



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

G.10.

8/3/2023

Subject:

Donald C. and Julie M. Herndon (Bruce Moia) request a change of zoning classification from GU to BU-1-A. (23Z00057) (Tax Account 2616074) (District 4) This item has been withdrawn by the applicant. Letter received 08/01/23.

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

This item has been withdrawn by the applicant on August 1, 2023. No action necessary.

Summary Explanation and Background:

Clerk to the Board Instructions:



Agenda Report

Public Hearing

WITHDRAWN
2725 Judge Fran Jamieson
Way
Viera, FL 32940
8/1/23

G.10.

8/3/2023

Subject:

Donald C. and Julie M. Herndon (Bruce Moia) request a change of zoning classification from GU to BU-1-A. (23Z00057) (Tax Account 2616074) (District 4)

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 GU (General Use) to BU-1-A (Restricted Neighborhood Commercial).

Summary Explanation and Background:

The applicant is requesting to change the zoning classification from GU to BU-1-A on 0.23 acres. The applicant has not proposed a specific use or provided a concept plan. The subject property is currently developed as a single-family residence and retains the original GU zoning. The subject property is located south of Aspinwall Avenue approximately 455 feet west of S. Highway 1.

The proposed BU-1-A classification allows retail commercial land uses on minimum 7,500 square foot lots. This classification encompasses lands devoted to limited retail shopping and personal services to serve the needs of nearby low-density residential neighborhoods. The minimum floor area is 300-square feet.

The subject property is surrounded by single-family residences to the north (across Aspinwall Avenue), west, east, and south. The closest commercial use is located approximately 90 feet northeast of the subject property on 3rd Street which is developed as a multi-story commercial office building.

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

On July 17, 2023, the Planning and Zoning Board heard the request and voted 5:3 to recommend approval of the BU-1-A (Restricted Neighborhood Commercial) zoning classification, as amended by the applicant at the meeting. The applicant's original request was for BU-1 (General Retail Commercial), with a companion Small Scale Comprehensive Plan Amendment from to change the Future Land Use from Neighborhood Commercial to Community Commercial. On July 24th, the applicant withdrew the request for the Small Scale Comprehensive Plan Amendment, but wishes to proceed with the request for BU-1-A.

Clerk to the Board Instructions:

Once resolution is received, please execute and return a copy to Planning & 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

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Viera, Florida 32940
(321)633-2070 Phone / (321)633-2074 Fax
<https://www.brevardfl.gov/PlanningDev>

STAFF COMMENTS

23Z00057

Donald and Julie Herndon

GU (General Use) to BU-1 (General Retail Commercial)

Tax Account Number(s): 2616074
Parcel I.D.: 26-36-13-DE-62-13
Location: South side of Aspinwall Avenue approximately 455 feet west of S.
Highway 1 (District 4)
Acreage: 0.23 acres

Planning & Zoning Board: 7/17/2023

Board of County Commissioners: 8/03/2023

Consistency with Land Use Regulations

- Current zoning may 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)

	CURRENT	PROPOSED
Zoning	GU	BU-1
Potential*	0 SFR	FAR of 1.0
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 23SS00017.

Background and Purpose of Request

The applicant is requesting to change the zoning classification from GU (General Use) to BU-1 (General Retail Commercial) on 0.23 acres. The applicant has not proposed a specific use or provided a concept plan. The subject property is currently developed as a single-family residence and retains the original GU zoning. The subject property is located south of Aspinwall Avenue approximately 455 feet west of S. Highway 1.

Surrounding Area

	Existing Use	Zoning	Future Land Use
North	Single-Family Residence (across Aspinwall Ave.)	GU	NC
South	Single-Family Residence	GU	NC
East	Single-Family Residence	GU	NC
West	Single-Family Residence	GU	NC

To the north, across Aspinwall Avenue, is a 0.23-acre parcel developed as a single-family residence built in 1957 with GU zoning.

To the south is a 0.33-acre parcel developed as a single-family residence built in 1957 with GU zoning.

To the east is a 0.34-acre parcel developed as single-family residence built in 1993 with GU zoning.

To the west is a 0.46-acre parcel developed as a single-family residence built in 2012 with GU zoning.

The current GU classification is a holding category, allowing single-family residences on five acre lots with a minimum width and depth of 300 feet. The minimum house size in GU is 750 square feet.

The proposed BU-1 classification encompasses land devoted to general retail shopping, offices and personal services to serve the needs of the community and allows for retail commercial land uses on minimum 7,500 square foot lots. The BU-1 classification does not permit warehousing or wholesaling. The BU-1 classification allows for the outdoor storage of retail items that may include but are not limited to motor vehicles, utility sheds, nursery items such as plants and trees, and boats.

TR-1 is a single family residential mobile home zoning classification which permits mobile homes or residences of standard construction on lots of 7,500 square feet (minimum) with lot width of 65 feet and lot depth of 100 feet.

RU-2-10 classification permits multiple-family residential development or single-family residences at a density of up to 10 units per acre on minimum lot sizes of 7,500 square feet.

One zoning action has been approved within a half-mile radius of the subject property within the last three years: 20Z00014, approved by the Board on September 30, 2020, was a request to rezone from PUD and PIP to all PUD with retention of the CUP for alcoholic beverages (full-liquor) at an Assisted Living Facility (ALF) on 16.33 acres located approximately one-half mile south of the subject property on N. Wickham Road.

There are three pending zoning actions within one-half mile of the subject property:

23Z00034 is a request to rezone from GU and BU-1 to all BU-2 on 2.4 acres located immediately east of the subject property on Aspinwall Avenue for a commercial wood flooring business. A companion application (23SS00004) to change the FLU designation from NC to CC is also pending for this site.

23Z00043 is a request to rezone from BU-2 and RU-2-10 to all BU-2 on 1.72 acres located 160 feet east of the subject property on S. Highway 1.

23Z00009 is a request to amend an existing BDP to allow for a new site layout on 2.23 acres in BU-2 zoning located approximately 2,000 feet northeast of the subject property on Freeman Lane.

Future Land Use

The subject property is currently designated as Neighborhood Commercial (NC) on the Future Land Use Map (FLUM). The existing GU zoning classification may be considered consistent with the existing NC FLU designation per FLUE Policy 2.10; however, the proposed BU-1 zoning classification cannot be considered consistent with the NC FLU designation.

A companion application, **23SS00017**, if approved, would amend the Future Land Use designation from Neighborhood Commercial (NC) to Community Commercial (CC).

The proposed BU-1 zoning classification can be considered consistent with the proposed Community Commercial (CC) FLU designation.

Applicable Land Use Policies

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

B. Existing commercial zoning trends in the area;

Existing commercial development in the immediate area includes a multi-story office building to the northeast on 3rd Street, a repair shop to the east on Aspinwall Avenue, and a retail store to the east on Aspinwall Avenue at S. Highway 1.

C. Compatibility of the proposed use with the area, pursuant to Administrative Policy 3;

This zoning classification change could be considered an introduction of BU-2 into the immediate area on Aspinwall Avenue. The primary zoning classification in the surrounding area is GU.

- 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; however, the maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 1.02%. The corridor is anticipated to operate at 84.99% of capacity daily.

The subject parcel is within the City of Cocoa utilities service area for public water. The closest Brevard County sewer line is approximately 400 feet north of the subject site on 3rd Street. The next closest Brevard County sewer line is approximately 555 feet east on the east side of S. Highway 1. The proposed development is not anticipated to have an impact on the LOS for potable water service, sanitary sewer or solid waste disposal.

- E. Impact upon natural resources, including wetlands, floodplains, and endangered species; and

No noteworthy land use issues were identified. Please refer to all comments provided by the Natural Resource Management Department at the end of this report.

- 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 62-1483 and 62-1833.5 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 2.1; and
- m) Planned Industrial Park development (as permitted by PIP zoning).

The applicant is requesting to change the zoning classification from GU to BU-1. A specific use has not been proposed.

The Board should evaluate the compatibility of this application within the context of Administrative Policies 2 – 8 of the Future Land Use Element.

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

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

Criteria:

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

The applicant requests to change the Future Land Use designation on 0.23 acres from NC to CC. The applicant has not provided a proposed use. Performance standards within Sections 62-2251 through 62-2272 will be reviewed at the site plan review stage should the zoning and Future Land Use change be approved.

- 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 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 is primarily single-family residential that transitions to commercial use east of the subject site along S. Highway 1 which serves local and regional markets. Existing residential uses are located west of the subject property along Aspinwall Avenue and Byham Road. The request could be considered an encroachment. The request may also be considered a transition.

There are two (2) FLU designations within 500 feet of the subject site: CC and NC. The predominant FLU designation along Aspinwall Avenue is NC with CC uses concentrated along US Highway 1.

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

It appears no changes to the immediate area have occurred within the last three years.

