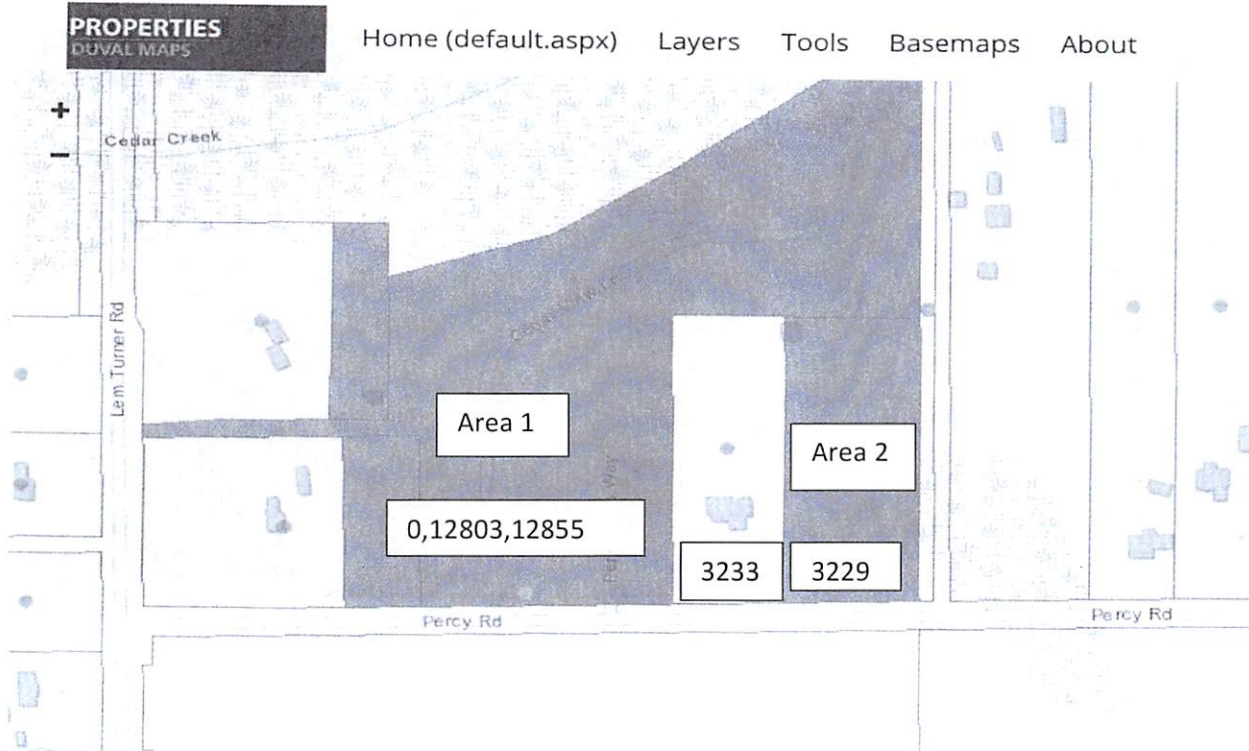


Percy Oaks Development  
Re-Zoning

The Percy Rd and Northlake Communities are both very much opposed to this new Ordinance number 2019-0373. We do not view ourselves as separate communities, but as one community whether we live on Percy Rd or off Percy Rd, being that there is only one way in and out of the community on Percy Rd. We are willing to go with the first compromise from 2005 with 60' and 70' lots. This ordinance is for the re-zoning of two areas of land that are separated by about four acres of land. (Map 1)

Area 1	Area 2
0 Lem Turner Rd, 12803 Lem Turner Rd, and 12855 Lem Turner Rd. (These lots also border Percy Rd.)	3229 Percy Road

- Per city records in September 2018 there was a Corrective Warranty Deed filed between NRNS Acquisition Percy Oaks LLC and Percy Oaks Partners, LLC (Area 1)
- Per city records in December 2018 there was General Warranty Deed filed between William and Cynthia Morrison and Percy Oaks Partners, LLC (Area 2)
- Trees were removed from both areas of land April, May of 2019
- On the 3229 Percy Rd land there was a home and barn. The barn was removed sometime around late December of 2018 the home was removed at the time the trees were removed and per city records building permit B19-191245.000 finalized NIF Paid 5/14/2019 Demolition of home.



(Map 1)

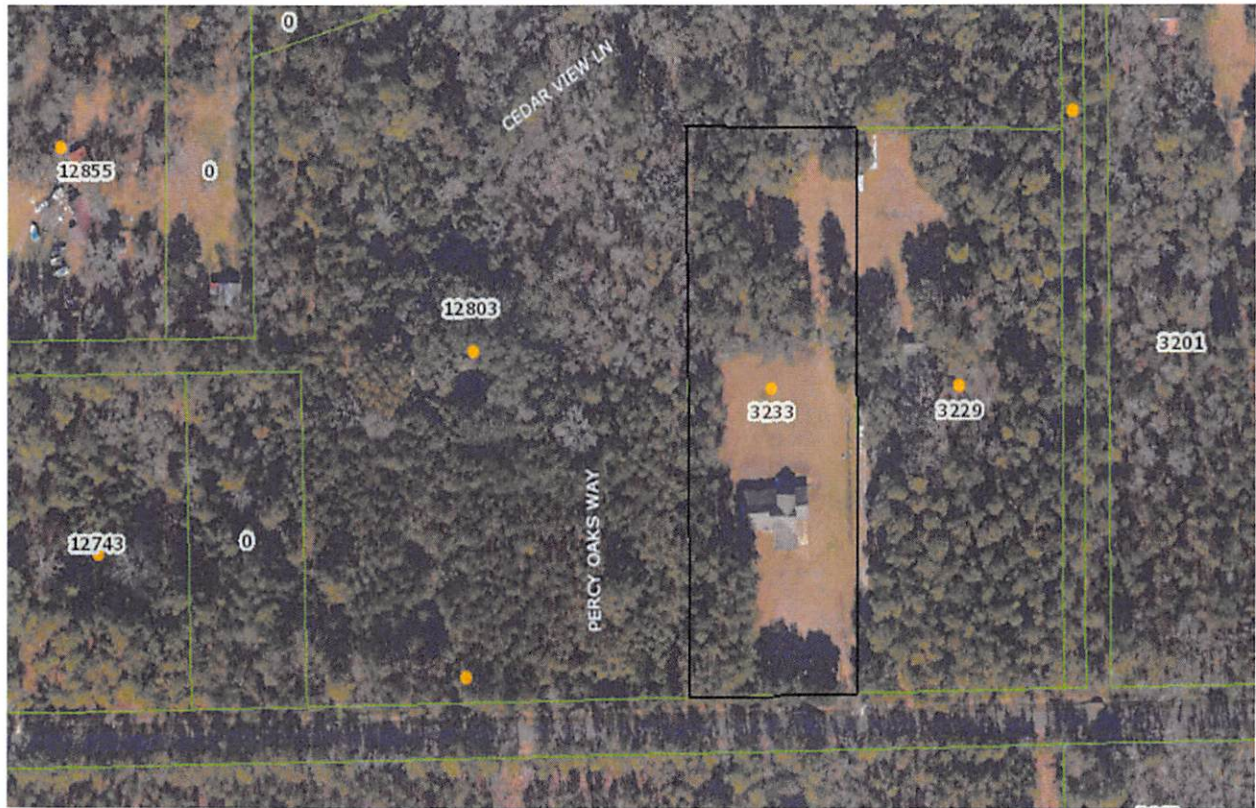
In 2005 another developer wanted to develop Area 1 in the above Map 1 and the community worked with the developer and compromised for the development of 42 single family homes on 60' and 70' lots.

- Now some 14 years later we now have another developer wanting to develop both area 1 and area 2 in the above map 1. Which is more land than the first, wanting us to compromise on the compromise with the first developer.
- With this new request you would have Mrs. Brown home which sits on about 4 acres in the middle of the land that is being looked at for development 3233 Percy Rd.
- We have met with the developer lawyer Mr. Harden about three or four times and have gone back and forth. We asked Mr. Harden to put in writing just what his client was willing to do and so far we have not received anything in writing. At one of our meeting Mr. Harden said they were willing to do away with the townhome and just do 95 single family homes. But then at the LUZ meeting on August 20 Mr. Harden said they would be willing to do around 75 single family homes.

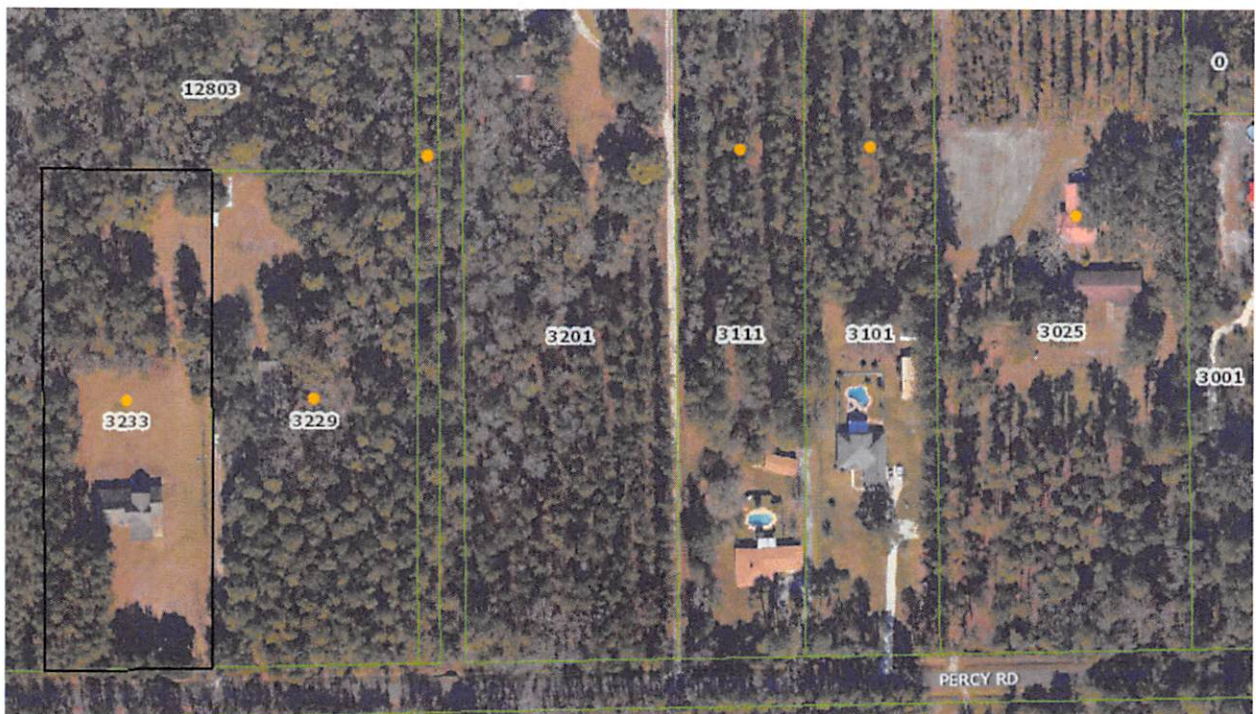
Most homes along Percy Rd and roads off Percy Rd (NorthLake) sit on 1 acre of land or more. Most lots are 100' are more across the front/street side.( <http://maps.coj.net/duvalproperty/#> )



