



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

---

H.6.

5/4/2023

---

### Subject:

Matthew and Christine Morak request a change of zoning classification from AU to RR-1. (23Z00010) (Tax Account 2004738) (District 1)

### Fiscal Impact:

None

### Dept/Office:

Planning & Development

### Requested Action:

It is requested that the Board of County Commissioners conduct a public hearing to consider a change of zoning classification from AU (Agricultural Residential) to RR-1 (Rural Residential).

### Summary Explanation and Background:

The applicants are seeking a change of zoning classification from AU to RR-1 for the purpose of building a single-family residence. At 2.2 acres, the subject property is substandard for the minimum lot size required for AU, which is 2.5 acres, and does not qualify as a nonconforming lot of record.

The RR-1 zoning classification permits single-family residential land uses on a minimum 1-acre lot, with a minimum lot width and depth of 125 feet, and a minimum house size of 1,200 square feet. The RR-1 classification permits horses, barns and horticulture as accessory uses to a single-family residence.

The developed character of the surrounding area is low-density residential. Most parcels in the immediate area are 1 acre or larger in size, zoned AU, and developed with single-family homes. The closest RR-1 zoning classification is approximately 30 feet to the southeast across the right-of-way of Burkholm Road.

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

On April 17, 2023, the Planning and Zoning Board heard the request and unanimously recommended approval.

### Clerk to the Board Instructions:

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

## **ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT**

Administrative Policies in the Future Land Use Element establish the expertise of staff with regard to zoning land use issues and set forth criteria when considering a rezoning action or request for Conditional Use Permit, as follows:

### **Administrative Policy 1**

The Brevard County zoning official, planners and the Director of the Planning and Development, however designated, are recognized as expert witnesses for the purposes of Comprehensive Plan amendments as well as zoning, conditional use, special exception, and variance applications.

### **Administrative Policy 2**

Upon Board request, members of the Brevard County planning and zoning staff shall be required to present written analysis and a recommendation, which shall constitute an expert opinion, on all applications for zoning, conditional uses, comprehensive plan amendments, vested rights, or other applications for development approval that come before the Board of County Commissioners for quasi-judicial review and action. The Board may table an item if additional time is required to obtain the analysis requested or to hire an expert witness if the Board deems such action appropriate. Staff input may include the following:

#### **Criteria:**

- A. Staff shall analyze an application for consistency or compliance with comprehensive plan policies, zoning approval criteria and other applicable written standards.
- B. Staff shall conduct site visits of property which are the subject of analysis and recommendation. As part of the site visit, the staff shall take a videotape or photographs where helpful to the analysis and conduct an inventory of surrounding existing uses. Aerial photographs shall also be used where they would aid in an understanding of the issues of the case.
- C. In cases where staff analysis is required, both the applicant and the staff shall present proposed findings of fact for consideration by the Board.
- D. For development applications where a specific use has not been proposed, the worst case adverse impacts of potential uses available under the applicable land use classification shall be evaluated by the staff.

### **Administrative Policy 3**

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

#### **Criteria:**

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

- B. Whether the proposed use(s) would cause a material reduction (five percent or more) in the value of existing abutting lands or approved development.
- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through analysis of:
  - 1. historical land use patterns;
  - 2. actual development over the immediately preceding three years; and
  - 3. development approved within the past three years but not yet constructed.
- D. Whether the proposed use(s) would result in a material violation of relevant policies in any elements of the Comprehensive Plan.

#### **Administrative Policy 4**

Character of a neighborhood or area shall be a factor for consideration whenever a rezoning or any application involving a specific proposed use is reviewed. The character of the area must not be materially or adversely affected by the proposed rezoning or land use application. In evaluating the character of an area, the following factors shall be considered:

##### **Criteria:**

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

#### **Administrative Policy 5**

In addition to the factors specified in Administrative Policies 2, 3, and 4, in reviewing a rezoning, conditional use permit or other application for development approval, the impact of the proposed use or uses on transportation facilities either serving the site or impacted by the

use(s) shall be considered. In evaluating whether substantial and adverse transportation impacts are likely to result if an application is approved, the staff shall consider the following:

**Criteria:**

- A. Whether adopted levels of services will be compromised;
- B. Whether the physical quality of the existing road system that will serve the proposed use(s) is sufficient to support the use(s) without significant deterioration;
- C. Whether the surrounding existing road system is of sufficient width and construction quality to serve the proposed use(s) without the need for substantial public improvements;
- D. Whether the surrounding existing road system is of such width and construction quality that the proposed use(s) would realistically pose a potential for material danger to public safety in the surrounding area;
- E. Whether the proposed use(s) would be likely to result in such a material and adverse change in traffic capacity of a road or roads in the surrounding area such that either design capacities would be significantly exceeded or a de facto change in functional classification would result;
- F. Whether the proposed use(s) would cause such material and adverse changes in the types of traffic that would be generated on the surrounding road system, that physical deterioration of the surrounding road system would be likely;
- G. Whether projected traffic impacts of the proposed use(s) would materially and adversely impact the safety or welfare of residents in existing residential neighborhoods.

