



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

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H.3.

11/5/2020

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### **Subject:**

2354 Talmadge Drive, LLC (Aldon Bookhardt) requests a Small Scale Comprehensive Plan Amendment to change the Future Land Use designation from RES 4 to NC. (20PZ00079) (Tax Account 2103831) (District 1)

### **Fiscal Impact:**

None

### **Dept/Office:**

Planning and Development

### **Requested Action:**

It is requested that the Board of County Commissioners conduct a public hearing to consider a Small Scale Comprehensive Plan Amendment to change the Future Land Use designation from RES 4 (Residential 4) to NC (Neighborhood Commercial).

### **Summary Explanation and Background:**

The applicant is requesting to amend the FLU (Future Land Use) designation from RES 4 to NC on a 0.98-acre portion of the overall 3.04-acre parcel of land located on the southwest corner of East Main Street and Harry T. Moore Avenue for the purpose of developing the 0.98-acre site as a neighborhood retail store.

A companion rezoning application was submitted accompanying this FLU amendment request to change the zoning classification from BU-1 (General Retail Commercial) to BU-1-A (Restricted Neighborhood Retail Commercial) on the 0.98 subject site and RU-1-9 (Single-Family Residential) with a Binding Development Plan (BDP) on the remaining portion of the overall parcel 3.04 acre parcel. The proposed rezoning and Future Land Use Amendment will establish consistency between the zoning classification and the Future Land Use Map.

To the north of the subject property is existing commercial retail and vacant land with FLU designations of RES 4; to the south is one single-family residence with a FLU designation of RES 4; to the east is multi-family housing with FLU designation of RES 4; and adjacent to the west is vacant, undeveloped land and one single-family residence with FLU designations of RES 4.

The proposed NC FLU designation will acknowledge the subject site's existing commercial zoning and is consistent with recommendation 3.2 of the adopted 2007 Mims Small Area Study that states commercial needs should generally be focused on providing goods and services to Mims residents, as opposed to larger regional markets.

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

On October 5, 2020, the Local Planning Agency heard the request and unanimously recommended approval.

**Clerk to the Board Instructions:**

Upon filing with the State, please return an executed copy of the Ordinance to Planning and Development.



## FLORIDA DEPARTMENT *of* STATE

**RON DESANTIS**  
Governor

**LAUREL M. LEE**  
Secretary of State

November 9, 2020

Honorable Scott Ellis  
Clerk  
Board of County Commissioners  
Brevard County  
Post Office Box 999  
Titusville, Florida 32781-0999

Attention: Deborah Thomas

Dear Mr. Ellis:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Brevard County Ordinance No. 20-20, which was filed in this office on November 6, 2020.

Sincerely,

Ernest L. Reddick  
Program Administrator

ELR/lb



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972  
Kimberly.Powell@brevardclerk.us

November 6, 2020

**M E M O R A N D U M**

**TO:** Tad Calkins, Planning and Development Director

**RE:** Item H.3., Ordinance for 20S.06 Small Scale Comprehensive Plan Amendment

The Board of County Commissioners, in regular session on November 5, 2020, conducted the public hearing and adopted Ordinance No. 20-20, setting forth Plan Amendment 20S.06 of the Small Scale Comprehensive Plan to change the Future Land Use designation from Residential 4 to Neighborhood Commercial for 2354 Talmadge Drive, LLC. Enclosed is a fully-executed Ordinance.

Your continued cooperation is always appreciated.

Sincerely,

**BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK**

*for Donna Scott*  
Kimberly Powell, Clerk to the Board

Encls. (1)

ORDINANCE NO. 20- 20

AN ORDINANCE AMENDING ARTICLE III, CHAPTER 62, OF THE CODE OF ORDINANCES OF BREVARD COUNTY, ENTITLED "THE 1988 COMPREHENSIVE PLAN", SETTING FORTH THE SIXTH SMALL SCALE PLAN AMENDMENT OF 2020, 20S.06, TO THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN; AMENDING SECTION 62-501 ENTITLED CONTENTS OF THE PLAN; SPECIFICALLY AMENDING SECTION 62-501, PART XVI (E), ENTITLED THE FUTURE LAND USE MAP APPENDIX; AND PROVISIONS WHICH REQUIRE AMENDMENT TO MAINTAIN INTERNAL CONSISTENCY WITH THESE AMENDMENTS; PROVIDING LEGAL STATUS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 163.3161 et. seq., Florida Statutes (1987) established the Local Government Comprehensive Planning and Land Development Regulation Act; and

WHEREAS, Section 163.3167, Florida Statutes, requires each County in the State of Florida to prepare and adopt a Comprehensive Plan as scheduled by the Department of Economic Opportunity; and

WHEREAS, on September 8, 1988, the Board of County Commissioners of Brevard County, Florida, approved Ordinance No. 88-27, adopting the 1988 Brevard County Comprehensive Plan, hereafter referred to as the 1988 Plan; and

WHEREAS, Sections 163.34 and 163.3187, and 163.3189, Florida Statutes, established the process for the amendment of comprehensive plans pursuant to which Brevard County has established procedures for amending the 1988 Plan; and

WHEREAS, Brevard County initiated amendments and accepted application for small scale amendments to the Comprehensive Plan for adoption in calendar year 2020 as Plan Amendment 20S.06; and

WHEREAS, Brevard County established Technical Advisory Groups consisting of County technical employees grouped according to their operational relationship to the subject of a plan element or sub-element being prepared or amended, and these Technical Advisory Groups have provided technical expertise for the Amendment 20S.06; and

WHEREAS, the Board of County Commissioners of Brevard County, Florida, have provided for the broad dissemination of proposals and alternatives, opportunity for written comments, public hearings after due public notice, provisions for open discussion, communication programs and consideration of and response to public comments concerning the provisions contained in the 1988 Plan and amendments thereto; and

WHEREAS, Section 62-181, Brevard County Code designated the Brevard County Planning and Zoning Board as the Local Planning Agency for the unincorporated areas of Brevard County, Florida, and set forth the duties and responsibilities of said local planning agency; and

Officially filed with the Secretary of State on November 6, 2020.

WHEREAS, on October 5, 2020, the Brevard County Local Planning Agency held a duly noticed public hearing on Plan Amendment 20S.06, and considered the findings and advice of the Technical Advisory Groups, and all interested parties submitting comments; and

WHEREAS, on November 5, 2020, the Brevard County Board of County Commissioners held a duly noticed public hearing, and considered the findings and recommendations of the Technical Advisory Group, and all interested parties submitting written or oral comments, and the recommendations of the Local Planning Agency, and upon thorough and complete consideration and deliberation, approved for adoption Plan Amendment 20S.06; and

WHEREAS, Plan Amendment 20S.06 adopted by this Ordinance comply with the requirements of the Local Government Comprehensive Planning and Land Development Regulation Act; and

WHEREAS, Plan Amendment 20S.06 adopted by this Ordinance is based upon findings of fact as included in data and analysis.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

Section 1. Authority. This ordinance is adopted in compliance with, and pursuant to the Local Government Comprehensive Planning and Land Development Regulations Act, Sections 163.3184 and 163.3187, Florida Statutes.

Section 2. Purpose and Intent. It is hereby declared to be the purpose and intent of this Ordinance to clarify, expand, correct, update, modify and otherwise further the provisions of the 1988 Brevard County Comprehensive Plan.

Section 3. Adoption of Comprehensive Plan Amendments. Pursuant to Plan Amendment 20S.06 to the 1988 Comprehensive Plan, Article III, Chapter 62-504, Brevard County Code, the 1988 Brevard County Comprehensive Plan is hereby amended based on documentation shown in Exhibit A and as specifically shown in Exhibit B. Exhibits A and B are hereby incorporated into and made part of this Ordinance.

