



AGENDA
PLANNING COMMISSION
CITY OF PORT ORANGE

Meeting Date: Thursday, September 23, 2021

Time: 5:30 PM

Location: Council Chambers, City Hall
1000 City Center Circle
Port Orange

A. CALL TO ORDER

1. Pledge of Allegiance
2. Roll Call

B. DISCUSSION/ACTION

3. Consideration of Minutes
4. APPLICATION: Special Exception/5404 S. Williamson Blvd.
CASE NO.: 21-70000001
LOCATION: 5404 S. Williamson Blvd.
STAFF CONTACT: Chris Carson, Senior Planner (386) 506-5676/ccarson@port-orange.org
APPLICANT: Port Orange Holdings II, LLC; 536 N. Halifax Ave., Ste. 100, Daytona Beach, FL 32118

A request by the applicant to allow the operation of a mini-warehouse facility within the Planned Community - Agricultural (PC-A) Workplace District.

5. APPLICATION: Variance/6015 Spruce Creek Rd.
CASE NO.: 21-90000007
LOCATION: 6015 Spruce Creek Rd.
STAFF CONTACT: Chris Carson, Senior Planner (386) 506-5676/ccarson@port-orange.org
APPLICANT: Pastor Scott Kirschner; P.O. Box 710, Burlington, WA 98233

A request by the applicant for a variance from the Land Development Code to waive the requirement for a new development to construct a sidewalk along an adjacent right-of-way.

6. APPLICATION: Variance/79 Dunlawton Ave.
CASE NO.: 21-90000008
LOCATION: 79 Dunlawton Ave.

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

APPLICANT: Pete Zahn, P.E., Zahn Engineering, Inc.; 150 S. Palmetto Ave., Ste. 201, Daytona Beach, FL 32114

A request by the applicant for variances from the Land Development Code to reduce the front building setback, the drainage and utility easement, parking space width, drive aisle width, the number of required parking spaces, landscape buffer width, vehicular use area and foundation landscaping, and open space requirements for a property in the Community Commercial zoning district in the Port Orange Town Center Community Redevelopment Area (CRA).

C. OTHER BUSINESS

7. Commissioner Comments
8. Staff Comments

D. PUBLIC COMMENTS

E. ADJOURNMENT

NOTICES — PURSUANT TO SECTION 286.0105 OF THE FLORIDA STATUTES, IF ANY PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE PLANNING COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT THIS PUBLIC MEETING OR HEARING, SUCH PERSON WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT, FOR SUCH PURPOSE, SUCH PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. THE CITY DOES NOT PREPARE OR PROVIDE SUCH A RECORD.



FOR SPECIAL ACCOMMODATIONS, PLEASE NOTIFY THE CITY CLERK'S OFFICE (PHONE: 386-506-5563) 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 OR HEARING DATE.



HELP FOR THE HEARING IMPAIRED IS AVAILABLE THROUGH THE ASSISTIVE LISTENING SYSTEM RECEIVERS CAN BE OBTAINED FROM THE CITY CLERKS' OFFICE.

IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT (ADA), 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, 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 OR HEARING 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
AUGUST 26, 2021

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

Pledge of Allegiance

Silent Invocation

Roll Call

Present: John Junco
Lance Green
Newton White
Stan Schmidt
Maria Mills-Benat
Thomas Jordan
Darrel “Bo” Bofamy

Also Present: Shannon Balmer, Assistant City Attorney
Shelby Field, Assistant City Clerk

B. DISCUSSION/ACTION

3. Consideration of Minutes

Motion to approve the minutes as presented from July 22, 2021 was made by Commissioner Mills-Benat and Seconded by Commissioner Jordan. Motion carried unanimously by roll call vote.

4. CASE NO.: 21-50000002

APPLICATION: Subdivision Plat and Plans/The Palms at Ashton Lakes Subdivision

LOCATION: Southeast corner of S. Williamson Blvd. and Oakwater Lane (6241 S. Williamson Blvd.)

STAFF CONTACT: Gwen Perney, Principal Planner (386) 506-5673 gperney@port-orange.org

APPLICANT: Roger Strcula, Upham, Inc.; 265 Kenilworth Ave., Ormond Beach, FL 32174

A request by the applicant to subdivide ±18.7 acres into two (2) commercial lots as shown on the approved The Palms at Ashton Lakes Planned Commercial Development (PCD) Conceptual Development Plan (CDP).

Gwen Perney, Principal Planner, discussed details of the proposed subdivision plat and plans.

Motion to approve Case No. 21-50000002 was made by Commissioner Jordan and Seconded by

Commissioner White. Motion carried unanimously
by roll call vote.

5. CASE NO.: 20-65000002

APPLICATION: PUD Rezoning/Madeline Commons Planned Unit Development Master Development Agreement and Conceptual Development Plan

LOCATION: North of Charles St., between McDonald Rd. and 5th St.

STAFF CONTACT: Gwen Perney, Principal Planner (386) 506-5673 gperney@port-orange.org

APPLICANT: A. Joseph Posey, Jr., Storch Law Firm; 420 S. Nova Rd., Daytona Beach, FL 32114

A request by the applicant to approve the rezoning of 34.6 acres from R-2D (Two-Family Residential) to PUD (Planned Unit Development) and the Madeline Commons Master Development Agreement and Conceptual Development Plan.

Gwen Perney, Principal Planner, discussed details of the proposed rezoning and answered questions from Commissioners.

Joey Posey, Storch Law Firm, provided a presentation to the Commission containing additional information on the location, the history of the project and the compromises they reached with the two neighborhood meetings held. He answered questions from Commissioners.

Commissioner Schmidt expressed concern with filling in four of the wetland areas on the property and creating runoff. Harry Newkirk, engineer, responded to Commissioner Schmidt's concern explaining the proposed drainage system that will meet both Port Orange's requirements and St. Johns Water Management District requirements. He assured the Commission they will take all necessary precautions and do the calculations to make sure the updated stormwater systems are effective.

Janice Nixon, citizen, is still concerned with the drainage, the removal of the east landscape buffer previously proposed when townhomes were included, and traffic but otherwise she is happy with the compromise Mr. Posey reached with the neighbors.

Motion to approve Case No. 20-65000002 subject to the policy issues was made by Commissioner Jordan and Seconded by Commissioner Mills-Benat. Motion carried unanimously by roll call vote.

6. CASE NO.: 21-20000001

APPLICATION: 21-1 Large-Scale Comprehensive Plan Amendment/Property Rights Element

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

APPLICANT: City of Port Orange

A request to amend the Comprehensive Plan to create a Property Rights Element in compliance with House Bill 59.

Penelope Cruz, Planning Manager, discussed details of the proposed amendment and answered questions from Commissioners.

Motion to approve Case No. 21-20000001 was made by Commissioner Mills-Benat and Seconded by Vice Chair Schmidt. Motion carried 6-1 by roll call vote with Commissioner Bofamy voting no.

Shannon Balmer, Assistant City Attorney, asked for clarification on the reason Commissioner Bofamy voted no. Commissioner Bofamy responded he doesn't understand the item being requested. Mrs. Cruz suggested reconsidering the motion upon further explanation.

Motion was made to reconsider the motion by Commissioner White and Seconded by Commissioner Schmidt. Motion carried unanimously by roll call vote.

