

JUSTIFICATION STATEMENT

Type 2 Variance Application

In Connection with Application No. DOA/CA/W-2019-1438

Control No. 1973-0039

Village Shops of Oriole Plaza

McDonald's L/C #009-2659 "Atlantic & Hagen"

Northeast Quadrant of Atlantic Avenue & Hagen Ranch Road

Palm Beach County, Florida

Submittal Date: April 13, 2020

PROJECT SUMMARY:

The subject site is under the jurisdiction of Palm Beach County (PBC), zoned Multiple Use Planned Development (MUPD) and has a future land use designation of Commercial High, with underlying HR-8 (CH/8). The proposed McDonald's fast food restaurant with a drive-thru will be located as a new outparcel in the underutilized parking area within the Villages at Oriole Plaza shopping center ("Plaza"). The overall Plaza consists of 25.46 acres. The Affected Area of this application is the existing parking area and is 0.96 acres. The new 4,455 square foot McDonald's is classified as a Type 1 Restaurant with a drive-thru. The proposed Type 1 restaurant with drive-thru will be located between the existing gas station to the east and Type 2 restaurant to the west, as reflected on exhibit 109. The site abuts Atlantic Avenue, however, there is no direct access to the site from Atlantic Avenue.

During the third review cycle for the Development Order Amendment (DOA/CA/W-2019-1438), the Land Development Reviewer made a comment that "the ultimate right-of-way does not exist at that location. Please confirm with FDOT that no dedication will be required from your side for future widening." The Applicant contacted Jerry Dean at FDOT and he confirmed that "the ultimate ROW identified in the PB [Palm Beach] Thoroughfare Map is 126' and with the canal on the south side, the 6-foot requirement to satisfy the ultimate ROW requirement needs to come from the North side of SR 806 [Atlantic Avenue]." It was agreed that the 6' could be dedicated to FDOT as a perpetual easement for public roadway purposes.

To comply with this requirement, the site was redesigned and the landscape buffer along the frontage of the McDonald's parcel was increased by 6'. With this change in the front of the site, the building and site elements were pushed towards the back. In order to not create a conflict with the existing shopping center drive aisle along the northern parcel boundary, the proposed landscape median between the proposed drive-thru lanes and the existing drive aisle was decreased at its narrowest point to 5'. In order to mitigate the reduced width, the divider median is proposed to be wider in areas where it is possible to provide additional landscape material within the larger portions of the divider median:



In order to move forward with the site plan approval process, McDonald’s is seeking approval of this Type II Variance Application to obtain relief from the following code requirement:

CODE SECTION	REQUIREMENT	PROPOSED	VARIANCE
Table 7.C.4.A. Landscape Island and Divider Median Planting and Dimensional Requirements	10’ Divider Median	5’ Divider Median Width	Allow for a reduction in the required divider median width by 5’

- a. **Special conditions and circumstances exist that are peculiar to the parcel of land, building, or structure, that are not applicable to other parcels of land, structures, or buildings in the same district;**

The site has been redesigned to accommodate the FDOT 6’ perpetual easement, while preserving a layout that will allow the McDonald’s to operate efficiently and safely. The subject site is within an existing shopping center. Additional property within the shopping center is not available in order to expand the McDonald’s developable area.

- b. **Special circumstances and conditions do not result from the actions of the Applicant;**

FDOT is requiring the Applicant to provide a 6’ perpetual easement along its frontage for future right-of-way improvements, which is not the result of the Applicant’s actions. Typically, achieving the ultimate right-of-way is shared equally on both sides of the road. However, in this case, Lake Worth Drainage District (LWDD) is the owner of the property on the south side of Atlantic Avenue, and with the canal on the south side, the 6’ requirement to satisfy the ultimate right-of-way requirement is born solely from the Affected Area.

- c. **Granting the variance shall not confer upon the Applicant any special privilege denied by the Plan and this Code to other parcels of land, buildings, or structures, in the same district;**

The Applicant has made a good faith effort to accommodate all of the other site development requirements and provide a safe buffer between the outside drive-thru and the existing shopping center drive aisle. While the narrowest point of the divider median is 5’, the total square footage of the divider median exceeds what is required by code. If the divider median was a 10’ x 82’ rectangle, than 820 SF of landscape area would be provided. The proposed divider median provides 872 SF of landscape area. Therefore, the requested variance is compatible with the intent of the Zoning Regulations.

- d. **Literal interpretation and enforcement of the terms and provisions of this Code would deprive the Applicant of rights commonly enjoyed by other parcels of land in the same district, and would work an unnecessary and undue hardship;**

Literal interpretation of the Code will prevent the proposed development from coming to fruition. Reasonable use of the property has been established and meets the intent of the Code. Approval of the Type II Variance will enable the project to move forward. The request for the Type II Variance is created, not by the Applicant, but rather by the restrictions caused by the canal on the south side of Atlantic Avenue. The existence of this LWDD canal is requiring the Affected Area to bear all

responsibility for the ultimate right-of-way. The proposed McDonald's will benefit the citizens of Delray Beach, as well as provide a suitable use of the under-utilized parking area of the shopping center. Denial of the requested variance would cause an undue hardship and, in turn, would require the Applicant to withdraw the intent to develop the subject site with a McDonald's restaurant and drive-thru.

e. Granting the variance is the minimum variance that will make possible the reasonable use of the parcel of land, building or structure;

The 5' reduction of the divider median is the minimum necessary to develop the site, within the confines of established shopping center, while at the same time complying with other aspects of the Zoning Regulations. In order to develop the subject site, some flexibility in relation to the Zoning Regulations will be required. The site layout does not allow for alternative design options that would eliminate the necessity for the variance. The requested variance will not have a negative impact on the surrounding commercial uses and complies with the character of the area.

f. Granting the variance will be consistent with the purposes, goals, objectives and policies of the Plan and this Code; and,

The requested variance is consistent with the purposes, goals, objectives and policies of the Plan and the Code. The subject site is zoned Multiple Use Planned Development (MUPD) and has a future land use designation of Commercial High, with underlying HR-8 (CH/8). The proposed McDonald's is consistent with the Comprehensive Plan's directive, which encourages commercial development. The proposed site layout complies with all applicable standards and provisions of the ULDC for use, layout, function, and general development characteristics.

g. Granting the variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

Approval of the Type II Variance will allow the McDonald's development to be harmonious within the shopping center. The divider median reduction will not conflict with the existing shopping center drive aisle, while still providing a buffer from the proposed drive-thru lane. The proposed site layout meets the general intent of the Code and will facilitate a more efficient use of the subject site that will not be detrimental to the public welfare and negatively impact the surrounding properties.