



BOARD OF COUNTY COMMISSIONERS

**Planning and Development Department**

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**STAFF COMMENTS  
 25Z00010**

**John & Christine Conley**

**BU-2 (Retail, Warehousing and Wholesale Commercial) to RU-1-11(Single-family Residential)**

Tax Account Number: 3019263  
 Parcel I.D.s: 25-37-06-CX-\*-16.06  
 Location: 1356 S. Banana River Drive, Merritt Island FL 32952 (District 2)  
 Acreage: 0.28 acres

Planning & Zoning Board: 06/16/2025  
 Board of County Commissioners: 07/17/2025

**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)

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Zoning</b>	BU-2	RU-1-11
<b>Potential*</b>	8 multifamily units**	1 Single-family
<b>Can be Considered under the Future Land Use Map</b>	NO RES 4	YES RES 4

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

\*\* Development potential at 30 units per acre pursuant to F.S. 125.01055 (Live Local Act)

**Background and Purpose of Request**

The applicant is requesting a change of zoning classification from BU-2 (Retail, Warehousing and Wholesale Commercial) to RU-1-11 (Single-family Residential) on approximately 0.28 acres. The applicant proposes to develop a single-family residential home. The subject property meets the RU-1-11 zoning criteria. The current BU-2 zoning is not consistent with the RES 4 FLU. The request will provide consistency per Sec. 62-1255 with the Future Land Use (FLU) designation.

A portion of this property is located within the Coastal High Hazard Area (CHHA) as defined by Florida Statute 163.3178(2)(h), and 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. Objective 7 of the Coastal Management Element aims to limit densities within the coastal high hazard area and direct development outside of this area

The subject property was established in 1922 within Plat Book 3, Page 11 of the Banana River Drive development. The original lot 16 was a 7.73 acre parcel that has been subdivided over its history and is not a nonconforming lot of record. The subject property was owned by Marker 24 Marina and was sold to the current applicant as of February 9, 2022 via ORB 9412, Page 2271.

The subject property was included in Zoning action **Z-11219** for a rezoning of 17.25 acres from BU-2 and RU-1-11 to PUD, was denied on September 20, 2006. No other actions have been brought forward. BU-2 zoning appears to be the original zoning classification from 1958.

In 2023, the Live Local Act was enacted and was revised in 2024. The Act is intended to address the state's growing housing affordability crisis through significant land use, zoning, and tax benefits. Pursuant to **Florida Statute 125.01055**, a county must authorize multifamily and mixed-use as allowable uses in any area zoned for commercial, industrial, or mixed use if at least 40 percent of the residential units in a proposed multifamily rental development. In unincorporated Brevard County, the Live Local Act effectively allows for the development of up to 30 dwelling units per acre. The subject property, encompassing 0.28 acres zoned BU-1, allows for development options that include either commercial use with a Floor Area Ratio (FAR) of 1.0 or 8 multi-family units as stipulated by the Live Local Act.

### Potential Code Enforcement

Information available to NRM indicates that unpermitted land alteration activities may have occurred on this parcel between 2021 and 2023. The confirmation of unpermitted land alteration activities may result in code enforcement action.

### Surrounding Area

	Existing Land Use	Zoning	Future Land Use
North	1 Single Family Unit	BU-2	RES 4
South	Marker 24 Marina E of Banana River Dr	BU-2	RES 4
East	Banana River	N/A	N/A
West	Marker 24 Marina W of Banana River Dr	RU-1-11	RES 4

North of the subject property is a 0.55 acre lot developed with a single-family home and zoned BU-2.

South and West of the subject property is a 7.06 acre parcel developed with the Marker 24 Marina zoned BU-2 on the east side of S. Banana River Dr. and RU-1-11 on the west side of S Banana River Drive. Both within a single parcel.

East of the subject property is the Banana River, a major waterway.

The BU-2 classification permits retail, wholesale and warehousing commercial land uses on minimum 7,500 square foot lots. BU-2 zoning is the county's most intense commercial zoning classification due to the intensive nature of commercial activities permitted. Off-site impacts such as noise, light, traffic and other potential nuisance factors associated with BU-2 activities should be considered. The BU-2 zoning classification allows outside storage of retail items including, but not limited to, motor vehicles, utility sheds, nursery items such as plants and trees, boats and mobile homes.

