



AGENDA
Regular City Council Meeting
Monday, March 1, 2021, 6:00 PM
Council Chambers, 116 First Street, Neptune Beach, Florida

1. CALL TO ORDER / ROLL CALL / PLEDGE OF ALLEGIANCE
2. AWARDS / PRESENTATIONS / RECOGNITION OF GUESTS / NONE
3. APPROVAL OF MINUTES
 - A. **February 1, 2021 Regular City Council Meeting**
February 16, 2021 Special City Council Meeting p. 3
February 16, 2021 Workshop City Council Meeting
4. COMMUNICATION / CORRESPONDENCE / REPORTS
 - Mayor
 - City Council
 - City Manager
 - City Attorney
 - City Clerk
 - Departmental Reports
5. COMMENTS FROM THE PUBLIC
6. CONSENT AGENDA / NONE
7. VARIANCES / SPECIAL EXCEPTIONS / DEVELOPMENT ORDERS
 - PH* A. **Second of Two Public Hearings—Development Agreement between City of Neptune Beach and Neptune Beach, FL Realty LLC, for the property known as 540-580 Atlantic Boulevard (RE#172395-0130)** p. 19
 - PH* B. **V20-01 Application for variance as outlined in Chapter 27, Article 8 of the Unified Land Development Code of Neptune Beach for Neptune Beach FI Realty, LLC for the property known as 540-580 Atlantic Blvd (RE#172395-0130). This property is former Lucky's Market in the Neptune Beach Plaza. The variance request is to provide relief from Note 6 of Table 27-229-1 by varying the 1000 linear foot requirement for businesses that operate under common business ownership or management, share a warehouse or distribution facility, or otherwise operate as an associated, integrated or cooperative business shall not exceed a combined sixty thousand (60,000) square feet of total gross floor area in aggregate.** p. 68
8. ORDINANCES
 - PH* A. **ORDINANCE NO. 2021-01, FIRST READ AND PUBLIC HEARING**, An Ordinance of the City of Neptune Beach, Florida, Amending Chapter 22 of the Code of Ordinances, Traffic and Motor Vehicles, by Amending Section 22-46, Penalties; Providing for Conflicts; Providing for Severability; and Providing an Effective Date. p. 173
9. OLD BUSINESS / NONE
10. NEW BUSINESS

A. RESOLUTION NO. 2021-05, A Resolution of the City of Neptune Beach Requesting a Beaches Trail Loop/East Coast Greenway Feasibility Study Be Included in the North Florida Transportation Planning Organization's 2021/2022 Unified Planning Work Program p. 179

B. Discussion of Resident-Requested Statement Concerning Mixed-Use Zoning

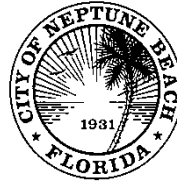
11. COUNCIL COMMENTS

12. ADJOURN

To view the meeting online, please register for Regular City Council Meeting on Mar 1, 2021 6:00 PM EST at:

<https://attendee.gotowebinar.com/register/1002870466530193679>

After registering, you will receive a confirmation email containing information about joining the webinar.



MINUTES
REGULAR CITY COUNCIL MEETING
MONDAY, FEBRUARY 1, 2021, 6:00 P.M.
NEPTUNE BEACH CITY HALL
116 FIRST STREET
NEPTUNE BEACH, FLORIDA 32266

Pursuant to proper notice, a Regular City Council Meeting of the City Council of the City of Neptune Beach was held on Monday, February 1, 2021, at 6:00 p.m., at Neptune Beach City Hall, 116 First Street, Neptune Beach, Florida 32266.

Attendance:

IN ATTENDANCE:

Mayor Elaine Brown
 Vice Mayor Fred Jones
 Councilor Kerry Chin
 Councilor Lauren Key
 Councilor Josh Messinger

STAFF:

City Manager Stefen Wynn
 City Attorney Zachary Roth
 Chief of Police Richard Pike
 Chief Financial Officer Carl LaFleur
 Public Works Director Jim French
 Mobility Management Director Megan Steward
 Senior Center Director Leslie Lyne
 Grant and Resiliency Coordinator Colin Moore
 Community Development Director Kristina Wright
 Code Compliance Supervisor Piper Turner
 City Clerk Catherine Ponson

Councilor Chin attended virtually due to illness

Call to Order/Roll Call

Mayor Brown called the meeting to order at 6:00 p.m. and led the Pledge of Allegiance.

AWARDS / PRESENTATIONS/ RECOGNITION OF GUESTS

National Gun Violence Survivors Week

Mayor Brown read and presented a proclamation designating February 1-7, 2021, National Gun Violence Survivors Week in Neptune Beach.

APPROVAL OF MINUTES

Minutes

Made by Jones, seconded by Messinger.

MOTION: TO APPROVE THE FOLLOWING MINUTES:

January 19, 2020, Special City Council Meeting

Roll Call Vote:

Ayes: 5- Chin, Key, Messinger, Jones, and Brown.
 Noes: 0

MOTION CARRIED

COMMUNICATIONS / CORRESPONDENCE / REPORTSCity Manager
Report

City Manager Stefen Wynn reported the following:

- Jarboe Park improvements are well underway. He presented a revised construction timeline.
- Site work has been completed and foundation poured for the Senior Center.
- The Vision Plan, Comprehensive Plan and LDC schedule has been updated and is available at <https://www.neptunebeachvisionplan.com>.
- The traffic study along Bay Street is still ongoing and data is being collected.
- The quarterly report for North Beaches Parking was presented.

All monthly City Manager reports can be found, in their entirety, at: <https://www.ci.neptune-beach.fl.us/city-manager/pages/city-manager-reports>

Police Chief
Report

Police Chief Richard Pike clarified that in any unposted residential area, the speed limit is 30 m.p.h., pursuant to Florida Statute. He stated he will present an accurate traffic reading next month. He presented the January monthly report.

Councilor Messinger requested including a page in the report for traffic accidents. This would delve into the complete streets and sidewalk programs that would make our streets safer.

PUBLIC COMMENTS / NONE**ORDINANCES / NONE****OLD BUSINESS / NONE****NEW BUSINESS**

Res. No. 2021-02, Request to COJ for Third Street Improvements

Resolution No. 2021-02, A Resolution of the City of Neptune Beach Requesting Improvements to Third Street (State Road A1A) to Address Pedestrian and Bicyclist Safety, Vehicle Turning Movements at Vehicle/Pedestrian Conflict Points, Drainage and Aesthetics Be Placed on the 2021 Duval County List of Priority Projects.

Mayor Brown explained this is a request for Third Street improvements to be placed on the 2021 Duval County List of Priority Projects “complete streets” and “context sensitive” concepts for improvements to Third Street.

Councilor Chin stated he supports this resolution.

Councilor Messinger commented this is an excellent step in the right direction and he supports this.

Vice Mayor Jones added this is exactly the process you go through to get the project. This is how Mayport Road has made the list of priority projects.

Councilor Key stated this has been needed for some time and is glad it is being addressed.

Made by Messinger, seconded by Key.

MOTION: **TO APPROVE RESOLUTION NO. 2021-02, REQUESTING IMPROVEMENTS TO THIRD STREET (A1A) BE INCLUDED ON 2021 DUVAL COUNTY LIST OF PRIORITY PROJECTS**

Roll Call Vote:

Ayes: 5-Key, Messinger, Chin, Jones, and Brown.

Noes: 0

MOTION CARRIED

Res. No. 2021-03, Resolution No. 2021-03, A Resolution of the City Council of the City of Neptune Beach, Florida, Supporting Florida Senate Bill 596 and Companion House Bill 6023, Which Would Repeal Florida Statute 163.045 to Enable Local Governments to Regulate Matters Relating to Trees Located on Residential Properties; Providing for Conflicts; and Providing for an Effective Date.

Supporting State
Legislation
Regarding
Regulation of
Trees

City Attorney Zachary Roth explained there was legislation passed two years ago that essentially allowed carte blanche destruction of trees on residential property. This bill repeals that legislation. It does not amend it. The City can go back to enforcing our own Code. This bill would be a huge step in terms of Home Rule.

Vice Mayor Jones stated this is good policy in getting us back to protecting local quality of life.

Councilor Key expressed that all cities are different and we should be given the right to decide what is right for our City.

Councilor Chin added that this really about Home Rule. He has had many calls from upset neighbors, and he supports this resolution.

Councilor Messinger commented it is about Home Rule and it is a huge quality of life issue.

Made by Messinger , seconded by Key.

MOTION: **TO APPROVE RESOLUTION NO. 2021-03, SUPPORTING LEGISLATION ENABLING LOCAL GOVERNMENTS TO REGULATE MATTERS RELATING TO TREES**

Roll Call Vote:

Ayes: 5-Messinger, Chin, Key, Jones, and Brown.

Noes: 0

MOTION CARRIED

Jarboe Park Bids Authorization for City Manager to Solicit Bids for All Courts in Jarboe Park.

Mr. Wynn reported that the City received an estimate on what it would cost to improve the courts in Jarboe Park. Due to the poor base of the courts, the City estimates the cost to be enough to put the project out to bid.

Made by Jones, seconded by Messinger.

MOTION: **TO AUTHORIZE THE CITY MANAGER TO SOLICIT BIDS FOR ALL COURTS IN JARBOE PARK**

Roll Call Vote:

Ayes: 5-Chin, Messinger, Key, Jones, and Brown.

Noes: 0

MOTION CARRIED

COUNCIL COMMENTS

Vice Mayor Jones reported that a consultant has been selected for the Penman Road Study. The contract needs to be reviewed and the project should be underway next month.

Councilor Messinger commented that Neptune Beach has collected a lot of data and opinions from our City. He requested that this is transferred to those consultants early on so we are not transmitting at the end when they have done their planning.

Adjournment

There being no further business, the meeting adjourned at 6:41 p.m.

Elaine Brown, Mayor

Attest:

Catherine Ponson, CMC
City Clerk

Approved: _____



MINUTES
SPECIAL CITY COUNCIL MEETING
TUESDAY, FEBRUARY 16, 2021, 6:00 P.M.
NEPTUNE BEACH CITY HALL
116 FIRST STREET
NEPTUNE BEACH, FLORIDA 32266

Pursuant to proper notice, a Special City Council Meeting of the City Council of the City of Neptune Beach was held on Tuesday, February 16, 2021, at 6:00 p.m., at Neptune Beach City Hall, 116 First Street, Neptune Beach, Florida 32266.

Attendance:	<p>IN ATTENDANCE: Mayor Elaine Brown Vice Mayor Fred Jones Councilor Kerry Chin Councilor Lauren Key Councilor Josh Messinger</p>	<p>STAFF: City Manager Stefen Wynn City Attorney Zachary Roth Chief of Police Richard Pike Chief Financial Officer Carl LaFleur Public Works Director Jim French Mobility Management Director Megan Steward Senior Center Director Leslie Lyne Grant and Resiliency Coordinator Colin Moore Community Development Director Kristina Wright City Clerk Catherine Ponson</p>
Call to Order/Roll Call/Pledge	<p>Mayor Brown called the Special Meeting to order at 6:00 p.m. and Councilor Messinger led the Pledge of Allegiance.</p>	
Public Hearing-Development Agreement	<p><u>First of Two Public Hearings</u>—Development Agreement between City of Neptune Beach and Neptune Beach, FL Realty LLC, for the property known as 540-580 Atlantic Boulevard (RE#172395-0130)</p> <p>Mayor Brown explained this is the first of two public hearings on a Development Agreement between the City of Neptune Beach and Neptune Beach, FL Realty LLC.</p>	
Public Hearing	<p>Mayor Brown opened the public hearing. There being no comments from the public, the public hearing was closed.</p>	
Neptune Beach City Attorney	<p>Mayor Brown asked City Attorney Zachary Roth to remind everyone where we are and how we got to this process.</p> <p>City Attorney Zachary Roth explained that about one year ago, the owners of the property, Neptune Beach, FL LLC, approached the City about the old Lucky's space which was in bankruptcy. The idea was for Publix to acquire the lease and potentially to move into that space. The City had concerns regarding a provision of our Code regarding similar run businesses. Staff also opined that the City was not certain that the property would qualify for a variance.</p>	

The idea developed of a development agreement to perform tasks on the property that may alter it and make the variance provisions a little more applicable here.

Over the process, it is a development agreement, that will be recorded into the public record that is designed essentially for certain improvement updates, activity, landscaping and things like that to this parcel that would alter the analysis into this document.

The development agreement has been heavily negotiated through the process in terms of what is going to be done, how do we guarantee it is going to be done and what happens if it is not done.

Instead of just the language of the document, there are also photos, landscaping plans and building plans that have run parallel in this process. Mr. Roth added that we are to a point where the development agreement is in place where the parties are comfortable to bring to Council.

There are certain deadlines within this agreement that are provided. The developer has to meet those deadlines at various stages in terms of building permits, plan submissions, initial instruction, construction deadlines, and items like that. This is a binding date. Each time a binding date is not met, there is an extension fee. Those fees will be held in an escrow fund by Ansbacher Law, P.A.

Applicant
Presentation

Andrew Greene, Vice-President, TLM Realty, applicant and property owner, introduced individuals joining virtually who were involved in the process, including Bob Balcerak,, David Rubin, Anthony Rodriguez, and Andy Pillari with Publix, and Jake Cremer and Elise Bartel with Stearns, Weaver, Miller. He gave a brief overview of what was presented to the Community Development Board in September, 2020.

He presented placemaking enhancements for the proposed area, including a new pedestrian plaza on Lemon Street, expanded front walk and new courtyard. He anticipates coffee shops and restaurants will use that area.

Along Atlantic Boulevard, as you are driving toward the ocean, they would retain some of the mature landscaping and there would be a new monument sign to match the modern renovation. There would be a vehicular connection to 630 Atlantic Boulevard.

A final concept or addition to the development agreement are City Manager Coordination Meetings. These meetings will give City staff the opportunity to review the latest design plan and confirm that those plans continue to be in keeping with the exhibits.

Council
Questions

Councilor Key asked what guarantees does the City have or does Mr. Greene have that Publix will move into the space.

Mr. Greene explained that there is a condition in the development agreement that a lease get signed from Lucky's Market to Publix. Publix is contractually obligated to open in that location within 19 months.

Mr. Roth stated that there should at least be a provision that there is an obligation to open it that is enforceable by specific performance.

Mr. Greene indicated that there are other small shops and those tenants are going to want to be sure that Publix will open.

Councilor Key asked to see a copy of the lease. Mr. Green stated it is confidential but he could review that provision with the City Attorney. He answered that the lease would probably be terminated to Councilor Key's inquiry of what would happen if they did not open.

Vice Mayor Jones questioned if the developer had any active discussion with Seminole Shoppes at 630 Atlantic Boulevard regarding that parcel connection.

Mr. Greene answered that there was a requirement for the construction of a roadway in the 2010 development of 630 Atlantic. They have completed their section.

Councilor Messinger added that there is no intention to complete that connection and then install bollards to make it effectively complete but not useable.

Discussion

Councilor Chin commented that some of what the City wants to do is create a more walkable community and encourage bicycling as alternate modes of transportation. He questioned if there are 20 bike parking spots or 20 bike racks and asked what was the intention.

Mr. Greene stated those were the kinds of elements to be developed but there would be proper accessible parking with several locations.

Councilor Messinger said that the overall plan has a significant increase of over 70 hardwoods and he had expressed during the feedback that he wanted more tree canopy. He agreed with Councilor Chin regarding bicycles and it would be ideal to increase bike parking. Overall, it would be a great improvement to Atlantic Boulevard. He would like to see the bicycle parking squared away before the next meeting.

Vice Mayor Jones expressed it would be a great opportunity to work with local artists to come up with some schematics to provide parking. He stated that the development agreement references mobility fees on Page 9 of the agreement. Neptune Beach does not have those so it may be simple to just call it impact fees since it constitutes a specific entitlement.

Councilor Key questioned, in order to understand, that they would be doing improvements to the property in order to get a variance that is not in compliance with our big box ordinance.

Mr. Roth said that the intention behind this Development Agreement and the modification is to create a circumstance better qualifies the property for a variance.

Councilor Key questioned that potentially the property that has been an eyesore for the community, would be given a variance, on an ordinance we have something against, in order for them to start improving the property.

Mr. Roth stated that the Development Agreement and the variance go hand in hand. The Development Agreement is tied to the variance that would vary the provision of our Code regarding the big box ordinance in recognition of the improvements, modifications, and alterations.

Mayor Brown conveyed that a lot of time has been put into this with input from everyone. There is protection for the City and she feels comfortable with where we are with recommendations by our City Attorney.

Made by Jones, seconded by Messinger.

MOTION:

**TO MOVE THE DEVELOPMENT AGREEMENT TO A SECOND
READ ON MARCH 1, 2021**

Roll Call Vote:

Ayes: 4-Chin, Messinger, Jones, and Brown.

Noes: 1-Key

MOTION CARRIED

ACON Constr.-
Change Order
#1

Approval of ACON Construction, Change Order #1 - Jarboe Park Improvements Phase I.

Mr. Wynn reported that the original contract price was \$279,379.98. The change order amount is \$41,812.50 for a new total of \$321,192.48. The additional work being added includes grading of additional fill materials at the pickle ball, basketball and tennis courts; additional asphalt at handicapped parking near bridge; strip and removal of existing asphalt from tennis courts; grading of limerock and fill; grading of relocated areas; and installation of concrete circular path adjacent to Neptune House.

Councilor Messinger thanked City staff for all of their hard work in this project.

Councilor Key stated there should be more accountability on funding. There are a lot projects that are costly. She questioned where the City is right now without any other change orders.

Mr. Wynn reported if this change order and the next item on the agenda are approved, it is roughly \$646,000 without the courts.

Councilor Key expressed that the courts, sidewalks, sod, parking and stormwater still have to be completed. She asked for a ball park figure for where will the City be with all of that added in.

Mr. Wynn replied depending on the court costs, most likely, one million dollars.

Councilor Key stated she had reviewed prior budgets to get a better understanding. Those costs for Jarboe Park, with a five-year plan, reported \$287,000 and now we are at one million. She is concerned and plans on addressing these issues at the Finance Committee meeting on February 24. She has a hard time approving a change order when there isn't a full grasp on what we are spending.

Councilor Chin questioned the reason for the additional fill and if it is an engineering reason.

Mr. Wynn explained one of the water lines coming from the water plant goes under the volleyball courts. The courts are shallower than the design engineer thought. Public Works Director Jim French looked at the calculations and in order to make this work and have positive drainage, the pad would need to be raised.

Councilor Messinger pointed out that you would have to go back to the previous City Manager's budgeting to see why we are where we are at today. Actual true budgeting started happening when Mr. Wynn came on board. Grant and Resiliency Coordinator Colin Moore has been writing a significant amount of grant money for this project. He added the current budget and the budget from last year are greatly improved.

Mayor Brown thanked City staff for reviewing the project and doing as much as we can in-house. We have a project that has gone over budget and we will make sure we get a much clearer picture moving forward.

Made by Messinger, seconded by Jones.

MOTION: **TO APPROVE AKON CONSTRUCTION, CHANGE ORDER #1, JARBOE PARK IMPROVEMENTS PHASE I IN THE AMOUNT OF \$41,812.50**

Roll Call Vote:
 Ayes: 4- Messinger, Chin, Jones, and Brown.
 Noes: 1-Key

MOTION CARRIED

KOMPAN
 Playground
 Equipment-
 Change Order
 #1

Approval of KOMPAN Playground Equipment, Change Order # 1 - Jarboe Park Improvement Phase I.

Councilor Messinger explained that this is for two additional sail shades and more playground equipment. This is based on feedback received. These are 20-year and 10-year warrantied equipment. This vendor came back with the highest review for quality and longevity. This is a long-term investment for the community. The original sales proposal was \$232,801.05. The amended sales proposal is \$288,651.83. The change order is for the difference of \$55,850.78

Councilor Key stated she supports children having a fun and safe place to play. Right now, her concerns are where we are with the budget and the spending of our Better Jax Funds. She does not feel comfortable approving things until she has a better understanding of where we are with the budget right now.

Councilor Chin commented that the reason for the changes is resident-driven. He is sympathetic to Councilor Key’s concerns and having a better understanding of where the money is coming from. It is important to give the people and residents’ children something they can enjoy for years to come.

Made by Chin, seconded by Messinger.

MOTION: **TO APPROVE KOMPAN PLAYGROUND EQUIPMENT, CHANGE ORDER # 1 - JARBOE PARK IMPROVEMENT PHASE I IN THE AMOUNT OF \$55,850.78**

Roll Call Vote:
 Ayes: 4- Messinger, Chin, Jones, and Brown.
 Noes: 1-Key

MOTION CARRIED

Ghiotto &
 Associates,
 Add'l Costs

Approval of Ghiotto & Associates-Additional Construction Staking Costs -Jarboe Park Improvements Phase I

Vice Mayor Jones stated at this point this is a procedural issue that we will run into given the way we are doing this project. Looking at this project and the perspective people wanted could be a three million dollar job. This is actually a good price given where we are with our budget and what we are planning on getting. A park in the City of Jacksonville would cost much more.

Councilor Key stated that the most recent estimate of 2.8 million and has the potential to cost that here if we are not careful in the process.

Mr. Wynn answered Councilor Messinger’s inquiry that the 2.8 million is the estimate from Parsons Engineering for Phases 1A, 1B, 1C and Phase 2.

Mr. Wynn stated for this agenda item there were three quotes for the staking and it is over the minimum threshold for his approval. This will require Council approval and a contract.

The price should be a total not to exceed \$12,000, which includes \$3,682.50, already spent, with \$8,317.50 remaining.

Made by Messinger, seconded by Jones.

MOTION: **TO APPROVE GHIOTTO & ASSOCIATES-ADDITIONAL CONSTRUCTION STAKING COSTS -JARBOE PARK IMPROVEMENTS PHASE I NOT TO EXCEED \$12,000**

Roll Call Vote:

Ayes: 4- Chin, Messinger, Jones, and Brown.

Noes: 1-Key

MOTION CARRIED

Res. No. 2021-04, Opposing Short-term Rental Legislation

Resolution No. 2021-04, A Resolution of the City Council of the City of Neptune Beach, Florida, Opposing Florida Senate Bill 522 and House Bill 219, Which Would Preempt Regulation of Short-Term Rentals to the State; Providing for Conflicts; and Providing for an Effective Date

Mayor Brown stated Home Rule is important to everyone and we want to send a strong message to legislators.

Councilor Chin pointed out that he sees signs for short-term rentals that meet our minimum requirements but only stay one week and being refunded for the rest of the time. He wanted to make sure the City could prevent people from finding loopholes around our restrictions.

Made by Messinger, seconded by Chin.

MOTION: **TO APPROVE RESOLUTION NO. 2021-04, OPPOSING FLORIDA SENATE BILL 522 AND HOUSE BILL 219, WHICH WOULD PREEMPT REGULATION OF SHORT-TERM RENTALS TO THE STATE**

Roll Call Vote:

Ayes: 5- Key, Messinger, Chin, Jones, and Brown.

Noes: 0

MOTION CARRIED

PUBLIC COMMENT

Public Comment

John Holmes, 914 4th Street, Neptune Beach, spoke regarding an update on Bay Street parking. He said the newly-constructed fence leaves no room for anyone to walk except on the street.

Chuck McCue, 1908 3rd Street, Neptune Beach, stated he appreciated Councilor Key being the voice of reason on expenditures. He questioned the mound of dirt where the children’s playground was and suggested using that dirt on the tennis courts. He asked if the asphalt would be recycled. He stated the shade sails for the playground areas would last 8 to 10 years in Florida and noted the shipping fees. He is concerned about the low-bid spending. He suggested fixing drainage on Kings Road instead. He questioned the number of pickleball courts. He added that the park should be for residents. Mr. McCue remarked that he had concerns about the vagueness of the lease at Publix.

Scott Wiley, 723 Davis Street, Neptune Beach, stated everyone wants nice playground equipment and shade in the park. As former chairman of the Finance Committee, and these items were discussed but it was never mentioned that the park was over budget. We need to stay close to the budget. He requested receiving bids before deciding to do something.

Pat Hazouri, 207 Florida Boulevard, Neptune Beach, asked where could she see the plans for Jarboe Park. She commented that when she saw the plans back in January, there was one bridge toward the west that would be for handicapped parking. She asked if another bridge has been added. She asked what happened to the Neptune House and was it ever repaired.

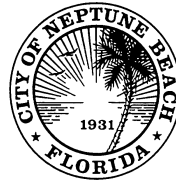
Adjournment There being no further business, the Special Meeting adjourned at 7:11 p.m.

Elaine Brown, Mayor

Attest:

Catherine Ponson, CMC
City Clerk

Approved: _____



**MINUTES
WORKSHOP CITY COUNCIL MEETING
IMMEDIATELY FOLLOWING SPECIAL MEETING
NEPTUNE BEACH CITY HALL
116 FIRST STREET
NEPTUNE BEACH, FLORIDA 32266
TUESDAY, FEBRUARY 16, 2021, 7:18 P.M.**

Pursuant to proper notice, a Workshop City Council Meeting of the City Council of the City of Neptune Beach was held on Tuesday, February 16, 2021, at 7:18 p.m., in Council Chambers, City Hall, 116 First Street, Neptune Beach, Florida, 32266

Attendance

IN ATTENDANCE:

Mayor Elaine Brown(*absent*)
Vice Mayor Fred Jones
Councilor Kerry Chin
Councilor Lauren Key
Councilor Josh Messinger

STAFF:

City Manager Stefen Wynn
City Attorney Zachary Roth
Chief of Police Richard Pike
Chief Financial Officer Carl LaFleur
Public Works Director Jim French
Mobility Management Director Megan Steward
Senior Center Director Leslie Lyne
Grant and Resiliency Coordinator Colin Moore
Community Development Director Kristina Wright
City Clerk Catherine Ponson

Call to Order

Vice Mayor Jones called the workshop meeting to order at 7:18 p.m.

AWARDS / PRESENTATIONS / GUESTS / NONE

DEPARTMENTAL SCORE CARD

Departmental Score Card

Departmental Score Card. City Manager Stefen Wynn reviewed the Departmental Score Card. The Departmental Score Cards are posted on the City website at: <https://www.ci.neptune-beach.fl.us/city-manager/pages/city-manager-reportsdepartmental-score-cards>

COMMITTEE REPORTS

Finance

Committee Chairman Lauren Key reported there will be a Finance Committee meeting on Wednesday, February 24, 2021 at 10:00 a.m.

Land Use & Parks

Committee Chairman Messinger reported his committee would meet in March.

Strategic Planning & Visioning/
Transportation & Public Safety

Committee Chairman Jones reported both of these committees met before the holidays. He added that we are continuing with the Visioning Plan and CIP Projects.

Mr. Wynn reported that the former Finance, Boards, and Charter Review Committee would be split and be its own separate committee.

PUBLIC COMMENT

Public Comment Chris Townsend, 1327 Trailwood Drive, Neptune Beach, stated he thought the new Senior Center being delivered was a job site trailer. He said it does not conform to the neighborhood.

Bob Walker, 1339 Trailwood Drive, Neptune Beach, stated he lives next door to Mr. Townsend. He pointed out that he drives by the site numerous times a day. He is disappointed at how this has come about. It does not conform or represent what Neptune Beach is all about. He added he is objecting to the project.

Chuck McCue, 1908 3rd Street, Neptune Beach, stated the focus needs to be on Neptune Beach seniors. He said it seems like we are doing a lot to attract seniors from all over. The same would go for Jarboe Park. He is also concerned about the vagueness of the lease for Publix. He asked if there is anything to keep them from subleasing that space. He questioned the amount of dirt at Jarboe Park.

Chris Townsend, 1327 Trailwood Drive, Neptune Beach, continued by stating he did not see an overall price for the project. It is discouraging that the City is spending this much money.

Pat Hazouri, 207 Florida Boulevard, Neptune Beach, requested making sure fence on Bay Street does not block the sidewalk.

PROPOSED ORDINANCES

Proposed Ord. 2021-Parking Penalties Proposed Ordinance No. 2021-, An Ordinance of the City of Neptune Beach, Florida, Amending Chapter 22 of the Code of Ordinances, Traffic and Motor Vehicles, By Amending Section 22-46, Penalties; Providing for Conflicts; Providing for Severability; and Providing An Effective Date.

Mobility Management Director Megan Steward explained that this ordinance deals with what happens when we have outstanding unpaid parking tickets. Under this ordinance, we are able to send letters to the registered owner of the vehicle and provides an appellate procedure. This gives other options rather than to boot and immobilize the vehicle.

Councilor Key stated that this makes sense for the goal of the parking program to be friendlier and this will help do that. She added that Ms. Steward is doing a good job.

Councilor Messinger pointed out that the majority of the parking in the Beaches Town Center is privately owned. People are upset when they get towed when this is not the City doing this. He commended Ms. Steward for an excellent job.

Councilor Chin commented that this gives someone who receives a ticket 100 days before anything happens. There is a lot of time to correct their issue. He questioned if the appeal process is on the ticket.

Ms. Steward stated the appeals process is through the North Beach Parking website and the website address appears on the ticket.

Vice Mayor Jones commented on how far the City has come with the parking program and thanked Ms. Steward.

CONSENSUS: **TO MOVE PROPOSED ORDINANCE NO. 2021, PARKING PENALTIES TO FIRST READ ON MARCH 1, 2021.**

CONTRACTS / AGREEMENTS / NONE

ISSUE DEVELOPMENT

Senior Center
Timeline to
Completion

Senior Center Timeline to Completion.

Mr. Wynn reported that he has taken this project and will see it to completion. Seeing this through is paramount to making sure the neighbors are happy with the final project. He assured everyone that the City is not done. The building is still being buttoned together.

Mr. Wynn presented a history of how we got where we are today and what the path forward will be. He is proposing that his recommendation is that final completion of the Senior Center be completed as a design-build proposal submitted to a landscape architect or engineering firm with a subcontractor that can do the work with a maximum not to exceed price. The things that need to be considered in the design-build RFP would be not only design, architectural, engineering, but also the porch or hip roof, the parking lot, stormwater landscaping, HVAC, moving or screening it, as well as the buffering requirements that are required by our own Code.

There was a variance for that building to be there but that does not preclude the City from following its own LDC and Comprehensive Plan. The RFP will include permitting with appropriate authorities. The final piece will be construction of the porch, landscaping, buffering, screening and curbing, electrical, fine grading, ingress/egress with ADA considerations and parking lot requirements.

Mr. Wynn continued with the timeline which includes publishing the RFP on March 3, 2021 and a completion date of August 26, 2021.

Councilor Chin stated there a lot of comments out there and disappointment that the modular units look like old trailers. He knows there is work to be finished. He asked Mr. Wynn how confident is he that the City can complete something like what has been presented in the picture.

Mr. Wynn answered that he is pretty confident. He had not been out here this week and there were a number of items to be done. He has not completed a punch list yet, but that is coming. He pointed out that the area is in a flood zone and if we are talking resiliency, having something off of the ground would allow for water to go a little bit better. We could put in flood vents but this would be a significantly different cost and longer timeline.

Councilor Chin pointed out that he saw the possibility of a grant that would be able to move the HVAC units and install ultraviolet germicidal irradiation.

Mr. Wynn stated Mr. Moore have reached out to the CDBG office in Jacksonville and the City is still looking at that.

Councilor Messinger commented that this has exposed a larger issue. He stated there were a lot of deficiencies from a professional services standpoint. His committee is going to be looking at how the City does capital projects throughout the City. The concerns he raised back in September on this project still stand. This is a residential area. We are talking design-build and our standards have not been followed. What we demand of our residents and commercial businesses has not been followed. Even if it was followed, our minimum standards for commercial are not sufficient for that area.

How we screen and design the landscaping is very important to quality of life in that area. We need to make sure as we go through the design-build process to make sure it is thoughtfully laid out.

Councilor Key asked if we had any idea how much it would cost to look like it appears in the picture presented.

Mr. Wynn explained we would set a not-to-exceed price that would go out with the RFP. He does not recommend including the entire amount of donations in case change orders or things come up. He thought \$150,000 would be pretty good. Mr. Wynn clarified that the intent back in September was that whatever was in excess for donations would replenish the Better Jax Funds.

Councilor Key pointed out that this is an important time to look at our processes and procedures. We need to make sure this does not happen again. This is going to cost more money. Senior Center Director Leslie Lyne has done a wonderful job fundraising that we have the funds. At that time, when this was approved, a pledge was made of \$100,000 to replenish the Better Jax Funds and now that can't happen as there is so much work to be done.

Ms. Lyne stated that she did not know where the idea came from that money from donations, grants and that sort of thing would go back into the Better Jax Funds. She has read the minutes and the motion was to approve funding for the Senior Activity Center in the amount of \$400,000. It was approved unanimously. There was never any discussion about any of the money that was raised to be put back into the coffers. That money would be used for the Center.

Mr. Wynn pointed out that his recommendation is for a design-build and that is how he would like to see the project to completion. We have witnessed this deficiency and he is attempting to address that with policy changes, namely, the procurement policy.

Councilor Messinger commented that this goes back to his concern in September. He would be interested to see what we can do with the design-build. His concern is here is a pot of money and how are we going to best execute on that. Give us those options to know as a body so we can work with the neighbors to figure out what would be the best outcome for that residential area. He added that maybe the minutes don't reflect the conversation but the audio clearly shows that when they approved it, the comment was that the \$100,000 would go back into the half-cent gas tax. This needs to be well thought out and properly planned.

Councilor Key stated that she and Ms. Lyne had emails back and forth. She stated to Ms. Lyne when she came up and said that she never intended to take any of that money and put it back towards the Senior Center is unfair. At minute 1:31 on the September 8, 2020, Council meeting, which Council was approving this, her exact words were, " I will not quit until I have \$100,000 is raised, which can then be placed back into your half-cent gas tax."

Vice Mayor Jones stated we have to clearly remedy this situation for the residents of the area. He added that no sort of screening to cover air conditioners is going to be suitable.

Mr. Wynn stated that there is a Council meeting before the RFP would be published. He could present it as part of his City Manager's report.

CONSENSUS: **TO AUTHORIZE THE CITY MANAGER TO ISSUE AN RFP FOR COMPLETION OF THE NEPTUNE BEACH SENIOR CENTER WITH A NOT-TO-EXCEED PRICE OF \$150,000**

PUBLIC COMMENT

Bob Walker, 1339 Trailwood Drive, Neptune Beach, stated if he had bought the modular home or trailer, he would never have gotten a building permit. You could build a really nice structure for \$400,000, and this is unacceptable

COUNCIL COMMENTS / NONE

Adjournment There being no further business, the workshop meeting adjourned at 8:13 p.m.

Elaine Brown, Mayor

ATTEST:

Catherine Ponson, CMC
City Clerk

Approved: _____



**Item #7A
Development
Agreement**

**CITY OF NEPTUNE BEACH
CITY COUNCIL MEETING
STAFF REPORT**

- AGENDA ITEM:** Second of Two Public Hearings—Development Agreement between City of Neptune Beach and Neptune Beach, FL Realty LLC, for the property known as 540-580 Atlantic Boulevard (RE#172395-0130)
- SUBMITTED BY:** Neptune Beach, FL Realty LLC
- DATE:** February 24, 2021
- BACKGROUND:** This is the second of two required public hearings pursuant to Florida Statutes Section 163.3225, for a Development Agreement between the City of Neptune Beach and Neptune Beach, FL Realty LLC, for property known 540-580 Atlantic Blvd. (RE#172395-0130), Neptune Beach, Florida
- BUDGET:** N/A
- RECOMMENDATION:** Consider the attached Development Agreement at the Second Public Hearing on March, 2021
- ATTACHMENT:**
1. Development Agreement - Neptune Beach FL Realty LLC - 02.08.21

This instrument prepared by and return to:

Jacob T. Cremer, Esq.
Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
PO Box 3299
Tampa, FL 33601

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into as of the ____ day of _____, 2021 by and between the **CITY OF NEPTUNE BEACH, FLORIDA**, a municipal corporation of the State of Florida (the “City”) and **NEPTUNE BEACH, FL REALTY LLC**, a Florida limited liability company (together with its successors and assigns “Developer”).

RECITALS:

WHEREAS, Developer is the owner and holds fee simple legal title to that certain real property located in the City, legally described in **Exhibit A** (the “Property”); and

WHEREAS, the Property has a Comprehensive Plan future land use designation of Commercial High and is zoned Commercial C-3; and the zoning, land use, and locational characteristics of the Property support commercial development; and

WHEREAS, the Property was developed in accordance with the City’s Unified Land Development Code (the “LDC”) on or about 1977 and is currently developed as a shopping center with approximately 55,652 square feet of commercial uses, including a 29,810 square foot grocery store, which was originally constructed as an A&P grocery store and was most recently leased and occupied by Lucky’s Market; and

WHEREAS, Lucky’s Market Operating Company, LLC (“Lucky’s Market”) has declared bankruptcy and closed the grocery store on the Property, and through the oversight of the bankruptcy court plans to assign its lease to Publix Super Markets, Inc. (“Publix”) subject to the City’s approval of Publix’s occupancy of the grocery store; and

WHEREAS, the City has advised that, in order to issue approval of Publix’s occupancy of the grocery store, a variance approval is necessary, and the Developer has filed and is pursuing approval of Variance Application V20-01 (the “Variance”), and the Community Development Board has recommended approval of the Variance; and

WHEREAS, Developer plans to redevelop and improve the existing shopping center and the grocery store in order to meet the needs of Publix and existing market conditions (the “Project”), and in order to service the redeveloped shopping center and facilitate the City’s approval of Publix’s occupancy of the grocery store, the Developer will construct certain placemaking improvements (the “Improvements”); and

WHEREAS, the City has determined that the existing development and the Project, if the Variance is approved, are consistent with the City’s Comprehensive Plan, conforms to the standards of the LDC to the public including but not limited to additional retail opportunities, more efficient and safer vehicular and pedestrian circulation, and more pleasing design aesthetics; and

WHEREAS, in accordance with Section 163.3220, Florida Statutes, et. seq., the City is authorized to enter into a development agreement; and the City has reviewed and analyzed all information supplied by the Developer regarding this Agreement and acknowledges that the information supplied by the Developer is adequate and appropriate to support the approvals and relief herein; and

WHEREAS, at the conclusion of two noticed public hearings, the City approved this Agreement and authorized the Mayor and/or City Manager of the City to execute it on behalf of the City; and

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Section 1. **Recitals**. The recitals set forth above are true and correct and are incorporated herein by this reference.