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

While there has not been any actual development within this area in the preceding three (3) years, one zoning action has been approved within one-half mile:

20Z00014, approved by the Board on September 30, 2020, was a request to rezone from PUD and PIP to all PUD with retention of the CUP for alcoholic beverages (full-liquor) at an Assisted Living Facility (ALF) on 16.33 acres located approximately one-half mile south of the subject property on N. Wickham Road.

There are three pending zoning actions within one-half mile of the subject property:

23Z00034 is a request to rezone from GU and BU-1 to all BU-2 on 2.4 acres located immediately east of the subject property on Aspinwall Avenue for a commercial wood flooring business. A companion application (23SS00004) to change the FLU designation from NC to CC is also pending for this site.

23Z00043 is a request to rezone from BU-2 and RU-2-10 to all BU-2 on 1.72 acres located 160 feet east of the subject property on S. Highway 1.

23Z00009 is a request to amend an existing BDP to allow for a new site layout on 2.23 acres in BU-2 zoning located approximately 2,000 feet northeast of the subject property on Freeman Lane.

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.

Criteria:

A. The proposed use must not materially and adversely impact an established residential neighborhood by introducing types or intensity of traffic, parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.

The developed character of the surrounding area is primarily single-family residential that transitions to commercial use east of the subject site along S. Highway 1, a commercial corridor that serves local and regional markets. Existing residential is located west of the subject property along Aspinwall Avenue and Byham Road.

The applicant has not proposed a specific use or provided a concept plan for the subject site.

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 area is located south of Aspinwall Avenue, north of Gannett Plaza Avenue, west of Highway 1, and east of Byham Road. The area is bounded to the west by the Florida East Coast Railway.

- 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 surrounded by single-family residences to the north (across Aspinwall Avenue), west, east and south. The closet commercial use is located approximately 90 feet northeast of the subject property on 3rd Street which is developed as a multiple-story commercial office building.

- 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 on Aspinwall Avenue which connects to S. Highway 1. While the immediate area surrounding the subject site is predominantly single-family residential, commercial uses are located just to the east of the subject site along S. Highway 1.

Preliminary Concurrency

The closest concurrency management segment to the subject property is US 1 from Pineda Boulevard to Suntree Boulevard, which has a Maximum Acceptable Volume (MAV) of 41,790 trips per day, a Level of Service (LOS) of D, and currently operates at 83.97% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 1.02%. The corridor is anticipated to operate at 84.99% of capacity daily. The maximum development potential of the proposal is not anticipated to create a deficiency in LOS. Specific concurrency issues will be address at the time of site plan review. This is only a preliminary review and is subject to change.

No school concurrency information has been provided as the development proposal is for commercial and not residential use.

The parcel is within the City of Cocoa utilities service area for public water. The closest Brevard County sewer line is approximately 555 feet east on the east side of S. Highway 1. The next closest Brevard County sewer line is approximately 400 feet north of the subject site on 3rd Street.

Environmental Constraints

- Aquifer Recharge Soils
- Land Clearing and Landscape Requirements
- Protected Species

No noteworthy land use issues were identified. Please refer to all comments provided by the Natural Resource Management Department at the end of this report.

For Board Consideration

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

NATURAL RESOURCES MANAGEMENT DEPARTMENT
Land Use Review & Summary
Item # 23Z00057

Applicant: Bruce Moia (Owner: Donald & Julie Herndon)

Zoning Request: GU to BU-1

Note: Not specified

Zoning Date: 7/17/2023; **BCC Hearing Date:** 8/3/2023

Tax ID No: 2616074

- 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
- Landscape and Land Clearing Requirements
- Protected Species

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

This property contains mapped aquifer recharge soils (Candler Fine Sand) as shown on the USDA Soil Conservation Service Soils Survey map. Mapped topographic elevations indicate the soils may consist of Type 3 Aquifer Recharge soils that have impervious area restrictions. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

Landscape and Land Clearing Requirements

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 valuable vegetative communities or robust trees into the design. Per Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, 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

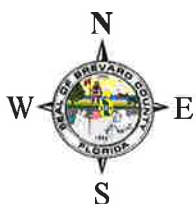
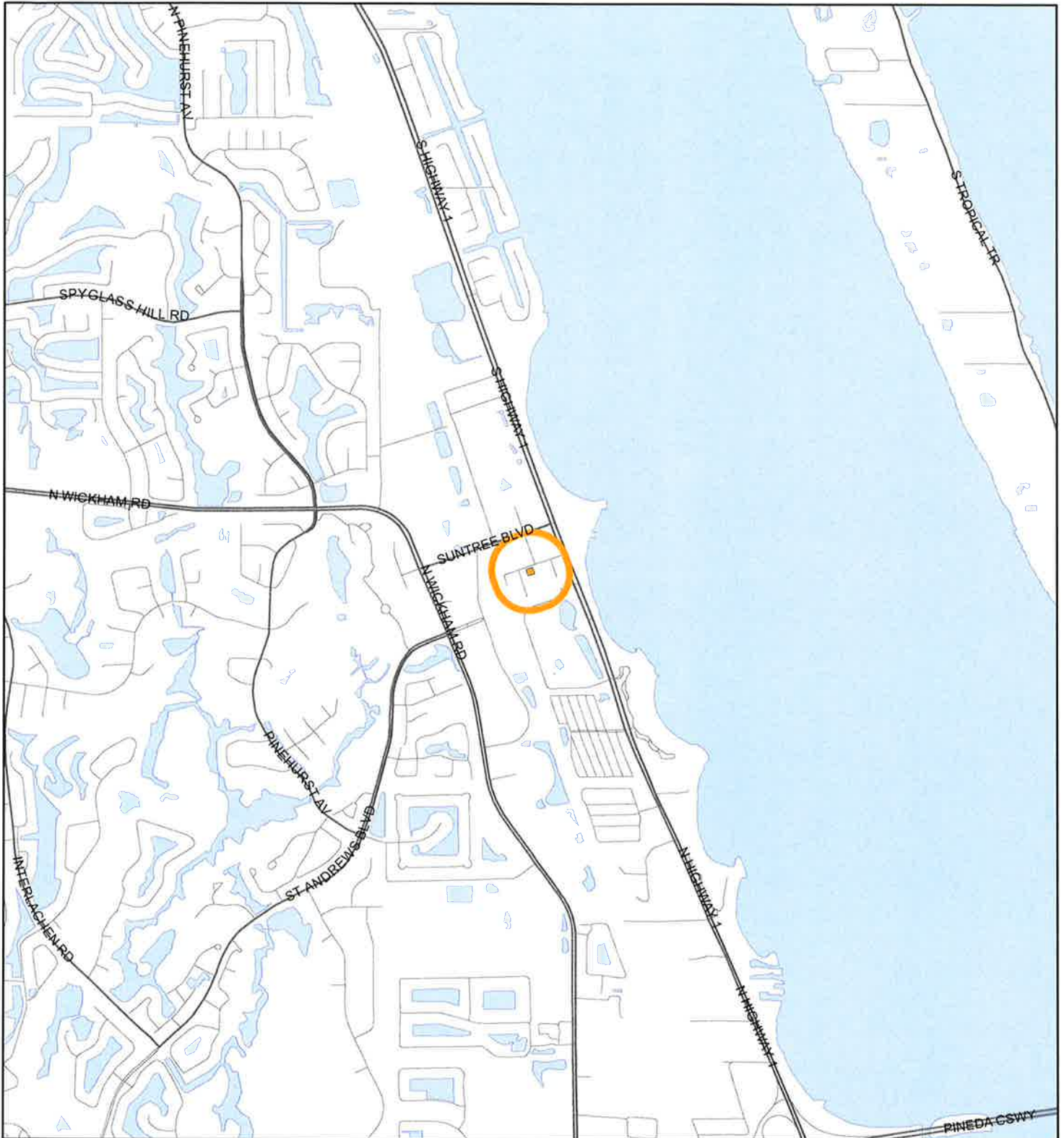
specific requirements for preservation and canopy coverage requirements. Applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities.

Protected Species

Federally and/or state protected species may be present on properties with aquifer recharge soils. Specifically, gopher tortoises have been observed in this area. If applicable, 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 prior to any plan, permit submittal, or development activity, including land clearing, as applicable

LOCATION MAP

Herndon, Donald & Julie
23Z00057



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.

