



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

H.6.

11/7/2019

### Subject:

Heck Enterprises of Brevard, Inc. requests a change of zoning classification from BU-1 (General Retail Commercial) to BU-2 (Retail, Warehousing, and Wholesale Commercial) (19PZ00104) (Tax Account 3009175) (District 3)

### 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 change of zoning classification from BU-1 (General Retail Commercial) to BU-2 (Retail, Warehousing, and Wholesale Commercial) to allow outdoor storage.

### Summary Explanation and Background:

The parcel currently is developed with two commercial buildings on the site, located at 307 & 311 Barefoot Boulevard, Micco. The applicant states that he is currently using the buildings to run his Electric Contractors Business and needs the BU-2 zoning to have outdoor storage. Outdoor storage for Contractors' Office is subject to conditions in section 62-1833.5; Storage yards must be enclosed with a six-foot wall, louvered fence or chain-link fence.

The developed character of the parcels along both sides of Barefoot Boulevard, east of the subject parcel to Highway US-1 are zoned BU-1, all with a Future Land Use designation of Community Commercial. Conversely, the developed character, west of the subject property is zoned TRC-1 (Mobile Home Cooperative) which is Barefoot Bay Subdivision.

On October 7, 2019, the Planning and Zoning Board heard the request and unanimously recommended approval with a Binding Development Plan limiting the location of outdoor storage to be behind the main building (311 Barefoot Boulevard), the BU-2 use on the property shall be limited to a contractor storage yard, and any other uses of the subject property shall be limited to those within the BU-1 zoning classification.

On October 18, 2019, the applicant submitted a BDP. The language in the proposed BDP provides for all the uses in BU-1 and BU-2 zoning classifications. In addition, the BDP contains a map of survey including the area behind the building and an area along the west side of the main building that is not in the rear.

The Board may wish to consider whether the requested BU-2 zoning is consistent and compatible with the

surrounding BU-1 and TRC-1 zoning classifications. The Board should also consider whether the stipulations within the proposed BDP mitigate the intensity of the BU-2 zoning classification.

**Clerk to the Board Instructions:**

Once resolutions are received, please execute and return to Planning and Development.

**Resolution 19PZ00104**

On motion by Commissioner Tobia, seconded by Commissioner Pritchett, the following resolution was adopted by a unanimous vote (Chair Isnardi absent):

**WHEREAS, Heck Enterprises of Brevard, Inc.** has requested a change of zoning classification from BU-1 (General Retail Commercial) to BU-2 (Retail, Warehousing, and Wholesale Commercial), on property described as Tax Parcel 505.1, as recorded in ORB 6314, Pages 503 – 505, of the Public Records of Brevard County, Florida. **Section 11, Township 30, Range 38.** (2.26 acres) Located on the south side of Barefoot Blvd., approx. 0.27 mile west of U.S. Highway 1. (307 & 311 Barefoot Blvd., Barefoot Bay); and

**WHEREAS,** a public hearing of the Brevard County Planning and Zoning Board was advertised and held, as required by law, and after hearing all interested parties and considering the adjacent areas, the Brevard County Planning and Zoning Board recommended that the application be approved with a BDP (Binding Development Plan) limiting the location of outdoor storage to be behind the main building (311 Barefoot Boulevard), the BU-2 use on the property shall be limited to a contractor storage yard, and any other uses of the subject property shall be limited to those within the BU-1 zoning classification; and

**WHEREAS,** the Board, after considering said application and Brevard County Planning and Zoning Board's recommendation, and hearing all interested parties, and after due and proper consideration having been given to the matter, find that the application should be denied; now therefore,

**BE IT RESOLVED** by the Board of County Commissioners of Brevard County, Florida, that the requested change of zoning classification from BU-1 to BU-2 be denied. The Planning and Development Director, or designee, is hereby directed to make this change on the official zoning maps of Brevard County, Florida.

**BE IT FURTHER RESOLVED** that this resolution shall become effective as of November 7, 2019.

BOARD OF COUNTY COMMISSIONERS  
Brevard County, Florida

*Bryan Andrew Lober*

Bryan Lober, Vice Chair

Brevard County Commission

As approved by the Board on November 7, 2019.

ATTEST:

*Scott Ellis*

SCOTT ELLIS, CLERK

(SEAL)

Planning and Zoning Board Hearing – October 7, 2019

Please note: A CUP (Conditional Use Permit) will generally expire on the three-year anniversary of its approval if the use is not established prior to that date. CUPs for Towers and Antennas shall expire if a site plan for the tower is not submitted within one year of approval or if construction does not commence within two years of approval. A Planned Unit Development Preliminary Development Plan expires if a final development plan is not filed within three years. **The granting of this zoning does**

**not guarantee physical development of the property. At the time of development, said development must be in accordance with the criteria of the Brevard County Comprehensive Plan and other applicable laws and ordinances.**

## **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: 213

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.



