

## NORTH MERRITT ISLAND

### DEPENDENT SPECIAL DISTRICT BOARD MINUTES

The North Merritt Island Dependent Special District Board met in regular session on **Thursday, August 11, 2022**, at 6:00 p.m., at the Merritt Island Service Complex, 2575 N. Courtenay Parkway, 2<sup>nd</sup> Floor, Merritt Island, Florida.

**Board members present were:** Mary Hillberg, Chair; Gina Lindhorst; Jack Ratterman, Vice Chair; Jim Carbonneau; Chris Cook; and Ted Balke.

**Planning and Development staff present were:** Jeffrey Ball, Planning and Zoning Manager; and Jennifer Jones, Special Projects Coordinator.

#### **Approval of April 14, 2022, Minutes**

Motion by Jack Ratterman, seconded by Gina Lindhorst, to approve the minutes from April 14, 2022. The motion passed unanimously.

#### **(22Z00026) Laura and Earl McCullough**

A change of zoning classification from SR (Suburban Residential), with an existing BSP (Binding Site Plan), to RR-1 (Rural Residential), retaining the existing BSP. The property is 2.35 acres, located on the north side of Hall Rd., approx. 285 ft. east of Wood Duck Lane. (4400 Sea Island Dr., Merritt Island) (Tax Account 2320550) (District 2)

Jeffrey Ball - For those of you who don't know, a BSP is a Binding Site Plan which are pre-cursors to Binding Development Plans. A few years ago, all of the existing BSP's were converted to Binding Development Plans, so they are the same thing. This is a rezoning request to RR-1 and there are revised staff comments for you, with a couple of changes. The first change in the comments are that this request will not be heard by the Planning & Zoning Board because it is not an increase in density. Also, RR-1 does not allow for farm animals and fowl other than horses. In order to have farm animals and fowl, the applicants would need to apply for a conditional use permit and also have a minimum of 2.5 acres.

Colin McCullough - I'm here on behalf of my parents, who are requesting a rezoning to RR-1 for the purpose of having one horse for personal use. Nearby is agricultural zoning as well as SR. One of the adjacent lots is a large lot that has farm animals that frequently cross over to my parents' property.

Public comment.

Chris Minerva, North Merritt Island Homeowners Association, PO BOX 542372, Merritt Island - Regarding the rezoning request by Earl and Laura McCollough, the homeowner's association has no objections.

Mary Hillberg - I think the property is in the floodplain, so remind your parents that horses hate standing in water.

Motion by Jim Carbonneau, seconded by Ted Balke, to recommend approval of the change of zoning classification from SR, with an existing BSP, to RR-1, retaining the existing BSP. The motion passed unanimously.

**(22Z00033) Daren T. and Regina M. Dempsey**

A change of zoning classification from AU (Agricultural Residential) to RU-1-13 (Single-Family Residential). The property is 1.41 acres, located on the east side of N. Tropical Trail, approx. 120 ft. north of Citrus Club Dr. (4850 N. Tropical Trail, Merritt Island) (Tax Account 2318342) (District 2)

Regina Dempsey, 1385 Bishop Rd., Merritt Island - There is currently a beautiful, older home on the property and we would like to subdivide off a lot, and RU-1-13 is in compliance with the 1,300 square-foot home that is already on the property, and we would like to keep that home. We met with George Ritchie to go over the entire application. Thank you.

Public comment.

Jeff Duncan, 4855 N. Tropical Trail, Merritt Island - Using the Brevard County zoning and future land use maps to determine the actual zoning of pieces of land on Merritt Island, if you look at S.R. 528 for a southern border, going north all the way to NASA Causeway, and from S.R. 3 west to the Indian River, the subject property is the only instance of RU-1-13 in that entire section, except for the development of River Island Estates development, 2.3 miles away from the subject property. Aside from the River Estates development, there is not a single example of the RU-1-13 zoning being utilized in that section, so this would set a precedent as it is not something that has been done numerous times before. The actions of the RU-1-13 zoning being utilized as a standalone property as mentioned demonstrates the unprecedented and out of character nature of the requested zoning change. I hope you will give this information due consideration and disapprove this one zoning change because proof is clearly demonstrated that the requested zoning change is not appropriate for this part of North Merritt Island. Thank you.

