BEFORE THE CITY COMMISSION

CITY OF STUART, FLORIDA

ORDINANCE NUMBER 2395-2019

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, AMENDING THE CITY'S OFFICIAL ZONING MAP, THEREBY APPLYING A LAND DEVELOPMENT ZONING DESIGNATION OF RPUD "RESIDENTIAL PLANNED UNIT DEVELOPMENT" TO THREE PARCELS OF LAND TOTALING 0.565 ACRES, OWNED BY FRAZIER CREEK LLC, FRAZIER CREEK TWO LLC, GARY L. HUFNAGEL AND KAROL HUFNAGEL, LOCATED AT 513, 517, AND 521 S.W. OCEAN BLVD., BEING MORE FULLY DESCRIBED IN EXHIBIT "A" ATTACHED; ESTABLISHING THE "TOWNHOMES AT FRAZIER CREEK" RESIDENTIAL PLANNED UNIT DEVELOPMENT (RPUD) CONSISTING OF TWO MULTI-FAMILY BUILDINGS WITH FOUR UNITS EACH IN THE URBAN WATERFRONT ZONING DISTRICT; ALLOWING BOTH BUILDINGS TO BE CONSTRUCTED WITH LESS THAN THE REQUIRED 10 FOOT SIDE SETBACK; PROVIDING FOR APPROVAL OF A MASTER SITE PLAN; PROVIDING FOR DEVELOPMENT CONDITIONS INCLUDING A TIMETABLE OF DEVELOPMENT, DECLARING THE PROJECT TO BE CONSISTENT WITH THE CITY'S COMPREHENSIVE PLAN; PROVIDING DIRECTIONS TO THE CITY CLERK; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE, PROVIDING FOR ACCEPTANCE BY THE APPLICANT AND FOR OTHER PURPOSES.

* * * * *

WHEREAS, the City Commission held a properly noticed hearing at a regularly scheduled City Commission to consider the application by Gary L. Hufnagel and Karol Hufnagel

(owners) of a .565 acre parcel of developed land located on the north side of S.W. Ocean Blvd. across from Shepard Park, and

WHEREAS, the City of Stuart has determined the need to assign RPUD zoning to said lands; and

WHEREAS, the Community Redevelopment Board held a properly noticed hearing at a regularly scheduled meeting to consider amending the city's official zoning map and approving a master site plan for two multifamily buildings with four units each and recommended approval for the rezoning on December 4, 2018; and

WHEREAS, on December 10, 2018, the City Commission held a properly noticed hearing at a regularly scheduled City Commission to consider the application by the owners, amending the city's official zoning map and approving a master site plan for two multifamily buildings with four units each, and

WHEREAS, the owners have requested a variance allowing both buildings to be constructed with less than the required 10 foot side setback on three lots for property located in the Urban Waterfront (UW) zoning district within the City's Community Redevelopment Area; and

WHEREAS, at the hearing the applicant showed by substantial competent evidence that the application does not create any detrimental effects on adjacent land uses within three hundred (300) feet of the proposed location; and

WHEREAS, the owners have committed to the City that its development will comply with all development codes, plans, standards and conditions approved by the City Commission; and that it will bind its successors in title to any such commitments made upon this ordinance; and

WHEREAS, the City Commission, has considered the Owner's voluntary request for a new zoning designation, and has also considered the recommendation of the City staff.

WHEREAS, at the hearing the applicant showed by substantial competent evidence that the application is consistent with the Stuart Comprehensive Plan, and the Land Development Code of the City, and with the procedural requirements of law; and

WHEREAS, this RPUD development will be in harmony with surrounding properties and their anticipated development; and

WHEREAS, the foregoing recitals are true and adopted as findings of fact and conclusions of law.

WHEREAS, the property is legally described in **"Exhibit A"** of this ordinance. A map depicting the property is attached hereto as **Exhibit "B"** and made a part hereof by reference; and development conditions including a timetable for construction of amenities attached hereto as **Exhibit "C";**

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA THAT:

SECTION 1: The following new documents are on file as public records of the City, at the office of the City Clerk in City Hall, and attached hereto as **Exhibit "D"**, hereinafter the "Development Documents", shall be deemed a part of this ordinance:

1. **Site Plan with Concept Drainage and Utility, Sheet 2, C. Calvert Montgomery and Associates Inc., dated 11.14.18.**
2. **Boundary Survey, Sheet 1, by Stephen J. Brown, Inc., Surveyors, Designers, Land Planners and Consultants dated July, 30, 2017.**
3. **Landscape Plan, Sheets 1 thru 4, by Michael Flaugh, Landscape Architect, dated 6.13.18 and last revised on 11.16.18.**

4. **Architectural First and Second Floor Plans, Sheets 2 and 3, by Kelly &Kelly Architects, dated 11.14.18.**
5. **Architectural Building Elevations, Sheets 4 and 5, by Kelly &Kelly Architects, dated 11.14.18.**

SECTION 2: The Zoning designation of the subject property shall be established as "RPUD" Residential Planned Unit Development on the City of Stuart's Official Zoning Map.

