



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

H.2.

5/26/2022

### Subject:

OBC Realty, LLC requests a Small Scale Comprehensive Plan Amendment (22S.05), to change the Future Land Use designation from RES 15 to CC. (22SS00002) (Tax Accounts 2521003 and 2521005) (District 2)

### Fiscal Impact:

None

### Dept/Office:

Planning & Development

### Requested Action:

It is requested that the Board of County Commissioners conduct a public hearing to consider a change of Future Land Use designation from RES 15 (Residential 15) to CC (Community Commercial).

### Summary Explanation and Background:

The applicant is requesting to amend the Future Land Use designation from RES 15 to CC on 0.52 acres to allow for redevelopment of the subject property with a 3-story mixed use building (including commercial retail, resort dwellings, and a restaurant). The applicant has provided a concept plan which has not been reviewed by staff for conformance to the Land Development Regulations and is for discussion purposes only.

The subject property is developed with one structure (built in 1958) that was formerly utilized as a nightclub/bar (a non-conforming use). The current zoning of the subject property is BU-1 (General Retail Commercial) and was established prior to the adoption of the 1988 Comprehensive Plan and is not consistent with the adopted Future Land Use designation of RES 15. BU-1 zoning is consistent with Community Commercial Future Land Use. There is no companion rezoning application accompanying this request as it is not required.

The subject property is surrounded by multi-family development to the north, south, east and west. In addition to multi-family development, a motel/motor lodge is located to the east and a single-family residence is located to the west.

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

On May 9, 2022, the Local Planning Agency heard the request and unanimously recommended approval.

### Clerk to the Board Instructions:

Once the ordinance is filed with the State, please return a copy to Planning & Development.



## FLORIDA DEPARTMENT *of* STATE

**RON DESANTIS**  
Governor

**CORD BYRD**  
Secretary of State

June 1, 2022

Honorable Rachel M. Sadoff  
Clerk  
Board of County Commissioners  
Brevard County  
Post Office Box 999  
Titusville, Florida 32781-0999

Attention: Deborah Thomas

Dear Honorable Rachel Sadoff:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of amended Brevard County Ordinance No. 22-17, which was filed in this office on May 31, 2022.

Sincerely,

Anya Owens  
Program Administrator

ACO/mas



May 27, 2022

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

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

**RE:** Item H.2., Tenth Small Scale Comprehensive Plan Amendment (22S.05) to Change the Future Land Use Designation from Residential 15 (RES) to Community Commercial (CC) (22SS00002)

The Board of County Commissioners, in regular session on May 26, 2022, conducted the public hearing and adopted Ordinance No. 22-17, setting forth the tenth Small Scale Comprehensive Plan Amendment of 2022, (22S.05), changing the Future Land Use designation from Residential 15 to Community Commercial. Enclosed is the fully-executed Ordinance.

Your continued cooperation is always appreciated.

Sincerely,

**BOARD OF COUNTY COMMISSIONERS**  
**RACHEL M. SADOFF, CLERK**

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

/ns

Encl. (1)

ORDINANCE NO. 22- 17

AN ORDINANCE AMENDING ARTICLE III, CHAPTER 62, OF THE CODE OF ORDINANCES OF BREVARD COUNTY, ENTITLED "THE 1988 COMPREHENSIVE PLAN", SETTING FORTH THE TENTH SMALL SCALE PLAN AMENDMENT OF 2022, 22S.05, TO THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN; AMENDING SECTION 62-501 ENTITLED CONTENTS OF THE PLAN; SPECIFICALLY AMENDING SECTION 62-501, PART XVI (E), ENTITLED THE FUTURE LAND USE MAP APPENDIX; AND PROVISIONS WHICH REQUIRE AMENDMENT TO MAINTAIN INTERNAL CONSISTENCY WITH THESE AMENDMENTS; PROVIDING LEGAL STATUS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

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

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

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

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

WHEREAS, Brevard County initiated amendments and accepted application for small scale amendments to the Comprehensive Plan for adoption in calendar year 2022 as Plan Amendment 22S.05; and

WHEREAS, Brevard County established Technical Advisory Groups consisting of County technical employees grouped according to their operational relationship to the subject of a plan element or sub-element being prepared or amended, and these Technical Advisory Groups have provided technical expertise for the Amendment 22S.05; and

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

WHEREAS, Section 62-181, Brevard County Code designated the Brevard County Planning and Zoning Board as the Local Planning Agency for the unincorporated areas of Brevard County, Florida, and set forth the duties and responsibilities of said local planning agency; and  
OFFICIALLY FILED WITH THE SECRETARY OF STATE ON MAY 31, 2022.

WHEREAS, on May 9, 2022, the Brevard County Local Planning Agency held a duly noticed public hearing on Plan Amendment 22S.05, and considered the findings and advice of the Technical Advisory Groups, and all interested parties submitting comments; and

WHEREAS, on May 26, 2022, the Brevard County Board of County Commissioners held a duly noticed public hearing, and considered the findings and recommendations of the Technical Advisory Group, and all interested parties submitting written or oral comments, and the recommendations of the Local Planning Agency, and upon thorough and complete consideration and deliberation, approved for adoption Plan Amendment 22S.05; and

WHEREAS, Plan Amendment 22S.05 adopted by this Ordinance comply with the requirements of the Local Government Comprehensive Planning and Land Development Regulation Act; and

WHEREAS, Plan Amendment 22S.05 adopted by this Ordinance is based upon findings of fact as included in data and analysis.

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

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

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

Section 3. Adoption of Comprehensive Plan Amendments. Pursuant to Plan Amendment 22S.05 to the 1988 Comprehensive Plan, Article III, Chapter 62-504, Brevard County Code, the 1988 Brevard County Comprehensive Plan is hereby amended based on documentation shown in Exhibit A and as specifically shown in Exhibit B. Exhibits A and B are hereby incorporated into and made part of this Ordinance.

Section 4. Legal Status of the Plan Amendments. After and from the effective date of this Ordinance, the plan amendment, Plan Amendment 22S.05, shall amend the 1988 Comprehensive Plan and become part of that plan and the plan amendment shall retain the legal status of the 1988 Brevard County Comprehensive Plan established in Chapter 62-504 of the Code of Laws and Ordinances of Brevard County, Florida, as amended.

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

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

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

DONE AND ADOPTED in regular session, this 26 day of May, 2022.

ATTEST:

  
Rachel M. Sadoff, Clerk

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

By: 

Kristine Zonka, Chair

As approved by the Board on May 26, 2022.

**EXHIBIT A**  
**22S.05 SMALL SCALE**  
**COMPREHENSIVE PLAN AMENDMENT**

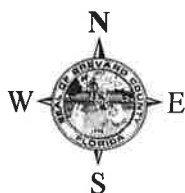
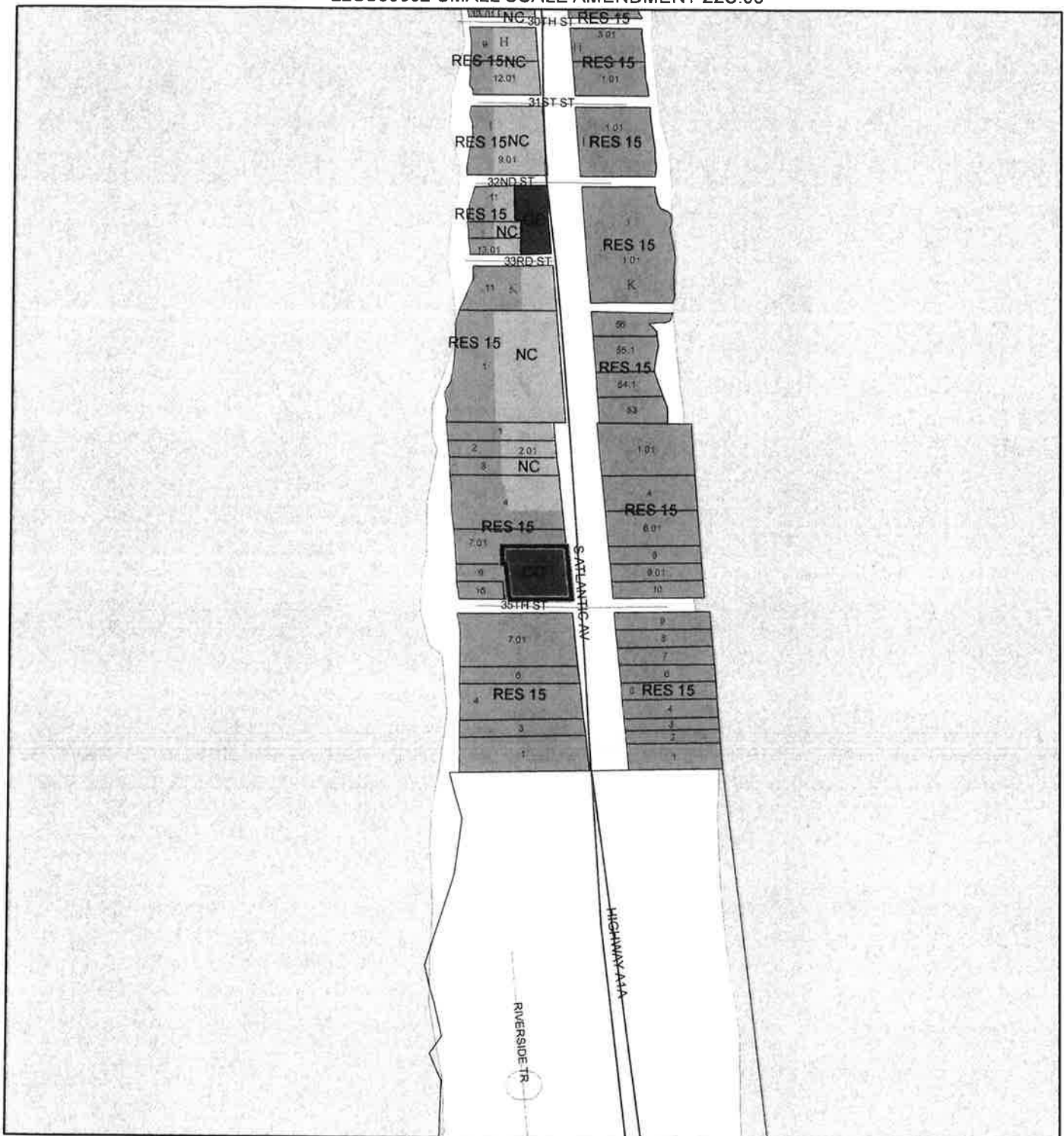
**Contents**

**1. Proposed Future Land Use Map**



# PROPOSED FUTURE LAND USE MAP

OBC REALTY, LLC

22SS00002 SMALL SCALE AMENDMENT 22S.05



1:4,800 or 1 inch = 400 feet

 Subject Property  
 Parcels

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

Produced by BoCC - GIS Date: 3/7/2022



## **EXHIBIT B**

### **Contents**

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

AD#5224435, 04/11/2022

# A PUBLIC HEARING NOTICE

NOTICE is hereby given pursuant to Chapters 125 & 163, FLORIDA STATUTES, and Chapter 62, Article VI of the Brevard County Code, that the Brevard County Planning and Zoning Board (Local Planning Agency) and the Board of County Commissioners will consider the following requests on MONDAY, MAY 9, 2022, and THURSDAY, MAY 26, 2022. **DISTRICT 2 (225300001) CHARLES K. DONALDSON** requests a Small Scale Comprehensive Plan Amendment (225.04) to change the Future Land Use designation from RES-1 (Residential-1) to RES-4 (Residential-4), on property described as that portion of the following described parcel of land that lies west of Tropical Trail, the same being more particularly described as follows: A parcel of land lying in Section 22, Township 24S, Range 36E, Brevard County, Florida, being more particularly described as follows: Commence at the NE corner of the NW 1/4 of the NE 1/4 of said Section 22 (as established by "Croton River Estates", recorded in Plat Book 25, Page 10 of the Public Records of Brevard County, Florida), and run S00deg23'34"E, along the east line of said NW 1/4 of the NE 1/4, and along the east line of the SW 1/4 of the NE 1/4 a distance of 1,773.42 ft. to the SE corner of lands described in ORB 2246, Page 2437, of said public records, the point of beginning; thence continue S00deg23'34"E, along said east line, a distance of 238.92 ft. (or 3 chains/62 links as stated in Deed Book "X", Page 457); thence N89deg56'46"W, parallel with the north line of said Section 22 and along the north line of lands described in ORB 3151, Page 4903 of said public records, a distance of 1,237.47 ft. to the NW corner of said lands (said corner being located 400 ft. east of the "mean water level" for the Indian River, as measured along the westerly extension of said line); thence perpendicular to said north line of Section 22, a distance of 109 ft. to the SW corner of said lands described in ORB 3151, Page 4903; thence N89deg56'46"W, parallel with said north line of Section 22, a distance of 345.41 ft. to a point on the aforementioned "mean water level" for the Indian River; thence return to the point of beginning, and run N89deg56'46"W, parallel with said north line and along the south line of lands described in ORB 2246, Page 2437, a distance of 583.31 ft. to a point on the centerline of pavement of 1 for N. Tropical Trail (a prescriptive right of way), said point being on a 404.40-ft. radius curve to the left having a radial bearing of N53deg41'53"E; thence southeasterly, along the arc of said curve and along said centerline and along said south line of lands of ORB 2246, Page 2437, thru a central angle of 15deg53'14" a distance of 112.13 ft. to a point of tangency; thence S50deg35'38"E, along said centerline and said south line, a distance of 11.06 ft.; thence departing said centerline, run N89deg56'46"W, parallel with said north line of Section 22 and along said south line of ORB 2246, Page 2437, a distance of 1,110.48 ft. to a point on the aforesaid "mean water level" off the Indian River; thence southeasterly, meandering said "mean water level", to an intersection with the fourth course of this description; less and except east 20 ft. thereof for right of way for Hill Avenue. Subject to right of way of N. Tropical Trail. (5.51 acres +/-) Located on the west side of N. Tropical Trail, approx. 500 ft. northwest of Easy Street. (1605 N. Tropical Trail, Merritt Island) The following ordinance will also be considered in conjunction with the Small Scale Plan Amendment, 225.04: an ordinance amending Article III, Chapter 62, of the Code of Ordinances of Brevard County, entitled "The Comprehensive Plan", amending Section 62-501, entitled Contents of the Plan; specifically amending Section 62-501, Part XI, entitled Future Land Use Element and Future Land Use Map Series; and provisions which require amendment to maintain internal consistency with these amendments; providing legal status; providing a severability clause; and providing an effective date. (225300002) ORC REALTY, LLC requests a Small Scale Comprehensive Plan Amendment (225.05), to change the Future Land Use designation from RES-15 (Residential-15) to CC (Community Commercial), on property described as Lots 8 and 9.01, as recorded in ORB 8301, Pages 891 - 892, of the Public Records of Brevard County, Florida. Section 35, Township 25S, Range 37E, (0.52 acres) Located on the northwest corner of S. Atlantic Ave. and 35th St. (Lot 8 - No assigned address, Lot 9.01 - 3466 S. Atlantic Ave., Cocoa Beach) The following ordinance will also be considered in conjunction with the Small Scale Plan Amendment, 225.05: an ordinance amending Article III, Chapter 62, of the Code of Ordinances of Brevard County, entitled "The Comprehensive Plan", amending Section 62-501, entitled Contents of the Plan; specifically amending Section 62-501, Part XI, entitled Future Land Use Element and Future Land Use Map Series; and provisions which require amendment to maintain internal consistency with these amendments; providing legal status; providing a severability clause; and providing an effective date. **DISTRICT 3 (22200012) CLIFTON THOMAS** (Clayton Bennett) requests a change of zoning classification from BU-1-A (Restricted Neighborhood Commercial) to RU-1-13 (Single-Family Residential), with a BDP (Binding Development Plan) limited to 1 unit, on property described as Lot 1, Block 9, Melbourne Shores First Addition, according to Plat Book 10, Page 87, of the Public Records of Brevard County, Florida, Section 14, Township 36S, Range 14E, (0.20 acres) Located on the west side of Highway A1A, approx. 170 ft. south of Ibis Dr. (5930 Hwy A1A, Melbourne Beach) **DISTRICT 1 (22200010) WILLIAM L. (JR.) AND SHARON R. FEAGAN** request a change of zoning classification from AU (Agricultural Residential) to RR-1 (Rural Residential), on property described as Tax Parcel 293, as recorded in ORB 8588, Pages 22 - 23, of the Public Records of Brevard County, Florida. (1 +/- acre) Section 24, Township 21S, Range 34E, located on the east side of Turpentine Rd., approx. 550 ft. south of Wherry Rd. (No assigned address. In the Mims area.) **DISTRICT 5 (22200011) HEATH AND SHANNON MORGAN** request a change of zoning classification from RU-1-9 (Single-Family Residential) to SR (Suburban Residential), on property described as Lot 51.01, Block 14, City Acres, as recorded in ORB 5504, Pages 7196 - 7197, of the Public Records of Brevard County, Florida, Section 02, Township 28S, Range 36E, (0.69 acres) Located on the north side of Miami Ave., approx. 200 ft. east of City Acres Rd. (No assigned address. In the West Melbourne area.) **DISTRICT 1 (22200013) PR CORPORATE HOLDINGS, LLC, AND ARBLUE HOLDINGS, LLC (Kim Fischer)** requests a change of zoning classification from AU (Agricultural Residential) to RU-1-11 (Single-Family Residential), on property described as Tax Parcel 253, as recorded in ORB 9419, Pages 1819 - 1820, of the Public Records of Brevard County, Florida, Section 29, Township 21S, Range 35E, (4.35 acres) Located on the north side of Diamond Rd., approx. 0.25 miles west of Old Dixie Hwy., Titusville. (3080 Diamond Rd., Titusville) **DISTRICT 2 (22PUD00001) HEALTH FIRST, INC., AND HEALTH FIRST SHARED SERVICES, INC. (Kim Rezanka)** requests a change of zoning classification from BU-1 (General Retail Commercial) and BU-2 (Retail, Warehousing, and Wholesale Commercial) to PUD (Planned Unit Development), with waivers, on property described as Tax Parcel 250.1, as recorded in ORB 3627, Pages 4856 - 4857, of the Public Records of Brevard County, Florida, Tax Parcel 251.2 & 298, as recorded in ORB 4651, Pages 1560 - 1562, of the Public Records of Brevard County, Florida; and Tax Parcel 276, as recorded in ORB 9414, Pages 1608 - 1610, of the Public Records of Brevard County, Florida, Section 36, Township 24S, Range 36E, (15.05 +/- acres) Located on the southwest corner of E. Merritt Ave., and Borman Dr. (255 Borman Dr., Units 100, 101, 200-202; 756 E. Merritt Ave., and 625 E. Merritt Ave., Merritt Island) Public Hearing before the Planning and Zoning Board (Local Planning Agency) will be held at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Bldg. C, Viera, Florida on MONDAY, MAY 9, 2022, at 3:00 p.m. A Public Hearing will be held by the Board of County Commissioners at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Commission Room, Bldg. C, Viera, Florida, on THURSDAY, MAY 26, 2022, at 5:30 p.m. All interested parties can be heard at said time and place. If a person desires to appeal any decision of this Board, agency or commission (as appropriate) with respect to any matter considered at this meeting or hearing, such a person will need a record of this proceeding and that, for such purposes, such person may need to ensure that a verbatim record of the proceedings is made, at his own expense, which record includes testimony and evidence upon which any such appeal is to be based. The Board may grant such other less intense zoning or land use classification as may be deemed appropriate. Final report of the above referenced agenda will be heard at this meeting. In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons needing special accommodations or an interpreter to participate in this proceeding should contact the Planning & Development Department no later than 48 hours prior to the meeting at 321-633-2069 for assistance. Brevard County Planning & Development Department, per: Tad Calkins, Planning and Development Director, By: Jennifer Jones, Special Projects Coordinator.

