



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.5.

5/4/2023

Subject:

Austin A. and Kailey R. Mahan request a change of zoning classification from AU to BU-2. (22Z00054) (Tax Account 3030132) (District 1)

Fiscal Impact:

None

Dept/Office:

Planning & Development

Requested Action:

It is requested that the Board of County Commissioners conduct a public hearing to consider a change of zoning classification from AU (Agricultural Residential) to BU-2 (Retail, Warehousing, and Wholesale Commercial).

Summary Explanation and Background:

The applicants are seeking a change of zoning classification from AU to BU-2 for the purpose of storing outdoor equipment in conjunction with a wholesale/retail kayak business. Per Section 62-1483, business uses and all materials and products shall be confined within a substantial building completely enclosed with walls and a roof; however, retail items of substantial size or which of necessity must remain outside may be permitted to be displayed outside of a building.

The proposed BU-2 zoning classification permits retail, wholesale and warehousing commercial land uses on minimum 7,500 square-foot lots. BU-2 allows for contractor's offices, plants and storage yards. Storage yards must be enclosed with a six-foot wall, louvered fence or chain-link fence.

Parcels in the surrounding area range from 0.43 acres to 11.15 acres. The parcel to the north is a motel on 2.98 acres zoned BU-2. The parcels to the west and southwest are 1 acre in size, developed with single-family residences, and zoned RR-1 (Rural Residential). The parcel to the south is vacant commercial land zoned BU-1 (General Retail Commercial) on 5.54-acres. Across U.S. Highway 1 is a retail store zoned BU-1 on 1.48 acres.

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

On April 17, 2023, the Planning and Zoning Board heard the request and unanimously recommended approval with a BDP retaining all BU-1 uses, limiting the BU-2 use to kayak storage only, and limiting egress only to E.R. Smyth Drive, with ingress and egress to U.S. Highway 1.

Clerk to the Board Instructions:

H.5.

5/4/2023

Once received, please execute the resolution and return a copy to Planning and Development.

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, 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 zoning staff shall be required to present written analysis and a recommendation, which shall constitute an expert opinion, on all applications for zoning, conditional uses, comprehensive plan amendments, vested rights, or other 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 development 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:

- 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.



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

2725 Judge Fran Jamieson Way
Building A, Room 114
Viera, Florida 32940
(321)633-2070 Phone / (321)633-2074 Fax
<https://www.brevardfl.gov/PlanningDev>

STAFF COMMENTS

22Z00054

Austin & Kailey R. Mahan

AU (Agricultural Residential) to BU-2 (Retail, Warehousing & Wholesale Commercial)

Tax Account Number: 3030132
Parcel I.D.: 21-35-06-00-289
Location: West of US Highway 1 and north of E R Smyth Drive (District 1)
Acreage: 0.77 acres

Planning & Zoning Board: 4/17/2023
Board of County Commissioners: 5/04/2023

Consistency with Land Use Regulations

- Current zoning can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal cannot 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	AU	BU-2
Potential*	1 SF unit	33,541 sq. ft.
Can be Considered under the Future Land Use Map	YES NC	YES** CC

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

Approval is pending approval of companion request **22SS00013 which proposes to change the Future Land Use Designation from Residential Neighborhood Commercial (NC) to Community Commercial (CC).

Background and Purpose of Request

The applicants are seeking a change of zoning classification from AU (Agricultural Residential) to BU-2 (Retail, Warehousing & Wholesale Commercial) for the purpose of allowing outdoor equipment storage as well as sell wholesale/retail items for his kayak business. The subject parcel is currently undeveloped.

The subject parcel was recorded into the current configuration per Official Records Book 9456, Page 2390, on March 28, 2022. The subject parcel has frontage on E R Smyth Drive and US Highway 1. The parcel is zoned AU (Agricultural Residential) since its formation.

The AU (Agricultural Residential) zoning classification allows for the sales of commodities raised on the premises in line with all agricultural pursuits. BU-2 (Retail, Warehousing & Wholesale Commercial) zoning classification would allow for both outdoor storage.

Land Use

The subject property is currently designated as Neighborhood Commercial (NC) FLU. The proposed BU-2 zoning is not consistent with the existing NC FLU designation. A companion application, **22SS00013**, if approved, would change the Future Land Use designation on the parcel to Community Commercial (CC) FLU.

Residential development or the integration of residential development with commercial development can be permitted in the Community Commercial (CC) land use designation, provided that the scale and intensity of the residential/mixed use development is compatible with abutting residential development and area designated for residential use on the Future Land Use Map.

Activities permitted in Community Commercial (CC) Future Land Use designations Policy 2.7 are intended to serve several neighborhoods, sub-regional and regional areas and provide an array of retail, personal and professional uses. Residential, Institutional and Transient commercial uses are just a few of permitted development activities that are permitted.

Applicable Land Use Policies

FLU Policy 2.2 – Role of Zoning Regulations in the Designation of Commercial Lands

The zoning process regulates the types and intensities of uses for a parcel of land. Criteria which aid in assessing zoning compatibility, shall include consideration of the following standards:

Criteria:

- A. Permitted/prohibited uses;
The applicant proposes to use the subject parcel to house his company's kayaks and conduct warehouse/retail business. Section 62-1483 provides that retail sales, warehousing and wholesale commercial may be permitted in BU-2 zoning in areas designated as Community Commercial on the Future Land Use Map.
- B. Existing commercial zoning trends in the area;
There have been two (2) zoning actions within 0.5-mile over the past 3 years. 20Z00003 took place August 5, 2020 to rezone a parcel from AU (Agricultural Residential) to BU-1 (General Retail Commercial). 19PZ00127 was to rezone from AU (Agricultural Residential) to RR-1 (Rural Residential) with a BDP (Binding Development Plan) to restrict density to one single-family residence on April 8, 2020.
- C. Compatibility of the proposed use with the area, pursuant to Administrative Policy 3;
This zoning classification change could be considered to be consistent with the immediate surrounding area zonings.

- D. Impact upon Level of Service (LOS) standards for roads, potable water service, sanitary sewer service and solid waste disposal;
The preliminary concurrency analysis did not indicate that the proposed development has the potential to cause a deficiency in the transportation adopted level of service. The subject site is on well water. The closest connection for potable water is located east across US Highway 1 approximately 250-feet away. The subject parcel does not have access to central sewer, they would be on septic.
- E. Impact upon natural resources, including wetlands, floodplains, and endangered species; and
The following land use issues were identified: wetlands protection, floodplain protection, aquifer/hydric soil, protected and specimen trees and protected species. Prior to the allowance of any wetland impacts or building on the subject property the applicants shall complete High Function and Landscape Level wetlands assessments according to Natural Resources.
- F. Other issues which may emerge specific to a particular property which may be addressed through performance-based zoning criteria.
This property will need to comply with Brevard County Performance Standards noted within Section 62-2251 through 62-2272 of Brevard County Code.

Activities Permitted in the Community Commercial (CC) Future Land Use Designations

FLUE Policy 2.7

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, provided that the guidelines listed in Table 2.2 are met, include the following:

- a) Existing strip commercial;
- b) Transient commercial uses;
- c) Tourist commercial uses;
- d) Professional offices;
- e) Personal service establishments;
- f) Retail establishments;
- g) Non-retail commercial uses;
- h) Residential uses;
- i) Institutional uses;
- j) Recreational uses;
- k) Public facilities;
- l) Transitional uses pursuant to Policy 2.11; and
- m) Planned Industrial Park development (as permitted by PIP zoning).

The applicant's proposed use can be considered consistent with these commercial and residential uses.

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 proposes to utilize the subject parcel for outdoor equipment storage and wholesale/retail items for their business. The hours of operation, lighting and traffic is not anticipated to affect the quality of life in the existing neighborhood. There is no anticipation of odor, noise level or site activity more so than already exists. However, CC FLU allows for an array of retail, personal and professional uses which may.

Per Brevard County Code of Ordinances, Section 62-1483 all business uses and all materials and products shall be confined within substantial buildings completely enclosed with walls and a roof, however, retail items of substantial size or which of necessity must remain outside of a building may be permitted to be displayed outside the building.

