

PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, August 15, 2022**, 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); Brian Hodgers (D2); Robert Sullivan (D2); Lorraine Koss (Alt. D2); Mark Wadsworth, Chair (D4); Liz Alward (D4); Logan Luse (Alt. D4); Bruce Moia (D5); Peter Filiberto (D5); and John Hopengarten (BPS).

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; Melissa Wilbrandt, Associate Planner; Jane Hart, Planner III; Alex Esseesse, Assistant County Attorney; and Jennifer Jones, Special Projects Coordinator.

Approval of the July 18, 2022, P&Z/LPA Minutes

Motion by Robert Sullivan, seconded by Liz Alward, to approve the P&Z/LPA minutes of July 18, 2022. The motion passed unanimously.

2354 Talmadge Drive, LLC (Aldon Bookhardt)

A change of zoning classification from AU (Agricultural Residential) to RU-1-11 (Single-Family Residential). The property is 7.68 acres, located on the north side of E. Main St., approx. 0.32 mile east of Harry T. Moor Ave. (No assigned address. In the Mims area.) (22Z00028) (Tax Account 2103243) (District 1)

Aldon Bookhardt, 3231 Nottingham Lane, Cocoa, stated the reason for his request is to change the zoning classification to coincide with the Future Land Use, which is RES 4 (Residential 4) for the purpose of building 20 - 25 single-family homes.

No public comment.

Bruce Moia stated there is RU-1-11 across the street and he is in support of the request.

Motion by Bruce Moia, seconded by Henry Minneboo, to recommend approval the requested change of zoning classification from AU to RU-1-11. The motion passed unanimously.

Carla Theadora Reece

A change of zoning classification from RR-1 (Rural Residential) to AU (Agricultural Residential). The property is 7.21 acres, located on the north side of James Rd., approx. 0.4 mile west of Cox Rd. (4050 James Rd., Cocoa) (22Z00032) (Tax Account 2403816) (District 1)

Carla Reece, 4050 James Rd., Cocoa, stated she owns just over seven acres of property that is also her residence and she would like to rezone from RR-1 to AU.

No public comment.

Liz Alward stated the request is a down-zoning and it is consistent with the Future Land Use. She noted the staff comments state Ms. Reece will be doing offsite sales of commodities produced on the property, and asked staff if AU allows for sales on the property.

Jeffrey Ball replied the AU zoning classification allows for the sale of commodities that are grown or produced on the property.

Ms. Alward stated she would be able to sell from the property if not limited by a BDP (Binding Development Plan).

Mr. Ball stated if AU is approved she would be able to sell the commodities onsite unless the board felt there is an issue with that and requested a BDP to limit sales, or the board can recommend AU(L) (Agricultural Residential, Low Intensity), which allows for the same agricultural uses, but it doesn't allow for the selling of the commodities from the property.

Ms. Alward stated AU(L) will give Ms. Reece the same opportunities to do what she wants to do, but without the sale of the commodities from the property. She said the subject property is surrounded mostly by RR-1 zoning. She stated her concern is that it becomes an issue if the property is sold, someone else could have a use that produces a lot of traffic, and that can be disruptive to the neighborhood. She stated she would recommend either AU(L) or a BDP that does not allow sales from the property.

Mark Wadsworth asked Ms. Reece if she wants to have sales from the property. Ms. Reece replied it is not her intention to have a lot of traffic coming to the property. She said the primary things she wants to sell is game birds, such as quail and some chickens, in addition to honey. She noted quail is not something that is sold directly to the public, and there is some additional licensing she has to get from the State, but there are restrictions that she can't sell directly to the public.

Mr. Wadsworth asked staff if AU(L) will allow her to do what she wants to do. Mr. Ball replied yes.

Ms. Reece stated she knew a BDP was a possibility, which she is okay with, but she would have to look into the AU(L).

Mr. Ball stated the only difference is that AU(L) does not allow for commercial activities, the buying and selling of commodities that are grown or produced on the property.

