

PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, June 12, 2023**, at **3:00 p.m.**, in the Florida Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

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

Board members present were: Board members present were: Henry Minneboo, (D1); Ron Bartcher (D1); Robert Sullivan (D2); Brian Hodgers (D2); Lorraine Koss (D2-Alt.); Ben Glover (D3); Debbie Thomas (D4); Mark Wadsworth, Chair (D4); Logan Luse (D4-Alt.); Robert Brothers (D5); and John Hopengarten (BPS).

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; Alex Esseesse, Deputy County Attorney; Jane Hart, Planner III; Paul Body, Planner III; Trina Gilliam, Planner II; and Jennifer Jones, Special Projects Coordinator.

Approval of the April 17, 2023, P&Z/LPA Minutes

Motion by Ben Glover, seconded by John Hopengarten, to approve the P&Z/LPA minutes of April 17, 2023. The motion passed unanimously.

Mehran Ghaeenzadeh (Ken Ludlow)

A change of zoning classification from BU-1 (General Retail Commercial) with an existing BDP (Binding Development Plan) to BU-2 (Retail, Warehousing, and Wholesale Commercial), and removal of the existing BDP. The property is 8.87 acres, located on the south side of W. New Haven Ave., approx. 250 ft. east of New York St. (3865 W. New Haven Ave., Melbourne) (23Z00007) (Tax Account 2800735) (District 5)

Ken Ludlow, BSE Consultants, stated the subject property is currently zoned BU-1 with a Binding Development Plan on the south 100 feet for landscaping and stormwater buffer. The owner proposes to construct a three-story, climate controlled, storage facility, and the BU-2 zoning would allow the structural height up to 35 feet. He stated although the use will be a storage facility, it will look and feel more like an office park-type of building, it will be quiet with low traffic. The proposed plan would keep the building up front, more in character with the commercial development typical of the rest of U.S. 192. He noted there are several other parcels already zoned BU-2 within a block, in either direction, on both sides of U.S. 192, so there is precedent for similar zoning in the neighborhood. He pointed out that the proposed facility is shorter than a billboard located on the parcel next door, so there is also precedent for height in the immediate vicinity. He said he is presenting a BDP that would basically replace the buffer with another 100-foot strip, with accommodation of stormwater and landscaping to buffer the south strip along the residential parcels.

Jeffrey Ball stated the main difference between the existing BDP and the proposed BDP is the removal of the second condition, "The developer/owner shall exclude adult entertainment development and rentals, or any other offensive operation." The language about the landscape buffer to the south is still included in the proposed BDP.

Mr. Ludlow stated he can include that language if needed, but he didn't feel that was necessary because that is included in that zoning anyway. Mr. Ball stated adult entertainment is permitted in that zoning classification; however, it is prohibited by locational criteria.

Public comment.

Christy Fischer, Planning Director, City of West Melbourne, stated her interest is finding out about the utilities for the proposed project and whether there will be a need to connect to City sewer.

Gerald Patenaude, 3850 Miami Avenue, West Melbourne, stated the proposed facility will basically be in his back yard. He said a canal straight across to both canals would stop the water intrusion, because with the vegetation gone, the potential flooding could be much worse than it is already. He stated as far as a barrier but he would prefer to have a concrete wall. He also stated a three-story building will bring it above the tree line, so he would prefer two stories.

Mr. Ludlow stated he believes the project will be connecting to City sewer, but it would be a minor amount of discharge, similar to a small office. He said as far as the drainage, the BDP addresses that, and there will be a wall or a fence for security.

Ron Bartcher asked if Mr. Ludlow would be willing to stipulate in the BDP that the only BU-2 use will be for the mini-warehouse, because there are other uses in BU-2 that would not be appropriate for the area. Mr. Ludlow replied, yes, he would agree to that stipulation.

Motion by Ron Bartcher, seconded by Lorraine Koss, to recommend approval of a change of zoning classification from BU-1 with an existing BDP, to BU-2, and removal of the existing BDP, and replacing it with a new BDP, retaining the BU-1 uses and limiting the BU-2 use to a mini-storage facility.

Samir and Ilham Itani Revocable Living Trust

A change of zoning classification from AU (Agricultural Residential) to EU-2 (Estate Use Residential). The property is 11.13 acres, located on the east side of Ford Rd., approx. 226 ft. south of Guil Dr. (No assigned Address. In the Titusville area.) (23Z00031) (Tax Account 2101052) (District 1)

Motion by John Hopengarten, seconded by Ben Glover, to recommend tabling the request to the July 17, 2023, meeting, as the applicant failed to appear. The motion passed unanimously.

Terrence A. Cronin, Jr. and Kathleen M. Hubbard (Mike Burkhead/Gulfstream Towers)

A CUP (Conditional Use Permit) for Wireless Telecommunication Facilities and Broadcast Towers, in a GU (General Use) zoning classification. The property is 29.17 acres, located at the eastern intersection of S.R. 407 and S.R. 528. (No assigned address. In the Cocoa area.) (23Z00015) (Tax Account 2324077) (District 1)

Mary Solik, 121 S. Orange Avenue, Suite 200, Orlando, Florida, stated she is legal counsel for Gulfstream Towers. The request is for a proposed 199-ft. telecommunications tower on a 29.17-acre tract, located where it will not bother anybody, but will provide needed coverage in the area. Staff has done a thorough job of analyzing the application, and Gulfstream meets the criteria under the CUP requirements.

