



**AGENDA REPORT**  
**December 18, 2018**

**Acceptance, Re: Binding Development Plan - Vinings Palm Bay Investment, LLC (18PZ00059) (District 4)**

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**SUBJECT:**

Acceptance, Re: Binding Development Plan - Vinings Palm Bay Investment, LLC (18PZ00059) (District 4)

**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 November 1, 2018, the Board approved a rezoning request from RU-2-15 (Medium-Density Multi-Family Residential) to BU-1 (General Retail 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 BDP include, but are not limited to, the following:

- The Developer/Owner shall provide a cross access easement and construct a driveway connection to connect to the existing cross access easement to the north property. Should the Developer/Owner subdivide the property in the future the cross access easement and driveway shall connect to all of the created development lots within the boundaries of the subject parent parcel
- No gas stations and/or convenience stores will be allowed.
- Fast food restaurants will be limited to no more than ten thousand (10,000) sq. ft. of total cumulative floor area over the entire subject property.
- Overall Floor Area Ration (F.A.R.) will be limited to 0.3.

- The Developer/Owner will provide traffic access improvements relative to the existing median opening in Wickham Road that is within the property frontage to a directional median opening, other median modification improvements, and/or driveway limitations per acceptable engineering access standards, as approved by County staff, as warranted, based on current and projected traffic patterns. The warrant shall be determined as part of the County site plan review process and the construction of the approved traffic improvements shall be completed prior to the issuance of a CO for the warranting facility.
- The Developer/Owner shall provide a pedestrian easement and connection to the remaining multi-family residential parent property.
- The BDP shall replace the existing BDP dated March 22, 2018, per 17PZ00109, for this subject property only, as described in Exhibit A. It shall not effect or replace the previous BDP 17PZ00109 for the remaining parent parcel.

The property is located on the east side of N. Wickham Rd., approximately 340 feet south of Jordan Blass Dr. (No assigned address. In the Melbourne area)

Staff Contact: Jennifer Jones Ext. 52653

**CLERK TO THE BOARD INSTRUCTIONS:**

After recordation, please forward two certified copies to Planning & Development.

**ATTACHMENTS:**

**Description**

- **BDP Package**

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

WHEREAS, VININGS PALM BAY INVESTMENT, LLC has requested a change of zoning classification from RU-2-15 (Medium Density Multi-Family Residential) to BU-1 (General Retail Commercial), on property described as (SEE ATTACHED)

Sections 13 & 14,  
Section 19,

Township 26 S,  
Township 26 S,

Range 36 E, and,  
Range 37 E, and,

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 stipulating that a cross access easement be provided to connect to the existing cross access easement to the north property; 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 as recommended, with the additional conditions that should the property be subdivided in the future, the cross access easement and driveway shall connect to all of the created development lots within the boundaries of the subject parent parcel; no gas stations and/or convenience stores shall be allowed; fast food restaurants shall be limited to no more than 10,000 square feet of total cumulative floor area over the entire subject property; overall Floor Area Ratio shall be limited to 0.3; traffic access improvements shall be provided relative to the existing median opening in Wickham Rd. that is within the property frontage to a directional median opening, other median modification improvements, and/or driveway limitations per acceptable engineering access standards, as approved by County staff, as warranted, based on current and projected traffic patterns; a pedestrian easement and connection to the remaining multi-family residential parent property shall be provided; and the BDP shall replace the existing BDP dated March 22, 2018, per 17PZ00109 for this subject property only, as described in Exhibit A of the BDP, and shall not affect nor replace the previous BDP for the remaining parent parcel; now therefore,

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested change of zoning classification from RU-2-15 to BU-1, APPROVED with a BDP, recorded in ORB 8345, Pages 662 - 666, dated January 09, 2019, stipulating the following; that the Developer/Owner shall provide a cross access easement and construct a driveway connection to connect to the existing cross access easement to the north proepryt, and that should the property be subdivided in the future, the cross access easement and driveway shall connect to all of the created development lots within the boundaries of the subject parent parcel; no gas stations and/or convenience stores shall be allowed; fast food restaurants shall be limited to no more than 10,000 square feet of total cumulative floor area over the entire subject property; overall Floor Area Ratio shall be limited to 0.3; traffic access improvements shall be provided relative to the existing median opening in Wickham Rd. that is within the property frontage to a directional median opening, other median modification improvements, and/or driveway limitations per acceptable engineering access standards, as approved by County staff, as warranted, based on current and projected traffic patterns; a pedestrian easement and connection to the remaining multi-family residential parent property shall be provided; and the BDP shall replace the existing BDP dated March 22, 2018, per 17PZ00109 for this subject property only, as described in Exhibit A of the BDP, and shall not affect nor replace the previous BDP for the remaining parent parcel. 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 January 09, 2019.

