



AGENDA REPORT
July 10, 2018

Public Hearing, Withdrawn Re: Carmine Ferraro, Trustee, requests a change of Zoning classification from BU-1-A to IN(L) (18PZ00021) (District 1)

SUBJECT:

This Request has been withdrawn by the applicant on 7/2/2018 via email.

Public Hearing, Re: Carmine Ferraro, Trustee, requests a change of Zoning classification from BU-1-A to IN(L) on 1.6 acres, located on the south side of Fay Blvd., approx. 170 ft. east of Adams Place (18PZ00021) (District 1)

FISCAL IMPACT:

None.

DEPT/OFFICE:

Planning and Development

REQUESTED ACTION:

It is requested that the Board of County Commissioners conduct a public hearing to consider the request for a change of Zoning classification from BU-1-A to IN(L) and retain the existing BDP on the subject property.

SUMMARY EXPLANATION and BACKGROUND:

The applicant is seeking a change of Zoning classification from BU-1-A (Restricted Neighborhood Retail Commercial) to IN(L) (Institutional Use - Low Intensity), for the purpose of adding a private school to an existing church site. The subject property is currently developed with a 2,880 square foot structure and has legal access from both Fay Boulevard and Adams Place. There are school zones designated by both pavement markings and signage on both of those corridors in existence today.

The proposed IN(L) Zoning classification is consistent with the NC (Neighborhood Commercial) Future Land Use designation.

The Board may wish to consider whether the proposal for rezoning from BU-1-A to IN(L) for the purpose of adding a private school to an existing church site is compatible with the surrounding residential neighborhood.

The language of the existing BDP specifically indicates that it shall run with the subject

property unless or until rezoned. The applicant has indicated that he intends to retain the existing BDP on the property. The Board may wish to consider whether the conditions contained within the existing BDP should be retained. Any changes to the BDP as a part of this zoning request will apply only to this parcel and would not change the BDP provisions for the Family Dollar parcel.

The existing BDP includes the following commitments:

- Prohibited uses such as adult entertainment, package liquor stores, gaming rooms, arcades, billiard halls, single-family residences, group homes, foster homes, resort dwellings and coin laundromats.
- Limits on ingress and egress as follows:
 - Close existing Adams Place driveway permanently, which is located on the southwest corner of the property
 - Construct full access driveway on Adams Place to line up with the driveway on the adjacent property to the west (Gas station/convenience store)

On June 13, 2018, the Port St. John Dependent Special District Board heard the request and unanimously recommended approval of the IN(L) Zoning classification, retaining the existing BDP.

Staff Contact: Erin Sterk, Planning & Zoning Manager erin.sterk@brevardfl.gov

ATTACHMENTS:

Description

- ▢ **Staff Comments**
- ▢ **Maps**
- ▢ **FYI**



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

July 11, 2018

M E M O R A N D U M

TO: Tad Calkins, Planning and Development Director Attn: Erin Sterk

RE: Item H.4., Public Hearing to Consider a Change of Zoning Classification from BU-1-A to IN(L) on 1.6 Acres of Property Located on the South Side of Fay Boulevard, East of Adams Place

The Board of County Commissioners, in regular session on July 10, 2018, took no formal action on a request by Carmine Ferraro, Trustee, for a change of Zoning Classification from BU-1-A to IN(L) on 1.6 acres of property located on the south side of Fay Boulevard, east of Adams Place, as the applicant withdrew the request.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

REZONING REVIEW WORKSHEET

18PZ00021

Commission District # 1

Hearing Dates: PSJ 06/13/18

BCC 07/10/18

Owner Name: CARMINE FERRARO, TRUSTEE

Request: BU-1-A to IN(L), retaining an existing BDP

Subject Property:

Parcel ID# 23-35-23-JM-81-12

Tax Acct.# 2309941

Location: South side of Fay Blvd., approx. 170 ft. east of Adams Place

Address: 4725 Fay Blvd., Port St. John

Acreage: 1.6 acres

Consistency with Land Use Regulations

YES Current zoning can be considered under the Future Land Use Designation. Sec. 62-1255

YES Proposal can be considered under the Future Land Use Designation. Sec. 62-1255

YES Would proposal maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	CURRENT	PROPOSED
Zoning	BU-1-A with BDP	IN(L) with BDP
Potential*	13,939 square feet	84,767 square feet
Can be Considered under FLU MAP	YES Neighborhood Commercial	YES Neighborhood Commercial

*Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations.

