

F. Consent Agenda - Planning and Development
ITEM 2.



AGENDA REPORT
August 20, 2019

**Acceptance, Re: Binding Development Plan - Xiaolu Yin and Robert McBride
(District 4)**

SUBJECT:

Acceptance, Re: Binding Development Plan - Xiaolu Yin and Robert McBride (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 May 30, 2019, the Board approved a rezoning request from GU (General Use) to BU-2 (Retail, Warehousing, and Wholesale 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 Developer/Owner shall prohibit the following uses on the Property: auditoriums, automobile hire; automobile paint and body repair; automobile repairs; automobile sales; automobile tires and mufflers sales and service; automobile washing - mechanized; boat service; building materials and supplies; cabinetmaking and carpentry; commercial entertainment and amusement enterprises; contractors outdoor storage yards; engine service; farm machinery sales and service; feed and hay for animals and stock; fertilizer stores; flea markets; gasoline service stations; hotels; lumber sales; motels; motorcycle sales and service; outside sale of mobile homes; pet kennels; plant nurseries; recovered materials processing facility; restaurant outdoor seating; seafood processing plants; service station for automotive vehicles and U-Haul service; sharpening and grinding shops; theatres; towers and antennas; trailer and truck service; treatment and recovery facility; welding repairs and metal fabrication; outdoor storage or display of large items or

material which may require a forklift, front loader, tractor, or similar machinery to move shall be prohibited. Digital or electronic signs shall be limited to the Brevard County Sign Code.

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

August 21, 2019

MEMORANDUM

TO: Jennifer Jones, Zoning

RE: Item F.2., Binding Development Plan Agreement – Xiaolu Yin and Robert McBride

The Board of County Commissioners, in regular session on August 20, 2019, executed Binding Development Plan Xiaolu Yin and Robert McBride for property located on 3.57 acres, located on the northeast corner of Waelti Drive and Freeman Lane, Melbourne. Said Plan was recorded in OR/BK 8521/1208. 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 19PZ00035

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

WHEREAS, Xiaolu Yin and Robert McBride have requested a change of zoning classification from GU (General Use) to BU-2 (Retail, Warehousing, and Wholesale Commercial), on property described as Blocks 23 & 24, Plan of Town of Pineda, according to the map or plat thereof, as recorded in Plat Book 1, Page(s) 41, together with vacated right-of-way as described in Official Records Book 4818, Page 400, of the Public Records of Brevard County, Florida. **Section 12, Township 26, Range 36.** (3.57 acres) Located on the northeast corner of Waelti Drive, and Freeman Lane. (3350 Freeman Lane, Melbourne)

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 with a BDP (Binding Development Plan) with the following uses prohibited: auditoriums; automobile hire; automobile paint and body repair; automobile repairs; automobile sales; tires and mufflers sales and service; automobile washing – mechanized; boat service; building materials and supplies; cabinetmaking and carpentry; commercial entertainment and amusement enterprises; contractors outdoor storage yards; engine service; flea markets; gasoline service stations; hotels; lumber sales; motels; motorcycle sales and service; outside sale of mobile homes; pet kennels; plant nurseries; recovered materials processing facility; restaurant outdoor seating; seafood processing plants; service station for automotive vehicles and U-Haul service; sharpening and grinding shops; theatres; towers and antennas; trailer and truck service; treatment and recovery facility; welding repairs and metal fabrication; outdoor storage or display of large items or material which may require a forklift, front loader, tractor, or similar machinery to move shall be prohibited. Outdoor intercoms and public address systems shall be prohibited. Digital or electronic signs and billboards, whether static, animated, or intermittent, shall be prohibited. Freestanding signs shall be limited to the Brevard County Sign Code; 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; now therefore,

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested change of zoning classification from GU to BU-2, be approved, with a BDP, recorded in Official Records Book 8521, Pages 1208 – 1214, dated August 22, 2019, with the following uses prohibited: auditoriums; automobile hire; automobile paint and body repair; automobile repairs; automobile sales; tires and mufflers sales and service; automobile washing – mechanized; boat service; building materials and supplies; cabinetmaking and carpentry; commercial entertainment and amusement enterprises; contractors outdoor storage yards; engine service; flea markets; gasoline service stations; hotels; lumber sales; motels; motorcycle sales and service; outside sale of mobile homes; pet kennels; plant nurseries; recovered materials processing facility; restaurant outdoor seating; seafood processing plants; service station for automotive vehicles and U-Haul service; sharpening and grinding shops; theatres; towers and antennas; trailer and truck service; treatment and recovery facility; welding repairs and metal fabrication; outdoor storage or display of large items or material which may require a forklift, front loader, tractor, or similar machinery to move shall be prohibited. Outdoor intercoms and public address systems shall be prohibited. Digital or electronic signs and billboards, whether static, animated, or intermittent, shall be prohibited. Freestanding signs shall be limited to the Brevard County Sign Code. 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 August 22, 2019.

