

Building and Construction Advisory Committee Minutes

The Brevard County Building and Construction Advisory Committee (BCAC) met on Wednesday, November 18, 2020, at 1:00 p.m., in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

Members present were: Ralph Durham, Chair; Michael Williams, Vice Chair, District 1; and Daniel McHugh, District 3.

Staff present were: Amanda Elmore, Interim Assistant Director, Planning and Development; Tad Calkins, Director, Planning and Development; Alex Essessee, Assistant County Attorney; Terry Talbert, Interim Building Official; and Jennifer Jones, Special Projects Coordinator.

The Chair, Ralph Durham, called the meeting to order at 1:00 p.m.

Excerpt of Complete Minutes

1. Amendments to Chapter 62, Article VI, Zoning Regulations, Relating to Vacation Rental as a Permitted Use in Certain Zoning Classifications.

Amanda Elmore stated a year ago staff was asked whether or not it could expand resort dwelling use, vacation rental use, and short-term rental use to other zoning classifications where it is not currently permitted, or permitted with conditions, or permitted with a conditional use permit. The County Attorney's Office researched that question and the answer is yes, as long as a definition is added for vacation rentals that is not in conflict with the State definition, and that is what staff tried to encapsulate in the proposed amendment. She stated in February 2020 the issue was brought back to the Board with the research and at that time there was pending State legislation that could have pre-empted the County's regulations all together, so the Board made the decision to wait and directed staff to come back with the conclusion of the legislation, but the legislation did not pass, so the existing regulations were kept in place. She noted the current regulations have been in place since prior to June 1, 2011, so they are grandfathered-in with regards to resort dwellings. The Board then authorized legislative intent on September 15, 2020, to allow staff to draft amendments to open vacation rental use to other zoning classifications, largely single-family zoning classifications. The vacation rental use would be a permitted use, whereas the resort dwelling use would remain, and in some zoning classifications it is either permitted, or permitted with conditions, or requires a conditional use permit.

Ralph Durham asked if things are left as they are then nothing would change. The BCAC is not required by the State to do anything because there is already rules in place from the 2011 ordinance.

Ms. Elmore replied yes, the BCAC is not required to do anything.

Mr. Durham asked if whatever the vote is today, is there anything mandated by the State that the BCAC must do, or can the committee vote as how independent people feel, and how the public feels.

Alex Esseeesse replied there is no State mandate at this time that would require the County to take any action. Brevard County is grandfathered-in based on ordinances being adopted prior to June 2011.

Public Comment.

James McGrath, 6400 S. A1A, Melbourne Beach, stated right now if nothing is done, the County is grandfathered-in, but if the board makes one change to that, it is forever going to be Airbnb's.

Melbourne Beach is a family community, and it is lucrative for corporations and others to buy single-family homes and turn them into Airbnb's, which would change how people live there. He said he met approximately 99% of people who live in Melbourne Beach are against changing the current zoning. He said he feels that what has happened in other communities could happen in Brevard. Airbnb's are not going to move to Palm Bay, they are going to move to the beaches. He asked the BCAC to leave the current ordinance in place and leave the beaches alone.

Dan Poston, Melbourne Beach, stated residents should be entitled to do what they desire with their own property without other people telling them what they can and can't do. He said a lot of people who are retired can use the income from the Airbnb rentals. He stated he voted for the commissioner in his district because he supports it. He understands there have been a few problems, and they need to be addressed. He said the first speaker said that 99% of the people in Melbourne Beach are opposed to the ordinance, but they are not all at this meeting, and a few people should not dictate what other people do. He said he has been affected by COVID-19, as have a lot of people, and a lot of people can use the extra income.

Ayn Samuelson, President of the South Patrick's Resident's Association, and residential rental owner, stated 15 years ago herself and others helped craft the 2006 resort dwelling ordinance, and it is grandfathered-in to keep it as written. A balance was created at that time supporting different types of property ownership in different locations. Residential areas developed in the last 15 years have been under this law, and HOA's have the law to back them up, but the proposed vacation rental matrix now shows vacation rentals allowed in all residential areas and would devastate the stable neighborhoods and impacts would be far-reaching. A revised law will end all resident protections. She said the law was created to protect residents from incompatible drop-in rentals in neighborhoods, and vacation are a commercial use of residential property. The established residential areas cannot support hotels, and the land use and zoning were crafted only for residential use, and the residential areas are not equipped to handle the traffic from commercial activity. The influx of Airbnb's will curtail affordable housing as well, which the County supports with tax dollars. Residents are justifiably fearful of strangers who are here today and gone tomorrow, and there are legitimate concerns about crime, partying, and increased calls to Code Enforcement and the Sheriff's Office. She said she lives next to a vacation rental and there was once 14 people at a time, there were animals, and a destination wedding, and it operated during the State mandated COVID-19 lockdown. She asked the committee to not let vacation rentals endanger stable communities.