## **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.

**FUTURE LAND USE MAP SERIES  
PLAN AMENDMENT**

**STAFF COMMENTS**

*Small Scale Plan Amendment 22S.05 (22SS00002)*  
**Township 25, Range 37, Section 35**  
LPA 5/9/2022 BoCC 5/26/2022

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**Property Information**

Owner / Applicant: **OBC Realty, LLC**

Adopted Future Land Use Map Designation: Residential 15 (RES 15)

Requested Future Land Use Map Designation: Community Commercial (CC)

Acreage: 0.52 acres

Tax Account #s: 2521003, 2521005

Site Location: Northwest corner of S. Atlantic Avenue (SR A1A) and 35<sup>th</sup> Street

Commission District: 2

Current Zoning: General Retail Commercial (BU-1)

**Background & Purpose**

The applicant is requesting to amend the Future Land Use designation from Residential 15 (RES 15) to Community Commercial (CC) on 0.52 acres to allow for redevelopment of the subject property with a 3-story mixed use building (including commercial retail, resort dwellings, and a restaurant). The applicant has provided a concept plan which has not been vetted by staff for meeting Land Development Regulations and is for discussion purposes only.

The subject property currently has a Future Land Use designation of RES 15 and is developed with one structure (built in 1958) that was formerly utilized as a nightclub/bar (a non-conforming use). The original future land use that was adopted with the Comprehensive Plan in September of 1988 was Residential land use and Urban residential density (30 dwelling units per acre maximum) which did not take into account the existing development on the subject property.

The current zoning of the subject property (BU-1) was established prior to the adoption of the 1988 Comprehensive Plan and is not consistent with the adopted Future Land Use designation (RES 15). BU-1 zoning is consistent with Community Commercial (CC) Future Land Use. There is no companion rezoning application accompanying this request as it is not required.

## Surrounding Land Use Analysis

	Existing Land Use	Zoning	Future Land Use
<b>North</b>	Multi-Family	RU-2-15	RES 15
<b>South</b>	Multi-Family	RU-2-15	RES 15
<b>East</b>	Multi-Family, Motel/Motor Lodge	RU-2-15, RU-2-30	RES 15
<b>West</b>	Multi-Family, Single-Family Residence	RU-2-15	RES 15

The subject property is surrounded by multi-family development to the north, south, east and west. In addition to multi-family development, a motel/motor lodge is located to the east and a single-family residence is located to the west.

## Comprehensive Plan Policies/Comprehensive Plan Analysis

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

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

### 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 foresee ably be affected by the proposed use;

**The applicant intends to redevelop the subject property as a 3-story mixed use building (to include commercial retail, resort dwellings, and a restaurant). The effects of lighting, site activity and traffic will be evaluated at the time of site plan review.**

- 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;

**While this segment of S. Atlantic Avenue (State Road A1A) has a historical pattern of mostly urban density residential land use, the intersection where the subject property is located (S. Atlantic Avenue and 35<sup>th</sup> Street) has historically been utilized as commercial since the mid-1970s and is currently commercial on three corners of the intersection.**

**Specifically, at the northwest corner of the intersection, the subject property retains BU-1 zoning (approved February 1976, Z-4020) and was formerly utilized as a commercial nightclub/cocktail lounge. A commercial retail store with BU-1 zoning (approved September 1976, Z-4116) is located at the southeast corner, and a commercial motel/motor lodge (structure built in 1956) is located at the northeast corner.**

**The proposed mixed use commercial and residential use of the subject property (including retail, resort dwellings, and a restaurant) can be considered consistent with the historical and existing pattern of surrounding development.**

**Mixed use commercial and residential use is regulated under Section 62-2106 of the Brevard County Code of Ordinances and caps density of the residential component based on the Future Land Use designation as described in Policy 2.10 of the Future Land Use Element of the Comprehensive Plan.**

**FLUE Policy 2.10 states that the integration of residential development with commercial development shall be permitted in the Neighborhood Commercial and Community Commercial land use designations, provided that the scale and intensity of the residential/mixed use development is compatible with abutting residential development and areas designated for residential use on the Future Land Use Map. In the Coastal High Hazard Area (CHHA), residential development is strictly limited to the density of the closest residentially designated area on the FLUM that is on the same side of the street.**

**The subject property is located within the CHHA, and therefore the density of the residential component of the proposed project would be limited to 15 dwelling units per acre as RES 15 is the closest FLU designation on the same side of the street.**

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

**There has not been any actual development within 0.2 miles of the subject property in the preceding three (3) years.**

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

**There has been one (1) development approval within 0.2 miles of the subject property for a new single family residential duplex within the past three (3) years that has not yet been constructed (20BC09547).**

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

### **Policy 2.1**

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

#### **Criteria:**

- A. Overall accessibility to the site;

**The subject 0.52 acre parcel has frontage on S. Atlantic Avenue (SR A1A) to the east and frontage on 35<sup>th</sup> Street to the south.**

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

**The subject property is adjacent to RES 15 to the north, south (across 35<sup>th</sup> Street), east (across S. Atlantic Avenue), and west. Inter-connectivity to the adjacent properties should be considered in the site design phase and reviewed at site plan.**

- C. Existing commercial development trend in the area;

**Existing commercial development at the intersection where the subject property is located includes a retail store at the southeast corner and a motel/motor lodge at the northeast corner. These existing commercial uses are considered non-conforming to the Future Land Use, as is the subject property.**

**Additional commercial activity along S. Atlantic Avenue (SR A1A) within one-half (1/2) mile of the subject property includes mixed use commercial residential (approximately 843 ft north), a restaurant approximately 1,564 ft north), and another restaurant (approximately 2,455 ft north).**

- D. Fundamental changes in the character of an area prompted by infrastructure improvements undertaken by the County;

**No fundamental changes in the character of the area have been prompted by infrastructure improvements undertaken by the County.**

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

**The subject site is within the City of Cocoa service area for potable water and within the City of Cocoa Beach service area for wastewater treatment.**

**The preliminary concurrency analysis did not indicate that the proposed development would cause a deficiency in the transportation adopted level of service.**

- F. Spacing from other commercial activities;

**This closest commercial activity along this segment of S. Atlantic Avenue (SR A1A) is a motel/motor lodge adjacent to the subject property to the east (across S. Atlantic Avenue) and a retail store located approximately 125 ft southeast of the subject property, across S. Atlantic Avenue. Additional commercial activity along S. Atlantic Avenue (SR A1A) within one-half (1/2) mile of the subject property includes mixed use commercial residential (approximately 843 ft north), a restaurant (approximately 1,564 ft north), and another restaurant (approximately 2,455 ft north).**

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

**The subject parcel is 0.52 acres. Within one-half (1/2) mile of the subject property there are approximately 0.4 acres designated as CC and 5.3 acres designated as NC along S. Atlantic Avenue (State Road A1A).**

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

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

- I. Integration of open space; and

**Open space will be evaluated during the site plan review process.**

- J. Impacts upon strip commercial development.

**Redevelopment of the subject 0.52 acre site would not extend strip commercial development which is discouraged within the Future Land Use element of the Comprehensive Plan.**

**Activities Permitted in Community Commercial (CC) Future Land Use Designations**  
**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 2.12; and
- m) Planned Industrial Park development (as permitted by PIP zoning).

**Locational and Development Criteria for Community Commercial Uses**  
**Policy 2.8**

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

**Criteria:**

- A. Community Commercial clusters of up to ten (10) acres in size should be located at arterial/arterial intersections. Collector/arterial intersections are 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/principal arterial intersections.

**The 0.52 acre subject parcel is located at an urban principle arterial and local road intersection.**

- B. Community commercial complexes should not exceed 40 acres at an intersection.



**Currently there is no Community Commercial (CC) Future Land Use designated at the intersection of S. Atlantic Avenue (SR A1A) and 35<sup>th</sup> Street. The applicant's request is for 0.52 acres of CC and would not exceed 40 acres at this 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.

**The next nearest CC cluster is approximately 0.8 miles north of the subject property along S. Atlantic Avenue (SR A1A).**

- 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.

**The gross floor area is regulated through the land development regulations and will be reviewed at the time of site plan.**

- E. Floor Area Ratio (FAR) of up to 1.00 will be permitted for Community Commercial sites unless accompanied with a PUD zoning classification wherein the FAR may be increased up to 1.75.

**The overall subject site has the potential for a twenty-two thousand six hundred fifty one square foot (22,651 s.f.) building based on allowances in the comprehensive plan. The FAR of up to 1.00 is permitted for CC designated sites unaccompanied with a PUD zoning classification. The Floor Area Ratio (FAR) is regulated through the land development regulations at the time of site plan review.**

### **Concurrency**

The subject site is within the City of Cocoa service area for potable water and within the City of Cocoa Beach service area for wastewater treatment.

The preliminary concurrency analysis did not indicate that the proposed development would cause a deficiency in the transportation adopted level of service.

A School Impact Analysis was not required for this application as this proposed project is not residential.

### **Environmental Resources**

Preliminary review of mapped resources indicates the following land use issues:

- Aquifer Recharge Soils
- Coastal High Hazard Area

- Indian River Lagoon Nitrogen Reduction Overlay
- Protected Species
- Land Clearing & Landscape Requirements

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

### **Historic Resources**

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

### **For Board Consideration**

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

**NATURAL RESOURCES MANAGEMENT DEPARTMENT  
Future Land Use (FLU) Review & Summary  
Item #22SS00002**

**Applicant:** Allen Engineering for OBC Realty

**FLU Request:** RES-15 to CC

**Note:** Applicant wants multi-use building: retail, resort dwelling, & restaurant.

**P&Z Hearing Date:** 5/9/22; **BCC Hearing Date:** 5/26/22

**Tax ID Nos:** 2521003 & 2521005

- 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
- Coastal High Hazard Area
- Indian River Lagoon Nitrogen Reduction Overlay
- Protected Species
- Land Clearing & Landscape Requirements

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 subject parcel contains mapped aquifer recharge soils (Canaveral-Palm Beach-Urban land complex) as shown on the USDA Soil Conservation Service Soils Survey map. The project provides an opportunity to re-establish recharge of the aquifer. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

**Coastal High Hazard Area**

The entire project area is located within the Coastal High Hazard Area (CHHA) as defined by Florida Statute 163.3178(2)(h), and as shown on the CHHA Map. The Coastal Management Element of the Comprehensive Plan, Policy 6.1, designates CHHAs to be those areas below the elevation of the Category 1 storm surge elevation

as defined in Chapter 163, Florida Statute. The applicant may wish to incorporate aspects of resiliency/LID strategies at time of site plan design. Please feel free to contact NRM to discuss potential opportunities.

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

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

#### **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.

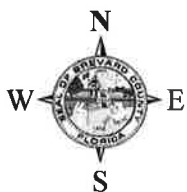
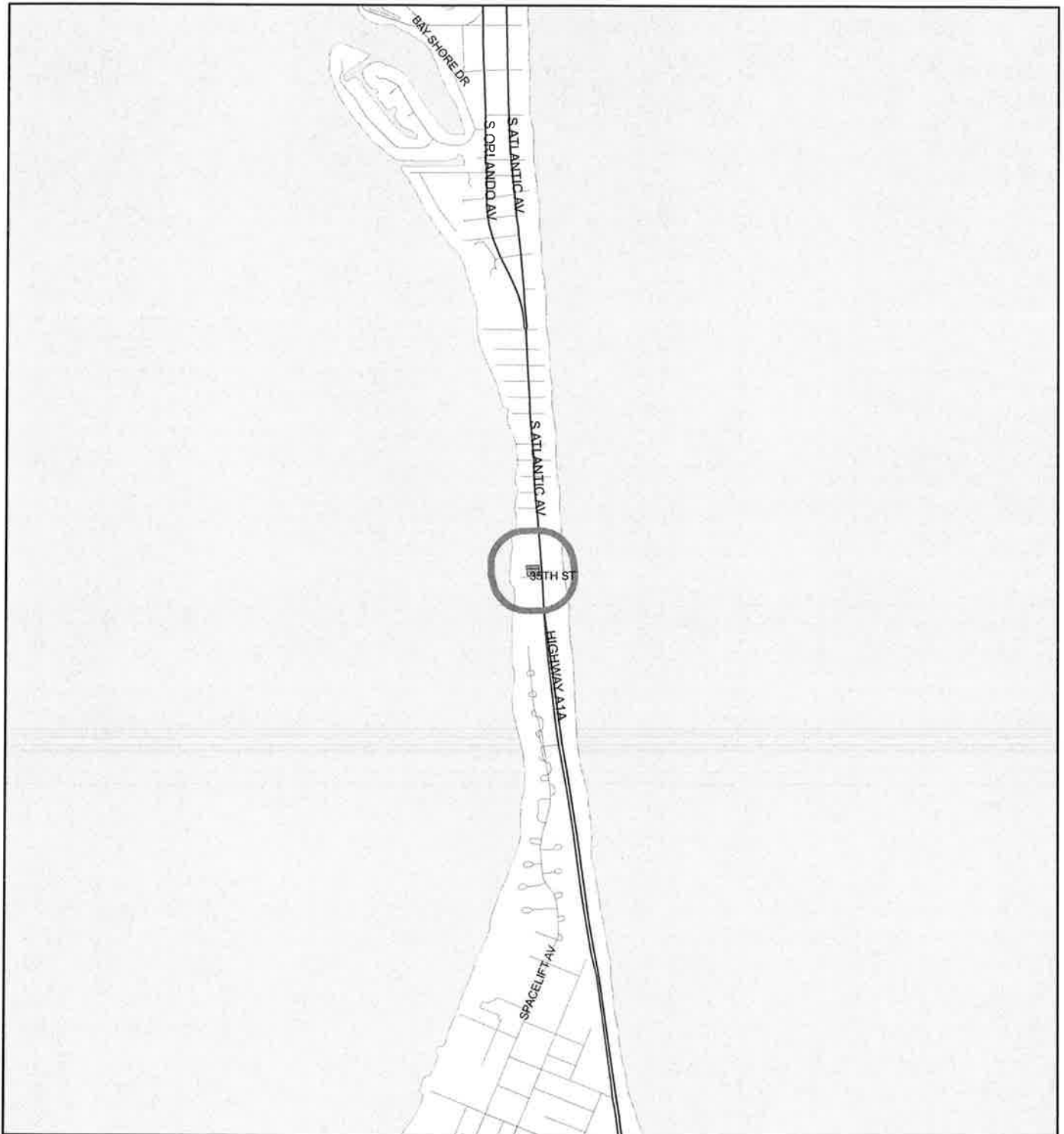
#### **Land Clearing & Landscape Requirements**

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

OBC REALTY, LLC

22SS00002 SMALL SCALE AMENDMENT 22S.05



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

Buffer Distance: 500 feet

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

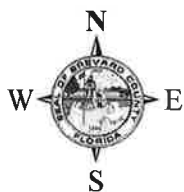
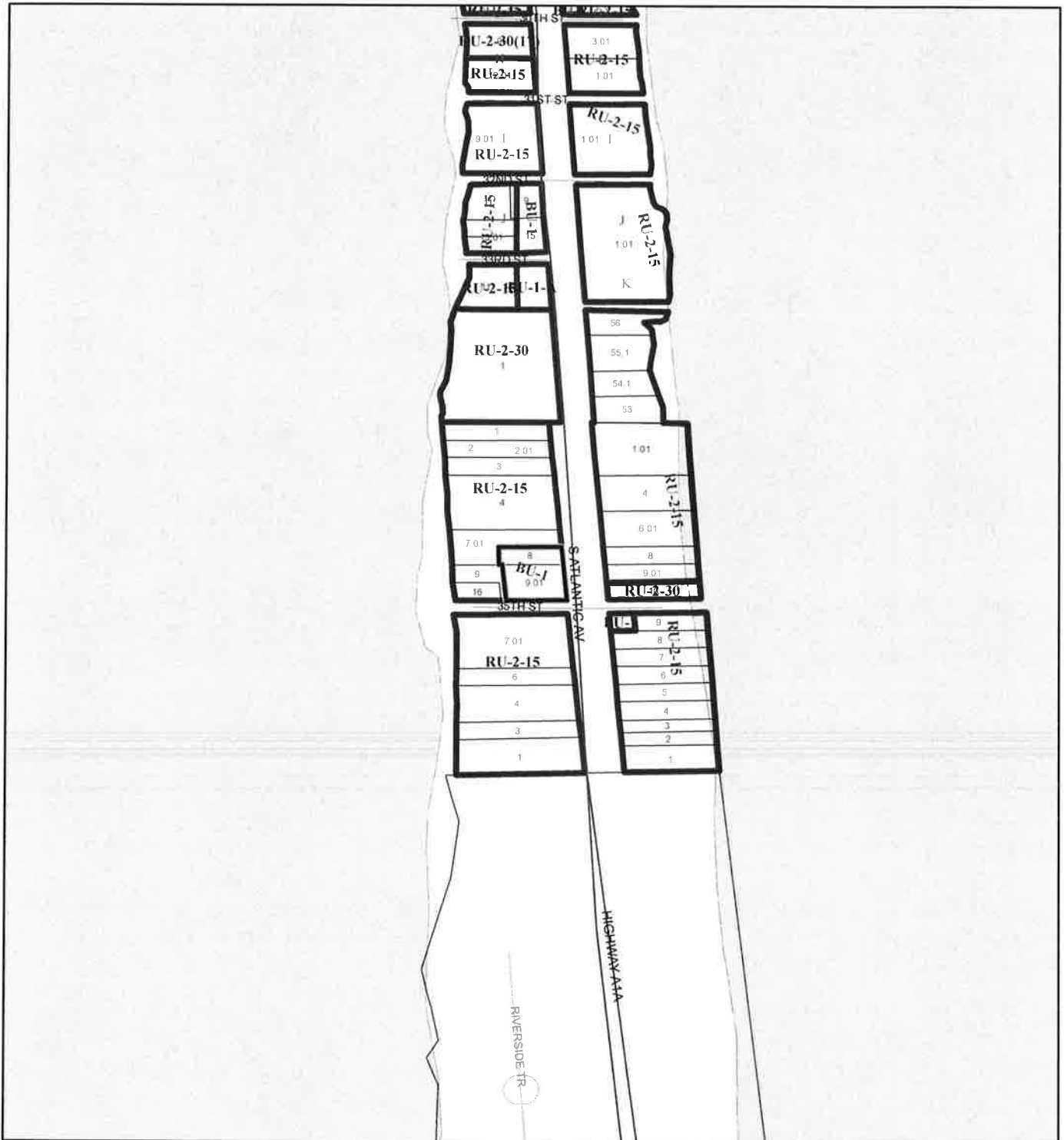
Produced by BoCC - GIS Date: 3/4/2022

