

## PLANNING AND ZONING BOARD MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, October 7, 2019**, at **3:00 p.m.**, in the Commission 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; Rochelle Lawandales; Brian Hodggers; Ben Glover; Mark Wadsworth, Chair; Bruce Moia; Peter Filiberto, Vice Chair; and Dane Theodore.

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; Jad Brewer, Assistant County Attorney; George Ritchie, Planner III; and Jennifer Jones, Special Projects Coordinator.

### **Approval of the September 9, 2019, Minutes**

Motion by Brian Hodggers, seconded by Rochelle Lawandales, to approve the minutes of September 9, 2019. The motion passed unanimously.

#### **1. Frances P. and Thomas A. Spina, Co-Trustees:**

A change of zoning classification from GU (General Use) and RR-1 (Rural Residential) to AU (Agricultural Residential). The property is 4.72 acres, located on the west side of Adamson Road, approximately 0.50 mile north of Saratoga Lane. (1470 Adamson Road, Cocoa) (19PZ00095) (District 1)

Thomas Spina, 1470 Adamson Road, Cocoa, stated they had five separate pieces of property that they combined to make 4.72 acres, and they would like to rezone it to do agricultural pursuits when he retires.

No public comment.

Rochelle Lawandales asked if there are any limitations types or kinds of animals that would be allowed in the AU zoning classification.

George Ritchie replied they cannot have a hog farm without 10 acres and a Conditional Use Permit.

Ms. Lawandales asked if slaughtering and rendering is permitted. Mr. Ritchie replied no, you can raise and graze, but you can't slaughter animals without industrial zoning. Whatever is grown or raised on the property can be for personal consumption.

Motion by Rochelle Lawandales, seconded by Bruce Moia, to approve the requested change of zoning classification from GU and RR-1 to AU. The motion passed unanimously.

#### **2. Thomas L. and Barbara S. Tofte (Anjelika Teynor):**

A change of zoning classification from GU (General Use) to SR (Suburban Residential) with a BDP (Binding Development Plan) limited to one lot. The property is 1.34 acres, located on the north side of Golden Shores Boulevard, approximately 0.44 mile west of U.S. Highway 1. (No assigned address. In the Mims area.) (19PZ00098) (District 1)

Anjelika Teynor, 3637 Kirby Court, Mims, stated she represents the applicants, who are asking to rezone three parcels on Golden Shores Boulevard. She stated the staff comments explain the request in good detail, and she would be happy to answer any questions.

Public comment:

Michael Buono, 540 Eloise Avenue, Titusville, stated he owns the parcel directly behind the Tofte's. He said the issues with the properties in the area are twofold: having enough property for the zoning, which is solved by rezoning; and the other issue is road frontage. The Tofte's have all of the road frontage, so everyone behind them is essentially landlocked. He said he doesn't necessarily object to the rezoning, but he will be asking for an easement, or legal ingress and egress, and he'd like to have it either prior to, or in conjunction with, the binding development plan.

Ms. Teynor stated it's not that the properties behind the Tofte's are landlocked, there are surveys that show the land that was reserved for future roadways, so there are rights-of-way, and she would not consider Mr. Buono's property landlocked.

Mark Wadsworth asked if the survey shows an easement on either side of that property. Ms. Teynor replied there is not easement, but there are several rights-of-way. She said there is a ditch on one side of the property, which is deeded to the County and therefore reduced the frontage for the Tofte's, which is why they had to combine three parcels in order to request the rezoning. She noted there is also a 30-foot strip of land in the middle, separating the lots, which was reserved but never dedicated to the County, so that one is just sitting there and no one knows who it belongs to, and there is no tax account number, but it's there because when the subdivision was planned many years ago, that land was reserved for roads or driveways. She stated on the west side of the property is another similar 25-foot right-of-way on the survey, so if anyone wanted access they would have to go about it a certain way, but she is not sure of the process.

Mr. Wadsworth asked if the strip in the middle of the lots belongs to the County. George Ritchie stated it's designated for a drainage right-of-way, but it was an unrecorded subdivision plat, and staff doesn't know who actually owns the property. He said the property records describe the land on either side of it, so staff is using a part of the Code that talks about properties that are split by rights-of-way to consider this piece of property.

Rochelle Lawandales asked if staff evaluated the access issues for the properties to the rear and the rights-of-way on either side, and if staff has identified them as valid rights-of-way where others can have access to the remaining lands in the back. Mr. Ritchie replied in this case, they actually provided a deed showing that 25 feet of their lot is dedicated to the County for creating a road right-of-way, and that's where the eastern lot is not as wide as the western property, but this is in an area where there was no recorded subdivision plat that set aside the ownership, so they provided that document to staff with the application.

