



BOARD OF COUNTY COMMISSIONERS

## Planning and Development Department

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

### STAFF COMMENTS

21PZ00038

Aaron and Penny Keegan

#### CUP for a Private Boat Dock Adjacent to a Single-Family Residence in RU-1-13

Tax Account Number: 2964949 & 2953089 (dock parcel) / 2953245 (single-family residence)  
Parcel I.D.: 29-38-03-HW-\*-2.02 & 29-38-03-HW-\*-2.12 (dock parcels have been combined as one warranty deed per Official Records Book 9153, Page 265 on June 11, 2021).  
Location: 29-38-03-50-D-20 (single-family residence parcel)  
South side of Ross Avenue, approx. 295 feet west of Lakeview Drive (dock parcel)  
Northwest corner of Ross Avenue and Malabar Boulevard (District 3) (Single-family residence parcel)  
Acreage: 0.02 acres (dock parcel)  
Planning & Zoning Board: 09/20/2021  
Board of County Commissioners: 10/07/2021

#### 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)

	CURRENT	PROPOSED
<b>Zoning</b>	RU-1-13	RU-1-13 with CUP
<b>Potential*</b>	1 Single-Family Home	Private Boat Dock
<b>Can be Considered under the Future Land Use Map</b>	YES** RES 2	YES** RES 2

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

\*\* The RU-1-13 zoning classification is not consistent with the Future Land Use designation of Residential 2. The parent lot, Lot 2, Block D, Crystal Lakes Subdivision is recorded in Plat Book 11, page 42A on December 31, 1955. The parent parcel is considered nonconforming to the Comprehensive Plan as it was established and of record before the Future Land Use of the Comprehensive Plan was adopted on September 8, 1988 and therefore the CUP request can be heard.

## Background and Purpose of Request

The applicant is requesting approval of a Conditional Use Permit (CUP) per **Section 62-1943.3** for a private residential boat dock in the RU-1-13 zoning classification for the purpose of legitimizing an existing boat dock on the parcel as an accessory use. The subject dock parcel was subdivided into this configuration on February 16, 1982. On June 30, 2000 this dock parcel was split into two parcels. This split created two parcels that did not meet the CUP's 30 feet water frontage requirement. The applicant has since purchased both of these parcels and combined them back together to the original configuration per warranty deed recorded in Official Records Book 9153, Page 265 on June 11, 2021.

A CUP for the existing dock was never applied for. The applicant also owns Lot 20, Block D, located in the same Crystal Lakes subdivision approximately 1,285 feet northeast of the subject waterfront lot. Both the dock parcel and parent parcel retain the RU-1-13 Zoning classification. Of the 13 similar parcels on the south side of Ross Avenue, all but two have existing docks. There have been ten approved CUP actions for private boat docks accessory to adjacent single-family residential lots within the Crystal Lakes subdivision.

On February 4, 1997, Administrative Action, **AA-1151** was approved for a waiver of two feet from the 20 feet rear setback required for a single-family home on the parent parcel.

## Land Use

The subject dock parcel and the parent property retain the RES 2 (Residential 2) Future Land Use designation. Per section 62-1255 Exhibit "A" the RU-1-13 zoning classification is not consistent with the Residential 2 Future Land Use. The parent lot, Lot 2, Block D, Crystal Lakes Subdivision is recorded in Plat Book 11, page 42A on December 31, 1955. The parent parcel is considered nonconforming to the Comprehensive Plan as it was established and of record before the Future Land Use of the Comprehensive Plan was adopted on September 8, 1988.

## Applicable Land Use Policies

**FLUE Policy 1.8** –The Residential 2 Future land use designation permits lower density residential development with a maximum density of up to two (2) 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 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.** This dock site is located within a large Residential 2 node. To the east, west and the parcels to the north across Ross Avenue are under the same FLU designation of Residential 2. To the south of the subject parcel lies a canal waterway for the subdivision.

**Analysis of Administrative Policy #4 - Character of a neighborhood or area.** The character of the area is a mix of existing single-family homes and parcels with existing dock parcels. Of the 13 similar parcels on the south side of Ross Avenue, all but two have existing docks. There have been ten approved CUP actions for private boat docks accessory to adjacent single-family residential lots

within the Crystal Lakes subdivision. The existing dock parcels along Ross Avenue range from approximately 30 feet wide to 78 feet wide with a lot depth of approximately 13 feet to 63 feet.