— Buffer

■ Subject Property

# ZONING MAP

OBC REALTY, LLC  
22SS00002 SMALL SCALE AMENDMENT 22S.05



1:4,800 or 1 inch = 400 feet

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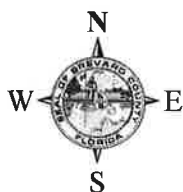
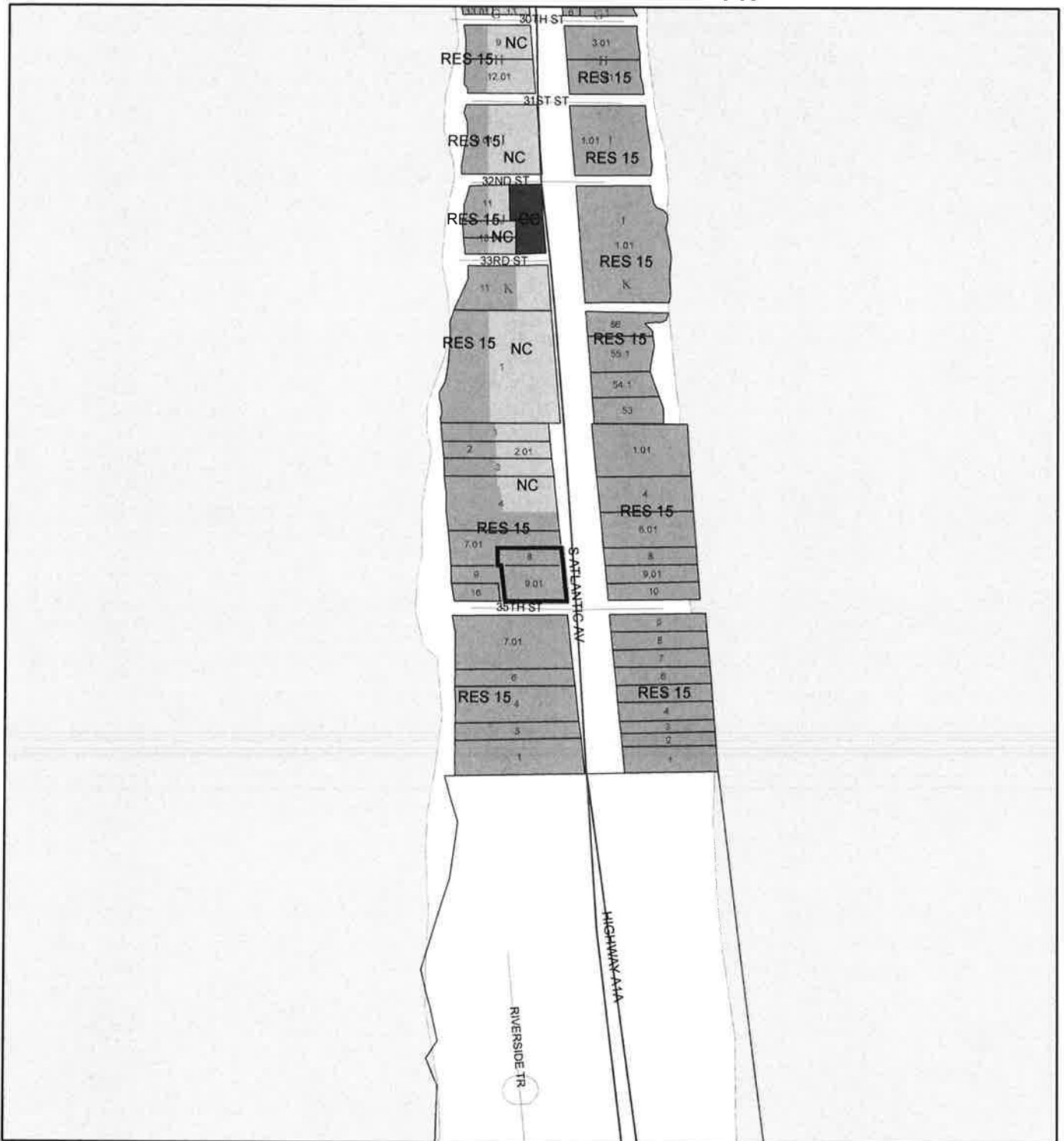
Produced by BoCC - GIS Date: 3/4/2022

- Subject Property
- Parcels
- Zoning

# FUTURE LAND USE MAP

OBC REALTY, LLC

22SS00002 SMALL SCALE AMENDMENT 22S.05



1:4,800 or 1 inch = 400 feet

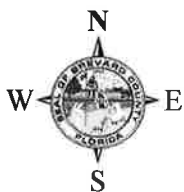
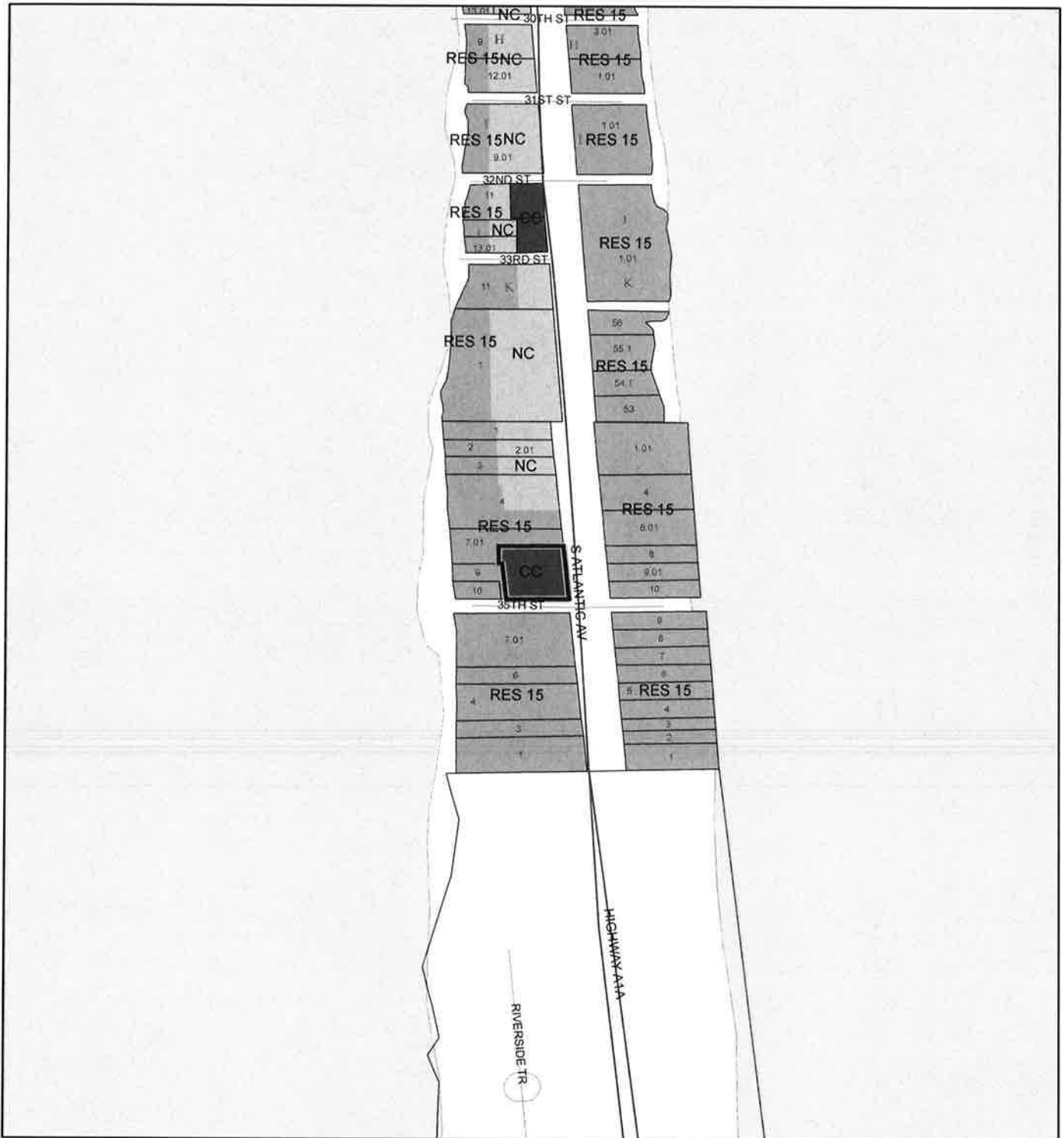
— Subject Property  
 □ Parcels

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Produced by BoCC - GIS Date: 3/4/2022

# PROPOSED FUTURE LAND USE MAP

OBC REALTY, LLC  
22SS00002 SMALL SCALE AMENDMENT 22S.05



1:4,800 or 1 inch = 400 feet

— Subject Property  
□ Parcels

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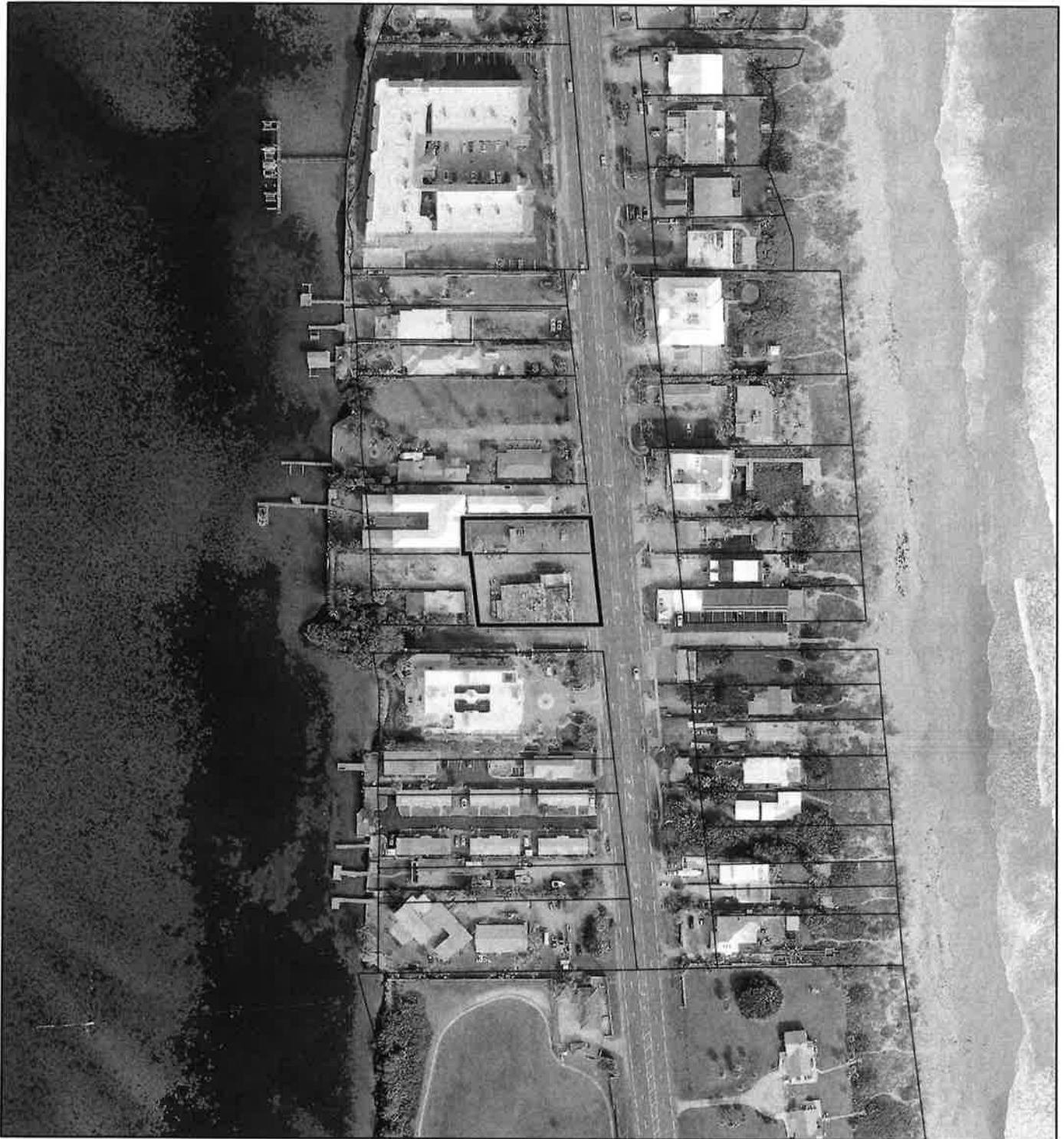
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# AERIAL MAP

OBC REALTY, LLC

22SS00002 SMALL SCALE AMENDMENT 22S.05



1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2021

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Produced by BoCC - GIS Date: 3/4/2022

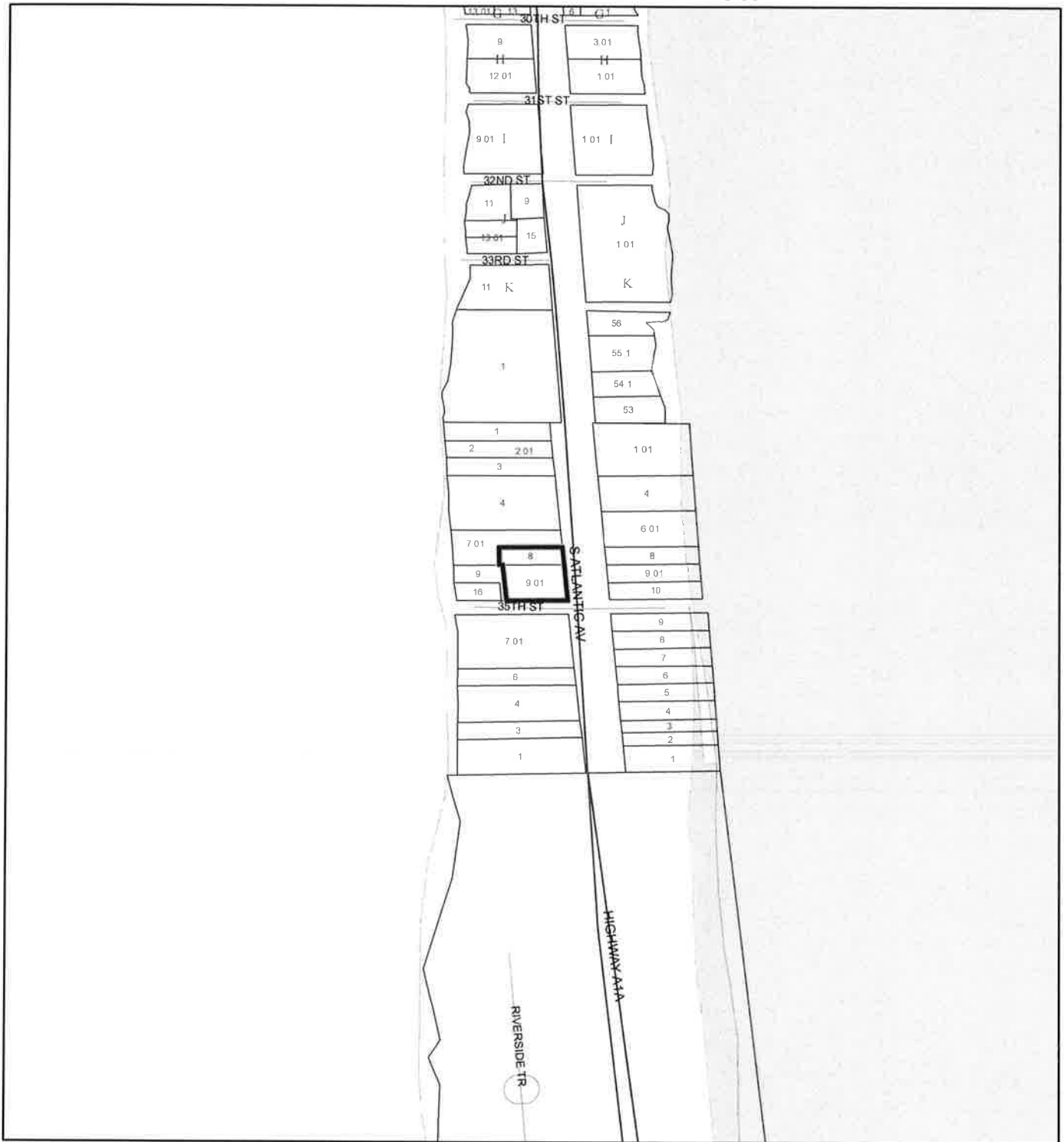
— Subject Property

□ Parcels

# NWI WETLANDS MAP

OBC REALTY, LLC

22SS00002 SMALL SCALE AMENDMENT 22S.05



1:4,800 or 1 inch = 400 feet

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

Produced by BoCC - GIS Date: 3/4/2022

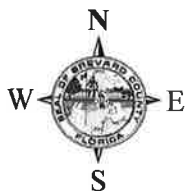
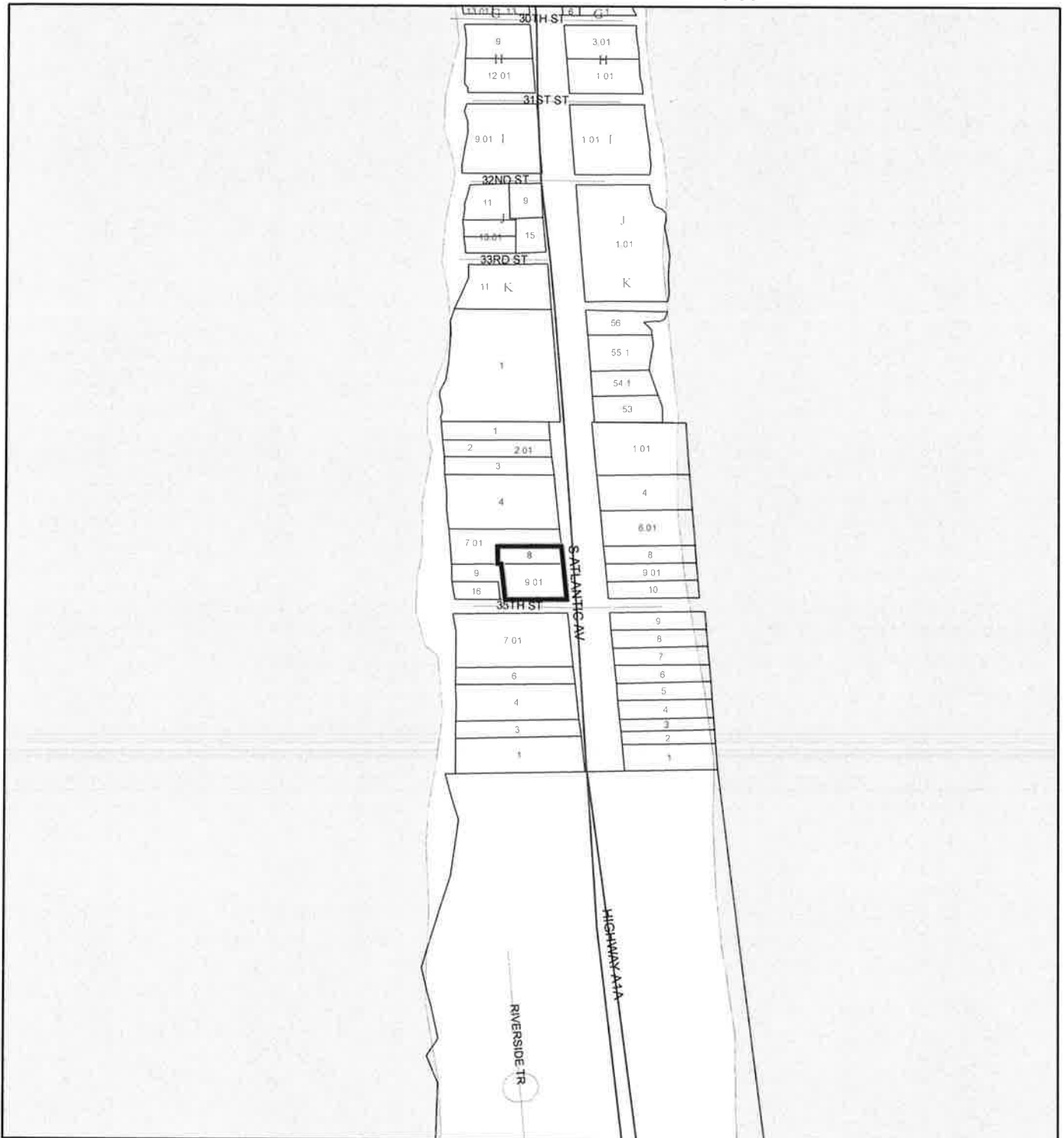
## National Wetlands Inventory (NWI)