SECTION 3: Except as otherwise provided herein, no development permits, site permits, or building permits shall be issued by the City except in compliance with the City's Land Development Code.

SECTION 4: All ordinances or parts of ordinances in conflict with this ordinance or any part thereof is hereby repealed to the extent of such conflict. If any provision of this ordinance conflicts with any contractual provision between the City and the developer of the site, this ordinance shall prevail.

SECTION 5: If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 6: Following the adoption and acceptance of this ordinance by the Owners, and in addition to any other action for failure to complete development or otherwise comply with the Development Documents, the City Development Director may obtain a hearing before the City Commission, and shall thereupon give at least five (5) days written notice of the time, date and location of the hearing, along with specific notice of the alleged breach. At the hearing before the City Commission the developer may appear, and may contest the allegation of breach or explain

the reason or reasons for the breach. Upon a finding of a material breach of the Development Documents and therefore, the Ordinance(s) adopting the same, the City Commission may impose or do any or all of the following:

a. Initiate the process to amend or repeal this or any other ordinance pertaining to the development.
b. Direct the City Development Director to initiate the process to rezone the PUD property or any portion of the PUD property.
c. Impose an administrative penalty of up to $1,000.00 for each violation, and up to $5,000.00 for each repeat violation that occurs, along with all reasonable costs, including attorney's fees incurred by the City.

Any breach of any provision or condition of this PUD ordinance by the developer shall be considered a zoning violation subject to any remedies provided herein, or as otherwise provided by law. In the event a violation found continues from day to day, each day the violation is found to continue shall be deemed a separate violation.

SECTION 7: This ordinance and agreement shall be effective upon the last of the following to occur: adoption by the City Commission, and proper execution and acceptance by the Owners.

SECTION 8: The complete execution and recording of this Ordinance by the City Clerk shall occur no later than 60 days from the date of this approval, failing which this ordinance shall be void.

SECTION 9: Upon complete execution of this Ordinance, including the Acceptance and Agreement by the Owners, the City Clerk is directed to record a Certified Copy of the same in the Public Records of Martin County, Florida.

PASSED on First Reading this 10th day of December, 2018.

Commissioner _____ offered the foregoing ordinance and moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a roll call vote, the vote w

	YES	NO	ABSENT	ABSTAIN
REBECCA S. BRUNER, MAYOR				
EULA R. CLARKE, VICE MAYOR				
KELLI GLASS LEIGHTON, COMMISSIONER				
MERRITT MATHESON, COMMISSIONER				
MIKE MEIER, COMMISSIONER				

ADOPTED on second and final reading this _____day of _____, 2019.

ATTEST:

_____ _____

MARY R. KINDEL
CITY CLERK

REBECCA S. BRUNER
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

_____

MICHAEL MORTELL
CITY ATTORNEY

CITY'S ACKNOWLEDGMENT

The above Ordinance, Acceptance and Agreement was acknowledged before me this _____day of _____, 2018, by REBECCA S. BRUNER, Mayor, and Mary R. Kindel, City Clerk, respectively, of the City of Stuart, Florida, a Florida municipal corporation.

_____

Notary Seal

Notary Public, State of Florida, at large
My Commission Expires:

ACCEPTANCE AND AGREEMENT

BY SIGNING THIS ACCEPTANCE AND AGREEMENT, THE UNDERSIGNED HEREBY ACCEPTS AND AGREES TO ALL OF THE TERMS AND CONDITIONS CONTAINED IN A RESIDENTIAL PLANNED UNIT DEVELOPMENT AND IN ALL EXHIBITS, ATTACHMENTS AND DEVELOPMENT DOCUMENTS, INTENDING TO BE BOUND THEREBY, AND THAT SUCH ACCEPTANCE AND AGREEMENT IS DONE FREELY, KNOWINGLY, AND WITHOUT ANY RESERVATION, AND FOR THE PURPOSES EXPRESSED WITHIN THE ABOVE ORDINANCE. IF IT IS LATER DISCOVERED THAT THE UNDERSIGNED, OR ITS SUCCESSORS OR ASSIGNS HAVE FAILED IN ANY MATERIAL WAY TO DEVELOP THIS RESIDENTIAL PLANNED UNIT DEVELOPMENT ACCORDING TO THIS ORDINANCE, ITS CONDITIONS, AND THE DEVELOPMENT PLANS AND DOCUMENTS, THE UNDERSIGNED UNDERSTANDS AND AGREES THAT THIS ORDINANCE MAY BE AMENDED OR REPEALED BY THE CITY COMMISSION, AND THAT OTHER ACTIONS MAY BE TAKEN AGAINST THE UNDERSIGNED BY THE CITY, INCLUDING BUT NOT LIMITED TO CODE ENFORCEMENT ACTIONS, PERMIT AND LICENSING REVOCATIONS, AND ALL APPLICABLE CIVIL AND CRIMINAL ACTIONS.

IN WITNESS WHEREOF THE UNDERSIGNED HAS EXECUTED THIS ACCEPTANCE AND AGREEMENT:

WITNESSES:

Frazier Creek, LLC, a Florida limited liability company

_____

By:_____
Gary L. Hufnagel, Manager

Print Name: _____

_____

Print Name: _____

OWNER'S ACKNOWLEDGMENT

The above Ordinance, Acceptance and Agreement was acknowledged before me this _____ day of_____, 2019, by Gary L. Hufnagel, Manager of Frazier Creek, LLC, a Florida limited liability company, on behalf of the Company.

Personally Known ____ OR Produced Identification ____ Type of Identification Produced

_____

_____
Notary Public, State of Florida, at large
My Commission Expires:

Notary Seal

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WITNESSES: **Frazier Creek Two, LLC, a Florida limited liability company**

_____ By: _____
Gary L. Hufnagel, Manager

Print Name: _____

_____

Print Name: _____

OWNER'S ACKNOWLEDGMENT

The above Ordinance, Acceptance and Agreement was acknowledged before me this _____ day of_____, 2019, by Gary L. Hufnagel, Manager of Frazier Creek Two, LLC, a Florida limited liability company, on behalf of the Company.

Personally Known ____ OR Produced Identification ____ Type of Identification Produced

_____

_____
Notary Public, State of Florida, at large
My Commission Expires:

Notary Seal

WITNESSES:

_____ _____
Gary L. Hufnagel

Print Name: _____

_____

Print Name: _____

OWNER'S ACKNOWLEDGMENT

The above Ordinance, Acceptance and Agreement was acknowledged before me this _____ day of_____, 2019, by Gary L. Hufnagel.

Personally Known ____ OR Produced Identification ____ Type of Identification Produced

_____

Notary Seal

_____
Notary Public, State of Florida, at large
My Commission Expires:

WITNESSES:

_____ _____
Karol Hufnagel

Print Name: _____

_____

Print Name: _____

OWNER'S ACKNOWLEDGMENT

The above Ordinance, Acceptance and Agreement was acknowledged before me this _____ day of_____, 2019, by Karol Hufnagel.

Personally Known ____ OR Produced Identification ____ Type of Identification Produced

_____

_____
Notary Public, State of Florida, at large
My Commission Expires:

Notary Seal

Exhibit A – Legal Description

KITCHINGS ADDN LOTS 8 & 9, BLK 4 KITCHING'S ADD'N, LOT 10 BLK 4 KITCHING'S ADD'N and LOT 11 BLK 4, final Plat of Kitching's Addition to the town of Stuart, Florida, according to the Plat thereof, filed March 17,1913 and recorded in Plat Book 2, Page 86, Palm Beach now Martin County, Florida, Public Records.

EXHIBIT B – LOCATION MAP



EXHIBIT C – DEVELOPMENT CONDITIONS

Approved Plans and Documents (Exhibit D)

1. **Site Plan with Concept Drainage and Utility, Sheet 2, C. Calvert Montgomery and Associates Inc., dated 11.14.18.**
2. **Boundary Survey, Sheets 1, by Stephen J. Brown, Inc., Surveyors, Designers, Land Planners and Consultants dated July, 30, 2017.**
3. **Landscape Plan, Sheets 1 thru 4, by Michael Flaugh, Landscape Architect, dated 6.13. 18 and last revised on 11.16. 18.**
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5. **Architectural Building Elevations, Sheets 4 and 5, by Kelly &Kelly Architects, dated 11.14.18.**

Prior to Issuance of Site Permits

1. Applicant shall provide a digital boundary survey and civil plan prior to the issuance of any site permits.

2. Final Development plans and/or Construction Drawings and Building Plans shall be submitted, reviewed, and approved by the City prior to the issuance of any Development Permits.