	ADT	PM PEAK		
Trips from Existing Zoning	798	69	Segment Number	115B
Trips from Proposed Zoning	772	0	Segment Name	FAY Grissom - Arequippa
Maximum Acceptable Volume (MAV)	33,800	3,042	Acceptable LOS	E
Current Volume	13,592	1,223	Directional Split	0.5
Volume With Proposed Development	14,364	1,293	ITE CODE	
Current Volume / MAV	40.21%	40.21%	560	
Volume / MAV with Proposal	42.50%	42.50%		
Current LOS	C	C		
OS With Proposal	C	C		
Findings	<input checked="" type="checkbox"/> Non-Deficiency		<input type="checkbox"/> Deficiency	

Background & Purpose of Request

The applicant is seeking a change of Zoning classification from Restricted Neighborhood Retail Commercial (BU-1-A) to Institutional Use (IN(L)) for the purpose of adding a private school to an existing church site. The subject property is currently developed with a 2,880 square foot structure and has legal access from both Fay Boulevard and Adams Place. On both of those corridors, there are school zones dedicated by both pavement markings and signage in existence today.

This site has been through three zoning changes since 2004. The first change **Z-10985(62)** rezoned the site from Single-Family Residential (RU-1-9) in December, 2004. The second change **Z-11412** occurred in December, 2007 when the zoning was changed from IN(L) to BU-1-A with BDP. The last change **13PZ-00084** occurred in March, 2014 when the BDP was replaced with a second BDP amending access to Adams Place by closing the existing access and creating a new access which was directly across the street being used by a gas station/convenience store. At the time the existing BDP was amended in March, 2014, it applied to one parcel. Since then, that parcel was split into two, with the BDP then applying to two parcels, including the parent parcel (Tax Account # 2309941) and the newly created parcel (Tax Account # 3011267). A Family Dollar was since constructed on the newly created parcel at the intersection of Adams Place and Fay Boulevard.

At the time of the application submittal, the applicant wished to amend and replace the existing BDP as a part of this zoning request; however, after discussions with zoning staff, the applicant has decided to retain the existing BDP conditions. Any changes to the BDP as a part of this zoning request will apply to only this parcel, and would not change the BDP provisions for the Family Dollar parcel.

The existing BDP includes the following commitments:

- Prohibited uses such as adult entertainment, package liquor stores, gaming rooms, arcades, billiard halls, single-family residences, group homes, foster homes, resort dwellings and coin laundromats.
- Limits on ingress and egress as follows:
 - Close existing Adams Place driveway permanently, which is located on southwest corner of the property
 - Construct full access driveway on Adams Place to line up with the driveway on the adjacent property to the west (Gas station/convenience store)

The Board may wish to consider whether the existing BDP's conditions are still applicable and whether they should be retained as a part of this Zoning action.

This area of Port St. John is characterized by a mixture of restricted commercial and institutional uses along the Fay Boulevard corridor. The BU-1-A property to the south is developed as a day care center and just beyond that, across Balfern Street, lies Challenger 7 Elementary School. The BU-1-A properties to the west across Adams Place are developed with mixed retail commercial uses. This property has approximately 179 feet of road frontage on Fay Boulevard and almost 56 feet of road frontage on Adams Place.

Land Use Compatibility

The subject parcel retains the Neighborhood Commercial (NC) Future Land Use designation. **FLUE Policy 2.5** defines the Activities Permitted in NC.

Neighborhood Commercial (NC) development activities are intended to be low impact in nature and serve the needs of the immediate residential area. Intrusion of these land uses into surrounding residential areas shall be limited. Existing BU-1-A uses, which were established as of the adoption date of this provision shall be considered consistent with this policy. Development activities which may be considered within NC Future Land Use designation, provided that listed criteria are met, include the following:

- a) Professional offices (no drive through lanes permitted);
- b) Personal Services (no drive through lanes permitted);

- c) Convenience stores (no drive through lanes permitted);
- d) Residential uses;
- e) Institutional uses;
- f) Recreational uses;
- g) Public facilities; and
- h) Transitional uses pursuant to Policy 2.14.

The proposed IN (L) Zoning classification is consistent with the NC Future Land Use designation.