Ms. Lawandales asked if staff knows if the properties on the right side of the right-of-way have done the same, and if there are deeds that have dedicated 25 feet on this side as well, so there would be a 50-foot right-of-way. Mr. Ritchie replied that is a different piece of property, so staff didn't check to see if the whole right-of-way was created.

Mr. Wadsworth clarified that there is a drainage ditch on both sides of the subject property. Ms. Teynor stated there is a drainage ditch owned by the County, and nothing can be accessed by going through that ditch. She said it is a private issue between the owners. Many of the lots behind the Tofte's are so small that nothing can be done with them unless they are combined, and then access is a secondary issue, which there is a provision for in the future.

Bruce Moia stated if they don't own it they don't have rights to it, and rezoning it doesn't give rights to it.

Ms. Teynor stated the survey shows the Tofte's do own that land, because it was never dedicated to Brevard County, it was just reserved, so they do own the right-of-way on the western side.

Mr. Wadsworth asked if the strip of land between the two lots is on the survey. Ms. Teynor replied that strip of land does not belong to the Tofte's, and what she is talking about is the land, or potential access to the back and west side of the property.

Mr. Moia stated ownership doesn't have anything to do with the request before the board.

Jad Brewer stated the area is difficult because the plats were never recorded and staff is going off old sales maps. It will be up to a court of competent jurisdiction to determine, and he's not sure the County can solve that complicated legal issue at this time. Mr. Moia noted changing the zoning doesn't infer anymore rights than they already have.

Motion by Bruce Moia, seconded by Rochelle Lawandales, to approve the requested change of zoning classification from GU to SR with a BDP limited to one lot. The motion passed unanimously.

### **3. Laura Kimberley Miller:**

A change of classification from RR-1 (Rural Residential) to AU (Agricultural Residential) and removal of an existing BDP (Binding Development Plan). The property is 9 acres, located at the westerly end of Eola Avenue. (4200 Eola Avenue, Titusville) (19PZ00099) (District 1)

Laura Miller, 4200 Eola Avenue, Titusville, stated it is her intention to have an agricultural nursery. She noted there was a successful nursery on the property for 30 years, and she would just like to rezone to AU, which was the previous zoning, in order to rebuild a hydroponic greenhouse with organically grown produce.

Ron Bartcher asked if eco-tourism is something the Ms. Miller would like to do. Ms. Miller replied no, it is not her intention.

Ben Glover asked if Ms. Miller was the owner of the property when it was rezoned to RR-1 with a BDP. Ms. Miller replied no, the previous owner was going to sell the property to a developer, but that did not work out.

Rochelle Lawandales asked staff to talk about the existing BDP.

Jeffrey Ball stated in the existing BDP there are three conditions: 1.) development is limited to six lots; 2.) access would be to Eola Avenue; and 3.) the drainage retention is to be located on the northeast corner of the property. He said if approved, this request will remove the limitations of the existing BDP. Ms. Lawandales asked if the design requirements will be removed as well. George Ritchie replied yes, there cannot be six lots under the AU zoning, and at a minimum requirement of 2.5 acres each, the minimum number of lots that can be created is three, but the end of Eola Avenue doesn't provide enough access for multiple lots unless a road is created to subdivision standards.

Dane Theodore stated there is pending code enforcement action regarding people camping in tents overnight and short-term vacation rentals, and asked Ms. Miller what actions she has taken to

mitigate those complaints. Ms. Miller explained that her ex-husband was in charge of that, and as the new owner she has complied by removing the tent structure, and she has also applied for a permit for the deck structure that she plans to use for agricultural purposes.

Motion by Bruce Moia, seconded by Ben Glover, to approve the requested change of classification from RR-1 to AU and removal of an existing BDP. The motion passed unanimously.

**4. Tanya C. Knowles and Daisy Knowles:**

A change of zoning classification from AU (Agricultural Residential) to RR-1 (Rural Residential). The property is 3.56 acres, located on the east side of Brown Road, approximately 488 feet south of Marlin Circle. (Tax Parcel 7 = 8302 Brown Road, Micco; Tax Parcel 16 = 8303 Brown Road, Micco) (19PZ00100) (District 3)

Tanya Knowles, 3630 Wisteria Lane, Micco, stated she represents herself and her mother, and they own the two parcels of land that were split in 1980 but remained agriculturally zoned, and at this time they do not meet the 2.5-acre requirement, which is why they are requesting a change to RR-1.

No public comment.

