

PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, September 18, 2023**, at **3:00 p.m.**, in the Florida Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

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

Board members present were: Board members present were: Henry Minneboo, (D1); Ron Bartcher (D1); Robert Sullivan (D2); Brian Hodgers (D2); Debbie Thomas (D4); Mark Wadsworth, Chair (D4); Logan Luse (D4 Alt); David Bassford (D5 Alt); and John Hopengarten (BPS).

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

Approval of the August 14, 2023, P&Z/LPA Minutes

Motion by Brian Hodgers, seconded by Debbie Thomas, to approve the P&Z/LPA minutes of August 14, 2023. The motion passed unanimously.

Glenn R. Miller, Sr., and Glenn R. Miller, Jr. (Jim Evers)

A change of zoning classification from SEU (Suburban Estate Residential) to AU(L) (Agricultural Residential, Low Intensity). The property is 2.5 acres, located approx. 95 ft. northwesterly from the end of Sand Lake Dr. (No assigned address. In the Melbourne area.) (23Z00036) (Tax Accounts 2703311 & 3027845) (District 5)

Jim Evers, 1795 Evers Road, Melbourne, stated he is the general contractor for the property owners and will be building a barn-style home for them, along with a few other non-commercial improvements for agricultural ventures.

No public comment.

John Hopengarten asked if the property will be used as a farm. Mr. Evers replied yes, the owners raise and train bird dogs and deer dogs.

Motion by Robert Sullivan, seconded by Henry Minneboo, to recommend approval of the change of zoning classification from SEU to AU(L). The motion passed unanimously.

The Powers Family Revocable Living Trust (Kelly Hyvonen)

A change of zoning classification from AU (Agricultural Residential), SEU (Suburban Estate Residential), and BU-1 (General Retail Commercial) to all AU. The property is 5.16 acres, located between U.S. Highway 1 and the Indian River, approx. 0.42 miles south of Blacks Rd. (Lot 1, Block A = 3861 N. Indian River Dr., Cocoa; Tax Parcel 12.2 = No assigned address. In the Cocoa area.) (23Z00062) (Tax Accounts 2462101 & 3026965) (District 1)

Kelly Hyvonen, Land Development Strategies, representing Aaron Powers, stated currently, the property has a combination of Community Commercial Future Land Use along U.S. Highway 1, and Residential 4 behind it, and then a small portion of Residential 1. The owners intend to keep the existing Future Land Use designations, but they would like to change the zoning on a portion of the property. The property has BU-1 zoning along U.S. Highway 1, AU as the largest portion of the property, and SEU on the east side of Indian River Drive. The owners would like to have the entire property zoned AU for the purpose of building a single-family home with accessory uses.

No public comment.

Ron Bartcher asked what kind of agricultural pursuits will be done on the property. Ms. Hyvonen replied the owners do not want any agricultural pursuits at this time, just a single-family home, accessory uses, a guesthouse, and a shed for projects.

Mr. Bartcher asked if the property owners have considered AU(L) zoning. Ms. Hyvonen replied, the property owner would like to maintain the AU zoning since that's what he already has today and that's what the neighbors have.

Mr. Bartcher said his concern is that it is next to the Indian River and they want agricultural pursuits on the property.

Ms. Hyvonen stated they do not want agricultural pursuits, but they want to maintain the ability for agricultural pursuits in the future. They intend to build a home on the property. The owner is giving up BU-1 zoning along U.S. Highway 1 because he does not intend to have any commercial development.

Jeffrey Ball stated currently, there are three zoning classifications on the property; BU-1 along U.S. Highway 1, then AU, and then a small portion on the river is SEU. The SEU zoning does not allow for agricultural uses, so if the board recommends AU or AU(L), it would allow for agritourism uses.

Ms. Hyvonen stated the SEU portion can remain, because that will only be used for a dock. The AU(L) zoning still allows for agricultural pursuits of a non-commercial nature. The owner could potentially be doing the same uses with AU(L) as AU.

Mark Wadsworth asked if EU-2 zoning would restrict the structures. He said AU would be consistent with the property to the south, but EU-2 would be consistent with the property to the north. Ms. Hyvonen noted EU-2 is not consistent with the land use designations on the property.

Mr. Ball stated EU-2 has size limitations for accessory structures; whereas, AU or AU(L) do not have size restrictions.

Mr. Wadsworth asked if the applicant would be willing to submit a BDP prohibiting agricultural uses, but still have their structures.