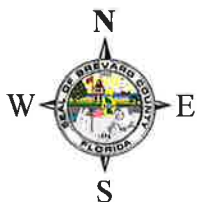
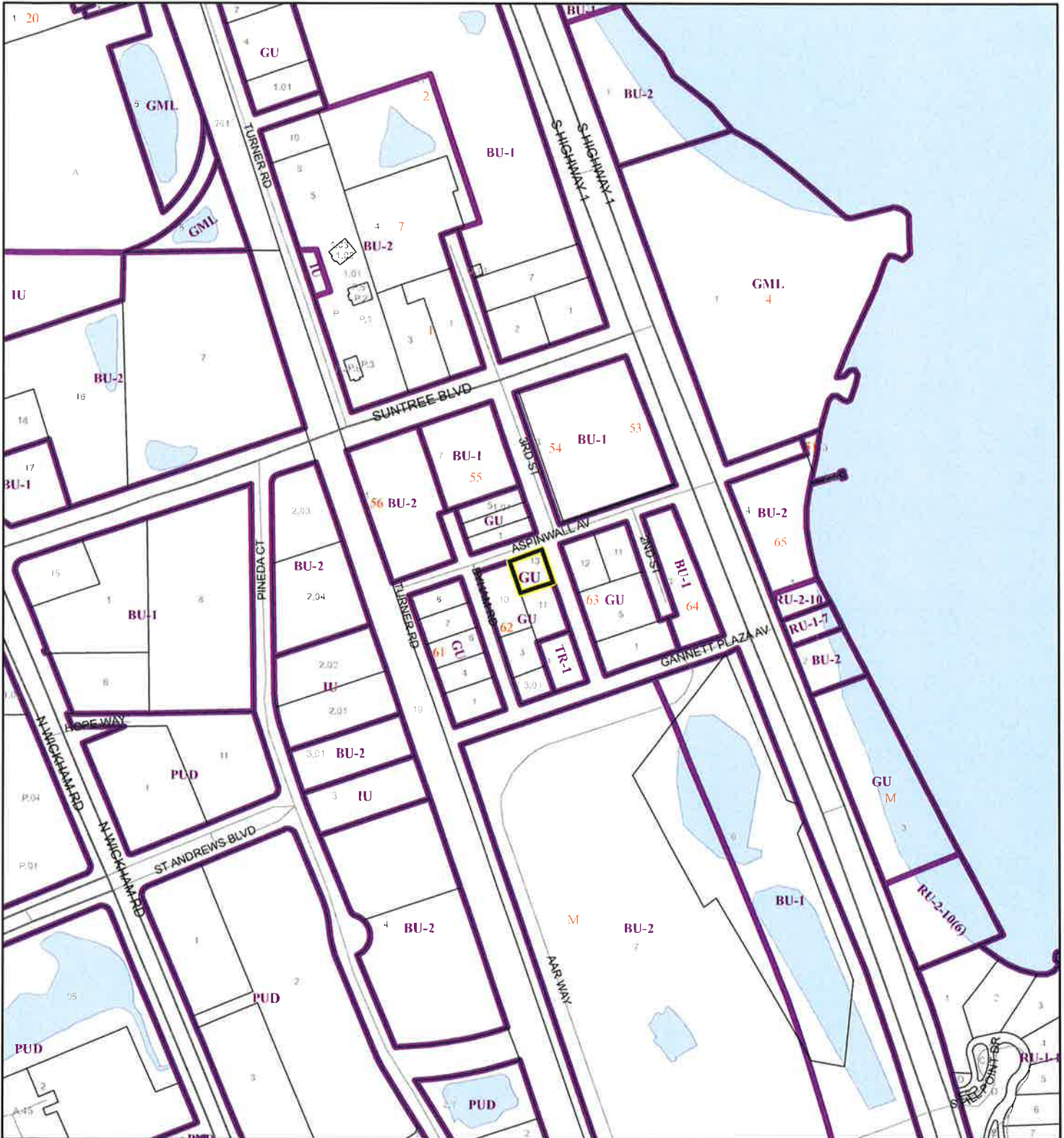
Produced by BoCC - GIS Date: 6/27/2023

- Buffer
- Subject Property

ZONING MAP

Herndon, Donald & Julie

23Z00057



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: 6/27/2023

 Subject Property

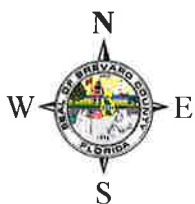
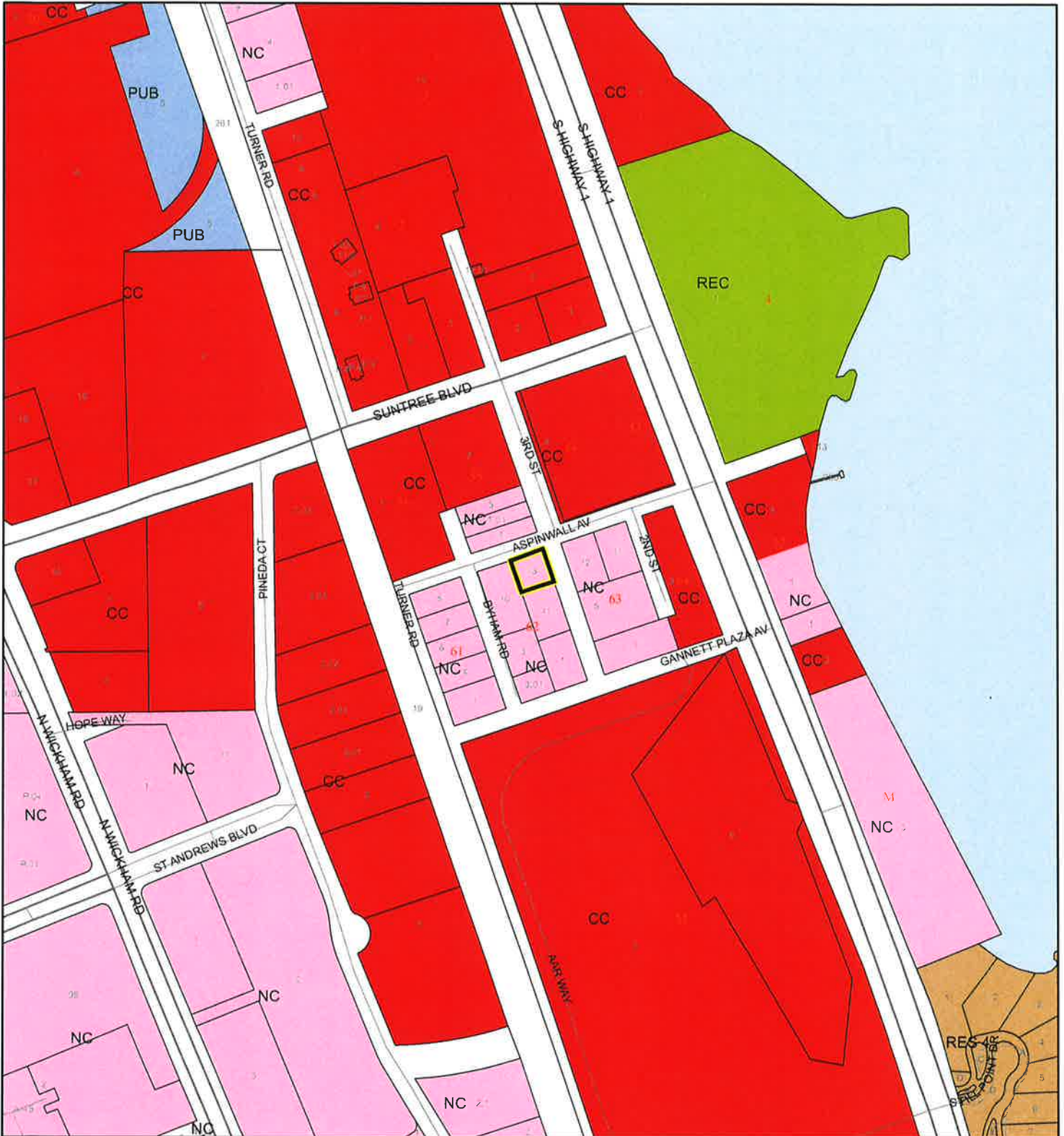
 Parcels

 Zoning

FUTURE LAND USE MAP

Herndon, Donald & Julie

23Z00057



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: 6/27/2023

AERIAL MAP

Herndon, Donald & Julie

23Z00057



1:1,200 or 1 inch = 100 feet

PHOTO YEAR: 2023

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Produced by BoCC - GIS Date: 6/27/2023

