

## **PLANNING AND ZONING BOARD MINUTES**

The Brevard County Planning & Zoning Board met in regular session on **Monday, October 11, 2021**, 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: Ron Bartcher (D1); Brian Hodgers (D2); Mark Wadsworth, Chair (D4); Liz Alward (D4 - Alt); Bruce Moia (D5); Peter Filiberto, Vice Chair (D5); and David Bassford (D5 - Alt).

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; George Ritchie, Planner III; Peter Martin, Planner II; Alex Esseeesse, Assistant County Attorney; and Jennifer Jones, Special Projects Coordinator.

### **Excerpt of Complete Minutes**

#### **Robert F. Erario and Jeremy Sothea Sun**

A change of zoning classification from BU-1 (General Retail Commercial) and AU (Agricultural Residential) to all AU. The property is 7.24 acres, located on the west side of U.S. Highway 1, approx. 500 ft. south of Aurantia Rd. (4740 N. U.S. Highway 1, Mims) (Tax Account 2001826) (District 1)

Robert Erario, 4740 U.S. Highway 1, Mims, stated he would like to rezone back to AU. The property is a total of 7.25 acres; one acre is BU-1; and the remaining 6.25 acres is AU. He stated he would like to rezone all 7.25 acres to AU in order to have a wholesale plant nursery on the front, and to have farm animals in the future.

Patricia Frank, 3825 Aurantia Road, Mims, stated her property borders the subject property to the north.

Bruce Moia asked if her property was the AU lot that is the first lot going west from U.S. Highway 1, on the left. Ms. Frank replied yes, the convenience store is on the corner and she has the surrounding property around the store. She said she and her neighbor have concerns because in March or April they were told there was going to be a wedding venue on the property and that Mr. Erario would be putting up a wall because their business zoning required him to put up a wall. She said the loophole is that they have intentions of doing a business and if it's changed to agricultural zoning, the Florida Statute uses the word 'ceremonial', which would allow weddings and ceremonies to take place, meaning loud music and alcohol, and possible drugs, with no fence, no border, and no wall. She said it would put her family and grandchildren at risk to people who might stray away. She said she would like to see a fence or a wall built to protect their families. The front lot is zoned BU-1 because the previous owners had a motorcycle shop; and before that, it was a bar. She said she has already been through the problems of loud music, fights, and police being called regularly. She stated if they want to do that, then they can put up a wall or a fence like they originally told her they would. She further stated that the previous owner built a building within three feet of her property line, and you can't walk around the building without stepping on her property.

Mark Wadsworth stated during permitting, they will have to meet setbacks.

Ms. Frank stated a wall or a fence is her only request.

Mr. Erario stated he wants to put up a fence because Ms. Frank's property is overgrown with vines and poison ivy that is coming onto his property. He said there are not any buildings within three feet

of her property line; he was granted a variance last month and the building is 12 - 14 feet from her property line.

Mr. Wadsworth asked if Mr. Erario would be opposed to a BDP to build a wall. Mr. Erario replied he would be willing to put up a vinyl fence, but not a concrete wall.

Jeffrey Ball stated he would ask the board to be specific on the criteria for a fence or wall as far as height, location, and material, because staff will need to be able to enforce them.

Ron Bartcher asked if Mr. Erario is planning on having a wedding venue on the property. Mr. Erario replied no, he does not have any current plans for a wedding venue. Mr. Bartcher noted if there were to be a wedding venue, it looks like there are a couple of buildings on the property, and asked if those could be used, or would they have to be refurbished to be used as a wedding venue. Mr. Erario replied they are not; he lives in the house; one building is a garage; and the other building is a laundry room.

Liz Alward asked if Mr. Erario has any plans for agritourism at this time for the property. Mr. Erario replied no. Ms. Alward asked if Mr. Erario would be amenable to taking agritourism off the table and just do bona fide agritourism. Mr. Erario replied he would not want to agree to that because he doesn't want to be singled out. He stated he wants to go back to the original zoning, which is AU.

Ms. Alward stated to her, AU is compatible but agritourism is not, considering the surrounding land uses and properties. She said she is inclined not to support it, especially since the applicant doesn't have any plans to do agritourism at this time.

