

**F. Consent Agenda - Planning and Development  
ITEM 6.**



**AGENDA REPORT  
April 23, 2019**

**Acceptance, Re: Binding Development Plan - Sylvia Properties, Inc.  
(18PZ00120) (District 5)**

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**SUBJECT:**

Acceptance, Re: Binding Development Plan - Sylvia Properties, Inc. (18PZ00120) (District 5)

**FISCAL IMPACT:**

None

**DEPT/OFFICE:**

Planning and Development

**REQUESTED ACTION:**

In accordance with Section 62-1157, it is requested that the Board of County Commissioners accept, and authorize the Chair to sign, the Binding Development Plan.

**SUMMARY EXPLANATION and BACKGROUND:**

On February 7, 2019, the Board approved a rezoning request from TU-2 (Transient Tourist Commercial) to BU-2 (Retail, Warehousing, and Wholesale Commercial), with a BDP (Binding Development Plan). The BDP is a voluntary agreement presented by the property owner to self-impose limits upon development of a property in support of a change of zoning or conditional use permit. Pursuant to Section 62-1157, a BDP shall be recorded in the public records within 120 days of approval of the rezoning request by the Board. Following staff and legal review, a BDP is presented to the Board in recordable form as a Consent Agenda Item in order to finalize the zoning action.

The limitations in the attached BDP include, but are not limited to, the following:

- Developer/Owner shall limit the use of the Property to the current business of Stone & Surface Designers, Inc.
- Developer/Owner shall not construct any additional metal buildings on the Property.
- Developer/Owner shall not utilize the southern four (4) acres of land he owns for his business

Staff contact: Jennifer Jones  
321-633-2069 ext. 52653

**CLERK TO THE BOARD INSTRUCTIONS:**

Upon recordation, please return two certified copies of the Binding Development Plan to Planning and Development.

**ATTACHMENTS:**

**Description**

- ▯ **BDP Package**



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972  
Tammy.Rowe@brevardclerk.us

April 24, 2019

**MEMORANDUM**

TO: Jennifer Jones, Zoning

RE: Item F.6., Binding Development Plan Agreement with Sylvia Properties, Inc.

The Board of County Commissioners, in regular session on April 23, 2019, executed Binding Development Plan with Sylvia Properties, Inc., for property located on 5 acres, on the northwest corner of U.S. Highway 192 and Columbia Lane. Said Plan was recorded in OR/BK 8421/1532. Enclosed for your necessary action are two certified copies of the recorded document.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

*Tammy Rowe*

Tammy Rowe, Deputy Clerk

/dt

Encls. (2)

cc: Contracts Administration

Prepared by: Kimberly Bonder Rezanka  
Address: Cantwell & Goldman, P.A.  
96 Willard Street, Ste. 302  
Cocoa, FL 32922

#### BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this 23 day of April, 2019 between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and SYLVIA PROPERTIES, INC., a Florida corporation (hereinafter referred to as "Developer/Owner").

#### RECITALS

WHEREAS, Developer/Owner owns property (hereinafter referred to as the "Property") in Brevard County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, Developer/Owner has requested the BU-2 zoning classification(s) and desires to utilize the Property to expand his business, Stone & Surface Designers, Inc., and pursuant to the Brevard County Code, Section 62-1157; and

WHEREAS, as part of its plan for development of the Property, Developer/Owner wishes to mitigate negative impact on abutting land owners and affected facilities or services; and

WHEREAS, the County is authorized to regulate development of the Property.

NOW, THEREFORE, the parties agree as follows:

1. The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the Property or improvements. It is the intent of the parties that the Developer/Owner, its grantees, successors or assigns in interest or some other association and/or assigns satisfactory to the County shall be responsible for the maintenance of the Property and any improvements.

2. Developer/Owner shall limit the use of the Property to the current business of Stone & Surface Designers, Inc.

3. Developer/Owner shall not construct any additional metal buildings on the Property.

4. The Developer/Owner shall not utilize the southern four (4) acres of land he owns for his business.

5. Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developer/Owner's agreement to meet additional standards or restrictions in developing the Property. This agreement provides no vested rights against changes to the Comprehensive Plan or land development regulations as they may apply to this Property.

6. Developer/Owner, upon execution of this Agreement, shall pay to the Clerk of the Court the cost of recording this Agreement in the Public Records of Brevard County, Florida.


7. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject Property unless or until rezoned and be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property, and be subject to the above referenced conditions as approved by the Board of County Commissioners on 4/23/19. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.

