

AGENDA
ESCAMBIA COUNTY BOARD OF ADJUSTMENT
October 17, 2018–8:30 a.m.
Escambia County Central Office Complex
3363 West Park Place, Room 104

1. Call to Order.
2. Swearing in of Staff and acceptance of staff as expert witness
3. Acceptance of the BOA Meeting Package with the Development Services Staff Findings-of-Fact, into evidence.
4. Proof of Publication and waive the reading of the legal advertisement.
5. Approval of Resume Minutes.
 - A. Approval of Resume Meeting Minutes from the August 15, 2018 Board of Adjustment Meeting.
6. **Consideration of the following cases:**
 - A. **Case No.: CU-2018-17**
Address: 3041 E Olive Road
Request: To allow a brewpub with the distribution of on-premises produced alcoholic beverages for off-site sales
Requested by: Susan Thibdeaux, Owner
 - B. **CASE NO.: AP-2017-02**
ADDRESS: 11400 Blk. Gulf Beach Hwy.
REQUESTED APPEAL: An appeal of a compatibility decision by the Planning Official
REQUESTED BY: David Theriaque, Agent for Teramore Development, LLC and Shu Shurett and Leo Huang, Owners
7. Discussion Items.
8. Old/New Business.
9. Announcement.

The next Board of Adjustment Meeting is scheduled for Wednesday, November 14, 2018, at 8:30 a.m., at the Escambia County Central Office Complex, Room 104, 3363 West Park Place.
10. Adjournment.

Board of Adjustment
Meeting Date: 10/17/2018

5. A.

Attachments

Draft August 15, 2018 Board of Adjustment Meeting Minutes

DRAFT

RESUMÉ OF THE MEETING OF THE BOARD OF ADJUSTMENT HELD August 15, 2018

CENTRAL OFFICE COMPLEX
3363 WEST PARK PLACE, BOARD CHAMBERS
PENSACOLA, FLORIDA
(8:30 A.M. – 11:21 A.M.)

Present: Auby Smith
Bill Stromquist
Jennifer Rigby
Michael Godwin

Absent: Judy Gund
VACANT
Walker Wilson

Staff Present: Andrew Holmer, Division Manager, Planning & Zoning
Caleb MacCartee, Urban Planner, Planning & Zoning
Horace Jones, Director, Development Services
Kayla Meador, Sr Office Assistant
Kristin Hual, Assistant County Attorney

REGULAR BOA AGENDA

1. Call to Order.
2. Swearing in of Staff and acceptance of staff as expert witness
3. Acceptance of the BOA Meeting Package with the Development Services Staff Findings-of-Fact, into evidence.

Motion by Vice Chairman Bill Stromquist, Seconded by Board Member Michael Godwin

Motion was made to accept the August 15, 2018 BOA meeting packet.

Vote: 4 - 0 Approved

4. Proof of Publication and waive the reading of the legal advertisement.

Motion by Vice Chairman Bill Stromquist, Seconded by Board Member Michael Godwin

The Clerk provided proof of publication and motion was made to accept.

Vote: 4 - 0 Approved

5. Approval of Resume Minutes.

A. Approval of Resume Meeting Minutes from the July 18, 2018 Board of Adjustment Meeting.

Motion by Vice Chairman Bill Stromquist, Seconded by Board Member Jennifer Rigby

Motion was made to approve the July 18, 2018 BOA Resume Meeting Minutes.

Vote: 4 - 0 Approved

6. **Consideration of the following cases:**

A. **Case No.: V-2018-06**

Address: 3470 Navigator Avenue

Request: Request eight foot variance to the required 20 feet rear setback

Requested by: Nanette Hammond, Owner

No BOA member acknowledged any ex parte communication regarding this item.

No BOA member acknowledged visiting the site.

No BOA member refrained from voting on this matter due to any conflict of interest.

Motion by Board Member Michael Godwin,

Motion was made to accept applicant's testimony paper.

Vote: 3 - 1 Approved

Voted No: Chairman Aubrey Smith

Motion by Vice Chairman Bill Stromquist, Seconded by Board Member Michael Godwin

Motion was made to disagree with Staff's Findings and approve the Variance.

Vote: 3 - 1 Approved

Voted No: Chairman Auby Smith

B. Case No.: CU-2018-13

Address: 298 Morris Ave
Request: Allow a church in LDR zoning
Requested by: Robert Cunningham, Agent for First Baptist Church
Cantonment, Owner

No BOA member acknowledged any ex parte communication regarding this item.

No BOA member acknowledged visiting the site.

No BOA member refrained from voting on this matter due to any conflict of interest.

Motion by Vice Chairman Bill Stromquist, Seconded by Board Member Jennifer Rigby

Motion was made to agree with Staff's Findings and approve the Conditional Use.

Vote: 4 - 0 Approved

C. Case No.: CU-2018-14

Address: 2115 N Pace Boulevard
Request: Conditional Use request to allow on-premise alcohol consumption within 1000' of a place of worship.
Requested by: Wiley C. "Buddy" Page, Agent for Pace & Joran, LLC, C/O
Ted Brown

No BOA member acknowledged any ex parte communication regarding this item.

No BOA member acknowledged visiting the site.

No BOA member refrained from voting on this matter due to any conflict of interest.

Motion by Board Member Michael Godwin, Seconded by Board Member Jennifer Rigby

Motion was made to accept Exhibit A into evidence.

Vote: 4 - 0 Approved

Motion by Board Member Jennifer Rigby, Seconded by Vice Chairman Bill Stromquist

Motion was made to agree with Staff's Findings and deny the Conditional Use request based on compatibility with surroundings uses.

Vote: 3 - 1 Approved

Voted No: Chairman Auby Smith

D. **Case No.: CU-2018-15**

Address: 735 S Hwy 29
Request: Saw Mill in HC/LI
Requested by: Gary Wilson, Agent for Ann King, Owner

No BOA member acknowledged any ex parte communication regarding this item.

No BOA member acknowledged visiting the site.

No BOA member refrained from voting on this matter due to any conflict of interest.

Motion by Vice Chairman Bill Stromquist, Seconded by Board Member Jennifer Rigby

Motion was made to agree with Staff's Findings and approve the Conditional Use request the the DRC condition.

Vote: 3 - 1 Approved

Voted No: Board Member Michael Godwin

E. **Case No.: CU-2018-16**

Address: 6400 W Nine Mile Rd
Request: To allow a fire station in LDR zoning
Requested by: Escambia County, Agent for Beulah Volunteer Fire Department

No BOA member acknowledged any ex parte communication regarding this item.

No BOA member acknowledged visiting the site.

No BOA member refrained from voting on this matter due to any conflict of interest.

Motion by Vice Chairman Bill Stromquist, Seconded by Board Member Michael Godwin

Motion was made to agree with Staff's Findings and approve the Conditional Use.

Vote: 4 - 0 Approved

7. Discussion Items.

8. Old/New Business.

A. Order Granting Petition for Writ of Certiorari for the Administrative Appeal Case:
TERAMORE DEVELOPMENT LLC vs. ESCAMBIA COUNTY FLORIDA

10. Announcement.

The next Board of Adjustment Meeting is scheduled for Wednesday, September 19, 2018 at 8:30 a.m., at the Escambia County Central Office Complex, Room 104, 3363 West Park Place.

11. Adjournment.

Board of Adjustment

6. A.

Meeting Date: 10/17/2018
CASE: CU-2018-17
APPLICANT: Susan Thibdeaux, Owner
ADDRESS: 3041 E Olive Rd
PROPERTY REFERENCE NO.: 17-1S-30-4204-000-001
ZONING DISTRICT: HDMU, High Density Mixed-use district
FUTURE LAND USE: MU-U, Mixed-Use Urban
OVERLAY DISTRICT: N/A

SUBMISSION DATA:

REQUESTED CONDITIONAL USE:

To allow a brewpub with the distribution of on-premises produced alcoholic beverages for off-site sales.

RELEVANT AUTHORITY:

Land Development Code of Escambia County, Florida (Ordinance 96-3 as amended), Section: 3-2.9(c)(3)b

CRITERIA:

Land Development Code of Escambia County, Florida (Ordinance 96-3 as amended), Section 2-6.4

CRITERION (a)

General compatibility. The proposed use can be conducted and operated in a manner that is compatible with adjacent properties and other properties in the immediate area.

If this is for the sale of alcohol within a 1000 ft of a place of worship or child care facility; please explain 1- 5 below:

1. The existing times of use of the places of worship or child care facilities coincide with the hours of operation of the subject business.
2. The 1000-foot minimum distance is not achieved.
3. The conflicting uses are visible to each other.
4. Any on-premises consumption is outdoors.
5. Any conditions or circumstances mitigate any incompatibility.

FINDINGS-OF-FACT:

The request is to allow a Brewpub with the distribution of on-premise produced alcoholic beverages for off-site sales as a conditional use. Currently the use of a Brewpub **without on site distribution**, is a permitted use in HDMU. The applicant has received verification stating the business was not within 1000 feet of a church or daycare. The applicant has

submitted a pre-application and during the initial Site Plan Review process, the locational criteria will be reviewed.

CRITERION (b)

Facilities and services. Public facilities and services, especially those with adopted levels of service, will be available, will provide adequate capacity to serve the proposed use consistent with capacity requirements.

FINDINGS-OF-FACT:

The site has access to and is currently utilizing the established public facilities provided by Emerald Coast Utilities Authority for water and sewer.

CRITERION (c)

On-site circulation. Ingress to and egress from the site and its structures will be sufficient, particularly regarding vehicle and pedestrian safety and convenience, efficient traffic flow and control, on-site parking and loading, and emergency vehicle access.

FINDINGS-OF-FACT:

The parcel has existing on-site parking with striping and wheel stops, however the parking does not seem to be sufficient for the requested use. The improvements made to Olive Road including the addition of sidewalks and turn lanes, make the access to the parcel more efficient for pedestrian and vehicular traffic, however, parking in the rear of the building may be challenging.

CRITERION (d)

Nuisances and hazards. The scale, intensity, and operation of the use will not generate unreasonable noise, glare, dust, smoke, odor, vibration, electrical interference, or other nuisances or hazards for adjoining properties and other properties in the immediate area.

FINDINGS-OF-FACT:

The parcel currently has a business in operation and with the addition of a brewpub, the parcel will see an increase in traffic. The main operations will be inside the building, however the applicant states there may be outside seating in the back for customers to enjoy, which may increase the noise level for the surrounding neighbors during the hours of operation.

CRITERION (e)

Solid waste. All on site solid waste containers will be appropriately located for functional access, limited off-site visibility and minimal odor and other nuisance impacts.

FINDINGS-OF-FACT:

Solid waste containers must be located in an area that is convenient for pick up as well as limit the off-site visibility.

CRITERION (f)

Screening and buffering. Where not otherwise required by the LDC, screening and buffering will be provided if appropriate to the proposed use and site.

FINDINGS OF FACT:

There is an existing vegetative buffer on the north and west side that should remain. Screening and buffering standards will be addressed at the Site Plan Review process.

CRITERION (g)

Signs and lighting. All exterior signs and lights, whether attached or freestanding, will be compatible with adjoining properties and other properties in the immediate area, especially regarding glare and traffic safety.

FINDINGS OF FACT:

All exterior signs and lighting will be reviewed during the Site Plan Review process and must meet the LDC requirements for the zoning.

CRITERION (h)

Site characteristics. The size, shape, location and topography of the site appear adequate to accommodate the proposed use, including setbacks, intensity, bulk, height, open space and aesthetic considerations.

FINDINGS OF FACT:

It appears from the site visit, there may be difficulty in meeting some of the parking proposed in the rear of the building. The site will be reviewed for adequate parking, setbacks and landscape at the time of Site Plan Review submittal.

CRITERION (i)

Use requirements. The proposed use complies with any additional conditional use requirements of the applicable zoning district, use, or other provisions of the LDC.

FINDINGS OF FACT:

The parcel is in High Density Mixed-use (HDMU) district which allows restaurants and brewpubs, with the exception of brewpubs with distribution of alcoholic beverages for off-site sales.

STAFF FINDINGS

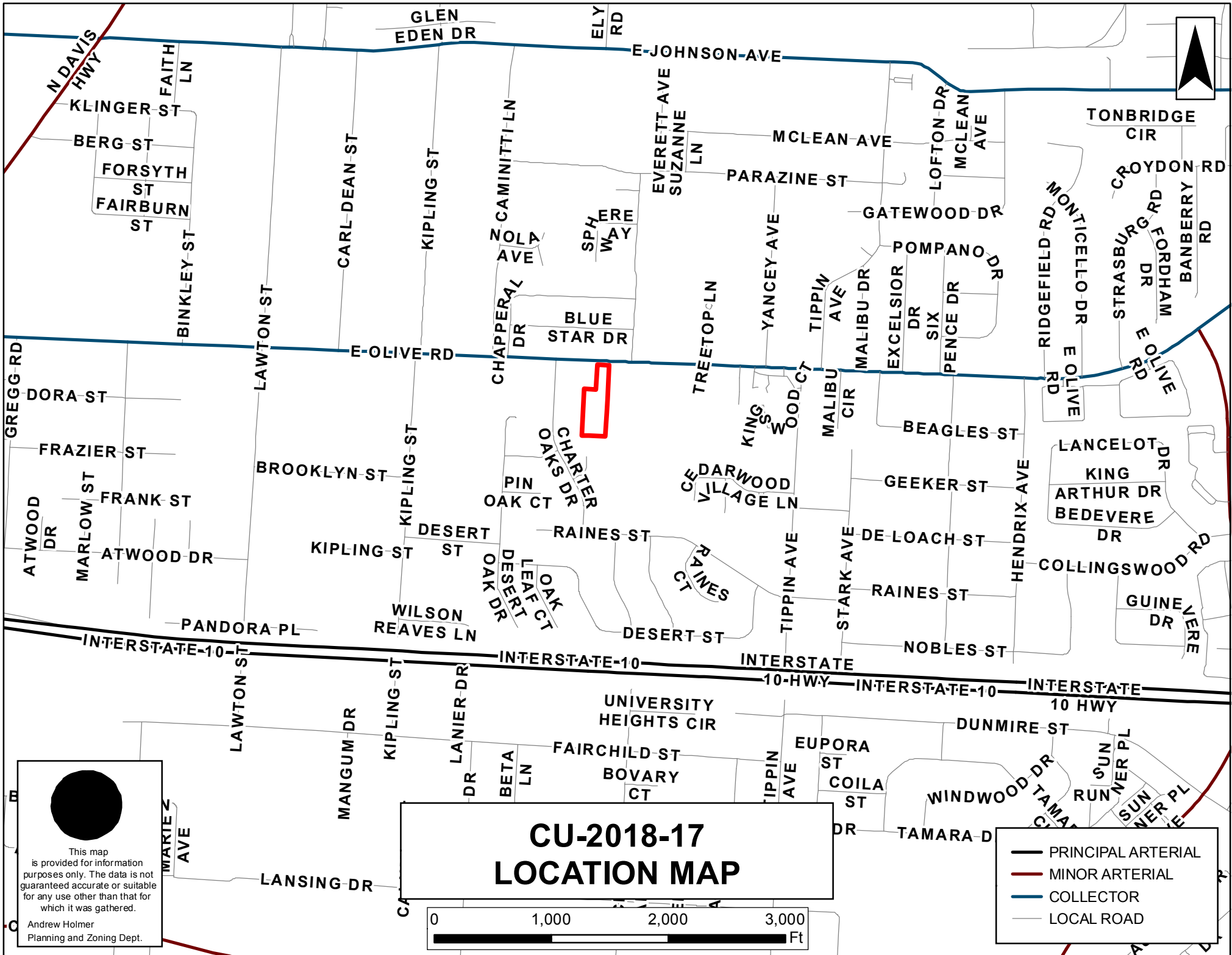
The request may increase traffic and possibly additional noise during the hours of operation. The applicant has received comments from a pre application meeting to address other items such as fire safety, ingress/egress and parking. Staff recommends approval of this Conditional Use, with the condition that this project must complete the Site Plan review process and obtain a Development Order

BOA DECISION

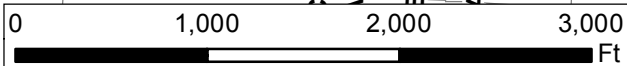
Attachments

[Working Case File](#)

CU-2018-17



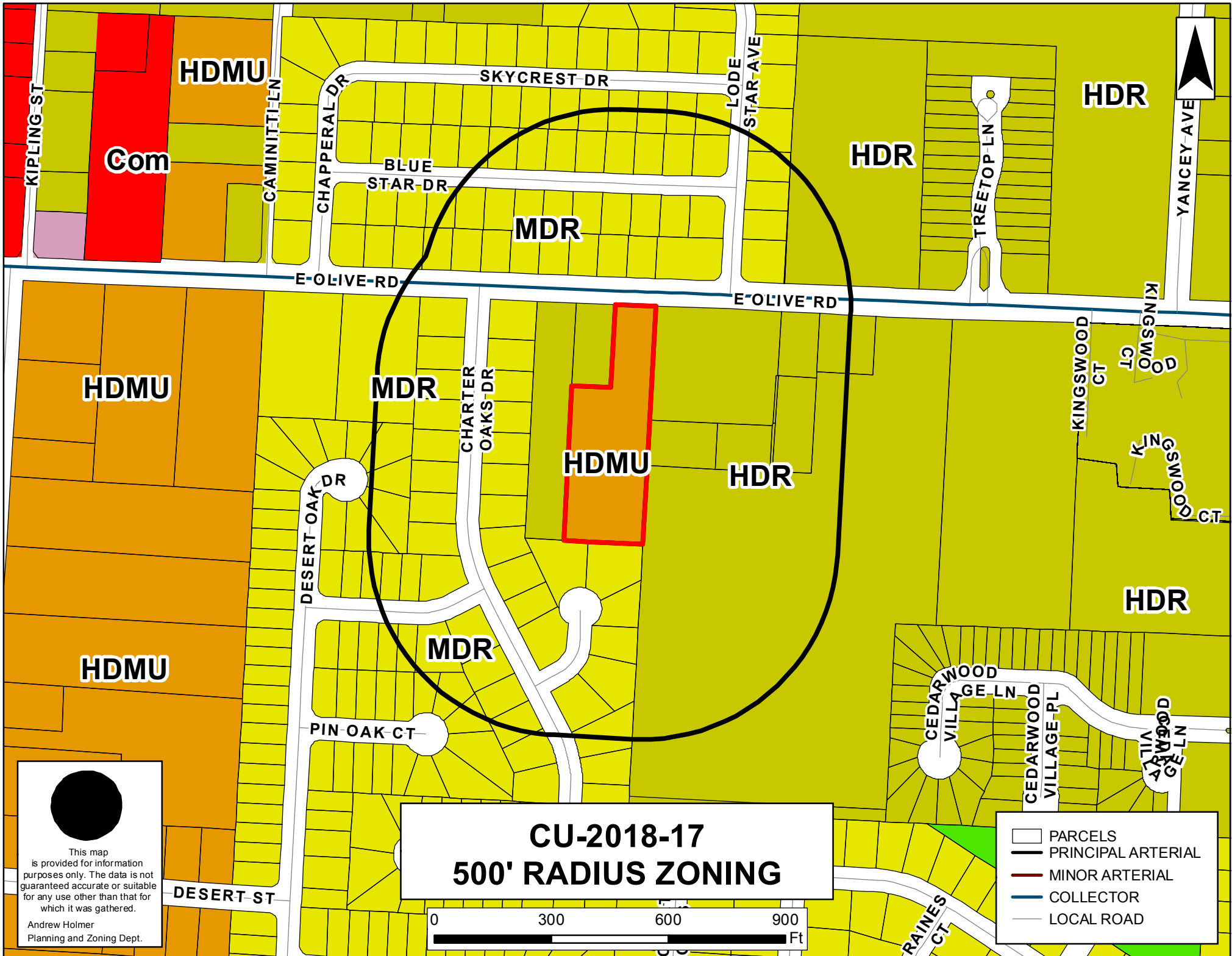
**CU-2018-17
LOCATION MAP**



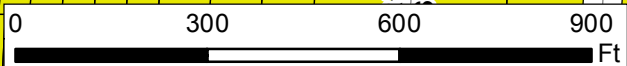
This map is provided for information purposes only. The data is not guaranteed accurate or suitable for any use other than that for which it was gathered.

