



AGENDA
PLANNING COMMISSION
CITY OF PORT ORANGE

Meeting Date: Thursday, August 24, 2017

Time: 5:30 PM

Type of Meeting: Regular

Location: Council Chambers
City Hall, 1000 City Center Circle

A. CALL TO ORDER

1. Pledge of Allegiance
2. Silent Invocation
3. Roll Call

B. DISCUSSION/ACTION

4. Consideration of Minutes
5. Case No. 17-90000001
VARIANCE/65 DUNLAWTON AVENUE

A request for variances from the Land Development Code to reduce the width of the drainage and utility easement along a right-of-way, reduce the side building setback along the west property line, reduce the minimum lot open space percentage, reduce the setback for a parking space from a right-of-way, reduce the dimensions for a parking space, and reduce the north landscape buffer to a variable width buffer. If the variance requests are approved, the applicant is proposing to redevelop the site as a restaurant. The subject property is located in the Port Orange Town Center CRA.

Staff Contact: Penelope Cruz (386) 506-5671/pcruz@port-orange.org

6. Case No. 17-90000002
VARIANCE/79 DUNLAWTON AVENUE

A request for variances from the Land Development Code to reduce the side building setback along the west property line (adjacent to the Halifax River), and allow a thatched palm frond roof in lieu of a required metal roof. If the variance requests are approved, the applicant is proposing to build a pavilion over the existing outdoor seating area for the DJ's Deck restaurant. The subject site is located in the Port Orange Town Center CRA.

Staff Contact: Penelope Cruz (386) 506-5671/pcruz@port-orange.org

7. Case No. 17-40000002

SECOND AMENDMENT TO THE GROVES PLANNED COMMERCIAL
DEVELOPMENT (PCD) MASTER DEVELOPMENT AGREEMENT (MDA) AND
CONCEPTUAL DEVELOPMENT PLAN (CDP)

West side of Clyde Morris Boulevard, south of Madeline Avenue

A request by the applicant to amend the Master Development Agreement (MDA) and Conceptual Development Plan (CDP) for The Groves Planned Commercial Development (PCD) to modify the minimum lot dimensional requirements, setbacks and permitted uses in the existing MDA, and to provide requirements for off-site signage.

Staff Contact: Briana Conlan-King (386) 506-5676/brking@port-orange.org

C. OTHER BUSINESS

8. Commissioner Comments

9. Staff Comments

D. PUBLIC COMMENTS

E. ADJOURNMENT

ANY PERSON WHO DECIDES TO APPEAL ANY DECISION MADE BY THE **PLANNING COMMISSION** WILL NEED A RECORD OF THE PROCEEDINGS, AND FOR SUCH PURPOSE HE OR SHE MAY NEED TO ENSURE AT HIS OR HER OWN EXPENSE FOR THE TAKING AND PREPARATION OF A VERBATIM RECORD OF ALL TESTIMONY AND EVIDENCE OF THE PROCEEDINGS UPON WHICH THE APPEAL IS TO BE BASED. NOTE: IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS AN ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE CITY CLERK FOR THE CITY OF PORT ORANGE, 1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129, TELEPHONE NUMBER 386-506-5563, CITYCLERK@PORT-ORANGE.ORG, AS FAR IN ADVANCE AS POSSIBLE, BUT PREFERABLY WITHIN 2 WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE OR 5 DAYS PRIOR TO THE MEETING DATE. IF YOU ARE HEARING OR VOICE IMPAIRED, CONTACT THE RELAY OPERATOR AT 7-1-1 or 1-800-8771. UPON REQUEST BY A QUALIFIED INDIVIDUAL WITH A DISABILITY, THIS DOCUMENT WILL BE MADE AVAILABLE IN AN ALTERNATE FORMAT. IF YOU NEED TO REQUEST THIS DOCUMENT IN AN ALTERNATE FORMAT, PLEASE CONTACT THE CITY CLERK WHOSE CONTACT INFORMATION IS PROVIDED ABOVE.

PLANNING COMMISSION MEETING MINUTES
CITY OF PORT ORANGE
1000 CITY CENTER CIRCLE
COUNCIL CHAMBERS
JULY 27, 2017

THE REGULAR MEETING OF THE PLANNING COMMISSION of the City of Port Orange was called to order by Vice Chairman Newton White at 5:30 p.m.

Pledge of Allegiance

Silent Prayer

ROLL CALL:

Present:	John Junco Newton White Mike Arminio Bo Bofamy Thomas Jordan Maria Mills-Benat
Absent:	Lance Green (Excused)
Also Present:	Shannon Balmer, Assistant City Attorney Michelle Cusella, City Clerk's Office

B. DISCUSSION/ACTION

4. Consideration of Minutes

Motion to approve the June 22, 2017 Minutes as presented was made by Commissioner Arminio, and Seconded by Commissioner Mills-Benat. Motion carried unanimously by voice vote.

5. Case No. 17-70000002

SPECIAL EXCEPTION/MINI WAREHOUSE AND MOTOR VEHICLE AND BOAT STORAGE FACILITY IN THE COMMUNITY COMMERCIAL (CC) ZONING DISTRICT
6250 South Williamson Boulevard

Continued from the June 22, 2017 Planning Commission meeting - A request by the applicant to approve a Special Exception to allow a Mini Warehouse and Motor Vehicle and Boat Storage Facility within the Community Commercial (CC) zoning district.

Staff Contact: Briana Conlan-King (386) 506-5676/brking@port-orange.org

Glen Storch, Attorney for applicant, discussed the changes made since the last meeting which include:

- Revised a more specific site plan that provides for use of a mini- warehouse and storage on the entirety of the parcel.
- Reduced traffic counts
- Met with Sanctuary HOA representatives to discuss concerns and agreed to preserve as much natural vegetation as city permits on Rosco Turner
- Designed consistent with the entrance feature at Rosco Turner

Mr. Storch also provided a staff report and traffic impact report.

Mr. Storch addressed concerns that were discussed at last meeting such as:

- Lighting will not leave the property
- 75 ft. wetland easement along western boundary
- No access from Roscoe Turner Trail
- Buildings enclosing facility limited to one story
- All fencing and walls will be to as high as permitted by the City LDC and opaque fencing will be used for the rear of the facility and no chain link will enclose property
- Stucco walling along frontage will include brick as shown on renderings
- No vehicle servicing and/or washing on site
- No work vehicle storage

Commissioner Mills-Benat and Commissioner Armino still questioned the traffic concerns and route.

Mr. Storch advised them of the different access points

Commissioner Mills-Benat and Commissioner Junco are pleased with the new information and changes that were provided.

Vice Chairman White believes this option would be the least impactful to go at this location.

Motion to approve was made by Commissioner Arminio, and Seconded by Vice Chairman White.

Public comments were made asking for a more detailed traffic analysis to show there won't be as many traffic problems as expected by the citizens. Citizens are also asking for a traffic light to be put at the Rosco Turner intersection.

Mr. Storch addressed the hazardous materials concerns and the rules and regulations against it. He also stated, there will be cameras monitoring what is being brought in and stored.

Motion carried 5-1 by roll call vote with Commissioner Armino voting no.

6. Case No. 17-40000001

EIGHTH AMENDMENT TO THE AMENDED AND RESTATED PORT ORANGE GATEWAY CENTER PLANNED COMMERCIAL DEVELOPMENT (PCD) MASTER DEVELOPMENT

AGREEMENT (MDA) AND CONCEPTUAL DEVELOPMENT PLAN (CDP)
1771 Dunlawton Avenue

Continued from the June 22, 2017 Planning Commission meeting - A request by the applicant to amend the Master Development Agreement (MDA) and Conceptual Development Plan (CDP) for the Amended and Restated Port Orange Gateway Center Planned Commercial Development (PCD) to allow two new outparcel lots (Lot 3A and Lot 3B) to be created from the existing Super Target lot (Lot 3), establish dimensional requirements for the new lots, as well as parking and signage requirements.

Staff Contact: Penelope Cruz (386) 506-5671/pcruz@port-orange.org

Penelope Cruz, Principal Planner, stated the applicant would like to request to continue to a nonspecific date in the future

Motion to continue was made by Commissioner Arminio, and Seconded by Commissioner Mills-Benat. Motion carried unanimously by voice vote.

7. Case No. 17-50000003

SUBDIVISION REPLAT/PORT ORANGE GATEWAY CENTER LOT 3
1771 Dunlawton Avenue

Continued from the June 22, 2017 Planning Commission meeting - A request by the applicant to replat Lot 3 (Super Target parcel) of the Port Orange Gateway Center Subdivision to create three lots (Lot 3A, Lot 3B, and modified existing Lot 3).

Staff Contact: Penelope Cruz (386) 506-5671/pcruz@port-orange.org

Ms. Cruz, Staff, stated the applicant would like to request to continue to a nonspecific date in the future

Motion to continue was made by Commissioner Mills-Benat, and Seconded by Commissioner Junco. Motion carried unanimously by voice vote.

8. Case No. 17-40000003

FIFTEENTH AMENDMENT TO THE COUNTRYSIDE PLANNED UNIT DEVELOPMENT (PUD)
MASTER DEVELOPMENT AGREEMENT (MDA) AND CONCEPTUAL DEVELOPMENT PLAN (CDP)
1058 Dunlawton Avenue

A request by the applicant to amend the Master Development Agreement (MDA) and Conceptual Development Plan (CDP) for the Countryside Planned Unit Development (PUD) to expand the bank use currently permitted on the property to allow additional commercial uses.

Staff Contact: Briana Conlan-King (386) 506-5676/brking@port-orange.org

Tim Burman, Planning Manager, discussed the details of the request and recommended approval of Case No. 17-40000003

*Motion to approve was made by Commissioner Jordan, and Seconded by Commissioner Junco.
Motion carried unanimously by roll call vote.*

9. Case No. 17- 25000005

LDC TEXT AMENDMENT/MEDICAL MARIJUANA - REVISED TO BE CONSISTENT WITH STATE LAW

Amendment to Chapters 2, 12, 16, 17, and 18 of the Land Development Code (LDC) related to medical marijuana. The proposed amendments would apply the current zoning requirements for a pharmacy in the City to a medical marijuana dispensary to be consistent with State law uses and also remove all regulations related to the cultivation and processing of medical marijuana preempted by State law.