Ms. Alward explained that the AU(L) zoning classification came about because people were doing light agricultural uses, but agricultural uses under AU allow industrial-type uses, such as processing and packing plants, so the County created AU(L) to allow agricultural uses that are not as intense as AU uses. She said she doesn't have a preference on either the AU(L) or a BDP.

Mr. Ball stated if the board finds that AU(L) is a more appropriate zoning classification, then he would suggest that as a recommendation. He said BDP's are a recorded document that sometimes get hung up because of joinders or other legal issues. It is a legal document that gets recorded and sometimes they get lost in the mix, but by rezoning to AU(L) it will be on the map and not hidden in an Official Records Book of added restrictions.

Brian Hodgers asked if there are BDP's on the two AU properties that are close to the subject property. Mr. Ball replied the only thing identified in the staff comments is two properties that have a bona fide agricultural exemption from the Property Appraiser Office.

Bruce Moia asked if the property rezoned from AU to RR-1. Mr. Ball replied it was zoned from GU to RR-1 in 1974.

Mr. Moia stated he is not sure he shares Ms. Alward's concerns being that there is AU across the street, adjacent, and to the west.

Motion by Brian Hodgers, seconded by Henry Minneboo, to recommend approval of a change of zoning classification from RR-1 to AU. The motion passed unanimously.

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) (22Z00033) (Tax Account 2318342) (District 2)

Jeffrey Ball stated the North Merritt Island Dependent Special District Board heard the request on August 11th and recommended the SR (Suburban Residential) zoning classification, citing density and lot size issues with the surrounding area. Also, part of the recommendation was that the Board of County Commissioners not take action on the request until there is a district 2 commissioner in office.

Regina Dempsey, 1385 Bishop Road, Merritt Island, stated the property is currently non-conforming, and RU-1-13 is the zoning that will assist in making it conforming.

Bruce Moia stated the property is non-conforming to the existing zoning of AU, and asked why Ms. Dempsey chose RU-1-13 when there are other zoning classifications that would qualify.

Ms. Dempsey replied the current house on the property is 1,359 square feet, and RU-1-13 is the classification that changes the non-conforming status.

Public comment.

Jeff Duncan, 4855 N. Tropical Trail, Merritt Island, stated the crux of his objection is that the zoning change being requested isn't going from the existing house to two houses, but up to five houses, per the RU-1-13. He said he would not object if they wanted to go to a zoning that would allow for one additional house, for a total of two houses on the property. He said he used the Brevard County zoning and Future Land Use web application site map to determine the actual zoning for each parcel of land in the area. On North Merritt Island, from S.R. 528 north to NASA Causeway, and S.R. 3 west to the Indian River, the only existence of RU-1-13 is the River Island Estates development, which is 2.3 miles away from the subject property. There are no standalone examples of RU-1-13 in the large section of Merritt Island, which demonstrates the unprecedented and out of character nature for the requested zoning change. He stated his second concern is that because district 2 doesn't currently have a county commissioner in office, he asks that the zoning request be put on hold until after the election and there is a district 2 commissioner in place.

Mary Gonzalez, 4990 N. Tropical Trail, Merritt Island, stated she is three properties north of the subject property. North Merritt Island is rural and has been rural, and almost everybody there has an acre or more, even the smallest subdivisions are .34-acre lots, but the requested zoning will allow five houses per acre. The Future Land Use Map is RES 4, but apparently it can be five houses per acre instead of four, but that is too dense, and even four houses per acre doesn't exist on North Merritt Island. She said RU-1-13 is inconsistent because it is too dense and not necessary because it could be zoned SR, which would allow for one house per half-acre with a minimum house size of 1,300 square feet. There has not been any other development in the area for the last three years, and there is also no development approved but not yet constructed in that time period.

