



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.4.

3/9/2021

Subject:

Acceptance, Re: Binding Development Plan with 4725 Fay Blvd Land Trust

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 the Chairman sign, the Binding Development Plan.

Summary Explanation and Background:

A BDP (Binding Development Plan) 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 the Board's approval of the zoning request. Following staff and legal review, the BDP is presented to the Board in recordable form as a Consent Agenda item in order to finalize the zoning action.

On December 3, 2020, the Board approved a rezoning request from BU-1-A (Restricted Neighborhood Commercial) with a BDP, to BU-1 (General Retail Commercial) and an amendment to the existing BDP. The conditions of the BDP include, but are not limited to, to following:

- Notwithstanding the uses permitted in BU-1, the Developer/Owner agrees that only the following uses shall be permitted: Hardware store with outdoor garden center. Developer shall retain the right to all permitted uses listed in the BU-1-A zoning classification pursuant to Brevard County Code, Section 62-1481, with the exception of the following uses, which shall be prohibited: adult entertainment, package liquor stores, gaming rooms, adult arcade, internet café, billiard hall, single-family residence, group homes, foster homes, resort dwellings, and coin laundromat.
- The Developer/Owner may open the previously closed Adams Place driveway, which is located on the southwest corner of property and shall identify this driveway with signage stating, "Delivery Use Only - Not for Customer Traffic" and provide a gate that shall be opened and closed only for such deliveries. Additionally, no deliveries using this entrance shall occur to the Property one hour before school starts and one hour after school dismisses.

Clerk to the Board Instructions:

Upon recordation, please forward two certified copies of the BDP to Planning and Development.



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

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

March 10, 2021

MEMORANDUM

TO: Jennifer Jones, Zoning

RE: Item F.4., Binding Development Plan Agreement with 4725 Fay Blvd. Land Trust

The Board of County Commissioners, in regular session on March 9, 2021, executed Binding Development Plan with 4725 Fay Blvd. Land Trust . Said Plan was recorded in BK/PG 9047/449. Enclosed for your necessary action are two certified copies of the recorded document.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

Kimberly Powell, Clerk to the Board

/dt

Encls. (2)

Prepared by: Carmine Ferraro, Trustee
4725 Fay Blvd Land Trust #1 U/A/D 02/10/2008
4265 Fay Blvd, Cocoa, FL 32927

**Second Amended and Restated
BINDING DEVELOPMENT PLAN**

THIS AGREEMENT, entered into this 9 day of March, 2021 between the
BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of
the State of Florida (hereinafter referred to as "County") and 4725 FAY BLVD LAND TRUST
AGREEMENT #1 U/A/D/ 02/10/2008 (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 desires to develop the property as BU-1 (as a hardware store with
outdoor garden center), 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, a BDP and Amendment were previously recorded against the Property and can be
found at Brevard County, Official Records Book 5848, Page 4612, and Official Records Book 7129, Page
1312, respectively; and

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

NOW, THEREFORE, the parties agree as follows:

1. The foregoing recitals are true and incorporated herein by reference.
2. 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.

3. Developer/Owner desires to modify the Binding Development Plan dated March 4, 2008, recorded in Official Records Book 5848, Page 4612, which was subsequently modified again on May 13, 2014, recorded in Official Records Book 7129, Page 1312, and this agreement shall supersede in the event where there is a conflict with any prior Binding Development Plan in force.
4. Notwithstanding the uses permitted in BU-1, the Developer/Owner agrees that only the following uses shall be permitted: Hardware store with outdoor garden center. Developer shall retain the right to all permitted uses listed in the BU-1-A (Restricted Neighborhood Retail Commercial) pursuant to the Brevard County Code, Section 62-1481, with the exception of the following uses, which shall be prohibited: Adult entertainment, package liquor stores, gaming rooms, adult arcade, internet café, billiard hall, single-family residence, group homes, foster homes, resort dwellings, and coin laundromat.
5. The Developer/Owner may open the previously closed Adams Place driveway, which is located on the southwest corner of property and shall identify this driveway with signage stating "Delivery Use Only – Not for Customer Traffic" and provide a gate that shall be opened and closed only for such deliveries. Additionally, no deliveries using this entrance shall occur to the Property one hour before school starts and one hour after school dismisses.
6. 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 Brevard County Comprehensive Plan or land development regulations as they may apply to this Property.
7. Developer/Owner, upon execution of this Agreement, shall pay to the Clerk of Court all costs of recording this Agreement in the Public Records of Brevard County, Florida.
8. 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 shall be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property, and shall be subject to the above referenced conditions as approved by the Board