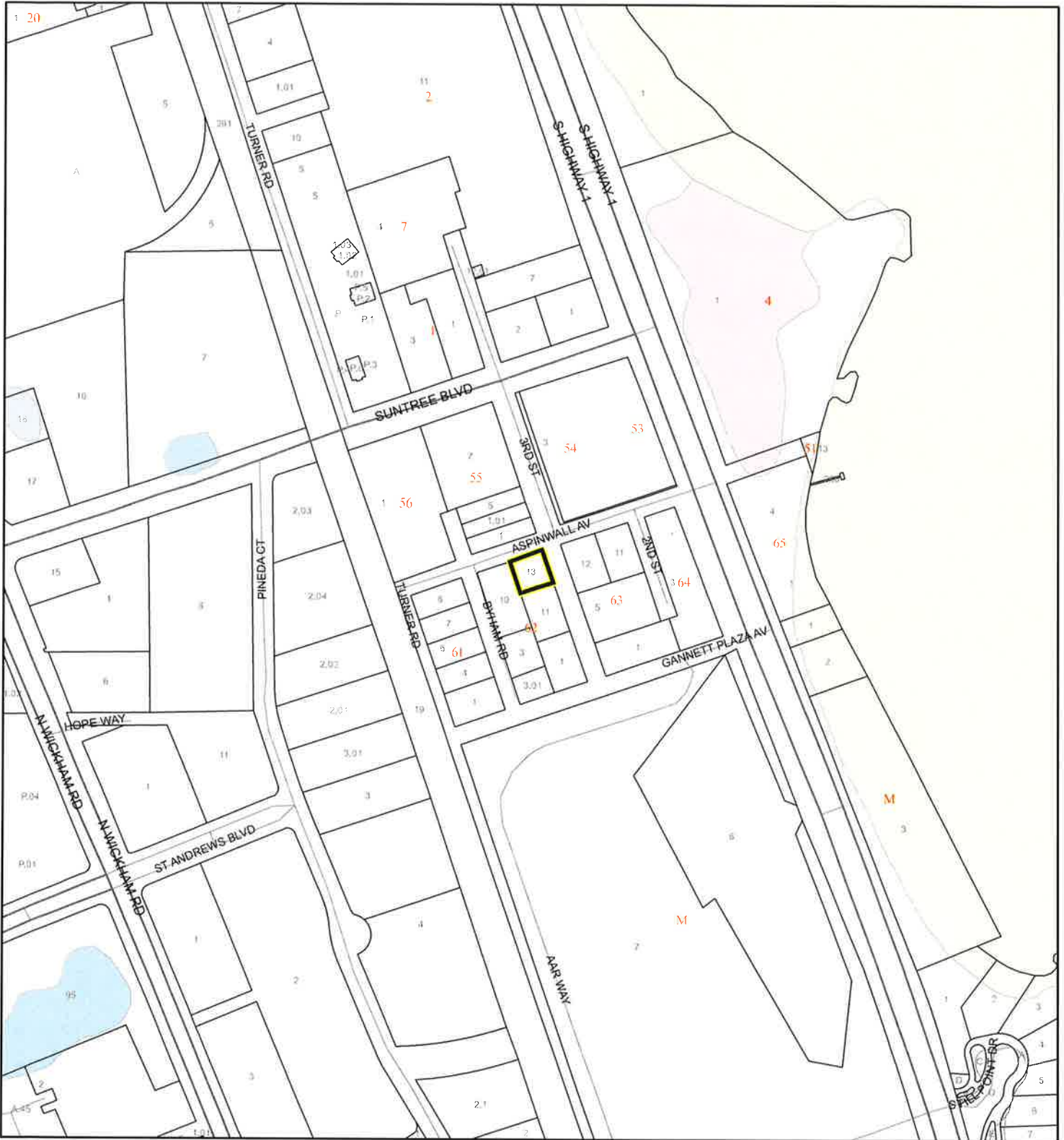
 Subject Property

 Parcels

NWI WETLANDS MAP

Herndon, Donald & Julie

23Z00057



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: 6/27/2023

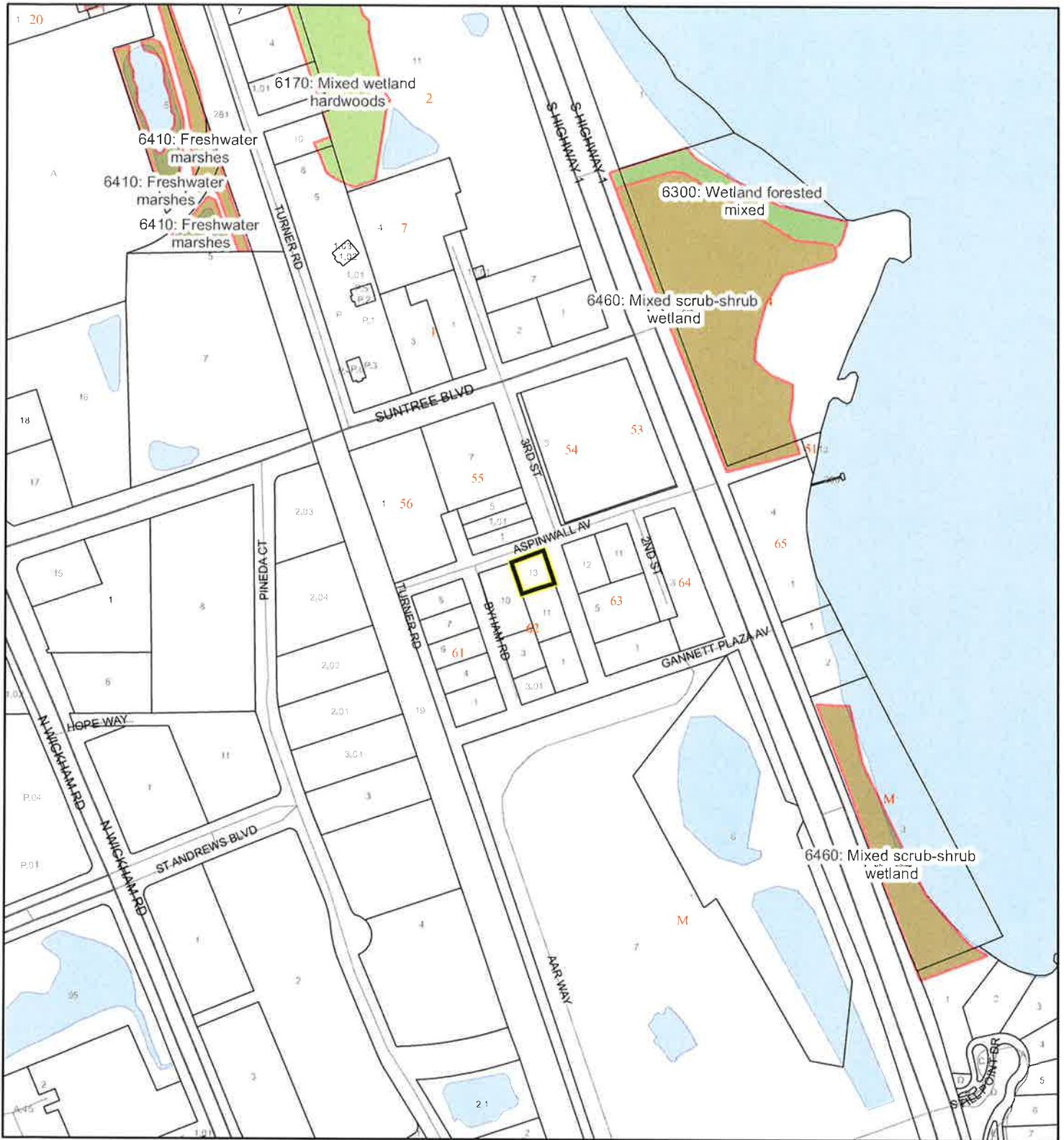
National Wetlands Inventory (NWI)