- 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 (Member 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;

The developed character of the surrounding area along Highway 1 corridor from Mc Cullough Road to the north down to Gloria Ave. to the south east. To the immediate north and south across E R Smyth Drive is Community Commercial (CC) FLU. Across US Highway 1 is also Community Commercial (CC) land use. All immediate surrounding areas to the north, south and east of US Highway 1 are commercial uses within 500-feet of this site.

The latest FLU amendment was approved under 20S.04, 20PZ00051, which changed the FLU from NC to CC on August 6, 2020 (Ordinance 20-11) roughly 650-feet to the northeast of the subject properties.

The subject site is located within the Mims Small Area Study, which was accepted by the Board on April 10, 2007. Recommendations of the Study recognized the Highway 1 corridor as a primary commercial area, particularly south of Grantline Road, which includes the area where the subject site is located. The Study recommendations also highlighted that commercial development should generally focus on providing goods and services to Mims residents, as opposed to larger regional markets.

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

There have been six commercial and residential developments within this area over the past three (3) years:

- 19PZ00127 was a rezoning from AU to RR-1 (Rural Residential) approved April 9, 2020 located approximately 0.5-miles from the subject property to legitimize the undersized lot to build a SFR.
- 20Z00003 was an approved rezoning from AU to BU-1 (General Retail Commercial) approximately 960-feet north of the subject property for future commercial development effective August 6, 2020.
- Indian River Preserve Estates is an ongoing project for a Planned Unit Development (PUD), 22PUD00005, as of April 11, 2022, adding 1,375 single-family residential units.
- A 9,100 square-foot retail commercial store was constructed, 21BC10252, across the ROW of US Highway 1 in February 2022.
- 22Z00018 was a rezoning from AU to RR-1 approved November 2, 2022 located approximately 650-feet east of the subject property with the purpose of subdividing the property into two lots.
- 22Z00050 was a rezoning from AU and RU-1-9 (Single-family Residential) to SR (Suburban Residential). The location is 0.5-miles from the subject property and the purpose was to legitimize the lot size to build a SFR.

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

There has not been any approved development within this area in the preceding three (3) years that has not 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 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.

Parcels in the surrounding area range from 0.43-acres to 11.15-acres. The parcel to the north is zoned BU-2 (Retail, Warehousing & Wholesale Commercial) on 2.98-acres and is a motel. The parcels to the west and southwest across E R Smyth Drive are zoned RR-1 (Rural Residential), both single-family residences on 1-acre. The parcel to the south is vacant commercial land zoned BU-1 (General Retail Commercial) on 5.54-acres. Across the ROW US Highway 1 is a retail store zoned BU-1 on 1.48-acres.

- 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.

The parcel is located in a residential and commercial area directly west of Highway 1.

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 subject property is requesting to be rezoned for commercial uses. The parcel to the north and parcels across ROW Highway 1 are also zoned for commercial use.

There were two zoning actions within a half-mile radius of the subject properties within the last three years. 20Z00003, approved by the Board on August 6, 2020, was a request to change AU (Agricultural Residential) to BU-1 (General Retail Commercial) on 1.32 acres located at the northwest corner of US Highway 1 and McCullough Road. 19PZ00127, approved April 9, 2020, was a request to change AU (Agricultural Residential) to RR-1 (Rural Residential) on 2-acres located on the south side of Richy Road and west of US Highway 1.

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.

The subject parcel is located to the east of a residential neighborhood. The parcel is located on a commercial corridor directly off Highway 1.

Administrative Policy #6 –

The uses proposed under the rezoning for development approval must be consistent with:

(a) all written land development policies set forth in these administrative policies

The applicants have met with our Land Development team to speak about the process of site planning.

(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.

The applicants have met with our Land Development team to speak about the process of site planning. The site planning process includes the departments listed to ensure the applicants will have consistency within those elements as well as the findings from Natural Resources.

Surrounding Area

	Existing Land Use	Zoning	Future Land Use
North	Motel	BU-2	CC
South	Vacant	BU-1	CC
East	(across ROW US Hwy. 1) Retail Store	BU-1	CC
West	Single-family	RR-1	NC

The current 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.

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.

The proposed BU-2 zoning classification permits retail, wholesale and warehousing commercial land uses on minimum 7,500 square foot lots. Possible incompatibilities are due to the intensive nature of commercial activities permitted by the BU-2 classification and possible noise, light, traffic and other nuisance factors potentially associated with BU-2 activities.

The RR-1 classification permits one single-family dwelling on an area of not less than one (1)-acre having a width and depth of not less than 125-feet. The minimum floor area is 1,200 square feet. The RR-1 classification also permits the raising/grazing of animals including horses.

Preliminary Concurrency

The closest concurrency management segment to the subject property is US Highway 1, between SR 46 to Lionel Road, which has a Maximum Acceptable Volume (MAV) of 41,790 trips per day, a Level of Service (LOS) of D, and currently operates at 24.93% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.03%. The corridor is anticipated to operate at 24.96% of capacity daily. The proposal is not anticipated to create a deficiency in LOS.

No school concurrency information has been provided as the development potential of this site falls below the minimum number of new residential lots that would require a formal review.

Environmental Constraints

- Wetlands Protection
- Aquifer Recharge
- Protected and Specimen Trees
- Protected Species

The subject property contains a small area of hydric soils (St. Johns sand, 0 to 2 percent slopes), an indicator that wetlands may be present on the property. A wetland delineation will be required prior to any land clearing activities. The wetland delineation shall be verified at time of site plan submittal.

Approximately 75% of the Pine flatwoods property was cleared in 2021/2022. The parent parcel was split, leaving the subject property in violation of Chapter 62, Article XIII, Division 2, entitled Landscaping, Land Clearing & Tree Protection.

For Board Consideration

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

**NATURAL RESOURCES MANAGEMENT (NRM) DEPARTMENT
Zoning Review & Summary**

Item #22Z00054

Applicant: Austin Mahan

Zoning Request: AU to BU-2

Note: Request to make property consistent with BU-2 zoning requirements.

LPA Hearing Date: 04/17/23; **BCC Hearing Date:** 05/04/23

Tax ID Nos: 3030132

- This is a preliminary review based on best available data maps reviewed by the Natural Resources Management Department (NRM) and does not include a site inspection to verify the accuracy of the mapped information.
- In that the rezoning process is not the appropriate venue for site plan review, specific site designs submitted with the rezoning request will be deemed conceptual. Board comments relative to specific site design do not provide vested rights or waivers from Federal, State or County regulations.
- **This review does not guarantee whether or not the proposed use, specific site design, or development of the property can be permitted under current Federal, State, or County Regulations.**

Summary of Mapped Resources and Noteworthy Land Use Issues:

- Wetlands Protection
- Aquifer Recharge
- Protected and Specimen Trees
- Protected Species

The subject property contains a small area of hydric soils (St. Johns sand, 0 to 2 percent slopes), an indicator that wetlands may be present on the property. A wetland delineation will be required prior to any land clearing activities. The wetland delineation shall be verified at time of site plan submittal.

Approximately 75% of the Pine flatwoods property was cleared in 2021/2022. The parent parcel was split, leaving the subject property in violation of Chapter 62, Article XIII, Division 2, entitled Landscaping, Land Clearing & Tree Protection.

Land Use Comments:

Wetlands

The subject property contains a small area of hydric soils (St. Johns sand, 0 to 2 percent slopes), an indicator that wetlands may be present on the property. A wetland delineation will be required prior to any land clearing activities. The wetland delineation shall be verified at time of site plan submittal.

Section 62-3694(c)(3)b has allowances for wetland impacts for commercial land development activities along Mitigation Qualified Roadways (MQRs). U.S. Highway 1 is an MQR in this location. E. R. Smyth Drive is not an MQR. An amendment to the Comprehensive Plan shall be required to add a mitigation qualified roadway to Map 8 and the associated table. For a project that encompasses multiple properties assembled under one site plan development order, wetland impacts for those properties without direct frontage on the mitigation qualified roadway may be permitted only if the properties are combined so that any proposed wetland impact is contained within a property with direct frontage on the mitigation qualified roadway. The assemblage shall be deed restricted for commercial or industrial use.

