

**III. PUBLIC HEARINGS**  
**B. NORTH MERRITT ISLAND DEPENDENT SPECIAL DISTRICT BOARD**

**Thursday, January 8, 2015 – 6:00 P.M.**  
Merritt Island Service Complex  
2575 N. Courtenay Pkwy., 2<sup>nd</sup> Floor, Merritt Island, Florida

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**BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**  
**Thursday, February 5, 2015 - 5:00 P.M.**  
Brevard County Government Center  
2725 Judge Fran Jamieson Way, Bldg. C, Viera, Florida

The Board of County Commissioners may approve or deny the requested classification, or may approve a classification of lesser intensity than that requested.

**DISTRICT 2**

**III.B.3. (14PZ-00098) – BRAD A. LANGE** – (Mark Gartley) – requests a CUP (Conditional Use Permit) for Alcoholic Beverages (beer & wine only) for On-Premises Consumption in Conjunction with a bait and tackle shop, in a BU-1 (General Retail Commercial) zoning classification, 0.97 acres, located on the east side of N. Courtenay Pkwy., approx. 0.20 mile south of Chase Hammock Rd. (4920 N. Courtenay Pkwy., Merritt Island)

NMI Recommendation:

**BCC ACTION:**



**Planning & Development Department**  
2725 Judge Fran Jamieson Way  
Building A, Room 114  
Viera, Florida 32940  
(321) 633-2069

**BOARD OF COUNTY COMMISSIONERS**

TO: North Merritt Island Dependent Special District Board Members  
FROM: Cindy Fox, Planning & Zoning Manager  
SUBJ: Planning and Zoning Staff Comments  
January 8, 2015  
DATE: November 19, 2014

The following comments are compiled by the Planning and Zoning staff and are reflections of a combination of technical reviews. These are presented to the North Merritt Island Dependent Special District Board and the Board of County Commissioners as a collection of known facts surrounding each proposal and their relationship to the policies of the Comprehensive Plan. It is hoped that these known facts and policy statements will assist each member in their individual decision-making efforts as additional information is received through the public hearing process. The material contained in these comments will be provided to the Commissioners in staff briefings. Any matter discussed in staff briefings not contained in this review will be disclosed at the Board of County Commissioners meeting.

**STAFF COMMENTS PREPARED BY:**

Planning & Zoning Office  
NATURAL RESOURCES MANAGEMENT DEPARTMENT

**Legend of Terms:**

FLU Map - Future Land Use Map of Comprehensive Plan  
FLUE - Future Land Use Element

## **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 and 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 zoning staff, however designated, are recognized as expert witnesses for the purposes of Comprehensive Plan amendments as well as zoning, conditional use, special exception and variance applications.

### **Administrative Policy 2**

Upon Board request, members of the Brevard County planning and 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 appeals, 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 re-zoning applications where a specific use has not been proposed, the worst case adverse impacts of potential uses available under the applicable land use classification shall be evaluated by the staff.

### **Administrative Policy 3**

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

#### **Criteria:**

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

- B. Whether the proposed use(s) would cause a material reduction (five per cent 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 an 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 or intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, etc.), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.
- B. In determining whether an established residential neighborhood exists, the following factors must be present:
  - 1. The area must have clearly established boundaries, such as roads, open spaces, rivers, lakes, lagoons, or similar features.
  - 2. Sporadic or occasional neighborhood commercial uses shall not preclude the existence of an existing residential neighborhood, particularly if the commercial use is non-conforming or pre-dates the surrounding residential use.
  - 3. An area shall be presumed not to be primarily residential but shall be deemed transitional where multiple commercial, industrial or other non-residential uses have been applied for and approved during the previous five (5) years.

#### **Administrative Policy 5**

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

##### **Criteria:**

- A. Whether adopted levels of service 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, odor, 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 that the following general standards are satisfied. The Board shall make the 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 MAI 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 thirty-five (35) feet higher than the highest residence within 1000 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 the section into the Zoning file and Public Record for that item.

These staff comments contain references to Policies of the Brevard County 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 MPO 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 (ALOS):** Acceptable Level of Service currently adopted by the County.