Mr. Ball stated it's not so much the agricultural uses, it's the agritourism uses. If that's the pleasure of the board to restrict the agritourism uses, rather than the agricultural uses, that would be more appropriate.

Logan Luse stated he agrees with the AU zoning, there are best management practices throughout agriculture to make sure there is not pollution into the aquifer and the river, and farmers and agriculturalists are aware of what they are putting into the land. Restricting the agricultural uses as in farming or being able to produce crops limits property rights. Agritourism is a great place to have a small business, and he would not like a BDP that restricts anything. Technology and innovation allow for specific fertilizers and pesticides that will not overload and runoff into the river.

Motion by Logan Luse, seconded by Debbie Thomas, to recommend approval of a change of zoning classification from AU, SEU, and BU-1 to all AU. The motion passed 8:1 with Hopengarten voting nay.

Joshua and Christy Jones

A change of zoning classification from GU (General Use) to RU-1-11 (Single-Family Residential) The property is 1.39 acres, located at the northeast terminus of James Rd. and Blue Ridge Ave. (No assigned address. In the Cocoa area) (23Z00061) (Tax Account 2444034) (District 1)

Christy Jones, 555 Cox Road, Cocoa, stated the reason for the rezoning request is to build a single-family residence.

Public comment.

Mark Stilley, 3401 Craggy Bluff Place, Cocoa, stated he doesn't have any objections to the zoning change, but he objects to the lot being completely clear cut with no building permit or silt fences.

Henry Minneboo asked the width of the lot's access.

Ms. Jones replied it is 33 feet. She said she spoke to Nathan Ottoson in Planning and Development and he said there is room for a driveway. She noted the entire property was not clear cut, but they did take down Pepper trees. She said there are still Pine and other trees on the property.

Motion by John Hopengarten, seconded by Logan Luse, to recommend approval a change of zoning classification from GU to RU-1-11. The motion passed unanimously.

Terrance P. and Peggy A. Mulreany (Kelly Hyvonen)

A Small Scale Comprehensive Plan Amendment (23S.16) to change the Future Land Use designation from NC (Neighborhood Commercial) to CC (Community Commercial). The property is 1.15 acres, located approx. 250 ft. east of Grissom Parkway, and approx. 0.7 miles south of Canaveral Groves Blvd. (No assigned address. In the Cocoa area.) (23SS00016) (Tax Account 2400699) (District 1)

Terrance P. and Peggy A. Mulreany (Kelly Hyvonen)

A change of zoning classification form GU (General Use) to BU-2 (Retail, Warehousing, and Wholesale Commercial). The property is 1.15 acres, located approx. 250 ft. east of Grissom Parkway, and approx. 0.7 miles south of Canaveral Groves Blvd. (No assigned address. In the Cocoa area.) (23Z00056) (Tax Account 2400699) (District 1)

Kelly Hyvonen, Land Development Strategies, stated the property owners are seeking to change the Future Land Use from NC to CC on 1.15 acres, and to change the zoning from GU to BU-2 for retail, warehousing, and wholesale commercial. The property looks familiar because there were similar requests in September 2022 and April 2023 on surrounding properties. It is a logical extension of the existing Community Commercial and BU-2, and the industrial to the south in the City of Cocoa. The property will have direct access to Grissom Parkway. Approval of the requests will create a unified development parcel with consistent Future Land Use and zoning for a future office, warehouse, or distribution use.

No public comment.

Motion by John Hopengarten, seconded by Robert Sullivan, to recommend approval of a Small Scale Plan Amendment from NC to CC. The motion passed unanimously.

Motion by John Hopengarten, seconded by Robert Sullivan, to recommend approval of a change of zoning classification from GU to BU-2. The motion passed unanimously.

Amendment to Chapter 62, Article I, Section 62-2, “Rules of construction and definitions”, Brevard County Code of Ordinances, to add a definition of “Major Transit Stop”, in order to comply with Chapter 2023-17, Laws of Florida (Live Local Act).