Andrew Holmer
Planning and Zoning Dept.


- PRINCIPAL ARTERIAL
- MINOR ARTERIAL
- COLLECTOR
- LOCAL ROAD

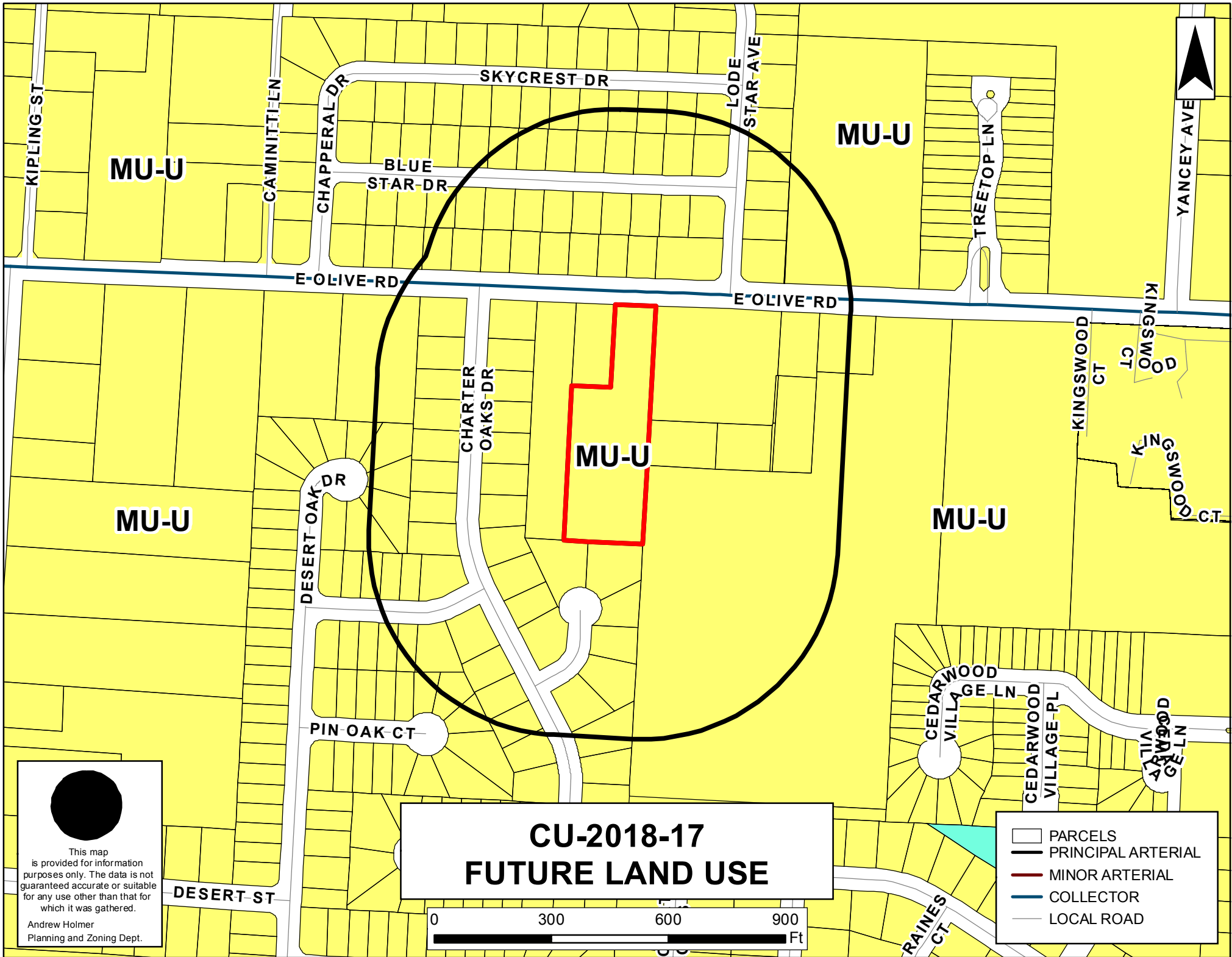


**CU-2018-17
500' RADIUS ZONING**



-  PARCELS
-  PRINCIPAL ARTERIAL
-  MINOR ARTERIAL
-  COLLECTOR
-  LOCAL ROAD


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 Planning and Zoning Dept.



MU-U

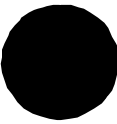
MU-U






MU-U

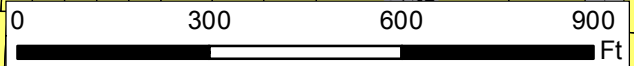
MU-U

MU-U

**CU-2018-17
FUTURE LAND USE**

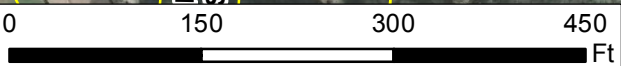

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 Andrew Holmer
 Planning and Zoning Dept.

-  PARCELS
-  PRINCIPAL ARTERIAL
-  MINOR ARTERIAL
-  COLLECTOR
-  LOCAL ROAD





CU-2018-17 AERIAL MAP



-  PARCELS
-  PRINCIPAL ARTERIAL
-  MINOR ARTERIAL
-  COLLECTOR
-  LOCAL ROAD



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Andrew Holmer
Planning and Zoning Dept.



**NOTICE OF
PUBLIC HEARING
BOARD OF ADJUSTMENT**

TYPE OF REQUEST: **CONDITIONAL USE**

CASE NO: **CU 2018-17**

DATE: **10/17/18** **TIME:** **8:30 AM**

LOCATION OF HEARING

**ESCAMBIA COUNTY CENTRAL OFFICE COMPLEX
3383 WEST PARK PLACE
BOARD MEETING ROOM**

**FOR MORE INFORMATION CALL:
DEVELOPMENT SERVICES AT 505-3476 OR VISIT
WWW.MYESCAMBIA.COM**

**PLEASE DO NOT REMOVE THIS SIGN
PROPERTY OF ESCAMBIA COUNTY**

Public Hearing Sign

Subject Parcel



Subject Parcel





Looking across Olive
Rd from subject parcel



Looking east along
Olive Rd from
subject parcel



Looking west along
Olive Rd from
subject parcel



Looking onto adjacent
parcel from subject
parking lot



Looking along west
side of building



Looking at rear of
parcel



Looking at rear of
subject parcel.
Showing vegetative
buffer

Escambia County Planning and Zoning

Development Services Department

3363 West Park Place

Pensacola, FL 32505

Phone: (850) 595-3475 • Fax: (850) 595-3481

<http://myescambia.com/business/ds>

Board of Adjustment Application

FOR OFFICE USE ONLY - Case Number: CU-2018-17 Accepted by: _____ BOA Meeting: 10/17/18

Conditional Use Request for: Coastal County Brewing LLC

Variance Request for: _____

1. Contact Information:

A. Property Owner/Applicant: Susan Thibodeaux, The Shopper Inc dba Coastal County Brewing LLC
Mailing Address: 7689 Mobile Hwy, Pens. FL 32526
Business Phone: 8 Cell: (850) 313-1331
Email: Susan2email@gmail.com

B. Authorized Agent (if applicable): _____
Mailing Address: _____
Business Phone: _____ Cell: _____
Email: _____

Note: Owner must complete the attached Agent Affidavit. If there is more than one owner, each owner must complete an Agent Affidavit. Application will be voided if changes to this application are found.

2. Property Information:

A. Existing Street Address: 3041 East Olive Road
Parcel ID (s): 1715304204000001

B. Total acreage of the subject property: 2.36 acres

C. Existing Zoning: HDMU
FLU Category: X see to the right →

D. Is the subject property developed (if yes, explain): Building 4264sqft. Asphalt parking,

E. Sanitary Sewer: Septic: _____

"The subject property as shown hereon is located in flood zone X, (Minimal risk areas outside the 1-percent and 2-percent-annual-chance floodplains. No BFEs or base flood depths are shown within these zones), as determined from the Federal Emergency Management Agency/Flood Insurance Rate Map of Escambia County, Florida, Community 120080, FIRIM map panel numbers 12033C0315G, map revision dated September 29, 2006."

3. **Amendment Request**

A. Please provide a general description of the proposed request, explaining why it is necessary and/or appropriate.

The request for conditional use in order to operate a Brewpub with a restaurant that will be producing beer for the purposes of onsite and offsite sales.

B. For **Variance Request** – Please address **ALL** the following approval conditions for your Variance request. (use supplement sheets as needed)

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

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

C. For Conditional Use Request – Please address **ALL** the following approval conditions for your Conditional Use request. (use supplement sheets as needed)

1. **General compatibility.** The proposed use can be conducted and operated in a manner that is compatible with adjacent properties and other properties in the immediate area. *If this is for the sale of alcohol within a 1000 ft of a place of worship or child care facility; please explain a-e below: a.) The existing times of use of the places of worship or child care facilities coincide with the hours of operation of the subject business b.) The 1000-foot minimum distance is not achieved. c.) The conflicting uses are visible to each other. d.) Any on-premises consumption is outdoors. e.) Any conditions or circumstances mitigate any incompatibility.*

Prior use of the property was light manufacturing for 40 years, a change of product is needed to meet ~~the~~ a growing industry of brewing in Escambia County. The sale of alcohol is outside the distance from a place of worship or childcare facility. A beer garden in the back of building not visible to the residential area or from the state roadway.
Compatible with other businesses within 500'.

2. **Facilities and services.** Public facilities and services, especially those with adopted levels of service, will be available, will provide adequate capacity to serve the proposed use consistent with capacity requirements.

ECUA is sufficient
Gulf Power also sufficient

3. **On-site circulation.** Ingress to and egress from the site and its structures will be sufficient, particularly regarding vehicle and pedestrian safety and convenience, efficient traffic flow and control, on-site parking and loading, and emergency vehicle access.

With the recent completion of Olive Road offering turn lane and sidewalks, ingress to and egress from the building provides safety and convenience for vehicles and pedestrian's safety along with easy access for emergency vehicles.

4. **Nuisances and hazards.** The scale, intensity, and operation of the use will not generate unreasonable noise, glare, dust, smoke, odor, vibration, electrical interference, or other nuisances or hazards for adjoining properties and other properties in the immediate area.

The Brewpub will not generate unreasonable noise, glare, dust, smoke, odor, vibration, electrical interference, or other nuisances or hazards for adjoining properties.

5. **Solid waste.** All on-site solid waste containers will be appropriately located for functional access, limited off-site visibility and minimal odor and other nuisance impacts.

Dumpsters will be located in an area not visible by street traffic but will be easily accessed and minimal odor or other nuisance impacts.

6. **Screening and buffering.** Where not otherwise required by the LDC, screening and buffering will be provided if appropriate to the proposed use and site.

Due to the location of the site, screening and buffering is not needed.

7. **Signs and lighting.** All exterior signs and lights, whether attached or freestanding, will be compatible with adjoining properties and other properties in the immediate area, especially regarding glare and traffic safety.

Signs will be designed to meet county code, and compatible with adjoining properties.

8. **Site characteristics.** The size, shape, location and topography of the site appear adequate to accommodate the proposed use, including setbacks, intensity, bulk, height, open space and aesthetic considerations.

Existing building meets all the above, except for an outswing door to be installed after board approval of the Southwest side of existed building

9. **Use requirements.** The proposed use complies with any additional conditional use requirements of the applicable zoning district, use, or other provisions of the LDC.

The proposed brewpub complies with additional conditional use requirements of the applicable zoning district, use, or other provisions of the LDC

5. Submittal Requirements

- A. Completed application: All applicable areas of the application shall be filled in and submitted to the Planning and Zoning Department, 3363 West Park Place, Pensacola, FL 32505.
- B. Application Fees: To view fees visit the website: <http://myescambia.com/business/board-adjustment> or contact us at 595-3475.

Note: Fees include all notices and advertisements required for the public hearing and a \$5 technical fee. Payments must be submitted prior to 3 pm of the closing date of acceptance of application. Please make checks payable to Escambia County. MasterCard and Visa are also accepted.

- C. Legal Proof of Ownership (ex: copy of Tax Notice or Warranty Deed) AND a Certified Boundary Survey (Include Corporation/LLC documentation if applicable.)
- D. Signed and Notarized Affidavit of Owner/Limited Power of Attorney AND Concurrency Determination Acknowledgement (pages 4 and 5).

By my signature, I hereby certify that:

- 1) I am duly qualified as owner(s) or authorized agent to make such application, this application is of my own choosing, and staff has explained all procedures relating to this request; and
- 2) All information given is accurate to the best of my knowledge and belief, and I understand that deliberate misrepresentation of such information will be grounds for denial or reversal of this application and/or revocation of any approval based upon this application; and
- 3) I understand that there are no guarantees as to the outcome of this request, and that the application fee is non-refundable; and
- 4) I authorize County staff to place a public notice sign(s) on the property referenced herein.; and
- 5) I am aware that Public Hearing notices (legal ad and/or postcards) for the request shall be provided by the Development Services Department.

[Signature]
Signature of Owner/Agent

Susan J. Thibodeaux
Printed Name of Owner/Agent

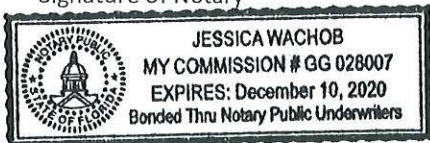
STATE OF FL COUNTY OF Escambia The foregoing instrument was acknowledged before me this 20 day August of

2018, by Susan J Thibodeaux

Personally Known OR Produced Identification . Type of Identification Produced: _____

[Signature]
Signature of Notary

Jessica Wachob
Printed Name of Notary



(Notary Seal)

Prepared by:
Stephen R. Moorhead, Esquire
McDonald Fleming Moorhead
25 West Government Street
Pensacola, Florida 32502
SRM-15-8637

Pam Childers
CLERK OF THE CIRCUIT COURT
ESCAMBIA COUNTY FLORIDA
INST# 2015022985 03/26/2015 at 02:22 PM
OFF REC BK: 7320 PG: 650 - 652 Doc Type: WD
RECORDING: \$27 00 Deed Stamps \$0.70

WARRANTY DEED

STATE OF FLORIDA
COUNTY OF ESCAMBIA

KNOW ALL MEN BY THESE PRESENTS: that SUSAN J. THIBODEAUX f/k/a SUSAN JAMES, an unmarried woman, whose address is 3041 East Olive Road, Pensacola, FL 32514, hereinafter called Grantor, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, does grant, bargain, sell and convey the below described property, situate, lying and being in the County of Escambia, State of Florida, unto THE SHOPPER, INC., a Florida corporation, whose mailing address is 3041 East Olive Road, Pensacola, FL 32514, hereinafter called Grantee, its successors and assigns:


SEE EXHIBIT "A" ATTACHED HERETO
AND INCORPORATED HEREIN BY REFERENCE


The subject property is not the homestead of the Grantor.

And Grantor does hereby fully warrant the title to the property and will defend the same against the lawful claims of all persons whomsoever. Subject to taxes for the current year and restrictions and reservations of record which are not hereby reimposed.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this the 24th day of March, 2015.

Signed, sealed and delivered
in the presence of:


Print Name Jayne Saba


Susan J. Thibodeaux f/k/a Susan James


Print Name Andrea Bennett

STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this 24th day of March, 2015,
by Susan J. Thibodeaux f/k/a Susan James.

Andrea Bennett

Notary Public

Personally Known
or
 Produced Identification
Type of Identification Produced FL DL

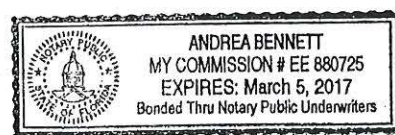


EXHIBIT "A"

Commence at the Northwest corner of the North half of the Southeast 1/4 of Section 17, Township 1 South, Range 30 West, Escambia County, Florida, thence run East along the North line of said North half of the Southeast 1/4 for 802 feet, thence South and parallel to the West line of the North half of the Southeast 1/4 for 250 feet to the point of beginning, thence continue along same line for 400 feet, thence run East parallel to the North line of the North half of the Southeast 1/4 for 202.0 feet, thence run North parallel to the West line of the North half of the Southeast 1/4 for 612.5 feet, thence run West parallel to the North line of the North half of the Southeast 1/4 for 102.0 feet, thence run South parallel to the West line of the North half of the Southeast 1/4 for 212.5 feet, thence run West parallel to the North line of the North half of the Southeast 1/4 for 100 feet to the point of beginning.

2018 NOTICE OF PROPOSED PROPERTY TAXES
 ESCAMBIA COUNTY TAXING AUTHORITIES

DO NOT PAY
THIS IS NOT A BILL

Real Property Acct: 022491000
 Property Ref No: 17-1S-30-4204-000-001

Location: 3041 E OLIVE RD
 BEG AT NW COR OF N 1/2 OF SE
 1/4 OF SEC E ALG N LI OF SD N
 1/2 OF SE 1/4 802 FT S PARL

R 022491000
 S - 081245 / 002514 JMS20863
 THE SHOPPER INC
 3041 E OLIVE RD
 PENSACOLA FL 32514



The taxing authorities which levy property taxes against your property will soon hold PUBLIC HEARINGS to adopt budget and tax rates for the next year.

