



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

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STAFF COMMENTS

20Z00030

Lazy River Investments, LLC

RU-1-13 (Single-Family Residential) to AU(L) (Agricultural Residential (Low Intensity))

Tax Account Number: 3008729
Parcel I.D.: 30G-38-19-HP-*-10
Location: Southwest corner of Fleming Grant Road and Seabird Lane (District 3)
Acreage: 20.39 acres

Planning and Zoning Board: 11/09/2020

Board of County Commissioners: 12/03/2020

Consistency with Land Use Regulations

- Current zoning can not 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-1-13	AU (L)
Potential*	Two (2) single-family residential units	Eight (8) single-family residential units
Can be Considered under the Future Land Use Map	NO Residential 1:2.5	YES Residential 1:2.5

* 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-1-13 (Single-Family Residential) to AU(L) (Agricultural Residential - Low Intensity) to be consistent with the RES 1:2.5 (Residential 1:2.5) FLU (Future Land Use) designation.

The property is located on the southwest corner of Fleming Grant Road and a private driveway, Seabird Lane. This property has dual frontage on Fleming Grant Road and the Sebastian River. The property is currently platted as two residential lots: Lot 10, a 10.75-acre lot and Lot 11, a 9.88-acre lot, which total 20.39 acres. The property is currently vacant.

On May 30, 2019, the Board of County Commissioners conducted a public hearing to consider a request for a Large Scale Comprehensive Plan Amendment to change the Future Land Use designation from RES 1:2.5 to RES 1, and a companion Zoning action request for a BDP (Binding

Development Plan) for consistency with the Residential 1 FLU designation (**18PZ00167**). The result of that hearing was that the Large Scale Comprehensive Plan Amendment was denied, and the applicant withdrew the companion BDP request. On December 5, 2019, the Board conducted a public hearing to consider a request for a BDP limiting the development of the property to 8 lots, with other stipulations offered to help mitigate the proposed development. The Board also denied this request. (**19PZ00093**)

Land Use

The property is currently designated RES 1:2.5 by the Future Land Use Map (FLUM). The existing zoning of RU-1-13 is inconsistent to the FLUM. The proposed zoning of AU(L) would allow consistency with the FLUM.

FLUE Policy 1.10 The Residential 1:2.5 land use designation, which establishes the lowest density of all the residential future land use designations, permits a maximum density of up to one (1) unit per 2.5 acres, except as otherwise may be provided for within this element. Development in the Residential 1:2.5 land use designation should seek to maximize the integration of open space within the development and promote inter-connectivity with surrounding uses.

Environmental Constraints

All references to mapped areas can be found in the GIS Maps section of this package.

The subject parcel contains an area of mapped NWI wetlands on the southwest portion of the site. A wetland delineation will be required prior to any site plan design, land clearing activities, or building permit submittal.

The southern portion of the property is in the Coastal High Hazard Area (CHHA). The Coastal Management Element of the Comprehensive Plan, Objective 7.0, seeks to limit densities within the coastal high hazard zone and direct development outside of this area.

The southern portion of the subject parcel is located within the Special Flood Hazard Area (SFHA) as identified by Federal Emergency Management Agency (FEMA) in yellow on the FEMA Flood Zone Map. A comparison of the SFHA and the CHHA on the corresponding maps, reveals a similar overlay. Per Section 62-3723(2)(a) and (b), development within an estuarine floodplain shall not negatively impact adjacent properties or receiving water body quality. Development shall provide a contiguous area that includes the primary structure and perimeter buffer, accessory structures, onsite sewage disposal system and buffer, and access to the primary and accessory structure. This contiguous, developed area shall be elevated to or above the 100-year base flood elevation (BFE) as described below.

Portions of the site are mapped within the Indian River Lagoon Nitrogen Reduction Septic Overlay. The project is not located within the Brevard County's sanitary sewer service area. Therefore, use of an alternative septic system designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes shall be required. Septic tanks and drain fields in the SFHA are subject to flooding, and per Section 62-3723(b) will require fill to be elevated to or above the BFE.

The entire subject property is mapped within Upland Mixed Coniferous/Hardwood trees FLUCCS code. Protected Trees (greater than or equal to 10 inches in diameter) and Specimen Trees (greater than or equal to 24 inches in diameter) are found in the project area. While developing in the SFHA and CHHA to a higher elevation would provide more protection from flooding, the additional fill is detrimental to the preservation of Specimen Trees, natural function and biodiversity.