8. Violation of this Agreement will also constitute a violation of the Zoning Classification and this Agreement may be enforced by Sections 1.7 and 62-5, Code of Ordinances of Brevard County, Florida, as may be amended.

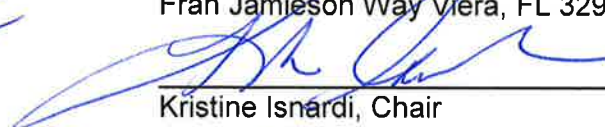
9. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and must be satisfied before Developer/Owner may implement the approved use(s), unless stated otherwise. The failure to timely comply with any mandatory condition is a violation of this Agreement, constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 8 above.

IN WITNESS THEREOF, the parties hereto have caused these presents to be signed all as of the date and year first written above.

ATTEST:

  
Scott Ellis, Clerk  
(SEAL)

BOARD OF COUNTY COMMISSIONERS OF  
BREVARD COUNTY, FLORIDA, 2725 Judge  
Fran Jamieson Way Viera, FL 32940


  
Kristine Isnardi, Chair  
As approved by the Board  
on 4/23/19


(Please note: You must have two witnesses and a notary for each signature required. The notary may serve as one witness.)

WITNESSES:

SYLVIA PROPERTIES, INC.  
P.O. Box 121535  
West Melbourne, FL 32912

  
  
(Witness Name typed or printed)

  
Director  
(title)

  
Patricia L. Clark  
(Witness Name typed or printed)

Fernando Ortiz  
(Name typed, printed or stamped)

STATE OF FLORIDA    )  
                                  > ss: Cocoa  
COUNTY OF BREVARD)

The foregoing instrument was acknowledged before me this 4th day of April, 2019, Fernando Ortiz, as Director of Sylvia Properties, Inc., who produced his driver's license as identification.

My commission expires

SEAL

Commission No.:



  
Notary Public

Patricia L. Clark  
(Name typed, printed or stamped)

**EXHIBIT "A"**

A PORTION OF LAND LYING IN THE NORTHEAST 1/4 OF SECTION 3, TOWNSHIP 28 SOUTH, RANGE 36 EAST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FROM THE SOUTHWEST CORNER OF THE NORTHEAST 1/4 OF SECTION 3, TOWNSHIP 28 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, RUN N89°33'30"E ALONG THE SOUTH LINE OF SAID NORTHEAST 1/4 OF SECTION 3 AND ALONG THE CENTERLINE OF U.S. HIGHWAY 192 A DISTANCE OF 659.73 FEET; THENCE N00°15'45"W, ALONG THE WEST LINE OF LOT 19, SECTION 3, TOWNSHIP 28 SOUTH, RANGE 36 EAST, FLORIDA INDIAN RIVER LAND COMPANY SUBDIVISION, AS RECORDED IN PLAT BOOK 2, PAGE 80, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, A DISTANCE OF 621.96 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE CONTINUE N00°15'45"W A DISTANCE OF 130.82 FEET; THENCE N86°47'30"E A DISTANCE OF 315.78 FEET TO THE WEST RIGHT OF WAY LINE OF AN 80 FOOT WIDE ACCESS ROAD RIGHT OF WAY; THENCE S00°08'00"E ALONG THE WEST RIGHT OF WAY LINE OF ACCESS ROAD A DISTANCE OF 145.36 FEET; THENCE S89°25'49"W A DISTANCE OF 315.04 FEET TO THE POINT OF BEGINNING. CONTAINING 43,524 SQUARE FEET OF 1.00 ACRES, MORE OR LESS.

### AFFIDAVIT OF NO MORTGAGE

I, Fernando Ortiz, Director of Sylvia Properties, Inc., after being duly sworn, deposes and says:

1. Sylvia Properties, Inc. is the owner of the real property as more particularly described in Exhibit "A" attached hereto.
2. There are no mortgages on the Property.

Dated April 4, 2019.

By: \_\_\_\_\_

Fernando Ortiz, Director  
Sylvia Properties, Inc.

STATE OF FLORIDA

COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 4th day of April, 2019, by Fernando Ortiz, Director of Sylvia Properties, Inc., who produced a Florida driver's license as identification.