Chris Minerva, North Merritt Island Homeowners Association (NMIHOA) - Regarding the rezoning request from AU to RU-1-13 at 4850 N. Tropical Trail, the NMIHOA voted to ask you to deny this request based on the following information and County policies. The owners purchased the property with AU zoning in March 2022; in June they applied for a change of zoning; and they are renting out the existing house and have stated they wish to build another rental house on the lot, or to split the lot. The lowest density zoning category that can be placed on this property and allow the changes the owners want, is RU-1-13. This is unfortunate because this is not a zoning used in this area; there is not one property of RU-1-13 in this large, rural, suburban area. The NMIHOA disapproves the RU-1-13 zoning, even with a binding development plan restricting development to two houses. The existing house can be removed in the future allowing five houses on this lot, unlike the hundreds of single-house lots that surround it, even just two rental houses on one lot is inappropriate in this area. The County's own analysis describes the character of this community as single-family residences on lots of spacious character for agricultural uses. As listed in Administrative Policy 3a, the zoning of this property to RU-1-13 would result in a reduction of the neighboring property values, and would be completely inconsistent with historical land use patterns and inconsistent with the actual surrounding development in the preceding three years, and also inconsistent with any surrounding development approved but not yet constructed in the past three years. In Administrative Policy 4, the request is completely inconsistent with past and current character of the neighborhood, and as stated in Administrative Policy 8, the request should be denied based on a consideration of character of the surrounding properties and land use, the impact of the proposed zoning on the established character of the surrounding properties, and how incompatible this zoning would be with the existing land use, and how inappropriate this zoning would be based on applicable conditions defined in the Administrative Policies. The owners might consider another option, such as increasing the size of the

existing house, making it more desirable if they wish to rent it out, and thus increasing the rental income, or to increase the desirability for future use and/or resale.

Mary Gonzalez, 4990 N. Tropical Trail, Merritt Island - I'm opposed to the zoning change at 4850 N. Tropical Trail. The request from AU-1 [sic], which is one house per acre [sic], to RU-1-13, which is five houses per acre introduces an entirely new zoning and isn't consistent with any in the area. We all moved to North Merritt Island for the rural and large lots. Most of the lots only have one house per acre, yet the zoning being requested is five homes, not anywhere close to what is currently there. It would change the whole character of this area, making it much more crowded and no longer rural, because you're bringing a whole new zoning and that means that anybody who wants to buy a house can go ahead and buy the house with whatever the existing zoning is and request it to be changed so they can also have five houses per acre. There is a three-acre property directly east that used to be a grove, and then someone else took it over and had a couple of horses there, it's currently for sale, and one of the selling points is that it can be subdivided. So, if you have a zoning on an adjacent property, five houses per one acre, then that adjacent three acres is potentially 15 houses. Once you set the precedent anyone can rezone, all they have to do is ask. If I want to sell my house I can sell it as agricultural and then have the next people turn around and say that isn't what they want, they want five houses per acre because two properties down, they've already got that, and the three acres behind it have that. I don't see that this is at all consistent with what is here, the future land use map says it's supposed to be four residences per acre, and this exceeds that. Everything about it, even the subdivisions around it, they are all an acre or more. There is nothing in our area that would be as dense as this. We don't want it, it will change the whole character of the area, it's not going to be rural with single-family homes on large lots, it's going to diminish the enjoyment and quality of life for all of the residents on North Merritt Island and I think it should be denied.

Brian Sorensen, 4835 N. Tropical Trail, Merritt Island - I live across the street from the property in question. My main concerns are what was just brought up by the last two speakers, and I don't want to see this become a multi-family property with one to five properties on that one little piece, and that is my main concern. I bought in the area because of the environment and if you start breaking them down to two-tenths of a property per each lot, it will completely destroy the lifestyle that we have created out there. I have no problem of subdividing it and making it single-family, the one that's there and building on the other side, I don't have a problem making it a single house over there, but not to make it RU-1-13 with five houses on that one property. I think it needs to be zoned for a single house and not for multiple houses.

Jeffrey Ball - The RU-1-13 is a single-family residential zoning classification and it does not allow for a multi-family product, such as apartments. RU-1-13 is one house per lot and it would allow up to five lots, but it would have to go through the subdivision process to do that. The land use is RES 4, which is four units per acre, it's not four units all together, it's based on the size of the property.

