

## PLANNING AND ZONING BOARD MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, October 11, 2021**, 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: Ron Bartcher (D1); Brian Hodgers (D2); Mark Wadsworth, Chair (D4); Liz Alward (D4 - Alt); Bruce Moia (D5); Peter Filiberto, Vice Chair (D5); and David Bassford (D5 - Alt).

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; George Ritchie, Planner III; Peter Martin, Planner II; Alex Esseesse, Assistant County Attorney; and Jennifer Jones, Special Projects Coordinator.

### **Approval of the September 20, 2021, Minutes**

Motion by Bruce Moia, seconded by Peter Filiberto, to approve the minutes of September 20, 2021. The motion passed unanimously.

### **Rodney McConkey**

A change of zoning classification from GU (General Use) to AU (Agricultural Residential). The property is 8.36 acres, located on the east side of Golfview Ave., approx. 500 ft. north of Port St. John Parkway. (No assigned address. In the Port St. John area.) (Tax Accounts 2312740, 2312741, 2312742, 2312743) (District 1)

Rodney McConkey, 2000 Cheney Highway, No. 103, Titusville, stated he would like to use the property for farming, as well as have cows and horses, and he would also like to grow fruits and vegetables to sell at a roadside stand or to a co-op in Titusville.

Ron Bartcher asked if Mr. McConkey has any plans for growing commercial crops, packaging, or processing, the higher intensity commercial uses. Mr. McConkey replied no.

Liz Alward stated part of the agricultural zoning classification includes agritourism and asked Mr. McConkey if he plans on any kind of agritourism, such as barn weddings. Mr. McConkey replied he has not considered doing anything like that, he just wants a place to be able to grow fruit and vegetables and have animals. He said a wedding venue might be in future plans, but it is not in the plans right now.

Ms. Alward asked if Mr. McConkey would be willing to consider a stipulation that doesn't include agritourism at this time if the board were to consider approving AU. Mr. McConkey replied if necessary, but he doesn't think it's an issue. Ms. Alward stated at some point in the future if he considers doing agritourism, he could always come back to the board and make a request. Mr. McConkey replied he has no problem with the stipulation.

No public comment.

Motion by Peter Filiberto, seconded by Liz Alward, to recommend approval the requested change of classification from GU to AU, with the stipulation that agritourism is prohibited. The motion passed 6:1, with Bruce Moia voting nay.

Bruce Moia stated he is opposed because the whole strip of land there is zoned AU and he doesn't see a need to restrict him over and above his neighbors.

**Julia A. and James W. Garrison**

A change of zoning classification from AU (Agricultural Residential) to RU-1-11 (Single-Family Residential). The property is 0.24 acres, located approx. 365 ft. south of Lucas Rd., approx. 145 ft. east of Bevis Rd., on the north side of Bevis Rd. (21Z00024) (1048 Bevis Rd., Merritt Island) (Tax Account 2419400) (District 2)

John Campbell stated he is a registered land surveyor representing the applicants.

Julia Garrison stated she and her husband would like to build a two-bedroom residential home, but it currently does not meet the required lot size for AU, and she would like to rezone to RU-1-11.

Mr. Campbell explained the lot was created in 1965 when there wasn't much officiality in the County and people split up properties however they wished. There are five other properties in the surrounding area that are of the same size and the same general position of Ms. Garrison's. In addition, the homes in the surrounding area are compatible with what the Garrison's want to build. [Mr. Campbell displayed photos, survey, and floor plans to the board. The exhibits can be found in file 21Z00024, located in the Planning and Development Department]. He stated the lot is well drained and there are no wetlands on the property. Concurrency indicates the roads can handle the requested zoning classification and the City of Cocoa will provide water service; however, sewer is not available.

No public comment

Peter Filiberto asked staff for clarification on the gravity main near the property.

Jeffrey Ball stated it would be up to the utility provider to provide that service. If they decide to go with septic, they will need to get a permit from Environmental Health. If sewer is available, the applicants will have to hook up to sewer.

Liz Alward noted there are many small AU lots in the area that are rezoning to residential and she supports the request.

Motion by Bruce Moia, seconded by Peter Filiberto, to recommend approval of the change of classification from AU to RU-1-11. The motion passed was unanimously.

**Scott Minnick**

A change of zoning classification from AU (Agricultural Residential) to SR (Suburban Residential). The property is 0.50 acres, located on the west side of U.S. Highway 1, approx. 479 ft. north of Glenn Rd. (3074 U.S. Highway 1, Mims) (Tax Account 3023195) (District 1)

Anne Nelson, 2959 Finsterwell Drive, Titusville, stated she is the representative for Scott Minnick, who would like to build a single-family home on the half-acre lot.

No public comment.

Mark Wadsworth asked the size of the home. Ms. Nelson replied it will be 1,400 square feet.

Ron Bartcher stated he believes the change is consistent and compatible.

Motion by Ron Bartcher, seconded by Brian Rodgers, to recommend approval of the change of classification from AU to SR. The motion passed unanimously.

**Robert F. Erario and Jeremy Sothea Sun**

A change of zoning classification from BU-1 (General Retail Commercial) and AU (Agricultural Residential) to all AU. The property is 7.24 acres, located on the west side of U.S. Highway 1, approx. 500 ft. south of Aurantia Rd. (4740 N. U.S. Highway 1, Mims) (Tax Account 2001826) (District 1)

Robert Erario, 4740 U.S. Highway 1, Mims, stated he would like to rezone back to AU. The property is a total of 7.25 acres; one acre is BU-1; and the remaining 6.25 acres is AU. He stated he would like to rezone all 7.25 acres to AU in order to have a wholesale plant nursery on the front, and to have farm animals in the future.

Patricia Frank, 3825 Aurantia Road, Mims, stated her property borders the subject property to the north.

Bruce Moia asked if her property was the AU lot that is the first lot going west from U.S. Highway 1, on the left. Ms. Frank replied yes, the convenience store is on the corner and she has the surrounding property around the store. She said she and her neighbor have concerns because in March or April they were told there was going to be a wedding venue on the property and that Mr. Erario would be putting up a wall because their business zoning required a wall. She said the loophole is that they have intentions of doing a business and if it's changed to agricultural zoning, the Florida Statute uses the word 'ceremonial', which would allow weddings and other ceremonies to take place, meaning loud music and alcohol, and possible drugs, with no fence, no border, and no wall. She said it would put her family and grandchildren at risk to people who might stray away. She said she would like to see a fence or a wall built for protection. The front lot is zoned BU-1 because the previous owners had a motorcycle shop; and before that, it was a bar. She said she has already been through the problems of loud music, fights, and police being called regularly. She stated if they want to do that, then they can put up a wall or a fence like they originally told her they would. She further stated that the previous owner built a building within three feet of her property line.

Mark Wadsworth stated they will have to meet setbacks during permitting.

Ms. Frank stated a wall or a fence is her only request.

Mr. Erario stated he wants to put up a fence because Ms. Frank's property is overgrown with vines and poison ivy that is coming onto his property. He said there are not any buildings within three feet of her property line; he was granted a variance last month and the building is 12 - 14 feet from her property line.

Mr. Wadsworth asked if Mr. Erario would be opposed to a BDP to build a wall. Mr. Erario replied he would be willing to put up a vinyl fence, but not a concrete wall.

Jeffrey Ball stated asked the board to be specific on the criteria for a fence or wall as far as height, location, and material.

Ron Bartcher asked if Mr. Erario is planning on having a wedding venue on the property. Mr. Erario replied no, he does not have any current plans for a wedding venue. Mr. Bartcher noted if there were to be a wedding venue, it looks like there are a couple of buildings on the property, and asked if those

could be used, or would they have to be refurbished to be used as a wedding venue. Mr. Erario replied they are not; he lives in the house; one building is a garage; and the other building is a laundry room.

Liz Alward asked if Mr. Erario has any plans for agritourism at this time for the property. Mr. Erario replied no. Ms. Alward asked if Mr. Erario would be amenable to taking agritourism off the table and just do bona fide agritourism. Mr. Erario replied he would not want to agree to that because he doesn't want to be singled out. He stated he wants to go back to the original zoning, which is AU.

Ms. Alward stated to her, AU is compatible but agritourism is not, considering the surrounding land uses and properties. She said she is inclined not to support it, especially since the applicant doesn't have any plans to do agritourism at this time.

Peter Filiberto asked Mr. Erario how long he has owned the property. Mr. Erario replied three years. Mr. Filiberto noted it looks like in 2019 or 2020 he dug a pond that was nonconforming. Mr. Erario replied he did not dig a pond, it was just a holding water spot and he moved a little bit of dirt, and it was only one foot deep.

Mr. Filiberto stated there was also unpermitted land clearing activities that may have potential wetland impacts. Mr. Erario noted he was cleared on all of that. Mr. Filiberto stated there is scrub jay occupancy on the property. Mr. Erario responded it was part of a scrub jay area, but no scrub jays were found.

Mr. Filiberto stated he agrees with Ms. Alward. If Mr. Erario agreed to restrict agritourism he would support the request. He noted he could always come back and apply again.

Mr. Bartcher asked staff, if the applicant decided he wanted to do a wedding venue, is that something that would be permitted in AU.

Mr. Ball replied yes, the agritourism umbrella is very broad.

Bruce Moia asked, if the applicant was to propose a wedding venue, would he have to go through the site plan process and meet all of the county's codes. Mr. Ball replied yes.

Mr. Moia stated there is agricultural zoning to the north and south; they both have the right to do anything agricultural allows; the applicant is down-zoning from BU-1 to AU, and he doesn't see the problem.

Motion by Bruce Moia, seconded by Brian Rodgers, to recommend approval of the change of classification from BU-1 and AU to all AU. The motion passed 5:2, with Liz Alward and Peter Filiberto voting nay.

Mr. Wadsworth stated the request will move on to the County Commission on November 4<sup>th</sup> for the final determination.

Ms. Alward stated there is AU(L) and AU, which is more intense, and asked if there is a way to create a zoning classification that includes agritourism as a conditional use so that it doesn't get looped into a typical AU, because agritourism is commercial.

Mr. Ball stated there are two different scenarios. One is the way that the State defines agritourism and the uses and how the zoning code addresses agricultural uses. There is an AU(L) zoning classification that doesn't allow the commercial sale of products; whereas, AU allows for the full-blown uses. He said the Board would have to direct staff to look at the code to see if there is anything that can be done as far as tightening the requirements.

Ms. Alward stated Mr. Moia is right, because all of the other AU properties in the area have the opportunity to do agritourism, but it could be a conditional use permit that would have to meet all the conditions.

Tad Calkins, Planning and Development Director, stated staff would have to address the possibility of a conditional use permit with the County Attorney's Office. He said what becomes difficult with agritourism is that it's not just AU zoning, they have to be a bona fide farm, they have to have an agricultural exemption from the Property Appraiser's Office, and then they have to have the use occurring at the site, which makes it difficult because once they get those things they are exempt from any local enforcement whatsoever, so Code Enforcement is ineffective. He noted there are a couple of properties in the County where agritourism is being done and they can be quite a nuisance to the neighbors. He said it's not so bad with those that just have a wedding venue where it's during the day or ends at a decent hour, but when there are things like concerts that can occur, they can go into the middle of the night.

Alex Esseesse stated there are essentially two different parallel restrictions and regulations in place. There is the local application of the Zoning Regulations, and then there are also State Regulations that exempt those if the Property Appraiser determines a bona fide agricultural use. It hinges on what the Property Appraiser does based upon inspection. If they determine it is agriculturally classified, then the County's regulations do not necessarily apply.

Mr. Filiberto asked, in regards to a conditional use permit, is there a way the board can treat agritourism how it treats a liquor license.

Mr. Ball replied yes, if the Board directs staff to look at requiring a conditional use for certain uses; however, it couldn't be based on the agritourism definition. For AU zoning, if it is in the zoning code that a wedding venue requires a conditional use, that could be done, but staff may call it a wedding venue and someone else may call it a wedding pavilion and are not subject to the same conditions.

Mr. Calkins asked the board to let staff discuss the matter with the County Attorney's Office and come back to the board with an update. He said there are different layers that come into play and State Statutes say the County cannot pass an ordinance that would limit the use of agricultural property through agritourism.

Upon consensus, the meeting adjourned at 3:42 p.m.