The purpose of these PUBLIC HEARINGS is to receive opinions from the general public and to answer questions on the proposed tax change and budget PRIOR TO TAKING FINAL ACTION.

Each taxing authority may AMEND OR ALTER its proposals at the hearing.

TAXING AUTHORITY TAX INFORMATION

REAL ESTATE	LAST YEAR'S TAXABLE VALUE (2017)	YOUR FINAL TAX RATE AND TAXES LAST YEAR (2017)		CURRENT TAXABLE VALUE (2018)	YOUR TAX RATE AND TAXES THIS YEAR IF NO BUDGET CHANGE IS MADE		YOUR TAX RATE AND TAXES THIS YEAR IF PROPOSED BUDGET CHANGE IS MADE	
TAXING AUTHORITY	COLUMN 1	COLUMN 2		COLUMN 3	COLUMN 4		COLUMN 5	
		MILLAGE RATE	TAXES		MILLAGE RATE	TAXES	MILLAGE RATE	TAXES
COUNTY	\$253,351	6.6165	\$1,676.30	\$256,597	6.385000	\$1,638.37	6.616500	\$1,697.77
SCHOOL BY LOCAL BOARD	\$253,351	2.248000	\$569.53	\$256,597	2.144400	\$550.25	2.125000	\$545.27
SCHOOL BY STATE LAW	\$253,351	4.383000	\$1,110.44	\$256,597	4.181000	\$1,072.83	4.200000	\$1,077.71
WATER MANAGEMENT	\$253,351	0.035300	\$8.94	\$256,597	0.033800	\$8.67	0.033800	\$8.67
SHERIFF	\$253,351	0.685000	\$173.55	\$256,597	0.644700	\$165.43	0.685000	\$175.77
LIBRARY	\$253,351	0.359000	\$90.95	\$256,597	0.343900	\$88.24	0.359000	\$92.12
TOTAL AD-VALOREM PROPERTY TAXES			\$3,629.71			\$3,523.79		\$3,597.31

PROPERTY APPRAISER VALUE INFORMATION

	COUNTY		PUBLIC SCHOOLS		MUNICIPAL		OTHER DISTRICTS	
	2017	2018	2017	2018	2017	2018	2017	2018
MARKET VALUE	\$253,351	\$256,597	\$253,351	\$256,597	\$0	\$0	\$253,351	\$256,597
LESS APPLIED ASSESSMENT REDUCTIONS								
Save Our Homes Benefit	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Non-Homestead Benefit	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Agricultural Classification	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
ASSESSED VALUE	\$253,351	\$256,597	\$253,351	\$256,597	\$0	\$0	\$253,351	\$256,597
LESS EXEMPTIONS								
First Homestead	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Add'l Homestead	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Senior Exemption	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Combat Veteran's	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other Exemptions	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
TAXABLE VALUE	\$253,351	\$256,597	\$253,351	\$256,597	\$0	\$0	\$253,351	\$256,597

The Taxing Authorities which levy property taxes against your property will soon hold PUBLIC HEARINGS to adopt budgets and tax rates for the next year. The purpose of the PUBLIC HEARINGS is to review opinions from the general public and to answer questions on the proposed tax change and budget PRIOR TO TAKING FINAL ACTION. Each taxing authority may AMEND OR ALTER its proposals at the hearing.

Taxing Authority Hearing Information

Taxing Authority	Hearing Location	Date	Time	Phone
CENTURY	CENTURY TOWN HALL 2001 CENTURY BLVD	September 10, 2018	5:01 PM	(850) 256-3208

Detail by Entity Name

Florida Limited Liability Company
COASTAL COUNTY BREWING COMPANY LLC

Filing Information

Document Number L17000094347
FEI/EIN Number 82-4240918
Date Filed 04/28/2017
Effective Date 04/27/2017
State FL
Status ACTIVE

Principal Address

3235 GLENDYNE DR W
JACKSONVILLE, FL 32216

Mailing Address

3235 GLENDYNE DR W
JACKSONVILLE, FL 32216

Registered Agent Name & Address

THIBODEAUX, DANIEL F
3235 GLENDYNE DR W
JACKSONVILLE, FL 32216

Authorized Person(s) Detail

Name & Address

Title MGR

THIBODEAUX, SUSAN
6713 FORT DEPOSIT RD
PENSACOLA, FL 32526

Annual Reports

Report Year	Filed Date
2018	01/31/2018

Document Images

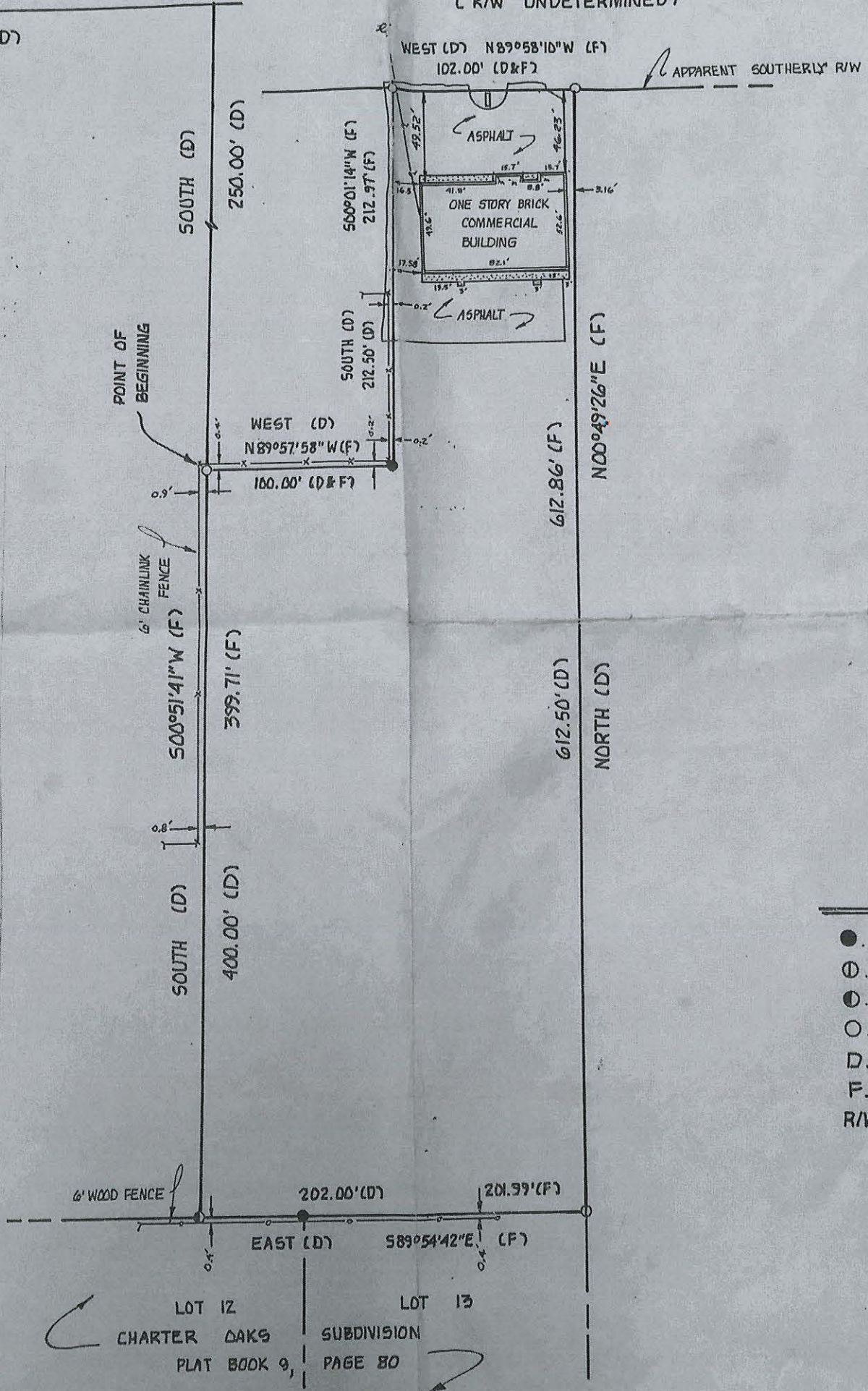
01/31/2018 -- ANNUAL REPORT	View image in PDF format
04/28/2017 -- Florida Limited Liability	View image in PDF format

SOUTHEAST 1/4 FOR 212.5 FEET, THENCE RUN WEST PARALLEL TO THE NORTH LINE OF THE NORTH HALF OF THE SOUTHEAST 1/4 FOR 100 FEET TO THE POINT OF BEGINNING.

CERTIFIED TO:
 STEPHEN R. MOORHEAD, P.A.
 AMERICAN PIONEER TITLE INSURANCE COMPANY
 SUSAN THIBODEAUX
 PEOPLES FIRST COMMUNITY BANK

EAST (D)
 802.00' (D)

3041 EAST OLIVE ROAD
 (R/W UNDETERMINED)



- EXIST
- ⊙... EXIST
- ⦿... EXIST
- ... SET
- D.... DEE
- F.... FIEL
- R/W... RIG

LOT 12 LOT 13
 CHARTER OAKS SUBDIVISION
 PLAT BOOK 9, PAGE 80



Development Services Department

Escambia County, Florida

For Office Use Only
Invoice# <u>18072332 PLU</u>
Fee \$ <u>\$80.00</u>
(fee includes \$5 technical fee)

SITE INSPECTION APPLICATION

Requestor's Information	Owner/Applicant: <u>Susan Thibodeaux</u>	Date: <u>7-17-18</u>
	Phone #: <u>(850) 313-1331</u> Fax #:	Escrow Account # (if applicable):
	Property Address: <u>3041 East Olive Road</u>	
	Property Reference #: <u>17-1S-30-4204-000-001</u>	
	Property Reference # can be obtained from the Property Appraiser's Office at 434-2735 or at www.escpa.org	
	Driving Directions: <u>North 9th Ave to Olive Rd, left on Olive to 3041 East Olive Road on left.</u>	
Type of Inspection:		
<input checked="" type="checkbox"/> Alcohol Uses (Land Development Code Chapter 4, Article 7; to determine if a Church or School is within 1,000 feet of a business selling alcoholic beverages for on-premise consumption.) <input type="checkbox"/> Signs (Land Development Code Chapter 5, Article 8) <input type="checkbox"/> Other: (Land Development Code _____; to determine: _____)		
<p>This verification relates to zoning for the specified property and is provided for information purposes only. This form DOES NOT imply or confer development rights for any desired use or activity on the specified parcel. Prior to the issuance of any permits, the applicant must submit a complete application to the County and must comply with all other applicable State and Local Regulations. Requestor, please sign below verifying that you have read and understand, and accept, this disclaimer:</p>		
SIGNATURE X <u>Susan Thibodeaux</u>		Date: <u>7-17-18</u>

OFFICE USE ONLY	Zoning District: <u>MOMU</u>	Future Land Use Category: <u>MU-U</u>	Zoning Overlay District: Yes () No (<input checked="" type="checkbox"/>) If Yes, check one: Barrancas () Brownsville () Scenic Hwy () Warrington () Palafox () Englewood ()	
	Findings of Inspection: <u>No place of worship, child care facilities, or educational facilities found as measured per Escambia County LDD Sec. 4-7.5 regulation. See attached map.</u>			
	Inspector (signature): <u>[Signature]</u>	Date: <u>7/20/2018</u>		
	Director/Designee (signature): <u>[Signature]</u>	Date: <u>7/30/2018</u>		
<input checked="" type="checkbox"/> Approved		<input type="checkbox"/> Denied		
		Date: <u>7/30/2018</u>		

OWNER: THE SHOPPER INC
 ADDRESS: 3041 E OLIVE RD
 REFERENCE #: 17-1S-30-4204-000-001
 CURRENT ZONING: HDMU
 FUTURE LAND USE: MU-U
 PREVIOUS ZONING: R-6
 COMMISSION DISTRICT: 4
 ACRES (approx): 2.36

1000' FT BUFFER

REORGANIZED OF JESUS CHRIST
 OF LATTER DAY SAINTS
 3190 OLIVE RD

FERRY PASS
 MIDDLE SCHOOL
 8355 YANCEY AVE

COVENANT ORTHODOX
 PRESBYTERIAN CHURCH
 2885 OLIVE RD

*approx. 1588' feet
 as measured
 front door to front door*

crosswalk

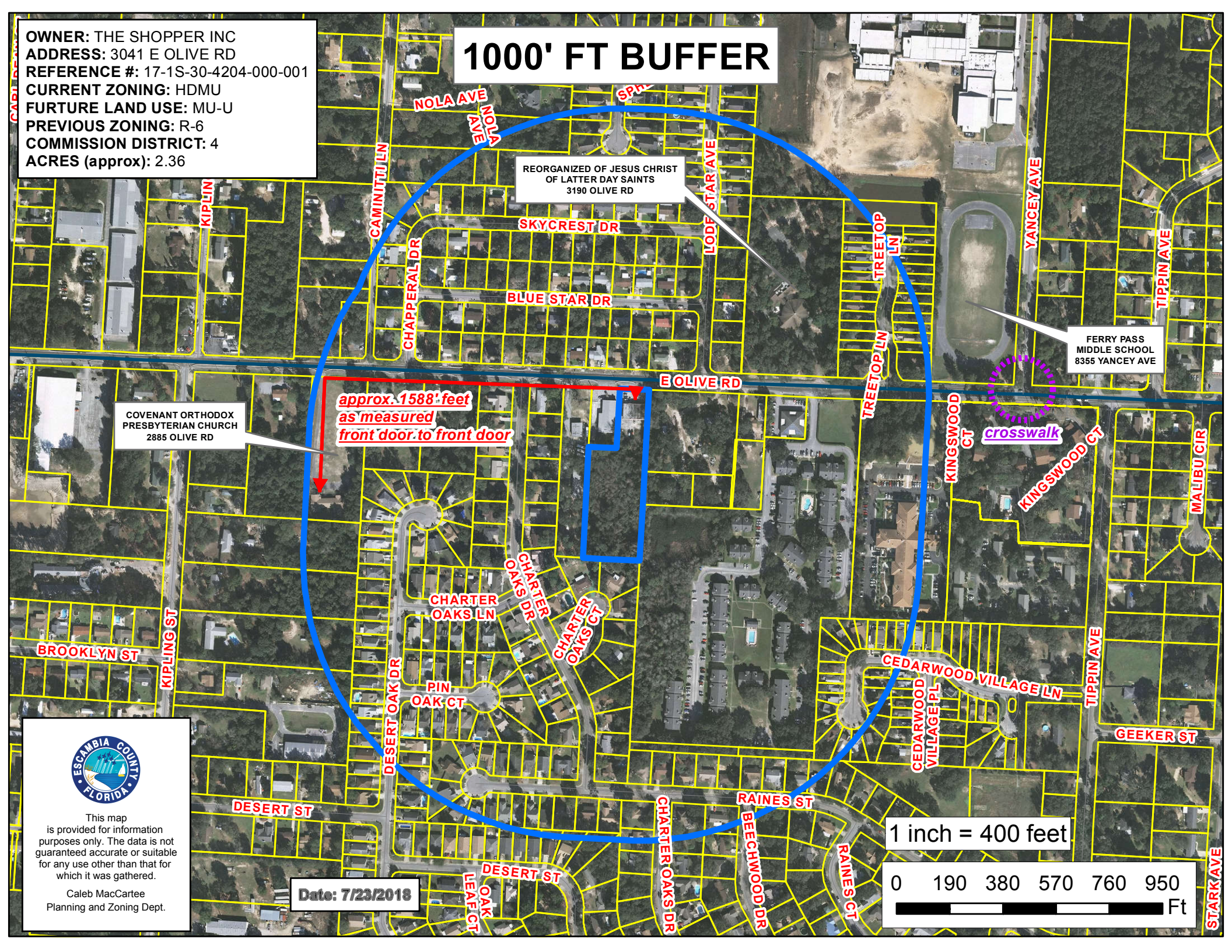
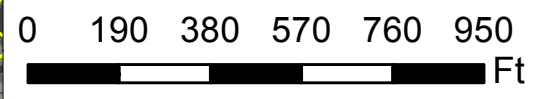


This map is provided for information purposes only. The data is not guaranteed accurate or suitable for any use other than that for which it was gathered.

Caleb MacCartee
 Planning and Zoning Dept.

Date: 7/23/2018

1 inch = 400 feet





DEVELOPMENT SERVICES ADMINISTRATIVE APPEAL WORKSHEET

Board of Adjustment

6. B.

Meeting Date: 10/17/2018

I. SUBMISSION DATA:

APPLICANT: David Theriaque, Agent for Teramore Development, LLC and Shu Shurett and Leo Huang, Owners

DATE OF ADMINISTRATIVE DECISION: July 24, 2017

DATE OF APPEAL APPLICATION: August 7, 2017

PROJECT ADDRESS: 11400 Blk. of Gulf Beach Hwy.

PROPERTY REFERENCE NO.: 23-3S-31-2001-000-000

ZONING DISTRICT: Commercial

FUTURE LAND USE: Mixed-Use Suburban

III. REQUESTED APPEAL::

On July 24, 2017, the Escambia County Planning Official issued a determination of land use compatibility in relation to a request from Teramore Development, LLC.

The determination was that a proposed Dollar General store would not be compatible based on location criteria found in Section 3-2.1 of the county Land Development Code.

The submitted administrative appeal seeks to overturn the decision of the planning official in this matter.

III. RELEVANT APPEAL AUTHORITY:

**Land Development Code of Escambia County, Florida (Ordinance 96-3 as amended),
Section: 2.04.00 & 2.04.01**

Sections 2.04.00, Appeal of Administrative Decisions and 2.04.01, Procedures for the Appeal of Administrative Decisions of the Escambia County Land Development Code (Ordinance No. 96-3 as amended), provide the relevant authority for the BOA's review of administrative decisions.

A. The BOA is authorized to hear and to rule upon any appeal made by those persons aggrieved by administration of this Code. An administrative decision, or staff interpretation, shall not be reversed, altered, or modified by the BOA unless it finds that:

1. A written application for the appeal was submitted within 15 days of the administrative decision or action indicating the section of this Code under which said appeal applies together with a statement of the grounds on which the appeal is based; and

2. That the person filing said appeal has established that the decision or action of the administrative official was arbitrary and capricious; or

3. An aggrieved party who files an appeal of a decision of the DRC approving or approving with conditions a development plan application, must show, by competent substantial evidence that:

(i) The decision of the DRC is not in compliance with the Comprehensive Plan or the Land Development Code;

(ii) Their property will suffer an adverse impact as a result of the development approval decision;

(iii) The adverse impact must be to a specific interest protected or furthered by the Comprehensive Plan or the Land Development Code; and

(iv) It must be greater in degree than any adverse impact shared by the community at large.