No public comment.

John Hopengarten asked if there will be an access road to the site. Ms. Solik replied the access will be from S.R. 407, through two additional tracts that are already improved and owned by the same property owner.

Ron Bartcher stated the staff report recommends additional restrictions, such as providing a structural analysis signed and sealed by a registered engineer. Ms. Solik replied that will be done at the site plan stage.

Mr. Bartcher asked if there is there a need for the board to put additional conditions on the CUP if they are being addressed at site planning.

Jeffrey Ball replied the recommendations are for the board to consider, the conditions were part of the consultant's review. The first proposed condition, the final construction documents, are part of the review process. The last condition, that all feed lines shall be installed within the support structure sealed from birds and wildlife, that is a condition the board may want to consider as part of the CUP approval.

Ms. Solik stated Gulfstream is amenable to all of the conditions.

Mr. Bartcher asked if the County Commission will apply the conditions. Mr. Ball replied yes, the P&Z board is a recommending body to the County Commissioners and it's up to the P&Z board to determine whether the application moves forward with that condition.

Motion by Robert Sullivan, seconded by Henry Minneboo, to recommend approval of a CUP for Wireless Telecommunication Facilities and Broadcast Towers, in a GU zoning classification. The motion passed unanimously.

Legacy West Melbourne, LLC (Bruce Moia)

A change of zoning classification from AU (Agricultural Residential) to RU-2-15 (Medium Density Multi-Family Residential). The property is 2.76 acres, located on the west side of John Rodes Blvd., approx. 600 ft. south of Fortune Place (930 S. John Rodes Blvd., Melbourne) (23Z00025) (Tax Account 2704610) (District 5)

Bruce Moia, MBV Engineering, stated the subject property is in an area where there is City and County property. He said he started working with Legacy over two years ago on the project, which is the adjacent parcel to the west. It is zoned for 15 units per acre; he did the design and went to West Melbourne City Council to request approval. Halfway through the design process after everything was submitted, Legacy acquired the subject property. He said at the time, there was no plan to do anything with it because they thought the project was viable, and did not think there were any issues, and the City asked if the developer was going to annex, or include it or not include it. He stated he told the City that nothing was planned for the property at the time, and that it would just be used as an amenity for the development. He said they realized the project could not be done after going through the site plan process and finding out utility and roadway improvements were needed, so the plan now is to include this property into the multi-family residential development to make it feasible. He stated they have withdrawn the submittal to the City of West Melbourne, but there is one last small piece that was recorded, and they are asking that to be un-recorded. He said they are going to wipe the slate clean, come back to the County for the rezoning to be consistent with the property to the west that is already zoned for 15 units per acre, and make this property 15 units per acre, and then go back to the drawing board and do whatever they have to do to make the project viable. He stated they will have to put in turn lanes on John Rodes Boulevard, but there is not a lot of room, so they are proposing to dedicate 35 feet of the property to the right-of-way to the County for the roadway improvements, including turn lanes, drainage improvements, and utilities, at a cost solely to the

developer. The project is at the threshold of a traffic concurrency, which is why the improvements are being requested. He noted West Melbourne Utilities plans to have their own water system, so there are a lot of water extensions the developer is proposing.

Mark Wadsworth stated the proposed project is consistent with what is to the south.

Henry Minneboo asked if the City of West Melbourne will require annexation if using the City's water. Mr. Moia replied annexation is not being proposed because they were able to get the approvals without it, and they have to go pretty far south to connect to water and sewer.

Public comment.

Christy Fischer, Planning Director, City of West Melbourne, stated as Mr. Moia mentioned, the property had no entitlements other than the former strawberry farm; whereas, the property behind it did, and they were going to build 199 units. She said the developer wanted to keep it at that threshold, in parts, though they only had one driveway, because the County has said any development over 200 units needs to have two accesses, and she is not sure where they are going to get access. She mentioned one access was going to be at the south end and they were going to do the improvements, and Mr. Moia minimized some of the traffic safety proponents of that because there was some traffic safety concerns. She said the City has a code that says if there is going to be connection to water and sewer, there either needs to be a pre-annexation agreement, or annexation if next to the City. She stated City Council believes there is probably enough property as it is that's vacant and can serve as multi-family, and the developer withdrew. She said she discovered the developer wants to get the entitlements through the County with the rezoning in order to have additional units. She noted she didn't know the project was not financially feasible until she heard about it from Mr. Moia, but it feels a little underhanded that they first weren't going to have any entitlements and it was just going to be what it was, and now they are going to have 50 – 60 units, and then come back to the City and say they have to annex as the way it is, and that is what bothers the City. She said the City is always happy to annex and have more revenue, but on the other hand, like the County, the City has a Comprehensive Plan, a long-term vision, and the proposed project doesn't play into that as well as it should.

Mr. Minneboo asked if the developer wanted the County to handle it. Ms. Fischer replied the developer wants the County do give them the density and be the culprit.

Mr. Moia stated there is nothing underhanded, and the developer is the victim of circumstance. He mentioned the rise in construction and material costs, interest rates, and insurance. In 2021 the numbers worked, but in 2023 the numbers do not work. He said the developer had all intentions of doing exactly what was proposed, but because of circumstances beyond control, it's not realistic. He stated in the beginning, there was only one means of access, and egress is really most important. Now, they own the entire frontage on John Rodes Boulevard and can have a second access, and would like to add a couple of more units to make the project viable. More than likely, they are not going to go all the way to the extreme, because they don't need every unit they can possibly get out of the project. He stated it is no secret that West Melbourne is not excited about multi-family development, but even when entitling the property there is still no guarantee of approval. He said despite the challenge, the developer gave the City everything they asked for, and was over-generous at first by giving that piece of property as a park or amenity, but now they have go back on that agreement, but it's not because they want to, it's because they have to.

