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PLANNING & ZONING BOARD AGENDA

To: Eric Weiss – Chairman
Will Hawthorne – Vice Chairman
Mark DeFuso
Heather Gantt
H. Gerald Jowers
David Kassander
Mark Maciel

Copy to: Mike Bollhoefer
Dan Langley
Kurt Ardaman
Ed Williams
Stephen Pash
Kelly Carson
Nadine Avola

RE: Agenda – **February 2, 2015 at 6:30 PM**
Commission Chambers, City Hall
300 West Plant Street, Winter Garden

-
1. **CALL TO ORDER**
 2. **ROLL CALL AND DETERMINATION OF QUORUM**
 3. **APPROVAL OF MINUTES FROM THE JANUARY 5, 2015 MEETING**

ANNEXATION / FUTURE LAND USE MAP AMENDMENT / REZONING (PUBLIC HEARING)

4. 30 W Smith Street (The Gregory House) – Investor Nation, LLC (**Rezoning and FLU**)
Parcel ID #23-22-27-8096-00-021

SPECIAL EXCEPTION PERMIT (PUBLIC HEARING)

5. 404 Lakeview Road (Golden Pond) – Medpro Contractors LLC
Parcel ID #22-22-27-0000-00-010

VARIANCE (PUBLIC HEARING)

6. 522 Palm Drive – Jeffrey Mikolaitis
Parcel ID #14-22-27-9392-01-210

CITY CODE OF ORDINANCES (PUBLIC HEARING)

7. Ordinance 15-21 (Package Sale Vendor)

ADJOURN to the next regular Planning and Zoning Board meeting on Monday, **March 2, 2015** at **6:30 p.m.** in City Hall Commission Chambers, 300 W. Plant Street, 1st floor.



**A REGULAR MEETING MINUTES
PLANNING AND ZONING BOARD
JANUARY 5, 2015**

1. CALL TO ORDER / PLEDGE OF ALLEGIANCE / INVOCATION

Chairman Eric Weiss called the meeting of the City of Winter Garden Planning and Zoning Board to order at 6:32 p.m. in the City Hall Commission Chambers. A moment of silence was followed by the Pledge of Allegiance.

2. ROLL CALL AND DETERMINATION OF QUORUM

The roll was called and a quorum was declared present.

MEMBERS PRESENT:

Chairman Eric Weiss, Vice-Chairman Will Hawthorne, and Board Members: Mark DeFuso, Heather Gantt, David Kassander, and Mark Maciel

MEMBERS ABSENT:

Gerald Jowers (excused)

STAFF PRESENT:

City Attorney Kurt Ardaman, Community Development Director Ed Williams, Community Development Manager Steve Pash, Planner II Kelly Carson, Planner I Nadine Avola, and Customer Service Rep. Kathleen Rathel

3. APPROVAL OF MINUTES

Motion by David Kassander to approve the regular meeting minutes of December 1, 2014 and seconded by Mark DeFuso. Motion carried unanimously 6 - 0.

PRESENTATION

City Attorney Kurt Ardaman made a presentation on the requirements that apply to appointed Public Officials. Mr. Ardaman discussed the Sunshine Law and other Board Member responsibilities to the new and existing Board Members. The presentation lasted approximately 30 minutes. (*Attached Exhibit 'A'*).

ANNEXATION / FUTURE LAND USE MAP AMENDMENT / REZONING (PUBLIC HEARING)

4. 933 Carter Road – Duston Properties II, LLC (ANNEXATION/FLU/ZONING)

Community Development Manager Pash presented a voluntary request for Annexation, Zoning, and Future Land Use designation for the property located at 933 Carter Road. The subject property makes up a 0.907 +/- acre enclave located on the east side of Carter Road, south of East Story Road and north of West Colonial Drive. The applicant has requested Annexation into the City, initial Zoning of I-2, and Amendment to the Future Land Use Map

of the City's Comprehensive Plan to designate the property as Multi Office Industrial. Staff recommends approval of Ordinances 15-13, 15-14 and 15-15.

Motion by Will Hawthorne to recommend approval of Ordinances 15-13, 15-14 and 15-15 [933 Carter Road] with Staff Recommendations (as provided in the agenda packet) and seconded by Heather Gantt. Motion carried unanimously 6 - 0.

5. 120 E Maple Street – Jude Meus (ZONING)

Community Development Manager Pash presented a request for Rezoning for the property located at 120 E Maple Street. The subject property consists of a 0.16 +/- acre lot located at the southwest corner of East Maple Street and Charles Street. Staff discovered a scrivener's error while reviewing plans for this property and we are processing this rezoning from R-2 to C-3 to make the zoning consistent with the existing FLU designation and use of the property. Staff recommends approval of Ordinance 15-17 subject to the conditions listed in the Staff Report.

Motion by Mark DeFuso to recommend approval of Ordinance 15-17 [120 E Maple Street] with Staff Recommendations (as provided in the agenda packet) and seconded by David Kassander. Motion carried unanimously 6 - 0.

6. 360 W Plant Street – Blue House Development, LLC (ZONING)

Community Development Manager Pash presented a request for Rezoning for the property located at 360 W Plant Street. The subject property consists of a 0.49 +/- acre lot located just west of City Hall. The property was recently purchased by a developer with plans to demolish the existing house and construct an 18,000 square foot retail and office building. The lot is located in the Historic District and an application has been submitted to the Architectural Review and Historic Preservation Board (ARHPB) requesting the demolition and approval of the new construction. The proposed rezoning from R-NC to C-1 and the proposed development is consistent with the surrounding area. Staff recommends approval of Ordinance 15-18.

Board Member Weiss asked if it was normal for Traditional Downtown to get approval from the ARHPB first. Mr. Pash replied that it was not necessary for rezoning but it would be required before the project goes through Site Plan review.

Motion by David Kassander to recommend approval of Ordinance 15-18 for 360 W Plant Street with Staff Recommendations (as provided in the agenda packet) and seconded by Mark Maciel. Motion carried unanimously 6 - 0.

PRELIMINARY PLAT (PUBLIC HEARING)

7. Lake Brim Drive – Oakland Park Phase 4

Planner II Carson presented a request for a Preliminary Plat Oakland Park Phase 4 which consists of 158 single-family lots on 66.1 +/- acres. This Phase will also include development of several recreational areas. The proposed Preliminary Plat is consistent with the City's Comprehensive Plan, the City of Winter Garden Code of Ordinances, and the Planned Unit Development Zoning. Staff recommends approval subject to the conditions listed in the Staff Report.

John Classe with Crescent Communities was present to answer questions. A discussion ensued regarding roadwork in other phases as well as connection to Tildenville School Road and the western boundary being located at the city limit of the town of Oakland.

Motion by David Kassander to recommend approval of the Preliminary Plat for Lake Brim Road with Staff Recommendations (as provided in the agenda packet) and seconded by Will Hawthorne. Motion carried unanimously 6 - 0.

8. 17001 Marsh Road – Waterside on Johns Lake Phase 2

Planner II Carson presented a request for a Preliminary Plat for Waterside on Johns Lake Phase 2 which consists of 289 single-family units and 17 live/work units on 105.23 +/- acres. The subject property is located on the north and south sides of Marsh Road directly to the west of Waterside on Johns Lake Phase 1. This phase will be constructed in three sub-phases: Phase 2-A will consist of 103 single-family units, Phase 2-B will consist of 52 single-family units, and Phase 2-C will consist of 134 single-family units along with the 17 live/work units. The project will also include construction of a round-a-bout on Marsh Road and improvements on N Williams Road. The proposed Preliminary Plat is consistent with the City's Comprehensive Plan, the City of Winter Garden Code of Ordinances, and the Urban Village Planned Unit Development Zoning. Staff recommends approval subject to the conditions listed in the Staff Report and the DRC memo.

Board Member Weiss asked about setbacks from Lake Avalon and other sensitive environmental features adjacent to the subject property. Ms. Carson replied there is a significant Karst feature that is being avoided with large setbacks.

Motion by Heather Gantt to recommend approval of the Preliminary Plat for 17001 Marsh Road with Staff Recommendations (as provided in the agenda packet) and seconded by Mark Maciel. Motion carried unanimously 6 - 0.

9. 562 Beard Road – Beard Road Subdivision

Community Development Manager Pash presented a request for a Preliminary Plat for the Beard Road Subdivision which consists of 77 single-family lots. The proposed Preliminary Plat is consistent with the City's Comprehensive Plan, the City of Winter Garden Code of Ordinances, and the Planned Unit Development Zoning. Staff recommends approval subject to the conditions listed in the Staff Report.

Board Member Weiss asked about Orange County Public Schools in the past wanting the Planning & Zoning Board to deny large developments as no new schools were being built. Mr. Pash stated that this particular subdivision had been given approval by Orange County Public Schools as there is currently enough capacity. A discussion ensued regarding the approval process from the School System.

Motion by Mark Maciel to recommend approval of the Preliminary Plat for 562 Beard Road with Staff Recommendations (as provided in the agenda packet) and seconded by Mark DeFuso. Motion carried unanimously 6 - 0.

SPECIAL EXCEPTION (PUBLIC HEARING)

10. 16100 Marsh Road – Corner Market Orlando, Inc.

Community Development Manager Pash presented a request for a Special Exception to allow for the development of a convenience store at 16100 Marsh Road, Suite 203. The property is

generally located at the southwest corner of Marsh Road and Avalon Road. The property is zoned PCD and the Ordinance only allows convenience stores through a Special Exception. The store is proposed to be 1400 square foot and sell general household items – no lottery tickets, alcohol, or tobacco products. Staff recommends approval subject to the conditions listed in the Staff Report.

It was clarified that there would be no fuel sales and there was sufficient parking.

Motion by Mark DeFuso to recommend approval of the Special Exception for 16100 Marsh Road with Staff Recommendations (as provided in the agenda packet) and seconded by Will Hawthorne. Motion carried unanimously 6 - 0.

VARIANCE

11. 224 S Boyd Street – Tory Parish

Planner II Carson presented a request for a Variance for the property located at 224 S Boyd Street. The property is .2 +/- acre with a zoning of R-2. The applicant is requesting permission to construct a new two-story single-family residence and double front porch with a 22' front yard setback in lieu of the minimum required 30' front yard setback in order to avoid construction within the drip line of an existing mature live oak tree. Staff recommends approval of the Variance.

A discussion ensued regarding the proposed location of the new construction in relation to the tree. It was also verified that the porch only would encroach into the front yard setback.

Tory Parish of 12524 Aldershot Lane, Windermere FL was present to answer questions and clarified that the only reason for the variance was to save the existing mature live oak tree.

Motion by David Kassander to recommend approval of the Variance for 224 S Boyd Street with Staff Recommendations (as provided in the agenda packet) and seconded by Eric Weiss. Motion carried unanimously 6 - 0.

12. ADJOURNMENT

There being no further business, the meeting was adjourned at 7:33 pm.

ATTEST:

APPROVED:

Customer Service Rep. Kathleen Rathel

Chairman Eric Weiss

City of Winter Garden Planning and Zoning Board Workshop

January 5, 2015
Presented by Fishback Dominick

Topics

- Powers and Duties
- Quasi-judicial decisions
- Ex-parte communications
- Citation of legal authority upon denial
- Decision standards for approvals
- Sunshine Law
- Voting conflicts

Planning and Zoning Board

- Consist of seven members appointed by the City Commission.
- Absence from three (3) regular meetings of the board within a one year period shall operate to vacate the seat of a member, unless the absences are excused by the board.
- Four members of the board present at a meeting constitutes a quorum for transacting business.
- The board elects its chairperson for terms of one year.

Powers and Duties

- Recommendations to City Commission
 - Comprehensive Plan Amendments
 - Rezoning
 - Subdivisions – preliminary plats & lot splits
- Grant Special Exceptions
- Grant Variances
- Serve as City's Land Planning Agency

Quasi-judicial decisions

- A quasi-judicial action applies an existing rule or policy to a small number of people or a particular piece of property.
- Most actions taken by the board are quasi-judicial in nature, including:
 - Most rezonings
 - Variances
 - Special Exceptions
 - Preliminary Plats and Plats

Quasi-judicial proceedings

- In a quasi-judicial proceeding, certain elements of due process must be afforded the applicants and participants, such as:
 - Reasonable notice of a hearing
 - Right to be heard and submit evidence at the hearing
 - Recommendations and decisions of board must be based on competent substantial evidence in the record.
- Due process must be afforded to all participants. Conduct of proceedings must be in accordance with established rules and principles such that interested parties may meaningfully participate in the process
- Refrain from taking a position for or against an application that involves a quasi-judicial decision until after hearing all the evidence presented at the public hearing. Avoid making statements in advance of Board deliberations that would subject you or the Board to scrutiny for having your mind made up or being prejudicially biased for or against an application and/or interested party/person.

Competent Substantial Evidence

- Substantial evidence has been described as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred.
- For the "substantial" evidence to also constitute "competent" evidence, the evidence relied upon should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support for the conclusion reached.
- Some of the items that can be relied upon as competent substantial evidence are:
 - City staff reports and testimony
 - Fact based applicant and citizen testimony
 - Comprehensive plan and zoning maps and ordinances
 - Expert testimony and reports.

