



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

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STAFF COMMENTS

21Z00027

Robert F. Erario and Jeremy Sothea Sun

BU-1 (General Retail Commercial) and AU (Agricultural Residential) to all AU (Agricultural Residential)

Tax Account Number: 2001826
Parcel I.D.: 20G-34-17-MK-*-1.01
Location: West side of U.S. 1, approx. 497 feet south of Aurantia Road (District 1)
Acreage: 7.24 acres

Planning & Zoning Board: 10/11/2021

Board of County Commissioners: 11/04/2021

Consistency with Land Use Regulations

- Current zoning can be considered under the Future Land Use Designation, Section 62-1255.
- The proposed zoning 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	BU-1 and AU	AU
Potential*	Up to 43,560 sq. ft. (1.0 FAR) in BU-1 and one single-family unit in AU	One single-family unit, agricultural uses
Can be Considered under the Future Land Use Map	YES, CC and RES 1:2.5	Yes, CC and 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 AU (Agricultural Residential) and BU-1 (General Retail Commercial) to all AU. BU-1 zoning occupies a one acre portion of their 7.24-acre property along Highway 1. The applicant seeks to have AU across the parcel for agricultural purposes.

On September 22, 2021, the Board of Adjustment approved the following variances as part of zoning action **21PZ00050**: A variance of 27 feet to lot width for AU in lieu the required 150 ft; Variances to allow two accessory structures in front of the principal structure in AU; A variance of 9 feet to the side setback in lieu of the required 15 ft. in AU for an accessory structure.

Florida Statute 570.86 defines “agritourism activity” as “any agricultural related activity consistent with a bona fide farm, livestock operation, or ranch or in a working forest which allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy activities, including farming, ranching, historical, cultural, civic, ceremonial, training and exhibition, or harvest-your-own activities and attractions.” Local government is prohibited from adopting ordinances, regulations, rules, or policies that prohibit, restrict, regulate, or otherwise limit an agritourism activity on land that has been classified as agricultural land.

Wedding venues may be considered an agritourism activity. The applicant had previously submitted a site plan for a wedding/event venue (**20SP0021**), but subsequently withdrew it.

The entire lot was zoned AU. The one acre eastern portion of the property adjacent to Highway 1 was initially a separate parcel that was rezoned to BU-1 on April 1, 1985, by zoning action **Z-7061**. There have been no zoning actions on the 6.24-acre portion of the parcel that is currently zoned AU.

Future Land Use

The BU-1 portion of subject property is currently designated as CC (Community Commercial). The proposed AU zoning classification can be considered with CC FLU per Policy 2.13 of the Future Land Use element, which states: “Residential development or the integration of residential development with commercial development shall be permitted in the Neighborhood Commercial and Community Commercial land use designations, provided that the scale and intensity of the residential/mixed use development is compatible with abutting residential development and areas designated for residential use on the Future Land Use Map.”

The remaining portion of the property has a FLU designation of RES 1:2.5, which is consistent with the AU zoning classification.

Applicable Future Land Use Policies

FLUE Policy 1.4 – Community Commercial (CC) development activities are intended to serve several neighborhoods, sub-regional and regional areas and provide an array of retail, personal and professional uses. Development activities which may be considered within the Community Commercial (CC) Future Land Use designation.

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. The Residential 1:2.5 land use designation may be considered for lands within the following generalized locations, unless otherwise limited by this Comprehensive Plan.

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 parcel retains a FLU designation of CC on one acre adjacent to Highway 1, and a RES 1:2.5 FLU designation on the remaining 6.24 acres to the rear. Structures on the property include an existing single-family residence built in 2005 which straddles the line between the CC and RES 1:2.5 FLU. Additionally, five separate outbuildings that are located on either side of the existing SFR. These structures are concentrated on the eastern half of the parcel.

All of the parcels directly adjacent to Highway 1 have a FLU designation of CC or Neighborhood Commercial (NC). There are two convenience stores on the southwest and southeast corners of Aurantia and Highway 1, but otherwise the only commercial use is a retail building currently used for used motorcycle sales. The rest of the parcels adjacent to the highway are currently vacant or contain site-built or manufactured homes.

