



City of New Smyrna Beach

January 27, 2016

MEMBERS OF THE LOCAL PLANNING AGENCY
PLANNING AND ZONING BOARD
New Smyrna Beach, Florida

THIS SHALL SERVE AS YOUR OFFICIAL NOTIFICATION of a special meeting of the LOCAL PLANNING AGENCY AND THE PLANNING AND ZONING BOARD on THURSDAY, February 4, 2016 at 6:30 P.M., in the **CITY COMMISSION CHAMBERS, 210 SAMS AVENUE**, New Smyrna Beach, FL, for consideration of the following:

ROLL CALL

OLD BUSINESS

A. V-3-15: 176 Corbin Park Rd / Capuano

Vincenzo Capuano, 4311 Sea Mist Drive, New Smyrna Beach, FL 32169 owner and applicant requests variances in order to construct a new 150 seat restaurant as follows:

1. Reduce the required build-to line from SR 44 from 45-65 feet to 40 feet including a 15 foot utility easement
2. Reduce the second front yard set back (from Corbin Rd) from 25 feet to 21 feet
3. Reduce the side (south) buffer from 7 to 2 feet
4. Reduce the required parking space dimensions from 10 feet by 20 feet to 9 feet by 18 feet
5. Reduce the minimum parking aisle width from 22 feet to 20 feet
6. Reduce the parking area interior landscaping from 20 percent to 8 percent
7. Reduce the side yard (west) setback from 25 feet to 10 feet.

NEW BUSINESS

B. NEW SMYRNA CHRYSLER – DODGE – JEEP – RAM / SR 44

Glenn D. Storch, 420 South Nova Road, Daytona Beach, Florida 32114, applicant on behalf of Mitchell Equity Group LLLP, P O Box 2180, New Smyrna Beach, Florida 32170, request variances to construct a new commercial building or an automotive dealership as follows:

1. A variance for the minimum open space requirement to be 25 % in lieu of 50 %;
2. A variance for the natural vegetation requirement to be 15 % in lieu of 30 %;
3. A variance for the maximum building height to be 45 feet in lieu of 35 feet;
4. A variance for the required on-site parking to be 43 spaces in lieu of 147 spaces;

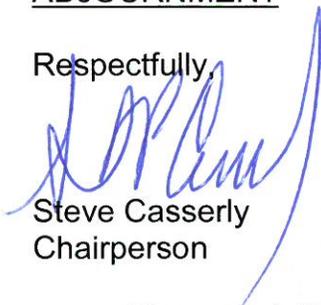
5. A variance for a the second permitted monument sign to be 48 square feet in lieu of 24 square feet;
 6. A variance to require no more than thirty-six (36) 2 ½ inch caliper replacement hardwood trees per acre, in lieu of the requirements of the LDR;
 7. A variance to allow preservation of 15 specimen trees in lieu of 16;
 8. A variance for tree mitigation costs to be determined based on the actual cost of purchasing, planting and maintaining an approved species of 2 ½ inch caliper replacement hardwood tree, in lieu of \$500.00 per 2 ½ inch caliper hardwood; and
 9. In the event a build-to line is required for the east property line along Glencoe Road, a variance for said east build-to line to be 25 – 850 feet in lieu of 25 feet.
- The subject property is zoned PUD and is in the SR 44 Corridor Overlay Zone (COZ), contains approximately 12 acres, and is generally located north of SR-44 and west of North Glencoe Road. (VCPA # 7323-02-01-0080)

COMMENTS OR STATEMENTS BY BOARD MEMBERS

REPORTS AND COMMUNICATIONS BY STAFF

ADJOURNMENT

Respectfully,



Steve Casserly
Chairperson

cc: Mayor and City Commissioners
City Manager
City Clerk
City Attorney
Planning Manager
Planners
Members of the Press

Pursuant to Florida Statutes 286.01015, if an individual decides to appeal any decision made by the Planning & Zoning Board with respect to any matter considered at this meeting, a record of the proceedings will be required and the individual will need to ensure that a verbatim transcript of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based. Such person must provide a method for recording the proceedings.

In accordance with the Americans With Disabilities Act, persons needing assistance to participate in any of these proceedings should contact the Board Secretary listed below prior to the meeting:

Ursula Moccia, Planning and Zoning Secretary

LPA/PLANNING AND ZONING BOARD

FEBRUARY 4, 2016

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City of New Smyrna Beach
2650 N. Dixie Freeway
New Smyrna Beach, FL 32168
(386) 410-2830

LPA / PLANNING AND ZONING BOARD
MINUTES
JANUARY 4, 2016

The Local Planning Agency / Planning and Zoning Board held a regular meeting on Monday, January 4, 2016 in the City Commission Chambers, 210 Sams Avenue, New Smyrna Beach, Florida. Chairperson Travous Dever called the meeting to order at 6:30p.m.

ROLL CALL

The following members were present:

Travous Dever
Stephen Sather
Ian Ratliff
Pat Arvidson
Jamie Calkins
Steven Casserly
Kelly Azzinaro

Also present were Assistant City Attorney Greg McDole; Interim Planning Manager Jeff Gove; Planner Robert Mathen; Planner Steve Bapp; Board Secretary Tammy Dickerson and members of the public.

ELECTION OF CHAIR AND VICE CHAIR

Mr. Sather nominated Mr. Casserly as Chair, seconded by Mr. Calkins. Motion passed unanimously on a roll call vote, 7-0.

Mr. Calkins nominated Mr. Ratliff as Vice-Chair, seconded by Pat Arvidson. Motion passed unanimously on a roll call vote, 7-0.

APPROVAL OF MINUTES

Motion by Mr. Calkins, seconded by Ms. Azzinaro, to approve the minutes of the regular December 7, 2015, Planning and Zoning Board meeting. Motion passed unanimously on a roll call vote, 7-0.

Mr. Dever stated that case V-3-16: 176 Corbin Park Road was advertised but it's not on the agenda and won't be heard at tonight's meeting. He also stated that the following case is requesting continuance:

- J. **SP-19-15: RESPLENDENT MF / PORTOFINO BLVD. (CLASS III)**
Mark Dowst, P.E., 536 N. Halifax Ave., Suite 100, Daytona Beach, FL 32118, applicant and authorized representative of property owner Venetian View Ventures LLC, 1474 W 84th Street, Hialeah, FL 33014, requests Class III site plan approval for a new multi-family facility proposed for 267 units on an undeveloped 14.88 acre site. The property is within the Venetian Bay PUD zoned

community, and is generally located north of Portofino Boulevard and east of Airport Road, within Tract F of Venetian Bay Ph 2 Unit 1 (VCPA # 7317-01-00-0002).

Mr. Gove stated that the applicant has requested to continue this case until the March 7, 2016 meeting agenda. He stated that the applicant isn't here tonight and there hasn't been a staff report prepared. He stated that they didn't meet the technical issues and therefore they couldn't be heard at tonight's meeting.

Motion by Mr. Sather, seconded by Mr. Casserly, to continue this case SP-19-15 Resplendent MF / Portofino Boulevard (Class III) to the March 7, 2016, Planning and Zoning Board meeting. Motion passed unanimously on a roll call vote, 7-0.

PUBLIC PARTICIPATION

Chairman Casserly opened public participation.

No one from the public spoke regarding any items that were not on the agenda.

Chairman Casserly closed public participation.

OLD BUSINESS

- A. V-13-15: SOUTH ATLANTIC AVENUE/OVERCHUCK
John and Natacha Overchuck, 641 Manor Road, Maitland, Florida 32751, applicants and property owners, requests approval of a variance to reduce the required front yard setback on a corner lot from 10' to 5'. The subject property consists of approximately 0.4 acres, is currently zoned R-6, Multi-Family Residential, and is located southeast of the intersection of East 16th Avenue and Hill Street. (VCPA PID # 7422-01-17-0010) (This case was continued from its previously scheduled October 5, 2015, November 11, 2015, and December 7, 2015 meetings, due to inadequate public notice by and/or request of the applicant).

Mr. Gove stated that the case was withdrawn by the applicant.

NEW BUSINESS

- B. A-1-16: 1921 & 1933 SOUTH GLENCOE ROAD / 2575 ERENA DRIVE
George and Mary Seney, 1921 South Glencoe Road, New Smyrna Beach, Florida 32168, applicant and property owners, request voluntary annexation, *Comprehensive Plan* amendment from Volusia County Rural to City Rural, and rezoning from Volusia County A-4, Transitional Agriculture to City A-4, Transitional Agriculture, &
Steven L. and Rachel D Hardock, 806 Oakview Drive, New Smyrna Beach, Florida 32169, applicants and property owners, request voluntary annexation, *Comprehensive Plan* amendment from Volusia County Rural to City Rural, and rezoning from Volusia County RA, Rural Agricultural Estate to City RA, Rural Agriculture Estate.

The subject properties consist of approximately 7.5 acres, and are generally located south of SR 44, addressed as 1921 South Glencoe Road (VCPA# 7335-00-00-0063), 1933 South Glencoe Road (VCPA# 7335-00-00-006A), and 2575 Erena Drive (VCPA# 7335-00-00-0074).

C. A-2-16: VACANT PARCEL ON ROSS LANE / 436 WARREN AVENUE

Larry E. Buck, 1603 South Riverside Drive, New Smyrna Beach, Florida 32168, and Cynthia V. Buck, 551 Doras Lane, Bakersville, North Carolina, 28705, and Michael R. Buck, 1143 Corbin Park Road, New Smyrna Beach, Florida 32168 applicants and property owners, request voluntary annexation, *Comprehensive Plan* amendment from Volusia County UMI, Urban Density Intensity to City MDR, Medium Density Residential and rezoning from Volusia County R-4, Urban Single-Family Residential to City R-2, Single-Family Residential.

Suzanne T. Palmer, 436 Warren Avenue. New Smyrna Beach, Florida 32168, applicant and property owner, request voluntary annexation, *Comprehensive Plan* amendment from Volusia County UMI, Urban Density Intensity to City MDR, Medium Density Residential and rezoning from Volusia County R-4, Urban Single-Family Residential to City R-2, Single-Family Residential.

The subject properties consist of approximately 0.44 acres, and are generally located on the north side of Ross Lane (VCPA# 7419-00-00-0330), and north of Canal Street addressed as 436 Warren Avenue (VCPA# 7418-01-23-0010).

D. A-3-16: 2362 MELONIE TRAIL / 2342 MELONIE TRAIL

Robin A. Vinay, 2362 Melonie Trail, New Smyrna Beach, Florida 32168, applicant and property owner, request voluntary annexation, *Comprehensive Plan* amendment from Volusia County Rural to City Rural, and rezoning from Volusia County A-3, Transitional Agriculture to City A-3, Transitional Agriculture.

Jack V. Travis, 2342 Melonie Trail, New Smyrna Beach, Florida 32168, , applicant and property owner, request voluntary annexation, *Comprehensive Plan* amendment from Volusia County Rural to City Rural, and rezoning from Volusia County A-3, Transitional Agriculture to City A-3, Transitional Agriculture.

The subject properties consist of approximately 2 acres, and are generally located east of the East Coast Railroad and north of Williams Road, addressed as 2362 Melonie Trail, (VCPA# 7340-04-00-0160) and 2342 Melonie Trail, (VCPA#7340-04-00-0170).

E. A-4-15: 411 OLD MISSION ROAD

Douglas J. Thompson, 400 Rush Street, New Smyrna Beach, Florida 32168, applicant and property owner, request voluntary annexation, *Comprehensive Plan* amendment from Volusia County UMI, Urban Medium Intensity to City MDR, Medium Density Residential, and rezoning from Volusia County R-4, Urban Single-Family Residential to City R-2, Single-Family Residential. The subject property consists of approximately 0.345 acres, and is generally located south of SR 44 addressed as 411 Old Mission Road (VCPA# 7419-14-11-0040).

F. A-5-16: 2218 DOSTER DRIVE

Edward and Carol Fisher, 2218 Doster Drive, New Smyrna Beach, Florida 32168, applicant and property owner, request voluntary annexation,

Comprehensive Plan amendment from Volusia County ULI, Urban Low Intensity to City LDR, Low Density Residential, and rezoning from Volusia County R-4, Urban Single-Family Residential to City R-2, Single-Family Residential. The subject property consists of approximately 0.69 acres, and is generally located south of SR 44 addressed as 2218 Doster Drive (VCPA# 7344-03-00-0270).

Mr. Mathen reviewed staffs' findings and stated that staff recommended approval of the requested annexations, *Comprehensive Plan* amendments and rezonings. He stated that staff was able to find capable zoning for all applicants except zoning for 1921 South Glencoe Road. He stated that staff has prepared a zoning text amendment to have a compatible zoning district for this parcel which is item G on tonight's agenda. He stated that their approval would be conditioned upon the approval of this zoning text amendment.

Motion by Mr. Dever, seconded by Mr. Calkins, to recommend the City Commission approve the requested annexations, *Comprehensive Plan* amendments, and rezonings with the condition that the zoning text amendment ZT-1-16 is approved for the zoning for A-1-16: 1921 South Glencoe Road. Motion passed unanimously on a roll call vote, 7-0.

G. ZT-1-16: A-4, TRANSITIONAL AGRICULTURE ZONING DISTRICT
The City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach, Florida, 32168, requests approval of amendments to the City's *Land Development Regulations* to create the A-4, Transitional Agriculture zoning district.

Mr. Mathen reviewed staffs' findings and stated that staff recommended approval of the proposed changes to the City's *Land Development Regulations*.

Motion by Mr. Sather, seconded by Mr. Ratliff, to recommend the City Commission approve the requested zoning text amendment. Motion passed unanimously on a roll call vote, 7-0.

H. S-9-15: CALLALISA PRESERVE PPL & FPL
Patrick J. Knight, 1900 Adams Dr. E., Maitland, FL 32751, applicant and representative of property owner 524SouthPeninsula, LLC, same address, requests Preliminary & Final Plat approval for an 8 lot single family & duplex subdivision, with associated site improvements. The subject property consists of approximately 3.09 acres, is currently zoned R-4, Multi-Family Residential, and is generally located on the west side of South Peninsula Avenue between Ocean Avenue to the north and 2nd Avenue to the south, on the north and south sides of the Marker 33 entrance driveway (VCPA PID # 7416-00-00-0353).