The Board should evaluate the compatibility of this application within the context of the Board's Administrative Policies 1 - 8 of the Future Land Use Element, as outlined on pages 2 through 5 of the Administrative Policies.

Environmental Constraints

Please refer to comments provided by the Natural Resource Management Department.

Applicable Land Use Policies

The request is to change the zoning back to IN(L) zoning in order to allow the existing church to expand by adding a private school to the site. This area of Port St. John is characterized by a mixture of restricted commercial and institutional uses along the Fay Boulevard corridor.

The surrounding properties are zoned Government Managed Lands (GML) to the north across Fay Boulevard, BU-1-A and Residential-Professional (RP) to the south, RU-1-9 to the east and BU-1-A to the west. The GML Zoning classification allows a variety of land uses for governmental purposes, which today is operating as Fay Park. The BU-1-A classification permits restricted neighborhood retail and personal service uses to serve the needs of nearby low-density residential neighborhoods. Minimum lot size of 7,500 square feet is required with minimum width and depth of 75 feet. RP is a residential-professional Zoning classification, intended to promote low to medium density residential development along with low intensity commercial usage. Minimum lot area requirements in the RP classification are 7,500 square feet, with 75 feet of width and depth. The RU-1-9 classification permits single family residential development on lots of 6,600 square feet (minimum). The minimum house size is 900 square feet.

For Board Consideration

The Board may wish to consider whether the proposal for rezoning from Restricted Neighborhood Retail Commercial (BU-1-A) to Institutional Use (IN(L)) for the purpose of adding a private school to an existing church site is compatible with the surrounding residential neighborhood.

The proposed IN (L) Zoning classification is consistent with the NC Future Land Use designation.

The language of the existing BDP specifically indicates that it shall run with the subject property unless or until rezoned. The applicant has indicated that he intends to retain the existing BDP on the property. The Board may wish to consider whether the conditions contained within the existing BDP should be retained.

NATURAL RESOURCES MANAGEMENT DEPARTMENT
Rezoning Review

SUMMARY

Item #: 18PZ00021	Applicant: Carmine Ferraro, Trustee
Zoning Request: BU-1-A to IN (L)	
PSJ Board Hearing Date: 06/13/18	BCC Hearing: 07/10/18

This is a preliminary review based on environmental maps available to the Natural Resources Management Department (NRM) at the time of this review and does not include a site inspection to verify the accuracy of this information. This review does not ensure whether or not a proposed use, specific site design, or development of the property can be permitted under current Federal, State, County or Local Regulations. The property is located within the Port St. John Special District. In that this process is not the appropriate venue for site plan review, specific site designs that may be submitted with the rezoning will be deemed conceptual and any comments or omissions relative to specific site design do not provide vested rights or waivers from these regulations, unless specifically requested by the owner and approved by the Board of County Commissioners. If the owner has any questions regarding this information, he/she is encouraged to contact NRM prior to submittal of any development or construction plans.

Natural Resource	Preliminary Assessment	Natural Resource	Preliminary Assessment
Hydric Soils/Wetlands	Not mapped	Coastal Protection	N/A
Aquifer Recharge Soils	Mapped	Surface Waters	N/A
Floodplains	Not mapped	Wildlife	Mapped Scrub Jay