3. Civil Plans shall be reviewed and approved by all applicable City departments prior to the issuance of a site permit.
4. All regulatory agency permits, including but not limited to the South Florida Water Management District and Army Corp of Engineers, shall be obtained by the applicant and copies provided to the City prior to the commencement of any development activities.

5. Prior to issuance of a building permit, the applicant shall either contribute the required art fee of one percent of the vertical construction cost or provide work of art on the development pursuant to Section 3.01.08.

Development and Construction

6. Except as otherwise set forth in the Frazier Creek RPUD, development shall comply with the City Land Development Code. Any modifications to the Master Site Plan that exceeds 10% of the approved building footprint, building setbacks, gross square footage, building location, parking size, location and number of parking, drainage areas, and location of landscaping, may be approved by the City's Development Director, provided however, the Development Director may refer the matter to the City Commission for approval via public hearing.

7. All applicable state or federal permits must be obtained before the commencement any development activities. Issuance of this development order/permit/approval by the City of Stuart does not in any way create any right on the part of an applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the City of Stuart for the issuance of this order/permit/approval if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law.

8. The maximum building height within the RPUD shall be thirty five (35) feet otherwise the maximum building height o two stories. Height shall be measured from the lowest permissible finished first floor elevation to the surface of a flat roof and to the eave of a pitched roof. The peak of a pitched roof may not exceed 15 feet above the maximum building height.

9. The developer shall provide an 8 foot wide sidewalk in front of the project along N.W. Ocean Blvd.

10. In the event of any conflict in the provisions of Exhibit 'C' Development Conditions and attached exhibits, Exhibit 'C' shall prevail.

11. Prior to certificate of occupancy of the last building, the applicant shall provide an engineer's written confirmation attesting that the RPUD's storm water system is in place and functioning in compliance with all approved plans and specifications.

12. Construction activity shall be limited from 7.00 am to 6:00 pm Monday – Saturday.

13. Any existing infrastructure, sidewalk or private property that is damaged during construction shall be repaired or replaced prior to the issuance of a Certificate of Occupancy.

14. Temporary or freestanding storage units are prohibited on the property once construction is complete.

Landscaping

15. The common buffer and other common areas shall be provided with landscaping with an irrigation system of sufficient capacity to maintain the landscaping in a healthy growing condition.
16. "Hat racking" of trees is prohibited on the property.
17. The City's landscape inspector shall have the opportunity to inspect all trees and/or landscape material with the landscape architect prior to installation.
18. The applicant shall install a 6 foot tall fence or wall along the east property line as described on the site plan.

Development Timetable

19. Timetable for development shall be as follows:

Demolition permit submittals for each of the three houses on 513,517 and 521 SW Ocean Blvd.	**May 30, 2019**
Demolition of each of the buildings on 513,517 and 521 SW Ocean Blvd.	**November 30, 2019**
Final Certificate of Occupancy for all site and building improvements.	**November 30, 2021**

Allowable Uses

20. The following uses shall be permitted:
    a. Multifamily Townhomes.

Prohibited

21. No temporary or modular buildings are permitted on the property except for permitted temporary construction/leasing trailers.
22. Billboards are prohibited on the property.
23. Banners and any other sign or advertising device not in accordance with the City's Land Development Regulations are prohibited.

Platting- HOA Requirements & Future Amendments

24. Plat approval per Section 11.01.06.1 shall occur prior to any future development permit for any development activity, no permit for development including site work and infrastructure, shall be issued by the City unless and until a plat has been approved by the City Commission and recorded in the public records.
25. The PUD may be conveyed to 8 separate home owners without further amendment to this Ordinance. Prior to application for any development, the applicant/developer shall form a HOA (Homeowners Association) or other similar entity acceptable to the City Attorney, which shall be singularly responsible for the perpetual maintenance of the common site features including the improved platted alley at the rear of the site.
26. Any applications to amend this Ordinance shall be limited to the developer or the Home Owners Association.