4. In the event the owner, developer, or applicant is aggrieved or adversely affected by a denial of a development plan application or the imposition of conditions, the owner, developer or applicant filing the appeal must show, by competent substantial evidence, that the denial of the development plan or the imposition of conditions is neither required nor supported by the Comprehensive Plan or the Land Development Code or the application of technical design standards and specifications adopted by reference in the Code, or Concurrency Management Procedures and is, therefore, arbitrary and capricious.

IV. BACKGROUND INFORMATION

The request by Teramore Development, LLC for land use compatibility was denied on July 24, 2017, by Escambia County Planning Official, Horace Jones.

The Administrative Appeal was filed with the Board of Adjustment on August 7, 2017, within the 15 day deadline provided in the LDC.

The case was added to the agenda for the scheduled October 18, 2017 BOA meeting.

At the October 18, 2017, BOA meeting, the Board voted 5-0 to deny the appeal of the Planning Officials Determination. The Board amended their findings to add that their decision was based on competent and substantial evidence presented by the expert witnesses.

Attachments

AP-2017-02

Order Granting Petition for Writ of Certiorari Signed by Judge Duncan 8-3-18

AP-2017-02








GARCON SWAMP



AP-2017-02 LOCATION MAP

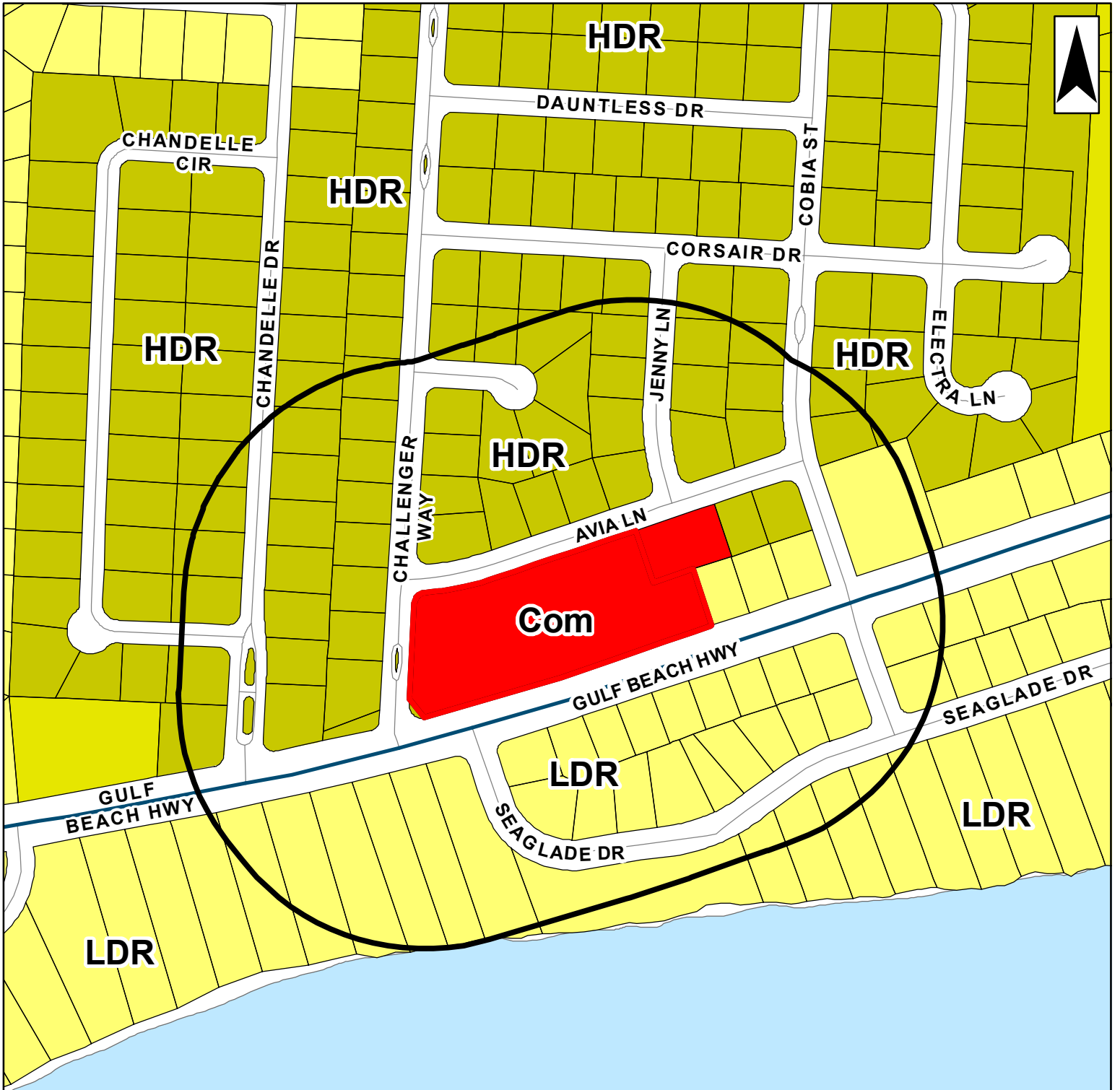



-  PRINCIPAL ARTERIAL
-  MINOR ARTERIAL
-  COLLECTOR
-  LOCAL ROAD



This map is provided for information purposes only. The data is not guaranteed accurate or suitable for any use other than that for which it was gathered.

Andrew Holmer
Planning and Zoning Dept.





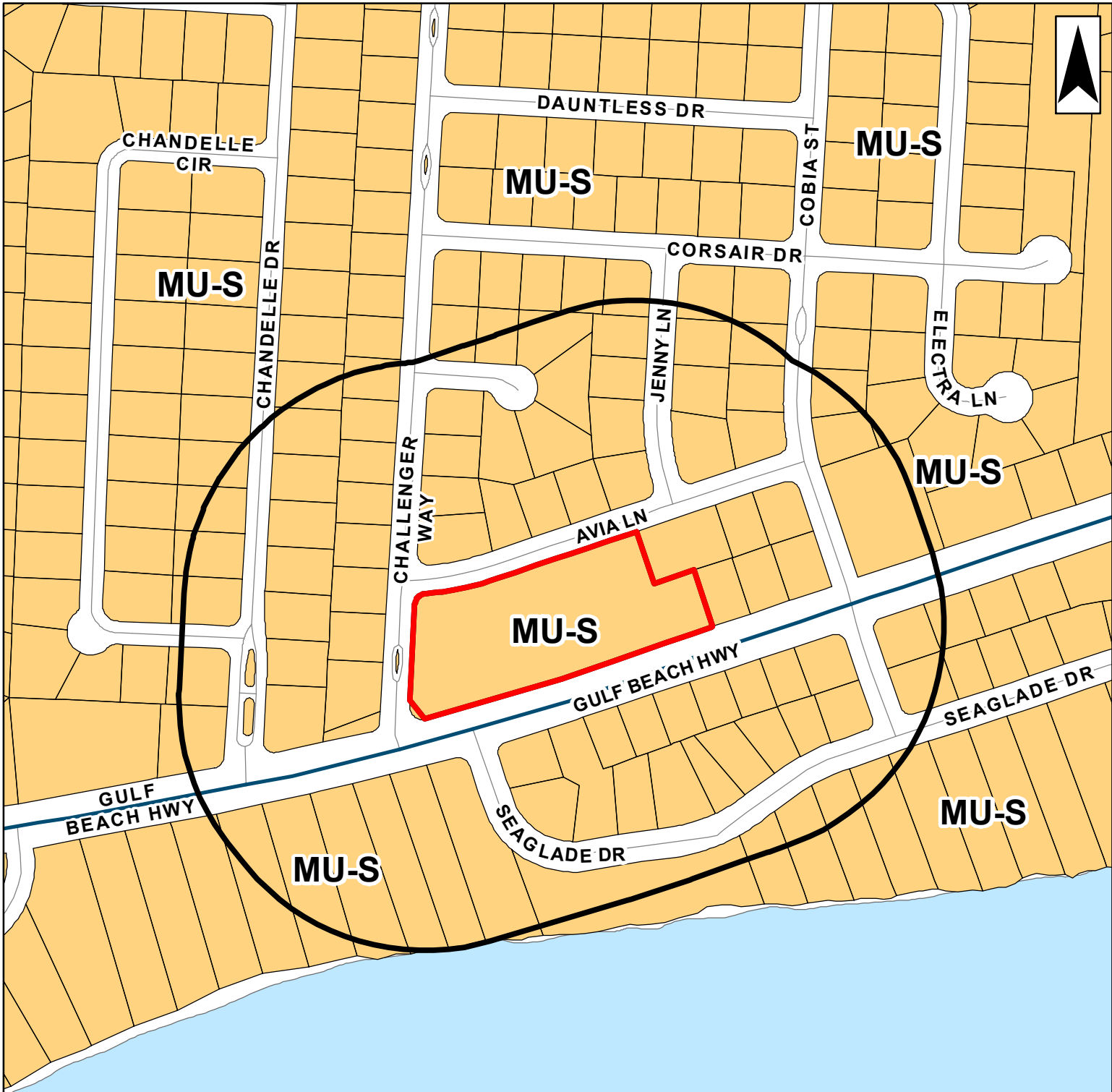
This map is provided for information purposes only. The data is not guaranteed accurate or suitable for any use other than that for which it was gathered.

Andrew Holmer
Planning and Zoning Dept.


AP-2017-02
500' RADIUS ZONING



-  PARCELS
-  PRINCIPAL ARTERIAL
-  MINOR ARTERIAL
-  COLLECTOR
-  LOCAL ROAD



BIG LAGOON





This map is provided for information purposes only. The data is not guaranteed accurate or suitable for any use other than that for which it was gathered.

Andrew Holmer
Planning and Zoning Dept.

AP-2017-02 FUTURE LAND USE



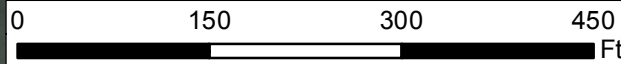
-  PARCELS
-  PRINCIPAL ARTERIAL
-  MINOR ARTERIAL
-  COLLECTOR
-  LOCAL ROAD



This map is provided for information purposes only. The data is not guaranteed accurate or suitable for any use other than that for which it was gathered.

Andrew Holmer
Planning and Zoning Dept.

AP-2017-02 AERIAL MAP



- PARCELS
- PRINCIPAL ARTERIAL
- MINOR ARTERIAL
- COLLECTOR
- LOCAL ROAD



Public Hearing Sign



Looking onto Subject Property



Looking East along Gulf Beach Hwy.



Escambia County Planning and Zoning

Development Services Department

3363 West Park Place

Pensacola, FL 32505

Phone: (850) 595-3475 • Fax: (850) 595-3481

<http://myescambia.com/business/ds>

Board of Adjustment Application

FOR OFFICE USE ONLY - Case Number: _____ Accepted by: _____ BOA Meeting: _____

_____ Development Order Extension

Administrative Appeal

1. Contact Information:

A. Property Owner/Applicant: Shu Cheng Shurett & Leo Huang

Mailing Address: 3434 Pelham Pkwy, Pelham, AL 35124

Business Phone: _____ Cell: _____

Email: dcsmarketing@aol.com

B. Authorized Agent (if applicable): Teramore Development, LLC

Mailing Address: P.O. Box 6460, Thomasville, GA 31758

Business Phone: 229-516-4289 Cell: 229-403-2436

Email: thodges@teramore.net

Note: Owner must complete the attached Agent Affidavit. If there is more than one owner, each owner must complete an Agent Affidavit. Application will be voided if changes to this application are found.

2. Property Information:

A. Project Name & Development Order Number (if applicable): N/A

B. Existing Street Address: 11400 block of Gulf Beach Highway, Pensacola

Parcel ID (s): Number 23-3S-31-2001-0000-000

C. Total acreage of the subject property: 3.4 acres

3. Reason for Request

A. Please explain why the extension or administrative appeal is necessary.

Please see Exhibit "A" which is attached hereto.

B. Development Order Extension

The LDC requires good faith efforts in adhering to its established periods, but extension of an eligible LDC time limit may be requested according to the provisions of this section whereby a landowner asserts that the limit does not anticipate legitimate delays in compliance. However, no applicant is automatically entitled to any extension. Short-term (6 month) extensions are evaluated by the Planning Official, and longer extensions (one year) shall be evaluated through a quasi-judicial public hearing review by the BOA. These extension processes allow additional time for concluding the compliance review, developing an approved use, and continuing or reestablishing some uses.

1. Limits on extensions. Extensions to LDC periods are subject to the following limitations:

a. Availability. Extensions are available and may be granted only for LDC periods that specifically provide that option, only if a complete application for the extension was submitted prior to the expiration of the period for which the extension is requested, and only as otherwise allowed by the provisions of the LDC.

b. Approving authority. Extensions to any period not required by the LDC but imposed as a condition of approval by an approving authority cannot be granted by another approving authority.

c. Individual and multiple limits. An extension can only be granted based on a specific review of an individual period. If an extension of more than one period is requested, the extension criteria shall be evaluated for each limit.

C. Administrative Appeal

Application for appeal of an administrative decision shall be submitted for compliance review within 15 days after the date of the decision being appealed. A quasi-judicial public hearing for the appeal shall be scheduled to occur within 30 business days after receipt of a complete application. The application shall provide information as required by the adopted appeal procedures, including the following:

1. Decision appealed. A copy of the written administrative decision to be reviewed on appeal.

2. LDC reference. Identification of the specific LDC provisions for which noncompliance is alleged.

3. Alleged error. A description of how the decision of the administrative official

is considered arbitrary or capricious.

4. Conditions. Documentation satisfying the conditions established in the compliance review provisions of this section.

5. Remedy. A description of the proposed remedy.

6. Other information. Any other pertinent information the applicant wishes to have considered.

D. Medical Hardship

Temporary placement of a manufactured (mobile) home or park trailer may be requested according to the provisions of this section when a landowner asserts that existing medical conditions require in-home care and an accessory dwelling to reasonably provide it. The manufactured home may be placed within any mainland zoning district to remedy a medical hardship according to the temporary use provisions of Chapter 4, regardless of the density limits of the applicable zoning. The requirements to grant the temporary use of a manufactured home or park trailer as an accessory dwelling to provide in-home medical care is considered by the BOA in a quasi-judicial hearing whether conditions warrant such use.

The BOA shall conduct a quasi-judicial public hearing as noticed to consider the requested medical hardship temporary use of a manufactured home or park trailer according to the provisions of this article. The applicant has the burden of presenting competent substantial evidence to the board that establishes each of the following conditions:

1. Certified need. A Florida-licensed physician certifies in writing the medical need, specifying the extent of the need for in-home medical care and the approximate length of time for such in-home medical care.

2. Minimum necessary. Conditions and circumstances make it difficult or impossible for the recipient and provider of medical care to reside in the same dwelling and the temporary accessory dwelling is the minimum necessary to provide relief of that medical hardship.

3. Adequate public services. The manufactured home or park trailer will have adequate water, sewer, solid waste removal, and electric services available.

4. Compatibility. The temporary use will not produce adverse impacts on the uses of surrounding properties.

5. Standard conditions. The temporary use can comply with the applicable standards of Chapter 4.

4. Please complete the following form (if applicable): Affidavit of Owner/Limited Power of Attorney

AFFIDAVIT OF OWNER AND LIMITED POWER OF ATTORNEY (if applicable)

As owner of the property located at the 11400 block of Gulf Beach Highway, Pensacola, Florida, property reference number(s) Number 23-3S-31-2001-0000-000 I hereby designate Tom Hodges of Teramore Development, LLC for the sole purpose of completing this application and making a presentation to the Board of Adjustments on the above referenced property. This Limited Power of Attorney is granted on this 7th day of August the year of, 2017, and is effective until the Board of Adjustment has rendered a decision on this request and any appeal period has expired. The owner reserves the right to rescind this Limited Power of Attorney at any time with a written, notarized notice to the Development Services Department.

Agent Name: Tom Hodges of Teramore Development, LLC Email: thodges@teramore.net

Address: P.O. Box 6480, Thomasville, GA 31758 Phone: 229-516-4288

Signature of Property Owner: Shu Cheng Shurett Printed Name of Property Owner: Shu Cheng Shurett Date: 8-7-17

Signature of Property Owner Printed Name of Property Owner Date

STATE OF Alabama COUNTY OF Shelton The foregoing instrument was acknowledged before me this 7 day of August 20 17 by Shu Cheng Shurett Personally Known OR Produced Identification: Type of Identification Produced: Drivers License

Signature of Notary: Samuel F. Clemens Printed Name of Notary: Samuel F. Clemens

(Notary Seal)



5. Submittal Requirements

4. Please complete the following form (if applicable): Affidavit of Owner/Limited Power of Attorney

AFFIDAVIT OF OWNER AND LIMITED POWER OF ATTORNEY (if applicable)

As owner of the property located at the 11400 block of Gulf Beach Highway, Pensacola Florida, property reference number(s) Number 23-36-31-2001-0000-000 I hereby designate Tom Hodges of Teramore Development, LLC for the sole purpose of completing this application and making a presentation to the Board of Adjustments on the above referenced property. This Limited Power of Attorney is granted on this 7th day of August the year of 2017 and is effective until the Board of Adjustment has rendered a decision on this request and any appeal period has expired. The owner reserves the right to rescind this Limited Power of Attorney at any time with a written, notarized notice to the Development Services Department.

Agent Name: Tom Hodges of Teramore Development, LLC Email: thodges@teramore.net

Address: P.O. Box 6460, Thomasville, GA 31758 Phone: 228-516-4289

Signature of Property Owner: [Signature] Printed Name of Property Owner: Leo Huang Date: 8-7-17

STATE OF Alabama COUNTY OF Shelby The foregoing instrument was acknowledged before me this 7 day of August 2017 by

Personally Known OR Produced Identification: Type of Identification Produced: Driver's License Signature of Notary: [Signature] Printed Name of Notary: Samuel F. Clemens



5. Submittal Requirements

4. Please complete the following form (if applicable): Affidavit of Owner/Limited Power of Attorney

AFFIDAVIT OF OWNER AND LIMITED POWER OF ATTORNEY (if applicable)

As owner of the property located at the 11400 block of Gulf Beach Highway, Pensacola, Florida, property reference number(s) Number 23-3S-31-2001-0000-000 I hereby designate David A. Theriaque, Esquire, for the sole purpose of completing this application and making a presentation to the Board of Adjustments on the above referenced property. This Limited Power of Attorney is granted on this 7th day of August the year of 2017, and is effective until the Board of Adjustment has rendered a decision on this request and any appeal period has expired. The owner reserves the right to rescind this Limited Power of Attorney at any time with a written, notarized notice to the Development Services Department.