Mr. Wadsworth asked if Legacy owns the property to the west. Mr. Moia replied yes, and to the east; they own both properties. Mr. Wadsworth asked if the property fronts John Rodes Boulevard. Mr. Moia replied yes. Mr. Wadsworth asked if Dike Road reaches the property from the rear. Mr. Moia replied no, there is a canal right-of-way between the subject property and Dike Road. Mr. Wadsworth stated he's almost certain there is an easement for Dike Road to continue.

Mr. Moia stated the developer is doing the roadway improvements and can add multiple accesses now that there is full frontage on John Rodes Boulevard.

Mr. Wadsworth asked if there is multi-family to the south. Mr. Moia replied yes, there is a large subdivision to the south.

John Hopengarten asked what would be the best way to handle it that would satisfy the City of West Melbourne. Mr. Moia replied they have to start over, so they are going back to West Melbourne. Mr. Hopengarten asked about annexation. Mr. Moia replied annexation will probably eventually happen.

Robert Sullivan asked if the developer would consider a BDP with the City of West Melbourne. Mr. Moia stated they will abide by whatever City Council wants, and whatever is presented to them is what they will have to build; the City does not do BDP's, they look at the plan and approve it as-is, and it can't be deviated from, so a binding development plan is a site plan. He said a BDP would have to be for the County, and if the board wants a BDP in order to approve the zoning request, he doesn't know what could be added to it, because they are not going to do anything without the City's approval.

Motion by Ben Glover, seconded by Brian Hodgers, to recommend approval of a change of zoning classification from AU to RU-2-15. The motion passed 10:1, with Robert Sullivan voting nay.

Mina St, LLC (W. Nathan Meloon)

A change of zoning classification from RU-1-13 (Single-Family Residential) to RU-2-10 (Medium Density Multi-Family Residential). The property is 0.21 acres, located on the north side of South Court, approx. 600 ft. west of N. Highway A1A (29 & 31 South Court, Indialantic) (23Z00026) (Tax Account 2716147) (District 5)

Nathan Meloon, 1990 W. New Haven Avenue, West Melbourne, stated the reason for the request is to make the property compliant with what it is, which is a duplex. A public records request revealed that in 1963 the property was a duplex and has been a duplex for almost 60 years. A mass rezoning in the area in 1973 changed the zoning to single-family, which does not permit a duplex, it only allows a single-family dwelling. He said the proposed zoning allows a duplex as a permitted use, which is what his client is trying to comply with. He said the proposed zoning is consistent and compatible because it has been in existence for 60 years. There is other multi-family zoning west of A1A; there are condos directly to the south, and another condo a block further to the south. He noted there is no redevelopment planned with the request, the property will remain the same. He mentioned the concern about Airbnb's in the public comments and stated there was a six-month lease that recently ended, and there is now a current lease. He concluded by saying his client is asking the board to approve the rezoning to allow the duplex use that has always existed on the property.

Ben Glover asked if the property owner lives in the duplex. Mr. Meloon replied no, the applicant does not currently live at the duplex. Mr. Glover asked if there is a lease for both sides of the duplex, or if there is one unit that is vacant.

Nash Cole, 8430 Illinois Avenue, West Melbourne, property owner, stated both units are currently occupied. The current lease is still in effect, but it is month to month because the tenant is moving in the next couple of weeks and then there will be a new tenant.

Mr. Glover asked if Airbnb's would be permitted if the zoning was changed. Mr. Cole replied he does not intend to have an Airbnb, he wants to be compliant with what the property is.

Mr. Glover asked if 30 days or 60 days is the County's minimum on rentals.

Jeffrey Ball replied, the only rental requirements are short-term rental, and it is greater than 90 days.

Robert Sullivan asked why Mr. Meloon thinks the zoning changed to single-family residential in 1973, and stated it was possibly for uniformity of the neighborhood. Mr. Meloon stated he believes it was done on a mass scale without looking at what was actually built.

Mr. Ball stated in 1973 the property was rezoned to RU-1-13 from RU-3, because the County was discontinuing that multi-family zoning classification. When the property was rezoned, it made the duplex use non-conforming. This request would legitimize the existing duplex; however, it will allow for the introduction of short-term rental use on the property because anything higher than RU-2-4 is multi-family zoning and would allow for resort dwelling use.

Mr. Wadsworth asked if the applicant would agree to a BDP on the short-term lease if the zoning is approved. Mr. Meloon stated he would have to discuss it with his client, because it would be binding on future property owners. Mr. Cole stated he would agree to a BDP if it meant the property would be rezoned to the RU-2-10 zoning.

Public comment.

Robert Pope, 27 South Court, Indialantic, stated he lives next door to the subject property, and it has been used as an Airbnb for the past eight months. He stated the property owner and tenants have been nothing but hell on the street, and the neighbors have come together and wrote many emails stating such. He said he represents the neighborhood, and the neighborhood doesn't want the zoning changed.