Section 4. Legal Status of the Plan Amendments. After and from the effective date of this Ordinance, the plan amendment, Plan Amendment 20S.06, shall amend the 1988 Comprehensive Plan and become part of that plan and the plan amendment shall retain the legal status of the 1988 Brevard County Comprehensive Plan established in Chapter 62-504 of the Code of Laws and Ordinances of Brevard County, Florida, as amended.

Section 5. Severability. If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair,

invalidate, or nullify the remainder of this Ordinance, but the effect thereof shall be confined to the section, paragraph, subdivision, clause, sentence or provision immediately involved in the controversy in which such judgment or decree shall be rendered.


Section 6. Effective Date. The effective date of this small scale plan amendment shall be 31 days after adoption, unless the amendment is challenged pursuant to Section 163.3187(3), Florida Statutes. If challenged, the effective date of this amendment shall be the date a final order is issued by the Department of Economic Opportunity, or the Administration Commission, finding the amendment in compliance with Section 163.3184, Florida Statutes. A certified copy of the ordinance shall be filed with the Office of the Secretary of State, State of Florida, within ten days of enactment.

DONE AND ADOPTED in regular session, this 5 day of November, 2020.

ATTEST:

  
\_\_\_\_\_  
Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

  
By: \_\_\_\_\_  
Bryan Andrew Lober, Chairman

As approved by the Board on Nov. 5, 2020.

**EXHIBIT A**  
**20S.06 SMALL SCALE**  
**COMPREHENSIVE PLAN AMENDMENT**

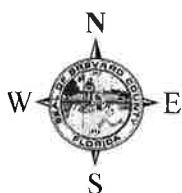
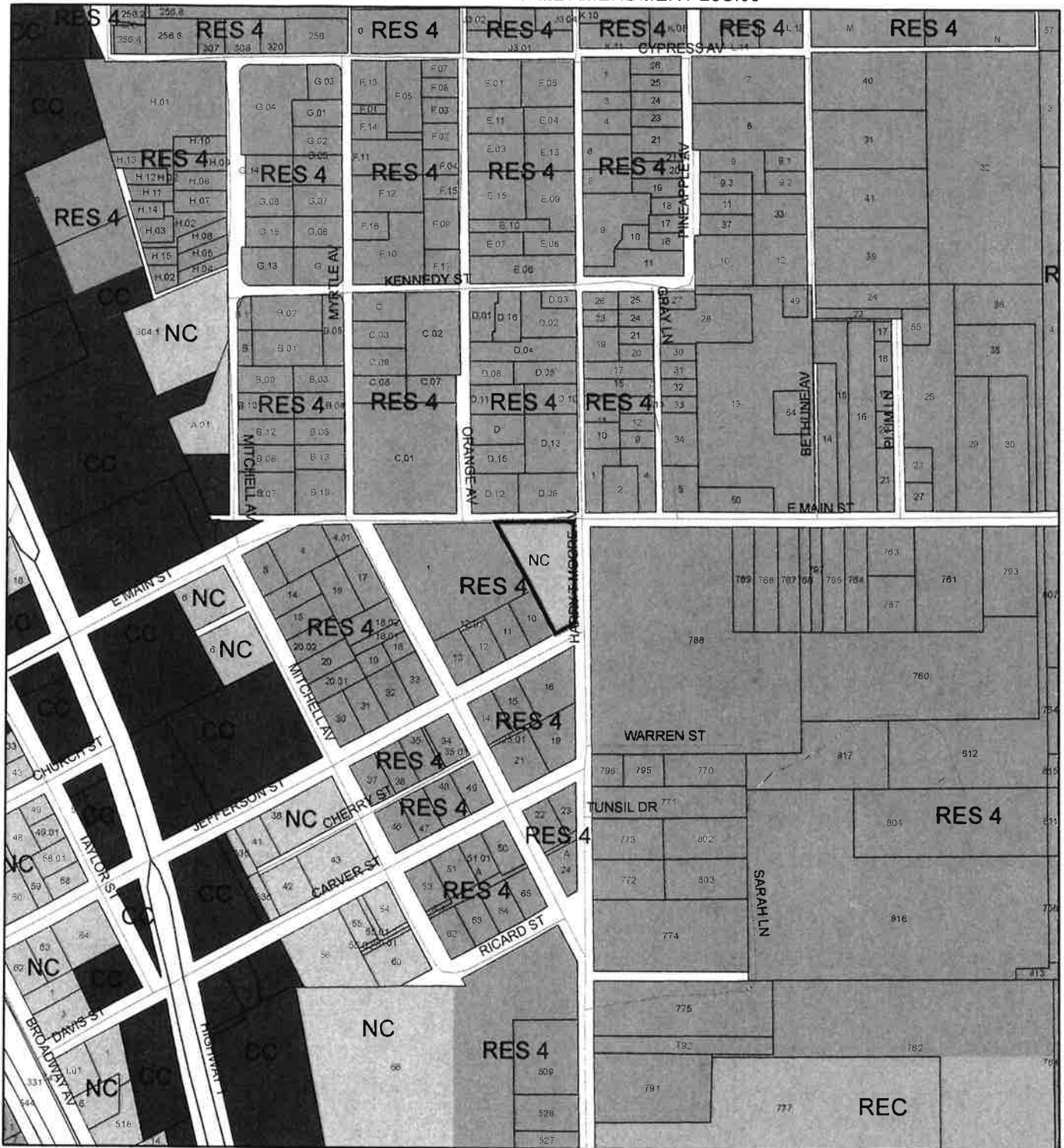
**Contents**

**1. Proposed Future Land Use Map**



# PROPOSED FUTURE LAND USE MAP

2354 TALMADGE DRIVE, LLC  
20PZ00079 SMALL SCALE AMENDMENT 20S.06



1:4,800 or 1 inch = 400 feet

— Subject Property  
□ Parcels

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 8/10/2020

## **EXHIBIT B**

### **Contents**

#### **1. Legal Description**

### Notice Public Hearing

**BECKWITH, JAMES** (1925- ) **PROFESSOR**  
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This list contains names and titles of new books and articles published in the English language during the past year. The books are listed in alphabetical order by author. The articles are listed in alphabetical order by title. The books are listed in the left column and the articles in the right column. The books are listed in the left column and the articles in the right column. The books are listed in the left column and the articles in the right column.

## **ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT**

Administrative Policies in the Future Land Use Element establish the expertise of staff with regard to zoning land use issues and set forth criteria when considering a rezoning action or request for Conditional Use Permit, as follows:

### **Administrative Policy 1**

The Brevard County zoning official, planners and the director of the Planning and Development staff, however designated, are recognized as expert witnesses for the purposes of Comprehensive Plan amendments as well as zoning, conditional use, special exception, and variance applications.

### **Administrative Policy 2**

Upon Board request, members of the Brevard County Planning and Development staff shall be required to present written analysis and a recommendation, which shall constitute an expert opinion, on all applications for development approval that come before the Board of County Commissioners for quasi-judicial review and action. The Board may table an item if additional time is required to obtain the analysis requested or to hire an expert witness if the Board deems such action appropriate. Staff input may include the following:

#### **Criteria:**

- A. Staff shall analyze an application for consistency or compliance with comprehensive plan policies, zoning approval criteria and other applicable written standards.
- B. Staff shall conduct site visits of property which are the subject of analysis and recommendation. As part of the site visit, the staff shall take a videotape or photographs where helpful to the analysis and conduct an inventory of surrounding existing uses. Aerial photographs shall also be used where they would aid in an understanding of the issues of the case.
- C. In cases where staff analysis is required, both the applicant and the staff shall present proposed findings of fact for consideration by the Board.
- D. For re-zoning applications where a specific use has not been proposed, the worst case adverse impacts of potential uses available under the applicable land use classification shall be evaluated by the staff.

