

LOCAL PLANNING AGENCY/PLANNING AND ZONING BOARD MINUTES

The Local Planning Agency/Planning and Zoning Board met in regular session on Monday, January 28, 2019, at 3:00 p.m., in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

Board members present were: Henry Minneboo, Chair; Ron Bartcher; Ben Glover; Scott Langston; Mark Wadsworth; Bruce Moia; and Peter Filiberto.

Staff members present were: Erin Sterk, Planning and Zoning Manager; Jad Brewer, Assistant County Attorney; and Jennifer Jones, Special Projects Coordinator II.

The Chair, Henry Minneboo, called the meeting to order at 3:00 p.m.

Approval of November 19, 2018, Minutes

Motion by Ben Glover, seconded by Scott Langston, to approve the minutes of November 19, 2018. The motion passed unanimously.

Plan Amendment 2018-2.1

A proposal initiated by Flamingo Land Company to amend Part XI, the Future Land Use Element, to change the Future Land Use Map Series designation from IND (Light Industrial) to RES 4 (Residential 4). The property is 27.99 acres, located on the northeast corner of Canaveral Groves Boulevard and Morris Avenue.

Rick Kern, 5963 Stillwater Avenue, Cocoa, stated his client is seeking an amendment to RES 4, and believes it would be beneficial to the area.

No public comment.

Motion by Bruce Moia, seconded by Peter Filiberto, to approve the Large Scale Comprehensive Plan Amendment from IND to RES 4. The vote was unanimous.

Flamingo Land Company (Rick Kern)

A change of zoning classification from IU (Industrial Use) to RU-1-7 (Single-Family Residential). The property is 27.99 acres, located on the north side of Canaveral Groves Boulevard, between Morris Avenue and Devoe Avenue. (No assigned address. In the Cocoa area.) (18PZ00072) (District 1)

No public comment.

Motion by Bruce Moia, seconded by Mark Wadsworth, to approve the change of zoning classification from IU to RU-1-7. The motion passed unanimously.

Martin Family Trust (Jennifer Martin-Sater & Craig Sater)

A change of zoning classification from BU-1 (General Retail Commercial) to BU-2 (Retail, Warehousing, and Wholesale Commercial). The property is 1.39 acres, located on the west side of U.S. Highway 1, approximately 600 feet south of Cross Road. (3645 North U.S. Highway 1, Cocoa) (18PZ00117) (District 1)

Mike Sarraco, representing the Martin Family Trust, stated the applicants would like to rezone from BU-1 to BU-2.

No public comment.

Motion by Bruce Moia, seconded by Mark Wadsworth, to approve the change of zoning classification from BU-1 to BU-2. The motion passed unanimously.

Clark A. and Patricia A. Simms

A change of zoning classification from RU-1-9 (Single-Family Residential) to RU-2-4 (Low-Density Multi-Family Residential). The property is 0.93 acres, located on the west side of North Tropical Trail, approximately 685 feet north of Lucas Road. (700 Saint Lawrence Lane, Merritt Island) (18PZ00130) (District 2)

Clark Simms, 700 St. Lawrence Lane, Merritt Island, stated he would like to rezone to be able to build a home for his mother-in-law.

Bruce Moia asked if only one additional residence is being proposed. Mr. Simms replied he might build a duplex to accommodate his parents as well. He said the only other option was to make a flag lot, but because of the width of the property, that would cause problems with driveways and access.

Mr. Moia asked if Mr. Simms wants to maintain ownership and only rezone a portion of the property. He noted there is no multi-family in the area and asked the size of the subject property. Mr. Simms replied the property is zoned EU-1 (Estate Use Residential) on two acres, and the front 0.92 acres is RU-1-9. Mr. Moia stated the staff comments say there could be up to three more units, and asked if that is three additional units, or three units total. Mr. Simms replied he can only have three units because it's less than an acre. Mr. Moia noted the property abuts single-family residential.