BOARD OF COUNTY COMMISSIONERS

**Planning and Development Department**

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

**STAFF COMMENTS**

**19PZ00104**

**Heck Enterprises of Brevard, Inc.**

**BU-1 (General Retail Commercial) to BU-2 (Retail, Warehousing, and Wholesale Commercial)**

Tax Account Number: 3009175  
 Parcel I.D.: 30-38-11-00-505.1  
 Location: South side of Barefoot Boulevard, approximately 0.27 miles west of U.S. Highway 1 (307 & 311 Barefoot Boulevard, Barefoot Bay) (District 3)  
 Acreage: 2.26 acres

Planning and Zoning Board: 10/07/19  
 Board of County Commissioners: 11/07/19

**Consistency with Land Use Regulations**

- Current zoning can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal would maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Zoning</b>	BU-1	BU-2
<b>Potential*</b>	19,689 sq. ft.	27,565 sq. ft.
<b>Can be Considered under the Future Land Use Map</b>	YES Community Commercial	YES Community Commercial

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

**Background and Purpose of Request**

The applicant is seeking a change of zoning classification from BU-1 (General Retail Commercial) to BU-2 (Retail, Warehousing and Wholesale Commercial) for the purpose of having a Contractors' Office with outdoor storage. The parcel currently is developed with two commercial buildings on the site. The applicant is currently using the buildings to operate his Electric Contractors Business and requires the BU-2 zoning to have outdoor storage. Outdoor storage for Contractors' Office is subject to conditions in section 62-1833.5; Storage yards must be enclosed with a six-foot wall, louvered fence or chain-link fence.

October 27, 1969: zoning action **Z-2528** was approved to change the zoning classification from TRC-1 (Single-Family Mobile Home Cooperative) to BU-1.

## Land Use Compatibility

The subject property retains the CC (Community Commercial) FLU (Future Land Use) designation. The existing zoning classification BU-1 (General Retail Commercial) and the proposed BU-2 (Retail, Warehousing, Wholesale Commercial) zoning classification are consistent with the Future Land Use designation.

There is no other BU-2 zoning along the Barefoot Bay Boulevard corridor from the subject parcel east to U.S. Highway 1.

**FLUE 2.1** outlines the role of the Comprehensive Plan in the designation of commercial land.

*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;*
- B. Existing commercial zoning trends in the area;*
- C. Compatibility of the proposed use with the area, pursuant to Administrative Policy 3;*
- D. Impact upon Level of Service (LOS) standards for roads, potable water service, sanitary sewer service and solid waste disposal;*
- E. Impact upon natural resources, including wetlands, floodplains, and endangered species; and*
- F. Other issues which may emerge specific to a particular property which may be addressed through performance-based zoning criteria.*

*The request for BU-2 zoning should be evaluated within the context of **Policy 2.7** of the Future Land Use Element, which identifies "development activities that may be considered within the Community Commercial Future Land Use Designation..."*

*Existing strip commercial;  
Transient commercial uses;  
Tourist commercial uses;  
Professional offices;  
Personal service establishments;  
Retail establishments;  
Non-retail commercial uses;  
Residential uses;  
Institutional uses;  
Recreational uses;  
Public facilities;  
Transitional uses pursuant to Policy 2.14; and  
Planned Industrial Park development (as permitted by Planned Industrial Park zoning).*

The request for BU-2 zoning should be evaluated within the context of **Policy 2.8** of the Future Land Use Element, which sets forth locational criteria for community commercial land use activities, as follows:

- A. *Community Commercial clusters of up to ten (10) acres in size should be located at arterial intersections. Collector/arterial intersections area acceptable for clusters of up to ten (10) acres in size, however, the collector roadways must serve multiple residential areas. Intrusion of these land uses into the surrounding residential areas shall be limited. For Community Commercial clusters greater than ten (10) acres in size, they must be located at principal/arterial intersections.*
- B. *Community Commercial complexes should not exceed 40 acres at an intersection.*
- C. *Community Commercial clusters up to 10 acres in size should be spaced at least 2 miles apart and Community Commercial clusters up to 40 acres in size should be spaced at least five (5) miles apart.*
- D. *The gross floor area of Community Commercial complexes should not exceed 150,000 square feet for commercial clusters up to 10 acres in size and shall not exceed 400,000 square feet for commercial clusters greater than 10 acres but less than 40 acres in size.*
- E. *The subject parcel contains 2.26 acres (98,445 sq. ft.). A Floor Area Ratio (FAR) of up to 1.00 percent is permitted for Community Commercial sites. This would permit 98,445 sq. ft. of total building sq. ft.*

This request should be evaluated within the context of **Policy 2.14A** of the Future Land Use Element, which establishes locational criteria for non-retail commercial uses, as follows:

A. *Non-retail commercial land uses shall be limited to those areas where non-retail commercial or industrial characteristics are established or planned so as to protect residential areas from their influence. Non-retail uses, including wholesaling, contracting, heavy repair services, paint and body shops, storage and warehousing uses, may serve as a transitional use between the following higher intensity and lower intensity uses, in the following listed Future Land Use designations:*

*Higher Intensity Uses: Heavy Industrial or Light Industrial activities.*

*Lower Intensity Uses: Community Commercial, Planned Industrial Park or Planned Business Park uses.*

*Future Land Use Designations: Community Commercial, Heavy/Light Industrial or Planned Industrial (Planned Industrial permits PIP zone uses only).*

*Roadway Access Requirements: Convenient access to a major transportation corridor or along a railroad corridor with visual buffering from such corridors.*

Given the zoning pattern in the area, **Policy 2.15**, which addresses infill versus strip commercial development, should also be considered, as follows:

*The creation/promotion of strip pattern of commercial development shall be discouraged. Infill within established strip commercial areas is preferred over extension of a strip commercial pattern. Extension of a commercial land use designation may be considered in circumstances where the proposed commercial parcel is located within a block in which at least fifty percent (50%) of the block face (in linear feet) is either currently developed with commercial land uses or is designated for commercial use. In either case, the proposed commercial land use extension shall not constitute an*

*encroachment into a residential area. Judging the suitability of a location for an extension of strip commercial development activities shall be based upon the following minimum criteria:*

- A. Impacts upon traffic circulation should be anticipated and mitigated through the reservation of right-of-way for road widening and marginal access streets. Access points for strip commercial complexes shall seek to minimize points of conflict by utilizing frontage roads, providing cross access between parcels or installing shared use curb cuts for access driveways to the maximum extent feasible, as determined by Brevard County.*
- B. Setbacks and landscaped or other appropriate buffers shall be established to mitigate the visual impacts of strip commercial development.*
- C. A sidewalk or bicycle path shall be required where appropriate (as encouraged by Tables 2.1 and 2.2 of the FLUE) to provide convenient access to surrounding residents and to reduce traffic volumes on the roadways.*

The Board should evaluate the compatibility of this application within the context of the Board's Administrative Policies 1 - 8 of the Future Land Use Element.

