AGENDA
PLANNING COMMISSION
CITY OF PORT ORANGE

Meeting Date: Thursday, December 19, 2019 **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. APPLICATION: Variance/1631 Taylor Road
   CASE NO.: 19-90000007
   STAFF CONTACT: Briana Conlan-King, Senior Planner (386) 506-5676/brking@port-orange.org
   APPLICANT: Port Orange Fuel, LLC

   A request by the applicant for a variance from the Land Development Code (LDC) to reduce the Taylor Road right-of-way landscape buffer from 50 feet to 10 feet.

6. APPLICATION: 16th Amendment to the Countryside Planned Unit Development
   CASE NO.: 19-40000007
   STAFF CONTACT: Briana Conlan-King, Senior Planner (386) 506-5676/brking@port-orange.org
   APPLICANT: Clermont Synergy, LLC

   A request by the applicant for the 16th Amendment to the Countryside Planned Unit Development (PUD) to add “retail sales and services” as a permitted use for 1090 Dunlawton Avenue.

C. OTHER BUSINESS

7. Commissioner Comments
8. 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 1-800-955-8771. 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.

REGULAR PLANNING COMMISSION MEETING MINUTES
COUNCIL CHAMBERS – CITY HALL
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA
NOVEMBER 21, 2019

THE REGULAR PLANNING COMMISSION MEETING of the City of Port Orange was called to order by Chairman Jordan at 5:30pm.

Pledge of Allegiance

Silent Invocation

Roll Call

Present:	John Junco Maria Mills-Benat Darrel "Bo" Bofamy Newton White Stan Schmidt Thomas Jordan, Chairman
Absent:	Lance Green (excused)
Also Present:	Shannon Balmer, Assistant City Attorney Shelby Field, Assistant City Clerk

B. <u>DISCUSSION/ACTION</u>

4. Consideration of Minutes

Motion to approve the minutes as presented from October 24, 2019 was made by Commissioner Bofamy and Seconded by Vice Chair Mills-Benat. Motion carried unanimously by roll call vote.

5. Case No. N/A
Permitted Use Determination/3830 S. Nova Rd., Suite C5/6

Request for Planning Commission to determine if a game/recreation facility may be a permitted use within the Countryside Mall pursuant to Countryside Planned Unit Development Master Development Agreement.

STAFF CONTACT: Max Garcia, Planner (386) 506-5672 mgarcia@port-orange.org

Max Garcia, Planner, discussed details of the request and answered questions from the Commissioners.

Noah Maynard, Vortex Esports Arena, and Corey Vazquez-Holms, applicant, discussed their desire to open an Esports Center in this location and answered questions from Commissioners.

> *Motion to approve a game/recreation facility use within the Countryside Mall was made by Vice Chair Mills-Benat and Seconded by Commissioner White. Motion carried unanimously by roll call vote.*

6. Case No: 19-27500001
Comprehensive Plan Capital Improvements Element/2019 Annual Update

Update to amend the Comprehensive Plan Capital Improvements Element (CIE) in accordance with Florida Statutes.

STAFF CONTACT: Penelope Cruz, Planning Manager (386) 506-5671/pcruz@port-orange.org

Penelope Cruz, Planning Manager, discussed the state requirements for the amendment and answered questions from the Commissioners.

> *Motion to approve the amendment to the Comprehensive Plan Capital Improvements Element in accordance with Florida Statutes was made by Commissioner Schmidt and Seconded by Vice Chair Mills-Benat. Motion carried unanimously by roll call vote.*

7. 2020 Proposed Public Hearing and Development Review Calendars

Mrs. Cruz discussed the 2020 proposed Public Hearing and Development Review calendars.

> *Motion to approve the 2020 calendar was made by Commissioner Junco and seconded by Vice Chair Mills-Benat. Motion carried unanimously by voice vote.*

C. <u>OTHER BUSINESS</u>

8. 2019 Concurrency Management Report

Mrs. Cruz stated the report is an annual report they provide with a cumulative view of all the concurrency analysis for the year.

9. Commissioner Comments

Commissioner White asked for an update on the church on Madeline Ave. Tim Burman, Community Development Director, responded it is still moving along and it looks like the work should begin at the end of January. Commissioner White asked if there were any regulations on

short term rentals such as Airbnb's. Mr. Burman responded the city does not have any regulations or codes currently and that there is a State preemption to local government regulation unless there were regulations adopted prior to 2011; however, HOAs can create their own regulations.

Commissioner Bofamy asked if he could get a copy of the noise ordinance for the City. Mr. Burman will provide it.

Commissioners thanked staff for all the work they do.

10. Staff Comments

Mr. Burman informed the Commission they are working with Code Enforcement to get the shopping center at Spruce Creek and Nova Rd. into compliance, changing the signs and working on rezoning. He also spoke to a variance request that will come before the Commission soon regarding reopening the prior Citgo on Taylor Rd adjacent to the Walgreens.

D. PUBLIC COMMENTS

There were none.