Mary Hillberg - That's the future land use.

Jeffrey Ball - Yes, that's the future land use. Right now, it's AU, which requires a minimum of 2.5 acres.

Gina Lindhorst - It's not compliant with that.

Jeffrey Ball - Correct.

Regina Dempsey - It's 1.4 acres.

Mary Hillberg - The future land use gives it four units per acre. There is property across the street that is about the same size. There are larger pieces of property around the subject property.

Regina Dempsey - We didn't buy the property to rent it. We don't want to build a house to rent it out. We had some friends move into the house because it has some nice character and it has old Merritt Island floors in it, so we rented that part of the house out. There are some fruit trees on the property, which we appreciate. I don't know where that information came from but we don't plan on renting any properties out, it would be single-family ownership. There is a plan here that we built at 580 S. Tropical Trail, and some pictures of the house, and what we plan to do here would do nothing but increase the value of the properties. We've checked with the City of Cocoa and the water meter is right there, so there is no issue with water. There are townhomes being built on S.R. 3, and we live on Bishop Road which has 110 houses being built at the end of our property, and we are going to be driving every day on Crisafulli Road to get there. I'm a local builder and build custom homes only. If you divided 1.4 into 6 homes, that's 0.23 an acre, and it's probably going to be a lot less than that, but across from the tennis court, there's the 1.4 acres, and then the neighborhood adjacent to it is 0.23 to 0.22 lots.

Ted Balke - I'm looking at the map and my question is, you already have trees and shrubs on the lot, and you admitted you have fruit trees.

Regina Dempsey - We have fruit trees, but I don't think they will be damaged in any way.

Ted Balke - I don't know when Natural Resources Management comes out and looks at property before anybody does any changes, but I would think at some point.....

Regina Dempsey - They have come out to look at the property.

Ted Balke - Have they approved this?

Regina Dempsey - They haven't denied it. There are fruit trees on it, but I don't think they will be an issue.

Jeffrey Ball - Natural Resources provided comments as far as environmental impacts of what they see. If the applicant is successful in getting the zoning change and she applies for a building permit, Natural Resources will review the building permit for any environmental impacts that need to be addressed.

Ted Balke - Is there a way to get a copy of what Natural Resources has reviewed?

Jeffrey Ball - It is in the staff comments provided to the board.

Ted Balke - I constantly see complete liquidation of every tree on a piece of property without any hesitation and they become large vacant lots, and I know there are endangered species of trees and shrubs on those properties before anything even happens. I don't understand how we came to an RU-4 in our area. The North Merritt Island Tropical Trail Study at 2.5 acres per house, and the small area study which wasn't approved, made it one acre per house and now all of a sudden we have a one-quarter acre per house. When did that change, and who changed it?

Jeffrey Ball - Natural Resources does list the property as having protected specimen trees, so that is an environmental constraint. It's my understanding that when the building permit comes in, they will look at what trees are being preserved and what are not.

Ted Balke - When do they come back and re-visit what's going on in the area? I have watched the devastation that goes on every day up there on empty lots. One day it is all of a sudden completely excavated. When I look at the development plans I see that there are preserves shown to be in existence after whatever development is done, and there are no trees left to even be a preserve.

Jeffrey Ball - When talking about large developments with a subdivision plan, Natural Resources reviews those plans as well, and reviews them for tree protection zones. I think we are getting too far in the weeds, but Natural Resources reviews landscaping plans and plans that protect the trees on every project that comes through the subdivision process. Now, building plans for a single-family home is a different process and they review that in accordance with our codes and regulations.

Ted Balke - There are so many violations going on, on North Merritt Island, I have no idea when someone comes up to even review the processes that are taking place.

Jeffrey Ball - If it's a subdivision, County staff reviews it to make sure they comply with codes and ordinances.

Mary Hillberg - We need to focus on the subject property right now and not all of North Merritt Island.

Ted Balke - I don't understand how we became an RU-4, when did that happen?

Mary Hillberg - It was a future land use change that was voted by the commission and this is what it turned into.

Ted Balke - Every study that was ever made has been more than that.

Mary Hillberg - I know, all the small area studies didn't recommend that at all, but that's what we have. It's unfortunate in those aspects, but that's what we have.

Gina Lindhorst - The next step down from AU is not RU-1-13, that is several steps away from AU.