Wetlands proposed for impact shall be assessed using methodologies established in the Countywide Wetlands Study, prepared BKL, Inc. Consulting Ecologists (September 30, 2013) to determine if they meet the criteria of High Functioning Wetlands or Landscape Level Wetlands. Impacts to high functioning and/or landscape level wetlands shall be prohibited unless the proposed impacts are found to be in the public interest, or of overriding public benefit. Approval by the Brevard County Board of County Commissioners may be required for impacts.

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. Any unpermitted wetland impacts may result in Code Enforcement action. The applicant is encouraged to contact NRM at (321) 633-2016 prior to any site plan design or permit submittal.

Aquifer Recharge Soils

St. Johns sand, 0 to 2 percent slopes, can also function as an aquifer recharge soil. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

Protected and Specimen Trees

Approximately 75% of the property was cleared in 2021/2022. The parent parcel was split, leaving the subject property in violation of Chapter 62, Article XIII, Division 2, entitled Landscaping, Land Clearing & Tree Protection. The property is mapped as Pine flatwoods. Protected (≥ 10 inches in diameter) and Specimen (≥ 24 inches in diameter) trees may exist on the parcel. The applicant shall perform a tree survey prior to any site plan design in order to incorporate the remaining valuable vegetative communities or robust trees into the design. Per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. 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 preservation and canopy coverage requirements. Applicant should contact NRM at 321-633-2016 prior to performing any more land clearing activities.

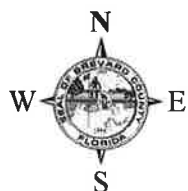
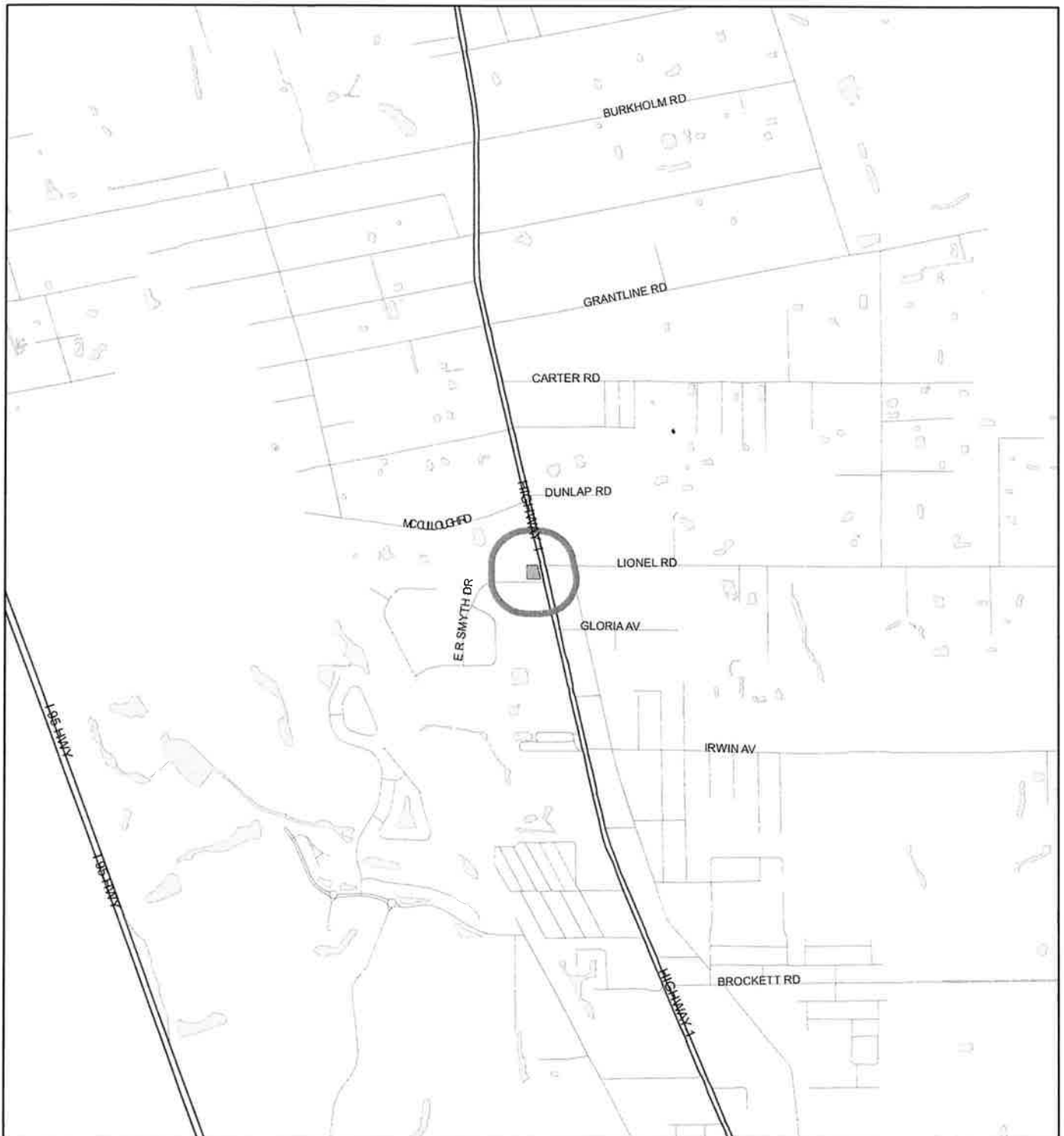
Protected Species

Information available to NRM indicates that federally and/or state protected species may be present on the property. Prior to any plan, permit submittal, or development activity, including land clearing, the applicant should obtain any necessary permits or clearance letters from the Florida Fish and Wildlife Conservation Commission and/or U.S. Fish and Wildlife Service, as applicable.

LOCATION MAP

MAHAN, AUSTIN and KAILEY ROSE

22Z00054



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.

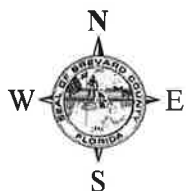
Produced by BoCC - GIS Date: 3/24/2023

— Buffer
 ■ Subject Property

ZONING MAP

MAHAN, AUSTIN and KAILEY ROSE

22Z00054



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.

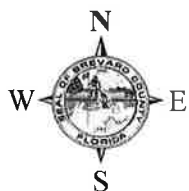
Produced by BoCC - GIS Date: 3/24/2023

- Subject Property
- Parcels
- Zoning

FUTURE LAND USE MAP

MAHAN, AUSTIN and KAILEY ROSE

22Z00054



1:4,800 or 1 inch = 400 feet

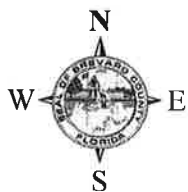
— Subject Property
 □ Parcels

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: 3/24/2023

AERIAL MAP

MAHAN, AUSTIN and KAILEY ROSE
22Z00054





1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2022

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.