**Current 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 LOS that a proposed development may generate on a roadway.

**III.B.3.**

**Commission District # 2 (14PZ-00098)**  
**Initial Hearing Dates: NMI 01/08/15 BCC 02/05/15**

**REZONING REVIEW WORKSHEET**

**Applicant Name: BRAD A. LANGE**

**Request: CUP for Alcoholic Beverages (beer & wine only) for On-Premises Consumption in Conjunction with a Bait & Tackle Shop, in a BU-1 zoning classification**

**Subject Property:**

**Parcel ID#: 23-36-35-00-260 (west 210 ft.)**  
**Tax Acct#: 2318704**  
**Location: Located on the east side of Courtenay Pkwy., approx. .20 mile south of Chase Hammock Rd.**  
**Address: 4920 N. Courtenay Pkwy., Merritt Island**  
**Acreage: 0.97 acres.**

**Consistency with Land Use Regulations**

- YES Current zoning can be considered under the Future Land Use Designation. Sec. 62-1255
- YES Proposal can be considered under the Future Land Use Designation. Sec. 62-1255
- YES Would proposal maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Zoning</b>	BU-1	BU-1 with CUP for alcohol (beer & wine)
<b>Potential*</b>	20 seat Restaurant and Bait Shop	20 seat Drinking Place and Bait Shop
<b>Can be Considered under FLU MAP</b>	YES COMMUNITY COMMERCIAL	YES

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

	<b>ADT</b>	<b>PM Peak</b>		
Trips from Existing Zoning	239.1	22	Segment Number	157
Trips from Proposed Zoning	No Change	No Change	Segment Name	Hall to N. Tropical
Maximum Acceptable Volume (MAV)	34,200	3,146.4	Acceptable LOS	E
Current Volume	13,570	1,248.4	Directional Split	
Volume With Proposed Development	No Change	No Change	ITE CODE 932 (Previous) 925 (Proposed) 20 seats – approximately 1,900 sq. ft.	
Current Volume / MAV	39.6%	39.67%		
Volume / MAV with Proposal	No Change	No Change		
Current LOS	C	C		
LOS With Proposal	C	C		

## Land Use Compatibility

FLUE Policy 1.1 requires consideration of land use compatibility and character of the area.

The request is for a Conditional Use Permit for the on-premises consumption of alcohol in conjunction with a bar and retail bait and tackle establishment in a BU-1 zoning classification. The BU-1 classification allows retail commercial land uses on minimum 7,500 square foot lots. The BU-1 classification does not permit warehousing or wholesaling. The surrounding zoning classifications are AU to the north, BU-1 to the south, RU-2-30 to the east and BU-1 to the west across North Courtenay Parkway. The AU zoning classification permits single-family residences and agricultural pursuits on 2 ½ acre lots, with a minimum lot width and depth of 150 feet. The minimum house size in AU is 750 square feet. The AU classification also permits the raising/grazing of animals, fowl and beekeeping. The RU-2-30 classification permits high density multi-family residential development of up to 30 unit per acre. Multiple-family residential structures may be constructed on a minimum lot size of 10,000 square feet, with at least 100' of lot width and 100' of lot depth. Single-family residences are also permitted on minimum lot sizes of 7,500 square feet with at least 75' of lot width and 75' of lot depth. This area of North Merritt island is characterized by the North Courtenay Parkway corridor which has a mixture of undeveloped land, commercial and residential zoning classifications and uses. The Board should evaluate the compatibility of this application within the context of Administrative Policies 2 - 8 of the Future Land Use Element, as outlined on pages 2 through 5 of these staff comments.

## Environmental Constraints

NA

**Other Considerations:** The request is for a Conditional Use Permit (CUP) for the on-premises consumption of alcohol (beer and wine) accessory to a proposed bar in a retail bait and tackle establishment. The existing building is approximately 1,930 square feet and was constructed in 1964. The subject property has approximately 200 feet of road frontage on North Courtenay Parkway.

The applicant indicates that there would be 20 seats for the bar inside the existing building. The subject property was granted approval for the on premises consumption of alcohol (beer and wine) accessory to a restaurant in 2005 (Z-11028). The applicant does not desire to operate a restaurant therefore, since the 2005 approval was accessory to a restaurant and not a bar, a new CUP is required. A portion of the existing building has also been used as a consignment store.