Lem Turner and Percy Rd



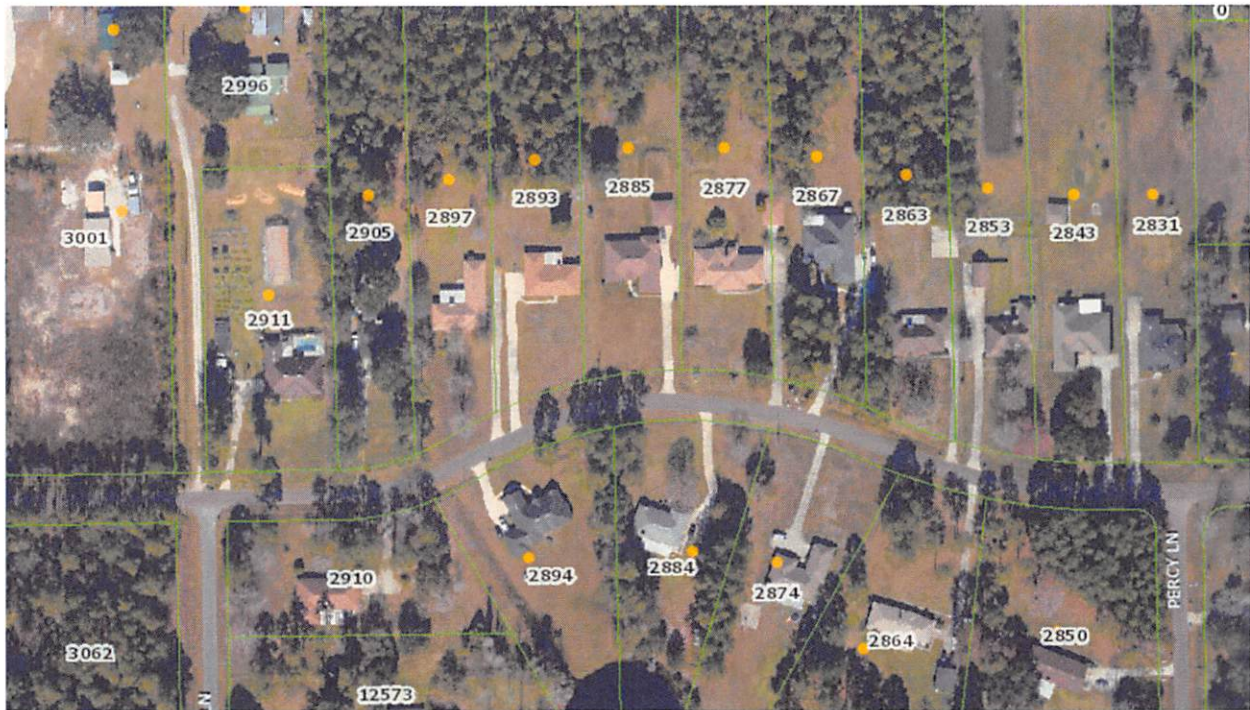
Percy Rd (Brown)



Percy Rd



Percy Rd (NL)



Percy Rd (NL)



Percy Rd (NL)



Percy Rd (NL)

8/23/2019

Duval Property Map

**PROPERTIES**  
DUVAL MAPS

- Home (default.aspx)
- Layers
- Tools
- Basemaps
- About



maps.coi.net/duval/property/#



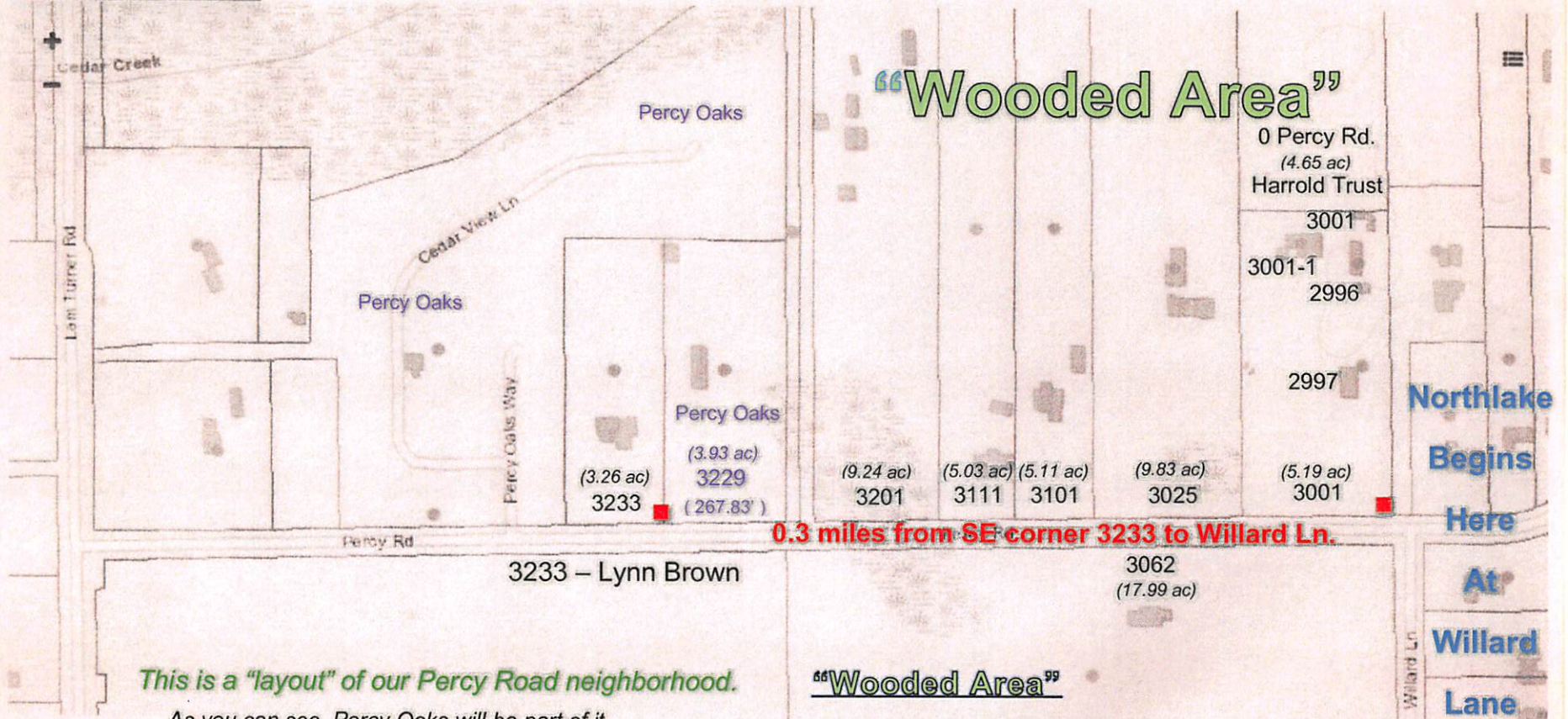
1/1

# RE: Percy Oaks rezoning Ordinance 2019-0373

9/16/2019

My Neighborhood Map

MY NEIGHBORHOOD  
DUVAL MAPS



0.3 miles from SE corner 3233 to Willard Ln.

*This is a "layout" of our Percy Road neighborhood.*

*As you can see, Percy Oaks will be part of it.*

*That is why we, the Percy Road neighborhood,  
is so concerned about the future of our community.*

"Wooded Area"

- 3201 – Larry & Joan Harrold
- 3111 – Nora J. Miller
- 3101 – Paul D. George
- 3025 – Harrold Trust
- 3001 – Connie Northway
- 3001-1 – Jonathan Lizza
- 2997 – Clint Northway
- 2996 – William Graham

## Timeline Summary – Ordinance 2019=0373

By Lynn Brown

**RE: Percy Oaks rezoning Ordinance 2019-0373 & Statements made by Paul M. Hardin before the Land Use & Zoning Committee meeting on August 20, 2019.**

**12/21/2018: Percy Oaks Partners purchased 3229 Percy Road property.**

**Item 1:** Rep. Danny Becton asked Mr. Hardin if the property was cleared before sale to Percy Partners.

Mr. Hardin replied that it had been cleared prior to purchase by Percy Partners by the previous owner as an “estate cut” and he sold the pine trees that were there.

**Note: Pine trees were still there in mid-March when I was out to mow on my property at 3233. If there was an “estate cut”, why were oak trees still there and have white surveyor’s tape tied around the trunks?**

(Refer to “Percy Oaks Detailed Timeline, Ordinance 2019-373)

**3/22/2019:** Percy Oaks Partners obtained a “Site Clearing” permit for 3229 Percy Road.

**3/25/2019:** Percy Oaks Partners obtained a “Notice of Commencement for Demolition Only” for the single family home located at 3229 Percy Road.

**5/10/2019:** Percy Oaks Partners obtained “Notice of Demolition or Asbestos Renovation” for single family residence at 3229 Percy Road. Demolition Start: 5/28/2019, Finish: 5/29/2019.

**5/14/2019:** Percy Oaks Partners obtained “Onsite Sewage Treatment & Disposal System” construction permit for 3229 Percy Road.

---

**Item 2:** Mr. Hardin incorrectly stated that “this piece of property is as the crow flies, probably ½ mile from their neighborhood. Between us and them is somewhere between 20 and 40 acres of wooded land.”

What Mr. Hardin doesn’t realize is that the residents living on Percy Road consider all of Percy Road their neighborhood. Percy Oaks is not ½ mile from Northlake, **it is 0.3 miles from the SE corner of 3233 Percy Road to Willard Lane** (which is the beginning of the Northlake community).

Furthermore, there are 8 residences in the 20 to 40 acres of the “Wooded Area” between Percy Oaks at 3229 Percy Road and Willard Lane. These people were living here before Northlake came into being.

(Refer to the “layout” of the Percy Road neighborhood.)

---

**Item 3:** As for Mr. Hardin’s referral to the “value” of his proposed PUD units, price has nothing to do with the neighborhood’s objections to his proposal. This is like comparing apples to oranges. What we object to is not the worth of the proposed PUD units, but the population density problems it will cause.