	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

OBC REALTY, LLC

22SS00002 SMALL SCALE AMENDMENT 22S.05



1:4,800 or 1 inch = 400 feet

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

Produced by BoCC - GIS Date: 3/4/2022

## 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

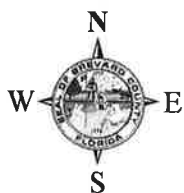
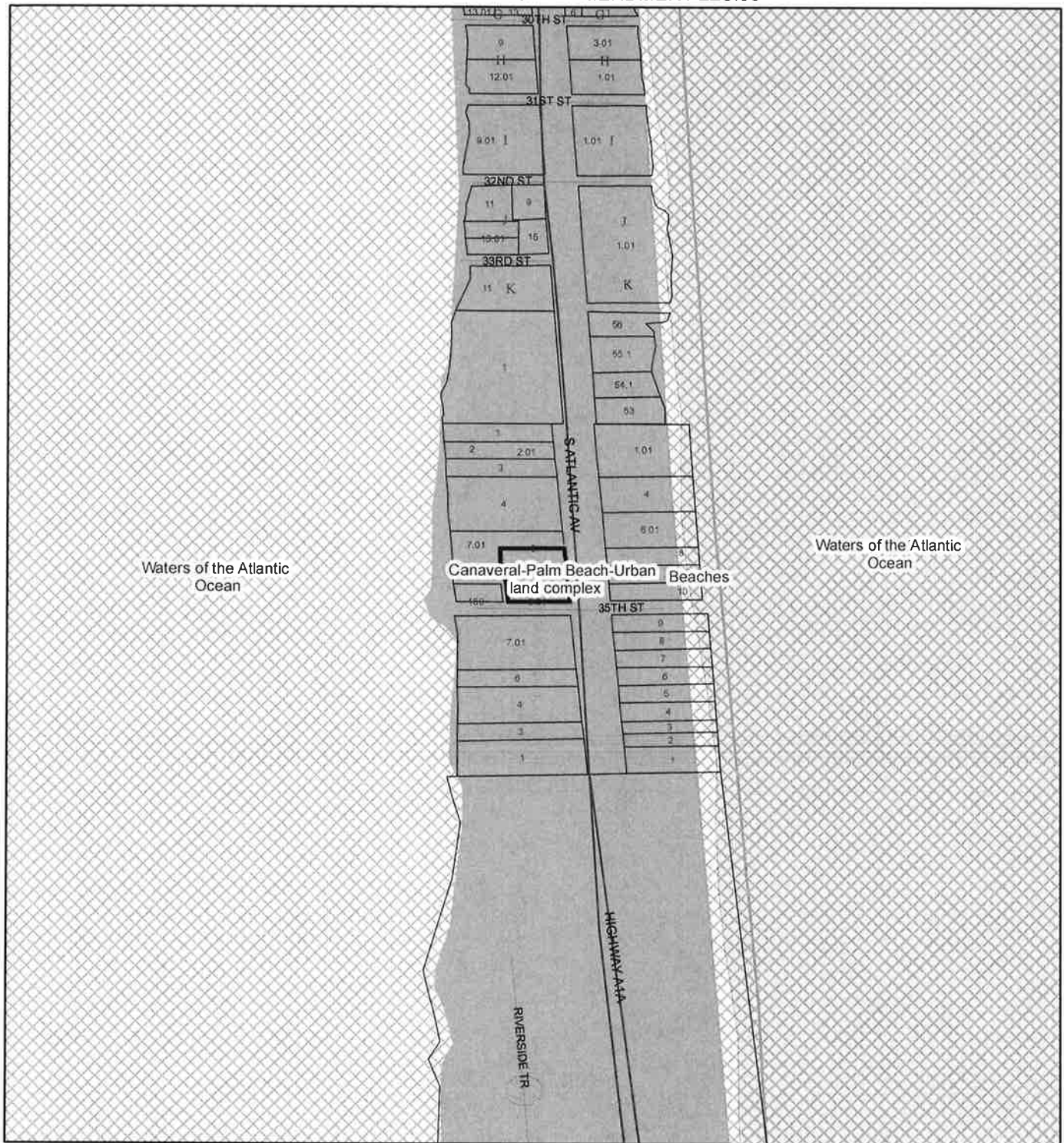
Subject Property

Parcels

# USDA SCSSS SOILS MAP

OBC REALTY, LLC

22SS00002 SMALL SCALE AMENDMENT 22S.05



1:4,800 or 1 inch = 400 feet

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

Produced by BoCC - GIS Date: 3/4/2022

## USDA SCSSS Soils

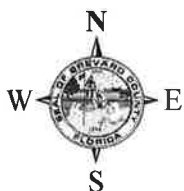
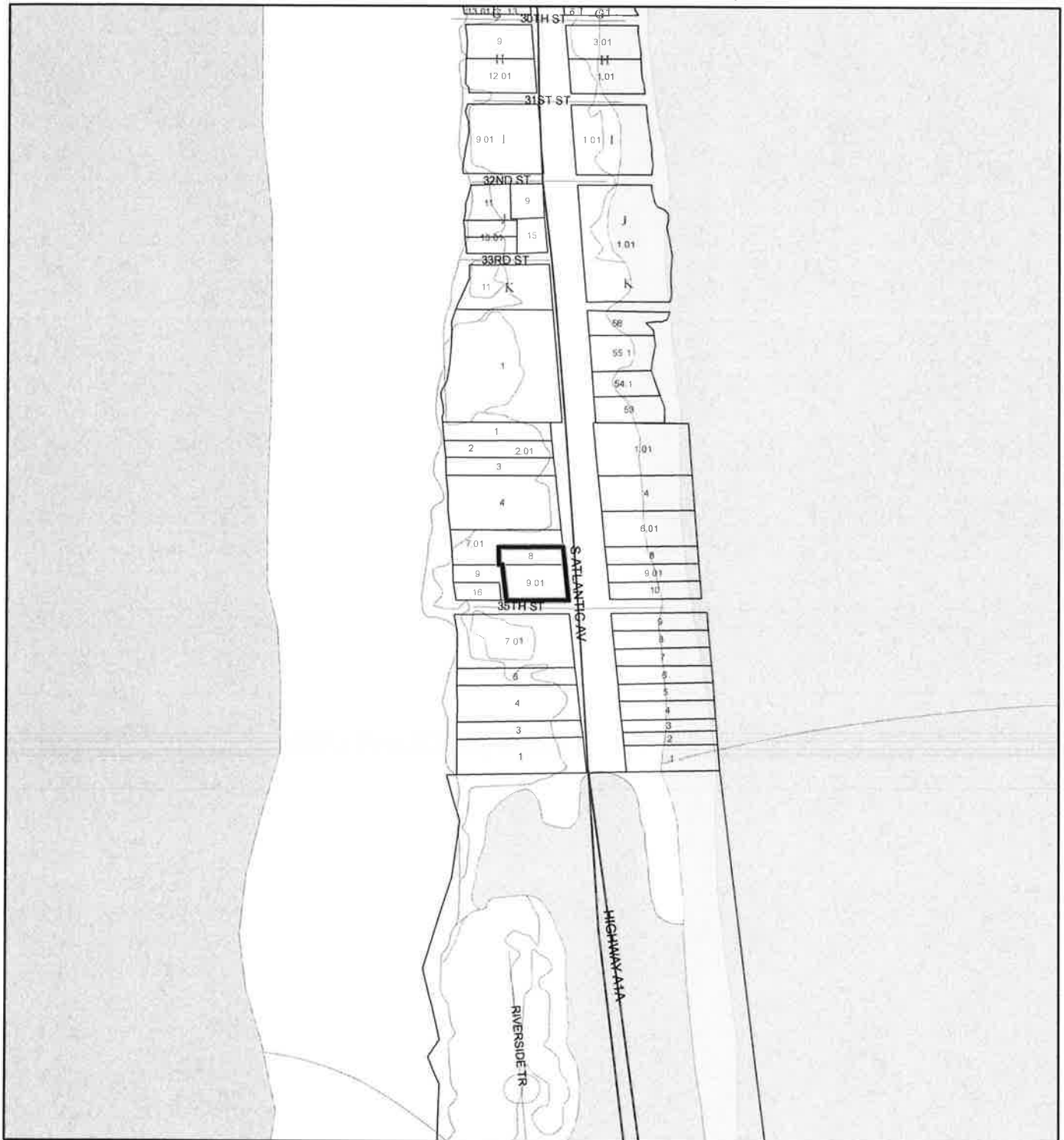
- Aquifer and Hydric
- Aquifer
- Hydric
- None

- Subject Property
- Parcels

# FEMA FLOOD ZONES MAP

OBC REALTY, LLC

22SS00002 SMALL SCALE AMENDMENT 22S.05



1:4,800 or 1 inch = 400 feet

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

Produced by BoCC - GIS Date: 3/4/2022

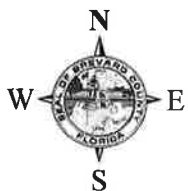
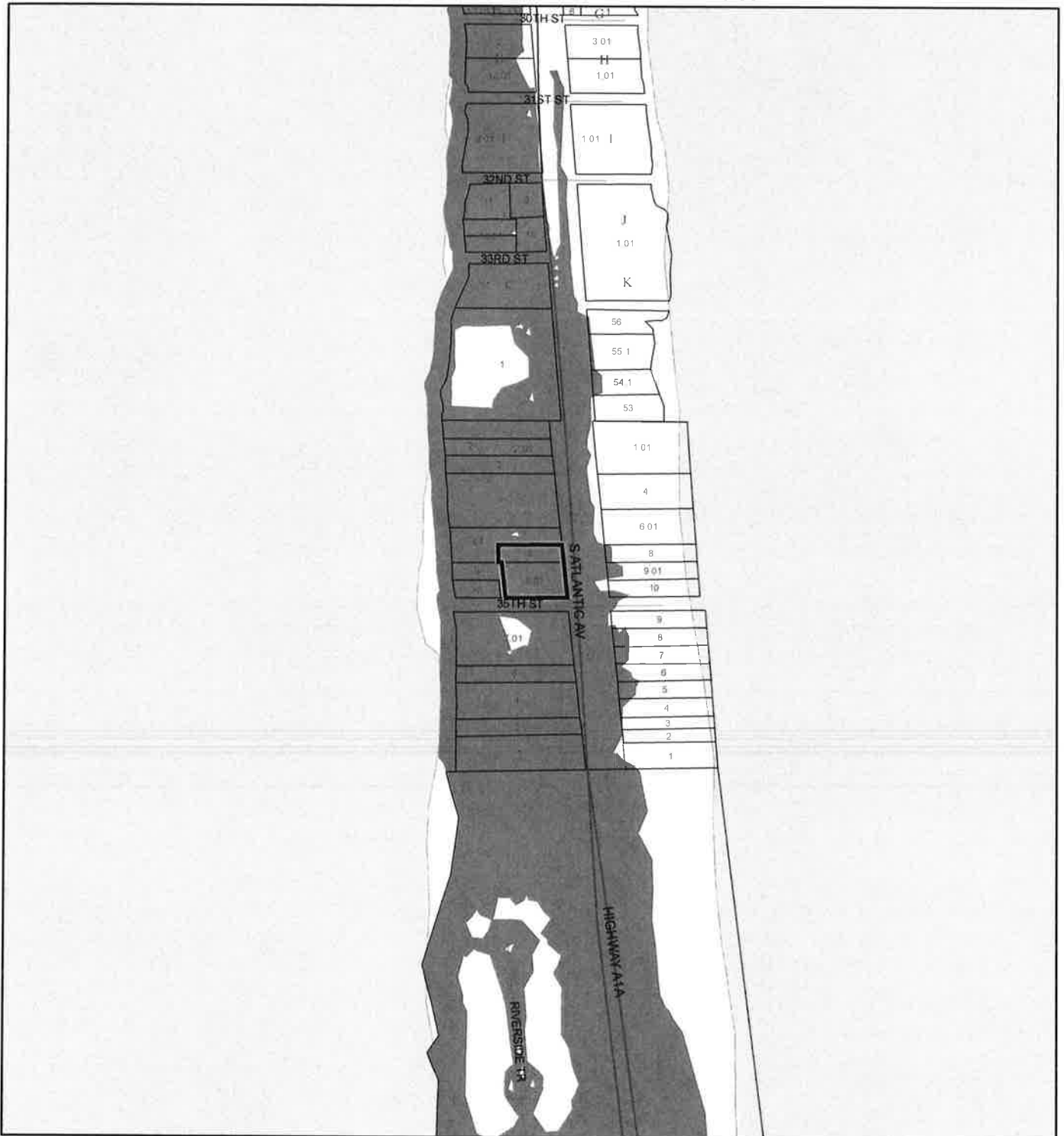
## FEMA Flood Zones

A	AO	X
AE	Open Water	
AH	VE	
Subject Property	Parcels	

# COASTAL HIGH HAZARD AREA MAP

OBC REALTY, LLC

22SS00002 SMALL SCALE AMENDMENT 22S.05



1:4,800 or 1 inch = 400 feet

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

Produced by BoCC - GIS Date: 3/4/2022

— Subject Property

□ Parcels

**Coastal High Hazard Area**

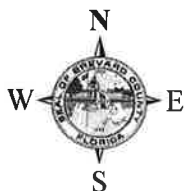
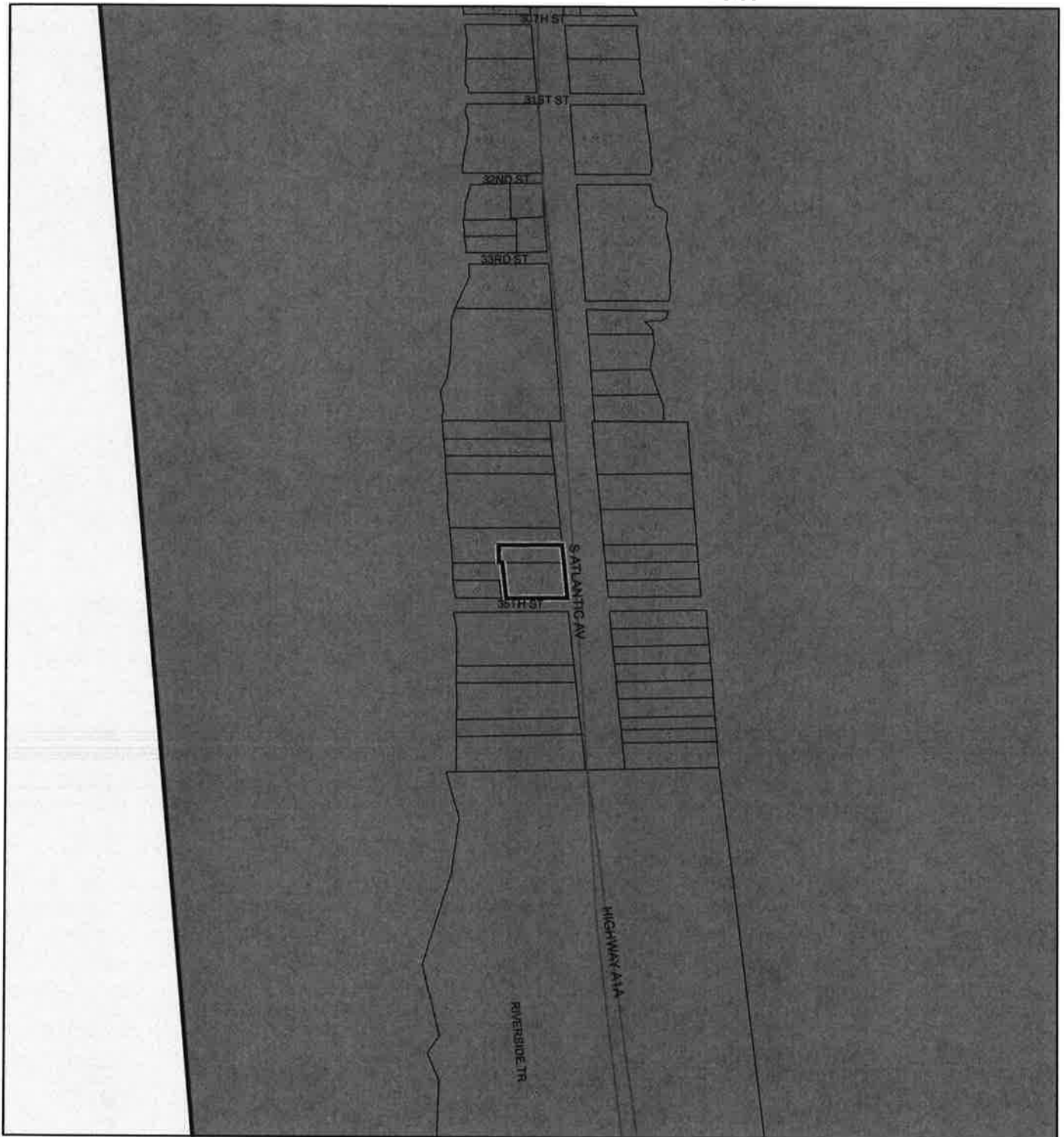
■ SurgeZoneCat1



# INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

OBC REALTY, LLC

22SS00002 SMALL SCALE AMENDMENT 22S.05



1:4,800 or 1 inch = 400 feet

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

Produced by BoCC - GIS Date: 3/4/2022

 Subject Property

 Parcels

## Septic Overlay

 40 Meters

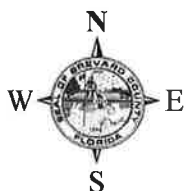
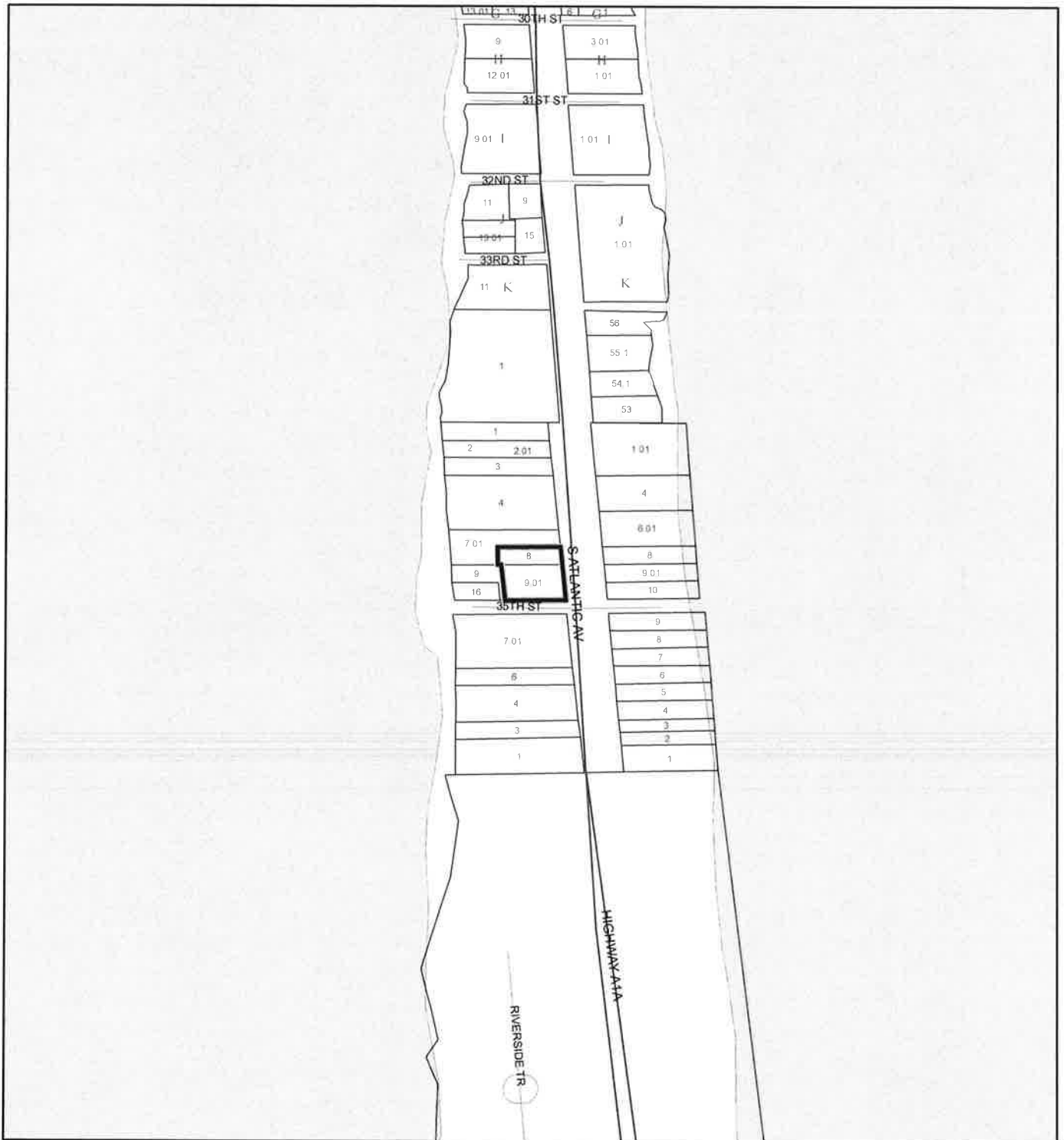
 60 Meters

 All Distances

# EAGLE NESTS MAP

OBC REALTY, LLC

22SS00002 SMALL SCALE AMENDMENT 22S.05



1:4,800 or 1 inch = 400 feet

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

Produced by BoCC - GIS Date: 3/4/2022

 Subject Property

 Parcels



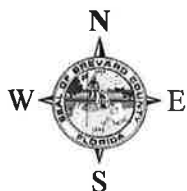
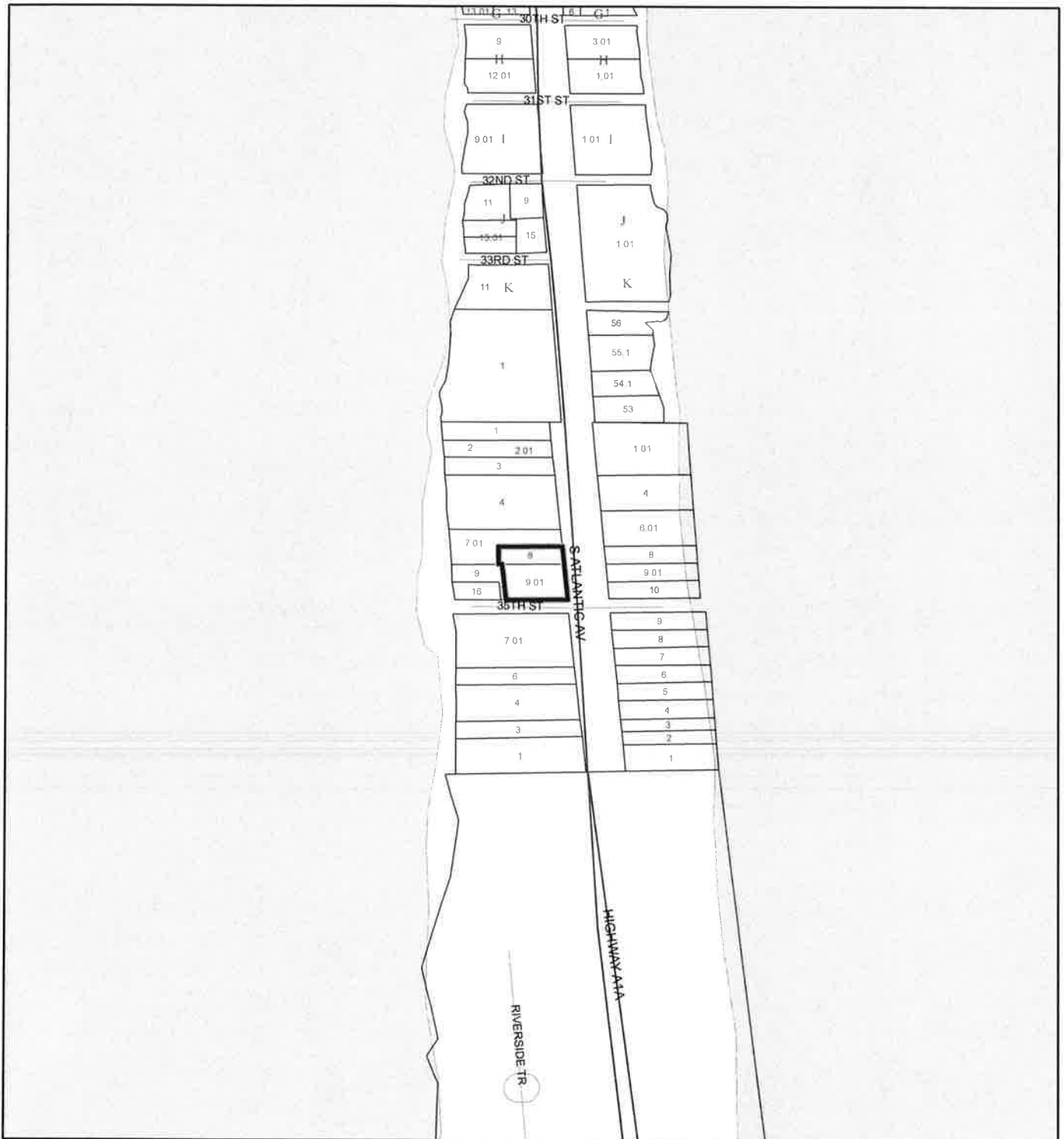
Eagle Nests  
FWS 2010



# SCRUB JAY OCCUPANCY MAP

OBC REALTY, LLC




22SS00002 SMALL SCALE AMENDMENT 22S.05



1:4,800 or 1 inch = 400 feet

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

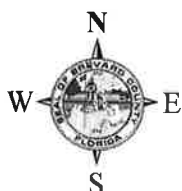
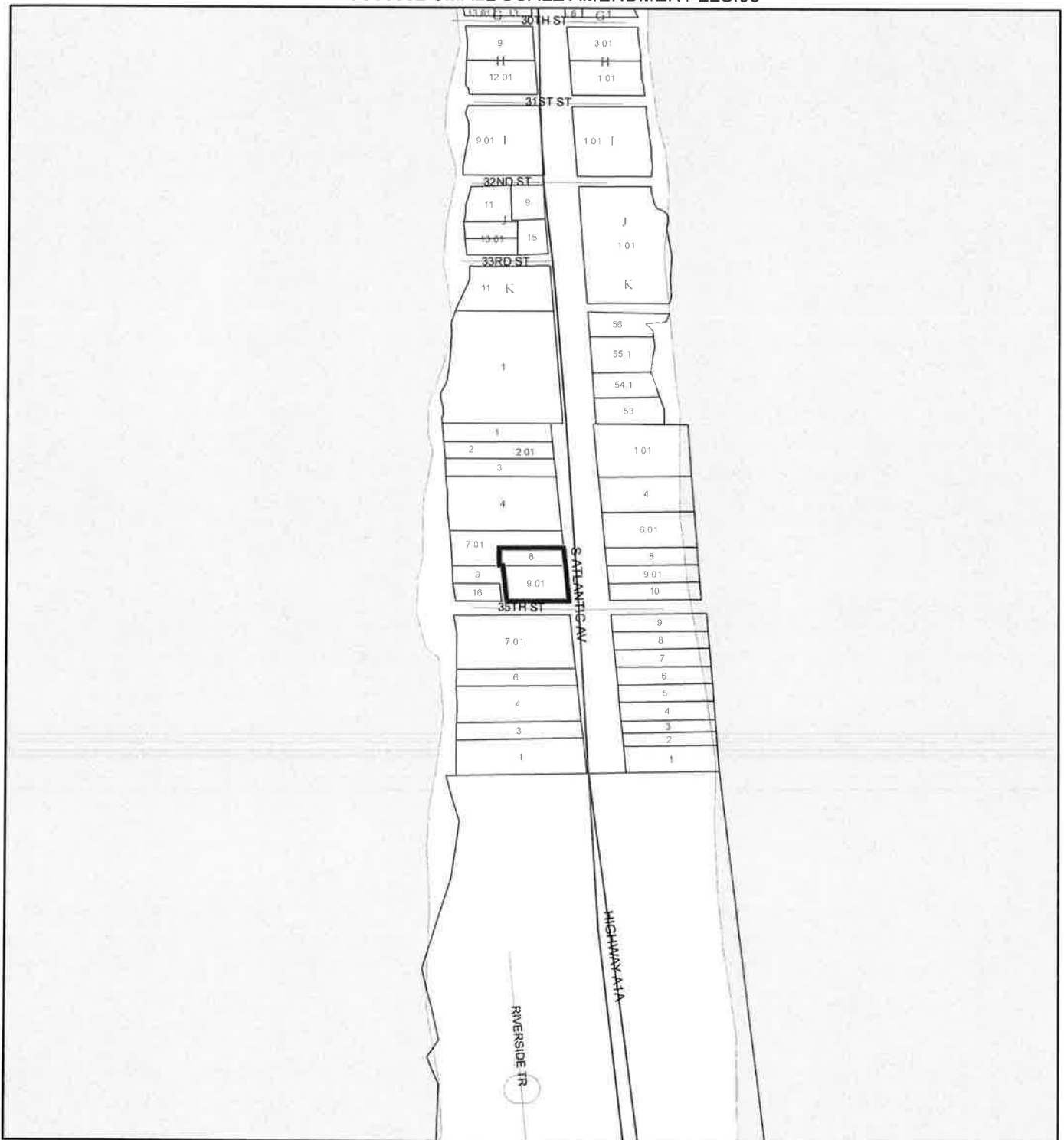
Produced by BoCC - GIS Date: 3/4/2022

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

# SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

OBC REALTY, LLC

22SS00002 SMALL SCALE AMENDMENT 22S.05







1:4,800 or 1 inch = 400 feet

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

Produced by BoCC - GIS Date: 3/4/2022

## SJRWMD FLUCCS Upland Forests

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

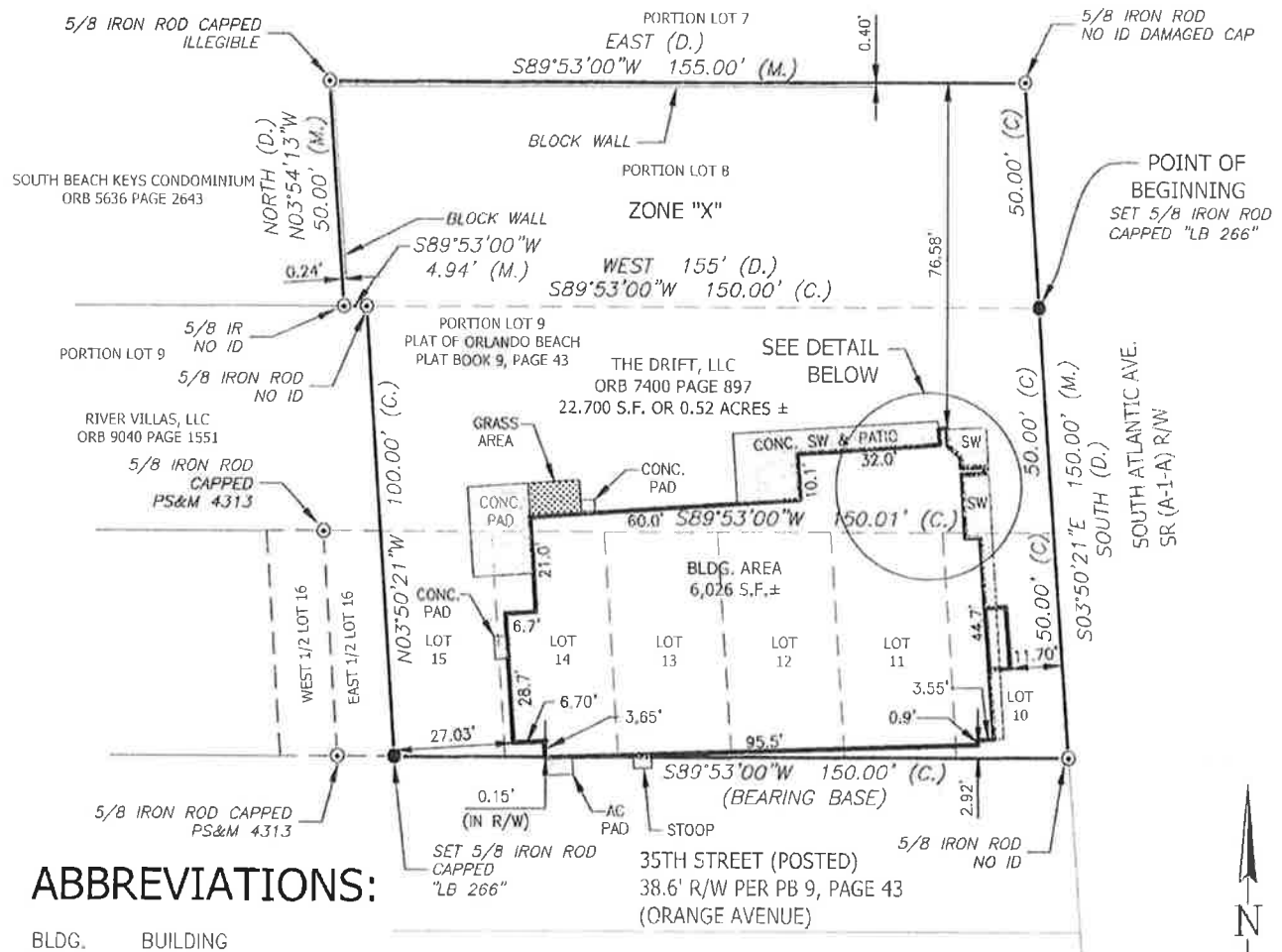
 Subject Property

 Parcels

# SKETCH TO ACCOMPANY DESCRIPTION

## BOUNDARY SURVEY

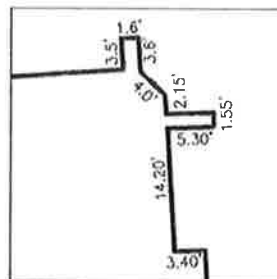
3466 S. ATLANTIC AVE. - COCOA BEACH



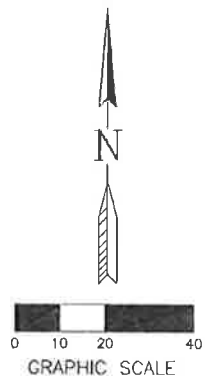
### ABBREVIATIONS:

BLDG.	BUILDING
CONC.	CONCRETE
LLC	LIMITED LIABILITY COMPANY
ID	IDENTIFICATION
ORB	OFFICIAL RECORD BOOK
PB	PLAT BOOK
R/W	RIGHT-OF-WAY
S.F.	SQUARE FEET
SR	STATE ROAD
SW	SIDEWALK
C	CALCULATED
D	DEED
M	MEASURED
P	POSTED

SHEET 2 OF 2



DETAIL  
N.T.S.



**ALLEN**  
Engineering, Inc.  
SURVEYORS - ENGINEERS  
106 DIXIE LANE  
COCOA BEACH, FLORIDA 32931

TELEPHONE: (321)783-7443 - FAX: (321)783-5902  
WEBSITE: www.alleneng.net - EMAIL: info@alleneng.net

SEE SHEET 1 FOR DESCRIPTION,  
SURVEYOR'S CERTIFICATION & NOTES

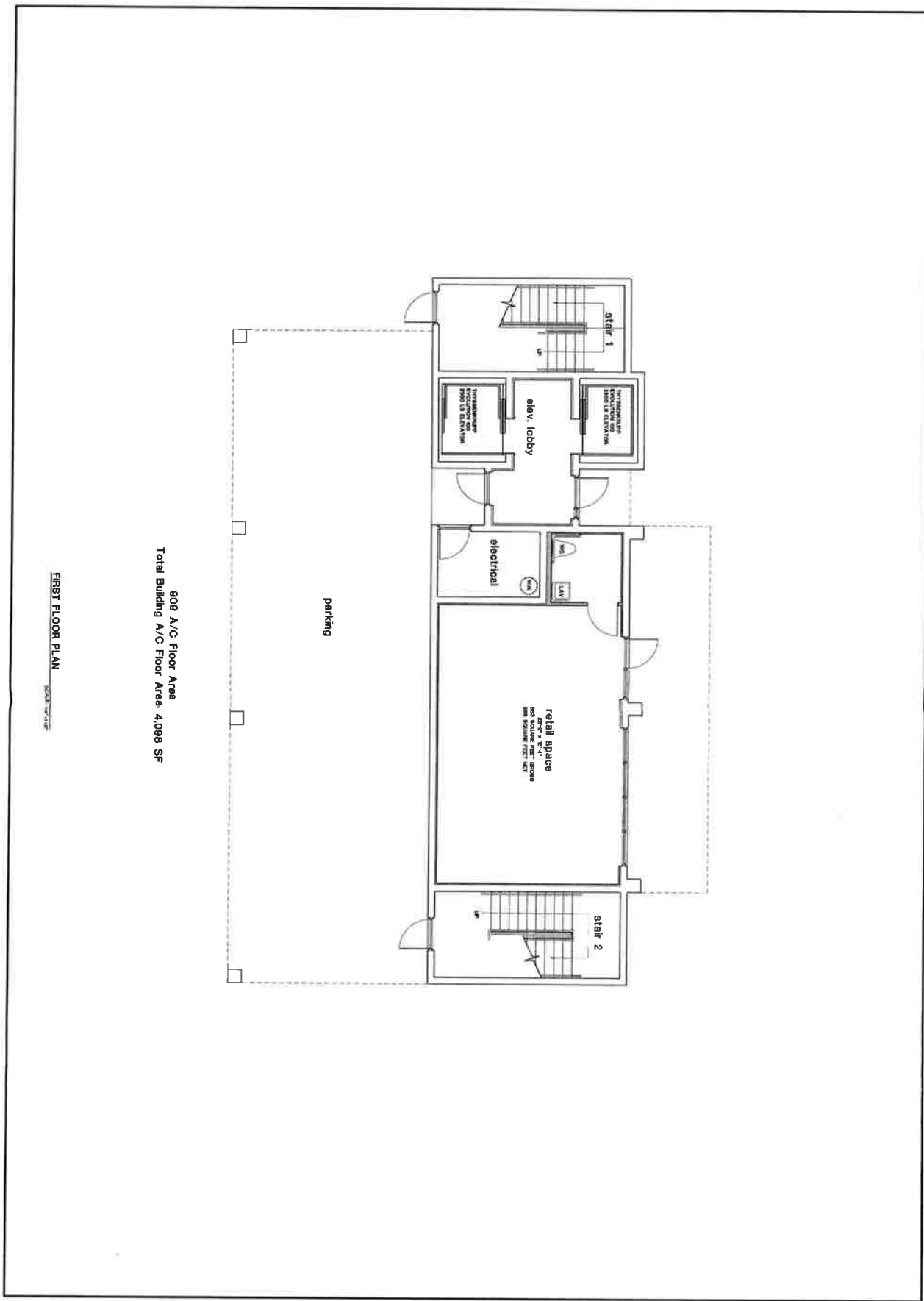
PREPARED AND CERTIFIED FOR:

OBC Realty, LLC

DATE: 2/28/22  
DRAWN BY: DPA  
JOB NO.  
SCALE: 1"=40'

(b)

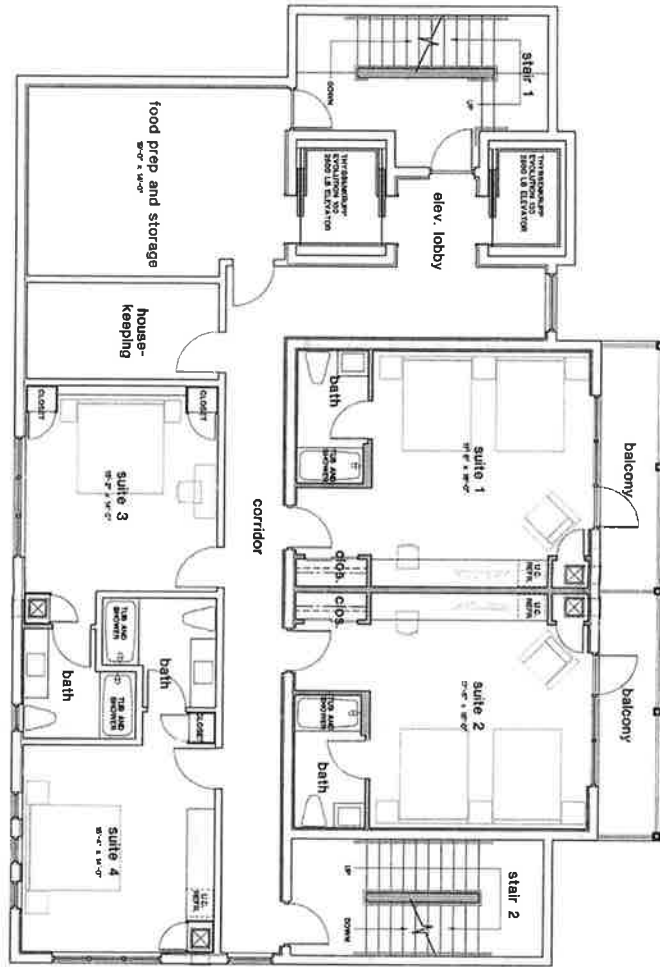




FIRST FLOOR PLAN

<p>PROJECT NO. <b>A-1</b></p> <p>SHEET NO. <b>01 - SHEET 1</b></p>	<p><b>JACKSON KIRSCHNER ARCHITECTS, P.A.</b></p> <p>1000 N. W. 10th Ave. Suite 1000 Fort Lauderdale, FL 33304</p>	<p><b>FIRST FLOOR PLAN</b></p>	<p><b>RAV DEVELOPMENT GROUP</b></p> <p>COMMERCIAL BUILDING 3466 SOUTH ATLANTIC AVE. COCOA BEACH, FLORIDA</p>	<p>DESIGNED BY <b>RAV</b></p> <p>DRAWN BY <b>RAV</b></p>	<p>DATE: <b>01-14-22</b></p> <p>BY: <b>RAV</b></p>
--	---	--------------------------------	--	--	--

17



SECOND FLOOR PLAN

2,320 A/C Floor Area

PROJECT NO.  
**A-2**  
- 37 - ARCHITECTS

**JACKSON KIRSCHNER**  
ARCHITECTS P.A.  
1400 W. 10th Ave., Suite 100  
Cocoa Beach, FL 32909  
Tel: 321/833-1111  
Fax: 321/833-1112  
www.jkarchitects.com

1. Project No. A-2, 2. Suite 1, 3. Suite 2, 4. Suite 3, 5. Suite 4, 6. Bath, 7. Bedroom, 8. Closet, 9. Balcony, 10. Stairs, 11. Elevator Lobby, 12. Food Prep and Storage, 13. House-keeping.

**SECOND FLOOR PLAN**

**RAV DEVELOPMENT GROUP**  
COMMERCIAL BUILDING  
3466 SOUTH ATLANTIC AVE.  
COCOA BEACH, FLORIDA

REVISIONS  
DATE  
BY  
REVISION  
DATE  
BY

DESIGN BY: **JK**  
CHECKED BY: **JK**  
DATE: **11/28/11**  
SCALE: **1/8" = 1'-0"**

(15)

19

SHEET NO.  
**A-3**  
- OF - SHEETS

**JACKSON KIRSCHNER**  
ARCHITECTS P.A.  
1000 N. W. 10th St., Suite 100  
Fort Lauderdale, FL 33304  
Tel: 305.551.1000  
Fax: 305.551.1001  
www.jkarchitects.com

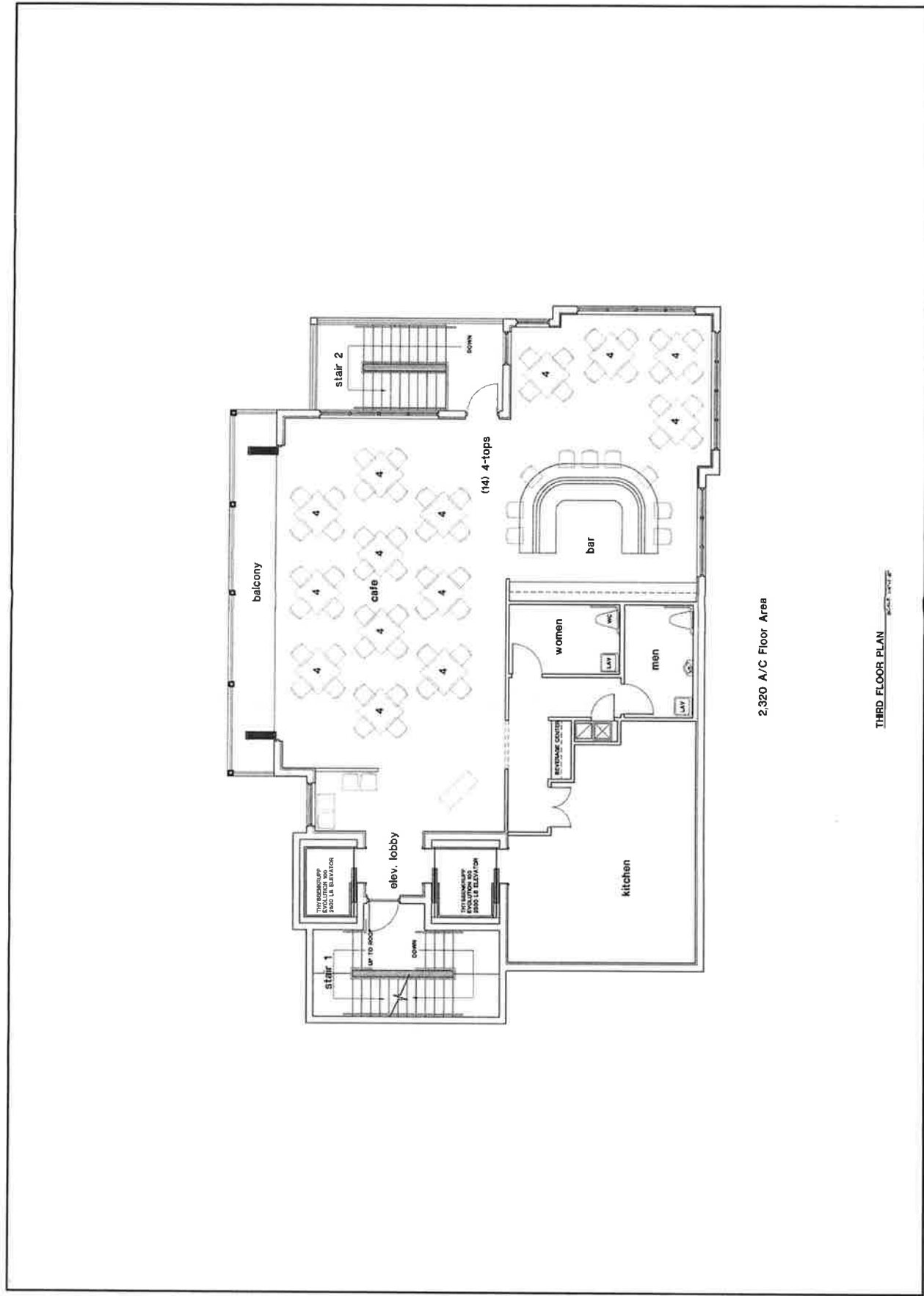
THIRD FLOOR PLAN

THIRD FLOOR PLAN

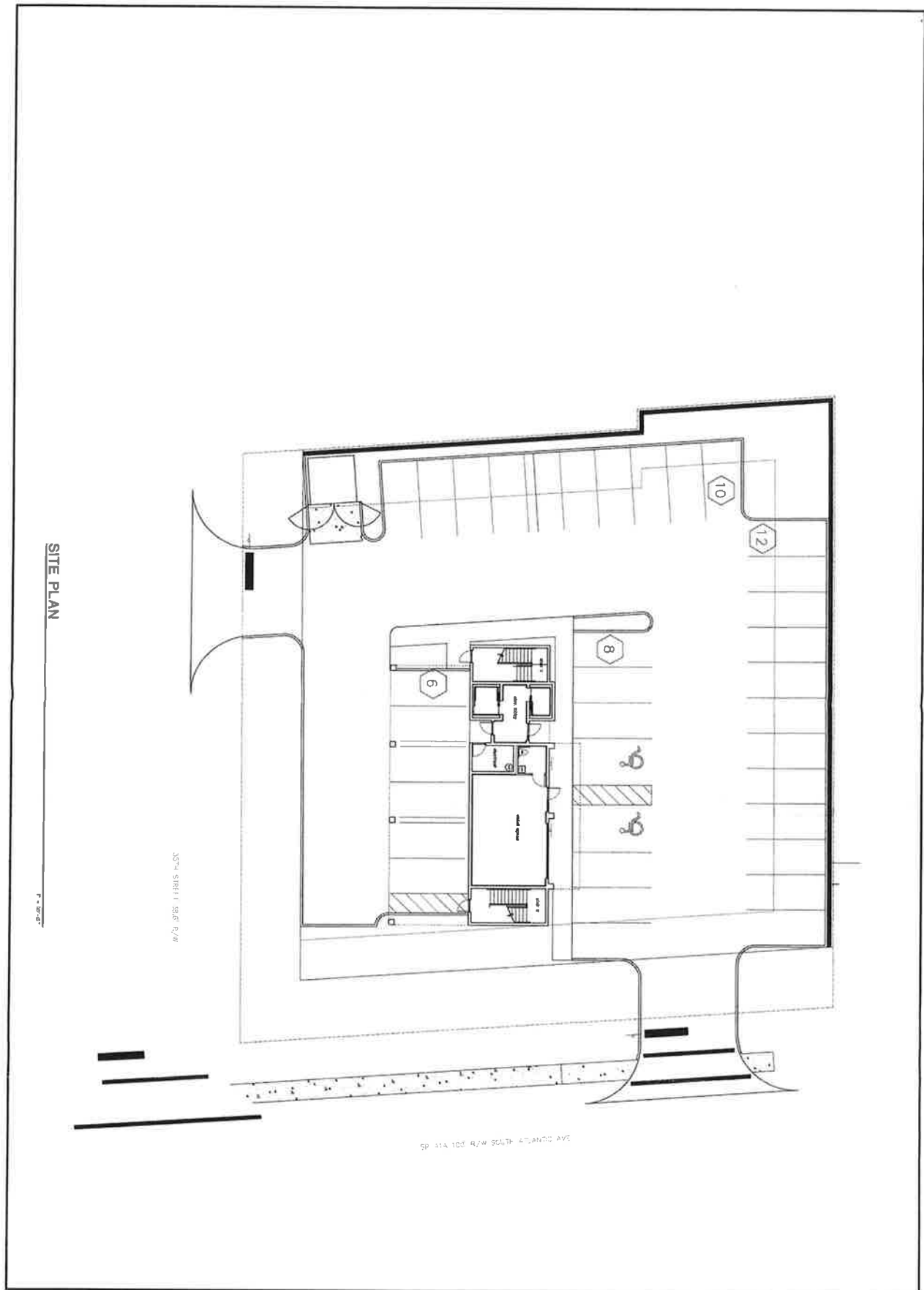
**QAV DEVELOPMENT GROUP**  
COMMERCIAL BUILDING  
3466 SOUTH ATLANTIC AVE.  
COCOA BEACH, FLORIDA

REVISIONS  
DATE  
BY  
REVISION  
DATE  
BY

DESIGNED BY  
CHECKED BY  
DATE  
DATE



THIRD FLOOR PLAN



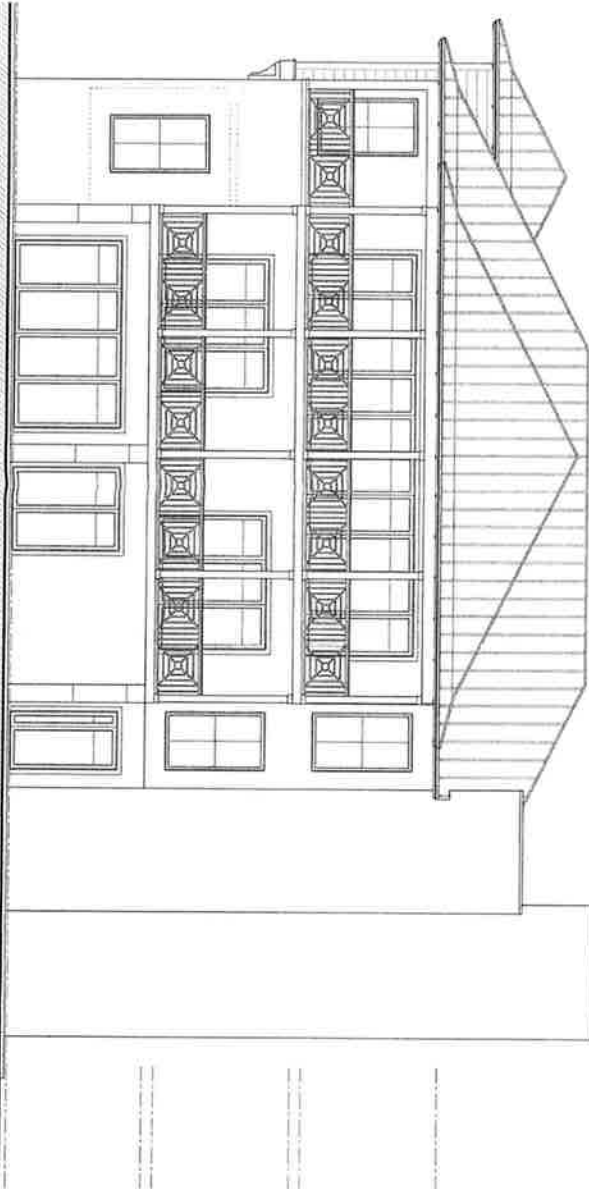
SITE PLAN

<p>SHEET NO. <b>A-4</b></p> <p>DATE: 11/11/11</p>	<p><b>JACKSON KIRSCHNER</b> ARCHITECTS, P.A. LAWRENCEVILLE, GA</p> <p>10511g Ave A, Suite 100 201-281-1117</p>	<p>Andrew Robert Kirschner License No. 11111111</p>	<p><b>SITE PLAN</b></p>	<p><b>RAV DEVELOPMENT GROUP</b> COMMERCIAL BUILDING 3466 SOUTH ATLANTIC AVE. COCOA BEACH, FLORIDA</p>	<p>REVISIONS</p> <table border="1"> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </table>	NO.	DATE	DESCRIPTION													<p>DESIGNED BY: JKL DRAWN BY: JKL DATE: 11/11/11</p>
NO.	DATE	DESCRIPTION																			

28



NORTH ELEVATION



EAST ELEVATION



SHEET NO.  
A-5  
-OF- SHEETS

JACKSON KIRSCHNER  
ARCHITECTS, P.A.  
ARCHITECTS  
3466 SOUTH ATLANTIC AVE.  
COCOA BEACH, FLORIDA 32931  
TEL: 321.851.1111  
WWW.JKA-ARCHITECTS.COM

DATE: 01.14.20  
DRAWN BY: JKA  
CHECKED BY: JKA  
APPROVED BY: JKA

EXTERIOR ELEVATIONS

RAV DEVELOPMENT GROUP  
COMMERCIAL BUILDING  
3466 SOUTH ATLANTIC AVE.  
COCOA BEACH, FLORIDA

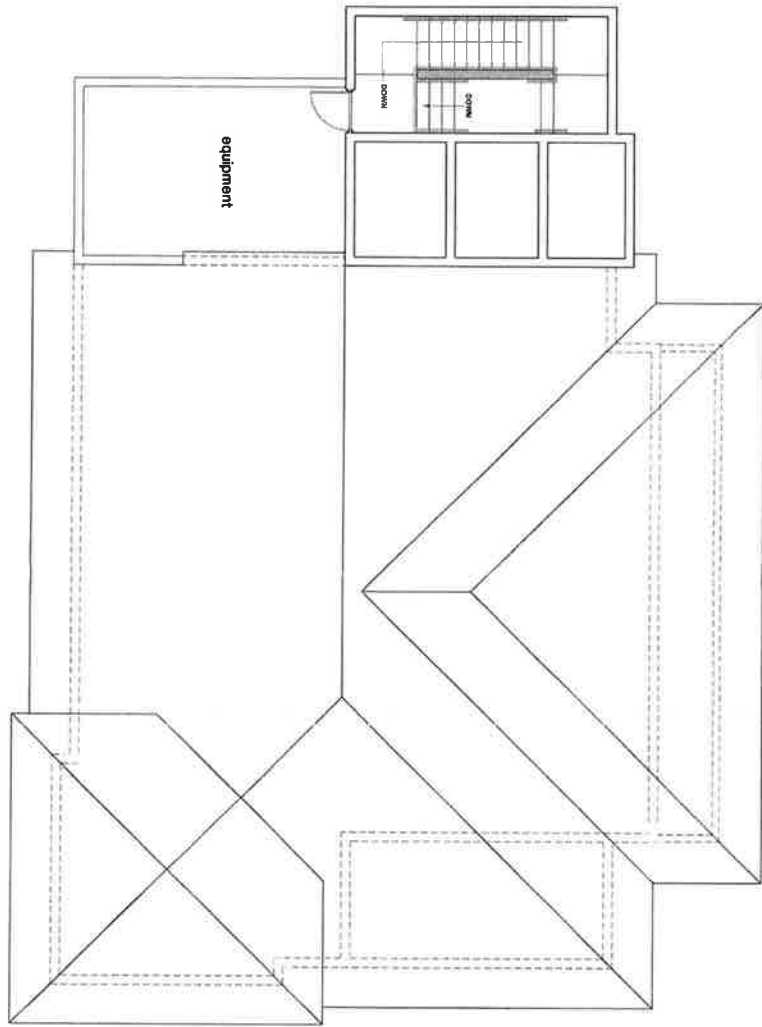
REVISIONS  
NO. DATE DESCRIPTION  
1 01.14.20 INITIAL DESIGN  
2 01.14.20 REVISED DESIGN  
3 01.14.20 REVISED DESIGN  
4 01.14.20 REVISED DESIGN  
5 01.14.20 REVISED DESIGN  
6 01.14.20 REVISED DESIGN  
7 01.14.20 REVISED DESIGN  
8 01.14.20 REVISED DESIGN  
9 01.14.20 REVISED DESIGN  
10 01.14.20 REVISED DESIGN

PROJECT NO. 2019-001  
DATE: 01.14.20  
DRAWN BY: JKA  
CHECKED BY: JKA  
APPROVED BY: JKA

21

ROOF PLAN

1/4" = 1'-0"



SECTIONS = 40  
A-6  
SHEET NO.