Mr. Gove reviewed staffs' findings and stated that staff recommends the Planning and Zoning Board approve a recommendation to the City Commission for the requested preliminary and final plat with the following conditions:

- a. The Planning and Zoning Board specifically approve the layout shown on the Exhibit C plans, as required under Section 605.01 F (3) of the LDR, for those seven (7) proposed lots that each have "*direct access and is adjacent to an access drive having a minimum width of 20 feet and approved by the Planning*

and Zoning Board of New Smyrna Beach, but has not been accepted for maintenance by the City and is not available for public uses,”

- b. All outstanding staff comments be addressed, and the plat is approved by all PRC members, prior to City Commission approval, and
- c. A review of the plat be completed by an independent surveyor contracted by the City at the applicant’s expense, to confirm the survey and plat as presented by the applicant, prior to City Commission approval.

Motion by Mr. Sather, seconded by Mr. Dever, to recommend the City Commission approve the requested preliminary and final plat with the following conditions:

- a. **The Planning and Zoning Board specifically approve the layout shown on the Exhibit C plans, as required under Section 605.01 F (3) of the LDR, for those seven (7) proposed lots that each have “*direct access and is adjacent to an access drive having a minimum width of 20 feet and approved by the Planning and Zoning Board of New Smyrna Beach, but has not been accepted for maintenance by the City and is not available for public uses,”***
- b. **All outstanding staff comments be addressed, and the plat is approved by all PRC members, prior to City Commission approval, and**
- c. **A review of the plat be completed by an independent surveyor contracted by the City at the applicant’s expense, to confirm the survey and plat as presented by the applicant, prior to City Commission approval.**

Motion passed unanimously on a roll call vote, 7-0.

I. SP-8-15: BRILLIANCE ALF – US1 & WAYNE AVE / AILANI (CLASS III)

Dr. Rajesh Ailani, PCCC of Volusia, LLC, 1055 No. Dixie Freeway, New Smyrna Beach, FL 32168, applicant and owner, requests Class III site plan approval for the redevelopment of existing buildings for conversion into a 54 bed Assisted Living Facility (ALF) on a 1.2 acre developed site at the southeast corner of the intersection of US1 and Wayne Avenue that is zoned B3, Highway Service Business District (VCPA PID # 7441-02-00-1020).

Mr. Gove reviewed staffs’ findings and stated that staff recommends the Planning and Zoning Board approve the requested site plan with the condition that any outstanding items be addressed by the applicant for the plan to then be approved by all PRC members, as part of the review process still pending at the time of this report.

Grant Renee, Yazz Consultants LLC Engineer for the project, stated his name then addressed the Board. He stated that the driveway access was a FDOT safety improvement. He stated that he was here for any questions the Board might have.

Motion by Mr. Dever, seconded by Mr. Sather, to approve the site plan with the condition that any outstanding items be addressed by the applicant for the plan to then be approved by all PRC members, as part of the review process still pending at the time of this report. Motion passed unanimously on a roll call vote, 7-0.

K. V-1-16: 101 ESTHER STREET / DARRENKAMP

Kevin C. and Terri L. Darrenkamp, 101 Esther Street, New Smyrna Beach, Florida 32169, requests approval of a variance from Land Development Regulation 803.03 to allow a 6 foot high fence in a front yard. The subject property consists of approximately 0.28 acres, is zoned R-2, Single-Family Residential, and is generally located west of North Peninsula Avenue and north of Flagler Avenue addressed as 101 Esther Street. (VCPA#7455-01-00-0991).

Chairman Casserly swore in Mr. Mathen. Mr. Mathen stated his qualifications and educational background and he was qualified as an expert witness. Mr. Mathen reviewed staffs' findings and stated that staff recommended staff recommends denial. However, should the Board determine that all five variance criteria have been satisfied, staff would recommend that the following conditions be applied to the Board's approval:

1. The variances only apply to the sections of fence showed on Exhibit D and not for other accessory structures.
2. The property owner applies for and receives a building permit for the section of fence listed as request # 1, from the City Building Department within 60 days or this portion of the variance would be null and void.
3. The property owner applies for and receives a building permit for the section of fence listed as request # 2, from the City Building Department within 2 years or this portion of the variance would be null and void.

Kevin Darrenkamp, applicant, was sworn in to testify then addressed the Board. He stated that there are two separate reasons for the variance request one being trespassing and vandalism and the other being harassment from the neighbors. He stated that their intent was to put up a 6-foot wooden fence. He discussed the comments that were provided by the neighbors including the legal issues.

Mr. Sather asked if the property had been vacant before they purchased the property.

Terri Darrenkamp, applicant, was sworn in to testify then addressed the Board. She stated that she was told the property was vacant for approximately 10 months before they purchased the property. She stated that after they called the police department during a trespassing issue they were told by the police department that it was partying place during that time period.

Mr. Darrenkamp stated that they have occupied the property for 3 years and the trespassing still hasn't subsided.

Ms. Azzinaro asked if construction is still ongoing.

Mr. Darrenkamp stated that was correct and even when it is completed they don't think the harassment will stop.

Mr. Ratliff asked if a 4-foot fence wouldn't suffice for this issues they were having.

Mr. Darrenkamp stated that they believe people will just jump over it that 2 more feet makes a big difference.

Mr. Dever stated that he thought maybe a 6-foot slated metal fence might work for the trespassing and wouldn't obstruct the view.

Mr. Darrenkamp stated that would be a great idea if trespassing was the only issue but the harassment from the neighbors is the other reason for this request.

Mr. Calkins and Mr. Sather stated that they visited the property.

Mr. Ratliff asked the applicants how they met the variance requirements.

Mr. Darrenkamp stated that we don't feel a privilege to have to put up this fence and a nearby neighbor also has a 6-foot fence so they wouldn't be the only property in the neighborhood with a 6-foot fence. He stated that it's at dead-end so there wouldn't be a traffic issue.

Doyle Kennedy, 2642 Sunset Drive, was sworn in to testify then addressed the Board. He stated that his parents use to live nearby this property and they were having the exact same issues as these property owners. He stated that possibly a rod iron fence that wouldn't obstruct the view would be the answer for this problem they are having with the trespassers.

Randy Herman, 108 Esther Street, was sworn in to testify then addressed the Board. He stated that he has lived in the neighborhood for 5 years and his mother even longer. He stated that applicants were lying that this property was never a party house. He stated that the applicants were aware of what they were buying. He stated that he has suggested mediation with the neighbors and the Darrenkamps but there are no services available. He stated that walls aren't going to solve anything. He stated that they need to call the police if they have issues not build a wall. He stated that his personal view will be affected and the neighbors have a deeded access to the river and it shouldn't be blocked by this request. He stated that the wall should be 25-feet back from the river if they chose to put it up to not block the view.

James Peterson, attorney on behalf of some of the neighbors, stated his name then addressed the Board. He stated that there are means of solving the applicant's issues and that would be the police department or code enforcement. He stated that there is no reason to grant a special privilege for their issues on this property. He stated that there is no special circumstances on this property. He stated that neighbors feel if the applicants feel this strongly about this request at least keep it to 4 foot in height to not block the visibility triangle.

Michael Wintz, 99 Esther Street, was sworn in to testify then addressed the Board. He stated that he is only against the visibility triangle when it comes to this request. He stated that many residents come to this area to see the view of the river, sunset etc. He

stated that in the 19 years he has lived at this property he has had no trespassing issues and has a 4-foot wall around his property. He stated that this property was vacant for 10 months but wasn't a party house during that time period. He stated that unless the Darrenkamps plan to put a wall on top of their seawall this wouldn't stop trespassers and there has been no harassment from the neighbors to the Darrenkamps. He stated that after the Darrenkamps complete construction the issues in the neighborhood will be rectified.

Mr. Calkins stated that he doesn't believe that it's a 4-foot wall around the property at 99 Esther Street he was over 6 foot tall and wouldn't be able to get over the wall surrounding this property.

Mr. Wintz stated that if the problem truly exist then the wall should be on the river front also in front of the property not just on the side where it would be blocking the visibility triangle.

Earl Wallace, 114 Florida Avenue, was sworn in to testify then addressed the Board. He stated that he was in favor of the request that there are problems with trespassers on the riverfront properties.

Mr. Ratliff stated that he didn't see how this variance request wasn't providing special privilege for this property owner. He stated that they should at least build a 4 foot fence and see how it works and then if it doesn't then come back to the Board at that time to request the variance again.

Mr. Calkins stated that he sees this as a unique road and he disagrees with staffs comments on how they don't meet the criteria.

Mr. Dever stated that he agrees but is against a solid fence all the way to the river.

Mr. Sather stated that he also agrees they meet the criteria.

Motion by Mr. Calkins, seconded by Mr. Sather, to recommend approval of the variance with the following conditions:

- 1. The variances only apply to the sections of fence showed on Exhibit D and not for other accessory structures.**
- 2. The property owner applies for and receives a building permit for the section of fence listed as request # 1, from the City Building Department within 60 days or this portion of the variance would be null and void.**
- 3. The property owner applies for and receives a building permit for the section of fence listed as request # 2, from the City Building Department within 2 years or this portion of the variance would be null and void.**

Motion failed on a roll call vote, 3-4 with the following Board members dissenting, Mr. Casserly, Mr. Ratliff, Ms. Azzinaro and Ms. Arvidson.

Ms. Azzinaro and Ms. Arvidson left at 8:06pm.

L. V-2-16: 720 SOUTH DIXIE FREEWAY / SAVE A LOT

Van Morgan of D & R Signs, 133 Thomason Avenue, Daytona Beach, Florida 32117 authorized applicant for Ozinus NSB LLC, 12481 Brantley Commons Court, Fort Myers, Florida 33907 property owner request approval of a variance of Section 604.12.G.2.b.1 to allow wall signage from the allowed 200 square feet to 310 square feet. The subject property consists of approximately 5 acres, with a 35,590 square foot commercial building and is zoned B-3, Highway Service Business District, and is generally located south of Canal Street on the west side of South Dixie Freeway addressed as 720 South Dixie Freeway. (VCPA #7444-01-00-0230)

Mr. Mathen reviewed staffs' findings and stated that staff recommended staff recommends denial. If the Board determines that the variance application meets of the criteria, the following conditions should be applied to the Board's approval:

1. The variance approval is only for the proposed 310 square wall sign located on the north side of the building and not for any additional wall signage.
2. A building permit is obtained within 60 days of this variance approval.

Van Morgan, 133 Thomason Avenue, was sworn in to testify then addressed the Board. He stated that a larger sign is needed for drivers passing by to see the signage without having to break hard or changing lanes for them to have to do a u-turn and go back to the store.

Mr. Sather asked if the formula that Mr. Morgan was stating came from FDOT.

Mr. Morgan stated that was correct.

Mr. Calkins asked if the owner would be willing to lower the size of the sign a little due to the fact they will have a street and wall sign.

Mr. Morgan stated that it's possible but the road sign is obstructed also by a tree.

Nick Patel, 720 South Dixie Freeway, was sworn in to testify then addressed the Board.

Darline Wethington, 1704 Greenridge Circle Jacksonville, was sworn in to testify then addressed the Board.

Mr. Dever stated that it would be nice if the owner of the property would trim up the tree around the sign.

Mr. Patel stated that they don't want to take out the landscape.

Mr. Ratliff stated that he didn't believe drivers would miss that size building to go from a 200 foot sign that is allowed to a 300 foot sign.

Motion by Mr. Dever, seconded by Mr. Calkins, to recommend approval of the variance with the following conditions:

- 1. The variance approval is only for the proposed 310 square wall sign located on the north side of the building and not for any additional wall signage.**
- 2. A building permit is obtained within 60 days of this variance approval.**

Motion passed on a roll call vote, 3-2 with the following Board members dissenting, Mr. Casserly and Mr. Ratliff.

M. V-4-16: 124 S WALKER DRIVE / STORCH

Glenn D. Storch, 420 South Nova Road, Daytona Beach, FL 32114 applicant on behalf of Auto Zone LLC (Contract Purchaser) for property owners Mary K. Whitehouse, 2248 Grand Ave, Deland FL 32720; and Doyle Kennedy, 2642 Sunset Dr. New Smyrna Beach, FL 32168; requests variances to construct a new commercial building as follows:

1. Reduce the minimum lot frontage from 300 feet to 225 feet.
2. Increase the build-to-line from Walker Drive from 25 feet to 100-135 feet.

The subject property is zoned PUD and is in the SR 44 Corridor Overlay Zone (COZ), contains approximately 2.12 acres, and is generally located South of SR-44 and West of South Walker Drive. The property is addressed as 124 South Walker Drive (VCPA # 7343-06-00-0521 and 7343-06-00-0511/portion thereof).

Chairman Casserly swore in Mr. Bapp. Mr. Bapp stated his qualifications and educational background and he was qualified as an expert witness. Mr. Bapp reviewed staffs' findings and stated that staff recommended staff recommends denial. If the Board determines that the variance application meets all of the criteria, the following condition should be applied to the Board's approval:

1. Increase the build-to-line from Walker Drive from 25 feet to 100-135 feet to the building footprint as shown on submitted concept plan.

Mr. Calkins asked what the parcels nearby on SR44 were zoned.

Mr. Bapp stated that the current zoning is PUD.

Glenn Storch, attorney for the applicant, stated his name then addressed the Board. He stated that the applicant has spent about 2 years planning this application because of how difficult the zoning classification is for this property. He plans to build a 7000 square foot building on a 2 acre site which is very small for this size property. He stated that this was a difficult site to work with because of all the different irregularities on the property especially being on a corner lot. He stated that they have worked with staff to set this building back from the road to allow for vegetation and won't affect the neighborhood on the looks of the building directly on the road. He then discussed on

how they met the criteria for the variance. He stated that he will continue to work with staff and the neighborhood to make sure this has no impact on the neighbors.

Jary Hustead, 166 Walker Street, was sworn in to testify then addressed the Board. He stated that he was concerned about the stormwater from the property being transferred on to his property and the fact that this will lower his property value.

Mr. Storch stated that the property owner will be required to retain 125% of the stormwater on their own property so this won't be an issue for the residents in the neighborhood. He stated that they will meet with the neighbors with the plans in the future.

Resident, 826 Flagler Avenue, was sworn in to testify then addressed the Board. He stated that the traffic is already bad in this area why not go to one of these abandon buildings instead of this corner lot.