---

**The obvious questions are: How can we be expected to deal with someone whose integrity is in question?**

**Should Mr. Hardin be sworn in prior to making any statements?**

END



## Percy Oaks Detailed Timeline (Ordinance 2019-373)

Page 1 of 2

By Lynn Brown

- **6/21/2018: Christopher M. Ward & Lawrence R. Towers file “Percy Oaks Partners, LLC”** with Florida Department of State, Division of Corporations, Document #L18000152618 effective 6/21/2018, active.
- **12/21/2018: General Warranty Deed** between William A. and Cynthia J. Morrison for the sale of 3229 Percy Road to Percy Oaks Partners, LLC, Book/Page: 18648/358.
- **3/1/2019 (Exhibit E): Percy Oaks PUD plan** for Percy Oaks Partners, LLC.
- **3/5/2019: Letter from JEA** to Chris Ward re availability of electric, potable water, sanitary sewer & reclaimed water service. Project Name: Percy Road, Availability #: 2018-0493.
- **3/5/2019 (Exhibit D): PUD Written Description**, Percy Oaks Partners, RE #'s 019455-000, 019456-0050 & 019494 (portion).
- **3/6/2019: Application for Percy Oaks Partners PUD**, by Agent/Owner: Paul M. Harden/Chris Ward.
- **3/6/2019: Checklist/Baseline Review** submitted by Agent/Owner: Paul M. Harden/Chris Ward.
- **3/22/2019: “Site Work Permit”:** L-19-159477.000” for 12803 Lem Turner Road to Percy Oaks Partners, LLC, owner, for **“Site Clearing”**. *This permit posted & located on a tree in an inaccessible fenced area at 3229 Percy Road.*
- **3/25/2019: NOTICE of COMMENCEMENT for Demolition Only** at 3229 Percy Road, Permit No. B19-191245.000, Tax Folio No. 019455.0000, State of Florida, Duval County (Contractor: Towers Contracting Co. of NE FL, Inc., Owner: Chris Ward),
- **4/29/2019:** Duval County, City of Jacksonville, **General Collection Receipt** in the amount of \$2,625.00 to account #CR507169 for **PUD Rezoning** located at 12803 Lem Turner Road (Z-2285), Rezoning/Variance/Exception in the name of Paul M. Harden/Christopher Ward.

**By Lynn Brown**

- **5/10/2019:** Florida Department of Environmental Protection, **Notice of Demolition or Asbestos Renovation**, for single-family residence at 3229 Percy Road, issued to Percy Oaks Partners, LLC, Contractor: Charles R. Towers II, Owner/Operator: Chris Ward, Manager. **Demolition Start: 5/28/2019, Finish: 5/29/2019.**
- **5/10/2019:** Building Inspection Division, Permit #B-19-191245.000, Issued: 5/10/2019, **for demolition of single-family residence at 3229 Percy Road.** Contractor: Charles Towers II. Chris Ward, Contact for Percy Oaks Partners, LLC,
- **5/14/2019:** State of Florida, Department of Health, Onsite Sewage Treatment & Disposal System, Permit for OSTDS Abandonment, Construction, Permit #16-SJ-1949129, Application #AP1414015, Document #PR1226311, Applicant: Percy Oak Partners, LLC, Property Address: 3229 Percy Road (Property ID #: 019455-0000), Expiration Date: 8/12/2019.
- **6/10/2019:** I (Lynn Brown) received a **“Notice of Public Meetings & Hearings”**, envelope postmarked 6/6/2019. This is the only notification I have ever received about the Percy Oaks PUD.
- **NOTE:** No rezoning signs were posted prior to site clearing.

**END**

Google Maps



Google



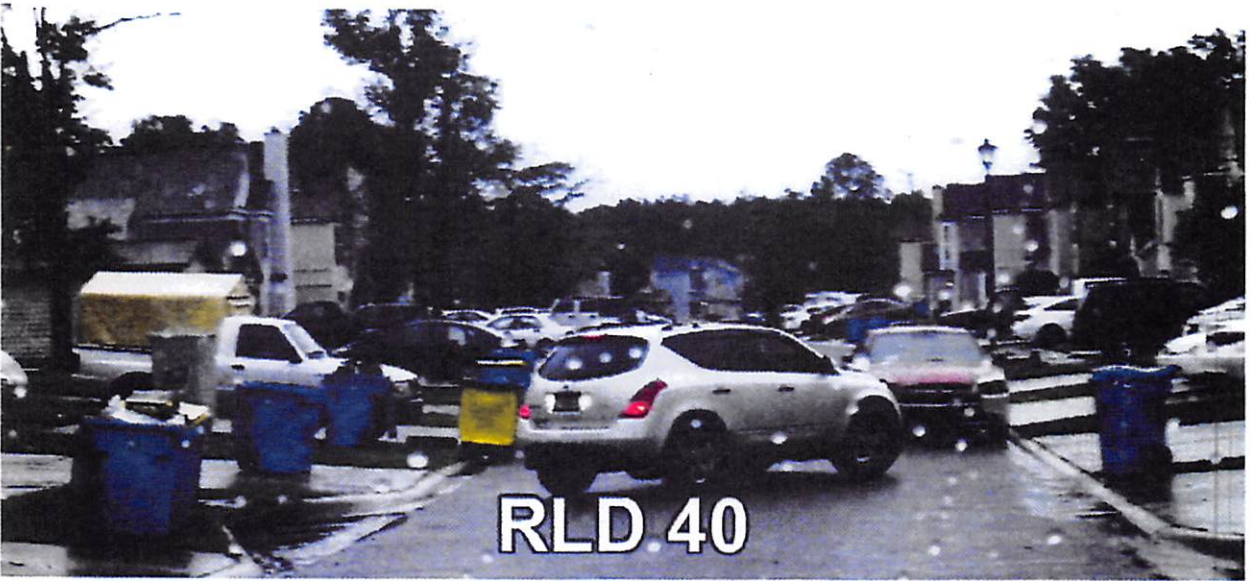
**Sample homes in Northlake subdivision**

# Percy Oaks Pud This is what it will look like?

2019-0373-PUD  
3229  
PERCY  
ROAD



RLD 40

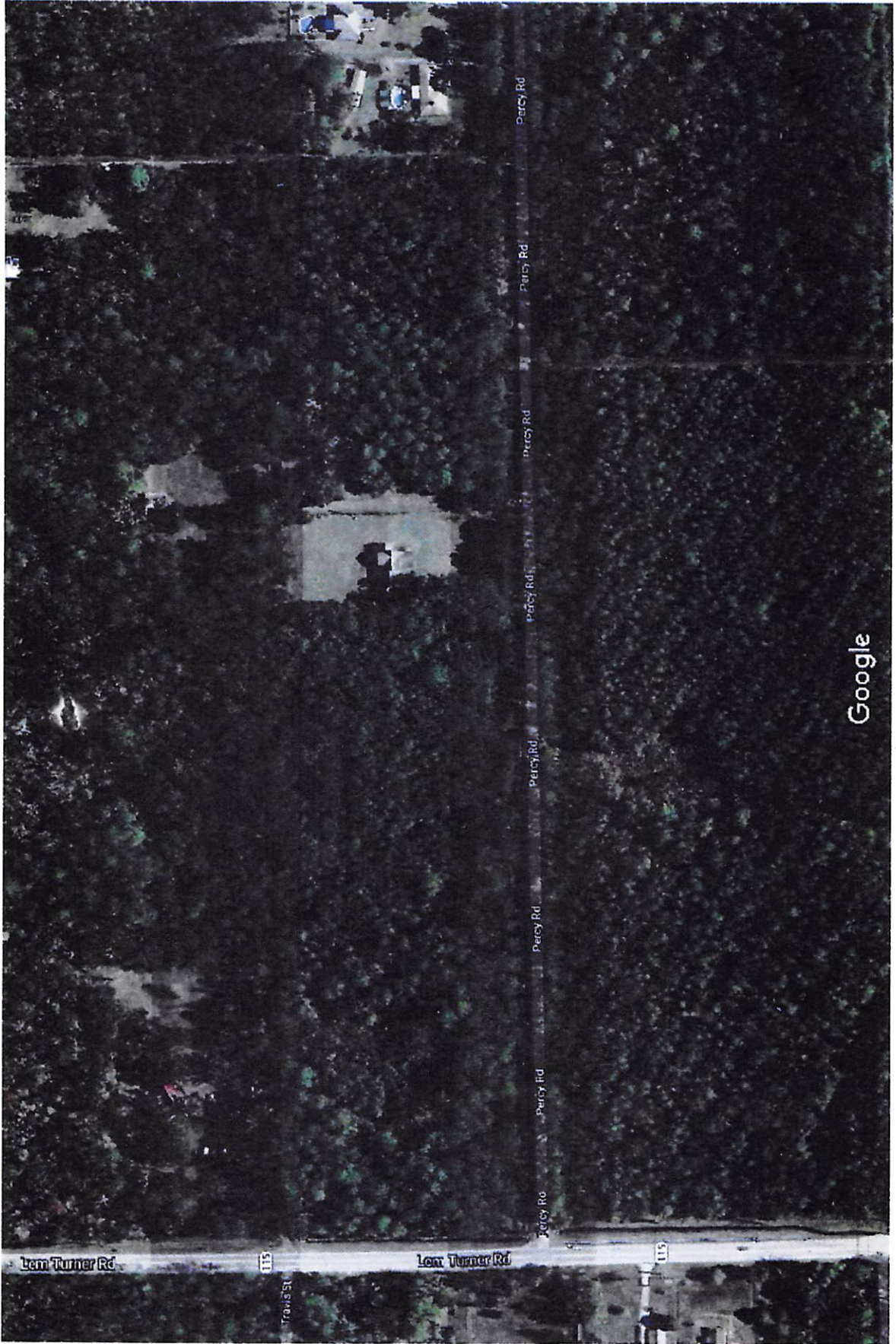


RLD 40

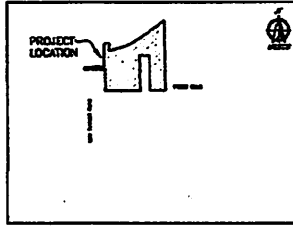


RLD 60

012803 & 128565  
LEM  
TURNER



p5



LOCATION MAP

**SITE SUMMARY**

- DEVELOPER:**  
PERCY OAKS PARTNERS, INC  
181 HANFORD POSE DRIVE, SUITE 1  
ST. AUGUSTINE, FLORIDA 32082  
PHONE: 904-854-1883
- ARCHITECT:**  
DOMINION ENGINEERING GROUP  
4348 SOUTHPOINT BLVD, SUITE 204  
JACKSONVILLE, FLORIDA 32216  
PHONE: 904-854-4500  
FAX: 904-854-4505
- SURVEYOR:**  
ARJ LAND SURVEYORS  
5647 LURELLA STREET  
JACKSONVILLE, FLORIDA 32207  
PHONE: 904-346-1736
- EXISTING VEGETATION:**  
WOODS
- ZONING/PUD:**  
PUD
- TOTAL SITE AREA SUMMARY:**  
TOTAL SITE AREA = 23.83 AC.± (100%)  
SINGLE FAMILY AREA = 5.28 AC. ± (22%)  
MULTI FAMILY AREA = 6.81 AC. ± (28%)  
ACTIVE REC/OPEN SPACE = 0.86 AC.± (3%)  
PASSIVE OPEN SPACE, WETLANDS, PONDS = 8.22 AC.± (34%)  
PUBLIC R/W = 2.33 AC.± (10%)  
MAXIMUM COVERAGE OF BUILDINGS = 7.26 AC.± (30%)  
NUMBER OF SINGLE FAMILY LOTS = 42  
NUMBER OF MULTI FAMILY LOTS = 60

**TYPICAL SINGLE FAMILY LOT SIZES:** 40'x110'

**MIN LOT AREA:** 4,000 sq'

**BUILDING SET BACK INFORMATION:**

FRONT = 20'

SIDE = 5'

REAR = 10'

**MAXIMUM LOT COVERAGE:** 35%

**TYPICAL MULTI FAMILY LOT SIZES:** 20'x100'

**MIN LOT AREA:** 2,000 sq'

**BUILDING SET BACK INFORMATION:**

FRONT = 20'