Section 2. **Description of Project and Proposed Uses:**

A. **Existing Uses**: The Property was developed in or about 1977 and is currently developed as a shopping center with approximately 55,652 square feet of commercial uses, including a 29,810 square foot grocery store, which was originally constructed as an A&P grocery store. After a renovation of the Property façade and stores in 2016, the 29,810 square foot store was most recently leased and occupied by Lucky’s Market.

B. **Proposed Uses:**

1. **Shopping Center**: The Property will continue to be developed as a shopping center, including to date approximately 55,652 square feet of existing commercial uses, including an approximately 29,810 square foot existing grocery store (with permitted accessory uses including a café use within the grocery store), which will be leased, renovated, and occupied by Publix upon approval of the Variance (it being understood for clarity that the Patio, as hereafter defined, is not included in the above square footage calculation). The parties agree that development other than that related to the Project and the Improvements shall be separately permitted in accordance with Section 7 of this Agreement. This Agreement does not prevent (but also does not authorize) the shopping center and grocery store from being expanded or contracted

in size, subject to review in accordance with the Variance and the LDC in accordance with Section 7 of this Agreement; in such case, the parties agree to cooperate to amend this Development Agreement as appropriate based upon the results of any review in accordance with the Variance and the LDC.

2. **Café Use:** An accessory café use is permitted to be contained within the grocery store and may be extended outside to the Patio if approved by special exception. The accessory café use permits the on-premises consumption of beer and wine as permitted under Section 4-9 of the LDC, subject to approval by all state agencies.

3. **Variance:** If approved by the City, the Variance shall be governed by the LDC as it exists at the time of approval, including but not limited to Section 27-149. The parties agree that the Variance is a development order subject to the provisions of Section 252.363, Florida Statutes. The City agrees that the Variance will not expire “by earlier council action” as long as Developer is in substantial compliance with this Agreement and that “actual construction” means any material physical work on the Property in furtherance of the Project. Until such time as the Variance runs with the land, the City agrees that the Variance shall be transferred automatically to any successor in title to the Property, as long as Developer is not in breach of this Agreement at the time of transfer of title to the Property (and if the Developer is in breach, then the variance shall be transferred at the earlier of the consent of City Council or when the default is cured). Developer may request certifications related to the Variance in accordance with Section 22 of this Agreement. Notwithstanding anything to the contrary, the Variance shall be limited to Publix’s (or any Publix affiliate’s) occupancy and shall not inure to the benefit of any other tenant except by merger or acquisition.

Section 3. **Public Facilities to Service Development.** The following public facilities are presently available to the Project and Property from the sources indicated below. Development will be governed by the concurrency ordinance provisions applicable at the time of development approval.

A. **Water.** The City will provide potable water.

B. **Sanitary Sewer.** The City will provide sanitary sewer service. Water and sanitary sewer upgrades and improvements are the responsibility of Developer.

C. **Stormwater Management.** Stormwater management and drainage facilities will be provided by the Developer. There will be no increase in impervious surface and, as a result, no change in stormwater management shall be required.

D. **Law Enforcement, Fire Protection, and Emergency Medical Service.** Law enforcement will be provided by the City. Fire protection and emergency medical services will be provided by the City of Jacksonville.

E. **Solid Waste/Recycling.** Solid waste and recycling collection services will be provided by the City.

F. **Recreation/Open Space.** All public recreation/open space facilities will be provided by the City.

G. **Transportation/Mass Transit.** The public roads and mass transit facilities serving the Project have been determined to meet the adopted level of service both before and after the traffic impacts of the Project are considered.

Section 4. **Agreements of the Developer.** Upon approval of the Agreement and satisfaction of the Conditions Precedent, as hereafter defined, Developer shall perform the following:

A. **Improvements.** Developer shall construct and maintain the following Improvements as described in **Exhibit B** and further depicted in **Exhibit C** (the “Improvements”). No deviation from Exhibits B or C shall be permitted except by amendment to this Agreement recorded in the public records of Duval County, Florida; however, the City Manager may approve minor deviations that, in his sole judgment and discretion, are not material and that do not relate to landscaping. All improvements must be maintained in a commercially reasonable manner and to reasonably minimize any costs on the City.

B. **Assurance of Completion of Improvements.**

1. **Escrow Funds to Ensure Completion of Improvements.** The parties acknowledge and agree that the City will be harmed if Developer does not complete the Improvements within a timely manner. Prior to the execution of this Agreement by the Mayor and/or City Manager of the City, Developer shall provide to the City \$1,365,000.00 in funds to be escrowed in an account maintained by the City Attorney’s law firm, Ansbacher Law (“Escrow Funds”). Once Developer completes the Improvements, as evidenced by a notice of substantial completion by the Engineer of Record and confirmation by the City Manager, such confirmation not to be unreasonably withheld, any remaining Escrow Funds shall be returned to Developer within 7 days.

2. **Binding Dates.** Developer warrants that construction of the Improvements will begin and be completed in accordance with the milestone dates identified in the schedule attached as **Exhibit D** (“Binding Dates”). The Binding Dates are subject to and shall be extended by: (i) delays due to Force Majeure, which events shall have an adverse effect on the Project and shall mean acts of God (including earthquakes, hurricanes, tornadoes and floods, epidemics and pandemics); war, terrorism or the threat thereof, insurrection, civil commotion, riots; strikes, lockouts, embargoes; fire; and any other similar occurrence, event or condition beyond the reasonable control of Developer; (ii) for the City’s delays in issuing permits for construction to occur that are not subject to Developer’s control; and (iii) for a purchase of extension, as described below in Section 4.B.3. If any Binding Date is extended, that Binding Date and any subsequent Binding Dates shall be automatically extended, and such new dates shall become the new Binding Dates. Notwithstanding anything to the contrary in this Agreement or at law, Developer agrees that this Agreement and the Binding Dates are not subject to a right of extension pursuant to Section 252.363, Florida Statutes, because a development agreement is not a permit or other authorization as defined by Section 252.363(1)(a), Florida Statutes. Developer

agrees that it shall not file or send a notification as described in Section 252.363(1)(b), Florida Statutes regarding any extension of any Binding Date or other deadline under this Agreement, and that any such notification shall constitute a breach of this Agreement. In the event of such breach, in addition to any other remedy the City may have under this Agreement, the City may place a stop work order on the construction of the Improvements until the Developer withdraws such notification, and upon a finding by majority vote of City Council that such breach occurred, the Escrow Funds shall be paid to the City as liquidated damages. This agreement regarding Section 252.363, Florida Statutes, is material consideration for the City's approval of this Agreement.

3. **Purchase of Extensions of Binding Dates.** If any of the Binding Dates are not met, Developer shall be required to purchase an extension of the Binding Date in 30-day increments. Binding Dates may be extended by purchased extension for a maximum of two years. The cost of the 30-day extensions shall escalate as follows: first 30 days: \$15,000; second 30 days: \$30,000; third and each subsequent 30 days: \$60,000. Payment shall be due in full, and may be withdrawn by the City from the Escrow Funds without further authorization from Developer, on the first day of the extension period. The City shall proceed against the Escrow Funds as liquidated damages in full satisfaction of damages owed by Developer. The City may use default as a remedy in addition to damages only after the depletion of the Escrow Funds, and pursuant to Sections 13 and 14 of this Agreement. The parties agree and acknowledge that (i) these damages constitute liquidated damages and not penalties, (ii) the amount of loss or damages likely to be incurred is incapable or is difficult to precisely estimate, (iii) the damages specified bear a reasonable relationship to, and are not plainly or grossly disproportionate to the damages that may be borne by the City, (iv) one of the reasons parties reaching an agreement as to such amounts was the uncertainty and cost of litigation regarding the question of actual damages, and (v) the parties are sophisticated business parties that have been represented by sophisticated and able legal counsel and negotiated this Agreement at arm's length.

4. **Escrow Terms.** Developer acknowledges and agrees to hold Ansbacher Law, P.A. free and harmless from any claim and/or liability including court cost and attorney's fees, that may result from the holding and/or releasing of or otherwise related to the Escrow Funds except for the negligence or willful misconduct of Ansbacher Law, P.A. Developer further agrees, if for any reason any type of dispute should occur regarding these matters, Ansbacher Law, P.A. is hereby authorized and directed to deposit all monies being held with the office of the Clerk of the Circuit Court of Duval County, Florida. Once all monies are deposited in the office of the Clerk of the Circuit Court of Duval County, Florida, Ansbacher Law, P.A. shall be released from any and all liability in the dispute.

5. **Good Faith Coordination Meetings.** In order to facilitate good faith coordination between the parties and in acknowledgement that both parties intend that the Improvements shall be completed in accordance with the Binding Dates and as described in Exhibit B and further depicted in Exhibit C, the parties shall hold regular coordination meetings ("Coordination Meetings"). Coordination Meetings shall be attended by the City Manager (who may choose to include City staff, the City Attorney, and an elected official if appropriate) and Developer's team, which shall consist of a representative of the Developer, the Developer's architect, and the Developer's engineer. The parties agree to the schedule of Coordination meetings enclosed as **Exhibit E**. In no event, excepting Force Majeure as defined in Section 4.B.2 above,

shall the Coordination Meetings be delayed without the consent of both parties in writing to a date and time certain. Developer shall have the option to accelerate the Coordination Meetings at a mutually agreeable date and time. Coordination Meetings may occur virtually, telephonically, or physically.

6. **Conduct of Coordination Meetings.** The purpose of the Coordination Meetings is to ensure regular communication and confirm that the design and specifications of the project, as developed, are consistent with this Agreement including its Exhibits. On the business day before each Coordination Meeting, Developer shall provide the City Manager with a written agenda. On the business day after each Coordination Meeting, Developer shall provide the City Manager with written minutes, which shall constitute the official record of each Coordination Meeting unless the City Manager responds by the following business day with any corrections to the written minutes. At each meeting, Developer will present the items to be reviewed as indicated on Exhibit E and in the agenda. If in the reasonable judgement of the City Manager, the information, plans, and specifications presented materially deviates from this Agreement or its Exhibits, the City Manager shall provide written objections within 9 business days of the Coordination Meeting. Within 10 business days of receipt of such objections, Developer will revise information, plans, and specifications to incorporate City Manager comments or provide necessary clarification to resolve objections in the reasonable judgement of City Manager. If Developer and City Manager cannot resolve objection, Developer shall have the option to place the issue on the next scheduled regular or special City Council meeting which can be properly noticed in order for City Council to resolve the issue, which may include directing amendment of this Agreement in accordance with statutory notice requirements. City Council's resolution of any disputes in this regard shall be final. Once construction plans have been approved by the City or the appropriate Authority Having Jurisdiction, the approved plans shall replace the corresponding Exhibits of this Agreement as the governing documents for the Improvements. Such plans shall remain on file at the City and are not required to be recorded.

Section 5. **Agreements of the City.** The City agrees to the following conditions or actions to implement this Agreement:

A. **Project Concurrency Vesting.** Because the Project consists of the redevelopment of an existing shopping center without an increase in square footage, the Project is vested against any concurrency obligations. Future changes in use not contemplated in this Agreement beyond the scope of the Project may require concurrency review.

B. **Impact Fee Credits - Prior Use.** The Developer shall be entitled to credits or offsets associated with the prior square footage demolished and redeveloped against any impact fees owed for the newly constructed improvements, including but not limited to fees for transportation, water, and sanitary sewer.

C. **Publix Outdoor Dining Area.** In connection with the Proposed Use, the City acknowledges that Developer intends to grant to Publix exclusive use of that certain outdoor seating and dining area contiguous to the grocery store, if approved by the City, as conceptually depicted on **Exhibit F** attached hereto and made a part hereof (the "Patio"), for on-premises

consumption of food and beverages, including beer and wine. The City hereby acknowledges this intended use and will require separate review and approval of a special exception application.

Section 6. **Permits Required.** The development permits that have been approved or may be needed to be approved for the redevelopment of the Property include:

- A. City site and construction plan approvals;
- B. Plat or subdivision approvals, including infrastructure construction plan approval;
- C. City Right-of-Way use permit;
- D. City building permits and sign permits;
- E. FDOT permits, as applicable;
- F. All applicable approvals for opening and operating a café and for on-premises consumption of beer and wine; and
- G. Other City, County, State or Federal permits, as may be required by law.

Section 7. **Applicable City Ordinances and Codes.** In accordance with Section 163.3233, Florida Statutes, all City Codes, policies, charter provisions, and ordinances governing the development of the Project and Improvements upon the date of execution of this Agreement shall continue to govern the development of the Project until the expiration of this Agreement, including relevant provisions of the City's Comprehensive Plan and height restrictions outlined in the City's Charter, for 20 years, with the opportunity for extensions. Notwithstanding anything in this Agreement, the Property may at any time be redeveloped in accordance with the then-existing Comprehensive Plan and LDC provisions subject to the City's standard approval process.

Section 8. **Effect of Development Agreement.** The failure of this Agreement to address a particular permit, condition, term or restriction shall not relieve the Developer of the necessity of complying with the law governing said permitting requirements, conditions, terms or restrictions.

Section 9. **Disclaimer of Joint Venture.** Developer and City represent that by the execution of this Agreement it is not the intent of the parties that this Agreement be construed or deemed to represent a joint venture or common undertaking between City and Developer, or between either and any third party. While engaged in carrying out and complying with the terms of this Agreement, Developer is an independent principal and not a contractor for or an officer or employee of City. Developer shall not at any time or in any manner represent that it or any of its agents or employees are employees of City.

Section 10. **Successors in Interest.** The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. Developer, in its sole discretion, shall have the right to make a conveyance or and

assignment of its interest in the Property to a successor, in which all rights and obligations of the Developer hereunder shall be assigned to and assumed by the successor, and Developer shall thereafter have no further obligations under this Agreement. This Agreement shall constitute a covenant running with the land for the duration hereof and shall be binding upon Developer and upon all persons deriving title by, through or under said Developer and upon its assigns and successors in title. The agreements contained herein shall benefit and limit all present and future developers of the Project and the City for the term hereof. The covenants and restrictions required herein shall be of the duration expressed herein.

Section 11. **Amendments.** The parties acknowledge that this Agreement may only be amended by mutual consent of the parties subsequent to execution (or their successors in interest), in accordance with Section 163.3237, Florida Statutes. All amendments to this Agreement shall be ineffective unless reduced to writing and executed by City and Developer, in accordance with the Code. If subsequent modifications to this Agreement are necessary to achieve the ultimate Project development, the City agrees not to require any additional commitments of land, money, or other exactions, or to impose any additional conditions of development approval, as long as the Project development is in conformance with this Agreement, except that the City may require the Developer to pay all costs incurred in complying with legal requirements pertaining to the adoption of any such modification.

Section 12. **Recording of this Agreement.** The City Clerk shall, no later than fourteen (14) days after this Agreement is entered into by the City as described below, cause this Agreement to be recorded with the Clerk of the Circuit Court for Duval County. The Developer shall bear the expense of recording this Agreement.

Section 13. **Notices.** All notices, demands, requests for approvals or other communications given by either party to another shall be in writing and shall be sent by registered or certified mail, postage prepaid, return receipt requested, by a recognized national overnight courier service, or by email transmission to the office for each party indicated below. Properly addressed, postage prepaid, notices or communications shall be deemed delivered and received on the day of hand delivery, the next business day after deposit with an overnight courier service for next day delivery, on the third day following deposit in the United States mail, certified mail, return receipt requested, or on the day of email transmission. The parties may change the addresses set forth below (including the addition of a mortgagee to receive copies of all notices), by notice in accordance with this Section.

To the City: City of Neptune Beach, City Manager
 Stefan Wynn
 116 First Street
 Neptune Beach, FL 32266-6140
 Email: cm@nbfl.us

With a copy to: City of Neptune Beach, City Attorney
 Zachary Roth, Esq.
 8818 Goodbys Executive Drive
 Jacksonville, FL 32217
 Email: Zachary.Roth@ansbacher.net

To the Developer: Neptune Beach, FL Realty, LLC
TLM Realty Corp.
Attn: Ronald Oehl
Attn: Andrew Greene
295 Madison Ave, 37th Floor
New York, NY 10017
Email: Roehl@tlmltd.com
Email: agreene@tlmltd.com

With a copy to: Jacob T. Cremer, Esq.
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
401 East Jackson Street, Suite 2100
Tampa, FL 33602
Email: jcremer@stearnsweaver.com

Section 14. **Default.** In the event either party is in default of any provision hereof, the non-defaulting party, as a condition precedent to the exercise of its remedies, shall be required to give the defaulting party written notice of the same pursuant to this Agreement. The defaulting party shall have thirty (30) business days from the receipt of such notice to cure the default or commence to cure if longer than thirty (30) business days is reasonably required to cure such default. If the defaulting party timely cures the default, the default shall be deemed waived and this Agreement shall continue in full force and effect. If the defaulting party does not timely cure or commence to cure such default, the non-defaulting party shall be entitled to pursue its remedies available at law or equity once pre-suit mediation is completed. In any suit under this Agreement, the prevailing party shall be entitled to attorney's fees and costs, including without limitation the fees and costs related to pre-suit mediation and any appeals. Notwithstanding the foregoing, if Developer defaults under this Agreement, the City hereby acknowledges and agrees that the approved Variance will not be affected by such default except as expressly otherwise provided in Section 2.B.3 of this Agreement. The parties agree that specific performance is an available remedy for breach of this Agreement; if the City requests such remedy and a court declines to enforce it for any reason, then the parties agree that the City is authorized to enter upon the Property to complete the Improvements. Invoices for the costs of such completion work shall be presented to Developer on a monthly basis. If Developer does not pay such invoices in full within 30 days after presentation, then the City may record a lien in the public records against the Property for the amount not paid. In the event of any award for attorneys' fees and costs to the City, such lien may include such amounts.

Section 15. **Pre-Suit Mediation.** Before filing suit in any way related to this Agreement, the parties shall submit any dispute to non-binding pre-suit mediation. Time is of the essence in this Section, and the parties shall use their best efforts to mediate in an expeditious fashion, including through consideration of telephonic or electronic mediation. Once a dispute has been mediated and cured once, if that dispute or a similar issue arises again, the parties may, but are not required to, submit such dispute to non-binding pre-suit mediation.

Section 16. **Non-Action on Failure to Observe Provisions of this Agreement.** The failure of the parties to promptly or continually insist upon strict performance of any term, covenant, condition or provision of this Agreement or any other agreement, instrument or

document of whatever form or nature contemplated hereby shall not be deemed a waiver of any right or remedy that the parties may have, and shall not be deemed a waiver of a subsequent default or nonperformance of such term, covenant, condition or provision.

Section 17. **Applicable Law and Construction**. The laws of the State of Florida shall govern the validity, performance and enforcement of this Agreement, without regard for conflict of laws principles. This Agreement has been negotiated by the City and the Developer, and the Agreement shall not be deemed to have been prepared by the City or the Developer, but by all equally.

Section 18. **Venue; Submission to Jurisdiction**. For purposes of any suit, action, or other proceeding arising out of or relating to this Agreement, the parties hereto do acknowledge, consent, and agree that venue thereof is Duval County, Florida. Each party to this Agreement hereby submits to the jurisdiction of the State of Florida, Duval County, and the courts thereof for the purposes of any suit, action, or other proceeding arising out of or relating to this Agreement.

Section 19. **Entire Agreement**. This Agreement, and all the terms and provisions contained herein, including without limitation the Exhibits hereto, constitute the full and complete agreement between the parties hereto to the date hereof, and supersedes and controls over any and all prior agreements, understanding, representations, correspondence and statements whether written or oral. Any provisions of this Agreement shall be read and applied *in pari materia* with all other provisions hereof.

Section 20. **Holidays**. Whenever a notice or performance under the terms of this Agreement is to be made or given on a Saturday or Sunday or on a legal holiday observed in the City, it shall be postponed to the next following business day.

Section 21. **Exhibits**. Each Exhibit referred to and attached to this Agreement is an essential part of this Agreement.

Section 22. **Certification**. The Developer and the City shall at any time and from time to time, upon not less than ten (10) days prior notice by the other party execute, acknowledge and deliver to the other party a statement in recordable form certifying that this Agreement has not been modified and is in full force and effect (or if terminated, stating such), and that to the knowledge of such party, neither it nor the other party is then in default hereof (or if the other party is then in default hereof, stating the nature and details of such default), it being intended that any such statement delivered pursuant to this Paragraph may be conclusively relied upon by any prospective purchaser, tenant, mortgagee, successor, assignee of any mortgage or assignee of the respective interest in the Project, if any, of any party made in accordance with the provisions of this Agreement. By way of example and not of limitation, once the Improvements have been fully permitted, constructed, and approved by the City, the Developer may request a certification stating that the Developer's obligations under this Agreement are substantially complete.

Section 23. **Survival of Warranties and Representations**. The warranties, representations, covenants and obligations of the parties hereto shall be binding upon the parties and their respective successors in interest.

Section 24. **Termination**. This Agreement shall automatically terminate and expire upon the occurrence of any of: (i) the full performance by all parties and the expiration of this Agreement as described in Section 7; (ii) the revocation of this Agreement in accordance with Section 163.3235, Florida Statutes; or (iii) execution of a written termination by all parties to this Agreement. Notwithstanding anything in this Agreement to the contrary, all development orders approved concurrently with or prior to this Agreement run with the land and shall survive termination. Notwithstanding the foregoing or any provision herein, the City hereby acknowledges and agrees that the approved Variance will not be affected by any termination of this Agreement.

Section 25. **Minor Non-Compliance**. Developer will not be deemed to have failed to comply with the terms of this Agreement in the event such non-compliance, in the reasonable judgment of the City Manager of the City, is deemed of a minor or inconsequential nature.

Section 26. **Covenant of Cooperation**. The parties shall cooperate with and deal with each other in good faith and assist each other in the performance of the provisions of this Agreement and in achieving the completion of development of the Property and completion of the Project, including in processing future development approvals and amendments to this Agreement, and including Developer requests for extensions of this Agreement. Whenever an approval or consent is required under or contemplated by this Agreement, such approval or consent shall not be unreasonably withheld, delayed or conditioned. All such approvals and consents shall be requested and granted in writing. Notwithstanding, no covenant of cooperation in this Agreement shall be deemed to bind the City in approval of the Variance.

Section 27. **Partial Invalidity**. If any term or provision of this Agreement or the application thereof to any person or circumstance is declared invalid or unenforceable, the remainder of this Agreement, including any valid portion of the invalid term or provision and the application of such invalid term or provision to circumstances other than those as to which it is held invalid or unenforceable by a court of competent jurisdiction, shall not be affected thereby and shall with the remainder of this Agreement continue unmodified and in full force and effect. Notwithstanding the foregoing, if such responsibilities of any party thereto to the extent that the purpose of this Agreement or the benefits sought to be received hereunder are frustrated, such party shall have the right to terminate this Agreement upon fifteen (15) days notice to the other parties.

Section 28. **Counterparts**. This Agreement may be executed in counterparts, each of which an original but all of which shall constitute a single instrument.

Section 29. **Conditions Precedent**. This Agreement shall be of no effect unless and until the following conditions precedent (the “Conditions Precedent”) occur: (i) the City approves the Variance; (ii) the Assignment and Assumption of Lease is executed by Lucky’s Market and Publix;; and (iii) any periods for review or challenge of the Variance expire without action or all actions challenging the Variance are fully resolved such that the Variance is upheld as approved by the City and all appeals periods for such actions have expired. Notwithstanding, approval of the Variance shall not obligate the City to approve this Agreement. The City shall not be deemed

to have entered into this Agreement as provided in Fla. Stat. §163.3239 until each of the Conditions Precedent is satisfied.

Section 30. **Duty to Defend.** Upon reasonable notice, Developer shall defend, to the fullest extent permitted by law, any action, claim, proceeding, or any other assertion against the City, its principals, agents, consultants, officers, elected officials, employees and other affiliated persons (“Covered Parties”) arising from this Agreement or the Variance, by and through attorneys and other professionals at commercially reasonable rates selected by the City and reasonably satisfactory to the Developer. This duty to defend is separate and independent of any indemnity provided below. The duty to defend includes claims for which any of the Covered Parties may be liable without fault or may be strictly liable. Such duty to defend applies immediately, regardless of whether any of the Covered Parties have paid any sums or incurred any detriment arising out of or relating, directly or indirectly, to any claims covered by this duty. It is the express intention of the Parties that the Covered Parties shall be entitled to obtain summary adjudication regarding the duty to defend at any assertion of any claim covered by this section. Notwithstanding the foregoing, any of the Covered Parties may, in their sole and absolute discretion and at their own cost, engage their own attorneys and other professionals to defend or assist them; however, such attorneys shall not resolve the claim or proceeding without the consent of Developer, which shall not be unreasonably withheld, and the costs of such other attorneys and professionals are not subject to indemnification unless such attorneys or professionals are engaged as a result of Developer’s failures to meet its obligations pursuant to this paragraph. Such duty to defend shall apply throughout the term of this Agreement and through the expiration of the statute of limitations for all claims. Such duties shall apply to and through all appeals. Nothing in this paragraph shall be construed to limit the remedies available to the City. No obligation imposed hereby shall be deemed to alter the state’s waiver is sovereign liability pursuant to Section 768.28, Florida Statutes, or to extend the liability beyond such limits. Notwithstanding the foregoing or anything else to the contrary contained in this Agreement, in the event Developer pays or reimburses any amounts pursuant to this section, such amount shall be credited against indemnification to ensure that such indemnification costs are not reimbursed twice.

Section 31. **Indemnification.** Separate and independent of the duty to defend provided in the previous paragraph, to the fullest extent permitted by law, Developer shall indemnify and hold harmless the Covered Parties from any and all claims arising from this Agreement or the Variance (including reasonable attorneys’ fees and costs, regardless of whether a defense is provided as required by the duty to defend described above). Notwithstanding, such indemnity shall not apply to damages caused by the negligent acts or omissions or willful, wanton, or intentional misconduct of such indemnified parties. Such obligation of indemnification shall apply throughout the term of this Agreement and through the expiration of the statute of limitations for all claims. Such duties shall apply to and through all appeals. Nothing in this paragraph shall be construed to limit the remedies available to the City. No obligation imposed hereby shall be deemed to alter the state’s waiver is sovereign liability pursuant to Section 768.28, Florida Statutes, or to extend the liability beyond such limits.

[Signatures Follow]

IN WITNESS WHEREOF the parties have hereunto set their hands and seals the day and year so shown.

FOR CITY OF NEPTUNE BEACH

_____, Mayor

_____, City Manager

(City Seal)

Attest

_____, City Clerk

Approved to form:

ZACHARY ROTH, ESQ., City Attorney

STATE OF FLORIDA

COUNTY OF DUVAL

The foregoing instrument was signed, delivered, and acknowledged before me by means of physical presence or online notarization this ____ day of _____ 2021, by _____, as Mayor of the City of Neptune Beach, and _____, as City Manager of the City of Neptune Beach, a political subdivision of the State of Florida, on behalf of the City. Such persons are each personally known to me or have each produced a _____ as identification.

Notary Public

My Commission Expires:

**FOR NEPTUNE BEACH, FL REALTY
LLC**

By: _____
Title: _____

Witnesses:

Print: _____

Print: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was signed, delivered, and acknowledged before me by means of physical presence or online notarization this ____ day of _____ 2021, by _____, as _____ of Neptune Beach, FL Realty LLC, a Florida limited liability company, on behalf of the company. Such person is personally known to me or has produced a _____ as identification.

Notary Public

My Commission Expires:

EXHIBIT LIST

Exhibit A – Legal Description of Property

Exhibit B – Improvements

Exhibit C – Conceptual Depictions of Improvements

Exhibit D – Schedule of Improvements

Exhibit E – Coordination Meetings

Exhibit F – Conceptual Depiction of Patio

EXHIBIT A

Legal Description of the Property

A PARCEL OF LAND LYING IN GOVERNMENT LOT 2, SECTION 21, TOWNSHIP 2 SOUTH, RANGE 29 EAST, DUVAL COUNTY FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR A POINT OF REFERENCE COMMENCE AT THE SOUTHERLY RIGHT OF WAY LINE OF ATLANTIC BOULEVARD (HAVING A 100 FOOT RIGHT OF WAY) WITH THE WESTERLY RIGHT OF WAY LINE OF THIRD STREET NORTH (HAVING A 100 FOOT RIGHT OF WAY) AND RUN SOUTH 89°24'50" WEST ALONG THE SOUTHERLY RIGHT OF WAY LINE OF SAID ATLANTIC BOULEVARD, 1,533.56 FEET TO THE NORTHEAST CORNER OF LANDS DESCRIBED IN THE OFFICIAL RECORDS OF SAID COUNTY IN VOLUME 3177, PAGE 821 FOR THE POINT OF BEGINNING.

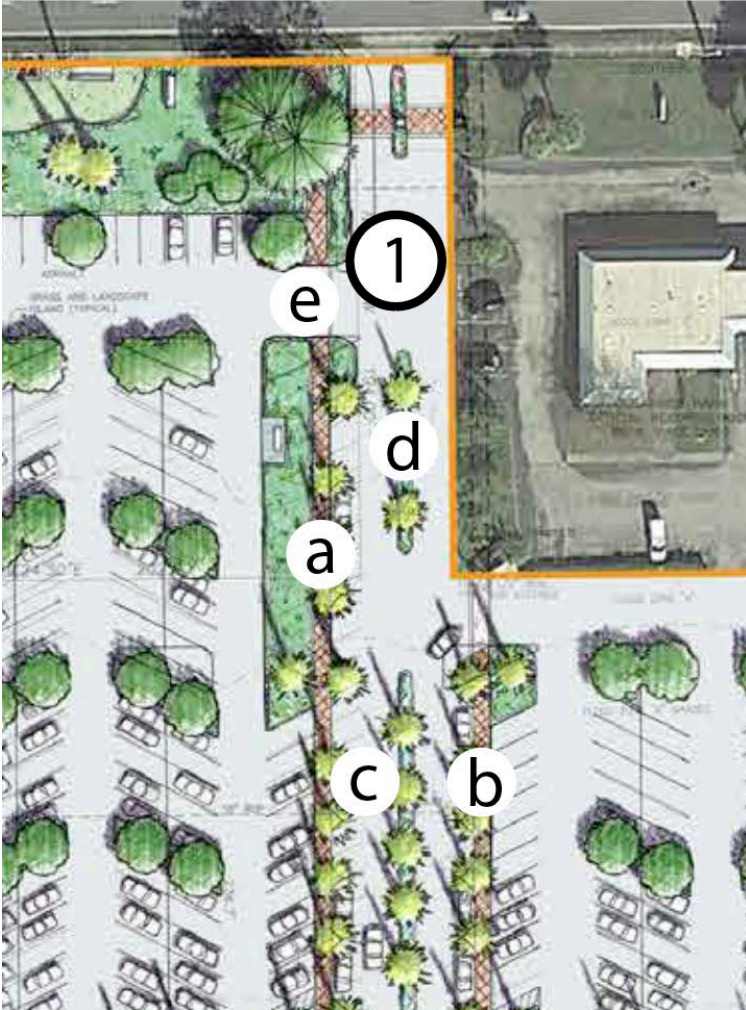
FROM THE POINT OF BEGINNING THUS DESCRIBED RUN SOUTH 00°35'10" EAST ALONG THE EAST LINE OF LAST MENTIONED LANDS AND THE SOUTHERLY PROLONGATION OF SAID LINE, 754.81 FEET TO AN IRON PIPE SET ON THE SOUTHERLY LINE OF SAID GOVERNMENT LOT 2, SECTION 21; RUN THENCE NORTH 89°03'45" EAST ALONG SAID SOUTHERLY LINE OF GOVERNMENT LOT 2, A DISTANCE OF 483.50 FEET; RUN THENCE NORTH 00°56'15" WEST, 63.62 FEET TO A POINT; RUN THENCE NORTH 24°57'16" EAST, 43.21 FEET TO A POINT; RUN THENCE NORTH 00°23'59" WEST, A DISTANCE OF 91.31 FEET TO A POINT; RUN THENCE NORTH 89°29'22" EAST, 42.23 FEET; RUN THENCE NORTH 00°30'38" WEST, 165.03 FEET; RUN THENCE SOUTH 89°29'22" WEST, 41.91 FEET; RUN THENCE NORTH 00°23'59" WEST, A DISTANCE OF 198.91 FEET TO A POINT LYING ON THE SOUTH LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 16740, PAGE 808; RUN THENCE SOUTH 89°24'50" WEST, ALONG SAID SOUTH LINE, AND ALONG THE SOUTH LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 8978, PAGE 2260, A DISTANCE OF 182.01 FEET TO THE SOUTHWEST CORNER OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 8978, PAGE 2260; RUN THENCE NORTH 00°35'10" WEST, ALONG THE WEST LINE OF THE LAST SAID LANDS, A DISTANCE OF 194.00 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF ATLANTIC BOULEVARD (100' RIGHT OF WAY AS NOW ESTABLISHED); RUN THENCE SOUTH 89°24'50" WEST ALONG SAID SOUTHERLY RIGHT OF WAY LINE OF ATLANTIC BOULEVARD, A DISTANCE OF 321.15 FEET TO THE POINT OF BEGINNING.


EXHIBIT B


Improvements


EXHIBIT B


The Improvements


Description	Visual Cross-Reference
<p>1. New grand-entrance arrival street (at existing full-access entrance opposite Sylvan Drive):</p> <p>(a) Approximately 360 linear feet of new sidewalk will be constructed to connect existing public sidewalk on Atlantic Blvd. to shops on west side of entry drive.</p> <p>(b) Approximately 160 linear feet of new sidewalk will be constructed on east side of entry drive, from the shops to the property line of the 560 Atlantic Blvd. (Ameris Bank), which is not owned by Developer and there is no requirement for the Developer to construct improvements on the 560 Atlantic Blvd. property.</p> <p>(c) On-street parallel parking.</p> <p>(d) Center, landscaped median</p> <p>(e) Extension of private water and sewer utility lines in preparation for the possible future development of an outparcel building.</p> <p>(f) Sidewalks and median to be landscaped per the Landscape Plan.</p> <p>(g) All landscaped areas will be irrigated and maintained.</p> <p>(h) New paving, curbing, and sidewalks (in all areas) will meet or exceed quality standards and requirements of all Codes and Regulations including those within The Florida DOT Design Manual (the “Green Book”).</p> <p>(i) Lane width of 12’ in each direction will be provided.</p>	

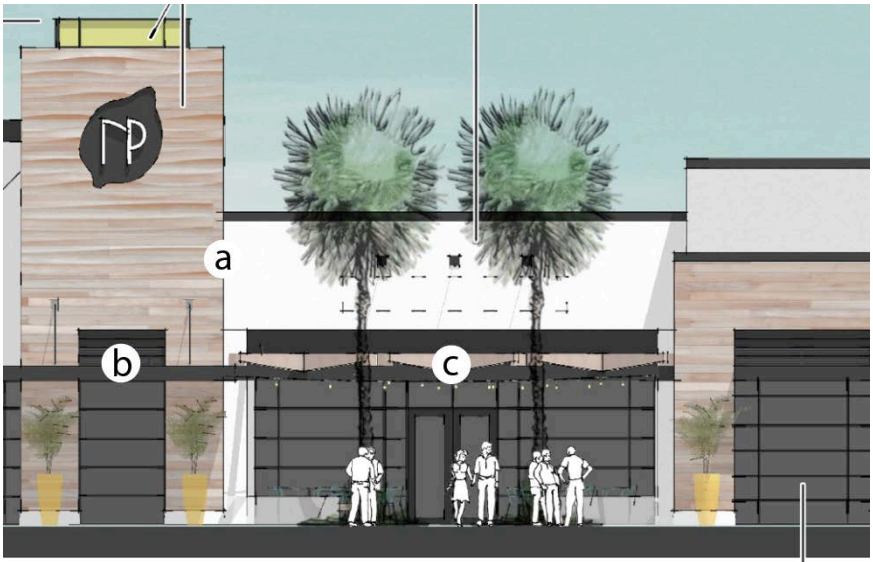
Description	Visual Cross-Reference
<p>2. Transformation of front drive aisle into “Lemon Street”:</p> <p>(a) The existing front drive aisle to the property, which is in alignment with Lemon Street in the Beaches Town Center, will be reconfigured across the 540-580 Atlantic Blvd. parcel. The reconfiguration shifts the roadway north and introduce an intentional curve to meet the intersection with the entry drive. These changes serve both to introduce traffic calming to support a pedestrian-friendly environment and create space to create the new arrival pedestrian plaza. Lane width of 12’ in each direction (24’ total width) will be provided.</p> <p>(b) A tabletop, an area of raised roadbed constructed with concrete and pavers, will be constructed along portions of Lemon Street near Publix and the pedestrian plaza. The tabletop is a traffic calming feature which also serves to support a flush curb which is a pedestrian and cart-friendly feature.</p>	 <p>The image is an architectural rendering of a proposed urban street scene. It features a wide, multi-lane roadway with a central raised section (tabletop) made of reddish-brown pavers. The scene is lined with tall palm trees and modern buildings. One building has a red sign that says "beals" and another has a green sign that says "Publix". People are shown walking on a pedestrian plaza and crossing the street. Two callout boxes, labeled 'a' and 'b', are overlaid on the image. Callout 'a' points to the raised roadway section, and callout 'b' points to a specific area of the roadway near a car.</p>


Description	Visual Cross-Reference
<p>3. New entry monument sign and enhanced landscape along Atlantic Blvd. frontage:</p> <ul style="list-style-type: none"> a) The existing monument signs will be replaced with a new monument sign featuring “Beaches Modern” design to replicate architectural renovations. Signage is subject to permits and requirements of Chapter 27, Article XV of the Code. b) Enhanced landscape, depicted in the Landscape Plan, with an emphasis on native landscaping and retaining existing healthy, mature pine and other trees while introducing hardscape design elements from plaza design. c) JTA bus stop, if active, will be enhanced with new bench and trash receptable. 	