Steve and Wendy Payne, 144 Walker Drive, were sworn in to testify then addressed the Board. They stated that they wanted this property to stay residential like it is now and this will be an eye sore and not a good place for Auto Zone to be located.

Mike Morris, 2059 Burma Road, was sworn in to testify then addressed the Board. He stated that he was concerned about the traffic already and this will just cause more traffic to the area. He stated that this is a neighborhood and no buffer will make a difference.

Mr. Storch stated that he understands the issues that the residents are having but these aren't directly towards the variance request. He stated that this property is designated commercial not residential. He stated that he will continue to work with the residents on their concerns.

Mr. Dever stated that the concerns can be worked in to the PUD.

Motion by Mr. Dever, seconded by Mr. Ratliff, to recommend approval of the variance with the following conditions:

- 1. Increase the build-to-line from Walker Drive from 25 feet to 100-135 feet to the building footprint as shown on submitted concept plan.**

Motion passed unanimously on a roll call vote, 5-0.

COMMENTS OR STATEMENTS BY MEMBERS OF THE BOARD

Mr. Dever asked what needed to be done to change the PUD and variance process. He stated that the elected officials should be dealing with these issues with PUD.

Mr. McDole asked if he wanted a PUD to be a back room negotiation.

Mr. Storch stated that the LDR could be amended to allow certain things to be negotiated or flexibility with the process.

Mr. McDole stated that would be a good approach.

Mr. Dever stated that items such as landscaping could be negotiated on the staff level.

Mr. McDole stated that he agreed that there should be a list of negotiable items during the PUD process.

Mr. Dever stated that the Board needs to have a workshop to create that list of items that could be negotiated during the process of application not during a variance request.

Mr. Ratliff stated that the Board needs to also have a general discussion on the variance process on the criteria and how the Board views the criteria.

Mr. Dever stated that the criteria is written so there are different views.

Mr. Sather stated that he feels the attorneys should be involved in this discussion.

Mr. Sather stated that he would like to continue the discussion of west Canal and US1 zonings.

There was a discussion with staff when to have the workshop. Mr. Gove stated that he would email available dates to the Board.

REPORTS AND COMMUNICATIONS BY THE STAFF

- January 2016 Development Activity Report
- Annual review of by-laws

Mr. McDole stated that he had a suggestion on rehearings to be changed in the by-laws.

Mr. Casserly stated that he would like to add a time limit on the public speaking.

Motion by Mr. Dever, seconded by Mr. Sather, to continue the bylaws to the February 1, 2016 meeting. Motion passed unanimously on a roll call vote, 5-0.

ADJOURNMENT

With there being no further business, the meeting was adjourned at 9:48pm.

CITY OF NEW SMYRNA BEACH – PLANNING AND ENGINEERING
V-3-16: 176 Corbin Park Rd / Capuano
February 4, 2016

I. Summary

- A. **Applicant:** Vincenzo Capuano, 4311 Sea Mist Drive, New Smyrna Beach, FL 32169.
- B. **Property Owner:** Vincenzo Capuano, 4311 Sea Mist Drive, New Smyrna Beach, FL 32169.
- C. **Request:** variances in order to construct a new 150 seat restaurant as follows:
 - 1) Reduce the required build-to line from SR 44 from 45-65 feet to 40 feet including a 15 foot utility easement
 - 2) Reduce the second front yard set back (from Corbin Rd) from 25 feet to 21 feet
 - 3) Reduce the required side yard (South) buffer from 7 feet to 2 feet
 - 4) Reduce the required parking space dimensions from 10 feet by 20 feet to 9 feet by 18 feet
 - 5) Reduce the minimum parking aisle width from 22 feet to 20 feet
 - 6) Reduce the parking area interior landscaping from 20 percent to 8 percent
 - 7) Reduce the side yard (west) setback from 25 feet to 10 feet.
- D. **Site Information:** The subject property is zoned B-3 Highway Service Business, and is in the SR 44 Corridor Overlay Zone (COZ), contains approximately 0.72 acres, and is generally located south of State Road 44 and West of Corbin Park Road, and is addressed as 176 Corbin Park Rd. A location map is found in **Exhibit A** and an aerial photo is found in **Exhibit B**.
- E. **Tax I.D. Number:** 734306000506 ,734306000507, 734306000508

II. Findings

- A. The subject property is zoned B-3 Highway Service Business District, and is in the SR-44 COZ Overlay. Existing site conditions are illustrated in **Exhibit C – Photos**. The current site conditions are illustrated in **Exhibit D – Survey**.
- B. The minimum required build-to, setbacks, and parking requirements for this property are:
 - 1. Front yard: Build-to-line of 45—65 feet (along U.S.1) and 45-150 feet (along SR 44) Parcels which front on two streets shall provide the

LPA/PLANNING AND ZONING BOARD

V-3-16: 176 Corbin Park Rd / Capuano

February 4, 2016

- above Build-to line for the front yard on corridor frontage and a 25-foot front yard on the other street
2. Side: 25 feet
 3. Rear: 25 feet
 4. Parking space size 10'x20'
 5. Interior parking access aisle width 22'
 6. Interior Landscaping requirements 20 percent.
 7. Side yard buffer requirement 7 feet, except that no buffer is required where contiguous side yards abut one another on commercially zoned premises.
- C. The applicant wishes to develop the site for a new 2,900 sq. ft., 150 seat restaurant (Bada-Bing) with associated site improvements. The proposed building footprint is illustrated in **Exhibit E – Site Plan**.
- D. The applicant has presented a conceptual plan to support his case. Staff recommends that all commercial project of this size should go to the Planning Review Committee to determine site requirements, including possible variances. The number of variances could increase, decrease or be eliminated through thorough the review process. Staff has reviewed the concept plan in a cursory review and determined more variances would be required, or, examination of variances in their current state would be incomplete. Such examples include:
1. Applicant is showing access to property through a private bank access drive. Applicant has not provided a copy of lease agreement or dedicated easement at this time. Parking space calculations would change if this easement was not present,
 2. Concept plan shows 60 parking spaces, which would require 3 full sized handicapped parking spaces. Applicant's concept plan shows only one handicapped space. The Planning and Zoning Board cannot grant a variance on this state mandated requirement. Concept plan would need to be redone, and parking space calculations may change due to this.
- E. Staff has determined that the variance requesting to *reduce the required side yard (South) buffer from 7 feet to 2 feet* would not be required. The LDR for the COZ states "A landscaped buffer shall be provided in all yards at the perimeter of any premise except that no buffer is required where contiguous side yards abut one another on commercially zoned premises." The side (south) property line of the subject property abuts the commercial zoned property of the Friends Bank.

- F. The purpose of the variance request appears to place a specific use on the property. The entire site is being designed to attempt to fit the required 60 parking spaces to support a 150 seat restaurant. A restaurant of 150 seats is required to gain exemption from the measurement distances required for the sale of alcohol on the premises.
- G. The property owner, through his authorized agent, has provided a letter of response in support of this variance. The letter of response is found in **Exhibit F**.
- H. The LDR requires variance requests to meet all of the following criteria. , **staff's responses are in bold.**
 - (i) Special circumstances exist which are peculiar to the subject property owner's land, structure, or building, and do not generally apply to the neighboring lands, structures, or buildings, in the same district or vicinity.

Staff determines that no special circumstances exist peculiar to the subject property that do not generally apply to other lots in the same district or vicinity. Staff has reviewed lot sizes, shapes and configurations in the COZ, and determined this particular lot is not significantly smaller, odd shaped or restrictive in nature.

The criterion has not been met.

- (ii) Strict application of the provisions of this LDR would deprive the subject property owner of reasonable rights commonly applicable to other properties in the same district or may preclude a benefit to the community in general.

Strict applications of the provisions of the LDR would not deprive the subject property owner of reasonable rights commonly applicable to other properties in the same district. The property owner could design a multitude of commercial building with supporting infrastructure on this site.

The criterion has not been met.

- (iii) The special circumstances and conditions that exist do not result from the direct or indirect actions of the present property owner(s) or past property owner(s). This criterion shall not be satisfied if the present or past property owner created, to any degree, the hardship that is the subject of the variance request.

The present property owner is creating this perceived hardship based on the desire to establish a new alcohol serving restaurant on the subject property. The property owner could develop this property for many other uses found with the COZ. Any perceived hardship is being created by the applicant himself.

This criterion has not been met.

- (iv) That granting of the variance will not cause substantial detriment to the public welfare or impair the purposes and intent of this Ordinance.

Granting the variance would cause substantial detriment to the public. Reduction of access aisles by 10% will cause access issues for emergency vehicles, and increase chances of damage to vehicles. Reduction of parking lot sizes will also cause an increased chance of damage to privately owned vehicles of the general public.

Granting of these six variance would cause substantial impairment of the purposes of the Land Development Regulations. This is not consistent with the intent of LDR Section 104.01 B – *“Controlling the location, design and construction of development within the city is necessary to maintain and improve the quality of life within the city”* and 104.01 D – *“Low quality development does not pay for itself. It overburdens existing improvements, adds little to the tax base, attracts other low quality development and, in general, is a liability to the city”*

This criterion has not been met.

- (v) That granting of the variance will not constitute a grant of special privilege that is denied by this Ordinance to other lands, structures, or buildings, in the same district.

Granting the variance would constitute a grant of special privilege that is denied by other lands, structures or buildings in the same district. Granting this request with 7 significant variances, for the sole purpose of establishing this restaurant would grant the applicant a special privilege of having a full liquor license.

This criterion has not been met.

III. Recommendation

This application meets none of the 5 evaluation criteria. Furthermore, a commercial project of this size should go to the Planning Review Committee to determine site requirements. The number of variances could increase, decrease or be eliminated through thorough review process. This fact, combined with the failure of meeting any evaluation criteria, staff recommends **denial** of these variance requests.

If the Board determines that the variance application meets all of the criteria, the following conditions should be applied to the Board's approval:

- 1) Reduce the required build-to line from SR 44 from 45-65 feet to 40 feet including 15 foot utility easement limited to the portion of the building as shown on the submitted site plan,
- 2) Reduce the second front yard set back (from Corbin Rd) from 25 feet to 21 feet limited to the portion of the building as shown on the submitted site plan,
- 3) Reduce the required parking space dimensions from 10 feet by 20 feet to 9 feet by 18 feet, all required handicapped parking will not be granted a reduction in size, and parking space variance granted only if written contract and easement granting access to parking area from the bank access road,
- 4) Reduce the minimum parking aisle width from 22 feet to 20 feet only upon approval of the City Fire Marshall and upon Plan Review Committee review and full approval of a site plan,
- 5) Reduce the parking area interior landscaping from 20 percent to 8 percent, only if replaced with square footage of landscaping on remaining portion of property equal to that of the reduction,
- 6) Reduce the side yard (west) setback from 25 feet to 10 feet limited to the portion of the building as shown on the submitted site plan,
- 7) All granted variances expire two years from Planning and Zoning Board approval if a building permit is not granted from the Chief Building Official.

EXHIBIT A – Location Map



EXHIBIT B – Aerial Photo Map



EXHIBIT C (Cont.)



Southeast point of property looking north along Corbin Park Rd.

EXHIBIT C (Cont.)



Southeast corner of subject property looking west

EXHIBIT C (Cont.)



Northeast corner of the property looking west along SR 44

EXHIBIT C (Cont.)



Northeast corner of property looking southwest across property

EXHIBIT C (Cont.)



Near Southwest corner of property looking north

EXHIBIT C (Cont.)



Adjacent property to the east

EXHIBIT C (Cont.)



View of adjacent property to the West

EXHIBIT C (Cont.)



View of the adjacent property to the South

EXHIBIT C (Cont.)