Linda Lawton, Melbourne Beach, stated the neighbors in her community help each other in good times and bad times, and to have strangers coming in and out constantly will destroy their way of life.

Paul Genesco, Melbourne Beach, stated if the ordinance is approved, daily rentals will come to the beachside area. He said he doesn't want to see his neighborhood turn into an area where residents can't feel comfortable walking down the street. He stated it is an issue that should remain un-politicized, because he doesn't want his politicians to be influenced by the power of the dollar.

David Vreeland, South Melbourne Beach, stated the Melbourne Beaches area has a number of bed and breakfasts, and small hotels, so there is the ability to accommodate short-term renters. The whole beach area is dotted by single-family homes and condos, but short-term renters treat the neighborhoods like a resort, and they do not clean up after themselves. He said the County is half-way through the 10-year plan to clean up the Indian River, and what that program will provide is a big increase to the damage that has already been done to the river. He said all the work that has been

done should not be reversed the other way and he would appreciate it if the committee would advise the commissioners of that.

Scott Coghill, 118 Eden Avenue, South Patrick Shores, stated he has lived in his house since 1960 and he's abided by all County regulations. He said his street is 18 feet wide, and recently there was a Vrbo that was created illegally and he has filed a complaint with the Brevard County Code Enforcement division. He stated the owner is not paying taxes on the rental; he has a three-bedroom, two-bath house and having six, eight, and 10 people staying in it, with five to eight cars parked on the street. He said he just had to re-sod part of his front yard because a four-wheel drive dug it up. He stated for the people who are in favor of Airbnb use, he would like to remind them that they chose to buy property knowing what the covenants are. He said he also owns property in North Carolina and South Carolina, both with expensive HOA fees, and he knew that when he bought the property. He said for those not interested in putting the issue before the voters, he warns them that by not doing so they are allowing a handful of elected officials to decide the future of their property. He urged those in opposition to attend all public meetings on the issue.

Alex Covison, Merritt Island, stated he chose to retire in Merritt Island because it was a nice, quiet, community, until his neighbor decided to move out and turn the house into an Airbnb. He has called the Sheriff's Office for music playing until 5:00 a.m., there was recently a birthday party with 25 people and cars parked up and down the street, and himself and other residents in his neighborhood do not want that to happen; they didn't choose to live there so they could live next to a hotel. He asked the committee to deny the proposed ordinance.

Christy Richardson, Merritt Island, stated she researched having an Airbnb for a family member who has a vacation home on Merritt Island, and no where in her research did she find the current ordinance. She said the Tax Collector told her where to apply for a legal license through the State, and also how to get a Business Tax Receipt, so she made sure everything was proper before she started. She said as an Airbnb host, she went through her neighborhood and made sure everyone had her phone number in case there were any problems. The renters sign a rental agreement saying they will not party, they will abide by the quiet rules of the neighborhood, and that they will not have pets, et cetera. She stated she has had wonderful guests. As an Airbnb owners have to market their homes all the time; therefore, they are constantly keeping up the homes and yards. She said if there is proper management, Airbnb's do not let in people who want to stay for less than four days. She said she pays taxes and Airbnb's are good revenue for the State. She said not everyone who stays at an Airbnb is there to party, they want to relax and stay away from crowds. She said if people want rules in their neighborhood, they should buy in an HOA that has rules, and noted there are residents and long-term renters who are trashier than her Airbnb customers.

Noreen Williams, South Melbourne Beach, stated she loves Airbnb's, but not in her backyard, so if they all go away, so be it. In Anna Marie Island, I've seen the homes there selling and being torn down and replaced with large homes with 10 bedrooms, and as a consequence the schools lost children and small businesses suffered. If the proposed ordinance is passed, the same thing could happen in South Melbourne Beach.