Ex parte Communications

- Communications with persons or parties to quasi-judicial proceedings outside of the public hearing, may constitute a presumptive prejudice of the other party's due process rights and be a basis for challenging the Board's decision.
- Parties to a quasi-judicial proceeding include the applicant, persons speaking for or against the application, and city staff.
- Site visits and independent investigations for quasi-judicial matters are discouraged. Although section 286.0115, Florida Statutes, allows such investigations and site visits and the receipt of opinions regarding quasi-judicial actions, logistical and due process issues that may arise are good reason to avoid making such independent inquiries. Again, the best course of action to avoid scrutiny and potential challenges is to avoid making your own site visits, inspections, or receipt of expert opinions, and to utilize information made available at the various hearings on the particular issue. If, however, a site visit, inspection, or receipt of expert opinions does occur, then disclosure should be made early in the hearing and made part of the record before final action on the matter in order to give those with contrary positions or evidence an opportunity to respond to such.
- Pursuant to section 286.0115(1), Florida Statutes and City Ordinance, if ex parte communications are sent or received by a Board member, it is necessary for the member to disclose during the public hearing and before final action the subject of the ex parte communications and the identity of the person, group, or entity with whom the communications took place.

Decision Based on Criteria

- Quasi-judicial decisions should be based on the applicable criteria for the approval or matter being sought.
- For example, each type of development application has a set of criteria set forth in the City's Code. The application must meet the applicable criteria to be approved.
- The Board's duty is to determine whether based on competent, substantial evidence in the record made at the hearing, the application meets or fails to meet the criteria. If the criteria is met, the application is to be approved.

Special Exception Criteria

Sec. 118-97 through 118-102

- Any special exception use shall be permitted as specified in individual zoning district regulations, when such use is compatible to surrounding uses, will not create traffic hazards or parking problems, does not deviate from the terms of this chapter.
- All special exceptions shall be subject to site plan review by the Board. This procedure requires submission of a development plan which sets forth specific land use, circulation and access, building arrangement and overall site layout.
- The Board shall especially consider the effect of the special exception use on surrounding uses in determining whether a special exception use shall be approved, modified or disapproved.
- The Board may require conditions such as performance standards, screening or landscaping as well as time limitations or other similar requirements.

Variance Criteria

Sec. 118-126 through 118-135

- A variance may be granted from land development regulations if the Board concludes that:
 - literal enforcement of the provisions of land development regulations would result in either practical difficulties (for setback and parking provisions); or
 - unnecessary hardships (for all other land development regulations) for the property at issue.
- "Practical difficulty" means use of all or a portion of the property at issue cannot occur with reasonable physical accommodation that is economically reasonable.
- "Unnecessary hardship" means a practical difficulty which exists due to an unintended effect of the land development regulation.

Variance Criteria

Sec. 118-126 through 118-135

- In order for a variance to be granted, the Board must also find that, by granting the variance, the remaining regulations will protect the public safety and welfare of the city. The Board may reach these conclusions if it finds that:
 - (1) Granting the variance will not cause or allow interference with the reasonable enjoyment of adjacent or nearby property owners or negatively impact the standard of living of the citizens of the city;
 - (2) The variance will allow a reasonable use of the property, which use is not out of character with other properties in the same zoning category;
 - (3) In the context presented, strict compliance with the land development regulation will not further any legitimate city objective or the benefits that would be achieved under the other variance criteria by the granting of the variance outweigh the benefits under this criteria if the variance were denied;
 - (4) The granting of the variance is consistent with the city's comprehensive plan; and
 - (5) The variance requested is the minimum variance that will make reasonable use of the land, building, or structure or the benefits that would be achieved under the other variance criteria by the granting of the variance outweigh the benefits under this criteria if the variance were denied.

Subdivisions – Preliminary Plats & Lot Splits Chapter 110, Winter Garden Code

- Lot Splits and Preliminary Plats are reviewed to determine if they meet technical code requirements.
- If code requirements are met, Board shall recommend approval of the pending application for lot split or preliminary plat.
- Issues of compatibility with surrounding uses are not relevant to subdivision approval.

Rezoning

- The Board may recommend approval of a rezoning to the City Commission if after competent, substantial evidence has been presented that allows the Board to make the following findings:
- (1) The request is consistent with the comprehensive plan and the future land use map;
- (2) The proposed rezoning will not substantially devalue or prevent reasonable use and enjoyment of the adjacent properties;
- (3) Adequate facilities are available or a development agreement has been established that will provide these improvements in a reasonable time frame;
- (4) The proposed rezoning will not allow a type or intensity of development that is premature or presently out of character in relationship to the surrounding area;
- (5) The rezoning will not interfere with an adjacent property owner's reasonable expectation of use or enjoyment; and
- (6) There is available adequate streets and thoroughfares to support traffic to be generated by development of the property to be rezoned.

Denial of Development Permits

- Section 166.033, Florida Statutes states that when a municipality denies an application for a development permit, the municipality shall give written notice to the applicant and the notice must include a citation to authority for denial of the permit.
- If the Board denies a development permit application, written notice of the denial must be given to the applicant and must contain the legal basis for such denial.
- Therefore, in order to assist the City staff in their preparation of the required notice, the Board member making the motion for denial of a development permit application should announce all of the code provisions/criterion with which the application does not comply.

Sunshine Law

Section 286.011, Florida Statutes

- Planning & Zoning Board members are subject to the Government in the Sunshine Law.
- The law has been applied to any gathering of two or more members of the same board to discuss some matter which will foreseeably come before that board for action. There is no requirement for a quorum to be present for a meeting to be subject to Sunshine Law.
- There are three basis requirements of Sec. 286.011, Fla. Stat.:
 - Meetings of Board must be open to the public;
 - Reasonable notice of such meetings must be given; and
 - Minutes of the meetings must be taken.

Sunshine Law

- Correspondence between Members of the same board to discuss with, solicit opinions and comments from, or inform other Members of a subject which will be discussed at a public hearing is a violation of the Sunshine Law.
- Meeting with another Board member includes communications by:
 - In person meetings
 - E-mail, internet blogs, facsimiles, mail, passing notes/letters
 - Telephone
 - Use of non-board member liaisons between members

Sunshine Law

Penalties for Violations

- Any Member who *knowingly* violates the Sunshine Law is guilty of a misdemeanor of the second degree, which is punishable by imprisonment up to 60 days and/or a fine of \$500.00.
- Suspension upon indictment and removal from office upon conviction.
- Non-criminal penalties for violations are punishable by a fine up to \$500.00 and reasonable attorney's fees assessed against the violating member.
- The action taken in violation of the Sunshine Law may be void.

Voting Conflicts

- Section 286.012, Florida Statutes, provides that no Member of the Board who is present at any Board meeting at which a official decision, ruling, or other official act is to be taken or adopted may abstain from voting, except when, with respect to any such Member, there is, or appears to be, a possible conflict of interest prescribed in Chapter 112, Florida Statutes

Voting Conflicts

Chapter 112, Florida Statutes

- No Board member shall vote upon any matter which:
 - would inure to the member's special private gain or loss;
 - the member knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained;
 - He or she knows would inure to the special private gain or loss or a relative or business associate of the member.

Voting Conflicts

Chapter 112, Florida Statutes

- A Member with a voting conflict shall:
 - Abstain from voting on the conflicting matter.
 - Prior to the vote being taken, publicly state to the assembly the nature of the Member's interest in the matter from which he or she is abstaining from voting.
 - Within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person recording the Board minutes.

END

DRAFT

THE CITY OF WINTER GARDEN
PLANNING AND ZONING BOARD AGENDA ITEM

ITEM # 4 (Public Hearing)

DATE: January 30, 2015 **MEETING DATE:** February 2, 2015

SUBJECT: 30 W Smith Street (REZONING & FLU)
PROJECT NAME 30 W Smith Street Rezoning (0.26 +/- ACRES)
PARCEL ID# 23-22-27-8096-00-021

ISSUE: The applicant is requesting that the property located at 30 W Smith Street be rezoned from R-2 to R-NC and the Future Land Use designation be changed from Low Density Residential to Residential-Neighborhood Commercial.

SUPPLEMENTAL MATERIAL/ANALYSIS:

OWNER/APPLICANT: Investor Nation, LLC

CURRENT ZONING: R-2 Residential District

PROPOSED ZONING: R-NC Residential-Neighborhood Commercial District

CURRENT FLU: LR Low Density Residential

PROPOSED FLU: NC Residential-Neighborhood Commercial

SUMMARY:

The subject property consists of a 0.26 ± acre lot located at 30 W Smith Street at the southwest corner of South Boyd street and West Smith Street. The R-2 zoned property currently contains two residential housing units. The applicant is now requesting to rezone the property to R-NC Residential-Neighborhood Commercial District and change the Future Land Use designation from Low Density Residential to Residential-Neighborhood Commercial, which is consistent with the character of the surrounding area. (See attached Staff Report).

STAFF RECOMMENDATION(S):

Staff recommends approval of Ordinances 15-19 & 15-20 subject to the conditions listed in the Staff Report (see attached).

NEXT STEP(S):

A public hearing for the first readings of the ordinances is scheduled for the City Commission on Thursday, February 12, 2015.

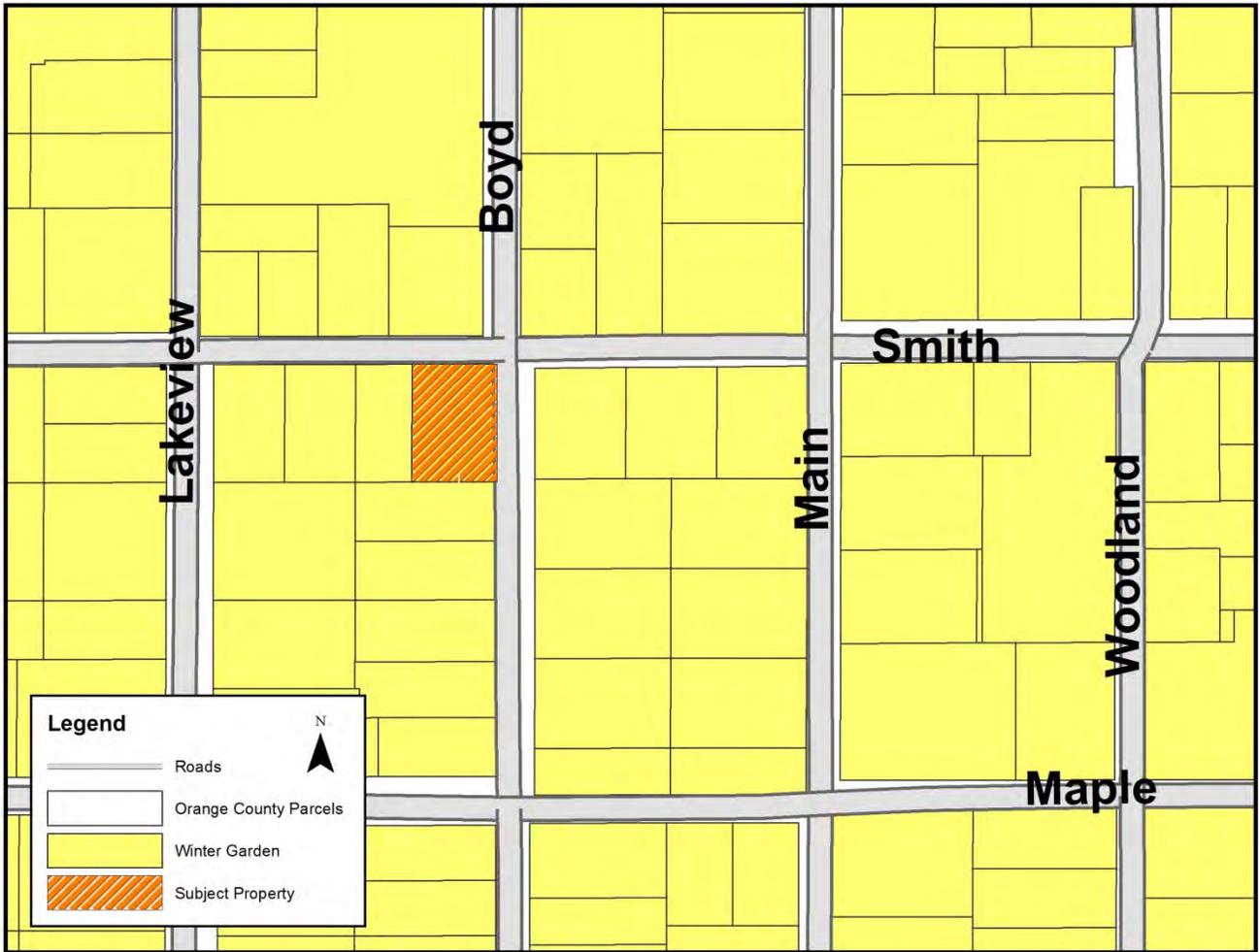
ATTACHMENT(S):

Location Map
Staff Report dated 1-29-2015
Ordinances 15-19 & 15-20

LOCATION MAP

30 W Smith Street

REZONING & FLU AMENDMENT



CITY OF WINTER GARDEN

PLANNING & ZONING DIVISION

300 West Plant Street - Winter Garden, Florida 34787-3011 • (407) 656-4111

STAFF REPORT

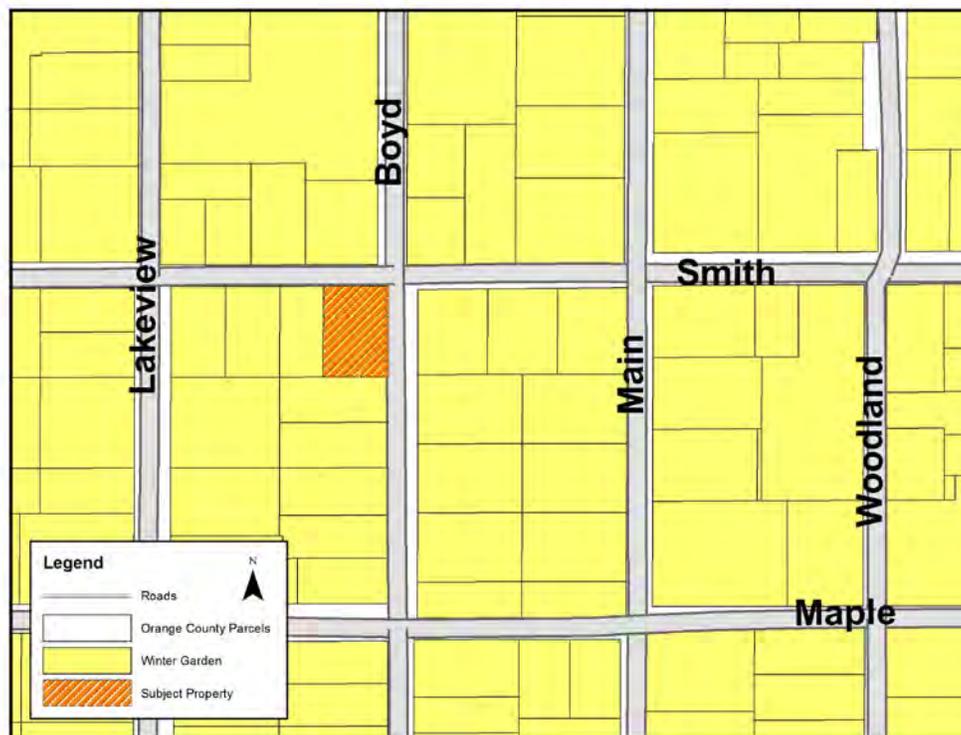
TO: PLANNING AND ZONING BOARD
PREPARED BY: KELLY CARSON, PLANNER II
DATE: JANUARY 29, 2015
SUBJECT: REZONING (R-2 to R-NC)
FLU AMENDMENT (LR to NC)
30 W SMITH STREET (0.26 +/- ACRES)
PARCEL ID #: 23-22-27-8096-00-021

APPLICANT: Investor Nation, LLC

INTRODUCTION

The purpose of this report is to evaluate the proposed project for compliance with the City of Winter Garden Code of Ordinances and Comprehensive Plan.