Ben Glover asked Mr. Moia if he would like to limit the applicant to just one duplex to keep him from building additional multi-family structures on the property.

Mr. Moia asked how that would work when the applicant is asking for multi-family against single-family, and if there are any additional code requirements code.

Erin Sterk explained, the protections preventing subdividing aren't there. The applicants said they aren't going to do that, but there's nothing to prohibit that if they could do a flag lot and develop it in a way that would allow the back to have access.

Mr. Moia stated if the rezoning is approved, they could build a triplex and rent it out, and he doesn't think that was the intent, but the board might want to limit the development.

Bill Hank, 685 Timuquana Drive, Merritt Island, said 14 years ago he was involved in a small area plan study that looked at everything west of Tropical Trail, south of Venetian Way, and north of Lucas Road. He stated the small area study was started because a developer wanted to rezone a 27-acre parcel and build over 200 units. The developer eventually withdrew the request, and as a result, Commissioner Pritchard put together a committee to do a study. He said after a year's worth of deliberation, the committee had a recommendation that went to the Commission that said the area should be a minimum of one acre per unit. The recommendation was eventually approved by the Commission for incorporation into the Comprehensive Plan. He said he is opposed to the rezoning because it will set a precedent along Tropical Trail, but if it is approved he would like a stipulation to be added that the property cannot be subdivided, any additional dwellings on the property be occupied by a relative of the property owners, and additional dwellings cannot be rented public.

Henry Minneboo asked Mr. Hank if he would agree to only one additional dwelling. Mr. Hank replied yes, but he doesn't know how an additional unit would fit on the narrow property.

Ms. Sterk stated it is difficult to decipher how they would meet the lot width and depth and get the access road past it, and without a concept plan it's hard to demonstrate that it is feasible.

Lana Walters, 530 Timuquana Drive, Merritt Island, stated she is opposed to the request, and although she empathizes with the applicants, the zoning will affect the whole neighborhood. She said her concerns are the environmental impact on the area and the market value of the surrounding properties. She stated she lives directly across from the subject property and will have an entirely different view and noise levels. She asked, if the property is zoned multi-family, what is to stop somebody from turning it into a duplex, a triplex, or seasonal rentals.

Mr. Simms stated the additional unit will be as close to his house as possible and won't affect anyone's view. He said the small area plan was for separate lots, and he is not proposing a separate lot, nor subdividing and selling off anything.

Mr. Minneboo stated there is not much multi-family from Lucas Road to the north, and beyond that everybody has larger parcels that have not been split.

Ms. Sterk stated the recommendation from the South North Tropical Trail Study committee was implemented as recommended, which was for Residential 1 on the portions of property to the west, and Residential 4 on the east portions.

Mr. Glover asked if it is possible for the applicant to build another single-family home on the property. Mr. Minneboo replied yes, he could build one additional home.

Mr. Glover stated he is against the multi-family part of the request, but he would support only one additional unit.

Mr. Moia stated there isn't any multi-family on that side of Tropical Trail. He said the board can deny the request, and the applicant will have to create a flag lot, or it can approve the request with the condition of one unit.

Mark Wadsworth stated the applicant can already have one unit. Mr. Moia replied he would have to divide the property. He said the board can approve the rezoning, but limit it to one unit, and then he can maintain ownership of the property, but limited to one single-family residence.

Mr. Minneboo asked if Mr. Simms would agree to a binding development plan. Mr. Simms replied yes.

Mr. Moia stated he would support approval of the request with a condition that only one additional unit is allowed on the property. Mr. Glover asked if that would be multi-family. Mr. Moia replied no, it would be one unit.

Ms. Sterk asked for clarification that the unit is intended as a single-family unit. Mr. Moia replied yes, one single-family unit. Ms. Sterk stated having multi-family zoning allows him to share the access. If he had to create a flag lot for his current access and then another access with the canal on the property, two driveways out to Tropical Trail would be challenging.