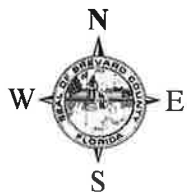
Produced by BoCC - GIS Date: 3/24/2023

 Subject Property
 Parcels

NWI WETLANDS MAP

MAHAN, AUSTIN and KAILEY ROSE

22Z00054



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: 3/24/2023

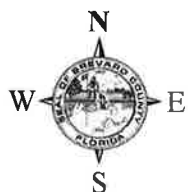
National Wetlands Inventory (NWI)

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

MAHAN, AUSTIN and KAILEY ROSE

22Z00054



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: 3/24/2023

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

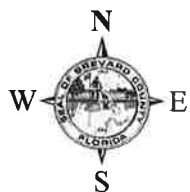
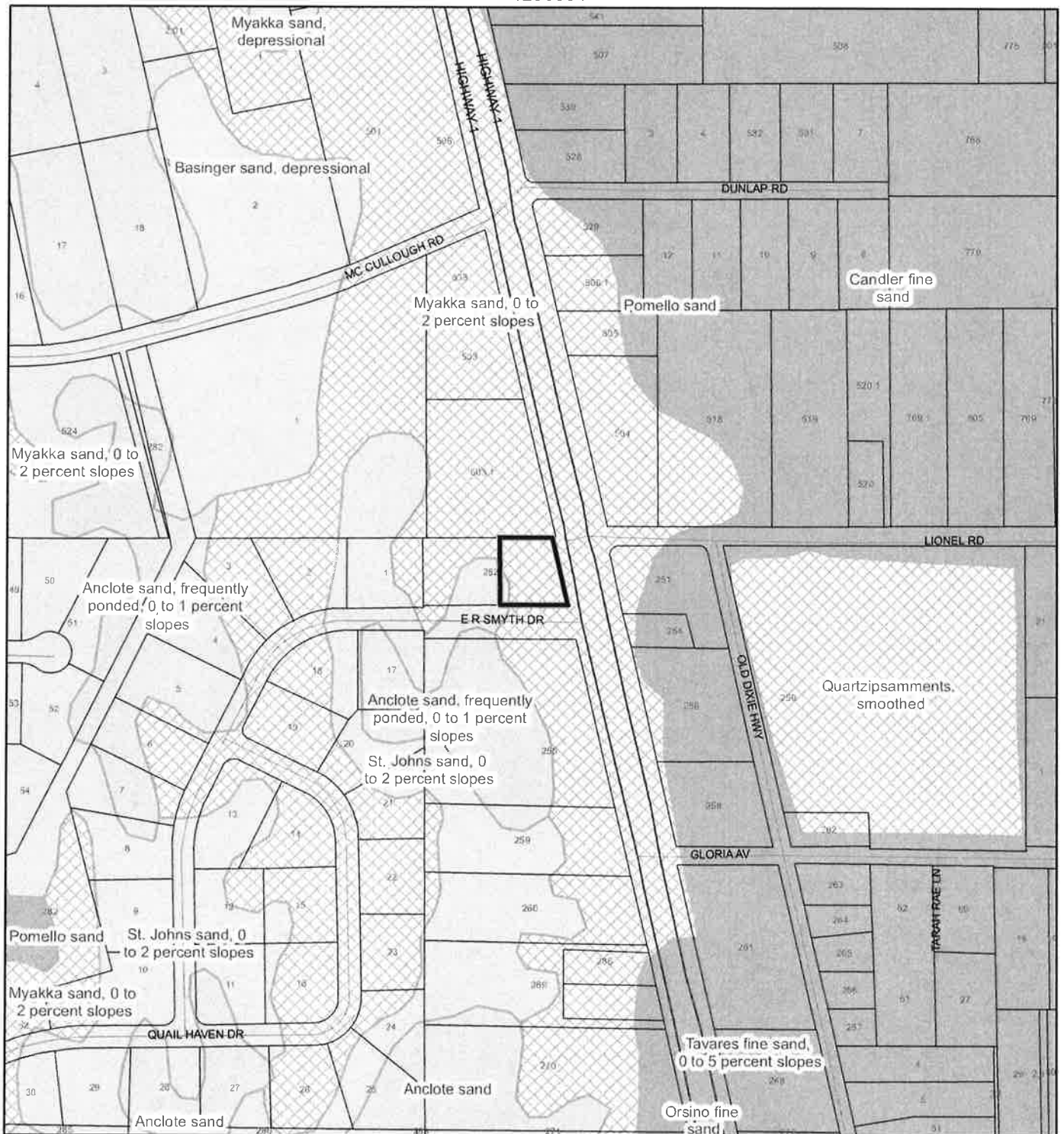
Subject Property

Parcels

USDA SCSSS SOILS MAP

MAHAN, AUSTIN and KAILEY ROSE

22Z00054



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: 3/24/2023

USDA SCSSS Soils

Aquifer and Hydric

Aquifer

Hydric

None

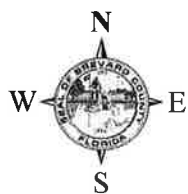
Subject Property

Parcels

FEMA FLOOD ZONES MAP

MAHAN, AUSTIN and KAILEY ROSE

22Z00054



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: 3/24/2023

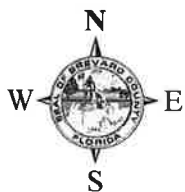
FEMA Flood Zones

A	AO	X
AE	Open Water	
AH	VE	
Subject Property	Parcels	

COASTAL HIGH HAZARD AREA MAP

MAHAN, AUSTIN and KAILEY ROSE

22Z00054



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: 3/24/2023

— Subject Property

□ Parcels

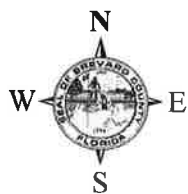
Coastal High Hazard Area

■ SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

MAHAN, AUSTIN and KAILEY ROSE

22Z00054



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: 3/24/2023

— Subject Property

□ Parcels

Septic Overlay

■ 40 Meters

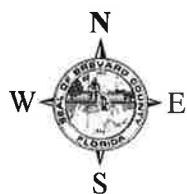
■ 60 Meters

■ All Distances

EAGLE NESTS MAP

MAHAN, AUSTIN and KAILEY ROSE

22Z00054



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: 3/24/2023

 Subject Property

 Parcels

 Eagle Nests FWS

SCRUB JAY OCCUPANCY MAP

MAHAN, AUSTIN and KAILEY ROSE

22Z00054



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: 3/24/2023

 Subject Property

 Parcels

 Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

MAHAN, AUSTIN and KAILEY ROSE

22Z00054



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: 3/24/2023

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

From: [Thorneatomicred](#)
To: [Jones, Jennifer](#); [Thorneatomicred](#)
Subject: issue with rezoning notice
Date: Wednesday, December 21, 2022 2:16:18 PM

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Hello Jennifer, My husband and I are reaching out to you concerning the rezoning notice # 22Z00054. We do not agree with this property being allowed to be rezoned from AU to commercial. This property is located at the front entrance to the Quail Haven subdivision. With the increased population to the area we are already experiencing difficulty at times entering and exiting our neighborhood. We are concerned with the potential use as well of ER Smyth itself as an entrance/exit to that property for a business. There are many times we struggle to turn around in the median and try to get across the lanes to turn into our neighborhood with the US 1 traffic coming from the north and people trying to cross from and to Lionel Road. There would be a definite increase in potential accidents with us trying to turn into our neighborhood itself and then having to deal with vehicles entering and exiting into a potential business in that area. We appreciate your time and attention into this concern. We also realize this family has a kayak business and has a need to make a living, but at what cost to the rest of the neighborhood? They only recently built that home and we were told by Natural Resource Management that the Mahans/their builder were told they could only clear a certain amount and they went well beyond that. It is an eyesore at this time due to being "leveled" and so sad to see more and more wildlife be displaced as more and more people move into the area. Anyways, thanks again for your time, Van and Thea Thorne 3780 ER Smyth Drive, Mims FL 32754 (Quail Haven Subdivision)

From: [Thorneatomicred](#)
To: [Jones, Jennifer](#)
Subject: addendum to prior email sent
Date: Sunday, April 16, 2023 5:26:05 PM

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Jennifer, This email is an addendum to our prior email dated 12-21-2022 for zoning # 22Z00054. The prior request was tabled per the Mahans' request and is now back on the agenda. We had said the land was an eyesore, but they have now placed an 8 foot fence around the .77 acre parcel that they split off from the original 1.77. Their house has been built on the one acre that was split from the original 1.77 acre parcel which the entire 1.77 parcel was designated as AU at the time of their purchase. The fence looks nice and once again we realize they have a kayak business and they should be able to use the land that belongs to them, but to change to commercial at the entrance to an established neighborhood is not acceptable. There are openings in the fence at this time for entering and exiting-one on the US 1 side and the other on the ER Smyth side which is the entrance road and only established road into the Quail Haven neighborhood. We feel there could be issues with a potential commercial use of our only established road into our neighborhood. The Mahans knew this land was AU when they purchased it and maybe they should have considered the potential effects on the Quail Haven community beforehand. We realize commercial property can be expensive, but to try to circumvent the system for their own personal benefit at the expense of an established community should not even be considered. Not to mention what if this land was allowed to be zoned commercial and then the Mahans chose to sell it? What could go in then? We do not want any type of business along our only established road into the neighborhood. Thank you once again for your time, Van and Thea Thorne

BOARD OF ADJUSTMENT

2825 JUDGE FRAN JAMIESON WAY

VIERA, FL 32940

RE APPLICATION # 5616

ATTENTION JENNIFER JONES

Dear Ms. Jones,

We would like to express our opposition to Future Land Use designation and zoning classification changes to the property at the entrance to Quail Haven, Mims, FL in the above referenced matter.