The subject property is located at 30 W Smith Street and is approximately 0.26 ± acres. The map below depicts the subject property within the City's jurisdictional limits:



The property is located within the City of Winter Garden jurisdictional limits, is zoned R-2 Residential District, and has a Future Land Use Designation of LD Low Density Residential. The applicant is now requesting to rezone the property to R-NC Residential-Neighborhood Commercial District and change the Future Land Use designation to Residential-Neighborhood Commercial.

EXISTING USE

The subject property contains several residential structures. The site's main 1,700-square-foot single-story building was constructed in 1924. This building features a covered wood porch that faces Smith Street. One additional housing unit, a 1,000 -square-foot single-story detached guest residence, is located in the rear yard. This building was added to the property in 1954. There is also a small metal shed located within the property's side yard and a wood porch in the rear yard. The subject property is located just outside the Winter Garden Historic Downtown District.

ADJACENT LAND USE AND ZONING

The property located to the north of the subject property is zoned C-1 (Central Commercial District) and is located within the City of Winter Garden municipal limits. The parcel is currently used as an office and is located within the Historic Downtown District. The properties to the east, west, and south of the subject property are all zoned R-2 (Residential District) and are located within the City of Winter Garden municipal limits. The property to the east contains a duplex building, and the properties to the west and south contain single-family houses.

PROPOSED USE

If the zoning application is approved, the applicant is planning to rehabilitate and retrofit the existing main 1,700 square foot structure to accommodate low intensity professional uses and such as offices and small neighborhood retail establishments. The second, smaller guest unit would be rehabilitated and retrofitted to be a live/work artist-in-residence space. Both of these uses may be allowed in the R-NC Zoning District through the Special Exception Permit process. Currently, the property has not received approvals for any non-residential uses.

STAFF ANALYSIS

The property is consistent with the Comprehensive Plan Policy for Residential-Neighborhood Commercial Properties. According to Policy 1-1.2.6:

Residential-Neighborhood Commercial. Properties designated with the Residential-Neighborhood Commercial land use category are required to be developed at a floor area ratio not greater than 0.35. Gross residential density shall be not greater than 6 dwelling units per acre. All uses shall have a maximum height of 35 feet. This designation shall provide for permitted low density residential uses and neighborhood commercial and professional uses. The mix should have a minimum of 80% residential uses. Uses should be located on collector and minor arterial streets close to low density residential areas. The zoning classifications that are consistent with the Residential Neighborhood Commercial classification is RNC and INT.

The subject property is developed with a floor area ratio that is less than 0.35. It's also located on a collector road; Smith Street is considered a collector from S Highland Ave east to where it intersects with Dillard Street. No building on the site exceeds 35 feet in height and the entire property is currently used residentially. In addition, the proposed R-NC zoning designation is consistent with the Residential-Neighborhood Commercial FLU list of permitted zoning classifications. The only portion of the policy with which the property does not comply is the maximum allowed gross residential density of six dwelling units per acre- the property exceeds this density as it currently contains two dwelling units on a $0.26 \pm$ acre parcel of land. However, if the current plans for the parcel materialize and the property is retrofitted to accommodate professional uses, it will no longer contain a number of dwelling units in excess of what's permitted by Policy 1-1.2.6.

Although the property is located outside a designated Activity Center as defined on Future Land Use Map 1.3 in the Comprehensive Plan, the subject parcel is still situated in a highly visible, well-trafficked corner directly adjacent to Downtown. Smith Street, which runs east-west along the southern limits of the Historic Downtown District, is a corridor poised to experience an increase in traffic volumes and a growth of mixed-uses. Several properties along this corridor have recently been rezoned to Residential-Neighborhood Commercial including 203 S Main Street, which received P&Z approval in October of last year.

Smith Street has been identified as the main collector road for the new municipal parking garage, which is proposed to be located due north of the subject property, separated by only one commercial parcel. In anticipation of the garage, the City has also identified key road improvements for Smith Street including construction of new sidewalks and the possible development of a roundabout at the corner of Smith and Dillard. These improvements will only increase Smith's viability as a main vehicular and pedestrian access route to Downtown locations- both existing and those slated for future development such as the Plant Street Market and the former Planning Department site.

Additionally, Smith Street has been identified as the main corridor for the new Winter Garden Arts District. The creation of the Arts District includes the development of a new program whereby residential properties along Smith Street have the option of converting a portion of their dwelling units to retail gallery spaces for live-in artists. This is exactly what the applicant intends to accomplish with a portion of the subject property.

Given that Main Street has begun the transition into more highly-trafficked, mixed-use corridor, the subject property's proposed residential-neighborhood commercial zoning and future use designation would be consistent with the changing character of the district.

PUBLIC FACILITY ANALYSIS

The City will continue providing garbage collection, police protection, City utilities, and all other services regularly provided to City of Winter Garden residents. The property will be served by both Orange County Fire and Rescue and the City of Winter Garden Fire Department under the First Response System.

SUMMARY

City Staff recommends approval of the proposed Future Land Use Amendment and Rezoning Ordinances on the basis that:

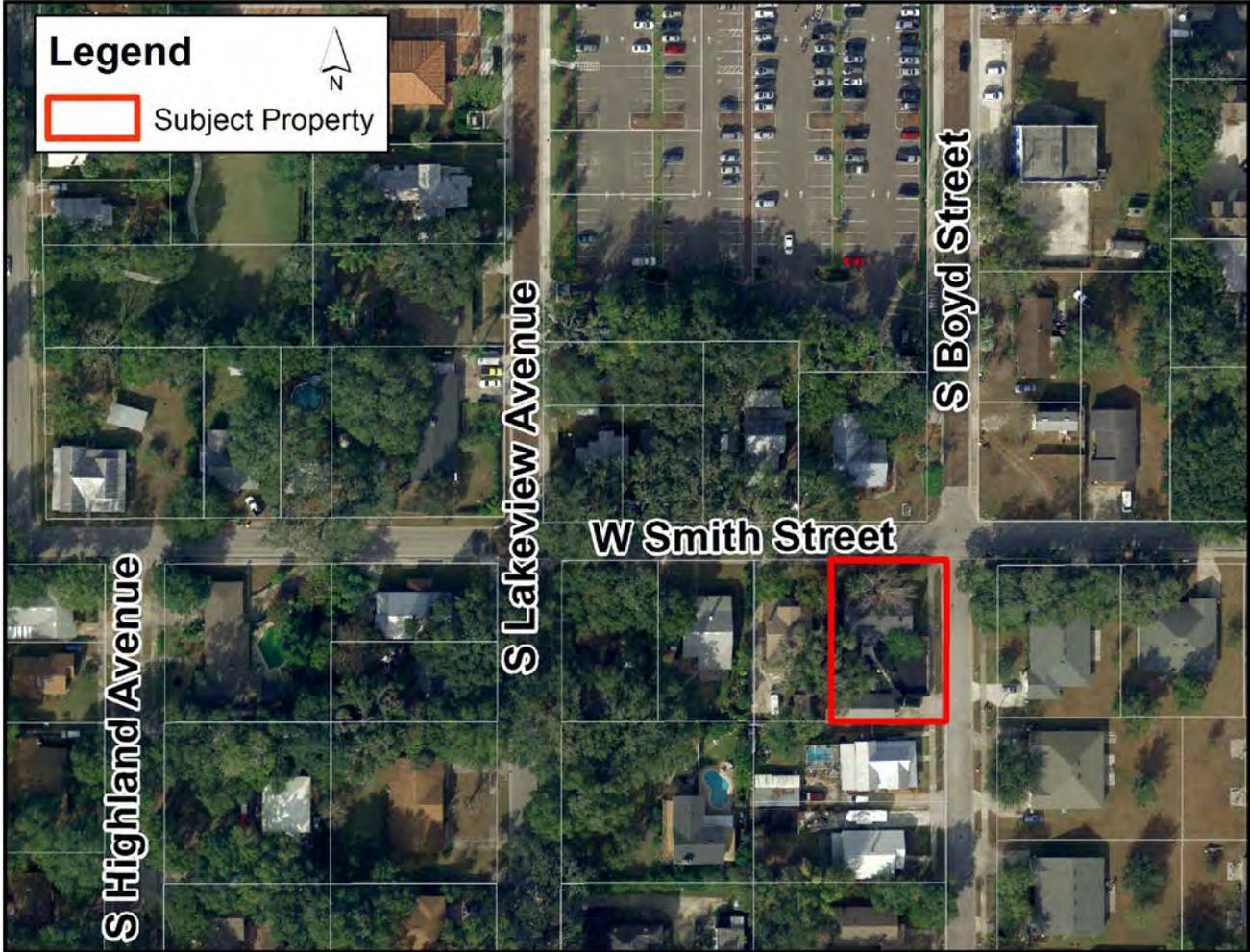
1. The request is consistent and compatible with adjacent development.
2. The request is consistent and compatible with the character and growth trajectory of the Smith Street corridor.
3. It can meet all concurrency requirements of the City.

Staff would therefore recommend approval subject to the following condition:

1. After rezoning, any proposed commercial and/or live/work uses on the property will need to procure Special Exception Permit approval from the Planning & Zoning Board prior to start of operations. Conditions of approval will include any required commercial upgrades to the site or building(s), as well as all necessary buffering from surrounding residential properties.