BOARD OF COUNTY COMMISSIONERS
Brevard County, Florida



Kristine Isnardi, Chair
Brevard County Commission

As approved by the Board on August 20, 2019.

ATTEST:



SCOTT ELLIS, CLERK

(SEAL)

Planning and Zoning Board Hearing – May 6, 2019

Board of County Commissioners Hearing – May 30, 2019

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.**

Prepared by: Anne Brucker-Busso
Address: 233 Waterside Drive, IHB, FL 32937

BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this 20 day of AUGUST, 2019 between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and Robert McBride and Xiaolu Yin. (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-2 zoning classification(s) and desires to develop the Property as a Boat and RV storage facility, 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 prohibit the following uses on the Property: auditoriums; automobile hire; automobile paint and body repair; automobile repairs; automobile sales; automobile tires and mufflers sales and service; automobile washing – mechanized; boat service; building materials and supplies; cabinetmaking and carpentry; commercial entertainment and amusement enterprises; contractors

outdoor storage yards; engine service; farm machinery sales and service; feed and hay for animals and stock; fertilizer stores; flea markets; gasoline service stations; hotels, lumber sales; motels; motorcycle sales and service; outside sale of mobile homes; pet kennels; plant nurseries; recovered materials processing facility; restaurant outdoor seating; seafood processing plants; service station for automotive vehicles and U-Haul service; sharpening and grinding shops; theatres; towers and antennas; trailer and truck service; treatment and recovery facility; welding repairs and metal fabrication; outdoor storage or display of large items or material which may require a forklift, front loader, tractor, or similar machinery to move shall be prohibited. Outdoor intercoms and public address systems shall be prohibited. Digital or electronic signs and billboards, whether static, animated, or intermittent, shall be prohibited. Freestanding signs shall be limited to the Brevard County Sign Code.

3. 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.
4. Developer/Owner, upon execution of this Agreement, shall pay to the Clerk of Court the cost of recording this Agreement in the Public Records of Brevard County, Florida.
5. 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 30, 2019. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.
6. 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.

7. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential 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 as described in Paragraph 6 above.

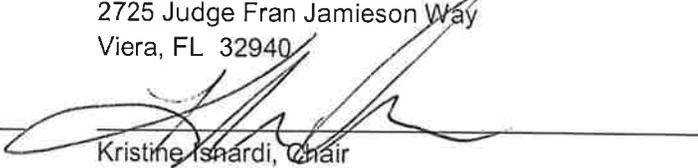
IN WITNESS THEREOF, the parties hereto have caused these presents to be signed all as of the date and year first written above.

ATTEST:



Scott Ellis, Clerk
(SEAL)

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



Kristine Ishardi, Chair

As approved by the Board on August 20, 2019

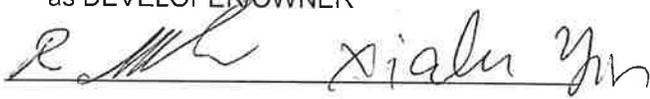
(Please note: You must have two witnesses and a notary for each signature required. The notary may serve as one witness.)

WITNESSES:

Robert McBride and Xiaolu Yin
as DEVELOPER/OWNER



PATRICIA BERTRAND
(Witness Name typed or printed)



3350 Freeman Lane
(Address) Melbourne FL 32940



PAUL BERTRAND
(Witness Name typed or printed)

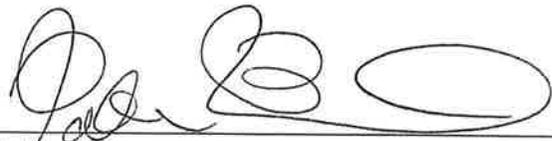
ROBERT MCBRIDE XIAOLU YIN
(Name typed, printed or stamped)

STATE OF Florida §

COUNTY OF Brevard §

The foregoing instrument was acknowledged before me this 24th day of June 2019,
2019, by Robert McBride and Xiaolu Yin, who is personally known to me or who has produced
as identification.

My commission expires 10/3/2020
SEAL
Commission No.: GG034925



Notary Public
PATRICIA BERTRAND
(Name typed, printed or stamped)

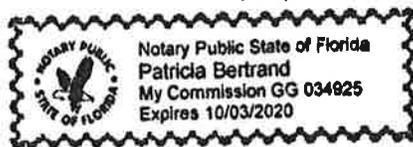


Exhibit "A"

Blocks 23 and 24, Plan of Town of Pineda, according to the map or plat thereof, as recorded in Plat Book 1, Page 41, together with vacated right-of-way as described in Official Records Book 4818, Page 400, of the Public Records of Brevard County, Florida.

JOINDER IN BINDING DEVELOPMENT PLAN

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, being the authorized agent and signatory for the owner and holder of that certain Mortgage dated July 31st, 2019 given by Xiaolu Yin, as mortgagor, in favor of the undersigned, JP Morgan Chase, as mortgagee, recorded in Official Records Book 0001, page 004, Public Records of Brevard County, Florida, and encumbering lands described in said Mortgage, does hereby join in the foregoing Binding Development Plan for the purpose of consenting to the change of property use and development requirements as set forth therein.

WITNESSES:

MORTGAGEE NAME/ADDRESS

Chase Bank

5390 stadium Pkwy, FL 32955
Viera,

(Address)

EDWARD DELL'OLIO

Edward Dell'olio

Authorized Agent Signature

R MCBRIDE

R McBride

(Witness name typed or printed)

(Name/title typed, printed or stamped)

PATRICIA BERTRAND

Patricia Bertrand

(Witness name typed or printed)

STATE OF Florida §

COUNTY OF Brevard §

The foregoing instrument was acknowledged before me this 31st day of July, 2019, by Edward Dell'Olio, who is personally known to me or who has produced DL 440-230-88-209-0 as identification.

My commission expires 10/3/2020

Patricia Bertrand



SEAL

Notary Public

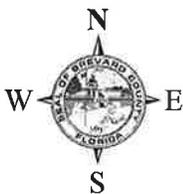
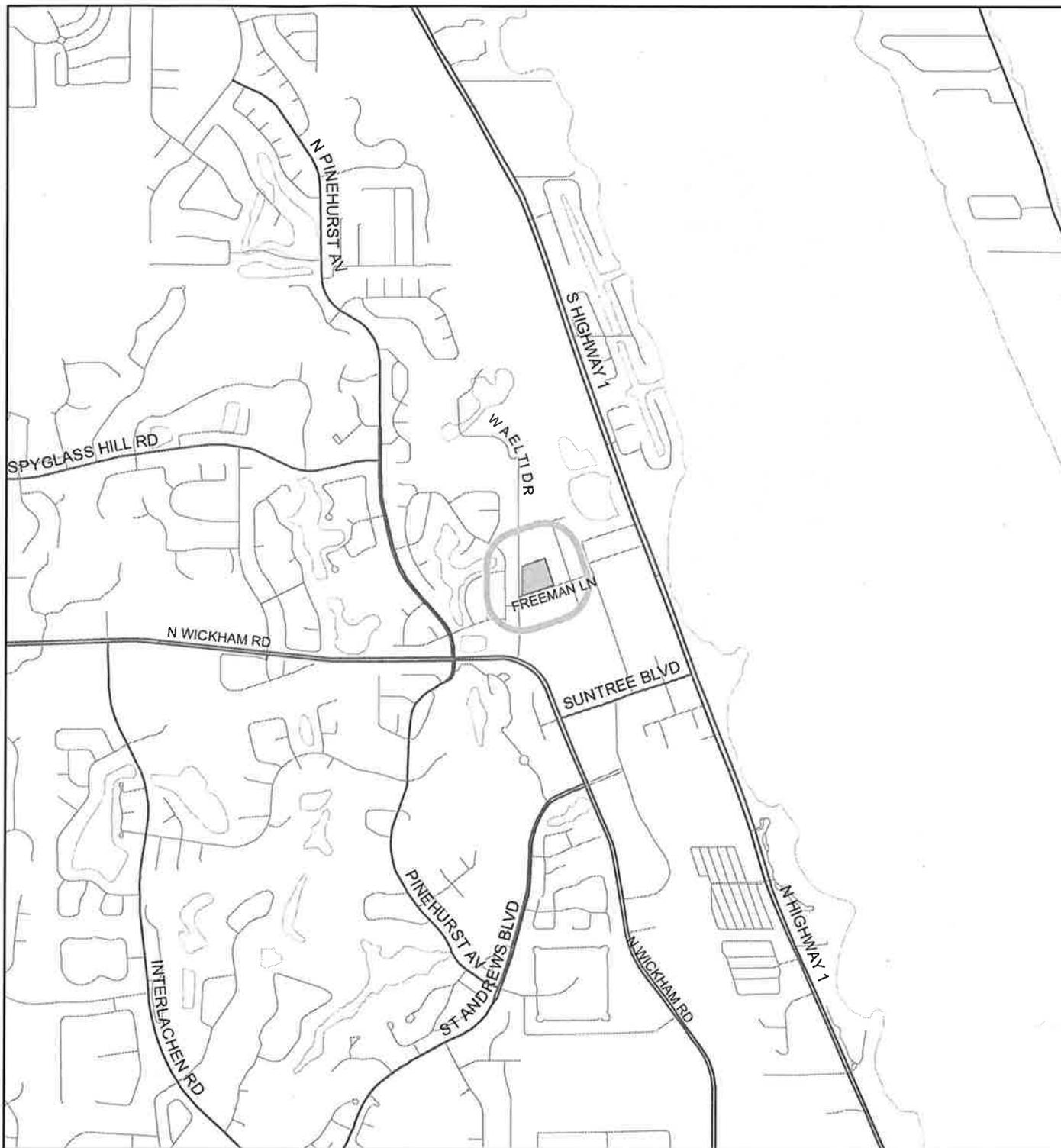
PATRICIA BERTRAND

Commission No.: GG 034925

(Name typed, printed or stamped)

LOCATION MAP

YIN, XIAOLU AND McBRIDE, ROBERT
19PZ00035



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: 3/6/2019

-  Buffer
-  Subject Property

Local Planning Agency Recommendation: Lawandales/Filiberto – Approved. The vote was unanimous. (Bruce Moia abstained from voting)

Board of County Commissioners Action: Smith/Lober – Approved as recommended, and adopted Ordinance 19-12. The vote was unanimous.

5. **Xiaolu Yin and Robert McBride** (Oscar Busso) requests a change of zoning classification from GU (General Use) to BU-2 (Retail, Warehousing, and Wholesale Commercial). The property is 3.57 acres, located on the northeast corner of Waelti Drive and Freeman Lane. (3550 Freeman Lane, Melbourne) (19PZ00035) (District 4)

Planning and Zoning Board Recommendation: Lawandales/Filiberto – Approved with a BDP (Binding Development Plan) with the following uses prohibited: auditoriums; automobile hire; automobile paint and body repair; automobile repairs; automobile sales; automobile tires and mufflers sales and service; automobile washing – mechanized; boat service; building materials and supplies; cabinetmaking and carpentry; commercial entertainment and amusement enterprises; contractors outdoor storage yards; engine service; farm machinery sales and service; feed and hay for animals and stock; fertilizer stores; flea markets; gasoline service stations; hotels, lumber sales; motels; motorcycle sales and service; outside sale of mobile homes; pet kennels; plan nurseries; recovered materials processing facility; restaurant outdoor seating; seafood processing plants; service station for automotive vehicles and U-haul service; sharpening and grinding shops; theatres; towers and antennas; trailer and truck service; treatment and recovery facility; welding repairs and metal fabrication; outdoor storage or display of large items or material which may require a forklift, front loader, tractor, or similar machinery to move shall be prohibited. Outdoor intercoms and public address systems shall be prohibited. Digital or electronic signs and billboards, whether static, animated, or intermittent, shall be prohibited. Freestanding signs shall be limited to the Sign Code. The vote was unanimous. (Bruce Moia abstained from voting)

Board of County Commissioners Action: Smith/Lober – Approved with a BDP as recommended. The vote was unanimous.

6. **Palm Bay REH, LLC** (Hitesh Patel) requests a CUP (Conditional Use Permit) for Alcoholic Beverages (full liquor) for On-Premises Consumption in conjunction with a restaurant, in a TU-1 (General Tourist Commercial) zoning classification. The property is 1.23 acres, located on the west side of U.S. Highway 1, approximately 290 feet north of Camp Road. (4885 North Highway 1, Cocoa) (19PZ00051) (District 1)

Planning and Zoning Board Recommendation: Lawandales/Moia – Tabled to the May 20, 2019, Local Planning Agency meeting, as the applicant failed to appear. The vote was unanimous.

Board of County Commissioners Action: Pritchett/Lober – Approved as recommended. The vote was unanimous.



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

May 31, 2019

MEMORANDUM

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

RE: Board Actions on Planning and Zoning Board Recommendations

The Board of County Commissioners, in regular session on May 30, 2019, took action on Planning and Zoning Board Recommendations.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

A handwritten signature in cursive script that reads "Tammy Rowe".

Tammy Rowe, Deputy Clerk

\cw

Encl. (1)

cc: Jennifer Jones, Zoning
County Attorney

PLANNING AND ZONING BOARD RECOMMENDATIONS

- Item H.1. Clark A. and Patricia Simms. Lober/Pritchett. Approved with Binding Development Plan limiting development to two lots, each developed with one single-family dwelling and one guesthouse with kitchen facilities.
- Item H.2. Robert Bailey. Pritchett/Lober. Denied request for Small Scale Plan.
- Item H.3. Robert Bailey. Pritchett/Lober. Denied.
- Item H.4. Xiaolu Yin. Smith/Lober. Adopted Ordinance No. 19-12, for Small Scale Plan Amendment 19S.09.
- Item H.5. Xiaolu Yin. Smith/Lober. Approved as recommended with Binding Development Plan limited to no auditoriums; automobile hire; automobile paint and body repair; automobile repairs; automobile sales; automobile tire and muffler sales and service; automobile washing – mechanized; boat service; building materials and supplies; cabinetmaking and carpentry; commercial entertainment and amusement enterprises; contractors outdoor storage yards; engine service; farm machinery sales and service; feed and hay for animals and stock; fertilizer stores; flea markets; gasoline service stations; hotels; lumber sales; motels; motorcycle sales and service; outside sale of mobile homes; pet kennels; plant nurseries; recovered materials processing facility; restaurant outdoor seating; seafood processing plants; service station for automotive vehicles and UHaul service; sharpening and grinding shops; theatres; towers and antennas; trailer and truck service; treatment and recovery facility; welding repairs and metal fabrication; outdoor storage or display of large items or material which may require a forklift, front loader, tractor, or similar machinery to move shall be prohibited. Outdoor intercoms and public address systems shall be prohibited. Digital or electronic signs and billboards, whether static, animated, or intermittent, shall be prohibited. Freestanding signs shall be limited to the Sign Code.
- Item H.6. Palm Bay REH, LLC (Hitesh Patel). Pritchett/Lober. Approved as recommended.
- Item H.7. Mark D. Hansson. Pritchett/Lober. Adopted Ordinance No. 19-13, for Small Scale Plan Amendment 19S.08.
- Item H.8. Mark D. Hansson. Pritchett/Lober. Approved with a Binding Development Plan limiting it to the operation being on the east side of the railroad tracks, no fast food restaurants, and no convenience stores with or without gas pumps.
- Item H.9. Douglas and Cindy Robertson (Bruce Moia). Tobia/Lober. Denied.
- Item H.10. Douglas and Cindy Robertson (Bruce Moia). Withdrawn by Applicant.

JOINDER IN BINDING DEVELOPMENT PLAN

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, being the authorized agent and signatory for the owner and holder of that certain Mortgage dated July 31st, 2019 given by Xiaolu Yin, as mortgagor, in favor of the undersigned, JP Morgan Chase, as mortgagee, recorded in Official Records Book 0001, page 004, Public Records of Brevard County, Florida, and encumbering lands described in said Mortgage, does hereby join in the foregoing Binding Development Plan for the purpose of consenting to the change of property use and development requirements as set forth therein.

WITNESSES:

MORTGAGEE NAME/ADDRESS

Chase Bank

Viera,
5390 stadium Pkwy, FL 32955

(Address)

EDWARD DELL'OLIO

Edward Dell'olio

Authorized Agent Signature

R McBRIDE

R McBride

(Witness name typed or printed)

(Name/title typed, printed or stamped)

Mitch Ribak

(Witness name typed or printed)

STATE OF FLORIDA §

COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 27 day of JUNE,
2019, by XIAOLU YIN, who is personally known to me or who has produced
FL DL as identification.

My commission expires

AUG 9, 2020

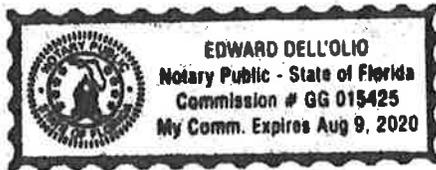
Notary Public

Edward Dell'Olio

SEAL

Commission No.: 66 015425

(Name typed, printed or stamped)



PATRICIA BERTRAND

(Witness name typed or printed)

Patricia Bertrand

STATE OF Florida §

COUNTY OF Brevard §

The foregoing instrument was acknowledged before me this 31st day of July, 2019, by Edward Dell'Olio, who is personally known to me or who has produced DL H40-230-88-209-0 as identification.

My commission expires 10/3/2020

SEAL



Commission No.: GG 034925

Patricia Bertrand

Notary Public

PATRICIA BERTRAND

(Name typed, printed or stamped)