View of the adjacent property to the Northeast

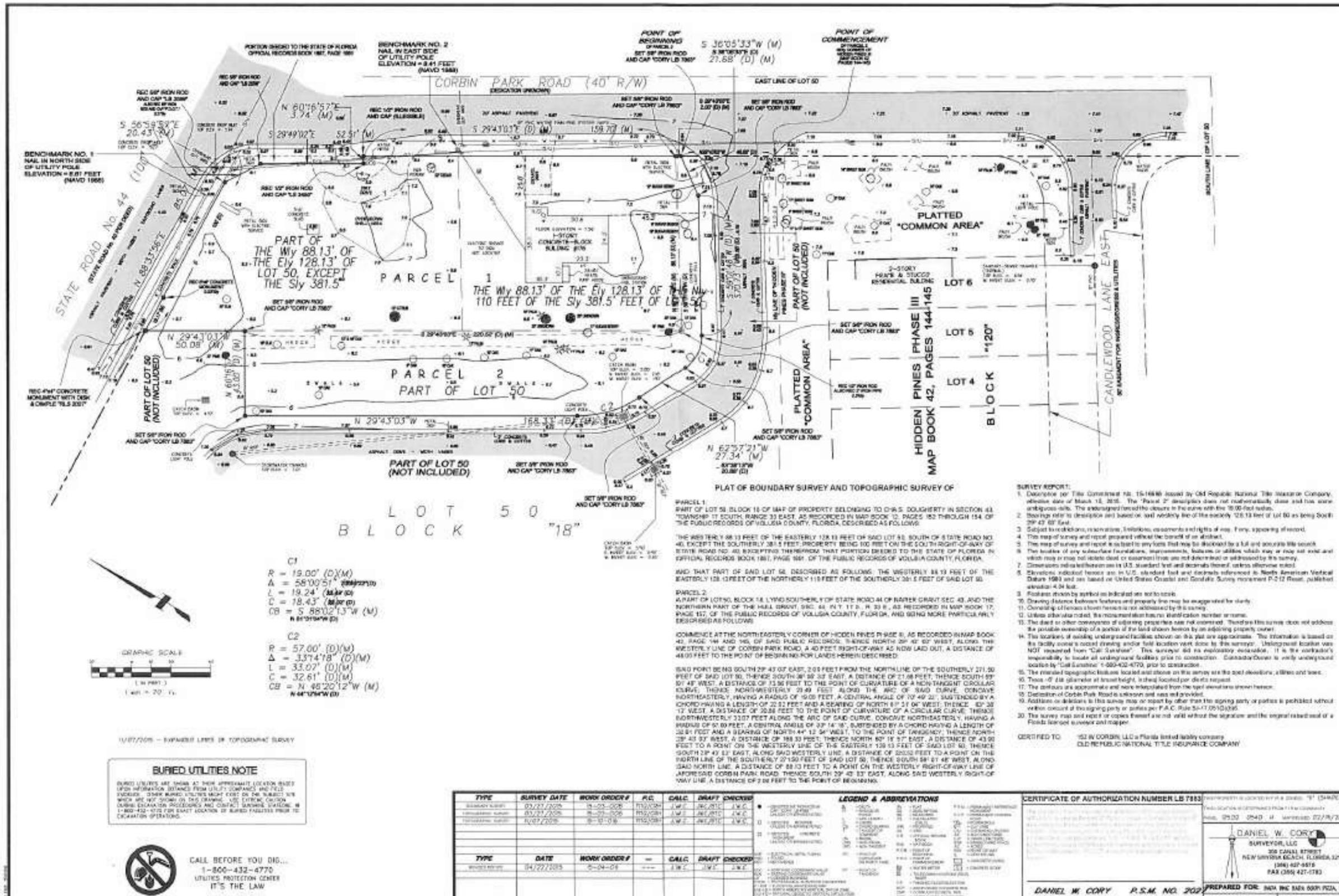
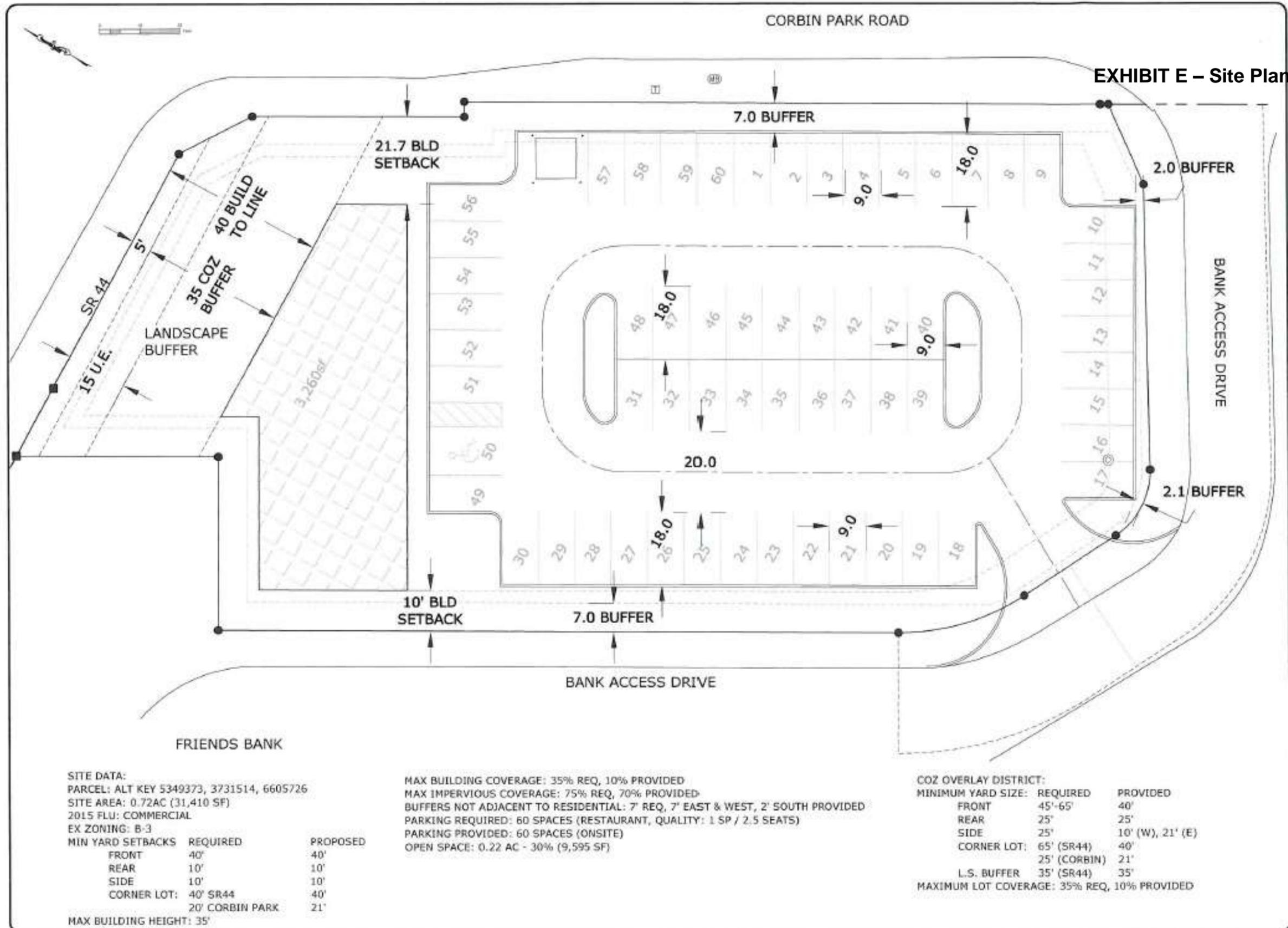


EXHIBIT E – Site Plan



SITE DATA:
 PARCEL: ALT KEY 5349373, 3731514, 6605726
 SITE AREA: 0.72AC (31,410 SF)
 2015 FLU: COMMERCIAL
 EX ZONING: B-3

MIN YARD SETBACKS	REQUIRED	PROPOSED
FRONT	40'	40'
REAR	10'	10'
SIDE	10'	10'
CORNER LOT:	40' SR44	40'
	20' CORBIN PARK	21'

MAX BUILDING HEIGHT: 35'

MAX BUILDING COVERAGE: 35% REQ, 10% PROVIDED
 MAX IMPERVIOUS COVERAGE: 75% REQ, 70% PROVIDED
 BUFFERS NOT ADJACENT TO RESIDENTIAL: 7' REQ, 7' EAST & WEST, 2' SOUTH PROVIDED
 PARKING REQUIRED: 60 SPACES (RESTAURANT, QUALITY: 1 SP / 2.5 SEATS)
 PARKING PROVIDED: 60 SPACES (ONSITE)
 OPEN SPACE: 0.22 AC - 30% (9,595 SF)

COZ OVERLAY DISTRICT:

MINIMUM YARD SIZE:	REQUIRED	PROVIDED
FRONT	45'-65'	40'
REAR	25'	25'
SIDE	25'	10' (W), 21' (E)
CORNER LOT:	65' (SR44)	40'
	25' (CORBIN)	21'
L.S. BUFFER	35' (SR44)	35'

MAXIMUM LOT COVERAGE: 35% REQ, 10% PROVIDED

EXHIBIT F – Applicant Response Letter

Bada Bing Letter of Response – December 4, 2015

1. *Special circumstances exist which are peculiar to the subject property owner's land, structure, or building, and do not generally apply to the neighboring lands, structures, or buildings in the same district or vicinity.*

A special circumstance peculiar to the subject property is its size relative to the vast majority of parcels in the COZ. The stated purpose of the COZ is to ensure traffic flow on arterials by reducing traffic congestion and hazardous conditions often associated with strip commercial development. The COZ is largely intended to apply to large parcels. This small parcel is proposing its entrance/exit off an existing access drive from Corbin Park Road and will not directly access SR 44 or Corbin Park Road. The previous use had access from Corbin Park Road so this variance would actually eliminate an existing access point and improve the safety conditions along SR 44.

2. *Strict application of the provisions of the Land Development Regulations would deprive the subject property owner of reasonable rights commonly applicable to other properties in the same district or may preclude a benefit to the community in general.*

Since the intent of the COZ is to ensure safe ingress and egress from SR 44, strict application of the LDR would not result in the proposed entrance/exit from an existing access road, thereby precluding a benefit to the community in general.

3. *The special circumstances and conditions that exist do not result from the direct or indirect actions of the present property owner(s) or past property owner(s). This criterion shall not be satisfied if the present or past property owner(s) created, to any degree, the hardship that is subject of the variance request.*

The property owner purchased the property in its present configuration and to the best of the owner's knowledge, this configuration existed prior to the COZ.

4. *That granting of the variance will not cause substantial detriment to the public welfare or impair the purposes and intent of the land Development Regulations.*

Since granting the variance will improve the safety of access to the property, granting of the variance will not cause substantial detriment to the public welfare or impair the purposes and intent of the land Development Regulations.

EXHIBIT H – (Cont.)

5. *That granting of the variance will not constitute a grant of special privilege that is denied by the Land Development Regulations to other lands, structures or buildings in the same district.*

Since the property is unique in its size and location for this district, the variance will not constitute a grant of special privilege that is denied by the Land Development Regulations to other lands, structures or buildings in the same district

EXHIBIT H – (Cont.)

Bada Bing Requested Site Plan Waivers - December 16, 2015

Zoning B-3 Highway Service Business District

The proposed restaurant is located at 176 Corbin Park Road. The .72 acre site has generally been used for a residence then commercial. This small infill site has its limitations as it was a part of a bigger parcel in the past. Due to the current configuration of the lot several variances are required to construct a 3,260 sf quality sit-down restaurant.

The proposed restaurant is a 150 seat full service establishment. To provide parking for a quality restaurant per the LDC 60 spaces are required or 1 space per 2.5 seats. To achieve 60 parking spaces several alternatives were discussed with staff and the resulting site plan is presented. The site plan orients the building in the front of the lot and the parking behind which is consistent with the COZ overlay district criteria. Since the existing lot is .72 acres the maximum setback from SR 44 is shown to be 40'. This will maintain a 35' COZ buffer as required and shown. A 15' utility easement is also maintained along SR 44 as required and discussed with the New Smyrna Utility Authority. To achieve the 40' build to setback the rear parking area was moved south within 2' of the rear boundary line. Behind the property is an existing bank access drive. We know that the number of parking spaces was very important to the city so we also reduced the size of the parking spaces to make sure we obtained the required 60. The drive isle for this development was also reduced from 22' to 20' which also meets the minimum access requirement for fire and EMS vehicles. Lastly, per the COZ corner lot setback requirement the side yard setback for this property is shown at 21' instead of 25'.

Buffers

Code: Along sides and rear lots lines not abutting residentially zoned lots buffer shall be seven feet wide.

Proposed buffer on south boundary line adjacent to access tract for bank property is 2'.

COZ

Code: Front Yard Build-to-line 45-65 feet

Proposed Front Yard setback 40' including 15' utility easement.

Code: Parcels which front on two streets shall provide a 65-foot front yard on corridor frontage and a 25-foot side yard on the other street or as required per [subsection 504.01M. of this LDR.

Proposed Front Yard setback 40'

Proposed Side Yard Setback 21' (East), 10' (West)

604.09 Parking Lot Design Standards

*Code: Minimum parking space size 10' x 20'
Minimum Isle Width 22'*

Parking space size 9' x 18'
Isle Width 20'

CITY OF NEW SMYRNA BEACH – DEVELOPMENT SERVICES
V-5-16: NEW SMYRNA CHRYSLER – DODGE –
JEEP – RAM / STATE ROAD 44
FEBRUARY 4, 2016

I. Summary

- A. **Applicant:** Glenn D. Storch, 420 South Nova Road, Daytona Beach, Florida, 32114
- B. **Property Owner:** Mitchell Equity Group LLLP, P O Box 2180, New Smyrna Beach, Florida 32170
- C. **Request:** Approval of the following variances in order to allow construction of an automobile dealership:
1. A variance for the minimum open space requirement to be 25 % in lieu of 50 %;
 2. A variance for the natural vegetation requirement to be 15 % in lieu of 30 %;
 3. A variance for the maximum building height to be 45 feet in lieu of 35 feet;
 4. A variance for the required customer on-site parking to be 43 spaces in lieu of 147 spaces
 5. A variance for a second permitted monument sign to be 48 square feet in lieu of 24 square feet;
 6. A variance to require no more than thirty-six (36) 2 ½ inch caliper replacement hardwood trees per acre, in lieu of the requirements of the LDR;
 7. A variance to allow preservation of 15 Specimen Trees in lieu of 16;
 8. A variance for tree mitigation costs to be determined based on the actual cost of purchasing, planting and maintaining an approved species of 2 ½ inch caliper replacement hardwood tree, in lieu of \$500.00 per 2 ½ inch caliper hardwood; and
 9. In the event a build-to line is required for the east property line along Glencoe Road, a variance for said east build-to line to be 25 – 850 feet in lieu of 25 feet.

The variances are being requested in conjunction with a concurrent request to rezone the property to PUD, Planned Unit Development from its existing zoning of Volusia County A-3, Transitional Agriculture.

- D. **Site Information:** The approximately 12 acre subject property is currently zoned Volusia County, A-3C (2), Transitional Agriculture, Corridor Overlay Zone. The site falls within the SR 44 Corridor Overlay Zone (COZ) and is thus subject to those regulations, and is generally located northwest of SR-44 and North Glencoe Road, on the north side of SR 44.
- E. **Maps and Attachments:** A Location Map is attached as **Exhibit A** and an aerial map is attached as **Exhibit B**. Proposed site plan exhibits submitted

by the applicant are attached as **Exhibit C**, which are the same three plan sheets submitted as the PUD Conceptual Development Plan (CDP). These three sheets include a Concept Plan, Specimen Tree Plan, and Existing Site Conditions. The applicant's letter of response, as to how the five specific criteria listed in the LDR as necessary to be met for the nine variances to be granted, is attached as **Exhibit D**.

No other information was submitted by the applicant as documentation, background information, and/or justification concerning many of the nine specific variance requests, including:

- 1) No tree survey and/or other tree information, other than the Exhibit C Specimen Tree Plan, relating to Variance Requests # 1, 2, 6, and 8;
- 2) No building elevation drawings, re Variance Request # 3;
- 3) No parking calculations, re Variance Request # 4; and
- 4) No sign plan and/or drawings, re Variance Request # 5.

Due to this lack of submitted information, staff has included in this report two exhibits from the pending PUD application, to be used as reference and which are assumed to be compatible with the requested Variances # 3 (building elevation) and # 5 (sign plan). Neither of these exhibits, however, indicate any of the requested dimensions, or any other dimensions of these proposed structures.