### **Environmental Constraints**

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

### **Preliminary Concurrency Analysis**

The closest concurrency management segment to the subject property is Highway US-1, between Micco Road and First Street, which has a Maximum Acceptable Volume (MAV) of 41,790 trips per day, a Level of Service (LOS) of D, and currently operates at 39.21% of capacity daily. The maximum development potential from the proposed rezoning does increase the proposed trip generation by 00.21%. The corridor is anticipated to continue to operate at 39.42% of capacity daily LOS C. The proposal is not anticipated to create a deficiency in LOS.

The parcel is serviced by Brevard County water and Brevard County sewer.

The proposed request will have no school impacts.

### **Applicable Land Use Policies**

The applicant is seeking a change of zoning classification from BU-1 (General Retail Commercial) to BU-2 (Retail, Warehousing and Wholesale Commercial) for the purpose of having a Contractors' Office with outdoor storage. The parcel currently is developed with two commercial buildings on the site. The applicant is currently using the buildings to operate his Electric Contractors Business and requires the BU-2 zoning to have outdoor storage. Outdoor storage for Contractors' Office is subject to conditions in section 62-1833.5; Storage yards must be enclosed with a six-foot wall, louvered fence or chain-link fence.

The current BU-1 classification allows retail commercial land uses on minimum 7,500 square foot lots. The BU-1 classification does not permit warehousing or wholesaling.

The requested 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.

Other concerns are there are the parcels to the west are zoned TRC-1 a single-family mobile home development. Also, there is no other BU-2 zoning along the Barefoot Bay Boulevard corridor from the subject parcel east to Highway US-1.

*Section 62-1833.5. Contractors' offices, plants and storage yards.*

- (a) *Storage yards must be enclosed with a six-foot wall, louvered fence or chain link fence.*
- (b) *In the Merritt Island Redevelopment Area, contractor's plants and storage yards shall not be located on any parcel with frontage on State Road 520. Within the remainder of the Merritt Island Redevelopment Area, there shall be no visible outside storage. Storage yards must be enclosed with a six-foot opaque wall or fence. Contractors' offices not associated with plants or storage yards may be located on any parcel with frontage on SR 520.*

The parcels to the west are zoned TRC-1 a single-family mobile home development. The Board may wish the storage area be enclosed with a solid six-foot wall or fence or higher.

The parcel directly across Barefoot Boulevard to the north is zoned BU-1. The abutting parcels to east and south are zoned BU-1. The abutting parcels along the west are zoned TRC-1 (Single-Family Mobile Home Cooperative) and are part of Barefoot Bay Subdivision which are developed with single family mobile homes and abutting a Drainage Right-of-Way which has no zoning classification.

TRC-1 encompasses lands devoted to planned single-family mobile home development which permits mobile homes or residences on lots of minimum 6,500 square feet with a lot width of 65 feet and a lot depth of 80 feet.

There has been one zoning action within a half-mile of the subject property in the last five years.

May 01, 2014; application **14PZ-00013** changed the zoning from TR-1 (Single-Family Mobile Home) to BU-2 and changed the Future Land Use (FLU) from Residential 1 (RES 1) to Community Commercial (CC) on a 0.41-acre parcel approximately 1,484 feet southeast of the subject parcel.

### **For Board Consideration**

The applicant is seeking a change of zoning classification from BU-1 (General Retail Commercial) to BU-2 (Retail, Warehousing and Wholesale Commercial) for the purpose of having a Contractors Office with outdoor storage. The parcel currently is developed with two commercial buildings on the site. The applicant states that he is currently using the buildings to run his Electric Contractors Business and needs the BU-2 zoning to have outdoor storage. Outdoor storage for Contractors'

Office is subject to conditions in section 62-1833.5; Storage yards must be enclosed with a six-foot wall, louvered fence or chain-link fence.

The developed character of the parcels along both sides of Barefoot Boulevard, east of the subject parcel to Highway US-1 are zoned BU-1, all with a FLU (Future Land Use) designation of CC (Community Commercial). The developed character of the parcels along both sides of Barefoot Boulevard, west of the subject parcel are zoned TRC-1 and are part of Barefoot Bay Subdivision.

The Board may wish to consider whether the requested BU-2 zoning is consistent and compatible with the surrounding BU-1 parcels to the north, east and south and the TRC-1 parcels to the west.

Storage yards must be enclosed with a six-foot wall, louvered fence or chain link fence. The parcels to the west are zoned TRC-1 a single-family mobile home development. The Board may wish the storage area be enclosed with a solid six-foot wall or fence or higher.

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

**Item # 19PZ00104**

**Applicant:** Heck Enterprise

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

**Note:** Applicant wants outdoor storage

**P&Z Hearing Date:** 10/07/19; **BCC Hearing Date:** 11/07/19

**Tax ID No:** 3009175

- 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
- Floodplain
- Indian River Lagoon Septic Overlay
- Protected Species
- Heritage Specimen Trees

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

**Land Use Comments:**

**Aquifer Recharge Soils**

The majority of 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.