Peter Filiberto asked Mr. Erario how long he has owned the property. Mr. Erario replied three years. Mr. Filiberto noted it looks like in 2019 or 2020 he dug a pond that was nonconforming. Mr. Erario replied he did not dig a pond, it was just a holding water spot and he moved a little bit of dirt, and it was only one foot deep.

Mr. Filiberto stated there was also unpermitted land clearing activities that may have potential wetland impacts. Mr. Erario noted he was cleared on all of that. Mr. Filiberto stated there is scrub jay occupancy on the property. Mr. Erario responded it was part of a scrub jay area, but no scrub jays were found.

Mr. Filiberto stated he agrees with Ms. Alward. If Mr. Erario agreed to restrict agritourism he would support the request. He noted he could always come back and apply for it again.

Mr. Bartcher asked staff, if the applicant decided he wanted to do a wedding venue, is that something that would be permitted in AU.

Mr. Ball replied yes, the agritourism umbrella is very broad from the State, and the concern is that when you allow AU zoning, that is a use that can happen within that zoning classification.

Bruce Moia asked, if the applicant was to propose a wedding venue, would he have to go through the site plan process and meet all of the county's codes. Mr. Ball replied yes.

Mr. Moia stated there is agricultural zoning to the north and south; they both have the right to do whatever agricultural allows; the applicant is down-zoning from BU-1 to AU, and he doesn't see the problem. The board would be saying he can't do it, but his neighbors to the north and south could.

Motion by Bruce Moia, seconded by Brian Hodgers, to recommend approval of the change of classification from BU-1 and AU to all AU. The motion passed 5:2, with Liz Alward and Peter Filiberto voting nay.

Mr. Wadsworth stated the request will move on to the County Commission on November 4<sup>th</sup> for the final determination.

Ms. Alward stated there is AU(L) and AU, which is more intense, and asked if there is a way to create a zoning classification that includes agritourism as a conditional use so that it doesn't get looped into a typical AU, because agritourism is commercial.

Mr. Ball stated there are two different scenarios. One is the way that the State defines agritourism and the uses and how the zoning code addresses agricultural uses. There is an AU(L) zoning classification that doesn't allow the commercial sale of products; whereas, AU allows for the full-blown uses. He said it would have to be board-directed for staff to look at the code to see if there is anything that can be done as far as tightening the requirements.

Ms. Alward stated Mr. Moia is right, because all of the other AU properties in the area have the opportunity to do agritourism, but it could be a conditional use permit that would have to meet all the conditions.

Tad Calkins, Director, Planning and Development, stated staff would have to address the possibility of a conditional use permit with the County Attorney's Office. He said what becomes difficult with agritourism is that it's not just AU zoning, they have to be a bona fide farm, they have to have an agricultural exemption from the Property Appraiser's Office, and then they have to have the use occurring at the site, which makes it difficult because once they get those things they are exempt from any local enforcement whatsoever, so Code Enforcement is ineffective. He noted there are a couple of properties in the County where agritourism is being done and they can be quite a nuisance to the neighbors. He said it's not so bad with those that just have a wedding venue where it's during the day or ends at a decent hour, but when there are things like concerts that can occur, they can go into the middle of the night.

Alex Esseeesse stated there are essentially two different parallel restrictions and regulations in place. There is the local application of the Planning and Zoning Regulations, and then there are also State Regulations that exempt those if the Property Appraiser determines it is a bona fide agricultural use. It hinges on what the Property Appraiser wants to do based on what they see upon inspection. If they determine it is agriculturally classified, then the County's regulations do not necessarily apply.

Mr. Filiberto asked, in regards to a conditional use permit, is there a way the board can treat agritourism how it treats a liquor license.

Mr. Ball replied yes, if the Board directed staff to open the Zoning Code to look at requiring a conditional use for certain uses; however, it couldn't be based on the agritourism definition. For AU zoning, if it is in the zoning code that a wedding venue requires a conditional use, that could be done,

but staff may call it a wedding venue and someone else may call it a wedding pavilion and are not subject to the same conditions.

Mr. Calkins asked the board to let staff discuss the matter with the County Attorney's Office and come back to the board with an update. He said there are different layers that come into play and State Statutes say the County cannot pass an ordinance that would limit the use of agricultural property through agritourism.