### **Administrative Policy 3**

Compatibility with existing or proposed land uses shall be a factor in determining where a rezoning or any application involving a specific proposed use is being considered. 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.
- B. Whether the proposed use(s) would cause a material reduction (five percent or more) in the value of existing abutting lands or approved development.
- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through analysis of:

1. historical land use patterns;
  2. actual development over the immediately preceding three years; and
  3. development approved within the past three years but not yet constructed.
- D. Whether the proposed use(s) would result in a material violation of relevant policies in any elements of the Comprehensive Plan.

#### **Administrative Policy 4**

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 of intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, et cetera), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.
- 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.
  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.
  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.

#### **Administrative Policy 5**

In addition to the factors specified in Administrative Policies 2, 3, and 4, in reviewing a rezoning, conditional use permit or other application for development approval, the impact of the proposed use or uses on transportation facilities either serving the site or impacted by the use(s) shall be considered. In evaluating whether substantial and adverse transportation impacts are likely to result if an application is approved, the staff shall consider the following criteria:

##### **Criteria:**

- A. Whether adopted levels of services will be compromised;
- B. Whether the physical quality of the existing road system that will serve the proposed use(s) is sufficient to support the use(s) without significant deterioration;

- C. Whether the surrounding existing road system is of sufficient width and construction quality to serve the proposed use(s) without the need for substantial public improvements;
- D. Whether the surrounding existing road system is of such width and construction quality that the proposed use(s) would realistically pose a potential for material danger to public safety in the surrounding area;
- E. Whether the proposed use(s) would be likely to result in such a material and adverse change in traffic capacity of a road or roads in the surrounding area such that either design capacities would be significantly exceeded or a de facto change in functional classification would result;
- F. Whether the proposed use(s) would cause such material and adverse changes in the types of traffic that would be generated on the surrounding road system, that physical deterioration of the surrounding road system would be likely;
- G. Whether projected traffic impacts of the proposed use(s) would materially and adversely impact the safety or welfare of residents in existing residential neighborhoods.

#### **Administrative Policy 6**

The use(s) proposed under the rezoning, conditional use or other application for development approval must be consistent with, (a), all written land development policies set forth in these administrative policies; and (b), the future land use element, coastal management element, conservation element, potable water element, sanitary sewer element, solid waste management element, capital improvements element, recreation and open space element, surface water element, and transportation elements of the comprehensive plan.

#### **Administrative Policy 7**

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

#### **Administrative Policy 8**

These policies, the staff analysis based upon these policies, and the applicant's written analysis, if any, shall be incorporated into the record of every quasi-judicial review application for development approval presented to the Board including rezoning, conditional use permits, and vested rights determinations.

Section 62-1151(c) of the Code of Ordinances of Brevard County directs, "The planning and zoning board shall recommend to the board of county commissioners the denial or approval of each application for amendment to the official zoning maps based upon a consideration of the following factors:

- (1) The character of the land use of the property surrounding the property being considered.
- (2) The change in conditions of the land use of the property being considered and the surrounding property since the establishment of the current applicable zoning classification, special use or conditional use.

- (3) The impact of the proposed zoning classification or conditional use on available and projected traffic patterns, water and sewer systems, other public facilities and utilities and the established character of the surrounding property.
- (4) The compatibility of the proposed zoning classification or conditional use with existing land use plans for the affected area.
- (5) The appropriateness of the proposed zoning classification or conditional use based upon a consideration of the applicable provisions and conditions contained in this article and other applicable laws, ordinances and regulations relating to zoning and land use regulations and based upon a consideration of the public health, safety and welfare.

The minutes of the planning and zoning board shall specify the reasons for the recommendation of approval or denial of each application."

#### **CONDITIONAL USE PERMITS (CUPs)**

In addition to the specific requirements for each Conditional Use Permit (CUP), Section 62-1901 provides that the following approval procedure and general standards of review are to be applied to all CUP requests, as applicable.

- (b) Approval procedure. An application for a specific conditional use within the applicable zoning classification shall be submitted and considered in the same manner and according to the same procedure as an amendment to the official zoning map as specified in Section 62-1151. 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. If the applicant meets its initial burden, then the Board has the burden to show, by substantial and competent evidence, that the applicant has failed to meet such standards and the request is adverse to the public interest. As part of the approval of the conditional use permit, the Board may prescribe appropriate and reasonable conditions and safeguards to reduce the impact of the proposed use on adjacent and nearby properties or the neighborhood. A nearby property, for the purpose of this section, is defined as any property which, because of the character of the proposed use, lies within the area which may be substantially and adversely impacted by such use. In stating grounds in support of an application for a conditional use permit, it is necessary to show how the request fulfills both the general and specific standards for review. The applicant must show the effect the granting of the conditional use permit will have on adjacent and nearby properties, including, but not limited to traffic and pedestrian flow and safety, curb-cuts, off-street loading and parking, off-street pickup of passengers, odors, glare and noise, particulates, smoke, fumes, and other emissions, refuse and service areas, drainage, screening and buffering for protection of adjacent and nearby properties, and open space and economic impact on nearby properties. The applicant, at his discretion, may choose to present expert testimony where necessary to show the effect of granting the conditional use permit.
- (c) General Standards of Review.
  - (1) The planning and zoning board and the board of county commissioners shall base the denial or approval of each application for a conditional use based upon

a consideration of the factors specified in Section 62-1151(c) plus a determination whether an application meets the intent of this section.

- 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.
  - 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.
  - c. The proposed use will not cause a substantial diminution in value of abutting residential property. 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. The Board of County Commissioners carries the burden to show, as evidenced by either testimony from or an appraisal conducted by an M A I certified appraiser, that a substantial diminution in value would occur. The applicant may rebut the findings with his own expert witnesses.
- (2) The following specific standards shall be considered, when applicable, in making a determination that the general standards specified in subsection (1) of this section are satisfied:
- a. Ingress and egress to the property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire and catastrophe, shall be: (1), adequate to serve the proposed use without burdening adjacent and nearby uses, and (2), built to applicable county standards, if any. Burdening adjacent and nearby uses means 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, as determined by applicable Brevard County standards, 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.
  - 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.
  - c. Noise levels for a conditional use are governed by Section 62-2271.



- d. The proposed conditional use shall not cause the adopted level of service for solid waste disposal applicable to the property or area covered by such level of service, to be exceeded.
- e. The proposed conditional use shall not cause the adopted level of service for potable water or wastewater applicable to the property or the area covered by such level of service, to be exceeded by the proposed use.
- f. The proposed conditional use must have existing or proposed screening or buffering, with reference to type, dimensions and character to eliminate or reduce substantial, adverse nuisance, sight, or noise impacts on adjacent and nearby properties containing less intensive uses.
- 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.
- 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.
- 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 35 feet higher than the highest residence within 1,000 feet of the property line.
- 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. 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.

#### **FACTORS TO CONSIDER FOR A REZONING REQUEST**

Section 62-1151(c) sets forth factors to consider in connection with a rezoning request, as follows:

"The planning and zoning board shall recommend to the board of county commissioners the denial or approval of each application for amendment to the official zoning maps based upon a consideration of the following factors:

- (1) The character of the land use of the property surrounding the property being considered.
- (2) The change in conditions of the land use of the property being considered and the surrounding property since the establishment of the current applicable zoning classification, special use or conditional use.
- (3) The impact of the proposed zoning classification or conditional use on available and projected traffic patterns, water and sewer systems, other public facilities and utilities and the established character of the surrounding property.

- (4) The compatibility of the proposed zoning classification or conditional use with existing land use plans for the affected area.
- (5) The appropriateness of the proposed zoning classification or conditional use based upon a consideration of the applicable provisions and conditions contained in this article and other applicable laws, ordinances and regulations relating to zoning and land use regulations and based upon a consideration of the public health, safety and welfare."

