



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

**21Z00017**

**Joshua E. Motta and Virginia L Rymer**  
**General Use (GU) to Agricultural Residential (AU)**

Tax Account Number: 2314015  
Parcel I.D.: 23-35-33-01-12-11  
Location: West side of Fishtail Palm Avenue, approximately 1.1 miles southwest of the Intersection of Port Saint John Parkway and I-95 (District 1)  
Acreage: 2.23 acres

Planning and Zoning Board: 07/12/2021  
Board of County Commissioners: 08/05/2021

### 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>	GU	AU
<b>Potential*</b>	1 unit	1 unit
<b>Can be Considered under the Future Land Use Map</b>	YES RES 1:2.5	YES RES 1:2.5

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

### Background and Purpose of Request

The applicant is seeking a change of zoning classification from GU (General Use) to AU (Agricultural Residential) for the purposes of developing a single-family residence and agricultural-residential accessory structures and uses, including raising and grazing of animals for commercial purposes.

The property is a nonconforming lot of record in terms of lot area and width under the current GU zoning. The property meets the minimum lot width and depth requirements for the proposed AU zoning, but is 0.27 acres under the minimum required lot area of 2.5 acres. The applicant applied for a 0.27 acre variance to the minimum lot area required by Section 62-1334 (4) to be eligible to apply for the proposed AU zoning. This request, variance **21PZ00031**, is scheduled for the Board of Adjustment (BOA) on 6/23/2021 and must be approved in order for the subject rezoning to be heard.

## Land Use

The subject property retains the RES 1:2.5 Future Land Use designation (FLU). The existing zoning classification of GU is consistent with the FLU. The proposed zoning classification of AU is consistent with the RES 1:2.5 FLU. This lot predates the September 9, 1988 Comprehensive Plan and is nonconforming to the FLU area requirement.

## Applicable Land Use Policies

The Board should evaluate the compatibility of this application within the context of Administrative Policies 2 – 8 of the Future Land Use Element.

**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 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 property retains RES 1:2.5 FLU. It is located in the center of an area in Canaveral Groves consisting of parcels that all have RES 1:2.5 FLU. The proposed uses could be considered to be consistent with the existing and emerging pattern of surrounding development.

**3.C.1: Historical land use patterns** in this area have been characterized by low-density residential, mixed with agricultural uses that are accessory to the principal residential use of properties. The development and use of land is approximately 2/3 residential and 1/3 residential-agricultural.

**3.C.2:** The **emerging land use pattern** in the area indicates a trend from residential to agricultural-residential, with rezonings from GU to AU approved **within the last three years**. The **actual development** of AU zoned properties in the area is primarily residential, with equestrian and citrus as the main agricultural accessory uses. Raising and grazing of animals and other commercial agricultural uses are present on some of these properties. While the **actual use of most of these lots** is in line with uses permitted in the Agricultural Residential Light (AU(L)) zoning classification, all lots in the immediate area are zoned either GU or AU, and the applicant desires commercial agricultural that is not permitted in AU(L), even as accessory to residential.

**3.C.3:** Other than building permits to infill individually owned, existing platted lots, no **development** has been **approved in this area** and no tracts nearby are large enough to subdivide.

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

The surrounding area can be characterized as a mixture of low density single-family residential (SFR) and low density SFR with accessory agricultural uses. Most of these properties are developed with single-family residences, but some of them are also characterized by agricultural uses, such as horses, other farm animals, barns, or citrus, consistent with the proposed use of the subject site. The properties in the surrounding area mostly have similar lot dimensions and area as the subject parcel and are zoned either AU or GU.

## Surrounding Area

The parcel to the north is developed with a single-family residence and retains GU zoning. The parcel to the east, across Fishtail Palm Avenue, is developed as residential agricultural with a house, barn, fenced area for horses, and AU zoning. The parcel abutting to the south is developed as residential with accessory and outbuildings in AU zoning. The parcel to the west, across the 80 foot drainage right-of-way, is developed as single-family residential with GU zoning.

The current GU classification is a holding category, allowing single-family residences on five acre lots with a minimum width and depth of 300 feet. The minimum house size in GU is 750 square feet. The proposed AU classification permits single-family residences and agricultural pursuits on 2 ½ 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.