Mrs. Cruz provided additional information about the request to amend the Comprehensive Plan to create a Property Rights Element in compliance with House Bill 59.

Motion to approve Case No. 21-20000001 was made by Commissioner Mills-Benat and Seconded by Vice Chair Schmidt. Motion carried unanimously by roll call vote.

7. CASE NO.: 21-15000001

APPLICATION: Amendment to Port Orange Town Center Community Redevelopment Plan

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

APPLICANT: City of Port Orange

A request to amend the Port Orange Town Center (POTC) Redevelopment Plan to modify the Riverwalk Planned Community Conceptual Development Plan (CDP).

Mrs. Cruz discussed details of the proposed amendment and answered questions from Commissioners.

Robert Reinhausen, citizen, spoke against the project. The ordinance that set up Riverwalk promised a promenade for public access along the entire length of the river, and he believes offering the land for sale violates the intent of the Ordinance. He recommends denial.

Tim Burman, Community Development Director, addressed Mr. Reinhausen's concerns about developers overrunning the property and not allowing public access. It has been stressed with the Collier Company and it is in the plan that a public space/walkway is required.

Motion to approve Case No. 21-15000001 was made by Commissioner Mills-Benat and

Seconded by Commissioner Bofamy. Motion
carried unanimously by roll call vote.

8. CASE NO.: 21-25000005

APPLICATION: LDC Amendment/Chapter 2, 17, and 18

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

APPLICANT: City of Port Orange

A request to amend Chapters 2, 17, and 18 of the Land Development Code (LDC) regarding the Riverwalk Overlay District and the Planned Commercial-Riverwalk (PC-R) zoning district.

Mrs. Cruz discussed details of the proposed amendments and answered questions from Commissioners.

Motion to approve Case No. 21-25000005 was
made by Commissioner Mills-Benat and
Seconded by Commissioner White. Motion
carried unanimously by roll call vote.

C. OTHER BUSINESS

9. Commissioner Comments

Commissioner Green inquired as to who owns the water in front of the proposed Fysh Restaurant at Riverwalk. Mr. Burman responded the waterfront in front of Fysh is owned by Halifax River Partners and there is some submerged land that they own as well as some land leases. There are conceptual plans for a Marina that wraps around the entire point.

Commissioner White asked for an update on the permit software system. Mr. Burman anticipates it going live in early 2022.

10. Staff Comments

There were none.

D. PUBLIC COMMENTS

There were none.

E. ADJOURNMENT – 6:55 p.m.

Chair John Junco



STAFF REPORT

Special Exception for a Mini-Warehouse Facility in the Planned Community – Agricultural District CASE NO. 21-70000001

REQUEST:	To allow the operation of a mini-warehouse facility within the Planned Community - Agricultural (PC-A) Workplace District.
PROPERTY OWNER:	Port Orange Holdings II, LLC
APPLICANT:	Mark S. Dowst, Mark Dowst and Associates, Inc.
LOCATION:	5404 S. Williamson Boulevard
STAFF CONTACT:	Chris Carson, Senior Planner (386) 506-5676
STAFF RECOMMENDATION:	Approval
PLANNING COMMISSION:	September 23, 2021

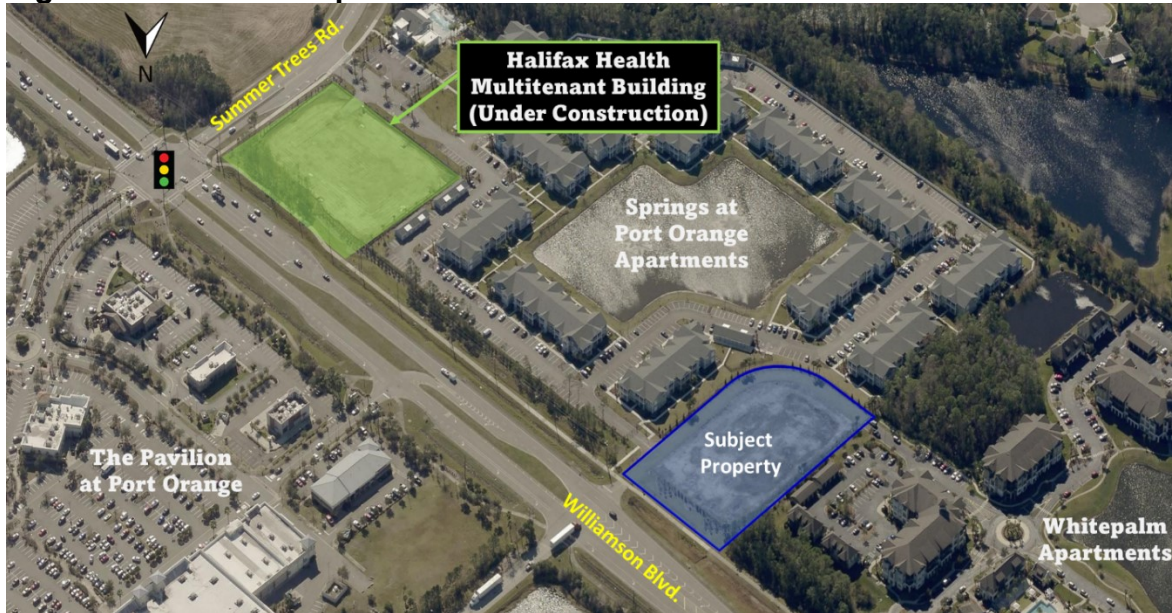
INTRODUCTION

Mark Dowst, applicant for the property owner, Port Orange Holdings II, LLC, has applied for a Special Exception to operate a mini-warehouse facility within the Workplace District of the Planned Community – Agricultural (PC-A) zoning district. The LDC defines a mini-warehouse as, “a self-service storage facility in a building consisting of individual self-contained units of varying sizes that are leased or owned for the storage of business and household goods, or for contractor’s supplies.” According to the LDC, “a special exception is a use that would not be appropriate without restriction, but which, if controlled as to number, area, location or relation to the surrounding area, would promote the public health, safety and general welfare.”

If approved, the applicant intends to submit a site plan to establish a ±750 cubicle mini-storage facility on a ±2.3-acre site located on the south side of Williamson Boulevard, between the Whitepalm Apartments and the Springs at Port Orange Apartments. According to the applicant’s own market analysis, they have determined that the demand for a mini-warehouse does exist at this location. The site plan will be required to meet all architecture, landscaping, stormwater and infrastructure requirements of the City’s Land Development Code (LDC).

The subject property has had Planned Community – Agricultural (PC-A) Workplace District zoning district since 2002. In addition to the proposed mini-warehouse use, the existing zoning of the property also allows uses such as banks, health/exercise clubs, hotels, motor vehicle and boat storage facilities, motor vehicle service stations, offices, retail sales and service, and restaurants (including drive-thrus).

Figure 1. Location Map – 5404 S. Williamson Blvd.



SPECIAL EXCEPTION DEVELOPMENT STANDARDS

All Special Exception uses are required to meet a uniform list of development standards, encompassing traffic generation, landscaping and buffering, and others [Ch. 18, Sec. 2(d)(2) of the LDC]. The following are the development standards and how they apply to the request.

Standard Special Exception Development Standards:

1. *Traffic generation and access for the proposed use shall not adversely impact adjoining properties and the general public safety.*

According to the applicant, a mini-warehouse facility use produces very low traffic volumes compared to other retail, restaurant, and office uses permitted on the subject property. The proposed ± 750 mini-warehouse use is estimated to generate 210 daily trips.

Table 1. ITE Daily Trip Rate for uses in Workplace District of the Planned Community – Agricultural (PC-A) Zoning District

Use	Daily Trip Rate	Multiplier
Mini-warehouse	2.5	Per 1,000 SF
Warehouse (Motor vehicle and boat storage)	3.56	Per 1,000 SF
General Office	11.03	Per 1,000 SF
Health/ Exercise Club	32.93	Per 1,000 SF
Medical/Dental Office	36.13	Per 1,000 SF
Retail	44.32	Per 1,000 SF
Restaurant without a Drive-Thru	127.15	Per 1,000 SF
Bank	148.15	Per 1,000 SF
Restaurant with Drive-Thru	496.12	Per 1,000 SF
Convenience Store with Gas	845.6	Per 1,000 SF

According to the latest traffic counts for Williamson Boulevard and Summer Trees Road, adjacent to the subject property, there is capacity for the traffic (210 daily trips) anticipated to be generated by the proposed development of this property (Table 2). The site plan submittal for this property will be required to comply with the City's Concurrency Management requirements in the LDC. Detailed traffic analysis occurs at the site plan review stage to identify any improvements that might be required. Similar to other developments within the city, the developer may be required to enter into a Proportionate Fair Share Agreement with the City and Volusia County to pay for part of the scheduled transportation improvements for any impacted areas.

Table 2. Traffic Capacity

Roadway Segment	Maximum Capacity Vehicles Per Day	Current Vehicles Per Day*	Remaining Capacity Vehicle Per Day	Daily V/C Ratio**
Williamson Blvd. from Taylor Rd. to Town West Blvd.	37,970	20,840	17,130	0.55
Summer Trees Rd. from Williamson Blvd. to Taylor Rd.***	12,744	4,691	8,053	0.37

*Source Volusia County Traffic Engineering, 2019

**V/C Ratio (Volume-Demand-to-Capacity Ratio) Compares roadway demand (vehicle volumes) with roadway supply (carrying capacity).

***Source City of Port Orange Traffic Counts, 2020

The subject property is Lot 2 of the 3-lot Springs at Port Orange subdivision. There is an existing driveway along Williamson Boulevard that currently serves as the emergency only access point to the Springs at Port Orange Apartments and the Whitepalm Apartments. The driveway was approved by Volusia County and constructed with the Springs at Port Orange Apartments in 2019. Access from Williamson Boulevard in this area is under Volusia County's jurisdiction. Access to the proposed mini-warehouse facility will be from the existing driveway along Williamson Boulevard.

Figure 2. Access Point for the Proposed Mini-Warehouse Facility (Lot 2) and Location of Emergency Access Gates for Apartments



The new access drive for the subject property (Lot 2) will tie in with the existing Williamson Boulevard driveway and existing gated emergency only access driveway to the Springs at Port Orange Apartments. There are no proposed changes to the location of the emergency gate for the Springs at Port Orange Apartments.

The existing emergency only gate for the Whitepalm Apartments that is currently located behind the Williamson Boulevard sidewalk will be relocated. The existing emergency access drive, located on Lot 2, will be maintained in its current condition as a sodded and stabilized emergency only access drive (Figure 4).

2. *Off-street parking, loading and service areas shall be provided and located such that there is no adverse impact on adjoining properties, beyond that generally experienced in the district.*

Parking will be provided as required by the LDC. The total number of parking spaces and design of the parking lot and spaces will be reviewed with the submittal of the site plan. The LDC currently requires one space per 50 cubic feet for a mini-warehouse, plus 1 loading space at all public entry doors for a facility with interior corridor access.

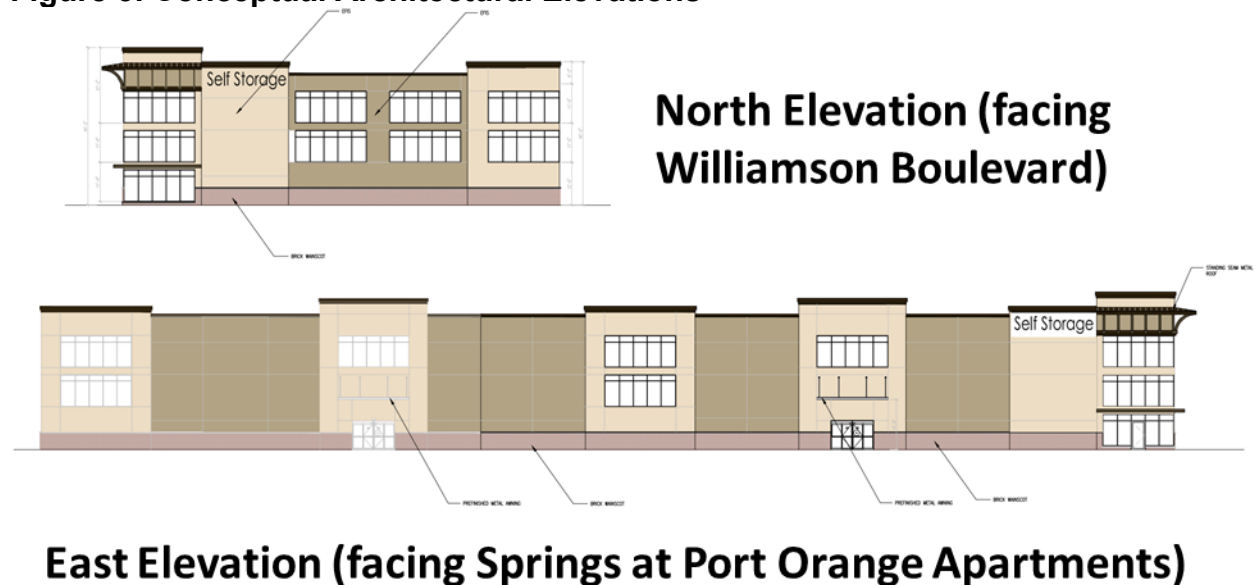
3. *Required yards, screening or buffering, and landscaping shall be consistent with the district in general and the specific needs of the abutting land uses.*

The site will be developed with landscape buffers in accordance with the LDC for screening the surrounding properties and rights-of-way from a mini-warehouse facility. The LDC requires a minimum 50' landscape buffer along Williamson Boulevard, a minimum 10' landscape buffer along the sides and rear property lines, and foundation plantings around the building. In addition to the 10' landscape buffer on the sides and rear. A review of the landscape buffers will occur with the site plan.

4. *Architectural and signage treatments shall comply with the general provisions applicable to permitted uses in the district, to the greatest extent possible, and be sensitive to surrounding development.*

The architectural style of the building, accessory structures, and wall/fence will be developed with a common architectural theme and comply with the LDC. A formal review of the architecture will occur with the site plan to verify compliance with the LDC. Any proposed signage will have to meet the regulations set forth by the LDC. Figure 3 illustrates the proposed design for the mini-warehouse facility that complies with the LDC.

Figure 3. Conceptual Architectural Elevations



5. *Size, location or number of special exception uses in an area shall be limited so as to maintain the overall character of the district as intended by this code.*

There are no other Special Exception for mini warehouse uses in the general area of the subject property (Figure 4). The proposed development is located approximately 0.87 miles from an existing mini-warehouse facility (Westport

Storage) and approximately 0.93 miles from a proposed mini-warehouse facility (Crane Lakes Depot); both of these facilities were approved through a Planned Commercial Development (PCD).

Figure 4. Nearby Mini-Warehouse Facilities



The subject site will be developed to meet the building setback, building coverage and open space requirements for the Workplace District of the Planned Community – Agricultural (PC-A) Zoning District, and the proposed use generates less vehicular trips than other uses permitted on the subject property.

In addition to the standard development requirements for all special exceptions, a mini-warehouse use in the PC-A zoning district must also comply with three additional development requirements [Ch. 18, Sec. 3(b)(10) of the LDC]. The following are the additional development requirements for a mini-warehouse use and how they apply to the request.

Specific Mini-Warehouse Development Requirements:

1. *Warehouse buildings shall be screened from any public rights-of-way by a six-foot high opaque fence or wall with a type 2 buffer yard planted along the street side of the fence or wall. Buffer yard requirements may be increased in accordance with chapter 13 of this Code.*

The proposed development will comply with the 50-foot Williamson Boulevard right-of-way landscape buffer and wall/fence requirement in the LDC. A review of the landscape buffers and the wall/fence will occur with the site plan.

2. *The proposed site shall be a minimum of two acres.*

The subject property is ±2.3 acres.

3. *The proposed site shall front on an arterial roadway.*

The site fronts on Williamson Boulevard. Williamson Boulevard is defined by the City's Comprehensive Plan as an urban principal arterial roadway.

RECOMMENDATION

Staff recommends approval of the Special Exception to allow a mini-warehouse facility to be developed at 5404 S. Williamson Boulevard.

ATTACHMENTS

Exhibit A – Applicant's Letter Dated August 6, 2021

August 6, 2021

Via Hand Delivery & Email

Melanie Schmotzer
Community Development
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

RE: Port Orange Neighborhood Storage – Special Exception Application
5404 S Williamson Blvd, Port Orange, FL 32128
MDA #1550

Dear Melanie:

Please find enclosed the following exhibits for review and approval:

1. Special Exception Application, one (1) original.
2. Civil Construction Plans, one (1) copy, signed and sealed.
3. Landscape Plans, one (1) copy, signed and sealed.
4. Boundary, Topo & Tree Surveys, one copy (1) signed and sealed.
5. Architectural Elevations, one (1) copy, signed and sealed.
6. Trip Generation Estimate, one (1) copy, signed and sealed.
7. Copy of Deed, one (1) copy.
8. Owner Authorization, one (1) copy.
9. Check in the amount of \$450 for application fee.
10. 11x17 copies of items 2-5.
11. CD with PDFs of items 1-9.

The purpose of this application is to construct a 750+/- cubicle neighborhood mini storage facility on a vacant 2.26 ac site.

The Special Exception General Requirements [Chapter 18, Section 2 (d)(2)] have been addressed as follows:

1. Traffic generation and access for the proposed use shall not adversely impact adjoining properties and the general public safety.
Response: The proposed use is a very low traffic generator generating only 210 ADT.
2. Off-street parking, loading and service areas shall be provided and located such that there is no adverse impact on adjoining properties, beyond that generally experienced in the district.
Response: General activity on the proposed site is less than that occurring on adjacent multifamily property.
3. Required yards, screening or buffering, and landscaping shall be consistent with the district in general and the specific needs of the abutting land uses.
Response: All required buffer yards and screening have been met.

4. Architectural and signage treatments shall comply with the general provisions applicable to permitted uses in the district, to the greatest extent possible, and be sensitive to surrounding development.

Response: The architectural elevations and signage has been designed to comply with all requirements and be sensitive to surrounding developments.

5. Size, location or number of special exception uses in an area shall be limited so as to maintain the overall character of the district as intended by this code.

Response: The proposed use will provide convenient storage to the surrounding neighborhood.

The mini warehouse specific special exception requirements [Chapter 18, Section 3(b)(10)] have been addressed as follows:

- a. Warehouse buildings shall be screened from any public rights-of-way by a six-foot high opaque fence or wall with a type 2 buffer yard planted along the street side of the fence or wall. Buffer yard requirements may be increased in accordance with chapter 13 of this Code.

Response: minimum type 2 buffer yards have been provided.

- b. The proposed site shall be a minimum of two acres.

Response: The site is 2.26 acres.

- c. The proposed site shall front on an arterial roadway.

Response: The site fronts on Williamson Boulevard which is a designated arterial roadway.

Thank you for your assistance regarding the above. I especially appreciate the information and time provided by Penelope Cruz in the preparation of this application. If you have any questions, or require additional information, please do not hesitate to give me a call.

Very truly yours,
MARK DOWST & ASSOCIATES, INC.



Mark S. Dowst, P.E.
President

MD/AG

Cc: Hugh Home via email



STAFF REPORT

VARIANCE / SIDEWALK REQUIREMENT CHAPTER 12 SECTION 8(c), LDC

CASE NO. 21-90000007

REQUEST: A variance from the Land Development Code to waive the requirement for a new development to construct a sidewalk along an adjacent right-of-way.

PROPERTY OWNER: Christ the King Network

APPLICANT: Pastor Scott Kirschner

LOCATION: 6015 Spruce Creek Road

STAFF RECOMMENDATION: Approval

STAFF CONTACT: Chris Carson, Senior Planner (386) 506-5676

PLANNING COMMISSION DATE: September 23, 2021

INTRODUCTION

Christ the King Network, property owner, has submitted a site plan to develop the subject ± 7.58 -acre property with a $\pm 9,111$ square-foot house of worship with 250 seats and associated site improvements. The proposed site plan is currently under staff review. According to Chapter 12, Section 8(c) of the Land Development Code (LDC), a new development is required to construct a sidewalk along any adjacent right-of-way that abuts a property being developed. Therefore, as part of the site improvements for the subject property, a 4' wide, ± 916 -foot-long sidewalk is to be constructed along the south side of Central Park Boulevard.

Figure 1. Location Map



Map created by the City of Port Orange Community Development Department

DISCUSSION

The applicant, Pastor Scott Kirschner, is requesting to waive the minimum requirement that new developments must construct sidewalks along adjacent rights-of-way. If the variance request is approved, Christ the King Network, property owner, is proposing to not construct a sidewalk along Central Park Boulevard.

According to the applicant, the subject property has been designed to minimize impacts to the specimen trees throughout the site and the existing wetland located at the east side of the subject property. According to the environmental report prepared for the site plan, the wetland is about +/- 2.38 acres and consists of mixed wetlands hardwood with species including: sweetgum, sugarberry, water oak, dogwood, cabbage palm, and swamp bay. The environmental consultant advised that wetland is considered high quality as it hydrologically connects with other off-site wetland areas and contains large mature trees and other native vegetation. The applicant states that the request to waive the sidewalk requirement is to avoid further impacting the wetland and removal of some specimen trees and other mature trees. In addition to requesting to waive the sidewalk requirement, the applicant has designed the proposed church building and parking to be in the center of the subject property to preserve the wetland, provide sufficient buffers around the wetlands and preserve as many of the healthy specimen trees as possible.

In addition, the applicant stated that constructing the sidewalk along Central Park Boulevard will not provide a significant benefit to the surrounding developments as there is no existing sidewalk on the south side of Central Park Boulevard east of the subject property for the sidewalk required as part of the proposed development to connect to. The parcel adjacent to the sidewalk gap is zoned agriculture and occupied with an existing single-family home. There will likely not be any commercial development or redevelopment on this parcel to warrant the completion of the sidewalk gap by a developer. To the best of the City's knowledge, there have not been public requests to complete the existing sidewalk gap.

Figure 2. Proposed Site Plan



Adjacent to the subject property, there is an 8-foot-wide sidewalk along the north side of Central Park Boulevard and a crosswalk just before Central Park Boulevard curves south, which connects to the existing sidewalk network within the Oakland Park Subdivision. As for pedestrians accessing the church, according to the Applicant, most residents walking to the site come from Spruce Creek Road. Therefore, as part of the site improvements for the church, a sidewalk connection from the new building to the existing sidewalk along Spruce Creek Road will be provided.

The current sidewalk network along Central Park Boulevard and Spruce Creek Road, south of Central Park Boulevard, includes an 8-foot-wide sidewalk on one side of the right-of-way and sidewalks from abutting neighborhoods connecting to these sidewalks, or there are points to cross Central Park Boulevard and Spruce Creek Road to access the 8' sidewalk. Therefore, if the variance is approved, there is no anticipated impact to the sidewalk network in this area.

In July 2020, a Conditional Use was approved by the City Council to allow the church to use the subject property to hold outdoor church services and other church related programs. The Conditional Use is scheduled to expire July 21, 2022.

REVIEW OF VARIANCE CRITERIA

Chapter 19, Section 1, of the LDC, lists the review criteria used to determine whether the variance requested should be granted. These criteria, accompanied by staff 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, structures or building in the same zoning district.*

According to the applicant, the special circumstances that exist for the subject property include a wetland on the eastern portion of the property adjacent to the Central Park Boulevard right-of-way. The proposed site plan has been designed to avoid impacting the wetland and the applicant is requesting to waive the requirement to construct the sidewalk to not impact the wetland area.

The applicant also states that there is a ±270-foot sidewalk gap east of the property, so if the sidewalk would be built on the subject property, it would not connect to the existing sidewalk. The parcel with the sidewalk gap is zoned agriculture and occupied with an existing single-family home and likely will not be redeveloped where a developer would be required to construct the sidewalk gap.

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

The special conditions cited by the applicant regarding the wetland and a ±270-foot sidewalk gap east of the property are not a result of actions by the applicant or the property owner and existed prior to the acquisition of the property.

- (c) *Literal interpretation and enforcement of the development code regulations would deprive the applicant of rights commonly enjoyed by the other properties in the*

same zoning district under the terms of the development code and would work unnecessary and undue hardship on the applicant.

When a site is developed, it must comply with current site development requirements of the LDC. The intent of the requirement is to construct sidewalks in adjacent rights-of-way to provide an interconnected network that provides travel and access options. Literal interpretation of the LDC would not deprive the applicant of rights commonly enjoyed by other properties within the same zoning district. The applicant could construct the sidewalk along Central Park Boulevard; however, there would be a ± 270 -foot sidewalk gap east of the property and a portion of the sidewalk to be constructed would impact the wetland on the east portion of the site. In addition to impacting the wetland, some mature trees could need to be removed for the construction of the required sidewalk.

If the variance is approved, there would still be an interconnected sidewalk network that will meet the intent of the LDC to maintain bicycle and pedestrian movements, and to encourage use of alternative transportation. There is an 8-foot-wide sidewalk along the north side of Central Park Boulevard and a crosswalk just before Central Park Boulevard curves south, which connects to the sidewalk network throughout the Oakland Park Subdivision. Alternatively, there are other low-speed routes for residents to travel to Spruce Creek Road including Newton Road and Oakland Park Boulevard. To enhance connectivity with the surrounding area and promote safety, the applicant has agreed to coordinate with Public Works to install yellow, unsignalized pedestrian crosswalk signs at the Central Park Boulevard crosswalk as part of the site improvements.

According to the applicant, most of the pedestrian traffic to the subject property utilizes the existing Spruce Creek Road sidewalk and creating a connection to this sidewalk through the site would create the necessary access to the church building.

- (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 not necessary to make reasonable use of the land. The site can be developed with or without the sidewalk along the south side of Central Park Boulevard. However, if the sidewalk is built, there would still be a ± 270 -foot sidewalk gap and impacts to an existing quality wetland is anticipated along with the possible removal of specimen trees.

The parcel adjacent to the sidewalk gap has an existing single-family home and is zoned agriculture. The development of the parcel for commercial uses which would require the completion of the sidewalk gap is unlikely. The completion of sidewalk gaps has historically been funded through grants from the River to Sea Transportation Planning Organization (TPO). There is currently no submittal for funding planned to complete sidewalk gaps in this area.

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

The current sidewalk network along Central Park Boulevard and Spruce Creek Road, south of Central Park Boulevard, includes an 8-foot-wide sidewalk on one side of the right-of-way and sidewalks from abutting neighborhoods connecting to these sidewalks, or there are points to cross Central Park Boulevard and Spruce Creek Road to access the 8' sidewalk. Therefore, not all properties in the general area of the subject property have been required to install sidewalks.

- (f) *The granting of the variance 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 intent of the requirement to construct sidewalks in adjacent rights of way is to provide an interconnected network that provides travel and access options. There is an existing pedestrian network that has existed and served the area for over 25 years. Key routes for the sidewalk network include the 8' sidewalk along the east side of Spruce Creek Road and the 8' sidewalk along Central Park Boulevard. Many other nearby residential streets include 4' sidewalks along both sides of the roadway and are used by people walking and bicycling to get to and from Central Park Boulevard and Spruce Creek Road. The development will enhance pedestrian access to the existing sidewalk along Spruce Creek Road while meeting all other requirements of the LDC. The proposed variance is not anticipated to adversely impact the public or surrounding properties as the development has already been operating under a Conditional Use Development Order. Granting the variance would still result in the general intent of the LDC by constructing a sidewalk connection from the existing sidewalk along Spruce Creek Road to the development and enhancing the existing pedestrian network.

- (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 on a claim brought under the Bert J. Harris Private Property Rights Protection Act.

RECOMMENDATION

Based on the finding of this report, staff recommends approval of the variance to waive the minimum requirement to construct a 4' sidewalk in the Central Park Boulevard right-of-way, adjacent to the subject property, subject to the applicant funding and installing two pedestrian crosswalk signs as part of the site plan submittal.

ATTACHMENTS

Exhibit A – Applicant’s Letter Dated August 18, 2021

August 18, 2021

To Whom It May Concern,

We are requesting a variance for the Christ the King Community Church property located at 6015 Spruce Creek Rd, Port Orange, FL 32127. This variance is requested because of the requirement to connect the sidewalk within the City right-of-way adjacent to the entire northern property line within the Central Park Blvd south right-of-way. The variance is requested to not construct the sidewalk along the south right-of-way of Central Park Blvd. We are requesting this because a new sidewalk across south right-of-way would become a dead end, as there are no existing connecting sidewalks east of this property limit to connect to. Additionally, a sidewalk route for pedestrians currently exists on the northern right-of-way of Central Park Blvd which extends the full length of the property and connects to continuous sidewalks on both sides east of the property. We propose that a new sidewalk extend from the existing sidewalk within the east right-of-way of Spruce Creek Road into the site with an internal site sidewalk system that leads to the church building.

Special circumstances exist for this site, includes a wetland on the eastern portion of the property that is adjacent to the southern Central Park Blvd right-of-way, which will not be impacted, and the fact that there are no other existing connecting sidewalks within the southern Central Park Blvd right-of-way limits beyond the east site limits. These special circumstances are not a direct result of the applicant and existed prior to the acquisition of the property.

Literal interpretation and enforcement of the development code would cause undue hardship, by creating a sidewalk with no destination, which could potentially decrease the aesthetic quality of the eastern portion of the property adjacent to the un-impacted wetland. In addition, there would be the undue hardship of additional development costs for the installation of that portion of sidewalk which would have no pedestrian benefit because it would terminate at a dead end within the Central Park Blvd right-of-way at the property line.

This variance is the minimum variance necessary and will not confer any special privileges in regard to other lands in the GPU zoning district.

The variance is in harmony with the general intent of the code by providing the owner with rights to develop the property in a manner which is aesthetically consistent with the surrounding properties, and which ensures for the adequate protection of nature and public safety.

Sincerely,

ZAHN ENGINEERING, INC.



Michael R. Anderson, PE

CC: Christ the King Community Church
Project File, Tracer File

150 S Palmetto Ave, Ste 201 • Daytona Beach, FL 32114
Phone: (386) 252-0020 • Fax: (386) 252-6050
www.zahneng.com



STAFF REPORT

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

CASE NO. 21-90000008

REQUEST:

Variances from the LDC to reduce the front building setback, the drainage and utility easement, parking space width, drive aisle width, the number of required parking spaces, landscape buffer width, vehicular use area and foundation landscaping, and open space requirements for a property in the Community Commercial zoning district in the Port Orange Town Center Community Redevelopment Area (CRA).

LOCATION:

79 Dunlawton Avenue

OWNER:

Port Orange Marina, Inc.

APPLICANT:

Pete Zohn, PE, Zahn Engineering, Inc.

STAFF RECOMMENDATION:

Approval

STAFF CONTACT:

Penelope Cruz, Planning Manager (386) 506-5671

PLANNING COMMISSION DATE: September 23, 2021

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 Avenue Bridge, adjacent to the Halifax River in the Down Under area of the Port Orange Town Center (POTC) Community Redevelopment Area (CRA) (Figure 1). If the variances requested are approved, the owner is proposing to redevelop the property as Millie's Landing, a casual riverfront restaurant with live entertainment, and maintain the existing commercial marina and Two Jerks Seafood business located on the north side of site. The site was previously developed with a 1,524 square-foot restaurant (DJ's Deck, formerly J.C.'s Oyster Deck) and another 2,277 square-foot retail store (formerly the Bait Shack). Both structures were demolished in August 2021.

Figure 1. Location Map



BACKGROUND

The property owner is proposing to redevelop the property with a new ± 800 square-foot restaurant and associated site improvements. The Land Development Code (LDC) requires a site to be brought up to current code standards when there is a change in the use of the property. The site upgrades include, but are not limited to, paving and expanding the parking facilities, stormwater retention, landscaping and buffers, irrigation, signage and architectural design. Staff has worked with the property owner on identifying the necessary site upgrades and minimizing the variances being requested.

The proposed redevelopment of the subject property as Millie's Landing restaurant, includes two phases:

- 1) Maintaining the existing thatched pavilion for outdoor seating and placement of temporary kitchen and restroom structures so Millie's Landing can open this fall; and
- 2) Constructing a permanent kitchen and restrooms from shipping containers and using the existing thatched pavilion and additional outdoor space along the river as the seating for the restaurant, and modifications to the parking lot to increase the number of parking spaces.

The redevelopment plan also includes maintaining the commercial marina and Two Jerks Seafood business located in the buildings at the northwest corner of the site.

Redevelopment on this site would be an improvement for the overall Down Under area of the Port Orange Town Center CRA with a structure that will meet current architectural codes, improved landscape buffering, and controlled access points for traffic management. However, to support redevelopment on some infill sites in the CRA, variances or flexibility in development regulations are typically necessary for sites with restrictions to redevelop (e.g., Dimucci Realty Company – 51 Dunlawton; Benedict Advertising & Dunes Brewery – 59 Dunlawton; Jimmy Hula's – 65 Dunlawton). Redevelopment of this site will add to the number of projects that have been constructed in this area and 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.

According to the concept plan submitted by the Applicant, redevelopment of the site requires nine (9) variances from the LDC. The variances being requested are listed below and are illustrated in Figure 2 (Page 3):

1. To reduce the minimum 12'-wide drainage and utility easement along the right-of-way to 0' along $\pm 78'$ of the western portion of the site adjacent to the proposed new buildings [LDC, Chapter 6, Section 3 (b)(4)].
2. To reduce the minimum lot open space percentage from 30% to 9%; and reduce the building setbacks from the required front (south) setback of 10' to 0' for $\pm 78'$ of the western portion of the site [LDC, Chapter 17, Section 27].

3. To reduce the distance between the first parking space and the right-of-way from 25' to 5' [LDC, Chapter 12, Section 2(b)(3)(a)].
4. To reduce the minimum width of a two-way access drive width from of 24' to 22' [LDC, Chapter 12, Section 3(f)].
5. To reduce the dimensions of a regular parking space from 10' x 20' to 9' X 19' [LDC, Chapter 12, Section 6(b)(1)(a)].
6. To allow a parking ratio less than 1 space per 3 seats [LDC, Chapter 12, Section 4(b)(6)].
7. To reduce the south roadway landscape buffer from 10' to 5' for the easterly 144' and to 0' for the westerly 118' [LDC, Chapter 13, Section 3 of the LDC].
8. To reduce the required vehicular use area landscaping from 10% to 5% [LDC, Chapter 13, Section 4].
9. To not provide the required building foundation plantings [LDC, Chapter 13, Section 5(a)(1)(b)].

Figure 2. Proposed Variances



Building Setbacks

The LDC requires a front (south) building setback for a site in the Community Commercial (CC) zoning district located along a local road to be 10-feet. The proposed site layout plan shows the temporary kitchen (TK) and storage (TS), and the new permanent kitchen (PK) set back 0-feet from the south property line at the west end of the site. According to the applicant, the proposed location of the permanent kitchen is to provide more space for parking spaces and outdoor waterfront seating. The two prior buildings on the site that were recently demolished had been located on the south property line with a 0-foot setback for over 60 years; therefore, the proposed redevelopment will not increase the setback encroachment along this right-of-way.

Open Space

The LDC requires that a minimum of 30% of a site within the Community Commercial zoning district remain as open space. The proposed site plan indicates 9% of the site will remain as open space. Currently, 7.2% of the site is open space; therefore, the proposed redevelopment will result in a slight increase in the amount of open space.