Mark Shantzis stated he has lived in Brevard for 23 years, and he moved here for the safe neighborhoods, away from the chaos of Miami. Melbourne Beach is one of the 10 best family town to live in, in the United States. In 2006, when the issue of resort dwellings first came up, when there was a boom in real estate, there was a large group of people who got together, including developers, builders, and contractors, who looked at how to protect neighborhoods, and they passed a resort

dwelling ordinance. He stated the resort dwelling ordinance allows certain designated areas for resort dwellings, and there is also a specific addition called Transient Commercial Development activities, which allows activities intended to serve the needs of overnight visitors to be located in Community Commercial Future Land Use designations. The ordinance was done in two years and was fair to everyone. In 2011, the State moved to take away all local rule and decided to create statewide vacation rentals. Brevard County has an exemption and if it goes away it can't come back. He stated the proposed ordinance says it's for certain zoning classifications, but there are 40 listed and three are institutional, 14 zoning classifications already allow vacation rentals, so it's not certain zoning classifications, it's all zoning classifications. He said the BCAC should not only now allow this, but it should start talking about the things that allows neighborhoods to be destroyed. He asked the committee members if they would allow this to happen in their neighborhoods.

Cheryl Hernandez, 122 Pelican Drive, Melbourne Beach, stated she is asking the committee to vote against the proposed changes to the zoning regulations. A few requests for short-term rentals does not constitute the need for a zoning regulation change that will affect residents' lifestyles for decades. She said the current regulations protect residential neighborhoods. She said she purchased in Melbourne Beach because of the quaint neighborhoods, and if the ordinance is passed, it will be replaced by street parking, noise, loud parties, trash, and transients with no ties to the community or the environment. She noted Code Enforcement only works from 8:00 a.m. to 5:00 p.m. during the week, and they are not there on nights or weekends, so by the time they investigate a complaint, the parties who were the issue are gone, so there is virtually no oversight that is enforceable. The tourist tax collection is not a guarantee, as Palm Beach County found out when it lost its lawsuit to collect from Airbnb's and Vrbo. She said she believes the change does not benefit the community at-large, and asked the committee to vote no to the changes.

Tracy Warren, Melbourne Beach, stated she has experienced the problems with vacation rentals, which are illegal in her zoning classification. She said Code Enforcement is not staffed nor equipped to deal with it and never have been.

Mr. Durham asked if Ms. Warren deals with Brevard County Code Enforcement.

Ms. Warren replied yes, and also with the Sheriff's Office, because the worst of it happens after hours. She stated County staff feels there will not be a financial impact, but she thinks there will be because more staff will have to be hired to deal with it. The Administrative Policies of the Future Land Use Element establishes the expertise of staff with regards to zoning and land use issues and the set forth criteria when considering a rezoning action or request for a conditional use permit. She stated what is being done here is rezoning of an entire county, or looking at allowing a conditional use permit activity throughout the county. The Administrative Policies should be looked at very carefully, as that is the guide that is supposed to be taken into consideration for a change of use in zoning. The policies state hours of operation, lighting, and odor should be taken into consideration, as well as traffic, among other things. The renters are on vacation and they don't care; they dump beer bottles and cans in the river; they leave trash on the beaches; and they have fires on the beach during nesting season. If there have to be some changes made, it should be to protect the residential lifestyle.

Mr. Durham asked staff if there is any protection the County will do to try to protect the quality of the Lagoon and other things.

Tad Calkins replied one of the things the County has done is implemented the sales tax to clean up the river and is moving forward with different projects for that. The County has also implemented a

new septic tank requirement where enhanced septic tanks are required within a certain number of feet from the river or ocean. Brevard County Code Enforcement is reactive, not proactive, so they have to get a complaint and respond. The problem with complaints about resort dwellings and short-term rentals is that they don't happen in the timeframe that staff can respond to, and staff can't respond until after the event is over, so they have to rely on the Sheriff's Office who will go out and investigate the complaints. Code Enforcement might not be the most effective solution from a noise complaint standpoint when it's a single event, but we do have Code Enforcement where we look at many of these and where they advertise and how they are being advertised, and we've been very successful at getting those establishments into compliance.

Mr. Durham stated the County has taken great steps to see that things are doing well, and no one wants sea turtles to see bonfires.