Staff Contact: Penelope Cruz (386) 506-5671/pcruz@port-orange.org

Ms. Cruz reported that this past June the State has opted for new regulations. Ms. Cruz stated the City's current regulations are now un-enforceable so there are only two options left by the State regulations - either ban it fully or allow it and treat it in the same manner as any retail pharmacy.

Ms. Cruz advised State Law states where agricultural is allowed, cultivation would be allowed, just as where industrial is allowed the processing would be allowed.

Ms. Cruz advised one would have to be on the approved list of organizations by the State to be able grow.

Commissioner Junco stated he does see the medical benefit in approving this and realizes this is a forward motion that will be hard to stop once other states keep joining the legalizing.

*Motion to approve was made by Commissioner Junco, and Seconded by Commissioner Armino
Motion carried unanimously by roll call vote.*

C. OTHER BUSINESS

10. Commissioner Comments

Commissioner Junco had a follow up question regarding the road markings behind Nova Road.

Wayne Clark, Director of Community Development, advised this has been passed on to Public Works and it is on their maintenance schedule.

Commissioner Bofamy asked for updates on the Riverwalk.

Mr. Burman advised the Commission everything is moving along on schedule at the Riverwalk.

11. Staff Comments – There were none.

D. PUBLIC COMMENTS -There were none.

Motion to adjourn was made by Commissioner Mills-Benat, and Seconded by Commissioner Bofamy. Motion carried unanimously by voice vote.

E. ADJOURNMENT: 7:16 p.m.

Vice Chairman Newton White



STAFF REPORT

Variance/Chapter 6, 12, 13, and 17 of the Land Development Code (LDC)

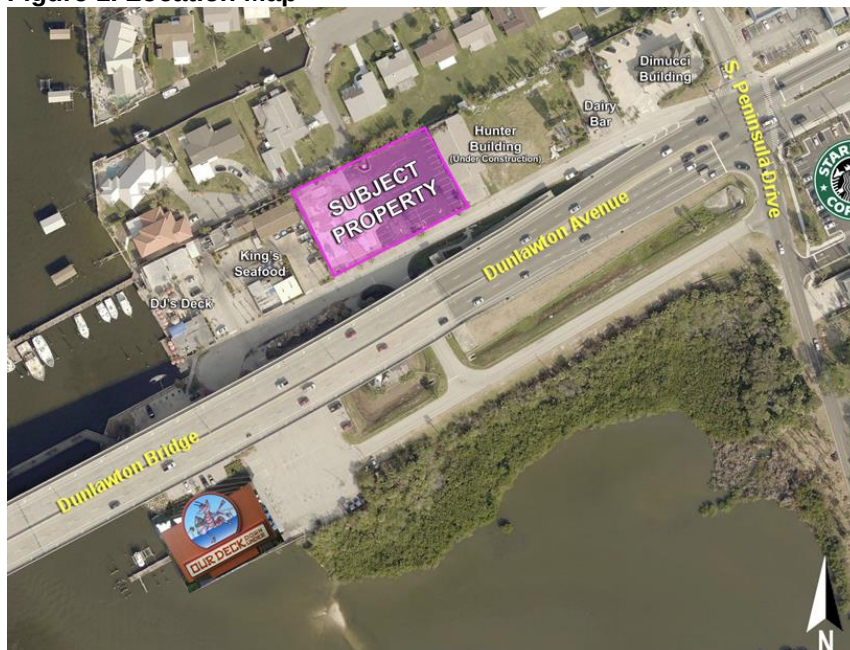
CASE NO. 17-90000001

REQUEST:	Variances from the LDC to reduce the parking space width and location, building setback, landscape buffer width and open space requirements for an infill property zoned Community Commercial in the Port Orange Town Center CRA.
LOCATION:	65 Dunlawton Avenue
OWNER:	Benedict Land, LLC
APPLICANT:	Pete Zahn, PE, Zahn Engineering, Inc.
STAFF RECOMMENDATION:	Approval
STAFF CONTACT:	Penelope Cruz, Principal Planner (386) 506-5671
PLANNING COMMISSION DATE:	August 24, 2017

PROPERTY OVERVIEW

The subject property is ± 0.6 acres (26,136 square-feet) and located at 65 Dunlawton Avenue, on the north side of the Dunlawton Bridge, east of DJ's Deck and King's Seafood restaurants, in the Down Under area of the Port Orange Town Center (POTC) Community Redevelopment Area (CRA) (Figure 1). The site was previously developed as a $\pm 6,750$ square-foot restaurant (first as the Holiday Harbor Restaurant, then Harbor Lights Restaurant). The restaurant structure was demolished in 2015 and the site is currently undeveloped.

Figure 1. Location Map



BACKGROUND

The property owner is proposing to redevelop the site with a new ± 3,648 square-foot restaurant with associated site improvements. The Land Development Code (LDC) requires a site to be brought up to current code standards when it is redeveloped. The site upgrades include but are not limited to parking facilities, stormwater retention, landscaping and buffers, irrigation, signage and architectural design. Staff has worked with the Applicant on identifying the necessary site upgrades and minimizing the variances being requested.

Redevelopment of this infill site would be an improvement for the overall Down Under area of the Port Orange Town Center CRA with a building that will meet current architectural codes, improved landscape buffering, and controlled access points for traffic management. However, to support redevelopment on infill sites, variances or flexibility in development regulations are typically necessary for sites with restrictions to redevelop (e.g. Dimucci site – 51 Dunlawton; Hunter site – 59 Dunlawton; DJ's Deck – 79 Dunlawton). A redeveloped site with associated site improvements will add to the number of redevelopment projects that have been developed in this area and will enhance the aesthetics and vitality of the area.

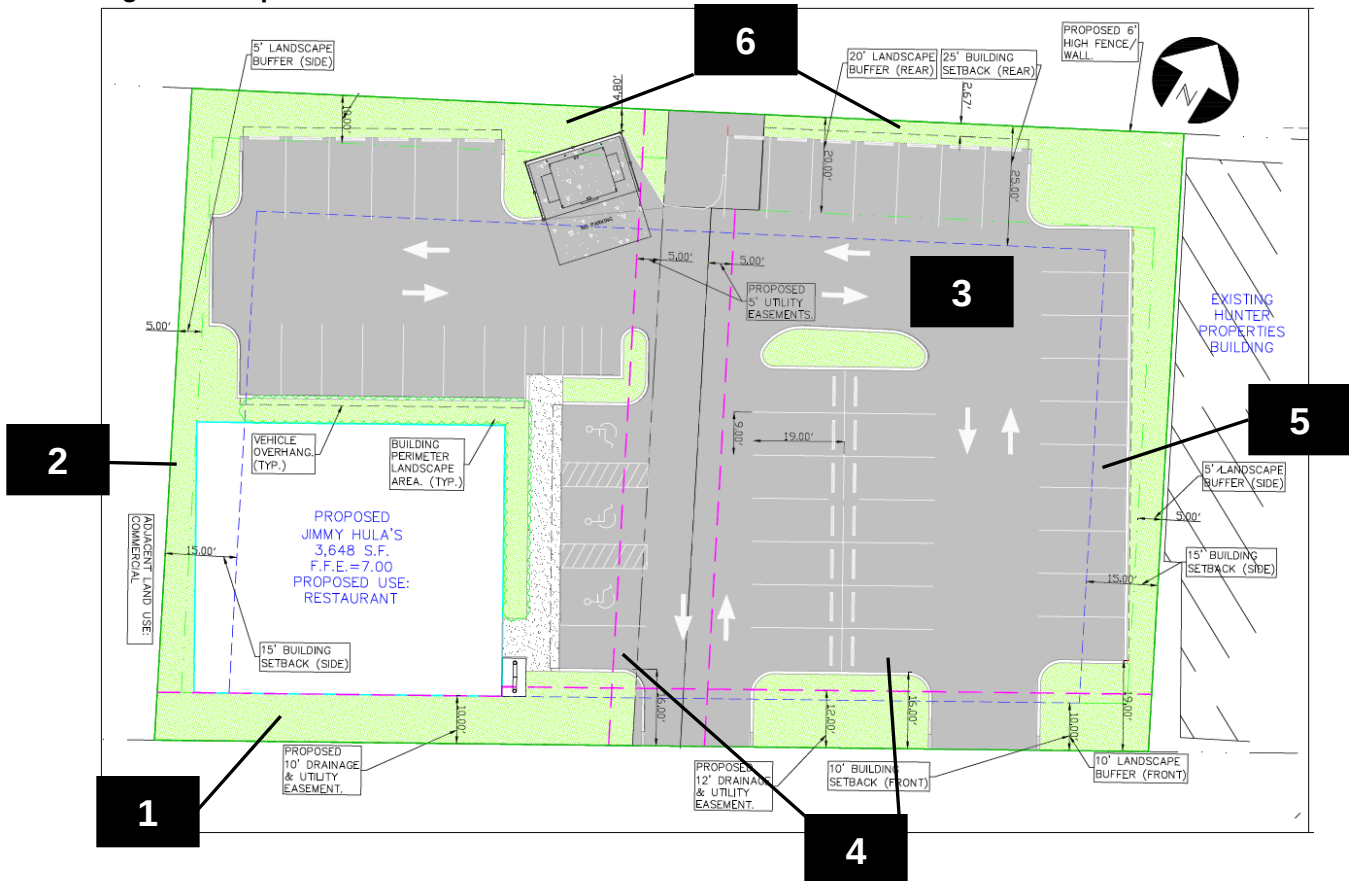
The LDC is generally focused on regulating new “green field” development for typical suburban dimensions. Typically infill redevelopment projects require more flexibility in development regulations to allow underutilized properties to redevelop. Variance request patterns indicate code changes for redevelopment areas may be needed in the future to address the needs of smaller sites.

DISCUSSION

According to the proposed concept plan, redevelopment of the site requires six (6) variances. The variances being requested are listed below and are illustrated in Figure 2:

- 1) Chapter 6, Section 3 (b)(4) of the LDC to reduce the minimum 12'-wide drainage and utility easement along the right-of-way to 10';
- 2) Chapter 17, Section 27 of the LDC to reduce the west building setback from 15' to 5';
- 3) Chapter 17, Section 27 of the LDC to reduce the minimum lot open space percentage from 30% to 24%;
- 4) Chapter 12, Section 2(b)(3)(a) of the LDC to reduce the distance between the first parking space and the right-of-way from 25' to 16';
- 5) Chapter 12, Section 6(b)(1)(a) of the LDC to reduce the dimensions of a regular parking space from 10' x 20' to 9' X 19'; and
- 6) Chapter 13, Section 3 of the LDC to reduce the north landscape buffer to a variable width buffer with a maximum width of 20' and a minimum width of 4.5'.