I am concerned that in the future a business could be established that could have a detrimental impact on our property values as well as the quality of life we now enjoy.

Thank you for your consideration.

Sincerely,



Coen Gilmore



Barbara Gilmore

3635 Wood Duck Dr.

Mims, FL 32754

From: [Thorneatomicred](#)
To: [Commissioner, D1; Jones, Jennifer](#)
Subject: Rezoning Notice 22Z00054 and the attached 22SS00013
Date: Tuesday, December 27, 2022 9:03:22 AM

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Good Morning Commissioner Rita and Jennifer, We saw the aerial map photo on page 4 of the packet which is quite deceptive due to that being a picture after they already cleared the lot. You can see in the attachment below that the entire property was wooded prior to the sale. We had made a phone call to Planning and zoning when we saw the land being leveled and also called Natural Resources Management and spoke to Mackie. We were told at the time that they were not given permission to clear that amount of land and that the home would not receive a CO until the land was restored. Well that obviously did not happen and the house received the CO and the land remains leveled for the area that the Mahans have chosen to place their business on. I see they have split the parcel now from the 1.77 to the two separate parcels. Thank you for your time and attention into this matter. Van and Thea Thorne also, Jennifer, we did receive your response to the prior email sent on 12/21 and appreciate your time.

[3716 Er Smyth Dr, Mims, FL 32754 | realtor.com®](#)

From: [Commissioner, D1](#)
To: [Bill Metzger](#)
Cc: [Pritchett, Rita](#); [Schmadeke, Adrienne](#)
Subject: RE: zone
Date: Tuesday, March 21, 2023 11:14:16 AM
Attachments: [Approved Plot Plan \(1\).pdf a.pdf](#)

Good morning Mr. Metzger,

On behalf of Commissioner Pritchett I want to acknowledge receipt of your email, it will be shared with her. I have attached the approved permit drawing you requested for the fence on the subject property. The zoning item for the property is schedule to come before the Planning and Zoning Board on April 17th at 3:00 PM and before the Board of County Commissioners on May 4th at 5:00 PM. I will let the commissioner know about you and your neighbors desire for the egress to be off of US1.

Thanks,

Keith Alward



Keith Alward
Brevard County Commission, District 1
Commissioner Rita Pritchett
321-621-4711 | Keith.Alward@Brevardfl.Gov
7101 S US Hwy 1
Titusville, FL 32780

From: Bill Metzger <f4phantomv10@yahoo.com>
Sent: Monday, March 20, 2023 4:16 PM
To: Commissioner, D1 <D1.Commissioner@brevardfl.gov>
Subject: zone

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Hi my name is Bill Metzger at 3685 wood Duck DR Mims. In regard to the up coming meeting with Mr Mahanan his request zoning change' I will not be able to attend as I FINALLY got a meeting with the VA and it happens to be at the same time as your meeting. I do not know if you can deliver my message, if so then what I want to say is that I an other neighbors have concerns that the egress to an from his business

be done on US1 only, E R Smyth is not to be used. We want our sub division to remain absolutely separate from any commercial enterprise.

Thank You Bill Metzger

PS I see that a perimeter fence is being put up. Where do I find a permit drawing off that..

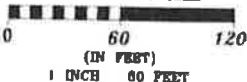
LEGAL DESCRIPTION:

Part of NE 1/4 of NW 1/4, according to the map or plat thereof, as recorded in Deed Book 433, Page(s) 447, of the Public Records of Brevard County, Florida.

SURVEYOR'S NOTES:

1. Unless otherwise noted, only plotted easements are shown hereon.
2. P.U.D.E. denotes Public Utilities and Drainage Easement. P.U.E. denotes Public Utilities Easement.
3. No underground utilities or improvements were located unless otherwise shown.
4. Bearings shown hereon are based on the RIGHT OF WAY LINE OF E. R. SMYTH DRIVE being N 88°43'10" W according to the plat described hereon, and may not be a True North Azimuth.
5. This site appears to lie within FIRM Zone "AE & X" per Community Panel Number 12009C 0105H dated 1/27/21.
6. Elevations shown are based on NAVD 1988.

MAP OF SURVEY GRAPHIC SCALE



* FENCE GOOD SIDE OUT

Height of fence measured from the lowest grade on either side of the property line per Section 62-2109(E). It is the applicant's responsibility to verify site conditions.

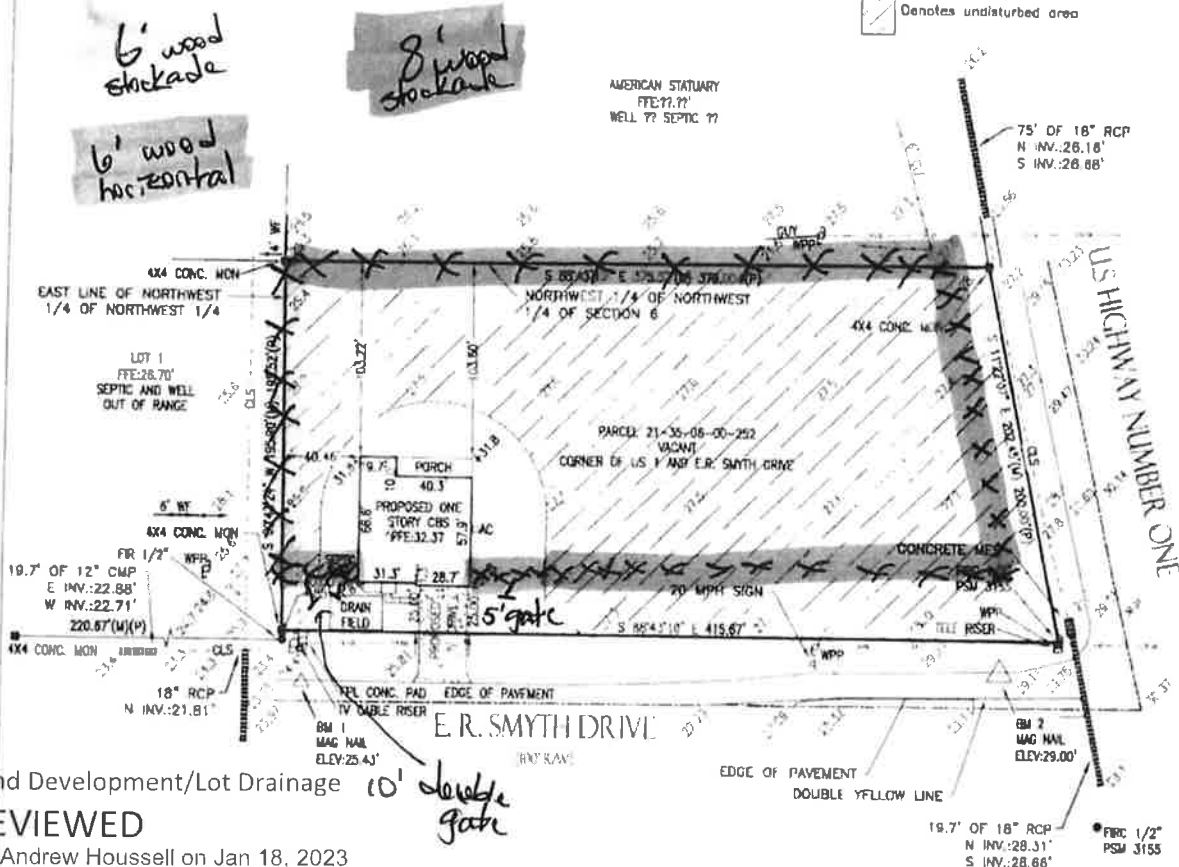
LEGEND:

- Found iron rebar, size and cap
- Set 1/2" iron rebar with cap # PSM 6545
- △ Set nail and disk # PS
- ▲ Found nail and disk, identification # as shown
- Found concrete monument
- Existing spot elevation
- Proposed spot elevation
- Denotes concrete area
- Denotes undisturbed area

* Zoning Division

REVIEWED

By M. Meyer



* Land Development/Lot Drainage

REVIEWED

By Andrew Houssell on Jan 18, 2023

* DAMAGE TO ROADWAY, ROW, & EASEMENTS MUST BE RESTORED AND ROW MUST BE RE-SODDED.