Mary Hillberg - Why is the request for RU-1-13?

Jeffrey Ball - AU requires a 2.5-acre lot, and RU-1-13 is a 7,500 square-foot lot. There are multiple zoning classifications that require more land area. For example, SR requires a half-acre; EU requires a half-acre lot; and EU-2 is along those same parameters. EU and EU-2 are already in the area.

Mary Hillberg - I don't see any SR.

Gina Lindhorst - What is the next step down from AU?

Jeffrey Ball - SR is a half-acre lot. There is also RR-1, which is a one acre lot, but there is no RR-1 in the area. From a planning perspective, you look at what zoning classifications are already in the area, so any time you introduce a zoning classification there are concerns about setting a precedent. I would say that the next zoning would be RR-1.

Gina Lindhorst - The subject property is 1.4 acres, so RR-1 would only allow for one home. The SR zoning is the next level down at a half-acre minimum. EU is a minimum lot size of 15,000 square feet and a minimum living area of 2,000 square feet; EU-2 is a minimum lot size of 9,000 square feet and a minimum living area of 1,500 square feet; and RU-1-13 is much smaller.

Mary Hillberg - Why is this request for RU-1-13? Can it go differently? Can it go less intense?

Jeffrey Ball - Part of your duties is to review the staff comments, take public testimony, and make a recommendation. If you don't see fit that RU-1-13 is appropriate you can recommend a different zoning classification that is more appropriate.

Mary Hillberg - What would be the next zoning category that would be applicable for this property?

Jeffrey Ball - I would say either EU or EU-2 would be appropriate.

Gina Lindhorst - SR is half-acre lots.

Jeffrey Ball - Yes, SR would also be appropriate.

Mary Hillberg - The Future Land Use is RES 4.

Jeffrey Ball - SR and RES 4 are consistent. Ms. Dempsey will probably tell you that the SR zoning classification requires a larger house size than what is currently on the property, which is the reason they are requesting RU-1-13.

Mary Hillberg - They are going to build a house.

Jeffrey Ball - There is a house on the property already that does not meet the square footage for the other zoning classifications.

Mary Hillberg - But they are going to be building houses.

Jeffrey Ball - As far as I know they are going to build one other house.

Mary Hillberg - If you're building another house, then EU-2 would be applicable?

Jeffrey Ball - EU-2 would be appropriate.

Mary Hillberg - Can we ask the applicant to step up and tell us why EU-2 would not be appropriate?

Regina Dempsey - Because we are trying to stay in compliance with the existing house on the property, which is a little over 1,300 square feet. When I met with George Ritchie we had to go with that zoning because the other ones weren't in compliance.

Mary Hillberg - You have a smaller house, so you need to go with a more dense zoning.

Regina Dempsey - You have to go with square footage, you can't go with a house that is bigger than the existing home that is on site.

Gina Lindhorst - She's trying to comply with the numbers.

Regina Dempsey - We have to comply with the square footage on the existing home.

Mary Hillberg - You're leaving the existing home there

Regina Dempsey - Yes. I was told by George Ritchie that that's the way to stay in compliance, so I went with his recommendation.

Jeffrey Ball - Staff does not provide recommendations to applicants, we tell them what the code allows for and what it doesn't. When someone asks for a rezoning, we do not want to create a non-conforming, or substandard issue, where the zoning classification that is applied and now there is a non-conforming structure on the property that would now require it to be either torn down, or a variance is granted.

Gina Lindhorst - Right now, it is zoned AU, which doesn't comply with the minimum requirement of 2.5 acres.

Jeffrey Ball - It doesn't. I don't know when that lot was created, if it was split out from the tennis court property, we'd have to do the research to find out.

Chris Cook - To simplify, the house currently doesn't comply, and they want to bring it to RU-1-13, which is a very high density so they can either put a bunch of other houses on there, or tear that one down. What we have to look at is not this applicant and her plan, we need to focus on the zoning itself. Either we take it to the zoning you feel comfortable with and just go with that.....

Gina Lindhorst - Or recommend a variance for the house that is on it.

Chris Cook - What we can do is get a variance for the house that is on it and take the less dense zoning.

Mary Hillberg - What would be your recommendation?

Chris Cook - That would be my recommendation.

Mary Hillberg - Which zoning?