SIDE = 0' FEET FOR INTERIOR UNITS, 10' FOR END UNITS

REAR = 5' FEET FOR INTERIOR UNITS, 10' FOR END UNITS

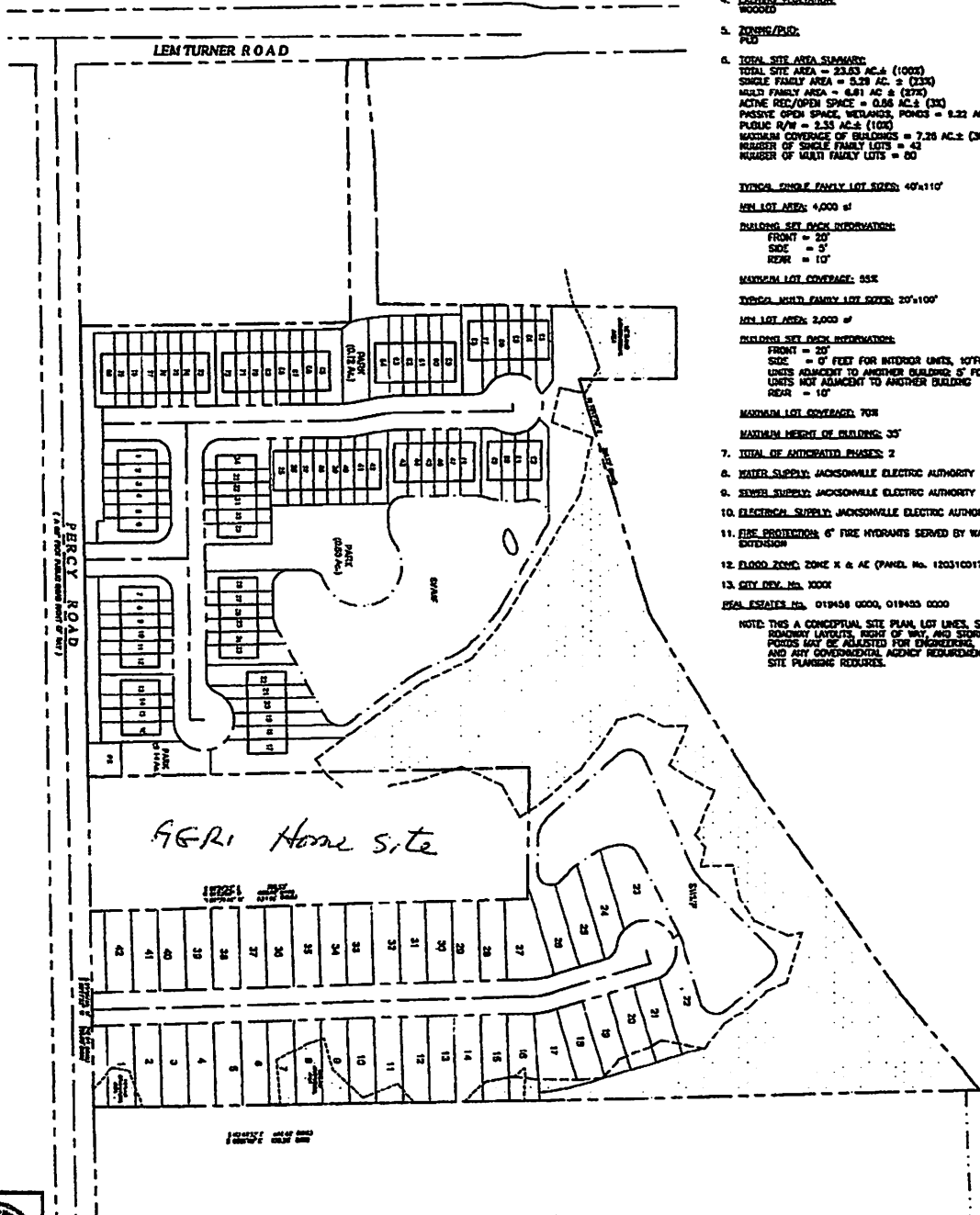
REAR = 10'

**MAXIMUM LOT COVERAGE:** 70%

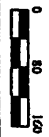
**MAXIMUM HEIGHT OF BUILDING:** 35'

- TOTAL OF AUTHORITY PHASES:** 2
- WATER SUPPLY:** JACKSONVILLE ELECTRIC AUTHORITY
- SEWER SUPPLY:** JACKSONVILLE ELECTRIC AUTHORITY
- ELECTRICAL SUPPLY:** JACKSONVILLE ELECTRIC AUTHORITY
- FIRE PROTECTION:** 6" FIRE HYDRANTS SERVED BY WATER MAIN DISTRICT
- FLOOD ZONE:** ZONE X & AE (FAND. No. 1203100125)
- CITY DEV. NO.:** 1000
- REAL ESTATE NO.:** 019458 0000, 019453 0000

NOTE: THIS IS A CONCEPTUAL SITE PLAN, LOT LINE, SIZE, ROADWAY LAYOUTS, RIGHT OF WAY, AND STORM WATER POUNDS MAY BE ADJUSTED FOR ENGINEERING, GEOMETRY, AND ANY COMMERCIAL AGENCY REQUIREMENTS AND AS SITE PLANNING REQUIRES.



GERI Home site



DATE: MARCH 01, 2010

PAGE \_\_\_ OF \_\_\_

NO.	REVISION	DATE
1	ISSUED FOR PERMITS	03/01/2010
2	REVISED PER COMMENTS	03/01/2010
3	REVISED PER COMMENTS	03/01/2010
4	REVISED PER COMMENTS	03/01/2010
5	REVISED PER COMMENTS	03/01/2010
6	REVISED PER COMMENTS	03/01/2010
7	REVISED PER COMMENTS	03/01/2010
8	REVISED PER COMMENTS	03/01/2010
9	REVISED PER COMMENTS	03/01/2010
10	REVISED PER COMMENTS	03/01/2010
11	REVISED PER COMMENTS	03/01/2010
12	REVISED PER COMMENTS	03/01/2010
13	REVISED PER COMMENTS	03/01/2010
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23	REVISED PER COMMENTS	03/01/2010
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26	REVISED PER COMMENTS	03/01/2010
27	REVISED PER COMMENTS	03/01/2010
28	REVISED PER COMMENTS	03/01/2010
29	REVISED PER COMMENTS	03/01/2010
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34	REVISED PER COMMENTS	03/01/2010
35	REVISED PER COMMENTS	03/01/2010
36	REVISED PER COMMENTS	03/01/2010
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40	REVISED PER COMMENTS	03/01/2010
41	REVISED PER COMMENTS	03/01/2010
42	REVISED PER COMMENTS	03/01/2010

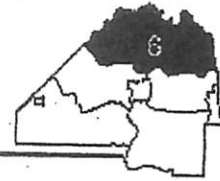
PERCY OAKS  
FOR  
PERCY OAKS PARTNERS, LLC

PUD PLAN

DOMINION ENGINEERING GROUP, INC.  
PLANNERS AND ENGINEERS  
4348 SOUTHPOINT BLVD, SUITE 204, JACKSONVILLE, FLORIDA 32216  
TEL: 904-854-4500 C.A. NUMBER: 56321 FAX 904-854-4505  
www.dmg-eng.com

pb

**North District  
Citizens Planning Advisory Committee**  
 Chair: Mike Getchell Vice Chair: Teresa Moore



July 15, 2019

To: Honorable Danny Becton, Chair LUZ

Re: Ordinance # 2019-0373

Dear Chairman Becton:

The referenced Ordinance proposes to rezone from AGI and PUD to a PUD 22.69 acres of land located on the north side of Percy Road, east of Lem Turner Road. The PUD is currently subject to the provisions of Ordinance 2005-833-E.

This Ordinance has been reviewed by the North District CPAC and we are very much opposed to it.

There is an existing PUD; while not ideal it is preferable to what is being proposed. The only reason for the proposed PUD is to increase profit for the Developer – at the expense and quality-of-life of surrounding neighborhoods. The current PUD allows 42 homes on 60 and 70 feet (width) lots. The proposed PUD is seeking 42 homes on 40 feet (width) lots and 84 townhomes.

The adjacent homes to the east of this property are situated on Agricultural and Rural Residential (with the smallest lot being 1-1/2 acres). There is no transition between the lowest density to the most intense density. This runs counter to what the North District CPAC has been fighting for – to provide an alternative to the over-crowding seen in other parts of Jacksonville.

If the proposed PUD is approved, it will be the standard bearer for rezoning surrounding properties. You will see more PUD to PUD rezoning's to cash in (on High Density zoning).

The residents immediately east of the proposed PUD must ingress/egress via Percy Road – there is no other choice for them.

There is no comparison of the cost of a home on a 40' lot to a home on several acres; the AGI and RR homes will lose value.

We ask that you not look at this in a vacuum; please look at the big picture and consider the greater ramifications approval of Ordinance 2019-0373 could have on existing communities and future rezoning's.

Therefore, the North District CPAC recommends that Ordinance 2019-0373 be denied.

Respectfully submitted,

Mike Getchell

Cc: City Council President: Scott Wilson; Vice President: Tommy Hazouri; Members: Joyce Morgan, Al Ferraro, Aaron L. Bowman, LeAnne Cumber, Michael Boylan, Reggie Gaffney, JuCoby Pittman, Garrett L. Dennis, Brenda Priestly Jackson, Danny Becton, Randy White, Rory Diamond, Randy DeFoor, Terrance Freeman, Ronald B. Salem, Matt Carlucci and Samuel Newby

E-copy: Council Legislative Services: Carol Owens, Cheryl Brown, Jessica Matthew, Melanie Wilkes  
 Attorney: Shannon Eller  
 Planning Commission: Folks Huxford,  
 Planning Department: William Killingsworth, Kristen Reid, Bruce Lewis, Laurie Santana Erin Abney  
 Neighborhood Department: Bryan Mosier, Chaquitta Moore, Lisa Ransom, Michelle Godwin-Ware





**North Jacksonville Civic Association, Inc.**

**311 Baisden Road  
Jacksonville, Florida 32218**

**Mrs. Dot Mathias, President  
904-757-4749**

**Dr. Susan Ruffin, Vice President**

---

June 24, 2019

Dear Mayor Curry:

RE: 2019-0373-PUD 3229 Percy Road and 0.12803 & 128565 Lem Turner Road :

This application seeks to rezone approximately 23.53 acres of property from PUD 2005.833 to PUD to allow for the construction of 42 single family homes on 40' lots and 84 townhomes.

The North Jacksonville Civic Association, Inc. submits this letter in support of the communities surrounding this property in their opposition to this rezoning. The current PUD was crafted in good faith with the surrounding communities making many concessions. Now, they are being asked to make even more concessions. Listed below are just some of the reasons why this rezoning should be denied:

1. This Application is not a reasonable minor modification to an existing PUD; it is essentially a completely new PUD which more than doubles the number of units previously proposed.
2. It provides no transition from Agricultural and Rural Residential zoning to (extremely) high density (40' lots and townhomes) being proposed.
3. No consideration has been given to the fact that farm animals are allowed in Agricultural and Residential areas.
4. Percy Road is the only ingress/egress for the Northlake community which is east of this property.
5. The Northlake community consists of large brick homes on 1-1/2 to 5 acres sites. Homes on 40' lots and townhomes cannot compare in value to large brick homes on large acreage.

