

## **PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY MINUTES**

The Brevard County Planning & Zoning Board met in regular session on **Monday, January 10, 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.

At the outset of the meeting, nine Board members were present and voted on all items on the agenda: Henry Minneboo (D1); Ron Bartcher (D1); Robert Sullivan (D2); Ben Glover (D3); William Capote (D3); Mark Wadsworth, Chair (D4); Liz Alward (D4); Peter Filiberto, Vice Chair (D5); and John Hoppengarten (BPS).

Bruce Moia (D5) was present for Items H.14 & H.15 only.

Lorraine Koss (D2 - Alt) was present, but did not participate from the dais.

Staff members present were: Tad Calkins, Planning & Development Director; Jeffrey Ball, Planning and Zoning Manager; George Ritchie, Planner III; Kyle Harris, Associate Planner; Virginia Barker, Natural Resources Management Director; Amanda Elmore, Natural Resources Management Deputy Director; Darcie McGee, Natural Resources Management Assistant Director; Alex Esseeesse, Assistant County Attorney; and Jennifer Jones, Special Projects Coordinator.

### **Excerpt from Complete Minutes**

#### **Carter & Jessica Hayes**

A change of zoning classification from AU (Agricultural Residential) to RU-2-4 (Low Density Multi-Family Residential). The property is 2.79 acres, located on the west side of N. Courtenay Pkwy., approx. 0.38 mile north of Hall Rd. (4645 N. Courtenay Pkwy., Merritt Island) (Tax Accounts 2318403 & 2318404) (District 2)

Jeffrey Ball informed the board that the North Merritt Island Dependent Special District Board heard the request on January 6<sup>th</sup> and recommended approval as SR (Suburban Residential) with BDP (Binding Development Plan). He noted the BDP is not necessary because the comprehensive plan and zoning regulations already provide consistency.

Carter Hayes, 4645 N. Courtenay Parkway, stated his property has been zoned AU for so long it no longer meets the minimum property size requirements for that classification, and if he were to sell one of the lots he couldn't advertise it as AU because it couldn't be used as agricultural. He said they would like to change the zoning from AU to RU-2-4 under the RES 4 land use designation, in order to build townhouses or duplexes. He pointed out that the lots to the north, south, and west are all RES 4. He stated as a general contractor he will build the units himself, maintain ownership of them, and rent them out. He said the buildings will be very nice, one-store, and in the range of 1,800 to 2,000 square feet, with a target demographic of young adults who need a nice, safe place to live. He referred to the staff comments and noted page 3 states, "A multi-family use may be considered transitional from North Courtenay to the single-family residential areas to the west". He said N. Courtenay has commercial, neighborhood commercial, and high-density across the street, and his project is will be a nice transition. He said in 2013 the DEP, Army Corps of Engineer, and the St. Johns River Water Management District have been to the property and de-marked the wetlands, and then his surveyor marked those spots. He said one-third of the lot is wetlands. The wetlands area could be a natural barrier to the single-family homes to the west. He said he is going to leave the wetlands alone. He stated some of the comments from his neighbors include concerns about stormwater management, but that will be addressed during the permit process. He stated he intends

fully to comply with all of the stormwater management. He concluded by saying he believes his request is consistent with the comprehensive plan and compatible with the surrounding neighborhoods.

Jessica Hayes, 4645 N. Courtenay Parkway, Merritt Island, stated all of N. Courtenay Parkway is commercial and multi-family, and she thinks multi-family fits the area, and also helps with the housing shortage.

Public comment.

Don Barker, 4540 Deanna Court, Merritt Island, stated there is a large canal in the back of his property that goes through the back of Deanna Court, and the nature in the back of the property is like a second ecosystem. The subject property is in the floodplain and two-thirds of the property is affected. He said he bought his house because of the wetlands behind him, and he doesn't want 11 rentals at his back door. He said when there is a rainstorm the canal overflows and now is full all the time. He stated he does not think the proposed project is compatible with his neighborhood or North Merritt Island.