BOARD OF COUNTY COMMISSIONERS  
Brevard County, Florida

by Kristine Isnardi, Chair  
Brevard County Commission

As approved by Brevard County Commission on December 18, 2018.

ATTEST:

SCOTT ELLIS, CLERK  
(SEAL)

(P&Z Hearing – July 9, 2018)

(BCC Zoning Hearing – November 1, 2018)

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 PUD 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.

Legal Description.

A parcel of land lying in Sections 13 & 14, Township 26S, Range 36E, and Section 19, Township 26S, Range 37E, of Brevard County, Florida. Being more particularly described as follows: Begin at the SW corner of Lot 1, Block A of Pineda Landings, as recorded in Plat Book 61, Pages 45 – 48, inclusive of the Public Records of Brevard County, Florida; thence N53deg53'31"E, along the south line of said Lot 1, a distance of 250 ft.; thence S36deg05'10"E, parallel to the east right-of-way line of Wickham Rd., a distance of 199.18 ft. to the point of curvature of a curve concave westerly, having a radius of 1,256.60 ft., a central angle of 21deg55'26", and a chord bearing S25deg07'26"E, 477.90 ft.; thence southerly along said curve an arc distance of 480.83 ft. to the terminus of said curve; thence N89deg07'36"W, a distance of 261.23 ft. to a point on the east right-of-way line of Wickham Rd. (right-of-way width varies), said point being on a curve concave westerly, having a radius of 1,006.60 ft., a central angle of 18deg03'50", and a chord bearing N27deg03'15"W, 316.04 ft.; thence northerly along said right-of-way line and curve, an arc distance of 317.35 ft. to the point of tangency of said curve; thence continue along said right-of-way line N36deg05'10"W, a distance of 199.08 ft. to the point of beginning. (3.43 +/- acres) Located on the east side of N. Wickham Rd., approx. 340 ft. south of Jordan Blass Dr. (No assigned address. In the Melbourne area.)

Prepared by: MBV Engineering, Inc.  
Address: 1250 W. Eau Gallie Blvd., Melbourne, FL 32935

### BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this 1 day of November, 2018 between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and Vinings Palm Bay Investment, LLC., a Florida Limited Liability Company (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-1 zoning classification(s) and desires to develop the Property as commercial/retail, 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 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 any improvements.

2. Developer/Owner shall provide a cross access easement and construct a driveway connection to connect to the existing cross access easement to the north property. Should the

developer/owner subdivide the property in the future, the cross access easement and driveway shall connect to all of the created development lots within the boundaries of the subject parent parcel.

3. No gas stations and/or convenience stores will be allowed.
4. Fast food restaurants will be limited to no more than ten thousand (10,000) sq.ft. of total cumulative floor area over the entire subject property.
5. Overall Floor-Area Ratio (F.A.R.) will be limited to 0.3.
6. The Developer/Owner will provide traffic access improvements relative to the existing median opening in Wickham Rd. that is within the property frontage to a directional median opening, other median modification improvements, and/or driveway limitations per acceptable engineering access standards, as approved by county staff, as warranted, based on current and projected traffic patterns. The warrant shall be determined as part of the County site plan review process and the construction of the approved traffic improvements shall be completed prior to the issuance of a CO for the warranting facility.
7. Developer/Owner shall provide a pedestrian easement and connection to the remaining multi-family residential parent property.
8. This BDP shall replace the existing BDP dated March 22, 2018 per 17PZ00109 for this subject property only, as described in Exhibit A. It shall not effect or replace the previous BDP 17PZ00109 for the remaining parent parcel.
9. Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developer's/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.
10. Developer/Owner, upon execution of this Agreement, shall pay to the County the cost of recording this Agreement in the Public Records of Brevard County, Florida.
11. 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 \_\_\_\_\_.