The Land Development Regulations require one parking space for every 100 square feet of the establishment including any outside seating areas. Therefore, the existing building square footage requires 19 parking spaces. Consistency with this requirement is attainable since the existing restaurant has 22 parking spaces, however, due to its age, the subject property has not been site planned under current County standards and the parking may not met County standards. Additionally, section 62-1906 requires that no alcoholic beverages shall be served within 300 feet of a church or school. There are no churches or schools within 300 feet of the restaurant.

The Board should consider the compatibility of the proposed CUP pursuant to Section 62-1151(c) and to Section 62-1901, as outlined on pages 6-9 of these comments. Section 62-1151(c) directs the Board to consider the character of the land use of the property and its surroundings; changes in the conditions of the land use being considered; impact upon infrastructure; compatibility with land use plans for the area; and appropriateness of the CUP based upon consideration of applicable regulations relating to zoning and land use within the context of public health, safety and welfare. The applicant has submitted documentation in order to demonstrate consistency with the standards set forth in Section 62-1901. The applicant's responses are indicated in **bold** and staff observations are provided in *italics*.

Section 62-1901(c)(1)(a) Impact upon adjacent and nearby properties from the proposed use:

Number of persons using property;  
Noise, odor, particulates, smoke, fumes and other emissions; and  
Increase in traffic within the vicinity.

**The property is to be used primarily as a bait and tackle retail business. Additional use shall be for the on site consumption of beer and wine. The bar area will have 20 seats. No odors or other offensive emissions will be created. The use of this facility is similar to other businesses in the surrounding area. The applicant indicates that there will be 20 seats inside the existing building for the bar.**

Section 62-1901(c)(1)(b) Compatibility with the character of adjacent and nearby properties with regard to use:

Adjacent properties;  
Operating hours;  
Amount of traffic generated;  
Building size and setbacks; and  
Parking availability.

**The property has been used in the past for pizza, deli and other retail use. The proposed business is compatible with other retail facilities in the area. On site parking setbacks are established with this older building.**

*The applicant indicates that the business will be open seven days a week but has not indicated the hours of operation of the bar or the retail bait and tackle business.*

*The existing building is approximately 1,930 square feet and was constructed in 1964.*

*The Land Development Regulations require one parking space for every 100 square feet of the establishment including any outside seating areas. Therefore, the existing restaurant square footage requires 19 parking spaces. Consistency with this requirement is attainable since the existing restaurant has 22 parking spaces. However, due to its age, the subject property has not been site planned per current County standards.*

Section 62-1901(c)(1)(c) Impact upon property values of abutting residential properties:

**This is an established retail facility . no and does no change values of adjacent property.**

*This area of North Merritt Island is characterized by the North Courtenay Parkway corridor with surrounding single-family uses. A single-family home abuts the subject property to the east.*

Section 62-1901(c)(2)(a) Adequacy of ingress and egress to serve the use without burdening adjacent and nearby uses:

**Ingress and egress to existing facility is provided by existing driveways from Courtenay Parkway.**

*The subject property has an existing driveway off of North Courtenay Parkway, with approximately 200 feet of road frontage.*

Section 62-1901(c)(2)(b) Noise, glare, odor, particulates, smoke, fumes, etc.:

**No additional noise of fumes are anticipated and will not affect adjacent properties.**

*The property is subject to the performance standards found in sections 62-2251 through 2271 of the Zoning regulations.*

Section 62-1901(c)(2)(c) Actual Noise Levels:

**No live entertainment is planned. No adverse sound pressures will be generated.**

Section 62-1901(c)(2)(d) Impact upon solid waste disposal level of service:

**This is an existing facility and no additional level of service for solid waste for this retail business.**

Section 62-1901(c)(2)(e) Impact upon potable water and waste water levels of service:

**This is an existing facility and no additional level of service is needed.**

Section 62-1901(c)(2)(f) Screening and buffering:

**Has existing landscaping and no adverse nuisance is to be anticipated nor will it effect adjacent properties.**

Section 62-1901(c)(2)(g) Signage and glare from lighting:

**Existing, there for e 10 years. No additional to be added.**

*The property is subject to the performance standards found in sections 62-2251 through 2271 of the Zoning regulations.*

Section 62-1901(c)(2)(h) Hours of operation:

*The applicant indicates that the business will be open 7 days a week but has not indicated the hours of operation for the bar or the retail bait and tackle business.*

Section 62-1901(c)(2)(l) Height of proposed use:

**NA**

*The existing building is one story.*

Section 62-1901(c)(2)(J) Impact of off-street parking and loading areas upon adjacent properties:

**Attached survey shows adequate.**

This request should be evaluated in the context of **Section 62-1906** which governs alcoholic beverages for the on-premises consumption of alcohol which states in, specifically 62-1906 (3) and (5)

- 3) Except for restaurants with more than 50 seats, no alcoholic beverages shall be sold or served for consumption on the premises from any building that is within 300 feet from the lot line of a school or church if the use of the property as a school or church was established prior to the commencement of the sale of such alcoholic beverages. For the purposes of this subsection, a school shall include only grades kindergarten through 12. For the purpose of establishing the distance between the proposed alcoholic beverage use and churches and schools, a certified survey shall be furnished from a registered engineer or surveyor. Such survey shall indicate the distance between the front door of the proposed place of business and all property lines of any church or school within 400 feet. Each survey shall indicate all such distances and routes.

*A radius drawing prepared by a surveyor has been provided by the applicant and demonstrates there are no schools, churches or daycares within 400' of the establishment.*

- 5) Imposition of additional operational requirements. When deemed appropriate, as based upon circumstances revealed through the general and specific standards of review set forth in this division, the Board shall have the option of imposing operational requirements upon an establishment approved for a conditional use for on-premises consumption of alcoholic beverages. Requirements may include, but are not limited to, the following: maximum number of patrons; hours of operation; limitations upon outdoor seating and service of alcoholic beverages; limitations upon outside music and/or public address systems; additional buffering requirements; additional parking requirements; internal floor plan arrangement; or other specific restrictions based upon special neighborhood considerations. Additional requirements shall not exceed the limits of regulatory authority granted to local governments in the State Beverage Law, F.S. § 562.45.

**Summary:** The request is for a Conditional Use Permit (CUP) for the on-premises consumption of alcohol (beer and wine) accessory to a bar and retail bait and tackle restaurant. The existing building was constructed in 1964 and consists of 1,930 square feet.

The subject property was granted approval for the on premises consumption of alcohol (beer and wine) accessory to a restaurant in 2005 (Z-11028). The applicant does not desire to operate a restaurant; therefore, since the 2005 approval was accessory to a restaurant and not a bar, a new CUP is required.

The Land Development Regulations require one parking space for every 100 square feet of the establishment including any outside seating areas. Therefore, the existing restaurant square footage requires 19 parking spaces. Consistency with this requirement is attainable since the existing restaurant has 22 parking spaces. However, due to its age, the subject property has not been site planned per current County standards and the

NMI Staff Comments  
January 8, 2015  
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parking may be inadequately maintained. The Board may wish to require that the parking be brought up to County standards prior to County sign off of the alcohol permit.

Additionally, section 62-1906 requires that no alcoholic beverages shall be served within 300 feet of a church or school. There are no churches or schools within 300 feet of the restaurant.

**III. PUBLIC HEARINGS**  
**B. NORTH MERRITT ISLAND DEPENDENT SPECIAL DISTRICT BOARD**

**Thursday, February 12, 2015 – 6:00 P.M.**  
Merritt Island Service Complex  
2575 N. Courtenay Pkwy., 2<sup>nd</sup> Floor, Merritt Island, Florida

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**BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**

**Thursday, March 5, 2015 - 5:00 P.M.**  
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2725 Judge Fran Jamieson Way, Bldg. C, Viera, Florida

The Board of County Commissioners may approve or deny the requested classification, or may approve a classification of lesser intensity than that requested.