**Floodplain**

The southeast portion the parcel is mapped as being within the floodplain, potentially isolated, as identified by FEMA and as shown on the FEMA Flood Zones Map. The portion of the property located within the floodplain is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance. Per Section 62-3724(3)(d), compensatory storage shall be required for fill in excess of that which will provide an upland buildable area within an isolated floodplain greater than one third (1/3) acre in size. Chapter 62, Article X, Division 6 states, "No site alteration shall adversely affect the existing surface water flow pattern." Chapter 62, Article X, Division 5, Section 62-3723 (2) states, "Development within floodplain areas shall not have adverse impacts upon adjoining properties."

**Indian River Lagoon Septic Overlay**

The site is mapped within the Indian River Lagoon Septic Overlay per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay. If sewer is not available, the use of an alternative septic system designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes shall be required if applicable.

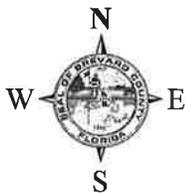
**Protected Species**

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.

**Heritage Specimen Trees**

The parcel contains a mapped polygon of SJRWMD Florida Land Use and Cover Classification System (FLUCCS) code 4110 – Upland Coniferous Forest. Aerials indicate that Heritage Specimen Trees, including Southern Live Oak, with diameter greater than or equal to 24 inches, may reside on subject property. Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4341(18), Specimen Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Per Section 62-4332, 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.

**LOCATION MAP**  
**HECK ENTERPRISES OF BREVARD, INC.**  
**19PZ00104**



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.

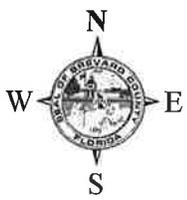
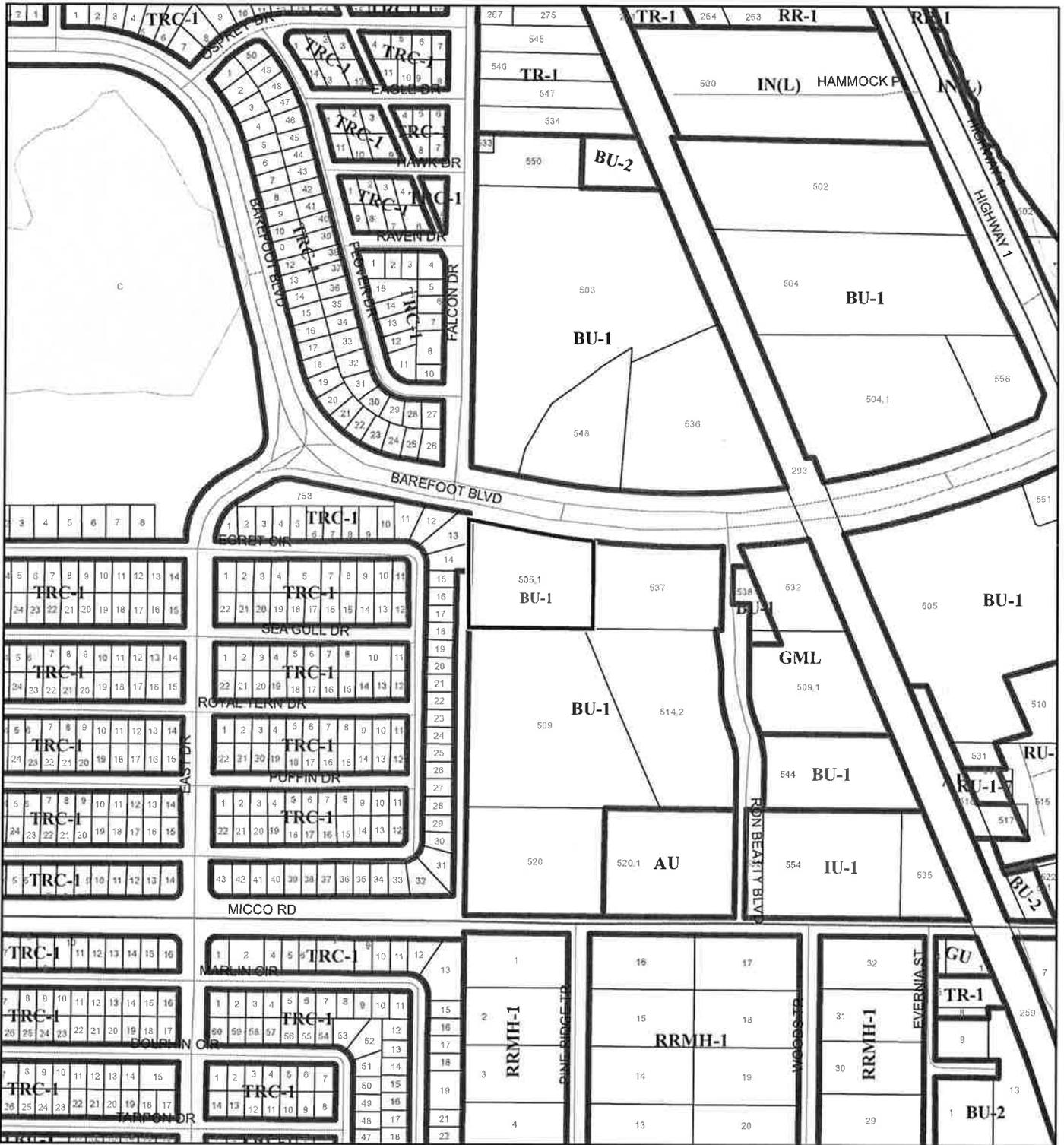
Produced by BoCC - GIS Date: 8/5/2019

-  Buffer
-  Subject Property

# ZONING MAP

HECK ENTERPRISES OF BREVARD, INC.

