

PLANNING AND ZONING BOARD MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, July 12, 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); Joe Buchanan (D4 Alt); Peter Filiberto (D5); and David Bassford (D5 Alt).

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; George Ritchie, Planner III; Paul Body, Planner II; Kyle Harris, Planner I; Abigail Jorandby, Assistant County Attorney; and Jennifer Jones, Special Projects Coordinator.

At the outset of the meeting, David Bassford announced he had a conflict of interest on Items H.1., H.7., and H.8., and would need to abstain from voting.

Excerpt of Complete Minutes

395 East, LLC (Alex Berkovich)

A change of zoning classification from SEU (Suburban Estate Use) to EU (Estate Use Residential). The property is 6.33 acres, located on the southwest corner of Curry Dell Lane and S. Courtenay Pkwy. (No assigned address. In the Merritt Island area.) (21Z00018) (Tax Account 2511450) (District 2)

Alex Berkovich, 6065 S. Tropical Trail, Merritt Island, stated the board saw this property approximately one year ago and the request was approved with only one member in opposition. The request a year ago was AU to EU. Unfortunately, at the County Commission meeting there were many neighbors who were opposed to the change because Mr. McGuire wanted to develop an 11-lot subdivision, and although he was allowed to do that, the neighbors came out in large numbers and stated they believed it would be a construction nightmare. He said Mr. McGuire wanted to use the neighbors' private street to access the property. He said he's met with the HOA president and vice president on two occasions, and their biggest contention was they would not allow their private street to be used as access points. He stated he assured the HOA president that he will not use the private street as an entrance point; he will use S. Tropical Trail from one end, and S. Courtenay Parkway from the other. He said he also assured the HOA he will not build more than four homes on the property. He explained that his goal is to have two properties for his parents and kids, and then sell the two others on S. Tropical Trail and S. Courtenay Pkwy. He stated the board will probably hear people say they do not want development, but he's not building 11 homes, he's building four homes, if even possible based on certain situations. He stated he is asking the board to allow him to go to the zoning that was requested a year ago. He noted he met with the County Attorney, the District 2 Commissioner, and staff two weeks ago and they are all in agreement that 11 homes is not a reasonable number, but he believes four homes is a number that is manageable if it can be done, and that is his request today.

Mark Wadsworth asked if he owns the property across the street on S. Courtenay Parkway. Mr. Berkovich replied he is still negotiating that property.

Mr. Wadsworth asked if he wants four lots total, or four lots between the S. Tropical Trail and S. Courtenay Parkway. Mr. Berkovich replied the S. Courtenay Parkway lot that is on the water is not in consideration, and he wants four lots on the dry side, which would be west of S. Courtenay. Mr. Berkovich continued that the District 2 Commissioner suggested that he would be comfortable, if he

does buy the lot on the east side of S. Courtenay, that it not be developed, and it would stay zoned SEU. He reiterated that he is only asking for the rezoning on the dry portion, which is between S. Tropical Trail and S. Courtenay Parkway.

Paul Body stated the lot on the east side of S. Courtenay Parkway is included with the application to change the zoning from SEU to EU, and it is part of the same tax account number.

Mr. Berkovich stated when he met with the County Attorney and the Commissioner, they felt it better to keep that lot SEU and develop it because the lot cannot be expanded. He noted he is not in contract yet on that property; he is only in contract with Mr. McGuire on the dry portion of 5.5 acres.

Mr. Body clarified the property was advertised to include the portion east of S. Courtenay Parkway, and whether it is buildable or not, it was advertised with the property under consideration today. Mr. Berkovich replied in that case, his request for EU would be for the whole property, including the piece on the east side of S. Courtenay Parkway.

Jeffrey Ball suggested the board table the request to allow staff to make sure the legal description submitted by the applicant included the piece on the east side of S. Courtenay Parkway, and if it wasn't, the maps need to be amended. He said staff's understanding is that the piece on the east side of S. Courtenay Parkway was included in the overall property, and if Mr. Berkovich does not have owner authorization for that piece, that would be something staff needs to look at in further detail.

Peter Filiberto stated if it is all under one tax number, it would be all one property. Mr. Body replied yes, it is one legal description that includes the portion on the east side of S. Courtenay Parkway.

Mr. Ball stated staff needs to look at the documentation that Mr. Berkovich submitted with his application to see if there is a difference in what he is allowed to do on one side of the street versus the other.