Tom Johnson, 28 South Court, Indialantic, stated he is in opposition to the change in zoning at the end of South Court, which is a short, dead end, street with virtually all single-family homes. He said there is no reason to potentially increase the number of people who live on the street. He stated there is an active Code Enforcement case underway that indicates the problem with the resort code, and the owner is operating an Airbnb, which is a violation of County Ordinance. In April, at the subject property, there was an unruly gathering that resulted in a party tent and speakers, and included increased traffic, pedestrian traffic, guest parking congestion on public and private property, late night noise from guests, vehicles, music, fireworks, outdoor tent, and loudspeakers. He said public intoxication was also demonstrated, along with motorcycle noise and trespassing. He concluded by saying he is opposed to the rezoning and against so many new or relocated people who might end up at the end of the quiet street because of the rezoning.

Yvette Winia, 28 South Court, Indialantic, stated she understands there have been other resort dwellings at the first five condos on South Court, and she has noticed different people coming and going, but it hasn't been a problem because she lives toward the end of the street. She said she has noticed an increase in traffic and residents, unfamiliar faces, and they are there for a period of one week, or a weekend, not 90 days or six months. She stated South Court cannot allow two cars to pass because it is so narrow. She said she is also concerned that her property value will decrease if the subject property is a vacation rental or resort dwelling.

Mr. Hopengarten asked if the current tenant is a full-time occupant. Mr. Cole replied yes. Mr. Hopengarten asked if the lease is for six months. Mr. Cole replied yes. Mr. Hopengarten asked if the tenant is subletting during the six months. Mr. Cole replied no, subletting is not allowed in the lease, and if there are people coming and going it is friends or family of the tenants.

Brian Hodgers stated Airbnb's exist whether they are approved or not, and asked if the enforcement mechanism is through County Code Enforcement. Mr. Ball replied yes.

Mr. Hodgers stated if the owner is operating the duplex as an Airbnb right now, even if there was a BDP that didn't allow short-term rentals, it doesn't mean the Planning & Zoning board has any enforcement over that, because it goes back to Code Enforcement.

Mr. Ball stated the zoning change would legitimize the ability to have that use, whether the board feels that it is an appropriate use for the property, the zoning would have the potential to introduce that use, and it also has the ability to legitimize the existing duplex use.

Mr. Hodgers stated there are several RU-2-10 zonings in the vicinity, and asked if there is another zoning that would legitimize the duplex but ban the Airbnb. Mr. Ball replied no, because all of the multi-family zoning classifications allow for resort dwelling use. He said from a zoning perspective, there is no multi-family zoning to the west, it's all next to A1A.

Mr. Glover asked, if the zoning is approved today, is an Airbnb or short-term rentals allowed. Mr. Ball replied the RU-2-10 zoning classification would allow resort dwellings as a permitted use.

Mr. Hodgers asked if a BDP can be placed on the property. Mr. Ball replied the board can make a BDP part of its motion, but the applicant would have to agree.

Mark Wadsworth stated if the leases are long-term, why does the applicant want to change the zoning. Mr. Meloon replied changing the zoning would make the property comply with the zoning code. He noted his client attempted to do a non-conforming use, but the County informed him he would need to rezone.

Mr. Ball stated another option, if the applicant qualifies, is a pre-existing use, where the applicant would demonstrate that the use existed prior to the zoning change. He said he doesn't know if that information is even available from the past 60 years. The most expeditious remedy in this case is to rezone the property if it is consistent and compatible.

Mr. Wadsworth stated everything around the property is RU-1-13.

Mr. Hopengarten asked what happens to the property if the rezoning is denied. Mr. Ball replied, the applicant would have to remove the use, and that's part of the Code Enforcement case.

Mr. Hodgers stated it was already built as a duplex.

Mr. Ball explained the County will not actively go after a property owner for a use unless it's a Code Enforcement case, and he does not believe the duplex was part of the code enforcement case, it was for operating an Airbnb on a residential property.

Mr. Glover asked if there are two power meters to the property. Mr. Cole replied there are two meters and two mailboxes.

Mr. Hodgers stated it is clear it has always been a duplex, and the Airbnb is the issue on the Code Enforcement case, so if they cut out the Airbnb he doesn't have to do anything, and asked what happens if he sells the property, or if he even can sell it because it's non-conforming.

Mr. Ball replied Brevard County does not regulate the sale of property. If a potential buyer asks, staff will fully disclose the uses of the property and what can be done and what can't be done, and the potential remedies.

Mr. Bartcher asked if Mr. Cole would be willing to enter into a BDP that says he will not have a resort dwelling. Mr. Cole replied yes, he would be willing to do that.

Mr. Glover stated a BDP would limit him to no less than 90 days. Mr. Cole replied he is fine with that.

Mr. Bartcher stated it seems a BDP would solve the problem of getting the property in conformance, because he would get the zoning, and it will also take care of the concerns that the residents have about an Airbnb at the property.

Mr. Sullivan asked, if the property has been zoned single-family since 1963, and it has never come up prior to that, is there a mechanism for an exception. Mr. Ball replied, the property was administratively rezoned in 1973, so any use that's been established would be considered non-conforming and there is a process to establish a non-conforming use. The inclusion of the BDP to prohibit resort dwellings would rectify the Code Enforcement case.

Mr. Glover stated he can support the zoning with a BDP.

Henry Minneboo stated his concern is the fact that every home around there is single-family, and at the very end of the street would be multi-family.

Mr. Glover stated he agrees, but there will not be any more or less people, because there are already people living there.