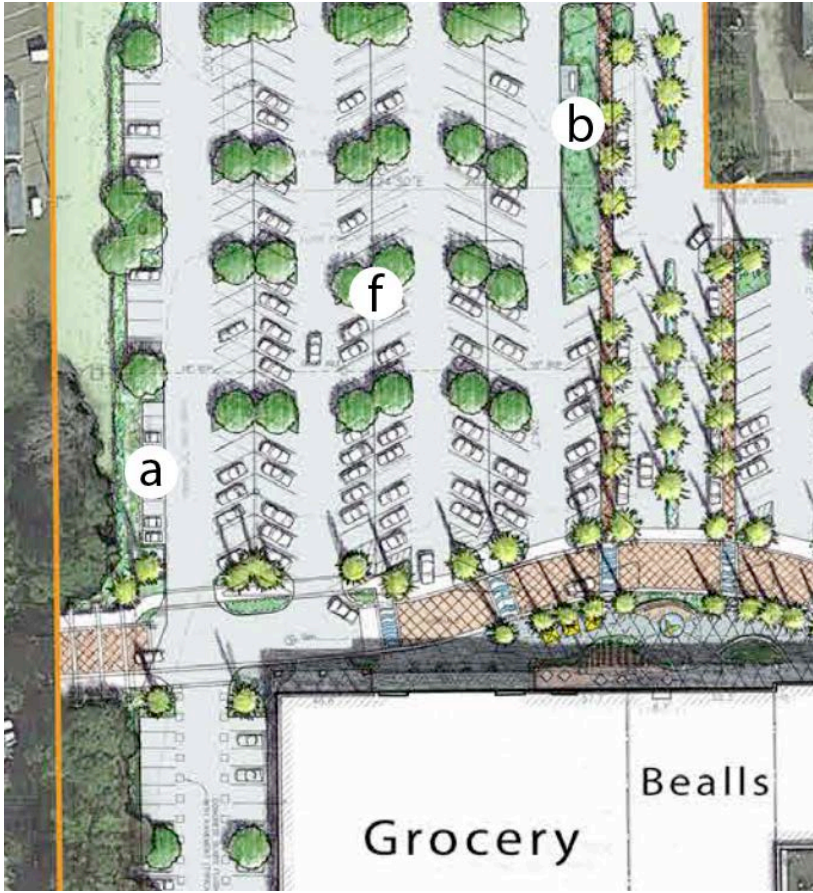
Description	Visual Cross-Reference
<p>4. New arrival pedestrian plaza:</p> <p>a) A new pedestrian plaza will be created by curving Lemon Street north. The plaza, roughly in the shape of a lemon wedge, measures approximately 160' across (east-west) by 48' deep measured from the building edge to the curb line at the outermost edge of the curve, which is centered on the entry drive. The depth tapers to about 30' on the edge of the plaza where the plaza transitions into the expanded Front Walks.</p> <p>b) Prominent “Lemonade” sculpture and water feature in center of plaza, situated to be visible from the new entry street and lemon street. Water feature creates pleasant sound for pedestrians and those enjoying the plaza.</p> <p>c) Pedestrian plaza features a mix of landscaped and hardscape areas. Surfacing is a diamond-pattern scored concrete, reminiscent of fish scales. Running through this pattern are long, wave-like lines in a contrasting color. These surfaces will be interspersed with areas of wood-like decking reminiscent of a boardwalk.</p>	 <p>The image is an architectural rendering of a pedestrian plaza. In the center, there is a large, yellow, lemon-shaped water feature with water cascading down its sides. The plaza is paved with a diamond-patterned concrete and interspersed with wood-like decking. There are several people walking and sitting on a low white wall. The background shows a modern building and tall palm trees under a bright sky. Labels 'a', 'b', 'c', 'd', and 'g' are placed on the image to correspond to the description.</p>

Description (Continued)	Visual Cross-Reference
<p>d) Outdoor seating will be interspersed throughout pedestrian plaza with a combination of formalized seating areas operated by tenants and dispersed communal seating areas. A combination of seating types is envisioned including various-sized tables and chairs, benches, and “Adirondack” style lounge chairs. Canopies, the trellis, and umbrellas will offer shaded seating. (Outdoor seating/dining is a use by special exception within the C-3 zoning district and this use will be subject to City Council approval of Developer’s application(s) for special exception).</p> <p>e) Outdoor power outlets will be installed on building wall and seat walls adjacent to seating to provide power for laptop and phone charging.</p> <p>f) Free public WiFi will be installed to serve the plaza area.</p> <p>g) Art reflecting the local Beaches community will be featured in the wall space behind the plaza (e.g., vintage photographs of Neptune Beach, work by local artists, coastal-themed mosaic etc.)</p> <p>h) Pedestrian-scaled light fixture will serve the plaza area. In addition, power will be installed for decorative and seasonal lighting, including holiday palm tree lighting.</p>	

Description	Visual Cross-Reference
<p>5. Transformation of Front Walk along all retail spaces and New Courtyard:</p> <p>(a) Extending to the east and west from the new arrival plaza, the front walk has been enlarged along the entire front of the retail space to provide for additional space. The minimum expansion of the walk is 8 feet, excepting the far western area west of the Publix entrance where the sidewalk expansion tapers gradually from 8' to 0' to permit Lemon Street to align with the proposed vehicular connection.</p> <p>(b) Additional front walk space creates room for landscape areas, outdoor seating and furnishings.</p> <p>(c) New outdoor courtyard will be created by deconstructing a portion of the existing in-line retail building to create an outdoor amenity with planting and an outdoor seating/dining area to support future tenants (e.g, restaurant, café, coffee shops). The size of the courtyard will be approximately 30 feet deep by 32 to 40 feet wide. The exact width will be dependent on the courtyard location.</p> <p>(d) If the in-line retail building is leased to restaurants that seek outdoor seating/dining for restaurant use, the Developer and/or tenants will apply for special exception for outdoor seating/dining for restaurant use and this use will be subject to City Council approval. The courtyard feature will also improve the massing and interest of the in-line store architecture.</p> <p>(e) A minimum of 20 bicycle parking spaces will be provided in convenient locations throughout the front walk area and pedestrian plaza, with an emphasis on creative and visible bicycle rack design and placement.</p>	 <p>The image is an architectural rendering of a modern retail building facade. The building features a prominent corner tower with a glowing top section and two large, stylized 'P' logos. The facade is composed of light-colored wood paneling and large glass windows. In the foreground, there is a wide, paved pedestrian plaza with several tall palm trees. People are shown walking and sitting on outdoor furniture. Four white circles with black letters are overlaid on the image: 'a' is at the bottom left corner of the plaza; 'b' is in the middle of the plaza near a palm tree; 'c' is near the building entrance; and 'd' is near a group of people walking.</p>

Description	Visual Cross-Reference
<p>6. Renovated Beaches Modern façade:</p> <ul style="list-style-type: none"> (a) Façade of all retail stores will be renovated with a “Beaches Modern” style with emphasis on white painted EIFS and wood textures. (b) Creation of new metal canopies and architectural detailing on Public façade and in-line retail spaces. (c) Signature trellis to be installed over the new plaza area with exposed “surfboard” structure. 	 <p>The image is an architectural rendering of a modern building facade. It features a mix of materials: light-colored wood paneling on the upper levels, white EIFS (Exterior Insulation and Finish System) on the middle level, and dark grey/black panels on the ground floor. A prominent feature is a large, dark, circular logo with the letters 'TP' on the wood-paneled section. Two palm trees are planted in front of the building. A trellis structure with a 'surfboard' design is visible over the plaza area. Three callout letters are present: 'a' points to the wood-paneled upper section, 'b' points to the dark grey ground floor panels, and 'c' points to the trellis structure. Several stylized human figures are shown in the plaza area for scale.</p>










Description	Visual Cross-Reference
<p>7. Western Vehicular Connection:</p> <p>(a) A 24' wide driveway (12' lane width in each direction) will be constructed extending "Lemon Street" west across the ditch and to the property line shared with 630 Atlantic Blvd. (Seminole Shoppes, which is not owned by Developer) to connect to a driveway previously constructed on 630 Atlantic Blvd. There is no requirement for Developer to construct improvements on or maintain the condition of the 630 Atlantic Blvd. property. Legal use of the connector will be subject to permission from owner of 630 Atlantic Blvd.</p> <p>(b) A pedestrian sidewalk will be connected from the retail stores to the western property line. An outdoor bench will be added alongside the sidewalk</p>	 <p>The image is an aerial site plan showing a proposed driveway and sidewalk. A vertical orange line on the left side of the plan is labeled with 'a' and 'b' in white circles. A horizontal driveway, labeled 'a', extends from the top of the orange line to the right. A sidewalk, labeled 'b', extends from the bottom of the orange line to the right. To the right of the sidewalk is a building labeled 'Grocery'. The plan also shows a parking lot with several cars, a road with a crosswalk, and various trees and landscaping elements.</p>

Description	Visual Cross-Reference
<p>8. Significant renovation of the existing parking field:</p> <ul style="list-style-type: none"> (a) Incorporation of approximately 9 golf-cart parking spaces on western edge of parking field with pervious paving surface and available electric power for charging. (b) Bench seating and signage will be provided for a Beaches Buggy pickup/drop-off area. (c) Electric vehicle charging station will be installed. (d) Existing automobile parking space count will be reduced from 354 spaces currently to approximately 290 spaces. (e) New LED-lighting fixtures with new full cut-off heads, poles, and bases will be installed. (f) Current number of parking lot islands will be more than doubled with construction of approximately 19 new landscaped parking lot islands. Nearly all existing landscape islands will be increased in size. (g) Significant new irrigated landscape will be installed per the Landscape Plan. (h) Parking lot maintenance, including mill and repave and striping, of the remaining asphalt surfaces will be performed together with the improvements. 	 <p>The image is an aerial site plan of a parking lot renovation project. It shows a large parking area with several islands of trees and landscaping. Callout 'a' is located on the western edge of the parking field, indicating the area for golf-cart parking. Callout 'b' is located on the eastern edge, indicating the area for bench seating and signage. Callout 'f' is located in the central area of the parking lot, indicating the area for new landscaped parking lot islands. The plan also shows existing and proposed landscaping, including trees and shrubs. At the bottom of the plan, there are two buildings labeled 'Grocery' and 'Bealls'. A vertical orange line is visible on the left side of the plan, likely representing a road or boundary.</p>

Description	Visual Cross-Reference
<p>9. Additional rear tree planting for screening purposes:</p> <p>(a) A line of trees will be planted on the north edge of the rear stormwater ditch to provide additional screening for adjacent residential area. See Landscape Plan for details.</p>	

Landscape Plan – Plant Material

Trees

CANOPY TREES	BOTANICAL NAME	COMMON NAME	SPECIFICATIONS	QUANTITY
	EXISTING TREES	EXISTING TREES	TREES TO BE PRESERVED	
	PINUS ELLIOTTI	SLASH PINE	10' - 12' HEIGHT, 2.5' - 3.5' SPREAD, 4" CAL.	17
	QUERCUS VIRGINIANA	SOUTHERN LIVE OAK	10' - 15' HEIGHT, 4.5' - 6' SPREAD, 4" CAL.	9
	TAXODIUM DISTICHUM	BALD CYPRESS	8' - 12' HEIGHT, 2.33' - 4' SPREAD, 4" CAL. MIN.	10
	ULMUS PARVIFOLIA 'DRAKE'	DRAKE ELM	9' - 12' HEIGHT, 4.5' - 6' SPREAD MIN., 4" CAL.	55
PALM TREES	BOTANICAL NAME	COMMON NAME	SPECIFICATIONS	QUANTITY
	PHOENIX SYLVESTRIS	WILD DATE PALM	14' C.T., B&B, DIAMOND CUT, REGENERATED	8
	SABAL PALMETTO	CABBAGE PALMETTO	8' - 12' CT, B&B, SLICK	12
	WASHINGTONIA ROBUSTA	MEXICAN FAN PALM	12' CT, B&B, STRAIGHT TRUNK	54
UNDERSTORY TREES	BOTANICAL NAME	COMMON NAME	SPECIFICATIONS	QUANTITY
	LIGUSTRUM JAPONICUM	TREE LIGUSTRUM	9' - 10' HEIGHT, 9' - 10" SPREAD, B&B., MT., MIN. 3 TRUNKS, TREE FORM	3

The tree and plant species, specifications, and locations depicted on the Landscape Plan and Plant Material Schedules govern the Improvements and supersede all other depictions.

Landscape Plan – Plant Material

Shrubs and Ground Cover

TYPICAL ATLANTIC BOULEVARD & PERIMETER				+/- 15,696 SF
SHRUB & G.C. AREAS	BOTANICAL NAME	COMMON NAME	SPECIFICATIONS	
	MUHLENBERGIA CAPILLARIS	PINK MUHLY	10' - 16" HEIGHT, 10' - 16" SPREAD, 1 GAL., FULL, 36" O.C.	
	PODOCARPUS MACROPHYLLUS 'PRINGLES'	PRINGLES PINE	14' - 16" HEIGHT, 14' - 6" SPREAD, 3 GAL., FULL, 24" O.C.	
	SPARTINA BAKERI	SAND CORD GRASS	10' - 16" HEIGHT, 10' - 16" SPREAD, 1 GAL., FULL, 42" O.C.	
	ZAMIA PUMILA	COONTIE	14' - 16" HEIGHT, 14' - 16" SPREAD, 3 GAL., FULL, 30" O.C.	
	VIBURNUM OBOVATUM 'MRS SHILLERS DELIGHT'	MRS SHILLERS DELIGHT VIBURNUM	14' - 18" HEIGHT, 14' - 16" SPREAD, 3 GAL., FULL, 30" O.C.	
	CRINUM ASIATICUM	CRINUM LILY	36" HEIGHT, 36" SPREAD, SINGLE SPECIMEN PER POT, 15 GAL., 48" O.C.	
	SERENOA REPENS	SAW PALMETTO	14' - 16" HEIGHT, 14' - 16" SPREAD, 7 GAL., FULL, 48" O.C.	
TYPICAL ENTRY BOULEVARD & PLAZA				+/- 7,149 SF
SHRUB & G.C. AREAS	BOTANICAL NAME	COMMON NAME	SPECIFICATIONS	
	NEOMARICA CAERULEA 'REGINA'	GIANT APOSTLE'S IRIS	16' - 18" HEIGHT, 16" SPREAD, 3 GAL., FULL, 36" O.C.	
	PODOCARPUS MACROPHYLLUS 'PRINGLES'	PRINGLES PINE	14' - 16" HEIGHT, 14' - 6" SPREAD, 3 GAL., FULL, 24" O.C.	
	NERIUM OLEANDER 'DWARF'	DWARF OLEANDER	20" HEIGHT, 18" - 20" SPREAD, 3 GAL., FULL, 36" O.C.	
	ZAMIA PUMILA	COONTIE	14' - 16" HEIGHT, 14' - 16" SPREAD, 3 GAL., FULL, 30" O.C.	
	VIBURNUM OBOVATUM 'MRS SHILLERS DELIGHT'	MRS SHILLERS DELIGHT VIBURNUM	14' - 18" HEIGHT, 14' - 16" SPREAD, 3 GAL., FULL, 30" O.C.	
	SERENOA REPENS	SAW PALMETTO	14' - 16" HEIGHT, 14' - 16" SPREAD, 7 GAL., FULL, 48" O.C.	
	STRELITZIA REGINAE	ORANGE BIRD OF PARADISE	20" HEIGHT, 18" - 20" SPREAD, 3 GAL., FULL, 36" O.C.	
TYPICAL INTERIOR VUA ISLAND				+/- 4,573 SF
SHRUB & G.C. AREAS	BOTANICAL NAME	COMMON NAME	SPECIFICATIONS	
	ILEX VOMITORIA 'SCHILLINGS DWARF'	DWARF SCHILLINGS HOLLY	12' - 16" HEIGHT, 12' - 16" SPREAD, 3 GAL., FULL, 30" O.C.	
	LIROPE MUSCARI	LILY TURF	12" HEIGHT AND SPREAD, FULL, 1 GAL., 18" O.C.	
	DIETES IRIDIODES	AFRICAN IRIS	16" - 18" HEIGHT, 16" SPREAD, 3 GAL., FULL, 30" O.C.	
TYPICAL TERMINAL VUA ISLAND				+/- 4,579 SF
SHRUB & G.C. AREAS	BOTANICAL NAME	COMMON NAME	SPECIFICATIONS	
	PITTISPORUM TOBIRA	GREEN PITTISPORUM	14' - 18" HEIGHT, 14" - 16" SPREAD, 3 GAL., FULL, 36" O.C.	
	ROSA MEIMIRROTE	APRICOT DRIFT ROSE DOUBLE	16' - 18" HEIGHT, 16" SPREAD, 3 GAL., FULL, 36" O.C.	
TYPICAL RESIDENTIAL BUFFER				+/- 6,909 SF
SHRUB & G.C. AREAS	BOTANICAL NAME	COMMON NAME	SPECIFICATIONS	
	MYRICA CERIFERA	WAX MYRTLE	20' - 24" HEIGHT, 20" - 24" SPREAD, 3 GAL., FULL, 48" O.C.	
	TRIPSACUM DACTYLOIDES	FAKAHATCHEE GRASS	14' - 18" HEIGHT, 14" - 18" SPREAD, 1 GAL., FULL, 48" O.C.	
TYPICAL SOD				
	ZOYSIA SPP.	ZOYSIA GRASS		+/- 11,184 SF

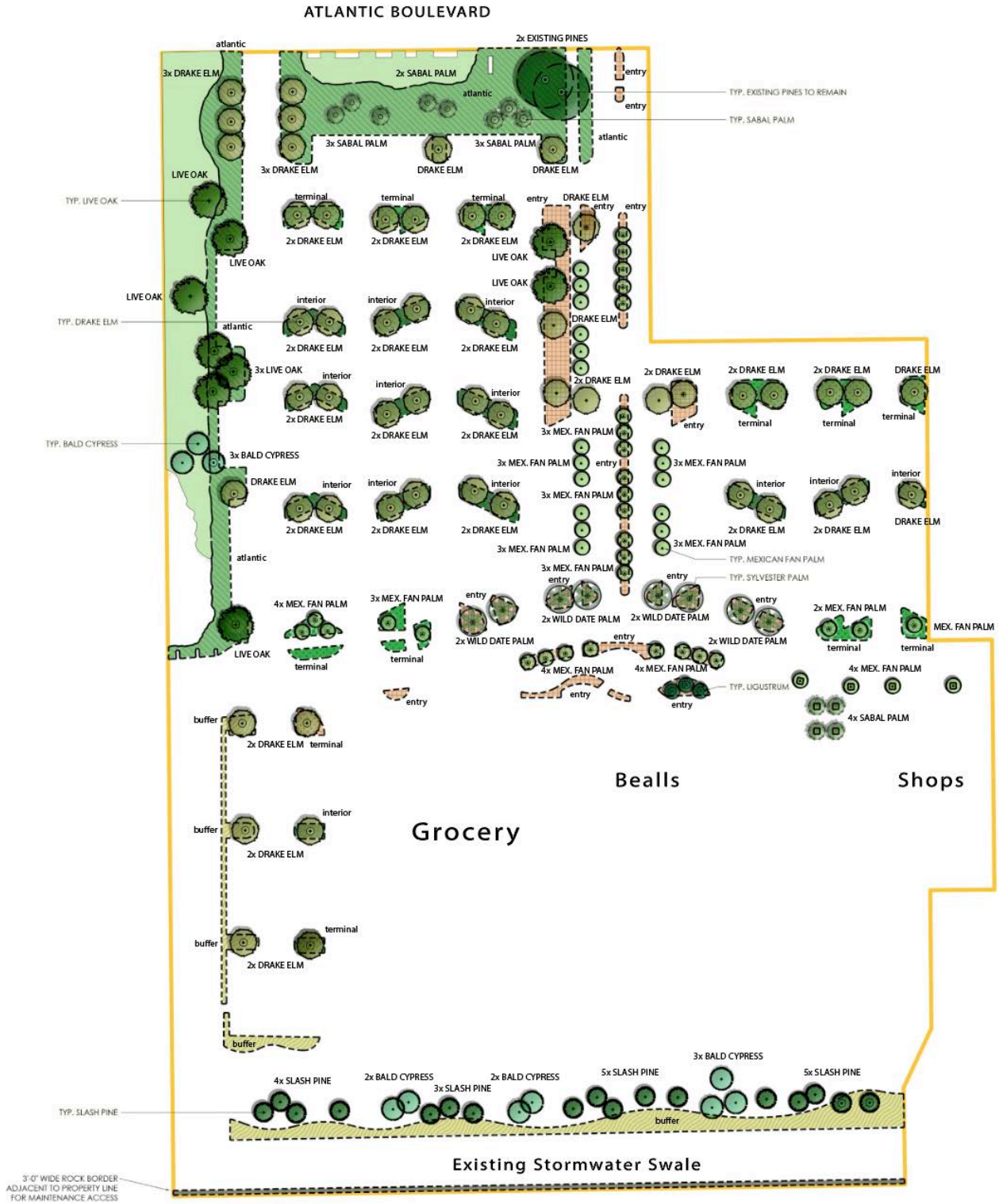
The tree and plant species, specifications, and locations depicted on the Landscape Plan and Plant Material Schedules govern the Improvements and supersede all other depictions.

Landscape Plan



The tree and plant species, specifications, and locations depicted on the Landscape Plan and Plant Material Schedules govern the Improvements and supersede all other depictions.

Landscape Plan (with labels)



The tree and plant species, specifications, and locations depicted on the Landscape Plan and Plant Material Schedules govern the Improvements and supersede all other depictions.

Schematic Elevations & Materiality

Material Legend

- ① **Stucco:**
Exterior Grade Paint
Color "White"
- ② **Stucco:**
Integral Color Finish Coat
Color "Grey"
- ③ **Composite Wood Panel:**
Rain-Coated Natural Veneer
Product: "Prodek"
- ④ **Storefront Aluminum, Metal
Coping, Metal Canopies:**
Factory Powder Coat
Color "Black"
- ⑤ **Metal Louvers:**
Factory Powder Coat
Color "Green"
- ⑥ **Public Storefront Aluminum:**
Factory Finish
Color "Clear Anodized"



General Notes:

1. Building signage is shown for illustration only and subject to tenant specific items. Final materials, branding, colors, sizes, and location are subject to permits and requirements of Chapter 27, Article XV.
2. Location of entries and fenestration of Public frontage subject to change pending coordination with interior store layout.



NEPTUNE PLAZA WEST

TLM REALTY CORP

January 29, 2021

Elevations & Materiality

SCALE: 1/8" = 1'-0"



Full Size Plan (42" by 30") shall remain on file at the City of Neptune Beach

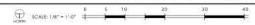
Schematic Hardscape & Materiality



NEPTUNE PLAZA WEST
 TLM REALTY CORP

January 29, 2021

Schematic Hardscape Plan & Materiality



Full Size Plan (60" by 30") shall remain on file at the City of Neptune Beach

List of Façade Materials

Substrate:

Steel frame structure

Cold-formed metal stud framing

Glass fiber reinforced gypsum sheathing

Fluid applied latex waterproofing membrane

Painted Stucco Finish:

Drainable Cement Plaster system

AND/OR

Drainable EIFS (Exterior Insulation and Finish System)

Wood Rainscreen:

Pressure or composite furrings strips

Tropical Hardwood rainscreen siding (Ipe, or similar)

OR

Galvanized metal furring materials


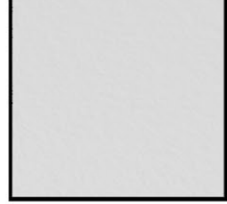
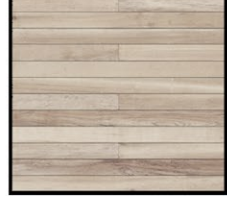


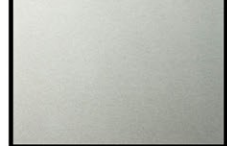
Wood/Resin composite panel

Canopies:

Fluoropolymer (KYNAR) pre- finished and pre-engineered aluminum fabrications

Glue-laminated engineered wood structural elements

Material Legend

- ①  **Stucco:**
Exterior Grade Paint
Color "White"
- ②  **Stucco:**
Integral Color Finish Coat
Color "Gray"
- ③  **Composite Wood Panel:**
Resin Coated Natural Veneer
Prodema "Prodex"
- ④  **Storefront Aluminum, Metal Coping, Metal Canopies:**
Factory Powder Coat
Color "Black"
- ⑤  **Metal Louvers:**
Factory Powder Coat
Color "Green"
- ⑥  **Publix Storefront Aluminum:**
Factory Finish
Color "Clear Anodized"



General Notes:

1. Building signage is shown for illustration only and subject to tenant specifications. Final materials, branding, colors, sizes, and location are subject to permits and requirements of Chapter 27, Article XV.
2. Location of entries and fenestration of Publix frontage subject to change pending coordination with interior store layout.




NEPTUNE PLAZA WEST

TLM REALTY CORP

January 29, 2021

Elevations & Materiality

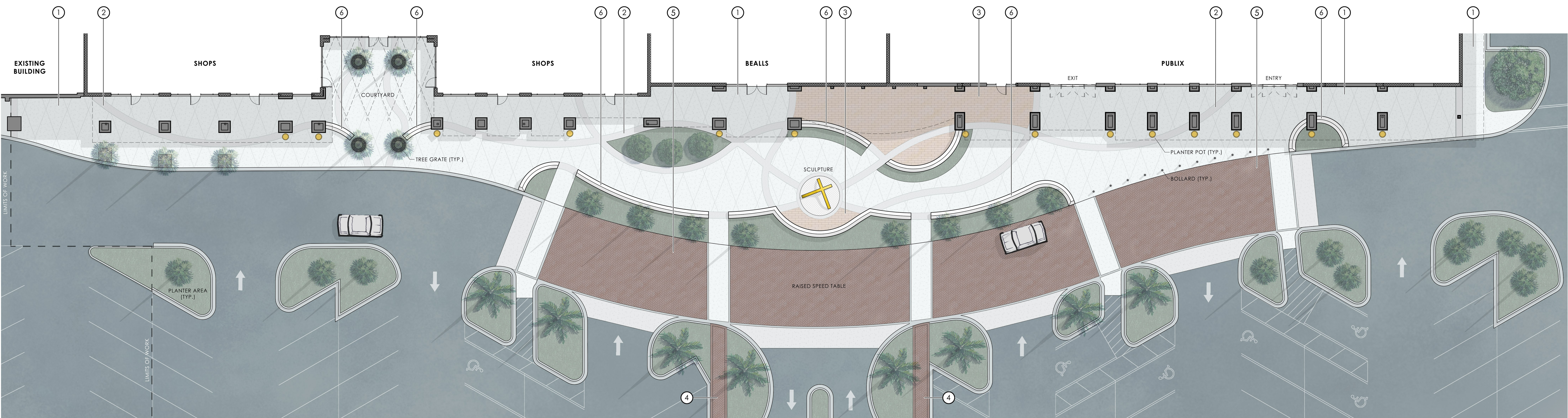
SCALE: 1/8" = 1'-0"



THIS MATERIAL REPRESENTS DEVELOPMENT CONCEPTS AND ARCHITECTURAL AND OTHER DESIGN CONCEPTS BEING CONSIDERED AT THE TIME IT WAS PRODUCED. THIS INFORMATION IS SUBJECT TO REVISIONS AND MODIFICATIONS WITHOUT NOTICE. ALL ORAL AND WRITTEN INFORMATION, DESCRIPTIONS, PLANS, COPY, GRAPHICS, PHOTOGRAPHY, CHARTS, GRAPHS AND DRAWINGS MAY BE MODIFIED AT ANY TIME AND SHOULD NOT BE RELIED UPON AS FINAL.

planning
architecture
landscape architecture
urban design
visual communication





- Material Legend**
- ① **Concrete Sidewalk:**
Medium Salt Rock texture
Diamond scouring pattern
 - ② **Concrete Banding:**
Smooth finish
Color TBD
 - ③ **Plank Pavers:**
Product TBD
Appearance to match building wood panels
Alternate: Ipe Wood
 - ④ **Paver Sidewalk:**
4x8 Clay Paver
 - ⑤ **Raised Speed Table:**
4x8 Clay Paver
 - ⑥ **Seat Wall:**
20" tall, concrete-formed with stucco finish.
Color to match building.

EXHIBIT C

Conceptual Depictions of Improvements

540-580 Atlantic Blvd

Numbers Correspond to Items on Exhibit B

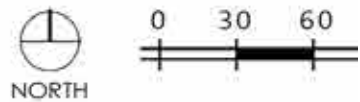










EXHIBIT D

Schedule of Improvements

Exhibit D - Schedule of Improvements

540-580 Atlantic Blvd.

Milestone	Anticipated Date Range (for Information Purposes)	Binding Date (No Later Than)
Variance Approval	3/1/21	
First Read of Development Agreement	2/16/21	
Second Read and Approval of Development Agreement	3/1/21	
City Manager & Developer Coordinaton Meeting #1	3/1/21	
Publix Interior Construction Permit Submission*	3/15/21	
Satisfaction of Conditions Precedent	4/1/21	
FDOT Driveway Permit Application	4/5/21	
City Manager & Developer Coordinaton Meeting #2	4/5/21	
Publix Interior Construction Start*	5/2/21	
City Manager & Developer Coordinaton Meeting #3	5/3/21	
City Manager & Developer Coordinaton Meeting #4	6/7/21	
Landlord Building Permit Submittal to CONB	5/3/21	8/19/21
Landlord Construction of Improvements Commencement	7/2/21	10/20/21
City Manager & Developer Coordinaton Meeting #5	8/16/21	
City Manager & Developer Coordinaton Meeting #6	10/18/21	
City Manager & Developer Coordinaton Meeting #7	12/6/21	
Publix Interior Construction Completion*	Est. 12/8/21	
Publix Grand Opening Date*	Est. 1/27/2022	
City Manager & Developer Coordinaton Meeting #8	2/7/22	
Landlord Construction of Improvements Substantial Completion	Phased 12/8/21-5/1/22	8/19/22

Notes

Bolded Items with Binding Date represent a Developer obligation to satisfy Milestone no later than the date shown.

*Dates with asterisk reflect Developer's understanding of anticipated Publix schedule as reviewed on 1/28/21 call with Publix and Landlord design and engineering representatives and are subject to change

Anticipated Dates and Date Ranges represent current and best projections of key development milestones but are presented here for information purposes only and are subject to refinement as design and engineering advances.

EXHIBIT E

Coordination Meetings

Exhibit E - Coordination Meetings

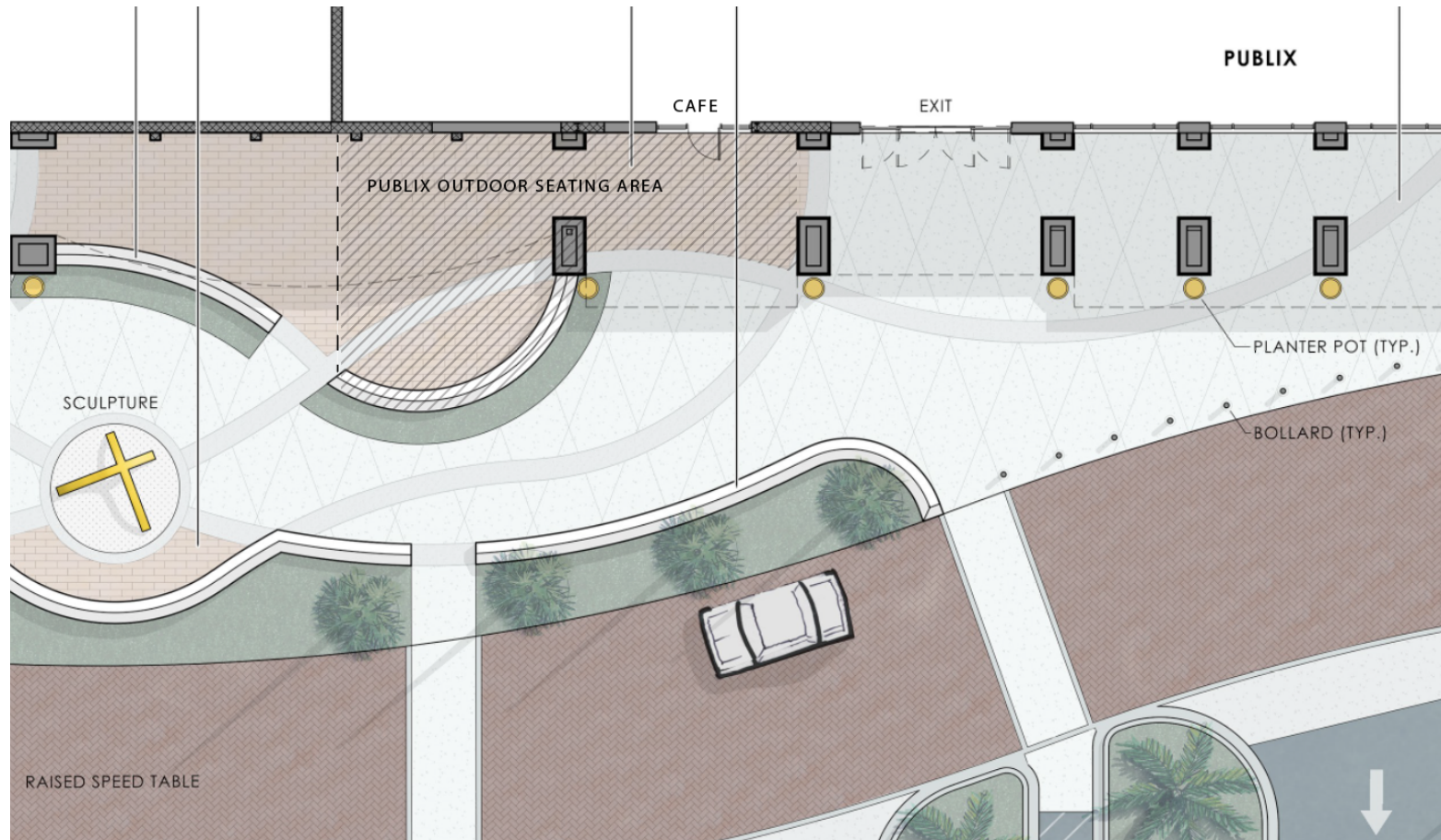
Date (All Meetings 1 p.m.)	Items to be Reviewed	City Objections Due
Monday, March 1, 2021	Design Development Architectural and Landscape Drawings, Preliminary Engineering Design Drawings	Friday, March 12, 2021
Monday, April 5, 2021	Mid-Stage Architectural, Landscape, and Engineering Construction Documents and Specifications	Friday, April 16, 2021
Monday, May 3, 2021	Final Architectural, Landscape, and Engineering Construction Documents and Specifications/Initial Construction Coordination	Friday, May 14, 2021
Monday, June 7, 2021	Initial Construction Coordination	Monday, June 14, 2021
Monday, August 16, 2021	Construction Coordination	Monday, August 23, 2021
Monday, October 18, 2021	Construction Coordination	Monday, October 25, 2021
Monday, December 6, 2021	Construction Coordination	Monday, December 13, 2021
Monday, February 7, 2022	Construction Coordination/Project Walk-Thru	Monday, February 14, 2022

EXHIBIT F

Conceptual Depiction of Patio

EXHIBIT F

Conceptual Depiction of Patio



City of Neptune Beach

Kristina L. Wright, FRA-RA, Community Development Director
116 First Street • Neptune Beach, Florida 32266-6140
(904) 270-2400 x 34 • FAX (904) 270-2526



MEMORANDUM

TO: Community Development Board

FROM: Kristina L. Wright, FRA-RA, Community Development Director

DATE: September 3, 2020

SUBJECT: V20-01 540-580 Atlantic (PIN: 172395-0130)

Background

Application V20-01 540-580 Atlantic is a request for a variance that seeks to provide relief from Note 6 of Table 27-229-1 to remove the 1000 linear foot separation requirement for businesses that operate under common business ownership or management, share a warehouse or distribution facility, or otherwise operate as an associated, integrated or cooperative business shall not exceed a combined sixty thousand (60,000) square feet of total gross floor area in aggregate.

More specifically, the Note 6 referenced within Table 27-229-1 states:

Furthermore, any retail stores, wholesale warehouses, or other freestanding buildings for any permitted use located within one thousand (1,000) linear feet of each other that operate under common business ownership or management, share a warehouse or distribution facility, otherwise operate as an associated, integrated or cooperative business shall not exceed a combined sixty thousand (60,000) square feet of total gross floor area in aggregate.

The application was continued by the Applicant from July 8, 2020 CDB Meeting. Since that time the Applicant has revised the application to include elevations featuring numerous improvements and includes a revised site plan. The Applicant is proposing additional landscaped areas to increase the pervious surface area on-site while modernizing the existing building with significant façade improvements, public art, fountains, and advanced mobility options.

Summary

The Applicant, Neptune Beach, FL Realty LLC, is seeking to allow a second, smaller Publix Supermarket within Neptune Beach and hopes to enter into a lease with Publix for the existing Building located at 540-580 Atlantic Boulevard, which is within 500' of the existing Publix located at 630 Atlantic Blvd. The Applicant is the owner of 540-580 Atlantic Blvd., and their tenant Lucky's Market entered into a long-term lease (20-year initial term) dated as of September 1, 2015 for the 29,810 square foot Lucky's Market grocery store within Neptune Beach Plaza.