Figure 2. Proposed Variances



Drainage and Utility Easement:

The LDC requires a 12-foot drainage and utility easement to be located along the fronts of all lots adjacent to any street. The Applicant has requested to reduce the width of the easement to 10'. The Applicant is proposing to locate the new restaurant building in the same general location as the previous building and meet the 10' building setback required by the Community Commercial (CC) zoning district. The Applicant is proposing to provide a 12' drainage and utility easement along 208' of the Dunlawton Avenue frontage, except for 73' where the new building is proposed. City Staff have reviewed this variance request and agree that infrastructure needs can be met within the space provided.

Parking Space Width:

The LDC requires the width of a parking space to be a minimum of 10' and the depth to be 20'. The parking space width is proposed to be 9' and the depth is proposed to be 19'. The requested parking space width and depth helps provide the required number of parking spaces for the proposed use while allowing the site to include increased landscape areas. According to the Applicant, the proposed parking space dimensions are common in this region and will allow for adequate area to park and still provide room for vehicles maneuvering to enter and exit the site. The proposed 9' width and 19' depth is consistent with other cities in the area and with many of the Planned Commercial Development (PCD) Master Development Agreements (MDA) and variances approved by the City for other infill redevelopment projects (Table 1).

Table 1. Comparison of Parking Space Dimensions

City	Standard Depth Dimension for a Standard Parking Space	Standard Width Dimension for a Standard Parking Space
Proposed in Variance Request	19'	9'
Port Orange	20'	10'
New Smyrna Beach	20' and 18' in CRA areas	10'
Daytona Beach	19'	9'
Ormond Beach	20'	9'
Deland	19'	9'
South Daytona	18'	9'
Daytona Beach Shores	19'	9'

25-Foot Setback from a Right-of-Way to a Parking Space

The code requires a minimum of 25' from the right-of-way line to any parking space to allow room for stacking and maneuvering of vehicles. The concept plan proposes to locate a row of parking spaces 16' to 19' from the right-of-way. The reduced setback is only for 4 parking spaces and is being requested to help meet the number of parking spaces required for the proposed use. According to the Applicant, the reduced setback allows for a wider rear landscape buffer because the parking lot can be shifted closer to the street. Additionally, the requirement for the 25' setback is typically for streets with higher speed limits and traffic volumes where stacking room for vehicles entering a parking lot is needed. According to the Applicant, the road the subject property is located on functions similar to a drive aisle in a parking lot and not a collector or arterial road, therefore the typical 25' setback is not necessary due to the slower travel speeds and traffic volume. The Applicant states that the proposed parking lot design with the reduced setback will still provide the necessary room for stacking and maneuvering of vehicles in a safe manor.

North Landscape Buffer:

For the north landscape buffer, the LDC requires a 20' wide landscape buffer and a minimum 6' tall wall/opaque fence along the entire north property line. The intent of the landscape buffer requirements is to ensure quality landscape design, minimize the impact of adjoining differing land uses, and maintain and enhance an attractive natural environment within the City. The landscape buffer proposed along the north property line would range in width from 20' to 4.5'. A 6' tall fence or wall will also be included as required by the LDC.

According to the Applicant, the site had been designed to locate the most intense portion of the proposed use (the restaurant building) away from the adjacent residential property. This results in the parking spaces being located closer to the north property line. The Applicant has also stated that the proposed design has located the largest landscape island proposed on the site directly adjacent to the residential use, which will ultimately provide the full 20' landscape buffer for this area. The Applicant has also committed to providing the same quantity of landscaping required in the required buffers within the reduced width buffer.

All other landscape buffers (sides and along the roadway) will be provided as required by the LDC, and the same quantity of landscaping will be provided in the proposed reduced width northern buffer. Currently, there is no landscape buffer at the rear or sides of the property. The proposed landscape for this site, including this buffer, will increase the area

of the site with landscaping from 2% to 24% and will be an improvement to existing conditions.

Open Space:

The LDC requires that a minimum of 30% of a site within the Community Commercial (CC) zoning district remain as open space. The proposed concept plan indicates 24% of the site will remain as open space. Currently, 98% of the site is impervious (asphalt and concrete) leaving only 2% of open space. The proposed redevelopment of the site will result in a significant increase in the amount of open space.

Building Setbacks

The LDC requires a side building setback of 15' for a site in the Community Commercial (CC) zoning district. The proposed concept plan shows the building located 5' from the west property line. According to the Applicant, the site has been designed to shift the most intense portion of the proposed use (the restaurant building) closer to the adjacent commercial property and away from the residential area to the north. According to the Applicant, the proposed location of the restaurant building is to help create the least impact to the residential lots to the north and still allows for the required 5' landscape buffer along the west perimeter of the property. The prior restaurant building on the site was located adjacent to the west property line and with no space for a landscape buffer. The proposed setback will be an improvement to prior conditions.

REVIEW OF VARIANCE CRITERIA:

Chapter 19, Section 1, of the LDC, lists the review criteria that are used to determine whether the variances requested should be granted. These criteria, accompanied by staff's responses, are listed below.

- a) *Special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are not applicable to other lands, structure or buildings in the same zoning district.*

The subject property is bisected by a ±10' wide City-owned parcel. Within the City parcel is a gravity sewer line and a regional lift station. The parcel became city-property by deed in 1964. The utility improvements were installed in 1987. This condition creates a unique site design challenge for this lot than other lots in the Community Commercial (CC) zoning district. A building cannot be located on this City-owned parcel which requires any building to be located on the east or west side of the site and reduces the buildable area of the overall lot. Easements are in place to allow for the parking lot and landscaping to be installed on the City-owned parcel. Although the sewer line could be relocated, the regional lift station cannot; therefore, the site must be designed around the location of these existing utilities.

- b) *The special conditions and circumstances are not result of actions of the property owner.*

The special condition/circumstance associated with the subject property is not a result of the current property owner. The former restaurant building was built in 1973 and did not meet the 15' side building setback at that time. It is anticipated that the building

was shifted closer to the west side of the property to accommodate the City-owned utility parcel.

The Applicant stated that the requested 5' building setback is needed in order to create a site design that can function properly and also avoid the impacts on the City-owned utility parcel. In addition, the subject property is the only lot bisected with a parcel owned by the City in the Community Commercial zoning district.

- c) *Literal interpretation and enforcement of the land development code regulation would deprive the property owner of rights commonly enjoyed by other properties in the same zoning district under terms of the development code, and would work unnecessary and undue hardship on the property owner.*

As part of the development approval process, all properties are required to be brought into compliance with the current development requirements of the LDC when a site is being redeveloped.

The intent of the landscape buffer and open space requirements is to ensure quality landscape design, minimize the impact of adjoining differing land uses, and to maintain and enhance an attractive environment within the City. The proposed landscape buffers create a separation between adjacent uses, enhance the proposed site design, and represent an improvement to the appearance of this part of the City. The Applicant acknowledges that the landscape buffer requirement for the north buffer is not met; however, states that this is due to the constraint of the site and every effort has been made to provide as much landscaping as possible to enhance this site. The Applicant has also stated that the amount of landscape materials (shade and understory trees and shrubs) required by the LDC will be planted within the modified north landscape buffer.

The intent of the parking space width and depth and setback from the right-of-way line requirements is to ensure adequate parking spaces and safe a logical traffic patterns. According to the Applicant, the proposed parking lot will have sufficient room for safe maneuverability for vehicles and pedestrians.

The intent of building setback and drainage and utility easement requirements is to minimize the impact on adjoining properties, ensure adequate separation between structures for air movement and light, and provide room on the subject property for maintenance and necessary repairs to the structure. According to the Applicant, the requested 5' building side setback and 10' easement is due to the configuration of the lot, providing a functional parking lot and locating the restaurant further from residential uses and in the same general footprint of the previous restaurant to use existing underground infrastructure (water and sewer). The Applicant states that placement of the restaurant as proposed would still meet the intent of the LDC since there is a parking lot for a commercial use on the adjacent property and the placement of the restaurant building would not impact air movement and light for the adjacent property.

- d) *The variances, if granted, are the minimum variances necessary to make possible the reasonable use of the land, building or structure.*

The site could be redeveloped to comply with the requirements of the LDC; however, this would require changes to the proposed site design and building.

Staff has worked with the Applicant on the proposed site plan to reduce the overall number of variances needed and to minimize the variances being requested. The Applicant has stated that to redevelop the site in a manner that functions effectively, the restaurant must be a certain square footage and the variances requested are the minimum variances needed to redevelop the site as proposed.

- e) *Granting of the variances requested will not confer on the property owner any special privilege that is denied by the development code to other lands, buildings or structures in the same zoning district.*

All properties developed or redeveloped within the City are required to meet the development requirements of the LDC or secure variances from said requirements.

- f) *The granting of the variances will be in harmony with the general intent and purpose of this code, and will not be injurious to the surrounding properties or detrimental to the public welfare.*

The LDC is intended to implement the City's Comprehensive Plan, to protect the health, safety and general welfare of the citizens of the City, and to enhance the appearance, function and livability of the City, to the end of improving the overall quality of life within the community. However, the LDC is generally focused on regulating new "green field" development rather than infill redevelopment. Typically infill redevelopment projects require variances or flexibility in development regulations to allow underutilized properties to redevelop.

Overall, the proposed redevelopment of the site with a new ±3,648 square-foot restaurant and associated site improvements will improve the existing conditions in this area of the City. Although the proposed project does not bring the site into full compliance with the current code, the proposed redevelopment will improve the existing conditions. The variances, if granted, would enable a site in the Port Orange Town Center CRA to be redeveloped in a manner that would enhance the appearance of the site and this area.

- g) *The variance represents a reasonable disposition of a claim brought under the Bert J. Harris Private Property Rights Protection Act, chapter 95-181, Laws of Florida, that a development order of the city has unreasonably burdened the applicant's property, based upon the recommendations of the special master appointed in accordance with the act, or the order of a court as described in the act.*

The variance requested is not based upon a claim brought under the Bert J. Harris Private Property Rights Protection Act.

RECOMMENDATION:

Based on the findings of this report, staff recommends **approval** of the variances requested with the condition that the same quantity of landscape materials is installed in the proposed rear landscape buffer as required by the LDC for the required buffer width.