**Administrative Policy 6**

The use(s) proposed under the rezoning, conditional use or other application for development approval must be consistent with, (a), all written land development policies set forth in these administrative policies; and (b), the future land use element, coastal management element, conservation element, potable water element, sanitary sewer element, solid waste management element, capital improvements element, recreation and open space element, surface water element, and transportation elements of the comprehensive plan.

**Administrative Policy 7**

Proposed use(s) shall not cause or substantially aggravate any, (a), substantial drainage problem on surrounding properties; or (b), significant, adverse and unmitigatable impact on significant natural wetlands, water bodies or habitat for listed species.

**Administrative Policy 8**

These policies, the staff analysis based upon these policies, and the applicant's written analysis, if any, shall be incorporated into the record of every quasi-judicial review application for development approval presented to the Board including rezoning, conditional use permits, and vested rights determinations.

Section 62-1151(c) of the Code of Ordinances of Brevard County directs, "The planning and zoning board shall recommend to the board of county commissioners the denial or approval of each application for amendment to the official zoning maps based upon a consideration of the following factors:

- (1) The character of the land use of the property surrounding the property being considered.
- (2) The change in conditions of the land use of the property being considered and the surrounding property since the establishment of the current applicable zoning classification, special use or conditional use.
- (3) The impact of the proposed zoning classification or conditional use on available and projected traffic patterns, water and sewer systems, other public facilities and utilities and the established character of the surrounding property.
- (4) The compatibility of the proposed zoning classification or conditional use with existing land use plans for the affected area.
- (5) The appropriateness of the proposed zoning classification or conditional use based upon a consideration of the applicable provisions and conditions contained in this article and other applicable laws, ordinances and regulations relating to zoning and land use regulations and based upon a consideration of the public health, safety and welfare.

The minutes of the planning and zoning board shall specify the reasons for the recommendation of approval or denial of each application."

#### **CONDITIONAL USE PERMITS (CUPs)**

In addition to the specific requirements for each Conditional Use Permit (CUP), Section 62-1901 provides that the following approval procedure and general standards of review are to be applied to all CUP requests, as applicable.

- (b) Approval procedure. An application for a specific conditional use within the applicable zoning classification shall be submitted and considered in the same manner and according to the same procedure as an amendment to the official zoning map as specified in Section 62-1151. The approval of a conditional use shall authorize an additional use for the affected parcel of real property in addition to those permitted in the applicable zoning classification. The initial burden is on the applicant to demonstrate that all applicable standards and criteria are met. Applications which do not satisfy this burden cannot be approved. If the applicant meets its initial burden, then the Board has the burden to show, by substantial and competent evidence, that the applicant has failed to meet such standards and the request is adverse to the public interest. As part of the approval of the conditional use permit, the Board may prescribe appropriate and reasonable conditions and safeguards to reduce the impact of the proposed use on adjacent and nearby properties or the neighborhood. A nearby property, for the purpose of this section, is defined as any property which, because of the character of the proposed use, lies within the area which may be substantially and adversely impacted by such use. In stating grounds in

support of an application for a conditional use permit, it is necessary to show how the request fulfills both the general and specific standards for review. The applicant must show the effect the granting of the conditional use permit will have on adjacent and nearby properties, including, but not limited to traffic and pedestrian flow and safety, curb-cuts, off-street loading and parking, off-street pickup of passengers, odors, glare and noise, particulates, smoke, fumes, and other emissions, refuse and service areas, drainage, screening and buffering for protection of adjacent and nearby properties, and open space and economic impact on nearby properties. The applicant, at his discretion, may choose to present expert testimony where necessary to show the effect of granting the conditional use permit.

(c) General Standards of Review.

- (1) The planning and zoning board and the board of county commissioners shall base the denial or approval of each application for a conditional use based upon a consideration of the factors specified in Section 62-1151(c) plus a determination whether an application meets the intent of this section.
  - a. The proposed conditional use will not result in a substantial and adverse impact on adjacent and nearby properties due to: (1), the number of persons anticipated to be using, residing or working under the conditional use; (2), noise, odor, particulates, smoke, fumes and other emissions, or other nuisance activities generated by the conditional use; or (3), the increase of traffic within the vicinity caused by the proposed conditional use.
  - b. The proposed use will be compatible with the character of adjacent and nearby properties with regard to use, function, operation, hours of operation, type and amount of traffic generated, building size and setback, and parking availability.
  - c. The proposed use will not cause a substantial diminution in value of abutting residential property. A substantial diminution shall be irrebuttably presumed to have occurred if abutting property suffers a 15% reduction in value as a result of the proposed conditional use. A reduction of 10% of the value of abutting property shall create a rebuttable presumption that a substantial diminution has occurred. The Board of County Commissioners carries the burden to show, as evidenced by either testimony from or an appraisal conducted by an M A I certified appraiser, that a substantial diminution in value would occur. The applicant may rebut the findings with his own expert witnesses.
- (2) The following specific standards shall be considered, when applicable, in making a determination that the general standards specified in subsection (1) of this section are satisfied:

- a. Ingress and egress to the property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire and catastrophe, shall be: (1), adequate to serve the proposed use without burdening adjacent and nearby uses, and (2), built to applicable county standards, if any. Burdening adjacent and nearby uses means increasing existing traffic on the closest collector or arterial road by more than 20%, or 10% if the new traffic is primarily comprised of heavy vehicles, except where the affected road is at Level of Service A or B. New traffic generated by the proposed use shall not cause the adopted level of service for transportation on applicable roadways, as determined by applicable Brevard County standards, to be exceeded. Where the design of a public road to be used by the proposed use is physically inadequate to handle the numbers, types or weights of vehicles expected to be generated by the proposed use without damage to the road, the conditional use permit cannot be approved without a commitment to improve the road to a standard adequate to handle the proposed traffic, or to maintain the road through a maintenance bond or other means as required by the Board of County Commissioners.
- b. The noise, glare, odor, particulates, smoke, fumes or other emissions from the conditional use shall not substantially interfere with the use or enjoyment of the adjacent and nearby property.
- c. Noise levels for a conditional use are governed by Section 62-2271.
- d. The proposed conditional use shall not cause the adopted level of service for solid waste disposal applicable to the property or area covered by such level of service, to be exceeded.
- e. The proposed conditional use shall not cause the adopted level of service for potable water or wastewater applicable to the property or the area covered by such level of service, to be exceeded by the proposed use.
- f. The proposed conditional use must have existing or proposed screening or buffering, with reference to type, dimensions and character to eliminate or reduce substantial, adverse nuisance, sight, or noise impacts on adjacent and nearby properties containing less intensive uses.
- g. Proposed signs and exterior lighting shall not cause unreasonable glare or hazard to traffic safety, or interference with the use or enjoyment of adjacent and nearby properties.
- h. Hours of operation of the proposed use shall be consistent with the use and enjoyment of the properties in the surrounding residential community, if any. For commercial and industrial uses adjacent to or near residential uses, the hours of operation shall not adversely affect the use and enjoyment of the residential character of the area.
- i. The height of the proposed use shall be compatible with the character of the area, and the maximum height of any habitable structure shall be not more than 35 feet higher than the highest residence within 1,000 feet of the property line.

- j. Off-street parking and loading areas, where required, shall not be created or maintained in a manner which adversely impacts or impairs the use and enjoyment of adjacent and nearby properties. For existing structures, the applicant shall provide competent, substantial evidence to demonstrate that actual or anticipated parking shall not be greater than that which is approved as part of the site plan under applicable county standards.

#### **FACTORS TO CONSIDER FOR A REZONING REQUEST**

Section 62-1151(c) sets forth factors to consider in connection with a rezoning request, as follows:

"The planning and zoning board shall recommend to the board of county commissioners the denial or approval of each application for amendment to the official zoning maps based upon a consideration of the following factors:

- (1) The character of the land use of the property surrounding the property being considered.
- (2) The change in conditions of the land use of the property being considered and the surrounding property since the establishment of the current applicable zoning classification, special use or conditional use.
- (3) The impact of the proposed zoning classification or conditional use on available and projected traffic patterns, water and sewer systems, other public facilities and utilities and the established character of the surrounding property.
- (4) The compatibility of the proposed zoning classification or conditional use with existing land use plans for the affected area.
- (5) The appropriateness of the proposed zoning classification or conditional use based upon a consideration of the applicable provisions and conditions contained in this article and other applicable laws, ordinances and regulations relating to zoning and land use regulations and based upon a consideration of the public health, safety and welfare."

These staff comments contain references to zoning classifications found in the Brevard County Zoning Regulations, Chapter 62, Article VI, Code of Ordinances of Brevard County. These references include brief summaries of some of the characteristics of that zoning classification. Reference to each zoning classification shall be deemed to incorporate the full text of the section or sections defining and regulating that classification into the Zoning file and Public Record for that item.

These staff comments contain references to sections of the Code of Ordinances of Brevard County. Reference to each code section shall be deemed to incorporate this section into the Zoning file and Public Record for that item.

These staff comments contain references to Policies of the Brevard County Comprehensive Plan. Reference to each Policy shall be deemed to incorporate the entire Policy into the Zoning file and Public Record for that item.



These staff comments refer to previous zoning actions which are part of the Public Records of Brevard County, Florida. These records will be referred to by reference to the file number. Reference to zoning files are intended to make the entire contents of the cited file a part of the Zoning file and Public Record for that item.

## DEFINITIONS OF CONCURRENCY TERMS

**Maximum Acceptable Volume (MAV):** Maximum acceptable daily volume that a roadway can carry at the adopted Level of Service (LOS).