JACKSON KIRSCHNER  
ARCHITECTS, P.A.  
1000 N. W. 10th St., Suite 100  
Fort Lauderdale, FL 33304  
TEL: 561-555-1111  
FAX: 561-555-1112

1/4" = 1'-0"

ROOF PLAN

RAV DEVELOPMENT GROUP  
COMMERCIAL BUILDING  
3466 SOUTH ATLANTIC AVE.  
COCOA BEACH, FLORIDA

REVISIONS  
DATE  
BY  
CHECKED  
DATE  
BY

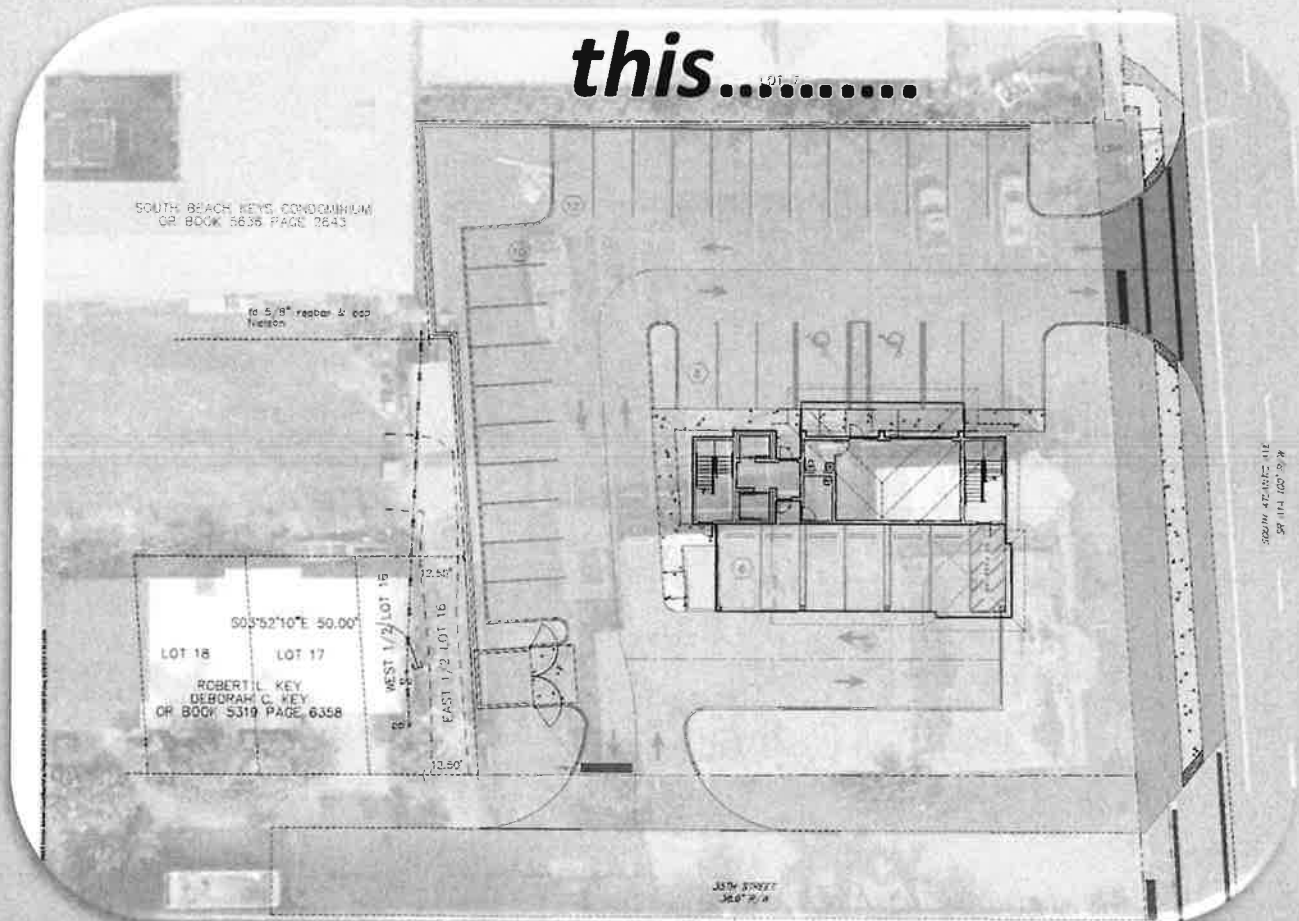
DRAWN BY  
DATE  
BY  
CHECKED  
DATE  
BY

23

## What if this...

Could become  
something  
similar to

**this...**



**Comprehensive Plan Amendment  
Consistency and Justification Report  
OBC, LLC  
Brevard County  
Rochelle W. Lawandales, FAICP**

# ROCHELLE W. LAWANDALES, FAICP

## MEMORANDUM

DATE: May 4, 2022  
TO: Mr. Jack Kirschenbaum, Esquire  
GrayRobinson, P.A.  
RE: Consistency and Compatibility Report-OBC Realty, LLC

Property Location: Atlantic Avenue and 35th Street, South Cocoa Beach in Unincorporated Brevard County  
Existing Use: Vacant parking lot and former Bar  
Existing Land use: Residential 15  
Existing Zoning: BU-1  
Proposed/Requested Land Use: Community Commercial, to make the BU-1 consistent with the Future Land Use Map

### INTRODUCTION

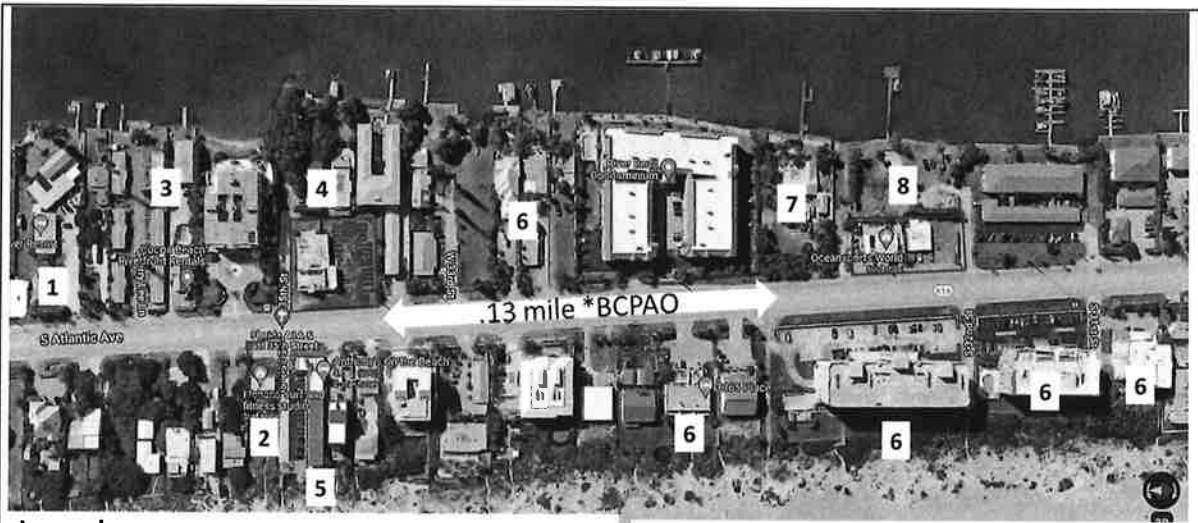
The Brevard County staff report states: "The applicant is requesting to amend the Future Land Use designation from Residential 15 (RES 15) to Community Commercial (CC) on 0.52 acres to allow for redevelopment of the subject property with a mixed use building, that would include commercial retail, resort dwellings, and a restaurant. The applicant has provided a concept plan which has not been vetted by staff for meeting Land Development Regulations and is for discussion purposes only.

The subject property currently has a Future Land Use designation of RES 15 and is developed with one structure (built in 1958) that was formerly utilized as a nightclub/bar (a non-conforming use). The original future land use that was adopted with the Comprehensive Plan in September of 1988 was Residential land use and Urban residential density (30 dwelling units per acre maximum) which did not take into account the existing development on the subject property."

I have been asked to evaluate the Future Land Use Map amendment against the appropriate and relevant policies in the Comprehensive plan to render an opinion as to the consistency and compatibility of the request with the Comprehensive Plan and the surrounding community. To do that, I have visited the site and prepared a series of maps and figures to demonstrate existing conditions and compatibility with the area with the proposed redevelopment project.

Map 1 is a 2 part composite map that shows the existing uses and commercial zoning along the AIA corridor within proximity to the subject property. The County's Land Use Map and Zoning Map, both found in the staff report to the Local Planning Agency/Planning Board for this item, are incorporated by reference.

# **MAP 1** **GENERALIZED LOCATION AND SURROUNDING COMMUNITY**



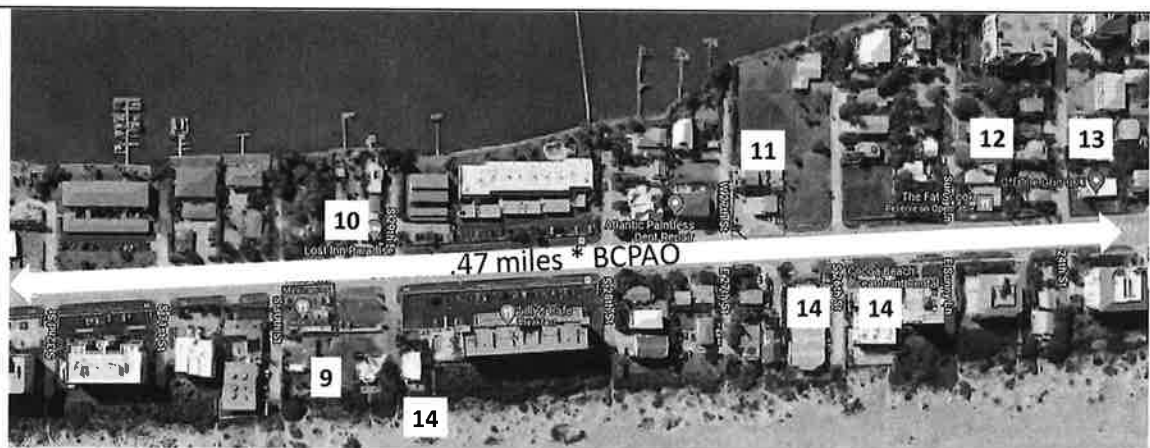
## **Legend**

- 1** Banana River Resort Rentals (Commercial use)
- 2** Former Dry Cleaners/Surf Shop (BU-1 Zoning)
- 3** Cocoa Beach Riverfront Resort rental (Commercial use)
- 4** Subject property (BU-1 Zoning)
- 5** Anthony's Hotel (Commercial use)

## **Legend**

- 6** Rentals (Commercial use)
- 7** Vacant (BU-1A zoning)
- 8** Mixed Use store and 2 residents (BU-1 Zoning)

Source: Google Maps, April, 2022



## **Legend**

- 9** Taco City Restaurant (BU-1 Zoning) and parking
- 10** Lost in Paradise Resort Hotel (Commercial Use)
- 11** Restaurant/Commercial building (BU-1 Zoning)
- 12** Fat Snook Restaurant (BU-1A Zoning)
- 13** Commercial Building (BU-1 Zoning)
- 14** Rentals (Commercial use)

Source: Google Maps, April, 2022

## **EXISTING CONDITIONS**

This area of State Road AIA began to develop as Brevard County gave birth to the space program. During that time, most of the lands along the frontage were developing with a mix of commercial and residential uses. Much of the residential development was in the form of both single family and apartments as rental housing for the flood of employees coming to the Space Center and to the new businesses that were erupting in the area. For years, these forms of development peacefully co-existed, with few conflicts. They still do today.

The entire AIA artery still contains a mix of uses, restaurants that serve alcohol, offices, surf shops, fitness, and diverse housing types. The long history of this segment of AIA into and through Cocoa Beach is a testament to the ability of various uses to be compatible with each other.

As the area grew and the state became more sophisticated in its planning for growth and development, new statutes required local comprehensive planning. There are many 'spots' and 'lots' across the county and cities that were designated for a particular land use on the future land use map (FLUM), but the actual current use did not 'match'. If the uses did not match, the existing use became non-conforming, as the Future Land Use Map is the governing document.

Many of those non-conforming uses continued to operate for many years after adoption of the FLUM. Others converted to different uses or sit vacant and deteriorating, presenting potential blighted conditions in the area. Figure 1 shows what the existing building looked like in 2012 and Figure 2 shows the current location and site conditions in 2022 demonstrating the deterioration occurring on the site.

The Comprehensive Plan and Land Development Codes will govern the development of the site. The County's comprehensive Plan, adopted in 1988, changed over time, and this parcel has a

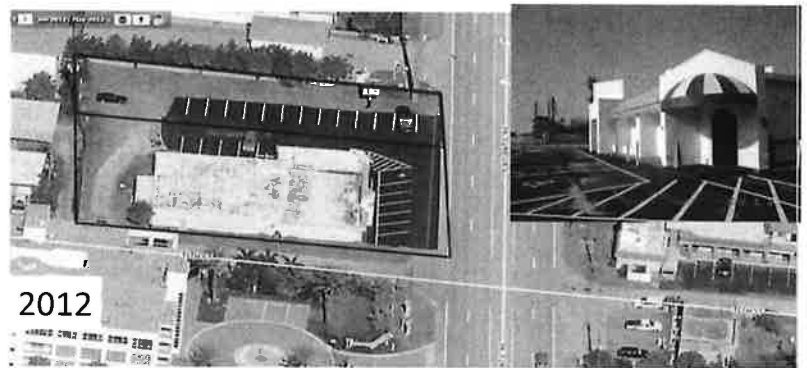


Figure 1 Site from 2012 from Brevard County Property Appraiser, April 2022

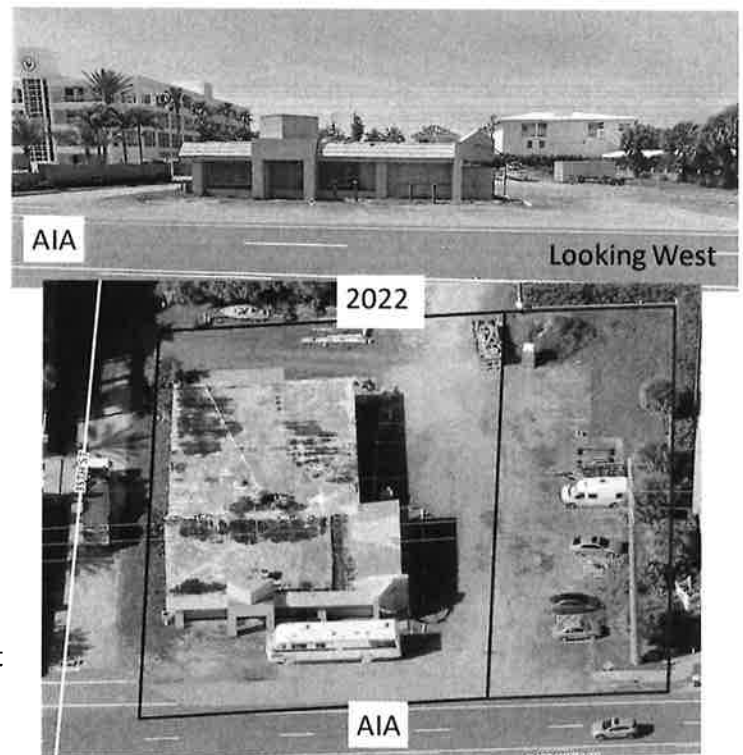


Figure 2 Current Location Map and Site from 2022 from Brevard County Property Appraiser, April 2022

land use that doesn't allow for the zoning. As the zoning and use of the property has remained unchanged, the request is to amend the land use to 'match' the zoning. This will make the land use and zoning consistent, enabling the owners to development the property and bring it back to life in a new form, meeting all current environmental, building, aesthetic, and other contemporary codes.

The owners' desire to demolish existing pavement and structures and replace with a new mixed use product that would house multi-family units, a small retail area, and a restaurant in a new vertically mixed use structure. The project would have to comply and conform to the County's land development code for uses that are allowed in the Community Commercial Land Use category and standards set forth in the BU-1 Zoning District. With the BU-1 zoning in place, no rezoning is necessary. The project will have to go through site plan and administrative approvals, as well as outside agency permitting. A site plan was submitted for demonstrative purposes, and is being used by me to analyze other pertinent consistency and compatibility factors required by the Comprehensive Plan.

Existing site conditions are substandard at best. Figure 3 provides a graphic example.



Figure 3 Existing site conditions

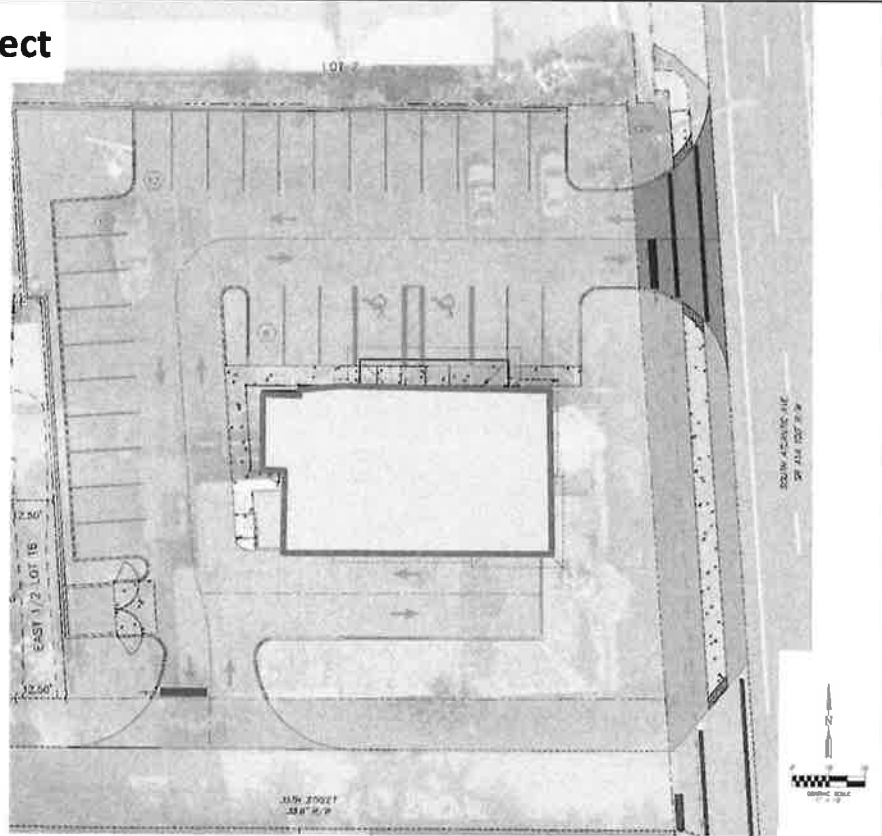
The site cannot be redeveloped without the land use amendment being approved so that the zoning and Future Land Use are consistent. The owners site plan is indicative of the numerous upgrades that would result of the land use amendment. These are conceptualized in Figure 4. The owners have several conceptual elevations, but are not provided for the requested amendment as they are subject to change.