There have been four zoning actions within a half-mile of the subject property within the last three years:

- December 3, 2020, **20Z00026** rezoned a 4.76 acre parcel from GU and AU to all AU, located approximately 2,170 feet southeast of the subject property, on the east side of Pine Street.
- February 6, 2020, **19PZ00132** rezoned 2.38 acres from GU to AU, located approximately 835 feet northwest of the subject property, on the west side of Florida Palm Avenue.
- September 5, 2019, **19PZ00069** rezoned a 2.09 acre parcel from GU to AU, located approximately 2,065 feet northwest of the subject property, on the north side of Date Palm Street.
- On March 7, 2019, **18PZ00145** rezoned 2.38 acres from GU to AU, located approximately 1,325 feet south of the subject property, on the east side of Florida Palm Avenue.

## Environmental Constraints

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

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

The subject parcel contains mapped SJRWMD wetlands and hydric soils; indicators that wetlands may be present on the property. A review of historical aerials also reveals the likely presence of wetlands 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 acreage.

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 for classification requirements. Section 62-3694(a)(1) 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.**

A wetland determination will be required at time of building permit submittal. 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 to any land clearing activities, site plan design or building permit submittal.

### **Preliminary Transportation Concurrency**

The closest concurrency management segment to the subject property is Citrus Boulevard, between Pine Street and Lee Street, which has a Maximum Acceptable Volume (MAV) of 15,600 trips per day, a Level of Service (LOS) of E, and currently operates at 28.85% of capacity daily. The maximum development potential from the proposed rezoning does increase the percentage of MAV utilization by 0.07%. The corridor is anticipated to continue to operate at 28.92% 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 parcel is not serviced by Brevard County sewer. The closest available sewer is approximately 1.8 miles north of the subject property.

The parcel is serviced by City of Cocoa water.

### **For Board Consideration**

The Board may wish to consider whether this request for AU zoning is consistent and compatible with the surrounding neighborhood which has a mix of AU and GU zoning. In addition, the Board may wish to consider the potential impacts of Agritourism, or any the more intense agricultural uses permitted in AU, on surrounding properties.

**NATURAL RESOURCES MANAGEMENT DEPARTMENT**  
**Zoning Review & Summary**  
**Item # 21Z00017**

**Applicant:** Joshua Motta and Virginia Rymer

**Zoning Request:** GU to AU

**Note:** Applicant wants to build a single-family residence, and have AU uses.

**P&Z Hearing Date:** 07/12/21; **BCC Hearing Date:** 08/05/21

**Tax ID No:** 2314015

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

The subject parcel contains mapped SJRWMD wetlands and hydric soils; indicators that wetlands may be present on the property. A review of historical aerials also reveals the likely presence of wetlands 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 acreage.

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 for classification requirements. Section 62-3694(a)(1) 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.**

A wetland determination will be required at time of building permit submittal. 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 to any land clearing activities, site plan design or building permit submittal.

### **Land Use Comments:**

#### **Wetlands/Hydric Soils**

The subject parcel contains mapped SJRWMD wetlands, and hydric soils (Basinger sand and Valkaria sand) as shown on the SJRWMD Florida Land Use & Land Cover Codes, and USDA Soil Conservation Service Soils Survey maps, respectively; indicators that wetlands may be present on the property. A review of historical aerials also reveals the likely presence of wetlands 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 acreage.

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 classification requirements. If Bona Fide Agriculture classification is not established, then land clearing and accessory structures, including barns, sheds and other detached structures, are not permitted in wetlands. Section 62-3694(a)(1) states that non-bonafide agricultural and forestry operations utilizing best management practices shall be permitted in wetlands **provided they do not result in permanent degradation or destruction of wetlands**.

A wetland determination will be required at time of building permit submittal. 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 land clearing activities, plan or permit submittal. The applicant is encouraged to contact NRM at (321) 633-2016 prior to any to any land clearing activities, site plan design or building permit submittal.

#### **Aquifer Recharge Soils**

Basinger and Valkaria sands may also function as aquifer recharge soils. 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**

The subject property contains a mapped polygon of SJRWMD FLUCCS code 6181-Cabbage Palm Hammock. Specimen Trees (greater than or equal to 24 inches in diameter) may be found on the property. Per Section 62-4339, lots greater than or equal to 1.25 acres shall comply with Specimen Tree requirements. 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. The applicant is advised to refer to Article

XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for tree preservation. Land clearing is not permitted without prior authorization by NRM. **The applicant should contact NRM prior to performing any land clearing activities.**

#### **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.