* FENCING SHALL NOT BE INSTALLED OVER SEPTIC DRAIN FIELDS OR UNDERGROUND TANKS

* Natural Resources Management

APPROVED

By Stefanie Jansson on Jan 24, 2023

* APPROVED FOR CONSTRUCTION

Brevard COUNTY

Permit No. 23BC00831
Date: March 02, 2023

Section 6, Township 21S, Range 35E

BOUNDARY & TOPOGRAPHIC SURVEY

Certified to:

COOP CONSTRUCTION

I hereby certify that the survey shown hereon is true and correct to the best of my knowledge and belief, based on actual measurements taken in the field. This survey meets the Standards of Practice as set forth by the Florida Board of Professional Land Surveyors in Chapter 51-17, Florida Administrative Code, pursuant to Section 472.027, Florida Statutes.

UNLESS IT BEARS THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER THIS DRAWING, SKETCH, PLAT OR MAP IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT VALID.

James Zimmerman
Professional Land Surveyor No. 6545
Certificate of Authorization No. 7540
State of Florida

Drawn by:	DS	
Checked by:	JZ	
Scale:	1" = 60'	
Date:	3/11/21	
Project:	21-111	
DATE	REVISIONS	

LAYOUT SERVICES, INC.
LAND SURVEYING & MAPPING
3380 S. PARK AVE. STE 7
TITUSVILLE, FL 32780
(321) 529-4484
layout1@att.net

From: [Thorneatomicred](#)
To: [Commissioner, D1](#)
Cc: [Schmadeke, Adrienne](#); [Alward, Keith A](#); [Pritchett, Rita](#)
Subject: Re: Opinion on request for rezoning
Date: Tuesday, December 27, 2022 10:00:07 AM

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Thank you. Van and Thea Thorne

Sent from the all new AOL app for iOS

On Tuesday, December 27, 2022, 9:54 AM, Commissioner, D1 <D1.Commissioner@brevardfl.gov> wrote:

Good morning Mr. and Mrs. Thorne,

On behalf of Commissioner Pritchett, I want to acknowledge receipt of your email regarding zoning # 22Z00054.

Kind Regards,

Adrienne Schmadeke



Adrienne Schmadeke

Legislative Aide

Brevard County Commission, District 1

Commissioner Rita Pritchett

[321.607.6901](tel:321.607.6901) | Adrienne.Schmadeke@brevardfl.gov

7101 S. US Hwy 1
Titusville, FL 32780

Please note:

Florida has a very broad public records law. Most written communications to or from the offices of elected officials are public records available to the public and media upon request.

Your email communications may, therefore, be subject to public disclosure.

From: Thorneatomicred <thorneatomicred@aol.com>

Sent: Monday, December 26, 2022 9:38 AM

To: Jones, Jennifer <jennifer.jones@brevardfl.gov>; Commissioner, D1 <D1.Commissioner@brevardfl.gov>; Thorneatomicred <thorneatomicred@aol.com>
Subject: Opinion on request for rezoning

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Hello Commissioner Rita, I am sending the below email to you since it will eventually come to the board on February 2nd after planning and zoning vote on this on January 9th. I am also resending this to Jennifer since I am not sure she received it, for I have received no reply at this time. I did only send it on December 21st and with the holidays I can understand the potential delay for a response. Thank you both for your time and attention to this matter and hope you both had a Merry Christmas and a Happy New Year! Van and Thea Thorne:)

Hello Jennifer, My husband and I are reaching out to you concerning the rezoning notice # 22Z00054. We do not agree with this property being allowed to be rezoned from AU to commercial. This property is located at the front entrance to the Quail Haven subdivision. With the increased population to the area we are already experiencing difficulty at times entering and exiting our neighborhood. We are concerned with the potential use as well of ER Smyth itself as an entrance/exit to that property for a business. There are many times we struggle to turn around in the median and try to get across the lanes to turn into our neighborhood with the US 1 traffic coming from the north and people trying to cross from and to Lionel Road. There would be a definite increase in potential accidents with us trying to turn into our neighborhood itself and then having to deal with vehicles entering and exiting into a potential business in that area. We appreciate your time and attention into this concern. We also realize this family has a kayak business and has a need to make a living, but at what cost to the rest of the neighborhood? They only recently built that home and we were told by Natural Resource Management that the Mahans/their builder were told they could only clear a certain amount and they went well beyond that. It is an eyesore at this time due to being "leveled" and so sad to see more and more wildlife be displaced as more and more people move into the area. Anyways, thanks again for your time, Van and Thea Thorne 3780 ER Smyth Drive, Mims FL 32754 (Quail Haven Subdivision)

From: The Beach
To: Schmadeke, Adrienne
Subject: Phone Log - Bill Metzger - 3685 Wood Duck Dr...
Date: Wednesday, December 28, 2022 10:14:14 AM

 Bill Metzger - 3685 Wood Duck Dr... has been changed



Schmadeke, Adrienne




12/26/2022 10:13 AM

Name/Company Bill Metzger - 3685 Wood Duck Dr Mims








Phone Number 321-567-5060


Date/Time Call Received 12/27/2022 12:00 PM

Purpose  Voicemail left 12/22 at 2:53 pm Edited

of Call:  Wants to talk with Commissioner or staff
 about zoning change with home at entrance
 to development, NC to CC.

 12/28/2022 10:00 am

 His call was regarding the Mahan property
 changes to zoning 22Z00054 and land use
 22SS00013. I returned his call. Gave him
 information for when the property will be on
 the P&Z Board Meeting Agenda, time &
 location, and how to look up additional
 information via BASS.

Follow Up Needed:  Edited

Date Received 12/27/2022

Modify my alert settings : View Phone Log

From: Commissioner, D1
To: Bill Metzger
Cc: Pritchett, Rita; Alward, Keith A; Schmadeke, Adrienne; Jones, Jennifer
Subject: RE: zone request Mr Mahan
Date: Friday, January 27, 2023 9:55:00 AM

Good morning Mr. Metzger,

On behalf of Commissioner Pritchett, I want to acknowledge receipt of your email regarding Zoning request 22Z00054 and 22SS00013.

Although these items are scheduled for the Feb. 2, 2023 Board of County Commissioners Zoning meeting, their agenda items will have a notation that they are automatically being tabled to the April 17, 2023 Local Planning Agency meeting and May 4, 2023 Board of County Commissioners Zoning meeting, at the request of the applicant.

Kind Regards,

Adrienne Schmadeke



Adrienne Schmadeke
Legislative Aide
Brevard County Commission, District 1
Commissioner Rita Pritchett
[321.607.6901](tel:321.607.6901) | Adrienne.Schmadeke@brevardfl.gov
7101 S. US Hwy 1
Titusville, FL 32780

Please note:

Florida has a very broad public records law. Most written communications to or from the offices of elected officials are public records available to the public and media upon request. Your email communications may, therefore, be subject to public disclosure.