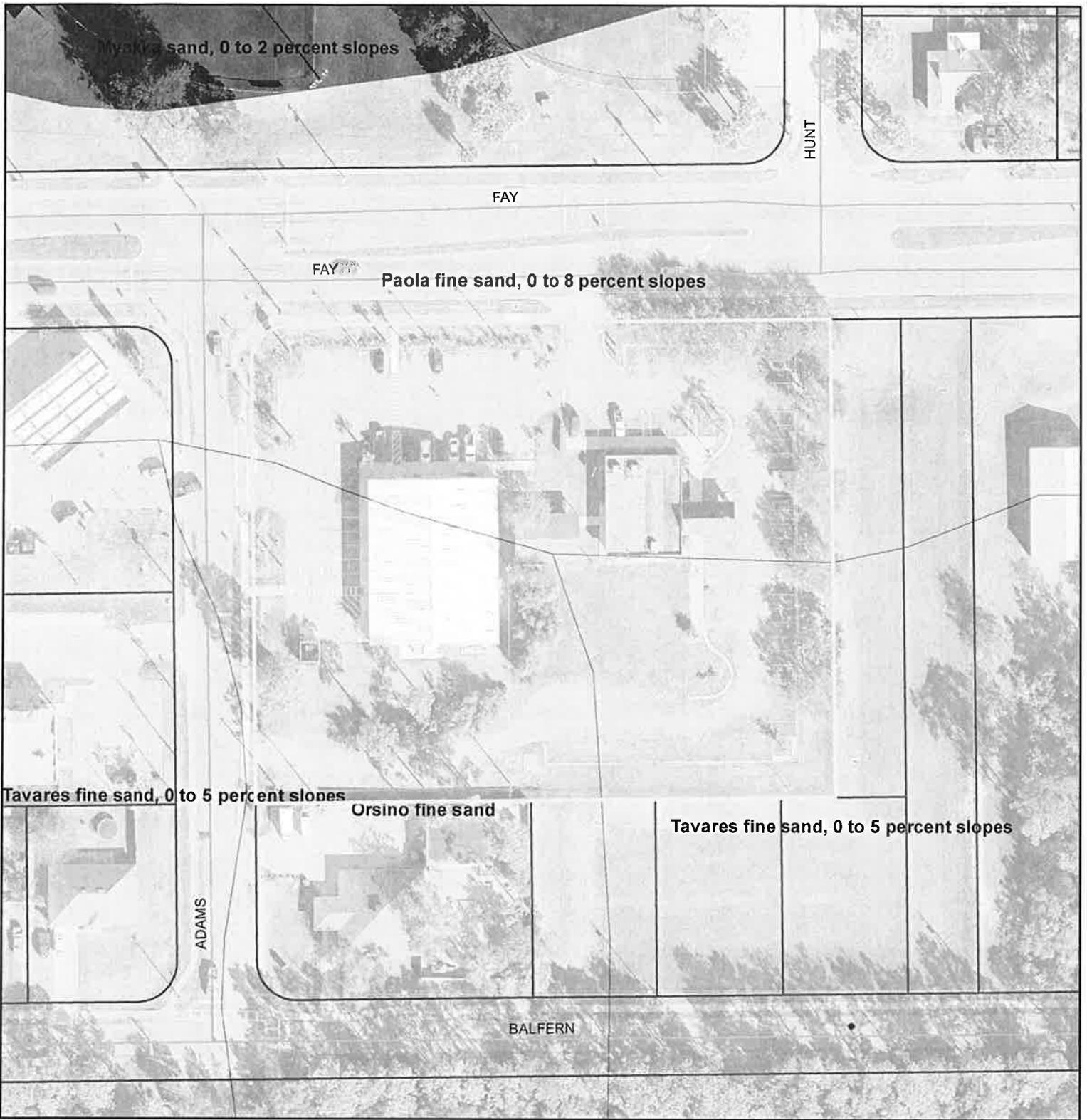
Comments:

**This review relates to the following property: Twp 23, Rng. 35, Sec. 23;
Tax ID No. 2309941**

The subject parcel contains mapped aquifer recharge soils (Orsino fine sand, Tavares fine sand, and Paola fine sand, 0 to Candler–Urban land). The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

Information available to NRM indicates that federally and/or state protected species may be present on the property. Specifically, gopher tortoises can be found in areas of aquifer recharge soils. Additionally, the property is located within a large Florida Scrub Jay polygon. Prior to any plan, permit submittal, or development activity, including land clearing, the applicant should obtain any necessary permits or clearance letters from the Florida Fish and Wildlife Conservation Commission and/or U.S. Fish and Wildlife Service, as applicable.

The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for preservation and canopy coverage requirements. Land clearing is not permitted without prior authorization by NRM.