ATTACHMENTS:

Exhibit A – Email from Adjacent Resident

Cruz, Penelope

From: Larry <akunbird7@aol.com>
Sent: Thursday, August 17, 2017 8:46 PM
To: Cruz, Penelope; john.zemball@zahneng.com; pjbn@aol.com; akunbird7@aol.com; jspooner@bdo.com
Subject: 65 Dunlawton Av requests for Variances

To:you + 1 more Details
To Whom it may concern,

In response to a request for a number of variances for 65 Dunlawton Av, we would like to go on record as being opposed to the changes proposed which apply to the North side of the property. Our mailed is forwarded, so we just received the notices today. We are away for the summer in Vermont and cannot attend the public hearing.

We have been abutters to this property since 1985 and unfortunately have had to make several complaints to Community Development over these years. I would hope that all of our complaint (s) documentation will be reviewed before considering any variance. We met with Tim Burman and others a few months ago and those complaint files were researched and reviewed at that time.

In short, Many years ago, as a result of a hurricane an existing 12 foot high buffer wall was damaged. The wall was built by the developer of the residential property prior to the commercial property being developed. The wall was built 8 inches onto the commercial property. The residential property has not been adequately buffered since.

At the time the city could not direct the commercial property to repair the wall because the last time the existing restaurant expanded, the buffer wall was not mentioned. WE WERE ABUTTERS AT THE TIME AND THE CITY NEVER NOTIFIED US OF ANY PLANNED EXPANSION. We never would have been in agreement with the encroachment right up to our property line. Would you? The last restaurant had it's dumpster and 55 gallon oil waste barrels on that property line. It has since become our responsibility to try to buffer our property. We have always believed that it should be the responsibility of the commercial property to provide an adequate buffer.

When the commercial property was built it was elevated approx 2 feet higher than the residential property. The original wall also helped with the water run off, keeping it on the commercial side. Our neighbor to the west was severely flooded from local run off, during the last hurricane.

This whole process has been very frustrating for us over the years, having to deal with several different regimes coming and going in Community Development. Unfortunately, many of our problems with 65 Dunlawton Av over the years have been having to deal with the many different faces in Community Development, going back as early as not being notified of the the expansion of the original restaurant. We have to believe that the planning department is commonly dealing with home owners that don't have the 30 years history of abutting the property concerned here. We have that history and the majority of it is documented in your files. Please take our concern seriously. We have lived it, you folks have not.

We hope you can understand, that having the track record we have had over these years with the city puts us on the defensive. We believe set back rules are on the books for a reason. It is a small piece of property we are talking about to begin with. We understand that the property needs to be developed, but should not be expanded on at the residential properties expense. The last expansion to the original restaurant was , in our opinion, not done legally, and that should be taken into consideration when looking at plans for redevelopment. .

So here we are 30 years later.

We truly believe that the City wants to do the right thing here, and naturally we want that too. We hope we can resolve the buffer problems we have had all these years, with something that works for all parties. We want to see Jimmy Hula's make a go of it, just not at our expense.

I had the opportunity to speak with Zahn Engineering project engineer today, and He has assured me that we will have some input regarding the buffering. That is somewhat comforting.

Please keep us advised

Thank You,

Lawrence & Pamela Bean
116 coral way
Port orange, FL 32127
akunbird7@aol.com
386 846 9152



STAFF REPORT

Variance/Chapter 14 and 17 of the Land Development Code (LDC)

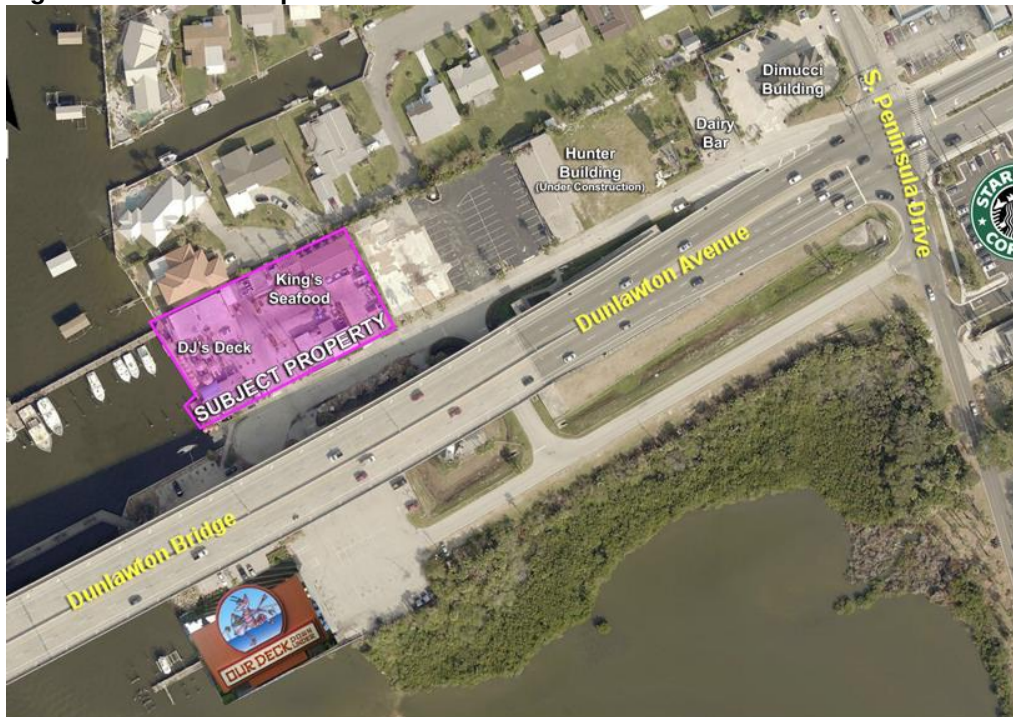
CASE NO. 17-90000002

REQUEST:	Variances from the LDC to reduce a building setback and vary from the architectural requirements for a pavilion over existing outdoor seating on property in the Port Orange Towne Center Community Redevelopment Area (CRA)
LOCATION:	79 Dunlawton Avenue
OWNER:	Port Orange Marina, Inc.
APPLICANT:	DJ's Deck, Inc.
STAFF RECOMMENDATION:	Approval
STAFF CONTACT:	Penelope Cruz, Principal Planner (386) 506-5671
PLANNING COMMISSION DATE:	August 24, 2017

OVERVIEW

The subject property is ± 0.8 acres ($\pm 35,189$ square-feet) and located at 79 Dunlawton Avenue, on the north side of the Dunlawton Bridge, adjacent to the Halifax River in the Down Under area of the Port Orange Town Center (POTC) Community Redevelopment Area (CRA) (Figure 1). The site is developed with a restaurant (DJ's Deck), a commercial marina, and a retail store (Kings Seafood). If the variances requested are approved, the Applicant is proposing to build a pavilion over the existing outdoor seating area located along the Halifax River for the DJ's Deck restaurant (Figure 2).

Figure 1. Location Map



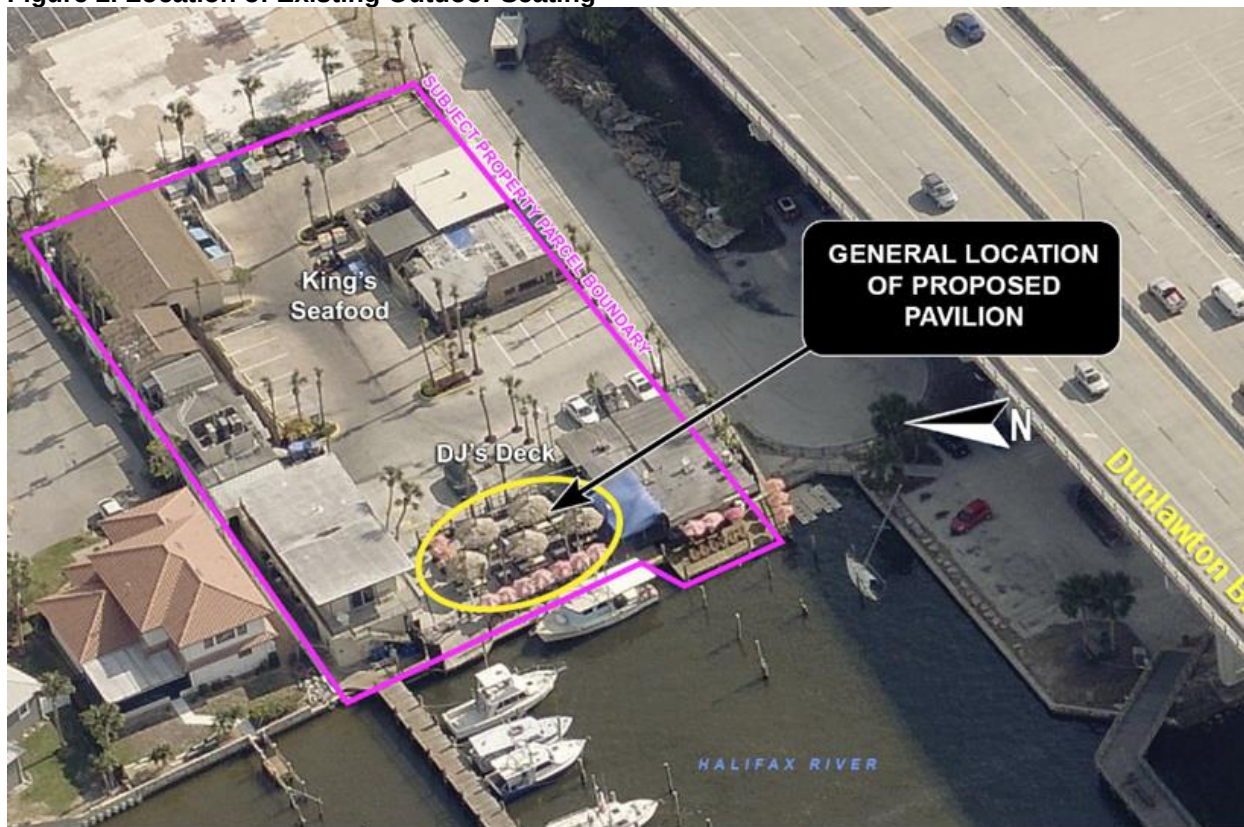
DISCUSSION

Redevelopment on this site would be an improvement for the overall Down Under area of the Port Orange Town Center CRA. However, to support redevelopment on some sites in the CRA, variances or flexibility in development regulations are typically necessary for sites with restrictions to redevelop. Redevelopment of this site will add to the number of projects that have been constructed in this area and will enhance the aesthetics and vitality of the area (e.g. Dimucci site – 51 Dunlawton; Hunter site – 59 Dunlawton; Jimmy Hula's – 65 Dunlawton).