### **Surrounding Area**

The abutting parcels, north, south, east and west of the dock parcel and the residential parcel are zoned RU-1-13.

RU-1-13 permits single-family residences on minimum 7,500 square foot lots, with minimum widths and depths of 75 feet. The minimum house size is 1,300 square feet.

There have been three zoning actions within a half-mile radius around this site within the last 4 years.

On May 24, 2018, application **18PZ00016** approved a CUP for a Private Boat Dock Accessory to a Single-Family Residential Lot. This site is located on the south side of Ross Avenue abutting the subject dock parcel to the east.

On October 03, 2019, application **19PZ00046** approved a CUP for a Private Boat Dock Accessory to a Single-Family Residential Lot. This site is located on the south side of Ross Avenue approximately 256 feet west of the subject dock parcel.

On May 06, 2021, application **21PZ00004** approved a CUP for a Private Boat Dock Accessory to a Single-Family Residential Lot. This site is located on the south side of Ross Avenue approximately 134 feet west of the subject dock parcel.

### **Environmental Constraints**

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

- Hydric Soils/Wetlands
- Aquifer Recharge Soils
- Coastal High Hazard Area
- Floodplain
- Surface Waters of the State
- Indian River Lagoon Nitrogen Reduction Overlay
- Land Clearing and Landscape Requirements
- Protected Species

Information available to NRM indicates that recent, unpermitted land clearing activities may have occurred in the Surface Water Protection Buffer. The discovery of unpermitted land clearing activities may result in enforcement action.

### **Preliminary Transportation Concurrency**

The subject property is closest to the concurrency management segment of Highway A1A, between Heron Dr. and Mar-Len Dr., which has a Maximum Acceptable Volume (MAV) of 24,200 trips per day, a Level of Service (LOS) of D, and currently operates at 39.71% of capacity daily. The maximum

development potential from the proposed CUP does not increase the proposed trip generation on the corridor and will not create a deficiency in LOS which operates at 39.71% of capacity daily.

### **Special Considerations for CUP (Conditional Use Permit)**

The Board should 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 62-1943.3, Private Boat Dock Accessory to a Single-Family Residential Lot.

This request should be evaluated in the context of Section **62-1943.3**, governing private boat docks accessory to adjacent single family residential lots, as follows:

A private boat dock, for the purposes of this section, is a boat dock that is used in connection with a waterfront lot or parcel which may be undersized for the residential zoning classification in which it is located, and is therefore associated with and considered part of an adjacent residential lot. The term "adjacent", for the purposes of this section, means any lot within the same neighborhood as described below in paragraph (1).

A conditional use for a private boat dock on a waterfront lot or parcel may be considered as an accessory use to an adjacent developed or undeveloped buildable residential lot in any residential zoning classification under the following conditions. Owners of docks established prior to November 17, 2008, as evidenced by a certified survey or other irrefutable evidence, may request a waiver of any of the below conditions as part of the conditional use permit review process.

***Staff analysis: The subject dock parcel was subdivided into this configuration on February 16, 1982. Currently, there is an existing dock on the parcel. On June 30, 2000 the dock parcel was split into two parcels. This split created two parcels that did not meet the CUP 30 feet water frontage requirement. The applicant has since purchased both parcels and combined them back together with one warranty deed per Official Records Book 9153, Page 265 on June 11, 2021. A CUP for the existing dock was never applied for.***

- (1) The lot or parcel upon which the dock is to be constructed must be owned and used by the owner of a residential lot or parcel (or residential tenant of said lot or parcel) located within either the same platted subdivision or within 1000' of the dock parcel. The owner of the dock

lot or parcel and the residential lot shall maintain fee simple ownership to both properties at all times.

**Staff analysis:** *The applicants' residential lot is in the same subdivision, Crystal Lakes, as the dock lot.*

- (2) The lot or parcel shall have at least 30 feet of water frontage, except where located on the Indian or Banana River Lagoons, where it shall have river frontage equal to or exceeding the minimum lot width requirement of the parcel's zoning classification.

**Staff analysis:** *The parcel meets the minimum 30 feet of water frontage as shown on the boundary survey of subject parcel included with CUP application.*

- (3) The boat dock may contain slips for no more than two boats and shall not be used for commercial purposes.