of County Commissioners on 12/03/20. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.

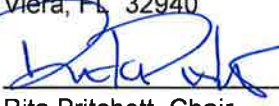
9. Violation of this Agreement shall constitute a violation of the zoning classification and of this Agreement. This Agreement may be enforced by Sections 1-7 and 62-5 of the Code of Ordinances of Brevard County, Florida, as may be amended.
10. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and shall be satisfied before Developer/Owner may implement the approved use(s), unless stated otherwise. The failure to timely comply with any condition is a violation of this Agreement and constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 9 above.
11. Severability clause. If any provision of this BDP is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provision shall continue in full force and effect without being impaired or invalidated in any way.

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

ATTEST:

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


Rachel Sadoff, Clerk of Court
(SEAL)


Rita Pritchett, Chair

As approved by the Board on March 9, 2021

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

WITNESSES:

(INSERT BUSINESS NAME or INDIVIDUAL NAME(s))
as DEVELOPER/OWNER

Pamela Ferraro

4725 Fay Blvd Land Trust

Pamela Ferraro

3860 Curtis Blvd #636

(Witness Name typed or printed)

(Address) Cocoa, FL 32927

Jennifer Jones


(President)

Jennifer Jones

Carmine Ferraro, Trustee

(Witness Name typed or printed)

(Name typed, printed or stamped)

STATE OF Florida §

COUNTY OF Brevard §

The foregoing instrument was acknowledged before me, by means of ☒ physical presence or

☐ online notarization, this 10 day of February, 2021, by

Carmine Ferraro


Trustee 4725
President of Fay Blvd Land Trust who is

personally known to me or who has produced _____ as identification.

My commission expires

SEAL

Commission No.:


Notary Public

(Name typed, printed or stamped)



Exhibit "A"

Lot 12, Block 81, Port St. John Unit Three, less and except the east 45 feet, as recorded in Plat Book 22, Pages 25 – 35, of the Public Records of Brevard County, Florida, less and except ORB 7510, Page 2546 - 2549, of the Public Records of Brevard County, Florida. Containing 1.59 acres.

STATE OF FLORIDA
COUNTY OF BREVARD

Carmine Ferraro

, after being duly sworn, deposes and says:

The undersigned is the owner of the real property described as follows:

(Insert legal description of property here) 4725 Fay Blvd, Cocoa, FL 32927

There are no mortgages on the above described property

Dated this 10th day of December.



Signature

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was sworn to before me this 10th day of DEC. 2020, by

CARMINE FERRARO who is personally known to me or who has
produced _____ as identification, and who did take an oath.

Notary Public:



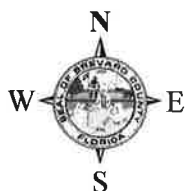
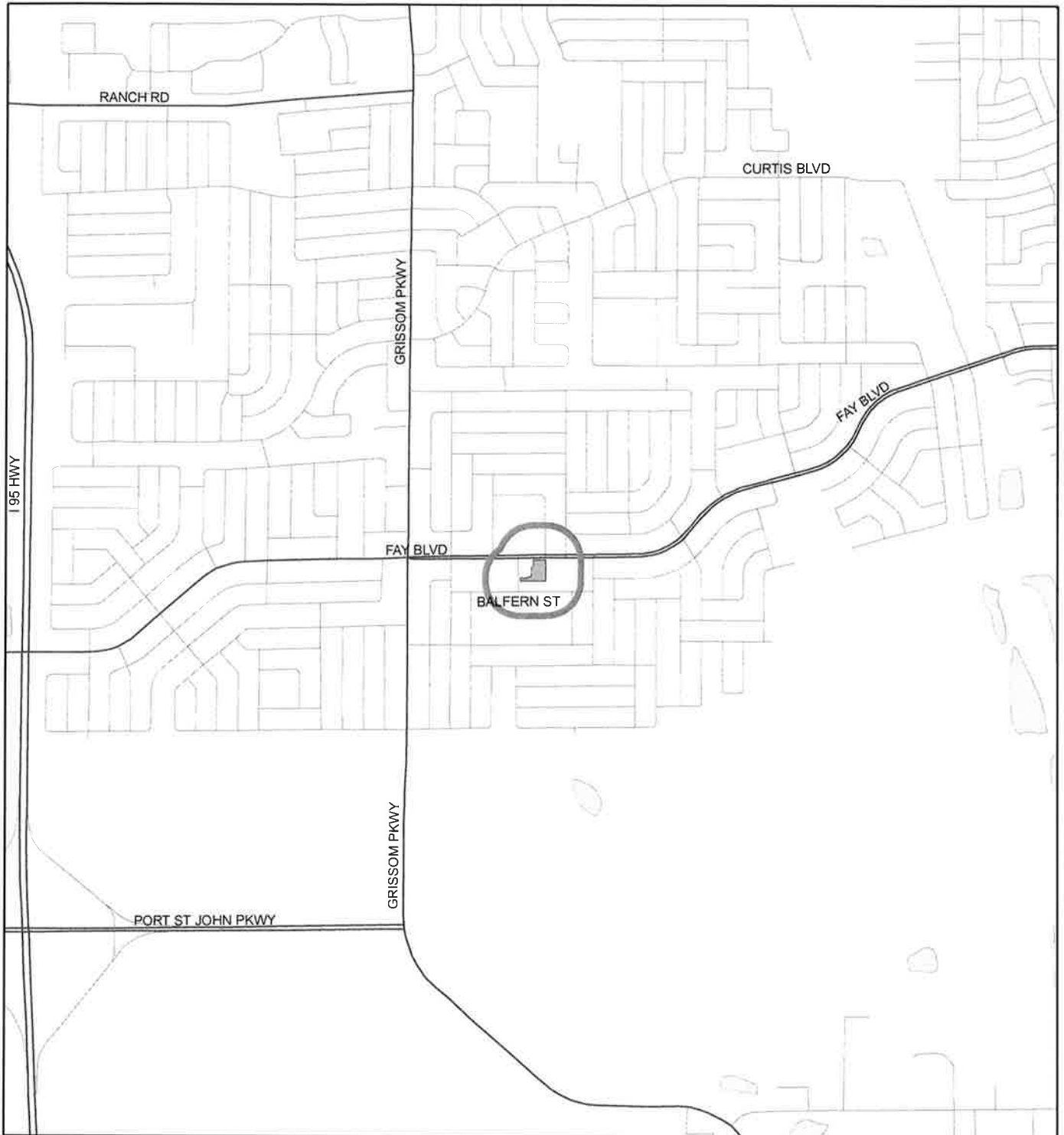
State of Florida at Large
My Commission Expires:

(SEAL)



LOCATION MAP

4725 FAY BLVD LAND TRUST
20Z00031



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.