12. 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 it may be amended.

THE REMAINDER OF THIS PAGE IS BLANK INTENTIONALLY

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*  
Scott Ellis, Clerk  
(SEAL)

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA  
2725 Judge Fran Jamieson Way  
Viera, FL 32940  
*Kristine Isnardi*  
Kristine Isnardi  
Chair  
As approved by the Board on Dec. 18, 2018

WITNESSES:

*Aleene Edmonds*  
Aleene Edmonds  
(Witness Name typed or printed)

DEVELOPER/OWNER  
*Vinings Palm Bay Investment, LLC*  
*3850 BIRD RD., MIAMI FL 33146*  
(Address)

*Nathan Vedrans*  
Nathan Vedrans  
(Witness Name typed or printed)

*Tomas Cabrerizo*  
(President) *Manager*  
*Tomas Cabrerizo*  
(Name typed, printed or stamped)

STATE OF FL §

COUNTY OF Miami Dade §

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of November, 2018, by Tomas Cabrerizo Manager, President of Vinings Palm Bay Investment, LLC, who is personally known to me or who has produced \_\_\_\_\_ as identification.

My commission expires  
SEAL  
Commission No.:

*Madelin Alfonso*  
Notary Public  
(Name typed, printed or stamped)

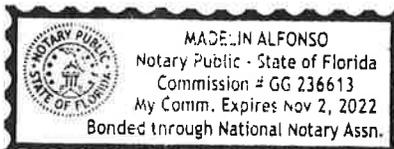


Exhibit "A"

LEGAL DESCRIPTION

A parcel of land lying in Sections 13 & 24, Township 26S, Range 36E, and Section 19, Township 26S, Range 37E, of Brevard County, Florida. Being more particularly described as follows:

Beginning at the SW corner of Lot 1, Block A of Pineda Landings, as recorded in Plat Book 61, Pages 45 – 48, inclusive of the Public Records of Brevard County, Florida; thence N53deg53'31"E along the south line of said Lot 1, a distance of 250 ft.; thence S36deg05'10"E, parallel to the east right-of-way line of Wickham Rd., a distance of 199.18 ft. to the point of curvature of a curve concave westerly, having a radius of 1,256.60 ft., a central angle of 21deg55'26", and a chord bearing S25deg07'26"E, 477.90 ft.; thence southerly along said curve an arc distance of 480.83 ft. to the terminus of said curve; thence N89deg07'36"W, a distance of 261.23 ft. to a point on the east right-of-way line of Wickham Rd. (right-of-way width varies), said point being on a curve concave westerly, having a radius of 1,006.60 ft., a central angle of 18deg03'50", and a chord bearing N27deg03'15"W, 316.04 ft.; thence northerly along said right-of-way line and curve, an arc distance of 317.35 ft. to the point of tangency of said curve; thence continue along said right-of-way line N36deg05'10"W, a distance of 199.08 ft. to the point of beginning. Contains 3.43+ acres more or less.

Prepared by:  
Erik Downs  
CFH Group, LLC  
3850 Bird Road, 8<sup>th</sup> Floor  
Miami, FL 33146

**Notarized Statement**

BEFORE ME, the undersigned authority, personally appeared Tomas Cabrerizo, Manage of Vining Palm Bay Investment, LLC., a Florida limited liability company, (the "owner"), who first being duly sworn, deposes and says:

1. Applicant is the owner of the following described property (the "Property"):  
See Exhibit A attached hereto.
2. There is no outstanding mortgage or other conveyance affecting the title of the property.