These staff comments contain references to zoning classifications found in the Brevard County Zoning Regulations, Chapter 62, Article VI, Code of Ordinances of Brevard County. These references include brief summaries of some of the characteristics of that zoning classification. Reference to each zoning classification shall be deemed to incorporate the full text of the section or sections defining and regulating that classification into the Zoning file and Public Record for that item.

These staff comments contain references to sections of the Code of Ordinances of Brevard County. Reference to each code section shall be deemed to incorporate this section into the Zoning file and Public Record for that item.

These staff comments contain references to Policies of the Brevard County Comprehensive Plan. Reference to each Policy shall be deemed to incorporate the entire Policy into the Zoning file and Public Record for that item.

These staff comments refer to previous zoning actions which are part of the Public Records of Brevard County, Florida. These records will be referred to by reference to the file number. Reference to zoning files are intended to make the entire contents of the cited file a part of the Zoning file and Public Record for that item.

## DEFINITIONS OF CONCURRENCY TERMS

**Maximum Acceptable Volume (MAV):** Maximum acceptable daily volume that a roadway can carry at the adopted Level of Service (LOS).

**Current Volume:** Building permit related trips added to the latest TPO (Transportation Planning Organization) traffic counts.

**Volume with Development (VOL W/DEV):** Equals Current Volume plus trip generation projected for the proposed development.

**Volume/Maximum Acceptable Volume (VOL/MAV):** Equals the ratio of current traffic volume to the maximum acceptable roadway volume.

**Volume/Maximum Acceptable Volume with Development (VOL/MAV W/DEV):** Ratio of volume with development to the Maximum Acceptable Volume.

**Acceptable Level of Service (CURRENT LOS):** The Level of Service at which a roadway is currently operating.

**Level of Service with Development (LOS W/DEV):** The Level of Service that a proposed development may generate on a roadway.

**FUTURE LAND USE MAP SERIES  
PLAN AMENDMENT**

**STAFF COMMENTS**

*Small Scale Plan Amendment 20S.06 (20PZ00079)*  
**Township 21, Range 35, Section 17**

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**Property Information**

Owner / Applicant: **Aldon Bookhardt**

Adopted Future Land Use Map Designation: Residential 4 (RES 4)

Requested Future Land Use Map Designation: Neighborhood Commercial (NC)

Acreage: 0.98 acres

Tax Account #: 2103831

Site Location: South side of east Main Street, west side of Harry T. Moore Avenue.

Current Zoning: General Retail Commercial (BU-1) and Single-Family Residential (RU-1-9)

Requested Zoning: Restricted Neighborhood Retail Commercial (BU-1-A) (20Z00023)

**Background & Purpose**

The applicant is requesting to amend the Future Land Use (FLU) designation from Residential 4 (RES 4) to Neighborhood Commercial (NC) on a 0.98 acre portion of the overall 3.04 acre parcel of land located on the southwest corner of East Main Street and Harry T. Moore Avenue for the purpose of developing the 0.98 acre site as a neighborhood retail store. The subject property has an existing FLU designation of RES 4 that was adopted with the Comprehensive Plan in September of 1988. The majority of the vacant subject property has retained General Retail Commercial (BU-1) zoning since 1966.

A companion rezoning application (20Z00023) was submitted accompanying this FLU amendment request to change the Zoning classification from General Retail Commercial (BU-1) to Restricted Neighborhood Retail Commercial (BU-1-A) on the 0.98 subject site and Single-Family Residential (RU-1-9) with a Binding Development Plan (BDP) on the remaining portion of the overall parcel 3.04 acre parcel. The proposed rezoning and Future Land Use Amendment will establish consistency between the zoning classification and the Future Land Use Map.

The preliminary concurrency analysis did not indicate that the proposed development would cause a deficiency in the transportation adopted level of service. Potable water service is available to the site through Brevard County Utilities. The subject parcel is not currently serviced by County or municipal sanitary sewer; however, a Brevard County sanitary sewer line is located approximately 1,280 feet west of the property at U.S. Highway 1. A School Impact Analysis was not required for this application.

### **Surrounding Land Use Analysis**

	<b>Existing Land Use</b>	<b>Zoning</b>	<b>Future Land Use</b>
<b>North</b>	Across East Main Street - Retail Store and Vacant, Undeveloped Land	BU-1, BU-1-A, RU-1-7	RES 4
<b>South</b>	Across Jefferson Street - One (1) Single-Family Residence	RU-1-9	RES 4
<b>East</b>	Across Harry T. Moore Avenue - Multiple-Family Residential Housing	RU-2-30	RES 4
<b>West</b>	Vacant, Undeveloped Land and One (1) Single-Family Residence	RU-1-9	RES 4

To the north of the subject property (across East Main Street) is existing commercial retail and vacant land with FLU designations of RES 4; to the south (across Jefferson Street) is one (1) single-family residence with a FLU designation of RES 4; to the east (across Harry T. Moore Avenue) is multi-family housing with FLU designation of RES 4; and adjacent to the west is vacant, undeveloped land and one (1) single-family residence with FLU designations of RES 4.

### **Environmental Resources**

*Based on the summary provided by the Natural Resource Management Department, it has been determined that the following are present on the subject property:*

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

*Please refer to the attached comments provided by the Natural Resources Management Department.*

## **Historic Resources**

*There are no recorded historic or archaeological sites on the project site according to the Master Site File from the Florida Division of Historic Resources.*

## **Comprehensive Plan Policies/Comprehensive Plan Analysis**

Comprehensive Plan Policies are shown in plain text; Staff Findings of Fact are shown in *italics*.

**Notice:** The Comprehensive Plan establishes the broadest framework for reviewing development applications and provides the initial level of review in a three layer screening process. The second level of review entails assessment of the development application's consistency with Brevard County's zoning regulations. The third layer of review assesses whether the development application conforms to site planning/land development standards of the Brevard County Land Development Code. While each of these layers individually affords its own evaluative value, all three layers must be cumulatively considered when assessing the appropriateness of a specific development proposal.

## **Future Land Use Element – Policies/Analysis:**

### **Administrative Policy 3**

Compatibility with existing or proposed land uses shall be a factor in determining where a rezoning or any application involving a specific proposed use is being considered. Compatibility shall be evaluated by considering the following factors, at a minimum:

#### **Criteria:**

- 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 is a historical land use pattern of commercial, residential and institutional land use surrounding the subject site. To the north is a retail store; to the east is multi-family housing; to the south is a single-family residence; and to the west is a single-family residence. At the northeast corner of East Main Street and Harry T. Moore Avenue is a church.*

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

*There has not been any actual development on surrounding properties within the preceding three (3) years.*

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

*There have been no development approvals for surrounding properties within the past three (3) years that have not yet been constructed.*

## **Role of the Comprehensive Plan in the Designation of Commercial Lands**

### **Policy 2.1**

The Comprehensive Plan takes into consideration broad criteria for evaluating requests for commercial land use designations within Brevard County. At a minimum, these criteria address the following:

#### **Criteria:**

- A. Overall accessibility to the site;

*The subject parcel is located on the southwest corner of East Main Street and Harry T. Moore Avenue.*

- B. Compatibility and inter-connectivity with adjacent adopted Future Land Use designations and land uses;

*The subject parcel is adjacent to parcels with Future Land Use designations of RES 4 on all sides; however, the parcel adjacent to the north (across East Main Street) has retained commercial zoning since prior to the adoption of FLU map in 1988 and is currently a retail store. The proposed change in land use to NC will acknowledge the subject property's commercial zoning classification.*

- C. Existing commercial development trend in the area;

