

Minutes Planning and Zoning Board / Local Planning Agency

3:00 PM

Call To Order - 3:00 P.M.

Approval of Minutes - July 26, 2021

Motion by William Capote, seconded by Joe Buchanan, to approve the July 26, 2021, minutes. The motion passed unanimously.

Result: APPROVED

Mover: William Capote

Second: Joe Buchanan

H. Public Hearings

- H.1.** William D. and Elizabeth Anne Elliott, Trustees (Joe Mayer) request a Small Scale Comprehensive Plan Amendment to change the Future Land Use designation from PI to RES 1. (21PZ00033) (Tax Accounts 2616601 & 2323951) (District 2)

1. William D. and Elizabeth Anne Elliott, Trustees (Joe Mayer)

A Small Scale Comprehensive Plan Amendment (21S.05) to change the Future Land Use designation from PI (Planned Industrial) to RES 1 (Residential 1). The property is 8.25 acres, located on the south side of D'Albora Rd., approx. 0.23 mile east of N. Courtenay Pkwy. (Tax Parcel 251 = 1401 D'Albora Rd.; Tax Parcel 286 = No assigned address. In the N. Merritt Island area.) (District 2)

2. William D. and Elizabeth Anne Elliott, Trustees (Joe Mayer)

A change of zoning classification from PIP (Planned Industrial Park) to RR-1 (Rural Residential). The property is 8.25 acres, located on the south side of D'Albora Rd., approx. 0.23 mile east of N. Courtenay Pkwy. (Tax Parcel 251 = 1401 D'Albora Rd.; Tax Parcel 286 = No assigned address. In the N. Merritt Island area.) (District 2)

Joe Mayer, Bussen-Mayer Engineering, 100 Parnell Street, Merritt Island, stated he is representing the applicant, who is proposing to change the Future Land Use from PI to Residential 1, and the zoning from PIP to RR-1. He noted the surrounding lots are Residential 1 and RR-1, and the industrial zoning is left over from a long time ago, and the Elliott's would like to have two flag lots.

No public comment.

Peter Filiberto asked what the North Merritt Island Dependent Special District Board recommended.

Jeffrey Ball replied the board recommended approval of both requests.

Motion by Peter Filiberto, seconded by Joe Buchanan, to approve the Small Scale Comprehensive Plan Amendment to change the Future Land Use designation from PI to RES 1.

Motion by Peter Filiberto, seconded by Joe Buchanan, to approve the change of classification from PIP to RR-1.

Result: APPROVED

Mover: Peter Filiberto
Seconders: Joe Buchanan

- H.2.** William D. and Elizabeth Anne Elliott, Trustees (Joe Mayer) request a change of zoning classification from PIP to RR-1. (21Z00020) (Tax Accounts 2616601 & 2323951) (District 2)

1. William D. and Elizabeth Anne Elliott, Trustees (Joe Mayer)

A Small Scale Comprehensive Plan Amendment (21S.05) to change the Future Land Use designation from PI (Planned Industrial) to RES 1 (Residential 1). The property is 8.25 acres, located on the south side of D'Albora Rd., approx. 0.23 mile east of N. Courtenay Pkwy. (Tax Parcel 251 = 1401 D'Albora Rd.; Tax Parcel 286 = No assigned address. In the N. Merritt Island area.) (District 2)

2. William D. and Elizabeth Anne Elliott, Trustees (Joe Mayer)

A change of zoning classification from PIP (Planned Industrial Park) to RR-1 (Rural Residential). The property is 8.25 acres, located on the south side of D'Albora Rd., approx. 0.23 mile east of N. Courtenay Pkwy. (Tax Parcel 251 = 1401 D'Albora Rd.; Tax Parcel 286 = No assigned address. In the N. Merritt Island area.) (District 2)

Joe Mayer, Bussen-Mayer Engineering, 100 Parnell Street, Merritt Island, stated he is representing the applicant, who is proposing to change the Future Land Use from PI to Residential 1, and the zoning from PIP to RR-1. He noted the surrounding lots are Residential 1 and RR-1, and the industrial zoning is left over from a long time ago, and the Elliott's would like to have two flag lots.

No public comment.

Peter Filiberto asked what the North Merritt Island Dependent Special District Board recommended.

Jeffrey Ball replied the board recommended approval of both requests.

Motion by Peter Filiberto, seconded by Joe Buchanan, to approve the Small Scale Comprehensive Plan Amendment to change the Future Land Use designation from PI to RES 1.

Motion by Peter Filiberto, seconded by Joe Buchanan, to approve the change of classification from PIP to RR-1.

Result: APPROVED
Mover: Peter Filiberto
Seconders: Joe Buchanan

- H.3.** Joseph A. Calderone requests change of zoning classification from TR-3 (21Z00021) (Tax Account 2315419) (District 2)

3. Joseph A. Calderone

A change of zoning classification from TR-3 (Mobile Home Park) to TR-1-A (Single-Family Mobile Home), on property described as Tax Parcel 517, as recorded in ORB 9056, Pages 710 - 711, of the Public Records of Brevard County, Florida. Section 14, Township 23, Range 36. (0.14 acre) Located on the northeast corner of Whaley Road and Mangrove Drive. (6810 Whaley Road, Merritt Island) (District 2)

Joseph Calderone, 637 Orange Court, Rockledge, stated when the property was cut out years

ago it was never addressed to be rezoned, and when he recently purchased the property he thought it was buildable, but later found out it wasn't. He would like to rezone the property in order to be able to build on it.

No public comment.