**Staff analysis:** *The existing boat dock would only permit two boats as shown on the boundary survey of subject parcel included with CUP application.*

- (4) No other accessory structures are permitted on the dock lot or parcel.

**Staff analysis:** *There are no accessory structures other than the existing dock on the parcel.*

- (5) The dock lot or parcel shall not be used to store a boat trailer, nor shall it be used to launch a boat.

**Staff analysis:** *Owner will only be parking vehicle on parcel only be while boat is in use.*

- (6) The dock shall meet all applicable development standards described in Section 62-2118.

**Staff analysis:** *The existing dock appears to meet the requirements of Section 62-2118(d) Residential Boat Docks and Piers as shown on the boundary survey of subject parcel included with CUP application. There does not appear to be a building permit for the existing dock.*

***The existing parcel and existing appears to meet conditions (1) to (6) above.***

The Board should consider the compatibility of the proposed CUP pursuant to Section 62-1151(c) and to Section 62-1901. 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.

The applicant's responses are indicated in **bold** and staff observations are provided in *italics*.

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: No additional impact will result. Only to be used by owner to dock up to two vessels.**

*Staff analysis: The subject property is one of many dock lots subdivided from a waterfront tract of the Crystal Lake Subdivision. Residential docks are permitted to have no more than two vessels moored and vessels must meet the setback requirement off the projection of the side property lines into the waterway.*

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: The property is only to be used as a boat dock, the same as adjacent properties.**

*Staff analysis: The subject property is one of many dock lots subdivided from a waterfront tract of the Crystal Lake Subdivision.*

Section 62-1901(c)(1)(c) The proposed use will not cause a substantial diminution in value of abutting residential property.

Note: A substantial diminution shall be irrebuttably presumed to have occurred if abutting property suffers a 15% reduction in value as a result of the proposed conditional use. A reduction of 10% of the value of abutting property shall create a rebuttable presumption that a substantial diminution has occurred.

**Applicant's Response: The proposed boat dock will be in compliance with building code regulations.**

*Staff analysis: Competent and substantial evidence by a MAI certified appraiser has not been provided by the applicant.*

## **Specific Standards**

Section 62-1901(c)(2)(a) Ingress and egress to the property and proposed structures (including vehicular and pedestrian safety and convenience, traffic flow and control, and emergency response access) shall be: (1) adequate to serve the proposed use without burdening adjacent and nearby uses, and (2) built to applicable county standards, if any.

Note: Burdening adjacent and nearby uses is defined as increasing existing traffic on the closest collector or arterial road by more than 20%, or 10% 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 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: The ingress and egress is adequate. The owner is the only anticipated traffic. Owner to park on lot not in the street.**

*Staff analysis: The dock parcel abuts the County maintain right-of-way of Ross Avenue.*

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: There will be no substantial disturbance to the neighbors from the boat dock or boat.**

*Staff analysis: Any outdoor lighting and noise standards should remain within code parameters per Brevard County's Performance Standards defined by Sections 62-2251 through 62-2272 or a violation will be created.*

Section 62-1901(c)(2)(c) Noise levels for a conditional use shall comply with Section 62-2271 of the Code, which includes the following:

**Applicant's Response: Noise levels will comply with section 62-2271 for residential use.**

*Staff analysis: Any outdoor noise standards should remain within code parameters per Brevard County's Performance Standards defined by Sections 62-2251 through 62-2272 or a violation will be created.*

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

**Applicant's Response: No additional waste will be generated.**

*Staff analysis: the adopted level of service for solid waste disposal shall not be exceeded.*

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

**Applicant's Response: None will be required.**

*Staff analysis: potable water and wastewater will not be required for a dock permit.*

Section 62-1901(c)(2)(f) The proposed conditional use must have existing or proposed screening or buffering, in terms of 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: The property is the same type of property as the neighbors.**

*Staff analysis: The subject property is one of many dock lots subdivided from a waterfront tract of the Crystal Lake Subdivision.*

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: None will be used.**

*Staff analysis: No sign will be needed. Any Lighting will need to meet Lighting Standards in section 62-2257.*

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: Hours will be the same as neighboring properties.**

*Staff analysis: There are no restrictions as to the hours of operation.*

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 thirty-five (35) feet higher than the highest residence within 1000 feet of the property line.