\_\_\_\_\_  
Notary Public

Patricia L. Clark

My commission expires

SEAL

Commission No.:



**EXHIBIT "A"**

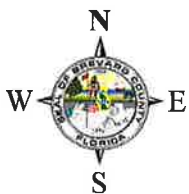
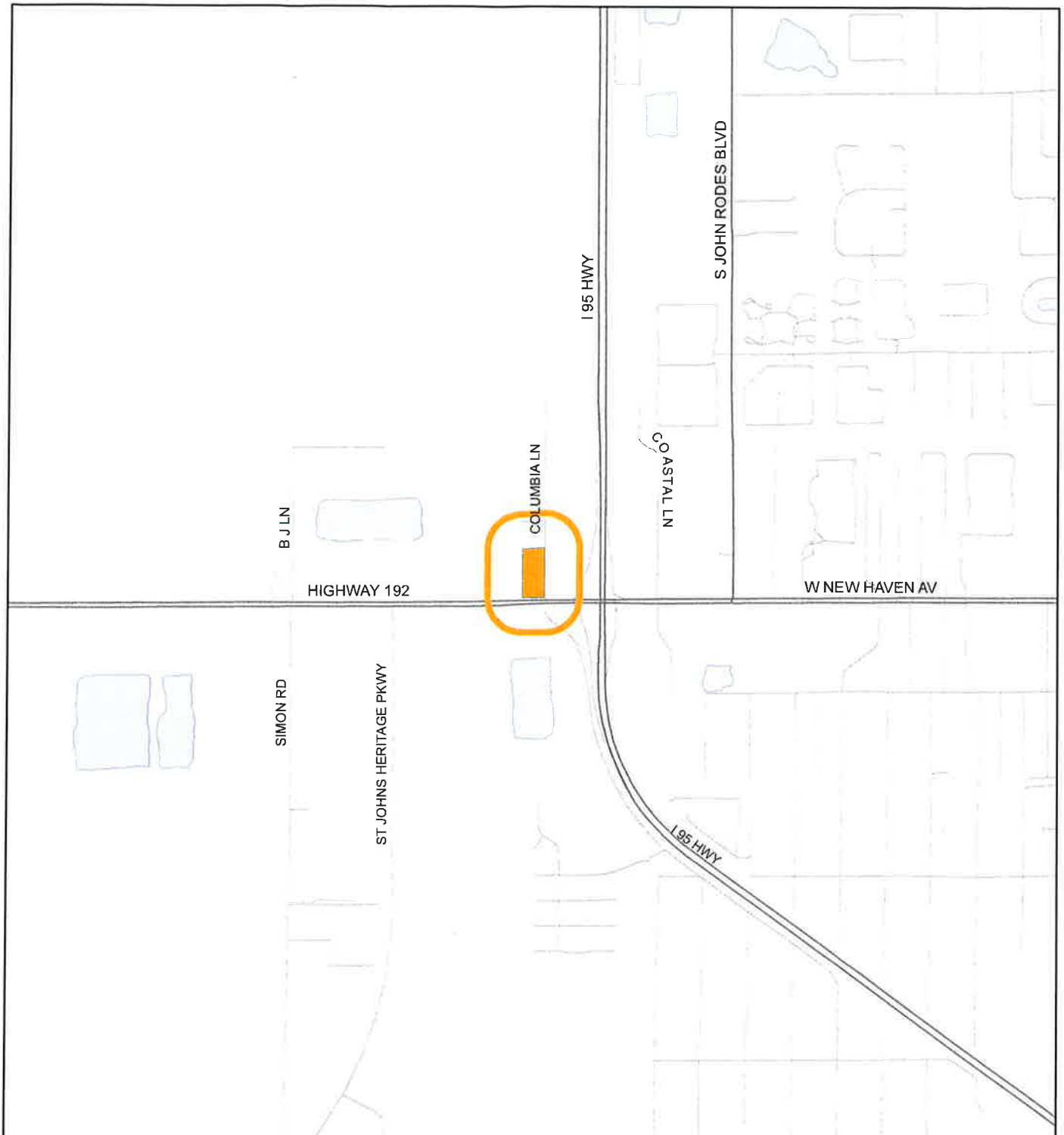
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# LOCATION MAP

SYLVIA PROPERTIES, INC.

18PZ00120



1:24,000 or 1 inch = 2,000 feet

Buffer Distance: 500 feet

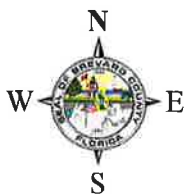
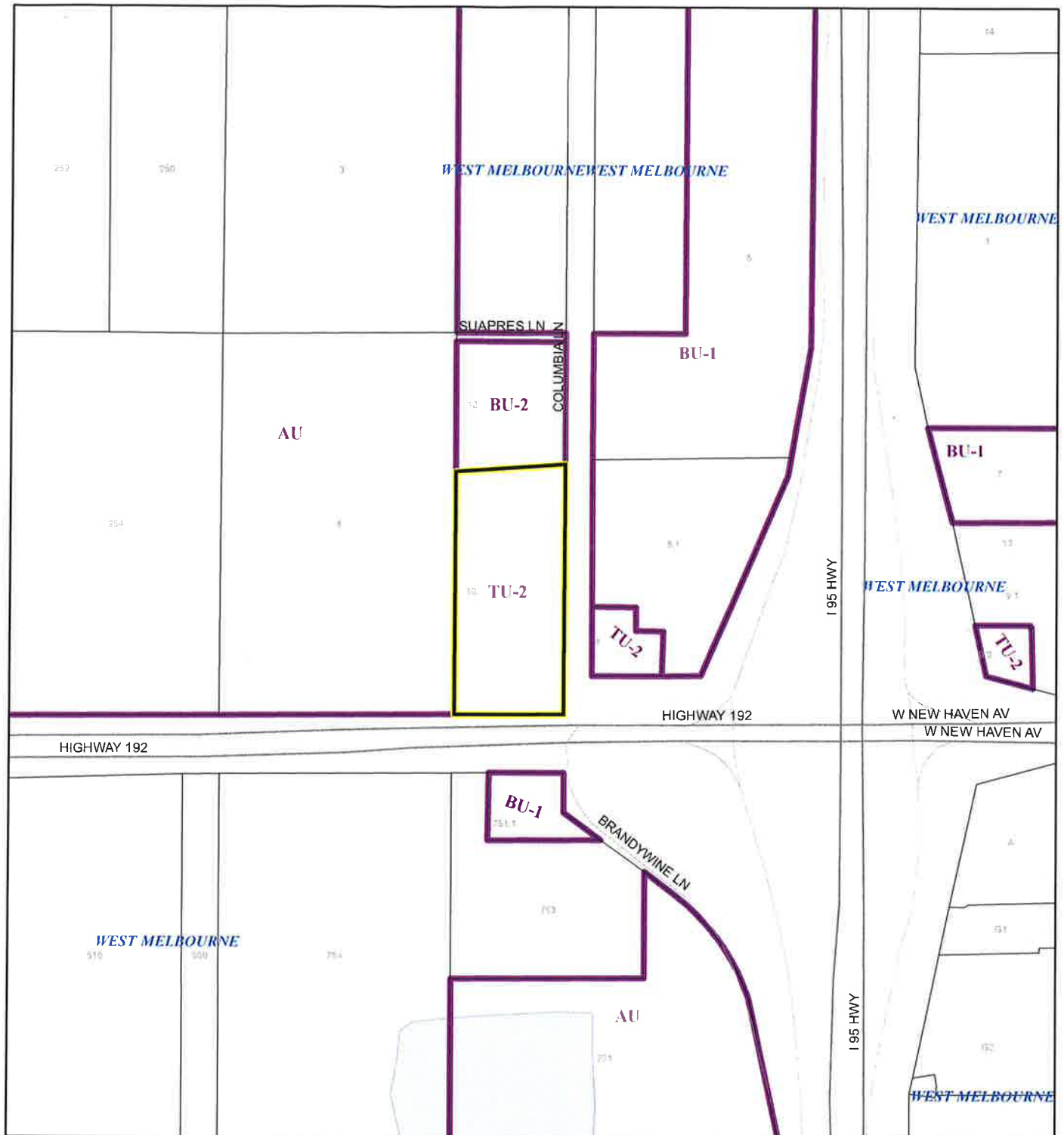
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 10/22/2018

— Buffer  
— Subject Property

# ZONING MAP

SYLVIA PROPERTIES, INC.  
18PZ00120



1:4,800 or 1 inch = 400 feet

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 10/22/2018

- Subject Property
- Parcels
- Zoning

**Board of County Commissioners Action:** Pritchett/Lober – Approved as recommended. The vote was unanimous.

6. **Sylvia Properties, Inc.** – (Fernando Ortiz) requests a change of zoning classification from TU-2 (Transient Tourist Commercial) to BU-2 (Retail, Warehousing, and Wholesale Commercial). The property is 5 acres, located on the northwest corner of U.S. Highway 192 and Columbia Lane. (No assigned address. In the Melbourne area.) (18PZ00120) (District 5)

**Planning and Zoning Board Recommendation:** Lawandales/Theodore – Approved with a Binding Development Plan limiting BU-2 to the northern 2 acres, with TU-2 remaining on the southern 3 acres; that no additional metal buildings be constructed on the property; and that the use be limited to the current business of Stone & Surface Designers, Inc. The vote was 8:1, with McLellan voting nay.

**Board of County Commissioners Action:** Lober/Pritchett – Approved with a Binding Development Plan limiting BU-2 to the northern 1 acre, with TU-2 remaining on the southern 4 acres; that no additional metal buildings be constructed on the property; and that the use be limited to the current business of Stone & Surface Designers, Inc. The Binding Development Plan will be scheduled as a Consent Item on a subsequent County Commission agenda, per Policy BCC-52. Resolution to be completed upon receipt of the recorded BDP. The vote was unanimous.

7. **Peggy Townsend** (Dale Townsend) requests a change of zoning classification from AU (Agricultural Residential) and RU-1-9 (Single-Family Residential) to RU-1-7 (Single-Family Residential). The property is 0.69 acres, located on the south side of Bevis Road, approximately 540 feet south of Lucas Road. (No assigned address. In the Merritt Island area.) (18PZ00123) (District 2)

**Planning and Zoning Board Recommendation:** Glover/Hodgers – Approved. The vote was unanimous.

**Board of County Commissioners Action:** Lober/Pritchett – Approved as recommended. The vote was unanimous.

8. **CP Venture Five-AMC, LLC** (Venkar Puskar) requests a CUP (Conditional Use Permit) for Alcoholic Beverages (beer & wine only) for On-Premises Consumption in conjunction with an Indoor Family Entertainment Center, in a PUD (Planned Unit Development) zoning classification. The property is 40,000 +/- square feet, located on the east side of Colonnade Avenue, approximately 0.24 mile east of Lake Andrew Drive. (6729 Colonnade Avenue, Unit 130, Viera) (18PZ00124) (District 4)

**Planning and Zoning Board Recommendation:** Langston/Lawandales – Approved. The vote was unanimous.

**Board of County Commissioners Action:** Smith/Lober- Approved as recommended. The vote was unanimous.

## PLANNING AND ZONING BOARD RECOMMENDATIONS

- Item H.1. Flamingo Land Company, Inc. Pritchett/Lober. Approved as recommended; and adopted Ordinance No. 19-03, adopting the 2018-2.1 Large Scale Comprehensive Plan Amendment to change the Future Land Use designation from IND (Industrial) to RES 4 (Residential 4).
- Item H.2. Flamingo Land Company, Inc. Pritchett/Lober. Approved as recommended with a Binding Development Plan limiting residential development to 4 units per acre, and requiring all dwelling units constructed on the property to be connected to sanitary sewer.
- Item H.3. LTM of Florida Holding, LLC. Pritchett/Lober. Tabled to April 4, 2019.
- Item H.4. Alberto and Biviana Roman. Lober/Pritchett. Tabled to March 7, 2019. Tobia voting nay.
- Item H.5. Mertin Family Trust; Joseph P. and Sarah Martin; and Craig A. and Jennifer Martin-Sater. Pritchett/Lober. Approved as recommended.
- Item H.6. Sylvia Properties, Inc. Lober/Pritchett. Approved with a Binding Development Plan limiting BU-2 to the northern one acre, with TU-2 remaining on the four acres; that no additional metal buildings be constructed on the property; and that the use be limited to the current business of Stone & Surface Designers, Inc.
- Item H.7. Peggy and Dale Townsend. Lober/Pritchett. Approved as recommended.
- Item H.8. CP Venture Five-AMC, LLC. Smith/Lober. Approved as recommended.
- Item H.9. Market Street Viera Senior Real Estate, LLC. Smith/Pritchett. Approved as recommended.
- Item H.10. Clark A. and Patricia A. Simms. Lober/Smith. Tabled to March 7, 2019.
- Item H.11. Nestle Larracas and Tony Andrade De La Torre. Withdrawn.
- Item H.12. Nestle Larracas and Tony Andrade De La Torre. Withdrawn.
- Item H.13. Gregory D. Taylor and Rachael J. Fitzpatrick. Smith/Isnardi. Approved as recommended. Pritchett and Lober voted nay.
- Item H.14. James. M. and Joanne M. Thomas. Pritchett/Lober. Tabled to March 7, 2019.
- Item H.15. Happy Landings Homes, Inc. Smith/Lober. Approved with amendment to existing Binding Development Plan as follows: Striking Paragraphs 3(h),

"If not already in compliance on the day the treatment and recovery facility is approved for operation by agencies with jurisdiction, the Developer shall comply with the bathroom, bedroom, and centralized cooking/dining facility requirements in Section 62-1826(3) of the Brevard County Code within one (1) year after receiving such approval"; 3(i), "The Developer represents that there is adequate parking currently used and available upon cleared land located within the 5.33-acre property to meet the requirements of Section 62-1826(5) of the Brevard County Code"; 3(j), "With the exception of the compliance required by subparagraphs (d) and (h) above, the Developer is currently in compliance with, and shall maintain compliance with, all other standards set forth in Section 62-1826 throughout its utilization of the property"; Retaining all other conditions, and adding conditions of, 1.) The northern driveway shall be the main ingress/egress; 2.) Developer/Owner shall install an eight-foot privacy fence along Old Dixie Highway on the west portion of the property; 3.) The Binding Development Plan shall refer to Developer/Owner; 4.) The County shall install a Stop Sign if required; and 5.) The septic system shall be modified to meet the current standards.

**EXHIBIT "A"**

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**RESOLUTION NO. 18PZ00120**

On motion by Commissioner Tobia, seconded by Commissioner Lober, the following resolution was adopted by a unanimous vote:

**WHEREAS, SYLVIA PROPERTIES, INC.** has requested a change of zoning classification from TU-2 (Transient Tourist Commercial) to BU-2 (Retail, Warehousing, and Wholesale Commercial) on property described as Tax Parcel 10, as recorded in ORB 8256, Pages 2833 – 2836, of the Public Records of Brevard County, Florida. **Section 03, Township 28, Range 36.** (5 acres) Located on the northwest corner of Highway 192 and Columbia Lane. (No assigned address. In the Melbourne area.)

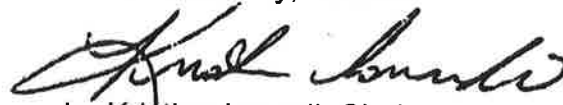
**WHEREAS,** a public hearing of the Brevard County Planning & Zoning Board was advertised and held, as required by law, and after hearing all interested parties and considering the adjacent areas, the Brevard County Planning & Zoning Board recommended that the application be approved with a BDP (Binding Development Plan) limited to BU-2 on the northern 2 acres, with TU-2 remaining on the southern 3 acres; that no additional metal buildings be constructed on the property; and that the use be limited to the current business of Stone & Surface Designers, Inc.; and

**WHEREAS,** the Board, after considering said application and the Brevard County Planning & Zoning Board's recommendation, and hearing all interested parties, and after due and proper consideration having been given to the matter, find that the application should be Approved with a BDP as limited to BU-2 on the northern 1 acre, with TU-2 remaining on the southern 4 acres; that no additional metal buildings be constructed on the property ; and that the use be limited to the current business of Stone & Surface Designers, Inc.; now therefore,

**BE IT RESOLVED** by the Board of County Commissioners of Brevard County, Florida, that the requested change of zoning classification from TU-2 to BU-2, be approved with a BDP, recorded in ORB 8421, Pages 1532 – 1535, dated April 24, 2019, limited to BU-2 on the northern 1 acre, with TU-2 remaining on the southern 4 acres; that no additional metal buildings be constructed on the property ; and that the use be limited to the current business of Stone & Surface Designers, Inc. The Planning & Development Director, or designee, is hereby directed to make this change on the official zoning maps of Brevard County, Florida.

**BE IT FURTHER RESOLVED** that this resolution shall become effective as of April 24, 2019.

BOARD OF COUNTY COMMISSIONERS  
Brevard County, Florida



by Kristine Isnardi, Chair

Brevard County Commission

As approved by Brevard County Commission on  
April 23, 2019.

ATTEST:



SCOTT ELLIS, CLERK  
(SEAL)

(P&Z Hearing – January 28, 2019)  
(BCC Zoning Hearing – February 7, 2019)

Please note: A Conditional Use Permit will generally expire on the three year anniversary of its approval if the use is not established prior to that date. Conditional Use Permits for Towers and Antennas shall expire if a site plan for the tower is not submitted within one (1) year of approval or if construction does not commence within two years of approval. A Planned Unit Development Preliminary Development Plan expires if a final development plan is not filed within three years. The granting of this zoning does not guarantee physical development of the property. At the time of development, said development must be in accordance with the criteria of the Brevard county Comprehensive Plan and other applicable laws and ordinances.