The Applicant states:

The smaller Publix location will provide for a concept distinct from the existing Publix, including an emphasis on grab-and-go prepared foods, organic groceries, and a "POURS" station (and they are) seeking to make architectural and placemaking improvements and provide additional vehicular and pedestrian connections to the 1977 shopping plaza.

The Applicant assumed the cost to construct the improvements required by the lease to renovate the store and the remainder of the property, including reimbursements to the tenant for their further improvements. In January 2020, Lucky's Market declared Chapter 11 Bankruptcy and closed nearly all the stores, including the store at 540-580 Atlantic Blvd. As part of the bankruptcy process, Publix Super Markets, Inc. entered into an agreement to purchase and take assignment of the Neptune Beach, FL lease from Lucky's Market. This purchase and assignment have been approved by the Bankruptcy Court and Publix has already completed the purchase of Lucky's Market leases elsewhere in the state.

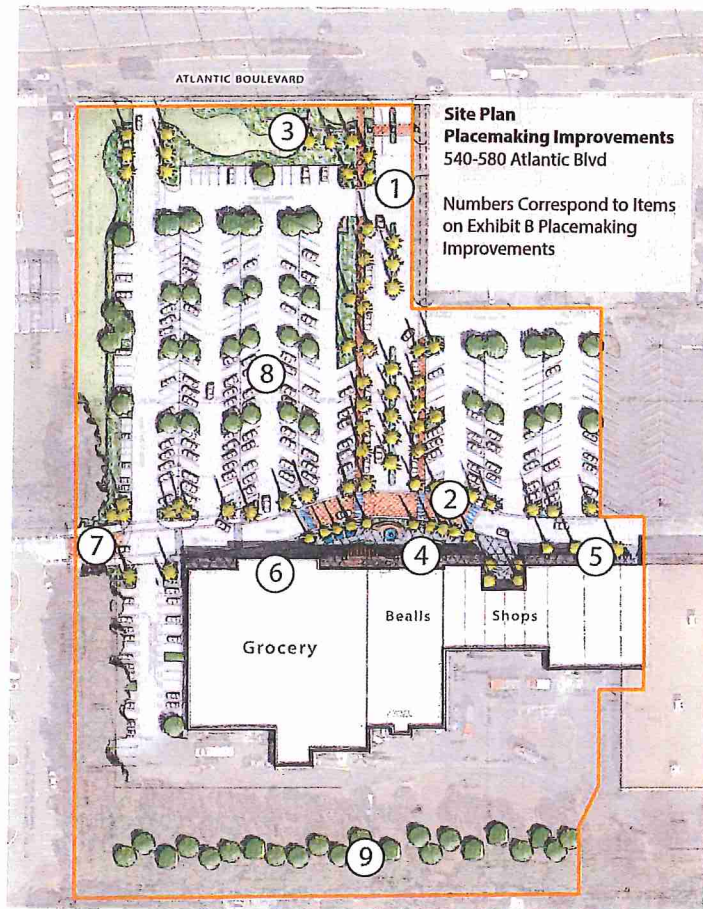
Representatives for the Applicant requested zoning verification letters and sought to change a provision within the City of Neptune Beach Land Development Code. At that time, this inquiry increased to administrative level discussions involving legal representation for all parties to clarify the intent of Note 6 referenced as part of Table 27-229-1 requiring a 1,000 linear foot distance separation from other business operating under common business ownership or management or that share a warehouse or distribution center or otherwise operate as an associated, integrated or cooperative business that is required not to exceed sixty thousand (60,000) square feet of total gross floor area in aggregate.

The Applicant and representatives assert that the provision is lot specific and has questioned the original motive for the creation of Ordinance 2006-13. Siting another Publix grocery store within 500' of an existing Publix would violate the provisions of Table 27-229-1, specifically the final sentence of Note 6, as the existing Lucky's Market grocery store at 540-580 Atlantic Blvd. is within 1,000 linear feet from an existing 54,310 square foot Publix grocery store at 630 Atlantic Blvd. which is leased by Publix from the owner(s) of that separate parcel. While the owner(s) of 630 Atlantic Blvd. are different from and have no affiliations with the owner of 540-580 Atlantic Blvd, both stores are affiliated with Publix Supermarkets, Inc. and the cumulative floor area of two separate stores would exceed 60,000 square feet, which stands in opposition to the provisions within the Neptune Beach Land Development Code, more specifically Table 27-229-1, Note 6.

As a result, the Applicant(s) are seeking a variance seeking relief from Note 6 of Table 27-229-1 to increase the maximum aggregate combined square footage from 60,000 to 89,500 to allow Publix to replace Lucky's Market as the tenant of the property owner and re-open a grocery store in the existing Lucky's Market premises at 540-580 Atlantic Blvd. The proposed store at 540-580 Atlantic Blvd. is distinct from the store at 630 Atlantic Blvd. as it presents a smaller format store (29,810 SF vs 54,310 SF) with features familiar to Lucky's Market shoppers, including an emphasis on prepared foods, organic groceries, and is planned to feature the "POURS" station, an in-store beverage bar concept from Publix's GreenWise branded-stores where shoppers can order beer and wine in addition to other non-alcoholic drinks.

According to the Applicant:

The variance will allow for the second Publix location to serve as a focused and distinct concept from the traditional existing Publix. The...Development Agreement...outlines and commits the landlord several architectural, placemaking, and mobility improvements. One such improvement which would extend Lemon Street to the parcel to the west with the existing Publix for vehicular and pedestrian access. This new interconnection will not only allow for vehicular traffic to travel to AIA without needing to travel upon Atlantic Blvd., but would also allow for an overall sense of place and natural connection to occur between the two shopping plazas.



Based on communications with the Applicant, they believe that the 1000' separation is lot specific, which is in opposition to the City's Comprehensive Plan Policy A.1.1.4 and the interpretation of Note 6, following Table 27-229-1. The preservation of the scale of development within a small, coastal community of 7,000 residents, which has been indicated within the City's Comprehensive Plan on page A-2. The City already has an existing Publix that would be sited within 500', and adjacent to, the proposed Publix.

While the Applicant notes that the "failure to grant the proposed variance will cause Publix to cancel its court-approved agreement to purchase the Neptune Beach lease and control of the future of the lease will return to Lucky's Market," financial motivations alone are not adequate justification for granting a variance to subvert the intent of Comprehensive Plan Policies and the

City's Land Development Regulations and must achieve the criteria established within 27-147, Required findings needed to issue a variance.

The Applicant explains:

Through the bankruptcy process Lucky's Market may then choose to reject the lease. Rejection would cause the lease (to be) terminated immediately, far earlier than the September 30, 2036 end of the initial term under the lease. The rejection of the lease due to the denial of the variance for Publix would be an exceptional hardship to the property owner and would result in a vacant anchor store, prevent the owner from obtaining an economic return on the investments it made in the lease, and would harm the property owner's other tenants who depend on the customer activity generated by the anchor tenant in the shopping center.

The Applicant further asserts that Council records demonstrate the intent of Council in drafting Note 6 in the Spring of 2006 was to prevent a Big Box retailer, specifically Walmart, from constructing a single store exceeding 60,000 SF in Neptune Beach. It was not the intent of Council to prohibit Publix from operating a separate store on a distinct parcel and within a separate shopping plaza at 540-580 Atlantic Blvd. per the meeting notes from the November 19, 2007 Council meeting on the intent of Ordinance 2006-13 (which added Note 6 to Table 27-229-1), Councilor Weldon, the sponsor of the Ordinance, made the following statement: "Councilor Weldon stated the intent of the Ordinance was to limit the amount **a single store from exceeding 60,000 square feet** ..." (emphasis added).

According to the Applicant:

The second Publix location will serve as a focused and distinct concept from the traditional existing Publix. The improvements proposed...will demonstrate this distinction by providing outdoor spaces to enjoy food and drink and by encouraging pedestrian use through outdoor seating/resting areas, pedestrian scale lighting, elimination of parking, addition of parking islands, traffic calming measures, and increased landscaping and green spaces.



Since the initial submittal, several proposed improvements to the property include:

- New entry arrival street with landscaped center median, parallel on-street parking, and new pedestrian sidewalk linking Atlantic Blvd. with the shopping plaza;
- New entry monument sign and enhanced landscaping along Atlantic Blvd;
- The creation of a centerpiece pedestrian plaza and outdoor space with furniture, trees, planting beds, hardscape, and public art features;
- A Beaches Modern façade with an emphasis on white painted stucco and natural wood tones;
- A Beaches Buggy pick-up/drop-off location; and
- New and expanded golf cart and bicycle parking.



On June 10, 2020, the Applicant came before the Community Development Board to provide an informational presentation about the project and former Councilor Weldon attended the June presentation to speak in support of the City and its regulations. Additionally, staff does not believe that these requirements are lot specific as this would create loopholes and code requirements could be subverted through simple lot splits and subdivisions to subvert an appropriate scale of development within the community.

Required findings needed to issue a variance (Section 27-147):

- (1) The property has unique and peculiar circumstances, which create an exceptional and unique hardship. For the purpose of this determination, the unique hardship shall be unique to the parcel and not shared by other property owners in the same zoning district.**

According to the Applicant, the hardship is the result of unique and peculiar circumstances which are unique to the parcel since they feel that a parcel analysis has determined that another Publix cannot be accommodated in any other location within the City of Neptune Beach based on a parcel analysis that has discovered that of the applicable parcels in C-3 and C-2, none of these are currently vacant.

Despite this objective observation, this does not demonstrate a hardship for the existing parcel simply because the proposal is not currently meeting the requirements of the Neptune Beach Land Development Code. The Applicant has also indicated that the tenant entered into an agreement with and received Bankruptcy Court approval for an assignment of the existing lease with the

property owner to Publix Super Markets, Inc. However, staff asserts that there are other viable alternatives exist.

The Applicant has indicated that a “strict application of Note 6 of Table 27-229-1 creates a hardship that is unique to this parcel and not shared by other property owners in the same zoning district”; however, this also does not preclude other economically viable alternatives that would meet the requirements of the Land Development Code.

The Applicant states that:

The hardship is the result of unique and peculiar circumstances which are unique to the parcel. First, hardship is created because a second Publix location cannot feasibly be located on any other parcel within the City of Neptune Beach. Second, hardship is created by the current and forecasted market conditions for brick-and-mortar retailers. Third, hardship is created because the Code is preventing two very different store concepts simply because they are operated by the same parent company. Fourth and finally, a hardship is created because the proposed Publix will serve a different geographic location.

The Applicant also outlines additional factors for consideration as follows:

- A. *Hardship is created because a second Publix location cannot feasibly be located on any other parcel within the City of Neptune Beach.*
- B. *Hardship is created by the current and forecasted market conditions for brick-and-mortar retailers. A record number of retail stores are expected to close permanently this year. The COVID-19 pandemic has accelerated an already declining industry. As internet sales take over for non-perishable goods, the only retail industry that looks with withstand the market shift is supermarkets. Even grocery stores, however, are falling victim to the current economic crisis. Coresight Research, a leading market-based research company focused on retail trends, predicts between 20,000 and 25,000 retail store closings this year alone—the most closings ever. Retailers which have filed for bankruptcy include not only Lucky’s Market, but also Earth Fare, Stein Mart, Pier 1 Imports, Tuesday Morning, and JCPenney. Additionally, the following retailers have announced intentions to close hundreds of retail locations permanently: GNC; Victoria’s Secret; Men’s Wearhouse; GameStop; Signet (Kay Jewelers, Zales, Jared the Galleria of Jewelry, etc.); Bed Bath & Beyond; AT&T; Chico’s; Walgreens; CVS; Macy’s; Office Depot; and Bath & Body Works. (See: <https://coresight.com/>; <https://moneywise.com/a/chains-closing-the-most-stores-in-2020>; <https://www.cnn.com/2020/06/09/coresight-predicts-record-25000-retail-stores-will-close-in-2020.html>.)*

Forecasters say that the retail industry has been forever changed. Given this seismic shift of the retail industry resulting from the internet age and drastically accelerated by the COVID-19 pandemic, shopping plazas and malls are finding it more and more difficult to retain tenants. Publix has a superb reputation and strong financials. A viable alternative to Publix simply does not exist in the current and foreseeable market conditions for the 1977 purpose-built supermarket. Without Publix, the plaza is at risk of remaining mostly vacant due to these market conditions. A vacant anchor tenant will serve as inefficient use of space within the City and cause the City to lose significant tax dollars. A vacant anchor tenant may even trigger blight with spillover effects onto neighboring parcels. Accordingly,

the forever-changed retail market conditions are a valid hardship on the Applicant and principles of fairness urge for the granting of a variance.

C. Hardship is created because the Code is preventing two very different store concepts simply because they are operated by the same parent company. The second Publix location is not a standard Publix supermarket. The second location is significantly smaller in footprint to the existing traditional Publix. The second location will focus on prepared food in a grab-and-go concept. The second location will also have an emphasis on organic foods and a POURS station to allow customers to enjoy beverages while shopping. Even though the second location will be operating under the Publix brand, the offerings will be different than a traditional supermarket. In fact, the offerings provide a greater variety than if a Winn-Dixie or other major traditional supermarket brand were to move into the location. These two store different concepts should be accommodated within the Code and a failure to do so results in a hardship.

D. Hardship is created because the proposed Publix will serve a different geographic demographic and location. As it exists today, the existing traditional Publix has access only to Atlantic Blvd. and tends to serve those residing in west Neptune Beach and east Jacksonville. The second Publix location is anticipated to serve those residing near AIA, south Neptune Beach, and downtown Neptune Beach through Lemon Street. One of the major impacts of the Development Agreement is to provide vehicular and pedestrian interconnection between the two shopping plazas. Accordingly, approval of the variance would expand convenient access to the traditional Publix to more City residents. The Development Agreement would allow the two stores to work in harmony. The Development Agreement also highlights the differences in these store concepts as outdoor seating and a pedestrian plaza with ample bike racks are essential to the second Publix's concept. Overall, the property has unique and peculiar circumstances, which create an exceptional and unique hardship which is not shared by other property owners within the same zoning district.

(2) The proposed variance is the minimum necessary to allow the reasonable use of the parcel of land.

The proposed variance is requesting the minimum additional square footage necessary to allow Publix to replace Lucky's Market as the tenant without any expansion of the existing Lucky's Market footprint. The denial of the proposed variance would prohibit Publix from taking assignment of the lease and enable Lucky's Market to reject their lease with the property owner. The rejection of the lease would terminate the lease, despite approximately 16 years of term remaining per the terms of the lease. Failure to grant the proposed variance would deny the property owner the reasonable use of its land as the property owner would be permanently unable to attain its reasonable investment-backed expectations from the existing lease.

However, staff asserts that other alternatives exist, which would allow the property owner to realize benefits obtained through the reasonable use of their land. The application of the Code provision prevents only a small number of uses at most. Most uses of this site are unaffected by this provision.

According to the Applicant:

A viable alternative to Publix simply does not exist in the current and foreseeable market conditions. Without Publix, the plaza is at risk of remaining significantly vacant due to these market conditions. The Development Agreement works to minimize the variance as well, in that the intent of the Improvements is to minimize potential and perceived impacts due to the redevelopment for a Publix.

(3) The proposed variance would not adversely affect adjacent and nearby properties or the public in general.

The proposed variance does not alter the existing, permitted use of the property, a retail grocery anchor store, or alter any physical characteristics of the property from the existing condition. Therefore, the proposed variance would not adversely affect adjacent and nearby properties or the public in general. Further, the re-opening of a grocery store at the property, which is the purpose of the variance, would create positive benefits to the nearby properties and the public in general. Granting of the variance supports Neptune Beach Comprehensive Plan **Goal A.1 and Objective A.1.3 Redevelopment and Infill Development** by encouraging infill redevelopment and avoiding blighting influences. The opening of a Publix grocery store at 540-580 Atlantic Blvd. is anticipated to create 50 additional permanent jobs, in addition to construction jobs, will have a beneficial impact on tax collection, and provide essential service to the public. While improvements and redevelopment are desired along with the creation of additional jobs and revenues, the addition of another Publix within 500' of an existing Publix on the immediately adjacent parcel expands the scale of development within a small, coastal community sought through the establishment of Comprehensive Plan Policy A.1.1.4 especially when other viable alternatives exist that could be of universal benefit.

According to the Applicant:

The Development Agreement will also serve to increase nearby property values and to enhance the value to the public in general. The improvements outlined within the Development Agreement will provide an overall facelift and modernization for the 1977 plaza and will serve to provide enhanced landscaping and pedestrian access and spaces. Moreover, the public in general will benefit by having an additional, unique grocery option in the community.

(4) The proposed variance will not substantially diminish property values in, nor alter the essential character of, the area surrounding the site.

The proposed variance does not alter the existing, permitted use, a retail grocery anchor store. The applicant asserts that the proposed variance would not substantially diminish property values in, nor alter the essential character of, the areas surrounding the site and has indicated that the re-opening of a store, particularly an industry-leading grocery store with strong finances and significant history, provides for long-term stability in property values and further supports **Objective A.1.3 Redevelopment and Infill Development** by encouraging infill development. According to the Applicant, "The Development Agreement will enhance, not alter the essential character of the area surrounding site by providing important placemaking enhancements." However, the City's Comprehensive Plan and Land Development Code were written and amended to ensure a scale that is appropriate to a small, coastal community. Further, the City's Comprehensive Plan indicates, "The City shall maintain within its Land Development Regulations

provisions intended to retain the unique community identity, the architectural character, and the residential scale of the City” per Policy A. 1.1.4 (2012, p. A-2).

(5) The effect of the proposed variance is in harmony with the general intent of the ULDC and the specific intent of the relevant subject area(s) of the ULDC.

The property is in the Commercial C-3 Zoning District which corresponds to the Commercial High designation on the adopted Future Land Use Map. According to the Uniform Land Development Regulations **Sec. 27-222.- Purpose and Intent of Zoning Districts:**

The Commercial C-3 Zoning District is intended to provide retail sales and services that serve the overall community. This district corresponds to the commercial high designation on the adopted future land use map.

According to the Applicant, the proposed variance is in harmony with the general intent of the Land Development Code since they feel that the re-opening of a store which “provide[s] retail sales and services that serve the overall community” and, in particular, provide essential grocery service to the community. However, the intent quoted from the LDC does not preclude the viability of other alternatives.

The Applicant states:

Further, the Development Agreement will serve to provide a benefit to the community by providing significant improvements to the property and enhancing the vehicular and pedestrian interconnectivity of the property. Granting the variance conditioned upon approval of the Development Agreement is in harmony with the general intent of the Code and provides a communitywide benefit.

(6) The need for the variance has not been created by the actions of the property owner or developer nor is the result of mere disregard for the provisions from which relief is sought.

According to the Applicant, the need for the variance has arisen from a unique and peculiar circumstances relating to the bankruptcy of the tenant under an existing lease with the property owner. The need for the variance has not been created by the actions of the property owner. However, while Publix is assuming these leases throughout the State of Florida, the fact that the one in Neptune Beach is next to another existing Publix is not basis for relief from regulations of the LDC. Further, the need for the variance is created in part by the Property Owner in that the Property Owner seeks to enter into a lease that would result in a Code violation due to a longstanding business on the adjacent parcel.

The Applicant states:

A viable alternative to Publix simply does not exist in the current and foreseeable market conditions. Without Publix, the purpose-built supermarket location that has existed since 1977 is at risk of remaining vacant due to these market conditions, leaving the plaza without an anchor tenant. The Development Agreement ensures that there is no

“disregard” for the provisions from which relief is sought. Instead, it supports those provisions by ensuring that the community gains an additional, unique grocery option in the community.

- (7) Granting the variance will not confer upon the Applicant any special privilege that is denied by the ULDC to other lands, buildings, or structures in the same zoning district.**
-

According to the Applicant, the need for the variance has arisen from unique and peculiar circumstances that have created a unique hardship for this parcel alone. The Applicant believes that by granting the variance, this will not confer upon the property owner any special privilege that is denied to other lands, buildings, or structures in the same zoning district; however, staff disagrees because this application seeks to remove regulations within the code that seek to prevent development that is out of scale for the community as contemplated by the City of Neptune Beach Comprehensive Plan and the Land Development Code. For example, Comprehensive Plan Policy A.1.1.4 states, “The City shall maintain within its Land Development Regulations provisions intended to retain the unique community identity, the architectural character, and the residential scale of the City” (2012, p. A-2). While all lands within the C-2 and C-3 zoning districts are permitted to have a grocery store as a permitted use, this does not subvert this distance separation and size limitation requirements that has been codified within Table 27-229-1, Note 6.

The Applicant States:

Further, the Development Agreement will serve to provide a benefit to the community by providing significant improvements to the property and enhancing the vehicular and pedestrian interconnectivity of the property. Granting the variance conditioned upon approval of the Development Agreement provides a distinction between this property and others within the same zoning district.

Staff Recommendation

Even though the Applicant has made considerable effort to demonstrate the desire to improve the lot and the existing development, staff recommends a motion to deny application **V20-01 540-580 Atlantic** since the application does not demonstrate the achievement of the Required findings needed to issue a variance established within Section 27-147, which requires the demonstration of a unique hardship, and the proposal and request are not consistent with the Neptune Beach Comprehensive Plan Policy A.1.1.4. nor Land Development Code Table 27-229-1, Note 6.

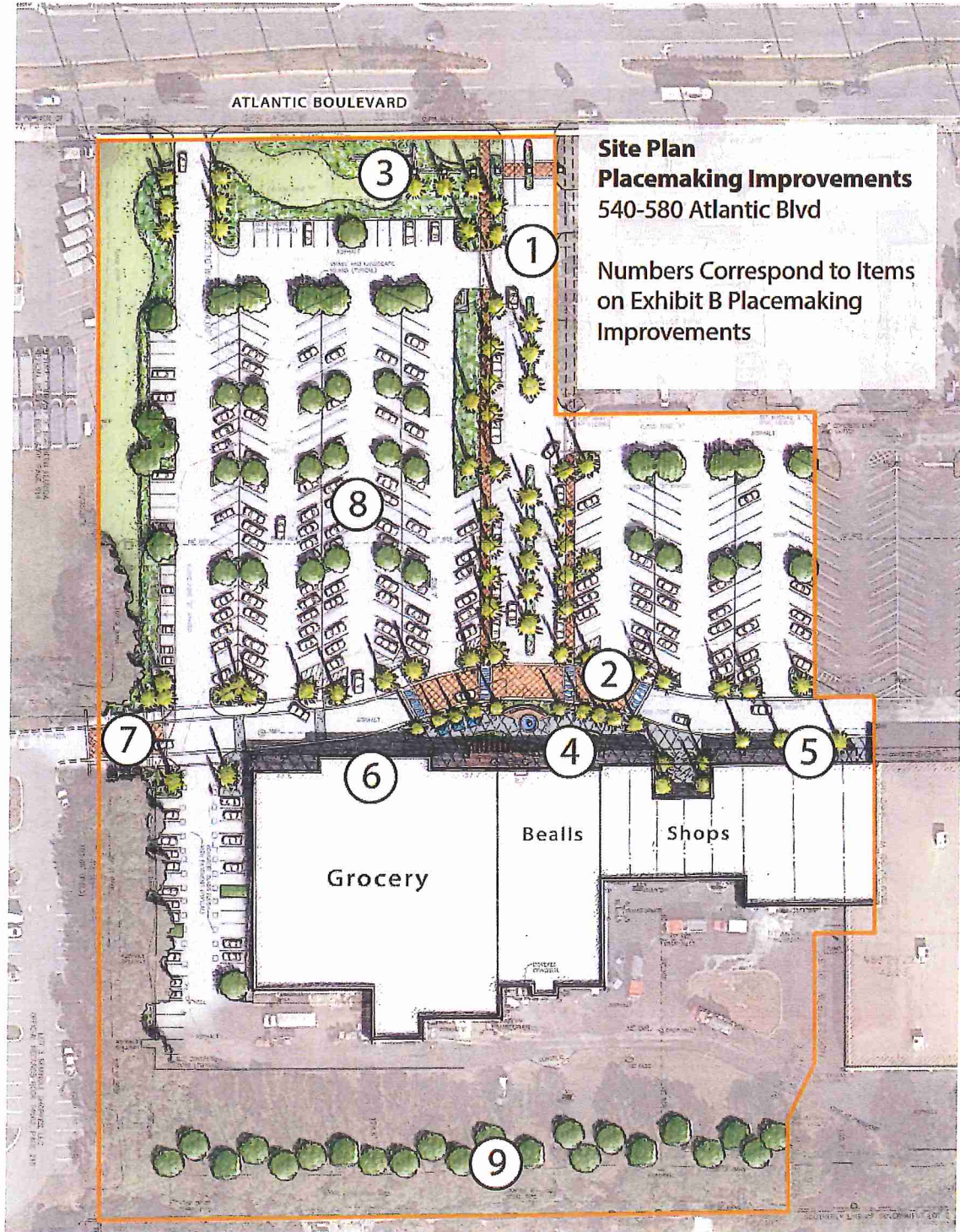
Recommended Motion

I move to deny application V20-01 540-580 Atlantic since the Applicant has not demonstrated the achievement of the criteria established within the Required findings needed to issue a variance within Section 27-147, which requires the demonstration of a unique hardship, and the proposal and request are not consistent with the Neptune Beach Comprehensive Plan Policy A.1.1.4. nor Land Development Code Table 27-229-1, Note 6.

EXHIBIT C

Conceptual Depictions of Placemaking Improvements

(This exhibit contains in-progress graphics of designs which continue to be refined)



View of New Arrival Pedestrian Plaza and Renovated Beaches Modern Façade



View of New Arrival Pedestrian Plaza



View of Transformation of Front Walk including New Outdoor Courtyard



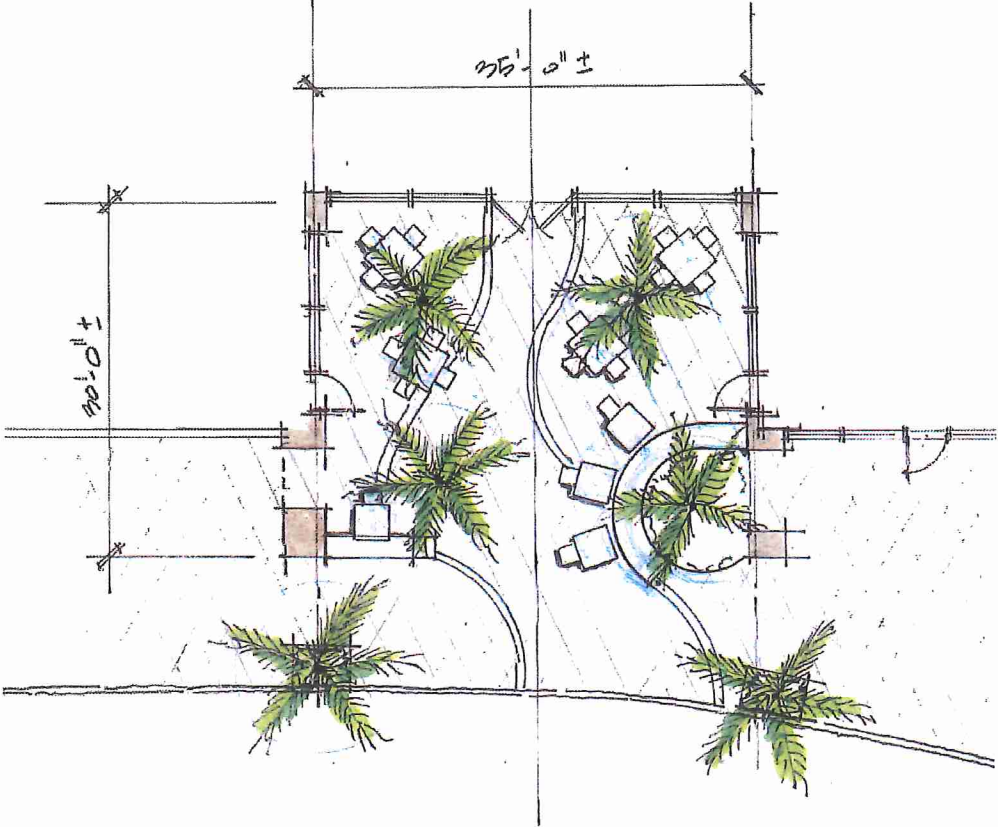
View of New Arrival Pedestrian Plaza



View of New Entry Monument Sign and Enhanced Landscape



Site Plan of New Outdoor Courtyard



View of New Arrival Pedestrian Plaza Showing “Surfboard” Trellis, Art on Building Wall and Water Feature



View of Beaches Modern Façade Renovation



Kristina Wright

From: Jake Cremer <jcremer@stearnsweaver.com>
Sent: Friday, June 19, 2020 3:12 PM
To: Kristina Wright
Cc: 'Zachary Roth'
Subject: Neptune Beach, FL Realty LLC - Variance Application Resubmittal
Attachments: Neptune Beach, FL Realty LLC - Variance Application 06.19.20.pdf

Kristina,

Please find attached Neptune Beach, FL Realty LLC's variance application resubmittal. We have included some additional analysis in our narrative and GIS backup for that analysis, but the substance of the request remains the same as the previous submittal that was withdrawn on May 20.

I'm not clear whether the city took payment for the previous submittal, so if you could let me know whether payment is still needed and how to do that, we will make sure it gets done on Monday.

I spoke with Zach earlier this week, and he confirmed we would be able to take this to the July 8 CDB meeting. Could you please confirm, and call me with any questions?

Thank you and have a great weekend!

Jake

Jacob T. Cremer, Esq.
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
401 East Jackson Street, Suite 2100 | Tampa, FL 33602
Direct: 813-222-5051 | Direct Fax: 813-222-5089 | [View My Bio](#)

STEARNS WEAVER MILLER

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STEARNS WEAVER MILLER
WEISSLER ALHADEFF & SITTERSON, P.A.

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Email: jcremer@stearnsweaver.com

August 23, 2020

VIA – EMAIL: cdd@nbfl.us

City of Neptune Beach
Attn: Kristina L. Wright, MAURP, FRA-RA
Community Development Director
116 1st Street
Neptune Beach, FL 32266

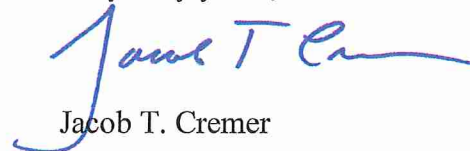
Re: Variance Application V20-01 - Application Revisions and Additional Information

Dear Kristina:

After numerous productive conversations with city elected officials, staff, and community leaders, we are excited to submit this application revision and additional information in support of V20-01. In brief, we propose that, as a condition of approval for V20-01 the Property Owner will execute with the City a Development Agreement in order to mitigate the impacts on the community of the variance and to ensure that the project meets the terms of the City's variance criteria. We have enclosed a draft Development Agreement for your review, as well as an analysis of how this condition supports our variance analysis. The key terms that the Property Owner is committing to include the placemaking improvements enclosed here.

These placemaking improvements will result in a significantly enhanced built environment that showcases many high-quality elements sought by the Neptune Beach community. We ask that you please consider these placemaking improvements in your analysis and that you distribute this information to CDB members. Thank you.

Very truly yours,



Jacob T. Cremer

/ks

Enclosures

cc: Mr. Andrew Greene (via email: agreene@tlmltd.com)

City of Neptune Beach
Attn: Kristina L. Wright, MAURP, FRA-RA
August 24, 2020
Page 2

Zachary Roth, Esq. (via email: Zachary.Roth@ansbacher.net)

Placemaking Improvements

1. New grand-entrance arrival street (at existing full-access entrance opposite Sylvan Drive):
 - (a) Approximately 360 linear feet of new sidewalk will be constructed to connect existing public sidewalk on Atlantic Blvd. to shops on west side of entry drive. Sidewalk will be landscaped with palm trees.
 - (b) Approximately 160 linear feet of new sidewalk will be constructed on east side of entry drive, from the shops to the property line of the 560 Atlantic Blvd. (Ameris Bank), which is not owned by Developer. Sidewalk will be landscaped with palm trees.
 - (c) On-street parallel parking.
 - (d) Center, landscaped median with palm trees.
 - (e) Extension of private water and sewer utility lines in preparation for future development of an outparcel building.
2. Transformation of front drive aisle into "Lemon Street":
 - (a) The existing front drive aisle to the property, which is in alignment with Lemon Street in the Beaches Town Center, will be reconfigured across the 540-580 Atlantic Blvd. parcel. The reconfiguration will narrow and shift the roadway north and introduce an intentional curve to meet the intersection with the entry drive. These changes serve both to introduce traffic calming to support a pedestrian-friendly environment and create space to create the new arrival pedestrian plaza.
 - (b) A tabletop, an area of raised roadbed constructed with concrete and pavers, will be constructed along portions of Lemon Street near Publix and the pedestrian plaza. The tabletop is a traffic calming feature which also serves to support a flush curb which is a pedestrian and cart-friendly feature.
3. New entry monument sign and enhanced landscape along Atlantic Blvd. frontage:
 - (a) The existing monument signs will be replaced with a new monument sign featuring "Beaches Modern" design to replicate architectural renovations. Signage is subject to permits and requirements of Chapter 27, Article XV of the Code.
 - (b) Enhanced landscape with an emphasis on native landscaping and retaining existing healthy, mature pine and other trees while introducing hardscape design elements from plaza design.
 - (c) JTA bus stop, if active, will be enhanced with new bench and trash receptable.
4. New arrival pedestrian plaza:

- (a) A new pedestrian plaza will be created by curving Lemon Street north. The plaza, roughly in the shape of a lemon wedge, measures approximately 160' across (east-west) by 48' deep measured from the building edge to the curb line at the outermost edge of the curve, which is centered on the entry drive. The depth tapers to about 30' on the edge of the plaza where the plaza transitions into the expanded Front Walks.
 - (b) Prominent water feature in center of plaza, situated to be visible from the new entry street and lemon street. Water feature creates pleasant sound for pedestrians and those enjoying the plaza.
 - (c) Pedestrian plaza features a mix of landscaped and hardscape areas. Surfacing is a diamond-pattern scored concrete, reminiscent of fish scales. Running through this pattern are long, wave-like lines in a contrasting color. These surfaces will be interspersed with areas of wood decking reminiscent of a boardwalk.
 - (d) Seat walls wrap plaza hardscape, encouraging seating and serving as barrier, together with landscape strips, between vehicular and pedestrian areas.
 - (e) Outdoor seating will be interspersed throughout pedestrian plaza with a combination of formalized seating areas operated by tenants and dispersed communal seating areas. A combination of seating types is envisioned including various-sized tables and chairs, benches, and "Adirondack" style lounge chairs. Canopies, the trellis, and umbrellas will offer shaded seating. Outdoor seating/dining is a use by special exception within the C-3 zoning district and this use will be subject to City Council approval of Developer's application for Special Exception.
 - (f) Outdoor power outlets will be installed on building wall and seat walls adjacent to seating to provide power for laptop and phone charging.
 - (g) Free public WiFi will be installed to serve the plaza area.
 - (h) Art reflecting the local Beaches community will be featured in the wall space behind the plaza (e.g., vintage photographs of Neptune Beach, work by local artists, coastal-themed mosaic etc.)
 - (i) Pedestrian-scaled light fixture will serve the plaza area. In addition, power will be installed for decorative and seasonal lighting, including holiday palm tree lighting.
5. Transformation of Front Walk along all retail spaces:
- (a) Extending to the east and west from the new arrival plaza, the front walk has been enlarged along the entire front of the retail space to provide for additional space. The minimum expansion of the walk is 8 feet, excepting the far western area west of the Publix entrance where the sidewalk expansion tapers gradually from 8' to 0' to permit Lemon Street to align with the proposed vehicular connection.
 - (b) Additional front walk space creates room for landscape areas, outdoor seating and furnishings.

- (c) New outdoor courtyard will be created by deconstructing a portion of the existing in-line retail building to create an outdoor amenity with planting and an outdoor seating/dining area to support future tenants (e.g, restaurant, café, coffee shops). The size of the courtyard will be approximately 30 feet deep by 32 to 40 feet wide. The exact width will be dependent on the courtyard location. Outdoor seating/dining is a use by special exception within the C-3 zoning district and this use will be subject to City Council approval of Developer's application for Special Exception. The courtyard feature will also improve the massing and interest of the in-line store architecture.
 - (d) A minimum of 20 bicycle parking spaces will be provided in convenient locations throughout the front walk area and pedestrian plaza, with an emphasis on creative and visible bicycle rack design and placement.
6. Renovated Beaches Modern façade:
- (a) Façade of all retail stores will be renovated with a "Beaches Modern" style with emphasis on white painted EIFS and wood textures.
 - (b) Creation of new metal canopies and architectural detailing on Public façade and in-line retail spaces.
 - (c) Signature trellis to be installed over the new plaza area with exposed "surfboard" structure.
7. Connection to 630 Atlantic Blvd.
- (a) A vehicular connection (Subject to Publix approval) will be made extending "Lemon Street" west across the ditch and to the property line of 630 Atlantic Blvd. (Seminole Shoppes, which is not owned by Developer) to form a vehicular connection between the two properties.
 - (b) A pedestrian sidewalk will be connected from the retail stores to the property line of 630 Atlantic Blvd. (Seminole Shoppes). An outdoor bench will be added alongside the sidewalk
8. Significant renovation of the existing parking field:
- (a) Incorporation of 10 golf-cart parking spaces on western edge of parking field with pervious paving surface and available electric power for charging.
 - (b) Bench seating and signage will be provided for a Beaches Buggy pickup/drop-off area.
 - (c) Electric vehicle charging station will be installed.
 - (d) Existing automobile parking space count will be reduced from 354 spaces currently to approximately 300 spaces.
 - (e) New LED-lighting fixtures with new full cut-off heads, poles, and bases will be installed.
 - (f) Current number of parking lot islands will be more than doubled with construction of approximately 19 new landscaped parking lot islands. Nearly all existing landscape islands will be increased in size.