Drainage and Utility Easement

The LDC requires a minimum 12-foot-wide drainage and utility easement to be located along the fronts of all lots adjacent to any street. The Applicant is proposing to provide a 12-foot-wide drainage and utility easement along 166-feet of the Dunlawton Avenue frontage, except for 78-feet at the west end of the site where the existing deck is located, and the new building is proposed. The current site does not provide this easement. City Staff have reviewed this variance request and agree that infrastructure needs can be met within the space to be provided.

Parking Space Dimensions

The LDC requires the width of a parking space to be a minimum of 10-feet and the depth to be 20-feet. The minimum parking space width is proposed to be 9-feet for all parking spaces and the depth is proposed to be 19-feet for a portion of the parking spaces. Of the 44 proposed parking spaces, 26 will meet the standard 20-foot width. According to the applicant, the requested parking space width and depth is to help provide as much parking in the infill redevelopment for the proposed use while allowing the site to include improved vehicular circulation. 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-foot 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 Variance Request	19'	9'
Jimmy Hula's Port Orange w/variance	19'	9'
Dimucci Realty Company Port Orange w/variance	20'	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 LDC requires a minimum of 25-feet 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 5-feet from the right-of-way. The reduced setback is only for 5 parking spaces and is being requested to help meet the number of parking spaces required for the proposed use. The requirement for the 25-foot 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 like a drive aisle in a parking lot and not a collector or arterial road, therefore the typical 25-foot setback is not required due to the slower travel speeds and traffic volume. The Applicant states that the current parking lot does not provide the subject setback and 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 and is consistent with previously approved variances in this area.

Number of Parking Spaces

The LDC requires a parking ratio of 1 space per 3 seats plus 1 space/each 2 employees for restaurants. The existing thatched pavilion provides approximately 180 outdoor seats that are generally well protected from the elements. The owner is proposing to add an additional 140 outdoor seats that will have some type of canvas covering and may not be fully utilized when there is inclement weather. This additional seasonal/outdoor seating would require half the parking than standard protected seating would require as it cannot be utilized in inclement weather. The applicant also anticipates 22 employees on the largest shift. Based on the proposed number of seats and employees, the total required parking would be 94 spaces. The proposed concept plan shows 44 spaces, with 3 spaces for the existing Two Jerks Seafood business, leaving 41 spaces for Millie's Landing. However, Two Jerks Seafood closes at 6 p.m., so those 3 spaces will be available for Millie's Landing guests after 6 p.m.

The Applicant is requesting a variance for 53 of the required parking spaces. According to the applicant, the proposed parking in addition to the shared parking under the bridge will provide sufficient parking for this use along with the other existing uses in the Down Under area. There are 82 shared parking spaces under the bridge and 40 to 50 grass parking spaces for vehicles to park along the south side of the access drive on the south side of the Dunlawton Bridge that are shared by all businesses located in the Down Under District. Existing businesses in the Down Under District that do not meet current parking requirements have historically used the common parking spaces for their businesses, including the former restaurant at this location, DJ's Deck. According to the applicant, while there is more seating proposed with this restaurant than with DJ's Deck, there is more on-site parking being provided.

According to the applicant, employees for Millie's Landing will park at the off-site location near the current Millie's restaurant in Daytona Beach Shores and will be shuttled to this location; therefore, providing up to 11 parking spaces to be used by guests. The applicant will also be promoting guests to use their parking lot on A1A, southwest of Pirates Cove Hotel, as an off-site parking lot where a shuttle van will bring customers to Millie's Landing, Uber and Lyft services, and access by boat (four to five docks are anticipated to be open for this). The proposed alternatives or accommodations for parking are anticipated to reduce the number of parking spaces needed to serve the site.

Access Drives

The LDC requires the minimum width of a two-way access drive to be 24-feet. The applicant is requesting to allow for 22-foot-wide two-way access drives. The LDC allows for an administrative variance for reduced access drive widths where unique traffic

engineering considerations exist on a specific site. City Staff have reviewed this variance request and agree with the assessment by the applicant that vehicles maneuvering to enter and exit the site and accessing parking spaces will have sufficient space with the proposed 22-foot-wide two-way access drives.

Landscaping

The LDC requires the south roadway landscape buffer to be 10-feet. The Applicant is requesting to reduce the south roadway landscape buffer from 10-feet to 5-feet for the easterly 144-feet and to 0-feet for the westerly 100-feet.

The LDC also requires 10% of vehicular use area (parking lot) to be landscaped. The Applicant is requesting to allow for only 5% of the parking lot to be landscaped in order to provide additional parking. The current parking lot only provides 4.5% landscape area.

The LDC also requires building foundation plantings directly adjacent to structures, excluding rear building areas not designed for public view or access, openings, minor building projections or recesses, and building areas located within 25 feet of required landscape buffers or natural areas which will be preserved. The Applicant is requesting to waive the required building foundation planting as the location of the proposed building is adjacent to the existing paved parking lot.

The intent of the landscaping 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. According to the Applicant, the landscape buffer variances are requested as a result of existing conditions to remain to also provide more space for parking spaces. Existing buildings along the north property line are in current use and have been so for many years. The east parking lot is unchanged from improvements approved and completed in the 90s. The south property line is proposed to be improved with a 5-foot landscape buffer.

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 and under the bridge is a special condition. Typically, commercial lots are adjacent to other lots where setbacks and landscape buffers 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.

The existing conditions of the site being almost entirely impervious (covered with building or concrete) and there being an active business still in operation on the

subject site with buildings not included in the redevelopment plan is also special conditions, as it limits how the site can be redesigned to comply with the LDC. Other properties in the area that have recently redeveloped have been able to utilize and redevelop the entire property.

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

The special conditions/circumstances associated with the subject property are not a result of the current property owner. According to the Property Appraiser's website, the existing structure that houses Two Jerks Seafood was constructed prior to 1959 and the prior restaurant (J.C's Oyster Deck, then D.J.'s Deck) as well as The Bait Shack were built in 1961. Variances were approved in 1996 for the other storage structures along the north property line. The current concrete parking lot layout was constructed in 1997.

- 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.*

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

The intent of building setback 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. The Applicant states that placement of the restaurant as proposed would still meet the intent of the LDC, it would not impact air movement and light for the adjacent property and would provide adequate space for maintenance.

The intent of the drainage and utility easement requirement is to provide access to infrastructure for future maintenance and repairs. City Staff have reviewed this variance request and agree that infrastructure needs can be met within the space provided.

The intent of the parking lot requirements is to ensure adequate parking spaces and a safe, logical traffic pattern. According to the Applicant, the proposed parking lot layout will provide additional parking than the previous restaurant had and will have sufficient room for safe maneuverability for vehicles and pedestrians. As for the variance from the required number of parking spaces, the intent of the shared parking under the bridge is to provide additional parking for these uses in the Down Under area. There are 82 shared parking spaces under the bridge and 40 to 50 grass parking spaces for vehicles to park along the south side of the access drive on the south side of the Dunlawton Bridge, and 10 grass spaces along the north

side of the Dunlawton Bridge that are shared by all businesses located in the Down Under District. Existing businesses in the Down Under District that do not meet current parking requirements have historically used the common parking spaces for their businesses, including the former restaurant at this location, DJ's Deck.

