

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

The Brevard County Planning & Zoning Board met in regular session on **Monday, April 17, 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: Ron Bartcher (D1); Robert Sullivan (D2); Debbie Thomas (D4); Mark Wadsworth, Chair (D4); Logan Luse (D4-Alt.); and John Hopengarten (BPS). Robert Brothers' presence was noted at 3:09 p.m.

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.

### **Excerpt of Complete Agenda**

#### **Austin A. and Kailey R. Mahan**

A Small Scale Comprehensive Plan Amendment (22S.15), to change the Future Land Use designation from NC (Neighborhood Commercial) to CC (Community Commercial). The property is 0.77 acres, located on the north corner of U.S. Highway 1, and E.R. Smyth Drive, Mims. (3716 E.R. Smyth Dr., Mims) (22SS00013) (Tax Account 3030132) (District 1)

#### **Austin A. and Kailey R. Mahan**

A change of zoning classification from AU (Agricultural Residential) to BU-2 (Retail, Warehousing, and Wholesale Commercial). The property is 0.77 acres, located on the north corner of U.S. Highway 1, and E.R. Smyth Drive, Mims. (3716 E.R. Smyth Dr., Mims) (22Z00054) (Tax Account 3030132) (District 1)

Austin Mahan, 3716 E.R. Smyth Drive, Mims, stated his father was interested in ecotourism and the outdoors, and he bought a kayaking company in 2004. Since then, the company has grown, and their credibility is very important to them. He said the business has over 2,700 reviews on Trip Advisors and 2,400 of those are five out of five stars; and they have thriving partnerships with the Brevard County Parks Department and the Merritt Island National Wildlife Refuge. He stated he understands the subject property is currently zoned as agricultural residential, but when he was investigating the lot for purchase, he contacted the Planning and Zoning Department about storing kayaks and equipment on the premises, and at the time was told it shouldn't be an issue. He said after building a home, he again sought to confirm the information before moving the equipment. At that time, when he again contacted Planning and Zoning, he was given different information. Since then, he has worked with the County to determine an appropriate zoning for the .77-acre portion of the property, and he is requesting BU-2 zoning. He emphasized that the business's services are rendered at the water's edge, guests are not transported, and there are not in-person ticket sales; and the .77 acres is strictly used for storing vehicles, kayaks, and related equipment. He said he believes the outdoor equipment storage will have minimal impact on the neighborhood. He has installed an 8-foot fence with additional plans to do aesthetic landscaping to keep the area secure and pleasing to people driving through the area. He said he is committed to taking whatever measures necessary to minimize noise and other disturbances, and is committed to being a responsible neighbor to everyone in the area. He stated he will work with the County to ensure all necessary permits and requirements are met, and will maintain open communication with the community to address any concerns or issues that arise. He said he believes rezoning will allow the business to continue providing high-quality outdoor experiences for residents and visitors while also supporting the local economy in promoting outdoor stewardship.

Ron Bartcher asked if Mr. Mahan plans to provide the landscaping on the outside of the fence. Mr. Mahan replied yes, the landscaping will be on the outside of the fence.

No public comment.

Motion by Debbie Thomas, seconded by Logan Luse, to recommend approval of the Small Scale Comprehensive Plan amendment to change the Future Land Use designation from NC to CC.

\*Robert Brothers' presence was noted.

Mr. Bartcher asked the applicant if he would be willing to add a BDP (Binding Development Plan) that says the only BU-2 use on the property would be for outdoor storage of products related to the business. He stated all of the BU-1 uses would be allowed as well, but BU-2 is a very wide-open zoning and there are some businesses he would not like to see in Mims. He said he would like to restrict it so the applicant can have all of the BU-1 uses, but for BU-2, only the outdoor storage of products related to the business.

Mr. Ball explained a BDP is a legal document that gets recorded and is attached to the rezoning when it goes to the Board of County Commissioners. It is a voluntary agreement between an applicant and the Board, and there are certain restrictions an applicant and the board agree upon. He said Mr. Bartcher is requesting a BDP that would only allow BU-1 uses and the only BU-2 use of outdoor storage of kayaks.

Mr. Mahan stated he would agree to a BDP.

Motion by Ron Bartcher to recommend approval of the zoning change to BU-2, with a Binding Development Plan retaining all BU-1 uses and limiting the BU-2 use to outdoor storage of kayaks.

Robert Sullivan noted there is an objection from the neighborhood, and they are not against what the applicant wants to do, but they don't want the neighborhood entrance on E.R. Smyth Road. He asked if Mr. Mahan would restrict the access to only the commercial property.

Mr. Mahan replied that is the intent. He asked if Mr. Sullivan is specifying there will not be any commercial vehicles moving past the .77-acre parcel, and the vehicles would only be transporting up to that property and not any further into the neighborhood.

Mr. Sullivan replied yes. Mr. Mahan stated he would want to preserve that as well, and would only plan to do that.

John Hopengarten asked Mr. Mahan if there will be any repair work on the kayaks. Mr. Mahan replied he does some minor welding to them on the premises. He clarified it is not fabrication welding, it is more like a heat gun.

Mr. Ball clarified the motion on the table is for approval subject to a BDP limiting the use of the property to all BU-1 uses and the only BU-2 use of outdoor storage of kayaks, and limiting the access to U.S. Highway 1 only.

Mr. Mahan stated there is a gap in the fence on the U.S. Highway 1 side, and a gap in the fence on the E.R. Smyth Drive side, offering two modes of leaving the property in case of an emergency. He

asked if he would only be entering and exiting through the U.S. 1 side. He said it was his understanding that the board is asking for only entering on the E.R. Smyth or the U.S. 1 side.

Mr. Sullivan stated if he could use the E.R. Smyth Drive side as an egress only, that would be fine. He said the neighbors have stated they don't want trucks in the neighborhood, transports entering in, but if only leaving the property on an egress, that would be easy.

Mr. Mahan stated he would agree to that.

Mr. Ball clarified that the access would be limited to ingress and egress from U.S. Highway 1, and egress only from E.R. Smyth Drive. Mr. Mahan stated he would agree to that.

Motion by Ron Bartcher, seconded by Robert Sullivan, to recommend approval of the change of zoning classification from AU to BU-2, with a BDP retaining all BU-1 uses, limiting the BU-2 use to kayak storage only, and limiting egress only to E.R. Smyth Drive, with ingress and egress to U.S. Highway 1. The motion passed unanimously.