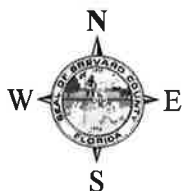
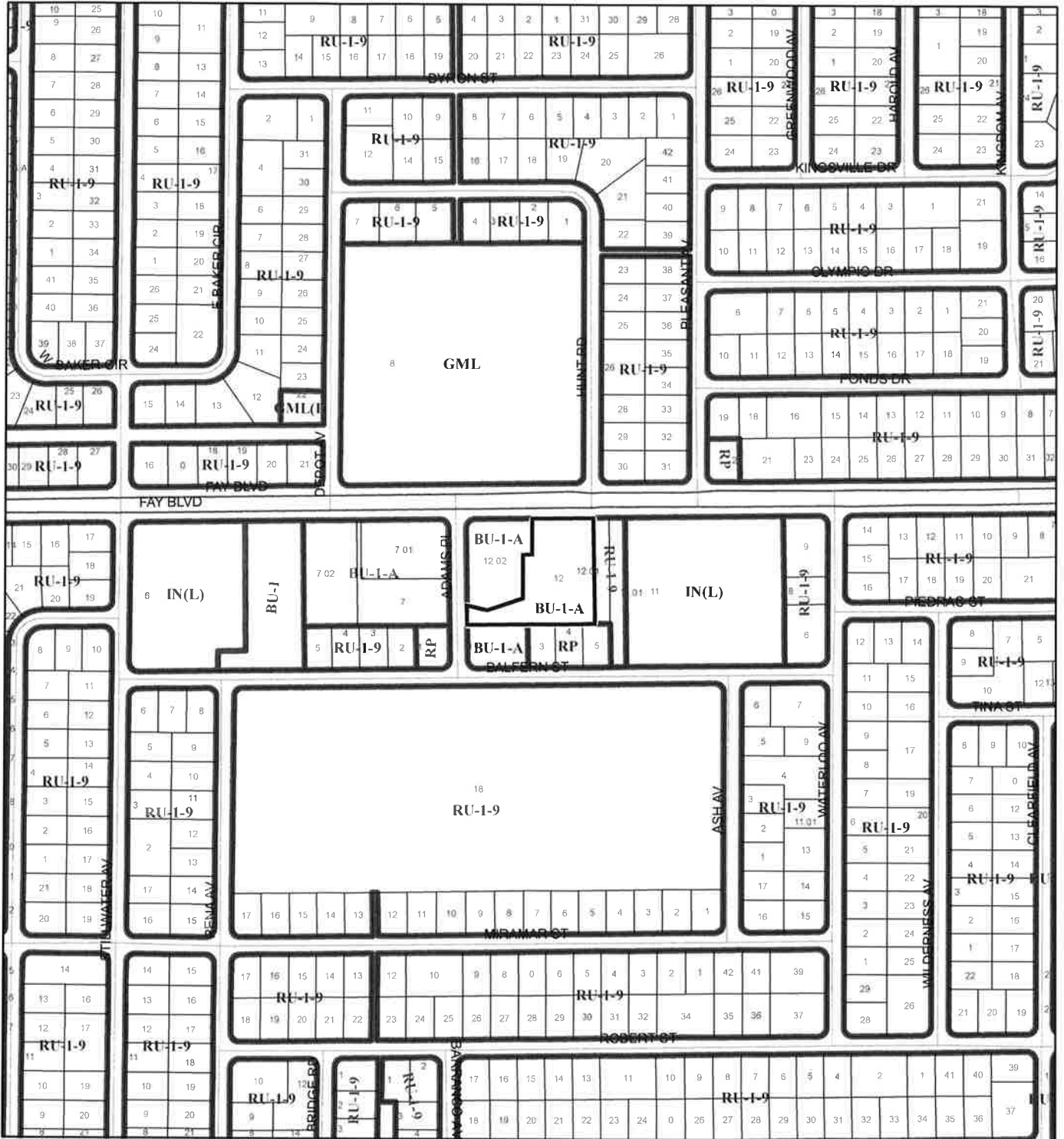
Produced by BoCC - GIS Date: 9/8/2020