Legend

Soils

-  Hydric
-  Aquifer Recharge
-  Aquifer Recharge, Hydric

Soils
18PZ00021



Legend

 Eagle2010

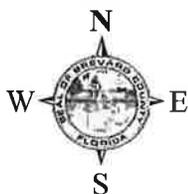
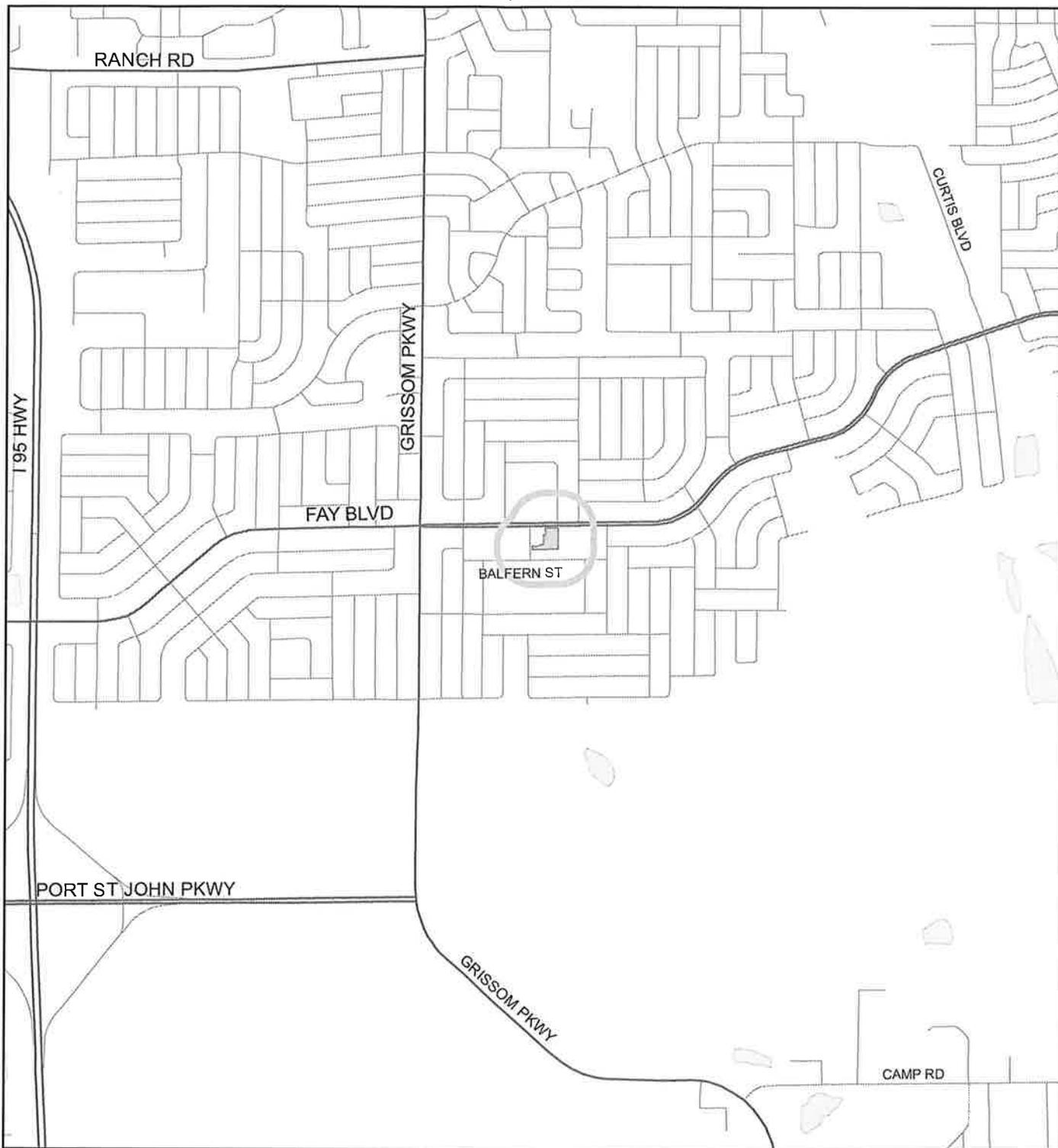
 Scrub Jay Occupancy