**DISTRICT 2**

**III.B.1. (14PZ-00118) – RO1, LLC** – (Kim Rezanka, Dean Mead) – requests removal of a BDP (Binding Development Plan) in a BU-2 (Retail, Warehousing, and Wholesale Commercial) zoning classification, on 3.44 acres, located on the east side of N. Courtenay Pkwy., approx. 420 ft. north of E. Crisafulli Rd. (No assigned address. In the N. Merritt Island area)

NMI Recommendation:  
**BCC ACTION:**



**Planning & Development Department**  
2725 Judge Fran Jamieson Way  
Building A, Room 114  
Viera, Florida 32940  
(321) 633-2069

**BOARD OF COUNTY COMMISSIONERS**

TO: North Merritt Island Dependent Special District Board Members

FROM: Cindy Fox, Planning & Zoning Manager

SUBJ: Planning and Zoning Staff Comments  
February 12, 2015

DATE: January 14, 2015

The following comments are compiled by the Planning and Zoning staff and are reflections of a combination of technical reviews. These are presented to the North Merritt Island Dependent Special District Board and the Board of County Commissioners as a collection of known facts surrounding each proposal and their relationship to the policies of the Comprehensive Plan. It is hoped that these known facts and policy statements will assist each member in their individual decision-making efforts as additional information is received through the public hearing process. The material contained in these comments will be provided to the Commissioners in staff briefings. Any matter discussed in staff briefings not contained in this review will be disclosed at the Board of County Commissioners meeting.

**STAFF COMMENTS PREPARED BY:**

Planning & Zoning Office  
NATURAL RESOURCES MANAGEMENT DEPARTMENT

**Legend of Terms:**

FLU Map - Future Land Use Map of Comprehensive Plan  
FLUE - Future Land Use Element

## **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 and 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 zoning staff, however designated, are recognized as expert witnesses for the purposes of Comprehensive Plan amendments as well as zoning, conditional use, special exception and variance applications.

### **Administrative Policy 2**

Upon Board request, members of the Brevard County planning and 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 appeals, 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 re-zoning applications where a specific use has not been proposed, the worst case adverse impacts of potential uses available under the applicable land use classification shall be evaluated by the staff.

### **Administrative Policy 3**

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

#### **Criteria:**

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

- B. Whether the proposed use(s) would cause a material reduction (five per cent 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 an 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 or intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, etc.), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.
- B. In determining whether an established residential neighborhood exists, the following factors must be present:
  - 1. The area must have clearly established boundaries, such as roads, open spaces, rivers, lakes, lagoons, or similar features.
  - 2. Sporadic or occasional neighborhood commercial uses shall not preclude the existence of an existing residential neighborhood, particularly if the commercial use is non-conforming or pre-dates the surrounding residential use.
  - 3. An area shall be presumed not to be primarily residential but shall be deemed transitional where multiple commercial, industrial or other non-residential uses have been applied for and approved during the previous five (5) years.

#### **Administrative Policy 5**

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

##### **Criteria:**

- A. Whether adopted levels of service 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, odor, 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 that the following general standards are satisfied. The Board shall make the 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 MAI 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 thirty-five (35) feet higher than the highest residence within 1000 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 the section into the Zoning file and Public Record for that item.

These staff comments contain references to Policies of the Brevard County 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 MPO 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 (ALOS):** Acceptable Level of Service currently adopted by the County.

**Current 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 LOS that a proposed development may generate on a roadway.

**III.B.1.**

**Commission District # 2 (14PZ-00118)**  
**Initial Hearing Dates: NMI 02/12/15 BCC 03/05/15**

**REZONING REVIEW WORKSHEET**

**Applicant Name: RO1, LLC**

**Request: Removal of BDP (Binding Development Plan) in a BU-2 (Retail, Warehousing, and Wholesale Commercial)**

**Subject Property:**

**Parcel ID#: 23-36-22-00-767**

**Tax Acct#: 2316318**

**Location: Located on the east side of N. Courtenay Pkwy., approx. 420 ft. north of E. Crisafulli Rd.**

**Address: No assigned address. In the N. Merritt Island area.**

**Acreage: 3.44 acres.**

**Consistency with Land Use Regulations**

- YES Current zoning can be considered under the Future Land Use Designation. Sec. 62-1255
- YES Proposal can be considered under the Future Land Use Designation. Sec. 62-1255
- YES Would proposal maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Zoning</b>	BU-2 with BDP	BU-2
<b>Potential*</b>	42,323 sq. ft. Mini-storage Warehouse	42,323 sq. ft. General Office
<b>Can be Considered under FLU MAP</b>	YES COMMUNITY COMMERCIAL	YES