Mr. Sullivan stated he has a hard time supporting a BDP in a zoning change based on the preponderance of evidence that the public is against it. He said he would like to see a better vehicle to rectify that it was originally built as a duplex and has been operating for 50 years as a duplex, but zoned as single-family, because he thinks the single-family zoning was to protect the residents.

Debbie Thomas stated Mr. Cole purchased the property in October 2022 and asked when the Code Enforcement case began.

Mr. Cole stated he was reported to Code Enforcement in December, and when he went to the last hearing he took everything down that pertained to the Airbnb. Recently, it was brought to his attention that there was a Vrbo listing that was put up on the property that he didn't know about, and he received notification from Vrbo today that the listing was done through a scam website that takes bookings, collects a deposit, and cancels the listing before someone checks in.

Ms. Thomas stated she can support the rezoning with a BDP.

Mr. Glover stated he believes it will be operated as a duplex with or without being rezoned, and asked why the board should not make it conforming.

Motion by Ben Glover, seconded by Debbie Thomas, to recommend approval of a change of zoning classification from RU-1-13 to RU-2-10, with a BDP limited to a minimum of 90-day rentals.

Mr. Hopengarten asked if the board can stipulate in the BDP a minimum of a one-year rental rather than 90 days. Mr. Ball replied the board can request that, but it becomes an enforcement issue, and there is really no way for the County to enforce that. Mr. Hopengarten asked if the County will be able to enforce the 90 days. Mr. Ball replied yes, because it would be considered a short-term rental.

Alex Esseesse stated there is a process in the code that allows for prima facie evidence for violations of the resort dwelling code, and that requires County staff to go out and observe the violations happening. That is when the evidence is brought forward to the Special Magistrate to determine whether the resort dwelling definition is being violated. Anything beyond 90 days would be allowable; anything shorter than that, which would require evidence from the Code Enforcement officers, would be needed in order to process the case in front of the Code Enforcement Magistrate.

Mark Wadsworth called for a vote on the motion as stated and it passed 9:2 with Henry Minneboo and Robert Sullivan voting nay.

Sean and Danielle Gleason (Kim Rezanka)

A change of zoning classification from AU (Agricultural Residential) to RU-1-13 (Single-Family Residential), on 9.47 acres; and a BDP (Binding Development Plan) limited to 22 units on entire 22.21 acres. The property is 22.21 acres total, located on the north side of E. Crisafulli Rd., approx. 285 ft. west of Broad Acres St. (1550 E. Crisafulli Rd., Merritt Island) (23Z00022) (Tax Account 2316598) (District 2) *This item was automatically tabled to the July 17, 2023, P&Z meeting at the request of the applicant. Letter received June 5, 2023.*

Tracey C. and Teresa B. Higginbotham (Randy Rodriguez)

A change of zoning classification from GU (General Use) to AU (Agricultural Residential). The property is 3.55 acres, located approx. 0.20 miles north of Port St. John Pkwy., and approx. 0.35 miles east of Golfview Ave. (No assigned address. In the Cocoa area.) (23Z00024) (Tax Accounts 2312731, 2319995, & 2319996) (District 1) *This item was automatically tabled to the August 14, 2023, P&Z meeting at the request of the applicant. Letter received June 1, 2023.*

Charles Steven Douglas and Debra Kay Douglas, Trustees; and Sandra J. Douglas (Brittany LeCun)

A change of zoning classification from IU-1 (Heavy Industrial) to BU-2 (Retail, Warehousing, and Wholesale Commercial). The property is 2.79 acres, located on the northeast corner of Micco Rd.,

and Ron Beatty Blvd. (No assigned address. In the Micco area.) (23Z00023) (Tax Account 3010512) (District 3)

Brittany LeCun, 5165 Wilden Road, Micco, Florida, stated she is interested in purchasing the property, but as of right now, it has no future use, and she would like to have it rezoned in order to have as RV and board storage and rental business.

Mark Wadsworth asked if it would be outdoors. Ms. LeCun replied yes, it will be open storage.

Ben Glover noted storage would be reducing the intensity of use. Ms. LeCun stated that is what was recommended by staff.

No public comment.

Ron Bartcher asked if Ms. LeCun would be willing to enter into a binding development plan restricting the BU-2 uses to only the RV outdoor storage. Ms. LeCun replied yes, as long as she is able to rent RV's from the property.

Mr. Bartcher asked staff if RV rentals would be permitted.

Jeffrey Ball stated the Code doesn't restrict the renting of RV's, it just states that the storage would require BU-2 zoning. If the board wants to further restrict the use to just RV and boat storage, there's nothing in the code that would prohibit renting them.

Mr. Bartcher stated his concern is that there are some other BU-2 uses that if she decides she doesn't want to do that use and wants to sell the property, and it's BU-2, somebody else could have another use.

Ms. LeCun stated as long as she can rent and store RV's and boats, that's all she wants to do.

Brian Hodgers stated Mr. Bartcher is trying to convey that the property may be sold in the future and whatever is put in the BDP is going to stick with the property, and a future buyer may not want to buy it with a BDP.

Ms. LeCun stated if that is the case, she would not want a BDP, but right now the property cannot be sold because it has no use. She asked what other uses are permitted in BU-2 zoning.

Robert Brothers stated limiting the use of the property to boat and RV storage is a disservice to the town of Micco and to the corridor. He said if the RV and boat storage doesn't work out, and there is a BDP that says it can only be RV and boat storage, then the land is completely useless.