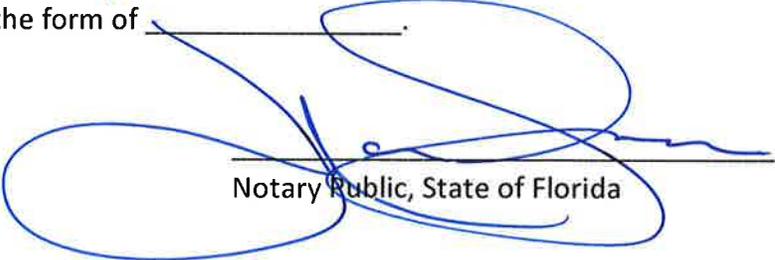
Date 9<sup>th</sup> day of Nov. 2018

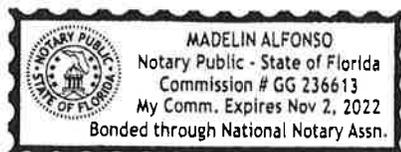
Vining Palm Bay Investment, LLC

By:   
Tomas Cabrerizo, Manager

STATE OF FLORIDA  
COUNTY OF MIAMI-DADE

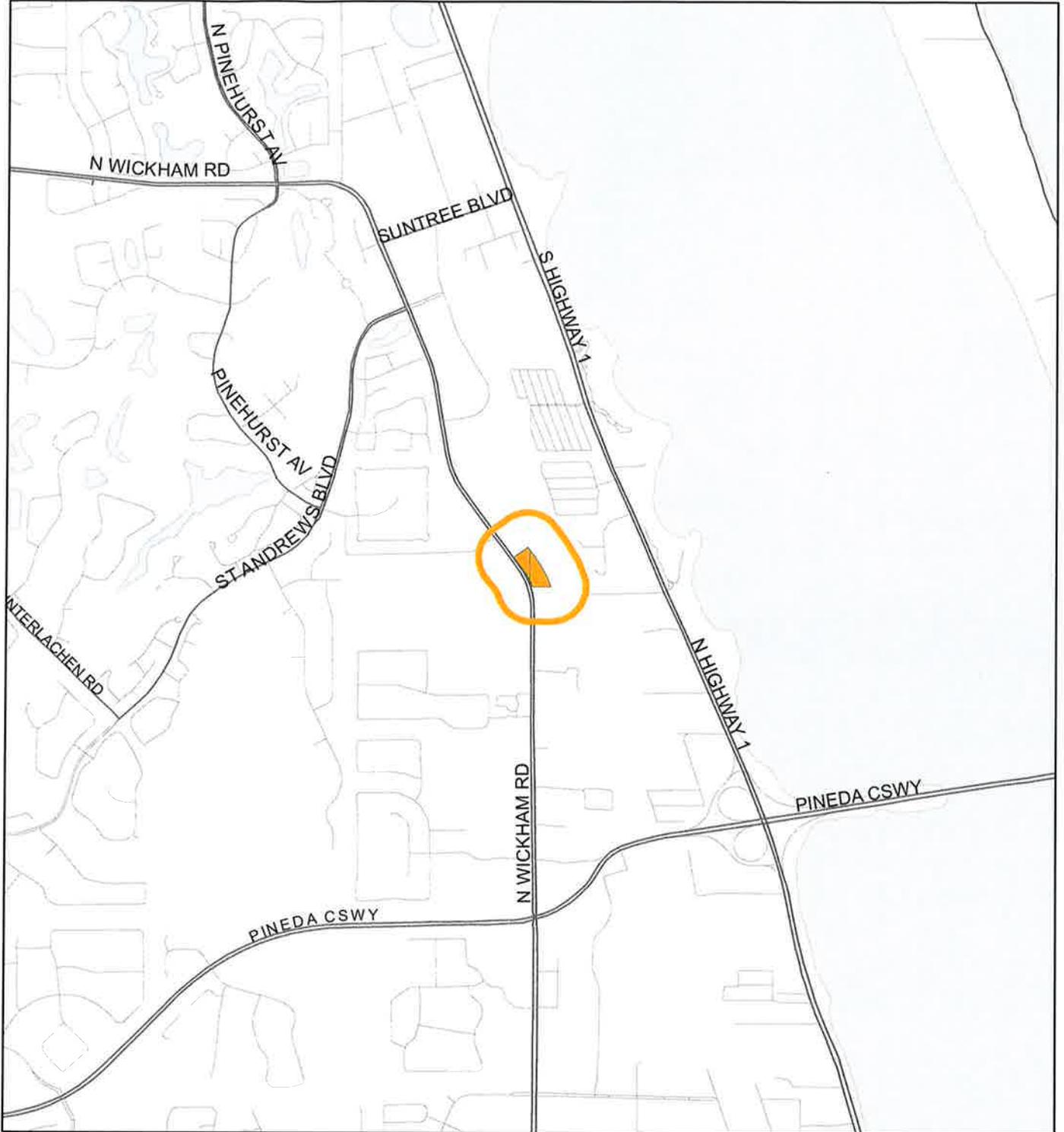
THE FORGOING INSTRUMENT was acknowledged before me this 9<sup>th</sup> day of Nov, 2018, by Tomas Cabrerizo, manager of Vining Palm Bay Investments a Florida limited liability company, who is  personally known to me and not take an oath, or \_\_\_\_\_ produced identification in the form of \_\_\_\_\_.