*The parcel adjacent to the north (across East Main Street) is currently developed as a commercial retail store. Additional commercial development is located 50 feet east of the intersection of East Main Street and Harry T. Moore Avenue and is currently a fraternal organization clubhouse.*

- E. Availability of required infrastructure at/above adopted levels of service;

*A Brevard County Utilities potable water line is adjacent to the subject property along East Main Street. The closest sanitary sewer line (Brevard County Utilities) is located approximately 1,280 feet west of the property at U.S. Highway 1.*

- F. Spacing from other commercial activities;

*The subject parcel is adjacent to a developed commercial property (retail store) to the north, across East Main Street. Additional commercial development (fraternal organization clubhouse) is located 50 feet east of the subject site on East Main Street. There is also existing commercial development approximately 1,280 feet west of the subject property at the*

*intersection of U.S. Highway 1 and East Main Street, providing an array of retail, personal and professional uses to serve several neighborhoods and sub-regional areas.*

- G. Size of proposed commercial designation compared with current need for commercial lands;

*The FLU designation change from RES 4 to NC is proposed on a 0.98 acre parcel of land. Consistent with Policy 2.5 of the Future Land Use Element of the Comprehensive Plan, neighborhood commercial development is intended to be low-impact in nature and serve the needs of the immediate residential area.*

- H. Adherence to the objectives/policies of the Conservation Element and minimization of impacts upon natural resources and systems;

*The Natural Resource Management (NRM) Department has provided a preliminary summary of adherence to the objectives/policies of the Conservation Element and the minimization of impacts upon natural resources and systems. (See attached NRM Department Summary).*

#### **Activities Permitted in Neighborhood Commercial (NC) Future Land Use Designations**

##### **Policy 2.5**

Neighborhood Commercial (NC) development activities are intended to be low-impact in nature and serve the needs of the immediate residential area. Intrusion of these land uses into surrounding residential areas shall be limited. Existing BU-1-A uses, which were established as of the adoption date of this provision shall be considered consistent with this policy. Development activities which may be considered within Neighborhood Commercial (NC) Future Land Use designation, provided that listed criteria are met, include the following:

- a) Professional offices (no drive through lanes permitted);
- b) Personal Services (no drive through lanes permitted);
- c) Convenience stores (no drive through lanes permitted);
- d) Residential uses;
- e) Institutional uses;
- f) Recreational uses;
- g) Public facilities; and
- h) Transitional uses pursuant to Policy 2.12.

#### **Locational and Development Criteria for Neighborhood Commercial Uses**

##### **Policy 2.6**

Locational and development criteria for neighborhood commercial land uses are as follows:

##### **Criteria:**

- A. Neighborhood commercial clusters should be located at collector/collector or collector/arterial intersections, except as otherwise provided for in this Comprehensive Plan.

*The proposed NC future land use is located at the intersection of East Main Street and Harry T. Moore Avenue.*

- C. New neighborhood commercial land use sites should incorporate no more than two acres maximum at each corner of an intersection, as set forth in Criterion A of this policy. Neighborhood commercial land uses at such intersections should not exceed eight (8) acres total.

*The proposed NC future land use is for a total of 0.98 acres at the southwest corner of East Main Street and Harry T. Moore Avenue.*

- D. Neighborhood commercial development clusters should be spaced at least 1/2 mile apart, except in the south beaches where neighborhood commercial clusters should be spaced at least three (3) miles apart.

*The closest NC future land use designation is at an undeveloped parcel located approximately 840 feet to the west of the subject property at the intersection of East Main Street and Mitchell Avenue. This request recognizes the existing commercial zoning on the property.*

- E. The gross floor area of neighborhood commercial complexes should not exceed 21,800 square feet and the Floor Area Ratio (FAR) should not exceed 0.75.

*The proposed gross floor area submitted by the applicant does not exceed 21,800 square feet or a FAR of 0.75. The Floor Area Ratio (FAR) is regulated through the land development regulations at the time of site plan review.*

*The proposed NC FLU designation will acknowledge the subject site's existing commercial zoning and is consistent with recommendation 3.2 of the adopted 2007 Mims Small Area Study that states Commercial needs should generally be focused on providing goods and services to Mims residents, as opposed to larger regional markets.*

### **For Board Consideration**

The Board may wish to legitimize the existing commercial zoning as the request is compatible with the surrounding area and consistent with the Comprehensive Plan.



**NATURAL RESOURCES MANAGEMENT DEPARTMENT  
Future Land Use (FLU) Review & Summary  
Item # 20PZ00079**

**Applicant:** Aldon Bookhardt

**FLU request:** RES-4 to NC

**Note:** Applicant wants to develop a retail store on corner of Main St. and Harry T. Moore Ave.

**P&Z Hearing Date:** 10/05/20; **BCC Hearing Date:** 11/05/20

**Tax ID No:** 2103831 (east 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:**

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

No noteworthy land use issues were identified. Natural Resources Management (NRM) reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

**Land Use Comments:**

**Aquifer Recharge Soils**

The subject parcel contains mapped aquifer recharge soils (Pomello 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.

**Protected and Specimen Trees**

The parcel contains a small mapped polygon of SJRWMD Florida Land Use and Cover Classification System (FLUCCS) code 4340 – Upland Mixed Coniferous/Hardwood trees. Heritage Specimen Trees (greater than or equal to 24 inches in diameter) are included in this FLUCCS code and may reside in 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. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements

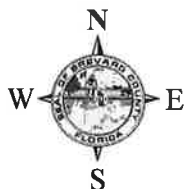
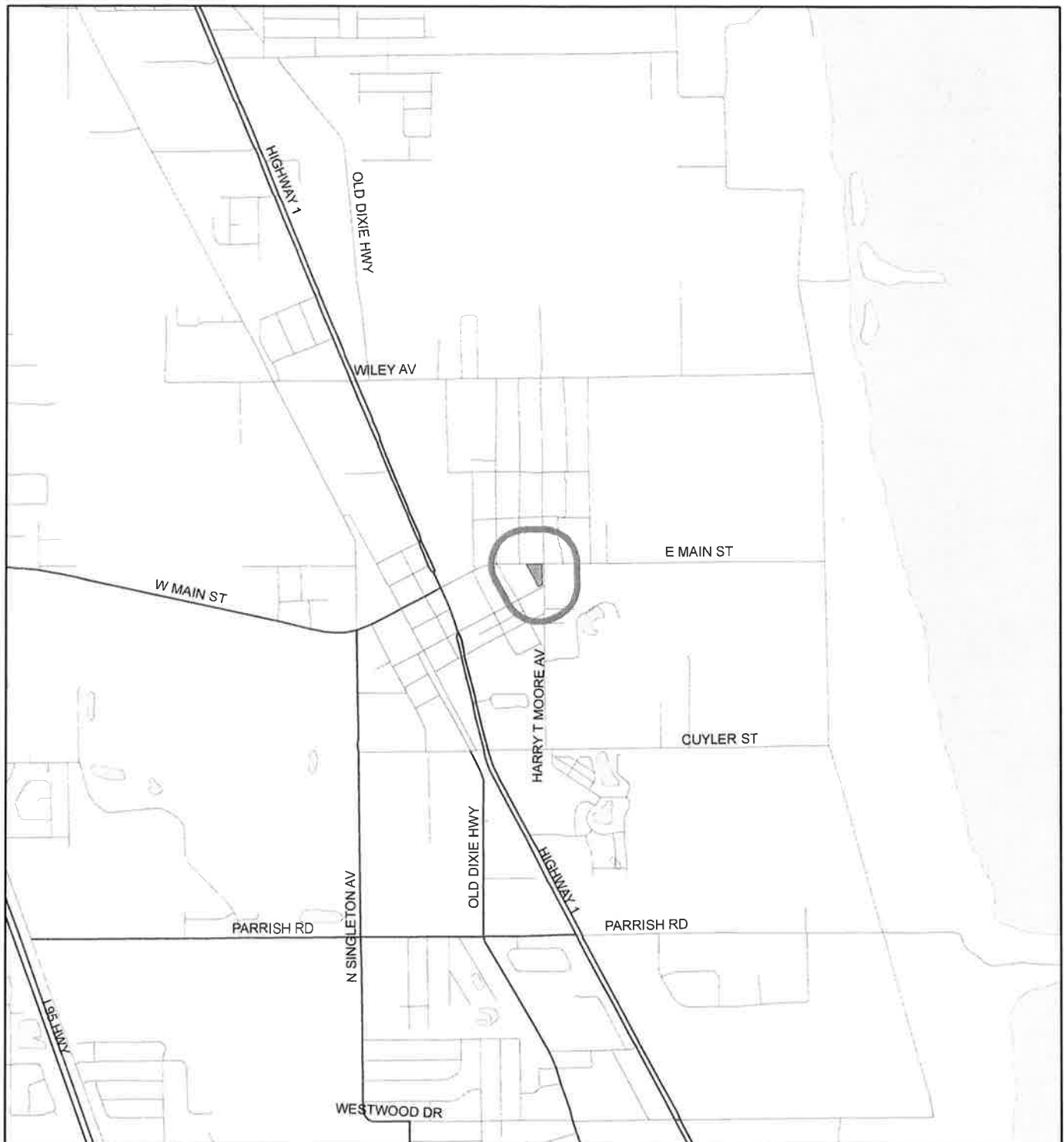
for tree preservation and canopy coverage requirements. Land clearing is not permitted without prior authorization by NRM.