Sandra Sullivan, South Patrick Shores, stated what Brevard County has now is working, so it would be great to not open Pandora's Box by allowing vacation rentals everywhere. She said she is aware of a number of houses in her neighborhood operating as Airbnb's. She noted what hasn't been mentioned is the South Beaches sewage plant, which is currently operating at 86% occupancy, and if more people are packing into more houses, that's more effluent. After Hurricane Irma there was 22 million gallons of sewage in the Lagoon, and the plant is near capacity right now. Also, FDOT did a study that in the event of a hurricane, residents cannot evacuate because there is not enough capacity to get everyone off of the barrier island. She said her neighborhood has a lot of elderly people and a lot of veterans who have needs, and Airbnb's can bring an opportunity for sexual predators to come into a neighborhood. She said her neighborhood is a family-oriented community that looks out for each other. She stated she finds the timing of this very curious, and asked if there is influence at this time because of the Air Force influence to say that if it is a transient community, they don't have to clean it up. She noted Brevard County is one of the most important sea turtle nesting areas in the world and the residents are on the beach cleaning up plastics and other garbage on a daily basis. People who stay in resort dwellings do not care. There are areas allocated for that type of business, but family-oriented communities should not be impacted by them.

Sue Covris, stated her neighborhood is mostly retirees and her neighbors next door bought a sailboat, left the country, and turned their home into an Airbnb. The first renters they allowed to come was from Georgia and they brought 30 people into a four-bedroom house to have a party for a week. She said she called the Sheriff's Office because the music was on until late at night. She noted she cannot contact the owners to complain and the few times she did, they told her they were out of the country and there was nothing they could do. She stated in the past four months the house has been rented out constantly, even during COVID-19 when there weren't supposed to be parties. She said she is in the process with Code Enforcement and has a hearing coming up to try to have the place shut down because of the noise and destruction.

Mr. Durham stated he has a neighbor who is problematic and he installed an app on his phone called Timestamp, where you take pictures that are timestamped and can be submitted to Code Enforcement.

Tracy Warren stated when she complained to Code Enforcement she was told to take pictures, but there is no way for them to enforce it, that is what we were told by Code Enforcement. She said a zoning activity cannot be incorporated into a residential area that significantly diminishes the enjoyment, safety and quality of life in existing neighborhoods.

Mark Shantzis stated he spoke to Code Enforcement who told him they go to Barefoot Bay 2-3 times a month for illegal vacation rentals. He said he filed a public records request for all of the complaints for the last six months and was told they don't categorize complaints under vacation rentals or resort dwellings. He said the County couldn't give me a list of complaints; they said there is one per month; and the someone else said there are 2-3 per month.

Joan Vaughn, 265 Pelican Drive, Melbourne Beach, stated she lives in a family community where the residents are an extended family. The only reason the meeting room isn't filled today is because of COVID-19.

Mr. Durham asked Ms. Vaughn if she thinks the County should have a referendum vote on the subject. Ms. Vaughn replied if enough people show up on December 8th it will be clear how many people do not want the proposed ordinance.

Ayn Samuelson stated when she and others brought this issue to the forefront in 2005 she worked with staff and commissioners to hammer out something that was fair and allowed areas to have resort dwellings. She noted she has rental property and I would never drop a resort dwelling in a residential community. She said she asked the Tax Collector if her office checks out people when they come in for a license, and she said yes, but there could be a better mechanism between her office and Planning and Development to make sure. She stated when people buy property they can't do whatever they want, they have to go through the proper lawful process.

Scott Coghill, stated when he made his complaint to Code Enforcement he wasn't given much hope that they would be out to investigate for at least 2 or 3 weeks. He asked, if Code Enforcement can't get to the few that are being run illegally now, what will happen when it's legal. He said at least with a referendum the people would be making the decision versus a handful of elected officials.

Cheryl Hernandez stated COVID-19 is a big concern for a lot of people, and that is why more people are not here today.

Mr. Durham encouraged people to email the commissioners. He said all along the beaches area are hotels to rent, and he doesn't know that Brevard County needs to do this, but it was asked by the commissioners and that's why they are here.

Jack Kligerman, 133 Pelican Drive, Melbourne Beach, stated there are several vacation rentals in his neighborhood and there was one last year that had 50 cars at the home, and there was another one with a domestic violence incident.

Mark Havican, South Melbourne Beach, stated he has lived in his home for a year, and there are two rentals in his neighborhood that he is not comfortable with. He said he chose the area because of the residential neighborhood feeling, and he doesn't want it to change.

Chair Durham closed the public comment and brought the item back to the committee.

Michael Williams stated from the information in the agenda packet, especially the map showing the permissible resorts are, or can be, he thinks there are enough out there to take care of everyone's needs. He noted he wouldn't want it in his neighborhood.

Daniel McHugh stated he feels like the voice of the people should be the rudder that steers the ship of government.

Motion by Michael Williams, seconded by Daniel McHugh, to deny the amendments to Chapter 62, Article VI, Zoning Regulations, relating to Vacation Rental as a Permitted Use in certain zoning classifications. The motion passed unanimously.