From: Bill Metzger <f4phantomv10@yahoo.com>
Sent: Thursday, January 26, 2023 12:37 PM
To: Commissioner, D1 <D1.Commissioner@brevardfl.gov>
Subject: Fw: zone request Mr Mahan

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

----- Forwarded Message -----

From: Bill Metzger <f4phantomv10@yahoo.com>
To: D1Commissioner@BrevardFL.gov <d1commissioner@brevardfl.gov>
Sent: Thursday, January 26, 2023 at 12:33:13 PM EST
Subject: Fw: zone request Mr Mahan

----- Forwarded Message -----

From: Bill Metzger <f4phantomv10@yahoo.com>
To: D1Commissioner@brevardfl.gov <d1commissioner@brevardfl.gov>
Sent: Thursday, January 26, 2023 at 11:51:29 AM EST
Subject: zone request Mr Mahan

Hi my IS Bill Metzger 3685 Wood Duck Dr in the Quail Haven development an I,m an interested party to the zoning request of Mr Mahan. The first thing I,d like to see happen is grass planted an kept as a green space. That 's not going to happen as Mr Mahan has the right to do what he wants to do so as he comply 's with all that is required . What I am looking at is that he has no egress on to Smythe, a divide along property line, no signage or other blockage to obstruct of view to exit Smythe on to US1. The divide I'd like to see is a 2 rail fence with a tall plantings between each segment the length of the property.

I do not want to see Quail Haven becoming a drive way for commercial endeavors,I don't want it to become a "flag lot" I want the entrance to be seen as entrance to the "Quail Haven" development not a entrance to their business.

I understand that there is some sort of issue with the natural resource people I don't know what it is, how would I find out. The next meeting is in April ? how do i find that out. The south side of Quail Haven will develop some day all things would apply to that endeavor.

Thank You Bill Metzger

From: [Thorneatomicred](#)
To: [Pritchett, Rita; Commissioner, D1](#)
Subject: information for upcoming Commissioner meeting on May 4th, 2023
Date: Friday, April 28, 2023 7:07:42 PM
Attachments: [addendum_email_for_zoning_22Z00054.pdf](#)
[3716 ER Smyth Drive prior to clearing.pdf](#)
[Picture of neighborhood entrance as related to the parcel split from the original whole.pdf](#)
[page 1 of staff comments for 22Z00054.pdf](#)
[Page 2 of Staff Comments for 22Z00054.pdf](#)

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Dear Commissioner Rita Pritchett, My husband and I were unable to attend the Planning and Zoning meeting on 4/17 for zoning request 22Z00054 and the companion request of 22SS00013 due to the recent passing of our disabled adult son and we did not feel we could present at this time due to our grief and healing process. We had put in a second email to be under public comments, but it was not listed on the agenda for the 4/17 meeting and I spoke to Jennifer and she said it would be handed out to the planning and zoning board members prior to the meeting on 4/17. Neither emails were read and only briefly mentioned at the 4/17 meeting. As of today, Friday, April 28th the agenda for the 5/4 meeting has not been posted therefore I am emailing you to make sure there is an awareness to our concerns. I have attached above the second email we put in after reading the Mahan requests for the 4/17 meeting (they had tabled their prior request from January). I will note that Austin Mahan did not state one time before the board that he intended to do retail sales and only said he needed the BU-2 for storage, because he did not know AU would not allow for the storage. We have no issue with storage, but we do have an issue with retail sales. As you can see on the last two attachments of the page 1 and page 2 of staff comments, the Mahans have requested for more than just storage. I included on the second and third attachments aerial photos of the property at 3716 ER Smyth Drive. It was purchased as 1.77 and then split to one acre in which they built their house and split off the .77 for this current request they have made. They have installed an 8 foot fence on the .77 parcel which has two openings in the fence- one on the US1 side and the other on the ER Smyth side. We have a concern with the potential use of ER Smyth Drive being the only access for this potential future business. Planning and zoning recommended all of BU-1 and storage of BU-2 and they also are allowing the use of ER Smyth Drive up to the southwest corner of their property. They also said the Mahans could only use the US-1 side of the fence opening for entering and exiting and the ER Smyth side fence opening for exiting only "in case of an emergency" as Austin Mahan stated at the meeting. The fence has been placed far enough back from the actual property line to allow for possible parking spaces and to allow for entering at the ER Smyth side solely and driving around to the front of their property and then entering the US-1 fence opening and avoiding an actual entrance and exit on US-1 itself. We hope we are wrong about their intentions for the use of the only entrance into our neighborhood. We do not want retail of any kind at the front of our already established neighborhood. Thanks so much for your time and attention into this matter, Van and Thea Thorne

From: thorneatomicred@aol.com,
To: jennifer.jones@brevardfl.gov,
Subject: addendum to prior email sent
Date: Sun, Apr 16, 2023 5:25 pm

Jennifer, This email is an addendum to our prior email dated 12-21-2022 for zoning # 22Z00054. The prior request was tabled per the Mahans' request and is now back on the agenda. We had said the land was an eyesore, but they have now placed an 8 foot fence around the .77 acre parcel that they split off from the original 1.77. Their house has been built on the one acre that was split from the original 1.77 acre parcel which the entire 1.77 parcel was designated as AU at the time of their purchase. The fence looks nice and once again we realize they have a kayak business and they should be able to use the land that belongs to them, but to change to commercial at the entrance to an established neighborhood is not acceptable. There are openings in the fence at this time for entering and exiting-one on the US 1 side and the other on the ER Smyth side which is the entrance road and only established road into the Quail Haven neighborhood. We feel there could be issues with a potential commercial use of our only established road into our neighborhood. The Mahans knew this land was AU when they purchased it and maybe they should have considered the potential effects on the Quail Haven community beforehand. We realize commercial property can be expensive, but to try to circumvent the system for their own personal benefit at the expense of an established community should not even be considered. Not to mention what if this land was allowed to be zoned commercial and then the Mahans chose to sell it? What could go in then? We do not want any type of business along our only established road into the neighborhood. Thank you once again for your time, Van and Thea Thorne

https://www.bcpao.us/PropertySearch/#/map/2102061

- My | Drev | Brev | Pub | GIS | Adm | Staff | Staff | GIS | Staff | Pub | New | Cha | Arch | Info

- RESEARCH
- EXEMPTIONS
- TANGIBLE
- FORMS
- GENERAL
- CONTACTS

Map View EagleView



The AU (Agricultural Residential) zoning classification allows for the sales of commodities raised on the premises in line with all agricultural pursuits. BU-2 (Retail, Warehousing & Wholesale Commercial) zoning classification would allow for both outdoor storage.

Land Use

The subject property is currently designated as Neighborhood Commercial (NC) FLU. The proposed BU-2 zoning is not consistent with the existing NC FLU designation. A companion application, **22SS00013**, if approved, would change the Future Land Use designation on the parcel to Community Commercial (CC) FLU.

Residential development or the integration of residential development with commercial development can be permitted in the Community Commercial (CC) land use designation, provided that the scale and intensity of the residential/mixed use development is compatible with abutting residential development and area designated for residential use on the Future Land Use Map.

Activities permitted in Community Commercial (CC) Future Land Use designations Policy 2.7 are intended to serve several neighborhoods, sub-regional and regional areas and provide an array of retail, personal and professional uses. Residential, Institutional and Transient commercial uses are just a few of permitted development activities that are permitted.

Applicable Land Use Policies

FLU Policy 2.2 – Role of Zoning Regulations in the Designation of Commercial Lands

The zoning process regulates the types and intensities of uses for a parcel of land. Criteria which aid in assessing zoning compatibility, shall include consideration of the following standards:

Criteria:

- A. Permitted/prohibited uses;
The applicant proposes to use the subject parcel to house his company's kayaks and conduct warehouse/retail business. Section 62-1483 provides that retail sales, warehousing and wholesale commercial may be permitted in BU-2 zoning in areas designated as Community Commercial on the Future Land Use Map.
- B. Existing commercial zoning trends in the area;
There have been two (2) zoning actions within 0.5-mile over the past 3 years. 20Z00003 took place August 5, 2020 to rezone a parcel from AU (Agricultural Residential) to BU-1 (General Retail Commercial). 19PZ00127 was to rezone from AU (Agricultural Residential) to RR-1 (Rural Residential) with a BDP (Binding Development Plan) to restrict density to one single-family residence on April 8, 2020.
- C. Compatibility of the proposed use with the area, pursuant to Administrative Policy 3;
This zoning classification change could be considered to be consistent with the immediate surrounding area zonings.