**Protected Species**

Information available to NRM indicates that federally and/or state protected species may be present on the property. Specifically, gopher tortoises can be found in areas of aquifer recharge soils. 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.

# LOCATION MAP

2354 TALMADGE DRIVE, LLC  
20PZ00079 SMALL SCALE AMENDMENT 20S.06



1:24,000 or 1 inch = 2,000 feet

Buffer Distance: 500 feet

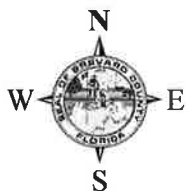
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 8/10/2020

Buffer  
Subject Property

# ZONING MAP

2354 TALMADGE DRIVE, LLC  
20PZ00079 SMALL SCALE AMENDMENT 20S.06



1:4,800 or 1 inch = 400 feet

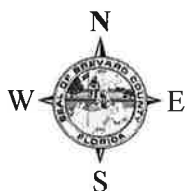
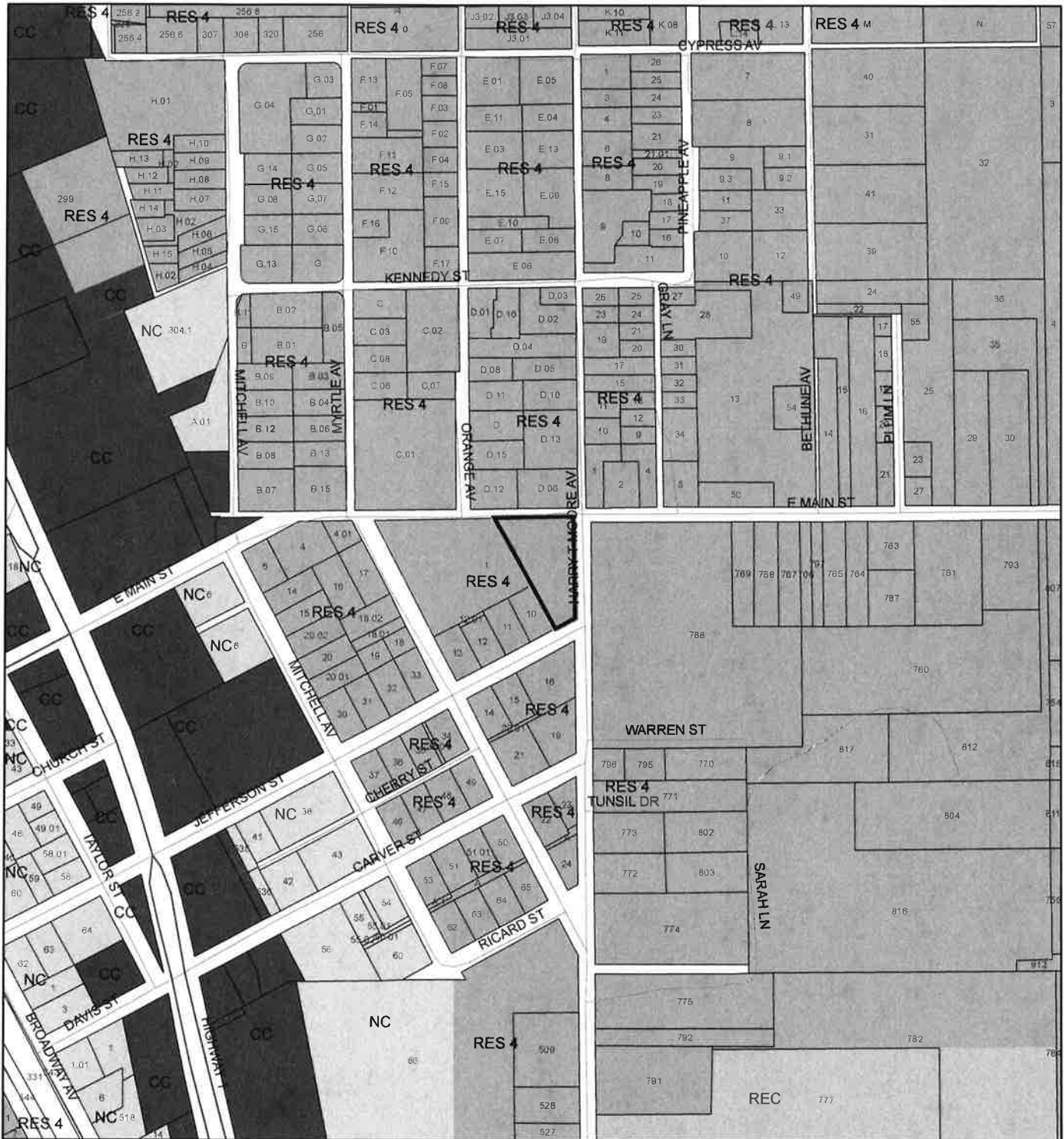
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Produced by BoCC - GIS Date: 8/10/2020