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

	<b>ADT</b>	<b>PM Peak</b>		
Trips from Existing Zoning	106	11	Segment Number	157
Trips from Proposed Zoning	466	66	Segment Name	Hall to N. Tropical
Maximum Acceptable Volume (MAV)	34,200	3,146.4	Acceptable LOS	E
Current Volume	13,579	1,249.2	Directional Split	
Volume With Proposed Development	14,045	1,315.2	ITE CODE 151 Mini-Storage Warehouse 710 General Office	
Current Volume / MAV	39.7%	39.7%		
Volume / MAV with Proposal	41.0%	41.8%		
Current LOS	C	C		
LOS With Proposal	C	C		

## Land Use Compatibility

FLUE Policy 1.1 requires consideration of land use compatibility and character of the area.

This request is for the removal of a Binding Development Plan in a BU-2 zoning classification. The BU-2 zoning classification permits retail, wholesale and warehousing commercial land uses on minimum 7,500 square foot lots. Possible incompatibilities are due to the intensive nature of commercial activities permitted by the BU-2 classification and possible noise, light, traffic and other nuisance factors potentially associated with BU-2 activities. The surrounding properties are zoned BU-1 to the north, BU-1 to the south, AU and RR-1 to the east with BU-2 to the west across North Courtenay Parkway. The BU-1 classification allows retail commercial land uses on minimum 7,500 square foot lots. The BU-1 classification does not permit warehousing or wholesaling. The AU zoning classification permits single-family residences and agricultural pursuits on 2 ½ acre lots, with a minimum lot width and depth of 150 feet. The minimum house size in AU is 750 square feet. The AU classification also permits the raising/grazing of animals, fowl and beekeeping. The RR-1 classification permits single-family residential land uses on minimum one acre lots, with a minimum lot width and depth of 125 feet. The RR-1 classification permits horses, barns and horticulture as accessory uses to a single-family residence. The minimum house size is 1,200 square feet. This area of North Merritt Island is characterized by a mixture of commercial and residential uses. The Board should evaluate the compatibility of this application within the context of Administrative Policies 2 - 8 of the Future Land Use Element, as outlined on pages 2 through 5 of these staff comments.

## Environmental Constraints

\* Does the project appear to meet county use or density restrictions based upon:  
 \* Refer to NRMO's comments following these staff comments.

The following environmental factors may affect development potential (Policies 1.1.A, II.2.E, and 3.1.F, of the Future Land Use Element):

Environmental Factor	Preliminary Assessment	Environmental Factor	Preliminary Assessment of Factor
Hydric Soils	Not Mapped	Coastal Protection	NA
Aquifer Recharge Soils	Mapped	Surface Water Protection	NA
Floodplains	Mapped	Habitat for Protected Species	Potential, Mapped Scrub Jay Occupancy

Note: This is a preliminary review based upon environmental maps available to the Natural Resources Management Office (NRMO) at the time of this review and does not include a site inspection to verify the accuracy of this information. This review does not ensure whether a proposed use or development of the property can be permitted under current federal, state or local regulations. Hydric Soils may be associated with wetlands. If applicable, the full text of NRMO's comments follow these staff comments.

**Other Considerations:** The applicant is requesting the removal of a Binding Development Plan (BDP) for the purposes of developing the subject property with retail or professional office uses.

The existing BDP was approved as part of a rezoning request from BU-1 to BU-2 in April 1997 (Z-9885). The rezoning request to BU-2 was made for the purposes of developing the property as a mini-warehouse project. The BDP stipulated that the use of the property be limited to mini-warehousing. A conceptual plan was submitted that showed a mini-warehousing project with 233 10'X20' units. The BDP also stipulated that a 30' buffer on the west portion of the property be retained in its "existing, heavily vegetated condition with the exception of the area devoted to the project's entry drive". The BDP also required that a 20' vegetated buffer be retained on the east portion of the property and that ingress and egress be limited to a single access drive from N. Courtenay Parkway (SR 3).