Mike Yauch, 565 Indian Bay Boulevard, Merritt Island, stated he is the Vice President of the North Merritt Island Homeowners Association, and the HOA disagrees with the proposed rezoning. He said neighboring residents to the west of the subject property expressed concerns associated with flooding, increased density, traffic, and that the proposed use is not consistent with the current use of the surrounding properties. The HOA also concluded that the proposed rezoning is not compatible with Administrative Policies 3, 4, 6, 7, and 8, and also Section 62-1151(c). He stated a substantial part of the property is wetland, and it seems likely that before any construction they will probably have to increase the elevation somewhat before construction begins, so it is so it's going to create some additional runoff that has to go somewhere. He said behind the subject property is several single-family homes on half-acre lots and they are not rental properties. An apartment building seems inconsistent with single-family homes. He concluded by saying Deanna Court is a nice quiet place that backs up to wetlands, and the HOA supports the North Merritt Island Board's recommendation.

Brittany McCloud, 4530 Deanna Court, Merritt Island, stated she is not only a concerned resident, but also an Environmental Engineer. She said Brevard County's GIS map shows that two-thirds of this property is in a wetland area. In order to make this land buildable, the topographical level would need to be elevated, making the land higher than its neighboring properties which could easily cause flooding not only to the properties behind, but on the road itself. If the land is built up higher than these properties around it, the water will have to be displaced elsewhere. If something were to be built on this property, the parts of land that were not deemed wetlands would now be a concrete footprint, which would prevent more drainage. If that water is then diverted into the creek behind these properties as well as the homes behind Deanna Court, it could easily cause the water level and water table to rise causing major concern for the existing homes that are along the creek. The creek consists of a thriving and sustainable ecosystem, and has an abundance of wildlife, including the American Eagle, and there are many fish and amphibian species in the creek as well. There are many environmental concerns with this, and with the Merritt Island National Wildlife Refuge being a close neighbor, North Merritt Island should continue to set the standard for environmental awareness and appreciation and continue to develop North Merritt Island, but in a way that makes it beautiful.

Ann Duset, 4560 Deanna Court, stated this change affects her because it's her back yard. She said she doesn't want to tell anybody what to do with their property, but she feels the density is too high and they should go for a different zoning. She said the canal floods often and is a major factor in the drainage. The current water level has been affected by the recent drainage updates to the north of her subdivision; it now stays high, and during the rainy season it does encroach properties. A change to RU-2-4 is too much density for the canal to handle. She stated she wants them to be able to use the land, but the density is too great.

Alan Carpentier, 4550 Deanna Court, Merritt Island, stated his parcel is directly behind the subject property. He said the stormwater runoff is a major concern in his neighborhood, and his property is currently eroding because of the canal. The clearing of wetlands for multiple unit houses is going to add pressure to the canal. He said he bought his property because it wasn't around multi-family units, and many studies show that when multi-family units get built around single-family homes, property values decrease.

Ken Marino, 4510 Deanna Court, Merritt Island, stated he moved to North Merritt Island two years ago. He said he is concerned about the runoff coming from the property in question. He stated the applicant could possibly put drywells in, but no one knows where the water will actually go. He said there is an abundance of wildlife in the wetlands and in the creek, including bobcats, turtles, and alligators, and now there will be runoff coming off of the parking lots that will have oil, gasoline, and whatever else. He said he chose North Merritt Island because it is rural, and if the zoning is approved, the board is setting a precedent for other multi-family.

Ben Glover asked who owns the canal, and if it is the HOA. Jeffrey Ball replied, from the Property Appraiser maps, it looks like it could be shared. Mr. Glover asked how much of the wetlands can be built upon. Mr. Ball replied there can be a maximum of a 1.8% impact to wetlands.

Mr. Glover asked Mr. Hayes if he plans to have 11 units. Mr. Hayes replied the number is a function of the designation and the math. Based on the wetland map he doesn't know how much buildable space he has because the survey he had done is only good for five years. He said he will have to de-mark the wetlands again.