- Subject Property
- Parcels
- Zoning

# FUTURE LAND USE MAP

2354 TALMADGE DRIVE, LLC  
20PZ00079 SMALL SCALE AMENDMENT 20S.06



1:4,800 or 1 inch = 400 feet

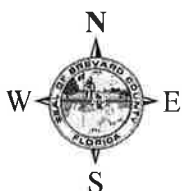
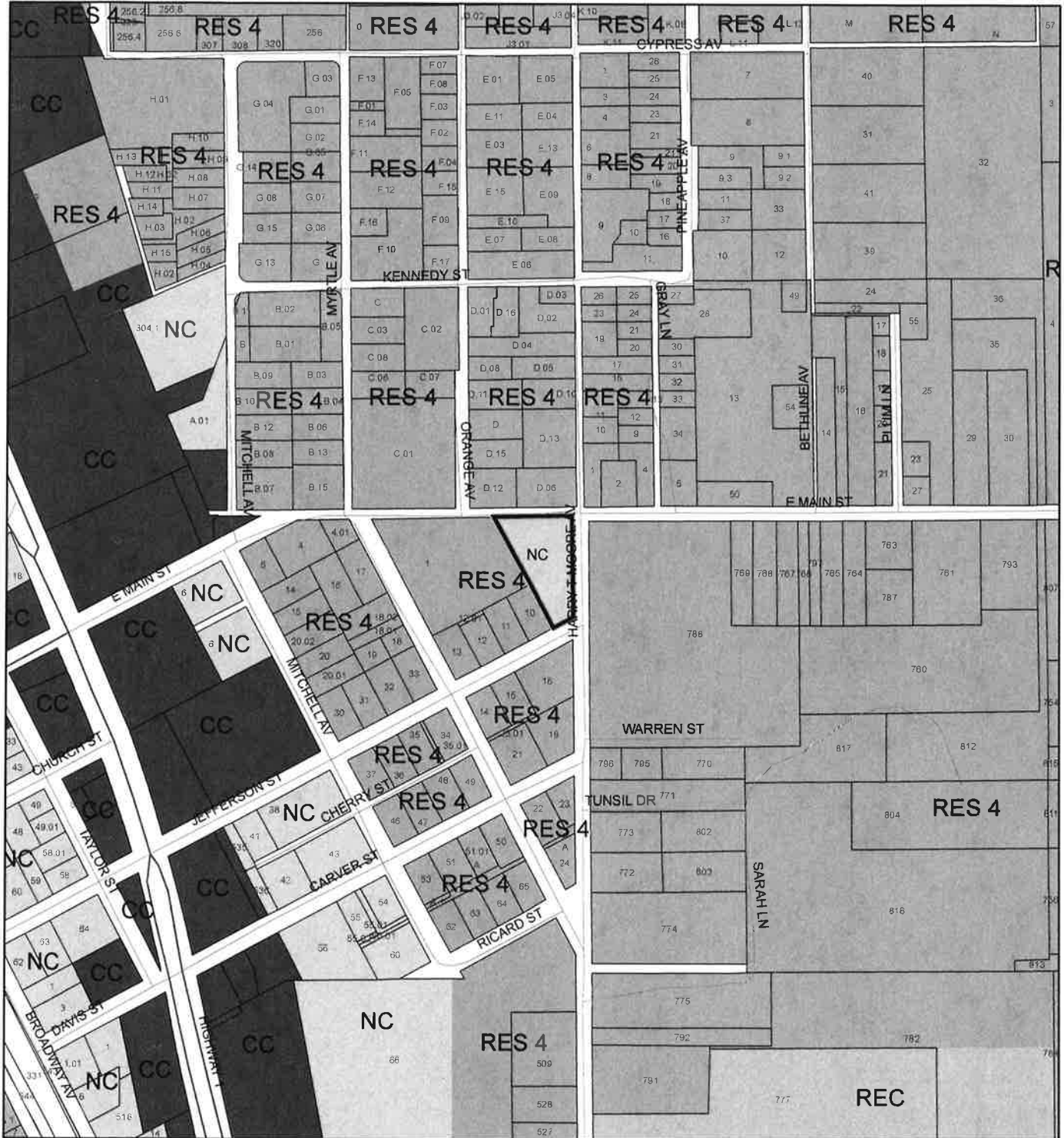
— Subject Property  
□ Parcels

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Produced by BoCC - GIS Date: 8/10/2020

# PROPOSED FUTURE LAND USE MAP

2354 TALMADGE DRIVE, LLC  
20PZ00079 SMALL SCALE AMENDMENT 20S.06



1:4,800 or 1 inch = 400 feet

— Subject Property  
□ Parcels

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Produced by BoCC - GIS Date: 8/10/2020

## **PLANNING AND ZONING BOARD MINUTES**

The Brevard County Planning & Zoning Board met in regular session on **Monday, October 5, 2020**, at **3:00 p.m.**, in the Florida Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

The meeting was called to order at 3:00 p.m.

Board members present were: Ron Bartcher; Brian Woltz; Ian Golden; Brian Hodgers; Mark Wadsworth, Chair; Peter Filiberto, Vice Chair; and Bruce Moia.

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; Abigail Jorandby, Assistant County Attorney; and Jennifer Jones, Special Projects Coordinator.

### **Excerpt of Complete Minutes**

#### **2354 Talmadge Drive, LLC (Aldon Bookhardt / Debbie Joyce)**

A Small Scale Comprehensive Plan Amendment to change the Future Land Use designation from RES 4 (Residential 4) to NC (Neighborhood Commercial). The property is 0.98 acres, located on the southwest corner of East Main Street and Harry T. Moore Avenue. (No assigned address. In the Mims area) (20PZ00079) (Tax Account 2103831) (District 1)

#### **2354 Talmadge Drive, LLC (Aldon Bookhardt / Debbie Joyce)**

A change of zoning classification from RU-1-9 (Single-Family Residential) and BU-1 (General Retail Commercial) to BU-1-A (Restricted Neighborhood Commercial) on 0.98 acres; and a BDP (Binding Development Plan) limited to 4 units per acre on 2.29 acres. The property is located on the southwest corner of East Main Street and Harry T. Moore Avenue. (No assigned address. In the Mims area.) (20Z00023) (Tax Account 2103831) (District 1)

Debbie Joyce, 3231 Nottingham Lane, Cocoa, stated the first application is to make the Future Land Use consistent with the zoning. The current zoning is BU-1 and they would like to change it to BU-1-A, which is neighborhood community commercial, in order to develop a retail store. The parcel across the street is also BU-1 and BU-1-A. The second application is to change the zoning from RU-1-9 to BU-1-A, and the plan is to develop single-family homes at four units per acre. Both parcels are owned by the LLC and they would like to develop them, but before they can do that they need these changes made to the land use and zoning. She said they would like to bring some single-family home ownership opportunity to the Mims area.

No public comment.

Peter Filiberto asked if they plan on having commercial on the bottom and residential on top. Ms. Joyce replied the plan is for commercial on one floor only, on the .98 acres. The plan is for a retail store, as well as a community meeting facility adjacent to the retail store.

Ron Bartcher asked what kind of retail store. Ms. Joyce replied a convenience store. Mr. Ball noted a convenience store in BU-1-A would require a conditional use permit; they can have retail, but if they call it a convenience store, that requires a conditional use, which is a public hearing process. Ms. Joyce replied it will be a retail store, because that was their understanding.

Brian Hodgers stated he sees mostly Residential 4 in the area, and not any commercial.

Mr. Ball stated the property on the corner retains the BU-1 zoning classification and when that was done it established commercial uses. The Comprehensive Plan was never updated to recognize that,

so this change to Neighborhood Commercial will recognize that and allow that corner to be developed. There is a small portion just to the north of that corner piece zoned BU-1 that is incorporated into the Neighborhood Commercial, so staff thought it would be appropriate and allow for more commercial area to be developed. The RU-1-9 will remain the Residential 4 land use, and that is the reason for the BDP to limit the four units per acre.