RU-1-11 classification encompasses 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 on minimum 7,500 square foot lots, with a minimum width and depth of 75 feet. The minimum house size is 1,100 square feet. RU-1-11 does not permit horses, barns or horticulture.

### **Land Use**

The subject property's BU-2 zoning classification cannot be considered consistent with the RES 4 Future Land Use designation provided on the FLUM series contained within Chapter XI – Future Land Use Element of Brevard County's Comprehensive Plan. The proposed RU-1-11 zoning classifications can be considered consistent with RES 4.

### **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.

### **Analysis of Administrative Policy #3 - Compatibility between this site and the existing or proposed land uses in the area.**

Compatibility shall be evaluated by considering the following factors, at a minimum:

Criteria:

- A. Whether the proposed use(s) would have hours of operation, lighting, odor, noise levels, traffic, or site activity that would significantly diminish the enjoyment of, safety or quality of life in existing neighborhoods within the area which could foreseeably be affected by the proposed use;

**The applicant intends to construct a single-family residence on this vacant property. This request is not anticipated to significantly diminish the enjoyment of, safety or quality of life in the existing neighborhood.**

**Development would need to meet Brevard County's Performance Standards defined by Sections 62-2251 through 62-2272 for hours of operations, lighting, odor, noise levels, traffic, or site activity.**

- B. Whether the proposed use(s) would cause a material reduction (five per cent or more) in the value of existing abutting lands or approved development.

**Only a certified MAI (Master Appraisal Institute) appraisal can determine if material reduction has or will occur due to the proposed request.**

C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through an analysis of:

1. historical land use patterns;

**There are two (2) FLUM designations (RES 4 and RES 6) within a half-mile radius of the subject property. The subject property is within the RES 4 classification.**

**The character of the area is mostly single-family residential use, with a marina on the south and west side of the subject property.**

**Staff analysis has determined that the proposed residential use would be consistent with land use trends along S. Banana River Drive.**

**Within the past three years, there have been no FLUM changes within the defined radius.**

2. actual development over the immediately preceding three years; and

**No new development has been noted.**

3. development approved within three years but not yet constructed.

**It appears there has been no development approved within the past three years that has not yet been constructed.**

D. Whether the proposed use(s) would result in a material violation of relevant policies in any elements of the Comprehensive Plan.

**No material violation of relevant policies of the Comprehensive Plan has been identified.**

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

Character of a neighborhood or area shall be a factor for consideration whenever a rezoning or any application involving a specific proposed use is reviewed. The character of the area must not be materially or adversely affected by the proposed rezoning or land use application. In evaluating the character of an area, the following factors shall be considered:

##### **Criteria:**

A. The proposed use must not materially and adversely impact an established residential neighborhood by introducing types or intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, etc.), parking, trip generation, commercial activity

or industrial activity that is not already present within the identified boundaries of the neighborhood.

**The maximum development potential from the proposed RU-1-11 rezoning increases the percentage of MAV utilization by 0.12%. The corridor is anticipated to operate at 15.48% of capacity daily. The proposal would not create a deficiency in LOS. Specific concurrency issues will be addressed at the time of site plan review. This is only a preliminary review and is subject to change. No commercial or industrial activity is proposed with this application.**

B. In determining whether an established residential neighborhood exists, the following factors must be present:

1. The area must have clearly established boundaries, such as roads, open spaces, rivers, lakes, lagoons, or similar features.

**There are two primary waterways bracketing the area to the east and west. The majority of the area is an established residential area with clearly established roads, open spaces, or similar land uses.**

2. Sporadic or occasional neighborhood commercial uses shall not preclude the existence of an existing residential neighborhood, particularly if the commercial use is non-conforming or pre-dates the surrounding residential use.

**The request is not for neighborhood commercial use.**

3. An area shall be presumed not to be primarily residential but shall be deemed transitional where multiple commercial, industrial or other non-residential uses have been applied for and approved during the previous five (5) years.

