

PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, November 14, 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); Ron Bartcher (D1); Brian Hodgers (D2); Robert Sullivan (D2); Lorraine Koss (Alt. D2); Ben Glover, Vice Chair (D3); Liz Alward (D4); Mark Wadsworth, Chair (D4); Logan Luse (Alt. D4); Bruce Moia (D5); and John Hopengarten (BPS).

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

Approval of the October 17, 2022, P&Z/LPA Minutes

Motion by Bruce Moia, seconded by Liz Alward, to approve the P&Z/LPA minutes of October 17, 2022. The motion passed unanimously.

Dwayne White (Brook Kershner)

A change of zoning classification from AU (Agricultural Residential) and RU-1-9 (Single-Family Residential) to SR (Suburban Residential). The property is 1.14 acres, located on the north side of Lionel Road, approx. 795 ft. east of U.S. Highway 1. (3460 Lionel Road, Mims) (22Z00049) (Tax Account 2000374) (District 1)

Brook Kershner, 3630 Lionel Road, Mims, stated Dwayne White is building a house for her on the subject property and it needs to be rezoned in order to build.

No public comment.

Motion by Ron Bartcher, seconded by Ben Glover, to recommend approval the requested change of classification from AU and RU-1-9 to SR. The motion passed unanimously.

Edita Realty (James McKnight)

A change of zoning classification from BU-1 (General Retail Commercial) to RU-2-10 (Medium Density Multi-Family Residential). The property is 0.40 acres, located on the north and northeast corner of Avon St., approximately 200 ft. east of Osceola Ave. (950 & 960 Avon St., Port St. John) (22Z00049) (Tax Account 2302548 & 2302549) (District 1) This item has been withdrawn from the agenda for re-advertising

Protea Senior Living Melbourne, LLC (Michael Allen)

A change of zoning classification from RU-1-9 (Single-Family Residential), RU-1-13 (Single-Family Residential), and IN(H) (Institutional Use, High-Intensity), with an existing BDP (Binding Development Plan), to IN(L) (Institutional Use, Low-Intensity), with removal of existing BDP, and adding a new BDP. The property is 6.35 +/- acres, located on the east side of Old Dixie Highway, approximately 90 ft. south of Otter Creek Lane. (Lots 12.05, 13, and 13.05 = No assigned address. In the Palm Shores area; Lot 14.01 = 5925 Old Dixie Highway, Melbourne) (22Z00047) (Tax Accounts 2606013, 2606015, 2606018, & 2606020) (District 4)

Bruce Moia stated for the record that the applicant has been a client of his in the past, but is not a current client.

Greg Spiro, 5458 Avenida Fiesta, La Jolla, California, stated Protea Senior Living are senior living developers with multiple properties in California and Florida. The intention is to develop a comprehensive senior living campus that includes 72 independent living beds, 79 assisted living beds, and 24 memory care units. There are a number of amenities, including pickleball courts, bocce ball, swimming pool, dog park, multiple courtyards, outdoor bar-b-que, dining, and walking trails. Indoor amenities include a dining room, sports bar, fitness center, salon and spa, theater, games room, and multiple activity rooms. He stated the building is well located, close to the Suntree neighborhood, with views of the Indian River, with access to I-95, Viera, and the beaches. He said the intention is to make it the premier senior living facility in Brevard County. As part of the site plan application, they will provide a comprehensive landscape plan that will provide a natural barrier between the facility and the residential neighborhood. He stated a neighborhood meeting was held on August 31, 2022, where the concept plan was shown to the neighbors for comments, and the most significant comment was a concern over the traffic that would be generated by the facility and the impact the traffic would have on Old Dixie Highway, Otter Creek Lane, and the intersection of U.S. Highway 1. On August 5, 2022, Protea commissioned LTG to perform a trip generation traffic statement for the site. The report showed that the expected traffic generated by the community would be less than 78 cars per peak hour; and therefore, it does not meet the County's requirement for conducting a trip impact analysis. Notwithstanding the report, since the neighborhood meeting on August 31st they have spent considerable time with LTG, Allen Engineering, County staff, and FDOT, in an attempt to come up with a plan that would improve accessibility and create a safer driving experience on all three roads. He noted they are not yet in a position to be able to drill down into the issues, but they are looking to improve sight distances at Otter Creek Lane and U.S. 1 to make it safer and easier to access from the north, and also to potentially improve turning angles. They are also investigating the possibility of widening a portion of Old Dixie Highway from the current 20 feet, to 24 feet, so that it conforms with County standards and allows for easier and safer travel.

Public comment.

Tim Montgomery, 2695 Pine Cone Drive, Melbourne, stated he doesn't know if the culvert beside the wildlife sanctuary will be able to hold the amount of concrete trucks that will be entering the neighborhood during construction. He said he received a drawing of the concept plan in the mail, and he is concerned there are three exits onto Old Dixie Highway. He said with that many exits, he imagines the plan would be for the trucks to come into the first exit and go out through the third exit, and if they did that, it would put a heavy traffic load on Old Dixie Highway. He noted employees will also add to the traffic, and getting in and out of the neighborhood is already very dangerous.

Michael P. Switzer, 5840 Old Dixie Highway, Melbourne, stated access from U.S. 1 to Otter Creek Lane is horrible, just for the residential community of a dozen homes. There have been numerous accidents because of the way it is set up, and if that is the only access to the facility, it will create a difficult and negative impact on the residents who already have a difficult time getting in and out of the neighborhood. He said his other concern is that the conceptual drawing doesn't give an accurate picture of the neighborhood. There are small children in the neighborhood, and the increased traffic is a concern.

Shirley Leslie, 2665 Hilltop Lane, Melbourne, stated she believes the proposed facility is too large for the neighborhood, with the traffic situation being a threat to everyone's safety. She stated the trip generation report from LTG states the project does not meet the code requirement threshold for conducting a transportation impact analysis; however, the staff comments do not mention staff, visitors, deliveries, nor emergency vehicles. Administrative Policies 3 and 4 talk about compatibility with existing or proposed land uses being a factor in determining a rezoning, and that the character of a neighborhood shall be a factor for consideration, as well as the character of the area must not be materially or adversely affected by a proposed rezoning by introducing types of intensity of traffic that is not already present within the identified boundaries of the neighborhood. She stated the proposed binding development plan does not provide for any restriction or requirements place on the developer other than what is provided in County code. She requested the following modifications and additions be made to the proposed BDP: a.) Modify paragraph 5, "Developer/Owner shall utilize ingress and egress at Old Dixie Highway until such time as an alternate access can be determined and provided." b.) Add, "Appropriate signs shall be posted and wetland shall be secured with fencing". c.) Add, "All wet retention ponds and wetlands shall be secured with fencing". d.) Add, "Athletic areas, ambulance receiving area, and air conditioning/heating units shall be located on the property's northernmost portion as to mitigate associated noises from those sources to preserve the quality of life in the existing neighborhoods". (e.) Add, "No dwellings, structures, parking lots, or buildings shall be constructed on the southernmost lot currently zoned RU-1-9 so as to be compatible with the historical current residential NC properties".

Mark Leslie, 2665 Hilltop Lane, Melbourne, stated in 2009 he and other residents went through mediation with the previous owner, and it took a year to come up with a plan that everyone could live with, and that plan resulted in 47 residents, capping out at 68 total, including staff. Now, the new owner is asking for 173 residents, plus personnel, which is much larger than the last request. The treatment and recovery center didn't go anywhere and the application was withdrawn. This developer today has been the kind of developer the neighbors have wanted for years, and they will do a good job because they have the money, the backing, and the professionalism to do it right, but it's really large. He said he would like find a way to convince the FDOT (Florida Department of Transportation) to put in stop lights or deal with the intersection before the project it built. He said the applicant is willing to pay for it, and he has gone to FDOT which has said no. The bottom line is that it is a very dangerous intersection. Turning left onto Hilltop Lane from the south, you can't see the cars waiting to make a U-turn to go into Grills. He stated it is important that the board look at the traffic part of the request.

Alexandra (last name inaudible), 2886 Cape View Lane, stated she appreciates the applicant's willingness to do anything, but it is a small community. She said originally there was one entrance, and now there are three entrances all on Old Dixie Highway, and there will be the new Brightline train coming through at the back of the neighborhood.

Robert Sullivan asked Mr. Spiro if he has considered reducing the density of the project. Mr. Spiro replied the previous BDP was limited to 47 units, but that is not viable.

Mr. Sullivan stated with the with the high-speed offramp going to Pineda Causeway, the chance of getting FDOT to put a traffic light there is nil. He said the residents have valid concerns on the increased traffic, and asked if there is any consideration of going to a maximum of two stories and reducing the total number.

Mr. Spiro replied the issue is that the current zoning of IN(H) requires access off of a major arterial, which would be U.S. 1, but because of the interchange, they cannot do that. He said they have no choice but to downzone to IN(L) in order to get access on Old Dixie. He stated he's had an honest discussion with the neighbors and he would like to make sure there is little traffic congestion because they are investing a lot of money and it is critical to get it right. In terms of reducing the size of the building, 47 units would not work. He said they are extremely limited by the wetlands, which is why they are going to three stories. The issue is really about a unit mix, which is a continuum of care and not just assisted living and memory care, it has independent living as well. Today, to be successful, a facility has to have all three elements, and there is a formula to make it work. He said the facility could be slightly smaller, but it won't make any difference one way or the other to the traffic.

Mark Wadsworth commended Mr. Spiro for his communication with the neighborhood.

Liz Alward stated they are possibly widening the road from 20 feet to 24 feet, and asked if that would include sidewalks. Mr. Spiro replied no, there are no sidewalks.

Ms. Alward noted not all of the residents will have vehicles, so the most vehicles that the neighbors will see are the employees, visitors, and service trucks. Mr. Spiro stated memory care and assisted living residents do not drive.

Henry Minneboo asked if the traffic engineer used the trip generation manual specifically for this use. Mr. Spiro replied yes, they took everything into account, and the bulk of the traffic are the employees and visitors; service trucks are limited.

Bruce Moia stated traffic studies look at every trip to a site, not just the people who live there, and being familiar with the site plan process in Brevard County, he knows anything that is substandard will have to be brought up to current requirements. He said because of the limited access to Pineda Causeway, they will not be able to get access to U.S. 1.

Brian Hodggers stated one of the speakers mentioned two entrances early in the process and now there are three entrances. He noted the southernmost entrance is close to the cluster of homes that make up the community, and asked if there is an option to route that road around the backside of the property and close off that entrance. Mr. Spiro replied one of the reasons they did that was to create additional parking. He said he believes the entrance can be changed, but he cannot commit to it yet.

Mr. Hodggers asked if there is an option to build a bridge over the wetlands for another entrance. Mr. Spiro replied it would be very difficult and very expensive, and they would have to go through the Humane Society property.

Mr. Ball stated the subject property does not have access to Otter Creek Lane. If the board is concerned about access points, it could be a condition in the BDP.

Motion by Liz Alward, seconded by John Hopengarten, to recommend approval of a change of zoning classification from RU-1-9, RU-1-13, and IN(H), with an existing BDP, to IN(L), with removal of existing BDP, and adding a new BDP providing a 15-foot buffer on the entire portion of the property, limiting density to 28 units per acre, and limiting ingress and egress to Old Dixie Highway. The motion passed unanimously.

Humane Society of South Brevard, Inc. (Michael Allen)

A Small Scale Comprehensive Plan Amendment (22S.14), to change the Future Land Use designation from NC (Neighborhood Commercial) and CC (Community Commercial) to all CC. The property is 0.86 acres, located on the southeast corner of Otter Creek Lane and Old Dixie Highway. (2600 Otter Creek Lane, Melbourne) (22SS00011) (Tax Account 2606030) (District 4)

Humane Society of South Brevard, Inc. (Michael Allen)

A change of zoning classification from GU (General Use) and BU-1 (Retail, Warehousing, and Wholesale Commercial) to all BU-1. The property is 0.86 acres, located on the southeast corner of Otter Creek Lane and Old Dixie Highway. (2600 Otter Creek Lane, Melbourne) (22Z00048) (Tax Account 2606030) (District 4)

Michael Allen, Allen Engineering, 106 Dixie Lane, Cocoa Beach, stated the reason for the land use change and rezoning request for the western portion of the subject property is to get it in conformance with the balance of the property, as well as the property to the south that the board just voted on, Protea Senior Living Melbourne. He said the requests could assist in clearing up the traffic questions the board heard with the prior agenda item.

Public comment.

Mark Leslie, 2665 Hilltop Lane, Melbourne, stated the request is to change the Future Land Use from Neighborhood Commercial (NC) to Community Commercial (CC), but on the previous item there are three NC parcels attached to the CC parcels that were not changed, so there are still three NC parcels on the Protea Senior Living proposed site. He asked if there is NC on the northern end of the other parcel, does it mean the project is in such limited in scope as defined in code, compared to community commercial.

Jeffrey Ball stated an ALF (Assisted Living Facility) is a different use that is in between a commercial and residential use. The code allows for an ALF and ILF (Independent Living Facility) to be situated in an NC land use designation; however, for the Humane Society request, BU-1 zoning is not allowed in the NC land use designation, and that is the reason the applicant is asking for the CC land use, because without it, BU-1 would not be a consistent or compatible zoning classification for that property because of the commercial uses.

Mr. Leslie asked if that means the Protea Senior Living property is going to be combined NC and CC. Mr. Ball replied yes, there was not a request to change the land use on that property because regardless of the land use, IN(L) is an allowable use in both NC and CC land use designations. Mr. Leslie asked what is the intensity criteria between IN(L) and IN(H). Mr. Ball replied there are uses that are allowed in only IN(L) versus IN(H), such as a private school.

Ron Bartcher asked if the Humane Society is making a change to its use. Mr. Allen replied the Humane Society is not currently making a change. Mr. Bartcher stated he was wondering if the Humane Society would be expanding its facility to accommodate more animals, because there is a need for that.

Mr. Allen stated if connection is needed to Otter Creek Lane for Protea, then it saves a step in coming back to the board. They are just trying to obtain flexibility.

Bruce Moia stated the current zoning of GU is incompatible, and it makes sense to make it consistent.

Mr. Ball noted the Protea Senior Living rezoning was approved with a BDP limiting access to Old Dixie Highway, so that would preclude them from getting access to Otter Creek Lane.

Motion by Liz Alward, seconded by Bruce Moia, to recommend approval of the Small Scale Comprehensive Plan Amendment (22S.14), to change the Future Land Use designation from NC and CC to all CC. The motion passed unanimously.

Motion by Liz Alward, seconded by Bruce Moia, to recommend approval of a change of classification from GU and BU-1 to all BU-1. The motion passed unanimously.

Comprehensive Plan Text Amendment Adoption Adding the Coastal High Hazard Area Map to the Coastal Management Element X, and Correcting Scrivener's Error in the Glossary Element XVI.

Bruce Moia asked the significance of changing 'and' to 'or'.

Jeffrey Ball replied it was a scrivener's error at the last minute to try to circumvent discussions that were happening.

Mr. Moia stated the amendment allows staff to adopt the latest maps as they come available. Mr. Ball replied yes, DEO (Department of Economic Opportunity) wanted staff to include those maps.

Henry Minneboo asked if the county's coastal setback line will eventually be adjusted.

Darcie McGee, Assistant Director, Natural Resources Management, stated right now, the county has a setback that is 25 feet landward of the state's coastal construction line, so the county already has 25 extra feet. She noted in some areas there are challenges when there are storms.

Mr. Minneboo stated the county is not consistent with the cities' lines, for instance Satellite Beach is different than portions of Brevard County. Ms. McGee replied yes, and they actually tried to adopt the county's line, and they had some pushback and ended up with a compromise of either 10 or 15 feet west of the line. She said both Satellite Beach and Brevard County has older structures to be worried about, and right now staff is working with residents and businesses that were affected by the storm because there was some undermining.

Mr. Minneboo asked if a structure today was total failure, would they be permitted to re-build. Ms. McGee replied there is a section of the code that addresses nonconforming structures and it talks about undermining and the requirement to move back. It doesn't mean the whole structure has to come down, but you need to take off the part that is undermined and then a minimum of 15 feet from crest of dune, and then a vulnerability analysis has to be done for a 25-year storm, to at least come back that far, but the other nonconforming part can stay.

Robert Sullivan asked why the County doesn't use the flood insurance rate maps for its coastal hazard line. Ms. McGee replied the coastal high hazard area is defined by State Statute, which is the Category 1 storm surge, which is not the same as the FEMA special flood hazard area map, they are two different things and they look different.

Mr. Sullivan stated the county just had a fast moving storm with 3 - 5-foot storm surge on top of a king tide, and it's undermining structures, so the densities the board looks at is a matter of life and death.

A lot of people are violating the coastal construction control line. He said Walton County has adopted FEMA's maps, and he would urge staff to look at the FEMA lines and use them.

Ms. McGee stated the County has the new 13 Peril of Flood policies that were recently adopted and staff will be seeking direction from the board and from the public.

Liz Alward stated at one time the County talked about managed retreat, and there is a high cost to managed retreat, but there is also a high cost to sand re-nourishment, and she doesn't know if the two can be tied together when looking at funding sources, but it would be a program where the owners of properties have the ability to sell that land to the county or cities and then it doesn't get developed and the shoreline can begin to be managed.

Ms. McGee stated there are some repetitive loss properties that the County has acquired through grants for flooding.

Motion by Bruce Moia, seconded by Liz Alward, to recommend approval the Comprehensive Plan Text Amendment Adoption 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.

Ordinance Amending Chapter 62, Article VI, Division 2, Section 62-1157, Submission of Binding Development Plan in Support of Request for Change of Zoning or Conditional Use Permit. This item was removed from the agenda to allow for review by the Building Construction Advisory Committee, due to the 11/09/22 meeting being cancelled by Hurricane Nicole.

Upon consensus, the meeting adjourned at 4:07 p.m.