- E. **Tax I.D. Number:** 7323-02-01-0080 (primary portion thereof, with westernmost lot, # 10, not included)

II. Findings

- A. The subject property is an approximately 12-acre rectangular site with the longer portion (1066') fronting State Road (SR) 44 and a much lesser depth, averaging just over 500' and with 514' frontage along North Glencoe Road to the east. That section of North Glencoe Road is a 20' two lane local road within a 40' right-of-way, with the west edge of that existing road pavement close to and even concurrent with the east property line of the subject parcel. SR 44 is a four lane arterial roadway with a grassed median, and an existing traffic signal that was recently installed at this Glencoe Road intersection.
- B. The subject property is undeveloped at this time, and has an existing 1.4 acre wetland slough running through its center from north to south, bisecting separate uplands in the east and west portions of the site. These topographic and wetland conditions are noted on the Exhibit C Existing Site Conditions exhibit attached, with those wetlands found within the onsite soils area numbered # 56, Samsula Muck.
- C. The subject property was annexed into the City over ten years ago, and while the future land use (FLU) designation was then changed to City

State Road (SR) 44 PUD, it retained its previous Volusia County zoning of Volusia County, A-3C(2), Transitional Agriculture, Corridor Overlay Zone (COZ) on City zoning maps. It's uncertain why this County zoning was retained at that time, and/or what the (2) suffix on those maps refers to. An inquiry was made to Volusia County staff regarding that (2) suffix and their response was that it meant the property was within an area designated as Activity Center by the Volusia County Comprehensive Plan, which on SR 44 would have been the Southeast Activity Center located around the SR 44/I-95 interchange area. That explanation for the (2) suffix is not currently plausible as the Activity Center FLU was never applied to areas this far east of that interchange. This would be a moot point due to the currently pending request for the subject property to be rezoned to PUD.

- D. The contract purchaser of the subject property is proposing to construct an automobile dealership on the site. As mentioned, the applicant has also submitted an application to rezone the property to PUD, Planned Unit Development in conjunction with these variance requests. That PUD application was submitted on December 18, 2015 and reviewed at the January 8, 2016 Plan Review Committee (PRC) meeting, with comments then provided to the applicant relating to the PUD documents, including the fact that variances would be necessary in conjunction with that plan. The applicant submitted this variance application by the submittal deadline that same day (1/8/16), for the Board to consider and act upon at this meeting. The pending PUD application has not yet been resubmitted since the January PRC meeting review and comments, as must occur in order to be scheduled for future Planning & Zoning Board and City Commission review and action.
- E. As mentioned, the subject property has a City Future Land Use (FLU) designation of State Road 44 PUD, with the stated intent of this FLU category being to “foster high quality business activities, office, financial institutions, and housing of a density up to 18 units per acre, as well as other uses, which are compatible with the surrounding area. *Land Development Regulations* (including planned unit development zoning), as well as the site plan review process, will determine whether a proposed use is suitable for a particular parcel.”
- F. Goal 5, Objective 4, of the Future Land Use Element of the City's *Comprehensive Plan* states that the City should “guide and enhance future economic development and redevelopment of US Highway 1 and State Road 44 by creating scenic parkways that efficiently move traffic and present an attractive, aesthetically pleasing appearance”.
- G. The *Comprehensive Plan* also lists the following policies that the City must implement along State Road 44 in order to achieve the above objective:
 - 1. The City shall continue to monitor and refine the Arterial Corridor Regulations adopted for State Road 44 in order to:

- i. Ensure safe ingress to and egress from proposed development
 - ii. Reduce the number of indiscriminate driveways
 - iii. Control signage
 - iv. Provide landscape requirements, and
 - v. Encourage development in the form of large planned unit developments and discourage the development of small individual lots.
 2. Require new developments to provide buffering and reasonable transitions to adjacent, lower-density residential areas.
 3. Require new developments and redevelopments to provide landscaping and other improvements, in order to present a pleasant aesthetic appearance along these parkways that is consistent with the charm of the City.
 4. Implement State Road 44 corridor regulations along undeveloped portions of the highway as they are annexed into the City.
- H. As mentioned above, the City's *Comprehensive Plan* requires the property to be rezoned to PUD, Planned Unit Development, and a PUD rezoning application is currently pending for future Planning and Zoning Board and City Commission review. In addition to those requirements of the PUD zoning designation, the property is also subject to the City's Corridor Overlay Zone (COZ) regulations.

The intent of the City's COZ regulations, which were established in the early 1990s is:

“to provide regulations to ensure safe ingress to and egress from proposed development along arterial transportation corridors by reducing the number of indiscriminate driveways, maintaining the integrity of the corridor by assuring that traffic generation is consistent with the corridor's designed capacity; lessening the possibility of hazardous traffic conditions and traffic congestion; establishing development requirements, including additional sign regulations that will create an attractive corridor entrance into the City. Commercial development typically expands along arterial transportation corridors as population and traffic volumes increase in the vicinity of and along the corridor. Eventually, conflicts result between the corridor's function and its ability to move high volumes of traffic through an area. This congestion is intensified where commercial growth is permitted to increase adjacent to the corridor disproportionate to the corridor's designed limitations.

“The increased commercial growth also changes the public's image of the transportation corridor. What was once considered an attractive tree-lined corridor gradually and often rapidly begins to exhibit characteristics of uncontrolled strip commercial development. Once this pattern has been established, it is difficult

to establish alternative types of development (e.g. residential) along these corridors. Therefore, these regulations apply to arterial corridors which (1) move large volumes of through traffic in addition to significant volumes of everyday local traffic, and (2) do not contain significant amounts of strip commercial development. These arterial corridor regulations are intended to supplement all of the zoning classifications located within the arterial corridor overlay zone. The type of permitted uses or special exceptions allowed would be determined according to the existing zoning classification and the site design, signage, building location, and the dimensional requirements would be regulated by these arterial corridor regulations.”

- I. As referenced above, one of the stated purposes of the Corridor Overlay Zone regulations is to protect the aesthetics of the corridor, as “what was once considered an attractive tree-lined corridor gradually and often rapidly can begin to exhibit characteristics of uncontrolled strip commercial development,” and “once this pattern has been established, it is difficult to establish alternative types of development (e.g. residential) along these corridors.” Several of the proposed variance requests, if approved, would significantly reduce required landscaping and tree preservation, which are a cornerstone of the COZ regulations. The visual aspects of the corridor would be thus be significantly altered and would perpetuate the typical “strip development” or corridor commercial aesthetics that the LDR, and specifically the COZ, seeks to prevent.
- J. Another intent behind required landscape areas is to preserve and maintain natural areas of the City, and foster a sense of civic pride and community spirit by maximizing positive impacts and images of new development. Landscaping, especially naturally vegetated areas, has been empirically shown in numerous studies to increase property values. Landscaped, shaded sites typically have higher property values than properties with less landscaping, by providing a more visually appealing and thus desirable property.
- K. Landscape areas also create a more visually appealing interface between differing and adjoining land uses. These landscape areas enhance and protect the integrity of roadway corridors, and reduce both surface heat and negative visual impact of paved vehicular areas, along with reducing noise from vehicles.
- L. Per Florida Statutes, and information provided by the City Attorney, a development agreement (for the pending PUD rezoning) cannot be used to circumvent or waive requirements of the LDR. Therefore, the applicant has submitted requests for variance from the City LDR for the following nine listed items, with each request discussed in further detail below. If approved, these variances would be further codified within the proposed PUD Master Development Agreement.

- M. While the specific variance criteria are each discussed individually in more detail below, the basic premise of the applicant's response letter is generalized to the nine requested variances as a whole, and not specific to each one. Consequently, that letter states the subject property and its proposed development would require the nine variances, as it is a commercial property (although currently still zoned for agricultural use) that is *"unique among other commercial properties in the City.* Accordingly, it has *"special circumstances that put limitations on site planning options and disrupt the reasonable use of the property."* The primary *"special circumstances"* that make the property *"unique"* appear to be that it falls within the Corridor Overlay Zone (COZ), and is thus subject to the COZ regulations, as are all other properties that are located along SR 44, for the 7 mile stretch from Myrtle Avenue west to the westernmost City boundary line.
- N. That same response letter states the subject property has a *"significantly greater than average number of trees"* and *"contains an unusually large number of protected trees at a very high density..."* and *"these constrictions unfairly limit the developer's reasonable use of the property, especially when considering the amount of surface area required for an automobile dealership disrupt the reasonable use of the property."* The applicant has provided no evidence of the number and/or size of existing trees within the property, as no tree survey has been provided. Beyond the absence of a tree survey, there is also no information submitted as to the basis of this request, for what should be considered an *"average number of trees"*, and thus any corresponding figures for the number of trees that would then be considered to be a *"significantly greater"* number.
- O. A third stated *"special circumstance involves a small wetland area bisecting the property from north to south through the middle of the property. Even though water flow through this wetland is minimal, the developer is still required to build a pipe on the property to provide a path for flowing water when necessary. The central location of this pipe on the property further limits the developer's options with regard to building location (cannot place building over pipe), which affects other site layout issues such as parking and natural vegetation preservation."* It's unclear how this filled one-acre wetland area and associated replacement pipe would affect the proposed parking (as parking areas are shown to be on top of it) and preservation of natural vegetation (as trees shown on the Exhibit C Specimen Tree Plan would be removed by this proposed wetland filling). Thus no evidence has also been provided of how the proposed site layout has been affected by this additional claimed *"special circumstance."*
- P. Because there does not appear to be any definite evidence provided by the applicant as to any special circumstances associated with the land or proposed buildings which staff has been able to identify, and with only

those identified by the applicant as listed above, staff cannot recommend approval of these variance requests. Additionally, the majority of issues in this application and the PUD and COZ overlay regulations are more appropriately addressed by amending the *Land Development Regulations*, and not through the variance process. With that in mind, the applicant did submit a companion application to amend the LDR for many if not all of these same aspects. That application was deferred for consideration at this time at the directive of the City Manager, as the Planning and Zoning has an imminently scheduled (February 25, 2016) workshop meeting to discuss many of these same issues. However, in the interest of expediting the approval process for the proposed PUD and site development, the applicant is now seeking relief through the variance process.

- Q. The applicant provided a five page letter of response (attached as **Exhibit D**) as to how the nine requested variances fulfill the five specific criteria listed in the LDR as being necessary to be met for variances to be granted. However, that Exhibit D letter and all other application materials lack some or all information and/or references concerning a number of the nine requested variances, as is noted below for each specific request:

1. **Reduce required open space from 50% to 25%**

The PUD regulations in Article V of the City's *Land Development Regulations* (LDR) require that a minimum of 50% of the PUD project be utilized as open space. Any area of the lot not utilized for buildings or parking is considered open space. In this case, a minimum of six acres of the site must be preserved as open space. The applicant is requesting a variance to reduce this requirement to 25% of the lot area, which would equate to three acres, or a reduction of approximately three acres.

According to the applicant, "*these constrictions unfairly limit the developer's reasonable use of the property, especially when considering the amount of surface area required for an automobile dealership or a typical commercial use. Granting variances to permit less open space*" and natural vegetation "*would help to alleviate the restrictions caused by these special circumstances and allow reasonable use of the property.*"

The applicant provides other generalized rationale within that response letter as to why the proposed development requires the current open space requirement to be only half of what is required, but provided no other specifics except for the above listed statements.

2. **Reduce the required natural vegetation preservation area from 30% to 15%**

The Corridor Overlay Zone regulations in Article V of the LDR require a minimum of 30% (3.6 acres) of the site area to remain covered by existing dense vegetation. If necessary, these areas are to be supplemented with additional shrubs and trees to create dense vegetative growth. The intent of the requirement is preserve established vegetation, which aids in screening parking areas, maintains the visual aspect of mature vegetation, and reduces developer costs by reducing the amount of tree mitigation.

The applicant is requesting a variance to reduce this requirement to instead be 15%, or with 1.8 acres thus proposed to be provided and a similar 1.8 acre natural vegetation area to no longer be provided as required but instead be developed. This requested reduction in tree preservation requirements is also the subject of two other and separate variance requests (# 6 & 7) of this same application.

Again, according to the applicant, *“these constrictions unfairly limit the developer’s reasonable use of the property, especially when considering the amount of surface area required for an automobile dealership...Granting variances to permit less open space, natural vegetation, and one less specimen tree would help to alleviate the restrictions caused by these special circumstances and allow reasonable use of the property.”*

In addition, the applicant also states *“another special circumstance”* to be the *“small wetland area bisecting the property from north to south through the middle of the property...the developer is still required to build a pipe on the property to provide a path for flowing water...The central location of this pipe on the property further limits the developer’s options with regard to building location (cannot place building over pipe), which affects other site layout issues such as parking and natural vegetation preservation.”*

The only existing trees shown on the **Exhibit C** proposed site plan exhibits submitted by the applicant are those considered large enough to be Specimen Trees, with no survey information provided for any other trees now existing within the site. The sole information regarding this request provided by the applicant is the statement that *“the subject property also contains an unusually large number of protected trees at a very high density.”*

The applicant’s statement above, that *“the subject property also contains an unusually large number of protected trees at a very high density”* is not consistent with the limited tree information that has been provided (on the **Exhibit C** Specimen Tree Plan). That exhibit shows a total of 20 Specimen trees existing within this 12 acre site, which that plan’s notes state to be 1.66 Specimen Trees

per acre. That ratio could hardly be considered either “*an unusually large number*” or “*a very high density*”, as the applicant has stated to justify this variance request.

With only Specimen Tree information provided, that is the single available source in trying to determine whether the site has the “*unusually large number*” or “*very high density*” of trees that the applicant states. Specimen Trees are required to be preserved by a varying ratio county-wide, in accordance with Minimum Environmental Standards enacted over 15 years ago. These minimum ratios vary within defined ranges according to the number of Specimen Trees (and thus density) that exist within a site. The highest density of Specimen Trees listed is 8 or more per acre, with two lesser density ranges listed (3 to 5/ac. and 5.1 to 8/ac.) that are each higher than the lowest density range listed. That lowest tree density range is 3 Specimen Trees per acre or less.

Exhibit C provided by the applicant shows the ratio of those within the site as being 1.66 Specimen Trees per acre. That figure is just over half of the very lowest density figure used for Specimen Tree protection, with the three other ranges provided for this purpose all increasing in number and density above that. The 1.66 existing Specimen Tree per acre figure for the subject property is thus at the very lowest range of tree density and number, with the highest figure provided (8 or more Specimen Trees per acre) being about five (5) times greater in number and density than the subject property.