**There have been no commercial, industrial or other non-residential uses applied for and approved during the previous five years.**

## **Admin Policy 7**

**Proposed use(s) shall not cause or substantially aggravate any (a) substantial drainage problem on surrounding properties; or (b) significant, adverse and unmitigable impact on significant natural wetlands, water bodies or habitat for listed species.**

- **The entire property is mapped within the estuarine floodplain as identified by FEMA and as shown on the FEMA SFHA Map. The property is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance. 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."**

- **The subject property is situated on the Indian River Lagoon, classified as Class II Water, Outstanding FL Water, and an Aquatic Preserve. A 50-foot Surface Water Protection Buffer is mandatory. Primary structures must be placed outside the Buffer. Accessory structures are permitted within the Buffer under certain conditions (e.g., provision of storm water management, avoidance and minimization of impacts, and a maximum of 30% impervious surface). Removal of native vegetation within the Buffer is prohibited unless authorized by an active development order. Temporary impacts to native vegetation require in-kind restoration.**

### **Preliminary Concurrency**

The closest concurrency management segment to the subject property is South Banana River Drive, between SR 520 and the southern end of South Banana River Drive which has a Maximum Acceptable Volume (MAV) of 12,480 trips per day, a Level of Service (LOS) of E, and currently operates at 15.36% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.12%. The corridor is anticipated to operate at 15.48% of capacity daily. The proposal is not anticipated to create a deficiency in LOS.

The subject property has access to potable water from the City of Cocoa and access to Brevard County's sanitary sewer.

### **Environmental Constraints**

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

- **Coastal High Hazard Area**
- Floodplain Protection
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Surface Waters of the State
- Protected and Specimen Trees
- Potential Code Enforcement

### **For Board Consideration**

The Board may wish to consider whether the proposed request is consistent and compatible with the surrounding area.

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

**Item No. 25Z00010**

**Applicant:** Savannah Farley, P.E. (Owners: John and Christine Conley)

**Zoning Request:** BU-2 to RU-1-11

**Note:** for consistency with FLU to build SFR (23BC15251)

**Zoning Hearing:** 06/16/2025; **BCC Hearing:** 07/17/2025

**Tax ID No.:** 3019263 (0.28 acres)

- 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
- Coastal High Hazard Area
- Floodplain Protection
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Surface Waters of the State
- Land Clearing and Landscape Requirements
- Potential Code Enforcement

**Land Use Comments:**

**Hydric Soils**

A majority of the subject parcel contains mapped hydric soils (Wabasso sand, 0 to 2 percent slopes); an indicator that wetlands may be present on the property. **A wetland delineation may be required prior to any land clearing activities, site plan design, 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. **This density may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total residential acreage as set forth in Section 62-3694(c)(6).** 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 plan or permit submittal.**

### **Coastal High Hazard Area**

A portion of this property is located within the Coastal High Hazard Area (CHHA) as defined by Florida Statute 163.3178(2)(h), and 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. Objective 7 of the Coastal Management Element aims to limit densities within the coastal high hazard area and direct development outside of this area.

### **Floodplain Protection**

This property is located within an area mapped as FEMA Special Flood Hazard Area (SFHA) AE, as identified by the Federal Emergency Management Agency, and as shown on the FEMA Flood Map. The parcel is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance. 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."

### **Indian River Lagoon Nitrogen Reduction Septic Overlay**

The entire property is mapped within the Indian River Lagoon Nitrogen Reduction Overlay. Per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay, if adequate sewer for the development is not available, then the use of an alternative septic system, designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes, shall be required. NRM requires a Septic Maintenance Notice be filed with the Brevard Clerk of Courts.

### **Surface Waters of the State**

The subject property is located on the Indian River Lagoon, designated as a Class II Water and Aquatic Preserve in this location. A 50-foot Surface Water Protection Buffer is required. Primary structures shall be located outside the Buffer. Accessory structures are permissible within the Buffer with conditions (e.g., storm water management is provided, avoidance/minimization of impacts, and maximum 30% impervious). The removal of native vegetation located within the Buffer is prohibited unless approved through an active development order. Temporary impacts to native vegetation require in-kind restoration. The Florida Department of Environmental Protection (FDEP) regulates mangrove trimming and can be reached at 407-897-4101. The applicant is encouraged to contact NRM at 321-633-2016 prior to any activities, plan, or permit submittal.



## **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 Protected and Specimen tree preservation. Land clearing is not permitted without prior authorization by NRM. **Applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities.**

## **Potential Code Enforcement**

Information available to NRM indicates that unpermitted land alteration activities may have occurred on this parcel between 2021 and 2023. The confirmation of unpermitted land alteration activities may result in code enforcement action.