Ron Bartcher asked if Ms. Knowles intends to connect to water or sewer. Ms. Knowles replied at this time there is only water on Brown Road, not sewer. Mr. Bartcher asked if they will be using the high-performance septic tanks. Ms. Knowles replied she did not know as they are not that far along in the planning.

Rochelle Lawandales asked Ms. Knowles if she is aware an ingress/egress easement will be required along the northerly parcel for a building permit for the new residence. Ms. Knowles replied yes, it is her mother's property and she will grant an easement.

Motion by Ben Glover, seconded by Dane Theodore, to approve the requested change of zoning classification from AU to RR-1.

**5. Wayne R. Friedrich and Adam J. Saab (Andrew Bader):**

A change of zoning classification from BU-1 (General Retail Commercial) to RU-2-15 (Medium Density Multi-Family Residential). The property is 0.52 acres, located on the west side of Highway A1A, approximately 680 feet south of Ocean Boulevard. (272 Highway A1A, Satellite Beach) (19PZ00103) (District 4)

Wayne Friedrich, 1465 Fuji Lane, Melbourne, stated he would like to develop residential townhouses.

No public comment.

Bruce Moia stated the 15 units per acre density is consistent with the area, and it looks like they will be tearing down an old commercial facility, which would probably be an improvement to the area.

Rochelle Lawandales asked if Mr. Friedrich has done any engineering to know exactly what the yield is for stormwater requirements and utilities. Mr. Friedrich replied the most he has done is determine how many townhomes can be developed based on the size of the lot, but he didn't want to spend thousands of dollars if the rezoning was denied.

Ben Glover asked if it will be seven units. Mr. Friedrich replied yes, seven Key West-style townhomes.

Motion by Rochelle Lawandales, seconded by Peter Filiberto, to approve the requested change of zoning classification from BU-1 to RU-2-15. The motion passed unanimously.

**6. Heck Enterprises of Brevard, Inc. (James Heck):**

A change of zoning classification from BU-1 (General Retail Commercial) to BU-2 (Retail, Warehousing, and Wholesale Commercial). The property is 2.26 acres, located on the south side of Barefoot Boulevard, approximately 0.27 mile west of U.S. Highway 1. (307 & 311 Barefoot Boulevard, Barefoot Bay) (19PZ00104) (District 3)

Bonnie Heck, 8035 542<sup>nd</sup> Street, Sebastian stated she and her husband own a construction company, and she is a real estate broker, and her office is also at the subject property. She said she rides her golf cart around Barefoot Bay, but when she parks it outside her tenants threaten to file a complaint, so she has to store it in a small garage. She said her husband gets deliveries of metal roofs and he cannot have them sit overnight without one of their tenants threatening to report them. She said they also have a skid loader, and usually it's on a trailer, but if she needs the trailer to go get material the tenants are out there with their cameras trying to take pictures of the skid loader because it's not on a trailer parked in the backyard. She said she just wants an area for the golf cart, skid loader, and aluminum materials.

Ben Glover asked if the trailer is stored behind the building. Ms. Heck replied yes, and the trailer is to put the skid loader on, so that's legally allowed to be there, but it's a problem if she has to use the trailer for something else, and then the skid loader is not on a licensed trailer.

Peter Filiberto asked if there is currently a fence or a wall around the property. Ms. Heck replied no, but there is a 10-foot tall berm with trees, and there is a drainage ditch on the west side.

Mr. Filiberto asked staff if Ms. Heck would have to install a chain link fence or a wall, considering she has a landscape buffer. George Ritchie replied no, because there is no site plan, but if she were required to submit a site plan, then Land Development Regulations would require a wall between the commercial property and the residential property.

Rochelle Lawandales stated there are a lot of things in BU-2 that are not appropriate or compatible with the area, but she doesn't have a problem with having an area to store things as long as it's enclosed and kept in a manner it should be. She said she would support BU-2 as long as storage were the only use allowed through a BDP. Ms. Heck asked if that means she can store the golf cart and roof panels. Ms. Lawandales replied yes, storage would be the only thing she could do.

Bruce Moia asked if it has to be enclosed, or is outdoor storage allowed in BU-2. Mr. Ritchie replied contractor storage yards are a Permitted with Conditions use, and the requirement is that they have a chain link fence at least six feet high to enclose the storage area.

Mr. Moia asked if there could be some conditions if the board approved it with a BDP, such as uses or where certain uses can take place. He said if there is a landscaped berm, that's probably better than a wall and the board could limit the activity to not go beyond certain areas. He said he's not opposed to it, but it would be nice to have some conditions instead of just blanket it with BU-2. He suggested limiting no storage west of the berm.