Motion by Bruce Moia, seconded by Mark Wadsworth, to approve the rezoning from RU-1-9 to RU-2-4, with a Binding Development Plan limited to one single-family development, and that there be shared access to North Tropical Trail. The motion passed unanimously.

Happy Landings Homes, Inc. (Kevin Lee)

An amendment to an existing BDP (Binding Development Plan), in an IN(H) (Institutional Use – High-Intensity) zoning classification. The property is 5.33 acres, located on the southwest corner of U.S. Highway 1 and Otter Creek Lane, on the east side of Old Dixie Highway. (5925 Old Dixie Highway) (18PZ00088) (District 4) [Documents submitted during the meeting can be found in file 18PZ00088 located in the Planning and Development Department.]

Dr. Mike Ronsisvalle, 1299 Bedford Drive, Melbourne, stated Brevard County is in need of a facility where professionals can provide effective treatment for substance abuse. He stated in 2017, 72,000 Americans died from drug overdoses; in 2013, it was 40,000, and the drug causing the most issues is synthetic opioids. He said in Florida, of the top five counties with the most drug or alcohol overdoses from 2014 to 2016, Brevard County is Number 2. He stated his company, Journeypure, wants to provide a solution for Brevard County. Six months after treatment, 70% of Journeypure patients are still clean and sober. He said Journeypure's program starts with an assessment by a medical professional, then goes to an individualized treatment plan, and then there is a long-term coaching process that helps patients stay clean and sober. He stated Journeypure has been doing intensive outpatient programming and partial hospitalization for over 10 years in Brevard County, and he would like to add a residential and detox component. The subject property has a long history with people that have been there for help with addictions, but it wasn't run by medical professionals, and it wasn't licensed by the State. He stated Journeypure is a closed facility where people stay for 30 days to get healthy, and has professionals who provide residential detox and partial hospitalization for patients. He stated Journeypure has a proven track record of creating professional, beautiful facilities that are an asset to the communities it serves, and what is being proposed on the five-acre subject property is a true detox residential program where people can stay on property for 30 days and then leave.

Scott Knox, Wideman and Malek Law Firm, 1900 West New Haven Avenue, Melbourne, stated the proposed BDP keeps the 6-foot privacy fence along Old Dixie Highway, which is part of the original BDP; access is being limited to Old Dixie Highway at the existing access. He said access from U.S. Highway 1 is not possible because FDOT has control over it and they do not want an access at that location. He stated the proposed use is a treatment and recovery facility, which is a permitted use with conditions; and there are certain things his client has agreed to provide. The current building is 9,885 square feet, and what is being proposed is up to 16,700 square feet, because of the need for a centralized kitchen and a specific number of bathrooms. The number of residents will be limited to the same number as before, 47, with 21 employees; and the facility will comply with the permitted use with conditions section of code within a year after getting approval.

Henry Minneboo asked if the current square footage has been a point of controversy with the neighborhood's concerns about staying within the 10,000 square feet. Mr. Knox replied the original plan was to stay within that square footage, but because it is being treated as a permitted use with conditions, one of the conditions requires a bigger facility.

Mr. Minneboo asked how many trips per day the facility will generate. Mr. Knox replied there would be 21 employees with different shifts and work days, so it will not be 21 trips per day.

Public Comment:

Linda Blumauer asked the board to protect the property values and the general safety and welfare of the neighborhood. She said she understands the need for these types of facilities and is sympathetic, but not in a residential neighborhood. Without security, without regulation, and without legal means to keep the patients onsite, the neighborhood will suffer consequences, as the ingress and egress would be in the neighborhood. She said the applicant is seeking an amendment to the existing BDP for the purpose of expanding the service to include a residential detox and treatment facility, so the change of use is an expansion, and by code is not allowed, as it is not conforming. They also want to expand the footprint to add 7,000 square feet, which would be considered an expansion of use and not allowed by code. The change of use to allow addicts and possible felons without onsite security is less restrictive. Since the 2009 there has been little impact on the surrounding neighborhood, as the property has been abandoned and is in a state of disrepair. There have never been 21 employees, and there's never been 47 residents. She stated the purpose of the Institutional Use zoning is to provide for private non-profit or religious uses, which are intended to serve the needs of the public for facilities of an educational, religious, health, or cultural nature. She said a BDP seems to not be worth the paper it's written on, as the current BDP has not been enforced. She said a BDP is a tool for the applicant to agree to conditions above and beyond code criteria, and conditions within a BDP should not be utilized as a mechanism to waive existing code provisions. She stated approving the request will be injurious to the neighborhood, and the board should vote to deny.

Jinger Knox, Pine Cone Drive, stated the State of Florida doesn't mandate what the square footage does, the board does, but if they don't have those health and safety things, the County will be responsible because the board said it was okay for them not to worry about the residents' health and safety. She asked what kind of business would want to be open for a year without worrying about the residents' safety. She stated the code says access has to be from U.S. Highway 1 or else they can't build a new facility that is 68% larger than the current facility. She said the board can approve whatever it wants, but it will put the Commission in a position in front of the media and everyone else because it passed this atrocity, and after that she will go to the Courthouse. She stated the amended BDP gives them less restrictions than the code, and that's not the intent of a BDP.

Shirley Leslie, 2665 Hilltop Lane, Melbourne, stated a developer must show marketable title of a property, or certification that shows marketable title of a property. Section 62-1157 says, "Where a BDP is submitted, approval of the zoning action shall be contingent upon the presentation of a final and complete BDP". She said paragraph D of the BDP references Section 62-1862 of the County Code, but there is no Section 62-1862, and the incorrect reference of Code makes the BDP incomplete and does not provide the County with a legal document. She stated the recitals of the BDP call the facility a treatment center, but to be complete, the BDP should read, 'residential detox, treatment, and recovery', contrary to what Dr. Ronsisvalle said they were not. She stated that for those reasons, the board should deny the BDP. The current owner is not in compliance with Item 6 of the current BDP that requires semi-annual meetings with the neighbors. Item 7 of the current BDP requires County inspections that were never conducted. This represents to the community that the current BDP was not enforced, and there is no control or oversight. The facility referenced in the BDP offers services more intensive than those required for room board, personal service, and general nursing care, and offers beds for use beyond 24 hours by individuals requiring diagnostic treatment, or care for illness, injury, deformity, and infirmity. Florida Statute 395 states the services qualify a facility to be a hospital, which would be a higher intensity use. The proposed BDP offers a 6-foot fence, but an 8 to 10-foot fence would be more appropriate. Also, the existing fence is not maintained to code, and the developer could assume the fence to be adequate. In Paragraph 2(h) of the BDP the developer wants to comply with the facility requirements within one year after receiving approval, but

65D.30 of the Florida Administrative Code requires a license. Florida Administrative Code 65D.30 says licensed facilities by the provider shall comply with health and zoning codes enforced at the local level and all providers shall update and have proof of compliance with local fire, safety, and health inspections annually. As currently proposed, the BDP could transfer to a different type of establishment and practice as such until new successors. She said history has proven that certain elements of the existing BDP were not adhered to. There's no guarantee the developer/owner will ever meet the square footage standards enumerated in Section 62-1826(3). She stated the same facility standards for square footage have applied to the property since it was rezoned in 1986, and they have never been met.