E. ADJOURNMENT – 6:40pm

_____

Chairman Thomas Jordan

STAFF REPORT
Variance from Land Development Code (LDC) Chapter 13, Section 3(d)
CASE NO. 19-90000007

REQUEST:	Variance from the Land Development Code (LDC) to reduce the Taylor Road right-of-way landscape buffer from 50 feet to 10 feet
LOCATION:	1631 Taylor Road (Figure 1 – Location Map)
OWNER/APPLICANT:	Port Orange Fuel, LLC; Ali Fatimi
STAFF RECOMMENDATION:	Approval
STAFF CONTACT:	Briana Conlan-King, Senior Planner (386) 506-5676
PLANNING COMMISSION DATE:	December 19, 2019

BACKGROUND

The subject property is ±0.48 acres and located on the south side of Taylor Road, between Waffle House and Walgreens (Figure 1). The site was previously a Citgo gas station with a convenience store. The gas station and convenience store closed in February 2016, and the site is currently abandoned. The site includes a ±3,480 square-foot building and canopy with three double-sided fueling dispensers. The property owner is proposing to renovate the existing site and building and reopen a gas station with a convenience store at this location. The subject property is zoned Interchange Commercial Development (ICD) and the use of the property as a gas station with a convenience store is a permitted use in the Interchange Commercial Development (ICD) zoning district.

Figure 1. Location Map

The Land Development Code (LDC) requires any site that has been abandoned for six months or more to be brought up to current code standards. The subject property is considered abandoned based on a non-active utility billing account and business tax license for over six-months. Staff has met with the applicant to discuss the site upgrades required to re-establish the gas station and convenience store use, and the major constraint is the required 50' wide right-of-way landscape buffer along Taylor Road. The existing gas canopy and pumps is an existing non-conforming structure that encroaches into the required 50' right-of-way landscape buffer along Taylor Road. The existing building and canopy were constructed in the early 1980's and the existing gas canopy was expanded in 1998. According to the applicant, the existing gas canopy is set back 20' from the Taylor Road right-of-way line and there is not sufficient room to install the required 50' landscape buffer without removing the canopy and fueling dispensers. If the required 50' landscape buffer were to be installed, the existing gas canopy, pumps and underground storage tanks would have to be removed and repositioned on the site. Based on a previously approved site plan for this site, the distance between the edge of the 50' landscape buffer and the existing building is 37', which would not provide sufficient room for fueling operations and vehicle maneuverability. Therefore, the applicant is requesting to replant the existing 10' landscape buffer rather than install the required 50' landscape buffer.

DISCUSSION

In 1998, a site plan was approved by the City to allow the expansion of the gas canopy toward Taylor Road. The approved 1998 site plan included a 10' Taylor Road right-of-way-landscape buffer instead of the code required 50' right-of-way-landscape buffer, with no record of a variance for the reduction of the right-of-way landscape buffer width. Based on the information in the 1998 site plan file, it appeared that in 1998, city staff worked with the applicant to design a 10' landscape buffer with specific plantings in lieu of the 50' right-of-way-landscape buffer.

Due to the subject property being abandoned for more than six months, the LDC requires the overall site to be brought up to current code requirements. The site upgrades include, but are not limited to, landscaping and buffers, irrigation, signage, architectural design, and cross-access connection with Walgreens. The applicant is currently working on preparing plans to complete the site and building improvements and is in contact with Walgreens to establish the cross-access connection between the two properties (Figure 2).

Figure 2. Required Cross Access Connection

Future cross access connection between Walgreens and 1631 Taylor Road along the south property line.

The intent of the landscape right-of-way buffer requirement is to ensure quality landscape design, maintain and enhance an attractive natural environment along the roadway, and improve the overall quality of life within the community. According to the applicant, to comply with the LDC, the installation of a 50' right-of-way landscape buffer along Taylor Road would require the existing gas canopy and pumps to be demolished. Therefore, the applicant is requesting a variance to maintain the existing 10' wide right-of-way landscape buffer along Taylor Road so the gas station can reopen and the existing canopy and fueling dispensers can remain. If the requested variance is approved, the applicant is proposing to install the required number of landscaping materials for a 10' landscape buffer within the existing 10' buffer area. The applicant is proposing to install new palms, understory trees, shrubs/ground cover and the required vehicular screening hedge (Exhibit 2). The renovation of the subject property would improve the appearance of the subject property and add to the overall improvement of the area around the Taylor Road/Williamson Boulevard intersection area.

REVIEW OF VARIANCE CRITERIA

Chapter 19, Section 1, LDC, lists the review criteria that shall be used to determine whether a variance request should be granted.

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 existing building and gas canopy were constructed in the early the 1980's and the gas canopy was expanded in 1998. The existing gas canopy and pumps is an existing non-conforming structure that encroaches into the required 50' right-of-way landscape buffer along Taylor Road. A special circumstance exists on this site due to the location of the existing gas canopy and pumps previously constructed on a constrained property. The location of the gas canopy is 20' from the Taylor Road right-of-way line and does not allow sufficient room for the required 50' landscape buffer.

In addition, the subject property is located within the Interchange Commercial Development (ICD) zoning district. The minimum lot area for a property in the ICD zoning district is 30,000 square feet and the minimum lot width is 150 feet. The subject property is +/- 13,900 square feet in lot area and the lot width is 117 feet, which is less than the minimums required by the ICD zoning district, making any type of infill or redevelopment of the subject property difficult due to the dimensional constraints.

b) The special conditions and circumstances are not result of actions of the applicant.

The existing site has been developed as a gas station and convenience store since the early 1980's. The current property owner purchased the subject property in October 2017. The structures currently on the property were previously reviewed by the City and built by a previous owner.

According to the applicant, the subject property has been a gas station with a convenience store for over 35 years and was developed under previous Land Development Code requirements. The requirement to install a 50' buffer along the Taylor Road right-of-way would leave the site dimensionally constrained and result in the removal of some, if not all, of the structures on the subject property, rendering the site unusable as a gas station and convenience store.

c) Literal interpretation and enforcement of the land development code regulation would deprive the applicant 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 applicant.

Literal interpretation of the LDC would not deprive the property owner of rights commonly enjoyed by other properties within the same zoning district. As part of the development approval process for an abandoned site, all properties are required to be brought into compliance with the current LDC requirements when the property has been abandoned for six months or longer.

The intent of the right-of-way landscape buffer requirement is to ensure quality landscape design and maintain and enhance an attractive natural environment along a roadway corridor within the City. According to the applicant, the proposed 10' landscape buffer allows for safer traffic maneuvering in the parking lot and fueling area, enhances the site, and represents an improvement to the appearance of this part of the City. The applicant acknowledges that the landscape buffer requirement is not met; however, this is due to the constraints on the site and every effort has been made to provide as much landscaping as possible to enhance the Taylor Road landscape buffer.

Further, the applicant stated that the requirement to install a 50' landscape buffer would render the property unusable as a gas station and convenience store because the remaining distance from the edge of the buffer to the building would be 37', which is not adequate space to rebuild a new gas canopy with fueling dispensers.

The applicant states that although the landscape buffer width requirement cannot be met due to the constraints of the site, he is proposing to provide the required plantings with new landscape material to enhance this area (see Exhibit 2). According to the applicant, the proposed buffer will be an improvement to the current appearance of this abandoned site at a main intersection of the City.

d) The variance, if granted, is the minimum variance necessary to make possible the reasonable use of the land, building or structure.

The variance requested is the minimum variance necessary to make possible reasonable use of the land and existing structures. In order to renovate the subject property and install the required 50' landscape buffer along the Taylor Road right-of-way, the existing gas canopy, pumps and underground storage tanks would need to be removed. Staff has worked with the property owner to reduce the overall number of variances needed and to minimize the variances being requested. The variance by the applicant is the minimum variance needed to renovate and re-use this site without demolishing all or part of the structures on the subject property. Infill redevelopment of any type on the subject property would require a variance from the required 50' landscape buffer requirements due to the dimensional constraints of the lot area and width, which is less than the minimums required by the ICD zoning district.

e) Granting of the variance requested will not confer on the applicant 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. The applicant states that the site and building have been in a state of disrepair for some time and wants to improve this site and the appearance of the area but retain the existing gas canopy, pumps and building. The applicant is requesting to maintain the 10' wide landscape buffer along the

Taylor Road right-of-way as it has existed for 35 years but replant the buffer with new landscaping materials.

The intent of the landscape right-of-way buffer is to enhance the appearance, function and livability of the City, and improve the overall quality of life within the community. The applicant states that the installation of the new landscaping material (see Exhibit 2), along with all the proposed site improvements to the subject property, will greatly enhance the overall appearance of the corner of Taylor Road and S. Williamson Boulevard for all residents, citizens and visitors to the City.

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.

The purpose and intent of the City's landscape buffer requirements is to promote quality landscape design and maintain and enhance an attractive environment in the City. According to the applicant, the appearance of the area along the Taylor Road right-of-way will improve with the proposed renovation of the subject property and installation of new landscaping material. If the variance is approved, the landscape material for the existing 10' buffer width will be re-planted to meet the LDC requirements of a 10' buffer.

According to the applicant, granting of the variance will allow the property owner to proceed with the required site upgrades, including exterior building modifications, and establish a landscape buffer that will add to the appearance of both the subject property and the City.

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.

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

RECOMMENDATION

Based upon the findings of this staff report, staff recommends approval of the requested variance subject to the landscape buffer design in Exhibit 2 of the staff report being installed and inspected by staff, along with all other LDC required site and building improvements prior to issuance of a Certificate of Occupancy.

ATTACHMENTS

Exhibit 1 - Applicant's Letter
Exhibit 2 - Proposed Landscape Buffer

Exhibit 1

Port Orange Fuel, LLC
475 Brickell Ave #3414, Miami, FL 33131
Phone: (786) 271-5362

November 17th, 2019

Department of Community Development
1000 City Center Circle
Port Orange, Florida 32129
Phone: (386) 506-5674
Fax: (386) 506-5699

Subject: Variance application cover letter for 1631 Taylor Rd, Port Orange, FL 32127

Dear Commissioners:

I am requesting a variance to reduce the required 50 foot landscape buffer to the existing 10 foot landscape buffer for my property located at 1631 Taylor Rd, Port Orange, FL 32127. I purchased this property in November 2017 as an existing gas station that has been part of the community for over 50 years. This property was developed prior to the current code (now in effect for roughly 35 years), that requires that any property located on parts of Taylor Rd and Dunlawton Rd (Interchange Commercial District), must have a 50 foot buffer for landscaping (Land Development Code). This code stipulates that any business that has been closed for more than 6 months must adhere to this code, if it has not done so before.

The property as a gas station has been closed for more than 6 months at a minimum of five times in the last 30 years, however this landscape buffer was not enforced upon any prior property owners. The intent of the city planners at the time the code was enacted was to provide buffers for incoming large developments with sites that were several acres in size. For these properties, a 50 foot buffer would not alter normal business operations. However, my property and existing business (a gas station), is only a 20,000 square foot lot that is 198 feet deep. Therefore, a 50 foot buffer in the front, along with the side and rear setbacks would render my land completely unusable. Surely, this is not the intent or the purpose of the code. Furthermore, the nature of the business makes such a setback impossible. In order to accommodate a 50 foot buffer, the underground tanks, canopy and physical structure would all need to be physically uprooted and demolished. As a small business owner, I would be bankrupted. My intent is to open this existing gas station back up to the community, create jobs, and provide affordable, high quality fuel and goods. I plan to re-brand the station as Chevron, a famed American gas brand, with new signage, LED lighting, an updated existing canopy and equipment. The site as is requires updating, which I am trying to do to beautify and provide essential services on the main artery into one of Florida's oldest incorporated cities. I am not making any structural or physical changes or additions of any kind to the property, aside from superficial changes such as paint and signage.

Furthermore, the State of Florida Environmental Protection Agency has served me with a lawsuit (a fine in excess of $10,000), for not having an operational station, despite having insured tanks

with clean environmental reports and updated tank registrations. Therefore, I am respectfully requesting that the commission maintains all setbacks as per existing records so that I can re-brand as Chevron and become fully operational as soon as possible. I hope that the commission also realizes the amount of financial distress and difficulty this puts me in as I am being sued by the State of Florida Environmental Protection Agency for not being an operational gas station and am also being prevented from opening by the city of Port Orange.

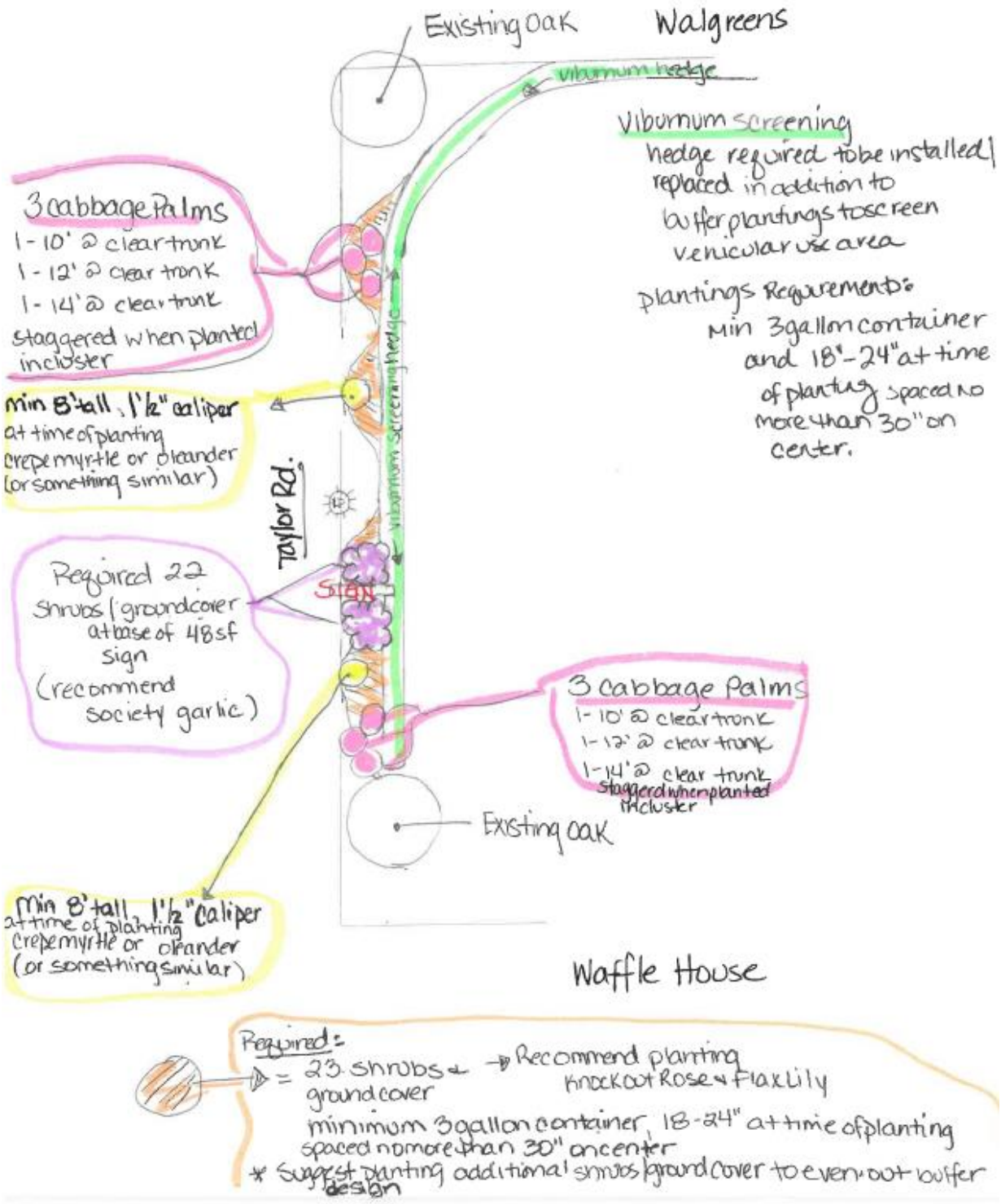
To further elaborate on my plans for the site, I am in the process of painting the existing building and trim with paint colors approved by the city planning department. I am in constant contact with Chevron to get plans corrected and approved for an upgrade to the existing canopy with signage as quickly as possible. I am working with a local landscape contractor and the city planning department to implement their ideas on how to best improve the appearance of the existing landscape buffer with plants and trees that meet the city's approval. The handicapped parking space will also be upgraded to meet the latest Americans with Disabilities Act requirements. Lastly, I am in communication with Walgreens to re-open an existing passage shown on the existing site plans between the two properties. I will re-patch the existing pass-through on my property up to the Walgreens property line and request that they make an opening on their property to improve traffic flow as per the city's request.

Thank you for careful consideration of this variance application.

Sincerely,

Ali (Moe) Fatemi
Managing Member
Port Orange Fuel, LLC

Exhibit 2


Existing Oak
Walgreens
viburnum hedge
Viburnum screening
hedge required to be installed/replaced in addition to buffer plantings to screen vehicular use area
Plantings Requirements:
Min 3gallon container and 18"-24" at time of planting spaced no more than 30" on center.
3 cabbage Palms
1-10' @ clear trunk
1-12' @ clear trunk
1-14' @ clear trunk
staggered when planted/ inclister
min 8' tall, 1 1/2" caliper at time of planting
crepe myrtle or oleander (or something similar)
Taylor Rd.
viburnum screening hedge
Required 22 shrubs/groundcover at base of 48sf sign (recommend society garlic)
SIGN
3 cabbage Palms
1-10' @ clear trunk
1-12' @ clear trunk
1-14' @ clear trunk
staggered when planted/ inclister
Existing Oak
min 8' tall, 1 1/2" caliper at time of planting
crepe myrtle or oleander (or something similar)
Waffle House
Required:
= 23 shrubs & groundcover
→ Recommend planting Knockout Rose & Flax Lily
minimum 3gallon container, 18-24" at time of planting
spaced no more than 30" on center
* Suggest planting additional shrubs/groundcover to even out buffer design

STAFF REPORT

16th AMENDMENT TO THE COUNTRYSIDE PLANNED UNIT DEVELOPMENT MASTER DEVELOPMENT AGREEMENT CASE NO. 19-40000007

REQUEST:	Amend the Master Development Agreement (MDA) for the Countryside Planned Unit Development (PUD) to allow all retail sales and services uses, which includes retail pharmacy as a permitted use.
PROPERTY OWNER:	Clermont Synergy, LLC
APPLICANT:	Jeffrey Buak, Esq.
LOCATION:	1090 Dunlawton Ave.
STAFF CONTACT:	Briana Conlan-King, Senior Planner (386) 506-5676
STAFF RECOMMENDATION:	Approval
PLANNING COMMISSION DATE:	December 19, 2019

DISCUSSION

The subject property is currently zoned Planned Unit Development (PUD) and is part of the Countryside PUD. The Countryside PUD was approved in 1981 and established as a +/- 400 acre mixed-used development. Since 1981, the Countryside PUD has been amended fifteen times over 38 years. The proposed 16th Amendment (Exhibit 1) to the Countryside PUD Master Development Agreement (MDA) would only apply to the +/- 1.7-acre property located between Coastal Grill restaurant and Chili's restaurant, south of Dunlawton Avenue and north of Butterfly Boulevard (Figure 1). The subject property currently permits uses that include, restaurants, banks, and offices, and specialty retail shops, such as a bookstore, florist, jewelry store, and pet store. The proposed amendment is to expand the limited specialty retail shop uses currently permitted on the property and allow all retail sales and services uses as allowed by the Land Development Code (LDC).

Figure 1 - Location Map

The subject property is currently regulated by the Countryside Master Development Agreement (MDA), Countryside MDA 5th Amendment (approved in 1996), Countryside MDA 7th Amendment (approved in 1999) and the Land Development Code. The 5th and 7th Amendments to the Countryside MDA provide the permitted uses for the subject property. The 5th and 7th Amendments provide limited permitted retail uses allowed on the subject property, which include a specific defined list of "specialty shops" (Exhibit 2). The applicant is requesting to expand the limited specialty shop retail uses currently permitted to allow all retail sales and service uses, including retail pharmacies, as permitted under the LDC, to assist with the infill redevelopment of the existing multi-tenant building. The applicant states that it is difficult to predict future development options on the subject property, and if the retail uses allowed on the property are limited, it limits redevelopment options for the site.

The retail sales and service use is defined in the LDC as establishments that sell products and services to the public for personal or household consumption, including but not limited to, beauty/barber shop, laundry and dry cleaning store, clothing stores, home electronic equipment, food/grocery stores, retail pharmacy, and sporting goods, etc. Any future redevelopment of the site and/or building will require development applications to ensure the site and/or building meet current standards, including, but not limited to, stormwater, traffic generation, landscaping, tree preservation, architecture, ADA, interior retrofit, and modifications to the parking lot, in accordance with the City standards in the Land Development Code (LDC), Florida Building Code (FBC), Florida Statutes and National Fire Prevention Association (NFPA).

According to the applicant, if the 16th Amendment is approved, the intent is to buildout a vacant tenant space in the existing multi-tenant building as a medical marijuana dispensary. The other tenant space in the multi-tenant building is currently occupied by Adams, Cameron & Co. Realtors. A building permit application for proposed interior tenant improvements for the medical marijuana dispensary is currently under review, and final approval of the building permit is pending approval of the proposed MDA amendment. Prior to the issuance of the building permit for tenant improvements, all site and building improvements are required to comply with the City's Land Development Code, Florida Building Code (FBC) and all Florida Statutes §381.986 (Exhibit 3), including the required licensure and security system medical marijuana dispensary.

In June 2017, the Governor signed into law legislation for uses related to medical marijuana. The state law for medical marijuana preempts local government regulation of medical marijuana treatment centers with dispensing facilities (medical marijuana dispensaries) along with the cultivation and processing of marijuana. Florida Statutes requires that a local government either ban a medical marijuana dispensary or treat them the same as a retail pharmacy. In 2017, the City Council adopted Ordinance 2017-28, which amended the LDC definition of retail pharmacy to include medical marijuana treatment center dispensing facility operating in accordance with state law, and the LDC allows the retail pharmacy use in any location that allows retail sales and services as a permitted use. Therefore, according to the Port Orange LDC, a medical marijuana dispensary is also permitted in any conventional commercial zoning district, Planned Unit Development (PUD), and Planned Commercial Development (PCD) that allows retail sales and services, subject to the 500-foot separation requirement from a public or private elementary school, middle school, or secondary school in §381.986 Florida Statutes (Exhibit 3). As part of the review for the 16th MDA amendment, staff verified that the subject property meets the required 500-foot separation requirement from a public or private elementary school, middle school, or secondary school.

CONSISTENCY WITH THE COMPREHENSIVE PLAN

The subject property is designated Office/Residential Transition (ORT) on the City's Future Land Use (FLU) Map. The ORT designation is a mixed-use designation that allows for commercial uses and provides a buffer between areas of high- and low-intensity uses, especially between low-density residential areas and higher intensity commercial nodes, and is intended to provide for an

appropriate mix of uses along arterial roadways. Commercial land uses are those that provide for the retail sale of items and services to the general public. These areas consist of shopping centers, retail stores, restaurants, and similar uses. The addition of the retail sales and service use in the proposed amendment does not change the FLU designation for the property and is consistent with the general intent of the Comprehensive Plan.

PUBLIC NOTICE

A Public Notice sign was posted on the site on November 15, 2019. At the time this agenda item was prepared, staff has received one (1) phone call requesting general information regarding the proposed amendment.

RECOMMENDATION

Staff recommends approval of the 16th Amendment to the Master Development Agreement (MDA) for the Countryside Planned Unit Development (PUD).

ATTACHMENTS

Exhibit 1 – 16th Amendment to the Countryside Planned Unit Development MDA
Exhibit 2 – Current Permitted Uses (Countryside PUD MDA 5th & 7th Amendments)
Exhibit 3 – §381.986 Florida Statutes Medical Marijuana Treatment Center Compliance Requirements

Exhibit 1

This Instrument Prepared By:
Tara L. Tedrow
Lowndes, Drosdick, Doster, Kantor & Reed, P.A.
215 N. Eola Drive
Orlando, FL 32801

THIS SIXTEENTH AMENDMENT TO COUNTRYSIDE PLANNED UNIT DEVELOPMENT MASTER LAND USE PLAN

THIS SIXTEENTH AMENDMENT TO COUNTRYSIDE PLANNED UNIT DEVELOPMENT MASTER LAND USE PLAN (this "Sixteenth 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 (the "City"), and Clermont Synergy, LLC, a Florida limited liability company whose address is 2345 W. Sand Lake Road, Suite 100, Orlando, FL 32809 (the "Owner"), and constitutes the sixteenth amendment to the Countryside Planned Unit Development Agreement.

WHEREAS, the City originally approved the Countryside Planned Unit Development Agreement recorded December 14, 1981, in the Official Records Book 2317, Page 1531, Public Records of Volusia County, Florida which was subsequently amended, most recently in that certain Fifteenth Amendment recorded at Official Records Book 7446, Page 4941, in the Public Records of Volusia County, Florida (collectively, the "PUD Agreement");

WHEREAS, the Owner is the owner of certain real property (the "Subject Property") located in Port Orange, Florida more particularly described Exhibit "A" which is the only property affected by this Sixteenth Amendment;

WHEREAS, the PUD Agreement included Exhibit "B", which contained a list of "Table of Permitted Uses and Dimensional Requirements" outlining those uses permitted in the PUD, including on the Subject Property;

WHEREAS, part of the amendments to the PUD Agreement included that certain Fifth Amendment recorded at Official Records Book 4610, Pages 2384-2394, in the Public Records of Volusia County, Florida, and that certain Seventh Amendment recorded at Official Records Book 4444, Page 2162, in the Public Records of Volusia County, Florida, both of which amended the permitted uses for the PUD as they relate to the Subject Property;

WHEREAS, the Owner desires to amend Exhibit "B" to add Retail Sales and Services, which includes Retail Pharmacy, as permitted uses on the Subject Property;

WHEREAS, the proposed changes are consistent with the City of Port Orange Comprehensive Plan and Land Development Code.

NOW, THEREFORE, the City, and the Owner hereby agree, in consideration of mutual premises and covenants contained herein, and with the intent to be legally bound and to bind their successors and assigns to the following:

1. The recitals stated above are true and correct and are incorporated herein by reference.

2. This Sixteenth Amendment to the PUD Agreement further amends Exhibit "B" "Table of Permitted Uses and Dimensional Requirements" to permit Retail Sales and Services, which includes Retail Pharmacy, as permitted uses on the Subject Property.

3. This Sixteenth Amendment, the PUD Agreement, as previously amended and all applicable City ordinances, resolutions and regulations in effect at the time of development of the Subject Property shall govern the development unless they are in conflict with the terms and provisions of this Amendment. In that event, this Amendment shall control, in case of any conflict between the terms of this Sixteenth Amendment and the exhibits to or terms contained in the PUD Agreement as amended, the terms and exhibits contained in this Sixteenth Amendment shall control. The Owner agrees to be bound by all other applicable City ordinances, resolutions and regulations that are not in conflict with or contrary to the terms and exhibits of this Sixteenth Amendment or the PUD Agreement as amended.

4. This Sixteenth Amendment shall be recorded in the Public Records of Volusia County Florida. The provisions of the Sixteenth Amendment shall inure to the benefit of the parties hereto and the Subject Property, and shall be binding upon any person, firm or corporation that may become a subsequent owner, successor in interest or assign, directly or indirectly, of the Subject Property or any portion thereof.

5. In the event of any claim, action, litigation or proceeding under this Sixteenth Amendment, venue shall be in Volusia County, Florida and no other location, and the prevailing party shall be entitled to an award of reasonable attorney's fees and costs.

6. If any provision of the Sixteenth Amendment is held by a court of competent jurisdiction to be invalid or otherwise unenforceable, such holding shall not affect the validity or enforceability of any other provision of this Sixteenth Amendment.

7. This Sixteenth Amendment represents the complete understanding by and between the parties with respect to the development of the Subject Property. All other terms and provisions of the PUD Agreement shall remain in full force and effect to the extent not otherwise modified by, or in conflict with, this Sixteenth Amendment.

[signatures on following pages]

IN WITNESS WHEREOF, the parties have accepted this Sixteenth Amendment, by and through their duly authorized representatives, on the dates indicated below.

WITNESSES:

_____
Name: _____

_____
Name: _____

CLERMONT SYNERGY, LLC, a Florida limited liability company

By: _____
Name: _____
Title: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 20___, by _____, as _____ of Clermont Synergy, LLC, a Florida limited liability company, who acknowledges that he/she is duly authorized to execute the foregoing agreement on behalf of said entity. He/She is personally known to me.

_____
Notary Public, State of Florida at Large
Printed, typed or stamped name, commission and expiration of commission term

WITNESSES:

CITY OF PORT ORANGE, a Florida Municipal Corporation.

_____
Name: _____

By: _____
Donald O. Burnette, Mayor

_____
Name: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by Donald O. Burnette, Mayor of the City of Port Orange, Florida, a charted municipal corporation, who acknowledges that he is duly authorized to execute the foregoing agreement on behalf of the City. He is personally known to me.