19PZ00104



1:4,800 or 1 inch = 400 feet

-  Subject Property
-  Parcels
-  Zoning

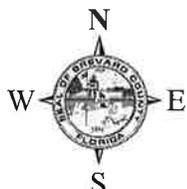
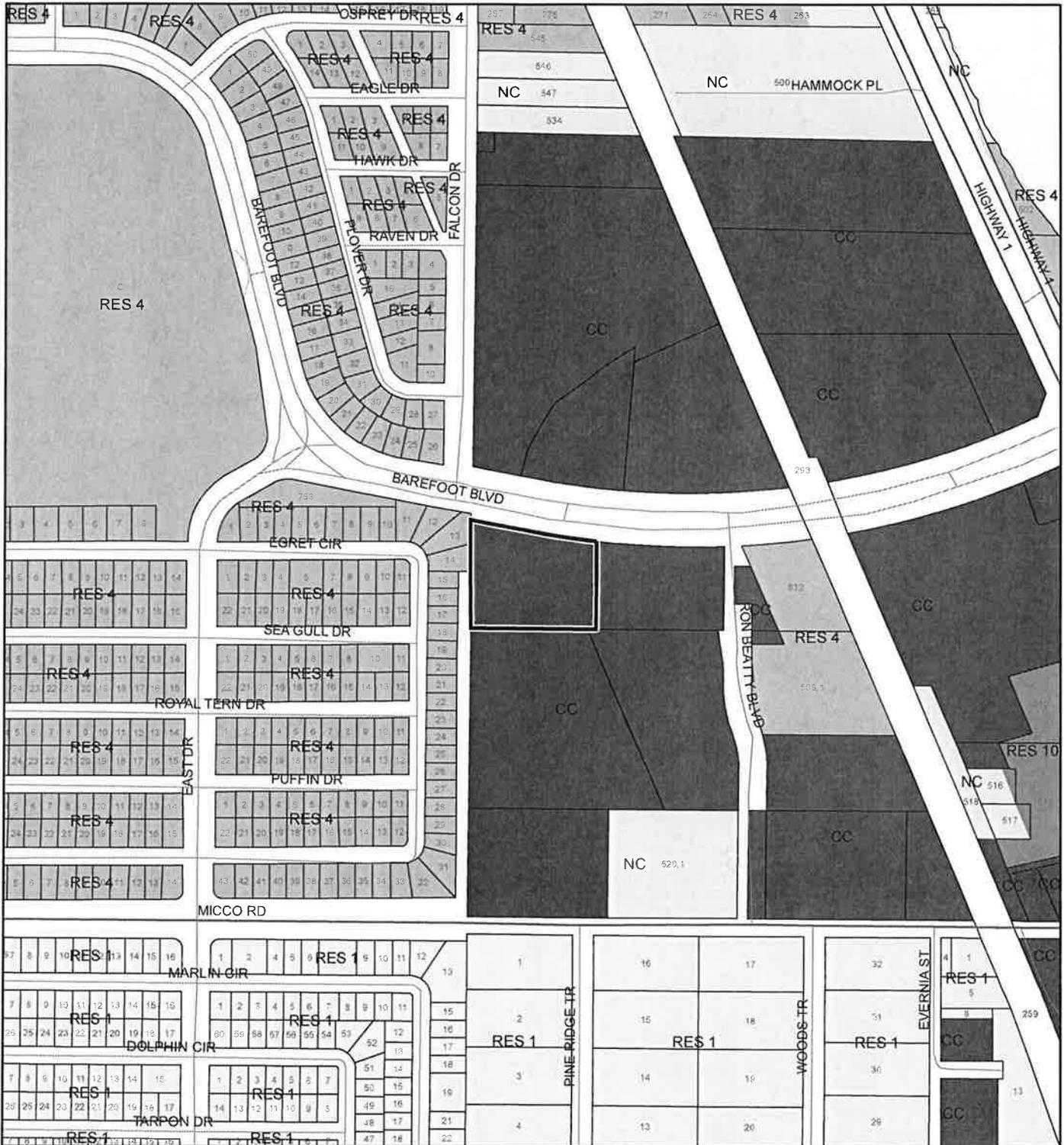
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 8/5/2019

# FUTURE LAND USE MAP

HECK ENTERPRISES OF BREVARD, INC.

19PZ00104



1:4,800 or 1 inch = 400 feet

- Subject Property
- Parcels

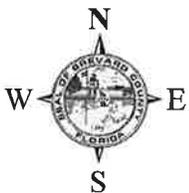
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Produced by BoCC - GIS Date: 8/5/2019

# AERIAL MAP

HECK ENTERPRISES OF BREVARD, INC.

19PZ00104



1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2019

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.

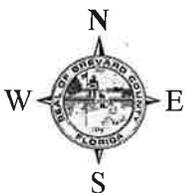
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-  Subject Property
-  Parcels

# NWI WETLANDS MAP

HECK ENTERPRISES OF BREVARD, INC.

19PZ00104



1:4,800 or 1 inch = 400 feet

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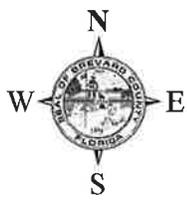
### National Wetlands Inventory (NWI)

- |  |                                   |  |                 |
|--|-----------------------------------|--|-----------------|
|  | 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

HECK ENTERPRISES OF BREVARD, INC.