Proposed Policy BCC-100, “Evaluation Procedures for Development Proposals Pursuant to the Live Local Act which are Not Otherwise Permissible”

Billy Prasad, Strategic Operations Manager, stated the items before the board are related to the County’s implementation of the Live Local Act, which is designed to facilitate and encourage the development of affordable housing. The Act requires the County to administratively approve developments that meet certain criteria, even if not consistent with certain zoning, land use, and height requirements. The implementation would affectively layer the Live Local Act provisions on top of the County’s existing policy. Unlike some other jurisdictions, the County would not be removing the existing affordable housing incentives and replacing them with Live Local Act requirements. Instead, the incentives that exist today would continue to carry forward upon the adoption of BCC-100. He clarified that does not mean that incentives can be co-mingled. For example, if someone is seeking a density incentive under the existing code, they don’t get that density bonus on top of the Live Local Act. There has been considerable discussions about potential ambiguities in the Live Local Act, and it is because of those discussions that staff is suggesting to use a Board Policy BCC-100 as the primary avenue for implementation of the Act. If additional information comes to light, or if the law is amended, the County would be in a better position to quickly adapt than if it was implemented directly into County Ordinances. In developing the Policy and researching the Act, one code amendment was identified as being required, which involves the definition of a Major Transit Stop. The proposed code amendment is being put forward because the Live Local Act requires the County to consider reduced parking requirements for qualifying affordable housing developments within a half-mile of a major transit stop as it is defined in the County’s Land Development Code. The County does not currently have such a definition. Staff sought input from the Transit Services Department, who suggested modeling the definition after FDOT’s definition of a transit center. He stated its unclear how often the major transit stop provision would actually be utilized because the County already has provisions to allow for reduced parking requirements.

John Hopengarten stated staff gave examples of Titus Landing, Shepherd Park, Cocoa Transit Center, Melbourne Square Mall, and Hammock Landing, as major transit stops, none of which are in the unincorporated area.

Mr. Prasad replied it’s not whether the bus stop is within the County, it’s whether the development is in the County. Conversely, if a development was happening in a City, the County’s definition would not apply, and it would be up to the City to create its own definition for that particular development. Where the bus stop is located is not the determining factor, it is where the development is located.

Mr. Hopengarten asked if it has to be within a half-mile. Mr. Prasad replied yes, that’s in the Live Local Act.

Mr. Hopengarten stated if there are no major stops in an unincorporated area, or close to the border with a municipality, then a developer would not be able to utilize this.

Mr. Prasad replied yes, but they would be able to utilize other provisions of the code. He said it is subject to change depending on what bus stops happen to meet the definition, depending on what Transit Services does.

Mr. Hopengarten asked if there could be a map overlay to show the locations so a developer would know what land to purchase and in what areas. Mr. Prasad replied yes, it would have to be updated periodically, but it can be accomplished.

Mr. Wadsworth asked if staff is only looking for recommendations at this time. Mr. Prasad replied yes, staff is seeking review and recommendations at this time.

Robert Sullivan asked if staff is using the FDOT standard. Mr. Prasad replied it was modeled after FDOT's definition of a transit center. He said staff extensively researched various definitions and there is no contextually relevant definition in the Statute itself.

Mr. Sullivan stated FDOT is pretty much for intermodal and not necessarily for Senate Bill 102. He said his recommendation would be to follow that standard, but with the understanding that the FDOT is for intermodal, not necessarily transit or development.

Mr. Minneboo noted there are stops that are not on FDOT rights-of-way.

Mr. Hopengarten asked staff to elaborate on the County's parking requirements, such as how many parking spots are required per unit for an apartment building.

Mr. Prasad replied there are a couple of provisions that could apply in the affordable housing provisions of the code. He said for studio apartments that meet the affordable housing criteria, it's one space per unit, and that's an example of an incentive that wouldn't be available for something that's not affordable housing or workforce housing.

Mr. Hopengarten asked the requirement if it is not affordable housing. Mr. Prasad replied, in that situation, parking studies can be provided to get certain reduced parking requirements.

Jeffrey Ball stated the current code for multi-family is 1.75 spaces per unit and it doesn't matter if it's one, two, or three bedrooms.

Mr. Prasad clarified that if a developer wants to follow the Live Local provision, they're now outside of the existing incentives. They cannot be layered that way. If a developer was doing the Live Local aspect of it, it just says the County shall consider, that's what the Live Local Act says the County must do and that's what the County would do. He said staff would then ask for studies to determine what that correct number is in any given situation, and it would be on a case-by-case basis. There are incentives already available under the code that might be an easier route for developers to use, and that's not going away.

Logan Luse asked if that would be the minimum they would have to have for affordable housing, at least one per unit, but they could have more. Mr. Prasad replied yes, that is correct.

Mr. Wadsworth stated if there is no further discussion on the ordinance amendment, the board can move to the Board Policy.

