



AGENDA REPORT
December 18, 2018

Acceptance, Re: Binding Development Plan - The Christian Missionary Alliance S.E. District (18PZ00074) (District 1)

SUBJECT:

Acceptance, Re: Binding Development Plan - The Christian Missionary Alliance S.E. District (18PZ00074) (District 1)

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 October 4, 2018, the Board approved a rezoning request from IN(L) (Institutional Use - Low Intensity) 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 attached BDP include, but are not limited to, the following:

- The Owner shall limit development to an approximately 900 square-foot commercial retail store
- The Owner acknowledges that no further development shall be permitted on the Property beyond what is contained herein without a waiver or release of the restrictions by the County.
- The Owner shall limit the Property's ingress and egress to and from Fay Boulevard to the north, with cross-access being shared with the adjacent land owner to the west to provide additional access to and from Stillwater Ave.; there shall be a restriction against the Property's access to and from Balfern St.

- The Owner shall install opaque fencing along the south boundary of the Property to provide a visual buffer for the school to the south.
- The Owner shall preserve as many of the trees within the Property and along Balfern St. as possible.

The property is located on the south side of Fay Blvd., approximately 950 feet east of Grissom Pkwy. (Part of 4855 Fay Blvd, Cocoa)

Staff Contact: Jennifer Jones Ext. 52653

CLERK TO THE BOARD INSTRUCTIONS:

After recordation, please forward two certified copies 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

December 19, 2018

MEMORANDUM

TO: Jennifer Jones, Zoning

RE: Item F.1., Binding Development Plan Agreement with The Christian Missionary Alliance
S.E. District

The Board of County Commissioners, in regular session on December 18, 2018, executed Binding Development Plan with The Christian Missionary Alliance S.E. District, for property located on the south side of Fay Blvd., approximately 950 feet east of Grissom Parkway, Cocoa. Said Plan was recorded in OR/BK 8344/2982. 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

RESOLUTION NO. 18PZ00074

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

WHEREAS, CHRISTIAN MISSIONARY ALLIANCE S.E. DISTRICT, has requested a change of zoning classification from IN(L) (Institutional Use – Low Intensity) to BU-1 (General Retail Commercial), on property described as a parcel of land being a portion of Lot 6, Block 82 of Port St. John Unit Three, according to the plat thereof, as recorded in Plat Book 22, Pages 25 – 35, of the Public Records of Brevard County, Florida, being more particularly described as follows: begin at the NE corner of said Lot 6, Block 82 and run S00deg27'48"E, along the east line of said Lot 6, a distance of 430 ft. to the SE corner thereof (said point being on the north right-of-way line of Balfern St., a 50-ft. wide right-of-way); thence S89deg32'12"W, along the south line of said Lot and along said north right-of-way line, a distance of 239 ft.; thence departing said lines, run N00deg27'48"W, parallel with the aforesaid east line of Lot 6, a distance of 56 ft. thence N89deg32'12"E, parallel with the aforesaid north right-of-way line of Balfern St., a distance of 79 ft.; thence Nn00deg27'48"W, parallel with said east line of Lot 6, a distance of 374 ft. to a point on the north line of said lot (said point being on the south right-of-way line of Fay Blvd., a 100-ft. wide right-of-way); thence N89deg32'12"E, along said north line and south right-of-way line, a distance of 170 ft. to the point of beginning. (1.78 acres) Located on the south side of Fay Blvd., approximately 950 ft. east of Grissom Parkway. (4855 Fay Blvd., Cocoa.)