**Current Volume:** Building permit related trips added to the latest TPO (Transportation Planning Organization) traffic counts.

**Volume with Development (VOL W/DEV):** Equals Current Volume plus trip generation projected for the proposed development.

**Volume/Maximum Acceptable Volume (VOL/MAV):** Equals the ratio of current traffic volume to the maximum acceptable roadway volume.

**Volume/Maximum Acceptable Volume with Development (VOL/MAV W/DEV):** Ratio of volume with development to the Maximum Acceptable Volume.

**Acceptable Level of Service (CURRENT LOS):** The Level of Service at which a roadway is currently operating.

**Level of Service with Development (LOS W/DEV):** The Level of Service that a proposed development may generate on a roadway.



BOARD OF COUNTY COMMISSIONERS

## Planning and Development Department

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

### STAFF COMMENTS

23Z00010

Matthew and Christine Morak

#### AU (Agricultural Residential) to RR-1 (Rural Residential)

Tax Account Number: 2004738  
Parcel I.D.: 20G-35-20-AI-3-7  
Location: North side of Burkholm Road, approximately 2,000-feet east of Highway 1  
(District 1)  
Acreage: 2.2 acres  
Planning & Zoning Board: 4/17/2023  
Board of County Commissioners: 5/04/2023

#### Consistency with Land Use Regulations

- Current zoning can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal cannot be considered under the Future Land Use Designation, Section 62-1255.
- The proposal would maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	CURRENT	PROPOSED
<b>Zoning</b>	AU	RR-1
<b>Potential*</b>	0	1 SF unit
<b>Can be Considered under the Future Land Use Map</b>	YES RES 1	YES RES 1

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

#### Background and Purpose of Request

The applicants are seeking a change of zoning classification from AU (Agricultural Residential) to RR-1 (Rural Residential) for the purpose of building a single-family residence. The subject parcel is currently undeveloped. The AU zoning requires 2.5-acres and the subject property is 2.2-acres.

The subject parcel was recorded originally in Plat Book 2, Page 33 in May 1914. The parcel was then changed into the current configuration per Official Records Book 6838, Page 1680, on March 28, 2013 and does not qualify as a nonconforming lot of record. The subject lot is 2.22 acres in size and has frontage on Burkholm Road and is approximately 1,100 feet east of Highway 1. The parcel was zoned AU (Agricultural Residential) since its formation.

The current AU zoning classification allows for the sales of commodities raised on the premises in line with all agricultural pursuits. RR-1 zoning permits single-family residential land uses on a minimum one-acre lot encompassing lands devoted to development of spacious character, together

with accessory uses as may be necessary or are normally compatible with residential surroundings, and at the same time permits uses which are conducted in such a way as to minimize possible incompatibility with residential development.

## **Land Use**

The subject property is currently designated as Residential 1 (RES 1) FLU. The proposed RR-1 zoning is consistent with the existing RES 1 FLU designation. Both the current AU zoning and proposed RR-1 zoning classifications are consistent with the RES 1 FLU designation. There is only one Future Land Use Designation, RES 1, within 500-feet of the subject property.

## **Applicable Land Use Policies**

**FLUE Policy 1.9** –The Residential 1 Future land use designation. The Residential 1 land use designation permits low density residential development with a maximum density of up to one (1) dwelling unit per acre, except as otherwise may be provided for within the Future Land Use Element.

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

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

### **Criteria:**

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

**Currently the parcel is maintained and fenced in but remains undeveloped. The applicant proposes the development of only a single-family home. It is not anticipated to diminish the enjoyment of, safety or quality of life in existing neighborhoods within the area. This would be consistent with the other recent developments in the immediate area.**

- B. Whether the proposed use(s) would cause a material reduction (five per cent or more) in the value of existing abutting lands or approved development.

**Only a certified MAI appraisal can determine if material reduction has or will occur due to the proposed request.**

- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through an analysis of:

1. historical land use patterns;

**The general area is residential in character with single-family homes on lots ranging in size from approximately one (1) to five (5) acres.**

**There is a mixture of AU, RU-1-7 and RR-1 zoning classifications in the general area. There is one (1) FLU designations (RES 1) within 500-feet of this site.**

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

**There have been many new developments within 0.5 miles in the preceding three (3) years.**

- **21BC15016 was for a single-family residence completed September 2022 and is located 0.5 miles north west off Highway 1.**
- **20BC03451 was for a single-family residence completed August 2022 and is located one (1) mile driving distance to the north east off Pennsylvania Ave.**
- **21BC19912 was for a barn completed April 2022 and is located approximately 1,162 feet east off Burkholm Rd.**
- **20BC01735 was for a single-family residence completed July 2021 and is located approximately 675 feet east off Burkholm Rd.**
- **21BC07161 was for a single-family residence completed September 2021 and is located approximately 310 feet east off Burkholm Rd.**
- **21BC16403 was for a single-family residence completed July 2022 and is located approximately 153 feet west off Burkholm Rd.**
- **20BC03445 was for a single-family residence completed August 2020 and is located approximately 345 feet west off Burkholm Rd.**

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

**Application 22Z00064 was approved by the Board on March 2, 2023, rezoning from AU to RR-1, on 3.91 acres, located approximately 665 feet south of the subject property on Orlando Ave.**

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

**No material violation of relevant policies has been identified.**

#### **Analysis of Administrative Policy #4 - Character of a neighborhood or area.**

Character of a neighborhood or area shall be a factor for consideration whenever a rezoning or any application involving a specific proposed use is reviewed. The character of the area must not be materially or adversely affected by the proposed rezoning or land use application. In evaluating the character of an area, the following factors shall be considered:

##### **Criteria:**

- A. The proposed use must not materially and adversely impact an established residential neighborhood by introducing types or intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, etc.), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.

**There is an existing pattern of residential land uses surrounding the subject parcel. A preliminary concurrency analysis does not indicate that the proposed request would materially or adversely impact the surrounding established neighborhood.**

**The developed character of the surrounding area is low-density residential. Most parcels in the immediate area are one (1) acre or larger in size and developed with single-family homes. To the north is a 4.9-acre parcel developed with a single-family residence zoned AU. To the south across ROW is a 2.27-acre parcel developed with a single-family residence zoned AU. To the east is a 4.66-acre parcel with a single-family residence zoned AU. To the west is a 2.49-acre parcel developed with a single-family residence zoned AU.**

**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.**

**This undeveloped parcel is north of Burkholm Road and approximately 1,100 feet east of Highway 1. Within 500-feet there are two (2) zoning classifications: Agricultural Residential (AU) and Rural Residential (RR-1). The closest RR-1 zoning classification is approximately 30 feet to the southeast across ROW Burkholm Rd.**

- 2. Sporadic or occasional neighborhood commercial uses shall not preclude the existence of an existing residential neighborhood, particularly if the commercial use is non-conforming or pre-dates the surrounding residential use.**

**The request is not for commercial use. It is located in an existing residential area.**

- 3. An area shall be presumed not to be primarily residential but shall be deemed transitional where multiple commercial, industrial or other non-residential uses have been applied for and approved during the previous five (5) years.**

**The area is primarily single-family residential along with agricultural uses. Application 22Z00064 was approved by the Board on March 2, 2023, rezoning from AU to RR-1, on 3.91 acres, located approximately 665 feet south of the subject property on Orlando Ave.**

## Surrounding Area

	Existing Land Use	Zoning	Future Land Use
<b>North</b>	SF residence	AU	RES 1
<b>South</b>	SF residence	AU	RES 1
<b>East</b>	SF residence	AU	RES 1
<b>West</b>	SF residence	AU	RES 1

The AU zoning classification permits single-family residences and agricultural uses on 2.5-acre lots, with a minimum lot width and depth of 150 feet. The minimum house size in AU is 750 square feet. The AU classification also permits the raising/grazing of animals and plant nurseries. Conditional uses in AU include hog farms, zoological parks, and land alteration.

RR-1 zoning classification permits single-family residential land uses on a minimum one-acre lot, 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. Keeping of horses and agricultural uses are accessory to a principal residence within RR-1 zoning.

## Preliminary Concurrency

The closest concurrency management segment to the subject property is Highway 1, between Lionel to Burkholm Rd., which has a Maximum Acceptable Volume (MAV) of 40,300 trips per day, a Level of Service (LOS) of C, and currently operates at 23.47% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.02%. The corridor is anticipated to operate at 23.50% of capacity daily. The proposal is not anticipated to create a deficiency in LOS.

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

The parcel is not within any public potable water or sewer lines. The applicant will be installing a well for potable water and septic for sewer.

## Environmental Constraints

- Aquifer Recharge Soils
- Protected and Specimen Trees
- Protected Species

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

**For Board Consideration**

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

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

**Item #23Z00010**

**Applicant:** Matthew & Christine Morak

**Land Use Request:** AU to RR-1

**Note:** Current zoning requires 2.5 acres to develop a SFR.

**P&Z Hearing Date:** 04/17/23; **BCC Hearing Date:** 05/04/202

**Tax ID No:** 2004738

- 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
- Protected and Specimen Trees
- Protected Species

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



## **Land Use Comments:**

### **Aquifer Recharge Soils**

The subject parcel contains mapped aquifer recharge soils (Pomello sand) as shown on the USDA Soil Conservation Service Soils Survey map. Mapped topographic elevations (~22 to 23 feet NAVD) indicate the soils may consist of Type 3 Aquifer Recharge soils that have impervious area restrictions. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

