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. 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.