Thus the applicant’s statements, that “*the subject property also contains an unusually large number of protected trees at a very high density*” as being a primary reason for this and other associated variance requests, to reduce pervious and tree areas, does not ring true in comparison with many other wooded lots.

3. **Increase the maximum permitted building height from 35 feet to 45 feet**

The applicant’s Exhibit D letter states this building height variance “*will allow the developer to ensure that potential customers can easily locate the automobile dealership.*”

As mentioned above, staff has enclosed an **Exhibit E** color rendering of the proposed building as was submitted with the pending PUD application, assuming the building height shown there may possibly be the intent of this variance request, but this is not certain as no building plans were submitted by the applicant as part of this application.

According to the applicant, and as this rendering shows, “*the increased building height will only be for used for locating an automobile display area at one corner of the main building.*” The applicant also states “*the building height variance can be further justified by the current, underlying zoning (County A-3C2), which permits structures up to 55 feet in height.*” As mentioned, that existing agricultural zoning is currently proposed to be rezoned to PUD, as the applicant assumedly does not want to pursue and/or be bound to any other of the current A-3 agricultural zoning requirements for use, setbacks, lot coverage, etc. The City’s B-5 zoning requirements for shopping centers, some of which also front on SR 44, is 45’.

Staff could consider this request, while not part of any “special circumstance”, to be of minimal impact, provided it was specific to the assumed Exhibit E building area shown, and that more detailed information was provided to document this aspect beyond that color rendering.

4. Reduce required on-site parking from 137 spaces to 43 spaces

In the applicant Exhibit D letter, he states “*The City’s parking requirements are based upon the premise that customers having their vehicles serviced will drop off their automobile, be picked up in another vehicle and leave the site while the vehicle is being serviced. However, the majority of customers will wait on-site while the vehicle is being serviced, thus reducing the need for required on-site parking. If the parking reduction variance is not granted, hundreds of square feet of additional impervious area would be required for the parking. This would be contrary to the City’s Comprehensive Plan and Land Development Regulations, which seek to reduce impervious areas and excess parking lots, particularly fronting along State Road 44.*”

The applicant states the reason for this request is to reduce impervious areas needed for required customer parking. At the same time, and within the same application, he is requesting to reduce open space and natural vegetation areas by half the required amount, in order to increase paved and impervious parking areas for the dealership vehicle inventory parking areas.

In addition, it is not certain that customers will wait on-site for vehicle servicing, as most dealerships provide shuttle service for customers to go to work, return home, etc. so customers do not have to wait on site. Many other customers also leave their vehicle for the day to be serviced, and thus do not wait on-site.

Finally, the application materials do not include any calculations as to the specific number of spaces that are proposed to be required and/or those requested to be reduced, and how the proposed figures were derived at and/or conform to or deviate from City LDR minimum requirements.

Typically a variance request includes specific calculations for both what is required and/or requested. This application has none of that, only the figures noted of 143 spaces being required and a request to reduce that number to 43, again with no calculations provided as to how those two figures were determined. Staff cannot confirm figures and/or calculations concerning variance requests if those are not provided.

5. **Increase the second permitted monument sign to 48 square feet in lieu of the maximum 24 square feet**

The applicant's Exhibit D letter states this variance, like Request # 3 for building height above, will also "*allow the developer to ensure that potential customers can easily locate the automobile dealership.*"

As mentioned, staff has enclosed an **Exhibit F** color rendering of the proposed monument sign, as was submitted with the pending PUD application, with the assumption the sign dimensions shown there may possibly be the intent of this variance request, but this is not certain as no sign plans were submitted by the applicant with this application.

The applicant's submittal materials provide no other information and/or rationale for this sign variance request.

6. **A variance to require no more than thirty-six (36) 2 ½ inch caliper replacement hardwood trees per acre, in lieu of the requirements of the LDR**

The applicant's Exhibit D letter makes no mention at all concerning this request, as to why it may be needed and/or suggested as an alternative, and what hardship would create its need, other than a general statement that "*the subject property also contains an unusually large number of protected trees at a very high density.*"

Again, no tree survey information has been submitted with this application and/or the pending PUD rezoning application to document the applicant's statements above. The only existing trees that are provided on the **Exhibit C** proposed site plan exhibits submitted by the applicant are those considered large enough to be

Specimen Trees, with no survey information provided for any other trees within the site.

The applicant's submittal materials provide no other information and/or rationale for this tree replacement variance request.

7. **A variance to allow preservation of 15 specimen trees in lieu of 16**

The County's minimum tree preservation standards, which apply to all jurisdictions countywide, require that a certain percentage of Specimen Trees be preserved, based upon the total number of existing Specimen Trees on-site. In this case, a total of 16 specimen trees are apparently required to be preserved on the subject property. The applicant is requesting a variance to reduce that number to 15 Specimen Trees.

Here again, the applicant's Exhibit D letter doesn't provide any information concerning why this request may be needed as an alternative, and what hardship would create its need, other than that general statement that "*the subject property also contains an unusually large number of protected trees at a very high density.*"

This request does not indicate which of the 20 existing Specimen Trees is the one that cannot be preserved and must be removed, in order to justify this variance request for 15 Specimen Trees to be preserved rather than the required 16. As to the only statement by the applicant on this subject, that "*the subject property also contains an unusually large number of protected trees at a very high density,*" the limited tree information that is provided (on the **Exhibit C** Specimen Tree Plan) shows a total of 20 Specimen trees exist within this 12 acre site, which that plan's notes state to be 1.66 Specimen Trees per acre.

As described in more detail above regarding Variance Request # 2, that could hardly be considered either "*an unusually large number*" or "*a very high density*", as information provided by the applicant apparently to justify this variance request states.

8. **A variance for tree mitigation costs to be determined based on the actual cost of purchasing, planting and maintaining an approved species of 2 ½ inch caliper replacement hardwood tree, in lieu of \$500.00 per 2 ½ inch caliper hardwood**

Section 604.041(B), LDR, details the City's requirements for tree replacement. If a property has an existing tree canopy coverage of 30% or greater, the developer may provide off-site tree mitigation.

If off-site tree mitigation is not possible, the developer may make a payment into the City's tree mitigation fund for the cost of the trees.

Section 604.041(B)(10), LDR, specifies that the replacement cost is \$500 per 2.5-inch caliper hardwood tree. In this particular case, the applicant has not yet provided staff with a detailed list of trees to be removed. Therefore, the total possible cost cannot be estimated.

In addition, the applicant has submitted no information and/or documentation concerning this request, and there is no specific mention of it in the applicant's Exhibit D letter. Again, the only existing trees on the Exhibit C proposed site plan exhibits submitted by the applicant are those considered large enough to be Specimen Trees, with no survey information provided for any other trees within the site. As detailed above, the applicant's claims of a very high density and large number of trees as being reasons for these various tree and landscape variance requests are not demonstrated.

9. In the event a build-to line is required for the east property line along Glencoe Road, a variance for said east build-to line to be 25 – 850 feet in lieu of 25 feet

Because the subject property is a corner lot, meaning that it is frontage on two streets, the LDR is unclear as to whether the COZ build-to line applies to both the State Road 44 and North Glencoe Road frontages. Therefore, the applicant requests a variance to change the front build-to line along North Glencoe Road. If approved, the request would require the building to be at least 25 feet from North Glencoe Road but no further back than 850 feet from North Glencoe Road.

- R. With regard to the build-to line variance (# 9), building height variance (# 3), on-site parking reduction variance (# 4), and the variance to reduce the required tree mitigation cost requirements (# 8), granting of these variances would not significantly alter the character or aesthetics of the corridor. However, because there is no special circumstance associated with the land or proposed plans that staff has been able to identify, staff cannot recommend approval of these variance requests.

Additionally, these issues are more appropriately addressed by amending the *Land Development Regulations* and not through the variance process. With that in mind, the applicant submitted a companion application to amend the LDR for many if not all of these same aspects. That application was deferred for consideration at this time at the directive of the City Manager, as the Planning and Zoning has an imminently scheduled workshop to discuss many of these issues at a February 25, 2016 meeting. However, in the interest of expediting the approval process for

the proposed PUD and site development, the applicant is now seeking relief through the variance process.

- S. The LDR requires variance requests to meet all of the following criteria. The applicant’s letter of response to the variance criteria is attached as **Exhibit F**. Because of the number of variance requests, staff has compiled a table with responses following each criterion.

CRITERION I: Special circumstances exist which are peculiar to the subject property owner’s land, structure, or building, and do not generally apply to the neighboring lands, structures, or buildings, in the same district or vicinity.		
APPLICANT RESPONSE: The applicant’s response to this required criterum is too lengthy to include in this chart, being two full pages (# 2 & 3) of Exhibit D , with that attachment letter available for reference.		
STAFF RESPONSE: Based upon the applicant’s generalized (and apparently incorrect) information and rationale as to existing tree densities within the site, variances would still be required for open space, natural vegetation preservation areas, required parking areas, and building and sign dimensions, at a minimum. This would seem to indicate that the size of the property is too small to accommodate the required development.		
The applicant’s response letter does not specify any special circumstances associated with either the land or proposed buildings that would justify granting any of the requested variances.		
This criterion has not been met for any of the variance requests.		
	Variance Request	Criterion Met (Y/N)
1	Reduce required open space from 50% to 25%	N
2	Reduce the required natural vegetation preservation area from 30% to 15%	N
3	Increase the maximum permitted building height from 35 feet to 45 feet	N
4	Reduce required on-site customer parking from 137 spaces to 43 spaces	N
5	Increase the second permitted monument sign to 48 square feet in lieu of the maximum 24 square feet	N
6	A variance to require no more than thirty-six (36) 2 ½ inch caliper replacement hardwood trees per acre, in lieu of the minimum requirements of the LDR	N
7	Reduce the number of Specimen Trees to be preserved to 15 instead of the required 16	N
8	Reduce the required tree mitigation fund cost per tree from \$500 to instead be determined based on the actual cost of purchasing, planting and maintaining an approved species of 2 ½ inch caliper replacement hardwood tree	N
9	Increase the required side/corner lot front yard build-to line from 25 feet to 25-850 feet	N

CRITERION II: Strict application of the provisions of this LDR would deprive the subject property owner of reasonable rights commonly applicable to other properties in the same district or may preclude a benefit to the community in general.		
APPLICANT RESPONSE: <i>The City of New Smyrna Beach is experiencing increased growth along the SR 44 corridor. New businesses, such as a big box retail store, grocery store and two car dealerships, have been built or are currently being constructed. A high density of trees and an excessive and inconsistent open space requirement, among other factors, limit the property owner’s ability to reasonably use the property, especially considering the property’s intended use as an automobile dealership, which requires additional surface area. In fact, in order to provide code-mandated on-site parking, hundreds of square feet of additional land would need to be converted from open space to impervious area, further reducing the ability to preserve trees and other existing vegetation on-site. Strictly applied, the LDR requirements would prevent the Developer from placing its new business within the corridor, unlike other, similar new businesses. The unique circumstances on the property would not only deprive the Developer of reasonable use of the property, but would also preclude a benefit to the community in general via increased employment in construction, automobile sales and service.</i>		

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STAFF RESPONSE: Denial of the variance requests would not prevent the Developer from placing a new business within the corridor, but would perhaps prevent development of this particular site as a car dealership. There are other parcels within the corridor that could be acquired for development that would allow all the desired improvements while still meeting the City's code requirements. Additionally, the proposed improvements are too large in scope to fit on the property that is being purchased, which has necessitated the request for the variances.

This criterion has not been met for any of the variance requests.

	Variance Request	Criterion Met (Y/N)
1	Reduce required open space from 50% to 25%	N
2	Reduce the required natural vegetation preservation area from 30% to 15%	N
3	Increase the maximum permitted building height from 35 feet to 45 feet	N
4	Reduce required on-site customer parking from 137 spaces to 43 spaces	N
5	Increase the second permitted monument sign to 48 square feet in lieu of the maximum 24 square feet	N
6	A variance to require no more than thirty-six (36) 2 ½ inch caliper replacement hardwood trees per acre, in lieu of the minimum requirements of the LDR	N
7	Reduce the number of Specimen Trees to be preserved to 15 instead of the required 16	N
9	Increase the required side/corner lot front yard build-to line from 25 feet to 25-850 feet	N

CRITERION III: The special circumstances and conditions that exist do not result from the direct or indirect actions of the present property owner(s) or past property owner(s). This criterion shall not be satisfied if the present or past property owner created, to any degree, the hardship that is the subject of the variance request.

APPLICANT RESPONSE: *The special circumstances, including the high density of trees, location of wetlands, and the City's inconsistent requirements for commercial PUDs with regard to open space, parking and other factors, do not result from the actions of the applicant; however, the applicant is working diligently to mitigate the effects of the special circumstances on the property in a manner that is both a reasonable use of the property and a benefit to the community in general.*

STAFF RESPONSE: The majority of the site is proposed for vehicle inventory parking, which reduces the amount of land available for other code requirements such as on-site customer parking, open space, landscape areas, and tree preservation.

The applicant has taken the direct action of freely choosing this subject property, to be purchased upon approval of the proposed development plan and other applications including this one. In addition, the proposed design and placement of the proposed site improvements shown is also a direct result of actions being taken by the contract purchaser.

This criterion has not been met for any of the requested variances.

	Variance Request	Criterion Met (Y/N)
1	Reduce required open space from 50% to 25%	N
2	Reduce the required natural vegetation preservation area from 30% to 15%	N
3	Increase the maximum permitted building height from 35 feet to 45 feet	N
4	Reduce required on-site customer parking from 137 spaces to 43 spaces	N
5	Increase the second permitted monument sign to 48 square feet in lieu of the maximum 24 square feet	N
6	A variance to require no more than thirty-six (36) 2 ½ inch caliper replacement hardwood trees per acre, in lieu of the minimum requirements of the LDR	N
7	Reduce the number of Specimen Trees to be preserved to 15 instead of the required 16	N
8	Reduce the required tree mitigation fund cost per tree from \$500 to instead be determined based on the actual cost of purchasing, planting and maintaining an approved species of 2 ½ inch caliper replacement hardwood tree	N
9	Increase the required side/corner lot front yard build-to line from 25 feet to 25-850 feet	N

LPA/PLANNING AND ZONING BOARD

V-5-16: NEW SMYRNA CHRYSLER – DODGE – JEEP – RAM / STATE ROAD 44

FEBRUARY 4, 2016

CRITERION IV: That granting of the variance will not cause substantial detriment to the public welfare or impair the purposes and intent of this Ordinance.

APPLICANT RESPONSE: *The granting of the variance will permit the construction and operation of an attractive new project in a reasonable manner and will cause a substantial benefit to the public welfare through increased employment and economic development while furthering the purpose and intent of the Land Development Regulations and Comprehensive Plan for the SR 44 corridor and providing a heavily landscaped gateway to the City.*

STAFF RESPONSE: Granting of the variances to increase the required build-to line, increase the building height (for display and in one isolated area only, and reduce the per tree mitigation cost will not cause substantial detriment to the public welfare or impair the purposes and intent of this Ordinance.

However, granting of the variances to reduce required open space, natural vegetation preservation areas, customer parking, sign area, replacement tree requirements, and preserved specimen trees would significantly alter the aesthetics of the corridor and this impact the public welfare. Granting of these variances would also impair the purposes and intent of the Corridor Overlay Zone and PUD regulations.

This criterion has been met for variance requests # 3, 8, and 9.

This criterion has not been met for variance requests #1, 2, 4, 5, 6 and 7.

	Variance Request	Criterion Met (Y/N)
1	Reduce required open space from 50% to 25%	N
2	Reduce the required natural vegetation preservation area from 30% to 15%	N
3	Increase the maximum permitted building height from 35 feet to 45 feet	Y
4	Reduce required on-site customer parking from 137 spaces to 43 spaces	N
5	Increase the second permitted monument sign to 48 square feet in lieu of the maximum 24 square feet	N
6	A variance to require no more than thirty-six (36) 2 ½ inch caliper replacement hardwood trees per acre, in lieu of the minimum requirements of the LDR	N
7	Reduce the number of Specimen Trees to be preserved to 15 instead of the required 16	N
8	Reduce the required tree mitigation fund cost per tree from \$500 to instead be determined based on the actual cost of purchasing, planting and maintaining an approved species of 2 ½ inch caliper replacement hardwood tree	Y
9	Increase the required side/corner lot front yard build-to line from 25 feet to 25-850 feet	Y

CRITERION V: That granting of the variance will not constitute a grant of special privilege that is denied by this Ordinance to other lands, structures, or buildings, in the same district.

APPLICANT RESPONSE: *On the contrary, the granting of the variances will allow for the Developer to make reasonable use of its property in a manner consistent with the area, despite the special circumstances and conditions existing on the parcel. In fact, granting the requested reduction in open space and natural vegetation would still result in this project meeting or exceeding the requirements for commercial areas in other parts of the City and allows for uses similar to other uses within the S.R. 44 corridor area.*

STAFF RESPONSE: Granting of the variances would constitute a grant of special privilege that is denied by this Ordinance to other lands, structures, or buildings, in the same district. The size of the property chosen by the contract purchaser is insufficient to accommodate all of the desired improvements while still meeting code requirements. However, there are other parcels available for the proposed use on State Road 44 and/or a different, less intensive use could be located on the subject property without the need for variances.

This criterion has not been met for any of the requested variances.

	Variance Request	Criterion Met (Y/N)
1	Reduce required open space from 50% to 25%	N
2	Reduce the required natural vegetation preservation area from 30% to 15%	N
3	Increase the maximum permitted building height from 35 feet to 45 feet	N
4	Reduce required on-site customer parking from 137 spaces to 43 spaces	N
5	Increase the second permitted monument sign to 48 square feet in lieu of the maximum 24 square feet	N
6	A variance to require no more than thirty-six (36) 2 ½ inch caliper replacement hardwood trees	N

CRITERION V: That granting of the variance will not constitute a grant of special privilege that is denied by this Ordinance to other lands, structures, or buildings, in the same district.		
APPLICANT RESPONSE: <i>On the contrary, the granting of the variances will allow for the Developer to make reasonable use of its property in a manner consistent with the area, despite the special circumstances and conditions existing on the parcel. In fact, granting the requested reduction in open space and natural vegetation would still result in this project meeting or exceeding the requirements for commercial areas in other parts of the City and allows for uses similar to other uses within the S.R. 44 corridor area.</i>		
STAFF RESPONSE: Granting of the variances would constitute a grant of special privilege that is denied by this Ordinance to other lands, structures, or buildings, in the same district. The size of the property chosen by the contract purchaser is insufficient to accommodate all of the desired improvements while still meeting code requirements. However, there are other parcels available for the proposed use on State Road 44 and/or a different, less intensive use could be located on the subject property without the need for variances.		
This criterion has not been met for any of the requested variances.		
	Variance Request	Criterion Met (Y/N)
	per acre, in lieu of the minimum requirements of the LDR	
7	Reduce the number of Specimen Trees to be preserved to 15 instead of the required 16	N
8	Reduce the required tree mitigation fund cost per tree from \$500 to instead be determined based on the actual cost of purchasing, planting and maintaining an approved species of 2 ½ inch caliper replacement hardwood tree	N
9	Increase the required side/corner lot front yard build-to line from 25 feet to 25-850 feet	N

III. Recommendation

	Variance Request	Staff Recommendation
1	Reduce required open space from 50% to 25%	N
2	Reduce the required natural vegetation preservation area from 30% to 15%	N
3	Increase the maximum permitted building height from 35 feet to 45 feet	N
4	Reduce required on-site customer parking from 137 spaces to 43 spaces	N
5	Increase the second permitted monument sign to 48 square feet in lieu of the maximum 24 square feet	N
6	A variance to require no more than thirty-six (36) 2 ½ inch caliper replacement hardwood trees per acre, in lieu of the minimum requirements of the LDR	N
7	Reduce the number of Specimen Trees to be preserved to 15 instead of the required 16	N
8	Reduce the required tree mitigation fund cost per tree from \$500 to instead be determined based on the actual cost of purchasing, planting and maintaining an approved species of 2 ½ inch caliper replacement hardwood tree	N
9	Increase the required side/corner lot front yard build-to line from 25 feet to 25-850 feet	N

Because none of the variance requests meet all of the required criteria, staff recommends **denial** of all the requested variances.

However, should the Board determine that some or all of the variance requests meet all of the variance criteria and should be approved, staff would recommend that the following conditions be applied to those approvals, as appropriate and specific to each of the nine requested variances:

- 1) The requested building height of 45' be limited to the specific area shown on the Exhibit E building rendering, and that more detailed information be provided to document this limitation beyond that color rendering.

- 2) Should the Board determine that any variance requests for landscape/open space areas meet all of the criteria for approval, a condition of that approval should be that larger-sized plants be used in order to enhance any reduced areas and amount of landscape materials and/or open space, including a minimum of 4" cal. for all trees to be installed as replacement trees.
- 3) If the developer is permitted to pay actual replacement costs into the City tree mitigation fund instead of the amount defined in the LDR, those costs shall be fully documented and certified when submitted for City review and approval, with that to occur prior to the issuance of any temporary and/or permanent Certificate of Occupancy (CO) for the subject property.
- 4) The applicant revises the pending PUD Master Development Agreement to include any new or amended language based on approval or denial of these requested variances, and that such changes are submitted prior to the PUD rezoning request being scheduled for any future public hearings.
- 5) Any approved variances expire two years from the date of Planning and Zoning Board approval if a building permit for this proposed project (as shown on Exhibit C) is not issued by the City Building Department.