FL Scrub Jay Occupancy
18PZ00021

LOCATION MAP

CARMINE FERRARO, TRUSTEE

18PZ00021



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

Buffer Distance: 500 feet

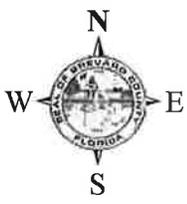
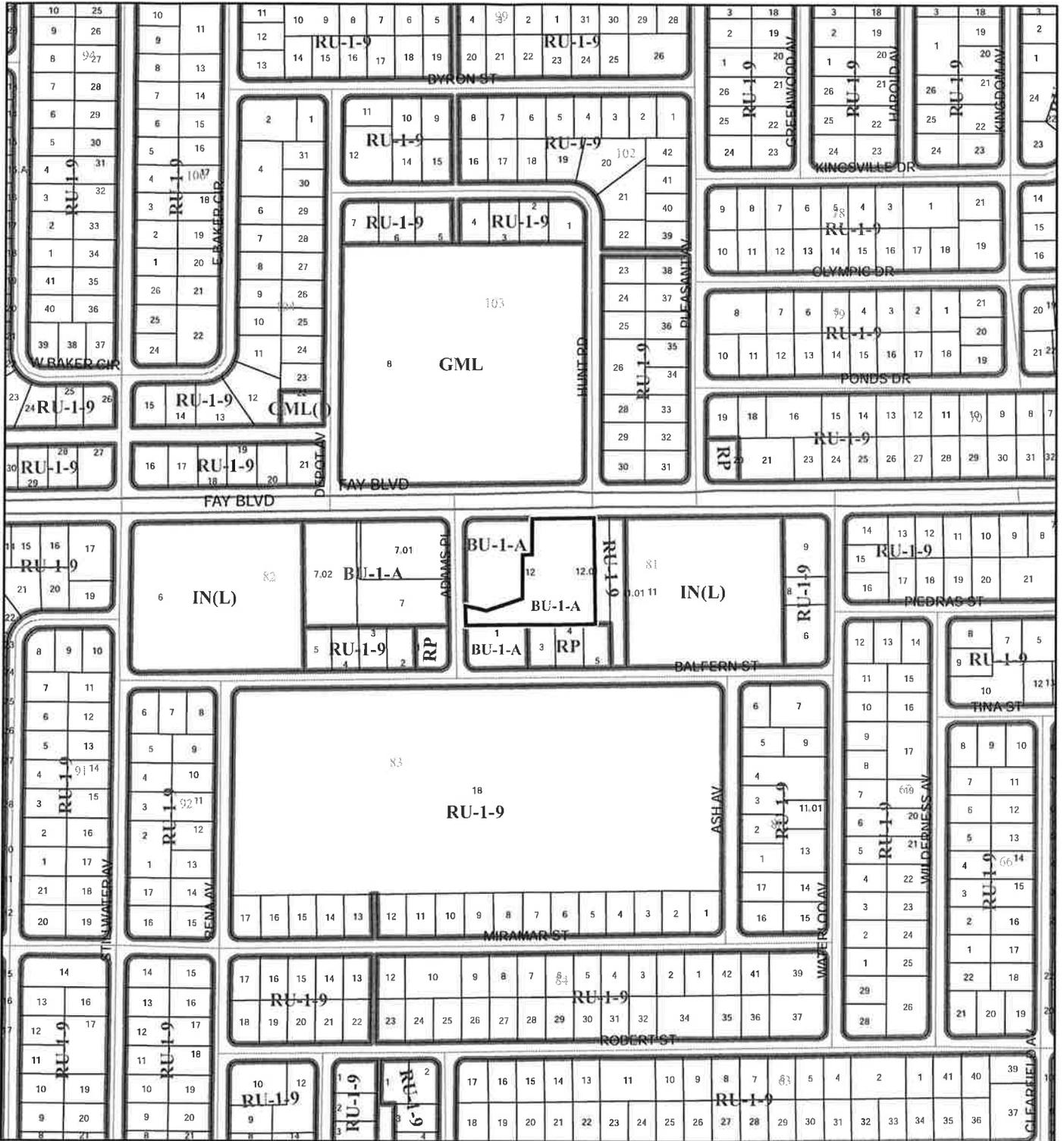
-  Buffer
-  Subject Property

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.