The NCA and the homeowners of the surrounding communities respectfully request that the rezoning be denied, and the existing 2005 PUD be honored. We trust that you support their objection so as not to devalue the worth of their homes and degrade the quality of life that those residents now enjoy..

Respectfully submitted,

Dorothy Mathias, President  
North Jax. Civic Association, Inc.

PS

# The EDEN Group, Inc.

100 East Hill  
Jacksonville, Florida 32202  
904.723.0136

June 24, 2019

Dear City Council Members::

RE: 2019-0373-PUD 3229 Percy Road and 0.12803 & 128565 Lem Turner Road

This application seeks to rezone approximately 23.53 acres of property from PUD 2005.833 to PUD to allow for the construction of 42 single family homes on 40' lots and 84 townhomes

The EDEN Group supports the communities surrounding this property in their opposition to this rezoning. The current PUD was crafted in good faith with the surrounding communities making many concessions. Now, they are being asked to make even more concessions. Listed below are just some of the reasons why this rezoning should be denied:

1. This Application is not a reasonable minor modification to an existing PUD; it is essentially a completely new PUD which more than doubles the number of units previously proposed.
2. It provides no transition from Agricultural and Rural Residential zoning to (extremely) high density (40'lots and townhomes) being proposed.
3. No consideration has been given to the fact that farm animals are allowed in Agricultural and Residential areas.
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5. The Northlake community consists of large brick homes on 1-1/2 to 5 acres sites. Homes on 40'lots and townhomes cannot compare in value to large brick homes on large acreage.

The EDEN Group and the homeowners of the surrounding communities respectfully request that the rezoning be denied, and the existing 2005 PUD be honored. Please, do not further devalue the worth of their homes and degrade the quality of life that those residents now enjoy.

Respectfully submitted,

  
Richard L. Berry, Executive Director

p9a



**Northside Business Leaders, Inc.**  
Post Office Box 28554 • Jacksonville, Florida 32226-8554  
[www.northsidebusinessleaders.com](http://www.northsidebusinessleaders.com)

June 30, 2019

Mayor Lenny Curry

City Hall at St. James Building  
117 W. Duval St. Suite 400  
Jacksonville, FL 32202

RE: 2019-0373-PUD 3229 Percy Road and .012803 & 128565 Lem Turner Road

Dear Mayor Curry,

This application seeks to rezone approximately 23.53 acres of property from PUD 2005.833 to PUD to allow for the construction of 42 single family homes on 40' lots and 84 townhomes.

The Northside Business Leaders Club submits this letter in support of the communities surrounding this property in their opposition to the rezoning. The current PUD was crafted in good faith with the surrounding communities making many concessions. Now, they are being asked to make even more concessions. Listed below are just some of the reasons why this rezoning should be denied:

1. This application is not a reasonable minor modification to an existing PUD; it is essentially a completely new PUD which more than doubles the number of units previously proposed.
2. It provides no transition from Agricultural and Rural Residential zoning to (extremely) high density (40' lots and townhomes) being proposed.
3. No consideration has been given to the fact that farm animals are allowed in Agricultural and Residential areas.
4. Percy Road is the only Ingress/ egress for the Northlake community which is east of this property.
5. The Northlake community consist of large brick homes on 1½ to 5 acres sites. Homes on 40' lots and townhomes cannot compare in value to large brick homes on large acreage.

The Northside Business Leaders Club, along with other civic organizations and the homeowners of the surrounding communities respectfully request that the rezoning be denied, and the existing 2005 PUD be honored. We trust that you support our objection to the devaluation of these existing homes and degrading the quality of life currently enjoyed by these existing residents.

### **Ordinance 2019-0373**

The Northlake Subdivision and surrounding residents are opposed to Ordinance 2019-0373. We made all the concessions we could possibly make in the current PUD (2001-0833E).

It is our hope and intent that the enclosure documents will give you a better understanding of the situation.

**Page 1** is an overview (2018) of homes on Percy Road in the Northlake Subdivision (east of subject property). Home sites in Northlake range from 1-1/5 to 5 acres.

**Page 2** is close-up (2019) of homes in Northlake Subdivision.

**Page 3** shows subdivision with homes on 40' lots. (not meant to be representative of what this developer plans to build; but, simply to show incompatibility with AGRI and RR.

**Page 4** shows Percy Road intersecting Lem Turner Road (Google Map 2018). Subject property is in the Northeast section Percy and Lem Turner Roads. The property was cleared 2-3 months ago.

**Page 5** shows the layout of lots in the proposed PUD -2019-0373. As you can see an Agri home site is flanked by townhomes and 40' lots (a total of 126 homes). The current PUD provides for less than 50 homes on 60' and 70' lots and stays to the west boundary of the AGRI home site.

Pages 6-9 are letters supporting our opposition to Ordinance 2019-0373:

Citizens Planning Advisory Committee  
North Jacksonville Civic Association  
The EDEN Group, Inc  
Northside Business Leaders, Inc

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2019-314



June 2019 when school out for summer, which shows Glen Kernan Parkway at Hodges and Windsor Commons. GK Pkwy has one lane ingress and egress for 4 different subdivisions, 3 of which have no other ingress or egress to Hodges Blvd for 567 homeowners.

## Table of Contents

1. SITE MAPS
2. FINAL ORDER – WLD-16-01
3. 656.133 – CRITERIA FOR WAIVER OF MINIMUM DISTANCE REQUIREMENTS
4. PLANNING COMMISSION TRANSCRIPT – WLD-16-01
5. WLD APPLICATION
6. PLANNING DEPARTMENT REPORT – WLD-19-13
7. PLANNING COMMISSION TRANSCRIPT – WLD-19-13
8. CASE LAW
9. FINAL ORDER – WLD-19-13

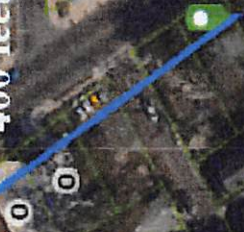
WLD 19-13

Subject Property



4250

400 feet



Subject Church

4110

4040

1353 0

1418 1408 0

1401

1415

4211

4129

4113

4101

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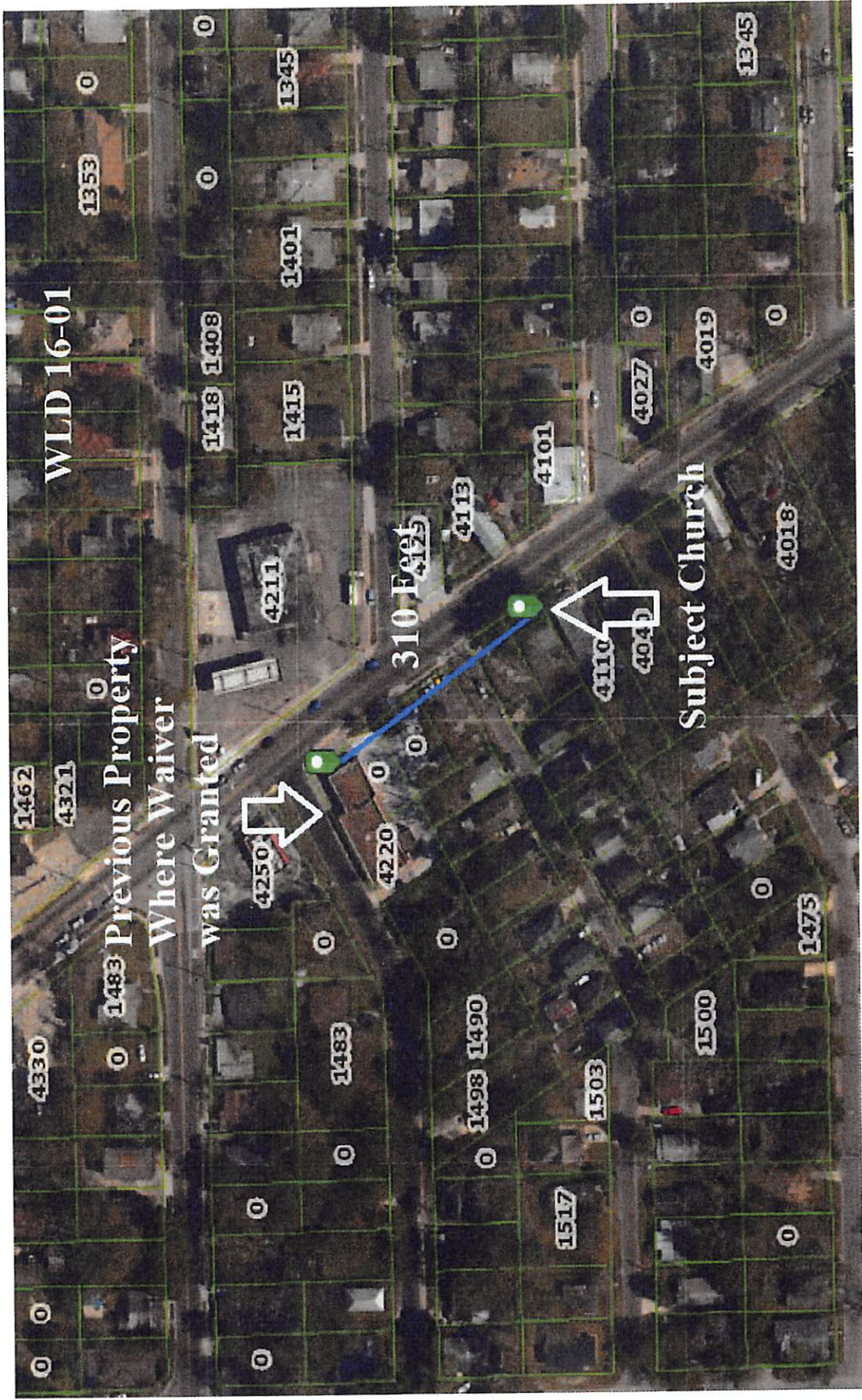
1498 1490

1503

1500

1475

4018



WLD 16-01

1483 Previous Property  
Where Waiver  
was Granted

310

Subject Church



BEFORE THE PLANNING COMMISSION  
OF THE CITY OF JACKSONVILLE

APPLICATION NO: WLD-16-01

IN RE: The Application for Waiver of Minimum  
Distance Requirements for Liquor License Location of

**H AND E BROTHERS, LLC**

**ORDER GRANTING APPLICATION FOR ZONING WAIVER  
OF MINIMUM DISTANCE REQUIREMENTS  
FOR LIQUOR LICENSE LOCATION WLD-16-01 WITH CONDITIONS**

This matter came to be heard upon the Application for Waiver of Minimum Distance Requirements for Liquor License Location **WLD-16-01** filed by George Safar, the owners of certain real property located at 4220 Moncrief Road, on behalf of H and E Brothers, LLC, seeking a waiver to reduce the required minimum distance between the subject property and a church or school from 500 feet to 310 feet in the CCG-2 Zoning District.