Mr. Bartcher stated any future owner would have the right to ask that the BDP be removed. The whole purpose of a BDP is to give the board, and the people around the property, a voice.

Ms. LeCun stated one reason why the owners have not been able to sell it is because no one wants to go through the rezoning process, and the only reason she's doing it is because she knows the property owner and she can use the property.

Mr. Ball explained currently, the property has a Community Commercial (CC) Future Land Use designation, and IU-1 zoning, which is an industrial classification and is a higher intensification; however, the CC land use is not compatible with the IU-1 zoning, so the property needs to be rezoned to be consistent. He stated he understands the board is reluctant to some of the uses in BU-2, but the existing zoning has some pretty intense uses that are already on the property by right. If the board decides to add a BDP, he suggests it allow the BU-1 uses and the BU-2 use of RV and boat storage, or some kind of compromise to some of the non-noxious uses to give the applicant as much flexibility as she thinks she may need.

Mr. Bartcher stated he would prefer a BDP to restrict the BU-2 uses.

Ms. LeCun asked if a BDP can be removed in the future. Mr. Bartcher replied yes, through a public hearing. Ms. LeCun stated as long as she can store trailers and rent trailers and boats.

Mr. Ball clarified that the existing zoning is IU-1, which is an industrial zoning classification; however, with CC land use, there is an incompatibility between commercial and industrial, but from a use perspective, there is some intensification of uses.

Mr. Glover stated that is probably why the property has been for sale for so long.

Mr. Wadsworth asked if the IU-1 zoning would give her the opportunity to do outdoor storage. Mr. Ball replied yes, but it also allows for industrial uses on the property that the Future Land Use doesn't allow.

Mr. Glover stated he can agree to the zoning change with a BDP. He said the applicant doesn't know if she's going to sell, but if BU-2 with a BDP gets her what she wants, she can come back to the board later to change it.

Motion by Ron Bartcher, seconded by Ben Glover, to approve the change of zoning classification from IU-1 to BU-2 with a BDP limited to all BU-1 uses, and the only BU-2 use of mini-storage, and boat and RV storage. The motion passed 10:1, with Brian Hodgers voting nay.

Afficap Cocoa, LLC (Javier Fernandez)

A Small Scale Comprehensive Plan Amendment (23S.03), to change the Future Land Use designation from RES 4 (Residential 4) and NC (Neighborhood Commercial), to RES 15 (Residential 15). The property is 19.48 +/- acres, located on the east side of Range Rd., approx. 700 ft. north of Pluckebaum Rd. (Tax Parcel 515 = No assigned address. In the Cocoa area. Tax Parcel 505 = 450 S. Range Rd., Cocoa) (23SS00003) (Tax Accounts 2424005 & 2441241) (District 1)

Afficap Cocoa, LLC (Javier Fernandez)

A change of zoning classification from AU (Agricultural Residential) to RU-2-10 (Medium Density Multi-Family Residential). The property is 14.82 acres, located on the east side of Range Rd., approx. 700 ft. north of Pluckebaum Rd. (450 S. Range Rd., Cocoa) (23Z00028) (Tax Accounts 2424005 & 2441241) (District 1)

Javier Fernandez, 1200 Brickell Avenue, Miami, Florida, stated in 2021, the property owner was before the board for a similar zoning and land use change on the property to the east, on Pluckebaum Road. The applicant began the site plan process throughout 2022, and during that process it was discovered that the existing lake could not be used for both open space and water retention because

the water quality standards could not be met. He stated two of the investors acquired the adjoining property that is the subject today, and they are asking to have the property rezoned so it is consistent with the zoning and land use designation next door. He said the subject property will be used solely for stormwater retention. He noted the developers will be preserving an existing wetland on the eastern half of the property.

Henry Minneboo asked if the property is contiguous to the City of Cocoa. Mr. Fernandez replied yes, it is just to the south of Cocoa and will be utilizing the City's water and sewer facilities.

Mr. Minneboo asked if the property will be annexed into Cocoa. Mr. Fernandez replied that is not the intention at this time, unless it is a condition of water and sewer.

No public comment.

Motion by Ron Bartcher, seconded by Debbie Thomas, to recommend approval of the Small Scale Comprehensive Plan Amendment from RES 4 and NC to RES 15. The motion passed unanimously.

Motion by Ron Bartcher, seconded by Debbie Thomas, to recommend approval of the change of zoning classification from AU to RU-2-10. The motion passed unanimously.

Rebecca and Allen Potter

A change of zoning classification from RR-1 (Rural Residential) and AU (Agricultural Residential) to all AU. The property is 3.53 acres, located on the east side of U.S. Highway 1, approx. 0.24 mile north of Barefoot Bay Blvd. (7660 U.S. Highway 1, Micco) (23Z00011) (Tax Account 3006359) (District 3)

Rebecca Potter, 7660 U.S. Highway 1, Micco, stated the subject property is her family's homestead. The property originally was several acres, but approximately 17 years ago it was split up into four or five different properties, and they have been able to acquire three of the properties back. She said they've joined the properties together and are asking for consistency with the zoning. She stated they do not want to develop anything; they just want it to be open land.

No public comment.

John Hopengarten noted the staff report stated the reason for the request is for a family farm. Ms. Potter replied they would like to have a micro-farm. She said the portion of property that abuts Snug Harbor is already zoned AU, but if they don't get the other portion zoned as AU, the animals would be against Snug Harbor and not on open land.