According to the building permit submitted for the pavilion, the Applicant is requesting approval of two variances from the following Land Development Code (LDC) regulations. The variances being requested are listed below:

1. Chapter 17, Section 27 of the LDC to reduce the west building setback (adjacent to the Halifax River) from 15' to 0'; and
2. Chapter 14, Section 3(f)(2) to allow for a thatched palm frond roof in lieu of a required metal roof.

Figure 2. Location of Existing Outdoor Seating



According to the Applicant, the restaurant has had an outdoor seating area for at least the 17 years that they have been the owners and protection from the weather has been provided throughout the years with various individual thatched and vinyl structures at the tables. A majority of the individual shade structures were damaged by Hurricane Matthew in 2016 and instead of purchasing new shade structures the applicant is proposing to construct a pavilion that would cover the entire existing seating area. According to the

Applicant, the proposed pavilion will only cover the existing seating area and will not expand the number of outdoor seats.

The pavilion has been designed to include a thatched palm frond roof and can be enclosed with clear vinyl curtains so the outdoor seating area can be used throughout the year. The proposed thatched palm fronds roof is to match the casual, open air, waterfront theme of their restaurant and also provide better protection for their customers from the weather. The Applicant has stated that during cold weather or when it is raining the outdoor seating area cannot be used and the proposed structure will provide sufficient cover to use it during inclement weather.

Building Setback

The LDC requires a side building setback of 15' for a site in the Community Commercial (CC) zoning district. The proposed site layout shows the pavilion located 0' from the west property line (Halifax River). According to the Applicant, there is no additional room on the site to relocate the existing outdoor seating. The applicant also states that building the pavilion 15' from the side lot line would require modifications to the existing parking lot and would reduce the separation between the outdoor seating area and the Halifax River.

Figure 3. General Location of Proposed Pavilion



Roof Material for Building in the Town Center CRA

The subject property is located within the Port Orange Town Center (POTC) CRA and according to the LDC all new structures built in the POTC are to have a metal roof. The applicant is requesting a variance to allow a thatched palm frond roof in lieu of a metal roof on the pavilion (Figure 4).

Currently, the LDC has specific architectural requirements for properties in the POTC and does not allow property owners or designers to incorporate variations to the Florida Vernacular architectural style. According to the Applicant, a thatched roof is commonly used roof material for outdoor seating pavilions throughout Florida and is general consistent with the intent of the Florida Vernacular architectural style.

The existing outdoor seating includes individual vinyl or palm frond thatched umbrellas over each table (Figure 5). According to the Applicant, the thatched roof material is designed to match the casual, open-air, waterfront theme of the restaurant, while providing better protection for customers from the elements.

Figure 4. Example of a Palm Frond Thatched Roof



Figure 5. Existing Thatched and Vinyl Umbrellas over Outdoor Seating



REVIEW OF VARIANCE CRITERIA:

Chapter 19, Section 1, of the LDC, lists the review criteria that are used to determine whether the variances requested should be granted. These criteria, accompanied by staff's responses, are listed below.

- a) *Special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are not applicable to other lands, structure or buildings in the same zoning district.*

The location of the subject property adjacent to the river is a special condition. Typically, commercial lots are adjacent to other lots where setbacks are needed to minimize the impact on adjoining properties, ensure adequate separation between structures for air movement and light, and provide room on the subject property for maintenance and necessary repairs to the structure.

- b) *The special conditions and circumstances are not result of actions of the property owner.*

The special condition/circumstance associated with the subject property is not a result of the current property owner.

- c) *Literal interpretation and enforcement of the land development code regulation would deprive the property owner of rights commonly enjoyed by other properties in the same zoning district under terms of the development code, and would work unnecessary and undue hardship on the property owner.*

When a new structure is built, it must comply with current development requirements of the Land Development Code (LDC). The intent of building setback requirement is to minimize the impact on adjoining properties, ensure adequate separation between structures for air movement and light, and provide room on the subject property for maintenance and necessary repairs to the structure.

Although not their preference, the Applicant could shift the proposed pavilion and seating area toward the center of the property to meet the side yard setback requirement and use a metal roof. According to the Applicant, the variance is necessary for the proposed pavilion to be located along the side lot line, close to the Halifax River, to provide the waterfront dining experience. The Applicant states that placement of the pavilion along from the property line would still meet the intent of the LDC since the area adjacent to the west is the Halifax River and the placement of the pavilion would not impact air movement and light for an adjacent property.

The intent of the POTC architectural requirements is to provide a uniform architectural theme which reflects characteristics of the historic Florida waterfront or Cracker vernacular architectural style. According to the applicant, a thatched roof is commonly used roof material for outdoor seating pavilions throughout Florida and is general consistent with the intent of the Florida Vernacular architectural style.

At the May 29, 2017 Workshop, part of the City Council discussion included providing flexibility with the architectural requirements in the POTC CRA. Staff has prepared LDC amendments to accomplish this (Case. No. 17-25000003), that if approved, would allow the proposed thatched roof without the need for a variance.

- d) *The variances, if granted, are the minimum variances necessary to make possible the reasonable use of the land, building or structure.*

The variances requested are not the minimum variances necessary to make possible reasonable use of the land. The site is already developed with a restaurant and the outdoor seating is an accessory to the principal restaurant use.

The pavilion could be built to comply with the setback and roof material requirements of the LDC; however, this would require changes to the proposed location of the pavilion on the site and its appearance. Although not their preference, the Applicant could shift the proposed pavilion toward the center of the property to meet the setback requirement and use a metal roof. Building the pavilion 15' from the side lot line would require modifications to the existing parking lot and would reduce the separation between the outdoor seating area and the Halifax River. According to the Applicant, the requested 0-foot side yard setback along the Halifax River will not impact adjacent properties.

Although not their preference, the Applicant could use a metal roof. According to the Applicant, the thatched roof material is designed to match the casual, open-air, waterfront theme of the restaurant, is a commonly used roof material for outdoor seating pavilions throughout Florida, and is general consistent with the intent of the Florida Vernacular architectural style.

The existing outdoor seating includes palm frond thatched umbrellas over individual tables. The proposed thatched pavilion would utilize the same design concept and cover all of the tables with one structure.

At the May 29, 2017 Workshop, part of the City Council discussion included providing flexibility with the architectural requirements in the POTC CRA. Staff has prepared LDC amendments to accomplish this (Case. No. 17-25000003), that if approved, would allow the proposed thatched roof without the need for a variance.

- e) *Granting of the variances requested will not confer on the property owner any special privilege that is denied by the development code to other lands, buildings or structures in the same zoning district.*

All properties within the City are required to meet the development requirements of the LDC or secure variances from said requirements.

- f) *The granting of the variances will be in harmony with the general intent and purpose of this code, and will not be injurious to the surrounding properties or detrimental to the public welfare.*

The LDC is intended to implement the City's Comprehensive Plan, to protect the health, safety and general welfare of the citizens of the City, and to enhance the appearance, function and livability of the City, to the end of improving the overall quality of life within the community. However, the LDC is generally focused on regulating new "green field" development rather than infill redevelopment. Typically infill redevelopment projects require more flexibility in development regulations to allow underutilized properties to redevelop.

The owner is proposing to construct a pavilion over the existing outdoor seating area designed to match the casual, open-air, waterfront theme of the restaurant, while providing better protection for customers from the elements. The variances, if granted, would not increase the existing outdoor seating area, and would not be injurious to the surrounding properties or detrimental to the public welfare.

- g) *The variance represents a reasonable disposition of a claim brought under the Bert J. Harris Private Property Rights Protection Act, chapter 95-181, Laws of Florida, that a development order of the city has unreasonably burdened the applicant's property, based upon the recommendations of the special master appointed in accordance with the act, or the order of a court as described in the act.*

The variance requested is not based upon a claim brought under the Bert J. Harris Private Property Rights Protection Act.

RECOMMENDATION:

Based on the findings of this report, staff recommends **approval** of the variances requested.



STAFF REPORT

SECOND AMENDMENT TO THE GROVES PCD MDA & CDP
CASE NO. 17-40000002

REQUEST:	Amend the Master Development Agreement (MDA) and Conceptual Development Plan (CDP) for The Groves Planned Commercial Development (PCD).
PROPERTY OWNER:	Future Land, LLC c/o Taher Khalil, M.D.
APPLICANT:	Mark Karet, Zev Cohen & Associates, Inc.
LOCATION:	3830 Clyde Morris Blvd.
STAFF CONTACT:	Briana Conlan-King, Planner (386) 506-5676
STAFF RECOMMENDATION:	Approval, subject to approval of the policy considerations as described in the staff report
PLANNING COMMISSION DATE:	August 24, 2017

DISCUSSION:

The subject property is currently zoned Planned Commercial Development (PCD) and is a part of The Groves PCD. The Groves PCD was approved in 1988 and established as a +/- 19 acre commercial development. The First Amendment to the PCD was approved in 1995, which divided the PCD into two phases, expanded the list of permitted uses, and established dimensional requirements for Phase 1 of the PCD. Phase 1 consists of a +/- 6.9-acre tract from the overall +/- 19 acre PCD. Phase I was developed in 1996 as a grocery store (former Food Lion) anchored shopping center and an outparcel lot (McDonalds). Phase II of the PCD consist of +/- 12.1 acres of undeveloped property.

Figure 1. Location Map



The proposed Second Amendment to The Groves Master Development Agreement (MDA) and Conceptual Development Plan (CDP) would apply to Phase II of the PCD. The proposed Second Amendment is to update the minimum lot dimensional requirements (lot width and area), building setbacks and permitted uses in the existing MDA, and to provide requirements for off-site signage and specific requirements for identification signs for lots without direct roadway frontage.

According to the applicant, the purpose for the proposed Second Amendment to the MDA and CDP is to assist in the development of the Phase 2 property by expanding the permitted uses on the subject property to allow for commercial uses, and by using the lot dimensional requirements and building setbacks as allowed in the Community Commercial (CC) zoning district. The applicant states that it is difficult to predict future development options on the subject property, and if the uses allowed on the property are limited, and the dimensional requirements are not consistent with other commercial properties, it limits the development options for the site. The CC zoning district permits typical community scale commercial uses commonly found at shopping centers and outparcels of this type such as retail stores, restaurants, personal services (hair salon, barber shop, nail salon, retail dry cleaning, etc.) offices, breweries, child care centers, convenience store/gas station, banks, and similar uses.