Pam Felski, 361 Treasure Lagoon Lane, Merritt Island, stated she is opposed to the change of zoning classification as a 20+-year homeowner in the area. She said RU-1-13 is out of character with the existing neighborhood and area, and it would negatively impact the value of the adjacent AU properties that are there, as well as the EU-zoned properties across the street. The change to RU-1-13 is inconsistent with the historical land use patterns in the area and is incompatible with the surrounding area. She stated since the owner has stated her desire to have two residences on the 1.41-acre lot, a more appropriate change would be to the SR classification with a minimum lot size of a half-acre and a minimum living area of 1,300 square feet, which takes into account the current home at 1,359 square feet. She concluded, given the impact of what the decision would have in the area, it would be greatly appreciated if the request could be tabled until there is a district 2 commissioner.

Mr. Moia asked if Ms. Dempsey has a plan.

Ms. Dempsey replied she doesn't have a firm plan at this time, but she was considering maybe subdividing off and building a home next to the home already on the property. She said she doesn't want to demo the house in order to build two houses. She noted she is in the process of getting a building permit to move a shed to help with the conforming, and that is tabled until the rezoning is completed.

Mr. Moia noted there is no RU-1-13 zoning in the area. Ms. Dempsey replied there are townhomes being built within one mile.

Mr. Moia asked if Ms. Dempsey would want five houses on the property. Ms. Dempsey replied maybe in the future, but maybe not five, maybe three or four. She said she might just build one and leave the house that is there.

Robert Sullivan asked if Ms. Dempsey would be amenable to the SR zoning. Ms. Dempsey replied SR doesn't conform with the zoning.

Mr. Moia asked if she believes the SR would not conform. Ms. Dempsey replied she was told in the meeting that she would have to demo the other house and just build two houses.

Mr. Ball stated the minimum living area for SR is 1,300 square feet, so the existing house would be okay; however, there is a problem with the lot width, so if Ms. Dempsey wants to split the lot, the minimum size for an SR lot is 100 feet, and according to the survey it is 195 feet, so in order to split the lot she would need a variance. As of right now, the lot conforms to RU-1-13.

Ms. Dempsey asked if the current house on the property is in compliance.

Mr. Sullivan replied yes, it is in compliance. He stated the alternative that was recommended at the North Merritt Island meeting was SR, and asked Ms. Dempsey if she is amenable to that.

Mr. Moia stated SR means she would have to get a variance to build a second home, or agree to a BDP to limit the density to two units.

Ms. Dempsey stated there is a subdivision next to the property that has quarter-acre lots.

Liz Alward asked Ms. Dempsey when she bought the property. She said she is interested if she bought a piece of property with a non-conforming home on it without knowing what she's going to be doing with it. Typically, when someone makes that kind of an investment they have an idea how to get a return on the investment.

Mr. Wadsworth stated Ms. Dempsey purchased the property in March 2022.

Henry Minneboo stated whatever is approved, the board has to be careful because it will be opening the door for many issues. He said the request is not conducive to this particular area, and there will be a lot more people asking for the same thing.

Ms. Dempsey stated the house that is on the property was built in 1950 and she appreciates that house. She said she was considering, maybe in three or more years, putting another house on the property and just based on the square footage of the existing home she thought this is what was necessary to stop it from being non-conforming. She said at the end of her street 110 houses are being built, and around the corner multi-family is being built.

Motion by Robert Sullivan, seconded by Henry Minneboo, to recommend denial of a change of zoning classification from AU to RU-1-13. The motion passed unanimously.

Ms. Dempsey asked if she can agree to a BDP (Binding Development Plan) and split the lot for one more house, and keep the current house.

Mr. Moia stated she can propose a BDP at the County Commission meeting if she chooses.