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

Preliminary Concurrency

The closest concurrency management segment to the subject property is US Highway 1, between the 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 52.02% of capacity daily. The parcel is undeveloped. The maximum development potential from the proposed rezoning increases the proposed trip generation 0.13%. The corridor is anticipated to operate at 52.15% of capacity daily. The proposal is not anticipated to create a deficiency in LOS C.

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 is not served by potable water. The subject property would be served by well and septic. Brevard County Division 46, Article II, Division 4 establishes a nitrogen reduction overlay area (Overlay) that requires advanced OSTDS that reduces total nitrogen by at least 65%. A portion of the property lies within this Overlay and septic systems within this Overlay are subject to said regulations.

Applicable Land Use Policies

The Board should evaluate the compatibility of this application within the context of Administrative Policies 3 - 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.

All of the properties between Fleming Grant Road and the Sebastian River have the RES 1:2.5 Future Land Use designation. This segment of Fleming Grant Road is considered to be low density residential and rural in character. The area contains a mixture of lot sizes and zoning classifications. Lots within ½ mile of the property range in size from 0.17 acres up to 4.5 acres with the majority being an acre or larger, and are zoned AG (Agricultural), GU (General Use), RR-1 (Rural Residential) and RU-1-13 (Single-Family Residential). The AG and GU classifications may be considered consistent with RES 1:2.5; however, the RR-1 and RU-1-13 classifications are not considered to be consistent with the RES 1:2.5. The majority of these parcels were created prior to the adoption of the Comprehensive Plan in 1988.

The proposed AU(L) zoning may be considered to be consistent with RES 1:2.5 as it has a minimum required lot size of 2.5 acres. The AU (Agricultural Residential) zoning classification is generally intended to encompass lands devoted to agricultural pursuits and single-family residential

development of spacious character. The classification is divided into two types, AU and AU(L). AU is the standard agricultural residential classification, while AU(L) is a low intensity sub-classification more suited to smaller lots where the neighborhood has a more residential than agricultural character. The AU(L) classification also permits the raising/grazing of animals, fowl and beekeeping for personal use and prohibits commercial agricultural activities. The AU(L) zoning classification requires a minimum lot size of 2 ½ acre lots, with a minimum lot width and depth of 150 feet, and a minimum house size of 750 square feet. There are parcels in the area that have the AU zoning classification; however, the Board's approval of the request would introduce AU(L) to the area.

The properties along the eastern boundary of the subject property and most of the north side of Fleming Grant Road from the subject property are zoned RR-1. The RR-1 zoning classification is generally intended to encompass lands devoted to single-family residential development of spacious character, together with such 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. The RR-1 classification permits horses, barns, and horticulture as accessory uses to a single-family residence subject to the standards in Section 62- 2100.5(2). The minimum lot size for RR-1 is one acre, with a minimum lot width and depth of 125 feet, and a minimum house size of 1,200 square feet.

The subject property and the properties along the western property line are zoned RU-1-13. The RU-1-13 classification is generally intended to encompass lands devoted to single-family residential development of spacious character, together with such accessory uses as may be necessary or are normally compatible with residential surroundings. RU-1-13 does not permit horses, barns, or horticulture. The minimum lot size is 7,500 square feet, with a minimum width and depth of 75 feet, and a minimum house size of 1,300 square feet.

Analysis of Administrative Policy #4 - Character of a neighborhood or area.

The area is characterized primarily by low-density single-family zoning and rural development. As mentioned above, the area contains a mixture of lot sizes and zoning classifications (i.e., AG, GU, RR-1 and RU-1-13). The majority of the AU-zoned land is approximately 360 feet west of the subject property and has a mixture of residential and residential/agricultural. The more intense uses allowed within the AU zoning classification do not appear to be occurring in the area. The parcels to the east and north of the subject property are zoned RR-1 and are primarily developed as single family residences.