19PZ00104



1:4,800 or 1 inch = 400 feet

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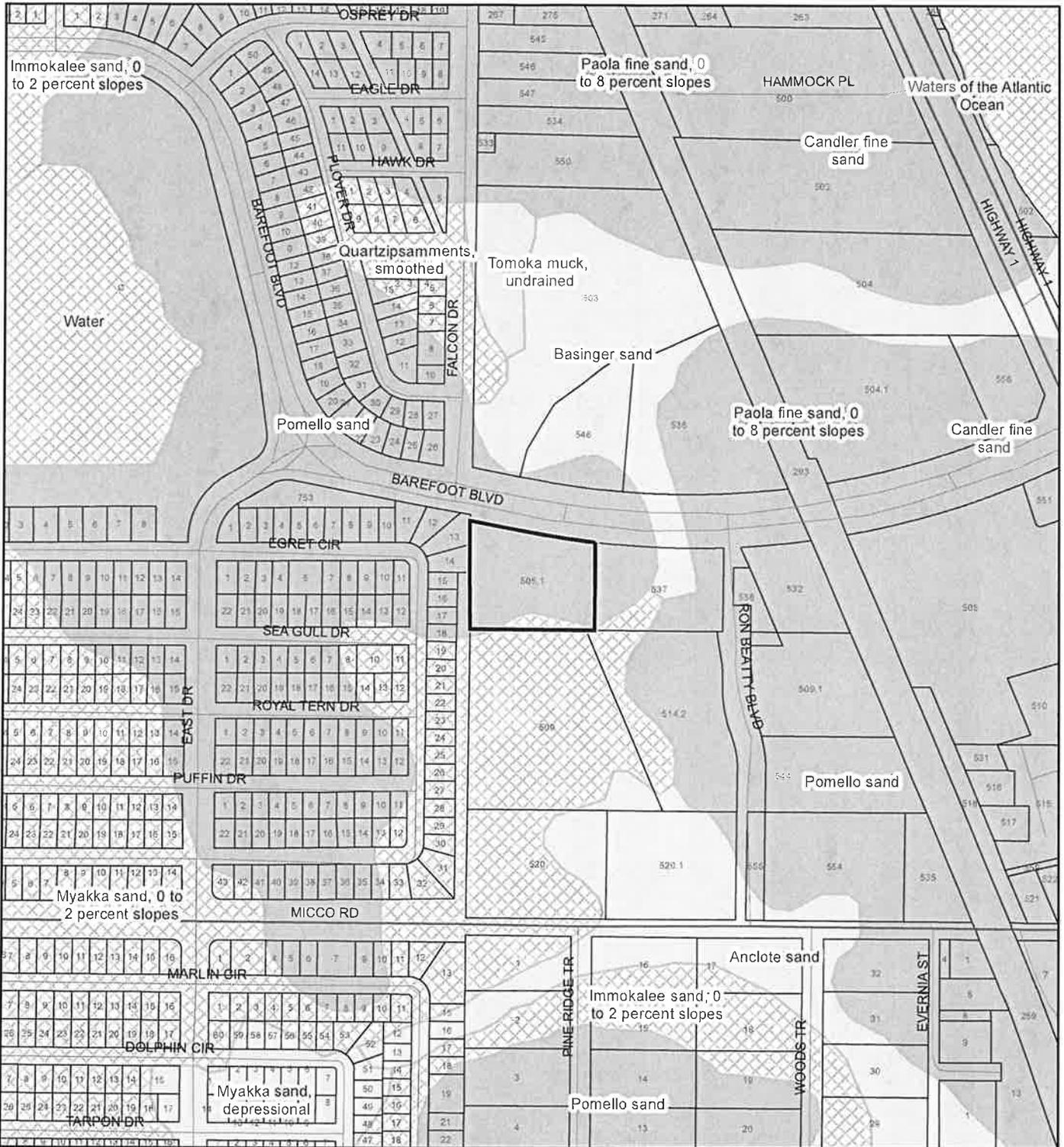
Produced by BoCC - GIS Date: 8/5/2019

- 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

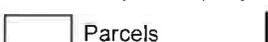
HECK ENTERPRISES OF BREVARD, INC.

19PZ00104



1:4,800 or 1 inch = 400 feet

### USDA SCSSS Soils

-  Aquifer and Hydric
-  Aquifer
-  Hydric
-  None
-  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: 8/5/2019

# FEMA FLOOD ZONES MAP

HECK ENTERPRISES OF BREVARD, INC.

19PZ00104



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 8/5/2019

### 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    |                      |

# INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

HECK ENTERPRISES OF BREVARD, INC.

19PZ00104



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 8/5/2019

— Subject Property

▭ Parcels

**Septic Overlay**

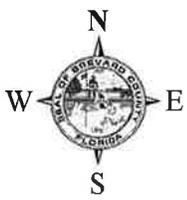
▭ 40 Meters

▭ 60 Meters

▭ All Distances

# EAGLE NESTS MAP

HECK ENTERPRISES OF BREVARD, INC.  
19PZ00104



1:4,800 or 1 inch = 400 feet

- Subject Property
- Parcels
- Eagle Nests FWS 2010

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: 8/5/2019

# SCRUB JAY OCCUPANCY MAP

HECK ENTERPRISES OF BREVARD, INC.

19PZ00104



1:4,800 or 1 inch = 400 feet

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

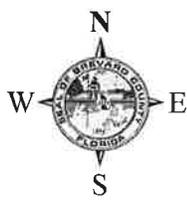
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Produced by BoCC - GIS Date: 8/5/2019

# SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

HECK ENTERPRISES OF BREVARD, INC.