Mr. Hopengarten asked how many animals would be on the farm. Ms. Potter replied she does not believe there is a limit on chickens, and they might have two sheep.

Ron Bartcher asked if Ms. Potter plans on having any agritourism activities.

Jeffrey Ball explained agritourism falls under the State Statutes, and it can be anything the State has determined to be agritourism, which can be anything from a petting zoo to having outdoor events. He said it is a broad definition that tends to have some offsite impacts.

Alex Esseesse further explained agritourism is outlined in Section 570.86 Florida Statutes, and it is a broad statute that includes ceremonial, historical, and cultural types of events that take place on a farm or agricultural related property.

Ms. Potter stated they have a church group over on Mondays to sing.

Mr. Bartcher asked if there is any butchering or slaughtering planned onsite. Ms. Potter stated they have not considered that at this point. Mr. Bartcher asked if there will be larger animals on the farm, such as cows. Ms. Potter replied she is not interested in horses or cows unless it would be a miniature cow.

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

John Earl and Chelsea Dominique Bassford (David Bassford)

A change of zoning classification from BU-1-A (Restricted Neighborhood Commercial) to AU (Agricultural Residential). The property is 3 acres, located on the southeast corner of U.S. Highway 1 and County Line Rd. (No assigned address. In the Mims area.) (23Z00020) (Tax Account 2003014) (District 1)

David Bassford, MBV Engineering, 1250 W. Eau Gallie Boulevard, stated the property owners would like to build a single-family residence, but because BU-1-A is commercial, they cannot get a loan for a single-family residence, so they would like to rezone to the AU zoning classification.

No public comment.

Motion by Ben Glover, seconded by Debbie Thomas, to recommend approval of a change of zoning classification from BU-1-A to AU. The motion passed unanimously.

Church of Deliverance, Inc. (Javier & Abigail Acosta)

A change of zoning classification from IN(L) (Institutional Use, Low-Intensity) to RU-1-7 (Single-Family Residential). The property is 0.76 acres, located on the northeast corner of Sawyer Ave. and N. Tropical Trail. (1350 N. Tropical Trail, Merritt Island) (23Z00027) (Tax Account 2417019) (District 2)

Abigail Acosta, 6502 Kingsville Way, Zionsville, Indiana, stated the church has been on the market for over a year before she suggested converting it to a single-family residence, which she would like to have as her home. She said she chose the RU-1-7 zoning classification because it is consistent with the houses and vacant lots to the east of the property. She said the plan is to use the same building footprint as the church.

No public comment.

Sherry Scott, 4025 E. Railroad Avenue, Cocoa, stated she is the President of the Church of Deliverance, and the church supports the request. She further stated the church is downsizing because the congregation has downsized dramatically, and they are looking for a smaller location.

Motion by Henry Minneboo, seconded by Brian Hodgers, to recommend approval of a change of zoning classification from IN(L) to RU-1-7. The motion passed unanimously.

Stephen J. and Pacharee Ellison

A change of zoning classification from RU-1-7 (Single-Family Residential) to SR (Suburban Residential). The property is 0.78 acres, located on the east side of U.S. Highway 1, directly across from 10th St., (8999 U.S. Highway 1, Micco) (23Z00017) (Tax Account 3008319) (District 3)

Steve Ellison, 1625 Las Palmos Drive, Palm Bay, stated in order to comply with the Future Land Use, he needs to change the zoning to a classification that is compatible. He said it is a change from single-family residence to single-family residence.

No public comment.

Motion by Brian Hodgers, seconded by Henry Minneboo, to recommend approval of a change of zoning classification from RU-1-7 to SR. The motion passed unanimously.

CP Venture Five - AMC, LLC (Ron Robbins)

A CUP (Conditional Use Permit) for Alcoholic Beverages (full-liquor) for On-Premises Consumption in Conjunction with a Cigar Bar, in a PUD (Planned Unit Development) zoning classification. The property is 1,600 square feet, located on the east side of Colonnade Ave., approx. 995 ft. east of Lake Andrew Dr. (6729 Colonnade Ave., Unit 108, Melbourne) (23Z00018) (Tax Account 2627467) (District 4)

Ron Robbins, 561 Spring Lake Drive, Melbourne, stated the applicant is requesting a CUP for the onsite sale of liquor to go along with an upscale cigar bar. The location of the facility is in an existing multi-tenant retail property at The Avenue Viera.

No public comment.

Motion by Henry Minneboo, seconded by Debbie Thomas, to recommend approval of a CUP for Alcoholic Beverages (full-liquor) for On-Premises Consumption in Conjunction with a Cigar Bar, in a PUD zoning classification. The motion passed unanimously.

Norfolk Parkway, LLC (Bruce Moia)

An amendment to an existing BDP (Binding Development Plan) in a BU-2 (Retail, Warehousing, and Wholesale Commercial) zoning classification. The property is 17.50 acres, located on the north side of Norfolk Pkwy., approx. 1,200 ft. west of Minton Road. (Parcel 756 = 3545 Carriage Gate Dr. Unit Tower, Melbourne; Parcel 758 (part) = No assigned address. In the Melbourne area.) (23Z00012) (Tax Account 2802676) (District 5)

Bruce Moia, MBV Engineering, 1250 W. Eau Gallie Boulevard, Melbourne, stated the subject property is one that a previous developer wanted to develop as boat and RV storage, and the new owner would also like the option of having buildings for indoor storage as well. He said the existing BDP has been modified to add buildings and restrict the building height to 25 feet, but the other conditions remain the same.