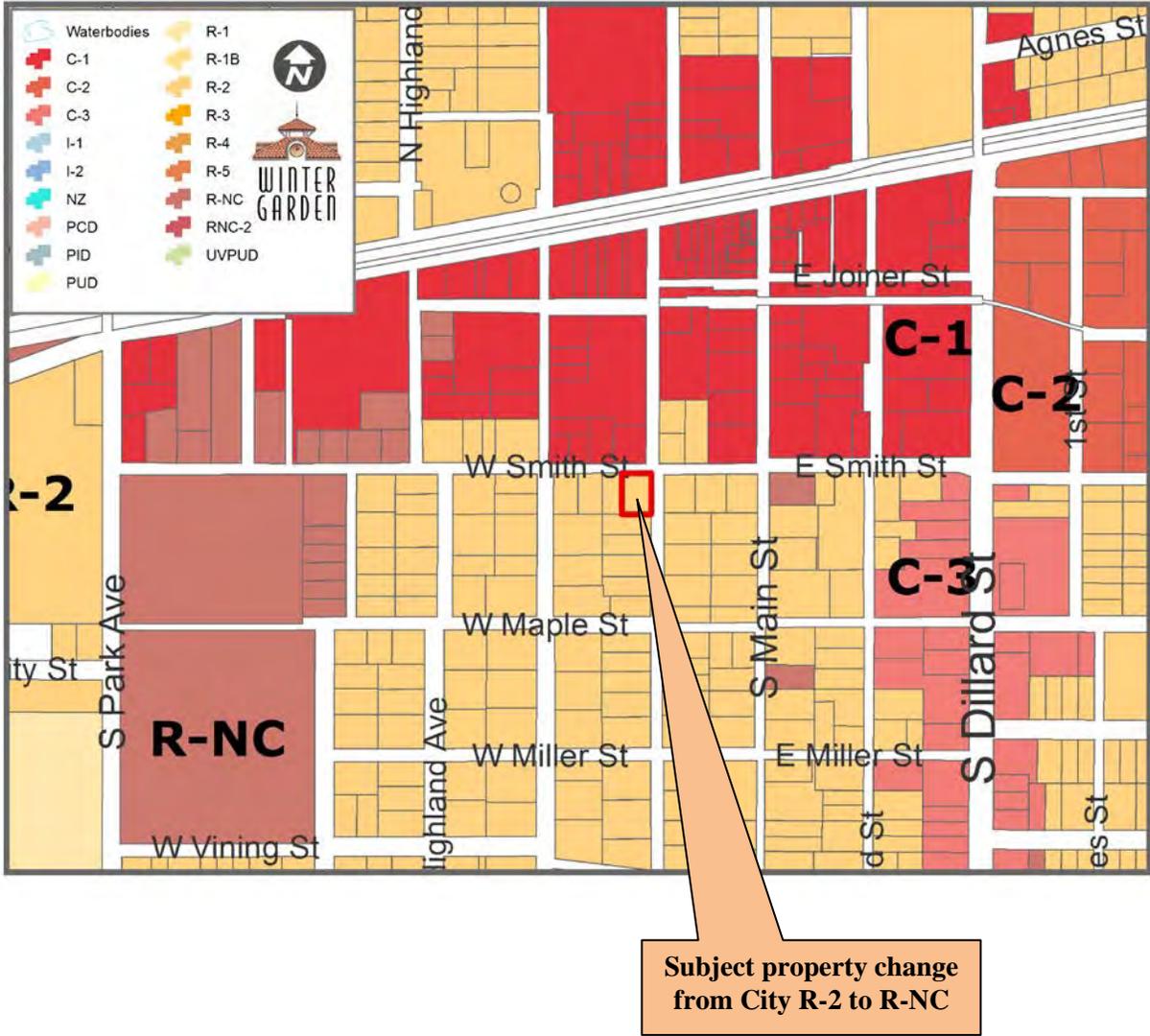
AERIAL PHOTO

30 W SMITH STREET



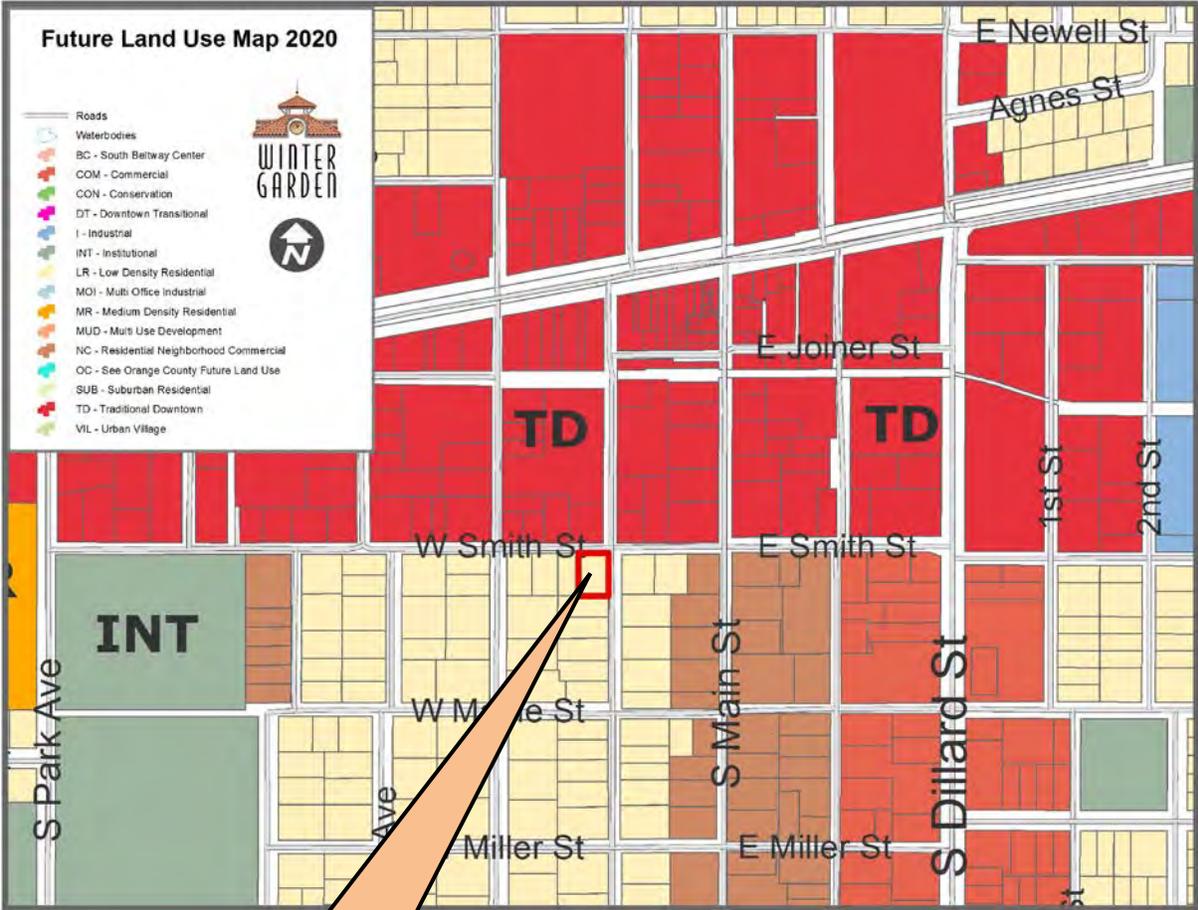
ZONING MAP

30 W SMITH STREET



FUTURE LAND USE MAP

30 W SMITH STREET



**Subject property change
from LR Low Density
Residential to NC
Residential-Neighborhood
Commercial**

END OF STAFF REPORT

ORDINANCE 15-19

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA REZONING APPROXIMATELY 0.26 ± ACRES LOCATED AT 30 WEST SMITH STREET AT THE SOUTHWEST CORNER OF SOUTH BOYD STREET AND WEST SMITH STREET FROM CITY R-2 RESIDENTIAL DISTRICT TO CITY R-NC RESIDENTIAL-NEIGHBORHOOD COMMERCIAL DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the owner of that certain real property generally described as 0.26 ± acres located at 30 West Smith Street at the southwest corner of South Boyd Street and West Smith Street, and legally described in Section 1 of this ordinance has petitioned the City to rezone said property from the City’s R-2 Residential District to the City’s R-NC Residential-Neighborhood Commercial District zoning classification, therefore; and

WHEREAS, after public notice and due consideration of public comment, the City Commission of the City of Winter Garden hereby finds and declares the rezoning approved by this Ordinance is consistent with the City of Winter Garden Comprehensive Plan; and

WHEREAS, further, the City Commission finds that based on competent, substantial evidence in the record, the rezoning approved by this Ordinance meets all applicable criteria for rezoning the Property to R-NC Residential-Neighborhood Commercial District contained within the City of Winter Garden Comprehensive Plan and the Code of Ordinances.

BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA:

SECTION 1: Rezoning. The above “Whereas” clauses constitute findings by the City Commission. After due notice and public hearing, the zoning classification of real property legally described on ATTACHMENT “A,” is hereby rezoned from City R-2 Residential District to City R-NC Residential-Neighborhood Commercial District in the City of Winter Garden, Florida.

SECTION 2: Zoning Map. The City Planner is hereby authorized and directed to amend the Official Winter Garden Zoning Map in accordance with the provisions of this ordinance.

SECTION 3: Non-Severability. Should any portion of this Ordinance be held invalid, then the entire Ordinance shall be null and void.

SECTION 4: Effective Date. This Ordinance shall become effective simultaneously upon the effective date of Ordinance 15-20, which is an amendment to the Future Land Use Map of the City of Winter Garden Comprehensive Plan that allows the property described herein to be zoned as provided in this Ordinance.

FIRST READING AND PUBLIC HEARING: _____, 2015.

SECOND READING AND PUBLIC HEARING: _____, 2015.

ADOPTED this _____ day of _____, 2015, by the City Commission of the City of

Winter Garden, Florida.

APPROVED:

JOHN REES, Mayor/Commissioner

ATTEST:

KATHY GOLDEN, City Clerk

ATTACHMENT "A"

LEGAL DESCRIPTION

PARCEL ID#: 23-22-27-8096-00-021

DESCRIPTION:

EAST 90 FEET OF LOTS 2 AND 3, G.T. SMITH SUB-DIVISION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK G, PAGE(S) 131, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

ORDINANCE 15-20

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA AMENDING THE FUTURE LAND USE MAP OF THE WINTER GARDEN COMPREHENSIVE PLAN BY CHANGING THE LAND USE DESIGNATION OF REAL PROPERTY GENERALLY DESCRIBED AS 0.26 ± ACRES LOCATED AT 30 WEST SMITH STREET AT THE SOUTHWEST CORNER OF SOUTH BOYD STREET AND WEST SMITH STREET FROM CITY LOW DENSITY RESIDENTIAL TO CITY RESIDENTIAL-NEIGHBORHOOD COMMERCIAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on the 13th of June, 1991, the City Commission of the City of Winter Garden adopted Ordinance 91-16 which adopted a new Comprehensive Plan for the City of Winter Garden, and on the 24th of June, 2010, the City Commission of the City of Winter Garden adopted Ordinance 10-19 readopting and amending the Comprehensive Plan for the City of Winter Garden;

WHEREAS, the owner of that certain real property generally described as approximately 0.26 ± acres located at 30 West Smith Street at the southwest corner of South Boyd street and West Smith Street, and legally described in ATTACHMENT "A" (the "Property") has petitioned the City to amend the Winter Garden Comprehensive Plan to change the Future Land Use classification from City Low Density Residential to City Residential-Neighborhood Commercial; and

WHEREAS, the City of Winter Garden's Local Planning Agency and City Commission have conducted the prerequisite advertised public hearings pursuant to Chapter 163, Florida Statutes, regarding the adoption of this ordinance; now, therefore,

BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA:

SECTION I. *FLUM Amendment.* The City of Winter Garden hereby amends the Future Land Use Map of the City of Winter Garden Comprehensive Plan by designating the aforesaid Property to City Residential-Neighborhood Commercial as set forth in ATTACHMENT "B".

SECTION II. *Effective Date.* This Ordinance shall become effective 31 days after adoption, unless the Ordinance is timely challenged pursuant to § 163.3187(5), Fla. Stat., in which case, the Ordinance shall not be effective until the state land planning agency or the Administrative Commission, respectively, issues a final order determining that the

adopted Ordinance is in compliance.

SECTION III. Severability. Should any portion of this Ordinance be held invalid, then such portions as are not declared invalid shall remain in full force and effect.

FIRST READING AND PUBLIC HEARING: _____, 2015.

SECOND READING AND PUBLIC HEARING: _____, 2015.

ADOPTED this _____ day of _____, 2015, by the City Commission of the City of Winter Garden, Florida.

APPROVED:

JOHN REES, Mayor/Commissioner

ATTEST:

KATHY GOLDEN, City Clerk

ATTACHMENT "A"

LEGAL DESCRIPTION

PARCEL ID#: 23-22-27-8096-00-021

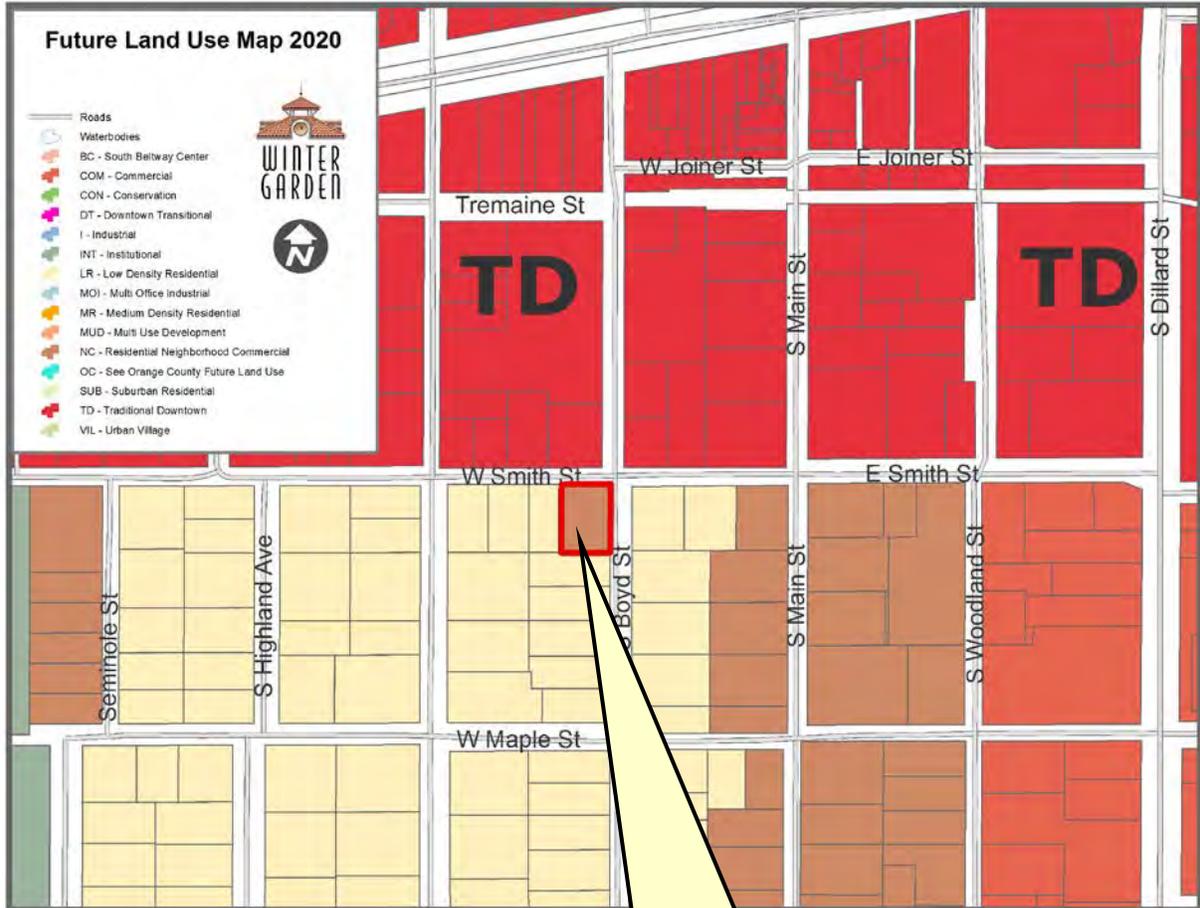
DESCRIPTION:

EAST 90 FEET OF LOTS 2 AND 3, G.T. SMITH SUB-DIVISION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK G, PAGE(S) 131, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

ATTACHMENT "B"

FUTURE LAND USE MAP

30 West Smith Street

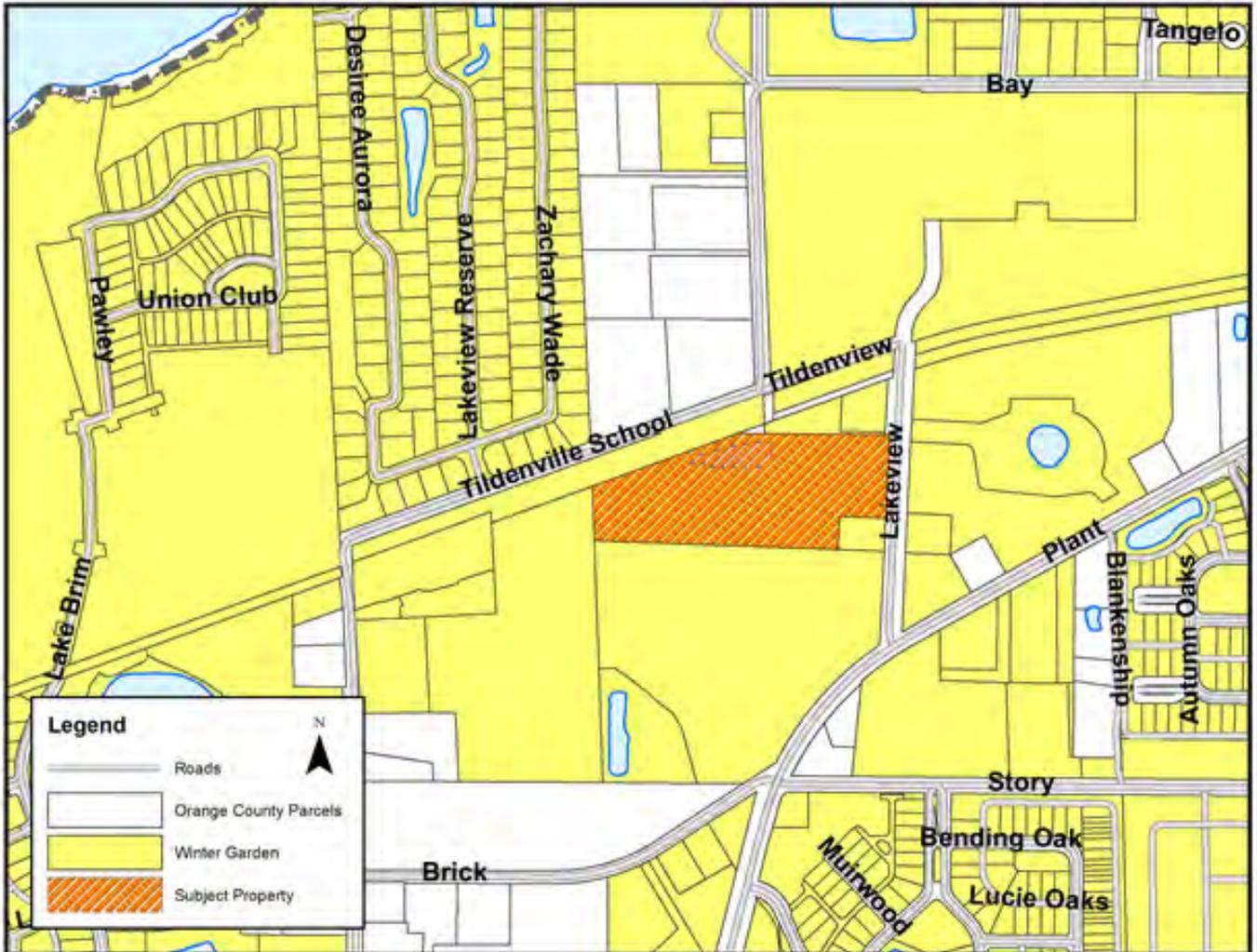


Subject property changed from City Low Density Residential to City Residential-Neighborhood Commercial

LOCATION MAP

404 Lakeview Road

SPECIAL EXCEPTION PERMIT



CITY OF WINTER GARDEN

PLANNING & ZONING DIVISION

300 West Plant Street - Winter Garden, Florida 34787-3011 • (407) 656-4111

STAFF REPORT

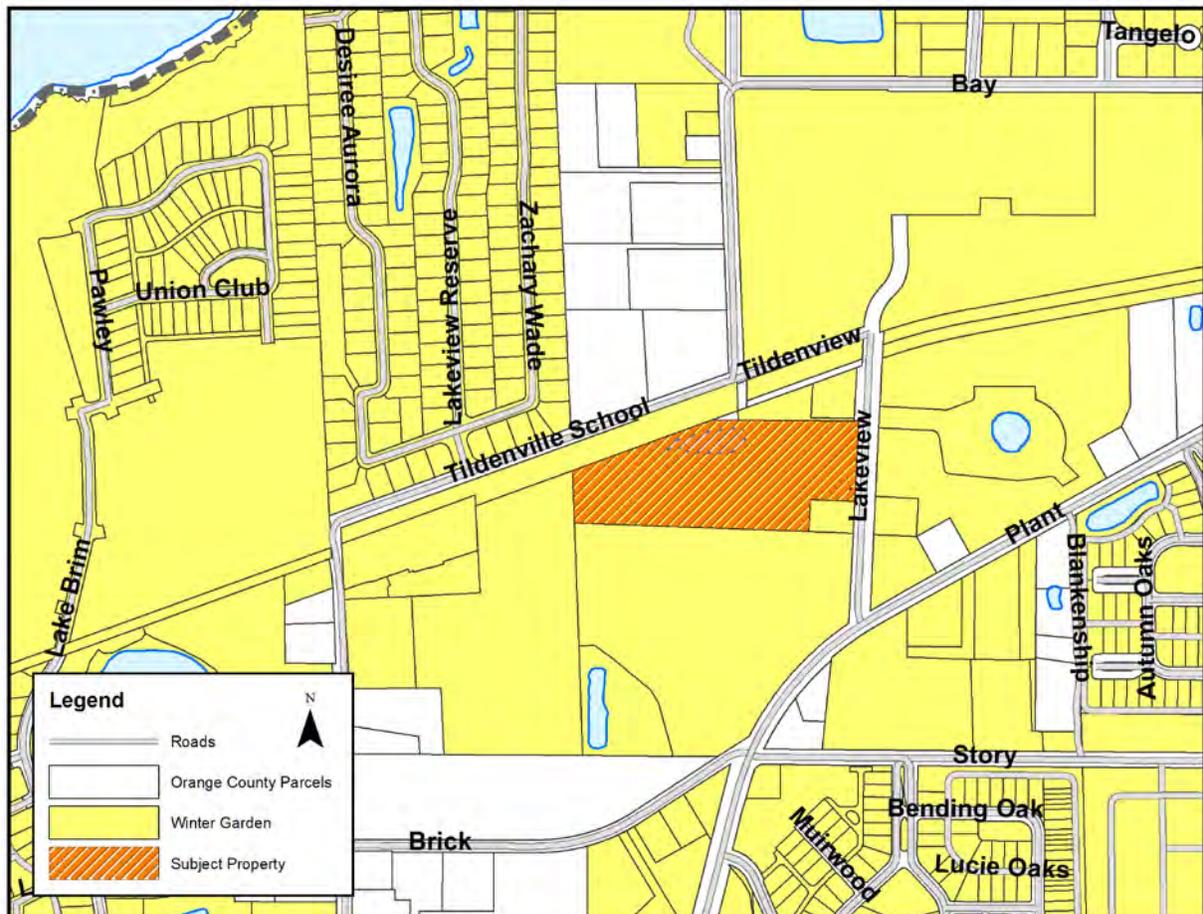
TO: PLANNING AND ZONING BOARD
PREPARED BY: KELLY CARSON, PLANNER II
DATE: JANUARY 28, 2015
SUBJECT: SPECIAL EXCEPTION PERMIT
404 Lakeview Road (3-Story Independent Living Facility)
PARCEL ID # 22-22-27-0000-00-010

APPLICANT: Golden Pond Communities // Medpro Contractors LLC

INTRODUCTION

The purpose of this report is to evaluate the proposed special exception permit for compliance with the City of Winter Garden Code of Ordinances and Comprehensive Plan.

The subject property is located at 404 Lakeview Avenue. The map below depicts the location of the subject property within the City of Winter Garden municipal limits:



The request is for a Special Exception Permit to allow the construction of a three-story independent living retirement facility on the property. The subject property is located within the City of Winter Garden municipal limits, carries the zoning designation R-2, and is designated Low Density Residential on the Future Land Use Map of the Comprehensive Plan.

EXISTING/PROPOSED USE

The site currently contains five buildings, four of which were constructed in 1999-2000. The property was granted its original Special Exception Permit by the Planning & Zoning Board in June of 1998 allowing them to build an assisted living facility. The approval permitted an independent living and memory care use on the property to provide residents with a “continuum of care in a home-like setting” with the condition that no general residential use was allowed. No specific height restrictions were included as conditions of approval at that time. A master site plan showing a six-building campus and associated infrastructure was approved in 1998, and four of the six proposed buildings were constructed shortly after.

In 2007, Golden Pond Communities revised their site plan slightly and received approval to construct the two additional buildings on the site. One of these buildings, a single story 18-unit facility located on the south side of the property featuring nearly identical colonial architecture as the other four buildings, was built in 2008. The second building, which was approved to be a two-story 30 unit / 60 bed independent living facility, was put on hold due to the economy.

The applicant is now seeking approval to complete the final phase of construction, changing the proposal to a three story independent living facility rather than a two story independent living facility. The building will be approximately 36’ in height from the finished floor elevation and will feature an architectural style that is consistent with the other five buildings on site. The number of proposed units has yet to be determined by the applicant.

ADJACENT LAND USE AND ZONING

The properties located to the north of the subject property include two single family residential parcels that are under the same ownership containing two detached single family residential dwellings and a pool that spans the central property boundary. These properties are zoned R-1 and are within the City of Winter Garden’s municipal limits. Also to the north of the subject property boundary is a small vacant triangular parcel that is zoned A-1 and is located in Unincorporated Orange County. A portion of the West Orange trail also spans a section of the subject property’s northern boundary, which is owned by the City.

The property to the west of the subject property is an undeveloped piece of land containing dense vegetation. This property is zoned R-1 and is within the City of Winter Garden’s municipal limits.

There are two properties located to the east of the subject property. One of these parcels contains a single family residential structure, is zoned R-1, and is located within the City of Winter Garden’s municipal limits. The other property features orange groves, several supporting modular agricultural structures, and a manufactured home. This property is also zoned R-1 and is within the City of Winter Garden’s municipal limits.

There are also two properties located to the south of the subject property. One of these parcels contains a single family residential structure, is zoned R-1, and is located within the City of Winter Garden’s municipal limits. The other parcel is owned and operated by the Garden

Cathedral Church of God and contains the main church sanctuary building, several other smaller church-related facilities and a daycare, and features large open spaces. This property is zoned R-2 and is within the City of Winter Garden's municipal limits.

DISCUSSION

The Golden Pond campus is located in an area of Winter Garden that features a mix of single family residential properties, institutional properties, and agricultural/ light industrial facilities. The height of the proposed 3-story independent living facility will likely be matched or exceeded by several existing buildings in the area including the Winter Garden Cathedral Church of God, portions of Lakeview Middle School and Tildenville Elementary School, and portions of the industrial facilities located at 1061 Tildenville School Rd.

It should also be noted that this proposal does not require a height variance from the Planning and Zoning Board as only single family residential and church buildings are prohibited from exceeding 30' in height in the R-2 District.