Retail and professional office uses can be conducted in the BU-1 zoning classification. Removal of the BDP would allow intensive wholesale and warehousing uses including outside storage on the subject property. The

buffering requirements set forth in the BDP would mitigate visual and noise impacts of BU-2 uses on the surrounding area.

The Board should take into consideration the recommendations of the North Courtenay Corridor Study, performed in 2005. It includes recommendations for opaque buffers to screen outside storage areas on BU-2 zoned properties. The study also recommends landscape buffers of at least 25' in depth for properties along the N. Courtney Parkway. Lastly, the study advocates access management to limit drive cuts on N. Courtenay Parkway, due to the nature of the roadway. The BDP provides for these considerations.

Just to the north of the subject property is an existing restaurant and bar. To the east are single-family homes constructed in the 1960s and to the south is an auto body and repair business. The subject property has remained undeveloped.

**Summary:** The applicant desires to remove the existing Binding Development Plan on the subject property for the purposes of developing the site for retail and professional office uses. The BDP currently limits the property development to a mini-warehousing project. Without the BDP, however, any BU-2 uses can be established on the property. As part of the approved BDP, a 30' buffer on the west portion of the property was to be retained in its "existing, heavily vegetated condition with the exception of the area devoted to the project's entry drive". The BDP also required that a 20' vegetated buffer be retained on the east portion of the property and that ingress and egress be limited to a single access drive. The BDP implements recommendations of the small area study with regards to buffering of BU-2 zoned properties, landscaping along the roadway frontage and access management.

Given the recommendations of the Small Area Study and that the subject property abuts single-family zoning to the east, the Board may wish to amend the BDP rather than remove it, by specifying permitted uses on the property, retaining buffering requirements and limiting the property to a single drive way.

**NATURAL RESOURCES MANAGEMENT DEPARTMENT**  
**Rezoning Review**  
**SUMMARY**

<b>Item #: 14PZ-00118</b>	<b>Owner: RO1, LLC</b>
<b>Zoning Request: BU-2 with BDP to BU-2</b>	
<b>NMI Hearing Date: 02/12/15</b>	<b>BCC Hearing Date: 03/05/15</b>

This is a preliminary review based on environmental maps available to the Natural Resources Management Department (NRM) at the time of this review and does not include a site inspection to verify the accuracy of this information. This review does not ensure whether or not a proposed use, specific site design, or development of the property can be permitted under current Federal, State, or County Regulations. In that this process is not the appropriate venue for site plan review, specific site designs that may be submitted with the rezoning will be deemed conceptual and any comments or omissions relative to specific site design do not provide vested rights or waivers from these regulations, unless specifically requested by the owner and approved by the Board of County Commissioners. If the owner has any questions regarding this information, he/she is encouraged to contact NRM prior to submittal of any development or construction plans.

Natural Resource	Preliminary Assessment	Natural Resource	Preliminary Assessment
Wetlands Potential/Hydric Soils	Not mapped	Coastal Protection	N/A
Aquifer Recharge Soils	Mapped	Surface Waters	N/A
Floodplains	Mapped	Wildlife	Potential, Mapped scrub jay occupancy

**Comments:**

**This review relates to a portion of the following property: Twp. 23, Rng. 36, Sec. 22; Tax ID No. 2316318**

The subject parcel contains mapped aquifer recharge soils on the northwest corner. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

A portion of the property is mapped as being within floodplain as identified by the Federal Emergency Management Agency; and is subject to the development criteria in Conservation Objective 4, its subsequent policies, and the Floodplain Ordinance.

The site has mapped scrub jay occupancy. Please call U.S. Fish and Wildlife Service (USFWS) at 904-232-2580. Other federally and/or state protected species may be present on the property. The applicant should obtain any necessary permits from USFWS and/or the Florida Fish and Wildlife Conservation Commission (352-732-1225).

The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for preservation and canopy coverage requirements. Land clearing is not permitted without prior authorization by NRM.