## Conceptualized Project

Any new project will be required at a minimum to provide:

1. Stormwater treatment for pre and post
2. New defined access management on AIA and 35<sup>th</sup> street
3. New site landscaping and green space for example shown in green
4. New waste management
5. AIA Sidewalk with raised curb at corners for pedestrian safety



**Figure 4 Conceptual project**

Once redeveloped, the site will provide economic benefits to the community through renewed use of a thriving business which has a new taxable value, and potentially add considerable sales taxes, resort taxes/fees, and the like rippling through the Brevard County economy. Coupled with the environmental sustainability measures and new stormwater treatment, the new site and building will be a positive community contributor.

### **FINDINGS OF FACT**

The staff provided findings of fact for the Local Planning Agency/Planning Board to consider when making a recommendation to the County Commission. The County Commission will also consider these same factors in their decision making. The following discussion provides my expert opinion on how this proposed plan amendment, project plan and subsequent intended development will adhere to, implement, and be consistent with the Brevard County Comprehensive Plan as a supplement to the staff report.

### **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.

**Response:** The proposed land use amendment will enable the owners to demolish the existing aging structure and remove asphalt, to redevelop the site with a vertical mixed-use project. The building had been a 'Strip Club' for some say almost 40 years or more since 1958, and converted to a nightclub/bar until it closed around 2018. New residential projects have been built over the years adjacent to the site. Clearly, the business location has not had any effect on adjacent properties as their values and demand for the lands continued to rise. The project will have to meet current regulations and the conceptual site plan shows they can meet the BU-1 land development standards. The new users will also be governed by noise decibel level standards.

On site lighting will directed on the site only, with no spillage off site. Modern kitchens have air filtering systems to eliminate odors. During the site plan and administrative review process, the owner will formally demonstrate through engineering and architectural plans how they meet the codes.

The main improvement will be in how stormwater treatment is handled. While there are some green spaces on the current site, they're mostly compacted dirt, which along with the completely paved portions of the site, cause untreated water to pool and then drain untreated into the nearby Indian River.



Figure 5 Brevard County Property Appraiser 2022

The new project is designed to fit within the confines of the site and neighborhood. The proposed project as currently designed will be similar in size, scale, and mass as adjacent properties. This project is compatible and will not diminish safety, health, quality of life or welfare of surrounding properties. To the contrary, the amendment and new project will be an improvement.

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.

**Response:** History and experience has shown that redevelopment of aging or derelict sites/structures will increase the values of the subject property and therefore, not cause any diminution of values of adjacent lands. A rising tide lifts all boats, and improvements to one site will help stimulate overall improvements to other sites and future values in the area.

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;

**Response:** Historically, AIA has been an eclectic mix of diverse and divergent uses that have peacefully co-existed with each other from the time of the space race. Single family, rentals, condominiums, surf shops, fine dining and casual restaurants, water dependent uses, bars, and hotels have created the overall ambiance and development pattern of the south Cocoa Beach/ North Patrick community. This proposed amendment will enable redevelopment of the property under the BU-1 zoning category which allows an array of commercial, residential, or mixed use projects. The area is already a mix of single, multi-family, duplex structures of varying heights and sizes. A new development on this site, will be compatible with the surrounding neighbors, enhanced by up to date landscape, stormwater, access management, and other zoning requirements. Figure 6 provides an aerial view of the existing properties surrounding the subject site.



**Figure 6 Compatibility**

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

**Response:** This area of the county has not had much development as most of the new development has gone to green fields or established redevelopment districts. However, there are signs of some new projects where existing buildings are being demolished and replaced with new similarly scaled projects.

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

**Response:** Unknown

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

**Response:** This project will further the goals, objectives, and policies of the Comprehensive Plan specifically, renewal and replacement of existing resources, sustainable development, placement of stormwater management systems where there are none to help with conditions in the Indian River and create the required consistent relationship between the comprehensive plan future land use map and zoning.

#### **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.

**Response:** The area surrounding the subject property is a mix of uses, including commercial and tourist or transient related residential facilities and condominiums. The numerous rental facilities are a commercial use. Concurrency will be formally evaluated at the time of site plan and building permit. However, the staff has done a preliminary review and find no reduction in the level of service, stating: *"The subject site is within the City of Cocoa service area for potable water and within the City of Cocoa Beach service area for wastewater treatment.*

*The preliminary concurrency analysis did not indicate that the proposed development would cause a deficiency in the transportation adopted level of service."*(Source: Brevard County Staff Report included in LPA/PZ May 9, 2022 Agenda Packet)

**The amount of trip generation from the proposed facilities will not be much different than the nightclub/bar that previously existed on the site for years. The retail shop will be mainly used by the neighborhood and welcomed because there is no 'bodega' anywhere in the vicinity. People from the neighborhood will walk to the store for sundries, ice cream or a sandwich. The trips generated are anticipated to be easily absorbed into the current AIA traffic pattern.**

**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.**

**Response: This is not a residential neighborhood. It is a narrow, mixed use, linear neighborhood that is bordered by the Indian River on one side and the Atlantic Ocean on the other. Map 1 shows the existing development pattern and locations of properties within that are zoned BU-1 or BU-1A. The County land use and zoning maps show a large portion of the lands are designated for neighborhood and community commercial land uses and BU-1 zoning. The remainder is higher density multi-family in the form of RES-15, RES 30, and contains mainly transient or rentals in low to high-rise residential structures, which are de facto commercial uses. This proposed project, with a mix of uses, will be a perfect fit for the site and current development landscape.**

**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.**

**Response: This building and use have been here since 1958. The residences have come and gone and changed over the years up and down AIA. The use is allowed under the BU-1 Zoning district. The County's actions to change the land use map years ago created an inconsistency that will be rectified by this action.**

**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.**

**Response: This area has been 'forgotten' for many years. It is only recently that redevelopment has begun, and the area is now ripe for new development and redevelopment.**

#### **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.

**Response to A-G: The County staff has evaluated the proposed request and development. Their determination was that the size and uses to be located within the structure will not cause any diminution of levels of service for water, wastewater, or the transportation network.**

**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.

**Response: The proposed land use change will enable redevelopment of this site which currently is a solid sheet of asphalt, having been built when very few if any environmental, building, landscape, or development regulations were adopted. The redevelopment and infill project will have to meet current codes and as such, will now provide pre-post stormwater treatment, more pervious area, more green spaces for landscaping, better construction materials and techniques, better defined site access, and further the goals, objectives and policies for all those elements.**

**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.

**Response: To the contrary, the redevelopment of this site will now include stormwater management systems, reducing or eliminating the 'sheet flow' of run-off into the Indian River from practically 'wall to wall' impervious surface parking area. There will also be green or pervious spaces for landscape and attenuation prior to outfall into the FDOT stormwater or other systems. The site is completely disturbed with no wetlands or habitat.**

The staff evaluated and I have considered other policies of the Comprehensive Plan in this evaluation. The staff's discussion on the "Role of the Comprehensive Plan in the Designation of Commercial Lands and Policy 2.1" considers the criteria for evaluating commercial land use requests. At a minimum, these criteria address the following:

**Criteria:**

A. Overall accessibility to the site;

**Response: The site has had access on AIA from the time it was a 2-lane road, and also on 35th street. These 2 access points will be enhanced by the development of the site. Pedestrian safety is also enhanced with designated cross-walks, raised pavers at the driveway curb, and sidewalks for life safety.**

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

**Response: The owner of this site owns an adjacent property. That property along with another property will have continued access through a perpetual easement. No one will be blocked off.**

C. Existing commercial development trend in the area;

**Response: Three corners at 35th street and AIA are commercial uses: this site, the Hotel on the NE side of AIA and 35<sup>th</sup> street and the former surf shop, now studio on the SE corner. Two (2) are zoned BU-1. The County made them all inconsistent with the Future Land Use Map in 1988. However, they continued to operate as have numerous other commercial properties within 1 mile of the project site. Those properties to the north were given commercial land uses. The same should be extended to these properties at this location. There has been no interest in converting them to other non-commercial uses, and in fact, as evidenced by this request, the market shows continued interest in maintaining commercial uses in this area.**

D. Fundamental changes in the character of an area prompted by infrastructure improvements undertaken by the County;

**Response: None. The development pattern has continued from the adoption of the plan.**

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

**Response: The staff stated: "The subject site is within the City of Cocoa service area for potable water and within the City of Cocoa Beach service area for wastewater treatment.**

**The preliminary concurrency analysis did not indicate that the proposed development would cause a deficiency in the transportation adopted level of service."**

F. Spacing from other commercial activities;

**Response: Map 1 shows their locations.**

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

**Response: This property has functioned as commercial and there is a current need to continue that use through the requested land use amendment.**

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

**Response: The project will have to meet current policies and regulations. The project's planned enhancements to create more green/open space, install exfiltration systems for stormwater management, and add landscaping, will be a fundamental improvement to the existing conditions.**

I. Integration of open space; and

**Response: The conceptual plan indicates there will now be about 27% open space and pervious area.**

J. Impacts upon strip commercial development.

**Response: Not applicable.**

Additionally, the proposed amendment meets the qualifications for Comprehensive Plan Policy 2.7 Activities and Uses in Community Commercial designated lands and Policy 2.8 Location criteria for the following reasons:

1. The area is a narrow linear strip with frontage on AIA that has been developed since the late 1950, with not much change, other than infill and redevelopment of existing sites and similar uses. Commercial lands have stayed along the frontage and corners on the west side with the residential uses (new and old) to the rear. A few are located on the east, but predominately on the west.
2. There are several established commercial locations that are neither nodes nor in strip form. They are neighborhood sized and scaled buildings and uses that provide community services to the people living in proximity or those passing by.
3. The size and scale of the proposed development is in a form that fits beautifully on the site and is compatible and consistent with the surrounding area.
4. Development of infill sites such as this are encouraged, particularly when they can replace old structures and provide stormwater management where there was not any or it was limited before.
5. The concept plan shows how the project is compatible and consistent with the Comprehensive Plan.

## **CONCLUSION**

From a planning perspective, this proposed amendment and subsequent redevelopment project is the type of development that local governments would welcome. It is a disturbed and developed site, which does not meet current environmental standards or building codes. The site will be demolished and on it, a new, modern development, with modern amenities, stormwater management, parking, landscaping, and infrastructure will arise.

Many improvements will come from the redevelopment project:

- The most important improvement will be the inclusion of an exfiltration vault underground, with weirs and control structures to provide pre and post treatment of stormwater which currently sheet flows into the Indian River Lagoon. The new system will have 2 to 3 inlets and will outfall into the FDOT system after being attenuated and treated.
- The current site has approximately 75% impervious area. Pervious surface will increase under a new development scenario.
- Landscape buffers will line the east and south sides of the property greatly improving the aesthetics and permeability or treatment of stormwater.
- Trash collection will be organized and managed into a modern container for regular pickup.
- Parking will be defined by raised curb on a newly paved surface. The parking and building are co-dependent. A building's size will be somewhat controlled by the limited area for parking.
- An wall will separate the site from the neighboring residential properties.
- Site access will be better defined, but generally in the same locations since 1958, and new safety crosswalks will be part of the sidewalks on the east property line along the AIA right-of-way.



- Lighting will be focused directly on the site so to not affect anyone off-site.

This site is no different than the other commercial properties that sit on many corners or on the frontage of AIA from Patrick Air Force Base to Cocoa Beach. They nestle in among the single and multi-family uses, each compatible with the other due to size, landscape, setbacks, parking area separation and other features. The conceptual site plan and existing development pattern are clear indicators that the project meets the requirements for being designated as "Community Commercial" on the County's Future Land Use Map. The proposed amendment is not only consistent and compatible with the immediate area, but moreover the proposed infill project will be consistent and compatible with the surrounding community. The amendment removes a non-conformity, allowing for redevelopment of this property through a consistency between Land Use and Zoning. This argument is strengthened by the numerous environmental and aesthetic enhancements that result from the proposed project. The project can only be constructed if the future land use map is amended.

It is my expert opinion that the request meets the requirements for recommendation of approval by the Local Planning Agency/Planning Board and approval by the County Commission as demonstrated by the findings herein and from the Brevard County Staff report as the request is consistent with the Comprehensive Plan, current development pattern, and compatible with the community. To not approve this request will result in leaving a site that negatively contributes untreated stormwater into the Indian River Lagoon and leaves a failing building as a public nuisance. Redevelopment will improve the economic, environmental, and aesthetic values for the County, implementing many policies of the County Comprehensive Plan, with an overall positive benefit to the community.

With kindest regards,



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Rochelle W. Lawandales, FAICP  
Planning Consultant  
**PLANNING FOR COMMUNITY**

## **PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY MINUTES**

The Brevard County Planning & Zoning Board met in regular session on **Monday, May 9, 2022**, 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); Brian Hodgers (D2); Robert Sullivan (D2); Ben Glover (D3); Mark Wadsworth, Chair (D4); Liz Alward (D4); Logan Luse (Alt. D4); Bruce Moia (D5); and John Hopengarten (BPS).

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; Jane Hart, Planner III; Alex Esseesse, Assistant County Attorney; and Jennifer Jones, Special Projects Coordinator.

### **Excerpt of Complete Agenda**

#### **OBC Realty, LLC**

A Small Scale Comprehensive Plan Amendment (22S.05), to change the Future Land Use designation from RES 15 (Residential 15) to CC (Community Commercial). The property is 0.52 acres, located on the northwest corner of S. Atlantic Ave. and 35<sup>th</sup> St. (Lot 8 = No assigned address. Lot 9.01 = 3466 S. Atlantic Ave., Cocoa Beach) (Tax Accounts 2521003 and 2521005) (District 2)

Rochelle Lawandales, FAICP, representing the applicant, stated the request is a result of an inconsistency that occurred in 1988 when the original Future Land Use Map was adopted. The request is to create a consistent situation between the FLUM and the zoning by changing the land use so that her client can redevelop the property. She noted under the CC land use, the BU-1 zoning classification, which is currently on the property, will allow him to do a mixed use project that will most likely include a mix of commercial retail, restaurant, and some residential. She said because the site is so small, all of the footprints will be small as well. The area is a mix of uses that have peacefully co-existed since the beginning of the space age, and what is being proposed will allow for redevelopment of a site that is currently derelict and ripe for redevelopment. She said currently, there is no open space, and no stormwater management, so it's all sheet-flowing into the Indian River; the redevelopment of the property will allow for stormwater treatment, pre and post; new defined access on A1A; new site landscaping and greenspace; new waste management; and a sidewalk along A1A with pedestrian safety features. The developer will have to conform to all of the site design standards within code and get site plan approval. She said the site cannot be brought up-to-date with modern day standards and some environmental sustainability without creating this consistency.

Henry Minneboo asked if the City of Cocoa Beach requires the property to be annexed into the City if using their wastewater treatment. Ms. Lawandales replied not to her knowledge, and the property is quite a distance from City limits.

No public comment

Bruce Moia stated redevelopment is always a good thing, especially an eyesore like the subject property.

Motion by Bruce Moia, seconded by Henry Minneboo, to recommend approve of the Small Scale Comprehensive Plan Amendment from RES 15 to CC. The motion passed unanimously.

**From:** Adam C.  
**To:** Jones, Jennifer  
**Cc:** Hart, Jane; Ball, Jeffrey  
**Subject:** Re: ID 22SSS00002  
**Date:** Wednesday, May 11, 2022 1:07:20 PM

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

Thank you for sending this to me. I read it in full and come out with a mixed view on the desirability of this, and so didn't come to the meeting.

This new site looks like it will become AirBnB also, because what long-term renter or owner wants to be over a restaurant? But also, the current location looks abandoned.

For your future consideration of these kinds of developments in the south end of Cocoa Beach: We are a mostly residential area, with a couple tidy, single story motels that have been quiet and clean for a long time. Our area is being transformed by how many units are AirBnB now. I have a home on the river, and last year my neighbor started AirBnB of his house, so there are new strangers constantly in the yard next door. I don't live next to a home anymore; I live next to a transient hotel. And instead being a neighbor - now I am putting up fencing and trees to block out what used to be my neighbor. This isn't right.

I know there is a State rule against controlling AirBnB at the local level. But, we shouldn't have more developments that are so conducive to AirBnB. I am part of a residential area, and I volunteer locally. People staying at AirBnB in what used to be a house - they do not volunteer or enrich the community.

On Thu, May 5, 2022 at 2:04 PM Jones, Jennifer <[jennifer.jones@brevardfl.gov](mailto:jennifer.jones@brevardfl.gov)> wrote:

Mr. Cohen,

Attached are the staff comments for 22SS00002, along with draft plans and a compatibility-consistency memo submitted by the applicant.

If I can be of further assistance, please let me know.

Jennifer

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**From:** Adam C. <[misteradamsays@gmail.com](mailto:misteradamsays@gmail.com)>  
**Sent:** Thursday, May 5, 2022 2:00 PM  
**To:** Jones, Jennifer <[jennifer.jones@brevardfl.gov](mailto:jennifer.jones@brevardfl.gov)>  
**Subject:** ID 22SSS00002

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

Hello Ms. Jones,

I received a postcard notice about a proposed Small Scale Plan Amendment from "RES 15" to "CC" for ID 22SS00002 / 3466 S. Atlantic Avenue / OBR Realty. LLC.

I own the house next door at 3580 S Atlantic Avenue.

Can you please send me any information on what this is about and how it could affect my house?

Thank you,

Adam Cohen

917-796-2834



**BOARD OF COUNTY COMMISSIONERS**

H-2  
ADDITIONS  
**Rita Pritchett, District 1 Commissioner**

7101 N. Highway 1

Titusville, FL 32780

(321) 607-6901

D1.commissioner@brevardfl.gov

Planning and Development

Commission Meeting May 26, 2022

(22SS00002) Tax Accounts 2521003 and 2521005

Commissioner Pritchett spoke with Jack Kirschenbaum of OBC Realty, LLC regarding the above referenced accounts on 5/23/2022. Commissioner Pritchett listened to his concerns.

**From:** [Alward, Keith A](#)  
**To:** [Schmadeke, Adrienne](#)  
**Cc:** [Jones, Jennifer](#); [Bellak, Christine](#)  
**Subject:** Disclosure - Item H-2 - 5/26/2022 Zoning Agenda Packet  
**Date:** Monday, May 23, 2022 2:04:11 PM

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Adrienne,

Jack Kirschenbaum called today in favor of Item H-2 which is part of the above referenced Zoning Packet. Jack gave an overview of the project and mentioned that it would help clean up this "blighted" parcel. He added that the redevelopment if approved would add stormwater treatment to the parcel which currently has none and sheet flows directly to the Banana River. Additionally he wanted Commissioner Smith to know that he felt it was compatible with the surrounding properties and was unanimously approved by the LPA.

Thanks,

*Keith Alward*



**Keith Alward**  
Legislative Aide  
Brevard County Commission, District 4  
Commissioner Curt Smith  
[321.350.9249](tel:3213509249) | [Keith.Alward@Brevardfl.Gov](mailto:Keith.Alward@Brevardfl.Gov)  
2725 Judge Fran Jamieson Way, Bldg. C - Suite  
214,  
Viera, FL 32940

***Please note:***

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