- (g) Parking lot maintenance, including mill and repave and striping, of the remaining asphalt surfaces will be performed together with the improvements.
-
9. Additional rear tree planting for screening purposes.
- (a) A line of trees will be planted on the north edge of the rear stormwater ditch to provide additional screening for adjacent residential area.

**REVISED ATTACHMENT TO APPLICATION FOR ZONING VARIANCE
540-580 Atlantic Blvd., Parcel 172395-0130
Items 1, 2 and 3a-g**

***August 23, 2020 resubmittal changes are underlined.**

1. Explain the proposed relief being sought from the code(s):

The Applicant seeks relief from Note 6 to Table 27-229-1 to increase the maximum aggregate combined square footage from 60,000 to 89,500. Note 6 to Table 27-229-1 states: *“Furthermore, any retail stores, wholesale warehouses, or other freestanding buildings for any permitted use located within one thousand (1,000) linear feet of each other that operate under common business ownership or management, share a warehouse or distribution facility, or otherwise operate as an associated, integrated or cooperative business shall not exceed a combined sixty thousand (60,000) square feet of total gross floor area in aggregate.”*

2. Explain the purpose of the variance (if granted)?

The purpose of the variance is allow a second, smaller location for a Publix Super Market within Neptune Beach. Currently, a Publix is located at 630 Atlantic Blvd. The smaller Publix location will provide for a concept distinct from the existing Publix, including an emphasis on grab-and-go prepared foods, organic groceries, and a “POURS” station. For the reasons described below, the Applicant, Neptune Beach, FL Realty LLC, is seeking to enter a lease with Publix for the existing building located at 580 Atlantic Blvd. and is seeking to make architectural and placemaking improvements and provide additional vehicular and pedestrian connections to the 1977 shopping plaza.



The Applicant, the owner of 580 Atlantic Blvd., and Lucky's Market of Neptune Beach, FL entered into a long-term lease (with a 20 year initial term) dated as of September 1, 2015 for a 29,810 square foot Lucky's Market grocery store in Neptune Beach Plaza. Based upon the economic return of the executed long-term lease, the property owner expended significant funds to construct the improvements required by the lease, renovate the store and the remainder of the property, and reimburse the tenant for further improvements made by the tenant. Lucky's Market opened to the public in December 2016. In January 2020, Lucky's Market declared Chapter 11 bankruptcy and closed nearly all stores earlier this year, including the store at 580 Atlantic Blvd. As part of the bankruptcy process, Publix Super Markets, Inc. entered into an agreement to purchase and take assignment of the Neptune Beach, FL lease from Lucky's Market. This purchase and assignment have been approved by the Bankruptcy Court and Publix has already completed the purchase of Lucky's Market leases elsewhere in the state. However, City of Neptune Beach has advised Publix Super Markets, Inc. and the property owner that a Publix grocery store would violate the provisions of Table 27-229-1, specifically the final sentence of Note 6,¹ as the existing Lucky's Market grocery store at 580 Atlantic Blvd. is within 1,000 linear feet from an existing 54,310 square foot Publix grocery store at 630 Atlantic Blvd. which is leased by Publix from the owner(s) of that separate parcel. The owner(s) of 630 Atlantic Blvd. are different from and have no affiliations with the owner of 580 Atlantic Blvd. However, the cumulative floor area of two separate stores would exceed 60,000 square feet.

A variance is sought from Note 6 of Table 27-229-1 to increase the maximum aggregate combined square footage from 60,000 to 89,500, thereby allowing Publix to replace Lucky's Market as the tenant of the property owner and re-open a grocery store in the existing Lucky's Market premises at 580 Atlantic Blvd. The proposed store at 580 Atlantic Blvd. is distinct from the store at 630 Atlantic Blvd. as it presents a smaller format store (29,810 SF vs 54,310 SF) with features familiar to Lucky's Market shoppers, including an emphasis on prepared foods, organic groceries, and is planned to feature the "POURS" station, an in-store beverage bar

¹ Table 27-229-1, Note 6 of Article IV-B of the City of Neptune Beach Unified Land Development Regulations is a footnote to Sec. 27-238(a) which begins, "The impervious surface on any lot, or parcel of land, shall not exceed...". The applicant believes Table 27-229-1, Note 6 is not applicable across separate tax parcels and/or zoning lots. As such, the existing Lucky's Market on Parcel 172395-0130 would be in compliance with Table 27-229-1 if Publix Super Markets, Inc., or any affiliate of same, occupies the former Lucky's Market store as a "Publix" grocery store (or other grocery store tradename), even though there is a "Publix" grocery store on a separate tax parcel within 1,000 linear feet located immediately to the west. However, the City of Neptune Beach has advised that Table 27-229-1, Note 6 is applicable across separate tax parcels and/or zoning lots and a variance is required.

concept from Publix's GreenWise branded-stores where shoppers can order various drinks.

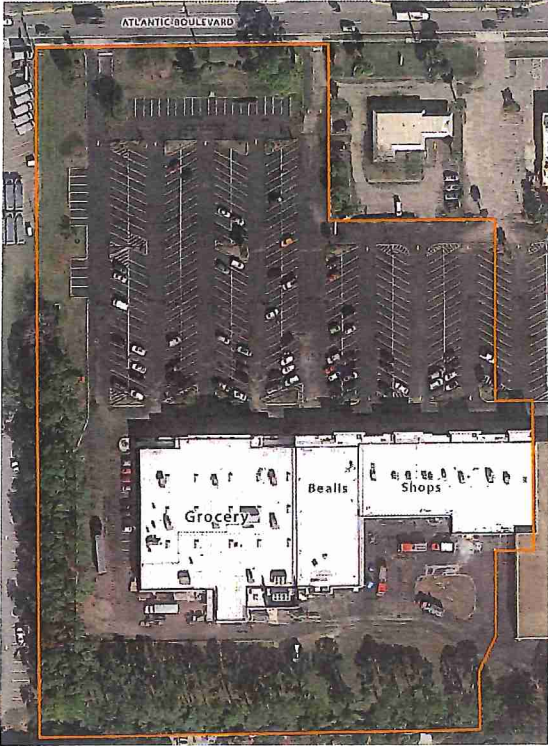
The variance will allow for the second Publix location to serve as a focused and distinct concept from the traditional existing Publix. The variance is proposed to be conditioned upon the approval of a Development Agreement which outlines and commits the landlord several architectural, placemaking, and mobility improvements. One such improvement which would extend Lemon Street to the parcel to the west with the existing Publix for vehicular and pedestrian access. This new interconnection will not only allow for vehicular traffic to travel to A1A without needing to travel upon Atlantic Blvd., but would also allow for an overall sense of place and natural connection to occur between the two shopping plazas.

Failure to grant the proposed variance will cause Publix to cancel its court-approved agreement to purchase the Neptune Beach lease and control of the future of the lease will return to Lucky's Market. Through the bankruptcy process Lucky's Market may then choose to reject the lease. Rejection would cause the lease terminated immediately, far earlier than the September 30, 2036 end of the initial term under the lease. The rejection of the lease due to the denial of the variance for Publix would be an exceptional hardship to the property owner and would result in a vacant anchor store, prevent the owner from obtaining an economic return on the investments it made in the lease, and would harm the property owner's other tenants who depend on the customer activity generated by the anchor tenant in the shopping center.

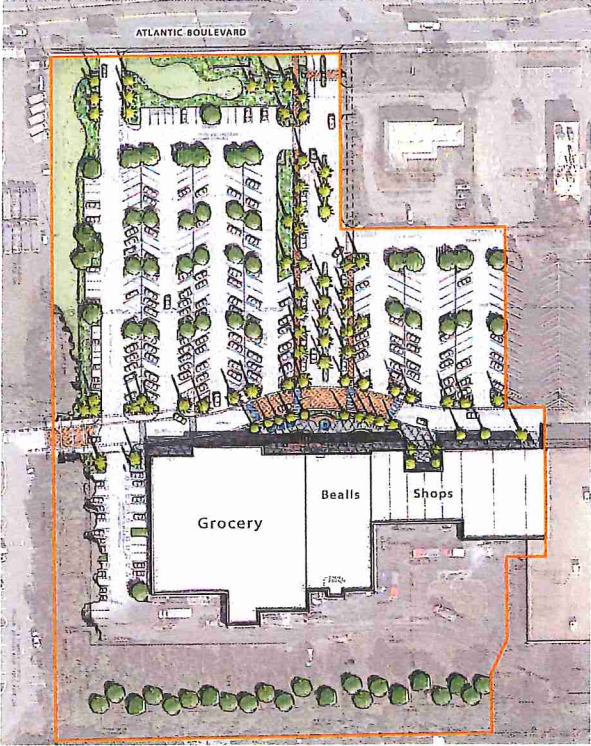
Council records demonstrate that the intent of Council in drafting Note 6 in the spring of 2006 was to prevent a Big Box retailer, specifically Walmart, from constructing a single store exceeding 60,000 SF in Neptune Beach. It was not the intent of Council to prohibit Publix from operating a separate store on a distinct parcel and within a separate shopping plaza at 580 Atlantic Blvd. Per the meeting notes from the November 19, 2007 Council meeting on the intent of Ordinance 2006-13 (which added Note 6 to Table 27-229-1), Councilor Weldon, the sponsor of the Ordinance, made the following statement: "Councilor Weldon stated the intent of the Ordinance was to limit the amount **a single store from exceeding 60,000 square feet...**" (emphasis added).

The proposed variance conditioned upon the approval of the Development Agreement continues to serve the intent and purpose of the Code. The second Publix location will serve as a focused and distinct concept from the traditional existing Publix. The improvements proposed under the Development Agreement

will demonstrate this distinction by providing outdoor spaces to enjoy food and drink and by encouraging pedestrian use through outdoor seating/resting areas, pedestrian scale lighting, elimination of parking, addition of parking islands, traffic calming measures, and increased landscaping and green spaces.



Existing Conditions



Concept Plan under Development Agreement



Existing Conditions



Concept Plan under Development Agreement

The approval of the Development Agreement is proposed to be a condition of the variance. In addition to the above, the Development Agreement calls for the following improvements:

- New entry arrival street with landscaped center median, parallel on-street parking, and new pedestrian sidewalk linking Atlantic Blvd. with the shopping plaza;
- New entry monument sign and enhanced landscaping along Atlantic Blvd;
- The creation of a centerpiece pedestrian plaza and outdoor space with furniture, trees, planting beds, hardscape, and public art features;
- A Beaches Modern façade with an emphasis on white painted stucco and natural wood tones;
- A Beaches Buggy pick-up/drop-off location; and
- New and expanded golf cart and bicycle parking.

3. Based on the required findings needed to issue a variance in Section 27-147 explain the following:

(1) The property has unique and peculiar circumstances, which create an exceptional and unique hardship. For the purpose of this determination, the unique hardship shall be unique to the parcel and not shared by other property owners in the same zoning district.

The hardship is the result of unique and peculiar circumstances which are unique to the parcel. First, hardship is created because a second Publix location cannot feasibly be located in on any other parcel within the City of Neptune Beach. Second, hardship is created by the current and forecasted market conditions for brick-and-mortar retailers. Third, hardship is created because the Code is preventing two very different store concepts simply because they are operated by the same parent company. Fourth and finally, a hardship is created because the proposed Publix will serve a different geographic location.

A. Hardship is created because a second Publix location cannot feasibly be located in on any other parcel within the City of Neptune Beach.

A parcel analysis was performed to determine all possible locations for a second Publix location within the City of Neptune Beach, under the strictest reading of Note 6 of Table 27-229-1. Overall, the parcel analysis shows that Publix cannot currently be accommodated in any other location within the City of Neptune.

The parcel analysis showed that of the 33 parcels zoned C-3, only eight parcels are large enough to accommodate an approximately 30,000 SF supermarket with associated parking and required open space (minimum 2 acres). Of those eight parcels, ONLY two are NOT within 1,000 linear feet of the existing Publix. Of those two parcels, neither have vacancies. See **Exhibit 1** showing a map of the existing Publix and the sole two C-3 parcels outside of the 1,000 linear foot radius that could accommodate a 30,000 SF Publix.

Additionally, the parcel analysis reviewed parcels within the C-2 zoning district. Of the 73 parcels zoned C-2, only two parcels are large enough to accommodate an approximately 30,000 SF supermarket with associated parking and required open space (minimum 2.13 acres). While both of those parcels are not within 1,000 linear feet of the existing Publix, they are both fully occupied. See **Exhibit 2** showing a map of the existing Publix and the sole two C-2 parcels that could accommodate a 30,000 SF Publix.

The parcel analysis further reviewed parcels within both the C-2 and C-3 zoning districts that could accommodate a 60,000 SF Publix. Only one parcel, the existing Winn-Dixie site, could accommodate a 60,000 SF Publix. This significant parcel limitation is a direct result of the 1,000 linear foot prohibition from the existing Publix. Overall, a strict reading of Note 6 of Table 27-229-1 significantly limits the locations available within the City to place another small Publix (30,000 SF) to just four parcels, none of which have vacancies. Despite the lack of available

parcels, the community demand is high for a second Publix location within Neptune Beach.

Additionally, the parcel contains an existing lease for a 29,810 SF retail grocery store, a permitted use, and the tenant under that long-term lease filed for Chapter 11 bankruptcy protection in January 2020. The tenant entered into an agreement with and received Bankruptcy Court approval for an assignment of the existing lease with the property owner to Publix Super Markets, Inc. As noted above, the existing 54,310 SF store operated by Publix Super Markets, Inc. significantly limits the availability of parcels under a strict reading of Note 6 of Table 27-229-1. The combination of these circumstances has created an exceptional and unique hardship that, absent the granting of the proposed variance, will prohibit Publix from taking assignment of the lease and enable Lucky's Market to reject and terminate the long-term lease with property owner. The strict application of Note 6 of Table 27-229-1 creates a hardship that is unique to this parcel and not shared by other property owners in the same zoning district.

B. Hardship is created by the current and forecasted market conditions for brick-and-mortar retailers.

A record number of retail stores are expected to close permanently this year. The COVID-19 pandemic has accelerated an already declining industry. As internet sales take over for non-perishable goods, the only retail industry that looks with withstand the market shift is supermarkets. Even grocery stores, however, are falling victim to the current economic crisis.

Coresight Research, a leading market-based research company focused on retail trends, predicts between 20,000 and 25,000 retail store closings this year alone—the most closings ever. Retailers which have filed for bankruptcy include not only Lucky's Market, but also Earth Fare, Stein Mart, Pier 1 Imports, Tuesday Morning, and JCPenney. Additionally, the following retailers have announced intentions to close hundreds of retail locations permanently: GNC; Victoria's Secret; Men's Wearhouse; GameStop; Signet (Kay Jewelers, Zales, Jared the Galleria of Jewelry, etc.); Bed Bath & Beyond; AT&T; Chico's; Walgreens; CVS; Macy's; Office Depot; and Bath & Body Works. (See: <https://coresight.com/>; <https://moneywise.com/a/chains-closing-the-most-stores-in-2020>; <https://www.cnbc.com/2020/06/09/coresight-predicts-record-25000-retail-stores-will-close-in-2020.html>.)

Forecasters say that the retail industry has been forever changed. Given this seismic shift of the retail industry resulting from the internet age and drastically accelerated by the COVID-19 pandemic, shopping plazas and malls are finding it more and more difficult to retain tenants.

Publix has a superb reputation and strong financials. A viable alternative to Publix simply does not exist in the current and foreseeable market conditions for the 1977 purpose-built supermarket. Without Publix, the plaza is at risk of remaining mostly vacant due to these market conditions. A vacant anchor tenant will serve as inefficient use of space within the City and cause the City to lose significant tax dollars. A vacant anchor tenant may even trigger blight with spillover effects onto neighboring parcels. Accordingly, the forever-changed retail market conditions is a valid hardship on the Applicant and principles of fairness urge for the granting of a variance.

- C. *Hardship is created because the Code is preventing two very different store concepts simply because they are operated by the same parent company.*

The second Publix location is not a standard Publix supermarket. The second location is significantly smaller in footprint to the existing traditional Publix. The second location will focus on prepared food in a grab-and-go concept. The second location will also have an emphasis on organic foods and a POURS station to allow customers to enjoy beverages while shopping.

Even though the second location will be operating under the Publix brand, the offerings will be different than a traditional supermarket. In fact, the offerings provide a greater variety than if a Winn-Dixie or other major traditional supermarket brand were to move into the location. These two store different concepts should be accommodated within the Code and a failure to do so results in a hardship.

- D. *Hardship is created because the proposed Publix will serve a different geographic demographic and location.*

As it exists today, the existing traditional Publix has access only to Atlantic Blvd. and tends to serve those residing in west Neptune Beach and east Jacksonville. The second Publix location is anticipated to serve those residing near A1A, south Neptune Beach, and downtown Neptune Beach through Lemon Street. The variance is also proposed to be conditioned upon the approval of the Development

Agreement. One of the major impacts of the Development Agreement is to provide vehicular and pedestrian interconnection between the two shopping plazas. Accordingly, approval of the variance would expand convenient access to the traditional Publix to more City residents. The Development Agreement would allow the two stores to work in harmony. The Development Agreement also highlights the differences in these store concepts as outdoor seating and a pedestrian plaza with ample bike racks are essential to the second Publix's concept.

Overall, the property has unique and peculiar circumstances, which create an exceptional and unique hardship which is not shared by other property owners within the same zoning district.

(2) The proposed variance is the minimum necessary to allow the reasonable use of the parcel of land.

The proposed variance is requesting the minimum additional square footage necessary to allow Publix to replace Lucky's Market as the tenant without any expansion of the existing Lucky's Market footprint. The denial of the proposed variance would prohibit Publix from taking assignment of the lease and enable Lucky's Market to reject their lease with property owner. The rejection of the lease would terminate the lease, despite approximately 16 years of term remaining per the terms of the lease. Failure to grant the proposed variance would deny the property owner the reasonable use of its land as the property owner would be permanently unable to attain its reasonable investment-backed expectations from the existing lease. A viable alternative to Publix simply does not exist in the current and foreseeable market conditions. Without Publix, the plaza is at risk of remaining significantly vacant due to these market conditions.

The Development Agreement works to minimize the variance as well, in that the intent of the Improvements is to minimize potential and perceived impacts due to the redevelopment for a Publix.

(3) The proposed variance would not adversely affect adjacent and nearby properties or the public in general.

The proposed variance does not alter the existing, permitted use of the property, a retail grocery anchor store, or alter any physical characteristics of the property from the existing condition. Therefore, the proposed variance would not adversely affect adjacent and nearby properties or the public in general. Further, the re-opening of a grocery store at the property, which is the purpose of the variance, would create

positive benefits to the nearby properties and the public in general. Granting of the variance support Neptune Beach Comprehensive Plan **Goal A.1** and **Objective A.1.3 Redevelopment and Infill Development** by encouraging infill redevelopment and avoiding blighting influences. The opening of a Publix grocery store at 580 Atlantic Blvd. is anticipated to create 50 additional permanent jobs, in addition to construction jobs, will have a beneficial impact on tax collection, and provide an essential service to public.

The Development Agreement as a condition of approval will also serve to increase nearby property values and to enhance the value to the public in general.. The improvements outlined within the Development Agreement will provide an overall facelift and modernization for the 1977 plaza and will serve to provide enhanced landscaping and pedestrian access and spaces. Moreover, the public in general will benefit by having an additional, unique grocery option in the community.

(4) The proposed variance will not substantially diminish property values in, nor alter the essential character of, the area surrounding the site.

The proposed variance does not alter the existing, permitted use, a retail grocery anchor store, or alter any physical characteristics of the property from the existing condition. Therefore, the proposed variance would not substantially diminish property values in, nor alter the essential character of, the areas surrounding the site. Further, the re-opening of a store, particularly an industry-leading grocery store with strong finances and significant history, provides for long-term stability in property values and further supports **Objective A.1.3 Redevelopment and Infill Development** by encouraging infill development.

The Development Agreement will enhance, not alter the essential character of the area surrounding site by providing important placemaking enhancements.

(5) The effect of the proposed variance is in harmony with the general intent of the ULDC and the specific intent of the relevant subject area(s) of the ULDC.

The property is located in the Commercial C-3 Zoning District which corresponds to the Commercial High designation on the adopted Future Land Use Map. According to the Uniform Land Development Regulations **Sec. 27-222. - Purpose and Intent of Zoning Districts**, *“The commercial C-3, zoning district is intended to provide retail sales and services that serve the overall community. This district corresponds to the commercial high designation on the adopted future land use*

map.” The proposed variance is in harmony with the general intent of the Uniform Land Development Regulations by enabling the re-opening of a store which “provide[s] retail sales and services that serve the overall community” and, in particular, provide essential grocery service to the community.

Further, the Development Agreement will serve to provide a benefit to the community by providing significant improvements to the property and enhancing the vehicular and pedestrian interconnectivity of the property. Granting the variance conditioned upon approval of the Development Agreement is in harmony with the general intent of the Code and provides a communitywide benefit.

(6) The need for the variance has not been created by the actions of the property owner or developer nor is the result of mere disregard for the provisions from which relief is sought.

The need for the variance has arisen from a unique and peculiar circumstances relating to the bankruptcy of the tenant under an existing lease with the property owner. The need for the variance has not been created by the actions of the property owner.

A viable alternative to Publix simply does not exist in the current and foreseeable market conditions. Without Publix, the purpose-built supermarket location that has existed since 1977 is at risk of remaining vacant due to these market conditions, leaving the plaza without an anchor tenant. The Development Agreement ensures that there is no “disregard” for the provisions from which relief is sought. Instead, it supports those provisions by ensuring that the community gains an additional, unique grocery option in the community.

(7) Granting the variance will not confer upon the applicant any special privilege that is denied by the ULDC to other lands, buildings, or structures in the same zoning district.

The need for the variance has arisen from a unique and peculiar circumstances that have created a unique hardship for this parcel alone. Granting the variance will not confer upon the property owner any special privilege that is denied to other lands, buildings, or structures in the same zoning district. All lands within the C-2 and C-3 zoning districts are permitted to have a grocery store as a permitted use.

Further, the Development Agreement will serve to provide a benefit to the community by providing significant improvements to the property and enhancing

the vehicular and pedestrian interconnectivity of the property. Granting the variance conditioned upon approval of the Development Agreement provides a distinction between this property and others within the same zoning district.

Original Application

APPLICATION FOR ZONING VARIANCE

TO THE CITY OF NEPTUNE BEACH COMMUNITY DEVELOPMENT DEPARTMENT
 116 FIRST STREET
 NEPTUNE BEACH, FLORIDA 32266-6140
 PH: 270-2400 Ext 34 FAX: 270-2432



IMPORTANT NOTE: THE COMMUNITY DEVELOPMENT BOARD, IN CONSIDERING YOUR PETITION, IS ACTING IN A QUASI-JUDICIAL CAPACITY AND ANY DISCUSSION WITH MEMBERS, OTHER THAN AT A PUBLIC MEETING IS PROHIBITED AND ANY SUCH CONTACT MAY VOID YOUR PETITION.

Date Filed: <u>MAY 11, 2020</u>	Zoning District: <u>C-3</u>	Real Estate Parcel Number: <u>172395-0130</u>
Name & Address of Owner of Record: <u>NEPTUNE BEACH, FL REALTY LLC</u> <u>295 MADISON AVE. 37TH FLOOR</u> <u>NEW YORK, NY 10017</u>	Property Address: <u>540-580 ATLANTIC BLVD.</u> <u>NEPTUNE BEACH, FL 32266</u>	Number of units on property <u>8 COMMERCIAL UNITS</u>
Contact phone number# <u>240-888-9137</u>	Have any previous applications for variance been filed concerning this property? <u>NONE KNOWN</u>	
e-mail address <u>agreene@tlmltd.com</u>	If Yes, Give Date: _____	
Section 27-15 of the Unified Land Development Code (ULDC) defines a variance as follows: <i>Grant of relief authorized by the board of appeals, or the city council upon recommendation by the planning and development review board, that relaxes specified provisions of the Code which will not be contrary to the public interest and that meets the requirements set forth in article III, division 8 of this Code.</i>		
1. Explain the proposed relief being sought from the code(s): <u>SEE ATTACHED</u>		
2. Explain the purpose of the variance (if granted)? <u>SEE ATTACHED</u>		
3. Based on the required findings needed to issue a variance in Section 27-147 explain the following (attach additional sheets as necessary):		

A. How does your property have unique and peculiar circumstances, which create an exceptional and unique hardship? Unique hardship shall be unique to the parcel and not shared by other property owners. The hardship cannot be created by or be the result of the property owner's own action.

SEE ATTACHED

B. How is the proposed variance the minimum necessary to allow reasonable use of the property?

SEE ATTACHED

C. Indicate how the proposed variance will not adversely affect adjacent or nearby properties or the public in general.

SEE ATTACHED

D. Indicate how the proposed variance will not diminish property values nor alter the character of the area.

SEE ATTACHED

E. Explain how the proposed variance is in harmony with the general intent of the Unified Land Development Code.

SEE ATTACHED

F. Explain how the need for the proposed variance has not been created by you or the developer?

SEE ATTACHED

G. Indicate how granting of the proposed variance will not confer upon you any special privileges that is denied by the code to other lands, buildings or structures in the same zoning district.

SEE ATTACHED

4. **Required Attachments**-Applicant must include the following: **(INCOMPLETE PACKAGES WILL BE RETURNED)**

A. 8 1/2" by 11" overhead site plan drawn to an appropriate scale showing the location of all existing and proposed improvements to the property and including all setback measurements from property lines. **WHICH HAS NOT BEEN REDUCED.**

B. Survey of the property certified by licensed surveyor dated within one year of application date. **WHICH HAS NOT BEEN REDUCED.**

C. Copy of Deed

D. Pictures of the property as it currently exists

5. Letter of authorization for agent to make application (Required only if not made by owner)

6. **NON-REFUNDABLE FEE:**

\$300.00 (Residentially zoning property) / \$500.00 (Commercially Zoned Property)

NO APPLICATION WILL BE ACCEPTED UNTIL ALL THE REQUESTED INFORMATION HAS BEEN SUPPLIED AND THE REQUIRED FEE HAS BEEN PAID. THE ACCEPTANCE OF AN APPLICATION DOES NOT GUARANTEE ITS APPROVAL BY THE COMMUNITY DEVELOPMENT BOARD. THE APPLICANT AND SURROUNDING PROPERTIES WILL BE NOTIFIED OF THE PUBLIC HEARING BY MAIL AND POSTING OF THE PROPERTY. THE APPLICANT OR HIS/HER AUTHORIZED AGENT MUST BE PRESENT AT THE MEETING.

***If a residential zoning variance is granted, then a 30 day wait period must pass before any required building permits can be released, in order to allow time for appeals.**

***If a commercially zoned variance is granted by council, then a 30 day wait period must pass before any required building permits can be released, in order to allow time for appeals.**

I HEREBY CERTIFY THAT I HAVE READ AND UNDERSTAND THE INFORMATION CONTAINED IN THIS APPLICATION. THAT I AM THE PROPERTY OWNER OR AUTHORIZED AGENT FOR THE OWNER WITH AUTHORITY TO MAKE THIS APPLICATION, AND THAT ALL OF THE INFORMATION CONTAINED IN THIS APPLICATION, INCLUDING THE ATTACHMENTS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I HEREBY APPLY FOR A ZONING VARIANCE AS REQUESTED.

NAME (S) OF PROPERTY OWNER (S)

NEPTUNE BEACH FL REALTY LLC

NAME OF AUTHORIZED AGENT

ADDRESS OF PROPERTY OWNER

295 MADISON AVE, 37TH FLOOR
NEW YORK, NY 10017

ADDRESS OF AUTHORIZED AGENT

SIGNATURE OF OWNER OR AUTHORIZED AGENT:

BY: TLM REALTY CORP., MANAGER

Ronald J. Oehl

BY: RONALD OEHL
ITS: PRESIDENT

BELOW THIS LINE FOR CITY USE ONLY.

BOARD PUBLIC HEARING DATE:

BOARD DECISION:

APPROVAL _____ DENIAL _____

ATTACHMENT TO APPLICATION FOR ZONING VARIANCE

540-580 Atlantic Blvd., Parcel 172395-0130

Items 1, 2 and 3a-g

1. Explain the proposed relief being sought from the code(s):

The Applicant seeks relief from Note 6 to Table 27-229-1 to increase the maximum aggregate combined square footage from 60,000 to 89,500. Note 6 to Table 27-229-1 states: *“Furthermore, any retail stores, wholesale warehouses, or other freestanding buildings for any permitted use located within one thousand (1,000) linear feet of each other that operate under common business ownership or management, share a warehouse or distribution facility, or otherwise operate as an associated, integrated or cooperative business shall not exceed a combined sixty thousand (60,000) square feet of total gross floor area in aggregate.”*

2. Explain the purpose of the variance (if granted)?

The purpose of the variance is allow a second, smaller location for a Publix Super Market within Neptune Beach. Currently, a Publix is located at 630 Atlantic Blvd. For the reasons described below, the Applicant, Neptune Beach, FL Realty LLC, is seeking to enter a lease with Publix for the existing building located at 580 Atlantic Blvd.



The Applicant, the owner of 580 Atlantic Blvd., and Lucky's Market of Neptune Beach, FL entered into a long-term lease (with a 20 year initial term) dated as of September 1, 2015 for a 29,810 square foot Lucky's Market grocery store in Neptune Beach Plaza. Based upon the economic return of the executed long-term lease, the property owner expended significant funds to construct the improvements required by the lease, renovate the store and the remainder of the property, and reimburse the tenant for further improvements made by the tenant. Lucky's Market opened to the public in December 2016. In January 2020, Lucky's Market declared Chapter 11 bankruptcy and closed nearly all stores earlier this year, including the store at 580 Atlantic Blvd. As part of the bankruptcy process, Publix Super Markets, Inc. entered into an agreement to purchase and take assignment of the Neptune Beach, FL lease from Lucky's Market. This purchase and assignment have been approved by the Bankruptcy Court and Publix has already completed the purchase of Lucky's Market leases elsewhere in the state. However, City of Neptune Beach has advised Publix Super Markets, Inc. and the property owner that a Publix grocery store would violate the provisions of Table 27-229-1, specifically the final sentence of Note 6,¹ as the existing Lucky's Market grocery store at 580 Atlantic Blvd. is within 1,000 linear feet from an existing 54,310 square foot Publix grocery store at 630 Atlantic Blvd. which is leased by Publix from the owner(s) of that separate parcel. The owner(s) of 630 Atlantic Blvd. are different from and have no affiliations with the owner of 580 Atlantic Blvd. However, the cumulative floor area of two separate stores would exceed 60,000 square feet.

A variance is sought from Note 6 of Table 27-229-1 to increase the maximum aggregate combined square footage from 60,000 to 89,500, thereby allowing Publix to replace Lucky's Market as the tenant of the property owner and re-open a grocery store in the existing Lucky's Market premises at 580 Atlantic Blvd. The proposed store at 580 Atlantic Blvd. is distinct from the store at 630 Atlantic Blvd. as it presents a smaller format store (29,810 SF vs 54,310 SF) with features familiar to Lucky's Market shoppers, including an emphasis on prepared foods, organic groceries, and is planned to feature the "POURS" station, an in-store beverage bar

¹ Table 27-229-1, Note 6 of Article IV-B of the City of Neptune Beach Unified Land Development Regulations is a footnote to Sec. 27-238(a) which begins, "The impervious surface on any lot, or parcel of land, shall not exceed...". The applicant believes Table 27-229-1, Note 6 is not applicable across separate tax parcels and/or zoning lots. As such, the existing Lucky's Market on Parcel 172395-0130 would be in compliance with Table 27-229-1 if Publix Super Markets, Inc., or any affiliate of same, occupies the former Lucky's Market store as a "Publix" grocery store (or other grocery store tradename), even though there is a "Publix" grocery store on a separate tax parcel within 1,000 linear feet located immediately to the west. However, the City of Neptune Beach has advised that Table 27-229-1, Note 6 is applicable across separate tax parcels and/or zoning lots and a variance is required.

concept from Publix's GreenWise branded-stores where shoppers can order various drinks.

Failure to grant the proposed variance will cause Publix to cancel its court-approved agreement to purchase the Neptune Beach lease and control of the future of the lease will return to Lucky's Market. Through the bankruptcy process Lucky's Market may then choose to reject the lease. Rejection would cause the lease terminated immediately, far earlier than the September 30, 2036 end of the initial term under the lease. The rejection of the lease due to the denial of the variance for Publix would be an exceptional hardship to the property owner and would result in a vacant anchor store, prevent the owner from obtaining an economic return on the investments it made in the lease, and would harm the property owner's other tenants who depend on the customer activity generated by the anchor tenant in the shopping center.

Council records demonstrate that the intent of Council in drafting Note 6 in the spring of 2006 was to prevent a Big Box retailer, specifically Walmart, from constructing a single store exceeding 60,000 SF in Neptune Beach. It was not the intent of Council to prohibit Publix from operating a separate store on a distinct parcel and within a separate shopping plaza at 580 Atlantic Blvd. Per the meeting notes from the November 19, 2007 Council meeting on the intent of Ordinance 2006-13 (which added Note 6 to Table 27-229-1), Councilor Weldon, the sponsor of the Ordinance, made the following statement: "Councilor Weldon stated the intent of the Ordinance was to limit the amount a single store from exceeding 60,000 square feet..." (emphasis added).

3. Based on the required findings needed to issue a variance in Section 27-147 explain the following:

(1) The property has unique and peculiar circumstances, which create an exceptional and unique hardship. For the purpose of this determination, the unique hardship shall be unique to the parcel and not shared by other property owners in the same zoning district.

The hardship is the result of unique and peculiar circumstances which are unique to the parcel. A parcel analysis was performed to determine all possible locations for a second Publix location within the City of Neptune Beach, under the strictest reading of Note 6 of Table 27-229-1. Overall, the parcel analysis shows that Publix

cannot currently be accommodated in any other location within the City of Neptune.

The parcel analysis showed that of the 33 parcels zoned C-3, only eight parcels are large enough to accommodate an approximately 30,000 SF supermarket with associated parking and required open space (minimum 2 acres). Of those eight parcels, ONLY two are NOT within 1,000 linear feet of the existing Publix. Of those two parcels, neither have vacancies. See **Exhibit 1** showing a map of the existing Publix and the sole two C-3 parcels outside of the 1,000 linear foot radius that could accommodate a 30,000 SF Publix.

Additionally, the parcel analysis reviewed parcels within the C-2 zoning district. Of the 73 parcels zoned C-2, only two parcels are large enough to accommodate an approximately 30,000 SF supermarket with associated parking and required open space (minimum 2.13 acres). While both of those parcels are not within 1,000 linear feet of the existing Publix, they are both fully occupied. See **Exhibit 2** showing a map of the existing Publix and the sole two C-2 parcels that could accommodate a 30,000 SF Publix.

The parcel analysis further reviewed parcels within both the C-2 and C-3 zoning districts that could accommodate a 60,000 SF Publix. Only one parcel, the existing Winn-Dixie site, could accommodate a 60,000 SF Publix. This significant parcel limitation is a direct result of the 1,000 linear foot prohibition from the existing Publix. Overall, a strict reading of Note 6 of Table 27-229-1 significantly limits the locations available within the City to place another small Publix (30,000 SF) to just four parcels, none of which have vacancies. Despite the lack of available parcels, the community demand is high for a second Publix location within Neptune Beach.

Additionally, the parcel contains an existing lease for a 29,810 SF retail grocery store, a permitted use, and the tenant under that long-term lease filed for Chapter 11 bankruptcy protection in January 2020. The tenant entered into an agreement with and received Bankruptcy Court approval for an assignment of the existing lease with the property owner to Publix Super Markets, Inc. As noted above, the existing 54,310 SF store operated by Publix Super Markets, Inc. significantly limits the availability of parcels under a strict reading of Note 6 of Table 27-229-1. The combination of these circumstances has created an exceptional and unique hardship that, absent the granting of the proposed variance, will prohibit Publix from taking assignment of the lease and enable Lucky's Market to reject and terminate the long-term lease with property owner. The strict application of Note 6 of Table 27-229-

1 creates a hardship that is unique to this parcel and not shared by other property owners in the same zoning district.

(2) The proposed variance is the minimum necessary to allow the reasonable use of the parcel of land.

The proposed variance is requesting the minimum additional square footage necessary to allow Publix to replace Lucky's Market as the tenant without any expansion of the existing Lucky's Market footprint. The denial of the proposed variance would prohibit Publix from taking assignment of the lease and enable Lucky's Market to reject their lease with property owner. The rejection of the lease would terminate the lease, despite approximately 16 years of term remaining per the terms of the lease. Failure to grant the proposed variance would deny the property owner the reasonable use of its land as the property owner would be permanently unable to attain its reasonable investment-backed expectations from the existing lease.

(3) The proposed variance would not adversely affect adjacent and nearby properties or the public in general.

The proposed variance does not alter the existing, permitted use of the property, a retail grocery anchor store, or alter any physical characteristics of the property from the existing condition. Therefore, the proposed variance would not adversely affect adjacent and nearby properties or the public in general. Further, the re-opening of a grocery store at the property, which is the purpose of the variance, would create positive benefits to the nearby properties and the public in general. Granting of the variance support Neptune Beach Comprehensive Plan **Goal A.1** and **Objective A.1.3 Redevelopment and Infill Development** by encouraging infill redevelopment and avoiding blighting influences. The opening of a Publix grocery store at 580 Atlantic Blvd. is anticipated to create 50 additional permanent jobs, in addition to construction jobs, will have a beneficial impact on tax collection, and provide an essential service to public.