EXHIBIT A

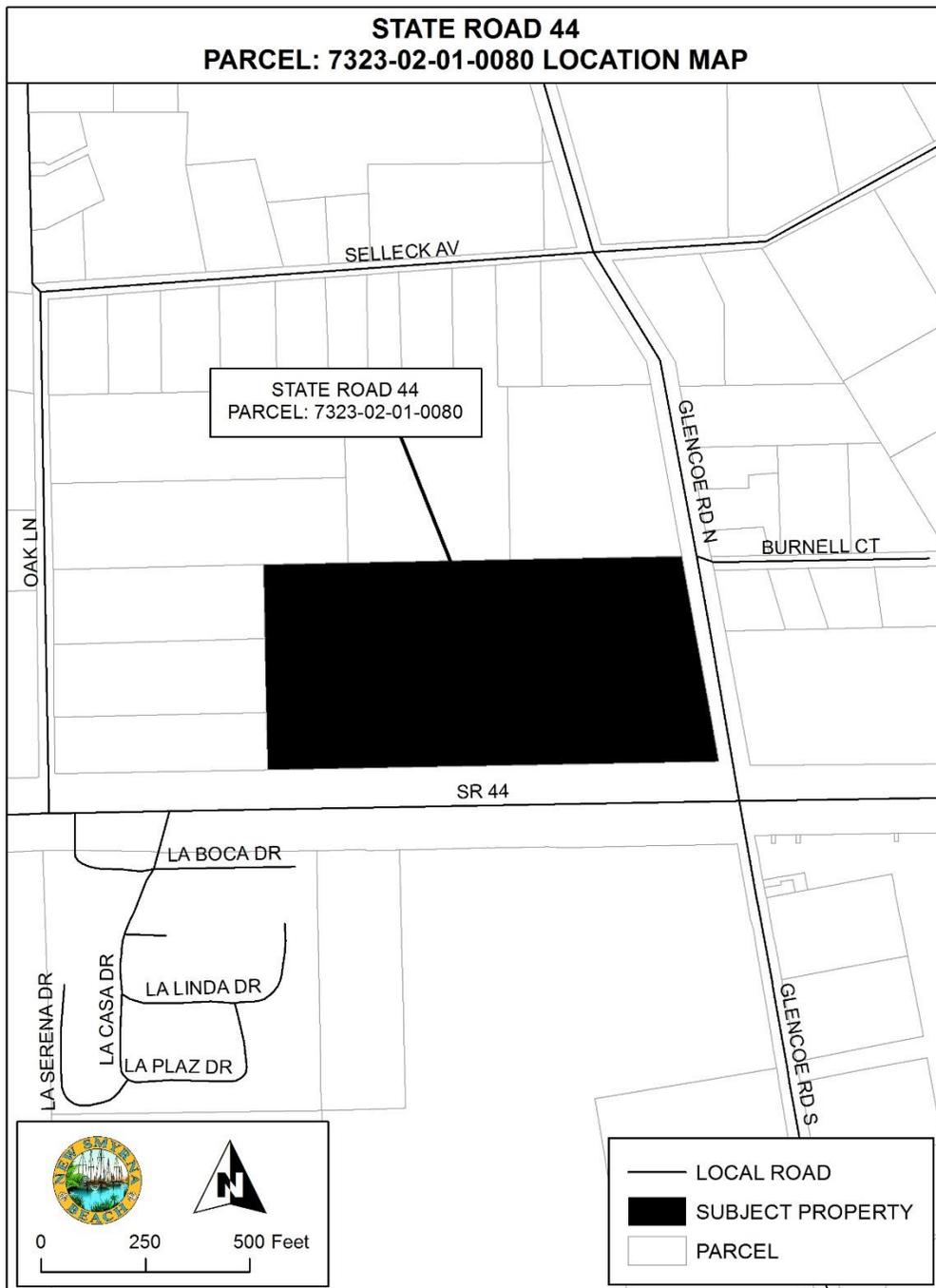


EXHIBIT B



EXHIBIT C
Specimen Tree Plan

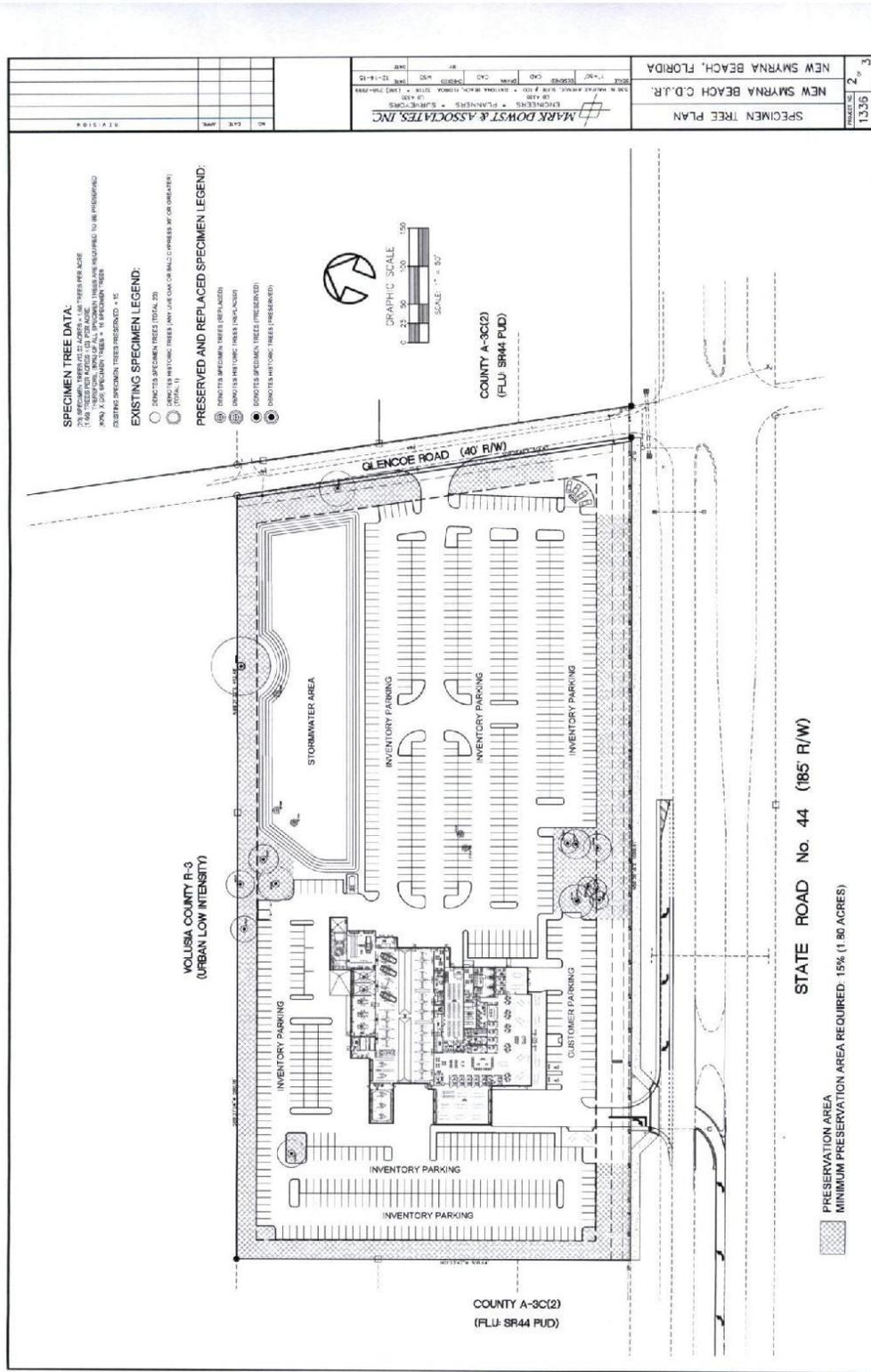


EXHIBIT C
Existing Site Conditions

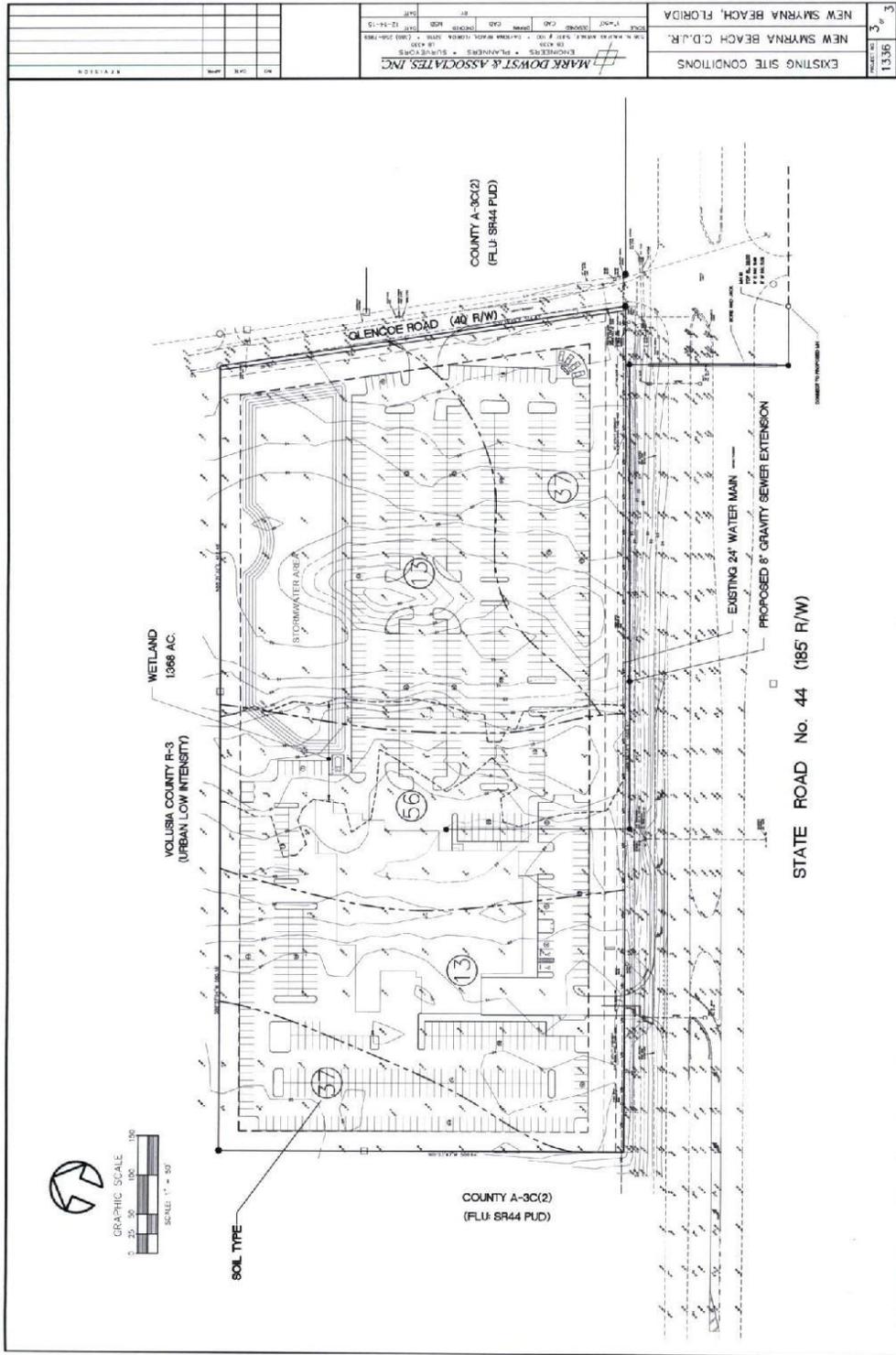


EXHIBIT D
Applicant Request Letter (5 pgs.)

GLENN D. STORCH, P.A.
ATTORNEYS AT LAW

GLENN D. STORCH, ESQUIRE
glenn@storchlawfirm.com

COREY D. BROWN, ESQUIRE
corey@storchlawfirm.com

A. JOSEPH POSEY, ESQUIRE
joey@storchlawfirm.com

January 8, 2016

Via Hand Delivery

Mr. Jeff Gove
Planning and Zoning Department
City of New Smyrna Beach
210 Sams Avenue
New Smyrna Beach, Florida 32168

Re: *Variances for New Smyrna Chrysler/Dodge/Jeep/Ram*

Dear Jeff:

Thank you for reviewing our application for variances from the City's Land Development Regulations (LDR) in conjunction with the proposed New Smyrna Chrysler/Dodge/Jeep/Ram Planned Unit Development rezoning. Below is a list of the requested variances and justifications for those variances under the LDR, as follows:

1. A variance for the minimum open space requirement to be 25 % in lieu of 50 %;
2. A variance for the natural vegetation requirement to be 15 % in lieu of 30 %;
3. A variance for the maximum building height to be 45 feet in lieu of 35 feet;
4. A variance for the required on-site parking to be 43 spaces in lieu of 147 spaces;
5. A variance for a the second permitted monument sign to be 48 square feet in lieu of 24 square feet;
6. A variance to require no more than thirty-six (36) 2 ½ inch caliper replacement hardwood trees per acre, in lieu of the requirements of the LDR;
7. A variance to allow preservation of 15 specimen trees in lieu of 16;
8. A variance for tree mitigation costs to be determined based on the actual cost of purchasing, planting and maintaining an approved species of 2 ½ inch caliper replacement hardwood tree, in lieu of \$500.00 per 2 ½ inch caliper hardwood; and
9. In the event a build-to line is required for the east property line along Glencoe Road, a variance for said east build-to line to be 25 – 850 feet in lieu of 25 feet.

420 South Nova Road • Daytona Beach, Florida 32114
(386) 238-8383 • (386) 238-0988 (fax)

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Responses to the ordinance criteria for variances are as follows:

Special circumstances exist which occurred on the applicant's land, structure and/or building, and do not generally apply to the neighboring lands, structures or buildings in the same district or vicinity:

RESPONSE

The subject property is in the City's Corridor Overlay Zone (COZ) at the northwest corner of S.R. 44 and Glencoe Road. It is unique among other commercial properties in the City, with special circumstances that put limitations on site planning options and disrupt the reasonable use of the property.

The Comprehensive Plan Future Land Use Designation (FLU) and COZ place different development standards on commercial development in this part of the City that unfairly limit the developer's options with regard to site layout, development costs and other factors. The FLU is "S.R. 44 PUD," which requires that the property be developed as a PUD, with no option for straight commercial rezoning. The PUD zoning designation was established for this area at a time when the City permitted negotiations as to certain provisions of the LDR within a PUD development agreement due to the unique nature of a PUD. Recently, the City has determined that variances are required for any deviations from the LDR, which has disrupted the ability to reasonably use the land within the PUD designation.

Most commercial properties in the City with commercial zoning only require 25% open space, while the subject property, due to the required PUD zoning and the aforementioned COZ, requires at least 50% open space under the LDR. Similarly, the LDR requires 30% natural vegetation preservation for the property pursuant to the PUD zoning and COZ regulations, whereas other commercial zoning districts in the City do not even have a requirement for natural vegetation preservation. These constrictions unfairly limit the developer's reasonable use of the property, especially when considering the amount of surface area required for an automobile dealership or a typical commercial use. Granting variances to permit less open space, natural vegetation, and one less specimen tree would help to alleviate the restrictions caused by these special circumstances and allow reasonable use of the property.

Another special circumstance involves a small wetland area bisecting the property from north to south through the middle of the property. Even though water flow through this wetland is minimal, the developer is still required to build a pipe on the property to provide a path for flowing water when necessary. The central location of this pipe on the property further limits the developer's options with regard to building location (cannot place building over pipe), which affects other site layout issues such as parking and natural vegetation preservation.

The subject property also contains an unusually large number of protected trees at a very high density, which increases the development costs dramatically. The LDR requires that trees over a certain size be replaced, or money be paid to the City for mitigation. This becomes

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prohibitively expensive when using the LDR's baseline number of \$500 per replacement tree, which was likely calculated at the height of the housing market before the crash in development costs. In addition, there is no allowance made for properties with a significantly greater than average number of trees, which increases costs even more. A variances to reduce the cost of tree mitigation to an amount equivalent to the actual cost of tree replacement will help to bring the development costs in line with today's more reasonable market conditions.

With regard to the parking reduction variance request, the City's code would automatically permit a 25% parking reduction if there were multiple uses on the site. However, because this is not the case, even though the development will have both automobile sales and service, the project may not qualify for this automatic reduction. The City's parking requirements are based upon the premise that customers having their vehicles serviced will drop off their automobile, be picked up in another vehicle and leave the site while the vehicle is being serviced. However, the majority of customers will wait on-site while the vehicle is being serviced, thus reducing the need for required on-site parking. If the parking reduction variance is not granted, hundreds of square feet of additional impervious area would be required for the parking. This would be contrary to the City's Comprehensive Plan and Land Development Regulations, which seek to reduce impervious areas and excess parking lots, particularly fronting along State Road 44.

Also, due to the PUD zoning and COZ, the subject property requires a large, combined landscape buffer and utility easement at least 45 feet in width along S.R. 44, along with 35 feet of landscape buffer and utility easement on Glencoe Road. In addition, the property has a large amount of frontage on S.R. 44, which means the 45 foot combined buffer/easement area affects a significant portion of the property. The enhanced buffer and easement requirements in this area take away usable square footage from the property owner and make it more difficult to make reasonable use of the property. Variances to permit an increased building height (45 feet) and an additional, full-sized monument sign (48 sq. ft.) on the corner of Glencoe Rd. and S.R. 44 will allow the developer to ensure that potential customers can easily locate the automobile dealership, while maintaining the development's large setback from those customers on the main road as required by the LDR. In fact, the increased building height will only be for used for locating an automobile display area at one corner of the main building. The building height variance can be further justified by the current, underlying zoning (County A-3C2), which permits structures up to 55 feet in height.

Finally, the subject property is on a corner lot, at the northwest corner of Glencoe Road and S.R. 44. The COZ regulations could be interpreted to require a 25 foot build-to line on Glencoe Road, instead of a 25 foot minimum setback. Such an interpretation would require that a developer build exactly 25 feet from the side yard boundary, with no room for adjustment. A variance to clarify this provision would allow the applicant to make reasonable use of the corner lot, with a build-to line range of 25 – 850 feet, in lieu of exactly 25 feet.

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Strict application of the provision of the LDR's would deprive the applicant of reasonable rights commonly applicable to other properties in the same district or may preclude a benefit to the community in general:

RESPONSE

The City of New Smyrna Beach is experiencing increased growth along the SR 44 corridor. New businesses, such as a big box retail store, grocery store and two car dealerships, have been built or are currently being constructed. A high density of trees and an excessive and inconsistent open space requirement, among other factors, limit the property owner's ability to reasonably use the property, especially considering the property's intended use as an automobile dealership, which requires additional surface area. In fact, in order to provide code-mandated on-site parking, hundreds of square feet of additional land would need to be converted from open space to impervious area, further reducing the ability to preserve trees and other existing vegetation on-site. Strictly applied, the LDR requirements would prevent the Developer from placing its new business within the corridor, unlike other, similar new businesses. The unique circumstances on the property would not only deprive the Developer of reasonable use of the property, but would also preclude a benefit to the community in general via increased employment in construction, automobile sales and service.

The special circumstances and conditions do not result from the actions of the applicant:

RESPONSE

The special circumstances, including the high density of trees, location of wetlands, and the City's inconsistent requirements for commercial PUDs with regard to open space, parking and other factors, do not result from the actions of the applicant; however, the applicant is working diligently to mitigate the effects of the special circumstances on the property in a manner that is both a reasonable use of the property and a benefit to the community in general.

The granting of the variance will not cause substantial detriment to the public welfare or impair the purpose and intent of the ordinance:

RESPONSE

The granting of the variance will permit the construction and operation of an attractive new project in a reasonable manner and will cause a substantial benefit to the public welfare through increased employment and economic development while furthering the purpose and intent of the Land Development Regulations and Comprehensive Plan for the SR 44 corridor and providing a heavily landscaped gateway to the City.

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The granting of the variances will not constitute a special privilege that is denied by this ordinance to other lands, structures or buildings in the same district:

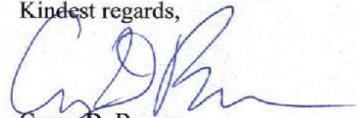
RESPONSE

On the contrary, the granting of the variances will allow for the Developer to make reasonable use of its property in a manner consistent with the area, despite the special circumstances and conditions existing on the parcel. In fact, granting the requested reduction in open space and natural vegetation would still result in this project meeting or exceeding the requirements for commercial areas in other parts of the City and allows for uses similar to other uses within the S.R. 44 corridor area.

Accompanying this letter are the following application materials: signed application form, application fees, authorization of owner, copy of survey, copy of concept plans, legal description, and list of property owners within 150 feet.

Please do not hesitate to contact me if you need any additional information regarding these variance requests.

Kindest regards,



Corey D. Brown
For: Glenn D. Storch

GDS/cdb

EXHIBIT E
Building Elevation/Rendering submitted for PUD



EXHIBIT F
Monument Sign Elevation/Rendering submitted for PUD