Mark Leslie, 2665 Hilltop Lane, Melbourne, stated he said he is not opposed to the facility because of what they are trying to do, he is opposed because it is proposed in his neighborhood. He said item 3 of the BDP states, "the development shall comply with the following conditions on the use and improvement of the property", and one of the conditions of IN(H) is that they meet a collector or arterial road, not a neighborhood road. He stated in 2005, they were rezoned administratively to IN(L) and Neighborhood Commercial as an Assisted Living Facility. In 2004, the neighborhood came before the board because the facility had contracts with the Department of Corrections to bring people into the neighborhood to be rehabilitated. The requirement for a connection to an arterial road did not come up until 2009 when it was rezoned to Community Commercial and IN(H) for the women and children center. He stated one of the conditions of the BDP states the developer shall comply with the restroom and dining facility standards, but that rule has applied since 1986, and they said in the last BDP that they would comply within a year and they didn't. He said the request to amend the BDP to develop the property as a residential detox treatment and recovery center, licensed by the Department of Children and Families should be denied because it would mean the treatment and recovery facility is being re-established. Section 62-1839.7(b) says, "A pre-existing use may not be re-established if at any time it is changed to the use as consistent with the Comprehensive Plan, or if the pre-existing use is abandoned for a period of three years or more". It was treatment and recovery, it was administratively rezoned in 2005, then rezoned again in 2009, and now they want to go back and rezone it as a treatment and recovery facility. He asked how the use of treatment and recovery can be re-established if the use was treatment and recovery up until 2005. He said the use of treatment and recovery was substantiated by County Attorney Knox during the May 18, 2004, Commission meeting. Mr. Knox advised the Board that approval could view the property as having been given a Residential Social Services Facility zoning in 1986, which would then include drug treatment and recovery facility. He stated if they want to expand the floor area, they would be allowed to, but they would only be able to do it by 25% through administrative review and approval, as long it meets the expansion regulations. If they were to pursue administrative relief through the board, it would require that they go through a process, and the County staff would have to illustrate the location and all proposed expansion and conformance to applicable site improvement requirements for the proposed re-building, and the degree at which the construction meets or brings the site into more conformance with all applicable site improvements. He said the State doesn't spell out specific square footage, they leave it to the County to decide the square footage.

Costas Manouselis, stated he lives across the street from the proposed project, and he is concerned for the safety of his family. He said he's also concerned with traffic from U.S. Highway 1, because there are a lot of accidents.

Scott Knox stated Mr. Leslie is correct that the facility was a pre-existing use, and for that reason the use that was there before existed as a treatment and recovery facility, with the same conditions that

exist today. That road was there, the buildings were there, and the only thing being requested now is an expansion. He said when there is a pre-existing use in the IN(H) zoning, developers don't have to comply with location standards, so collector road/arterial road is completely irrelevant, because it is a pre-existing use. He said Mr. Leslie is asking to change that and make them do something different by connecting to an arterial or collector road, which it probably still qualifies as a collector because it collects traffic from abutting residential neighborhoods onto Old Dixie Highway, which turns into Otter Creek Lane, and there is a commercial establishment at the end of Otter Creek Lane, so it fits all the criteria for a collector road under code. He stated there is a Fair Housing Act, an Americans with Disabilities Act, and a Rehabilitation Act at the Federal level that says you can't discriminate against a use where people have disabilities. He said Mr. Leslie talked about the conditions on the property 20 years ago, but they are the same conditions that exist today, and the only reason the board would deny it is because it is a treatment facility, and that doesn't fly under federal law. Expansion that's permitted for a pre-existing use is 25% or they can file a site plan with the County, and 99% of today's discussion would be covered by a site plan. He stated for an expansion with pre-existing uses developers can go to 25% administratively or go beyond that to the County Commission with a site plan and get the site plan approved. He said his clients added the 16,700 square feet as a cap; there may be fewer residents, or there may be fewer employees. The other thing the ordinance says about trading this exemption for pre-existing uses, is that the use has the same rights and privileges as are set forth in the ordinance; it doesn't say they have to comply with all the conditions of the ordinance. The ordinance, Section 62-1573, which deals with high-intensity institutional uses, says that if you existed as an institutional use before August 15, 2004, you are a pre-existing use, and you don't have to go through the qualification provisions, and it allows the same rights and privileges as a pre-existing use.

Mr. Minneboo asked staff if the board is specifically dealing with the amendment of the BDP.

Erin Sterk replied yes, the request is for an amendment to the BDP, some of the responsible parties within the BDP, and the specific conditions. She stated there are specific provisions that say they'll come into compliance with the facility standards a year after opening, but administratively, staff does not have a tool to allow for that; staff cannot sign a Business Tax Receipt for a facility to be out of compliance with Code over a certain time period. Item 3(i), the applicant represented there is adequate parking on the site, but staff doesn't have any demonstration that that has been approved, and staff also cannot exempt someone from meeting parking requirements a facility is expanded through a BDP condition. She stated before the board today is the change of the use and whether or not it is consistent and compatible with the surrounding area. A BDP is a tool to obligate the property owner; it runs with the land, not with a developer or owner. Generally, the proposed use is going from a dormitory in IN(H) zoning to a treatment and recovery facility. The dormitory is a permitted use, and the treatment and recovery facility is permitted with conditions, and that's when those specific conditions for compliance with the facility standards kick in. The dormitory doesn't have those standards and that's why they sought the dormitory use in 2009 and memorialized it in a BDP, because they weren't able to provide the facility standards necessary for the residents of the adult congregate living facility.

Scott Langston asked how many years the treatment facility has been on the property. Ms. Sterk replied she doesn't know what they were actually operating as, but they have not had the rights to be a treatment and recovery facility since 2005, when it was administratively rezoned with a BDP for an Adult Congregate Living Facility.

Mr. Langston asked if the property has had the same owners the entire time. Ms. Sterk replied she believes it has been the same owner but has operated under different names.

Mr. Minneboo stated the first thing the board should do is eliminate the existing BDP. Mr. Moia stated the board can remove the existing BDP by approving the new BDP.

Ms. Sterk stated staff has some significant concerns over the language of those conditions, such as the responsibility of the parties who would be obligated to come into compliance as proposed today and the intention to usurp the code later.

Ben Glover stated it seems as if the applicant is coming back and starting over. He said if the County has concerns, he doesn't know how the board pursues something like that.

Ron Bartcher stated typically, BDPs add to zoning restrictions, and he doesn't recall a BDP ever circumventing zoning restrictions. He said for conditions 3(i) and 3(j), there's been no evidence supporting those assertions. He asked staff who enforces the conditions of a BDP, and if a neighbor has to make a complaint to the County. Ms. Sterk stated ideally, the conditions would be structured in a way that include a timely mechanism that the applicant would need to demonstrate that they come into compliance. Staff doesn't have a regular mechanism to inspect properties.

Mr. Bartcher stated it seems the board is creating rules it doesn't enforce, and it is left to the residents to do that. If the board creates a rule that says they have to do something on a regular basis, then it should be up to the County to determine, and if there is not a way to do that, he doesn't see any reason to put it in a BDP. Ms. Sterk stated the property owner can request the County inspect the property for compliance, but they have not made the request.

Mr. Minneboo stated in the past, Code Enforcement has undertaken some of those tasks. Mr. Sterk stated the conditions in a BDP become part of the zoning action, and they are enforceable by Code Enforcement.

Mr. Knox stated Paragraph 5 says, "The developer shall comply with all regulations and ordinances of Brevard County". He said if there's something that's not in compliance with the County code, and staff feels that's the case, it can be fixed, because the intent is to comply with the code. The BDP is enforceable by Code Enforcement, as stated in Section 8. If it makes the neighbors more comfortable, he would agree to a requirement that the County inspect from time to time to ensure compliance.

Peter Filiberto stated the board has heard a lot on the subject. The County is concerned about it, and the residents are concerned, so he is not in support.

Motion by Peter Filiberto, seconded by Ron Bartcher, to deny the request for an amendment to an existing BDP in an IN(H) zoning classification. The motion passed 5:2, with Langston and Wadsworth voting nay.

Adjournment

Upon consensus of the board, the meeting adjourned at 4:46 p.m.