DEVELOPMENT PROPOSAL:

If approved, the Second Amendment to The Groves MDA and CDP will provide the regulatory framework for the development of the subject property. The applicant intends to market and develop the property with typical community-scale commercial uses commonly found at multi-use shopping centers and outparcels similar to other commercial developments located along Clyde Morris Boulevard and Nova Road.

The following discussion will focus on the aspects of the proposed MDA and CDP (Exhibit 1) such as the use, size and development impacts.

General Site Layout:

The proposed development will be accessed from Clyde Morris Boulevard and Madeline Avenue. The Phase II property will be developed with cross-access easements between Phase I to provide an internal network for vehicles and pedestrians. The Conceptual Development Plan shows the general location of the potential buildings and infrastructure. The exact locations of the buildings and associated site improvements will comply with the requirements in the Second Amendment to the MDA or Land Development Code (LDC) and will be reviewed at the time of site plan review.

Subdivision:

The subject property is proposed to be subdivided into 7 lots and will be developed with commercial uses, preservation areas, and common driveways to support the subdivision. The City may require individual building site owners to make off-site infrastructure (water, sewer, drainage, driveway, etc.) improvements for the overall development of Phase II. Development of each lot will require separate site plan approval, but each lot can be developed in no specific order, provided that the necessary infrastructure to support the lot has been constructed.

Landscaping/Screening:

The proposed development will comply with the landscape and screening (fencing) requirements of the City's LDC such as rights-of-way buffers, foundation plantings, screening of service areas for any of the proposed buildings, parking lot landscaping, tree preservation and fencing/wall to adjacent residential areas.

Water, Sewer and Reclaimed Water:

The proposed development will comply with the requirements of the City's LDC for improvements related to water, sewer, and reclaimed water. Water, sewer and reclaimed water service is available to serve the property.

Stormwater:

At the time of subdivision plat and plans and site plan submittal, each lot will be reviewed to ensure compliance with the Groves MDA and City's LDC. The stormwater drainage will also be required to meet the stormwater requirements of the St. Johns River Water Management District.

Architecture:

The architectural style of the buildings, accessory structures, screen walls, and site furnishings will be designed with a common architectural theme. A formal review of the architectural design will occur with each of the site plans to verify compliance with the Land Development Code.

Parking/ Project Access:

Parking will be provided as required by the LDC. The total number of parking spaces and design of the parking lots will be reviewed with the submittal of the site plans. Vehicles will enter/exit the project via the existing shared access drives located off Clyde Morris Boulevard and Madeline Avenue.

The CDP also shows a proposed third access drive off Clyde Morris Boulevard. A Volusia County permit will need to be required to construct this driveway location on Clyde Morris Boulevard and an official application has not been submitted. Prior to constructing the driveway on Clyde Morris Boulevard, a Volusia County Use Permit will have to be issued.

Traffic:

All site plan submittals for the seven lots will be required to comply with the City's Concurrency Management requirements in the LDC. Traffic studies may be required for proposed developments on these lots. If required, the study will have to be submitted at the time the site plans are reviewed to fully assess the impacts of the proposed development on the surrounding roadway network and to identify any improvements that might be needed. Similar to other developments within the City, the developer may be required to enter into a Fair-Share and Concurrency Agreement with the City to pay for part of the scheduled improvements for any impacted areas.

Signage:

As described in the MDA, wall signage and monument signs for the lots with direct frontage along Clyde Morris Boulevard will comply with the requirements of the City's LDC. The applicant is proposing two monument signs on the two interior lots at the western portion of

the property, as well as, an off-site sign that would identify those businesses in the PCD boundary area that do not have frontage on Clyde Morris Boulevard.

Policy Issues:

1. The applicant is requesting to have an off-site multi-tenant sign at the intersection of the existing driveway at Clyde Morris Boulevard located between Phase 1 and Phase 2 of the PCD property. If the proposed Second Amendment is approved, the proposed sign would be located on the south side of the shared driveway to identify any tenants within Phase II of the PCD property. According to the LDC, off-site signage is any sign that directs attention to a business not conducted or available on the premises where their sign is located. According to the applicant, the off-site signage is requested due to the configuration of the proposed lot layout and to advertise tenants that do not have direct building frontage along Clyde Morris Boulevard. The proposed multi-tenant monument sign will be designed to meet the height, sign area and design requirements in the LDC. No deviations are requested for the dimensional requirements or number and size of tenant panels. The sign would identify the businesses located on the seven lots. The proposed sign could have up to 112 square feet of sign area and up to 6 tenant panels. A similar off-site sign (height, sign area, and number of panels) was approved in 2015 as part of the Palmetto Pointe PCD to provide advertisement for tenants within the Palmetto Pointe project at the corner of Clyde Morris Boulevard and Madeline Avenue (Figure 2).

Figure 2. Palmetto Pointe Off-Site Monument Sign



2. The applicant is requesting to have identification signage for the business located on the lots that do not have directed roadway frontage onto Clyde Morris Boulevard (Figure 3). If the proposed Second Amendment is approved, the four lots (Lot 1, Lot 3, Lot 6 and Lot 7) without roadway frontage would be allowed to install a 32 square-foot identification sign in the parking lot to identify the businesses on these lots. The LDC currently allows identification signage but the maximum size is 2 square-feet. The applicant is requesting the identification signs with a maximum sign area of 32 square-feet and a maximum height of 8 feet. According to the applicant, the 32 square-foot identification sign is requested due to the configuration of the proposed lot layout and to identify tenants within the development that do not have direct frontage along Clyde Morris Boulevard.

Figure 3. Proposed Sign Locations



RECOMMENDATION:

Staff recommends **approval** of the Second Amendment to the Master Development Agreement (MDA) and Conceptual Development Plan (CDP) for the Groves Planned Commercial Development (PCD), subject to approval of the policy considerations related to the requested off-site signage and the 32 square-foot identification signs for lots without direct roadway frontage..

ATTACHMENT:

Exhibit 1 – 2nd Amendment to the Groves MDA & CDP

**REVISED**

SECOND AMENDMENT TO THE
THE GROVES PLANNED COMMERCIAL DEVELOPMENT
MASTER DEVELOPMENT AGREEMENT

This Second Amendment to the Groves Planned Commercial Development Master Development Agreement, hereinafter the "Second Amendment," is entered into by and between the City of Port Orange, a Florida municipal corporation whose address is 1000 City Center Circle, Port Orange, FL 32129 (hereinafter the "City") and Future Land, LLC, a Florida Limited Liability Company Whose Address is 22 Lake Vista Way, Ormond Beach FL., 32174 (hereinafter the "Owner") as Successor in Interest to Dipak Jobalia, Nell B. Chester, Marilyn Negrea, Arthur M. Ossinsky, Fred W. Leonhardt and Nichols A. George under Instruments recorded in the public records of Volusia County on October 12, 2005, and constitutes the second amendment to the Groves Planned Commercial Development Master Development Agreement.

WHEREAS, the Owner is the owner of certain real property (the "Subject Property") located in Port Orange, Florida more particularly described in **Exhibit "A"**;

WHEREAS, the City and the Owner's predecessors in interest previously entered into a Groves Planned Commercial Development Master Development Agreement to accommodate the development of the Groves Planned Commercial Development recorded in Official Records Book 3195, Page 1671, the Public Records of Volusia County Florida which included the Subject Property (hereinafter the "Original MDA");

WHEREAS, the City and the Owner's predecessors in interest previously entered into the First Amendment to the Master Development Agreement to accommodate Phase I of the development of the Groves Planned Commercial Development recorded in Official Records Book 4052, Page 3416, the Public Records of Volusia County Florida which did not impact the Subject property (hereinafter the "First Amendment"); and

WHEREAS, the Owner desires to develop the Subject Property for retail commercial uses in accordance with the Original MDA, the CDP, as amended, and the City of Port Orange Land Development Code; and

WHEREAS, the Owner is the owner of the Subject Property which is the only property impacted by this Second Amendment; and

WHEREAS, the Owner desires to amend the Groves Planned Commercial Development Master Development Agreement and the Conceptual Development Plan subject to the terms and conditions set forth herein; and

WHEREAS, The Groves Planned Commercial Development Master Development Agreement shall continue in full force and effect except with respect to those matters specifically amended by this Second Amendment. With respect to those matters specifically amended, this Second Amendment shall govern.

NOW THEREFORE, the City and the Owner hereby agree as follows:

1. The recitals stated above are true and correct and are incorporated herein by reference.
2. Paragraph 3 of the original MDA as applied to the Subject Property is hereby amended to read as follows:

Uses. The allowed uses on the Subject Property shall be the same as those listed in the City's Community Commercial (CC) Zoning District, as may be amended from time to time.

3. Paragraph 4 of the original MDA as applied to the Subject Property is hereby amended to read as follows:

A. Development Agreement and Conceptual Development Plan. Development of the Subject Property shall be controlled by the terms and provisions of the original Original MDA, the original Conceptual Development Plan ("Original CDP"), attached as Exhibit "C" to the Original MDA, this Second Amendment to the Original MDA, and the Revised Conceptual Development Plan as applied to the Subject Property, prepared by Zev Cohen & Associates, Inc and dated June 29, 2017, a copy of which is attached is attached hereto and by reference made a part hereof as **Exhibit "B"** ("Revised CDP"). The Original CDP generally depicts the planned layout of streets, buildings and other planned features or improvements to the Subject Property. Collectively, the Original MDA, the Original CDP, Second Amendment to the Original MDA and the Revised CDP may be referred to as the "Plan". In the event of a conflict between the terms and provisions of the Second Amendment and Original MDA, the Second Amendment shall control. If the Second Amendment is silent regarding a particular subject or requirement, such silence shall not be construed as a conflict with the Original MDA. Except as otherwise provided in this Second Amendment, in the event of a conflict between the terms and provisions of the Second Amendment and the City's ordinances, the requirements of the Second Amendment shall control. If the Second Amendment fails to address a particular subject or requirements, the requirements of the applicable City ordinance(s) in effect at the time of

development plan approval shall control. The parties acknowledge that compliance with the City's Land Development Code may necessitate modification of the Conceptual Development Plan. In the event modification to comply with the LDC is required, and the modifications to the Conceptual Development Plan are not in conflict with the textual provisions of the MDA and any City ordinances not superseded by this Second Amendment, the modifications shall be deemed "minor" and may be approved without formal amendment of this Second Amendment. Minor modifications shall require the City Administrative Official's written approval. If the Owner is not satisfied with the suggested resolution of any problem or the decision by the City Administrative Official categorizing the modification as minor or major, the Developer may appeal the decision to the Planning Commission. Appeals from the Planning Commission may be made to the City Council.