Proposed Policy BCC-100, “Evaluation Procedures for Development Proposals Pursuant to the Live Local Act which are Not Otherwise Permissible”

John Hopengarten asked if the board is to look at the Live Local Act as it affects unincorporated Brevard County.

Jeffrey Ball stated the policy would be only for properties in the unincorporated area, but the Live Local Act also has provisions for cities to implement it in the same way.

Henry Minneboo asked how it will work with the cities. Mr. Ball replied, the City of Melbourne was seeking to update its zoning code, but when County staff looked at it, it was determined the County’s zoning code did not need to be updated.

Billy Prasad noted some of what the board sees in the proposed policy was modeled after Melbourne’s code amendment. Some similar language was used, and the board might see some commonalities across different jurisdictions.

Robert Sullivan asked how the mechanics for a public hearing are going to work when there is a planned development adjacent to a single-family home, because the Live Local Act prohibits public hearings.

Mr. Ball advised the Live Local Act pertains to three different types of properties: commercial, industrial, and mixed use. If the properties aren’t one of those three, then a developer cannot use the Live Local Act to get the density bonus. It’s dependent upon the land use category, so if there is single-family adjacent to a commercial property and they are using the Live Local Act, it would not require a public hearing; however, a developer would have to meet the height requirements that are already established in the zoning classification.

Mr. Sullivan stated his concern is with the purpose of the board if staff can determine the public hearing requirements for zoning. He said this board is the first place the public can offer objection or support for a particular property, and it’s being taken away by non-elected officials. He said he has a problem with the process because the State is now mandating that a procedure that has been in place for decades can be bypassed.

Mr. Ball stated staff is implementing State Statute and is being pre-empted as far as what’s allowed and what’s not allowed in the Land Development Regulations.

Mr. Sullivan asked about punitive actions when a developer lies to staff.

Mr. Prasad replied, in Section VI of the proposed Policy, the last provision talks about failure to maintain and make available certain records showing that the affordable housing is accurate would subject developers to the normal requirements of the County’s Comprehensive Plan and Code of Ordinances. Essentially, they would lose their Live Local Act status.

Mr. Sullivan stated there is no financial disincentive to not lie. He stated he handed out a copy of Ordinance 62-6305, the density bonus for affordable housing and also 62-6307, the workforce housing incentive, both of which are developments to be located in unincorporated Brevard County within any coastal hazard area defined by the Comprehensive Plan or any of the barrier islands are not eligible for a density bonus. He asked if that will be enforced by BCC-100.

Mr. Prasad stated the Live Local Act preempts the County as it relates to density; however, there are other provisions in the Comprehensive Plan and County Code that still apply that on a practical sense and may prevent developments in those areas from occurring, especially high density developments. If a development does meet the provisions of the Live Local Act, staff is required to approve it.

Mr. Sullivan asked if language can be put in BCC-100 to exempt the barrier islands and the coastal hazard areas, because that is more about life safety than tax relief for developers.

Mr. Prasad stated staff does not have the authority to carve out exemptions to the Live Local Act provisions.

Alex Esseesse, Deputy County Attorney, reiterated there are two paths that developers are going to have available to them. Section 62-6305 would be one path, and there is also the density bonus under the Live Local Act itself. The prohibition about there being coastal hazard area limitations, or barrier island limitations, they are for availing themselves the density bonus under 62-6305. There are two paths that are available to the developers, and that is the way the legislature had it drafted.

Mr. Sullivan stated currently, the density on Merritt Island or the coastal beach areas cannot be increased that are unincorporated, and asked if that is the recommendation staff is going to take to the Board of County Commissioners.

Mr. Esseesse replied, the density bonus would not be available to the developer under 62-6305 if the property is in a coastal hazard area or on the barrier islands. That limitation only applies to that section and not in general.

Mr. Sullivan asked if staff can include that language as emphasis when developing BCC-100.

Mr. Esseesse reiterated BCC-100 is the application of the Live Local Act, and it doesn't seem to provide any flexibility with respect to the density, zoning, and height limitations.

Mr. Sullivan stated it takes away the building and zoning criteria if it meets the other thresholds. He said staff is saying that tax exemptions for developers trump life safety.

Amendment to Chapter 62, Article I, Section 62-2, "Rules of construction and definitions", Brevard County Code of Ordinances, to add a definition of "Major Transit Stop", in order to comply with Chapter 2023-17, Laws of Florida (Live Local Act) (continued)

Alex Esseesse stated staff needs guidance with respect to the board voting to allow the County to proceed with amending the code to include a definition of a major transit stop. If the board could authorize staff to proceed to the County Commission, or if it has any additions, staff would be happy to incorporate them into the definition.