Agent Name: David A. Theriaque, Esquire Email: dat@theriaquelaw.com

Address: 433 North Magnolia Drive, Tallahassee, FL 32308 Phone: 850-224-7332

Signature of Property Owner: [Signature] Leo Huang Printed Name of Property Owner Date: 8-7-17

STATE OF Alabama COUNTY OF Shelby The foregoing instrument was acknowledged before me this 7th day of August 2017 by

Personally Known OR Produced Identification Type of Identification Produced: Drivers License Signature of Notary: [Signature] Samuel F. Clemens Printed Name of Notary



5. Submittal Requirements

- A. X Completed application: All applicable areas of the application shall be filled in and submitted to the Planning and Zoning Department, 3363 West Park Place, Pensacola, FL 32505.
- B. X Application Fee: Application Fees: To view fees visit the website: <http://mvescambia.com/business/board-adjustment> or contact us at 595-3448

Note: Fees include all notices and advertisements required for the public hearing and a \$5 technical fee. Payments must be submitted prior to 3 pm of the closing date of acceptance of application. Please make checks payable to Escambia County. MasterCard and Visa are also accepted.

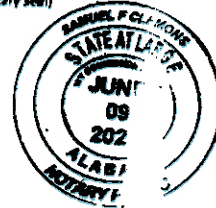
By my signature, I hereby certify that:

- 1) I am duly qualified as owner(s) or authorized agent to make such application, this application is of my own choosing, and staff has explained all procedures relating to this request; and
- 2) All information given is accurate to the best of my knowledge and belief, and I understand that deliberate misrepresentation of such information will be grounds for denial or reversal of this application and/or revocation of any approval based upon this application; and
- 3) I understand that there are no guarantees as to the outcome of this request, and that the application fee is non-refundable; and
- 4) I authorize County staff to place a public notice sign(s) on the property referenced herein.

Shu Cheng Shurett Shu Cheng Shurett 8-7-17 Signature of O-
 _____ Signature of O-

STATE OF Alabama COUNTY OF Shelby The foregoing instrument
 was acknowledged before me this 7 day of August 2017 by Shu Cheng Shurett
 Personally Known OR Produced Identification . Type of Identification Produced: Driver's License

[Signature] Gennet F. Clonias
 Signature of Notary Printed Name of Notary (notary seal)



A. X Completed application: All applicable areas of the application shall be filled in and submitted to the Planning and Zoning Department, 3363 West Park Place, Pensacola, FL 32505.

B. X Application Fee: Application Fees: To view fees visit the website: <http://mvscambia.com/business/board-adjustment> or contact us at 595-3448

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- 2) All information given is accurate to the best of my knowledge and belief, and I understand that deliberate misrepresentation of such information will be grounds for denial or reversal of this application and/or revocation of any approval based upon this application; and
- 3) I understand that there are no guarantees as to the outcome of this request, and that the application fee is non-refundable; and
- 4) I authorize County staff to place a public notice sign(s) on the property referenced herein.

Leo Huang

Leo Huang

8-7-17 Signature of O:
Signature of O:

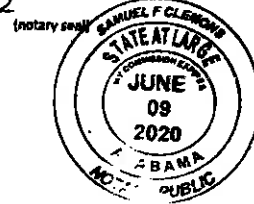
STATE OF Alabama COUNTY OF Shelby The foregoing instrument

was acknowledged before me this 7 day of August 2017, by Leo Huang

Personally Known OR Produced Identification . Type of Identification Produced: Drivers License

Samuel F. Clemens
Signature of Notary

Samuel F. Clemens
Printed Name of Notary





Escambia County Planning and Zoning
Development Services Department
3368 West Park Place
Pensacola, FL 32505
Phone: (850) 595-3475 • Fax: (850) 595-3481
<http://myescambia.com/business/ds>

Board of Adjustment Application

FOR OFFICE USE ONLY - Case Number: _____ Accepted by: _____ BOA Meeting: _____

_____ **Development Order Extension**

Administrative Appeal

1. Contact Information:

A. Property Owner/Applicant: Teramore Development, LLC
Mailing Address: P.O. Box 6460, Thomasville, GA 31758
Business Phone: 229-516-4289 Cell: 229-403-2436
Email: thodges@teramore.net

B. Authorized Agent (if applicable): David A. Theriaque, Esquire
Mailing Address: 433 North Magnolia Drive, Tallahassee, FL 32308
Business Phone: 850-224-7332 Cell: _____
Email: dat@theriaquelaw.com

Note: Owner must complete the attached Agent Affidavit. If there is more than one owner, each owner must complete an Agent Affidavit. Application will be voided if changes to this application are found.

2. Property Information:

A. Project Name & Development Order Number (if applicable): N/A

B. Existing Street Address: 11400 block of Gulf Beach Highway, Pensacola
Parcel ID (s): Number 23-3S-31-2001-0000-000

C. Total acreage of the subject property: 3.4 acres

3. Reason for Request

- A. Please explain why the extension or administrative appeal is necessary. Please see Exhibit "A" which is attached hereto.**

B. Development Order Extension

The LDC requires good faith efforts in adhering to its established periods, but extension of an eligible LDC time limit may be requested according to the provisions of this section whereby a landowner asserts that the limit does not anticipate legitimate delays in compliance. However, no applicant is automatically entitled to any extension. Short-term (6 month) extensions are evaluated by the Planning Official, and longer extensions (one year) shall be evaluated through a quasi-judicial public hearing review by the BOA. These extension processes allow additional time for concluding the compliance review, developing an approved use, and continuing or reestablishing some uses.

1. Limits on extensions. Extensions to LDC periods are subject to the following limitations:

- a. Availability.** Extensions are available and may be granted only for LDC periods that specifically provide that option, only if a complete application for the extension was submitted prior to the expiration of the period for which the extension is requested, and only as otherwise allowed by the provisions of the LDC.
- b. Approving authority.** Extensions to any period not required by the LDC but imposed as a condition of approval by an approving authority cannot be granted by another approving authority.
- c. Individual and multiple limits.** An extension can only be granted based on a specific review of an individual period. If an extension of more than one period is requested, the extension criteria shall be evaluated for each limit.

C. Administrative Appeal

Application for appeal of an administrative decision shall be submitted for compliance review within 15 days after the date of the decision being appealed. A quasi-judicial public hearing for the appeal shall be scheduled to occur within 30 business days after receipt of a complete application. The application shall provide information as required by the adopted appeal procedures, including the following:

- 1. Decision appealed.** A copy of the written administrative decision to be reviewed on appeal.
- 2. LDC reference.** Identification of the specific LDC provisions for which noncompliance is alleged.
- 3. Alleged error.** A description of how the decision of the administrative official

is considered arbitrary or capricious.

4. Conditions. Documentation satisfying the conditions established in the compliance review provisions of this section.

5. Remedy. A description of the proposed remedy.

6. Other information. Any other pertinent information the applicant wishes to have considered.

D. Medical Hardship

Temporary placement of a manufactured (mobile) home or park trailer may be requested according to the provisions of this section when a landowner asserts that existing medical conditions require in-home care and an accessory dwelling to reasonably provide it. The manufactured home may be placed within any mainland zoning district to remedy a medical hardship according to the temporary use provisions of Chapter 4, regardless of the density limits of the applicable zoning. The requirements to grant the temporary use of a manufactured home or park trailer as an accessory dwelling to provide in-home medical care is considered by the BOA in a quasi-judicial hearing whether conditions warrant such use.

The BOA shall conduct a quasi-judicial public hearing as noticed to consider the requested medical hardship temporary use of a manufactured home or park trailer according to the provisions of this article. The applicant has the burden of presenting competent substantial evidence to the board that establishes each of the following conditions:

- 1. Certified need.** A Florida-licensed physician certifies in writing the medical need, specifying the extent of the need for in-home medical care and the approximate length of time for such in-home medical care.
- 2. Minimum necessary.** Conditions and circumstances make it difficult or impossible for the recipient and provider of medical care to reside in the same dwelling and the temporary accessory dwelling is the minimum necessary to provide relief of that medical hardship.
- 3. Adequate public services.** The manufactured home or park trailer will have adequate water, sewer, solid waste removal, and electric services available.
- 4. Compatibility.** The temporary use will not produce adverse impacts on the uses of surrounding properties.
- 5. Standard conditions.** The temporary use can comply with the applicable standards of Chapter 4.

Last Updated: 6/21/17

- A. X Completed application: All applicable areas of the application shall be filled in and submitted to the Planning and Zoning Department, 3363 West Park Place, Pensacola, FL 32505.
- B. X Application Fee: Application Fees: To view fees visit the website: <http://mvescambia.com/business/board-adjustment> or contact us at 595-3448

Note: Fees include all notices and advertisements required for the public hearing and a \$5 technical fee. Payments must be submitted prior to 3 pm of the closing date of acceptance of application. Please make checks payable to Escambia County. MasterCard and Visa are also accepted.

By my signature, I hereby certify that:

- 1) I am duly qualified as owner(s) or authorized agent to make such application, this application is of my own choosing, and staff has explained all procedures relating to this request; and
- 2) All information given is accurate to the best of my knowledge and belief, and I understand that deliberate misrepresentation of such information will be grounds for denial or reversal of this application and/or revocation of any approval based upon this application; and
- 3) I understand that there are no guarantees as to the outcome of this request, and that the application fee is non-refundable; and
- 4) I authorize County staff to place a public notice sign(s) on the property referenced herein.

[Handwritten Signature]

Tom Hodges

 Signature of O

 Signature of O

STATE OF FLORIDA COUNTY OF THOMAS The foregoing instrument

was acknowledged before me this 7th day of AUGUST 2021, by TOM HODGES OF TERAMORE DEVELOPMENT, LLC

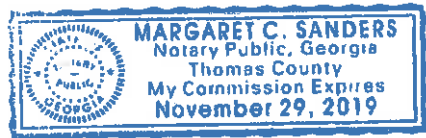
Personally Known X OR Produced Identification L. Type of Identification Produced: _____

Misandy

 Signature of Notary

MARGARET C. SANDERS

 Printed Name of Notary (notary seal)





REPLY TO: TALLAHASSEE

August 7, 2017

Kayla Meador, Administrative Assistant
County Clerk to the Board of Adjustment
Developmental Services Department
3363 West Park Place
Pensacola, Florida 32505

**Re: *Teramore Development, LLC – Parcel Number 23-3S-31-2001-0000-000
Administrative Appeal of Horace Jones’ Determination on July 24, 2017***

Dear Ms. Meador:

Our law firm represents Teramore Development, LLC, in regard to its desire to construct a 9,100 square foot Dollar General retail store on Parcel Number 23-3S-31-2001-0000-000 in Escambia County, Florida (“Property”). Teramore Development, LLC, requested a confirmation of compatibility from the Planning Official. On July 24, 2017, Horace Jones issued a written determination in which he concluded that the proposed development is not compatible. (A copy of Mr. Jones’ letter dated July 24, 2017, is attached hereto as Exhibit “1”).

Teramore Development, LLC, hereby files this Administrative Appeal of Mr. Jones’ July 24 determination. The specific provisions of the County’s Land Development Code (“LDC”) at issue in this Administrative Appeal include, but are not limited to, Sections 2-2.7 and 3-2.10(e). Teramore Development, LLC, respectfully submits that Mr. Jones incorrectly determined that the proposed development is not compatible. Rather, for the reasons set forth in the Land Use Compatibility Analysis prepared by The Planning Collaborative on June 25, 2017, the proposed development is compatible and, therefore, fulfills the locational criterion set forth in Section 3-2.10(e)(5) of the County’s LDC. (A copy of the Land Use Compatibility Analysis is attached hereto as Exhibit “2”).¹

¹ Teramore Development, LLC, reserves the right to submit additional evidence, including expert witness testimony, during the quasi-judicial hearing before the Board of Adjustment.

TALLAHASSEE
433 NORTH MAGNOLIA DRIVE
TALLAHASSEE, FLORIDA 32308
(850) 224-7332
FAX: (850) 224-7662

WINTER GARDEN
12200 WEST COLONIAL DRIVE, SUITE 300C
WINTER GARDEN, FLORIDA 34787
(407) 347-5388
FAX: (407) 264-6132



Kayla Meador, Administrative Assistant
August 7, 2017
Page 2

Teramore Development, LLC, requests that the Board of Adjustment determine that the proposed development is compatible and, therefore, fulfills the locational criterion set forth in Section 3-2.10(e)(5) of the County's LDC. Such a determination would allow Teramore Development, LLC, to submit an application for site plan approval for its proposed non-residential development.

I appreciate your attention to this matter. Please do not hesitate to contact me if you have any questions or need further information.

Sincerely,



David A. Theriaque

Enclosures

cc: Teramore Development, LLC



Board of County Commissioners • Escambia County, Florida

Horace I. Jones, Director
Development Services

Applicant information:

Name: Teramore Development, LLC Date: July 24, 2017

Address: 11400 Blk. Gulf Beach Highway, Pensacola, FL Parcel ID #: 23-3S-31-2001-000-000

Phone: (229) 516-4286 Other: _____ Email: develop@teramore.net

Section of the LDC to be interpreted: Sec. 3-2.10(e)

Address of proposed development for Compatibility Analysis: 11400 Blk. Gulf Beach Highway

Response to Request for Interpretation and/or Confirmation of Compatibility:

The applicant has submitted a Land Use Compatibility Analysis for a proposed Dollar General located at 11400 block of Gulf Beach Highway. The property is zoned Commercial and has a FLU of Mixed-Use Suburban (MU-S). The applicant has requested a confirmation of compatibility from the Planning Official pursuant to Sec. 2-2.7 of the LDC.

The proposed development is NOT COMPATIBLE. The proposed development does not meet the Location Criteria prescribed by the LDC.

Pursuant to Sec. 3-2.10(e) of the Land Development Code, all new nonresidential uses proposed within the commercial district that are not part of a planned unit development or not identified as exempt by the district shall be on parcels that satisfy at least one of the following location criteria: (1) Proximity to intersection. Along an arterial or collector street and within one quarter mile of its intersection with an arterial street. (2) Proximity to traffic generator. Along an arterial or collector street and within a one-quarter mile radius of an individual traffic generator of more than 600 daily trips, such as an apartment complex, military base, college campus, hospital, shopping mall or similar generator. (3) Infill development. Along an arterial or collector street, in an area where already established non-residential uses are otherwise consistent with the Commercial district, and where the new use would constitute infill development of similar intensity as the conforming development on surrounding parcels.



Response to Request for Interpretation and/or Confirmation of Compatibility

Teramore Development, LLC - 11400 Blk. Gulf Beach Highway

Page - 2 -

Additionally, the location would promote compact development and not contribute to or promote strip commercial development. (4) Site design. Along an arterial or collector street, no more than one-half mile from its intersection with an arterial or collector street, not abutting a single-family residential zoning district (RR, LDR or MDR), and all of the following site design conditions: a. Any intrusion into a recorded subdivision is limited to a corner lot. b. A system of service roads or shared access is provided to the maximum extent made feasible by lot area, shape, ownership patterns, and site and street characteristics. c. Adverse impacts to any adjoining residential uses are minimized by placing the more intensive elements of the use, such as solid waste dumpsters and truck loading/unloading areas, furthest from the residential uses. (5) Documented compatibility. A compatibility analysis prepared by the applicant provides competent substantial evidence of unique circumstances regarding the potential uses of parcel that were not anticipated by the alternative criteria, and the proposed use, or rezoning as applicable, will be able to achieve long-term compatibility with existing and potential uses. Additionally, the following conditions exist: a. The parcel has not been rezoned by the landowner from the mixed-use, commercial, or industrial zoning assigned by the county. b. If the parcel is within a county redevelopment district, the use will be consistent with the district's adopted redevelopment plan, as reviewed and recommended by the Community Redevelopment Agency (CRA).

Gulf Beach Highway is designated as a major urban collector street. However, the proposed development is not within one-quarter mile of an intersection with an arterial street. The proposed development is not within one quarter mile radius of an individual traffic generator of more than 600 daily trips. The proposed development is not in an area where already established nonresidential uses are otherwise consistent and where the new development would constitute infill development of similar intensity. The proposed development is not more than one-half mile from its intersection with an arterial or collector street, not abutting a single-family residential zoning district. The compatibility analysis provided by the applicant does not show unique circumstances that were not anticipated by the alternative criteria. The proposed use will not serve to achieve long-term compatibility with existing and potential uses. The proposed development is surrounded by existing residential uses and established residential development.

This confirmation of compatibility is not final authorization or denial of any requested development and the applicant must complete the County development review process prior to proceeding.

Date: July 24, 2017 Signature: H. Jones
Horace L. Jones, Director, Development Services

Additional pages attached: ___ yes X no

Land Use Compatibility Analysis

For a Dollar General Store to be located in the 11400 block of Gulf Beach Highway, Pensacola, Florida
Also referenced as Parcel ID number 23-35-31-2001-000-000

Conducted for:

Teramore Development, LLC
Ph: 229.516.4286
develop@teramore.net



Prepared for:

Escambia County Planning and Zoning Division
Ph: 850.554.8210
3363 West Park Place
Pensacola, FL 32505

Prepared by:

The Planning Collaborative
Allara Mills Gutcher, AICP
Ph: 850.319.9180
allara@theplanningcollaborative.com



June 25, 2017



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EXHIBIT 1 – Survey of 1.45-acre parcel.

EXHIBIT 2 – Survey of 1.95-acre parcel.

EXHIBIT 3 – Preliminary Site Plan prepared by Bell Engineering Services, LLC, as revised
February 2, 2017.

EXHIBIT 4 – Escambia County Property Appraiser Subdivision Map, as printed April 16, 2017.

EXHIBIT 5 – Example of a Dollar General Store architectural design.

EXHIBIT 6 – Example of a Dollar General Store architectural design.

EXHIBIT 7 – Example of a Dollar General Store architectural design.

EXHIBIT 8 – Letter dated June 22, 2017, from Bonita Player, P.E.

PURPOSE AND INTRODUCTION

This report analyzes the compatibility of a Dollar General retail store proposed to be located in the 11400 block of Gulf Beach Highway, Pensacola, Florida. As set forth below, the proposed Dollar General retail store will not, over time, adversely or negatively impact the surrounding existing uses. The proposed store will provide daily necessities and other common household items for consumers. Dollar General is known for its neighborhood-scale stores in locations convenient to customers.