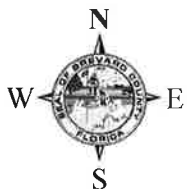
Motion by Ron Bartcher, seconded by Brian Hodggers, to approve the Small Scale Comprehensive Plan Amendment to change the Future Land Use from RES 4 to NC. The motion passed unanimously. (Bruce Moia absent)

Motion by Ron Bartcher, seconded by Peter Filiberto, to approve the change of zoning classification from RU-1-9 and BU-1 to BU-1-A on 0.98 acres; and a BDP limited to 4 units per acre on 2.29 acres. The motion passed unanimously. (Bruce Moia absent)



# AERIAL MAP

2354 TALMADGE DRIVE, LLC  
20PZ00079 SMALL SCALE AMENDMENT 20S.06



1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2020

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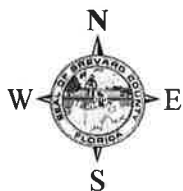
Produced by BoCC - GIS Date: 8/10/2020

— Subject Property  
□ Parcels

# NWI WETLANDS MAP

2354 TALMADGE DRIVE, LLC

20PZ00079 SMALL SCALE AMENDMENT 20S.06



1:4,800 or 1 inch = 400 feet

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 8/10/2020

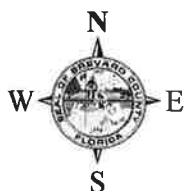
## National Wetlands Inventory (NWI)

	Estuarine and Marine Deepwater		Freshwater Pond
	Estuarine and Marine Wetland		Lake
	Freshwater Emergent Wetland		Other
	Freshwater Forested/Shrub Wetland		Riverine
			Subject Property
			Parcels

# SJRWMD FLUCCS WETLANDS - 6000 Series MAP

2354 TALMADGE DRIVE, LLC

20PZ00079 SMALL SCALE AMENDMENT 20S.06



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 8/10/2020

## SJRWMD FLUCCS WETLANDS

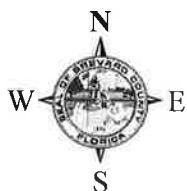
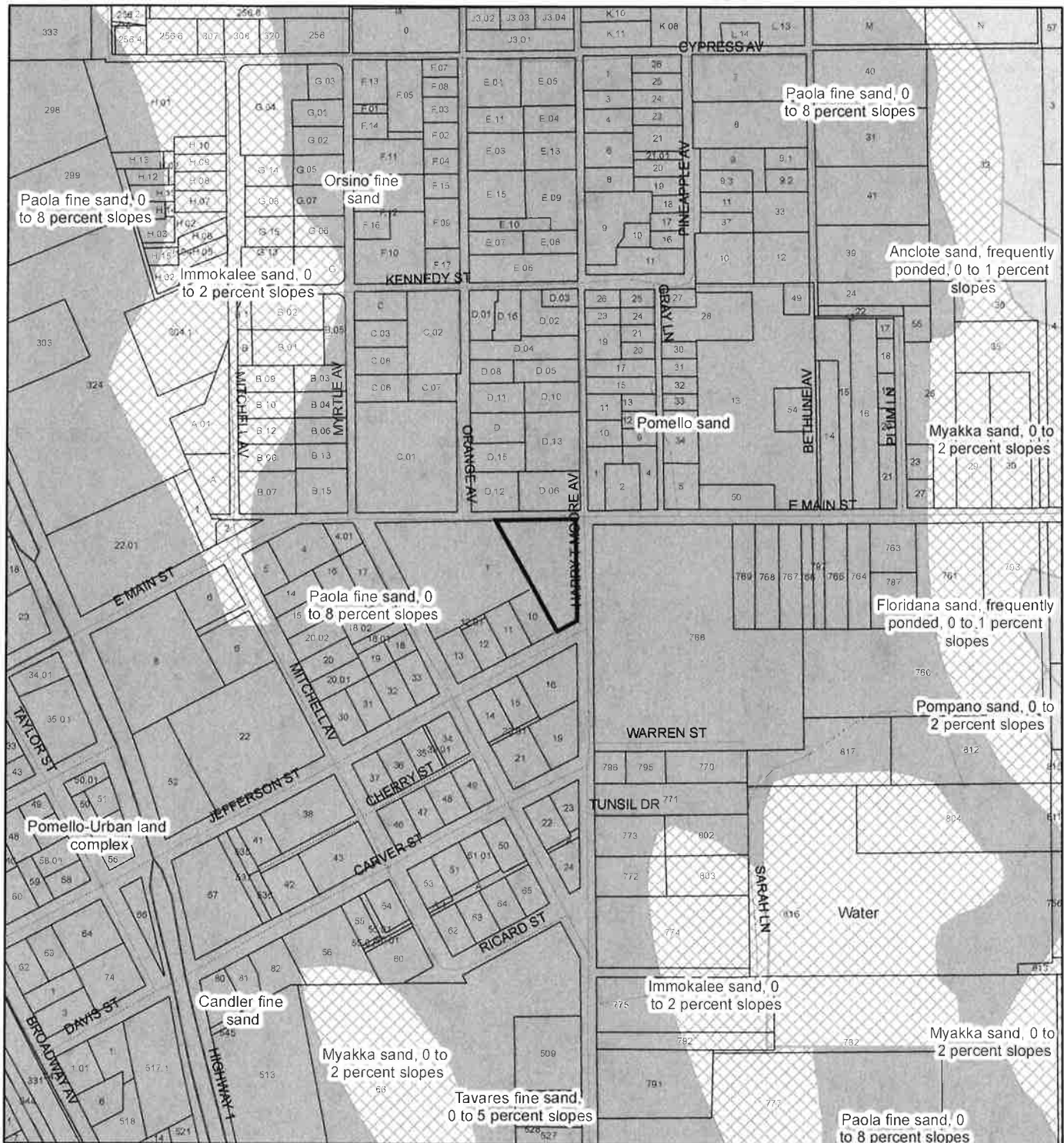
- Wetland Hardwood Forests - Series 6100
- Wetland Coniferous Forest - Series 6200
- Wetland Forested Mixed - Series 6300
- Vegetated Non-Forested Wetlands - Series 6400
- Non-Vegetated Wetland - Series 6500

Subject Property

Parcels

# USDA SCSSS SOILS MAP

2354 TALMADGE DRIVE, LLC  
20PZ00079 SMALL SCALE AMENDMENT 20S.06



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 8/10/2020

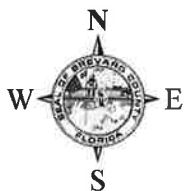
## USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None
- Subject Property
- Parcels



# FEMA FLOOD ZONES MAP

2354 TALMADGE DRIVE, LLC  
20PZ00079 SMALL SCALE AMENDMENT 20S.06



1:4,800 or 1 inch = 400 feet

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

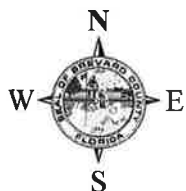
Produced by BoCC - GIS Date: 8/10/2020

## FEMA Flood Zones

- |  |   |                      |
|--|---|----------------------|
| A                                      | AO  | X                    |
| AE                                     | Open Water  | X Protected By Levee |
| AH                                     | VE  |                      |
| 0.2 Percent Annual Chance Flood Hazard | 0.2 Percent Annual Chance Flood Hazard Contained in Channel |                      |
| Subject Property                       | Parcels   |                      |

# COASTAL HIGH HAZARD AREA MAP

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— Subject Property

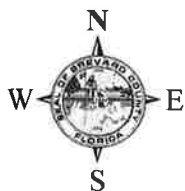
□ Parcels

**Coastal High Hazard Area**

■ SurgeZoneCat1

# INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

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20PZ00079 SMALL SCALE AMENDMENT 20S.06



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Subject Property

Parcels

## Septic Overlay

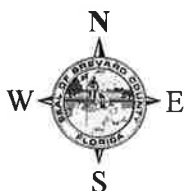
40 Meters

60 Meters

All Distances

# EAGLE NESTS MAP

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 Subject Property

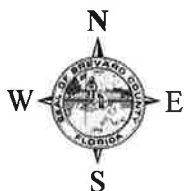
 Parcels

 Eagle Nests  
FWS 2010



# SCRUB JAY OCCUPANCY MAP




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20PZ00079 SMALL SCALE AMENDMENT 20S.06



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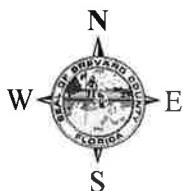
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-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

# SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

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20PZ00079 SMALL SCALE AMENDMENT 20S.06





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## SJRWMD FLUCCS Upland Forests

-  Upland Coniferous Forest - 4100 Series
-  Upland Hardwood Forest - 4200 Series
-  Upland Mixed Forest - 4300 Series
-  Tree Plantations - 4400 Series

 Subject Property  Parcels