(4) The proposed variance will not substantially diminish property values in, nor alter the essential character of, the area surrounding the site.

The proposed variance does not alter the existing, permitted use, a retail grocery anchor store, or alter any physical characteristics of the property from the existing condition. Therefore, the proposed variance would not substantially diminish property values in, nor alter the essential character of, the areas surrounding the

site. Further, the re-opening of a store, particularly an industry-leading grocery store with strong finances and significant history, provides for long-term stability in property values and further supports **Objective A.1.3 Redevelopment and Infill Development** by encouraging infill development.

(5) The effect of the proposed variance is in harmony with the general intent of the ULDC and the specific intent of the relevant subject area(s) of the ULDC.

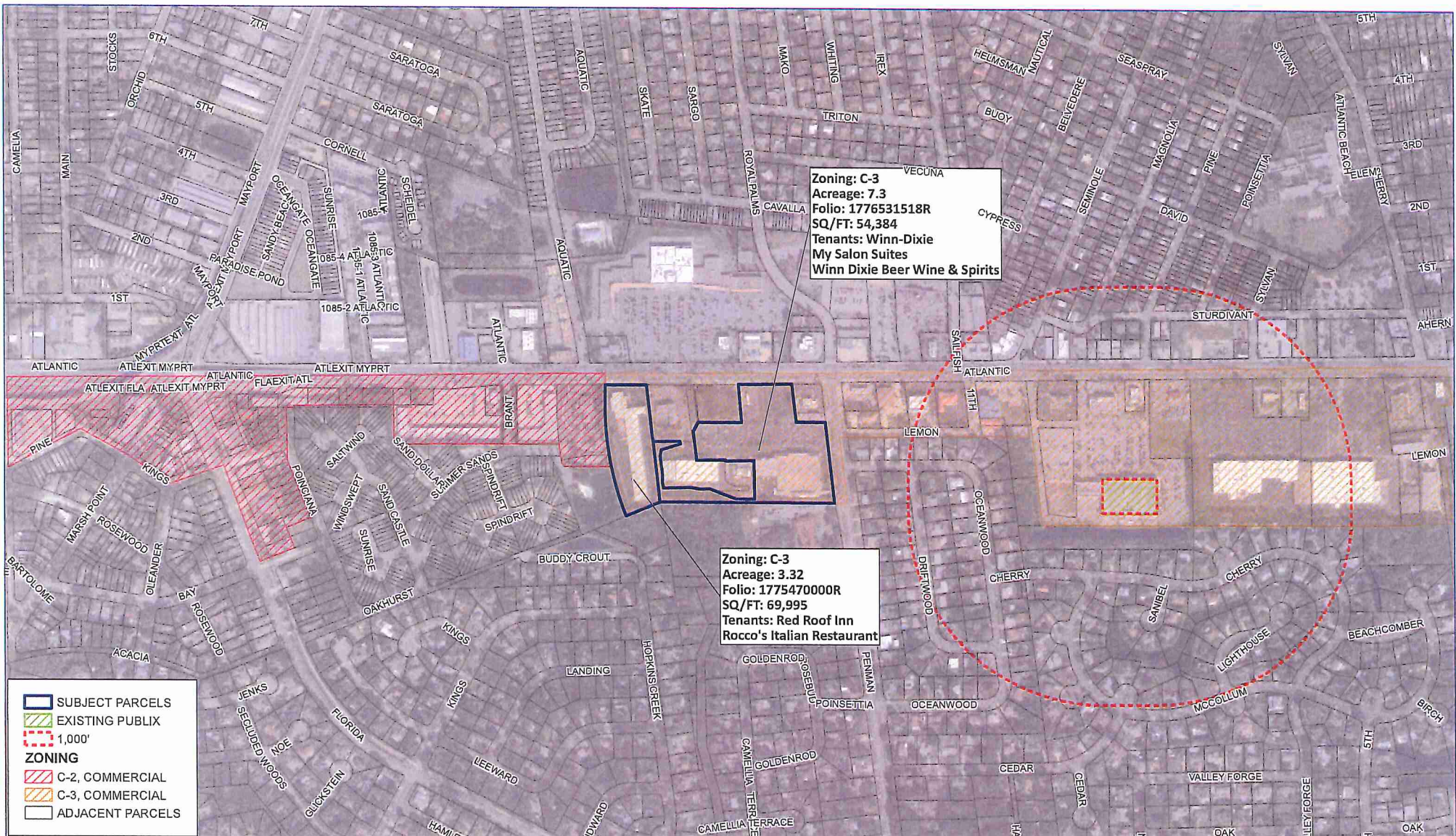
The property is located in the Commercial C-3 Zoning District which corresponds to the Commercial High designation on the adopted Future Land Use Map. According to the Uniform Land Development Regulations **Sec. 27-222. - Purpose and Intent of Zoning Districts**, *“The commercial C-3, zoning district is intended to provide retail sales and services that serve the overall community. This district corresponds to the commercial high designation on the adopted future land use map.”* The proposed variance is in harmony with the general intent of the Uniform Land Development Regulations by enabling the re-opening of a store which “provide[s] retail sales and services that serve the overall community” and, in particular, provide essential grocery service to the community.

(6) The need for the variance has not been created by the actions of the property owner or developer nor is the result of mere disregard for the provisions from which relief is sought.

The need for the variance has arisen from a unique and peculiar circumstances relating to the bankruptcy of the tenant under an existing lease with the property owner. The need for the variance has not been created by the actions of the property owner.

(7) Granting the variance will not confer upon the applicant any special privilege that is denied by the ULDC to other lands, buildings, or structures in the same zoning district.

The need for the variance has arisen from a unique and peculiar circumstances that have created a unique hardship for this parcel alone. Granting the variance will not confer upon the property owner any special privilege that is denied to other lands, buildings, or structures in the same zoning district. All lands within the C-2 and C-3 zoning districts are permitted to have a grocery store as a permitted use.

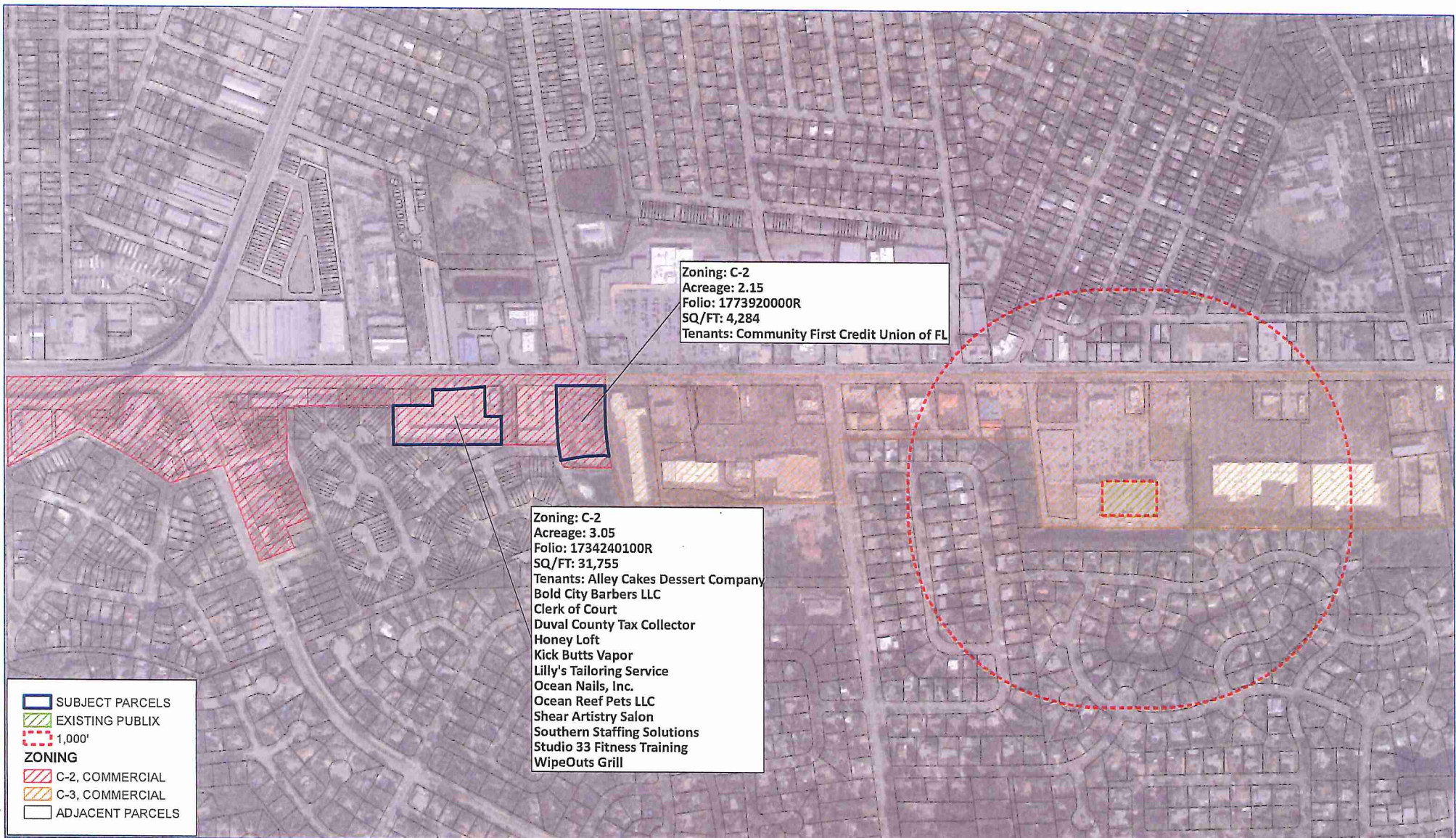


Zoning: C-3
Acreage: 7.3
Folio: 1776531518R
SQ/FT: 54,384
Tenants: Winn-Dixie
My Salon Suites
Winn Dixie Beer Wine & Spirits

Zoning: C-3
Acreage: 3.32
Folio: 1775470000R
SQ/FT: 69,995
Tenants: Red Roof Inn
Rocco's Italian Restaurant

- SUBJECT PARCELS
- EXISTING PUBLX
- 1,000'
- ZONING**
- C-2, COMMERCIAL
- C-3, COMMERCIAL
- ADJACENT PARCELS

Exhibit 1	1 inch = 450 feet 1:5,400	PROJECT: 580 Atlantic Boulevard Neptune Beach, Florida	STEARNS WEAVER MILLER <hr style="border: 1px solid blue;"/> MAP DATE: Jun-17-2020 BY: CP Smith
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<p>TITLE:</p> <h2 style="text-align: center;">Exhibit 2</h2>	<p>1 inch = 450 feet 1:5,400</p> <p style="text-align: center;">Feet</p>	<p>PROJECT:</p> <h2 style="text-align: center;">580 Atlantic Boulevard</h2> <p style="text-align: center;">Neptune Beach, Florida</p>	<h1 style="text-align: center;">STEARNS WEAVER MILLER</h1> <p style="text-align: right; font-size: small;">MAP DATE: Jun-17-2020 BY: CP Smith</p>
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8^{1/2}" by 11" Site Plan

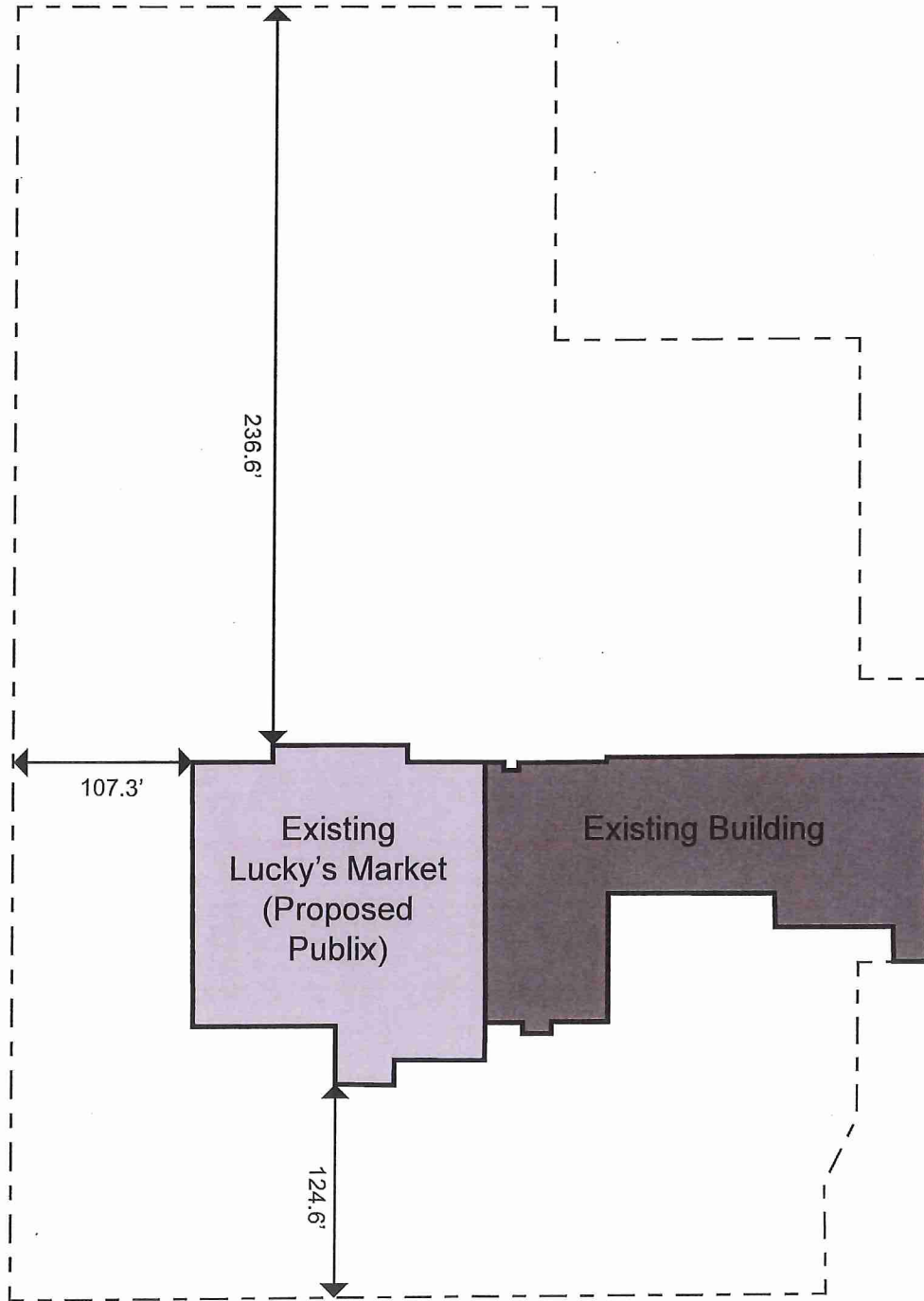
540-580 Atlantic Blvd.

Parcel 172395-0130

Neptune Beach, FL Realty LLC

1 inch equals 100 feet

Atlantic Blvd. ROW



This Instrument Prepared by
and Return to:

Cross reference to instrument recorded at:

Dahan & Nowick LLP
123 Main Street, 9th Floor
White Plains, New York 10601
Attention: M. Marc Dahan, Esq.

Document No. 2019036790, and Book 18691,
Page 2478, Official Records of Duval County,
Florida

Property Appraisers Parcel ID Numbers: 172395-0120 (Parcel A) and
172395-0100 (Parcel B)

CORRECTIVE QUIT-CLAIM DEED

THIS CORRECTIVE QUIT-CLAIM DEED, executed this ^{29th} day of March, 2019, by
Neptune Beach, FL Realty LLC, a Florida limited liability company, whose post office address is
295 Madison Avenue, 37th Floor, New York, New York 10017, first party, to Neptune Beach, FL
Realty LLC, a Florida limited liability company, whose post office address is 295 Madison
Avenue, 37th Floor, New York, New York 10017, second party:

[Whenever used herein the terms "first party" and "second party" shall include singular and plural, heirs, legal representatives and
assigns of individuals, and the successors and assigns of entities whenever the context so admits or requires.]

WITNESSETH: That the first party, for and in consideration of the sum of One Dollar
(\$1.00), in hand paid by the said second party, the receipt whereof is hereby acknowledged, does
hereby remise, release and quit-claim unto the said second party forever, all right, title, interest,
claim and demand which the said first party has in and to the following described lot, piece or
parcel of land, situate, lying and being in County of Duval, State of Florida, to wit:

SEE EXHIBIT A ANNEXED HERETO AND MADE A PART HEREOF

This property is not now nor ever has been the homestead property of the Grantor.

TO HAVE AND TO HOLD the same together with all and singular the appurtenances
thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity
and claim whatsoever of the said first party, either in law or equity, to the only proper use, benefit
and behoof of the said second party forever.

This Corrective Quit-Claim Deed is made to correct the legal descriptions of Parcel A and
Parcel B in Exhibit A to the Quit-Claim Deed dated February 11, 2019 from the party of the first
part to the party of the second part, recorded on February 14, 2019 as Document No. 2019036790,
in Book 18691, Page 2478, Official Records of Duval County, Florida, so as to properly adjust the
common boundary line between Parcel A and Parcel B as described in Exhibit A hereto.

[Signatures on Following Page]

IN WITNESS WHEREOF, the said Grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:

NEPTUNE BEACH, FL REALTY LLC,
a Florida limited liability company

Kerstin Wenzel
(signature)

By: TLM Realty Corp.,
a Delaware corporation,
Manager

Name: KERSTIN WENZEL
(print)

By: *Ronald J. Oehl*
Ronald J. Oehl, President

David Diamond
(signature)

Name: DAVID DIAMOND
(print)

STATE OF NEW YORK
COUNTY OF NEW YORK

The foregoing instrument was acknowledged before me this 22nd day of March, 2019 by Ronald J. Oehl, as President of TLM Realty Corp., a Delaware corporation, Manager of Neptune Beach, FL Realty LLC, a Florida limited liability company, on behalf of said corporation, as Manager of said limited liability company. He is personally known to me or has produced a New York driver's license as identification.

NOTARY PUBLIC:

Sign *Lyudmila Pinkhasova*

Print Lyudmila Pinkhasova

State of NY at Large (Seal)

My Commission Expires: 12/22/2022

LYUDMILA PINKHASOVA
Notary Public, State of New York
Registration #01PI6316937
Qualified In Queens County
Commission Expires Dec. 22, 2022

EXHIBIT A – LEGAL DESCRIPTION

PARCEL A – (“Former Kmart Parcel”)

A PARCEL OF LAND LYING IN GOVERNMENT LOTS 1 AND 2, SECTION 21, TOWNSHIP 2 SOUTH, RANGE 29 EAST, DUVAL COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR A POINT OF REFERENCE COMMENCE AT THE SOUTHERLY RIGHT OF WAY LINE OF ATLANTIC BOULEVARD (HAVING A 100 FOOT RIGHT OF WAY) WITH THE WESTERLY RIGHT OF WAY LINE OF THIRD STREET NORTH (HAVING A 100 FOOT RIGHT OF WAY) AND RUN SOUTH 89°24'50" WEST ALONG THE SOUTHERLY RIGHT OF WAY LINE OF ATLANTIC BOULEVARD, 542.44 FEET TO THE NORTHWEST CORNER OF LANDS DESCRIBED IN THE OFFICIAL RECORDS OF SAID COUNTY IN VOLUME 2967, PAGE 363, FOR THE POINT OF BEGINNING.

FROM THE POINT OF BEGINNING THUS DESCRIBED RUN SOUTH 06°33'10" EAST ALONG THE WEST LINE OF SAID LANDS, 402.01 FEET TO THE SOUTHWEST CORNER OF SAID LANDS, RUN THENCE NORTH 83°26'50" EAST ALONG A PORTION OF THE SOUTH LINE OF SAID LANDS 33.0 FEET TO A POINT; RUN THENCE SOUTH 00°35'10" EAST, 351.87 FEET TO A POINT ON THE SOUTH LINE OF GOVERNMENT LOT 1, AFOREMENTIONED; RUN THENCE SOUTH 89°03'44" WEST ALONG SAID SOUTH LINE A DISTANCE OF 582.25 FEET; THENCE DEPARTING SAID SOUTH LINE, RUN NORTH 00°56'15" WEST, A DISTANCE OF 63.62 FEET; THENCE NORTH 24°57'16" EAST, A DISTANCE OF 43.21 FEET; THENCE NORTH 00°23'59" WEST, A DISTANCE OF 91.31 FEET; RUN THENCE NORTH 89°29'22" EAST, 42.23 FEET; RUN THENCE NORTH 00°30'38" WEST, 165.03 FEET; RUN THENCE SOUTH 89°29'22" WEST, 41.91 FEET; RUN THENCE NORTH 00°23'59" WEST, 198.91 FEET TO THE SOUTH LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 16740, PAGE 808; RUN THENCE NORTH 89°24'50" EAST, ALONG SAID SOUTH LINE, A DISTANCE OF 103.99 FEET; RUN THENCE NORTH 00°35'10" WEST, A DISTANCE OF 194.00 FEET TO A POINT LYING ON THE SOUTHERLY RIGHT OF WAY LINE OF SAID ATLANTIC BOULEVARD; RUN THENCE ALONG SAID SOUTHERLY RIGHT OF WAY LINE NORTH 89°24'50" EAST, A DISTANCE OF 383.97 FEET TO THE POINT OF BEGINNING.

PARCEL B – (“Lucky’s Parcel”)

A PARCEL OF LAND LYING IN GOVERNMENT LOT 2, SECTION 21, TOWNSHIP 2 SOUTH, RANGE 29 EAST, DUVAL COUNTY FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR A POINT OF REFERENCE COMMENCE AT THE SOUTHERLY RIGHT OF WAY LINE OF ATLANTIC BOULEVARD (HAVING A 100 FOOT RIGHT OF WAY) WITH THE WESTERLY RIGHT OF WAY LINE OF THIRD STREET NORTH (HAVING A 100 FOOT RIGHT OF WAY) AND RUN SOUTH 89°24'50" WEST ALONG THE SOUTHERLY RIGHT OF WAY LINE OF SAID ATLANTIC BOULEVARD, 1,533.56 FEET TO THE NORTHEAST

CORNER OF LANDS DESCRIBED IN THE OFFICAL RECORDS OF SAID COUNTY IN VOLUME 3177, PAGE 821 FOR THE POINT OF BEGINNING.

FROM THE POINT OF BEGINNING THUS DESCRIBED RUN SOUTH $00^{\circ}35'10''$ EAST ALONG THE EAST LINE OF LAST MENTIONED LANDS AND THE SOUTHERLY PROLONGATION OF SAID LINE, 754.81 FEET TO AN IRON PIPE SET ON THE SOUTHERLY LINE OF SAID GOVERNMENT LOT 2, SECTION 21; RUN THENCE NORTH $89^{\circ}03'45''$ EAST ALONG SAID SOUTHERLY LINE OF GOVERNMENT LOT 2, A DISTANCE OF 483.50 FEET; RUN THENCE NORTH $00^{\circ}56'15''$ WEST, 63.62 FEET TO A POINT; RUN THENCE NORTH $24^{\circ}57'16''$ EAST, 43.21 FEET TO A POINT; RUN THENCE NORTH $00^{\circ}23'59''$ WEST, A DISTANCE OF 91.31 FEET TO A POINT; RUN THENCE NORTH $89^{\circ}29'22''$ EAST, 42.23 FEET; RUN THENCE NORTH $00^{\circ}30'38''$ WEST, 165.03 FEET; RUN THENCE SOUTH $89^{\circ}29'22''$ WEST, 41.91 FEET; RUN THENCE NORTH $00^{\circ}23'59''$ WEST, A DISTANCE OF 198.91 FEET TO A POINT LYING ON THE SOUTH LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 16740, PAGE 808; RUN THENCE SOUTH $89^{\circ}24'50''$ WEST, ALONG SAID SOUTH LINE, AND ALONG THE SOUTH LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 8978, PAGE 2260, A DISTANCE OF 182.01 FEET TO THE SOUTHWEST CORNER OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 8978, PAGE 2260; RUN THENCE NORTH $00^{\circ}35'10''$ WEST, ALONG THE WEST LINE OF THE LAST SAID LANDS, A DISTANCE OF 194.00 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF ATLANTIC BOULEVARD (100' RIGHT OF WAY AS NOW ESTABLISHED); RUN THENCE SOUTH $89^{\circ}24'50''$ WEST ALONG SAID SOUTHERLY RIGHT OF WAY LINE OF ATLANTIC BOULEVARD, A DISTANCE OF 321.15 FEET TO THE POINT OF BEGINNING.

PARCEL C – (“Drive Fee Parcel”)

A PARCEL OF LAND BEING PART OF HORNE'S NEPTUNE ACRES ACCORDING TO PLAT THEREOF RECORDED IN THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA IN PLAT BOOK 13, PAGE 87, SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF REFERENCE COMMENCE AT THE INTERSECTION OF THE SOUTHERLY RIGHT OF WAY LINE OF ATLANTIC BOULEVARD (HAVING A 100 FOOT RIGHT OF WAY) WITH THE WESTERLY RIGHT OF WAY LINE OF THIRD STREET NORTH (HAVING A 100 FOOT RIGHT OF WAY) AND RUN SOUTH $06^{\circ} 33' 10''$ EAST ALONG SAID WESTERLY RIGHT OF WAY LINE OF THIRD STREET NORTH, 323.63 FEET TO A POINT FOR THE POINT OF BEGINNING. FROM THE POINT OF BEGINNING THUS DESCRIBED CONTINUE SOUTH $06^{\circ} 33' 10''$ EAST ALONG SAID WESTERLY RIGHT OF WAY LINE, 42.0 FEET TO THE NORTHEASTERLY CORNER OF LANDS DESCRIBED IN OFFICIAL RECORDS OF SAID COUNTY IN VOLUME 3943, PAGE 165; RUN THENCE SOUTH $83^{\circ} 26' 50''$ WEST ALONG THE NORTH LINE OF LANDS DESCRIBED IN SAID OFFICIAL RECORDS, 200.0 FEET TO A POINT; RUN THENCE SOUTH $62^{\circ} 53' 28''$ WEST, 42.72 FEET TO A POINT ON THE WESTERLY LINE OF SAID HORNE'S NEPTUNE ACRES; RUN THENCE NORTH $06^{\circ} 33' 10''$ WEST ALONG THE WESTERLY LINE OF SAID HORNE'S NEPTUNE ACRES, 45.0 FEET TO A POINT; RUN THENCE NORTH $80^{\circ} 35' 05''$ EAST, 240.30 FEET TO THE POINT OF BEGINNING.

PARCEL D – (“Drive Easement from City”)

TOGETHER WITH A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OVER THE FOLLOWING PARCEL OF LAND, AS GRANTED BY THAT CERTAIN DRIVEWAY EASEMENT, GRANTED BY THE CITY OF NEPTUNE BEACH, FLORIDA, TO DEVELOPERS DIVERSIFIED ENTERPRISES, LTD., DATED JANUARY 25, 1977 AND RECORDED IN VOLUME 4360, PAGE 933, IN THE OFFICIAL RECORDS OF DUVAL COUNTY, FLORIDA:

A PORTION OF GOVERNMENT LOT 1, SECTION 21, TOWNSHIP 2 SOUTH, RANGE 29 EAST, DUVAL COUNTY, FLORIDA; SAID PORTION BEING THE NORTHERLY 50 FEET OF A 60 FOOT WIDE STRIP OF LAND AS DESCRIBED IN DEED TO CITY OF NEPTUNE BEACH AS RECORDED IN DEED BOOK 1700, PAGE 153 OF THE CURRENT PUBLIC RECORDS OF SAID COUNTY. THE EAST LINE OF SAID NORTHERLY 50 FEET BEING THE WEST LINE OF HORNE'S NEPTUNE ACRES, AS RECORDED IN PLAT BOOK 13, PAGE 87, AND THE NORTH LINE OF SAID NORTHERLY 50 FEET BEING THE SOUTH LINE OF LANDS DESCRIBED IN THE OFFICIAL RECORDS OF SAID COUNTY IN VOLUME 2976, PAGE 363.

PARCEL E – (“Easement Acquired from Dr. Edmonds for Drive”)

TOGETHER WITH A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OVER THE FOLLOWING PARCEL OF LAND, AS GRANTED BY THAT CERTAIN DRIVEWAY EASEMENT, GRANTED BY METROPOLITAN SECURITIES CO., INC. TO DEVELOPERS DIVERSIFIED ENTERPRISES, LTD., DATED MARCH 18, 1977, RECORDED IN VOLUME 4360, PAGE 929, IN THE OFFICIAL RECORDS OF DUVAL COUNTY, FLORIDA:

A 50 FOOT WIDE PARCEL OF LAND LYING IN GOVERNMENT LOT 1, SECTION 21, TOWNSHIP 2 SOUTH, RANGE 29 EAST, DUVAL COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF REFERENCE COMMENCE AT THE SOUTHERLY RIGHT OF WAY LINE OF ATLANTIC BOULEVARD (HAVING A 100 FOOT RIGHT OF WAY) WITH THE WESTERLY RIGHT OF WAY LINE OF THIRD STREET NORTH (HAVING A 100 FOOT RIGHT OF WAY) AND RUN SOUTH 89° 24' 50" WEST ALONG THE SOUTHERLY RIGHT OF WAY LINE OF SAID ATLANTIC BOULEVARD, 241.31 FEET TO A POINT; RUN THENCE SOUTH 06° 33' 10" EAST, 370.71 FEET TO THE SOUTHEAST CORNER OF LANDS DESCRIBED IN OFFICIAL RECORDS OF SAID COUNTY IN VOLUME 2976, PAGE 363; RUN THENCE SOUTH 83° 26' 50" WEST ALONG THE SOUTH LINE OF LAST MENTIONED LANDS, 60.0 FEET TO A POINT FOR THE POINT OF BEGINNING.

FROM THE POINT OF BEGINNING THUS DESCRIBED RUN SOUTH 06° 33' 10" EAST, ALONG THE WEST SIDE OF A 60 FOOT WIDE DRAINAGE RIGHT OF WAY AS DESCRIBED IN DEED BOOK 1700, PAGE 153, PUBLIC RECORDS OF SAID COUNTY, 50.0 FEET TO A POINT; RUN THENCE SOUTH 83° 26' 50" WEST, 211.73 FEET TO A POINT; RUN THENCE NORTH 00°35' 10" WEST, 50.27 FEET TO A POINT ON THE SOUTH LINE OF LANDS DESCRIBED IN SAID OFFICIAL RECORDS VOLUME 2976, PAGE 363; RUN

THENCE NORTH 83° 26' 50" EAST ALONG SAID SOUTH LINE, 206.5 FEET TO THE POINT OF BEGINNING.

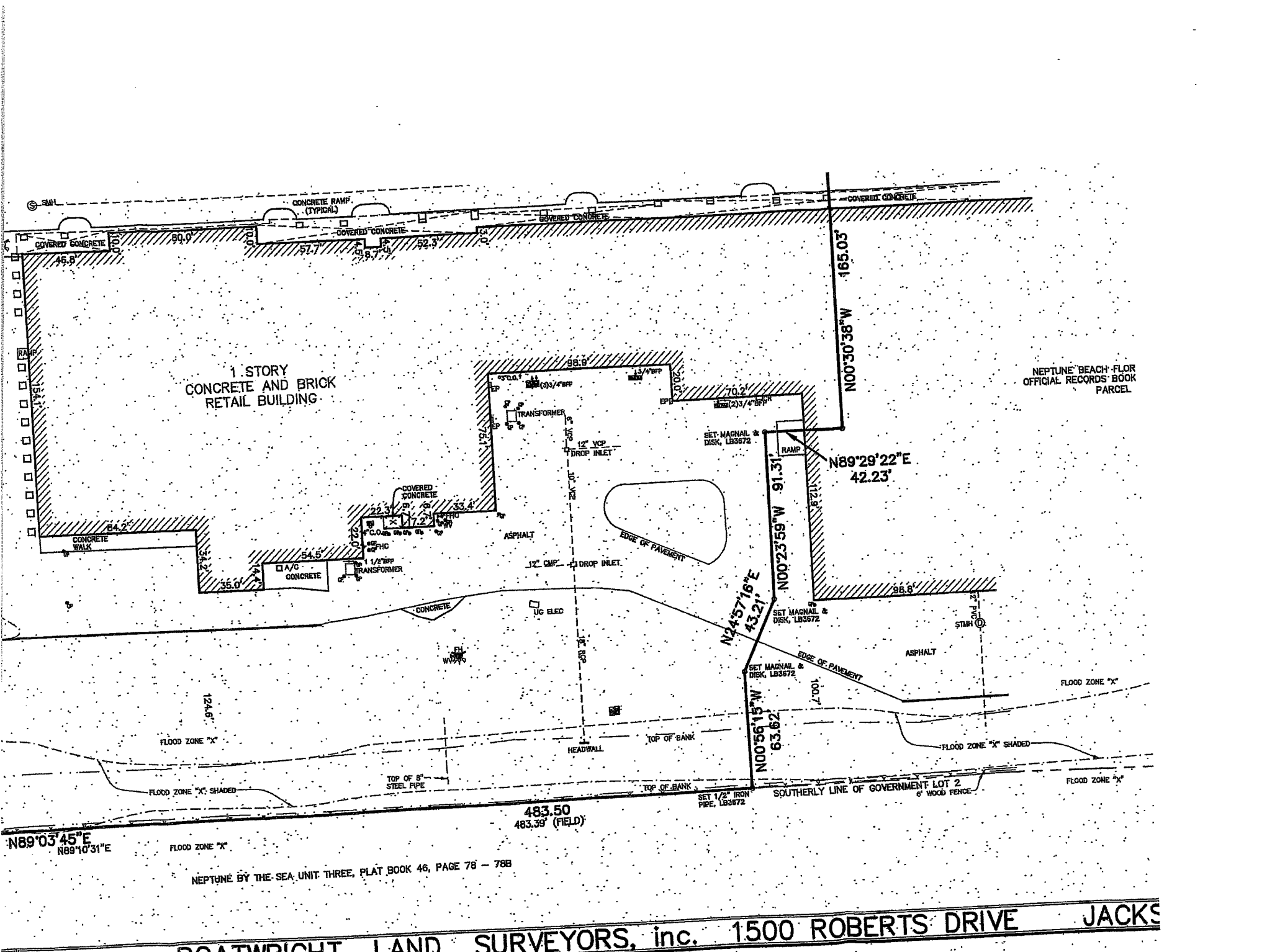
PARCEL F – (“Drainage Easement from Edmonds”)

TOGETHER WITH A-NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OVER THE FOLLOWING PARCEL OF LAND, AS GRANTED BY THAT CERTAIN DRAINAGE EASEMENT AND BUILDING LINE AGREEMENT, GRANTED BY METROPOLITAN SECURITIES COMPANY, INC. TO DEVELOPERS DIVERSIFIED ENTERPRISES, LTD., DATED MARCH 18, 1977, RECORDED IN VOLUME 4360, PAGE 944, IN THE OFFICIAL RECORDS OF DUVAL COUNTY, FLORIDA:

A PARCEL OF LAND LYING IN GOVERNMENT LOT 1, SECTION 21, TOWNSHIP 2 SOUTH, RANGE 29 EAST, DUVAL COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF REFERENCE COMMENCE AT THE SOUTHERLY RIGHT OF WAY LINE OF ATLANTIC BOULEVARD (HAVING A 100 FOOT RIGHT OF WAY) WITH THE WESTERLY RIGHT OF WAY LINE OF THIRD STREET NORTH (HAVING A 100 FOOT RIGHT OF WAY) AND RUN SOUTH 89° 24' 50" WEST ALONG THE SOUTHERLY RIGHT OF WAY LINE OF SAID ATLANTIC BOULEVARD, 542.44 FEET TO THE NORTHWEST CORNER OF LANDS DESCRIBED IN THE OFFICIAL RECORDS OF SAID COUNTY IN VOLUME 2976, PAGE 363; RUN THENCE SOUTH 06° 33' 10" EAST ALONG THE WEST LINE OF SAID LANDS, 402.01 FEET TO THE SOUTHWEST CORNER OF SAID LANDS; RUN THENCE NORTH 83° 26' 50" EAST ALONG A PORTION OF THE SOUTH LINE OF SAID LANDS, 33.0 FEET TO A POINT; RUN THENCE SOUTH 00° 35' 10" EAST, 351.87 FEET TO A POINT ON THE SOUTH LINE OF GOVERNMENT LOT 1, AFOREMENTIONED FOR THE POINT OF BEGINNING.

FROM THE POINT OF BEGINNING THUS DESCRIBED RUN NORTH 89° 03' 45" EAST, 244.25 FEET TO THE WESTERLY LINE OF A 60 FOOT WIDE DRAINAGE RIGHT OF WAY TO THE CITY OF NEPTUNE BEACH AS DESCRIBED IN DEED BOOK 1700; PAGE 153, CURRENT PUBLIC RECORDS OF SAID COUNTY; RUN THENCE NORTH 06° 33' 10" WEST ALONG SAID WESTERLY RIGHT OF WAY LINE, 40.19 FEET TO A POINT; RUN THENCE SOUTH 89° 03' 45" WEST, 240.07 FEET TO A POINT; RUN THENCE SOUTH 00° 35' 10" EAST, 40.0 FEET TO THE POINT OF BEGINNING.