SUMMARY

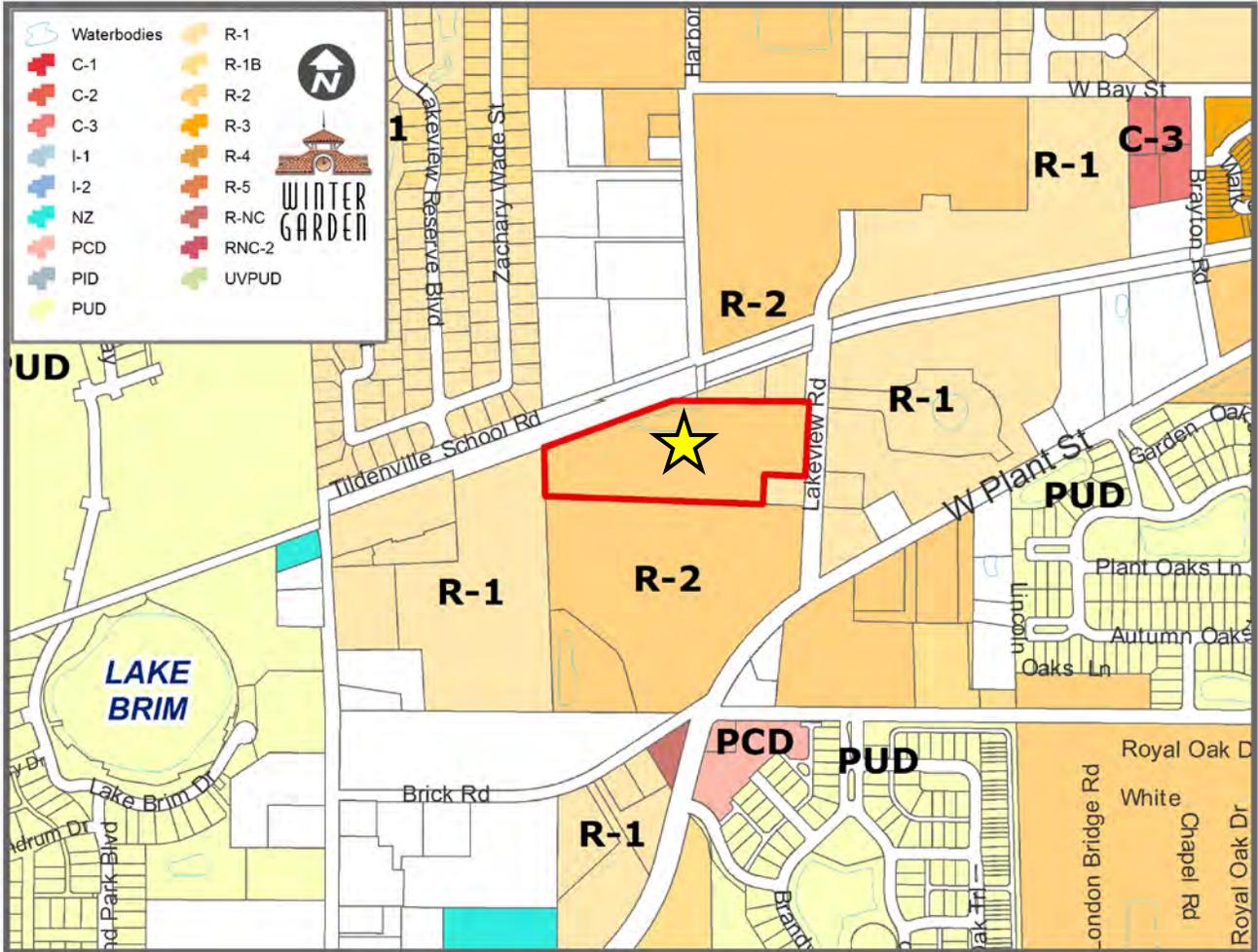
City Staff recommends approval of the proposed special exception permit to allow the construction of a three story independent living facility at 404 Lakeview Road with the following conditions:

1. A full site plan review is required. DRC will review the site plan for compliance with all development regulations including, but not limited to, setbacks, impervious surface maximums, parking, ingress/egress, circulation, landscape and buffering, utility and public service infrastructure, stormwater, fire safety, architectural design, lighting, signage, transportation impacts, and conformance to all other City standards, specifications, and Code of Ordinances.
2. As was stated in the property's original Special Exception Permit, no general residential use that is not tied to aspects of assisted living is permitted: i.e., the building can never be converted to apartments for rental by the general public.
3. The applicant will comply with all state ALF regulations and procure all state approvals.
4. Traffic study will be required if the number of proposed units exceeds those that were approved previously (30 units).

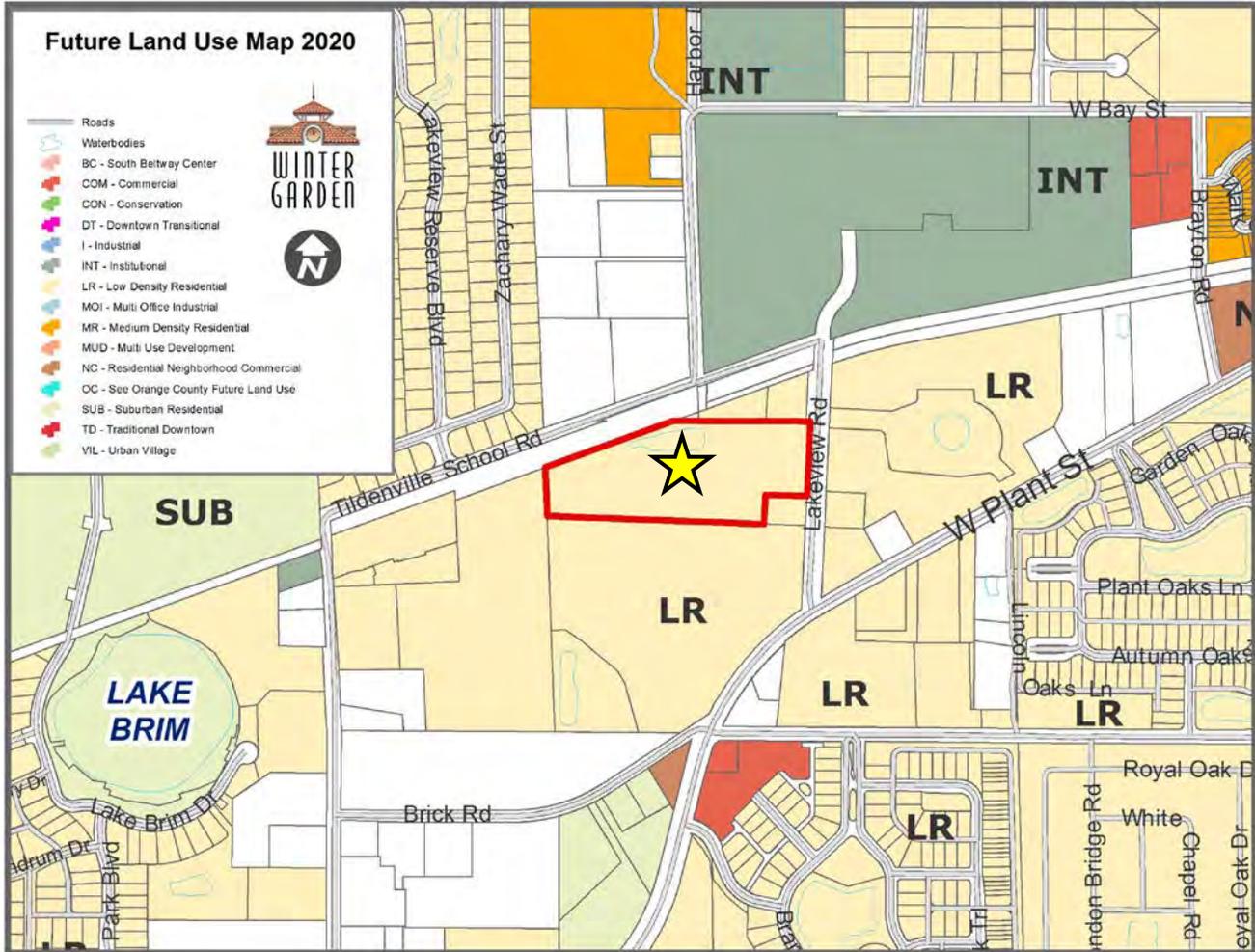
AERIAL PHOTO
404 Lakeview Road



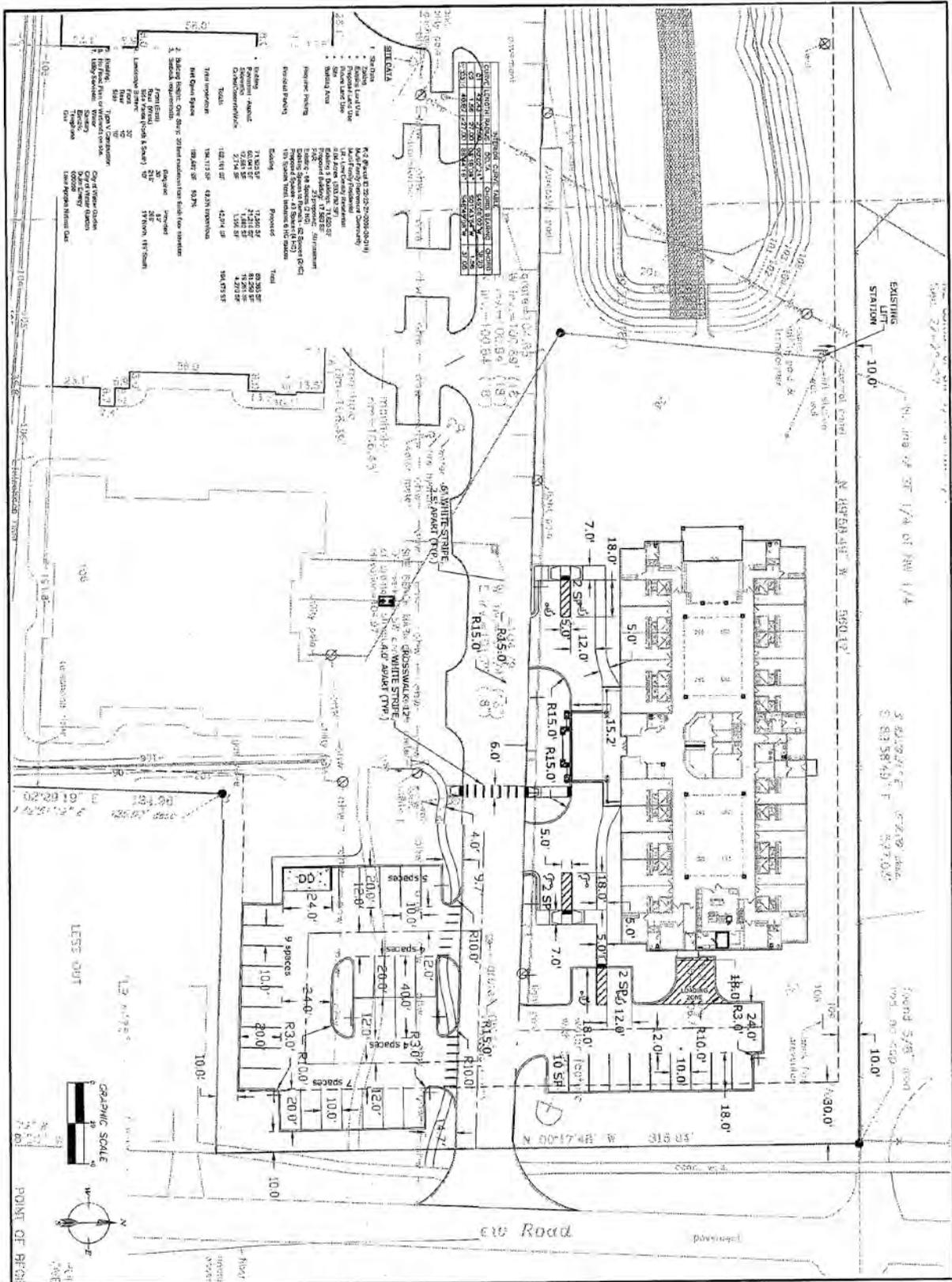
ZONING MAP
404 Lakeview Road



FUTURE LAND USE MAP 404 Lakeview Road



PROPOSED SITE PLAN
404 Lakeview Road



SITE PHOTOS
404 Lakeview Road



NEARBY PROPERTIES
404 Lakeview Road



1001 W Plant St



1061 Tildenville School Road



1200 W Bay St.

END OF STAFF REPORT



ASMA & ASMA, P.A.

Attorneys and Counselors at Law
884 South Dillard Street
Winter Garden, Florida 34787
Ph. (407) 656-5750 Fax (407) 656-0486

William N. Asma
bill.asma@asmapa.com

C. Nick Asma
nick.asma@asmapa.com

January 27, 2015

VIA EMAIL ONLY
kcarson@wintergarden-fl.gov

City of Winter Garden
300 West Plant Street
Winter Garden, FL 34787

**RE: Golden Pond
404 Lakeview Road
Winter Garden, FL
Special Exception**

Dear Sirs:

We have received a Notice of Public Hearing from the City of Winter Garden Planning and Zoning Board of Winter Garden. The notice pertains to a request for a Special Exception permit for property located at 404 Lakeview Road, Winter Garden, Florida. The exception permit would allow a three story independent living facility to be constructed in an R-2 Residential Zoning District.

Please be advised that neighboring property owners on Lakeview Road object to this request. Mary Ann McMillan owns approximately 13 acres directly across the street from Golden Pond (325 Lakeview Road). William Nick and Mary Beth Asma also own property directly across from Golden Pond (441 Lakeview Road) and Robert and Mary Anne Sanderson (340 Lakeview Road), are adjoining property owners. We all object to the granting of the Special Exception for three reasons:

1. The three story independent living facility is in essence an apartment building. Elderly people will reside there, but nonetheless it's an apartment building. The existing Golden Pond buildings fit the residential character of the area. However, a three story apartment building does not. Section 118-394(4) allows for Special Exceptions for hospitals, restoriums,

convalescent homes and nursing homes. Three story independent living facility (apartment building) is not listed as a permitted exception.

2. A three story building is simply too tall. It would stand out like a sore thumb. It will constitute an eyesore to the neighbors and it subsequently de-values the surrounding properties. There are no three story buildings in this area. The closest three story building is located downtown Winter Garden.

3. A three story apartment building would add to the traffic congestion that already exists on Lakeview Road. The apartment dwellers will likely have cars that will enter and exist onto Lakeview Road. Lakeview Road has increasingly become busier and busier over the years. This is specifically due to Lakeview Middle School's expansion and the developments of several subdivisions in the area. For example, Oakland Park has just begun development on a phase of their project that will exit onto Tildenview school road adding even more traffic. Traffic cannot proceed south on Brick Road which is a one-way road. This means the additional traffic will again come down Lakeview Road. Has Golden Pond provided a traffic study on this issue?

For the above reasons, we request that the City Planning and Zoning Board deny the request for a Special Exception.

Sincerely,

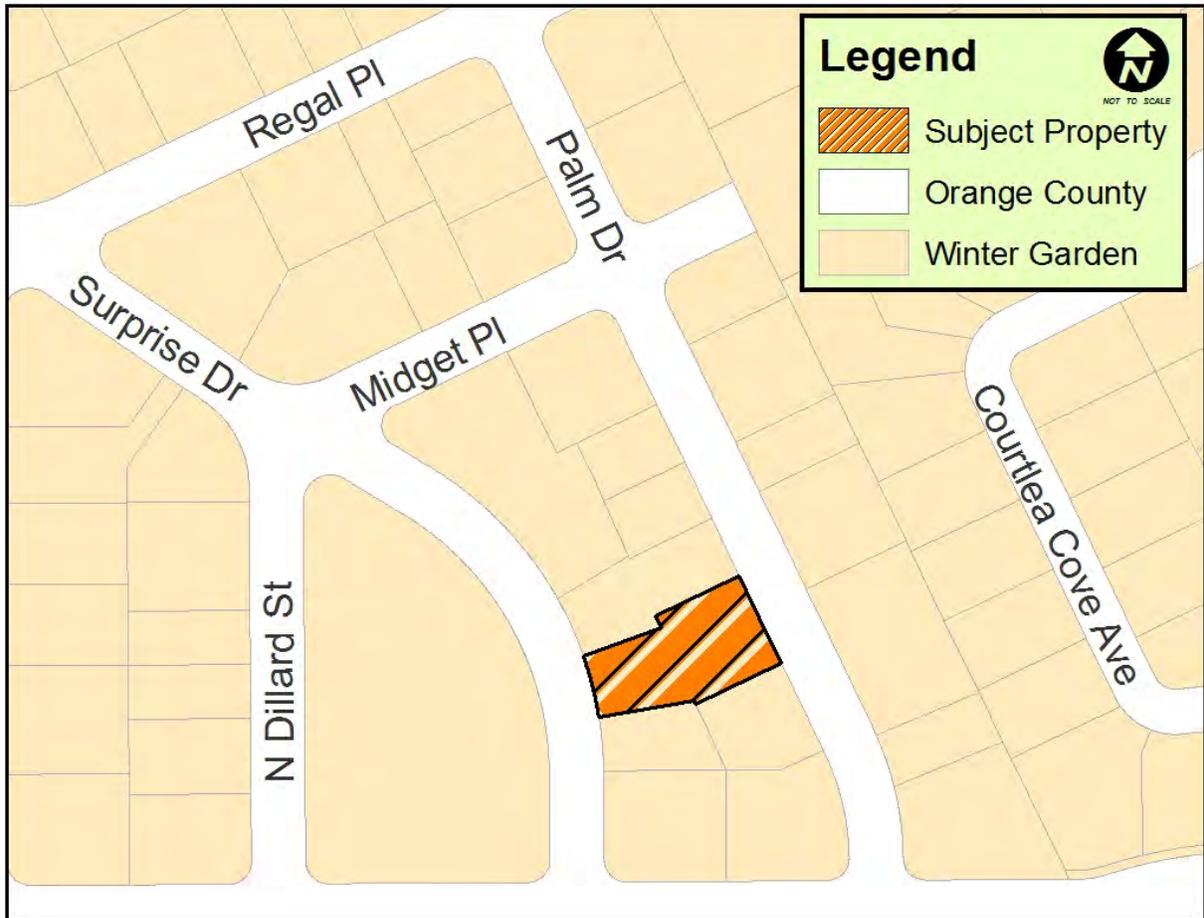

William N. Asma

WNA:em

LOCATION MAP

522 Palm Drive

VARIANCE



CITY OF WINTER GARDEN

PLANNING & ZONING DIVISION

300 West Plant Street - Winter Garden, Florida 34787-3011 • (407) 656-4111

STAFF REPORT

TO: PLANNING AND ZONING BOARD
PREPARED BY: STEVE PASH, COMMUNITY DEVELOPMENT MANAGER
DATE: FEBRUARY 2, 2015
SUBJECT: VARIANCE
522 Palm Drive (0.43+/- ACRES)
PARCEL ID # 14-22-27-9392-01-210

APPLICANT: Jeffrey Mikolaitis

INTRODUCTION

The purpose of this report is to evaluate the request for a front yard setback variance for property located at 522 Palm Drive in Winter Garden, Florida. The request is for an 8 foot front yard setback in lieu of the required 30 foot front yard setback to allow a 6 foot tall privacy fence to be built 8 feet from the front property line.

The subject property, located on Palm Drive, is an approximately 0.43± acre lot. The map below depicts the location of the subject property within the City of Winter Garden municipal limits:



The subject property carries the zoning designation R-1 (Single-Family Residential District) and is designated LR (Low Density Residential) on the Future Land Use Map of the City's Comprehensive Plan.

EXISTING USE

The subject property presently contains a single story 2,638 square foot single-family residential home. The property consists of multiple lots and connects to both Palm Drive and Surprise Drive, causing it to contain two front yards (one on each road). There are two existing driveways providing access to the property: one that connects to Palm Drive and another that connects to Surprise Drive.

The property to the north also consists of two lots and fronts on both streets. However, this property has a mother-in-laws suite (apartment) in a detached building that fronts onto Surprise Drive. The property to the south also has a home that fronts onto Surprise Drive.

ADJACENT LAND USE AND ZONING

The adjacent properties to the north, south, and east of the subject property contain single-family residential homes, have the zoning designation R-1 (Single-Family Residential District), and the future land use designation of LR (Low Density Residential). The property to the west is zoned R-1, has a land use designation of LR, but is a vacant block that was once developed with a hospital that has since been demolished.

PROPOSED USE

The applicant requests approval to build a 6 foot tall privacy fence in the front yard (Surprise Drive side) at an 8 foot setback in lieu of the minimum required 30 foot setback.

The proposed fence is located in the front yard setback and the properties to both sides of the subject property have houses that front onto Surprise Drive.

CODE REFERENCE

118-1297(a)(1). of the City Code of Ordinances addresses fence requirements and states in part that the minimum yard requirements for fences in a front yards is 3 feet in height to the front setback (30 feet) and 6 feet in height beyond this point.

The applicant is seeking a variance to the minimum front yard setback to allow the proposed 6 foot tall privacy fence to be constructed at an 8 foot front yard setback.

CODE REQUIREMENTS / CRITERIA

Code Requirements/Criteria:

Section 118-131 of the City Code that relates to the review criteria states that, "A variance may be granted from land development regulations by the planning and zoning board if the planning and zoning board concludes that literal enforcement of the provisions of land development regulations would result in either practical difficulties (for setback and parking provisions) or unnecessary hardships (for all other land development regulations) for the property at issue." The code also lists the following criteria that are to be addressed before a variance can be

approved. Underlined text is Staff's comments concerning this particular petition.

- (1) *Granting the variance will not cause or allow interference with the reasonable enjoyment of adjacent or nearby property owners or negatively impact the standard of living of the citizens of the city;*

The proposed fence located 8 feet from the front property line could negatively impact or interfere with the reasonable enjoyment of adjacent or nearby property owners. Building a 6 foot tall privacy fence at this setback could cause visibility problems with the neighbors to the north and south who both have driveways on Surprise Drive that provide access to their properties. A fence at this location could block the view of the neighbors when they back out of their driveways.

- (2) *The variance will allow a reasonable use of the property, which use is not out of character with other properties in the same zoning category;*

The requested variance allowing a 6 foot tall fence 8 feet from the front property line in lieu of the required 30 foot front yard setback will allow reasonable use of this unique property. However, a fence in this location is out of character with other properties in the same zoning category and the surrounding area.

- (3) *In the context presented, strict compliance with the land development regulation will not further any legitimate city objective or the benefits that would be achieved under the other variance criteria by the granting of the variance outweigh the benefits under this criteria if the variance were denied;*

Strict compliance with the City's land development regulations will further legitimate City objectives by protecting the safety of neighboring property owners. This request could create a visibility issue for the neighboring property owners and make it difficult for them to back out of their driveways.

- (4) *The granting of the variance is consistent with the city's comprehensive plan; and*
The variance is not consistent with the provisions of the City's Comprehensive Plan relating to low density residential neighborhood character.

- (5) *The variance requested is the minimum variance that will make reasonable use of the land, building, or structure or the benefits that would be achieved under the other variance criteria by the granting of the variance outweigh the benefits under these criteria if the variance were denied.*

The variance requested is not the minimum variance that will make reasonable use of the land. The proposed location of the fence could negatively impact the neighbors and is not consistent with front yard setbacks enjoyed by other property owners throughout the City.

SUMMARY

Staff recommends denial of a variance to Sections 118-1297 (a) (1) to allow a 6 foot tall privacy fence to be constructed at an 8 foot front yard setback in lieu of the required 30 foot front yard setback.

NEXT STEP

Not applicable.

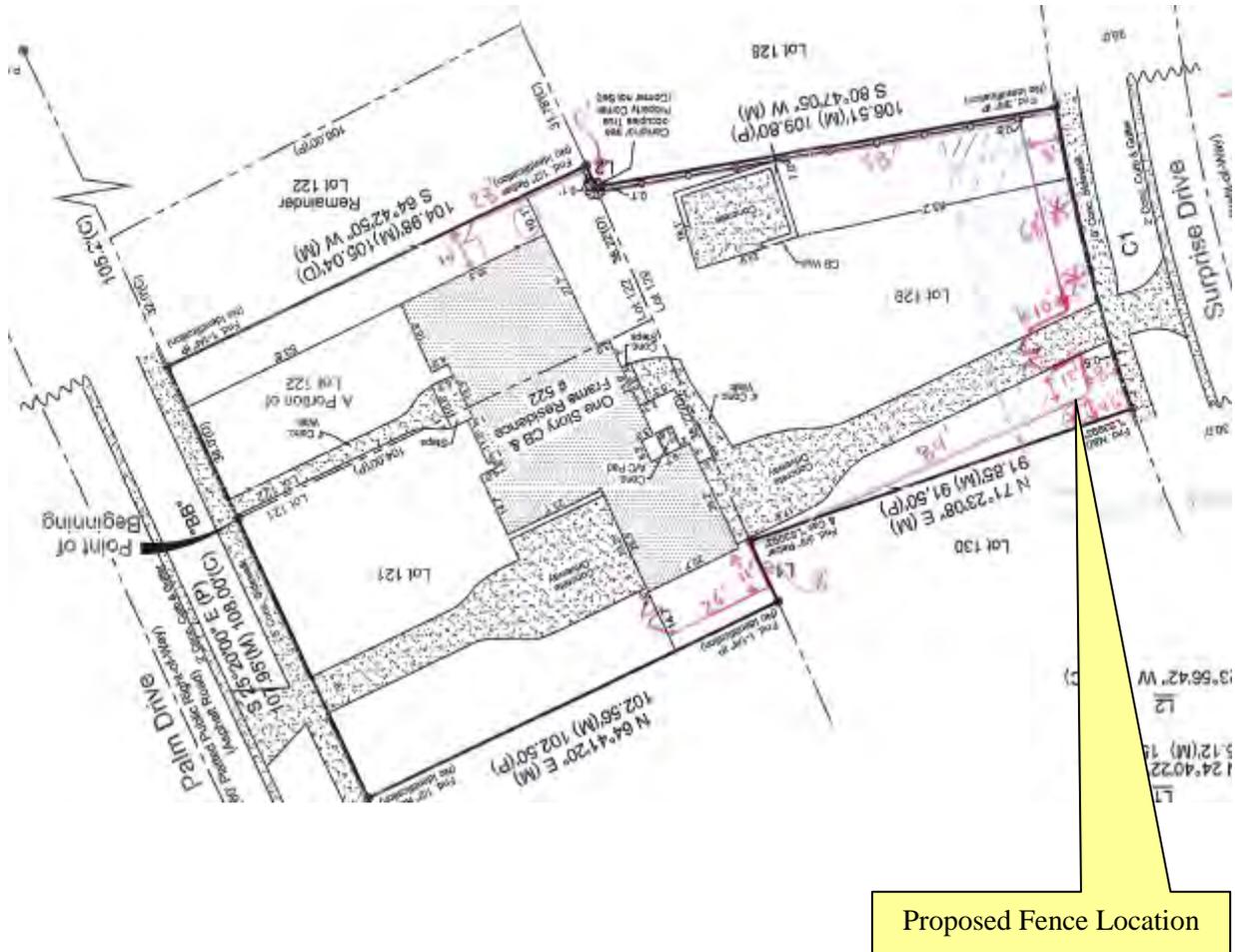
ATTACHMENTS

- Aerial Photo
- Survey (Site Plan)
- Site Photos
- Letters of Support from Neighbors

AERIAL PHOTO
522 Palm Drive



SURVEY (SITE PLAN)
522 Palm Drive



SITE PHOTOS
522 Palm Drive

Subject Property looking north from opposite side of Surprise Drive



Subject Property looking south from opposite side of Surprise Drive



Subject Property



Subject Property looking north from sidewalk



END OF STAFF REPORT

JAN 20 2015

COMMUNITY DEVELOPMENT DEPARTMENT
300 WEST PLANT STREET
WINTER GARDEN, FLORIDA 34787

Project # _____

Palm Drive - 522
**MIKOLAITIS PRIVACY FENCE
VARIANCE - 01/20/2015**

Attn: PLANNING & ZONING

o: Jeffrey S. Mikolaitis
14-22-27-9392-01-210

Project Name: Privacy Fence 522 Palm

This proposal letter is to request and permit the grant of a Variance for a residence at 522 Palm Dr. Winter Garden FL, 34787.

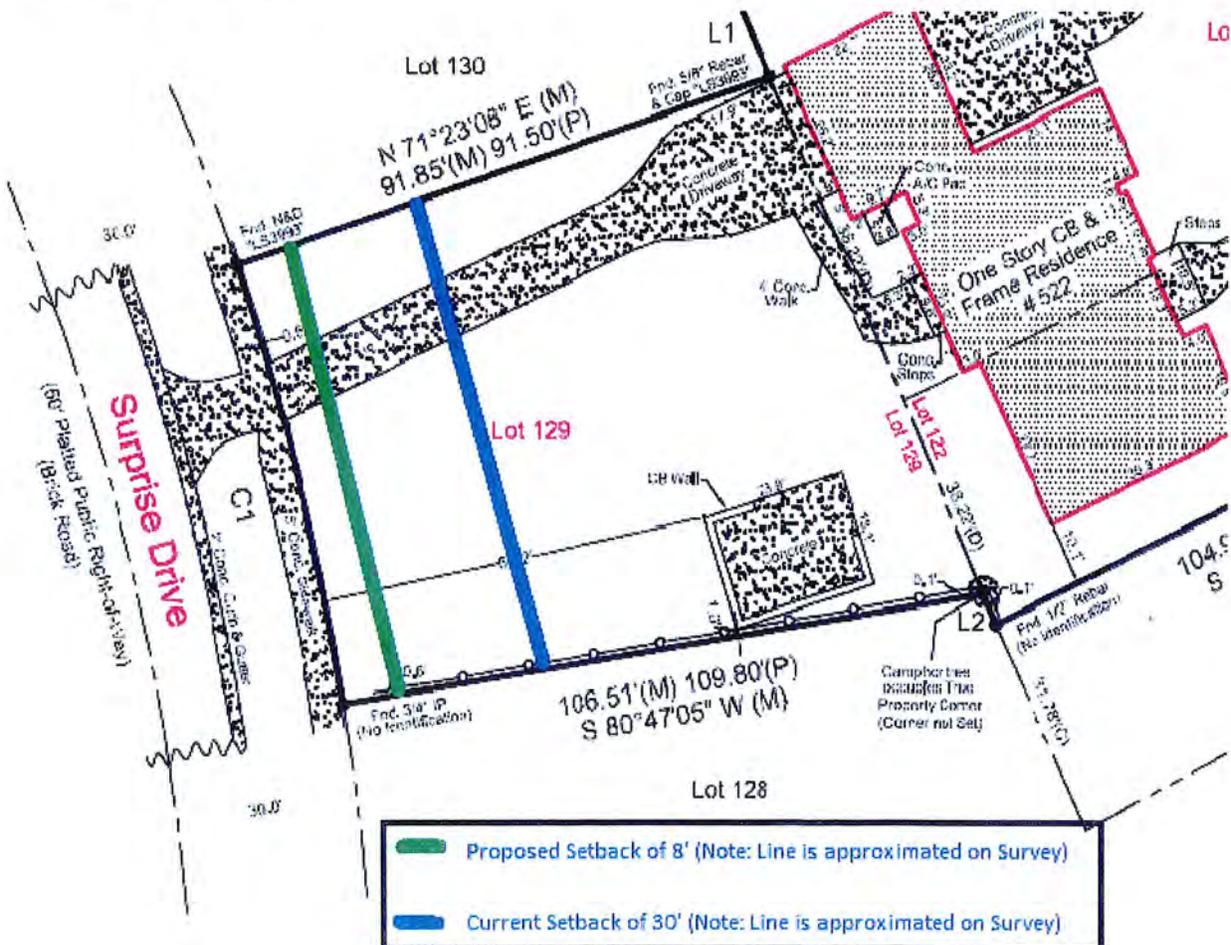
The Variance requested is relatively minor and is adjusting the setback from the current 30' to a proposed 8' for the purpose of installing a 6' Privacy fence made of wood at rear of this property.

Dan Waldrop
D Waldrop

Date: 1-16-15

530 Palm Dr.

Winter Garden, FL 34787



JAN 20 2015

COMMUNITY DEVELOPMENT DEPARTMENT

300 WEST PLANT STREET

WINTER GARDEN, FLORIDA 34787

Project # _____

Palm Drive - 522
MIKOLAITIS PRIVACY FENCE
VARIANCE - 01/20/2015

Attn: PLANNING & ZONING

o: Jeffrey S. Mikolaitis
14-22-27-9392-01-210

Project Name: Privacy Fence 522 Palm

This proposal letter is to request and permit the grant of a Variance for a residence at 522 Palm Dr. Winter Garden FL, 34787.

The Variance requested is relatively minor and is adjusting the setback from the current 30' to a proposed 8' for the purpose of installing a 6' Privacy fence made of wood at rear of this property.

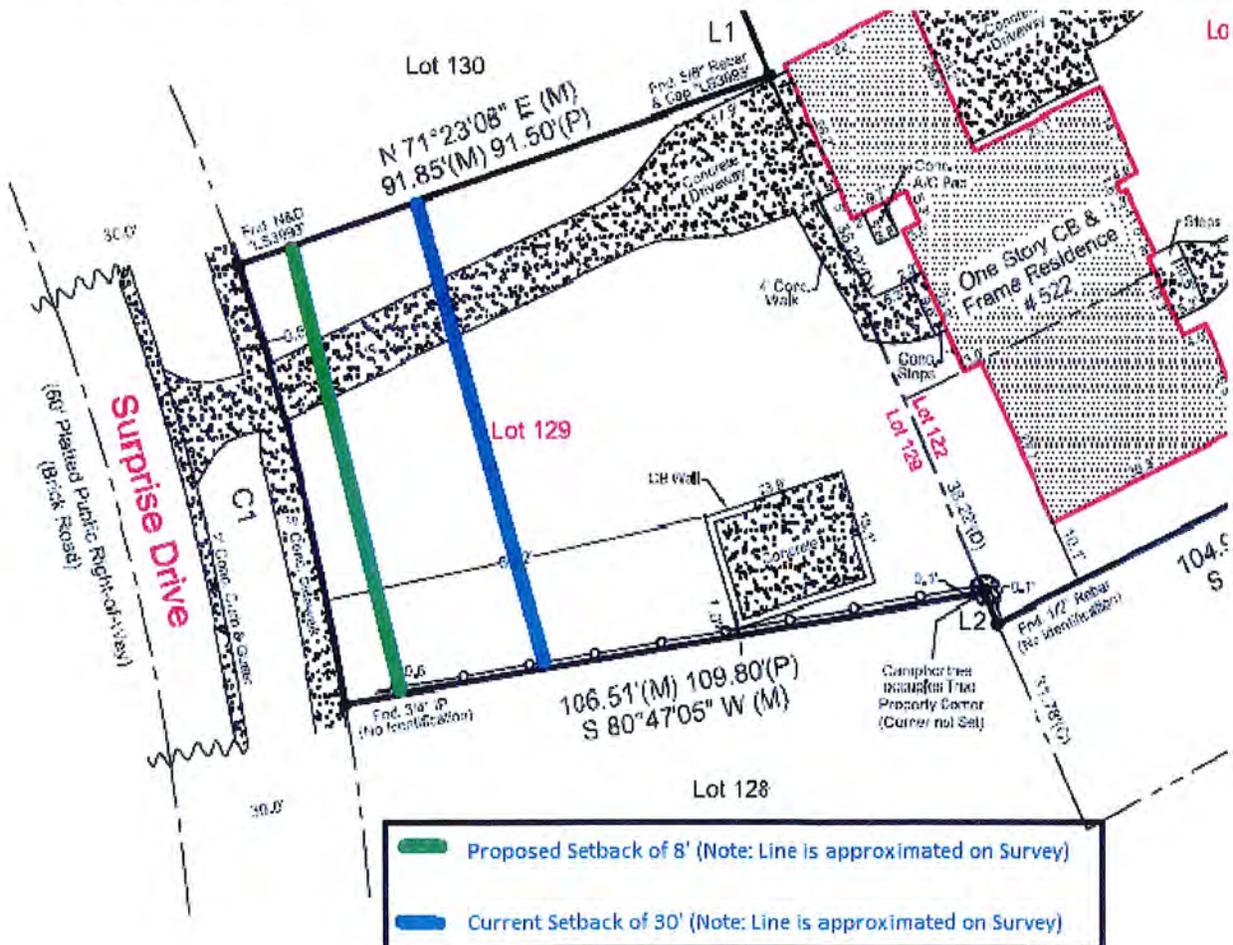
Jeffrey S. Mikolaitis

Jeffrey S. Mikolaitis

Date: 1/17/15

237 Surprise Dr.

Winter Garden, FL 34787



AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING CHAPTER 6 OF THE WINTER GARDEN CITY CODE; PROVIDING FOR THE DEFINITION OF PACKAGE SALE VENDOR; PROVIDING FOR PACKAGE SALE VENDOR DISTANCE REQUIREMENTS AND RESTRICTIONS; PROVIDING FOR METHOD OF MEASUREMENT OF DISTANCES; PROVIDING FOR EXEMPTIONS IN CERTAIN CIRCUMSTANCES; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to section 166.021, Florida Statutes, and section 2(b), Article VIII of the Florida Constitution, the City of Winter Garden ("City") has the power to exercise the City's home rule powers; and

WHEREAS, provisions of the Florida Beverage Law as set forth in chapters 561 through 568, Florida Statutes, including section 562.45(2)(a), Florida Statutes, recognize the authority of municipalities to enact ordinances regulating the location of businesses licensed under the Florida Beverage Law; and

WHEREAS, the City desires to amend Chapter 6 of the Winter Garden Code of Ordinances to provide for distance requirements between package sale vendors;

WHEREAS, the City finds it in the best interest of and for the health, safety, and welfare of the citizens of the City to restrict the number and locations of package sale vendors within the City limits.

BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA:

SECTION I: Sec. 6-1. – Definitions. Section 6-1 is hereby amended to reflect the following changes (underlined text indicates additions):

Package Sale Vendor means a person or entity licensed pursuant to The Beverage Law [F.S. chs. 561-568] to sell alcoholic beverages regardless of alcohol content; however, a package sale vendor does not include: (i) a business operation, in regards to beer and malt beverages (as defined by F.S. § 563.01) and wine (as defined by F.S. § 564.01) for consumption off premises; or (ii) any bona fide hotel, motel or motor court in possession of a special license issued in accordance with F.S. § 561.20(2)(a)1.

SECTION II: Section 6-7 is hereby amended to reflect the following changes (~~strike through text~~ indicates deletions and underlined text indicates additions)::

~~Any violation of this chapter is a misdemeanor of the second degree and any person found guilty of violating this chapter shall be punished by a fine not exceeding \$500.00 or imprisonment for a term not exceeding 60 days. Each violation of any section of this chapter shall constitute a separate offense.~~

~~In addition, the city commission may, when it deems it to be in the public interest and following a public hearing, rescind the occupational license issued under **Error! Hyperlink reference not valid.** to any person convicted of a violation of this chapter or of any business whose agent is convicted of violating this chapter within the scope of his employment.~~

Sec. 6-7. – Package Sale Vendors.

- (a) Package sale vendor distance requirements established. For all those certain areas of land in the City that lie within five thousand (5,000) feet of a package sale vendor's place of business as established, located and licensed, regardless of whether such established place of business is located within or outside of the City, no other new relocated package sale vendor shall be permitted to open and/or start the business of package sales within that distance.
- (b) Package sales within distance requirements restricted. The purpose of creating the distance requirements mentioned in subsection (a) of this section is to provide and require that no package sale vendor which is located or proposes to locate in the City shall be permitted to operate at a new location within a distance of five thousand (5,000) feet of the location of any package sale vendor which is both pre-existing at the time of the package sale vendor's application to operate at the new location and is located in any area of the City.
- (c) Distance requirements not applied to renewal, change in name or ownership, or change in certain licenses. The distance requirements set forth in subsections (a) and (b) shall not be applied to the location of an existing package sale vendor when there is:
 - (i) a renewal of an existing license;
 - (ii) a transfer in ownership;
 - (iii) a change in business name; or
 - (iv) a change in a state issued 4COP license for an existing package and lounge business to a 3PS license, and any decrease in the numerical designation of a state issued license which is of the same series (type); provided the physical location of the package sale vendor establishment does not change. No increase in the numerical designation of a series (type) of a state issued license which is the of the same series (type) shall be permitted at or for a location (new or existing) except in compliance with the provisions of Section 6-8.

(d) Measurement of distances. The distances provided in this section shall be measured by following the shortest route of ordinary pedestrian travel along the public thoroughfare from the proposed main entrance of a package sale vendor who proposes to operate the place of business and is licensed under The Beverage Law [F.S. chs. 561-568] to the main entrance of any other package sale vendor who is operating such business.

SECTION III. Section 6-8 is hereby added to the Code of Ordinances as follows (underlined text indicates additions):

Section 6-8. - Violations.

Any violation of this chapter is a misdemeanor of the second degree and any person found guilty of violating this chapter shall be punished by a fine not exceeding \$500.00 or imprisonment for a term not exceeding 60 days. Each violation of any section of this chapter shall constitute a separate offense.

In addition, the city commission may, when it deems it to be in the public interest and following a public hearing, rescind the occupational license issued under **Error! Hyperlink reference not valid.** to any person convicted of a violation of this chapter or of any business whose agent is convicted of violating this chapter within the scope of his employment.

SECTION IV. Existing Package Sale Vendor. Any package sale vendor that is established, located and licensed within 5,000 feet of another such package sale vendor as of the effective date of this Ordinance shall constitute a legal nonconformity.

SECTION V. INCONSISTENCY. If any Ordinances or parts of Ordinances are in conflict herewith, this Ordinance shall control to the extent of the conflict.

SECTION VI. SEVERABILITY. If any portion of this Ordinance is determined to void, unconstitutional, or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.

SECTION VII. CODIFICATION. That Section I and Section II of this Ordinance shall be codified and made a part of the City of Winter Garden Code of Ordinances; that the Sections of this Ordinance may be renumbered or relettered to accomplish such intention; the word “*Ordinance*” may be changed to “*Section*”, “*Article*”, or other appropriate word.

SECTION VIII. This Ordinance shall become effective upon approval by the City Commission at its second reading.

FIRST READING: _____, 2015.

SECOND READING: _____, 2015.

APPROVED:

John Rees, Mayor/Commissioner

ATTESTED:

Kathy Golden, City Clerk