Mr. Filiberto confirmed that if Mr. Berkovich was to purchase the property it would be the total property highlighted on the map. Mr. Ball replied yes, the way the request was advertised, it is staff's understanding that the whole property depicted on the map is part of this application.

Mr. Hodggers asked staff if it is possible Mr. Berkovich is mistaken and doesn't understand the way his contract is written. Mr. Ball replied possibly, but without having more time outside of this meeting, staff can't verify if those statements are accurate or not, and he doesn't feel comfortable moving forward without having sufficient time to review that part of the application.

Mr. Hodggers stated he understands, but if he's under contract to buy this and it already is just one single lot, then it could be that he is just making a mistake and he doesn't realize that lot is tied to it. Mr. Ball stated the issue is owner authorization for the property.

Public comment.

Phillip Barnes, 3700 S. Tropical Trail, stated his property is next to the subject property, and he also owns and lives in 1245 Leslie Drive, Merritt Island, which is next to Tom Curry's property, who used to own Curry Dell Lane. He stated he is opposed to the request because the Commissioners already voted on it and approved it as SEU. He said he is okay with two houses being built, but now the applicant wants four houses, and six houses might be next. He said when the property was originally

up for sale by the original owner, he tried to buy it because he wanted to save it because there is nothing left on South Merritt Island. He said he wrote four letters and the owner never responded.

Mr. Wadsworth asked if Mr. Barnes would you be okay with four houses. Mr. Barnes replied no, he would not, because the applicant told the original owner that it was unbuildable, which is how he bought it for \$150,000. He said the people who live there need to be respected, and two houses are fine, but four houses is not. He said how dare the Commissioner do little things on the side, and he's tried to talk to him, but he won't talk. He noted there are gopher turtles on the property that are having hatchlings right now, 65 years old or older. He said there is enough animal life on the property that development will be stopped by the State.

Mr. Wadsworth pointed out that even if the zoning was approved the owner still has to jump through major hoops.

Mr. Barnes stated he has already stopped surveyors because they took his survey stakes and moved them three feet onto his property, and he told them the next time he sees them there he's going to shoot them. He said he's done it twice at two different surveyors. He noted that John Campbell was the last surveyor who surveyed it, so he knows that is right.

Mr. Ball stated staff has reviewed the application submitted by Mr. Berkovich and it includes both the east and west sides of S. Courtenay Parkway.

Robin Silvea, 3800 S. Courtenay Parkway, Merritt Island, stated in reference to the lot on the east side of S. Courtenay, she knows something about that because she had to research it when she bought her lot. She said Mr. Curry subdivided the neighborhood in 1988 and there is an ordinance that says if anything contained wetlands, or big portions of wetlands, if it was not subdivided prior to 1988, it has to be at least five acres to build. If the board makes the decision today to all of a sudden allow subdividing, he can say he doesn't want that piece of property, and then it's its own parcel, and if it's its own parcel and under five acres and it's not subdivided, that is leaving the door open for something in the future. She stated as far as subdividing, there are ordinances in place for this specific reason, to protect the wetlands. She said her property was subdivided prior to 1988, under five acres, but it was before '88 so she was able to mitigate the wetlands. After 1988 any building must be done on the least intrusive land, which would be on the west side, so it has to stick together. She mentioned Curry Dell Lane, which is the HOA road currently in litigation. She asked the board to table the request until the court ruling on the road is secure, and then make a sensible decision.

Bill Jefferson, 3750 S. Tropical Trail, Merritt Island, stated he has two acres that directly abut the subject property. At the last Commission meeting the determining factor was that more septic tanks between the two rivers were not needed.

Motion by Joe Buchanan to table the request for further investigation and clarification. The motion died for lack of a second.

Mr. Ball advised that before the board is a rezoning application, and its recommendation should be based on two things: consistency with the comprehensive plan and compatibility with the surrounding area. He said today's meeting is not the process for subdividing property.

Mr. Berkovich stated all he is asking for today is a zoning change that was before this same board and approved a year ago. As far as going through hoops, he will do whatever he has to, and it will give him a chance to work with the neighbors to deal with the turtles and the roadway.

Mr. Wadsworth asked Mr. Berkovich to confirm he wants four units on the entire subject property. Mr. Berkovich replied yes, and he doesn't want any more. Mr. Wadsworth asked if he wanted three units on one side and one on the other side. Mr. Berkovich replied four units on one side.

Ron Bartcher stated the board needs to essentially insist on a BDP because otherwise it is approving the same thing that it approved the last time and was rejected by the County Commission. If the board doesn't include a BDP to limit the development, it is a waste of time.

Mr. Hodggers asked, if the request was approved with a BDP for four lots on the portion of property between S. Tropical Trail and S. Courtenay Parkway, and in the future he wants to build on the east side, he would have to come back before the board. Mr. Ball replied yes, he would have to come back to the board amend the BDP.

Mr. Hodggers explained to Mr. Berkovich that he would be agreeing to four on one side, or three with one on the other side, and once he agrees to it it's binding, so he won't be able to change it without going through this process again.

Mr. Berkovich stated he understands that.

Mr. Wadsworth asked if Mr. Berkovich wants to put a unit on the portion of the property east of S. Courtenay Parkway. Mr. Berkovich replied he would prefer not to, he would rather leave it for the residents to enjoy, his family and whomever buys the other two lots.

Robert Robb, engineer for the applicant, stated today they are only asking for a change of zoning. There are a lot of issues that need to be dealt with as far as wetlands. He said Mr. Berkovich would like a maximum of four units, but once they get through County Code, FDEP, and St. John's, it might end up being three units or two units. He believes the property that fronts the water is 100% wetlands and would end up going with one of the lots on the center portion of the property. He said regarding the Curry Dell Lane litigation, it is his understanding that once a subdivision reaches approximately 70% ownership of residents, the HOA takes over and all of the land is switched over to the HOA. In this case, he believes the road right-of-way never got switched over and the owner has passed away, so now there are legal issues with how to transfer.

Mr. Berkovich stated he is not involved in any litigation with anyone, and he has no problem ensuring that he will never use Curry Dell Lane for any kind of ingress/egress. He said he respects everyone who attended the meeting today and he's sure they want to see a nice park, but this is land that is allowed to be subdivided in the future.

Mr. Wadsworth stated approval would be with a BDP possibly to also include the ingress/egress.

Abby Jorandby noted that under the Code, a BDP is supposed to be voluntary from the applicant. She mentioned the prior meeting with Mr. Berkovich and the Commissioner.

Mr. Berkovich stated he agreed to everything that was requested, no entrance from Curry Dell Lane.

Ms. Jorandby stated in the prior discussion with the Commissioner, the concerns were that there would be no more than four single-family residences, no more than two stories, and no roadway access to the north of the property. She asked Mr. Berkovich if he recalls agreeing to that. Mr. Berkovich replied yes, Curry Dell Lane would be a private street and he would not have access.

Ms. Jorandby pointed out that he would be in a septic overlay, so he would have to have the advanced septic system. Mr. Berkovich replied yes, and he believes the Commissioner did not want any attached homes, or additional living quarters.

Ms. Jorandby stated the other condition is a maximum of 35 feet in height for the homes, which is per Code, but that is what was discussed with the Commissioner at the prior meeting with staff.

Mr. Wadsworth asked Mr. Berkovich if he agrees with all of those items. Mr. Berkovich replied yes, he agrees.

Mr. Bartcher asked if the parcel is going to be subdivided so that the property can be sold as individual lots, or is Mr. Berkovich going to retain ownership of the entire thing when he builds the four houses. Mr. Berkovich replies he does not know yet, but he thinks he will have to subdivide it at some point.

Mr. Body advised the board that if he is subdividing the property into more than two lots he has to go through the site planning process.

Mr. Bartcher stated if subdivided, he would assume two of the lots would have to be flag lots. Mr. Berkovich replied yes, that's correct.

Mr. Bartcher asked staff how wide the flag stem has to be.

Mr. Berkovich stated he believes he will need to request waivers, and he will have to go down to 20 feet for the flag stem, but he believes the requirement is 25 feet.

Mr. Bartcher asked staff if the waivers would be part of the BDP, or would that be the other board that grants the waivers. Mr. Body replied he would have to get the waivers through site planning when he goes through the platting process. Mr. Bartcher stated if the property is 140 feet wide, then the two stems could each be 20 feet, for which he would have to get an exception.

Mr. Body noted the Code calls for a corridor lot to have a 25-foot access stem. Mr. Bartcher stated if it's 25 feet, then that would mean the lots would be too small because the lots need to be 100 feet wide. Mr. Body advised Mr. Berkovich would have to go through site planning to be able to get everything he is requesting.

Mr. Robb stated that is why they are asking for a maximum of four lots, because they have to go through the process to see if they can get four; it may only be three lots.

Mr. Body pointed out that another requirement is that a corridor lot has to have at least an acre of land, less the flag stem portion.

Mr. Bartcher stated he is not comfortable with four lots in the center section, but three lots seems to be a reasonable compromise.

Mr. Wadsworth asked Mr. Berkovich if he would be interested in three lots. Mr. Berkovich replied if he owns the other portion of the lot, which he doesn't know if he does or doesn't, then he will have the option to build the fourth home there in the future if possible. He said he doesn't know if the zoning is the right avenue to discuss how many lots he can put on the property.

Ms. Jorandby advised the board that this is a rezoning application, so if the applicant voluntarily brings forward a BDP, that would be something to consider, but the motion will either be to recommend approval or denial to the Board of County Commissioners. Right now, the applicant is requesting the rezoning with a BDP with those four conditions. It is something voluntary from the applicant, so if he's not willing to drop it down to three lots, that is something to take into consideration, but it's not the actual motion that this board will make.

Mr. Hodggers asked, if he decides to build on the east side and make that one of the lots, would the BDP have to include that language, or is it just strictly four lots for the entire parcel. Ms. Jorandby replied, what was discussed was four lots for the entire parcel, since it is an application for the entire parcel.

Mr. Berkovich stated originally, he was going to build four on the center portion. He said he cannot imagine building on wetlands on the east portion. He stated he is willing to work with staff and the board, but this board approved the same request a year ago with the potential for 11 lots. As for how the lots get split, staff and his engineer will work it out. He said he doesn't think it's fair for the residents to come and discuss a different subject matter and change the board's mind the way they did with the Commission because from what he understands from a legal point of view he cannot see this not being approved as the EU zoning that was requested and approved by this board last year. He stated if staff and himself cannot work out a reasonable way with four lots, then he will be stuck with three lots.

Mr. Hodggers stated in light of what was just discussed, with the east side property in play, he would vote to approve it with a BDP for four units.

Mr. Berkovich stated if he is able to put for units in the center portion, he will not be able to put anything on the east side of S. Courtenay Parkway, but it will depend on if it's actually feasible and if waivers will reduce the flag lots to 20 feet as opposed to 25 feet. He said the subject has become less of a zoning hearing and more of a political hearing; not on the board's side, but on his neighbors' side.

Mr. Ball noted it's not whether staff and Mr. Berkovich can work out whether he can build four lots or not, it is whether Mr. Berkovich can demonstrate to staff that he complies with the Code requirements. He stated there is a Code that regulates development and he has to meet that, and if he doesn't, then there are some provisions that allow for him to request a waiver from the Code, and that is granted by the Board of County Commissioners. He said approval of waivers depends on the section of Code; if it is the Subdivision Code, a waiver would be determined by the Board of County Commissioners; there are some zoning provisions that would go to the Board of Adjustment, but those would relate to zoning setbacks, lot width, and lot depth. Depending on what waiver Mr. Berkovich would be requesting determines which board he goes to.

Mr. Bassford stated Mr. Berkovich has said he will agree to a BDP, but there is not a BDP in the agenda package.

Mr. Ball stated at this stage a BDP is kind of a work in progress, so a BDP is not required to be submitted at this point. The advisory board can recommend that Mr. Berkovich submit a BDP and list the conditions, and then it's up to the Board of County Commissioners to acknowledge that and make that part of its motion.

Ms. Jorandby stated she would like to make sure the applicant agrees that it would be a BDP with the following conditions: No more than four single-family residences; the residences will not exceed two stories; there will be no roadway access to the north, only access from S. Courtenay Parkway and S. Tropical Trail; will utilize the advanced septic systems; and a maximum height structures of 35 feet. Those are the conditions we discussed with the Commissioner at the prior meeting.

Mr. Berkovich stated he agrees to the conditions.

Motion by Brian Hodgers, seconded by Ron Bartcher, to approve the requested change of zoning classification from SEU to EU, with a BDP containing the following conditions: no more than four single-family residences; the residences will not exceed two stories; no ingress/egress to Curry Dell Lane; developer/owner will utilize the advanced septic systems; and a maximum height of structures not to exceed 35 feet. The motion passed 5:1, with Peter Filiberto voting nay.