19PZ00104



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 8/5/2019

### 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



**FOR SALE**  
Paradise Home Finders LLC  
Serving South Brevard & North Indian River  
**772-202-4045**  
311 Barefoot Blvd SUITE 6  
Bannie Heck, broker

 **FOR SALE**  
**Paradise Home Finders LLC**  
Serving South Brevard & North Indian River  
**772-202-4045**  
311 Barefoot Blvd SUITE 6  
Bonnie Heck, broker



Prepared by: James Heck Heck Enterprises of Brevard Inc.  
Address: 311 + 307 Borefoot Blvd  
Borefoot Bay FL 32976

**BINDING DEVELOPMENT PLAN**

THIS AGREEMENT, entered into this 18 day of October, 2019 between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and Heck Enterprises of Brevard Inc., a FLORIDA corporation (hereinafter referred to as "Developer/Owner").

**RECITALS**

WHEREAS, Developer/Owner owns property (hereinafter referred to as the "Property") in Brevard County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, Developer/Owner has requested the BU2 zoning classification(s) and desires to develop the Property as Retail, office, contractor storage, warehouse space and pursuant to the Brevard County Code, Section 62-1157; and

WHEREAS, as part of its plan for development of the Property, Developer/Owner wishes to mitigate negative impact on abutting land owners and affected facilities or services; and

WHEREAS, the County is authorized to regulate development of the Property.

NOW, THEREFORE, the parties agree as follows:

1. The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the improvements. It is the intent of the parties that the Developer/Owner, its grantees, successors or assigns in interest or some other association and/or assigns satisfactory to the County shall be responsible for the maintenance of any improvements.

AW uses  
allowed in  
BU-1 & BU-2 zone

2. Developer/Owner shall provide a \_\_\_\_\_ foot buffer on the \_\_\_\_\_ portion of the  
Property.

3. The Developer/Owner shall limit density to \_\_\_\_\_ units per acre and may be further  
restricted by any changes to the Comprehensive Plan or the Land Development Regulations.

4. The Developer/Owner shall limit ingress and egress to  
\_\_\_\_\_.

5. Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developer's/Owner's agreement to meet additional standards or restrictions in developing the Property. This agreement provides no vested rights against changes to the Comprehensive Plan or land development regulations as they may apply to this Property.

6. Developer/Owner, upon execution of this Agreement, shall pay to the County the cost of recording this Agreement in the Public Records of Brevard County, Florida.

7. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject Property unless or until rezoned and be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property, and be subject to the above referenced conditions as approved by the Board of County Commissioners on \_\_\_\_\_. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.

8. Violation of this Agreement will also constitute a violation of the Zoning Classification and this Agreement may be enforced by Sections 1.7 and 62-5, Code of Ordinances of Brevard County, Florida, as may be amended.

9. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and must be satisfied before Developer/Owner may implement the approved use(s), unless stated otherwise. The failure to timely comply with any mandatory condition is a violation of this Agreement, constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 8 above.

IN WITNESS THEREOF, the parties hereto have caused these presents to be signed all as of the date and year first written above.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA  
2725 Judge Fran Jamieson Way  
Viera, FL 32940

\_\_\_\_\_  
Scott Ellis, Clerk  
(SEAL)

\_\_\_\_\_  
Rita Pritchett, Chair  
As approved by the Board on \_\_\_\_\_

(Please note: You must have two witnesses and a notary for each signature required. The notary may serve as one witness.)

WITNESSES:

DEVELOPER/OWNER

\_\_\_\_\_  
\_\_\_\_\_  
(Witness Name typed or printed)

Heck Enterprises of Brevard Inc.  
311 Barefoot Blvd Suite 6  
(Address)  
Barefoot Bay FL 32976

\_\_\_\_\_  
\_\_\_\_\_  
(Witness Name typed or printed)

James Heck  
(President)  
James Heck president  
(Name typed, printed or stamped)

STATE OF \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

The foregoing instrument was acknowledged before me this \_\_\_\_ day of  
, 20\_\_, by \_\_\_\_\_, President of \_\_\_\_\_, who is personally  
known to me or who has produced \_\_\_\_\_ as identification.

My commission expires  
SEAL  
Commission No.:

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_  
(Name typed, printed or stamped)

## PLANNING AND ZONING BOARD MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, October 7, 2019**, at **3:00 p.m.**, in the Commission 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; Rochelle Lawandales; Brian Hodgers; Ben Glover; Mark Wadsworth, Chair; Bruce Moia; Peter Filiberto, Vice Chair; and Dane Theodore.

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; Jad Brewer, Assistant County Attorney; George Ritchie, Planner III; and Jennifer Jones, Special Projects Coordinator.

### Excerpt of Complete Agenda

#### **6. Heck Enterprises of Brevard, Inc. (James Heck):**

A change of zoning classification from BU-1 (General Retail Commercial) to BU-2 (Retail, Warehousing, and Wholesale Commercial). The property is 2.26 acres, located on the south side of Barefoot Boulevard, approximately 0.27 mile west of U.S. Highway 1. (307 & 311 Barefoot Boulevard, Barefoot Bay) (19PZ00104) (District 3)

Bonnie Heck, 8035 542<sup>nd</sup> Street, Sebastian stated she and her husband own a construction company, and she is a real estate broker, and her office is also at the subject property. She said she rides her golf cart around Barefoot Bay, but when she parks it outside her tenants threaten to file a complaint, so she has to store it in a small garage. She said her husband gets deliveries of metal roofs and he cannot have them sit overnight without one of their tenants threatening to report them. She said they also have a skid loader, and usually it's on a trailer, but if she needs the trailer to go get material the tenants are out there with their cameras trying to take pictures of the skid loader because it's not on a trailer parked in the backyard. She said she just wants an area for the golf cart, skid loader, and aluminum materials.