The intent of the landscaping 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 Applicant acknowledges that the landscaping requirements are not met; however, states that this is due to the constraints of the site and the landscaping proposed will improve the existing conditions and represent an improvement to the appearance of this part of the City.

Although not their preference, the Applicant could shift the proposed kitchen structure toward the center of the property to meet the setback and easement requirement, reduce the number of seats, and redesign the parking lot to provide the 10-foot roadway buffer. However, according to the Applicant, the variances are necessary for the proposed kitchen structure to be located along the front lot line, to not impact the existing thatched pavilion, not block the wind from the thatched pavilion area and provide room for additional waterfront seating. The Applicant also states that the proposed parking lot layout provides the most parking for the site.

- 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, building, and reduction in the proposed number of seats.

The variances requested are the minimum variances necessary to make possible reasonable use of the land. In order to redevelop the site and comply with all of the requirements of the LDC, all of the existing buildings on the north side of site would need to be demolished and the proposed seating of the new restaurant reduced. Staff has worked with the applicant on the proposed site plan to reduce the overall number variances needed and to minimize the variances being requested. The variances requested are the minimum variances needed to redevelop the site as proposed without demolishing all or part of the existing buildings.

The Applicant has stated that to redevelop the site in a manner that functions effectively, the reduced dimensional requirements are needed to provide additional parking, and the permanent kitchen must be located as proposed to not block the wind from the thatched pavilion area and provide increased waterfront dining opportunities.

- 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. All of the properties in the Down Under District of the Port Orange Town Center CRA have required variances or flexibility in development regulations to support redevelopment on these constrained infill sites.

- 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.

Overall, the proposed redevelopment of the site with a new 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 and provide additional parking. 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 variances requested are 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.

ATTACHMENTS

Exhibit A – Applicant's Request Letter

August 18, 2021

Revised September 17, 2021

Tim Burman

RE: Millie's Landing

Dear Tim,

Attached is an application for several variances requested for the proposed improvements to the area formerly known as DJ's Deck Down Under. The new project will be called Millie's Landing. The fish processing and sales office known as Two Jerks Seafood will remain as is and in continuing operation.

The Millie's Landing project will retain the Tiki Hut. The restaurant has been demolished, as well as the bait and tackle shop business. A new kitchen will be constructed and the Tiki area seating will be expanded for outdoor seating in the area where the previous kitchen (restaurant/coolers) was located.

Parking variance requested for the redevelopment area is per table below:

Total Parking Required

180 seats under palapa = 60 spaces

140 seasonal/outdoor seats = 30 spaces

22 employees = 11

Total Required = 94

Provided = 41 (44 total but 3 for Two Jerks)

Variance for 53 spaces

We are requesting a variance for the 53 additional parking spaces required on-site, to be provided off-site on the existing parking under the bridge / south of this site. Employees will park off-site and be shuttled into work which will allow 11 parking spaces to be used by guests and not employees. The owner will also be promoting guests to use their off-site parking lot on A1A, southwest of Pirates Cove, with shuttle van that will bring customers to Millie's Landing. Uber and Lyft services will be utilized, and an ability to access the restaurant by boat (four to five docks are anticipated to be open). The proposed parking in addition to the shared parking under the bridge will provide sufficient parking.

In addition, we are requesting to reduce building setbacks to 0 feet at south property line at the south limit of proposed kitchen / cooler. This will require a variance to reduce the 12' D/U easement to 0' along the right of way for the westerly 78'. The length of right of way along the south property line is about 244'.

This property is a working waterfront property.

Additional variances requested for the Millie's Landing property located at 79 Dunlawton, Port Orange, FL 32127. Variances for the landscape buffers are requested to be the following minimums:

On the south: roadway landscape buffer to be reduced from 10' to 5' for the easterly 144', and zero feet, for the westerly 100',

Reduce the distance between the first parking space and the right of way from 25' to 5',

Reduce minimum 10% vehicular use landscaping to 5.6%.

In addition to the landscape buffer variance request, the following variances are requested in respect to the parking and traffic engineering requirements:

A reduction to the minimum parking space dimension to be 9'x19'

A change of the minimum two way total lane width from 24' to 22'

The landscape buffer variances are requested as a result of existing conditions to remain. Existing buildings along the north property line are in current use and have been so for many years. The east parking lot is unchanged from improvements done several years ago (site plan approved by the City). The south property line is now being upgraded after demolition of the two buildings which were located along the south property line.

Reduce the building foundation landscaping to 0 due to existing paved area.

What We're Requesting

Variances:

South property line reduce LS buffer 10 to 5' for 144' from SE corner and to 0 for remainder (about westerly 100')

Reduce 12' wide drainage and utility easement along right of way (south property line) to 0 adjacent to proposed new building (about 78') at SW corner.

Reduce the minimum lot open space from 30% to 9%.

The property is a working waterfront property.

Parking and Traffic:

Reduce minimum parking space dimension size to 9'x19'

Two way total lanes for 24 to 22 w.

Code Requirements to address:

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

This property is a working water front property, which makes it unique in regards to surrounding properties, and with respect to other properties in the Community Commercial Zoning District.

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

These conditions and circumstances of this property are an innate result of the property existing and are out of the control of the applicant.

Literal interpretation and enforcement of the development code regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning

district under the terms of the development code, and would work unnecessary and undue hardship on the applicant.

Literal interpretation and enforcement of the development code would deprive the owner of property rights enjoyed by other properties in this zoning district such as the neighboring properties of Jimmy Hulas's, DiMucci, and Dunes Brewery, which have all had similar variances approved for their respective properties.

In an effort to preserve aesthetic continuity along the property lines with respect to the surrounding properties a variance is requested to reduce the required landscape buffer from 10' to 5' along southern property line. The easterly properties of Jimmy Hula's, DiMucci, and Dunes Brewery all received a landscape variance reducing the required landscape buffers. In addition, DiMucci received a variance reducing landscaping for the western buffer to 4', and Dune's Brewery received reduction for the variance of the southern property line landscape buffer from 10' to 3'. Dune's Brewery also received a variance waiving the required western 5' landscape buffer.

The parking variance requested to reduce the spaces to 9'x19' is reasonable. Jimmy Hula's received a reduction from 10'x20' to 9'x19'. Additionally, DiMucci width from 10' to 9'.

For the current use, the site requires 1 space/every 3 seats plus 1 space/ every 2 employees. See table of Total Parking Required on Page 1. We are requesting a variance to allow additional parking to be provided in adjacent parking areas, off-site parking with shuttle and access via boat to proposed new docks.

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

The variances requested are the minimum necessary for reasonable use of the land.

Granting of the variance request 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.

The variances requested are reasonable, and do not confer any special privileges to this property in comparison to other properties in this zoning district, such as Jimmy Hula's, DiMucci, and Dune's Brewery, which have been granted the same exceptions.

The granting of the variance 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 granting of these variances are in harmony with the intent of the land development code by providing uniform and visually pleasing landscaping, in addition to. consistent parking throughout Dunlawton Avenue.

Sincerely,

ZAHN ENGINEERING, INC.



Pete Zahn, PE

CC: Millie's Landing, Project File, Tracer File