  
Notary Public, State of Florida



My Commission Expires \_\_\_\_\_

LOCATION MAP  
VININGS PALM BAY INVESTMENT, LLC  
18PZ00059



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: 5/18/2018

-  Buffer
-  Subject Property



unanimous.

**Board of County Commissioners Action: Barfield/Smith – Approved, and adopted Ordinance 18-18, Small Scale Comprehensive Plan Amendment 18S.03. The vote was unanimous. Tobia/Isnardi absent.**

5. **MHE, LLC** (Mike Erdman or Sharon Harrell) requests a change of zoning classification from Single-Family Residential (RU-1-7) to Retail, Warehousing, and Wholesale Commercial (BU-2). The property is 1.20 acres, located approximately 400 feet south of State Road 520, approximately 400 feet east of Plumosa Street, and approximately 174 feet north of Fortenberry Road. (No assigned address. In the Merritt Island Redevelopment Area.) (18PZ00056) (District 2)

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

**Board of County Commissioners Action: Barfield/Smith – Approved with the applicant's agreement to grant Brevard County an easement for stormwater and to participate in the Stormwater utility, as recommended by the Merritt Island Redevelopment Agency (MIRA). The vote was unanimous. Tobia/Isnardi absent.**

6. **1322 Clearlake, LLC** (Michael Dreyer) requests the following: (1.) Removal of an existing Binding Development Plan (BDP) in a Retail, Warehousing, and Wholesale Commercial (BU-2) zoning classification (1.21 acres); (2.) Change of zoning classification from General Retail Commercial (BU-1) to BU-2 (0.02 acres). The property is a total of 1.23 acres, located on the east side of Clearlake Road, between Melrose Street and Furnari Street. (1322 Clearlake Road, Cocoa.) (18PZ00058) (District 2)

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

**Board of County Commissioners Action: Barfield/Smith – Approved. The vote was unanimous. Tobia/Isnardi absent.**

7. **Vinings Palm Bay Investment, LLC** (Tom Cabrerizo/Bruce Moia) requests a small scale comprehensive plan amendment from Residential 15 (RES 15) to Community Commercial (CC). The property is 3.43 +/- acres, located on the east side of North Wickham Road, approximately 340 feet south of Jordan Blass Drive. (No assigned address. In the Melbourne area.) (18PZ00060) (District 4)

**Local Planning Agency Recommendation: Lawandales/Hodgers – Approved. The vote was unanimous.**

**Board of County Commissioners Action: Smith/Isnardi – Tabled to the 09/06/18 meeting. The vote was unanimous. Tobia absent.**

**Board of County Commissioners Action of 09/06/18: Smith/Tobia – Tabled to the 10/04/18 meeting. The vote was unanimous.**

**Board of County Commissioners Action of 10/04/18: Tobia/Barfield – Tabled to the 11/01/18 meeting. The vote was unanimous.**

**Board of County Commissioners Action of 11/01/18: Isnardi/Smith – Approved as**

recommended, and adopted Ordinance 18-25, Small Scale Comprehensive Plan Amendment 18S.04. The vote was unanimous.

- 8. Vinings Palm Bay Investment, LLC** (Tom Cabrerizo/Bruce Moia) requests a change of zoning classification from Medium-Density Multi-Family Residential (RU-2-15) to General Retail Commercial (BU-1), and removal of an existing Binding Development Plan (BDP). The property is 3.43 +/- acres, located on the east side of North Wickham Road, approximately 340 feet south of Jordan Blass Drive. (No assigned address. In the Melbourne area.) (18PZ00059) (District 4)

**Planning and Zoning Board Recommendation:** Lawandales/Hodgers – Approved with a BDP stipulating that the developer/owner provide a cross access easement to connect to the existing cross access easement to the north property. The vote was unanimous.