Having duly considered both the testimonial and documentary evidence presented at the public hearing on March 17, 2016, including the Report of the Planning and Development Department on Application **WLD-16-01** and all attachments thereto ("Staff Report"), a copy of which is attached as **Exhibit "A"**, the Planning Commission of the City of Jacksonville hereby adopts and incorporates herein the recommendations of the Staff Report, and,

**FINDS AND DETERMINES:**

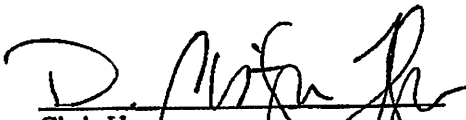
1. That the applicant has complied with all application requirements set forth in Section 656.133 of the Zoning Code.
2. **That substantial competent evidence demonstrates that the application WLD-16-01 meets, to the extent applicable, the standards and criteria set forth in Section 656.133(a) of the Zoning Code.**
3. The land to which this waiver is granted is owned by George Safar. A copy of the legal description of the subject property is attached as part of **Exhibit "A"** and incorporated by reference herein.

**NOW THEREFORE, it is ORDERED** by the Planning Commission:

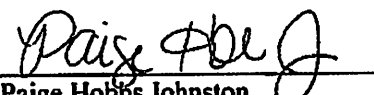
1. A Waiver of Minimum Distance Requirements for Liquor License Location **WLD-15-18** is hereby granted to H and E Brothers, LLC, thereby reducing the required minimum distance between the subject property and a church or school from 500 feet to 310 feet in the CCG21 Zoning District. The request is for the package sales of beer and wine for offsite consumption.
2. In conformity with state licensing requirements, the waiver hereby granted shall be personal to H and E Brothers, LLC, the license applicant/holder, non-transferable, and shall not run with the land as provided by Section 656.136(c) of the Zoning Code.

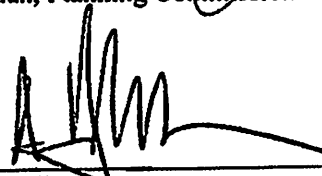
3. The waiver granted herein is subject to the following conditions:
  - (a) The package store shall not be open for business before 12:00 noon on Sundays; and
  - (b) A six foot tall 95% opaque fence shall be constructed along the southern property line.
4. Failure to exercise the waiver herein granted by commencement of the use or action herein approved within one (1) year of the effective date of this order shall render this waiver invalid and all rights arising hereunder shall terminate.
5. The Waiver herein shall not be construed as an exemption from any other applicable local, state or federal laws, regulations, requirements, permits or approvals. All other applicable local, state or federal permits or approvals shall be obtained before commencement of the development or use and issuance of this Waiver is based upon acknowledgement, representation and confirmation made by the applicant(s), owner(s), developer(s) and/or any authorized agent(s) or designee(s) that the subject business, development and/or use will be operated in strict compliance with all laws. Issuance of this Waiver does not approve, promote or condone any practice or act that is prohibited or restricted by any federal, state or local laws.
6. The approval granted herein shall not interfere with or abrogate or annul any easement, covenant or other agreement between any parties. In the event that the provisions of this Order impose a greater restriction upon the use, structures or development of the property than are imposed or required by other ordinances, rules, regulations or by easements, covenants or agreements, the provisions of this Order shall control.

Executed this 17th day of March, 2016.

  
Chris Hagan  
Chairman, Planning Commission

FORM APPROVED:

  
Paige Hobbs Johnston  
Assistant General Counsel

  
Abel Harding  
Secretary, Planning Commission

Copies to:

George Safar  
2715 Alvarado Avenue  
Jacksonville, FL 32217  
*Owners/Applicants*

Paul M. Harden, Esquire  
501 Riverside Avenue, Suite 901  
Jacksonville, FL 32202  
*Agents*

**NOTICE: This Order does not become final until the expiration of the twenty-one (21) day appeal period provided in the Zoning Code. Any work commenced during this appeal period is done at the risk of the applicant, and a building permit will only be issued after an Acknowledgement of the appeal period has been obtained from the Zoning Counter and returned to same executed properly by the applicant(s) or their agent(s).**

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Sec. 656.133. - Waivers for Minimum Distance Requirements for Liquor License Locations; Minimum Street Frontage Requirements; Signs; Minimum Distance Requirements for Medical Marijuana Dispensing Facilities; Downtown Properties.

- (a) *Waivers for minimum distance requirements for liquor license locations; waiver criteria.* Applications for minimum distance requirements for liquor license locations shall be considered by the Commission in accordance with the notice and public hearing requirements for zoning exceptions set forth in Section 656.131. Applications for waivers shall be in writing on the form **prescribed by the Commission** and filed with the Department together with the required number of copies and all required attachments. Upon receipt of the application, the Zoning Administrator shall determine whether the application is complete within five working days. If it is determined that the application is not complete, written notice shall be provided to the applicant specifying the deficiencies. The Zoning Administrator shall take no further action on the application until the deficiencies are remedied. When the application is determined to be complete, all fees must be paid as specified in Section 656.147.

The waiver for minimum distance requirements from a church or school for a liquor license location may be granted if there exist **one** or more circumstances which **negate the necessity for compliance with the distance requirements**, including, but not limited to the following:

- (1) The commercial activity associated with the alcoholic beverage use is of a lesser intensity than the commercial activity associated with the alcoholic beverage use which previously existed; e.g., there has been a reduction in the number of seats or square footage or the type of license;
- (2) The alcoholic beverage use is designed to be an integral part of a mixed planned unit development;
- (3) The alcoholic beverage use is located within a shopping center with an aggregate gross leasable area of 50,000 square feet or more, inclusive of all outparcels and meets the definition of a "bona fide restaurant", as defined in Section 656.805(c);
- (4) The alcoholic beverage use is not directly visible along the line of measurement defined in Section 656.806 and is physically separated from the church or school, **thereby negating the distance requirement** as a result of the extra travel time; or
- (5) There are other existing liquor license locations of a similar nature in the immediate vicinity of the proposed location; provided, however, that no waiver shall be granted pursuant to this criterion if the proposed liquor license location is closer to the church or school than other existing locations.

PLANNING COMMISSION  
TRANSCRIPT WLD 16-01

CITY OF JACKSONVILLE  
PLANNING COMMISSION  
MEETING

Proceedings held on Thursday, March 17, 2016,  
commencing at 1:08 p.m., City Hall, Council Chambers,  
1st Floor, 117 West Duval Street, Jacksonville, Florida,  
before Diane M. Tropa, a Notary Public in and for the  
State of Florida at Large.

PRESENT:

CHRIS HAGAN, Chairman.  
DANIEL BLANCHARD, Vice Chair.  
ABEL HARDING, Secretary.  
MARSHALL ADKISON, Commission Member.  
DAWN MOTES, Commission Member.  
BEN DAVIS, Commission Member.

ALSO PRESENT:

JIM LOVE, City Council Member.  
FOLKS HUXFORD, Chief, Current Planning.  
KRISTEN REED, Planner Supervisor.  
BRUCE LEWIS, Planning and Development Dept.  
LISA KING, Development Services Division.  
PAIGE JOHNSTON, Office of General Counsel.  
TYLER LOEHNERT, Duval County School Board.  
PATRICIA SALES, Planning and Dev. Dept.

- - -

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(904) 821-0300

1 as the City Planning and Development staff and  
2 General Counsel staff as well.  
3 Thank you for being here.  
4 And, Dr. Gaffney, thank you for being here  
5 from the mayor's office.  
6 And let me recognize Councilman Love being  
7 here. We have quite a -- quite a group up here  
8 today. Y'all are privileged.  
9 Time is granted by this body that each  
10 member of the public who wishes to speak before  
11 the Commission is limited to a three-minute  
12 presentation.  
13 And as we go along and we get into the --  
14 the last item on the agenda today, we will  
15 alter that a little bit, that I've discussed  
16 with several of the audience members.  
17 It is important that an accurate record  
18 must be kept of what the speakers say. So  
19 everybody that wishes to fill out -- wishes to  
20 speak, please fill out a blue speaker's card.  
21 That's up there, with Ms. Patricia Sales. And  
22 if you'll put that in her basket, she will give  
23 that to me. And so when your item comes up, we  
24 will be able to call your name out.  
25 Your testimony is taken down by the court  
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1 PROCEEDINGS  
2 March 17, 2016 1:08 p.m.

3 - - -

4 THE CHAIRMAN: All right. We're going to  
5 go ahead and get started here. We've got quite  
6 a few things on the agenda, and then I know we  
7 have one item that's going to probably take up  
8 the majority of our time.

9 So welcome to the Jacksonville Planning  
10 Commission. Today is March 17, 2016. The time  
11 is, I believe, 1:08.

12 As a courtesy, please place any mobile  
13 phones and tablets on silent mode.

14 And, if you will, please join me as we  
15 stand and recite the Pledge of Allegiance, and  
16 remaining standing for a brief moment of  
17 silence.

18 (Recitation of the Pledge of Allegiance.)

19 THE CHAIRMAN: Thank you.

20 All right. Let the record reflect that we  
21 do have a quorum today with Commissioners  
22 Hagan, Blanchard, Adkison, Harding, Davis, and  
23 Motes.