John Hopengarten asked if the motion would be to give staff the ability to come up with a definition, and the board won't tell staff what the definition needs to be. Mr. Esseesse replied, the board has a sample definition.

Mr. Sullivan asked if the board could table the item since the date has not been set for the Board. Mr. Esseesse replied it can be tabled to a time certain for the next meeting, which is October 16th.

Brian Hodgers asked if the map would be available by that date. Mr. Esseesse replied staff can have the locations identified in the agenda report. Mr. Hodgers stated he would support tabling if there will be a map by the next meeting.

Mr. Sullivan stated he also has questions about items in the Senate Bill and how they are applied locally, and he would prefer it be a collaborative effort.

Mr. Hodgers asked if the Board of County Commissioners has the right to deviate from the Senate Bill and the way the language was written. Mr. Prasad replied, staff is required to implement the Live Local Act, and what it requires is that staff must administratively approve qualifying developments.

Mr. Hodgers asked if the Commission would be violating the Senate Bill if it is modified. Mr. Prasad replied the policy was drafted in such a way to try to implement the Live Local Act in the most straight forward way possible.

Mr. Sullivan stated it's counter-intuitive that it's live local, and it's not Home Rule at all. He said it is no reflection on staff and the great job they do. He said what it's called and what it does are two different things.

Tad Calkins, Planning and Development Director, stated staff is trying to get through what the legislation has done, continue to help people develop. He said staff determined the policy would be the best way to go forward in administrating that until it is known how the development community is going to respond locally and what kind of developments would come, and then staff would move into more of what Melbourne and West Melbourne has done with code changes. He said right now, he can't tell say what part of the code should or shouldn't change because no one knows how it's going to happen. He said there has been one conversation with a developer on Live Local and it was to convert an existing motel into affordable housing, so if that's the route, then that's a different parameter than what is normally seen with construction. He said staff is looking for the board's input, and then it will move forward to the Board to set parameters for developers and the Live Local Act. He said he appreciates the board giving staff more information about what it's looking for with the code change because that's what the Statute says the County must have, a definition of a major transit stop. He said staff can create a list, or a map, and bring it back to the board. He noted staff has worked with Transit Services and Housing and Human Services to come up with a definition.

Mr. Minneboo stated the mapping is important because a developer might think they can build in a location because there is a bus stop. Mr. Calkins pointed out bus stops may alter or change by ridership and that is something that is out of staff's control.

Mr. Hopengarten asked what would happen to an existing facility if a bus stop changes.

Mr. Calkins replied, that is just a mechanism to help staff reduce the parking, it doesn't say that if you're within a half-mile you are now considered Live Local, all it does is allow someone to get below one space per one unit.

Mr. Hopengarten asked if a developer would be out of compliance if a particular transit stop was relocated.

Mr. Calkins stated he doesn't know that they would go out of compliance, it's just a mechanism to approve that lesser standard in parking. He noted there will still be a review process and waivers that

have to be obtained, that's just the mechanism for them to go that route. He said currently, in the code, staff has to evaluate multiple modes of transportation.

David Bassford asked if there will be a provision for a developer to take advantage of it if they are going to build a mass transit stop, and if that is something they could propose. Mr. Calkins replied, for a private developer, that is something that could always potentially be on the table. He said it would have to be accepted by the Transit Services Department.

Mr. Hopengarten asked if Mr. Calkins believes it will help developers. Mr. Calkins replied yes, and it will be interesting to see if that demand or opportunity is there. He said the State has already said if it is industrial or commercial it is an administrative process, but they did not affect residential.

Mr. Hopengarten asked if it will generate more affordable housing in the County. Mr. Calkins replied, it certainly removes some of the obstacles developers would have to go through.

Motion by John Hopengarten, seconded by Robert Sullivan, to continue the Amendment to Chapter 62, Article I, Section 62-2, "Rules of construction and definitions", Brevard County Code of Ordinances, to add a definition of "Major Transit Stop", in order to comply with Chapter 2023-17, Laws of Florida (Live Local Act), to give staff time to prepare a map to show the location of these areas within a half-mile of major transit stops. The motion passed unanimously.

Upon consensus, the meeting adjourned at 4:18 PM.