Robert Clay and Ethyl May Kirk (Chad Genoni / Kim Rezanka)

A Small Scale Comprehensive Plan Amendment (22S.10), to change the Future Land Use designation from REC (Recreation) to RES 4 (Residential 4). The property is 2.12 acres, located approx. 0.18 mile west of U.S. Highway 1, and approx. 0.37 mile south of Brockett Rd. (No assigned address. In the Mims area.) (22SS00007) (Tax Account 3018268) (District 1)

Kim Rezanka, Lacey Lyons Rezanka, 1290 U.S. Highway 1, Rockledge - [Ms. Rezanka submitted a handout to the board. The handout can be found in file 22SS00007, located in the Planning and Development Department]. She stated she represents Chad Genoni who is the contract purchaser of the subject property. She said the handout she gave to the board shows that the small skinny piece from west to east is the small scale plan amendment, 22SS00007; the L-shape to the east is small scale plan amendment 22SS00008; and the entire orange area is the rezoning request, 22Z00029. She clarified that the zoning will be limited to 197 units for all 76.52 acres, and the BDP will be changed to reflect that. She stated it will not be 306 units, although that would be possible. She said the reason for the request is to be able to have some flexibility in the designing of the lots, because there is a wetland that goes through the middle of the property and there are Scrub Jays. She stated the subdivision will have access from the north and the west.

Public comment.

Maryann Dalrymple, 3410 Chelsey Lane, Mims, stated she owns property on Brockett Road, and she is not in favor or against the proposed development, but she would like to know what, if any, consideration has been given about the effect this will have on the properties on Brockett Road. She said her property is 7.92 acres zoned agricultural/residential, and it's not currently developed, but if

there is a subdivision adjoining it, and she wants to have an agricultural use in the future, she would like to know if there will be a problem. She asked what she needs to do to find out if the development will adversely or positively affect property values.

Mr. Wadsworth stated she should follow the request to County Commission, or talk to the applicant after the meeting.

Motion by Liz Alward, seconded by Bruce Moia, to recommend approval of the Small Scale Comprehensive Plan Amendment (22S.10), to change the Future Land Use designation from REC to RES 4. The motion passed unanimously.

Paul J. Marion, Kimberly Ann LaMattina, Kayla Marie Losat, and Jessica Lynn Ripper; and Robert Clay Kirk and Ethylmay Kirk (Chad Genoni/Kim Rezanka)

A Small Scale Comprehensive Plan Amendment (22S.11), to change the Future Land Use designation from RES 2 (Residential 2) to RES 4 (Residential 4). The property is 35.36 acres, located approx. 385 ft. south of Brockett Rd., and approx. 0.72 mile east of U.S. Highway 1. (No assigned address. In the Mims area.) (22SS00008) (Tax Accounts 2102878 & 2102882) (District 1)

Kim Rezanka, Lacey Lyons Rezanka, 1290 U.S. Highway 1, Rockledge, stated the request meets the comp plan requirement of being adjacent to RES 4, and allows for the property to be developed with flexible lot sizes to avoid the wetlands and Scrub Jays, if necessary. She said the requested land use does not have an impact of levels of services, traffic, or school concurrency, and development will be limited to 197 units on 76.52 acres.

No public comment.

Peter Filiberto stated there is the ability to build 306 single-family lots, although the school capacity limits it to 197 units, and asked if it could be phased later to 306 units if more schools are built in the area. Ms. Rezanka replied no, the BDP would limit it to 197 units. She noted there also will be connection to sewer and water.

Motion by Peter Filiberto, seconded by Bruce Moia, to recommend approval of the Small Scale Comprehensive Plan Amendment, to change the Future Land Use designation from RES 2 to RES 4. The motion passed unanimously.

Paul J. Marion, Kimberly Ann LaMattina, Kayla Marie Losat, and Jessica Lynn Ripper; and Robert Clay Kirk and Ethylmay Kirk (Chad Genoni/Kim Rezanka)

A change of zoning classification from AU (Agricultural Residential), SR (Suburban Residential), RU-1-11 (Single-Family Residential), and GML (Government Managed Lands), with an existing BDP (Binding Development Plan) on SR and RU-1-11 portions, to RU-1-7 with removal of existing BDP and adding a new BDP. The property is 76.52 acres, located on the south side of Brockett Rd., approx. 0.60 mile east of U.S. Highway 1. (No assigned address. In the Mims area.) (22Z00029) (Tax Accounts 2102878, 2102918, 2102919, 2102882, 3018268, & 2113544) (District 1)