The parcels to the west of Highway 1 and south of Aurantia Road, where the subject property is located, all retain FLU designations of either RES 1 or RES 1:2.5, with land uses being a mix of site-built single-family homes, manufactured, or mobile homes.

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

The one-acre portion of the property adjacent to Highway 1 is zoned BU-1, while the remaining 6.24-acres are zoned AU.

In general, the lots fronting Highway 1 have a mix of residential and commercial zoning classifications. Zoning classifications along the highway include AU, RRMH-1, BU-1, and SR. There is BU-1 zoning adjacent to Highway 1 directly south of the subject property. There is AU zoning directly across the highway to the east, approximately 388 feet to the south, and approximately 550 feet to the north on the same side of the road as the subject property.

Many of the lots along Aurantia Road obtain access through flag lots and/or access easements. While the subject property has a 75-foot wide flag "stem" going from the interior north toward Aurantia Road, it does not have approval as a flag lot and therefore must continue to use Highway 1 for access.

The 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 and plants nurseries. Conditional uses in AU include hog farms, zoological parks, and land alteration.

The RRMH-1 classification permits single-family mobile homes and detached single-family residential land uses on minimum one acre lots, with a minimum width and depth of 125 feet. This classification permits horses, barns and horticulture as accessory uses. The minimum house size is 600 square feet.

The SR classification permits single family residences on minimum half acre lots, with a minimum width of 100 feet and a depth of 150 feet. The minimum house size in SR is 1,300 square feet.

The GU classification permits allows 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 current BU-1 classification allows retail commercial land uses on minimum 7,500 square foot lots. The BU-1 classification does not permit warehousing or wholesaling. BU-1 permits plant nurseries with no outside bulk storage of mulch, topsoil, etc. BU-1 does not permit the raising and grazing of animals.

There have been no rezoning applications in the surrounding area in the past 3 years.

Surrounding Area

The abutting parcel to the south of the one-acre CC portion of the subject property has a FLU designation of CC and is currently vacant. The parcel to the north of the CC portion of the subject property has a FLU designation of Neighborhood Commercial (NC) and contains a manufactured home built in 1999. The property is bordered by Highway 1 on its eastern side. To the west of the CC portion is the remaining 6.24-acre RES 1:2.5 portion of the property.

This portion of the property is bordered by RES 1:2.5 on the north, south, and west, while the parcels to the east are a mix of CC and NC. To the north is a lot containing a single-family home built in 1961. To the east is CC portion of the property, the vacant CC lot, and a lot with a FLU designation of NC that contains a retail building currently used as a used motorcycle store. The entire western property line is adjacent to a flag stem accessing the lot to the south of the subject property, which contains a single-family residence built in 1984.

To the north of the one-acre BU-1 portion of the property is a 1.77-acre lot zoned RRMH-1. To the south is a vacant 1.02-acre parcel also owned by the applicants that is zoned BU-1. To the west is the remainder of the parcel that is already zoned AU. To the east across Highway 1 is a 6.74 acre parcel zoned AU.

The parcels adjacent to the 6.24-acre AU portion of the property are zoned AU on the north, west, and south, while the parcels to the east are zoned BU-1 and SR. The AU-zoned lot to the north is 4.59 acres, while there is an approved 7.4-acre flag lot bordering the property to the west and south also zoned AU.

Environmental Constraints

The portion of parcel requesting the rezoning to AU contains mapped hydric soils, an indicator that wetlands may be present on the property. A wetland determination was performed by Toland Environmental Consulting (TEC) on the subject parcel portion, and no wetlands were found. The remaining portion of the parcel has mapped National Wetland Inventory (NWI) wetlands, SJRWMD wetlands, and hydric soils, and will require a wetland determination prior to any land clearing activities, site plan design or building permit submittal. The applicant is encouraged to contact NRM at (321) 633-2016. 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.

Information available to NRM indicates that between 2019 and 2020, a non-conforming pond was dug on the southeast portion of the parcel that is currently zoned AU. A code enforcement case is pending.