24 In attendance also is our Duval County  
25 Public Schools representative, Mr. Tyler  
Loehnert -- thank you for being here -- as well  
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1 reporter, Ms. Diane Tropa. And she does not  
2 take anything from anybody, so only one person  
3 at a time. And she stops typing after three  
4 minutes, right? That's not true. She doesn't.  
5 She'll take everything down.  
6 Any tangible material submitted with a  
7 speaker's presentation will become part of the  
8 public record and will be kept by this  
9 Commission. Therefore, please retain a copy of  
10 anything submitted if it is needed.  
11 Decisions by the Commission on rezonings  
12 and land use amendments are recommendations  
13 only. The recommendations are then transmitted  
14 to the Jacksonville City Council's Land Use and  
15 Zoning Committee which ultimately votes on  
16 these matters.  
17 LUZ may or may not follow the  
18 recommendation of the Planning Commission.  
19 Unless specifically deferred by LUZ, items  
20 voted on by the Planning Commission today are  
21 heard before the LUZ Committee in two weeks, on  
22 Tuesday, April 15th, 2016, for another public  
23 hearing. And that meeting is in these council  
24 chambers at 5:00 p.m.  
25 Any questions on a specific application,  
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1 of the five criteria. We find that it is  
 2 positive on that one. So with that, we  
 3 recommend to approve.  
 4 THE CHAIRMAN: Thank you, Folks.  
 5 Do you want to -- you did both of them.  
 6 All right.  
 7 Charlie Mann.  
 8 (Mr. Harden approaches the podium.)  
 9 THE CHAIRMAN: You want to --  
 10 MR. HARDEN: I'll just cover for him,  
 11 unless anybody has any questions.  
 12 THE CHAIRMAN: I appreciate that.  
 13 MR. HARDEN: Paul Harden.  
 14 I'm here for Charlie because it looks like  
 15 the Planning Department recommended approval,  
 16 there's nobody in opposition. Even I couldn't  
 17 lose this.  
 18 THE CHAIRMAN: All right. Anybody else in  
 19 the audience wishing to speak on E-15-80 or  
 20 WLD-15-18?  
 21 AUDIENCE MEMBERS: (No response.)  
 22 THE CHAIRMAN: Seeing none, I will close  
 23 the public hearing on both those items and  
 24 bring it back to the Commission.  
 25 COMMISSIONER BLANCHARD: Mr. Chairman, I  
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1 move approval of E-15-80.  
 2 COMMISSIONER HARDING: Second.  
 3 THE CHAIRMAN: Do you want to -- do you  
 4 have that condition?  
 5 COMMISSIONER BLANCHARD: With the one  
 6 condition as stated in the staff report.  
 7 THE CHAIRMAN: Okay. I've got a motion  
 8 and a second for approval of E-15-80 as  
 9 conditioned.  
 10 Discussion from the Commission?  
 11 COMMISSION MEMBERS: (No response.)  
 12 THE CHAIRMAN: Seeing none, all those in  
 13 favor?  
 14 COMMISSION MEMBERS: Aye.  
 15 THE CHAIRMAN: Opposed?  
 16 COMMISSION MEMBERS: (No response.)  
 17 THE CHAIRMAN: That motion passes.  
 18 COMMISSIONER BLANCHARD: Mr. Chairman, I  
 19 move approval of WLD-15-18.  
 20 COMMISSIONER HARDING: Second.  
 21 THE CHAIRMAN: I have a motion and a  
 22 second for approval of WLD-15-18.  
 23 Discussion from the Commission?  
 24 COMMISSION MEMBERS: (No response.)  
 25 THE CHAIRMAN: Seeing none, all those in  
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1 favor?  
 2 COMMISSION MEMBERS: Aye.  
 3 THE CHAIRMAN: Opposed?  
 4 COMMISSION MEMBERS: (No response.)  
 5 THE CHAIRMAN: That motion passes.  
 6 All right. WLD-16-01. And before staff  
 7 introduces this item, if you want to take this  
 8 opportunity to declare ex-parte communication,  
 9 I think this is a great opportunity to kind  
 10 of -- to speak about this now.  
 11 We need to -- there will be another item  
 12 coming up, Commissioners, that we need to make  
 13 sure that all of our ex-parte communication  
 14 is -- is specific to the matter, and then go  
 15 into a detailed description of what was talked  
 16 about in the ex-parte communication.  
 17 So I will start by saying, I had ex-parte  
 18 communication with Mr. Harden today on this  
 19 item. We talked about the line-of-sight issue.  
 20 And I made some recommendations that I would  
 21 like to see -- conditions that I would like to  
 22 see within the waiver of liquor -- waiver of  
 23 liquor distance application. So those are --  
 24 that's what Mr. Harden and I talked about. We  
 25 talked about that today.  
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1 Mr. Harding.  
 2 COMMISSIONER HARDING: Mr. Chair, I also  
 3 had a brief conversation with Mr. Harden this  
 4 morning and specific to the line-of-sight  
 5 issue.  
 6 COMMISSIONER BLANCHARD: I had a brief  
 7 conversation with Mr. Harden on the phone  
 8 yesterday regarding the same issues.  
 9 COMMISSIONER ADKISON: I had the same  
 10 issue, talked to Mr. Harden this morning,  
 11 line of sight.  
 12 THE CHAIRMAN: Great. Any others? Any  
 13 others? Any others?  
 14 COMMISSION MEMBERS: (No response.)  
 15 THE CHAIRMAN: All right. Folks, do you  
 16 want to give us a summary?  
 17 MR. HUXFORD: I feel left out. Mr. Harden  
 18 didn't talk to me today.  
 19 All right. Application for Waiver of  
 20 Liquor Distance WLD-16-01 is for property at  
 21 4220 Moncrief Road. The request is to reduce  
 22 the distance from a package store to a nearby  
 23 church from 500 feet to 310 feet.  
 24 The property is zoned CCG-2. And so the  
 25 use of the liquor store is allowed by right  
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13

1 anyway, but they still have to meet the  
2 distance requirement. The church in question  
3 is on the same side of the road as the proposed  
4 liquor store. I have been out to the site.

5 I know that in our staff report we -- we  
6 have recommended denial. And we maintain that,  
7 but in fairness, I would say that from the  
8 church property to the physical location of the  
9 building that's going to house the package  
10 store, it could potentially meet criteria  
11 number 4 by -- by way of it meeting the  
12 line-of-sight requirement; meaning, it's not  
13 directly visible.

14 However, it is within the boundaries of a  
15 Neighborhood Action Plan, and that's the 29th  
16 and Chase Neighborhood Action Plan. We feel  
17 that this would be -- granting this would be  
18 inconsistent with that. So for that reason, we  
19 are maintaining our recommendation to deny.

20 Thank you.

21 THE CHAIRMAN: Thank you, Folks.

22 Mr. Harden.

23 (Mr. Harden approaches the podium.)

24 MR. HARDEN: Aaron, could I get you to  
25 pass out some photographs?

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14

1 MR. GLICK: (Complies.)  
2 (Brief pause in the proceedings.)  
3 MR. HARDEN: One for everybody and Folks.  
4 Paul Harden, 501 Riverside Avenue, and  
5 representing the applicant.

6 Interestingly enough, the last item you  
7 considered has the exact same issue, and the  
8 line of sight is the exact same thing. So I  
9 have some quandary as to why the recommendation  
10 of denial on the line-of-sight issue.

11 There is one issue and but one issue for  
12 your consideration on this request: Is the  
13 alcoholic beverage use directly visible along  
14 the line of measurement defined in 656.806 and  
15 physically separated from the church? I'm  
16 passing out some photographs, and I'm going to  
17 ask you to -- to look at that, actually confirm  
18 that fact.

19 By the way, I'm going to talk about the  
20 29th and Chase plan, but the alcohol use itself  
21 is settled. This site is zoned CCG-2. Retail  
22 sale of alcohol is allowed by right in this  
23 location. And it was before the 29th and Chase  
24 plan -- which, by the way, was 14 years ago --  
25 and after the 29th and Chase plan. So the

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1 actual use is not required for an exception.

2 It's allowed by right in the location.

3 While the report suggests the building is  
4 directly visible on the site, I think  
5 Mr. Huxford conceded, after his visit  
6 yesterday -- and that's when I talked to him,  
7 not today -- that you can, in fact, not see the  
8 location.

9 And I'd like to walk quickly through  
10 these -- these photographs. The first  
11 photograph is a Google Earth depiction -- not  
12 depiction, photograph standing at the street,  
13 not even the line-of-sight location. And you  
14 can see, you cannot see the building that we  
15 are requesting because it's straight down  
16 Moncrief, on the same side of the road. But  
17 for your consideration, the line-of-sight is to  
18 be taken from the property line of the church.

19 So you have to move back to that fence,  
20 look through the brick building, look through  
21 the empty lot, look through the car -- used car  
22 location, look through a visual barrier on our  
23 site, and you still -- you can't see the site.

24 The next photograph is a photograph of the  
25 church that's an old house converted to a

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16

1 church that they use, just to give you the  
2 setting. And, by the way, the church itself is  
3 zoned CCG-2, so alcohol sale is allowed by  
4 right on that site as well, as long as every --  
5 as well as everything else in CCG-2 which, as  
6 you know, is the most intensive zoning in the  
7 commercial category.

8 The next photograph is a photograph of the  
9 building that we intend to purchase. And I  
10 will talk to you about that when I talk to you  
11 about the -- the plan.

12 Across the street is the next photograph,  
13 which allows retail sale of alcohol. Now,  
14 that's important because if you go back to the  
15 first photograph and you look, you can't see  
16 our building, but you can look straight at the  
17 building that does, in fact, sell the alcohol.  
18 And there's alcohol sales signs there. They  
19 sell alcohol. They sell it on Sunday morning.  
20 And that's an existing facility across from our  
21 property.

22 The last one is a photograph looking back  
23 at the church, to show that you can't see the  
24 church building from -- it's not visible in the  
25 line of sight from the existing facil- --

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17

1 proposed facility.  
2 And the last map is just to call to your  
3 attention this area (indicating). Everything  
4 in red is zoned CCG-2. Alcohol sales are  
5 allowed by right in everything that's red on  
6 that map. That's the -- you see where the  
7 site's located. And there are numerous retail  
8 sale of alcohol in the CCG-2 area, but it's an  
9 unusual location because typically, you might  
10 see CN or even CCG-2. This is the most intense  
11 commercial category in the zoning code. It  
12 allows retail sale of alcohol by right.

13 So I believe with Mr. Huxford conceding  
14 that the line of sight, we meet that, and you  
15 just having voted on one of similar ilk, the  
16 Planning Department report was exactly the  
17 opposite.

18 I would like for you to turn -- I'd like  
19 to turn to the other issue that they have  
20 raised, although I believe it not to be an  
21 appropriate issue in this case because once the  
22 line of sight is determined, your inquiry  
23 should be finished.

24 The Planning Department raises the  
25 Neighborhood Plan called 29th and Chase.

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19

1 I find disconcerting: Although not identified  
2 as an undesirable use, the intensity of a  
3 package store could be allowed -- to be allowed  
4 would be -- could be inconsistent with the  
5 plan.

6 How in the world could it be inconsistent  
7 with the plan when the site is zoned for that  
8 use, has been before the plan, has been for  
9 after the plan? I think it -- it's -- it's an  
10 opinion of the planner writing this as to the  
11 undesirability of -- of retail sales. I hope  
12 they don't discover that's the case down by the  
13 football stadium. I hope they don't discover  
14 that's the case along Bay Street. I hope they  
15 don't discover it's the case, you know, at Town  
16 Center because those are locations where  
17 similar uses have occurred.

18 Retail sale of alcohol is not an  
19 undesirable use. It's a regulated use and one  
20 that's specifically designated for this site  
21 that we're on.

22 So turning to the next two pages that they  
23 cite on the -- on the 29th and Chase plan, the  
24 goal is to provide retail and neighborhood  
25 services through attractive businesses that

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18

1 That -- that plan was done -- I said 14 years  
2 ago; it was 12 years ago -- in 2004.

3 All of these activities that have occurred  
4 in this area have taken place since the 29th  
5 and Chase plan, but just to give you some  
6 perspective, 29th Street is five blocks back  
7 south, and Chase is five blocks further to the  
8 east. This is -- this is remote from the 29th  
9 and Chase plan.

10 There's no map in their plan. They call  
11 this the commercial corridor for 29th and  
12 Chase. It's -- it's very, very remote, but in  
13 that plan, right now, you have retail sale of  
14 alcohol. And it has occurred since the --  
15 since the implementation of the plan some --  
16 some 12 years ago.

17 I'd like to go through the 29th and Chase  
18 plan because I believe we comply with that  
19 plan. It's in your report package. It's on  
20 about the third page. Well, the -- the report  
21 is deep in there, but I'm going to refer to  
22 some memo from Aaron Glick -- to Aaron Glick,  
23 from Lisa Ransom, showing the plan passed in  
24 2004, but they say that they don't want to put  
25 this because -- and this is language that I --

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20

1 invest in the community.

2 My client is investing in a building that  
3 was not in use, that they're going to  
4 landscape, they're going to clean up, and  
5 they're going to invest in the committee -- I  
6 mean in the community. That's meeting the goal  
7 of the 29th and Chase.