### **Protected and Specimen Trees**

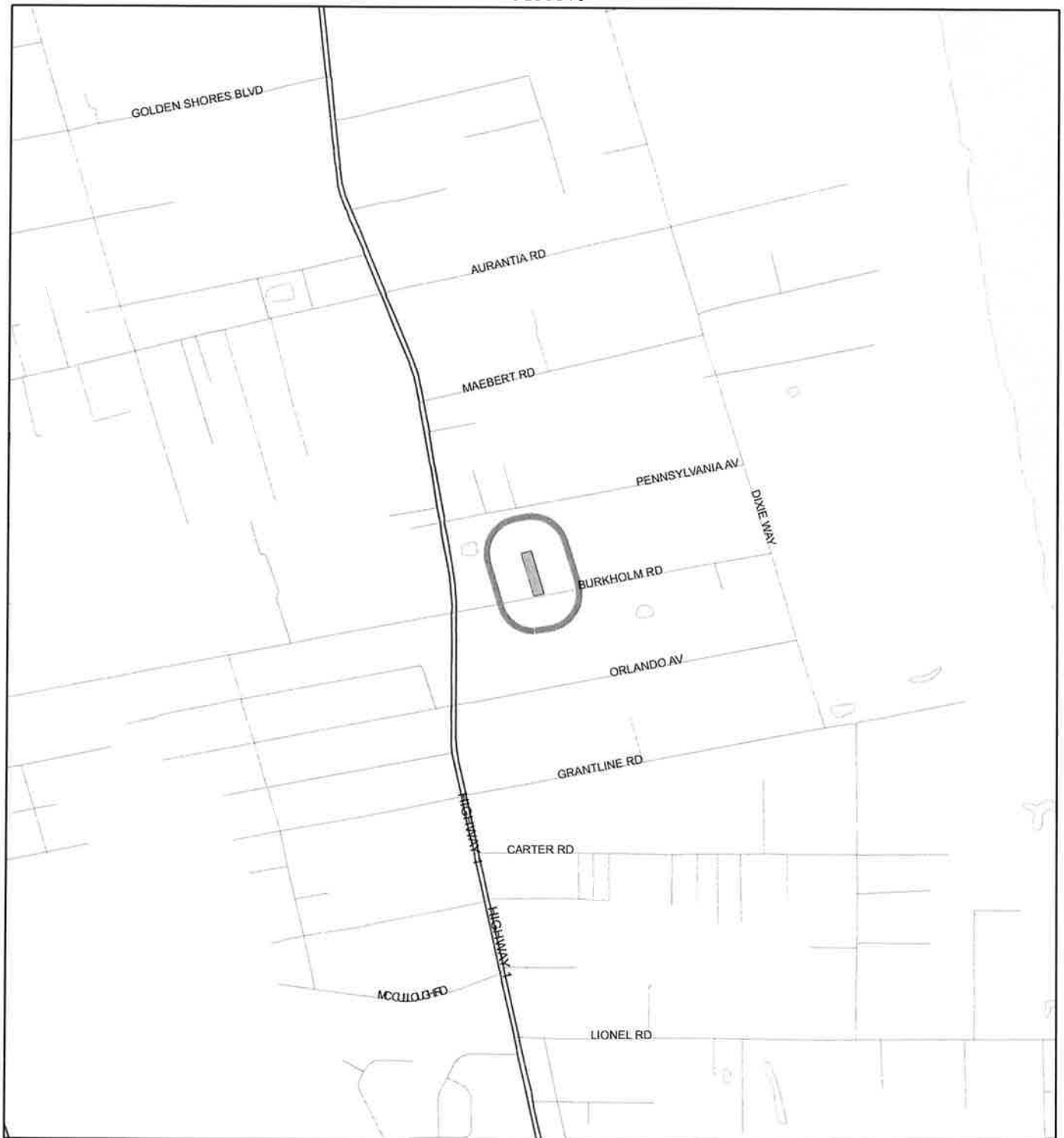
Protected ( $\geq 10$  inches in diameter) and Specimen ( $\geq 24$  inches in diameter) trees may exist on the parcel. A tree survey will be required at time of a site plan submittal. The applicant is encouraged to perform a tree survey prior to any site plan design in order to incorporate valuable vegetative communities or robust trees into the design. Per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for preservation and canopy coverage requirements. Applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities.

### **Protected Species**

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

# LOCATION MAP

Morak, Matthew & Christine  
23Z00010



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

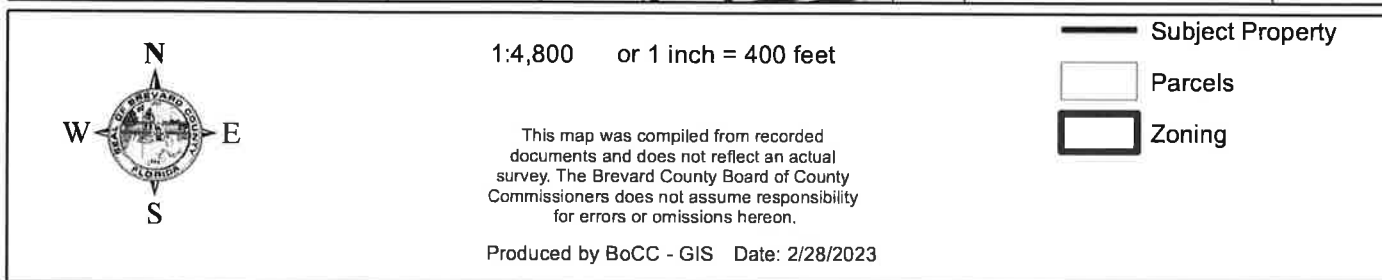
Buffer Distance: 500 feet

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: 2/28/2023

— Buffer  
■ Subject Property

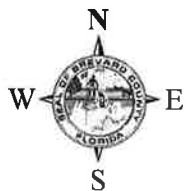
Morak, Matthew & Christine  
23Z00010



# FUTURE LAND USE MAP

Morak, Matthew &amp; Christine

23Z00010



1:4,800      or 1 inch = 400 feet

— Subject Property

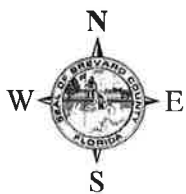
## Parcels

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: 2/7/2023

# AERIAL MAP

Morak, Matthew & Christine  
23Z00010



1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2022

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

Produced by BoCC - GIS Date: 2/7/2023

— Subject Property  
□ Parcels

# NWI WETLANDS MAP

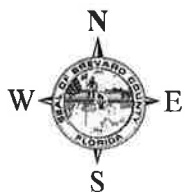
Morak, Matthew & Christine

23Z00010



# SJRWMD FLUCCS WETLANDS - 6000 Series MAP

Morak, Matthew & Christine  
23Z00010



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: 2/7/2023

## SJRWMD FLUCCS WETLANDS

-  Wetland Hardwood Forests - Series 6100
-  Wetland Coniferous Forest - Series 6200
-  Wetland Forested Mixed - Series 6300
-  Vegetated Non-Forested Wetlands - Series 6400
-  Non-Vegetated Wetland - Series 6500

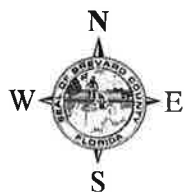
 Subject Property

 Parcels



# USDA SCSSS SOILS MAP

Morak, Matthew & Christine  
23Z00010



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: 2/7/2023

## USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

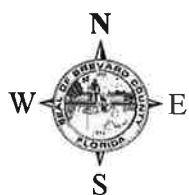
- Subject Property
- Parcels



# FEMA FLOOD ZONES MAP

Morak, Matthew & Christine

23Z00010



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: 2/7/2023

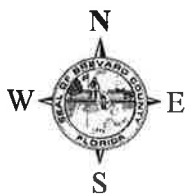
## FEMA Flood Zones

A	AO	X
AE	Open Water	
AH	VE	
Subject Property		Parcels

# COASTAL HIGH HAZARD AREA MAP

Morak, Matthew & Christine

23Z00010



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: 2/7/2023

— Subject Property

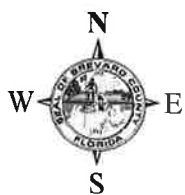
□ Parcels

**Coastal High Hazard Area**

■ SurgeZoneCat1

# INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

Morak, Matthew & Christine  
23Z00010



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: 2/7/2023

— Subject Property

□ Parcels

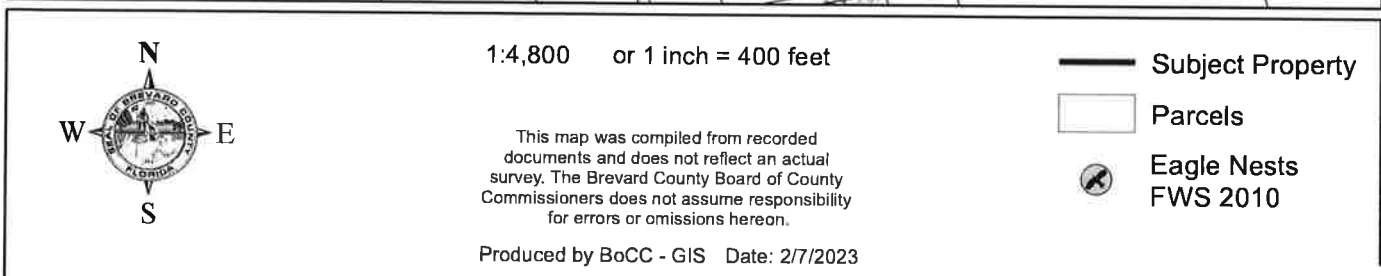
**Septic Overlay**

■ 40 Meters

■ 60 Meters

■ All Distances

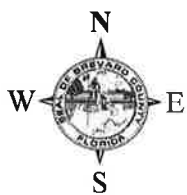
Morak, Matthew & Christine  
23Z00010



# SCRUB JAY OCCUPANCY MAP

Morak, Matthew &amp; Christine

23Z00010




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: 2/7/2023

— Subject Property

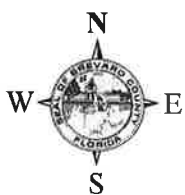
☐ Parcels

 Scrub Jay Occupancy

# SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

Morak, Matthew & Christine

23Z00010





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: 2/7/2023

## SJRWMD FLUCCS Upland Forests

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

 Subject Property

 Parcels

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

The Brevard County Planning & Zoning Board met in regular session on **Monday, April 17, 2023**, at **3:00 p.m.**, in the Florida Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

The meeting was called to order at 3:00 p.m.