Should the Board be concerned with agriculture activity between the RU-1-13 and RR-1 zoning classifications, an alternative residential zoning classification, REU (Rural Estate Use), could be considered in lieu of the applicant's AU(L) request. The REU zoning classification is similar to AU(L) and requires a minimum lot size of 2.5 acres and may be considered consistent with the RES 1:2.5 Future Land Use, but limits agricultural uses as a conditional use. The keeping of horses or other farm animals would require a separate zoning action in order to identify and limit their usage upon the property. Additionally, REU, with minimum lot width and depth of 200 feet, would limit the number of new lots fronting Fleming Grant Road or the river, plus a small left-over area for possible flag stems accessing Fleming Grant Road, or providing access to the water. The minimum living area is 1,200 square feet, which is 450 square feet larger than the 750 square feet required in AU(L). Although REU zoning is not currently located in the surrounding area, this zoning classification could offer additional protections that the AU(L) zoning classification does not.

Analysis of Administrative Policy #7 – Significant Adverse Environmental Impacts

The Environmental Constraints sect of the reports identify several environment limitations effecting the development potential of the property. The southern portion of the property is in the Coastal High Hazard Area (CHHA). The Coastal Management Element of the Comprehensive Plan, Objective 7.0, seeks to limit densities within the coastal high hazard zone and direct development outside of this area.

Surrounding Properties

The surrounding area is characterized as low density with some residential lots developed at less than 1 acre prior to the adoption of the Comprehensive Plan in 1988.

The surrounding properties are zoned RR-1 to the east, RU-1-13 to the west, AU across Fleming Grant Road to the north and General Use (GU) on the islands in the San Sebastian River to the south.

There have been no approved zoning actions approved in the last three (3) years within half-mile of the subject property.

Directly to the east of the subject property lies a 30-foot unimproved right-of-way, and to the east of that lies the private drive Seabird Lane, which per AA-1581 and AA-1583, provides access to two three-acre riverfront parcels.

For Board Consideration

The Board may consider whether the proposed rezoning to AU(L) is consistent and compatible with the surrounding area. The Board may also wish to consider whether the potential of agritourism activities adversely affect the surrounding area.

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

Item # 20Z00030

Applicant: Young for Bistarcky

Zoning Request: RU-1-13 to AU(L) for 8 units

P&Z Hearing Date: 11/09/20; **BCC Hearing Date:** 12/03/20

Tax ID No: 3008729

- 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:

- National Wetland Inventory (NWI) Wetlands
- Aquifer Recharge Soils
- Coastal High Hazard Area
- Floodplain
- Surface Water Classification
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Protected and Specimen Trees
- Protected Species

All references to mapped areas can be found in the GIS Maps section of this package.

The subject parcel contains an area of mapped NWI wetlands on the southwest portion of the site. A wetland delineation will be required prior to any site plan design, land clearing activities, or building permit submittal.

The southern portion of the property is in the Coastal High Hazard Area (CHHA). The Coastal Management Element of the Comprehensive Plan, Objective 7.0, seeks to limit densities within the coastal high hazard zone and direct development outside of this area.

The southern portion of the subject parcel is located within the Special Flood Hazard Area (SFHA) as identified by Federal Emergency Management Agency (FEMA) in yellow on the FEMA Flood Zone Map. A comparison of the SFHA and the CHHA on the corresponding maps, reveals a similar overlay. Per Section 62-3723(2)(a) and (b), development within an estuarine floodplain shall not negatively

impact adjacent properties or receiving water body quality. Development shall provide a contiguous area that includes the primary structure and perimeter buffer, accessory structures, onsite sewage disposal system and buffer, and access to the primary and accessory structure. This contiguous, developed area shall be elevated to or above the 100-year base flood elevation (BFE) as described below.

Portions of the site are mapped within the Indian River Lagoon Nitrogen Reduction Septic Overlay. The project is not located within the Brevard County's sanitary sewer service area. Therefore, use of an alternative septic system designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes shall be required. Septic tanks and drain fields in the SFHA are subject to flooding, and per Section 62-3723(b) will require fill to be elevated to or above the BFE.

The entire subject property is mapped within Upland Mixed Coniferous/Hardwood trees FLUCCS code. Protected Trees (greater than or equal to 10 inches in diameter) and Specimen Trees (greater than or equal to 24 inches in diameter) are found in the project area. While developing in the SFHA and CHHA to a higher elevation would provide more protection from flooding, the additional fill is detrimental to the preservation of Specimen Trees, natural function and biodiversity.

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

Land Use Comments:

Wetlands

The subject parcel contains an area of mapped NWI wetlands on the southwest portion of the site as shown on the NWI Wetlands Map; an indicator that wetlands may be present on the property. A wetland delineation will be required prior to any site plan design, land clearing activities, 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. For subdivisions greater than five acres in area, the preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total non-commercial and non-industrial acreage on a cumulative basis as set forth in Section 65-3694(c)(6). Any permitted wetland impacts must meet the requirements of Sections 62-3694(e) including avoidance of impacts, and 62-3696. The applicant is encouraged to contact NRM at 321-633-2016 prior to any plan or permit submittal.

Aquifer Recharge Soils

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

Coastal High Hazard Area

The southern portion of the property is in the CHHA. The Coastal Management Element of the Comprehensive Plan, Objective 7.0, seeks to limit densities within the coastal high hazard zone and direct development outside of this area. Policy 7.6 states that existence of sewer, water, roadways or

other public infrastructure shall not be considered adequate rationale for an increase in zoning density or intensity within the CHHA. Policy 6.1 designates CHHAs to be those areas below the elevation of the Category 1 storm surge elevation as defined in Chapter 163, Florida Statute.

Floodplain

The southern portion of the subject parcel is located within the SFHA as identified by FEMA in yellow on the FEMA Flood Zone Map. A comparison of the SFHA and the CHHA on the corresponding maps, reveals a similar overlay. Per Section 62-3723(2)(a) and (b), development within an estuarine floodplain shall not negatively impact adjacent properties or receiving water body quality, and development shall provide a contiguous area that includes the primary structure and perimeter buffer, accessory structures, onsite sewage disposal system and buffer, and access to the primary and accessory structure. This contiguous, developed area shall be elevated to or above the 100-year BFE as described below.

The FEMA determined BFE within the SFHA for the parcel is anticipated to increase from 4.5 feet NAVD to 5.3 feet NAVD, becoming effective January 29, 2021. Both the Florida Building Code and County Code require that for any structure proposed within the SFHA, the lowest floor elevation (FFE) of structures must be a minimum of 1 foot above the BFE, or 6.3 feet NAVD upon effective date. The LiDAR map provided in this package shows the 6.3 feet NAVD contour line. Elevations below 6.3 feet NAVD will either require fill, or an alternative option to slab-on-grade construction (i.e. stem wall construction), to bring the FFE up to 6.3 feet NAVD.

Construction in the SFHA of onsite septic tank and drain field with buffers, access to the primary and accessory structures, and all accessory structures such as pools, decks, detached garages, sheds, require a constructed elevation at or above the BFE (5.3 feet as of January 2021); which may likely result in fill used in conjunction with a stem wall/retaining wall.

Surface Water Classification

The property is located on surface waters designated by the State as an Aquatic Preserve. 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 such as pools, decks, sheds, cabanas, etc., are permissible within the Buffer provided that stormwater management is provided. Impervious areas shall not exceed 30% of Buffer area. Avoidance/minimization of Buffer impacts is required so that surface water quality and natural habitat is not adversely affected.

Per Section 62-3666(4), all alterations shall demonstrate avoidance and minimization of surface water protection buffer impacts, including the location of the alteration within the most landward portion of the Buffer, as practicable. The remainder of the surface water protection Buffer shall be maintained in unaltered native vegetation.

Indian River Lagoon Nitrogen Reduction Septic Overlay

Portions of the site are mapped within the Indian River Lagoon septic overlay per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay. The project is not located within the Brevard County's sanitary sewer service area. Thus, use of an alternative septic system designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes shall be required. Septic tanks and drain fields in the SFHA are be subject to flooding, and per Section 62-3723(b) will require fill to be elevated to or above the BFE.

Heritage Specimen Trees

The entire subject property is overlaid in a mapped polygon of SJRWMD FLUCCS code 4340-Upland Mixed Coniferous/Hardwood trees. Protected Trees (greater than or equal to 10 inches in diameter) and Specimen Trees (greater than or equal to 24 inches in diameter) are included in this FLUCCS code and are found on the project area. 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 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.

While developing to a higher elevation provides more protection from flooding, the additional fill is detrimental to the preservation of Protected and Specimen Trees, especially those located at the lower elevations within the SFHA floodplain and the CHHA. If units are developed in the lower elevations of the property, closer to the shoreline, more fill will be required to satisfy Land Development Regulations relating to the FFE.

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.