_____
Notary Public, State of Florida at Large
Printed, typed or stamped name, commission and expiration of commission term

Attest:

_____
Name: _____

_____
Robin L. Fenwick, City Clerk

_____
Name: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 20___, by Robin L. Fenwick, as City Clerk, of the City of Port Orange, Florida, a charted municipal corporation, who acknowledges that she is duly authorized to execute the foregoing agreement on behalf of the City. She is personally known to me.

_____
Notary Public, State of Florida at Large
Printed, typed or stamped name, commission and expiration of commission term

Exhibit "A"

THE EAST ½ OF LOT 22 AND LOTS 23 THROUGH 35, INCLUSIVE, OF COUNTRYSIDE COMMERCIAL CENTER UNIT IV, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 40, PAGE 160, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

Exhibit 2

Book: 4160
Page: 2393

5th Amendment

EXHIBIT "B"

TABLE OF PERMITTED USES AND DIMENSIONAL REQUIREMENTS

I. Permitted Uses.

Restaurants (no drive-thrus permitted)
Banks
Business Services
Financial Services
Offices
Personal Services *
Medical Offices/Clinics
Fleet-based Services
Funeral Homes
Veterinary Clinics
Xerographic and Offset Printing
Child Care Centers *
Office Supplies *
Specialty Shops defined as follows:

Specialty shops shall be permitted for development on one (1) parcel only. Individual shops shall not exceed 5,000 square feet gross floor area. Multi-tenant developments comprised of more than one (1) specialty shop shall be limited to no more than 10,000 square feet of gross floor area. Specialty shops may include the following:

- Apparel and/or Shoe Store
- Art Supply Store
- Audio/Video Sales
- Bicycle Sales
- Book/Stationary Store
- Camera/Photography Store
- Florist Shop
- Food Product Stores: Bakery, Candies, Nuts, Dairy, Delicatessen, Meat, Seafood, and Produce
- Furniture/Home Furnishings
- Hobby/Toy/Craft Store
- Jewelry Store
- Musical Instrument/Supply
- Optician/Optical Supplies
- Paint and Wallpaper
- Pet Shop
- Radio and TV Sales
- Sporting Goods Store

* These uses shall comply with the Special Development Criteria prescribed by Chapter 18 of the Port Orange Land Development Code.

part hereof; and (iii) the exterior building improvements described in the Design shall be initially constructed in a single construction phase, rather than as a multi-phase project. Multi-tenant developments comprised of more than one specialty shop shall be limited to no more than 10,000 square feet of gross floor area. Specialty shops may include the following:

Apparel and/or Shoe Store
Art Supply Store
Audio/Video Sales
Bicycle Sales
Book/Stationary Store
Camera/Photography Store
Florist Shop
Food Product Stores: Bakery, Candies Nuts, Dairy, Delicatessen, Meat, Seafood, and Produce
Furniture/Home Furnishings
Hobby/Toy/Craft Store
Jewelry Store
Musical Instrument/Supply
Optician/Optical Supplies
Paint and Wallpaper
Pet Shop
Radio and TV Sales
Sporting Goods Store

In case of a conflict between Exhibit "B" of the Fifth Amendment and the revision to Paragraph I of Exhibit "B" set forth in this Section, the revision set forth in this Section shall govern.

4. This Seventh Amendment shall be recorded in the Public Records of Volusia County, Florida. The provisions of this Seventh Amendment shall constitute covenants running with the land. This Seventh Amendment shall inure to the benefit of the parties hereto and the subject property, and shall be binding upon any person, firm, or corporation that may become a subsequent owner, successor in interest or assign, directly or indirectly, of the subject property or any portion thereof.

5. In the event of any claim, action, litigation or proceeding under this Seventh Amendment, venue shall be in Volusia County, Florida, and no other location, and the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs.

6. If any provision of this Seventh Amendment is held by a court of competent jurisdiction to be invalid or otherwise unenforceable, such holding shall not affect the validity or

Exhibit 3

§381.986 Florida Statutes Medical Marijuana Treatment Center Compliance Requirements

- Proof of being a licensed and approved Medical Marijuana Treatment Center per the State of Florida [§381.986 Florida Statutes].
- Proof of compliance with the following:
  1) The tenant space is designed to maintain a fully operational security alarm system that secures all entry points and perimeter windows and is equipped with motion detectors; pressure switches; and duress, panic, and hold-up alarms; and
  2) A video surveillance system that records continuously 24 hours a day and meets the following criteria:
     a. Cameras are fixed in a place that allows for the clear identification of persons and activities in controlled areas of the premises. Controlled areas include grow rooms, processing rooms, storage rooms, disposal rooms or areas, and point-of-sale rooms.
     b. Cameras are fixed in entrances and exits to the premises, which shall record from both indoor and outdoor, or ingress and egress, vantage points.
     c. Recorded images must clearly and accurately display the time and date.
     d. Retain video surveillance recordings for at least 45 days or longer upon the request of a law enforcement agency.

Exhibit 3

§381.986 F.S. 500-foot Separation Requirement