1 STORY
CONCRETE AND BRICK
RETAIL BUILDING

NEPTUNE BEACH-FLOOR
OFFICIAL RECORDS BOOK
PARCEL

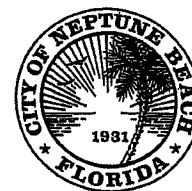
N89°03'45"E
N89°10'31"E

NEPTUNE BY THE SEA, UNIT THREE, PLAT BOOK 46, PAGE 78 - 78B

BOATWRIGHT LAND SURVEYORS, inc. 1500 ROBERTS DRIVE JACKSONVILLE, FL 32216

City of Neptune Beach

Kristina L. Wright, FRA-RA, Community Development Director
116 First Street • Neptune Beach, Florida 32266-6140
(904) 270-2400 x 34 • FAX (904) 270-2526



MEMORANDUM

TO: Community Development Board
FROM: Kristina L. Wright, FRA-RA, Community Development Director
DATE: July 1, 2020
SUBJECT: V20-01 580 Atlantic (PIN: 172395-0130)

Background

Application V20-01 580 Atlantic is a request for a variance that seeks to provide relief from Note 6 of Table 27-229-1 to remove the 1000 linear foot separation requirement for businesses that operate under common business ownership or management, share a warehouse or distribution facility, or otherwise operate as an associated, integrated or cooperative business shall not exceed a combined sixty thousand (60,000) square feet of total gross floor area in aggregate.

More specifically, the Note 6 referenced within Table 27-229-1 states:

Furthermore, any retail stores, wholesale warehouses, or other freestanding buildings for any permitted use located within one thousand (1,000) linear feet of each other that operate under common business ownership or management, share a warehouse or distribution facility, otherwise operate as an associated, integrated or cooperative business shall not exceed a combined sixty thousand (60,000) square feet of total gross floor area in aggregate.

Summary

The applicant, Neptune Beach, FL Realty LLC, is seeking to allow a second, smaller Publix Supermarket within Neptune Beach and hopes to enter into a lease with Publix for the existing Building located at 580 Atlantic Boulevard, which is within 500' of the existing Publix located at 630 Atlantic Blvd. The Applicant is the owner of 580 Atlantic Blvd., and their tenant Lucky's Market entered into a long-term lease (20-year initial term) dated as of September 1, 2015 for the 29,810 square foot Lucky's Market grocery store within Neptune Beach Plaza.

The applicant assumed the cost to construct the improvements required by the lease to renovate the store and the remainder of the property, including reimbursements to the tenant for their further improvements. In January 2020, Lucky's Market declared Chapter 11 Bankruptcy and closed nearly all the stores, including the store at 580 Atlantic Blvd. As part of the bankruptcy process, Publix Super Markets, Inc. entered into an agreement to purchase and take assignment of the Neptune Beach, FL lease from Lucky's Market. This purchase and assignment have been approved

by the Bankruptcy Court and Publix has already completed the purchase of Lucky's Market leases elsewhere in the state.

Representatives for the applicant requested zoning verification letters and sought to change a provision within the City of Neptune Beach Land Development Code. At that time, this inquiry increased to administrative level discussions involving legal representation for all parties to clarify the intent of Note 6 referenced as part of Table 27-229-1 requiring a 1,000 linear foot distance separation from other business operating under common business ownership or management or that share a warehouse or distribution center or otherwise operate as an associated, integrated or cooperative business that is required not to exceed sixty thousand (60,000) square feet of total gross floor area in aggregate.

The applicant and representatives assert that the provision is lot specific and has questioned the original motive for the creation of Ordinance 2006-13. Siting another Publix grocery store within 500' of an existing Publix would violate the provisions of Table 27-229-1, specifically the final sentence of Note 6, as the existing Lucky's Market grocery store at 580 Atlantic Blvd. is within 1,000 linear feet from an existing 54,310 square foot Publix grocery store at 630 Atlantic Blvd. which is leased by Publix from the owner(s) of that separate parcel. While the owner(s) of 630 Atlantic Blvd. are different from and have no affiliations with the owner of 580 Atlantic Blvd, both stores are affiliated with Publix Supermarkets, Inc. and the cumulative floor area of two separate stores would exceed 60,000 square feet, which stands in opposition to the provisions within the Neptune Beach Land Development Code, more specifically Table 27-229-1, Note 6.

As a result, the applicant(s) are seeking a variance seeking relief from Note 6 of Table 27-229-1 to increase the maximum aggregate combined square footage from 60,000 to 89,500 to allow Publix to replace Lucky's Market as the tenant of the property owner and re-open a grocery store in the existing Lucky's Market premises at 580 Atlantic Blvd. The proposed store at 580 Atlantic Blvd. is distinct from the store at 630 Atlantic Blvd. as it presents a smaller format store (29,810 SF vs 54,310 SF) with features familiar to Lucky's Market shoppers, including an emphasis on prepared foods, organic groceries, and is planned to feature the "POURS" station, an in-store beverage bar concept from Publix's GreenWise branded-stores where shoppers can order beer and wine in addition to other non-alcoholic drinks.

Based on communications with the applicant, they believe that the 1000' separation is lot specific, which is in opposition to the City's Comprehensive Plan Policy A.1.1.4 and the interpretation of Note 6, following Table 27-229-1. The preservation of the scale of development within a small, coastal community of 7,000 residents, which has been indicated within the City's Comprehensive Plan on page A-2. The City already has an existing Publix that would be sited within 500', and adjacent to, the proposed Publix.

While the applicant notes that the "failure to grant the proposed variance will cause Publix to cancel its court-approved agreement to purchase the Neptune Beach lease and control of the future of the lease will return to Lucky's Market," financial motivations alone are not adequate justification for granting a variance to subvert the intent of Comprehensive Plan Policies and the City's Land Development Regulations and must achieve the criteria established within 27-147, Required findings needed to issue a variance.

The applicant goes on to explain that:

Through the bankruptcy process Lucky's Market may then choose to reject the lease. Rejection would cause the lease (to be) terminated immediately, far earlier than the September 30, 2036 end of the initial term under the lease. The rejection of the lease due to the denial of the variance for Publix would be an exceptional hardship to the property owner and would result in a vacant anchor store, prevent the owner from obtaining an economic return on the investments it made in the lease, and would harm the property owner's other tenants who depend on the customer activity generated by the anchor tenant in the shopping center.

The applicant further asserts that Council records demonstrate the intent of Council in drafting Note 6 in the Spring of 2006 was to prevent a Big Box retailer, specifically Walmart, from constructing a single store exceeding 60,000 SF in Neptune Beach. It was not the intent of Council to prohibit Publix from operating a separate store on a distinct parcel and within a separate shopping plaza at 580 Atlantic Blvd. per the meeting notes from the November 19, 2007 Council meeting on the intent of Ordinance 2006-13 (which added Note 6 to Table 27-229-1), Councilor Weldon, the sponsor of the Ordinance, made the following statement: "Councilor Weldon stated the intent of the Ordinance was to limit the amount a single store from exceeding 60,000 square feet ..." (emphasis added).

Former Councilor Weldon attended the June 10, 2020 presentation to speak in support of the City and its regulations. Additionally, staff does not believe that these requirements are lot specific as this would create loopholes and code requirements could be subverted through simple lot splits and subdivisions to subvert an appropriate scale of development within the community.

Required findings needed to issue a variance (Section 27-147):

- (1) The property has unique and peculiar circumstances, which create an exceptional and unique hardship. For the purpose of this determination, the unique hardship shall be unique to the parcel and not shared by other property owners in the same zoning district.**

According to the applicant, the hardship is the result of unique and peculiar circumstances which are unique to the parcel since they feel that a parcel analysis has determined that another Publix cannot be accommodated in any other location within the City of Neptune Beach based on a parcel analysis that has discovered that of the applicable parcels in C-3 and C-2, none of these are currently vacant.

Despite this objective observation, this does not demonstrate a hardship for the existing parcel simply because the proposal is not currently meeting the requirements of the Neptune Beach Land Development Code. The applicant has also indicated that the tenant entered into an agreement with and received Bankruptcy Court approval for an assignment of the existing lease with the property owner to Publix Super Markets, Inc.

However, staff asserts that this does not preclude other viable alternatives (i.e. GreenWise branding, subleasing, etc.). The applicant has indicated that a "strict application of Note 6 of Table 27-229-1 creates a hardship that is unique to this parcel and not shared by other property owners in the same zoning district"; however, this also does not preclude other economically viable alternatives that would meet the requirements of the Land Development Code.

(2) The proposed variance is the minimum necessary to allow the reasonable use of the parcel of land.

The proposed variance is requesting the minimum additional square footage necessary to allow Publix to replace Lucky's Market as the tenant without any expansion of the existing Lucky's Market footprint. The denial of the proposed variance would prohibit Publix from taking assignment of the lease and enable Lucky's Market to reject their lease with the property owner. The rejection of the lease would terminate the lease, despite approximately 16 years of term remaining per the terms of the lease. Failure to grant the proposed variance would deny the property owner the reasonable use of its land as the property owner would be permanently unable to attain its reasonable investment-backed expectations from the existing lease.

However, staff asserts that other alternatives exist, which would allow the property owner to realize benefits obtained through the reasonable use of their land. The application of the Code provision prevents only a small number of uses at most. Most uses of this site are unaffected by this provision.

(3) The proposed variance would not adversely affect adjacent and nearby properties or the public in general.

The proposed variance does not alter the existing, permitted use of the property, a retail grocery anchor store, or alter any physical characteristics of the property from the existing condition. Therefore, the proposed variance would not adversely affect adjacent and nearby properties or the public in general. Further, the re-opening of a grocery store at the property, which is the purpose of the variance, would create positive benefits to the nearby properties and the public in general. Granting of the variance supports Neptune Beach Comprehensive Plan **Goal A.1 and Objective A.1.3 Redevelopment and Infill Development** by encouraging infill redevelopment and avoiding blighting influences. The opening of a Publix grocery store at 580 Atlantic Blvd. is anticipated to create 50 additional permanent jobs, in addition to construction jobs, will have a beneficial impact on tax collection, and provide essential service to the public. While improvements and redevelopment are desired along with the creation of additional jobs and revenues, the addition of another Publix within 500' of an existing Publix on the immediately adjacent parcel expands the scale of development within a small, coastal community sought through the establishment of Comprehensive Plan Policy A.1.1.4 especially when other viable alternatives exist that could be of universal benefit.

(4) The proposed variance will not substantially diminish property values in, nor alter the essential character of, the area surrounding the site.

The proposed variance does not alter the existing, permitted use, a retail grocery anchor store, or alter any physical characteristics of the property from the existing condition. Therefore, the

proposed variance would not substantially diminish property values in, nor alter the essential character of, the areas surrounding the site. Further, the re-opening of a store, particularly an industry-leading grocery store with strong finances and significant history, provides for long-term stability in property values and further supports **Objective A.1.3 Redevelopment and Infill Development** by encouraging infill development. The precedent of exceeding scale appropriate to a small, coastal community is in violation of our Comprehensive Plan and Code.

- (5) The effect of the proposed variance is in harmony with the general intent of the ULDC and the specific intent of the relevant subject area(s) of the ULDC.**

The property is in the Commercial C-3 Zoning District which corresponds to the Commercial High designation on the adopted Future Land Use Map. According to the Uniform Land Development Regulations **Sec. 27-222.- Purpose and Intent of Zoning Districts:**

The Commercial C-3 Zoning District is intended to provide retail sales and services that serve the overall community. This district corresponds to the commercial high designation on the adopted future land use map.

According to the applicant, the proposed variance is in harmony with the general intent of the Land Development Code since they feel that the re-opening of a store which "provide[s] retail sales and services that serve the overall community" and, in particular, provide essential grocery service to the community. However, the intent quoted from the LDC does not preclude the viability of other alternatives.

- (6) The need for the variance has not been created by the actions of the property owner or developer nor is the result of mere disregard for the provisions from which relief is sought.**

According to the applicant, the need for the variance has arisen from a unique and peculiar circumstances relating to the bankruptcy of the tenant under an existing lease with the property owner. The need for the variance has not been created by the actions of the property owner. However, while Publix is assuming these leases throughout the State of Florida, the fact that the one in Neptune Beach is next to another existing Publix is not basis for relief from regulations of the LDC. Further, the need for the variance is created in part by the Property Owner in that the Property Owner seeks to enter into a lease that would result in a Code violation due to a longstanding business on the adjacent parcel.

- (7) Granting the variance will not confer upon the applicant any special privilege that is denied by the ULDC to other lands, buildings, or structures in the same zoning district.**

According to the applicant, the need for the variance has arisen from unique and peculiar circumstances that have created a unique hardship for this parcel alone. The applicant believes that by granting the variance, this will not confer upon the property owner any special privilege that is denied to other lands, buildings, or structures in the same zoning district; however, staff disagrees because this application seeks to remove regulations within the code that seek to prevent development that is out of scale for the community as contemplated by the City of Neptune Beach Comprehensive Plan and the Land Development Code. For example, Comprehensive Plan Policy

A.1.1.4 states, "The City shall maintain within its Land Development Regulations provisions intended to retain the unique community identity, the architectural character, and the residential scale of the City" (2012, p. A-2). While all lands within the C-2 and C-3 zoning districts are permitted to have a grocery store as a permitted use, this does not subvert this distance separation and size limitation requirements that has been codified within Table 27-229-1, Note 6.

Staff Recommendation

Staff recommends a motion to recommend denial to the Neptune Beach City Council for application **V20-01 580 Atlantic** since the application does not demonstrate the achievement of the Required findings needed to issue a variance established within Section 27-147, in addition to the requirements of the LDC found within Table 27-229-1, Note 6 and the proposal and request are not consistent with Neptune Beach Comprehensive Plan Policy A.1.1.4.

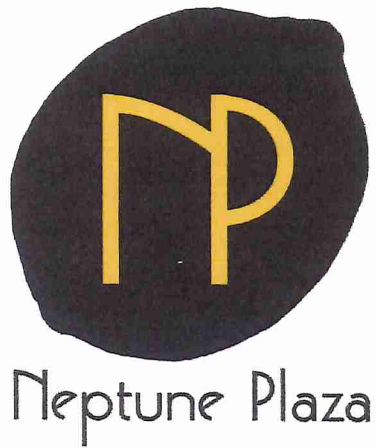
Recommended Motion

I move to recommend denial of application V20-01 580 Atlantic to the Neptune Beach City Council since the applicant has not demonstrated the achievement of the criteria established within the Required findings needed to issue a variance within Section 27-147 and does not achieve the criteria established within Land Development Code Table 27-229-1, Note 6 and is not consistent with Neptune Beach Comprehensive Plan Policy A.1.1.4.

Welcome to Neptune Plaza



V20-01 Application for Variance
Community Development Board Meeting 09 16 2020



Presentation Agenda

- Introduction of Presenters
- Property Location and Boundary
- Place-making Enhancements
- Questions We've Heard



Presentation Agenda

In Person



Andrew Greene
Property Owner

planning
architecture
landscape architecture
urban design
visual communication



Russ Ervin
Local Architect

STEARNS WEAVER MILLER

Jake Cremer, Esq.
Property Owner
Representative

Joining Virtually



Bob Balcerak, CCIM
VP Real Estate Strategy
David Rubin, AIA
Architect
Anthony Rodriguez, Esq.
Senior R.E. Attorney



Maria Woods, Esq.
General Counsel

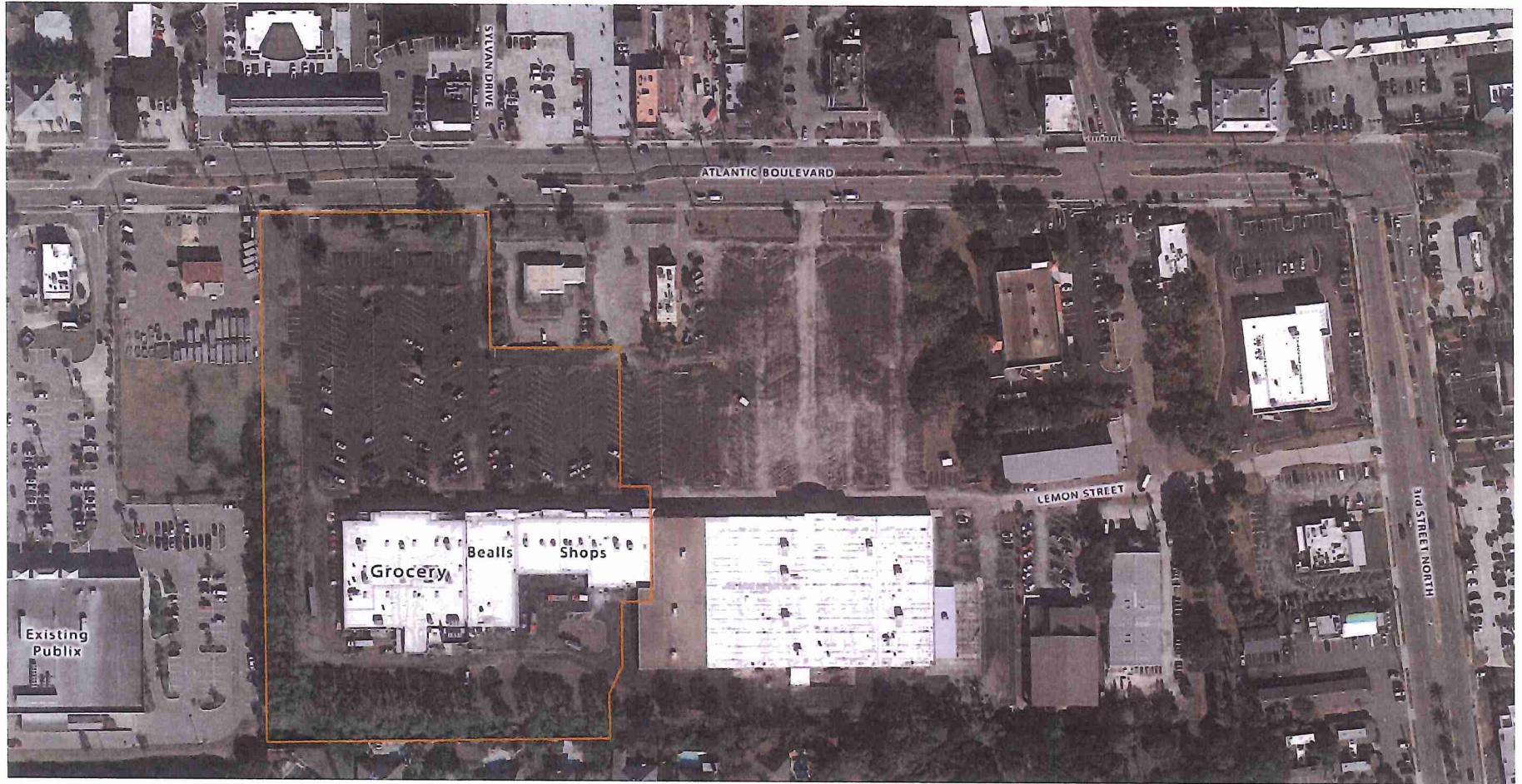
STEARNS WEAVER MILLER

Elise Batsel, Esq.
Publix
Representative



Participants

540-580 Atlantic Blvd (aka 572 Atlantic Blvd)



Property Location and Boundary

Small Format Publix Store

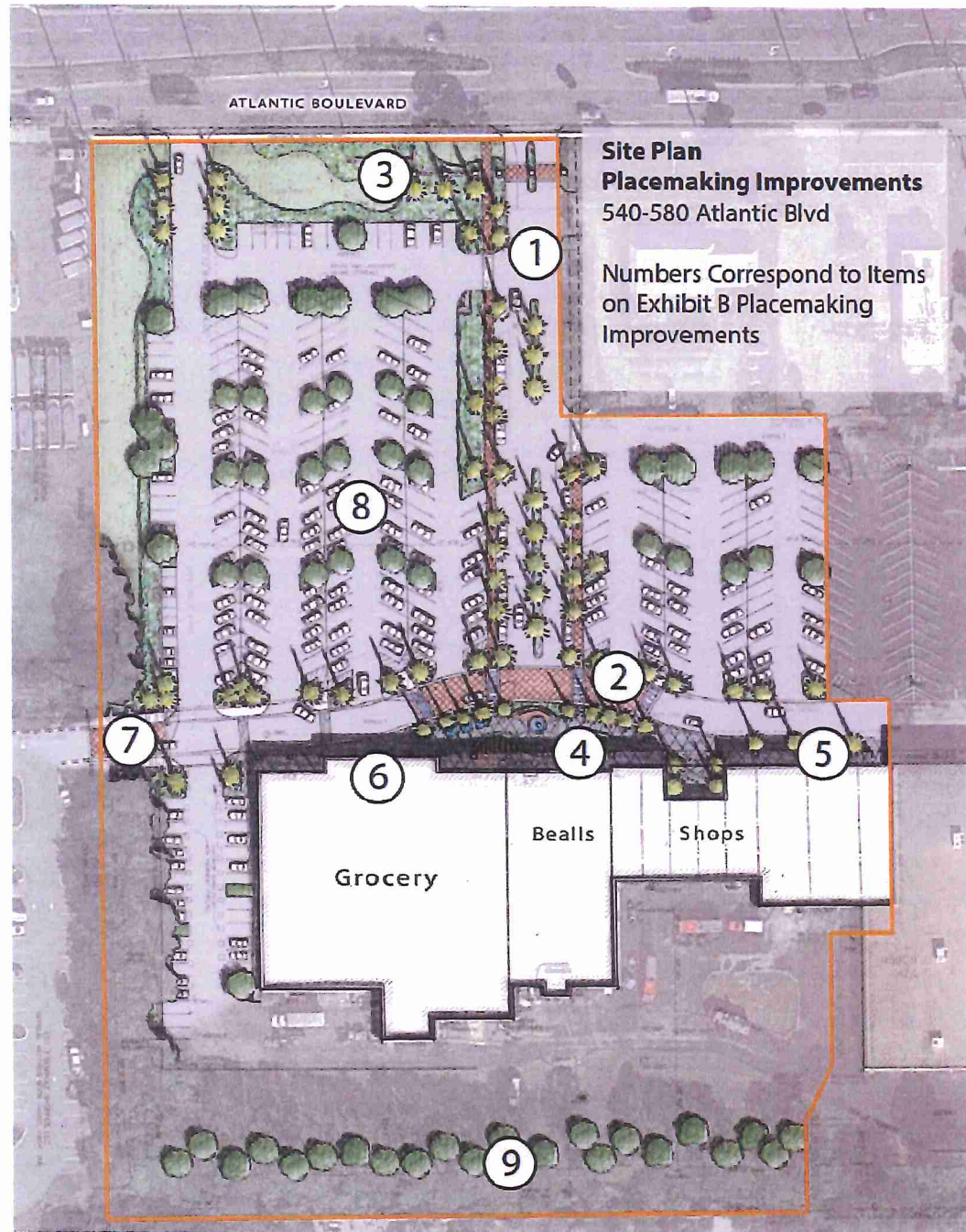


What Makes the Publix at Neptune Plaza Different?

- Small Format Store and Layout
- About half the size of full-size Publix
- Outdoor Seating
- In store café/beverage bar
- Convenience-oriented
- Center Deli
- Plentiful Grab & Go Options
- Appeals to a different type of shopper and shopping trip



What Makes the Publix at Neptune Plaza Different?



Place-making Enhancements Site Plan

1. Grand Entrance Arrival Street
2. Transformation of Lemon Street
3. Atlantic Blvd. Landscape and Signage
4. New Arrival Pedestrian Plaza
5. Transformation of Front Walk and New Courtyard
6. Renovated Beaches Modern Façade
7. Vehicular Connection to 630 Atlantic Blvd.
8. Parking Lot Enhancements
9. Buffer Plantings



Welcome to Neptune Plaza – Place-making Enhancements



View of Lemon Street and New Pedestrian Plaza

Welcome to Neptune Plaza – Place-making Enhancements



View of New Pedestrian Plaza

Welcome to Neptune Plaza – Place-making Enhancements

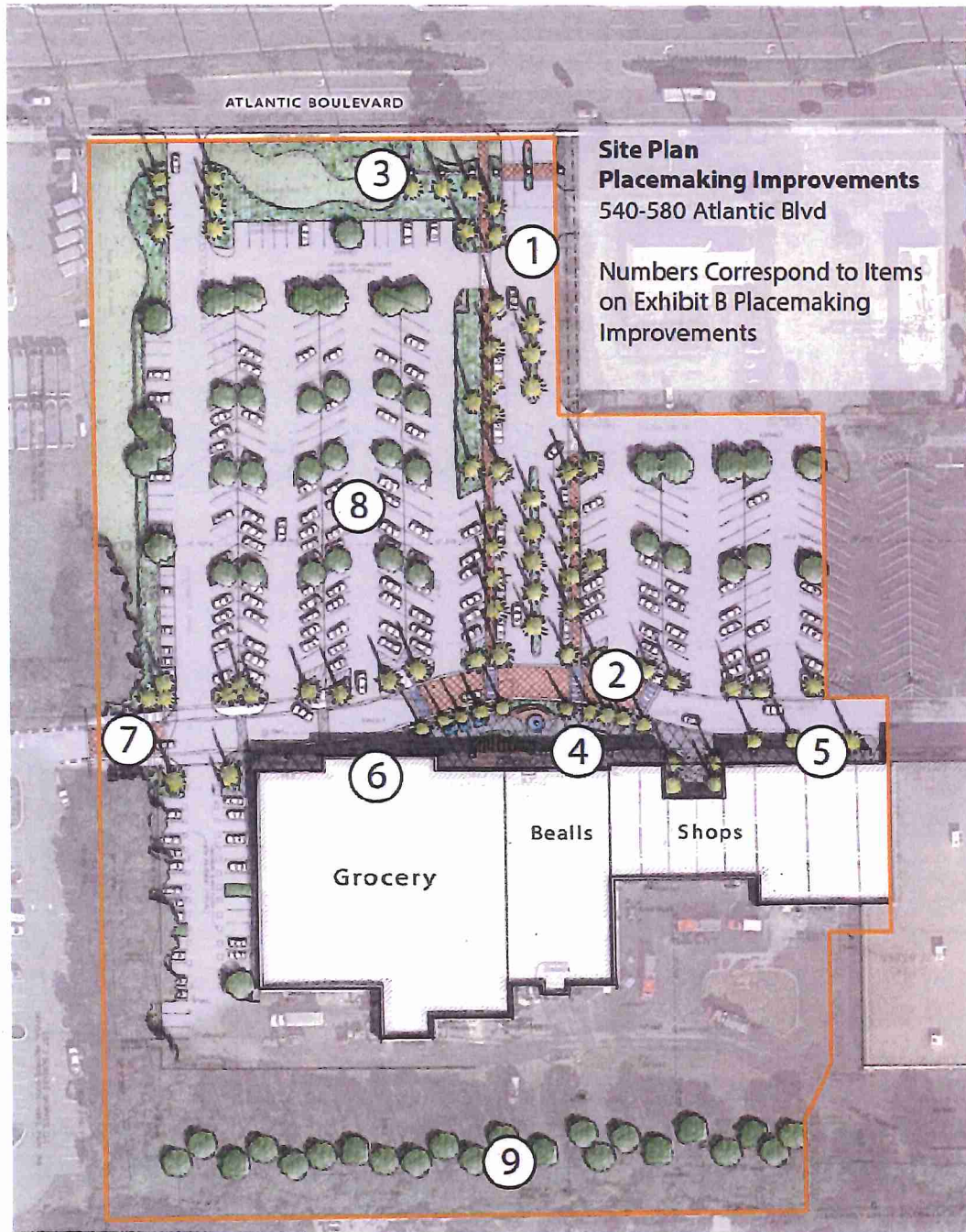


View of Expanded Front Walk and New Courtyard

Welcome to Neptune Plaza – Place-making Enhancements



View From Atlantic Blvd. of New Signage and Landscape



Place-making Enhancements Site Plan

1. Grand Entrance Arrival Street
2. Transformation of Lemon Street
3. Atlantic Blvd. Landscape and Signage
4. New Arrival Pedestrian Plaza
5. Transformation of Front Walk and New Courtyard
6. Renovated Beaches Modern Façade
7. Vehicular Connection to 630 Atlantic Blvd.
8. Parking Lot Enhancements
9. Buffer Plantings



Question: What is the term of the lease agreement between Publix and Property Owner?

Answer: Publix is assuming the Lucky's Market lease and extending the initial term to April 30, 2040, or 20 years. In addition, the lease provides for eight options to extend the lease for a total of 40 additional years. The final extension option expires April 30, 2080.



Common Questions We've Heard

Question: Could it be that Publix has no intention of operating a Publix store in this space?

Answer: City of Neptune Beach Code does not place any restrictions on Publix leasing the space to keep it empty. The City requires a variance to OPEN the Publix store.



Common Questions We've Heard

Question: Were there any other bidders for the Lucky's Market lease in Neptune Beach?

Answer: No. Publix was the only bidder for this location.



Common Questions We've Heard

Question: Does approving a variance set a precedent?

Answer: The approval of a variance does not create a precedent for subsequent variance requests. Because each variance is based upon unique circumstances of the property, the past approval of variances does not mandate similar action on the part of the City.



Common Questions We've Heard





Neptune Plaza

Thank You



Neptune Plaza

Additional Information

V20-01 Application for Variance

Note 6 is Neptune Beach's 60,000 SF ordinance (aka Big Box Ordinance) that was passed by City Council in 2006 after Wal-Mart approached the City to construct a 117,000 square foot store at 630 Atlantic Blvd. Ordinance 2006-13 was passed to prohibit new stores over 60,000 SF from being constructed in Neptune Beach. To prevent Walmart from skirting the ordinance (as they attempted in 2005 in Dunkirk, MD) Ordinance 2006-13 was drafted to include the following sentence:

“Furthermore, any retail stores, wholesale warehouses, or other freestanding buildings for any permitted use located within one thousand (1,000) linear feet of each other that operate under common business ownership or management, share a warehouse or distribution facility, or otherwise operate as an associated, integrated or cooperative business shall not exceed a combined sixty thousand (60,000) square feet of total gross floor area in aggregate.”



Ordinance 2006-13

1. The property has unique and peculiar circumstances, which create an exceptional and unique hardship. The unique hardship must be unique to the parcel.
2. The proposed variance is the minimum necessary to allow the reasonable use of the parcel of land.
3. The proposed variance would not adversely affect adjacent and nearby properties or the public in general.
4. The proposed variance will not substantially diminish property values in, nor alter the essential character of, the area surrounding the site.
5. The effect of the proposed variance is in harmony with the general intent of the ULDC and the specific intent of the relevant subject area(s) of the ULDC.
6. Neither the property owner nor developer created the need for the variance, nor is the variance request the result of mere disregard for the provisions from which relief is sought.
7. Granting the variance will not confer upon the applicant any special privilege that is denied by the ULDC to other lands, buildings, or structures in the same zoning district.



Variance Criteria

1. *The property has unique and peculiar circumstances, which create an exceptional and unique hardship. The unique hardship must be unique to the parcel.*

A second Publix location cannot feasibly be located on any other parcel within the City of Neptune Beach; the current market forecast for brick and mortar retailers is grim, so another lessee is likely not available; the language of the Ordinance will prevent two distinct stores merely because they are owned by the same parent company; and the proposed Publix will serve a different geographic location and clientele.

2. *The proposed variance is the minimum necessary to allow the reasonable use of the parcel of land.*

The proposed variance requests the minimum additional square footage necessary for Publix to replace Lucky's Market without any expansion.



Variance Criteria

- 3. The proposed variance would not adversely affect adjacent and nearby properties or the public in general.*

The proposed variance does not alter the existing, permitted use of the property. If approved, the Development Agreement will serve to increase nearby property values by modernizing the plaza to enhance landscaping, pedestrian access and spaces and provide the public with an additional, distinct grocery option.

- 4. The proposed variance will not substantially diminish property values in, nor alter the essential character of, the area surrounding the site.*

The Development Agreement will enhance, not alter, the essential character of the area by making significant placemaking improvements.



Variance Criteria

- 5. The effect of the proposed variance is in harmony with the general intent of the ULDC and the specific intent of the relevant subject area(s) of the ULDC.*

The property is located in the Commercial C-3 Zoning District and Commercial High designation on the Future Land Use Map. A Publix will “provide[s] retail sales and services that serve the overall community,” consistent with the ULDC.

- 6. Neither the property owner nor developer created the need for the variance, nor is the variance request the result of disregard for the provisions from which relief is sought.*

The Lucky’s Market bankruptcy and market conditions created the need for a variance.

- 7. Granting the variance will not confer upon the applicant any special privilege that is denied by the ULDC to other lands, buildings, or structures in the same zoning district.*

Other lands in the C-2 and C-3 zoning districts are permitted to have a grocery store, and the Development Agreement provides a distinction between this property and others in the same zoning district.



Variance Criteria

Florida Development Agreement Act - Section 163.3220, Florida Statutes

- (a) The lack of certainty in the approval of development can result in a waste of economic and land resources, discourage sound capital improvement planning and financing, escalate the cost of housing and development, and discourage commitment to comprehensive planning.
- (b) Assurance to a developer that upon receipt of his or her development permit . . . he or she may proceed in accordance with existing laws and policies, subject to the conditions of a development agreement, strengthens the public planning process, encourages sound capital improvement planning and financing, assists in assuring there are adequate capital facilities for the development, encourages private participation in comprehensive planning, and reduces the economic costs of development.



Florida Local Government Development
Agreement Act



Existing Conditions

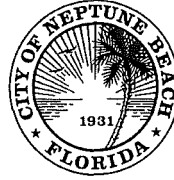


Concept Plan under Development Agreement

- Development Agreement as a condition of approval for V20-01 will:
 - Ensure compatibility;
 - Meets intent of Code by requiring improvements to create a distinct sense of place and highlights the differences between two store concepts; and
 - Enhance the essential character of the neighborhood.
- Submitted Draft to City on 8/24/20



Development Agreement



**CDB Minutes
09-16-2020
Approved 6-1**

**MINUTES
COMMUNITY DEVELOPMENT BOARD
SEPTEMBER 16, 2020 AT 6:00 P.M.
COUNCIL CHAMBERS
116 FIRST STREET
NEPTUNE BEACH, FLORIDA 32266**

Pursuant to proper notice a public hearing of the Community Development Board for the City of Neptune Beach was held both in person and via telecommunication on September 16, 2020 at 6:00 p.m. in the Council Chambers.

Attendance

Board members were in attendance:

Christopher Goodin, Chair
Ryan Dill (via web)
Aaron Evens, Member
W. Jeremy Randolph, Member
Bob Frosio, Member
Charles Miller, Member
Nia Livingston, Member

Mr. Schwartzenberger and Mr. Raitti (alternate members) were in the audience.

The following staff members were present:

Stefen Wynn, City Manager
Zachary Roth, City Attorney
Kristina Wright, Community Development Director
Piper Turner, Code Compliance Supervisor

Call to Order/Roll
Call

Chair Goodin called the meeting to order at 6:00 p.m.

Disclosure of
ex-parte
communications

All members disclosed they had spoken with members of the public.
Ms. Livingston, Mr. Miller and Mr. Goodin had also spoken with the applicant.

Minutes

Made by Evens, seconded by Miller.

MOTION: TO APPROVE AUGUST 12, 2020 MINUTES AS SUBMITTED.

Roll Call Vote:

Ayes: 7-Evens, Randolph, Miller, Livingston, Frosio, Dill, Goodin

Noes: 0

MOTION CARRIED

V20-01 Variance
Application for
Neptune FL Realty
540-580 Atlantic
Blvd.

V20-01 Application for variance as outlined in Chapter 27, Article 8 of the Unified Land Development Code of Neptune Beach for Neptune Beach FI Realty, LLC for the property known as 540-580 Atlantic Blvd (RE#172395-0130). This property is the former Lucky's Market in the Neptune Beach Plaza. The variance request is to provide relief from Note 6 of Table 27-229-1 by varying the 1000 linear foot requirement for businesses that operate under common business ownership or management, share a warehouse or distribution facility, or otherwise operate as an associated, integrated or cooperative business shall not exceed a combined sixty thousand (60,000) square feet of total gross floor area in aggregate.

Kristina Wright, Community Development Director, stated that application V20-01 for 580 Atlantic Blvd is a request for a variance that seeks to provide relief from Note 6 of Table 27-229-1 to remove the 1000 linear foot separation requirement for businesses that operate under common business, ownership or management, share a warehouse or distribution facility, or otherwise operate as an associated, integrated or operative business shall not exceed a combine sixty thousand square feet of total gross floor area in aggregate. The property is at 540-580 Atlantic Blvd located within the C-3 commercial zoning district. It's a previous Lucky's Market and Proctor Ace Hardware.

The variance request is to allow a second, smaller Publix Supermarket within 500 feet of the existing Publix located at 630 Atlantic Blvd. While the owners of both stores are different, both stores are affiliated with Publix Supermarket, Inc. Cumulative floor area of the 2 separate stores would exceed 60,000 square feet, which stands in opposition to the provisions within the land development code table 27-229-1 note 6. More specifically, note 6 within table 27-229-1 stipulates that any retail stores, wholesale warehouses or other freestanding buildings for any permitted use located within 1000 linear feet of each other that operate under common business ownership or management, share a warehouse or distribution facility or otherwise operate as an associated, integrated or cooperate business shall not exceed a combined 60,000 square feet of total gross floor area in aggregate. This property is located on the south side of Atlantic Blvd. and the within 500 feet of the existing Publix.

The applicant is proposing a number of site improvements. They have provided renderings showing elevations, textural changes and some landscaping. Tonight, we're here to consider only the variance request to the code.

Staff went over section 27-147: The required findings needed to issue a variance.

In terms of number 1: The property has unique and peculiar circumstances, which create an exceptional and unique hardship. For the purpose of this determination, the unique hardship shall be unique to the parcel and not shared by other property owners in the same zoning district.

The applicant states that the hardship is a result of major circumstances that are unique to the parcel. Applicant's parcel analysis has determined that another Publix cannot be accommodated in any other location within the city . Of the applicable parcels in C-3 and C-2, none of these are currently vacant. However, this does not demonstrate a hardship for the existing parcel. Other viable alternatives exist that could meet the requirements of the land development code. The applicant indicates that the tenant entered into an agreement with and received Bankruptcy Court approval for an assignment of the existing lease with the property owner to Publix Supermarkets, Inc. However. Staff asserts that this does not preclude other viable

alternatives such as GreenWise branding, subleasing, etc.