Chris Cook - I think the SR would be good.

Mary Hillberg - And you think getting a variance for the home that is there.

Chris Cook - Yes, because whatever they do, they are not going to be in compliance. You're either going to have a bunch of little houses there, or the house there on the big lot that is out of compliance. Whatever happens, they can turn around tomorrow and sell it, but the zoning stays with it. In all probability, what will most likely happen is the house will go away because it was built in the 1950's and it's a small house.

Gina Lindhorst - The zoning around it is EU and AU, and that's it. The Citrus Club is EU-2. I would recommend SR or EU.

Chris Cook - I agree.

Jim Carbonneau - I don't like it. I think we've heard all these stories before. Bud Crisafulli somehow got his 48 townhouses approved, and in the last few days that land has been leveled. In my opinion, I would vote to disapprove, period.

Gina Lindhorst - We should give them an option.

Mary Hillberg - If you are recommending to disapprove it, what would you recommend the zoning be changed to?

Jim Carbonneau - I don't think we need to get into that, I think that is up to the applicant and the County, but as presented, I don't like this plan at all.

Ted Balke - If we ask her to change the plan and come back with a new plan, then at least we can see it, because if we vote it down here, the only thing that's going to happen is that it is going to be passed on to the next group who is going to approve it.

Mary Hillberg - It's hard for us to stop the process here and tell her she has to come back with another idea, we really can't do that because it stops the process.

Jim Carbonneau - The current property and the current house, as Chris mentioned, is an older home, but it sits right in the middle of the property, no matter which way you slice it, I'd have to look at the new layout of the proposed houses with the setbacks that would be required to see if they will even fit on the property.

Gina Lindhorst - The houses around it are newer and larger and you wouldn't want to have a bunch of tiny places on that small piece of property.

Mary Hillberg - It will start a compatibility change, and then it moves from there.

Jeffrey Ball - You can outright deny the application and move forward to P&Z and the Commission, or you can recommend a different zoning classification that you believe is more appropriate. You can also ask the applicant to table the request in order for her to go back and take your comments and revise her plan, and then come back with something different, but it would be up to the applicant to do that.

Mary Hillberg - Having someone come back is difficult because it stops the process.

Jeffrey Ball - That would be up to the applicant to decide to do that.

Mary Hillberg - I have some difficulty with that, although if they are denied, they can come back and ask for a different zoning. Do we have a motion?

Gina Lindhorst - I suggest we deny the current request for RU-1-13 and suggest it be rezoned to SR or EU zoning. If there is a noncompliance because of the current house size, then a variance can be provided for that one house.

Jeffrey Ball - It would be better for the board to choose one zoning classification, because then P&Z has to try to interpret what you meant.

Gina Lindhorst - I recommend SR zoning.

Ted Balke - I recommend tabling it and changing to SR; otherwise, it's just going to be passed on to the next step and we mean nothing, and you know the next step is going to approve it as RU-1-3.

Mary Hillberg - We can't assume what other people will do.

Ted Balke - I understand that, but you know what has happened in the past. If you want to stop it here, then you have to table it and ask her to come back again.

Mary Hillberg - Gina has made a motion to deny the RU-1-13 and recommend SR zoning instead.

Gina Lindhorst - With a variance for the current house size.

Jeffrey Ball - A variance is outside of this board's purview.

Mary Hillberg - Is there a second?

Chris Cook - I'll second it.

Mary Hillberg called for a vote on the motion as stated, and it passed 4:2, with Ted Balke and Jim Carbonneau voting nay.

Chris Cook - Is there any way that I can get on the record that moving forward, the Commission not vote on this request until we have a District 2 commissioner representing us? It's not fair, it's taxation without representation, and it's borderline unethical in my opinion.

Jeffrey Ball - I would suggest that you re-open the public hearing and amend the motion to include what Chris suggested.

Upon consensus, the board re-opened the public hearing.

Gina Lindhorst - I amend my motion to deny the RU-1-13 and recommend SR zoning, and request that the Board of County Commissioners not take action on the request until a District 2 commissioner is in place.

Chris Cook - I'll second.

Mary Hillberg called for a vote on the motion as stated, and it passed 4:2, with Ted Balke and Jim Carbonneau voting nay.

Upon consensus, the meeting adjourned at 6:57 p.m.