Section 23,

Township 23 S,

Range 35 E, and,

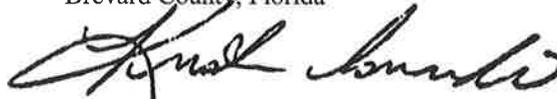
WHEREAS, a public hearing of the Port St. John Dependent Special District Board was advertised and held, as required by law, and after hearing all interested parties and considering the adjacent areas, the Port St. John Dependent Special District Board did not take action on the request; and

WHEREAS, the Board, after considering said application, 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 (Binding Development Plan), limiting development to an approximate 9,300 square-foot commercial retail store; no further development shall be permitted on the property beyond what is contained herein without a waiver or release of the restrictions by the County; ingress and egress shall be limited to and from Fay Boulevard to the north, with cross access being shared with the adjacent land owner to the west to provide additional access to and from Stillwater Avenue; there shall be a restriction against the property's access to and from Balfern Street; opaque fencing shall be installed along the south boundary of the property to provide a buffer to the school to the south; and preserving as many trees as possible within the property and along Balfern Street; now therefore,

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested change of zoning classification from IN(L) to BU-1, be APPROVED with a BDP, recorded in ORB 8344, Pages 2982 - 2986, dated January 09, 2019, limiting development to an approximate 9,300 square-foot commercial retail store; no further development shall be permitted on the property beyond what is contained herein without a waiver or release of the restrictions by the County; ingress and egress shall be limited to and from Fay Boulevard to the north, with cross access being shared with the adjacent land owner to the west to provide additional access to and from Stillwater Avenue; there shall be a restriction against the property's access to and from Balfern Street; opaque fencing shall be installed along the south boundary of the property to provide a buffer to the school to the south; and preserving as many trees as possible within the property and along Balfern Street. 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)

(PSJ Hearing – August 8, 2018)
(BCC Zoning Hearing – October 4, 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.

Prepared by & Return to:
Brian A. Block, Esq.
3917 NW 97th Blvd.
Gainesville, FL 32606
(352) 333-3233

BINDING DEVELOPMENT PLAN

This AGREEMENT is entered into this 29 day of October, 2018, by and between **Board of County Commissioners of Brevard County, Florida**, a political subdivision of the State of Florida (hereinafter referred to as "County") and **The Southeastern District of the Christian and Missionary Alliance**, a Florida corporation, whose mailing address is 7212 Curry Ford Road Orlando, Florida 32822 (hereinafter referred to as "Owner"). (County and Owner may be individually referred to herein as "Party" and collectively referred to herein as the "Parties".)

RECITALS

WHEREAS, Owner has fee simple title to Brevard County Tax Parcel Number 23-35-23-JM-82-6, which Property is legally described in Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, Owner has requested a BU-1 zoning classification and desires to develop the Property as a commercial retail store, and pursuant to Brevard County Code, Section 6622-1157; and

WHEREAS, as part of its plan for development of the Property, 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 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. The Owner shall limit development to an approximately 9,300 square foot commercial retail store (using the building's exterior dimensions as the basis for said square footage).
3. The Owner acknowledges that no further development shall be permitted on the Property beyond what is contained herein without a waiver or release of the restrictions by the County.
4. The Owner shall limit the Property's ingress and egress to and from Fay Boulevard to the North with cross access being shared with the adjacent land owner to the West to provide additional access to and from Stillwater Avenue; there shall be a restriction against the Property's access to and from Balfern Street.
5. The Owner shall install opaque fencing along the South boundary of the Property to provide a visual buffer for the school to the south.
6. The Owner shall preserve as many of the trees within the Property and along Balfern Street as possible.
7. The Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes 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.

8. The Owner, upon execution of this Agreement, shall record this Agreement in the Public Records of Brevard County, Florida, and shall furnish a copy of the recorded Agreement to the zoning division within 120 days of approval by the Board of County Commissioners.

9. 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 10/4/18. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.

10. 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.

11. Conditions Precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and must be satisfied before 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 10 above.

[Signatures to follow]

IN WITNESS THEREOF, the parties 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



Scott Ellis, Clerk



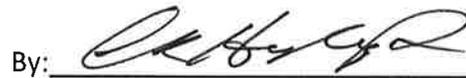
By: KRISTINE ISNARDI, CHAIR
As approved by the Board on Dec. 18, 2018

Witnesses:

The Southeastern District of the Christian and Missionary Alliance., a Florida corporation



Print Name: Amy L. Petke



By: Charles R. Hughes, President



Print Name: Patricia A. Santos

STATE OF FLORIDA
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me this 29 day of October, 2018, by Charles R. Hughes as the President of The Southeastern District of the Christian and Missionary Alliance, a Florida corporation, on behalf of said corporation, who is personally known to me ~~or has produced~~ _____ as identification.