Note: A survey of building heights within 1000 feet of the property lines should be furnished for applications requesting a CUP for additional building height.

**Applicant's Response: The dock height will be compatible with the character and codes of the area.**

*Staff analysis: The exist dock appears to meet the dock height requirement of section 62-2118. A new boat dock replacing the existing dock will have to meet the dock height requirements in section 62-2118 Residential boat docks and piers.*

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.

Note: 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: None will be required. Any parking will be on the property. Parking will only be while boat is in use.**



*Staff analysis: Owner will only be parking vehicle on parcel only be while boat is in use.*

### **For Board Consideration**

The Board may wish to consider the compatibility of the proposed CUP with surrounding development, or additional conditions beyond those cited in Sections 62-1901 and 62-1906 in order to mitigate potential impacts to the abutting properties.

The Board may also wish to stipulate that the parcels be combined with a Joinder to prohibit the selling of the dock parcel separately from the principal residential parcel.

**NATURAL RESOURCES MANAGEMENT DEPARTMENT  
Conditional Use Permit (CUP) Review & Summary  
Item # 21PZ00038**

**Applicant:** DePhillips for Keegan

**CUP Request:** Applicant wants a private boat dock accessory to their SFR parcel.

**P&Z Hearing Date:** 09/20/21; **BCC Hearing Date:** 10/07/21

**Tax ID Nos:** 2964949, 2953089, & 2953245

- 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:**

- Hydric Soils/Wetlands
- Aquifer Recharge Soils
- Coastal High Hazard Area
- Floodplain
- Surface Waters of the State
- Indian River Lagoon Nitrogen Reduction Overlay
- Land Clearing and Landscape Requirements
- Protected Species

Information available to NRM indicates that recent, unpermitted land clearing activities may have occurred in the Surface Water Protection Buffer. The discovery of unpermitted land clearing activities may result in enforcement action.

**Land Use Comments:**

**Hydric Soils/Wetlands**

The subject parcel contains mapped hydric soils (Canaveral-Anclote complex) as shown on the USDA Soil Conservation Service Soils Survey map; an indicator that wetlands may be present on the property. 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 site plan design or permit submittal.

**Aquifer Recharge Soils**

Canaveral-Anclote complex may also function as an aquifer recharge soil. 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 parcel is within the CHHA as shown on the CHHA Map. The Coastal Management Element of the Comprehensive Plan, Policy 6.1, designates coastal high hazard areas to be those areas below the elevation of the Category 1 storm surge elevation as defined in Chapter 163, Florida Statute.

**Floodplain**

The parcel is located within the floodplain as identified by the Federal Emergency Management Agency as shown on the FEMA Flood Zones Map. The property is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance. Additional impervious area increases stormwater runoff that can adversely impact nearby properties unless addressed on-site. 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."

**Surface Waters of the State**

The parcel is located on Class III surface waters of the State. A 25-foot Surface Water Protection Buffer (Buffer) is required. Alteration or construction of accessory structures, such a wood deck, is allowable within the Buffer provided that stormwater management is provided, and the alteration occurs in accordance with all other applicable federal, state, and local regulations. All alterations shall demonstrate avoidance and minimization of Buffer impacts, including the location of the alteration within the most landward portion of the Buffer, as practicable. The remainder of the Buffer shall be maintained in unaltered vegetation, except for non-native invasive plants.

**Indian River Lagoon Nitrogen Reduction Overlay**

The parcel is mapped within the Indian River Lagoon Nitrogen Reduction Overlay per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay. If applicable, the use of alternative septic systems designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes shall be required if sewer is not available. NRM requires a Septic Maintenance Notice be filed with the Brevard Clerk of Courts. Per Section 62-3666 (14), all onsite sewage treatment and disposal systems (OSTDS) shall be set back at least 100 feet from the buffer establishment line, the safe upland line, mean high water line or ordinary high-water line.

**Land Clearing and Landscape Requirements**

The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for tree preservation and canopy coverage requirements. Land clearing or tree removal in the Buffer is not permitted without prior authorization by NRM. Information available to NRM indicates that recent, unpermitted land clearing activities may have

occurred in the Buffer. The discovery of unpermitted land clearing activities may result in enforcement action.

**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.