	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

Herndon, Donald & Julie

23Z00057



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: 6/27/2023

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

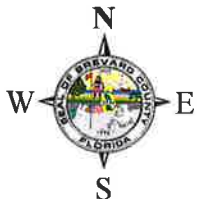
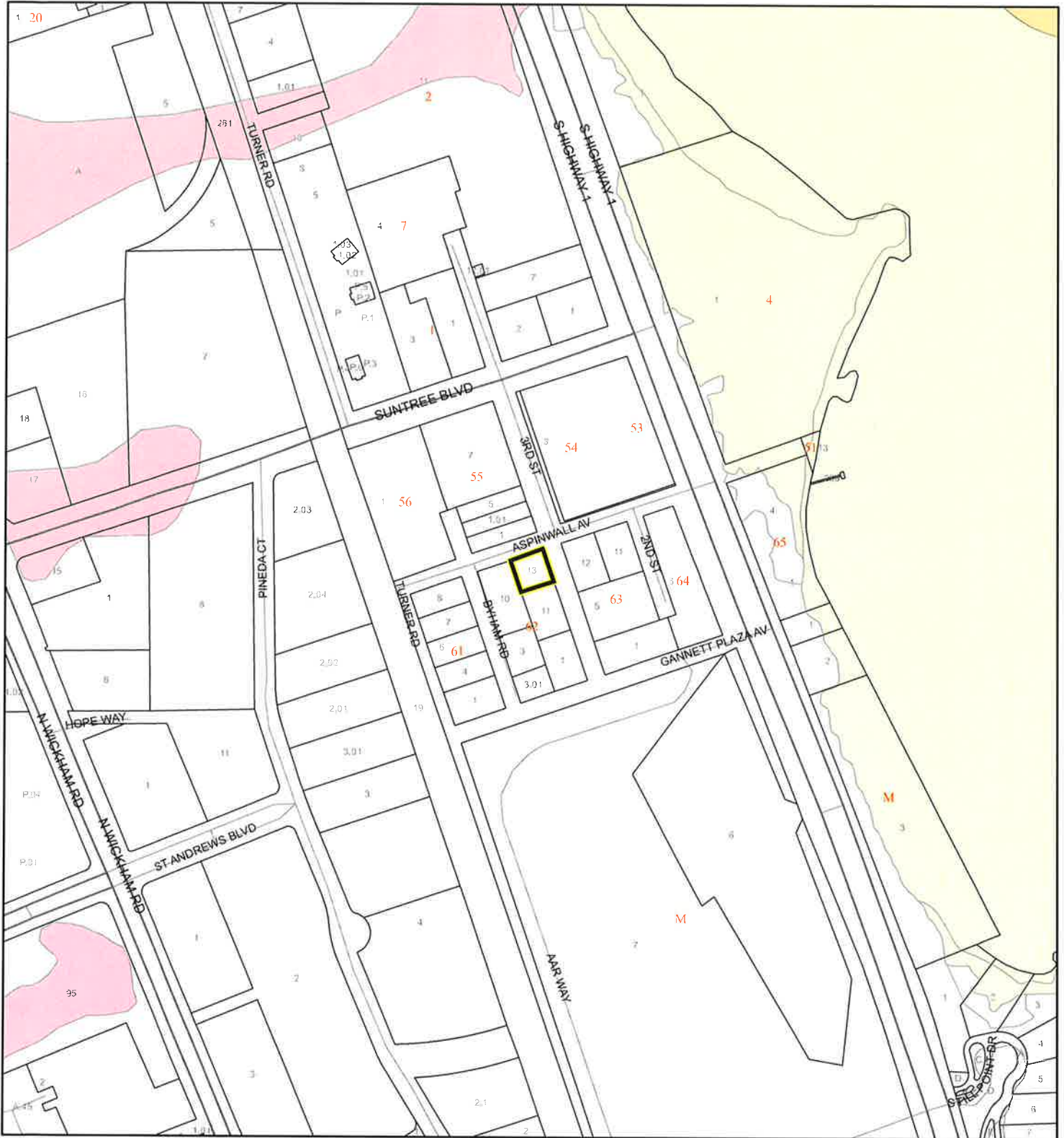
Parcels

23Z00057

FEMA FLOOD ZONES MAP

Herndon, Donald & Julie

23Z00057



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: 6/27/2023

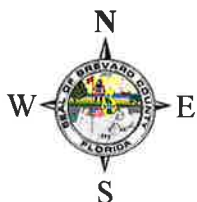
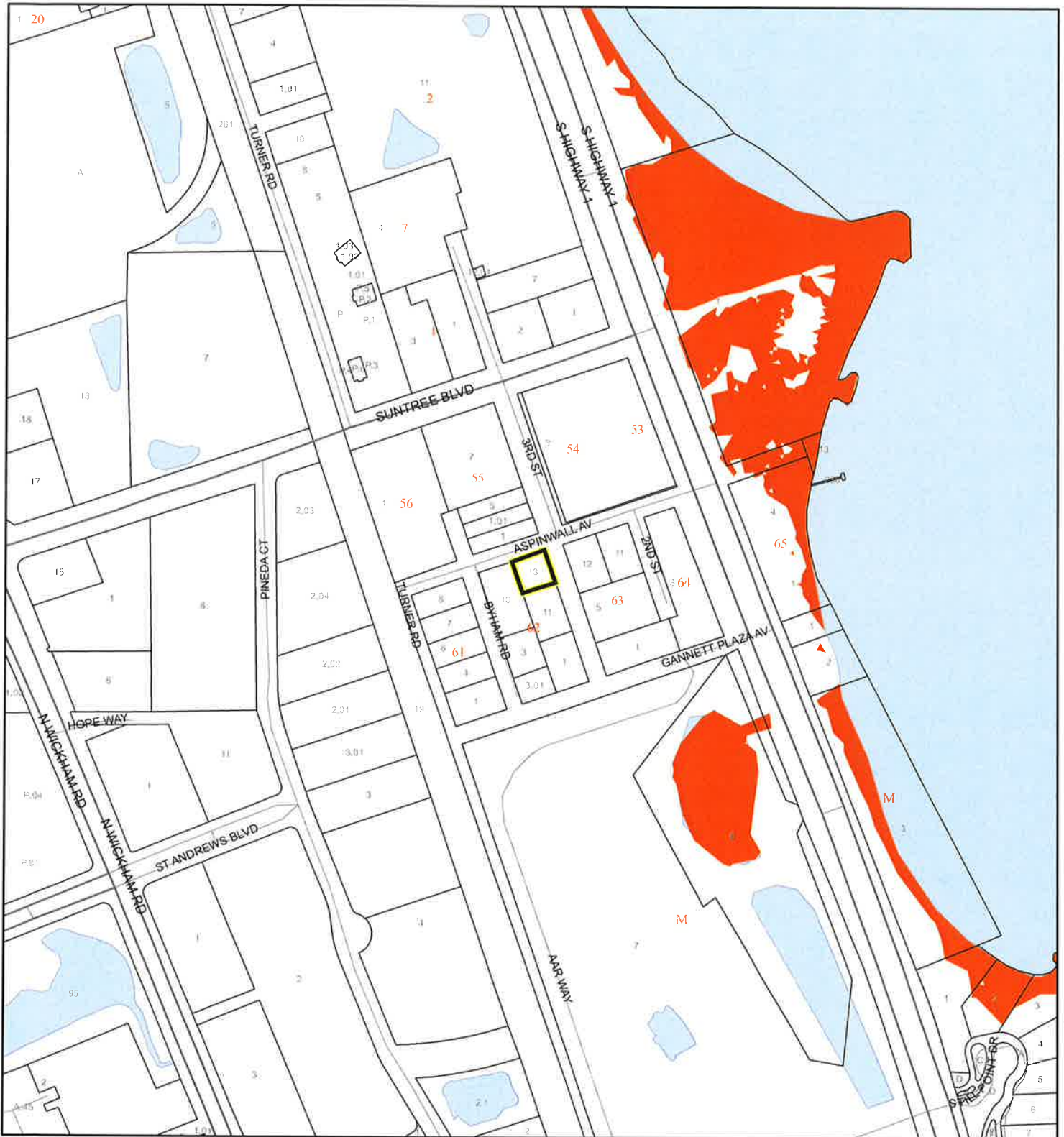
FEMA Flood Zones