Ben Glover stated the requested zoning appears to be less intense and he is in favor of the request.

Motion by Ben Glover, seconded by Joe Buchanan, to approve the requested change of zoning classification from TR-3 to TR-1-A. The motion passed unanimously.

Result: APPROVED

Mover: Ben Glover

Second: Joe Buchanan

H.4. Comprehensive Plan text amendment to include a Property Rights Element as required by House Bill 59, requiring all local governments to create a Property Rights Element.

4. Comprehensive Plan Text Amendment to include a Property Rights Element as required by House Bill 59, requiring all local governments to create a Property Rights Element; and to amend the Glossary Chapter Number from XV to XVI.

Ron Bartcher stated to him, this seems to be another restriction on Home Rule authority, which the State legislature has been doing for many years. He asked if this will mean a developer or owner will get more consideration than any neighbors who might oppose the development of such property.

Jeffrey Ball stated the element lists four additions to be added as part of the comprehensive plan amendment. He explained that the new element has a ripple effect because DEO is requiring the County to adopt the language before any comprehensive plan amendments are sent for review, so this is curtailing any large scale and small scale plan amendments that's been waiting for adoption.

Mr. Bartcher stated the new element does address property rights and he thinks it's good to put that in there, but he's concerned that lawyers for developers are going to come forward and say, "You've put that in your comprehensive plan and therefore it should be given higher priority". He said that because of that, he would like to see a fifth statement added that says Brevard County also recognizes that planning and development decisions affect not only the property owner but the neighbors as well, and that the neighbors would have a right to participate in any of that discussion.

Abby Jorandby stated as far as the neighboring properties, the element is statutorily mandated, so staff used the language provided. As far as additional language regarding the neighbors, the proposed element is really for the private property rights of the owners, and the right of the property owner to physically possess and control his or her interests. She said she is not sure what DEO's interpretation would be if there was language added about neighboring properties.

Mr. Bartcher stated the legislature provided some sample language the board can adopt, or it can create its own language as long as it doesn't conflict.

Ms. Jorandby stated the board can make that recommendation, but the current language from the statute is directed at the property owner and doesn't reference neighboring properties.

William Capote reminded the board that it can only make a recommendation to the County Commission, and they will have the final decision.

Peter Filiberto stated as a recommended body, he agrees with Mr. Bartcher, and the board should probably hash out what the additional language should be. He said he doesn't know if using the word, 'neighbor' would be appropriate.

Mr. Bartcher stated the language he would like to see is 'affected person' so that anyone who is affected can participate in and be a party to any hearing on any development decision and that the affected person could be a person or a local government that would suffer an adverse effect to an interest protected or furthered by this comprehensive plan, including interests related to health, safety, police, fire, service systems, density intensity of development, transportation, health care, equipment services, environmental or natural resources.

Mr. Capote asked for an opinion from the Assistant County Attorney.

Ms. Jorandby asked if Mr. Bartcher is reading that language from a particular statute. Mr. Bartcher replied no, it is language from the internet.

Ms. Jorandby stated from the prior discussion, she had written down that the recommendation was that Brevard County shall consider, as part of the planning and development decision making process, affected property owners and neighbors as well.

Mr. Bartcher stated 'affected person' is a better choice than 'neighbors' because the immediate neighbors may not be the only ones affected by the decision.

Mr. Ball stated 'affected neighbors' can be subjective as far as whether or not they are affected, and asked if the word 'adjacent' could be substituted.

Mr. Bartcher stated the reason he used 'affected parties' was that frequently an issue comes before the board and the property owner who owns property that is adjacent to the developed property is only one of the members of that residential group, and the entire residential group are the ones that are really opposed to it. If it is limited it to say it's only going to be the people who are adjacent, then the other 100 or 200 people who live in that area and would be affected by that property decision are locked out. He said he understands 'affected person' is subjective, but he would like to see that language in there and leave it up to the County Commission.

Ms. Jorandby stated if that is the board's motion and if it passes, it can go to the County Commissioners for consideration.

Motion by Ron Bartcher, seconded by Peter Filiberto, to add Paragraph (E) to the element that states Brevard County recognizes that planning and development decisions affect complex systems and have impacts that occur beyond site development. Any affected person may participate in and be a party to a hearing on a planning and development decision. An affected person is any person or local government that will suffer adverse effect to an interest protected or furthered by this comprehensive plan, included interests related to health, safety, police, fire, service systems, density intensity of development, transportation facilities, healthcare facilities, equipment services, environmental or natural resources. The motion passed unanimously.

Result: APPROVED AS AMENDED

Mover: Ron Bartcher

Seconded: Peter Filiberto

Public Comment

Adjournment

In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons needing special accommodations or an interpreter to participate in the proceedings, please notify the Planning and Development Department no later than 48 hours prior to the meeting at (321) 633-2069.

Assisted listening system receivers are available for the hearing impaired and can be obtained from SCGTV staff at the meeting. We respectfully request that ALL ELECTRONIC ITEMS and CELL PHONE REMAIN OFF while the Planning and Zoning Board is in session. Thank You.

This meeting will be broadcast live on Space Coast Government Television (SCGTV) on Spectrum Cable Channel 499, Comcast (North Brevard) Cable Channel 51, and Comcast (South Brevard) Cable Channel 13 and AT&T U-verse Channel 99. SCGTV will also replay this meeting during the coming month on its 24-hour video server nights, weekends, and holidays. Check the SCGTV website for daily program updates at <http://www.brevardfl.gov>. The Agenda may be viewed at: <http://www.brevardfl.gov/Board Meetings>