The discovery of unpermitted land clearing activities or wetland impacts may result in enforcement action.

Preliminary Concurrency

The closest concurrency management segment to the subject property is Highway 1, between Burkholm Road and the county line of Volusia County, which has a Maximum Acceptable Volume of 40,300 trips per day, a Level of Service (LOS) of E, and currently operates at 10.17% of capacity daily. The maximum development potential from the proposed rezoning does not change the percentage of MAV utilization. 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 or water. The closest water line to the parcel is approximately 2.06 miles to the south on Highway 1, while the closest sewer line is approximately 4.6 miles south on Highway 1.

For Board Consideration

The Board may wish to consider whether the request to AU is consistent and compatible with the surrounding area. The Board may also wish to consider the potential impacts of agritourism activities in the area.

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

Item #21Z00027

Applicant: Robert Erario

Zoning Request: BU-1 to AU

Note: Applicant wants farm animals and agricultural use

P&Z Hearing Date: 10/11/21; **BCC Hearing Date:** 11/04/21

Tax ID No: 2001826 – northeast portion

- 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
- Floodplain
- Protected Species
- Land Clearing and Landscape Requirements

The portion of parcel requesting the rezoning to AU contains mapped hydric soils, an indicator that wetlands may be present on the property. A wetland determination was performed by Toland Environmental Consulting (TEC) on the subject parcel portion, and no wetlands were found. The remaining portion of the parcel has mapped National Wetland Inventory (NWI) wetlands, SJRWMD wetlands, and hydric soils, and will require a wetland determination prior to any land clearing activities, site plan design or building permit submittal. The applicant is encouraged to contact NRM at (321) 633-2016. 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.

Information available to NRM indicates that between 2019 and 2020, a non-conforming pond was dug on the southeast portion of the parcel that is currently zoned AU. A code enforcement case is pending.

The discovery of unpermitted land clearing activities or wetland impacts may result in enforcement action.

Land Use Comments:

Hydric soils/Wetlands

The portion of parcel requesting the rezoning to AU contains mapped hydric soils (Tomoka muck) as shown on the USDA Soil Conservation Service Soils Survey map, an indicator that wetlands may be present on the property. A wetland determination was performed by Toland Environmental Consulting (TEC) on the subject parcel portion, and no wetlands were found. The remaining portion of the parcel has mapped National Wetland Inventory (NWI) wetlands, SJRWMD wetlands, and hydric soils, and will require a wetland determination prior to any land clearing activities, site plan design or building permit submittal. The applicant is encouraged to contact NRM at (321) 633-2016. 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.

Information available to NRM indicates that between 2019 and 2020, a non-conforming pond was dug on the southeast portion of the parcel that is currently zoned AU. A code enforcement case is pending. The discovery of unpermitted land clearing activities or 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 specific requirements to meet 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 will require mitigation in accordance with Section 62-3696. The applicant is encouraged to contact NRM at (321) 633-2016 prior to any site plan design.

Aquifer Recharge Soils

The subject parcel contains mapped aquifer recharge soils (Candler 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.

Floodplain

The entire parcel is mapped as being within an isolated floodplain as identified by the Federal Emergency Management Agency and as shown on the FEMA Flood Map. The property is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the

Floodplain Ordinance. Per Section 62-3724(3)(d), compensatory storage shall be required for fill in excess of that which will provide an upland buildable area within the isolated floodplain greater than one third (1/3) acre in size.

Protected Species

Information available to NRM indicates that federally and/or state protected species may be present on the property. The subject property has mapped Florida Scrub Jay polygon onsite as shown on the Scrub Jay Occupancy Map. 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.

Land Clearing and Landscape Requirements

Aerials show the parcel to be wooded. Per Section 62-4339, the parcel has requirements for Canopy, Protected and Specimen tree(s) preservation. Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4331(3), a purpose and intent of the ordinance is to encourage the protection of Specimen Trees. 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. The applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities. Information available to NRM indicates that recent, unpermitted land clearing activities may have occurred along U.S. Highway 1. The discovery of unpermitted land clearing activities may result in enforcement action. Land clearing is not permitted without prior authorization by NRM.