Board members present were: Board members present were: Ron Bartcher (D1); Robert Sullivan (D2); Debbie Thomas (D4); Mark Wadsworth, Chair (D4); Logan Luse (D4-Alt.); and John Hopengarten (BPS). Robert Brothers' presence was noted at 3:09 p.m.

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

### **Excerpt of Complete Agenda**

#### **Matthew and Christine Morak**

A change of zoning classification from AU (Agricultural Residential) to RR-1 (Rural Residential), on 2.22 acres, located on the north side of Burkholm Rd., approx. 0.38 mile east of U.S. Highway 1 (3660 Burkholm Rd., Mims) (23Z00010) (Tax Account 2004738) (District 1)

Matthew Morak, 2972 Eddington Drive, Titusville, stated he and his wife have decided to relocate to North Brevard and have bought a piece of property next to his parents. The property is currently zoned AU; however, it is 2.2 acres, and AU has a requirement of 2.5 acres. He said their plan is to build a single-family home to raise their family.

Public comment.

Naomi Nichols, 3635 Pennsylvania Avenue, Mims, asked if there is a reason the applicants cannot get a variance from the AU zoning classification instead of rezoning to RR-1. She said her concern is that the property could be split to allow two houses on the property if it is rezoned to RR-1. She stated there used to be a five-acre minimum, and she doesn't know when that changed, but the area has grown in the past 15 years. She said another concern is if rezoning to RR-1 would set a precedence.

Jeffrey Ball stated a variance could be possible; however, rezoning would be the first step to get rid of the non-conformities. The Future Land Use is RES 1, which would allow for one-acre lots, and RR-1 is a zoning classification that is consistent with that RES 1 Future Land Use. He stated the size of the property would also allow for a lot split by a flag lot. The other option is to apply for a variance for the lot size. He said there are many ways to fix the situation, but one thing staff looks at first is to change the zoning to match the land use so it provides consistency and compatibility with the area. Ms. Nichols asked if the board would look at changing the zoning more favorably than a variance in most cases. Mr. Ball stated he can only inform her of the options and what the board can and cannot consider. He said staff looks at consistency and compatibility with the Comprehensive Plan, and the RR-1 zoning is considered a down-zoning from AU, which allows for a multitude of commercial agricultural uses that would not be allowed in RR-1. He noted the area is getting some protection from commercial agricultural uses that are allowed in AU zoning.

Ron Bartcher stated he believes the request is consistent and compatible with the surrounding area.

Motion by Ron Bartcher, seconded by Robert Sullivan, to recommend approval of a change of zoning classification from AU to RR-1. The motion passed unanimously.



**Resolution 23Z00010**

On motion by Commissioner Feltner, seconded by Commissioner Tobia, the following resolution was adopted by a unanimous vote:

**WHEREAS, Matthew and Christine Morak** request a change of zoning classification from AU (Agricultural Residential) to RR-1 (Rural Residential), on property described as Lot 7, Block 3, Indian River Park, as recorded in ORB 9527, Pages 442 - 443, of the Public Records of Brevard County, Florida. **Section 20, Township 20G, Range 35.** (2.22 acres) Located on the north side of Burkholm Rd., approx. 0.38 mile east of U.S. Highway 1 (3660 Burkholm Rd., Mims); and

**WHEREAS,** a public hearing of the Brevard County Planning and Zoning Board was advertised and held, as required by law, and after hearing all interested parties and considering the adjacent areas, the Brevard County Planning and Zoning Board recommended that the application be approved; and

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

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

**BE IT FURTHER RESOLVED** that this resolution shall become effective as of May 4, 2023.

BOARD OF COUNTY COMMISSIONERS  
Brevard County, Florida

  
Rita Pritchett, Chair  
Brevard County Commission  
As approved by the Board on May 4, 2023.

ATTEST

  
RACHEL SADOFF, CLERK

(SEAL)

P&Z Board Hearing – April 17, 2023

Please note: A CUP (Conditional Use Permit) will generally expire on the three-year anniversary of its approval if the use is not established prior to that date. CUPs for Towers and Antennas shall expire if a site plan for the tower is not submitted within one year of approval or if construction does not commence within two years of approval. A Planned Unit Development Preliminary Development Plan expires if a final development plan is not filed within three years. **The granting of this zoning does not guarantee physical development of the property. At the time of development, said development must be in accordance with the criteria of the Brevard County Comprehensive Plan and other applicable laws and ordinances.**