Mr. Glover asked if the board can limit where she parks the golf cart and skid loader through a BDP. Jeffrey Ball stated a BDP is a voluntary agreement between the property owner and the County where the board can add stipulations that would limit where the storage would be allowed.

Ms. Heck stated she is only looking to do storage behind the main building, addressed 311 Barefoot Boulevard. She said she agrees with Ms. Lawandales' stipulation.

James Heck stated they own 311 and 307 Barefoot Boulevard, and they just want to be able to have storage behind the buildings. He said he'd rather have the berm because it is nicer than a chain link fence.

No public comment.

Mr. Ball stated the board could rezone only the back half of the property to BU-2, and that would limit the outside storage to the back half of that property. He noted outside storage is not allowed in BU-1, so the board would just be rezoning half of the property.

Mr. Moia stated the board could allow BU-2 along the rear of the building from the berm, to the east property line, everything south of that.

Ms. Lawandales asked if the applicants would need to provide staff with a legal description. Mr. Ritchie stated without a survey, that would be the safest way to describe it. He said the entire lot has been advertised based on the deed. He stated the board could approve it for the south 100 feet of the property, and that would be an easy description.

Mr. Moia stated the east building is 125 feet from the south property line, and the west corner of the building is about 140 feet.

Brian Hodgers asked if the applicant wants outdoor storage if equipment and materials go missing. Ms. Heck stated they would like to leave the aluminum in an area that is protected.

Motion by Rochelle Lawandales to approve the request with a BDP that would, 1.) define the area to the rear of the building, encompassed by the berm on the west, the southern property line, the eastern property line, and the rear of the building; 2.) that the uses within the BU-2 be limited only to the storage yard; 3.) that it be fenced.

Ms. Heck asked for clarification on which use is limited by the BDP. Ms. Lawandales replied the use would be limited to the storage yard, and the area would be from the back of the building to the berm, to the property line. Mr. Wadsworth pointed out that the storage area would be fenced.

Mr. Filiberto asked if a fence is necessary if there is a landscape buffer. Ms. Lawandales noted the landscape buffer is only on the west side. Mr. Glover asked if the applicant would be able to choose the area for the fence, or does she have to fence the entire area that would be BU-2. Ms. Lawandales stated her thought was that it would be the area that's BU-2, but she is open to that.

Mr. Ball stated the board is determining what part of the property is going to be rezoned to BU-2. The fence could be less than the area that's being rezoned to BU-2, and that would have to be in conformance with the Land Development Code based on the area they designate for outside storage. He said the board could describe the BU-2 portion of the property as the south 100 feet, and that

would limit the outside storage to just 100 feet south of that, so they wouldn't be able to have any outside storage in front of that building.

Dane Theodore seconded the motion.

Mr. Moia stated the idea was thrown out that the board can just rezone a portion of it, and that means there really doesn't need to be a BDP. Ms. Lawandales stated they need a BDP to limit the uses, because there are other uses in BU-2 that aren't appropriate there, which is why she wanted to limit it to only storage, and that would need to be done through a BDP.

Mr. Moia stated if the board is going to ask for a BDP, they might as well rezone the whole property. He asked if it would be appropriate to just do the rezoning of the portion and have the only condition that it's for the storage yard only and no other conditions. Ms. Lawandales stated that can only be legalized through a BDP.

Ms. Lawandales withdrew her motion, and Mr. Theodore withdrew his second to the motion.

Motion by Dane Theodore, seconded by Rochelle Lawandales, to approve the requested change of zoning classification from BU-1 to BU-2, with a BDP (Binding Development Plan) limiting the location of outdoor storage to be behind the main building (311 Barefoot Boulevard), the BU-2 use on the property shall be limited to a contractor storage yard, and any other uses of the subject property shall be limited to those within the BU-1 zoning classification. The motion passed unanimously.

#### **7. Corey Nail:**

A change of zoning classification from PUD (Planned Unit Development) and AU (Agricultural Residential) to all AU. The property is 2.5 acres, located on the west side of Turtle Mound Road, approximately 0.26 mile north of Post Road. (No assigned address. In the Melbourne area.) (19PZ00106) (District 4)

Corey Nail, 472 Thomas Drive, Melbourne, stated he recently discovered that the corner piece of his property is zoned PUD, and because it was 2.47 acres, he had some additional footage deeded to him to meet the 2.5-acre requirement for the AU zoning classification.

No public comment.

Motion by Bruce Moia, seconded by Rochelle Lawandales, to approve the requested change of zoning classification from PUD to AU. The motion passed unanimously.

Upon consensus of the board, the meeting adjourned at 4:09 p.m.