

CHARLOTTE COUNTY PLANNING AND ZONING BOARD
Administration Center, 18500 Murdock Circle, Room 119,
Port Charlotte, Florida
Minutes of Regular Meeting
October 13, 2014 @ 1:30 p.m.

Call to Order

Chair Hess called the meeting to order at 1:35 p.m. and upon the Secretary calling the roll, it was noted a quorum was present.

Roll Call

PRESENT

Paula Hess

Stephen Vieira
Paul Bigness

ATTENDING

Joshua Moye, Assistant County Attorney
Gayle Moore, Recording Secretary

ABSENT

Michael Gravesen
Ken Chandler

APPROVAL OF MINUTES

The minutes of September 8, 2014 were approved as circulated.

ANNOUNCEMENTS

Upon the oath being administered, the meeting commenced.

PETITIONS:

Z-14-08-12

Quasi-Judicial

Commission District I

An Ordinance pursuant to Section 125.66, Florida Statutes, amending the Charlotte County Zoning Atlas from Residential Single-family 3.5 (RSF-3.5) to Residential Estates 1 (RE-1), for property located at 1374 Blanot Drive and 27347 San Carlos Drive, in the Harbour Heights area, containing 1.46± acres; Commission District I; Petition No. Z-14-08-12; Applicants: Kendall V. and Tracie A. Baird; providing an effective date.

Staff Presentation

Matt Trepal, Principal Planner, presented the findings and analysis of the petition with a recommendation of Approval, based on the reasons stated in the staff report dated September 25, 2014, giving brief details regarding a scrivener's error in the original petition numbering (the correct number, as shown in these minutes, is Z-14-08-12), and the amount of property included in the rezoning request (all of applicant's property is included) and this correction is evidenced in an updated staff report which he made available to Board members in advance of his presentation. **Mr. Trepal** provided

background information regarding the request, noting that the application is requesting a reduction in density and will require a Plat Vacation as well; he also stated that the purpose of the request was for applicants to be able to keep a horse on the property.

Questions for Staff

Mr. Vieira asked how the meeting was noticed; **Mr. Trepal** described the noticing process, which includes newspaper advertising, written communication to adjacent property owners within 200 feet of the subject property, and posting a sign on the property.

Applicant's Presentation

Ms. Tracie Baird confirmed that she had been sworn, that the petition was for the entire 1.46 acres. **Chair Hess** also inquired whether she was aware of the conditions regarding the keeping of horses in the RE zoning district, especially with regard to setbacks and environmental concerns (e.g., manure), and this property is restricted to one horse. **Ms. Baird** indicated the various options for disposal of manure. **The Chair** asked specific questions regarding the circumstances on the land and how the animal would be kept. It was established that the entire property is fenced and the horse could roam on the property, under the trees, and manure could be sent to the landfill. **Mr. Baird** also addressed the Board, providing some of these details. **Chair Hess** also asked about the provision of water; feed was also discussed, including the method of delivery to the Baird property. Also discussed were places in the neighborhood where riding was done; trailering the horse and where the trailer would be kept; the potential for the neighborhood to fill in eventually (although **Mr. Baird** said that in 16 years, only one new house has been built there.) **Chair Hess** noted there was no substantial reasons why the property could not be used as presently zoned, as is a primary standard for rezoning approval, but balanced this against the reduction in density, which is a favorable aspect.

Mr. Bigness asked if the applicants knew of any negative impacts their keeping of the horse would impose on neighbors. **Mr. Baird** said manure doesn't really smell that bad; **Chair Hess** countered that it attracts flies, just as feed attracts rats, so there is an impact in the residential zoning district. **Ms. Baird** noted that they had polled the neighbors prior to making the application, and found most neighbors were either in favor or didn't object. **Chair Hess** noted that careful horse owners probably would not have any issues with their neighbors, but referred to the poor care some large animals receive that does cause their neighbors to complain.

Public Input

None.

- **Mr. Vieira** moved to close the public hearing, second by **Mr. Bigness** with a unanimous vote.