Ben Glover asked if the trailer is stored behind the building. Ms. Heck replied yes, and the trailer is to put the skid loader on, so that's legally allowed to be there, but it's a problem if she has to use the trailer for something else, and then the skid loader is not on a licensed trailer.

Peter Filiberto asked if there is currently a fence or a wall around the property. Ms. Heck replied no, but there is a 10-foot tall berm with trees, and there is a drainage ditch on the west side.

Mr. Filiberto asked staff if Ms. Heck would have to install a chain link fence or a wall, considering she has a landscape buffer. George Ritchie replied no, because there is no site plan, but if she were required to submit a site plan, then Land Development Regulations would require a wall between the commercial property and the residential property.

Rochelle Lawandales stated there are a lot of things in BU-2 that are not appropriate or compatible with the area, but she doesn't have a problem with having an area to store things as long as it's enclosed and kept in a manner it should be. She said she would support BU-2 as long as storage were the only use allowed through a BDP. Ms. Heck asked if that means she can store the golf cart and roof panels. Ms. Lawandales replied yes, storage would be the only thing she could do.

Bruce Moia asked if it has to be enclosed, or is outdoor storage allowed in BU-2. Mr. Ritchie replied contractor storage yards are a Permitted with Conditions use, and the requirement is that they have a chain link fence at least six feet high to enclose the storage area. 245

Mr. Moia asked if there could be some conditions if the board approved it with a BDP, such as uses or where certain uses can take place. He said if there is a landscaped berm, that's probably better than a wall and the board could limit the activity to not go beyond certain areas. He said he's not opposed to it, but it would be nice to have some conditions instead of just blanket it with BU-2. He suggested limiting no storage west of the berm.

Mr. Glover asked if the board can limit where she parks the golf cart and skid loader through a BDP. Jeffrey Ball stated a BDP is a voluntary agreement between the property owner and the County where the board can add stipulations that would limit where the storage would be allowed.

Ms. Heck stated she is only looking to do storage behind the main building, addressed 311 Barefoot Boulevard. She said she agrees with Ms. Lawandales' stipulation.

James Heck stated they own 311 and 307 Barefoot Boulevard, and they just want to be able to have storage behind the buildings. He said he'd rather have the berm because it is nicer than a chain link fence.

No public comment.

Mr. Ball stated the board could rezone only the back half of the property to BU-2, and that would limit the outside storage to the back half of that property. He noted outside storage is not allowed in BU-1, so the board would just be rezoning half of the property.

Mr. Moia stated the board could allow BU-2 along the rear of the building from the berm, to the east property line, everything south of that.

Ms. Lawandales asked if the applicants would need to provide staff with a legal description. Mr. Ritchie stated without a survey, that would be the safest way to describe it. He said the entire lot has been advertised based on the deed. He stated the board could approve it for the south 100 feet of the property, and that would be an easy description.

Mr. Moia stated the east building is 125 feet from the south property line, and the west corner of the building is about 140 feet.

Brian Hodgers asked if the applicant wants outdoor storage if equipment and materials go missing. Ms. Heck stated they would like to leave the aluminum in an area that is protected.

Motion by Rochelle Lawandales to approve the request with a BDP that would, 1.) define the area to the rear of the building, encompassed by the berm on the west, the southern property line, the eastern property line, and the rear of the building; 2.) that the uses within the BU-2 be limited only to the storage yard; 3.) that it be fenced.

Ms. Heck asked for clarification on which use is limited by the BDP. Ms. Lawandales replied the use would be limited to the storage yard, and the area would be from the back of the building to the berm, to the property line. Mr. Wadsworth pointed out that the storage area would be fenced.

Mr. Filiberto asked if a fence is necessary if there is a landscape buffer. Ms. Lawandales noted the landscape buffer is only on the west side. Mr. Glover asked if the applicant would be able to choose

the area for the fence, or does she have to fence the entire area that would be BU-2. Ms. Lawandales stated her thought was that it would be the area that's BU-2, but she is open to that.

Mr. Ball stated the board is determining what part of the property is going to be rezoned to BU-2. The fence could be less than the area that's being rezoned to BU-2, and that would have to be in conformance with the Land Development Code based on the area they designate for outside storage. He said the board could describe the BU-2 portion of the property as the south 100 feet, and that would limit the outside storage to just 100 feet south of that, so they wouldn't be able to have any outside storage in front of that building.

Dane Theodore seconded the motion.

Mr. Moia stated the idea was thrown out that the board can just rezone a portion of it, and that means there really doesn't need to be a BDP. Ms. Lawandales stated they need a BDP to limit the uses, because there are other uses in BU-2 that aren't appropriate there, which is why she wanted to limit it to only storage, and that would need to be done through a BDP.

Mr. Moia stated if the board is going to ask for a BDP, they might as well rezone the whole property. He asked if it would be appropriate to just do the rezoning of the portion and have the only condition that it's for the storage yard only and no other conditions. Ms. Lawandales stated that can only be legalized through a BDP.

Ms. Lawandales withdrew her motion, and Mr. Theodore withdrew his second to the motion.

Motion by Dane Theodore, seconded by Rochelle Lawandales, to approve the requested change of zoning classification from BU-1 to BU-2, with a BDP (Binding Development Plan) limiting the location of outdoor storage to be behind the main building (311 Barefoot Boulevard), the BU-2 use on the property shall be limited to a contractor storage yard, and any other uses of the subject property shall be limited to those within the BU-1 zoning classification. The motion passed unanimously.