A	AO	X
AE	Open Water	
AH	VE	
Subject Property	Parcels	

COASTAL HIGH HAZARD AREA MAP

Herndon, Donald & Julie

23Z00057



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 6/27/2023

— Subject Property

□ Parcels

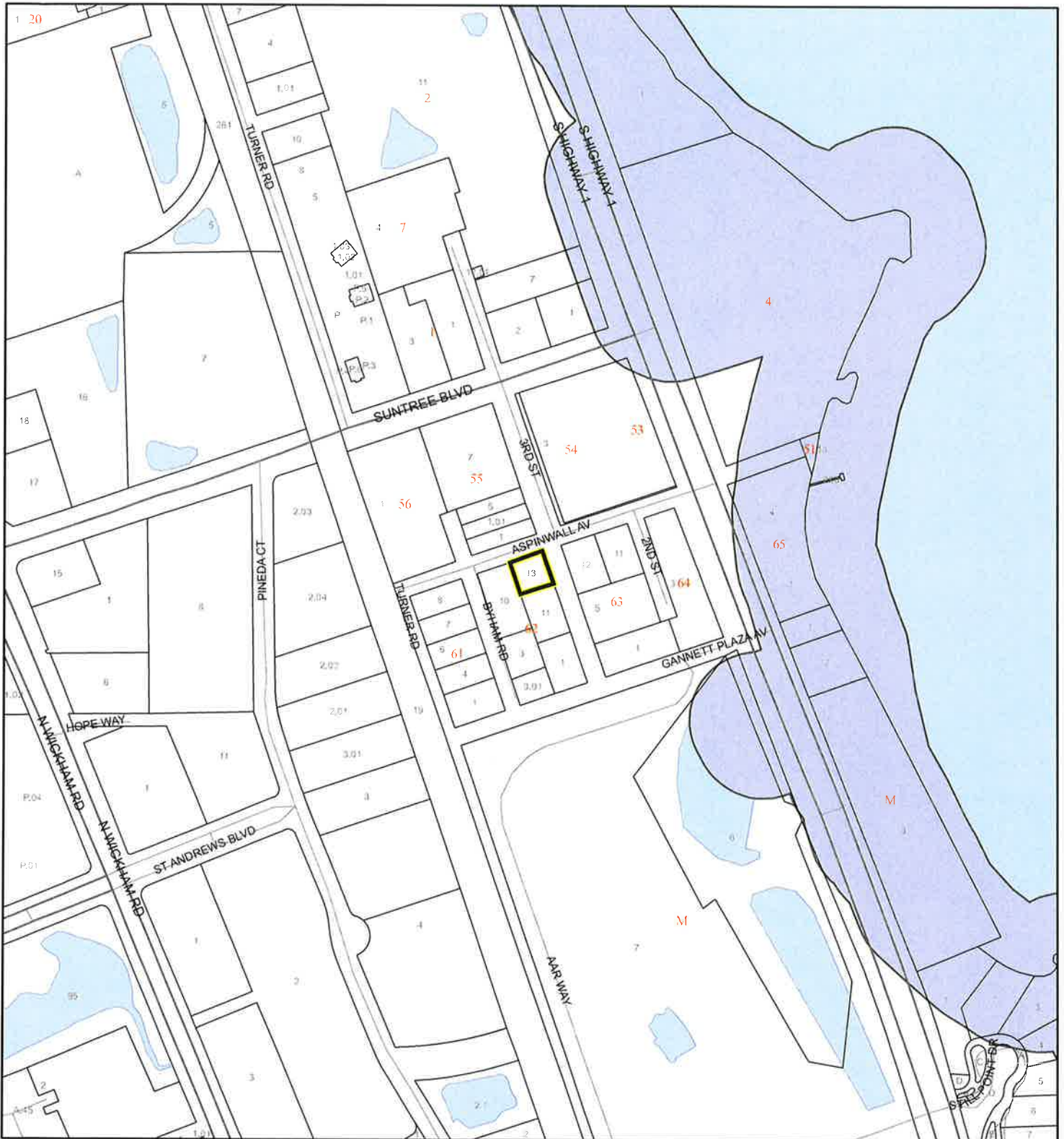
Coastal High Hazard Area

■ SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

Herndon, Donald & Julie

23Z00057



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 6/27/2023

— Subject Property

□ Parcels

Septic Overlay

■ 40 Meters

■ 60 Meters

■ All Distances

EAGLE NESTS MAP

Herndon, Donald & Julie

23Z00057



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 6/27/2023

 Subject Property

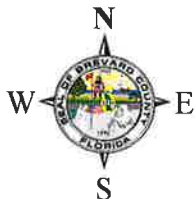
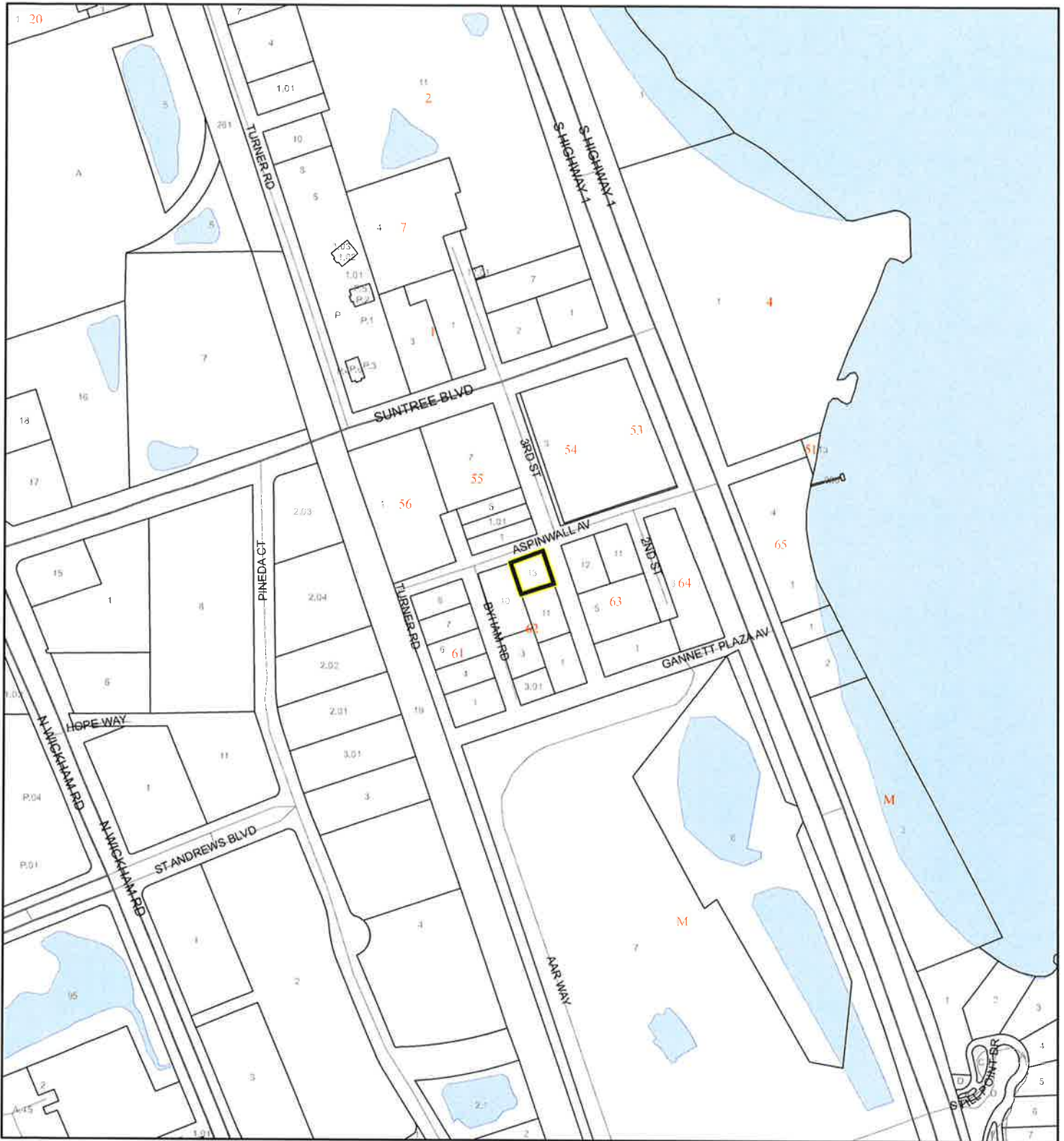
 Parcels

 Eagle Nests FWS

SCRUB JAY OCCUPANCY MAP

Herndon, Donald & Julie




23Z00057



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.