In the development of this report, the following definition of compatibility set forth in §163.3164(9), *Florida Statutes*, was utilized:

“Compatibility means a condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition.”

The Escambia County Comprehensive Plan also provides a definition of “Incompatible/compatible development” in Chapter 3 Definitions. Section 3.04 Definitions states as follows:

“Incompatible development is new development proposed to be constructed next to existing development wherein the proximity of the two kinds of development would each diminish the usefulness of the other or would be detrimental to existing operations. The incompatibility can arise from either land use or structure size and design. Compatible development is new development proposed to be constructed next to existing development in which the proximity of the two kinds of development would each complement or enhance the usefulness of the other.”

Finally, the County’s Land Development Regulations Chapter 6, Definitions, Section 6-0.3 Terms Defined provides the following definition for “compatible:

“*Compatible*. A condition in which land uses, activities or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use, activity, or condition is unduly negatively impacted directly or indirectly by another use, activity, or condition.”

As a note, the definition of “compatible” in Section 6-0.3 of the County’s Land Development Regulations is nearly identical to the definition of “compatibility” set forth in §163.3164(9), *Florida Statutes*.

This analysis has considered the type of development proposed in comparison to the existing built environment as directed by Florida Statutes and the Escambia County Comprehensive Plan. Such factors of study included the surrounding uses, lighting, building setbacks, building height, building orientation, open space ratios, and hours of operation.

The consultant, Allara Mills Gutcher, completed the following research in preparation of this report:

- A site visit conducted on Tuesday, April 4, 2017
- Review of the Escambia County Property Appraiser website data and maps
- Review of the Escambia County Comprehensive Plan, 2030
- Review of the Escambia County Land Development Regulations dated February 2017
- Review of the Escambia County Future Land Use Map and Zoning Map as shown on Escambia County's web mapping service web page.¹
- Consultation with Teramore Development, LLC

PROJECT DESCRIPTION

The applicant proposes construction of a retail establishment known as Dollar General, with approximately 9,100 gross square feet of building space on +/-1.25 acres of a 3.4-acre parcel. Approximately 2.15 acres of the 3.4-acre site will remain highly vegetated with the existing flora. (See Exhibits 1 and 2). The building will be oriented towards the south, facing Gulf Beach Highway. The area surrounding the developed portion of the site will remain in its natural condition. Parking will be located to the front of the structure, with a driveway along the east side of the structure to accommodate the loading and dumpster area. Ingress and egress to the site will be from Gulf Beach Highway. (See Exhibit 3).

The scale of the project will be that of a typical prototype Dollar General retail store. It will be single story in height, with a maximum height of twenty-two (22) feet, which includes any roof-top apparatus. This will be approximate in height to many of the existing on-site trees.

Hours of operation will begin at either 7:00 a.m. or 8:00 a.m., and close by 9:00 p.m. These hours of operation are conducive to general business hours with time in the evenings for local residents to shop for convenience needs. There will be no noise, smoke, glare, emissions, dust, vibration, or odors emitted from this use. Lighting used to support safety for vehicles and pedestrians will be installed in a down-lit fashion and attached to the side of the structure.

GENERAL PROJECT LOCATION AND SETTING

The site is in the 11400 block and on the north side of Gulf Beach Highway (CR 292A) in unincorporated Escambia County, 32507. The parcel is located to the east of and borders Challenger Way and is west of Cobia Street. It is south of and borders Avia Lane. The parcel is located within Section 23, Township 3S, Range 31. The Escambia County Property Appraiser's Reference Number is 23-3S-31-2001-000-000.

¹ <http://www.arcgis.com/home/item.html?id=4388823ea5fb4feeb4ebb3beb6677129>.

The undeveloped lot of 3.4 acres² is currently heavily vegetated with various types of trees. None of the trees are protected pursuant to the definition in Chapter 2, Environmental, Article 2 – Landscaping, Section 2-3.1(a) of the Escambia County Design Standards Manual. The site has a designation of “Upland Coniferous Forest” which includes a “canopy (of) at least 66 percent dominated by Coniferous species.”³ There are no wetlands on the site.⁴ The existing use of the site is classified as “Vacant Commercial.”⁵

Figure 1. Aerial Photograph



As part of this analysis, a review of the “*Escambia County Site Specific Survey for Environmentally Sensitive Lands or the Gulf Beach Highway Site*” was conducted. This document indicates that there are no wetlands, protected species, or protected trees that will be impacted or other environmentally sensitive land issues as a result of this development.⁶

² KJM Land Planning, LLC, Boundary and Topographic Survey dated January 16, 2017.

³ Florida Land Use, Cover and Forms Classification System, Florida Department of Transportation Surveying and Mapping Geographic Mapping Section.

⁴ Escambia County Site Specific Survey for Environmentally Sensitive Lands for the Gulf Beach Highway Site prepared by Biome Consulting Group, January 2017, pg. 2.

⁵ Escambia County Property Appraiser assigned Department of Revenue Tax Code.

⁶ Escambia County Site Specific Survey for Environmentally Sensitive Lands for the Gulf Beach Highway Site, prepared by Biome Consulting Group, January 2017, pg. 4.

Surrounding the parcel is established residential development. (See Exhibit 4). To the north and east of Avia Lane is a platted subdivision called Chevalier. This subdivision is within the Mixed-Use Suburban (“MU-S”) Future Land Use category and the High Density Residential (“HDR”) zoning district. The lots in close proximity to the subject site average three (3) to four (4) dwelling units per acre. To the south of Gulf Beach Highway is a platted subdivision called Seaglade. This subdivision is within the MU-S Future Land Use category and the Low Density Residential (“LDR”) zoning district. The lots in Seaglade, that are within close proximity to the development site, range from one (1) to four (4) dwelling units to the acre, with the waterfront lots being the larger parcels. Within a quarter mile radius of the subject parcel, the average lot size is 0.45 acres, or approximately two (2) dwelling units to the acre.⁷ All of the lots contiguous to the subject parcel and not otherwise separated by a roadway are currently vacant.

Figure 2. Street View of Site



APPLICABLE POLICIES AND REGULATIONS

The site is currently designated with a Future Land Use category of MU-S and a zoning district of Commercial. All properties surrounding this site are also categorized with a Future Land Use category of MU-S. (See Figure 3). Consequently, no Future Land Use Map amendment or zoning change is required to allow the proposed development. Descriptions of the Future Land Use category and zoning district are provided below:

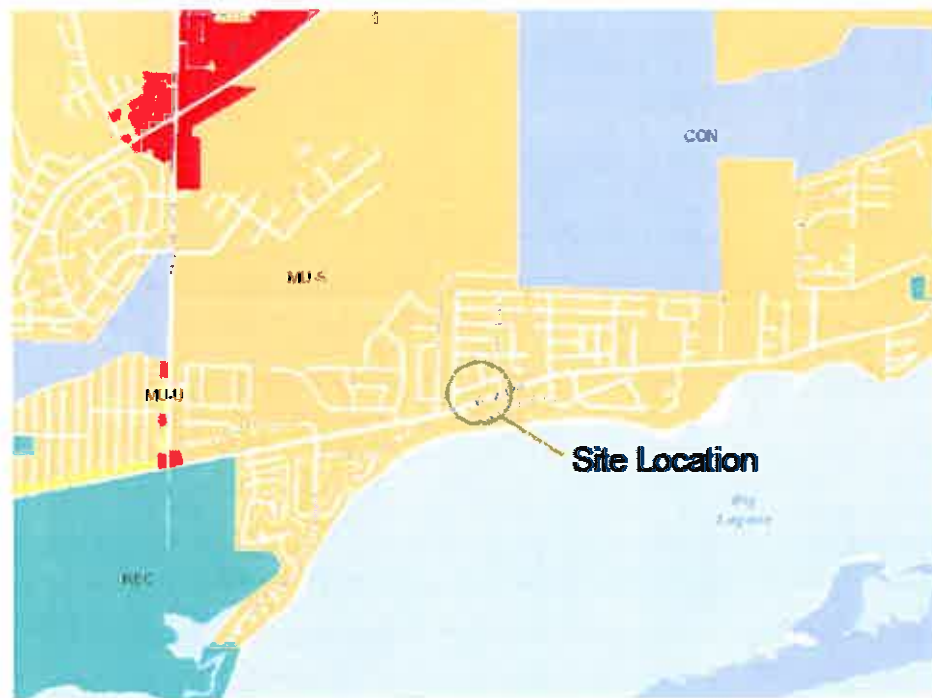
⁷ Escambia County Property Appraiser.

Future Land Use Category: Mixed-Use Suburban (MU-S)⁸

General Description of MU-S Future Land Use category: “Intended for a mix of residential and non-residential uses while promoting compatible infill development and the separation of urban and suburban land uses.”

MU-S Allowable Uses: The Comprehensive Plan describes the allowable uses as a range. These include: “Residential, **retail sales** and services, professional office, recreational facilities, public and civic, limited agriculture.” (Emphasis added). The maximum intensity for this category is a floor area ratio of 1.0.⁹

Figure 3. Escambia County Future Land Use Map



Esri, HERE, Garmin, INCREMENT P, USGS, METI/NASA, EPA, USDA | Escambia County Development Services Department

MU-S = Mixed-Use Suburban
MU-U = Mixed-Use Urban
REC = Recreation

C = Commercial
Con = Conservation

The MU-S Future Land Use category was created to “encourage redevelopment in underutilized properties (and) to maximize development densities and intensities”¹⁰ located not only within this category, but also in the MU-U, Commercial, and Industrial

⁸ www.myescambia.com/our-services/development-services/gis as of April 3, 2017.

⁹ Escambia County Comprehensive Plan, Future Land Use Element, Policy FLU 1.3.1.

¹⁰ Policy FLU 1.5.1 of the Escambia County Comprehensive Plan, 2030.

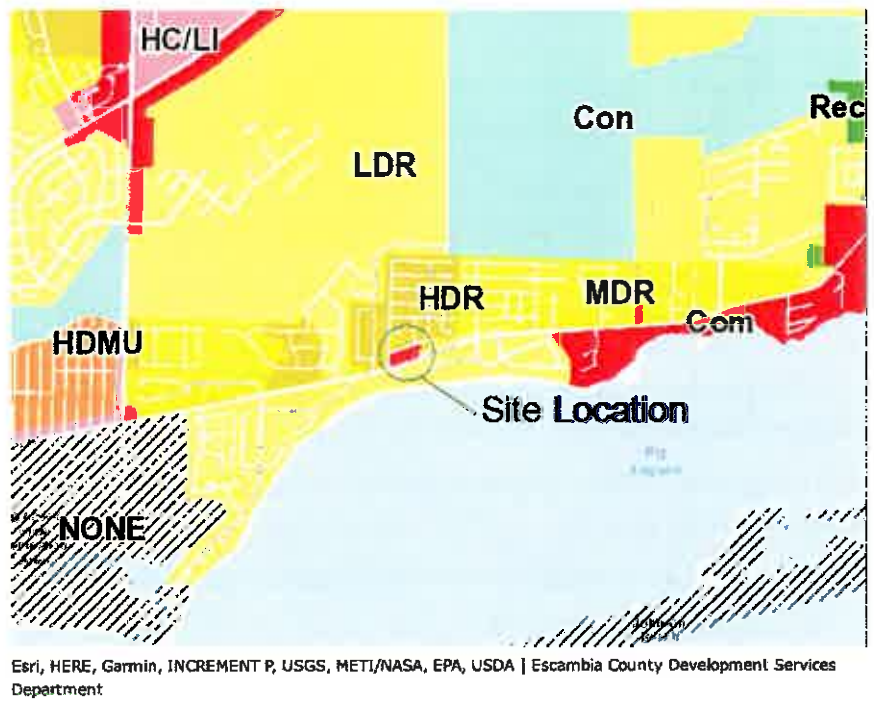
Future Land Use categories. In addition, the MU-S Future Land Use category provides for a minimum density to “ensure that developments are designed to be compact and to accommodate travel mode choices especially for short, local trips.”¹¹

Zoning Designation: Commercial¹²

The Commercial zoning district is established to designate appropriate areas and land for commercial activities, especially those in the retail and service industries. This category supports intense commercial uses.

The allowable uses within the Commercial zoning district are listed as: Residential (with restrictions), **retail sales** and services, public and civic uses, recreation and entertainment, limited industrial, agriculture and limited other uses such as billboard structures, parking garages and lots and some self-storage facilities. (Emphasis added). Other conditional uses are allowed.¹³

Figure 4. Escambia County Zoning Map



- Com = Commercial
- HDR = High Density Res
- MDR = Medium Density Res
- LDR = Low Density Res
- HDMU = High Density Mixed Use
- Con = Conservation
- REC = Recreation
- HC/LI = High Commercial and Light Industrial

¹¹ Policy FLU 1.5.2 of the Escambia County Comprehensive Plan, 2030.
¹² http://maps2.roktech.net/escambia_gomaps4/?mapName=General&mapType=zoning as of April 3, 2017.
¹³ Section 3-2.10 of the Escambia County Land Development Regulations dated February 2017.

The development standards for a parcel zoned “Commercial” are shown in Table 1, and are compared to the adjacent zoning district criteria.

Table 1. Zoning District Regulations Assigned to Subject Parcel and Parcels Contiguous to the Site

Criteria	Zoning Designation		
	Commercial	HDR	LDR
Location	Subject Parcel	North and West	South and East
Max Density	Max 25 d/u per acre	Max 18 d/u per acre	Max 4 d/u per acre
FAR	Not Specified*	Max 2.0	Max 1.0
Max Height	150 feet	120 feet	45 feet
Lot Area	No minimum	No minimum	No minimum
Minimum Lot Width	None for commercial uses.	40 feet for single family; 80 feet for two-family; 80 feet for other	20 feet for cul-de-sac lots; 70 feet for all other lots
Lot Coverage	15% minimum pervious; 85% max semi-impervious and impervious	20% minimum pervious; 80% max semi-impervious and impervious	30% minimum pervious; 70% max semi-impervious and impervious
Setbacks Front	15 feet	20 feet	25 feet
Setbacks Rear	15 feet	15 feet	25 feet
Setbacks Side	10 feet for structures less than 35 feet high; then additional 2 feet per each additional 10 feet in height.	10 feet for structures less than 35 feet high; then additional 2 feet for each additional 10 feet in height but does not exceed 15 feet.	5 feet or 10% of the lot width, not required to exceed 15 feet.

*Note: The floor area ratio is limited to 1.0 based on the Future Land Use category restriction of 1.0 (Policy FLU 1.3.1 for MU-S). Although the County’s Land Development Regulation lists FARs for Commercial FLU and MU-U FLU categories, neither are assigned to this MU-S designated parcel.

Section 3-2.10(e) of the County’s Land Development Regulations includes location criteria for new non-residential uses within the Commercial zoning district. At least one of the listed criteria for new non-residential uses proposed within the Commercial district which are not part of a PUD or otherwise exempt must be met. The proposed Dollar General retail store fulfills the location criteria pursuant to Section 3-2.10(e)(5), which is labelled as “Documented Compatibility.”

This compatibility analysis constitutes competent substantial evidence that the use of the property was not anticipated by the alternative criteria listed in Section 3-2.10(e)(1)-(4) of the County's Land Development Regulations. Additionally, this compatibility analysis constitutes competent substantial evidence that the proposed use will achieve long-term compatibility with the existing residential uses without any detriment or conflict. Furthermore, the following criteria are met as listed in Section 3-2.10(e)(5)a. and b.:

- a. The parcel was not rezoned by the landowner from the mixed-use, commercial, or industrial zoning assigned by the County.
- b. The parcel is not within a County Redevelopment District.

Overlay District: Airfield Influence Planning District-2¹⁴

The Airfield Influence Planning District-2 (AIPD-2) is established in Section 4-4.4 of the County's Land Development Regulations and with the AIPD-1 overlay is created to "enhance protection in support of the continued operation of military airfields for areas that are close enough to those airfields to influence or be influenced by their activities." This site is located in the AIPD-2 overlay district, as shown on the Escambia County Zoning map.

Section 4-4.4(b)(6) describes the development regulations for the AIPD-2 overlay district. This section only notates that "densities and minimum lots sizes of the underlying zoning district," which is commercial in this case, "are not modified by AIPD-2." Therefore, no additional development criteria apply to this site as a result of its location within the AIPD-2.

ANALYSIS

It is clear that the intent of Escambia County is to promote new infill development in already developed areas, and to be resourceful with existing transportation networks, utilities, and governmental services such as police and fire protection. Goals, Objectives, and Policies from the Escambia County Comprehensive Plan to support this include:

"Policy FLU 1.5.1: **New Development and Redevelopment in Built Areas.** To promote the efficient use of existing public roads, utilities, and service infrastructure, the County will encourage the redevelopment in underutilized properties to maximize development densities and intensities located in the **MU-S**, MU-U, Commercial, and Industrial Future Land Use categories (with the exception of residential development)." (Emphasis added).

"GOAL FLU 2 Development and Public Services. Escambia County will promote urban strategies for compact development, the efficient provision of infrastructure and urban services, and the protection of natural resources. Urban strategies will include **infill development**, mixed-use development, and coordinated land use and transportation planning." (Emphasis added).

¹⁴ http://maps2.roktech.net/escambia_gomaps4/?mapName=General&mapType=zoning as of April 3, 2017.

“Objective FLU 2.1 Urban Development. Direct growth toward those areas where infrastructure and services exist to support development at approved densities and intensities.”

“Objective 2.3 Infill Development. **Encourage infill development** in appropriate urbanized areas where infrastructure is sufficient to meet demands, such as in MU-U and **MU-S.**” (Emphasis added).

This project will accomplish these directives by creating a general store that will provide daily necessities to local residents within a short walk or drive time. The development plan is supported by FLU Policy 1.3.1 – FLUM Mixed-Used Suburban standards where Escambia County describes the intent of the MU-S category as a “mix of residential and non-residential uses while promoting compatible infill development.”

As depicted in Table 2 below, the standards of the Commercial zoning district are far greater in intensity than the actual plan for development. The structure’s floor area ratio (“FAR”) is approximately 0.06 due to the developer leaving most of the site in its natural vegetative state. This is substantially less than the maximum amount allowed of 1.0 FAR in the neighboring LDR zoning district. The building height will be no more than twenty-two (22) feet, which is similar in height to some of the on-site trees.