ZONING MAP

CARMINE FERRARO, TRUSTEE

18PZ00021



1:4,800 or 1 inch = 400 feet

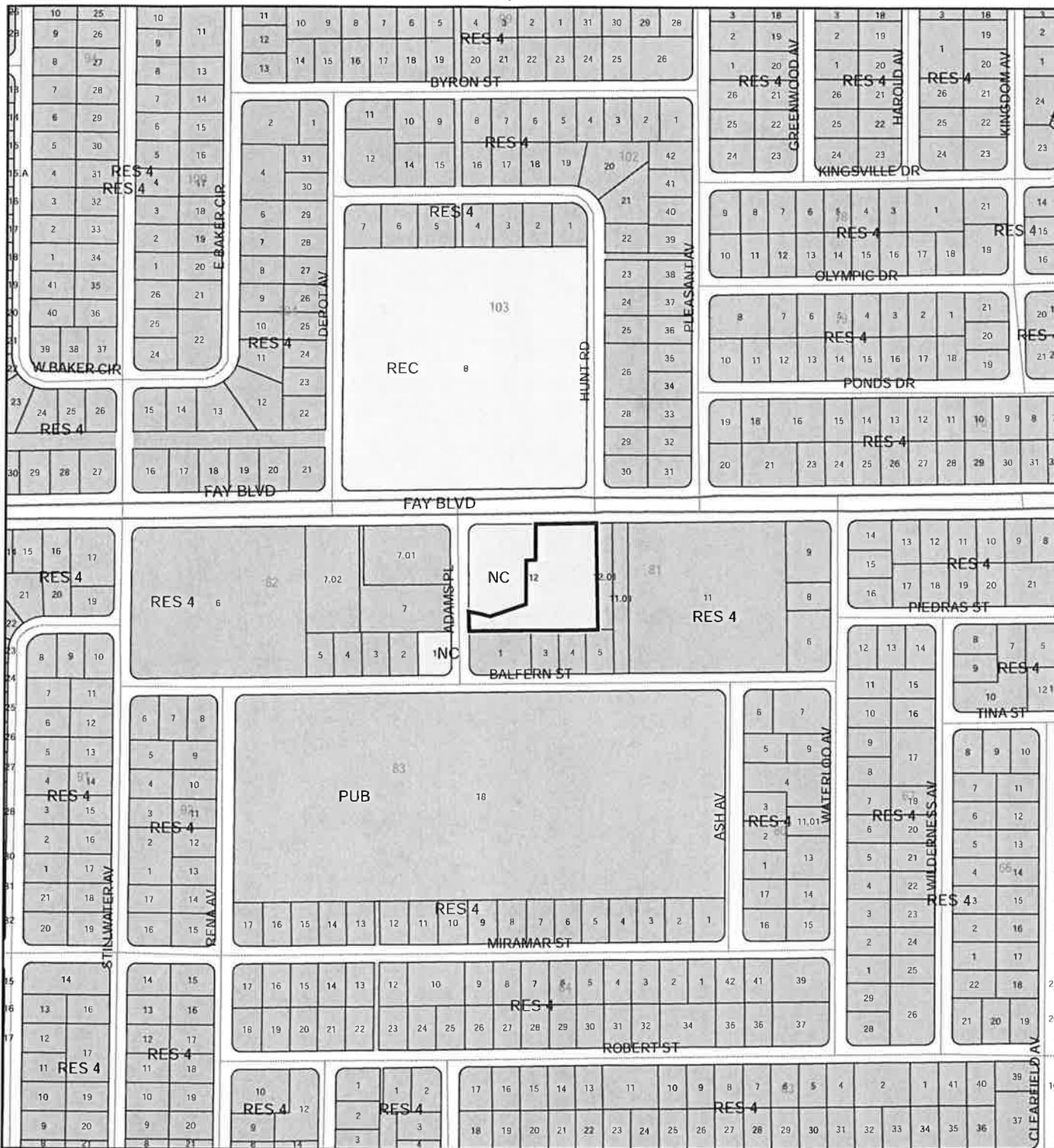
- Subject Property
- Parcels
- Zoning

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.

FUTURE LAND USE MAP

CARMINE FERRARO, TRUSTEE

18PZ00021



1:4,800 or 1 inch = 400 feet

 Subject Property

 Parcels

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AERIAL MAP
CARMINE FERRARO, TRUSTEE
18PZ00021



1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2017

 Subject Property

 Parcels

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 the Brevard County Planning and Zoning Office - GIS Section Date: 3/7/2018

Existing BDP

CFN 2014100789. OR BK 7129 PAGE 1312,
Recorded 05/20/2014 at 10:34 AM, Scott Ellis, Clerk of
Courts, Brevard County
Pgs:17

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

BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into on May 13, 2014 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-A (Restricted Neighborhood Retail Commercial 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 desires to modify that certain Binding Development Plan dated March 4, 2008 recorded in Official Record Book 5848, Page 4612, and

3. This agreement shall supercede in the event where there is a conflict with with any prior agreement in force.

4. Notwithstanding the uses permitted in BU-1-A, the Developer/Owner agrees that the following uses 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, coin laundromat.