— Buffer
■ Subject Property

ZONING MAP

4725 FAY BLVD LAND TRUST

20Z00031



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: 9/8/2020

— Subject Property

□ Parcels

□ Zoning

H. PUBLIC HEARINGS

Port St. John Dependent Special District Board
Wednesday, November 18, 2020, at 6:00 p.m.
Brevard County Government Center
2725 Judge Fran Jamieson Way, Building C, Third Floor, Florida Room, Viera

And

Local Planning Agency (Items 1 & 2 only)
Monday, November 23, 2020, at 3:00 p.m.
Brevard County Government Center
2725 Judge Fran Jamieson Way, Building C, First Floor, Viera,

And

Brevard County Board of County Commissioners
Thursday, December 3, 2020, at 5:00 p.m.
Brevard County Government Center
2725 Judge Fran Jamieson Way, Building C, First Floor, Viera, Florida

The Board of County Commissioners may approve or deny the requested classification, or may approve a classification of lesser intensity than that requested.

1. Port St. John Small Area Study

Port St. John Board Recommendation: Chinaris/Rupe – Tabled to the January 6, 2021, Port St. John Board meeting. The vote was unanimous.

2. **4725 Fay Blvd Land Trust** (Carmine Ferraro) requests a Small Scale Comprehensive Plan Amendment (20S.10), to change the Future Land Use designation from NC (Neighborhood Commercial) to CC (Community Commercial). The property is 1.59 acres, located on the south side of Fay Blvd., approx. 170 feet east of Adams Place. (4725 Fay Blvd., Port St. John) (20PZ00088) (Tax Account 2309941) (District 1)

Port St. John Board Recommendation: Chinaris/Rodriguez – Denied. The vote was unanimous.

Local Planning Agency Recommendation: Bartcher/Buchanan – Approved. The vote was unanimous.

Board of County Commissioners Action: Lober/Zonka – Approved, and adopted Ordinance No. 20-24. The vote was unanimous.

3. **4725 Fay Blvd Land Trust** (Carmine Ferraro) requests a change of zoning classification from BU-1-A (Restricted Neighborhood Commercial) with a BDP (Binding Development Plan) to BU-1 (General Retail Commercial) and an amendment to existing BDP. The property is 1.59 acres, located on the south side of Fay Blvd., approx. 170 feet east of Adams Place. (4725 Fay Blvd., Port St. John) (20Z00031) (Tax Account 2309941) (District 1)

Port St. John Board Recommendations: Chinaris/Messer – Denied. The vote passed 6:1 with Rodriguez voting nay.

Planning and Zoning Board Recommendation: Bartcher/Buchanan - Approved with a BDP, adding a stipulation that a gate be placed at the driveway access service entrance. The

vote was unanimous.

Board of County Commissioners Action: Lober/Smith – Approved with a BDP as recommended, with the additional stipulation that no deliveries shall take place through the Adams Place driveway one hour before school starts, and one hour after school dismisses. The vote was unanimous. The BDP will be scheduled as a consent item on a subsequent County Commission agenda, per Policy BCC-52. Resolution to be completed upon receipt of recorded BDP.