Kim Rezanka, Lacey Lyons Rezanka, 1290 U.S. Highway 1, Rockledge, representing the applicant, Chad Genoni. [Ms. Rezanka submitted a handout to the board. The handout can be found in file 22Z00029, located in the Planning and Development Department] She stated the rezoning request is for 76.52 acres limited to 197 units, or 2.57 units per acre, and the new BDP will reflect that. The request includes the removal of an existing BDP, which was on the 40.47 acres to the east, which is

SR, and it limited development to 128 units, so the current request will only add an additional 69 units, but on 36 acres, and it will actually be less dense. The approval of the request will allow flexibility in design because of the wetland and possible Scrub Jays. She stated there is no concept plan yet for the subdivision other than access from the west and access from the north on Brockett Road. She said Mr. Genoni doesn't intend to have all 5,000 square-foot lots, but because of the difficulty in developing the project, he is asking for that flexibility with RU-1-7. There are no concurrency issues, no level of service issues, and the development will connect to sewer and water.

Henry Minneboo asked when the existing BDP was approved. Ms. Rezanka replied it was approved in February 2007.

No public comment.

Mr. Moia noted that on the handout provided by Ms. Rezanka, there is an area of TR-1 highlighted in error, it is not part of the request.

Peter Filiberto thanked Ms. Rezanka for bringing water and sewer to the property, and being environmentally conscience of the property.

Motion by Peter Filiberto, seconded by Robert Sullivan, to recommend approval of the change of zoning classification from AU, SR, RU-1-11, and GML, with an existing BDP on SR and RU-1-11 portions, to RU-1-7 with removal of existing BDP and adding a new BDP limiting development to 197 units. The motion passed unanimously.

Lynda L. Lyles (Nita Salmon)

Removal of an existing BDP (Binding Development Plan), in an AU (Agricultural Residential) zoning classification. The property is 20.25 acres, located on the northeast corner of Fleming Grant Rd. and Hitchin Post Lane. (9385 Fleming Grant Rd., Micco) (Tax Account 3010233) (District 3)

Nita Salmon, 888 U.S. Highway 441 SE, Okeechobee, Florida, stated she represents Lynda Lyles, whose request is only to remove the existing binding development plan that was placed on the property 19 years ago. The original property was a little over 20 acres, and Ms. Lyles agreed to a BDP restricting her to one residence on the 20 acres. Since then, the Future Land Use has evolved, and accordingly, if it went as far as it could, it would be able to have 2.5 acres and have residences on them and still be AU. She said there is a pending flag lot application, but all they are trying to do is subdivide the 20 acres into two parcels, with one residence on each 10 acres. She stated in order to do any further subdividing, it would have to go before the board once the flag lot is approved.

Public comment.

Pamela Hughes, 5050 Hitchin Post Lane, Micco, stated in the documentation, her property is cited as being undeveloped, but it has recently been developed with a three-bedroom house, and it also has a BDP. She said it was implied that the subject property would be split into two pieces, and asked if a BDP could be placed on those two pieces, as many of the surrounding neighbors also have BDP's.

Lorraine Demontigny, 5005 Hitchin Post Lane, Micco, stated she is also adjacent to the subject property, on 10.91 acres, and her property is also under a BDP. She said originally, her property was zoned RR-1 and they wanted to be able to start clearing and digging a pond property before they applied for a building permit, but they could not do that as RR-1, so they rezoned to AU with a BDP

because there were concerns of hog farms and other things that can be done with AU zoning. She said she's not sure why the Lyles' had to have a BDP, but she is in favor of the BDP being removed, although she has some concerns about what they are going to do. She said she tried to speak to the purchaser who wants to build on the 10 acres and he wasn't very forthcoming, and she would like more open communication about what is planned.