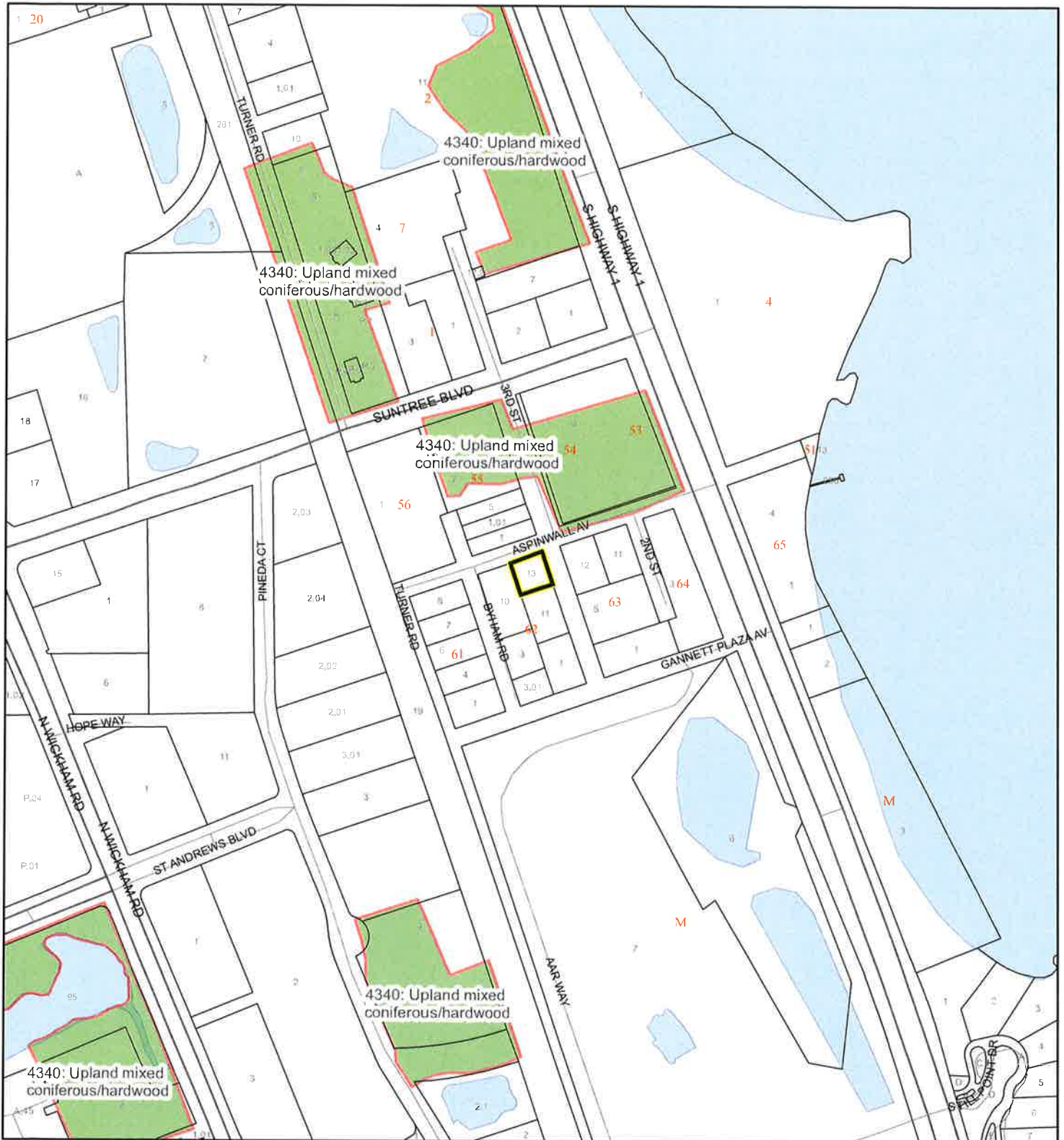
Produced by BoCC - GIS Date: 6/27/2023

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

Herndon, Donald & Julie

23Z00057



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 6/27/2023

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: [Wendy Rector](#)
To: [Jones, Jennifer](#)
Subject: ID23SS00004&23Z00034
Date: Thursday, July 6, 2023 6:50:40 PM

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

Dear Ms. Jones,

I reside @6585 Byham Rd, Rockledge Fl. Im writing today to file my dissatisfaction on the public notice filed by Don and Julie Herndon to expand the commercial site they use to own. The wood flooring business was just to be retail, it has become much more and has created issues with cars parking and much more traffic back here, along with other issues. This is a small quiet little neighborhood that has resided for generations. It wouldnt be fair to any of us back here, with traffic, noise, road congestion, crime, just a whole host of grievances. Traffic since the commercial building off Aspinwall and 3rd has created so many accidents from Suntree Blvd., just not good. There are so many vacant properties with buildings sitting and falling down. Why arent folks considering cleaning them up and utilizing, Im sure the county would prefer vacant buildings being used for a host of reasons. I will also be attending the meeting. The property wanting this should incorporate and clean up what he already owns. Thank you for taking the time to read and file this.

Cordially,

Wendy Rector Dimond
Sent from my iPad

From: [Dave Bier](#)
To: [Jones, Jennifer](#)
Cc: [rich3m@gmail.com](#)
Subject: small scale amendment id# 23SS00004,23Z00034,23SS00017&23Z00057
Date: Thursday, July 13, 2023 3:45:39 PM

Objection
23SS00004, 23Z00034 &
23SS00017 & 23Z00057
Cirrus - Herndon

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HELLO JENNIFER,
MY NAME IS DAVE BIER RESIDING AT 6595 BYHAM RD AND I AM AGAINST
REZONING THE AFORE MENTIONED PROPERTY ABOVE, BECAUSE I DO NOT
WISH FOR COMMERCIAL PROPERTY ENCROACHING ON ALREADY
ESTABLISHED RESIDENTIAL PROPERTY.

THANK YOU
DAVID BIER
208_509_1969

[Sent from Yahoo Mail on Android](#)

From: [Melissa Munson](#)
To: [Jones, Jennifer](#)
Subject: RE: Rezoning Notice # 23Z00057_23SS00017_23SS00004 & 23Z00034_
Date: Friday, July 14, 2023 4:47:21 PM

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

Good afternoon Jennifer,

My name is Melissa Munson and I am a homeowner directly next door to one of the properties we have been notified is being considered for a change of zoning classification from residential to retail / warehousing and wholesale commercial-based properties.

I am strongly against this consideration of re-zoning to accommodate a nearby business owner who wants to take over residential neighborhood land. This is our community of families and re-zoning for commercial use would have a negative impact not only in regards to traffic and additional pollution, but also to our unique established environment known in part as the Town of Pineda. We are a quiet and peaceful community not in agreement with this request for Small Scale Plan Amendment / change of zoning so close to our residential properties / within our residential community. The zoning classifications should not be changed.

Thank you for your consideration in this matter.

Sincerely,

Melissa Munson

Melissa Munson | Office Manager | **The Goldfield Corporation** | t 321.724.1700 | f 321.308.1164 | d 321.308.1165 | mmunson@goldfieldcorp.com | 1688 W. Hibiscus Blvd., Melbourne, FL 32901

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From: [Rich Munson](#)
To: [Jones, Jennifer](#)
Subject: ID# 23SS00017 & 23Z00057 ID#23SS00004 & 23Z00034
Date: Monday, July 17, 2023 9:47:03 AM

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

Good morning Jennifer,

My name is Richard Munson, my wife Melissa and I live at 3165 Aspinwall Ave, next door to one of the properties in the notice 3145 Aspinwall we also own the home directly behind 3145.

3155 Aspinwall Ave and we own the home directly across the street from 3145. Which is 3150 Aspinwall.

So we have a very big concern with any idea of this single family home at 3145 Aspinwall Ave changing zoning to CC and BU-1

This seems to be Spot zoning from what I understand.

The history of The Town of Pineda with this small quiet neighborhood should not be taken over by a few looking to expand their business interest.

So any change that will just add more retail or who knows what with Warehousing and Wholesale Commercial is not a move in the right direction.

Thank you for your time

Regards,

Richard Munson

From: [Buck Jones - Herndon](#)
To: [Buck Jones - Herndon](#)
Subject: ID# 23SS00004 & 23Z00034 ID# 23SS00017 & 23Z00057
Date: Monday, July 17, 2023 9:51:09 AM

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Mr. Lance doesn't email and asked me to forward

Brevard County Planning and Zoning
Jennifer Jones
2725 Judge Fran Jameson Way
Viera, FL 32940

RE: Rezoning Notice # 23Z00057_23SS00017_23SS00004 & 23Z00034

Dear Ms. Jones,

My name is William Lance and I would like to share my concerns regarding the above-mentioned zoning notices that are being proposed in my community.

I object and do not agree with the change of zoning classification from what it is now, to a retail / warehousing commercial-based zone. We live on a NO OUTLET road near the railroad tracks. This kind of zoning change will cause traffic issues and confusion in our small close-knit community that does have children in the area as well. It is not an area that should be commercialized.

Sincerely,



William Lance
6550 Byham Rd.
Rockledge, FL 32955

Objection
23SS00004, 23Z00034 &
23SS00017 & 23Z00057
Cirrus - Herndon

From: 
To: 
Subject: ID# 23SS00004 & 23Z00034 ID# 23SS00017 & 23Z00057
Date: Monday, July 17, 2023 9:54:28 AM

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Mr. Fuqua isn't able to email and asked me to send this.

July 14, 2023


Ms. Jennifer Jones,

We are writing concerning the rezoning notices
ID# 23SS00004 & 23Z00034
ID# 23SS00017 & 23Z00057

We are NOT in favor of any rezoning to Retail, Warehousing, Wholesale
Commercial, Community Commercial and General Retail Commercial.
Any and all these changes will only effect our neighborhood negatively.

Thank you,

William Fuqua


William & Gail Fuqua
6560 Byham Rd
Rockledge FL 32955

From: Rich Herndon
To: Jennifer Jones
Subject: Re: ID# 23SS00004 & 23Z00034 ID# 23SS00017 & 23Z00057
Date: Monday, July 17, 2023 10:50:33 AM

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Thank you Jennifer

Wasn't completely sure what and how much detail you wanted in my concern with the zoning. I don't know the normal procedures but here are few things I do know. I know Mr. Herndon and I have communicated with him about his plans to sell his properties. He sold his Flooring store 3115 Aspinwall Ave to Cirrus Properties and the house at 6550 2nd St. Mr. Herndon is looking to sell both 3125 & 3145 Aspinwall Ave to the new owner of the flooring store and it certainly looks like a rezoning was a part to make the deal happen.

I just looked at a text I got from Mr. Herndon May 1st this year and he said "I'm just over being a landlord. Never again" so this is sounding like a man ready to unload things. With the lack of affordable housing available in the area and the plan to sell everything to a guy that lives in Wildwood FL (Cirrus Properties) so he can put who knows what up on this hill side doesn't sound like a wise community plan.

My wife and I will be at the meeting

Thanks again,
Richard

On Mon, Jul 17, 2023 at 10:10 AM Jones, Jennifer <jennifer.jones@brevardfl.gov> wrote:

Thank you. I will take copies of all public comment to the meeting this afternoon.