PLANNING AND ZONING BOARD RECOMMENDATIONS

- Item H.1. Flor-Ohio. Tobia/Lober. Adopted Ordinance No. 20-22, approving the Small Scale Comprehensive Plan Amendment (20S.08) changing Future Land Use from RES 4 to NC as recommended.
- Item H.2. John Haley. Smith/Tobia. Approved changing zoning classification from RU-1-9 to RU-1-7 as recommended.
- Item H.3. Jason A. and Christina N. Spina. Lober/Zonka. Approved changing zoning classification from GU and AU to all AU as recommended.
- Item H.4. Reid B. Hart and Gail Skinner-Hart. Lober/Zonka. Approved changing zoning classification from GU to RR-1 as recommended.
- Item H.5. Donald Minnick. Lober/Zonka. Approved changing zoning classification from AU and EU-2 with a BDP, to all EU-2 and removal of BDP as recommended.
- Item H.6. Lazy River Investments. Tobia/Lober. Continued to February 4, 2021, Zoning meeting.
- Item H.7. Watermark Investors, LLC. Lober/Zonka. Approved amendment to an existing PUD as recommended.
- Item H.8. Tropical Manor Holdings, LLC. Lober/Tobia. Approved changing zoning classification from RU-1-7 and RU-2-30 to RU-2-12 with a BDP limited to a maximum of 85 units as recommended.
- Item H.9. Clarence Coomer. Smith/Lober. Adopted Ordinance No. 20-23, approving the Small Scale Comprehensive Plan Amendment (20S.07) to change Future Land Use from AG to RES 1:2.5 as recommended.
- Item H.10. Clarence Coomer. Lober/Zonka. Approved changing zoning classification from GU to RRMH-2.5 as recommended.
- Item H.11. 4725 Fay Blvd Land Trust. Lober/Zonka. Adopted Ordinance No. 20-24, approving the Small Scale Comprehensive Plan Amendment (20S.10) changing Future Land Use from NC to CC as recommended.
- Item H.12. 4725 Fay Blvd Land Trust. Lober/Smith. Approved changing zoning classification from BU-1-A with a BDP, to BU-1, and approved amendment of the existing BDP authorizing there be no use of Adams Place for truck deliveries one hour before or after school.

Resolution 20Z00031

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

WHEREAS, 4725 Fay Blvd Land Trust has requested a change of zoning classification from BU-1-A (Restricted Neighborhood Commercial) with a BDP (Binding Development Plan) to BU-1 (General Retail Commercial) and an amendment to existing BDP, on property described as Lot 12, Block 81, Port St. John Unit Three, less and except the east 45 feet, as recorded in Plat Book 22, Pages 25 – 35, of the Public Records of Brevard County, Florida, less and except ORB 7510, Page 2546 - 2549, of the Public Records of Brevard County, Florida. **Section 23, Township 23. Range 35.** (1.59 acres) Located on the south side of Fay Blvd., approx. 170 feet east of Adams Place. (4725 Fay Blvd., Port St. John).

WHEREAS, a public hearing of the Port Saint John Dependent Special District Board was advertised and held, as required by law, and after hearing all interested parties and considering the adjacent areas, the Port Saint John Dependent Special District Board recommended that the application be denied; and

WHEREAS, a public hearing of the Planning and Zoning Board was advertised and held, as required by law, and after hearing all interested parties and considering the adjacent areas, the Planning and Zoning Board recommended that the application be approved with a BDP, adding a stipulation that a gate be placed at the driveway access service entrance.

WHEREAS, the Board, after considering said application and Port Saint John Dependent Special District Board's and the Planning and Zoning Board's recommendations, 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 submitted, with the additional stipulation that no deliveries shall take place through the Adams Place driveway one hour before school starts, and one hour after school dismisses; now therefore,

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested a change of zoning classification from BU-1-A (Restricted Neighborhood Commercial) with a BDP (Binding Development Plan) to BU-1 (General Retail Commercial) and an amendment to existing BDP, be approved, with a BDP recorded in ORB 9047, Pages 449 - 453, as submitted, with the additional stipulation that no deliveries shall take place through the Adams Place driveway one hour before school starts, and one hour after school dismisses . The Planning and 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 March 11, 2021.

BOARD OF COUNTY COMMISSIONERS
Brevard County, Florida



Rita Pritchett, Chair
Brevard County Commission

As approved by the Board on March 9, 2021.

ATTEST:



RACHEL M. SADOFF, CLERK

(SEAL)

Port St. John Dependent Special District Board Hearing - November 18, 2020

Planning and Zoning Board Hearing – November 23, 2020

Board of County Commissioners Hearing - December 3, 2020

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 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.**