**Board of County Commissioners Action:** Smith/Isnardi – Tabled to the 09/06/18 meeting. The vote was unanimous. Tobia absent.

**Board of County Commissioners Action of 09/06/18:** Smith/Tobia – Tabled to the 10/04/18 meeting. The vote was unanimous.

**Board of County Commissioners Action of 10/04/18:** Tobia/Barfield – Tabled to the 11/01/18 meeting. The vote was unanimous.

**Board of County Commissioners Action of 11/01/18:** Isnardi/Barfield – Approved with a BDP (Binding Development Plan) as recommended. The vote was unanimous. The BDP will be scheduled as a Consent item on a subsequent County Commission agenda, per Policy BCC-52. Resolution will be completed upon receipt of recorded BDP.

- 9. Merritt Square Realty, LLC; Merritt Square CH, LLC; and Merritt Square Nassim, LLC** (Phil Nohrr) request a Conditional Use Permit (CUP) for Trailer and Truck Rental in a General Retail Commercial (BU-1) zoning classification. The property is 5.39 +/- acres, located on the northwest corner of South Sykes Creek Parkway and Fortenberry Road. (777 East Merritt Island Causeway) (18PZ00061) (District 2)

**Planning and Zoning Board Recommendation:** Lawandales/Hodgers – Approved with the conditions recommended by the Merritt Island Redevelopment Agency (MIRA) as follows: (1.) The site is to accommodate only cargo vans and pick-up trucks. Box trucks and/or other equipment would not be kept onsite. Upon being dropped off by leasee, the box truck and/or equipment would be removed promptly to another site; (2.) Outdoor parking would be limited to 40 U-Haul cargo vans and pick-up trucks. No repairs will be done onsite; (3.) Cargo vans assigned to the site will be presented with military imaging. Non-conforming vans or pick-up trucks will be moved within 72 hours; (4.) Enhanced/more natural mature landscaping to be compatible with the Veteran's Park area; (5.) The applicant agrees to close off the southeast entrance at the intersection of Fortenberry Road and Sykes Creek Parkway, and provide a sidewalk on Fortenberry Road behind the property for the length of the property; (6.) The applicant is to consider sidewalk for the Sykes Creek Parkway side of the property; (7.) U-Haul parking will be available for use by the Veteran's Park, with every available spot to be reserved for Park functions; (8.) The applicant is willing to participate in upgrades to the intersection to include landscaping, sidewalks, and crosswalks; (9.) The applicant is willing to commit to the presented renderings with minor deviations; (10.) The applicant will address orange doors with U-Haul's Corporate Office, and possibly consider another paint color; and (11.) The applicant

## PLANNING AND ZONING BOARD RECOMMENDATIONS

- Item H.1. Robert Allen Baker and Ruth Novelena Baker. Barfield/Isnardi. Approved the change of Zoning classification from RR-1 and GU to AU as recommended.
- Item H.2. MB Inter-Coastal Estates. Tobia/Barfield. Approved the change of Zoning classification from SR to RU-1-13 with a BDP limiting the 1.5 acre property to two lots and limiting the access to one ingress and egress driveway.
- Item H.3. Happy Landings Homes, Inc. Isnardi/Barfield. Tabled to December 6, 2018, Zoning Meeting to allow the applicant to properly notice the property.
- Item H.4. W.K. & R. Groves, Inc. Barfield/Tobia. Tabled to December 6, 2018, Zoning Meeting to allow the applicant to properly notice the property.
- Item H.5. LTM of Florida Holding, LLC. Barfield/Isnardi. Tabled to the January 7, 2019, P&Z meeting, and to the February 7, 2019, Board of County Commissioner meeting, at the request of the applicant.
- Item H.6. Vinings Palm Bay Investment, LLC. Isnardi/Smith. Adopted Ordinance No. 18-25, Small Scale Comprehensive Plan Amendment (18S.04) changing the Future Land Use designation from Residential 15 (Res 15) to Community Commercial (CC).
- Item H.7. Vinings Palm Bay Investment, LLC. Isnardi/Barfield. Approved the change of Zoning classification from RU-2-15 to BU-1, and replacement of an existing BDP.