Jennifer

From: Rich <richherd@gmail.com>
Sent: Monday, July 17, 2023 9:54 AM
To: Jones, Jennifer <jennifer.jones@brevardfl.gov>
Subject: ID# 23SS00004 & 23Z00034 ID# 23SS00017 & 23Z00057

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Mr. Fuqua isn't able to email and asked me to send this.

PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, July 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: Henry Minneboo, (D1); Ron Bartcher (D1); Robert Sullivan (D2); Ben Glover (D3); Debbie Thomas (D4); Mark Wadsworth, Chair (D4); Robert Brothers (D5); and John Hopengarten (BPS).

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; Melissa Wilbrandt, Associate Planner; and Jennifer Jones, Special Projects Coordinator.

Excerpt of Complete Agenda

Donald C. and Julie M. Herndon (Bruce Moia)

A Small Scale Comprehensive Plan Amendment (23S.17) to change the Future Land Use designation from NC (Neighborhood Commercial) to CC (Community Commercial). The property is 0.23 acres, located on the south side of Aspinwall Ave., approx. 445 ft. west of S. U.S. Highway 1. (3145 Aspinwall Ave., Rockledge) (23SS00017) (Tax Account 2616074) (District 4)

Donald C. and Julie M. Herndon (Bruce Moia)

A change of zoning classification from GU (General Use) to BU-1 (General Retail Commercial). The property is 0.23 acres, located on the south side of Aspinwall Ave., approx. 445 ft. west of S. U.S. Highway 1. (3145 Aspinwall Ave., Rockledge) (23Z00057) (Tax Account 2616074) (District 4)

Bruce Moia, MBV Engineering, Melbourne, stated the requests are less intense than the two previous requests, even though he believes CC is going to be the predominant land use in the area, and the rezoning request is only for BU-1, to transition east to west.

Public comment.

Richard Munson, 3165 Aspinwall Ave., Rockledge, stated the subject property proposed to be rezoned to BU-2 is at 3145 Aspinwall, and he lives directly to the west, and also owns the home behind it at 3155 Aspinwall, even though it fronts 3rd Street. He said the property owner is not going to be able to re-claim the road without his approval. He asked the future plan for the property, and stated it could be sold next year and there are many other uses that can be on the property. He said it makes no sense other than the fact there is a possibility he can sell it as a residential property as it is right now.

William Wojahn, 3120 Gannett Plaza Ave., Rockledge, stated there is a workshop with people sawing at 6:00 a.m. to 7:00 a.m., making molding and other things; the business doesn't open until 9:00 a.m., but they are there before then loading and offloading. He said 2nd Street is the primary place where they drive in and back in semi's and offload with fork lifts. The loading dock on the south side is rarely used. He stated he is concerned about people saying they are closing off 2nd Street, because that is the primary entrance to his property, and it would devalue his property.

Jeffrey Ball noted the Board of County Commissioners is the only authority to vacate a public roadway.

Wendy Diamond, 6585 Byham Rd., Rockledge, stated there are wild animals in the neighborhood, and the land is disappearing, destroying the habitats of many different animals. There are a lot of

entrances, but there are also a lot of dead-ends and traffic. She said the proposed zoning will decrease her property value.

Mr. Hopengarten stated he asked Mr. Herndon earlier if there was to be any fabrication on the property and he said no, but one of the speakers said someone is cutting materials in the early morning hours. Mr. Herndon replied the installers load their trucks early in the morning, so there is some activity there. He said all of the trucks go to the south entrance on Gannett Plaza Ave.

Motion by John Hopengarten, seconded by Robert Sullivan, to recommend denial of the Small Scale Comprehensive Plan Amendment (23S.17) to change the Future Land Use designation from NC to CC. The motion resulted in a 4:4 vote, with Debbie Thomas, Henry Minneboo, Ben Glover, and Mark Wadsworth voting nay.

Motion by Ben Glover, seconded by Debbie Thomas to recommend approval of the Small Scale Comprehensive Plan Amendment (23S.17) to change the Future Land Use designation from NC to CC. The motion resulted in a 4:4 vote, with Ron Bartcher, Robert Brothers, John Hopengarten, and Robert Sullivan voting nay.

Henry Minneboo stated there are two structures on the aerial that look like there would be residents affected by the unimproved public right-of-way for 2nd Street.

Mr. Moia replied he does not know because there is no road there, and he does not know if not having a road gives legal access.

Mr. Minneboo stated if the description is there and it's public, it doesn't have to be improved.

Mark Wadsworth asked staff if 2nd Street a deeded easement. Mr. Ball replied based on the boundary survey that was submitted with the application, it is showing 3rd Street as a 50-foot public right-of-way, as well as 2nd Street. The caveat to 2nd Street is that the south end has been vacated on Mr. Herndon's side of the property, and when a right-of-way is vacated, half goes to each owner on each side. Mr. Moia stated according to Resolution 2003-86 that portion to the south was vacated.

Mr. Moia stated he would proceed to the County Commission without a recommendation for the Small Scale Comprehensive Plan Amendment, but he would like the board to approve the rezoning to BU-1.

Mr. Ball stated BU-1 is not permitted in the NC land use, but he could request BU-1-A (Restricted Neighborhood Commercial), which is permitted in the NC land use.

Mr. Moia amended the requested rezoning from BU-1 to BU-1-A.

Motion by Ben Glover, seconded by Debbie Thomas, to recommend approval of the change of zoning classification from GU to BU-1-A, as amended by the applicant. The motion passed 5:3, with Ron Bartcher, Robert Sullivan, and John Hopengarten voting nay.

From: [Ball, Jeffrey](#)
To: [Jones, Jennifer](#)
Subject: FW: Herndon SSCPA 23SS00017
Date: Wednesday, July 26, 2023 8:46:43 AM
Attachments: [BU-1A Jul 2023.pdf](#)

FYI

From: Bruce M <brucem@mbveng.com>
Sent: Monday, July 24, 2023 12:09 PM
To: Ball, Jeffrey <Jeffrey.Ball@brevardfl.gov>
Cc: Calkins, Tad <tad.calkins@brevardfl.gov>; Don Herndon <Don@classicwoodflooring.com>
Subject: RE: Herndon SSCPA 23SS00017

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

Yes. Please accept this email as a formal withdrawal of the land use amendment request for Donald and Julie Herndon from NC to CC, Zoning Action 23SS00017, Tax Account 2616074.

We would like to proceed with the rezoning request from GU to BU-1-A. This is a lesser request than the initial BU-1 request.

Don, the current BU-1-A zoning code with permitted uses is attached for your reference.

Bruce A. Moia, P.E.

President, MBV Engineering, Inc.
1250 W. Eau Gallie Blvd., Unit H, Melbourne, FL 32935
P: 321.253.1510 x324 C: 321.243.0583 F: 321.253.0911
Conference: 712.832.7000 Passcode: 1861134#
BruceM@mbveng.com www.mbveng.com

Celebrating 40 Years of Service to the Space and Treasure Coasts (1983-2023)

From: Ball, Jeffrey <Jeffrey.Ball@brevardfl.gov>
Sent: Friday, July 21, 2023 9:57 AM
To: Bruce M <brucem@mbveng.com>
Cc: Calkins, Tad <tad.calkins@brevardfl.gov>
Subject: Herndon SSCPA 23SS00017

Bruce, have you entertained the thought of withdrawing 23SS00017 and just focusing on rezoning to BU-1A?

Jeffrey Ball, AICP
Brevard County Planning and Zoning Manager

This office can only provide zoning and comprehensive plan information. You may wish to contact other County agencies to fully determine the development potential of this property. This letter does not establish a right to develop or redevelop the property and does not constitute a waiver to any other applicable land development regulations. At the time of development, this property will be subject to all such regulations. Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

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Commissioner Rob Feltner, District 4

2725 Judge Fran Jamieson Way

Suite: C-214

Viera, FL 32940

Phone: (321) 633-2044

D4.Commissioner@Brevardfl.gov

July 26, 2023

To: Jennifer Jones

From: Rob Feltner, Brevard County Commissioner, District 4

Re: Disclosure – 23SS00004; 23Z00034: Tax Accounts: 2602468; 2602464; 2602466; 2602467
23SS00017; 23Z00057: Tax Account: 2616074

Concerning **23SS00004, 23Z00034, 23SS00017, 23Z00057** on the August 3, 2023, Brevard County Zoning meeting agenda; on July 26, 2023, Commissioner Feltner met with Ms. Wendy Dimond in the District 4 Commission Office. The meeting lasted approximately twenty-five minutes. Ms. Dimond expressed her concerns of increased noise, the removal of mature oak trees, negative impact on the existing wildlife, increased traffic and the owner not disclosing what the actual plans are for the properties. Ms. Dimond also feels this project will impact her property value negatively. Commissioner Feltner listened to Ms. Dimond's concerns as well as disclosed to her that he had driven through the area to look at the properties.

Thank you.

Rob Feltner
Brevard County Commissioner
District 4