B. Dimensional Requirements. The Subject Property shall be subject to the following dimensional requirements as follows:

Maximum Building Coverage Per Individual Lot: 35%

Maximum Open Space: 30% (Open Space is allowed to be cumulative for the property)

Minimum Lot Width: 150'

Minimum Lot Area: 22,500 sq. ft.

Min Building Setbacks:

Front – 20 Feet

Side – 15 Feet*

Rear – 25 Feet*

* Setback is equal to building height if adjacent to a residential lot.

Maximum Building Height: 45'

C. Signage. Except as otherwise set forth in this Second Amendment, the signage for the Subject Property shall be in compliance with the terms set forth in the City's LDC. In addition to the signage allowed by the LDC an off-site sign will be allowed for any tenant on a building site or lot in the Subject Property. The maximum sign area allowed for the off-site signage shall be 112 SF and the maximum number of panels shall be 6 per side. The

height of the sign shall be 12' and Two additional feet in height shall be allowed above the sign face for architectural embellishments consistent with the building or complex, up to a total maximum sign structure height of 14 feet. The sign shall be placed at the northeast corner of the Subject Property as shown on the CDP in an easement that shall provide for the private maintenance of the sign at the time of the submittal of subdivision plat and plans or site plan review. Any building site or lot that does not have frontage on Clyde Morris Boulevard shall be allowed to construct a free-standing identification sign of no more than 32-square feet in copy area and maximum height of 8 feet onsite. The design and height requirements of any signs constructed on the Property shall comply with the LDC.

D. Landscaping. All landscape areas including the perimeter buffers, foundation landscaping, vehicular use/parking internal landscaping, supplemental landscaping, specimen and historic tree preservation, and the 15% tree preservation area shall be developed in compliance with the Land Development Code, as amended from time to time. The parties acknowledge that compliance with the City's environmental preservation code may necessitate modification of the Conceptual Development Plan.

E. Parking and Driveways. All parking lots, access points, turn lanes, cross-access driveways and number of parking spaces will be developed in compliance with the Land Development Code, as amended from time to time. Easements for cross access to the driveways, vehicular use areas and parking lots shall be shared throughout the Property. Any proposed vehicular use driveway along Clyde Morris Boulevard will be required a Volusia County Use permit and approval from Volusia County. The minimum distance between two-way access points will comply with the Land Development Code. The

minimum distance is measured between the centerlines of the two-way access points.

F. Architecture. All buildings and accessory structures constructed within the Property shall be designed in conformance with architectural requirements in the Land Development Code.

G. Subdivision. Subdivision of the Subject Property shall comply with the Land Development Code of the City Port Orange. The Owner shall sell no more than 7 individual building sites. The individual building sites shall be developed by the purchasers of the building sites. Except as expressly provided herein, improvements permitted or required by this Second Amendment shall be constructed by individual building site owners in accord with the terms and conditions of this Second Amendment and, where applicable, the ordinances, resolutions and regulations of the City. The owner of an individual building site may be required by the City to make off-site improvements that will benefit the entire Subject Property and subsequent owners of individual building sites. The City may require the owner of an individual building site to make those off-site improvements necessary to insure the integrity of the common facilities of the Subject Property including, but not limited to, improvements to facilitate property drainage, access, and traffic circulation. The parties agree that off-site improvements made by an individual building site owner may provide benefit to the other building sites contained on the Subject Property. Plans for individual building sites shall be subject to the site development plan review procedures employed by the City at the time plans for an individual site are submitted. Utilities and all required off-site improvements shall be installed prior to the issuance of a certificate of occupancy for any of the individual site plans.

I. Infrastructure and Easements. Public utilities designed to meet the requirements of the Land Development Code and the City's Standard Construction Details shall be extended to serve development on the Subject Property. Stormwater drainage facilities shall be designed to meet the specifications of the Land Development Code, the City's Standard Construction Details and the regulations of the St. John's River Water Management District concerning stormwater drainage and management. Proposed easements for drainage and access and any easements or grants of easements for public utilities shall be submitted to the City for approval prior to construction on any portion of the Subject Property. The Developer shall provide to the City access easements, where reasonable and necessary, to any and all areas of the Subject Property in order for the City to provide municipal services and enforce its ordinances, resolutions and regulations.

J. MAINTENANCE.

The Owner and all future owners of the Property shall be responsible for the continuous and perpetual maintenance of all required onsite improvements in accordance with the LDC. In the event that the Property is subdivided into multiple parcels, lots, or tracts creating multiple ownerships, the division and assignment of maintenance responsibilities among the various owners shall be imposed by the creation of a property owner's association or agreement between the owners setting forth the necessary covenants and restrictions to assure the continuous and perpetual maintenance of all required improvements.

3. All the provisions of the Original MDA shall remain in full force and effect and shall be supplemented for the matters specifically amended herein by this Second Amendment. The Original Master Development Agreement shall survive the execution of this Second Amendment.

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IN WITNESS WHEREOF, the parties have executed this Amendment to the MDA Agreement by and through their duly authorized representatives, on the respective dates below.

WITNESSES:

**CITY OF PORT ORANGE, a Florida
Municipal Corporation**

By: _____

Donald O. Burnette, Mayor

Printed Name

Printed Name

Attest _____

Robin Fenwick, Deputy City Clerk

Printed Name

Printed Name

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by Donald O. Burnette, Mayor of the CITY OF PORT ORANGE, FLORIDA, a Florida Municipal Corporation, on behalf of the City. He is personally known to me and did not take an oath.

Notary Public, State of Florida at Large

Notary Seal:

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by _____, City Clerk of the CITY OF PORT ORANGE, FLORIDA, a Florida Municipal Corporation, on behalf of the City. She is personally known to me and did not take an oath.

Notary Public, State of Florida at Large

Notary Seal:

WITNESSES:

Printed Name

Printed Name

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____, Future Land, LLC, a Florida Limited Liability Company. He ____ is personally known to me OR _ produced _____ as identification.

Owner:

Future Land, LLC, a Florida Limited Liability Company

By: _____
_____, Manager

Date: _____, 2017

Notary Public, State of Nevada

Notary Seal:

EXHIBIT 'A' LEGAL DESCRIPTION

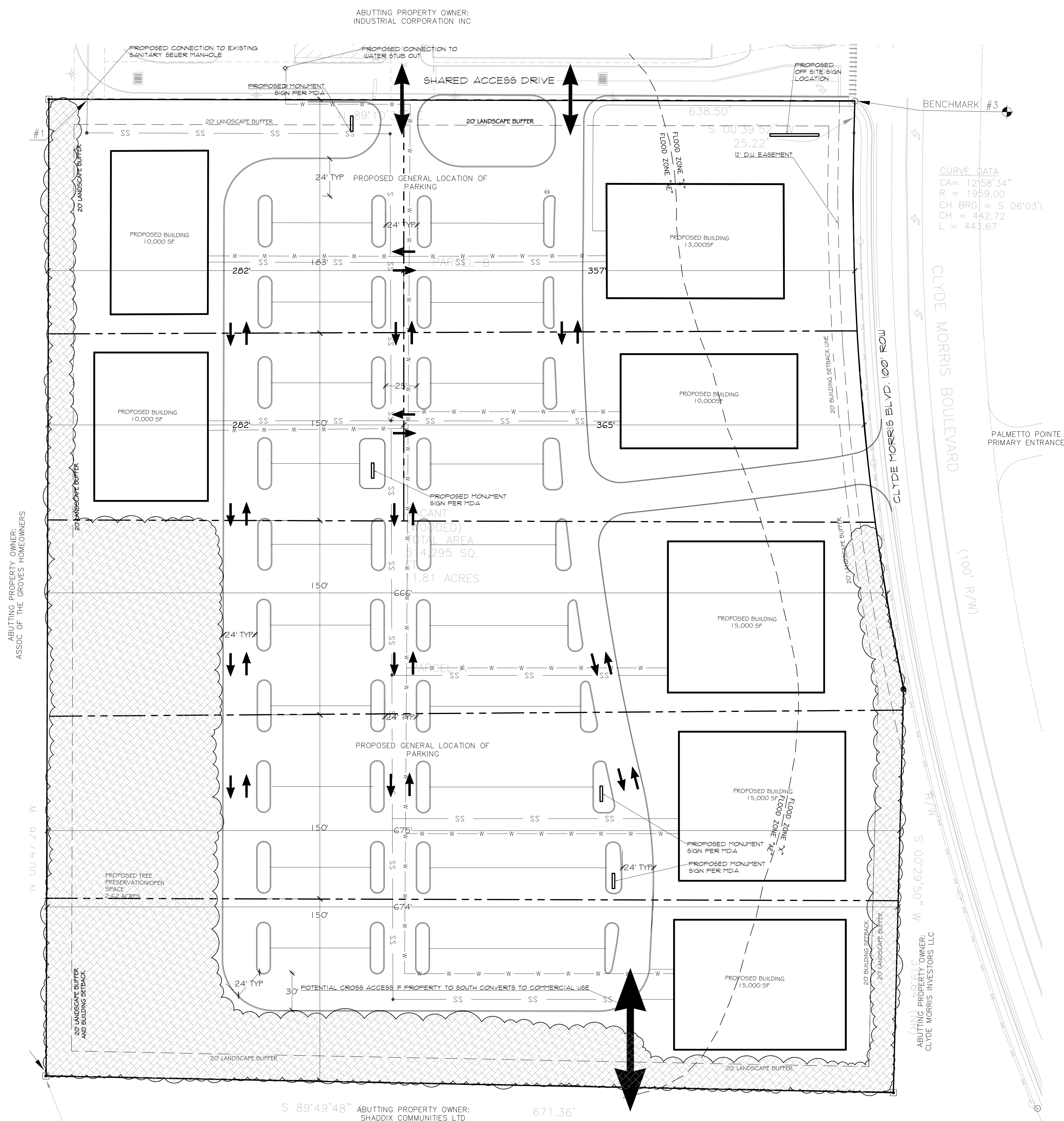
Parcel A:

A PORTION OF SECTION 6, TOWNSHIP 16 SOUTH, RANGE 33 EAST, VOLUSIA COUNTY, FLORIDA, DESCRIBED AS FOLLOWS: FROM THE WEST $\frac{1}{4}$ CORNER OF SAID SECTION 6, RUN ON AN ASSUMED BEARING, SOUTH 00 DEGREES 34 MINUTES 05 SECONDS EAST, THE BEARING BASIS OF THIS DESCRIPTION ALONG THE WEST LINE OF SAID SECTION 6, A DISTANCE OF 1319.31 FEET; THENCE DEPARTING SAID LINE, RUN SOUTH 89 DEGREES 49 MINUTES 49 SECONDS EAST, ALONG THE NORTH LINE OF THE SOUTH $\frac{1}{4}$ OF SAID SECTION 6, A DISTANCE OF 1977.64 FEET TO THE POINT OF BEGINNING; THENCE DEPARTING SAID LINE, RUN NORTH 00 DEGREES 50 MINUTES 02 SECONDS WEST A DISTANCE OF 488.04 FEET; THENCE NORTH 89 DEGREES 09 MINUTES 58 SECONDS EAST, A DISTANCE OF 649.61 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF CLYDE MORRIS BOULEVARD, A 100 FOOT RIGHT-OF-WAY, AND A POINT ON THE ARC OF A CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 1959.86 FEET, A CENTRAL ANGLE OF 05 DEGREES 20 MINUTES 12 SECONDS, AND A CHORD BEARING OF SOUTH 09 DEGREES 53 MINUTES 03 SECONDS EAST; THENCE RUN SOUTHERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 182.54 FEET; THENCE NON RADIAL TO SAID CURVE, DEPARTING SAID RIGHT-OF-WAY LINE, RUN SOUTH 00 DEGREES 25 MINUTES 03 SECONDS WEST, ALONG THE EAST LINE OF THE WEST $\frac{1}{2}$ OF SAID SECTION 6, A DISTANCE OF 319.67 FEET; THENCE DEPARTING SAID LINE, RUN NORTH 89 DEGREES 49 MINUTES 49 SECONDS WEST, ALONG THE NORTH LINE OF THE SOUTH $\frac{1}{4}$ OF SAID SECTION 6, A DISTANCE OF 671.44 FEET TO THE POINT OF BEGINNING.

Parcel B:

A PORTION OF SECTION 6, TOWNSHIP 16 SOUTH, RANGE 33 EAST, VOLUSIA COUNTY, FLORIDA, DESCRIBED AS FOLLOWS: FROM THE WEST $\frac{1}{4}$ CORNER OF SAID SECTION 6, RUN ON AN ASSUMED BEARING SOUTH 00 DEGREES 34 MINUTES 05 SECONDS EAST, THE BEARING BASIS OF THIS DESCRIPTION ALONG THE WEST LINE OF SAID SECTION 6, A DISTANCE OF 1319.31 FEET; THENCE DEPARTING SAID LINE, RUN SOUTH 89 DEGREES 49 MINUTES 49 SECONDS EAST, ALONG THE NORTH LINE OF THE SOUTH $\frac{1}{4}$ OF SAID SECTION 6, A DISTANCE OF 1977.64 FEET; THENCE DEPARTING SAID LINE, RUN NORTH 00 DEGREES 50 MINUTES 02 SECONDS WEST, A DISTANCE OF 488.04 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 00 DEGREES 50 MINUTES 02 SECONDS WEST, A DISTANCE 813.00 FEET; THENCE NORTH 89 DEGREES 09 MINUTES 58 SECONDS EAST, ALONG THE PROPOSED CENTERLINE OF MADELINE AVENUE EXTENDED A DISTANCE OF 650.00 FEET TO THE WEST RIGHT-OF-WAY LINE OF CLYDE MORRIS BOULEVARD, A 100 FOOT RIGHT-OF-WAY; THENCE ALONG SAID RIGHT-OF-WAY, RUN SOUTH 00 DEGREES 25 MINUTES 03 SECONDS WEST, A DISTANCE OF 552.48 FEET TO THE POINT OF CURVATURE OF A CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 1959.86 FEET, A CENTRAL ANGLE OF 07 DEGREES 38 MINUTES 00 SECONDS, AND A CHORD BEARING OF SOUTH 03 DEGREES 23 MINUTES 57 SECONDS EAST; THENCE RUN SOUTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 261.11 FEET; THENCE NON RADIAL TO SAID CURVE, DEPARTING SAID RIGHT-OF-WAY LINE, RUN SOUTH 89 DEGREES 09 MINUTES 58 SECONDS WEST, A DISTANCE OF 649.61 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT THE GROVES PLANNED COMMERCIAL DEVELOPMENT - PHASE 1, AS PER MAP IN MAP BOOK 45, PAGE 143, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA AND ANY PROPERTY NORTH OF SAID PLAT.



SITE DATA	
PARCEL NUMBER: 6306-00-00-0122, 6306-00-00-0126	
ZONING	PCD
ACREAGE	12.1 ACRES
FLOOD ZONES	X, AE
DIMENSIONAL LANDSCAPING AND PARKING REQUIREMENTS	
MAXIMUM BUILDING HEIGHT	45'
MAXIMUM BUILDING COVERAGE PER INDIVIDUAL LOT	35%
MIN. OPEN SPACE CUMULATIVE	30%
MIN. BUFFERS	
FROM S. CLYDE MORRIS BLVD.	PER LDC
SOUTH EXTERIOR PROPERTY LINE	PER LDC
MIN. BUILDING SETBACK	
FRONT	20'
EXTERIOR SIDE	15'
INTERIOR SIDE	15'
REAR	25'
MIN. LANDSCAPE BUFFER	
NORTH	PER LDC
EAST	PER LDC
SOUTH	PER LDC
WEST	PER LDC
TOTAL PROPOSED BUILDING SF	68,000 SF
TOTAL PROPOSED PARKING	PER LDC
TOTAL REQUIRED PARKING	PER LDC
MAXIMUM IMPERVIOUS	70%

- APPLICATION INFORMATION:
- OWNER/ APPLICANT:
FUTURE LAND, LLC
22 LAKE VISTA WAY
ORMOND BEACH FL., 32174
- PROJECT PLANNER:
ZEV COHEN & ASSOCIATES
300 INTERCHANGE BLVD.
ORMOND BEACH FL., 32174
PHONE: (386) 677-2428
- COMPLIANCE WITH THE LDC MAY NECESSITATE MODIFICATION OF THE CONCEPTUAL PLAN.
 - FINAL LOCATIONS OF BUILDINGS AND ASSOCIATED SITE IMPROVEMENTS WILL COMPLY WITH REQUIREMENTS IN THE 2ND AMENDMENT TO THE MDA AND THE LDC, AND WILL BE DETERMINED AT THE TIME OF SUBDIVISION PLAT AND PLANS OR SITE PLAN REVIEW.
 - EASEMENTS TO ALL PUBLIC UTILITIES WILL BE DEDICATED AS MAY BE NEEDED TO SERVICE THE DEVELOPMENT SITE.
 - VOLUSIA COUNTY MAY REQUIRE THE DEDICATION OF ADDITIONAL RIGHT-OF-WAY ALONG CLYDE MORRIS BOULEVARD AS PART OF SITE PLAN OR SUBDIVISION PLAT AND PLAN APPLICATION FOR THE SITE. IF ADDITIONAL RIGHT-OF-WAY IS REQUIRED THE BUILDING SETBACKS, LANDSCAPE BUFFERS AND 12' DRAINAGE AND UTILITY EASEMENT WILL BE MEASURED FROM THE NEW RIGHT-OF-WAY LINE. THE CDP MAY NEED TO BE MODIFIED TO ACCOMMODATE V.C. REQUIREMENTS.
 - DRIVEWAY PERMIT WILL BE REQUIRED FOR THE DEDICATION OF THE CDP. MODIFICATION TO THE CDP WILL BE NEEDED TO ACCOMMODATE V.C. DRIVEWAY PERMIT REQUIREMENTS.
 - ALL PARKING SHOWN IS CONCEPTUAL. ALL PARKING AND DRIVE ISLES ARE TO BE DESIGNED ACCORDING TO LDC PER SITE PLAN APPROVAL.
 - DRIVEWAY PERMIT WILL BE APPLIED FOR WITH VOLUSIA COUNTY IN CONJUNCTION WITH THE SUBDIVISION PLAT AND PLANS OR SITE PLAN APPROVAL PROCESS. THE INTENT IS TO ALIGN THE PROPOSED CLYDE MORRIS BOULEVARD ENTRANCE WITH THE PALMETTO POINTE PRIMARY ENTRANCE.
 - UPON SUBDIVISION PLAT AND PLAN OR SITE PLAN REVIEW ALL UTILITIES AND THEIR REQUIRED EASEMENTS SHALL BE DESIGNED PER THE LDC.
 - ALL SUBDIVISION REQUIREMENTS SHALL COMPLY WITH CHAPTER 5 ON THE LDC, AS AMENDED FROM TIME TO TIME.

OPEN SPACE	
CUMULATIVE OPEN SPACE REQUIRED :	3.6 AC
(CALCULATION: 12.1 AC. x 30% = 3.6 AC)	

15% NATURAL PRESERVATION	
TOTAL SITE AREA	12.1 ACRES
TOTAL PRESERVATION AREA REQUIRED	1.8 ACRES
(CALCULATION: 12.1 AC. x 15% = 1.8 AC)	
UNDISTURBED NATURAL PRESERVATION AREA	2.62 ACRES



ORMOND BEACH
300 INTERCHANGE BLVD., STE. C
ORMOND BEACH, FL 32174
(386) 677-2428 FAX (386) 677-2505

EDGEWATER
1840 AIRPARK ROAD
EDGEWATER FL 32132
(386) 677-2442 FAX (386) 677-2505

NO.	DATE	REVISIONS	BY
01	6/13/17	REVISED PER CITY COMMENTS JUNE 5, 2017	JES

GROVES
PLANNED COMMERCIAL DEVELOPMENT
CONCEPT PLAN

PROJECT NO: 07016
ISSUE DATE: 6/29/17
DESIGNED BY: JES
DRAFTED BY: JES
CHECKED BY: SB
DRAWING FILE: CON2 9.17
XREFS: 07016-XBASE
XREFS: