



Brevard County Board of County Commissioners

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Legislation Text

File #: 5432, **Version:** 1

Subject:

Public Hearing, Re: Ordinance Amending Chapter 62, Article VI, Division 2, Section 62-1157, "Submission of a Binding Development Plan in Support of Request for Change of Zoning or Conditional Use Permit"

Fiscal Impact:

None

Dept/Office:

Planning & Development

Requested Action:

It is requested that the Board of County Commissioners conduct a public hearing and adopt the proposed ordinance amending Chapter 62, Article VI, Division 2, Section 62-1157, "Submission of a Binding Development Plan in support of request for change of zoning or conditional Use Permit".

Summary Explanation and Background:

On August 30, 2022, the Board of County Commissioners approved legislative intent and permission to advertise Amendments to Section 62-1157, Brevard County Code of Ordinances, to effectuate the following changes:

1. Requiring that an application for a Binding Development Plan (BDP) identify all legal and equitable owners of the property, and any entity with an interest in the property, including, but not limited to, any lienor(s);
2. Requiring that all legal or equitable owners of the property, and any entity with an interest in the property, including, but not limited to, any lienor(s) be a party to the BDP prior to the final approval by the Board of County Commissioners; and
3. Clarifying when the 120-day period to record a BDP begins.

The attached ordinance has been drafted to meet this direction.

These amendments are being requested for several reasons. First, requiring the owners of and interest-holders in the subject property be identified in the application and, ultimately, joined in the BDP is necessary to ensure such individuals/entities are bound by the BDP's terms and conditions. The requirement of being a party to the BDP could be met by being a signatory to the BDP itself or a signatory to a legal instrument such as a joinder that would bind the interest-holder to the BDP.

Additionally, while Section 62-1157(1)(g) states, in pertinent part, that “a certified copy of the recorded document shall be supplied to the zoning division within 120 days of approval by the board of county commissioners,” the Ordinance does not specify that the “approval” being referred to is the approval of the associated rezoning application at the public hearing stage or, where there is no associated rezoning application, when the Board approves an application to amend a BDP or otherwise makes an initial approval of a BDP application. Staff has consistently interpreted this subsection to have this meaning, but clarifying this potential ambiguity would assist in ensuring these agreements are executed and recorded in a timely manner. This is important because the official zoning maps that the public and many entities rely on for information reflecting zoning-related matters will not reflect the Board’s decision regarding an approval subject to the execution of a BDP until such recordation occurs.

On December 14, 2022, the Building Construction Advisory Committee heard the request and unanimously recommended approval.

On January 9th, 2023, the Planning and Zoning Board/Local Planning Agency heard the request and voted to recommend approval 8-1, with a request to include “clarification on the extension” of the 120-day period to record a BDP. The attached proposed ordinance implements this request by adding a procedure to allow an applicant to request a 60-day extension from the Board. It should be noted that within the past 3 years, only 1 BDP was withdrawn due to lack of recordation within the 120-day time period.

Clerk to the Board Instructions:

Once ordinance is filed with the State, please return two copies to Planning & Development.