Liz Alward asked Ms. Demontigny what her BDP is limited to. Ms. Demontigny replied her BDP has a lot of the RR-1 components because she wanted to be able to have horses and chickens, but none of the heavy industrial things that can be done under AU zoning. Ms. Alward asked if the BDP limits the number of homes she can build on her property. Ms. Demontigny replied she does not remember.

Robert Sullivan asked Ms. Salmon if she is opposed to having a BDP for subdividing the property. Ms. Salmon replied not necessarily, but it wouldn't be necessary because the flag lot would be the 10.73 acres. She said to further subdivide it or do anything different, or even limit the houses, would not have any change, it would just be another obstacle for no reason. She said the buyer can't subdivide it any further and the intent is just to have an additional residence, which would give him one residence on 10 acres.

Bruce Moia stated Hitchin Post Lane is a driveway owned by Marlene and Steven Hughes, it serves three properties already, and it would serve a fourth. He asked if driveways need to be a certain distance from the existing one, and if they can have another residence off of Hitchin Post Lane.

Jeffrey Ball replied in 2011 the code was changed, so this was probably done prior to that, and the code has been updated to not allow that anymore.

Mr. Moia stated if she created a new lot she couldn't use the road, she would have to create a new one. Mr. Ball replied that is correct. Mr. Moia stated she would also have to meet the separation requirements. Mr. Ball replied that is correct.

Ms. Alward asked if she can only have one driveway off of the flag stem lot. Mr. Ball replied the flag lot is the legal access to Fleming Grant Road, so the driveway is the stem of the flag.

Mr. Moia stated a BDP is not necessary because she can only get one lot anyway, unless she decided to do a subdivision.

Ms. Salmon stated it would have to go before the County to do any further subdividing, because the 20 acres is being subdivided one time, and according to the County, if he decided to develop it into smaller parcels he would have to come back for another rezoning.

Mr. Moia stated there wouldn't need to be a rezoning to get a subdivision.

Mr. Ball stated the property has RES 1 land use, which is a one-acre lot, and AU zoning, which requires 2.5 acres, so there is a potential for eight lots and that would require a subdivision that would be reviewed by staff, but it would not go through a public hearing.

Mr. Moia stated the area has drainage and wetland issues. He said he understands the intent, but that is not what the zoning would open it up to, and he doesn't know if that is a concern of anyone's or not. Ms. Alward stated it is a concern of the neighbors and they said it is not compatible.

Motion by Bruce Moia, seconded by Liz Alward, to recommend approval of the removal of an existing BDP, and adding a new BDP limiting development to two lots. The motion passed unanimously.

A Text Amendment to the Comprehensive Plan adding the Coastal High Hazard Area map to the Coastal Management Element X, and correcting scrivener's error in the Glossary Element XVI

Jeffrey Ball stated this is a text amendment to fix a scrivener's error that was brought about during the last EAR (Evaluation and Appraisal Report) in February to fix the 'and's', 'or's', and 'should's' and 'shall's'. A series of maps are also included that were requested by DEO as far as the peril of flood and the coastal high hazard area.

No public comment.

John Hopengarten asked what is the impact of this from what was originally approved. Mr. Ball replied in the glossary, staff is striking the 'and' in the listed conditions and adding 'or'.

Peter Filiberto stated the 'and' to 'or' is only in one section of the coastal high hazard map. Mr. Ball replied yes, it's part of the glossary and comprehensive plan amendment.

Motion by Bruce Moia, seconded by Liz Alward, to recommend approval of A Text Amendment to the Comprehensive Plan adding the Coastal High Hazard Area map to the Coastal Management Element X, and correcting scrivener's error in the Glossary Element XVI. The motion passed unanimously.

Public Comment

Dana Robinson requested information on Item H.1. on the agenda, and whether or not the item was approved. Staff spoke to Ms. Robinson at the conclusion of the meeting.

Upon consensus, the meeting adjourned at 4:14 p.m.