5. The Developer/Owner shall limit ingress and egress as follows:

A. Close existing Adams Place driveway permanently, which is located on southwest corner of property.

B. Construct full access driveway on Adams Place to line up with the driveway on the adjacent property to the west (Gas Station/ Convenience Store)

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 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 County the cost of recording this Agreement in 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 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 May 13, 2014. 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 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.

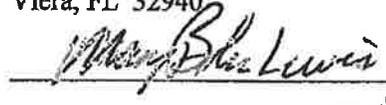
10. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate for incompatibility and must be satisfied before Developer/Owner may implement the approved use(s) unless stated otherwise. The failure to timely comply with any mandatory condition is a violation of this Agreement,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

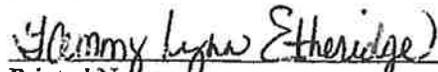

_____, Chairman

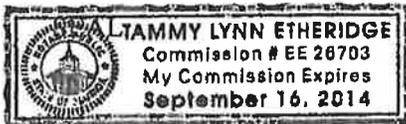
As approved by the Board on MAY 13 2014

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 13 day of May, 2014 by Mary Bolin Lewis, Chairman of the Board of County Commissioners of Brevard County, Florida, who is personally known to me or who has produced _____ as identification.

Notary Public:


Printed Name: Tammy Lynn Etheridge
My commission expires: 9-16-14



STATE OF FLORIDA
COUNTY OF BREVARD

This is to certify that the foregoing
is a true and current copy of Binding
Development Plan witness my hand
and official seal this 27 day of
May 2014

SCOTT ELLIS, Clerk of Circuit Court

BY _____ D.C.

[Signature]
Printed Name: James G. Ider

[Signature]
Printed Name: Diana L. Archambault

4725 FAY BLVD LAND TRUST AGREEMENT #1
U/A/D 02/10/2008

[Signature]
By: Carmine Ferraro
Its: Trustee

STATE OF FLORIDA)
COUNTY OF BREVARD)

The foregoing instrument was acknowledged before me this 7th day of April, 2014, by Carmine Ferraro as Trustee of 4725 FAY BLVD LAND TRUST AGREEMENT #1 U/A/D 02/10/2008, who is personally known to me or who has produced _____ as identification.



SEAL

Notary Public
[Signature]
Printed Name: _____
My commission expires: _____

Exhibit "A"

Legal Description:

Lot 12, Block 81, except the East 45 feet, PORT ST. JOHN UNIT THREE, according to the plat thereof, as recorded in Plat Book 22, Pages 25 through 35, of the Public Records of Brevard County, Florida.

Street Address: 4725 Fay Blvd.

Lewis, Sally A

From: Sterk, Erin
Sent: Monday, July 02, 2018 5:01 PM
To: Lewis, Sally A
Cc: Jones, Jennifer; Ragain, Rebecca
Subject: FW: PSJ 18PZ00021 - 4725 Fay Blvd, Rezoning Application Notice of Withdrawal

H.4

Hi Sally,

Would you make a note on the advanced agenda that the request below (18PZ00021) has been withdrawn by the applicant?

Many thanks,
Erin

From: Carmine Ferraro [<mailto:carmel32927@gmail.com>]
Sent: Monday, July 2, 2018 2:53 PM
To: Sterk, Erin; Ritchie, George C; Jones, Jennifer
Subject: PSJ 18PZ00021 - 4725 Fay Blvd, Rezoning Application Notice of Withdrawal

Erin:
After I relayed the comments made at the PSJ meeting a few weeks ago, to the Owners, there was considerable concern that if we went forward with this re-zoning in order to accommodate our tenant and his desire to open a private school, we would have significant resistance from the advisory board to switch back to commercial zoning if the Church terminated it's lease.

The decision was made to withdraw the application.

Please reply back confirming acknowledgement of this notice to withdraw Rezoning item#18PZ00021.

Regards

Make 2018 a Year to Remember!
Aspire Big!
Attempt even Bigger!
Ask beyond your Reach!
Accomplish Great Things!

Carmine Ferraro, President,
Crossover Commercial Group, Inc.

Licensed Real Estate Broker,
In Good Standing since 1987

Managing Member
Carmel Development, LLC
In Business Serving Florida since 2001

3860 Curtis Blvd., Suite 636
Port St. John, FL, 32927
(321) 536-5200 Cell/Direct

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