



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.4.

1/25/2022

Subject:

Acceptance, Re: Binding Development Plan with James Eric Preece (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 the Chair 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 2, 2021, the Board approved a rezoning request from RU-1-11 (Single-Family Residential) to RU-2-12 (Medium Density Multi-Family Residential), with a BDP. The conditions of the BDP include, but are not limited to, the following:

- Developer/Owner agrees not to use the Property for resort dwelling purposes and, therefore, such use is prohibited.
- Developer/Owner shall limit density to two units, constructed as a duplex, and may be further restricted by any changes to the Comprehensive Plan or the Land Development Regulations.
- Developer/Owner shall limit ingress and egress to one unit to Franklyn Avenue and one unit to Gross Pointe Avenue.

Clerk to the Board Instructions:

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

9. **(21Z00033) JAMES ERIC PREECE, TRUSTEE** (Kim Rezanka) requests a change of zoning classification from RU-1-11 (Single-Family Residential) to RU-2-12 (Medium Density Multi-Family Residential). The property is 0.26 acres, located on the south side of Franklyn Ave., approx. 320 ft. east of Palm Ave. (117 Franklyn Ave., Indialantic) (Tax Account 2731687) (District 5)

P&Z Recommendation: Filiberto/Capote - Approved. The vote was unanimous.

BCC ACTION: Lober/Zonka - Approved with a BDP limited to a duplex unit with one entrance driveway on Grosse Pointe and one entrance driveway on Franklyn Ave.; and prohibiting resort dwelling use. The

10. **(21Z00034) EH COCOA, LLC** (Bryan Potts) requests a change of zoning classification from BU-1 (General Retail Commercial) to BU-2 (Retail, Warehousing, and Wholesale Commercial). The property is 3.8 acres, located on the west side of U.S. Highway 1, approx. .13 mile north of Cidco Rd. (3633 & 3635 N. U.S. Highway 1, Cocoa) (Tax Accounts 2442707 & 2442708) (District 1)

P&Z Recommendation: Bartcher/Capote - Approved with a BDP (Binding Development Plan) limited to a mini-storage use within a metal building not to exceed two stories. The vote was unanimous.

BCC ACTION: Pritchett/Lober - Approved. 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.

11. Board Direction, Re: Combining the meeting schedules of the Planning & Zoning Board and the Local Planning Agency.

P&Z/LPA Recommendation: Alward/Capote - Approved. The vote was unanimous.

Resolution 21Z00033

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

WHEREAS, James Eric Preece, Trustee has requested a change of zoning classification from RU-1-11 (Single-Family Residential) to RU-2-12 (Medium Density Multi-Family Residential), on property described as the west 75 ft. of the east ½ of Lot 6, Block F, Map of Replat of North Indialantic By The Sea, according to the map or plat thereof, as recorded in Plat Book 9, Page 70, of the Public Records of Brevard County, Florida. **Section 31, Township 27, Range 38.** (0.26 acres) Located on the on the south side of Franklyn Ave., approx. 320 ft. east of Palm Ave. (117 Franklyn Ave., Indialantic); and

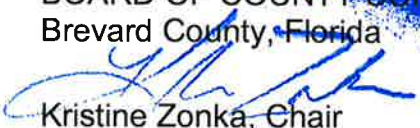
WHEREAS, a public hearing of the Brevard County Planning and Zoning Board was advertised and held, as required by law, and after hearing all interested parties and considering the adjacent areas, the Brevard County Planning and Zoning Board recommended that the application be approved; and

WHEREAS, the Board, after considering said application and Brevard County Planning and 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 limited to a duplex unit with one entrance driveway on Grosse Pointe and one entrance driveway on Franklyn Ave., and prohibiting resort dwelling use; now therefore,

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested change of zoning classification from RU-1-11 to RU-2-12, be approved with a BDP, recorded on 01/27/22, in ORB 9397, Pages 2219 - 2221, limited to a duplex unit with one entrance driveway on Grosse Pointe and one entrance driveway on Franklyn Ave., and prohibiting resort dwelling use. 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 January 27, 2022.

BOARD OF COUNTY COMMISSIONERS
Brevard County, Florida


Kristine Zonka, Chair
Brevard County Commission

As approved by the Board on January 25, 2022.

ATTEST:


RACHEL SADOFF, CLERK

(SEAL)

Planning and Zoning Board Hearing – November 15, 2021

Board of County Commissioners Hearing - December 2, 2021

Please note: A CUP (Conditional Use Permit) will generally expire on the three-year anniversary of its approval if the use is not established prior to that date. CUPs 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.**



January 26, 2022

MEMORANDUM

TO: Jennifer Jones, Zoning

RE: Item F.4., Binding Development Plan Agreement with James Eric Preece, Trustee

The Board of County Commissioners, in regular session on January 25, 2022, executed Binding Development Plan with James Eric Preece, Trustee, for property located at .26 acres, on the south side of Franklyn Avenue, approximately 320 feet east of Palm Avenue, Indialantic. 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

A handwritten signature in cursive script, reading "Kimberly Powell".

Kimberly Powell, Clerk to the Board

/dt

Encls. (2)

cc: Contracts Administration

Prepared by: Kimberly Bonder Rezanka, Esquire
Address: 1290 U.S. Hwy 1, Ste. 201
Rockledge, FL 32955

BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this _____ day of _____, 20__ between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and James Eric Preece, Trustee of the James Eric Preece Living Trust u/d/t May, 28, 2009 (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 as:

The West 75 feet of the East ½ of Lot 6, Block F, Map of Replat of North Indialantic By-The-Sea, according to the map or plat thereof, as recorded in Plat Book 9, Page 70, of the Public Records of Brevard County, Florida; and

WHEREAS, Developer/Owner has requested the RU-2-12 zoning classification(s) and desires to develop the Property as a duplex, 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 impacts 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. Recitals. The above recitals are true and correct and are incorporated into this Agreement by their 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 agrees not to use the Property for resort dwelling purposes and, therefore, such use is prohibited.

4. The Developer/Owner shall limit density to two (2) units, constructed as a duplex, and may be further restricted by any changes to the Comprehensive Plan or the Land Development Regulations.
5. The Developer/Owner shall limit ingress and egress to one unit to Franklyn Avenue and one unit to Gross Pointe Avenue.
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 12/21/2021. 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 M. Sadoff, Clerk of Court
(SEAL)


Kristine Zonka, Chair

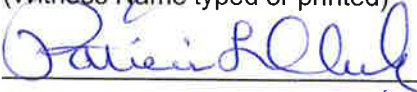
As approved by the Board on Jan. 25, 2022

WITNESSES:

James Eric Preece, Trustee of the James Eric Preece
Living Trust u/d/t May, 28, 2009



(Witness Name typed or printed)


James Eric Preece Trustee
615 N Riverside Dr., Indialantic, FL 32903



Patricia L. Clark
(Witness Name typed or printed)

STATE OF Florida §

COUNTY OF Brevard §

The foregoing instrument was acknowledged before me, by means of ☒ physical presence or
_____ online notarization, this 5th day of January, 2022, by
James Eric Preece, Trustee of the James Eric Preece
Living Trust u/d/t 5/28/2009, President of Living Trust u/d/t 5/28/2009, who is
personally known to me or who has produced FL D/L as identification.

My commission expires
SEAL
Commission No.:


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



Patricia L. Clark
Comm. #GG363212
Expires: October 1, 2023
Bonded Thru Aaron Notary

AFFIDAVIT OF NO MORTGAGE

James Eric Preece, Trustee of the James Eric Preece Living Trust u/d/t May, 28, 2009,
after being duly sworn, depose and say:

1. I am the owner of the real Property located at 117 Franklyn Avenue, Indialantic, FL
32903, more particularly described as:

The West 75 feet of the East ½ of Lot 6, Block F, Map of Replat of North
Indialantic By-The-Sea, according to the map or plat thereof, as recorded in Plat
Book 9, Page 70, of the Public Records of Brevard County, Florida

2. There are no mortgages on the Property.

James Eric Preece

Dated 5 Jan 2022

By: James Eric Preece
Trustee of the James Eric Preece Living
Trust u/d/t May, 28, 2009
615 N Riverside Dr., Indialantic, FL 32903

STATE OF FLORIDA

COUNTY OF BREVARD

The foregoing instrument was acknowledged before me, by means of ☒ **physical presence**
or ☐ **online notarization** this 5th day of January, 2022, by James Eric Preece,
Trustee of the James Eric Preece Living Trust u/d/t May, 28, 2009, who is personally known to
me or who has produced FL D/L as identification and who did (did not) take an
oath.

My commission expires:

SEAL

Commission No.:

Patricia L. Clark
Notary Public

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



CERTIFICATE OF TRUST

I, **JAMES ERIC PREECE**, as Grantor and Trustee of the **James Eric Preece Revocable Living Trust, u/d/t May 28, 2009**, hereby certify that the **James Eric Preece Revocable Living Trust, u/d/t May 28, 2009** remains in full force and effect and has not been revoked or altered in any way by me from the May 28, 2009 of inception (**May 28, 2009**) to this 26th day of October 2020.



JAMES ERIC PREECE, Grantor and Trustee

STATE OF FLORIDA
COUNTY OF BREVARD

On this 26th day of October 2020, personally appeared before me, the following named individual, **JAMES ERIC PREECE**, to me known and known to me to be the person described in and who executed the foregoing Certificate of Trust, and acknowledged that he executed the same, and being duly sworn by me, made oath that the statements in the foregoing instrument are true.

My Commission Expires



☒ Personally known.
☐ Produced as identification:



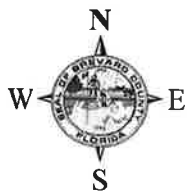
Notary Public Signature
State of Florida at Large

JENNY LAWTON SEAL

Typed or Printed Notary

LOCATION MAP

JAMES ERIC PREECE, TRUSTEE
21Z00033



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: 9/16/2021

Buffer
Subject Property

ZONING MAP

JAMES ERIC PREECE, TRUSTEE

21Z00033



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: 9/16/2021

- Subject Property
- Parcels
- Zoning

PLANNING AND ZONING BOARD RECOMMENDATIONS

- Item H.2. Scott Minnick. Pritchett/Lober. Continued the request for change of Zoning classification from AU to RR-1 to the February 3, 2022, Zoning Meeting. (21Z00025)
- Item H.3. DeRosa Holdings, LLC (Bruce Moia). Lober/Smith. Continued the request for an amendment to an existing Binding Development Plan (BDP) in an RU-2-12 Zoning classification to the January 11, 2022, Regular Meeting. (21PZ00059)
- Item H.4. Donald White and Trevantay Raymond Curry. Pritchett/Lober. Approved a change of Zoning classification from AU to RU-1-13 as recommended. (21Z00029)
- Item H.5. The Heather Calligan Trust (Chad Genoni). Pritchett/Tobia. Approved a change of Zoning classification from RU-1-11 to RU-1-7 with a BDP as submitted by the applicant at the 12/02/2021 Board of County Commissioners meeting. (21Z00030)
- Item H.6. Burnett Parrish, LLC (Javier Fernandez). Pritchett/Smith. Approved a change of Zoning classification from RU-1-9 and RU-2-10 to all RU-2-10 as recommended. (21Z00031)
- Item H.7. Perrone Properties, Inc. and Curtis R. and Sharon E. Davis (Javier Hernandez). Pritchett/Lober. Adopted Ordinance No. 21-27, approving a Small Scale Comprehensive Plan Amendment (21S.06) to change the Future Land Use designation from RES 4 to RES 15 as recommended. (21PZ00062)
- Item H.8. Perrone Properties, Inc. and Curtis R. and Sharon E. Davis (Javier Hernandez). Pritchett/Lober. Approved a change of Zoning classification from AU to RU-2-10 as recommended. (21Z00032)
- Item H.9. James Eric Preece, Trustee (Kim Rezanka). Lober/Zonka. Approved the change of Zoning classification from RU-1-11 to RU-2-12, with a BDP limited to a duplex unit, with one entrance driveway on Grosse Pointe and one entrance driveway on Franklyn Avenue; and prohibiting resort dwelling use. (21Z00033)
- Item H.10. EH Cocoa, LLC (Bryan Potts). Pritchett/Lober. Approved a change of Zoning classification from BU-1 to BU-2. (21Z00034)