ER Smyth Drive

Interested in selling your home?

in March 28, 2022 for

55,000

DUNLAP ACRES

FOWL HEN

QUAIL HAVEN

PINEHURST



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

2725 Judge Fran Jamieson Way

Building A, Room 114

Viera, Florida 32940

(321)633-2070 Phone / (321)633-2074 Fax

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

STAFF COMMENTS

22Z00054

Austin & Kailey R. Mahan

AU (Agricultural Residential) to BU-2 (Retail, Warehousing & Wholesale Commercial)

Tax Account Number: 3030132

Parcel I.D.: 21-35-06-00-289

Location: West of US Highway 1 and north of E R Smyth Drive (District 1)

Acreage: 0.77 acres

Planning & Zoning Board: 4/17/2023

Board of County Commissioners: 5/04/2023

Consistency with Land Use Regulations

- Current zoning can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal cannot 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	AU	BU-2
Potential*	1 SF unit	33,541 sq. ft.
Can be Considered under the Future Land Use Map	YES NC	YES** CC

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

Approval is pending approval of companion request **22SS00013 which proposes to change the Future Land Use Designation from Residential Neighborhood Commercial (NC) to Community Commercial (CC).

Background and Purpose of Request

The applicants are seeking a change of zoning classification from AU (Agricultural Residential) to BU-2 (Retail, Warehousing & Wholesale Commercial) for the purpose of allowing outdoor equipment storage as well as sell wholesale/retail items for his kayak business. The subject parcel is currently undeveloped.

The subject parcel was recorded into the current configuration per Official Records Book 9456, Page 2390, on March 28, 2022. The subject parcel has frontage on E R Smyth Drive and US Highway 1. The parcel is zoned AU (Agricultural Residential) since its formation.

PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, April 17, 2023**, 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: Board members present were: Ron Bartcher (D1); Robert Sullivan (D2); Debbie Thomas (D4); Mark Wadsworth, Chair (D4); Logan Luse (D4-Alt.); and John Hopengarten (BPS). Robert Brothers' presence was noted at 3:09 p.m.

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; Alex Esseeesse, Deputy County Attorney; Jane Hart, Planner III; Paul Body, Planner III; Trina Gilliam, Planner II; and Jennifer Jones, Special Projects Coordinator.

Excerpt of Complete Agenda

Austin A. and Kailey R. Mahan

A Small Scale Comprehensive Plan Amendment (22S.15), to change the Future Land Use designation from NC (Neighborhood Commercial) to CC (Community Commercial). The property is 0.77 acres, located on the north corner of U.S. Highway 1, and E.R. Smyth Drive, Mims. (3716 E.R. Smyth Dr., Mims) (22SS00013) (Tax Account 3030132) (District 1)

Austin A. and Kailey R. Mahan

A change of zoning classification from AU (Agricultural Residential) to BU-2 (Retail, Warehousing, and Wholesale Commercial). The property is 0.77 acres, located on the north corner of U.S. Highway 1, and E.R. Smyth Drive, Mims. (3716 E.R. Smyth Dr., Mims) (22Z00054) (Tax Account 3030132) (District 1)

Austin Mahan, 3716 E.R. Smyth Drive, Mims, stated his father was interested in ecotourism and the outdoors, and he bought a kayaking company in 2004. Since then, the company has grown, and their credibility is very important to them. He said the business has over 2,700 reviews on Trip Advisors and 2,400 of those are five out of five stars; and they have thriving partnerships with the Brevard County Parks Department and the Merritt Island National Wildlife Refuge. He stated he understands the subject property is currently zoned as agricultural residential, but when he was investigating the lot for purchase, he contacted the Planning and Zoning Department about storing kayaks and equipment on the premises, and at the time was told it shouldn't be an issue. He said after building a home, he again sought to confirm the information before moving the equipment. At that time, when he again contacted Planning and Zoning, he was given different information. Since then, he has worked with the County to determine an appropriate zoning for the .77-acre portion of the property, and he is requesting BU-2 zoning. He emphasized that the business's services are rendered at the water's edge, guests are not transported, and there are not in-person ticket sales; and the .77 acres is strictly used for storing vehicles, kayaks, and related equipment. He said he believes the outdoor equipment storage will have minimal impact on the neighborhood. He has installed an 8-foot fence with additional plans to do aesthetic landscaping to keep the area secure and pleasing to people driving through the area. He said he is committed to taking whatever measures necessary to minimize noise and other disturbances, and is committed to being a responsible neighbor to everyone in the area. He stated he will work with the County to ensure all necessary permits and requirements are met, and will maintain open communication with the community to address any concerns or issues that arise. He said he believes rezoning will allow the business to continue providing high-quality outdoor experiences for residents and visitors while also supporting the local economy in promoting outdoor stewardship.

Ron Bartcher asked if Mr. Mahan plans to provide the landscaping on the outside of the fence. Mr. Mahan replied yes, the landscaping will be on the outside of the fence.

No public comment.

Motion by Debbie Thomas, seconded by Logan Luse, to recommend approval of the Small Scale Comprehensive Plan amendment to change the Future Land Use designation from NC to CC.

*Robert Brothers' presence was noted.

Mr. Bartcher asked the applicant if he would be willing to add a BDP (Binding Development Plan) that says the only BU-2 use on the property would be for outdoor storage of products related to the business. He stated all of the BU-1 uses would be allowed as well, but BU-2 is a very wide-open zoning and there are some businesses he would not like to see in Mims. He said he would like to restrict it so the applicant can have all of the BU-1 uses, but for BU-2, only the outdoor storage of products related to the business.

Mr. Ball explained a BDP is a legal document that gets recorded and is attached to the rezoning when it goes to the Board of County Commissioners. It is a voluntary agreement between an applicant and the Board, and there are certain restrictions an applicant and the board agree upon. He said Mr. Bartcher is requesting a BDP that would only allow BU-1 uses and the only BU-2 use of outdoor storage of kayaks.

Mr. Mahan stated he would agree to a BDP.

Motion by Ron Bartcher to recommend approval of the zoning change to BU-2, with a Binding Development Plan retaining all BU-1 uses and limiting the BU-2 use to outdoor storage of kayaks.

Robert Sullivan noted there is an objection from the neighborhood, and they are not against what the applicant wants to do, but they don't want the neighborhood entrance on E.R. Smyth Road. He asked if Mr. Mahan would restrict the access to only the commercial property.

Mr. Mahan replied that is the intent. He asked if Mr. Sullivan is specifying there will not be any commercial vehicles moving past the .77-acre parcel, and the vehicles would only be transporting up to that property and not any further into the neighborhood.

Mr. Sullivan replied yes. Mr. Mahan stated he would want to preserve that as well, and would only plan to do that.

John Hopengarten asked Mr. Mahan if there will be any repair work on the kayaks. Mr. Mahan replied he does some minor welding to them on the premises. He clarified it is not fabrication welding, it is more like a heat gun.

Mr. Ball clarified the motion on the table is for approval subject to a BDP limiting the use of the property to all BU-1 uses and the only BU-2 use of outdoor storage of kayaks, and limiting the access to U.S. Highway 1 only.

Mr. Mahan stated there is a gap in the fence on the U.S. Highway 1 side, and a gap in the fence on the E.R. Smyth Drive side, offering two modes of leaving the property in case of an emergency. He

asked if he would only be entering and exiting through the U.S. 1 side. He said it was his understanding that the board is asking for only entering on the E.R. Smyth or the U.S. 1 side.

Mr. Sullivan stated if he could use the E.R. Smyth Drive side as an egress only, that would be fine. He said the neighbors have stated they don't want trucks in the neighborhood, transports entering in, but if only leaving the property on an egress, that would be easy.

Mr. Mahan stated he would agree to that.

Mr. Ball clarified that the access would be limited to ingress and egress from U.S. Highway 1, and egress only from E.R. Smyth Drive. Mr. Mahan stated he would agree to that.

Motion by Ron Bartcher, seconded by Robert Sullivan, to recommend approval of the change of zoning classification from AU to BU-2, with a BDP retaining all BU-1 uses, limiting the BU-2 use to kayak storage only, and limiting egress only to E.R. Smyth Drive, with ingress and egress to U.S. Highway 1. The motion passed unanimously.