Discussion

Chair Hess spoke to the issue of whether the property could be used as zoned, balanced against the reduction in density; she polled the Board members on their opinion. **Mr. Vieira** said he had done some research and found that there were at least 9 other properties scattered throughout Harbour Heights that could request the rezoning including some properties close to the park, and he expressed some trepidation that this could start a trend, especially among other people less conscientious than the present applicants about their animals. Discussion ensued on this possibility, with **Chair Hess** noting that each application has to be considered individually and any future similar petitions that might arise would be considered on their own merits at the time. **The Chair** also noted that the subject property has a natural buffer of roads on three sides, which would protect virtually all properties except to the east, which the petitioners contemplate acquiring for themselves. She indicated that the essential question, for her, was whether the reduction in density offset the fact that the property could still be used under the existing zoning; she inquired whether Mr. Bigness agreed.

Mr. Bigness agreed and said he thought it was a rugged area where people could expect rural conditions and uses; the petition was advertised and no one objected. For these reasons, he indicated he was in favor of it, and he was not bothered by the idea others might request the same rezoning. **Chair Hess** spoke further about the double setbacks and the lack of affect on neighbors; she also mentioned the care that needed to be taken with respect to storage of feed and disposal of waste, both for the comfort of the neighbors and the applicants. **The Chair** stated she was in favor of approval because of the reduction in density and the applicants appear to be responsible horse owners. **Mr. Bigness** acknowledged that a precedent was being set, but said the present instance did not cause him any concern.

Mr. Vieira said that he would not be able to make the motion because he was not in favor of the petition, because of the precedent. He also stated that he was concerned due to consideration of the conditional uses ULDC matter to come on later, which he felt would grant abilities to people with RE zoning for uses such as tack shops and commercial riding lessons, which opens up a whole host of issues. **Mr. Bigness** indicated he also was interested in hearing more about the dangers of introducing commercial uses into the area based on the Conditional Uses to be heard later. **Assistant County Attorney Josh Moyer** cautioned against using the proposed ULDC changes in deciding today's case because those changes might still not be adopted by the Commissioners. Some confusion was expressed about whether RE zoning as presently constituted allows horses – **Mr. Trepal** noted that RE currently does allow non-commercial private ownership, but not commercial aspects such as tack shops.

Recommendation

Mr. Bigness moved that application **Z-14-08-12** be sent to the Board of County Commissioners with a recommendation of *Approval*, based on the findings and analysis in the staff report dated September 25, 2014, along with the evidence presented at today's meeting, second by **Ms. Hess** (who passed the gavel) and carried by a vote of two to one, with **Mr. Vieira** voting Nay.

Revisions to the Charlotte County Land Development Regulations:

Conditional Uses and Structures

Legislative

Countywide

An Ordinance amending Charlotte County Code Chapter 3-9, by creating new Section 3-9-69, Conditional Uses and Structure; providing for purpose and intent; providing for conditions for agricultural uses; providing for conditions for commercial uses; providing for conditions for debris and waste facilities; providing for conditions for industrial uses; providing for conditions for public and civic uses; providing for conditions for residential uses; providing for conflict with other ordinances; providing for severability; and providing for an effective date. Applicant: Charlotte County Board of County Commissioners.

Staff Presentation

Jie Shao, Planner III, presented the Conditional Uses section of the Unified Land Development Code (ULDC), reminding the Board that the full discussion occurred at the last meeting, but this item was not part of the recommendation at that time. She also talked about the references to horse stables given in Conditional Uses, which allows them if specific conditions are met. **Ms. Shao** said she believed the Board wanted staff to set a minimum property size to have this type of use; staff did research and talked to property owners who own horses in the east County area and this resulted in a new condition, "e" (page 2, line 9) which states that the minimum size of the property shall be one acre per horse.

Questions for Staff

None.

Discussion

Chair Hess suggested they take the proposed section page-by-page for review. Referring to page one, she asked about the 4-H activities and whether they are allowed both inside and outside the Urban Service Area (USA); **Mr. Cullinan** noted this is generally allowed anyway and is just being codified. There were no other questions on page one.