*Henry Minneboo's absence was noted

Public comment.

Tom Zelnick, 4104 Caladium Circle, West Melbourne, stated he is not in favor, nor opposed. He said he lives in Sawgrass Lakes and Norfolk Parkway is the only egress to the property and to the school, and he would like to know how the traffic will be impacted with indoor storage.

Mr. Moia stated traffic was always an issue, which is why storage is the proposed use because it generates the least amount of traffic. He said a traffic study will be submitted to staff to ensure there are no safety issues.

John Hopengarten asked if the buildings will be two stories. Mr. Moia replied they will be single-story, but the 25-foot height will allow for larger objects.

Brian Hodgers asked if Mr. Moia has ever done a study on indoor storage units and how often a unit owner comes back to it, versus people who visit often to take out their boats or RV's. Mr. Moia replied there are different classifications in the ITE manual based on how much traffic is generated and based on the types of units.

Motion by Hopengarten, seconded by Brian Hodgers, to approve an amendment to an existing BDP in a BU-2 zoning classification. The motion passed unanimously.

Redfish Water Disposal, LLC (James Morris Smith)

Removal of an existing BDP (Binding Development Plan) in a PIP (Planned Industrial Park) zoning classification. The property is 2.79 acres, located on the southeast corner of Broadway Blvd. and Industrial Dr. (No assigned address. In the Cocoa area) (23Z00019) (Tax Account 2311419) (District 1)

Keith Silverman, V 3 Capital Group, 4916 S. Hunt Club Blvd., Apopka, Florida, stated he represents an owner of Redfish Water Disposal who purchased the property with the intent that it would be a concentrated wastewater processing facility; however, in the zoning code package plants require an associated residential, and are intended to be temporary. The proposed use would have been a permanent facility. Currently, Redfish does not have anywhere to dump its waste; sometimes the County accepts it, sometimes it does not, and they have to use private processors out of county, essentially subsidizing private entities who have a place to process waste elsewhere. He said after talking to staff, the subject property would not be the right site, so they are intending to remove the BDP in order to sell the property. He stated there is currently not an intended use for the site, as Redfish purchased the property before the determination was made that the use would not be permitted.

No public comment.

Ron Bartcher asked Mr. Silverman to explain why he is requesting the BDP to be removed. Mr. Silverman replied removing the BDP would provide options to the next owner; it is a fairly restrictive BDP that only allows for storage uses, and the property is not a storage site. He said it was always the intent of Redfish to remove the BDP, rezone to PIP, and develop a concentrated wastewater processing plant, but after speaking to staff, there is not really a place that is permitted within the County to do that, so they need to sell the property.

Mr. Bartcher asked if Mr. Silverman has any idea what kind of uses potential buyers might want. Mr. Silverman replied generally, the seller of a property isn't responsible for a buyer's use. Mr. Bartcher

stated the problem he has with BU-2 is that it is wide open. Mr. Silverman stated the PIP zoning is what they would rezone to. Mr. Bartcher stated because it's right next to residential, that's a concern.

Mr. Hopengarten asked how Redfish disposes of solids. Mr. Silverman replied Environmental Services wrote a letter stating they would accept solids.

Mr. Bartcher stated he would prefer Redfish to sell the property and have the new owner come to the board with a use for the property. Mr. Silverman stated with the BDP, it is difficult to market the property, and buyers do not want to spend the time, they would rather move to another site.

Robert Sullivan stated the hesitancy from the board is because it hears a lot about BDP's affecting neighbors, and Mr. Silverman is saying he is taking over a piece of property and removing that protection for the neighbors so that it is sellable. He said if a specific purpose in a BDP is long-term, the board understands and those are mitigating circumstances. He stated he agrees with Mr. Bartcher to sell the property with the BDP on it and have the next owner make a request to the board.

Mr. Wadsworth asked Mr. Silverman if there are any uses in the BDP that he isn't happy with. Mr. Silverman replied he is not happy the property cannot be used for what was intended. He said he is attempting to add value to the site; the value of the property is significantly reduced by the presence of the BDP. The intent of Redfish was always to remove the BDP because they were under the impression that PIP allowed the intended use.

Mr. Hodgers asked if the property is currently on the market. Mr. Silverman replied yes, but no one has been interested.

Motion by John Hopengarten, seconded by Ben Glover, to deny the removal of an existing BDP in a PIP zoning classification, passed 9:1 with Hodgers voting nay. (Henry Minneboo absent)

Amendment to Chapter 62, Article X, Division 5, Floodplain Protection, Section 62-3724(4)(e)

Darcie McGee, Natural Resources Management Assistant Director, stated the requested action is approval of an amendment to Section 62-3724(4)(e), specific to North Merritt Island, north of Hall Road. The modification will remove an unintentional and unilateral prohibition of minor structures requiring fill. It allows a property owner to have a minor structure if they can identify they will not be a flood risk.

No public comment.

Motion by John Hopengarten, seconded by Debbie Thomas, to approve an Amendment to Chapter 62, Article X, Division 5, Floodplain Protection, Section 62-3724(4)(e). The motion passed unanimously. (Henry Minneboo absent)

Upon consensus, the meeting adjourned at 5:15 PM.