Table 2. Commercial Development Standards Comparison to Development Plan

Standard	LDR Requirement	Development Plan
Density	Not applicable	None
Floor Area Ratio (FAR)	Not mentioned (see note)	0.06 FAR
Structure Height	Max 150 feet above grade	Max 22 feet above grade
Lot Area	No minimum	3.4 acres
Lot Width	No minimum for commercial	Approximately 650 feet at road frontage
Lot Coverage	Minimum pervious 15%; 85% maximum semi-impervious and impervious cover.	Pervious surface will be approximately 77%, or 23% impervious surface.
Structure Setbacks	Front and Rear: 15 feet	Front +/- 97 feet; Rear +/- 82 feet
	Side: 10 feet minimum	West side +/- 231 feet at shortest distance; East side +/- 175 feet at shortest distance

Note: The floor area ratio is limited to 1.0 based on the Future Land Use category restriction of 1.0 (Policy FLU 1.3.1 for MU-S). Although the Land Development Regulation lists FARs for Commercial FLU and MU-U FLU categories, neither are assigned to this parcel.

The Escambia County Land Development Regulations offer some guidance when analyzing compatibility when a new use is introduced. Chapter 3, Zoning Regulations, Section 3-1.6 “Compatibility” contains criteria which describe new non-residential development in relation to existing residential uses. Section 3-1.6(b) states that such criteria are created to allow for residential and non-residential uses to be located in close proximity to each other, specifically “small-scale dispersed neighborhood commercial uses in proximity to residential areas,” which is the case here. This site will be developed with a small-scale neighborhood use store to serve the residents with daily necessities.

Section 3-1.6(c) of the County’s Land Development Regulations states that other compatibility measures may be required such as landscaping, buffering, and screening to protect lower intensity uses from commercial uses. This criterion is met with the retention of most of the existing on-site vegetation. The site will only remove the vegetation that is within the footprint of the development, in addition to that which is needed for the site triangle and open space for transportation safety. Of the 3.4-acre parcel, approximately 2.15 acres will remain undisturbed, or sixty-three (63) percent of the site. This percentage will provide more than adequate buffering and screening from the Chevalier subdivision. Therefore, because of the extensive setbacks and existing tree canopy, the residential neighborhood to the north, east, and west will not have a visual sight-line of the structure or parking area. The building will be visible from Gulf Beach Highway, an Escambia County designated collector street.¹⁵

The planned setbacks are outlined below in Table 3, and are shown against the requirement for the zoning district. These extensive setbacks are an additional measure to ensure compatibility with the surrounding uses. The distance from the side of the structure to the property line has been greatly increased to provide a large vegetative buffer to the surrounding residential uses. These distances are shown as a percentage increase over the requirement, and are in no case less than 400 percent of the adopted standard.

Table 3. Setback Comparison

Setback Standard	Commercial Requirement	Development Plan	Percent Exceeded
Front	15 feet	97 feet	547%
Rear	15 feet	82 feet	447%
Side (West)	10 feet	231 feet at rear corner	2,210%
Side (East)	10 feet	175 feet at narrowest point	1,650%

Section 2-2.3 of Chapter 2, Article 2 of the Design Standards Manual incorporated in the Land Development Regulations states “the buffer shall protect the lower intensity use from the higher intensity use and provide an aesthetically attractive barrier between the uses.” Furthermore,

¹⁵ Escambia County Land Development Regulations, Chapter 6, Section 6-0.3 Terms Defined and Escambia County GIS interactive map.

through the preservation of the on-site vegetation, this buffer will provide a natural barrier between the uses.

Section 2-2.1 of Chapter 2, Article 2 of the Design Standards Manual requires no less than fifteen (15) percent of the parcel to be landscaped. This development, with sixty-three (63) percent of the parcel landscaped, exceeds the criterion by more than 300 percent.

Transportation Analysis:

Engineering & Planning Resources, PC, performed a traffic impact analysis of the proposed Dollar General retail store. The analysis focused on a comparison of the maximum allowable residential scenario to the planned commercial scenario for the referenced parcel.

The maximum development intensity for residential use of this site, using the Escambia County Comprehensive Plan and the County's Land Development Code as the guide, is an eighty-five (85) unit high-rise condominium. The planned commercial scenario under review is a proposed 9,100-square foot Dollar General discount store.

According to Engineering & Planning Resources, PC's analysis, none of the impacted roadway segments will exhibit adverse traffic conditions in the current year at either the planned commercial scenario or the maximum allowable residential scenario. (See Exhibit 8).

FINDINGS AND CONCLUSIONS

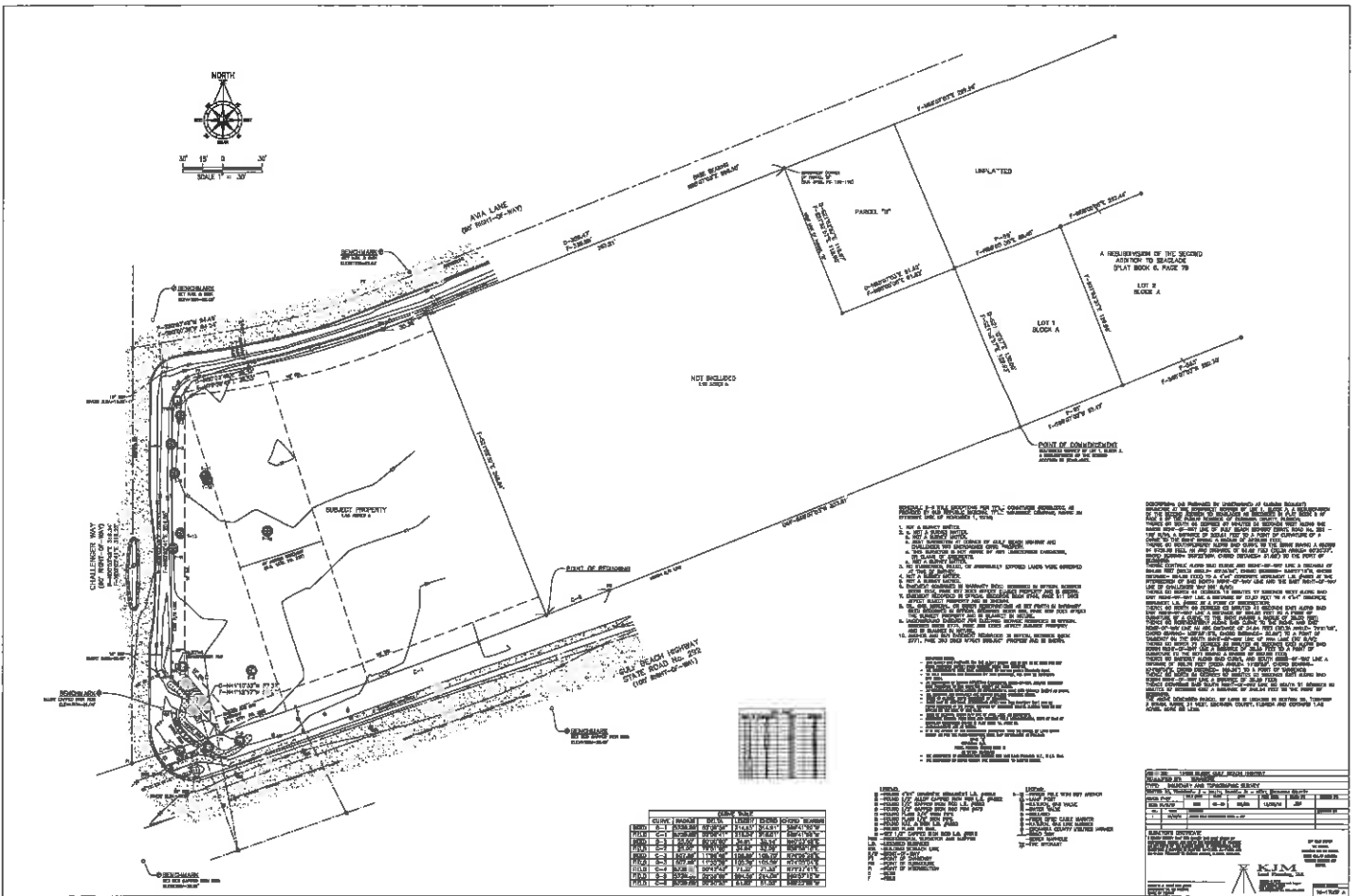
The proposed development of a 9,100-square foot retail store in the center of 3.4 acres (2.15 acres which will remain undisturbed) located on a collector roadway in unincorporated Escambia County will be compatible with the surrounding residential development. The proposed retail store will not result in any land use conflicts with the existing surrounding development. No adverse impacts will be generated such as noise, smoke, exhaust, emissions, dust, adverse lighting, vibrations, or odors that would be detrimental to the existing surrounding uses or would otherwise disturb the quiet enjoyment of adjacent residents. Additionally, the local residents will benefit from the location of this store with daily necessities and other common household items. This location will reduce vehicle trips and miles traveled on the roadways and reduce congestion by providing goods within a walkable or short driving distance to home.

Extensive buffering surrounding the retail store will be retained in the existing natural vegetative state to create a visual barrier from the residential subdivision north of Gulf Beach Highway. Setbacks greatly exceeding the minimum requirements of the Commercial zoning district are incorporated into the plan for development. The proposed retail store is considerably below the intensity allowed for this parcel with a Commercial zoning designation.

At 3.4 acres, the allowable residential density is eighty-five (85) dwelling units. The height limitation for the commercial zoning district is 150 feet and the floor area ratio is 1.0. In comparison to a residential development alternatively allowed on this site, a 150-foot high-rise

multi-family condominium or apartment complex with eighty-five (85) dwelling units would be less compatible due to the bulk and height of the structure. The proposed Dollar General store will not be visually obtrusive to the surrounding neighborhoods, and the traffic generation is similar for both development scenarios. (See Exhibit 8).

The proposed Dollar General retail store is consistent with and furthers the Goals, Objectives, and Policies of the Escambia County Comprehensive Plan and complies with the adopted requirements of the County's Land Development Regulations. The development of this store will not create a condition that will negatively impact the residential uses over time.



SECTION 16, T. 10 N., R. 10 W., S. 10 E., DISTRICT OF COLUMBIA, D.C.

BEING A PART OF THE SURVEY OF THE CHANNING ESTATE, AS SHOWN ON PLAT BOOK 6, PAGE 79, AND BEING A PART OF THE SURVEY OF THE CHANNING ESTATE, AS SHOWN ON PLAT BOOK 6, PAGE 79, AND BEING A PART OF THE SURVEY OF THE CHANNING ESTATE, AS SHOWN ON PLAT BOOK 6, PAGE 79.

1. The area shown on this plan is a part of the Channing Estate, as shown on Plat Book 6, Page 79, and is being surveyed for the purpose of showing the location of the easement shown thereon.
2. The area shown on this plan is a part of the Channing Estate, as shown on Plat Book 6, Page 79, and is being surveyed for the purpose of showing the location of the easement shown thereon.
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SECTION 16, T. 10 N., R. 10 W., S. 10 E., DISTRICT OF COLUMBIA, D.C.

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The area shown on this plan is a part of the Channing Estate, as shown on Plat Book 6, Page 79, and is being surveyed for the purpose of showing the location of the easement shown thereon.

LINE	BEARING	DISTANCE	MARKER
1	N 89° 15' 00" E	100.00	IRON NAIL
2	S 89° 15' 00" W	100.00	IRON NAIL
3	N 00° 00' 00" E	100.00	IRON NAIL
4	S 00° 00' 00" W	100.00	IRON NAIL
5	N 89° 15' 00" E	100.00	IRON NAIL
6	S 89° 15' 00" W	100.00	IRON NAIL
7	N 00° 00' 00" E	100.00	IRON NAIL
8	S 00° 00' 00" W	100.00	IRON NAIL

LINE	BEARING	DISTANCE	MARKER
1	N 89° 15' 00" E	100.00	IRON NAIL
2	S 89° 15' 00" W	100.00	IRON NAIL
3	N 00° 00' 00" E	100.00	IRON NAIL
4	S 00° 00' 00" W	100.00	IRON NAIL
5	N 89° 15' 00" E	100.00	IRON NAIL
6	S 89° 15' 00" W	100.00	IRON NAIL
7	N 00° 00' 00" E	100.00	IRON NAIL
8	S 00° 00' 00" W	100.00	IRON NAIL

DATE: 10/15/2010

BY: J. M. KIM

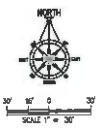
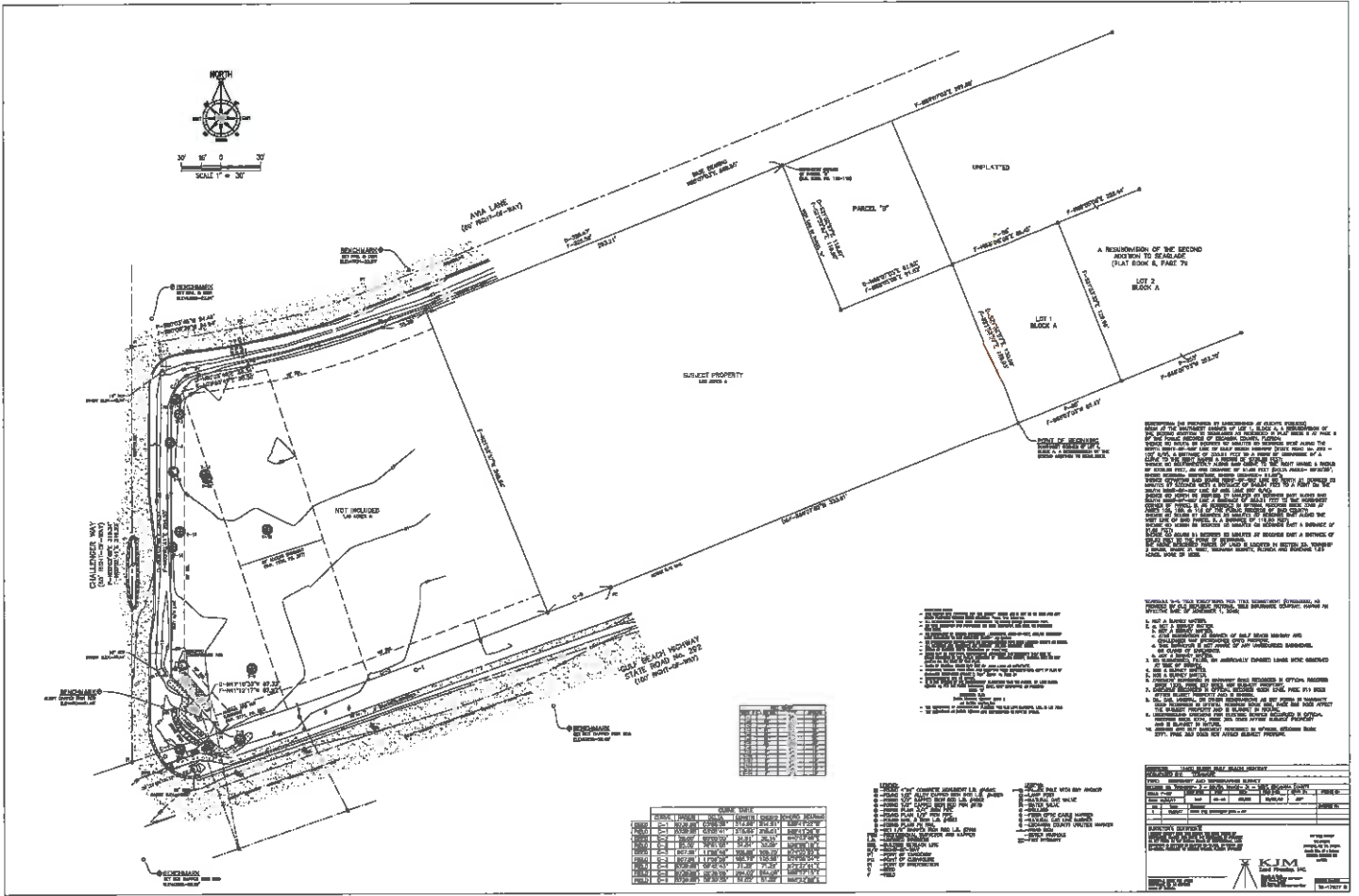
PROJECT: SURVEY OF 1.45-ACRE PARCEL

SCALE: 1" = 20'

PLAT BOOK: 6, PAGE 79

DISTRICT OF COLUMBIA, D.C.

SECTION 16, T. 10 N., R. 10 W., S. 10 E.



THIS SURVEY WAS MADE BY MEASUREMENT OF ANGLES AND DISTANCES...
 A RECONSTRUCTION OF THE SECOND SECTION TO BEADING (PLAT BOOK 4, PAGE 74)
 LOT 2 BLOCK A

- 1. THE SURVEY WAS MADE BY MEASUREMENT OF ANGLES AND DISTANCES...
- 2. THE SURVEY WAS MADE BY MEASUREMENT OF ANGLES AND DISTANCES...
- 3. THE SURVEY WAS MADE BY MEASUREMENT OF ANGLES AND DISTANCES...
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- 9. THE SURVEY WAS MADE BY MEASUREMENT OF ANGLES AND DISTANCES...
- 10. THE SURVEY WAS MADE BY MEASUREMENT OF ANGLES AND DISTANCES...

STATION	DATE	TIME	TEMP	WIND	MOON	BAROMETER	RAIN	WIND DIRECTION	WIND VELOCITY	MOON PHASE	MOON ALTITUDE	MOON DISTANCE	MOON BEARING	MOON DISTANCE	MOON BEARING	MOON DISTANCE	MOON BEARING
1	10/10/10	08:00	65	SE	1/2	30.0	0.0	SE	15	1/2	45	100	135	100	135	100	135
2	10/10/10	09:00	65	SE	1/2	30.0	0.0	SE	15	1/2	45	100	135	100	135	100	135
3	10/10/10	10:00	65	SE	1/2	30.0	0.0	SE	15	1/2	45	100	135	100	135	100	135
4	10/10/10	11:00	65	SE	1/2	30.0	0.0	SE	15	1/2	45	100	135	100	135	100	135
5	10/10/10	12:00	65	SE	1/2	30.0	0.0	SE	15	1/2	45	100	135	100	135	100	135
6	10/10/10	13:00	65	SE	1/2	30.0	0.0	SE	15	1/2	45	100	135	100	135	100	135
7	10/10/10	14:00	65	SE	1/2	30.0	0.0	SE	15	1/2	45	100	135	100	135	100	135
8	10/10/10	15:00	65	SE	1/2	30.0	0.0	SE	15	1/2	45	100	135	100	135	100	135
9	10/10/10	16:00	65	SE	1/2	30.0	0.0	SE	15	1/2	45	100	135	100	135	100	135
10	10/10/10	17:00	65	SE	1/2	30.0	0.0	SE	15	1/2	45	100	135	100	135	100	135

FIELD BOOK

STATION	DATE	TIME	TEMP	WIND	MOON	BAROMETER	RAIN	WIND DIRECTION	WIND VELOCITY	MOON PHASE	MOON ALTITUDE	MOON DISTANCE	MOON BEARING	MOON DISTANCE	MOON BEARING	MOON DISTANCE	MOON BEARING
1	10/10/10	08:00	65	SE	1/2	30.0	0.0	SE	15	1/2	45	100	135	100	135	100	135
2	10/10/10	09:00	65	SE	1/2	30.0	0.0	SE	15	1/2	45	100	135	100	135	100	135
3	10/10/10	10:00	65	SE	1/2	30.0	0.0	SE	15	1/2	45	100	135	100	135	100	135
4	10/10/10	11:00	65	SE	1/2	30.0	0.0	SE	15	1/2	45	100	135	100	135	100	135
5	10/10/10	12:00	65	SE	1/2	30.0	0.0	SE	15	1/2	45	100	135	100	135	100	135
6	10/10/10	13:00	65	SE	1/2	30.0	0.0	SE	15	1/2	45	100	135	100	135	100	135
7	10/10/10	14:00	65	SE	1/2	30.0	0.0	SE	15	1/2	45	100	135	100	135	100	135
8	10/10/10	15:00	65	SE	1/2	30.0	0.0	SE	15	1/2	45	100	135	100	135	100	135
9	10/10/10	16:00	65	SE	1/2	30.0	0.0	SE	15	1/2	45	100	135	100	135	100	135
10	10/10/10	17:00	65	SE	1/2	30.0	0.0	SE	15	1/2	45	100	135	100	135	100	135

REMARKS

1. THE SURVEY WAS MADE BY MEASUREMENT OF ANGLES AND DISTANCES...

2. THE SURVEY WAS MADE BY MEASUREMENT OF ANGLES AND DISTANCES...

3. THE SURVEY WAS MADE BY MEASUREMENT OF ANGLES AND DISTANCES...

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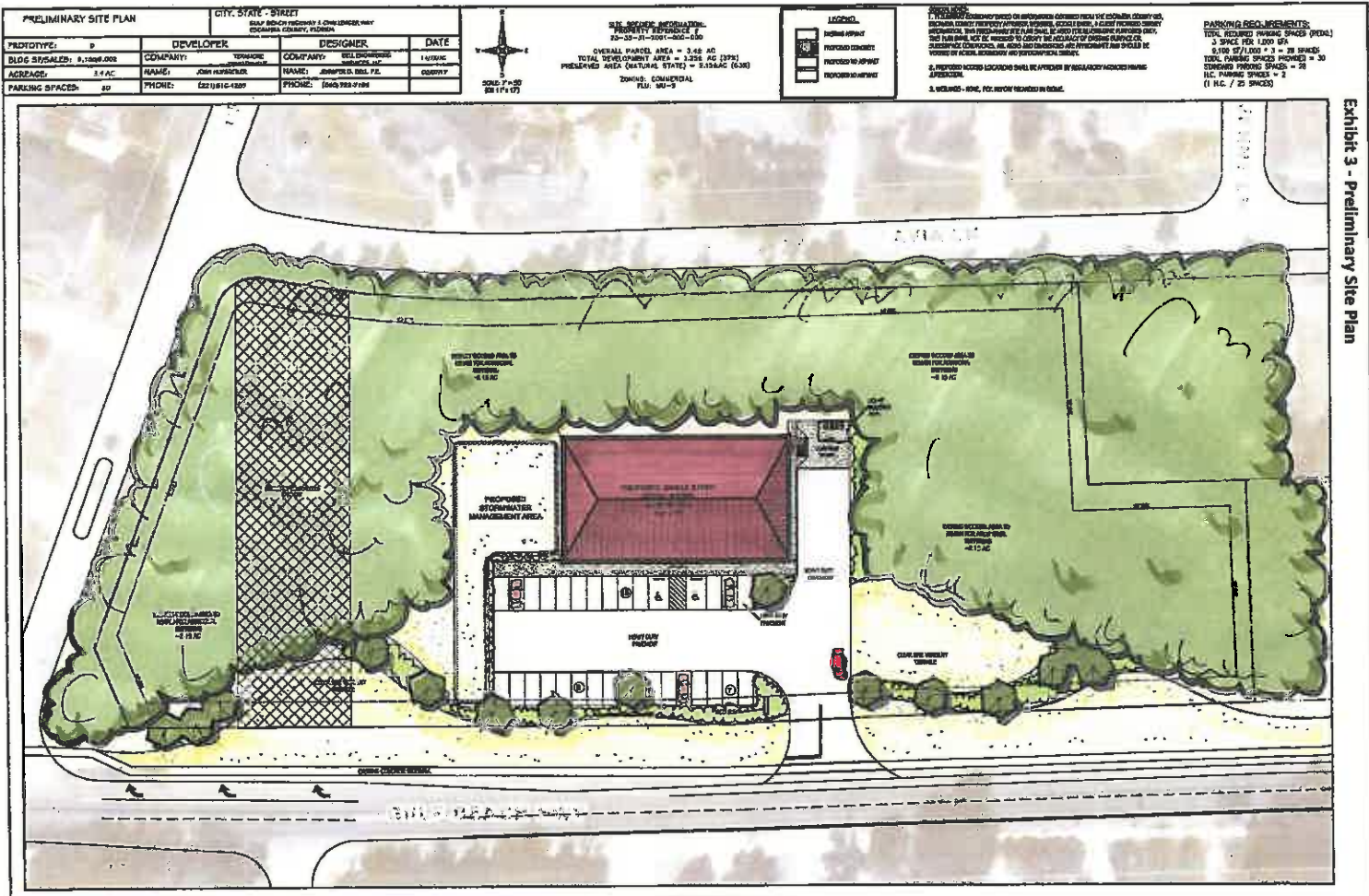


Exhibit 3 - Preliminary Site Plan

EXHIBIT 5 – Example of elevation rendering of a Dollar General Store



EXHIBIT 6 – Example of elevation rendering of a Dollar General Store



EXHIBIT 7 – Example of elevation rendering of a Dollar General Store





Exhibit 8 - Letter from Bonita Player, P.E.

June 22, 2017

Horace L. Jones
Department Director/Supervisor
Escambia County Developmental Services
3363 W Park Place
Pensacola, FL 32501

Dear Mr. Jones:

I have performed a traffic impact analysis of a proposed development located at parcel reference number 23-3S-31-2001-0000-000 in Escambia County at the northeast corner of Gulf Beach Highway and Challenger Way. The analysis focused on a comparison of the maximum allowable residential scenario to the planned commercial scenario for the referenced parcel.

The maximum development intensity for residential use of this site, using the Escambia County Comprehensive Plan and the County's Land Development Code as the guide, is an eighty-five (85) unit high-rise condominium. The planned commercial scenario under review is a proposed 9,100-square foot Dollar General discount store.

According to my analysis, none of the impacted roadway segments will exhibit adverse traffic conditions in the current year at either the planned commercial scenario or the maximum allowable residential scenario.

Sincerely,
Engineering & Planning Resources, PC

A handwritten signature in blue ink that reads "Bonita Player". The signature is written in a cursive, flowing style.

Bonita Player, PE

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA

TERAMORE DEVELOPMENT, LLC,
SHU CHENG SHURETT, and LEO
HUANG,

Petitioners,

vs.

Case No. 17-CA-1778

ESCAMBIA COUNTY, FLORIDA,

Respondent.

_____ /

ORDER GRANTING PETITION FOR WRIT OF CERTIORARI

This case is before the Court on the Amended Petition for Writ of Certiorari (“Amended Petition”) that the Petitioners filed on January 5, 2018. Respondent Escambia County, Florida (“County”), filed its Response on February 1, 2018. The Petitioners filed their Reply on March 5, 2018. The Court conducted oral argument on May 7, 2018.

FACTUAL BACKGROUND

The subject property is a 3.4-acre vacant parcel that is zoned Commercial (C) with a future land use designation of Mixed-Use Suburban (MU-S). The surrounding areas are zoned Low Density Residential (LDR) and High Density Residential (HDR), and the surrounding land uses are single family residential. The Petitioners proposed to build a 9,100-square foot retail store on the site to, in turn, lease to the Dollar General Corporation.

In mid-2017, the Petitioners requested confirmation of compatibility from the County’s Planning Official with regard to the proposed retail store pursuant to Section 3-2.10(e)(5) of the County’s Land Development Code (LDC), which provides:

All new non-residential uses proposed within the commercial district that are not part of a planned unit development or not identified as exempt by the district shall be on parcels that satisfy at least one of the following location criteria:

* * * *

(5) Documented compatibility. A compatibility analysis prepared by the applicant provides competent substantial evidence of unique circumstances regarding the potential uses of parcel that were not anticipated by the alternative criteria, and the proposed use . . . will be able to achieve long-term compatibility with existing and potential uses. . . .

The Petitioners submitted a compatibility analysis prepared by a certified land use planner in support of the request. In the compatibility analysis, the Petitioners' land use planner analyzed the proposed retail store and factors such as the surrounding uses, building setbacks, building height, building orientation, building mass, open space ratios, buffers, lighting, noise, and hours of operation in evaluating whether the proposed retail store would be "compatible" with the surrounding area. On July 24, 2017, the Planning Official issued a written decision concluding the proposed development, which is surrounded by existing residential uses, did not satisfy the alternative location criteria (1-4), and the Petitioners' written analysis did not provide evidence of "unique circumstances" that were not anticipated by the alternative criteria so as to otherwise conclude that the proposed use would achieve long-term compatibility with the surrounding existing residential uses. The Petitioners timely appealed the Planning Official's compatibility determination to the Board of Adjustment (BOA) pursuant to the County's LDC ("Administrative Appeal"). On October 18, 2017, the BOA conducted a quasi-judicial hearing on the Petitioners' Administrative Appeal. The BOA heard testimony from the Petitioner's expert land use planner, Allara Gutcher, whom they recognized as an expert witness. The BOA also heard testimony from Teramore's corporate representative, the County's Planning Official,

the County's Planning Manager, and several citizens from the surrounding area of the proposed development. At the conclusion of the October 18 hearing, the BOA unanimously voted to deny the Petitioners' Administrative Appeal and to uphold the Planning Official's determination that Teramore's proposed retail store is not "compatible." Thereafter, the Petitioners timely sought certiorari review of the BOA's October 18, 2017 decision in this Court.

LEGAL ANALYSIS

Upon first tier review of a quasi-judicial proceeding, a court must determine whether the Petitioners were accorded procedural due process, whether the essential requirements of the law have been observed, and whether the administrative findings and judgment are supported by competent substantial evidence. Florida Power & Light Co. v. City of Dania, 761 So. 2d 1089, 1092 (Fla. 2000) (citing City of Deerfield Beach v. Vaillant, 419 So. 2d 624, 626 (Fla. 1982)). Such review is not *de novo*. Rather, a circuit court is limited to reviewing the record that was created before the lower tribunal. Florida Power & Light Co. v. City of Dania, 761 So. 2d at 1092.

Petitioners did not contest whether they were accorded procedural due process. However, Petitioners do contest whether the essential requirements of the law have been observed and whether the BOA's decision was supported by competent substantial evidence. They argue that because the essential requirements of law were not observed and competent substantial evidence did not exist to support the BOA's decision, the Court should quash the denial of Petitioners' administrative appeal.

Frankly, the code provision at issue in this case is difficult to comprehend and lacks clarity in how it should be applied in many respects.¹ It never defines what a "compatibility analysis" should contain or who is qualified to prepare such analysis, but yet explicitly states that

¹ The Petitioner has not asserted that the code provision is ambiguous.

such "compatibility analysis" is competent substantial evidence of unique circumstances regarding the potential uses of parcel that were not anticipated by the alternative criteria. It can be argued also that the code provision does not communicate to property owners sufficient notice of what the County expects in a compatibility analysis, other than if you have one, it constitutes competent substantial evidence to support your application, until, like in this case, the County says it does not. Better said in Park of Commerce Associates v. City of Delray Beach, 606 So.2d 633, 635 (Fla. 4th DCA 1992), "(P)roperty owners are entitled to notice of the conditions they must meet in order to improve their property in accord with the existing zoning and other development regulations of the government. Those conditions should be set out in clearly stated regulations. Compliance with those regulations should be capable of objective determination in an administrative proceeding."

The record presented to this Court reveals that the BOA's denial of the Petitioner's Administrative Appeal was not supported by competent substantial evidence. Competent substantial evidence is that which is "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." De Groot v. Sheffield, 95 So. 2d 912, 916 (Fla. 1957). "For the action to be sustained, it must be reasonably based in the evidence presented." Town of Indialantic v. Nance, 400 So. 2d 37, 40 (Fla. 5th DCA 1981). "Surmise, conjecture or speculation have been held not to be substantial evidence." Fla. Rate Conference v. Fla. R.R. and Pub. Utils. Comm'n, 108 So. 2d 601, 607 (Fla. 1959).

The Court finds the BOA's decision to find that Petitioners' proposed retail store is not compatible with existing and potential uses is not supported by competent substantial evidence. The evidence presented at the hearing in support of the County's request that the proposed use be denied can only be characterized as speculative and conclusory. The record reveals that the

Planning Official's determination that the proposed development did not meet the criteria set forth in (e)(5) was not supported by any facts or evidence. The Planning Official did render an opinion that the development was not compatible, but never set forth any specific evidence to support such opinion. The record indicates that the County simply disagreed with the Petitioners' expert without presenting facts that contradicted the opinions set forth in her compatibility analysis. Additionally, the County's witnesses and the BOA itself never considered or applied the code's decree that a compatibility analysis was competent substantial evidence which supported the Petitioner's request. Further, other than its disagreement with the Petitioner's expert that the proposed use would be able to achieve long-term compatibility with existing and potential uses, the County never presented objective facts to support its disagreement. The County's opinion that the proposed development was not compatible and would not achieve long term compatibility was simply a bald conclusion and without more has no evidentiary value. Arkin Const. Co. v. Simpkins, 99 So. 3d 557, 561 (Fla. 1957).

In contrast, the Petitioner brought forth specific evidence in support of its application. The Petitioner's expert, who had put together hundreds of compatibility analyses in her career, prepared a compatibility analysis as contemplated by the code and gave testimony in support of such analysis at the hearing. In such analysis, and in her testimony, she also opined that the Petitioner's proposed use of the property would be able to achieve long-term compatibility with existing and potential uses; such opinion meeting the criteria set forth in (e)(5). As will also be addressed in another portion of this Order, the code language itself demands the BOA to find that the compatibility analysis is competent substantial evidence of unique circumstances regarding the potential uses of parcels that were not anticipated by the alternative criteria (i.e. (e)(1)-(4)). The County never introduced any specific evidence why the Petitioners' compatibility should be

rejected. Rather, the County's evidence was that it simply did not agree with the Petitioners' compatibility analysis. In fact, the County's witness never directly answered the question posed by Petitioners' counsel as to whether the proposed use (a commercial venture in a commercial zone) could coexist with the surrounding residential uses in a stable fashion over time such that no use, activity or condition is unduly negatively impacted. (See App. 076-080).

While the BOA affirmatively stated it based its decision on the expert testimony, and not the citizen testimony, the County argues that part of the competent substantial evidence supporting the BOA's decision did indeed come from the citizen testimony. The Court certainly understands the complaints and fears of these witnesses. However, the testimony of the citizens who spoke against the proposed use cannot constitute competent substantial evidence based upon existing case law.² The First District Court of Appeal has held that lay witnesses' speculation about potential traffic problems, light and noise pollution, and general unfavorable impacts of a proposed land use are not considered competent substantial evidence. Katherine's Bay, LLC v. Fagan, 52 So.3d 19, 30 (Fla. 1st DCA 2010). Similarly any lay witnesses' opinions that a proposed land use will devalue homes in the area are insufficient to support a finding that such devaluation will occur. Further, while there were speakers who identified themselves as real estate agents, their testimony cannot be considered as expert opinions as to whether the proposed use would cause devaluation of property. Such witnesses did not identify themselves as appraisers of real property and did not base their testimony on specific real estate sales and listings, opinions of brokers and other real estate agents, and information as to the general status of the local economy. See Trustees of Central States Southeast and Southwest Areas, Pension Fund v. Indico Corp., 401 So.2d 904, 906 (Fla. 1st DCA 1981). Based on the evidence the BOA

² The Florida Supreme Court has stated that the decisions of the district courts of appeal represent the law of Florida unless and until they are overruled by the Florida Supreme Court. Stanfill v. State, 384 So.2d 141, 143 (Fla. 1980).

could consider, the Court finds there was no competent substantial evidence justifying the BOA's decision to deny the Petitioners' administrative appeal.

The Court also finds that the BOA departed from the essential requirements of law by ignoring the code's language that a petitioner's compatibility analysis provides competent substantial evidence of unique circumstances regarding the potential uses of a parcel that were not anticipated by the alternative criteria. It is not for this Court to add or subtract words or requirements from a code provision. Anderson Columbia v. Brewer, 994 So.2d 419, 421 (Fla. 1st DCA 2008). Nothing in the plain language of Section 3-2.10(e)(5) of the County's LDC authorizes the County Staff or the BOA to simply disregard the Petitioner's compatibility analysis. The Code sets forth the established principle that a compatibility analysis must be viewed as competent substantial evidence. The County never considered that proposition when rendering its opinion, and neither did the BOA when it rejected the Petitioners' appeal. This is not a mere simple legal error, but rather a failure to apply the plain language of the Code. To be clear, this Court is not ruling at this time that a compatibility analysis automatically entitles the Petitioner the relief it seeks. However, the Court believes the Code mandated the BOA to apply the standards set forth in the Code when it rendered its decision, and by failing to do so the BOA departed from the essential requirements of the law that applied to this case.

For the reasons set forth above, the Court finds that the BOA's decision denying the Petitioners' Administrative Appeal was not supported by competent substantial evidence, and that the BOA departed from the essential requirements of the law. Accordingly, it is hereby ORDERED and ADJUDGED that:

1. The Petitioners' Amended Petition for Writ of Certiorari is GRANTED;

2. The BOA's decision denying the Petitioners' Administrative Appeal is QUASHED; and

3. The Court reserves jurisdiction to award costs, if appropriate, upon proper motion by the Petitioners as the prevailing party in this appellate proceeding.

DONE AND ORDERED in Chambers in Escambia County, Florida, this _____ day of _____ 2018.



eSigned by CIRCUIT COURT JUDGE J. SCOTT DUNCAN in 2017 CA 001778
on 08/03/2018 18:47:49 yw76gVXG

SCOTT DUNCAN
CIRCUIT COURT JUDGE

Conformed copies via e-mail to:

David A. Theriaque, Esquire (Counsel for Petitioners)
S. Brent Spain, Esquire (Counsel for Petitioners)
Kristin D. Hual, Esquire (Counsel for Respondent)