Referring to page two, **Chair Hess** said she was pleased about one horse per acre, but still has reservations although she acknowledged that the zoning code can't control treatment of the animals. She called for the addition of a condition "f" specifying that the use must be located in the Rural Service Area, to make the intent clear. **Chair Hess** said there should be some reference to minimum acreage for more commercial uses like tack shop or riding instructions. Further discussion ensued about limiting these activities to the Rural Service Area and not having commercial uses at this level. **Mr. Cullinan** responded that multiple options need to be considered because most RE is really outside the USA but Harbour Heights is an interesting area, zoned RSF but both inside and outside

the USA, with a mixture of uses. He indicated that staff would look into options, because commercial issues had not been fully considered in this setting.

Mr. Vieira posed a question regarding AG zoning, what is the minimum requirement acreage-wise for an operation of this type? **Mr. Cullinan** responded, AG is a minimum ten acres, and also commented on the variability of conditions and existing legally non-conforming situations. **Mr. Vieira** indicated he was hoping to prevent for the future that there might be boarding stables popping up all over Harbour Heights, which he characterized as a boating community, and a retirees 'bedroom community'. He said he is seeking to limit the assembling of acreage with the specific purpose of keeping horses or livestock, and while it is getting harder to accomplish this, it still happens.

Chair Hess referred to the material on page one regarding B. agricultural uses, including animal breeding, boarding and training, and asked whether tack shops should go under AG instead of RE; this led to a discussion regarding issues about whether a property is inside or outside the USA plus the nature of the zoning, whether it is AG or RE. **Mr. Cullinan** said that this option could be looked into; **Chair Hess** pointed out that it was difficult to make a recommendation on the material when there still seem to be many questions outstanding. Further discussion ensued on these matters, and whether any of these issues would go before the Board of Zoning Appeals; **Mr. Cullinan** indicated that one approach would be to take out the commercial uses from RE. **Mr. Moyer** sought to clarify which items in this section concerned commercial (A and B) and which were primarily residential (C, D and E). **Mr. Moyer** then asked, with regard to A and B (tack shop and riding lessons, how much acreage is enough in RE (five or ten acres?) or is it just not wanted in RE at all. Additional detailed discussion continued, and **The Chair** indicated she felt the section was really still too problematic to recommend.

The next question, under Farm Equipment Supply, concerned the reference to 15-foot high stacks and piles; this section was briefly debated, with the conclusion that perhaps the height could be adjusted down, although it was recognized to be within reason.

On page three, in the section concerning Vehicle Sales Service Rental the restriction on the business activity within 30 ft. of residential property, **Chair Hess** asked if that was enough? **Mr. Moyer** noted that's most like the US 41 businesses with residences behind them; that's where the 30 feet would come in. **Mr. Cullinan** noted that the code needs to respect property rights, plus he noted all these instances would include landscape buffering.

Mr. Vieira asked Mr. Cullinan if the intent is not to harm the existing businesses, what about the future? He said that he owns some of this type of CG property, across from residential, and wonders if there is some other allowable distance that can be influenced for the future, even if the existing uses cannot be changed. **Mr. Cullinan** reminded that this is *conditional*, not "by right"; conditions have to be met. The goal is to allow more uses of property, but also have tighter control. A brief discussion of the GDC practices ensued. There was also a brief exchange on whether conditions were being placed on

Zoning (which Chair Hess believed was not allowed) or on uses, which **Mr. Cullinan** said was the case here. **Mr. Moye** added that these sorts of questions would be settled in the Zoning Division, and wouldn't need to go to BZA. **Mr. Cullinan** emphasized that the idea is to give much more options to what people can do with their property. **Chair Hess** asked for clarification on this section – whether it was completely new; **Mr. Cullinan** confirmed that it is, and therefore there is no strikethrough/underline version. Further discussion ensued, and **Mr. Bigness** spoke in support of people not losing their ownership rights.

No questions were asked regarding the material on pages 4, 5, or 6. **Mr. Vieira** asked about the buffers, whether Type D always the first choice; **Mr. Cullinan** spoke about the various types, where D is the most restrictive as to amount of plants, but can be narrower.

Regarding the assisted living material on page seven, **Mr. Bigness** asked where do adult family care units fall in this? **Mr. Cullinan** responded that it depends on the classifications established under ACA: six people or less is considered to be a family unit, so these can exist by right in any single-family district; multi-family residential may allow ACLFs with 7 or more by right. Again, there are various types with and without health care providers, and other variables. **Mr. Bigness** said he would like to see the County foster and promote taking care of the elderly at home. He also questioned the role of the Coastal High Hazard Area (CHHA) and asked about the reference to “direct access” – does that mean the facility has to be on those main roads? **Mr. Cullinan** responded yes but noted that the idea is to shelter in place, since the evacuation of the elderly infirm is recognized to be a difficult proposition, so the emphasis is on increased safety features. **Ms. Shao** pointed out that this change is in response to the Comp Plan change; Smart Charlotte 2050 said it couldn't be done at all, but that worries about lawsuits from CG property owners in this area brought about the change.

Chair Hess next commented on the bed and breakfast section, stating she didn't know of too many in our area. **Mr. Cullinan** noted that they turn up on web searches; so the new regulation sure it's done properly. **Mr. Moye** pointed out that they are limited to two bedrooms.

No questions were raised regarding the material on page 8 or page 9.

Mr. Vieira asked to go back a page; under bed and breakfast, there is a requirement for the property owner to be on site, and he asked what about ACLFs, do we need to make a provision that they be staffed? **Mr. Cullinan** indicated that since they are heavily regulated by the state, it would not be necessary.

Some discussion ensued over what items were still to be heard, and **Chair Hess** asked when those items come forward, could staff please come back also with what you are going to do with RE which is so concerning. **Mr. Cullinan** stated if you want to hear it again, that will hold it up from moving forward, but we can do it. **Chair Hess** apologized

but noted that the Board has so many questions, she was uncomfortable sending it forward. **Mr. Cullinan** indicated they can take out the tack shop material; likewise the stables/riding lessons – these could be special exceptions, so there would be a public hearing to consider issues neighbors might have. **Mr. Vieira** wants to include livestock breeding, training, boarding and grazing as items needing to go for a Special Exception; upon further discussion, **Mr. Cullinan** suggested making all the commercial options a Special Exception in RE, where they can be individually considered in the context of their neighborhood, the acreage involved and the like: all the commercial items like tack shops, riding stables, breeding. Therefore, under item 5 as it appears on page two:

- (a) would be by SE
- (b) would be omitted totally
- Add (f) that these uses must be in Rural services
- 6 by Special Exception
- 7 is OK.

Ms. Shao commented on item 6, which is allowed in Parks and Recreation outside the USA; do you want to eliminate that? **Mr. Cullinan** gave examples of where this is targeted. The suggestion was to make it a Special Exception in RE and leave it in PKR.

Finally, in discussion amongst **Ms. Shao, Chair Hess** and **Mr. Moye**, with regard to tack shops, the decision was to keep it in AG; Harbour Heights is partly in the Rural Service Area but is not in AG; just take that use out of RE. The riding lessons are special exception, as is breeding, training, etc., in RE; it is by right in AG and conditional in PKR. The Chair concluded that with these agreed changes the Section could move to the BCC with our recommendation.

Recommendation

Mr. Vieira moved that Conditional Uses be sent to the Board of County Commissioners with a recommendation of Approval, with the changes as discussed in the record: under item 5 as it appears on page two:

- (a) would be by SE
- (b) would be omitted totally
- Add (f) that these uses must be in Rural services
- 6 by Special Exception
- 7 is OK

based on the findings and analysis in the staff report dated September 30, 2014, along with the evidence presented at today's meeting, second by **Mr. Bigness** and carried by a unanimous vote.

Chair Hess asked if preparation was being made for legalization outcome if it passes in the up-coming election. Further discussion ensued on this matter.

There being no further business to come before the Board, the meeting was adjourned at 2:50 p.m.