Mr. Glover asked staff the cap of the number of units. Mr. Ball replied the cap in density is governed by the Future Land Use, which is 4 units per acre, and by rights of the land use, it is 11 units. He said whether Mr. Hayes can develop that is up to him and his engineer. Mr. Glover stated that is unlikely as there is wetlands present, and asked if water retention would be part of site planning. Mr. Ball replied it is not really a zoning issue, but his understanding is that they would have to retain all of their stormwater on site and retain it.

Darcie McGee, Natural Resources Management, Assistant Director, stated the proposed development is in the North Merritt Island overlay for additional stormwater treatment. She said Mr. Hayes is going to have to compensate for any fill in the flood plain, he has to compensate for the rate and the volume, because he's north of Hall Road. She noted the North Merritt Island overlay and the wetlands will be a guiding force to his design, because there are enhanced stormwater requirements on North Merritt Island.

Mr. Glover asked if there were any negative reports from schools for increasing the housing. Mr. Ball replied the school district has said there is capacity to serve the potential students.

Peter Filiberto asked Mr. Hayes if he plans to hook up to sewer and water. Mr. Hayes replied yes.

Mr. Filiberto asked staff the difference between RU-2-4 with 11 units and SR (Suburban Residential). Mr. Ball replied SR is a half-acre lot, and RU-2-4 is a low-density multi-family zoning classification that allows for apartments and townhomes on a 7,500 square-foot lot. Mr. Filiberto asked if there could be 6 or 7 single-family homes on the property instead of multi-family. Mr. Ball replied that is correct. He stated it is a very tight site with the wetlands that are on the property. It will be up to Mr. Hayes and his engineer to determine how many units he is able to develop.

Mr. Filiberto stated based on the Eagle nest map there are no nests on the property, nor are there any scrub jays. He said he feels that duplexes or townhomes is high-density for the area, and he doesn't see any RU-2-4 in the surrounding area; however, there are no negative concurrency impacts for schools, utilities, transportation. He said as of right now, he would like to see the applicant compromise and agree to SR.

Mr. Ball stated if the board has concerns about the apartment-type use, there is another zoning classification the board can consider, which is RA-2-4 and only allows for townhomes. The RA-2-4 zoning exists just outside of the purview of the maps provided, and it was rezoned in 2017. He said RA-2-4 would allow the same type of density, but it does not allow for apartment-type units.

Mark Wadsworth asked Mr. Hayes if he would be opposed to RA-2-4. Mr. Hayes replied he has not studied RA-2-4 nor SR, but he wants to build units to own and rent.

Henry Minneboo stated not too long ago, the board approved 48 units at the southwest quadrant of Porcher Road and N. Courtenay. He said the board has always been concerned about having multi-family units on North Merritt Island. The area is not conducive having multi-family units. He said the stormwater system cannot tolerate more intrusion. He said the board approved the 48 units and hoped not to see another similar request. He stated he is vehemently against anymore multi-family on North Merritt Island, and approving this request will set a precedent. He noted the 48 units that were approved four or five years ago still aren't built, and to him, that is an indication that it's not conducive.

Mr. Hayes stated there are at least four other locations with townhouses or duplexes on North Merritt Island, and some of them are entire neighborhoods of duplexes. He said he can't be under AU anymore because it doesn't meet the requirements.

Ms. Hayes stated their property fronts Courtenay Parkway which is commercial and multi-family. There are no single-family homes on N. Courtenay Parkway and to make them build single-family homes is not conducive. She said she knows they won't get 11 units, but they are asking for the zoning and they might end up with eight.

John Hopengarten asked Mr. Hayes if he has done any developments before. Mr. Hayes replied no, but he built his own house. Mr. Hopengarten asked Mr. Hayes what type of construction he does. Mr. Hayes replied mostly remodeling, but he is also a marine contractor for seawalls and boat lifts.

Mr. Hopengarten stated he is an advocate for development, and the board would want a successful development, but he wouldn't want Mr. Hayes to start the development and then lose money and make it an eyesore in the neighborhood. He said Mr. Hayes has not presented his plan in a way that he feels comfortable with. He asked Mr. Hayes if it would have been better if he had done some preliminary engineering and invested a little bit of money to see if this is going to work or not. Mr.