The applicant indicates that a “strict application of Note 6 of Table 27-229-1 creates a hardship that is unique to this parcel and not share by other property owners in the same zoning district”; this does not preclude other economically viable alternatives that would meet the requirement of the land development code.

In terms of number 2, required finding is needed to issue a variance: The proposed variance is the minimum necessary to allow the reasonable use of the parcel of land.

The applicant states that they are seeking to replace Lucky’s Market without any expansion of the existing footprint. Claims that the denial of the proposed variance would prohibit Publix from taking assignment of the lease, which would then enable Lucky’s Market to reject their lease with the property owner. This would terminate the lease, despite approximately 16 years of term remaining per the terms of the lease. The applicant indicates without a variance the property owner would be “permanently unable to attain its reasonable investment-backed expectations from the existing lease”.

Staff asserts that other viable alternatives exist that would allow the property owner to realize benefits obtained through the reasonable use of their land. Most uses of this site would be unaffected by this provision. Those uses on this site would be unaffected by this privilege.

In terms of number 3, required findings needed to issue a variance, the proposed variance will not adversely affect adjacent or nearby properties or the public in general.

The applicant responds that the proposed variance does not alter the existing, permitted used of the property, a retail grocery anchor store. A number of improvements are planned to renovate the overall development. Re-opening of a grocery store at the property would create positive benefits to the nearby properties and the public in general. Granting of the variance supports the Comprehensive Plan Goal A.1 and Objective A.1.3 redevelopment and infill development by encouraging infill redevelopment and avoiding blighting influences. The opening of a Publix grocery store at 580 Atlantic Blvd. is anticipated to create 50 additional permanent jobs, in addition to construction jobs, will have a beneficial impact on tax collection and provide essential service to the public.

While redevelopment and the creation of additional jobs is desirable, the addition of another Publix within 500 feet of an existing Publix on the immediately adjacent parcel expands the scale of development within a small coastal community and does not adhere to the requirements of the LDC while other viable alternatives exist.

In terms of Number 4: The proposed variance will not diminish property values or the character of the area. According to the applicant the proposed variance does not alter the existing, permitted use, a retail grocery anchor store or alter any physical characteristics of the property from the existing condition. The proposed variance would not substantially diminish property values in, nor alter the essential character of the areas surrounding the site. Furthermore, the re-opening of a store, particularly an industry-leading grocery store with strong finances and significant history, provides for long-term stability in property values and further supports Objective A.1.3 redevelopment and infill development by encouraging infill development.

In terms of number 5: The proposed variance is in harmony with the general intent of ULDC. The applicant stated that the property is in the Commercial C-3

zoning district which corresponds to the Commercial high designation on the adopted future land use map. According to LDC Section 27-222-Purpose and intent of Zoning districts, the Commercial C-3 Zoning District is intended to provide retail sales and services that serve the overall community. The applicant indicates that the proposed variance is in harmony with the general intent of the LDC since they feel that the re-opening of a store which "provides retail sales and services that serve the overall community" and in particular provides essential grocery service to the community and the proposal seeks to expand mobility and interconnectivity while making site improvements.

While mobility, interconnectivity and redevelopment are desirable, the proposal is not consistent with the LDC, specifically Table 27-229-1 note 6. The application must also meet Section 27-147 required findings needed to issue of variance, which requires demonstrating a unique hardship.

In terms of number 6: The need for the variance has not been created by property owner or development nor is the result of mere disregard of the provisions from which relief is sought. The applicant for the variance request has written that the request has arisen from unique and peculiar circumstances relating to the bankruptcy of the tenant under an existing lease with the property owner. The applicant believes that a viable alternative to Publix "does not exist in the current and foreseeable market conditions." Believes that the need for the variance has not been created by the action of the property owner.

Staff says that while Publix is assuming these leases throughout the State, the fact that the one in Neptune Beach is next to another existing Publix is not the basis for relief from our LDC. Rather the need for the variance is being created in part by the property owner in that the property owner seeks to enter into a lease that would result in a code violation due to the long standing business on the adjacent parcel.

In terms of number 7: Granting the variance will not confer upon the applicant any special privileges that is denied by the ULDC to other lands, building, or structure in the same zoning district. The applicant states that the need for the variance has arisen from the unique and peculiar circumstances that have created a unique hardship for this parcel alone. The applicant is seeking a development agreement to be considered outside of the Community Development Board and believes that this will provide a distinction between this property and others within the same zoning district.

Staff states that while C-2 and C-3 zoning districts allow a grocery store as a permitted use, this does not preclude distance separation and size limitation requirements as codified withing Table 27-229-1 Note 6. Even though the applicant has made considerable effort to demonstrate the desire to improve the lot and the existing development, staff recommends a motion to deny application V20-01 for 540-580 Atlantic Blvd. since the application does not demonstrate the achievement of the Required Findings needed to issue a variance established within section 27-147, which required the demonstration of a unique hardship. Further, the proposal and request are not consistent with the Comprehensive Plan Policy A.1.1.4 or the Land Development Code Table 27-229-1, Note 6.

Staff recommends denial of application V20-01 for 540-580 Atlantic Blvd.

Swearing in

Mr. Roth asked anyone appearing before the board to raise their right hand to be sworn in.

Mr. Andrew Greene, VP of TM Realty, applicant and property owner, addressed the board. Happy to be here and proud of the work we have done with the community and

excited to introduce everyone to Neptune Plaza. He introduced others joining the meeting via the internet and in person. A lot has happened since we last spoke in June. If you recall, Lucky's Market went into bankruptcy in January and then Publix had entered into an agreement in Bankruptcy Court to purchase Lucky's. We also described the small format Publix and what makes that small format Publix different. It's smaller as the name suggests. It's roughly half the size of a full-size Publix. It also appeals to a different type of shopper and a different type of shopping experience. You're invited to linger at this Publix, grab a bite at the center deli, drink at the store beverage bar, navigate down a route of your choice. You can get easily in and out. Grab a few items on a busy night and maybe grab dinner to take home with the grab and go options.

In the weeks after our presentation and after many meetings and calls with numerous community members and stakeholders, I heard a consensus that people love Publix. A new Publix store was a rare opportunity in a challenging time for retail and finally with that opportunity many stakeholders felt that there was an opportunity. They wanted to see the property enhanced, to create a place that reflects beauty and character. We heard the community wants a place that reflects the Beaches lifestyle. A place to sit, public art that was walkable, mobility for golf carts. The water feature, trees, landscaping and more of those things we are going to reflect in terms of the Beach.

I have the honor tonight of presenting an exciting community development plan for "placemaking" a property. For those who do not know the term place-making, I want to read a good description from Wikipedia. Placemaking capitalizes on a local community's assets, inspiration, and potential, with the intention of creating public spaces that promote people's health, happiness and well-being. Don't think I could have said it better myself. It's a great definition, it fits perfectly with the place which we're presenting here tonight. These enhancements will transform the property as you see it today. These claims are the direct results of the conversations among the community stakeholders. Just to be clear, that I've heard this question come up a couple of times, these improvements are not a requirement and would done at our cost. I'm confident that the placemaking combined with an exciting new Publix store will create momentum to attract high quality tenants and businesses to our community.

Mr. Greene described the proposed site plan with the placemaking improvements.

The first enhancement would be the grand entrance arrival street from Atlantic Blvd. opposite Sylvan Drive in Atlantic Beach. This is a fully functional streetscape with the center planting median with palm trees. Foot traffic and on street parking and sidewalks again lined with palm trees giving the full effect of true streetscape as you enter the property and drive south away from Atlantic. Transformation of the front drive aisle into Lemon Street.

The existing front drive aisle to the property which is in alignment with Lemon Street in the Town Center will be reconfigured across the parcel. The reconfiguration will narrow and shift the roadway north and introduce an intentional curve to the intersection with the entry drive. These changes serve to introduce a type of traffic calming technique to support a pedestrian-friendly environment and create space for the new pedestrian plaza. The pavement has a raised area so that vehicles entering go up onto the raised flat tabletop with high contrast, visible crosswalks and stop signs.

The plaza itself roughly shaped like a lemon wedge measures roughly 160 feet across by 48 feet deep and at the center of the Plaza is a prominent public art fountain. The piece orients itself so that you see it coming down from Atlantic and also as you drive or walk on Lemon Street. We are pulling Lemon Street north away from the building. Doing this gives us the opportunity to create new seating areas, new landscape and new opportunities on the front walk. The expanded front walk gives the opportunity for additional space, pedestrian space and another highlight is the new courtyard. By actually deconstructing a portion of the existing buildings we can create an outdoor amenity space. This is something that we heard from the community members who wanted to replicate the quality of the courtyard by Southern Grounds.

Existing monument signs will be replaced with new one featuring a "Beaches Modern" design.

We will construct a vehicular roadway to connect the roadway that is currently built on the 630 Atlantic property to form a vehicular connection between the two centers. This has been a long-desired request from many community members and we'll make that a reality.

The existing parking lot will be renovated significantly. 10 golf cart parking spaces will be added on the western edge of the lot. There will be electric charging for the golf carts and regular vehicles. There will be a Beach Buggy drop off and pick up with signage. At least 20 new bicycle spaces will be located throughout the design. All new LED lighting and fixtures. The parking lot will be milled and repaved.

Finally, we will plant a new line of trees and shrubs on the north edge of the rear stormwater ditch to provide additional screening for the adjacent residential area.

Publix assuming the lease from Lucky's Market extends the initial term just about 20 years. There are provisions to extend the lease eight more times for a total of 40 additional years.

Because each variance is based on a unique circumstance of the property, the past approval of a variance does not mandate similar actions or programs and would not create a precedent for subsequent variance requests.

We are focusing on a lemon theme; we are making lemonade out of lemons. This year has been a lot of lemons so we wanted to use the opportunity to have fun with the idea of using the art structure in the shape of lemon with cross bars and a water feature so that kids could run through that and play on the map while the parents sit in the public area.

Questions from the board for Mr. Greene:

Mr. Miller asked what the width of the walkway would be? From the building to the outer edge of the curve it is about 48 feet.

Chairperson Goodin opened the floor for public comments.

Mary Frosio, 1838 Nightfall Drive, stated she was here to support the granting of the variance. This is smart development, supported by a majority of the community. Created a survey on Neptune Strong's Facebook page and got over 154 responses. Roughly 70% of the poll takers responded either "Yes" to the idea of a small format Publix or didn't care. Having Publix as an anchor tenant stabilizes and defines the future of the property for up to 60 years. Opposed development in the past but

always supported smart development. The property is going to be transformed from a tired 1970's strip center into a high-quality destination, a meeting place fitting the Neptune Beach lifestyle. Even the name evokes images, like a plaza where you ride your bike or golf cart. You sit down and enjoy a beverage, watch your neighbors come and go and see the kids playing in the lemon fountain. Lemons to lemonade fountain, was lemonade being made from lemons on Lemon Street. That's kinda of a joke around here. The place has ample parking, which is a big plus and outdoor dining and the ocean breeze will still reach it. Alternative tenants are hard to find. An anchor tenant especially Publix was the only company that can do it. If Publix is forced to walk away the property owner has to go back out to the market and look for a new tenant. Keep in mind they already have a 75% vacancy rate at this center. The market is shrinking for tenants in brick and mortar retail due to the rise of online shopping. We have a bird in the hand and it is worth two in the bush. Given the current market, there may be none in the bush. The code does allow you to contemplate this or a relaxation of the code. Granting the variance would not be nullifying this particular order. I ask you to vote to approve the variance.

Ginny Thurston, 1200 7th Street, agreed with Ms. Frosio and is an employee of Publix. They are a great company to work for. Can not see Publix not opening and leaving the building vacant. They are going to do whatever they can to make it work. Totally different buildings and different property owners.

Jon Raiti, 224 Bowles Street, Publix is a really well-respected company. Curious about what happened to the Green wise concept? I approve, it sounds like a great idea. Love to see what happens with the development.

Greg Schwartzenberger, 428 Lora St, long-life resident of the beach. Did support the project via an email in June. They have a great reputation amongst their employees, a very diverse workforce. Publix offers great products and consistent service. Supports the plan to clean up the parking lot, sidewalks and a main thoroughfare to the beach.

The following submitted written comments which have been included with the minutes.

Wade Laufenberg, Vice President of Bealls Outlet
Bruce Andrews, Atlantic Beach
Anne Blount, 915 Florida Blvd, Neptune Beach
Kim De Palma, owner of Little Palm Food Events, LLC
Alan Harris, 76 Oakwood Rd, Jacksonville Beach
Ronnie Mills
Wendy Pope
Harriet Pruette, Neptune Beach
Leona Sheedan, 2010 Shadow Lane, Neptune Beach
Ingrid Smalling, 1708 Strand, Neptune Beach

There being no comments, the public hearing was closed.

Mr. Roth, City Attorney, reminded the board that what was before them was just the variance and not the development agreement. In terms of the various drawings shown, those sorts of things are only relevant if they go toward your analysis of the seven required findings of fact for a variance. The development agreement itself, by statute, must be heard by the City Council. As you evaluate and discuss it, think about it in that context.

Board Discussion:

Mr. Frosio: All for it, you just have to look at the other strip center. The center at Penman and Atlantic in Atlantic Beach has been vacant for years. A smaller Publix is going to attract other tenants. Upscale won't be a Big Lots.

Mr. Randolph: If Publix wanted to go where Winn Dixie is and Winn Dixie wanted to go into Lucky's then we would not be here tonight.

Mr. Miller: There are a lot of factors at play. Going down the seven finding of facts. Note 6 has to do with Big Box. When you think of Big Box that is a large corporation. They are a great corporation. They are a large corporation. Has concerns over large corporations. If for some reason, Publix opted to occupy the Kmart at other end of shopping center then there would be no need to be here. I am having difficulty with the finding of facts.

Ms. Livingston: Understands the reason for Note 6. Everything else is different. This is going to raise the property value. If it were to remain empty it could be there for years like the rest of the center. Does not believe it will alter the character.

Chairperson Goodin: Substantial improvement in design and scope. No special privilege by allowing this in its location.

Vice-Chair Dill: It is a difficult decision in the sense that the code is distinct and appreciates the way its written. Enough about the proposal is different that we can make a distinction between this property and the other one and that is exactly what this opportunity for a variance is.

Questions for Staff:

If this is approved tonight and goes through City Council, what is the next step? Does it come back to the board with full plans for review to make sure it meets all aspects?

Ms. Wright stated that any exterior improvement that would alter the site plan would come back through but if the changes were to be within the shell of building those are allowable improvements. The next step in this process would be the Development Agreement. If that is picked up by the City Council, the variance would follow that. The applicant has indicated there might also be a special exception requested in the future. If that is the case, then they would have to go through that process. The pictures shown would go with the Development Agreement and that is not before the board tonight. That is the next step in the process. Any kind of improvement would likely either be codified through visual means or through word text and by part of the agreement.

Mr. Roth clarified that while development agreement is not before the board, any variance granted should be conditions on the Council's approval of a development agreement.

Made by Frosio, seconded by Randolph.

MOTION: MOVE TO APPROVE VARIANCE V20-01 FOR 540-580 ATLANTIC BLVD. CONDITIONED ON THE CITY COUNCIL'S APPROVAL OF THE DEVELOPMENT AGREEMENT.

Roll Call Vote:

Ayes: 6- Evens, Randolph, Livingston, Frosio, Dill, Goodin

Noes: 1-Miller

MOTION APPROVED.

The applicants were informed their variance would be forwarded to City Council for their final decisions on October 5th at 6:00 pm.

Adjournment

The next board meeting will be October 14, 2020 at 6:00 pm. There being no further business, the meeting adjourned at 7:08 p.m.

Chairperson Christopher Goodin

ATTEST:

Piper Turner, Board Secretary



Monday, July 6, 2020

City Council
Community Development Board
City of Neptune Beach
116 First Street
Neptune Beach, FL 32266

Dear Councilors and CDB Members;

I am Vice President Real Estate & Construction for Bealls Retail Group and I am writing in support of the variance application V20-01 submitted by Neptune Beach, FL Realty LLC for the property known as 540-580 Atlantic Blvd. The purpose of the variance is to permit the Publix to purchase the Lucky's Market lease in order to open a small-format Publix at 580 Atlantic Blvd.

We have operated a Beall's Outlet at this property for approximately 20 years and our store is directly adjacent to the Lucky's Market store. As a Florida-based company, we operate stores alongside Publix in many locations throughout Florida. In my 30 years of experience in retail real estate, I can state that Publix is an exemplary grocer and a great neighbor both for our business and for the communities in which we operate. Publix-anchored properties are regarded by many retailers as top locations and will often find success in leasing, thereby avoiding the negative impacts of vacant spaces.

The need for the City of Neptune Beach to support Publix's efforts to open at 580 Atlantic Blvd. is especially important at this time given the current pandemic and its impacts on jobs, businesses and our economy. As a business that has operated in Neptune Beach, we welcome the addition of Publix to 580 Atlantic Blvd. and encourage the City to approve V20-01.

Sincerely,

Wade Laufenberg
Vice President, Real Estate and Construction

**Bruce Andrews
Atlantic Beach**

Variance for Publix in Former Lucky's Space

bruce.andrews@comcast.net <bruce.andrews@comcast.net>

Sun 9/13/2020 9:38 PM

To: Catherine Ponson <clerk@nbfl.us>

Dear City Clerk,

Please share this email with the members of the Neptune Beach Community Development Board.

Best regards,

Bruce Andrews
Atlantic Beach, FL

Dear Community Development Board Members,

I am an Atlantic Beach resident and a customer of many Neptune Beach businesses including Ace Hardware, Winn-Dixie, Aqua East, Publix, etc. Our neighboring cities are part of the greater beaches community and what happens in one city often impacts residents of all of the beach cities.

I am writing to urge you to grant the variance that has been requested so that Publix can open their small-format grocery store in the former Lucky's space. I understand the reason for the existing ordinance and its intent to prevent the large box stores that we all feared a few years ago. It seems though that we have the potential for a very negative unintended consequence if a variance is not granted – that is, the loss of a new grocery store to fill the void left by Lucky's closure.

I personally enjoyed Lucky's and have missed their small store offering. We are fortunate that Publix wants to open their small format store since apparently no other grocery company bid on the Lucky's lease. If the lease had been assumed by Winn-Dixie or Aldi's or some other company, there wouldn't even be a need for a variance. What difference does it make if this new store is owned by the same company that owns the existing Publix?

Please be flexible and grant this variance so that a very negative unintended consequence of the anti-big box store ordinance does not result. If that were to happen, we would all suffer for no good reason.

Thank you for your consideration,

Bruce Andrews
Atlantic Beach, Florida

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Variance for 540-580 (Small Publix)

Anne Blount <blounthome11@yahoo.com>

Wed 9/16/2020 1:45 PM

To: Catherine Ponson <clerk@nbfl.us>

Dear Community Development Board Members,

I support granting a variance to Publix to put a small Publix store in the old Lucky's Market footprint. Publix has proven itself to be a great community-minded neighbor and the additional store and landscaping will go a long way to revitalize the Neptune Beach Plaza.

Thank you for your continued service to our beautiful city.

Very sincerely,

Anne Blount

915 Florida Blvd.

NB

**Anne Blount
915 Florida Blvd
Neptune Beach**

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Publix Variance

Harris, Alan <alan.harris@unf.edu>

Mon 9/14/2020 7:56 PM

To: Catherine Ponson <clerk@nbfl.us>

I would like to express my support for the variance requested by Publix to occupy the Lucky's Market location. I am a resident of Jacksonville Beach, right on the border with Neptune Beach. Lucky's Market provide us a great option to shop with young children who loved pushing their own small grocery carts. As a beaches resident, I love the concept that Publix has for that location. It would be a great family-friendly addition to the beaches.

Thank you,
Alan Harris
405-818-9909
76 Oakwood Rd
Jax Beach

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

**Alan Harris
76 Oakwood Rd
Jacksonville Beach**

Publix

Little Palm Food Events <littlepalmfoodevents@comcast.net>

Mon 9/14/2020 12:06 PM

To: Catherine Ponson <clerk@nbfl.us>

I am writing in reference to the Wednesday, Sept. 16 Community Development Board Meeting concerning the Publix variance where the old Lucky's used to be. If we are a society that encourages competition in the market place so that it only benefits the consumer, I am for upholding our code that says we can't have two stores owned by the same company within 1000 feet from each other. What benefit came from the brief time that Lucky's did occupy that space? It forced both Publix and Winn Dixie to up their game and create improvements in each store. Where would the incentive to create a better shopping experience come from with no or limited competition? I see prices creeping up and up, I see less diversity in products, I see customer service declining....that's what happens in a "monopoly" type situation. I am not against development in our city and I believe a Publix next to a Publix is a bad idea for our city.

Kim De Palma

owner Little Palm Food Events,LLC

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Kim De Palma
Owner,
Little Palm Food Events, LLC

Ronnie Mills

Fwd: Publix Variance support comments for Wednesday's CDB meeting

Ronnie Mills <ronniemills1009@aol.com>

Sun 9/13/2020 11:20 AM

To: Catherine Ponson <clerk@nbfl.us>

Subject: Publix Variance support comments for Wednesday's CDB meeting

Good Afternoon,

I have been with Publix for 26 years and my wife has 22 years. We also live in this community. Needless to say we are passionate about Publix and our community. We support that Publix should get the variance. Publix should not be penalized because of the name. I have worked at over 20 stores including every beach store from Neptune Beach to Vilano Beach. At every store we consistently made positive impacts on our community and the people living there by building deep rooted relationships with them. Another location is not just adding 50 new jobs, it's adding careers and opportunities that have no limits. Publix hires kids as young as 14 and grows them into adults who love the Publix culture of being responsible citizens in their communities, creating a positive environment with people of all nationalities and different backgrounds and treat them like family. When times are tough and our community needs us is when we really shine. Unemployment is on the rise but Publix is consistently hiring, promoting and creating jobs, even during Covid and in multiple recessions. I can't speak to what this location will be or the format but I can speak to the dedication and loyalty to the community that Publix has always given.

Thank you for your time.

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Re: Kmart center

Wendy Pope

Wendy Pope <wendypope2@gmail.com>

Mon 9/14/2020 4:13 PM

To: Catherine Ponson <clerk@nbfl.us>

Hi Catherine,

Still having a difficult time understanding why there will be two Publix in such close proximity. Publix manager, Ron Mills, told my husband he knew nothing about this and that Publix has never done anything similar. Very strange, in my opinion. I'm all for improving the area and I love the design photos I have seen, but honestly, not in favor of another Publix.

FW: New Publix market

**Harriet Pruette
Neptune Beach**

pitypat01 <pitypat01@aol.com>

Sat 9/12/2020 6:55 PM

To: Catherine Ponson <clerk@nbfl.us>

Would you make sure my letter is read into record at CDB meeting Wed...thanks.

Harriet

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: pitypat01 <pitypat01@aol.com>

Date: 9/12/20 6:47 PM (GMT-05:00)

To: clerk@nbfl.us

Subject: New Publix market

To Honorable Mayor Elaine Brown
and Honorable City Councilors

I am in full support of the new Publix market going into the old Lucky's space. I believe it will do well and will be a much needed improvement to the shopping center.

Thank you for your vote to support.

Harriet Pruette
Neptune Beach FL

Sent from my Verizon, Samsung Galaxy smartphone

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Publix Variance Request

lsheddan@aol.com <lsheddan@aol.com>

Sun 9/13/2020 10:21 AM

To: Catherine Ponson <clerk@nbfl.us>

Cc: Chris Goodin <cwgoodin@gmail.com>

I am very much in favor of granting a variance to Publix for installing a Little Publix in the location vacated by Lucky's.

Publix is a Florida Corporation with a reputation for quality in all aspects of their business. The inclusion of a courtyard and other amenities along with upscale product lines will NB residents additional choices and enhance the character of NB.

Additionally, the Publix Foundation has been generous to many Florida nonprofits including one for Children with Autism when I was Chairman of their Board.

They consistently strive for excellence as we do in Neptune Beach. It's a perfect match.

I speak for many of my neighbors too!

Please insure all CDB members receive this email and I ask that it be read at the Wednesday meeting.

Thank you

Leona Sheddan

2010 Shadow Lane NB

Sent from my iPhone Leona Sheddan

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Please add my comments to be read at the CDB meeting.

Ingrid Smalling <smallingi55@gmail.com>

Tue 9/15/2020 1:34 PM

To: Catherine Ponson <clerk@nbfl.us>

**Ingrid Smalling
1708 Strand Street
Neptune Beach**

My name is Ingrid Smalling. 1708 Strand St. I would like to comment about the variance that Publix is requesting for 572 Atlantic.

It is my understanding that the code as written is to keep out Big Box stores. I don't believe that allowing Publix to open a smaller store like a Greenwise or whatever smaller plan they have, including outdoor seating and patio area, would be the same as a Big Box store at all.

It seems that if you could have a grocery store there before, as it was with Lucky's, why would it not be okay to have a Publix there now? I'm sure Publix has run the numbers and done the legwork to know whether their plan is viable. Publix is a great brand and I'm sure will make much-needed improvements to that prime location. They obviously have a vested interest in the community and their surroundings and therefore I think they should be given the variance.

Thank you.

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Item # 8A
Ord. No.
2021-01

**CITY OF NEPTUNE BEACH
CITY COUNCIL MEETING
STAFF REPORT**

AGENDA ITEM: ORDINANCE NO. 2021-01, FIRST READ AND PUBLIC HEARING, An Ordinance of the City of Neptune Beach, Florida, Amending Chapter 22 of the Code of Ordinances, Traffic and Motor Vehicles, by Amending Section 22-46, Penalties; Providing for Conflicts; Providing for Severability; and Providing an Effective Date.

SUBMITTED BY: Mobility Management Director Megan Steward

DATE: February 24, 2021

BACKGROUND: In enforcing the provisions of the Code, the City has determined that alternative penalties would facilitate more efficient administration of the terms of Chapter 22 and provide clarity to users of parking within the controlled and/or metered parking zones within the City.

The proposed ordinances was moved forward for First Read at the February 16, 2021 Council workshop.

BUDGET: N/A

RECOMMENDATION: Consider Ordinance No. 2021-01 on First Read

ATTACHMENT: 1. Ord. No. 2021-01, Parking

SPONSORED BY:
MAYOR BROWN



ORDINANCE NO. 2021-01

A BILL TO BE ENTITLED

AN ORDINANCE OF THE CITY OF NEPTUNE BEACH, FLORIDA, AMENDING CHAPTER 22 OF THE CODE OF ORDINANCES, TRAFFIC AND MOTOR VEHICLES, BY AMENDING SECTION 22-46, PENALTIES; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Neptune Beach, adopted Ordinance No. 2019-07, establishing controlled and metered parking within certain designated zones within the City; and

WHEREAS, Ordinance No. 2019-07 established Section 22-46, which outlines penalties for violations of Chapter 22, Article IV of the Code; and

WHEREAS, Chapter 22 provides for penalties in the form of immobilization or towing of vehicles in violation of its provisions; and

WHEREAS, in enforcing the provisions of the Code, the City has determined that alternative penalties would facilitate more efficient administration of the terms of Chapter 22 and provide clarity to users of parking within the controlled and/or metered parking zones within the City; and

WHEREAS, the City has determined that a process designed to facilitate collection of fines, utilized in conjunction with immobilization and towing, will provide for such efficient administration; and

WHEREAS, the City also desires to implement a procedure for the appeal of parking tickets under Chapter 22; and

WHEREAS, the City Council of the City of Neptune Beach finds that these revisions to the City of Neptune Beach's Code will preserve, promote, and protect the health, safety, and welfare of its citizens.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL ON BEHALF OF THE PEOPLE OF THE CITY OF NEPTUNE BEACH, FLORIDA that:

SECTION 1. Chapter 22-46, of the Code of Ordinances of the City of Neptune Beach, Florida is hereby amended as follows:

Sec. 22-46. – Penalties.

- (a) Any person convicted of violating any section of this article shall be punished as provided in chapter 22, Traffic and Motor Vehicles.
- (b) Alternative Procedure. In addition to any other penalties authorized by this Chapter, the city adopts the following procedure, which may be used at the election of the district parking officer, but shall not be construed to be mandatory.
1. At least thirty (30) days following a motor vehicle's third (3rd) outstanding parking ticket, the district parking operator may deliver a first notice of outstanding fines to the address on file for the owner of the motor vehicle with the Department of Motor Vehicles, Neptune Beach Police Department, or other government agency. In the event such records are unavailable to the City, the district parking operator may send such notice to any address reasonably believed by the district parking operator to be affiliated with the owner of the motor vehicle.
 2. At least thirty days following a first notice, the district parking operator may deliver a second notice of outstanding fines to the address used for the first notice or such other address as the district parking operator has determined to be more likely that of the owner of the motor vehicle since delivery of the first notice.
 3. At least thirty days following a second notice, the district parking operator may cause to be scheduled a hearing before the special magistrate regarding such outstanding parking tickets. Notice of such hearing shall be delivered to the address used for the first or second notice or such other address as the district parking operator has determined to be more likely that of the owner of the motor vehicle since delivery of the first or second notice. The hearing before the special magistrate shall occur no sooner than ten (10) days after the notice of hearing is sent by the district parking operator.
 4. In the event a hearing is scheduled before the special magistrate, such hearing shall be conducted as provided in Chapter 2, Article VII, Division 2 of the Code. In addition to assessing the fines contained on the face of each parking ticket, the special magistrate shall also have the authority to assess their fees and costs, the City's legal fees and costs and costs of complying with the notice provisions of this section, and any other costs associated with the hearing against the owner of the motor vehicle, as well as to assess additional fines as follows:
 - i. For owners of motor vehicles appearing for outstanding parking tickets before the special magistrate for the first time, daily

finest from the date of the parking ticket in the amount of up to ten dollars (\$10.00) per day.

- ii. For owners of motor vehicles who have previously appeared for outstanding parking tickets before the special, daily fines from the date of the parking ticket in the amount of up to twenty dollars (\$20.00) per day.

5. Any notice delivered pursuant to this section shall be deemed valid and delivered if made in the manner described in Section 2-446.

6. The city shall have the right to utilize any available method to obtain collection of any amounts awarded by the special magistrate under this section. The city shall also be authorized to obtain the assistance of the courts to collect such award. Any judicial remedies to be sought by this section are in addition to any other power of the city regarding parking enforcement. In the event it is necessary for the city to utilize the services of legal counsel in any collection procedures that utilize the assistance of the courts, the city shall be entitled to recover its reasonable attorney's fees and costs incurred in that action.

(c) Appeals. In the event any person believes they have received a parking ticket or other fine in error or otherwise contrary to the terms and provisions of this Article, they may appeal such parking ticket or other fine as follows:

1. Within ten (10) business days of the issuance of the ticket or fine, the owner of such motor vehicle may submit a written appeal to the district parking operator through the city's website established for the controlled and/or metered parking within the city or alternative procedure adopted in writing by the district parking operator. Such written appeal shall include an email or mailing address for such appellant. If no appeal is filed within such time period or no email or mailing address is provided for such appellant, the validity of the ticket or fine shall be deemed admitted.

2. Within ten (10) business days of receipt of a written appeal, the district parking operator shall determine whether to enforce, reduce, or waive the ticket or fine and shall provide notice to the appellant of such decision.

3. Within ten (10) business days of receipt of the determination of the district parking operator, the appellant may appeal such decision to the special magistrate.

4. The special magistrate shall hear such appeal at their next scheduled hearing, which shall be conducted as provided in Chapter 2, Article VII, Division 2 of the Code.

5. In the event the the special magistrate upholds all or any of the ticket or fine as determined by the district parking operator, the appellant shall be responsible for all fees and costs associated with the hearing, including those of the special magistrate and the legal fees and costs of the city. In the event the special magistrate overturns the decision of the district parking operator and waives the ticket or fine, the city shall bear the costs of the special magistrate and its own legal fees and costs.

SECTION 2. Conflict. All ordinances, resolutions, official determinations or parts thereof previously adopted or entered by the City or any of its officials and in conflict with this ordinance are repealed to the extent inconsistent herewith.

SECTION 3. Severability. If a Court of competent jurisdiction at any time finds any provision of this Ordinance to be unlawful, illegal, or unenforceable, the offending provision shall be deemed severable and removed from the remaining provisions of this Ordinance which shall remain in full force and intact.

SECTION 4. Effective Date. This ordinance shall take effect upon final reading and approval.

VOTE RESULTS OF FIRST READING:

Mayor Elaine Brown
Vice Mayor Fred Jones
Councilor Kerry Chin
Councilor Lauren Key
Councilor Josh Messinger

Passed on First Reading this ____ day of March, 2021.

VOTE RESULTS OF SECOND AND FINAL READING:

Mayor Elaine Brown
Vice Mayor Fred Jones
Councilor Kerry Chin
Councilor Lauren Key
Councilor Josh Messinger

Passed on Second and Final Reading this ____ day of April, 2021.

Elaine Brown, Mayor

ATTEST:

Catherine Ponson, City Clerk

Approved as to form and content:

Zachary Roth, City Attorney



Item # 10A
Res. No. 2021-05

CITY OF NEPTUNE BEACH
CITY COUNCIL MEETING
STAFF REPORT

- AGENDA ITEM:** RESOLUTION NO. 2021-05, A Resolution of the City of Neptune Beach Requesting a Beaches Trail Loop/East Coast Greenway Feasibility Study Be Included in the North Florida Transportation Planning Organization's 2021/2022 Unified Planning Work Program
- SUBMITTED BY:** Grants and Resiliency Coordinator Colin Moore
- DATE:** February 24, 2021
- BACKGROUND:** The City is requesting that that the North Florida Transportation Planning Organization include a Beaches Trail Loop/East Coast Greenway Feasibility Study in the 2021/22 Unified Planning Work Program (UPWP).
- Study requests are submitted to the North Florida Transportation Planning Organization (TPO) each February for consideration. This study was included in the UPWP for FY 2020/21 through 2021/22 and is tentatively scheduled to begin in Fall, 2021. The TPO has requested resolutions from the Beaches Communities showing continuing support for this study.
- BUDGET:** N/A
- RECOMMENDATION:** Approve Resolution No. 2021-05
- ATTACHMENT:** 1. Res. No. 2021-05



RESOLUTION NO. 2021-05

A RESOLUTION OF THE CITY OF NEPTUNE BEACH REQUESTING A BEACHES TRAIL LOOP/EAST COAST GREENWAY FEASIBILITY STUDY BE INCLUDED IN THE NORTH FLORIDA TRANSPORTATION PLANNING ORGANIZATION'S 2021/2022 UNIFIED PLANNING WORK PROGRAM.

WHEREAS, the East Coast Greenway is a proposed 3,000-mile, shared-use pathway that will pass through Duval County to connect cities along the eastern seaboard from Calias, Maine to Key West, Florida; and

WHEREAS, the Greenway, considered the “urban equivalent of the Appalachian Trail”, will pass through sites showcasing the nation’s scenic, historic, and cultural diversity; and

WHEREAS, the Greenway will spur the building of a network of pedestrian and bicycling greenways through the Beaches Communities of Duval County, a goal supported by the City of Neptune Beach; and

WHEREAS, the Greenway will serve bicyclists, walkers, the physically challenged, and other non-motorized users, both residents and long-distance travelers; and

WHEREAS, the Greenway, by providing an off-road route separated from vehicular traffic, will encourage people of all ages to increase the time they spend outdoors, offering improved health and physical fitness through improved access to their communities; and

WHEREAS, the City of Neptune Beach procured the services of Dover, Kohl & Partners in 2019 to develop a section devoted to Beautiful Streets & Trails as part of the Neptune Beach Vision Plan; and

WHEREAS, the City of Jacksonville Beach has created an Urban Trails Committee that has developed a preliminary trail connectivity plan; and

WHEREAS, the City of Atlantic Beach Planning & Community Development Department has developed a draft Bicycle and Pedestrian Connectivity plan; and

WHEREAS, the City of Neptune Beach, the City of Atlantic Beach, and the City of Jacksonville Beach would all benefit from a feasibility study identifying a Beaches Trail Loop/East Coast Greenway route that crosses municipality boundaries and coordinates with the planning efforts of each of the Beaches Communities

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NEPTUNE BEACH, FLORIDA, THAT:

SECTION 1. The City of Neptune Beach hereby authorizes the formal request and does formally request that the North Florida Transportation Planning Organization include a Beaches Trail Loop/East Coast Greenway Feasibility Study in the 2021/2022 Unified Planning Work Program.

SECTION 2. This Resolution shall become effective immediately upon its adoption.

This Resolution adopted by the City Council of Neptune Beach, Florida, at the Regular Council Meeting held this 1st of March, 2021.

Elaine Brown, Mayor

ATTEST:

Catherine Ponson, CMC
City Clerk

Task 5.10—East Coast Greenways (Beaches) Feasibility Study

Responsible Agency

North Florida Transportation Planning Organization

Purpose

To determine the feasibility of constructing a trail parallel to the beach through Atlantic, Neptune and Jacksonville Beaches.

Previous Work

- North Florida Regional Bicycle and Pedestrian Master Plan
- North Florida Regional Multi-Use Trail Master Plan

Required Activities

- Coordinate with staff in Neptune and Jacksonville Beaches to identify potential alignments
- Develop preliminary cost estimate
- Coordinate with Atlantic, Neptune and Jacksonville Beaches for public outreach

Milestones/End Products/Target Dates

- Public outreach consistent with the Public Participation Plan, Fall 2020
- Draft document for review March 2021
- Final document for publication and posting June 2021

Task 5.10-East Coast Greenway (Beaches) Feasibility Study

FISCAL YEAR 2021/22

Budget Category	FHWA (SU)	TOTAL
a. Personnel Services	-	-
b. Consultant Services	75,000	75,000
c. Other Direct Services	-	-
Total Other Direct Services	-	-
GRAND TOTAL	75,000	75,000