Notary Public, State of FL at Large
Commission No.: FF206997
My Commission Expires: June 20, 2019

EXHIBIT "A"

A PARCEL OF LAND BEING A PORTION OF LOT 6, BLOCK 82 OF "PORT ST. JOHN UNIT THREE", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 22, PAGES 25 THRU 35 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHEAST CORNER OF SAID LOT 6, BLOCK 82 AND RUN $S.00^{\circ}27'48''E.$, ALONG THE EAST LINE OF SAID LOT 6, A DISTANCE OF 430.00 FEET TO THE SOUTHEAST CORNER THEREOF (SAID POINT BEING ON THE NORTH RIGHT OF WAY LINE OF BALFERN STREET, A 50 FOOT WIDE RIGHT OF WAY); THENCE $S.89^{\circ}32'12''W.$, ALONG THE SOUTH LINE OF SAID LOT AND ALONG SAID NORTH RIGHT OF WAY LINE, A DISTANCE OF 170.00 FEET; THENCE DEPARTING SAID LINES, $N.00^{\circ}27'48''W.$, PARALLEL WITH SAID EAST LINE OF LOT 6, A DISTANCE OF 430.00 FEET TO A POINT ON THE NORTH LINE OF SAID LOT (SAID POINT BEING ON THE SOUTH RIGHT OF WAY LINE OF FAY BOULEVARD, A 100 FOOT WIDE RIGHT OF WAY); THENCE $N.89^{\circ}32'12''E.$, ALONG SAID NORTH LINE AND SOUTH RIGHT OF WAY LINE, A DISTANCE OF 170.00 FEET TO THE POINT OF BEGINNING.

JOINDER AND CONSENT OF MORTGAGEE

The Alliance Development Fund, Inc., being the owner and holder of that certain Mortgage recorded on August 19, 2002 in Official Records Book 4662, Page 2457, of the Public Records of Brevard County, Florida, and agrees that the lien of said Mortgage shall be subject to the provisions of the Binding Development Plan to which this Joinder and Consent is attached; provided, however, that nothing herein shall be deemed to constitute a waiver of any rights reserved or granted to the Mortgagee (or similarly situated parties) in said Binding Development Plan.

Signed and sealed in the presence of:

**The Alliance Development Fund, Inc.,
a Florida non-profit corporation**

By: Theodore A Price

Printed Name: Theodore A Price

As its: VP For Finance

Troy McLaughlin
Signature of Witness #1

Troy McLaughlin
Name Printed/Typed

Sandra Dee Grant
Signature of Witness #2

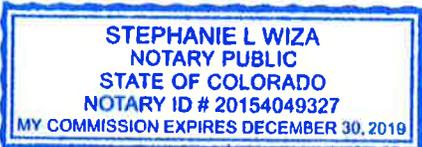
Sandra Dee Grant
Name Printed/Typed

STATE OF COLORADO
COUNTY OF EL PASO

The foregoing instrument was acknowledged before me this 30th day of October 2018, by Theodore Price as VP of Finance of The Alliance Development Fund, Inc, on behalf of said entity, who is personally known to me OR who has produced _____ as identification.

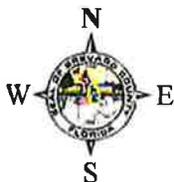
My commission expires:
DEC 30, 2019

Stephanie L Wiza
Notary Public



LOCATION MAP

CHRISTIAN MISSIONARY ALLIANCE S.E. DISTRICT
18PZ00073 SMALL SCALE AMENDMENT 18S.05



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

Buffer Distance: 500 feet

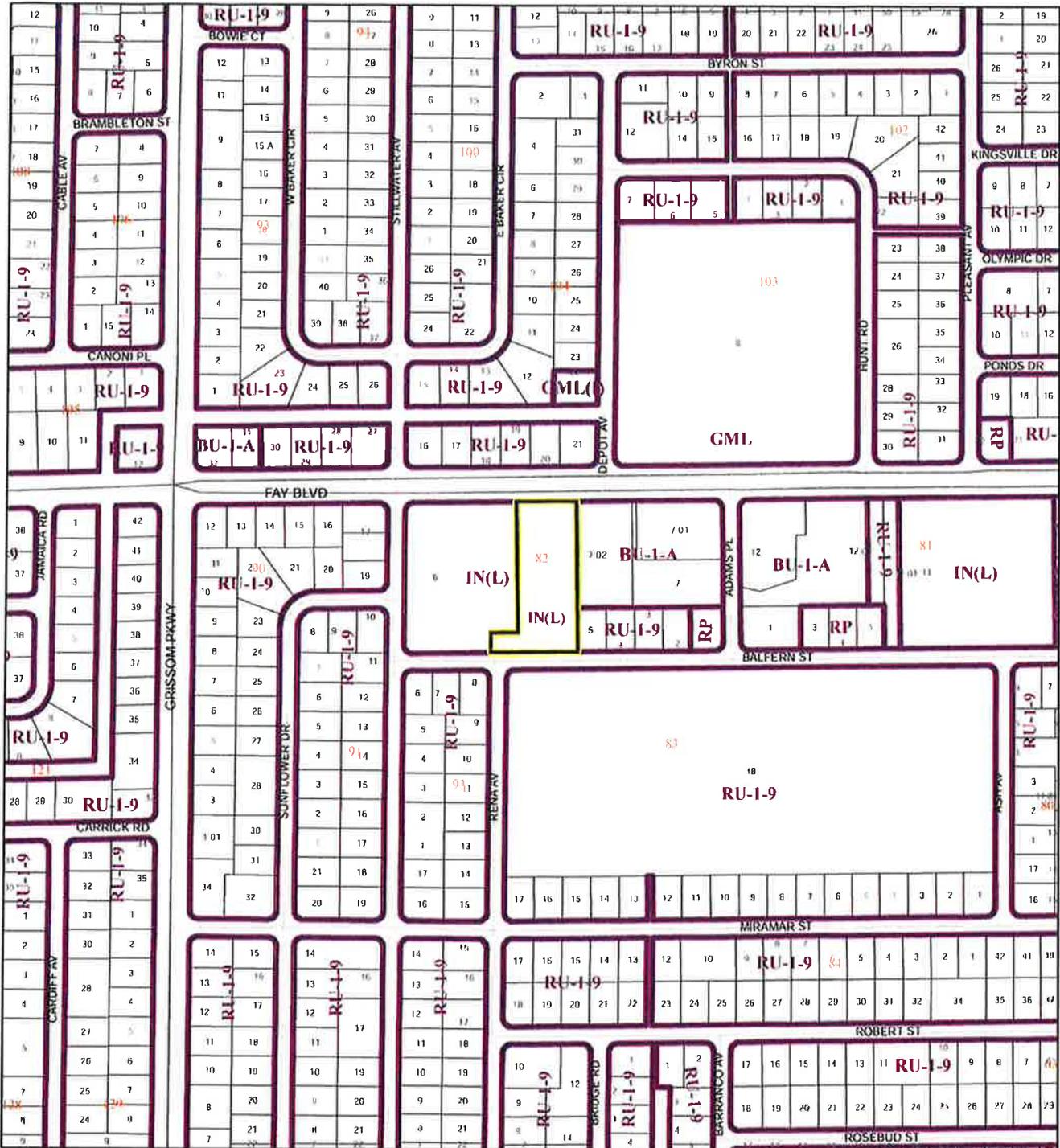
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 6/13/2018

 Buffer
 Subject Property

ZONING MAP

CHRISTIAN MISSIONARY ALLIANCE S.E. DISTRICT
18PZ0073 SMALL SCALE AMENDMENT 18S.05



1:4,800 or 1 inch = 400 feet

— Subject Property

□ Parcels

□ Zoning

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: 6/13/2018

H. PUBLIC HEARINGS

Port Saint John Dependent Special District Board
Wednesday, August 8, 2018, at 6:00 p.m.
6500 Carole Avenue, Port Saint John, Florida

Local Planning Agency
(Item 5. Only)
Monday, August 20, 2018, at 3:00 p.m.
Brevard County Government Center
2725 Judge Fran Jamieson Way, Building C, First Floor, Viera, Florida

Brevard County Board of County Commissioners
Thursday, September 6, 2018, 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.

- 5. Christian Missionary Alliance S.E. District (Matt Cason)** requests a Small Scale Comprehensive Plan Amendment (18S.05) to change the Future Land Use designation from RES 4 (Residential 4) to CC (Community Commercial). The property is 1.78 acres, located on the south side of Fay Boulevard, approximately 950 feet east of Grissom Parkway. (4855 Fay Boulevard, Cocoa) (18PZ00073) (District 1)

Port Saint John Board Recommendation: Chinaris/Porter – Denied. The vote was unanimous.

Local Planning Agency Recommendation of 09/24/18: Barber/Wadsworth – Approved. The vote was 7:3, with Bartcher, Lawandales, and Moia voting nay.

Board of County Commissioners Action of 10/04/18: Barfield/Tobia – Approved, and adopted Ordinance 18-21, Small Scale Comprehensive Plan Amendment 18S.05. The vote was unanimous.

- 6. Christian Missionary Alliance S.E. District (Matt Cason)** requests a change of zoning classification from IN(L) (Institutional Use – Low-Intensity) to BU-1 (General Retail Commercial). The property is 1.78 acres, located on the south side of Fay Boulevard, approximately 950 feet east of Grissom Parkway. (4855 Fay Boulevard, Cocoa) (18PZ00074) (District 1)

Port Saint John Board Recommendation: The Board did not take action on this item.

Board of County Commissioners Action of 10/04/18: Tobia/Barfield – Approved with a Binding Development Plan as submitted by the applicant on 09/14/18. The vote was unanimous.

PUBLIC COMMENT

PLANNING AND ZONING BOARD RECOMMENDATIONS

- Item H.1. Ahuon, Inc. Isnardi/Barfield. Approved as recommended.
- Item H.2. Happy Landings Homes, Inc. Barfield/Isnardi. Tabled to November 1, 2018, Zoning Meeting.
- Item H.3. W.K.&R. Groves, Inc. Barfield/Isnardi. Tabled for readvertisement and to send it back to the North Merritt Island and Planning and Zoning Advisory Boards, and to the November 1, 2018, Zoning Meeting.
- Item H.4. Christian Missionary Alliance S.E. District. Barfield/Tobia. Adopted Ordinance No. 18-21, Small Scale Comprehensive Plan Amendment (18S.05) changing the Future Land Use designation from Residential 4 (Res 4) to Community Commercial (CC).
- Item H.5. Christian Missionary Alliance S.E. District. Tobia/Barfield. Approved the change of zoning classification from IN(L) to BU-1; and approved the Binding Development Plan (BDP) as proposed.
- Item H.6. Anthony Lopes and Eugene R. Lomando. Tobia/Barfield. Tabled to December 6, 2018, Zoning meeting.
- Item H.7. Anthony Lopes and Eugene R. Lomando. Tobia/Isnardi. Tabled to December 6, 2018, Zoning meeting for binding development plan approval.
- Item H.8. Vinings Palm Bay Investment, LLC. Tobia/Barfield. Tabled to November 1, 2018, Zoning meeting.
- Item H.9. Vinings Palm Bay Investment, LLC. Tobia/Barfield. Tabled to November 1, 2018, Zoning meeting.