Hayes replied no, when he started the process the County said he didn't need a site plan for a zoning change. He said once he gets past this phase, the next phase is when he determines how much land he has to work with, because he's not asking to go into the wetlands.

Liz Alward stated she doesn't agree that there is plenty of multi-family in the vicinity. Everything to the west is SR, and along Courtenay Parkway is AU, a couple of BU-1-A's, and some commercial. She said she is concerned there is not one RU-2-4 on the entire zoning map. She said she doesn't think an apartment complex or townhomes are compatible. She agrees with a lot of the neighbors that they built there with the understanding that it was 1 - 1.5 units per acre and they had some expectation that even with the AU, he would only have been able to put one unit on it with the existing zoning, so bringing it to 11 units is pretty high density. She stated she would support the North Merritt Island Board's recommendation to consider the SR zoning, which with 2.79 acres would get five units.

Mr. Hayes noted there is a mobile home park across the street. Ms. Alward replied he isn't abutting the mobile home park, he is abutting a subdivision with half-acre lots or larger.

Ron Bartcher asked Mr. Hayes what he plans to do with the wetlands. Mr. Hayes replied he does not want to build anything on the wetlands. Mr. Bartcher asked if he is going to be cleaning up the pepper trees. Mr. Hayes replied he would like to take out the pepper trees.

Mr. Bartcher stated as far as coming to the board with a plan, there have been a lot of developers who have come to the board without a plan. It has never been a requirement. It's nice to have, but for a lot of developments it's a big investment and he doesn't consider that to be something to hold against them. He said one-third of Mr. Hayes' property is not going to be developed, and it may be even more. That one-third of his property faces those houses in Citrus River Groves. If he doesn't clean out the pepper trees those people will never see what is happening on that property, nor hear it. He said he doesn't see a problem with the development.

Mr. Glover stated on today's discussion, he believes the density of the mobile home park across the street is far higher than 11 units. He said Mr. Hayes is not going to get 11 units; he might get 6 or 7, but that is speculation.

Motion by Ben Glover, seconded by Ron Bartcher, to approve the change of zoning classification from AU to RU-2-4. The motion failed 4:5, with Henry Minneboo, Liz Alward, Peter Filiberto, John Hopengarten, and Robert Sullivan voting nay.

Mr. Glover asked Mr. Hayes if he would be willing to limit the development to six units.

Mr. Hayes asked if he could stay with RU-2-4, but limit the density, as opposed to a different zoning classification.

Mr. Ball stated he could keep the request as RU-2-4 and agree to a BDP to cap the density at two or three units per acre.

Mr. Glover asked staff how many houses he can build with the SR zoning. Mr. Ball replied five houses, which would be two units per acre.

Ms. Alward stated that would be compatible with the neighborhood to the west.

Mr. Glover stated five houses would cause more water issues than if he builds townhouses. Ms. Alward pointed out he would have to follow the same stormwater procedures.

Mr. Glover stated he is going to build up the foundation of the house, and there's going to be a swale and it will run wherever it runs. Mr. Bartcher stated water has to be retained on the property. Mr. Glover stated that is typically 25% of the parcel.

Mr. Filiberto stated staff mentioned RA-2-4, and he's willing to go with that, or SR. Mr. Bartcher stated RA-2-4 means he can't rent them out, and keeping them as rentals gives him an ongoing source of income.

Mr. Filiberto asked staff if SR can be rented. Mr. Ball replied SR is a single-family zoning classification and cannot be rentals.

Mr. Glover stated the map shows a neighborhood the board approved that looks like zero lot lines. It's not multi-family, but it's high density.

Mr. Wadsworth stated the main concern is the stormwater and the wetland impacts, but those are things that will be regulated throughout the permitting process.

Motion by Ben Glover, seconded by William Capote, to recommend approval the change of zoning classification from AU to RU-2-4 with a BDP limiting density to three units per acre. The motion passed 7:2, with Liz Alward and John Hopengarten voting nay.