8 And then the objectives are to improve the  
9 appearance of the building. You see our  
10 building now. We're going to clean it up.  
11 We're going to landscape it. We're going to  
12 put in signage. It's -- it's -- it's not  
13 dilapidated because it's a brick building.  
14 It's a pretty nice-looking building, but we're  
15 going to spend money changing the appearance of  
16 it.

17 Create business opportunities within the  
18 community. It's going to be an owner within  
19 that community.

20 Increase retail-level opportunities. This  
21 is a retail-level opportunity in this  
22 community.

23 So in -- in -- in fairness, we meet the  
24 goals of the 29th and Chase plan. For some  
25 reason, a particular planner believes that

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1 retail sale of alcohol is an undesirable use.  
2 All I can say is, I beg to differ.  
3 The last thing I want to point out is,  
4 there's already alcohol sales within 500 feet  
5 of the church, straight across the street  
6 from -- from our location, and -- and that is  
7 visible. Ours is not.

8 And I believe with the concession of the  
9 Planning Department that we're not on the  
10 visible line of sight and the fact that the  
11 other inquires are not appropriate, that I  
12 respectfully request your support, but if you  
13 want to inquire into the 29th and Chase plan,  
14 we meet those goals.

15 And, by the way, the City zoned this site,  
16 and as you can see from that red map, about 50  
17 other properties in this area, and it allows  
18 retail sales by right.

19 With that, I'll sit down and respond to  
20 any comments anybody else has.

21 THE CHAIRMAN: Thank you, Mr. Harden.

22 I do not have any more speaker cards on  
23 this item. Is there anybody else in the  
24 audience that wishes to speak on WLD-16-01?

25 AUDIENCE MEMBERS: (No response.)

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1 THE CHAIRMAN: Seeing none, I will close  
2 the public hearing and bring it back to the  
3 Commission.

4 COMMISSIONER HARDING: Mr. Chairman, I  
5 make a motion that we approve WLD-16-01.

6 COMMISSIONER ADKISON: Second.

7 THE CHAIRMAN: I've got a motion and a  
8 second for approval of WLD-16-01.

9 Discussion from the Commission?

10 Mr. Harding.

11 COMMISSIONER HARDING: Mr. Chairman, I  
12 guess you know I am very familiar with this.  
13 This is, obviously, my planning district. I'm  
14 very familiar with this neighborhood and this  
15 area.

16 And, you know, I think Mr. Harden makes a  
17 very compelling case. The fact is that it  
18 would appear, based on the zoning, that this  
19 pastor could sell this church tomorrow and  
20 someone could put a package store in that site.

21 So -- so it seems a little disingenuous to  
22 deny something. I mean, I think you can make a  
23 compelling case with the line of sight issue,  
24 that it is not within the line of sight, but I  
25 think it's a little disingenuous to deny

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1 approval based on the fact that a church exists  
2 just down the street, which is not -- was not  
3 necessarily built as a church, obviously, if  
4 you look at it, and could easily turn around  
5 and sell tomorrow and become a package store  
6 itself. So that's why I've chosen to support  
7 it.

8 THE CHAIRMAN: Very good comments.  
9 Commissioner Blanchard.

10 COMMISSIONER BLANCHARD: Thank you,  
11 Mr. Chairman.

12 Through the Chair to the applicant, you  
13 know, I'm not thrilled with the idea of a  
14 package store in this location, but I think  
15 that that's more of a personal opinion of mine.  
16 And I think that based on the technical  
17 arguments that you've made, I would tend to be  
18 in support of the WLD.

19 MR. HARDEN: Mr. Chairman, may I make one  
20 point that I didn't make?

21 I represented to Mr. Blanchard and to you  
22 and to Mr. Huxford that if it were passed, we  
23 would agree to a condition that it doesn't open  
24 before noon on Sunday.

25 So even though there's nobody else here,  
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1 I'll -- I'm agreeable to that condition,  
2 because I've made that representation.

3 THE CHAIRMAN: Okay. Any other comments?

4 COMMISSION MEMBERS: (No response.)

5 THE CHAIRMAN: Well, then I'll make a  
6 couple of comments.

7 You know, a lot of times when we have  
8 applications come in front of us, you know,  
9 I'll look at the staff report. You know, this  
10 application, I actually drove out there because  
11 I was trying to wrap my head around it. And I  
12 can honestly say, I've never been to -- down  
13 that street or around that -- where that  
14 application is being proposed. So, you know, I  
15 wanted to go out there and actually look at it  
16 for myself.

17 And, you know, I did have a hard time with  
18 the line of sight. You know, I didn't actually  
19 get out and put -- stand in front of the  
20 church, but if you did, I would have a hard  
21 time seeing if there's a line of sight.

22 I did see a lot of activity across the  
23 street from where this application is, which I  
24 saw more of a nuisance than anything, but when  
25 you talk about an individual that's trying to

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1 put something in and it meets the criteria, so,  
2 you know -- you know, you'd have to look  
3 through a lot of trees, you'd have to look  
4 through all the bushes, but I would -- I would  
5 offer up, I guess, my -- well, I guess I really  
6 can't make an amendment a condition, can I?  
7 But I would like -- I would like to see if --  
8 you know, if -- if any other commissioners  
9 would say, hey, you know, why don't you fence?  
10 They've got a wood -- a wood-paneling fence on  
11 one side.

12 Folks, you may know whether it's the west  
13 or south. I think it's the south side?

14 MR. HUXFORD: I think I know where you're  
15 going. I think what you're looking for is a  
16 condition that a 6-foot-tall, 95 percent opaque  
17 fence be installed and maintained along the  
18 southerly property line.

19 THE CHAIRMAN: Southern property line.  
20 There you go. You know, I think that might be  
21 an opportunity if the applicant was agreeable  
22 to that.

23 And then also, I think you did come up  
24 here and mention that reduc- -- limit the hours  
25 of operation on Sunday to open at 12:00. So

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1 that would kind of, you know, have church, get  
2 out -- church gets out. Then you don't have  
3 people, you know, drinking, you know, while  
4 church is getting out.

5 So those would be two, you know,  
6 conditions that I would offer up. I can't make  
7 a motion, but if any other commissioners wanted  
8 to make that as a motion or amend this  
9 application ...

10 COMMISSIONER HARDING: Mr. Chairman, I  
11 would amend my recommendation that we put in  
12 those two requirements, the 6-foot, 90 percent  
13 opaque fence on the south -- on the southern  
14 end of the south side of the property, and then  
15 that the store not open before noon on Sundays.

16 THE CHAIRMAN: Does the seconder agree to  
17 that?

18 COMMISSIONER ADKISON: Second.

19 THE CHAIRMAN: Great. Okay.

20 MR. HUXFORD: Usually, the standard would  
21 be not less than 95 percent opaque. And also,  
22 while we're throwing that in there, with the  
23 caveat that the fence cannot be located in a  
24 sight triangle, just so there's no public  
25 safety issue.

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1 THE CHAIRMAN: Right.

2 COMMISSIONER HARDING: I amend my  
3 amendment to say 95 percent opaque and what he  
4 just said.

5 THE CHAIRMAN: Paige, you got all that?

6 MS. JOHNSTON: Yes.

7 THE CHAIRMAN: Marshall, you seconded it?

8 COMMISSIONER ADKISON: Yeah.

9 THE CHAIRMAN: All right. Discussion on  
10 the amendments?

11 COMMISSION MEMBERS: (No response.)

12 THE CHAIRMAN: Seeing none, all in favor  
13 of the two Harding amendments, say aye.

14 COMMISSION MEMBERS: Aye.

15 THE CHAIRMAN: Opposed?

16 COMMISSION MEMBERS: (No response.)

17 THE CHAIRMAN: Those amendments pass.  
18 Discussion on the entire application

19 with -- as amended?

20 COMMISSION MEMBERS: (No response.)

21 THE CHAIRMAN: Seeing none, I have a  
22 motion and a second for approval on -- on  
23 WLD-16-01 as conditioned by amendments.

24 All those in favor?

25 COMMISSION MEMBERS: Aye.

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1 THE CHAIRMAN: Opposed?

2 COMMISSION MEMBERS: (No response.)

3 THE CHAIRMAN: That motion passes.

4 Thank you for being here.

5 All right. Page 3, E-16-06 and AD-16-11.  
6 Staff, if you will open those up.

7 MR. HUXFORD: Thank you, Mr. Chairman.

8 Application for Zoning Exception E-16-06  
9 and its companion, Administrative Deviation  
10 request W- -- not WLD, AD-16-11, for property  
11 at 11271 Alumni Way. This is out close to UNF.

12 The zoning exception is requesting a  
13 church on less than four acres of property in  
14 the CRO zoning district.

15 The deviation is seeking to reduce the  
16 amount of parking with the church from 55  
17 spaces to 25 spaces, as well as a small  
18 reduction in the setback.

19 Staff reviewed the application. As a  
20 general rule, we're content neu- -- we're  
21 neutral on whatever denomination or faith that  
22 we're talking about, even though we call it a  
23 church, because that's what the code says. In  
24 this case, we recognize, it's -- it's a  
25 synagogue that wants to go in.

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Date Submitted:
Date Filed:

Application Number:
Public Hearing:

**Application for Waiver of Minimum Distance  
Requirements for Liquor License Location**  
City of Jacksonville, Florida  
Planning and Development Department

Please type or print in ink. Instructions regarding the completion and submittal of this application are located at the end of this form. For additional information, please contact the Planning and Development Department at (904) 255-7865.

For Official Use Only		
Current Zoning District:	Current Land Use Category:	
Council District:	Planning District:	
Previous Zoning Applications Filed (provide application numbers):		
Applicable Section of Ordinance Code:		
Notice of Violation(s):		
Neighborhood Associations:		
Overlay:		
Number of Signs to Post:	Amount of Fee:	Zoning Asst. Initials:

PROPERTY INFORMATION	
1. Complete Property Address: 4250 Moncrief Road	2. Real Estate Number: 085106 0000
3. Land Area (Acres): 0.25	4. Date Lot was Recorded: 10/30/19
5. Property Located Between Streets: 33rd and 32nd Street West	6. Utility Services Provider: City Water / City Sewer <input checked="" type="checkbox"/> Well / Septic <input checked="" type="checkbox"/>
7. Waiver Sought: Reduce Required Minimum Distance between liquor license location and church or school from <u>500</u> feet to <u>400</u> feet.	
8. In whose name will the Waiver be granted?      Banner Liquor, Inc.	

**OWNER'S INFORMATION (please attach separate sheet if more than one owner)**

9. Name: Malih Properties, LLC	10. E-mail: zach_miller@bellsouth.net
11. Address (including city, state, zip): 11399 Glen Laurel Oaks Circle Jacksonville, Florida 32257	12. Preferred Telephone: 904-396-5731

**APPLICANT'S INFORMATION (if different from owner)**

13. Name:	14. E-mail:
15. Address (including city, state, zip):	16. Preferred Telephone:

**CRITERIA**

Section 656.101(l), Ordinance Code, defines a waiver as "a relaxation of the Zoning Code minimum distance requirements for liquor license locations, pursuant to Section 656.805, Ordinance Code."

Section 656.133(a)1 through 5, Ordinance Code, provides that, with respect to action upon Applications for Waivers, the Planning Commission **shall** grant a waiver for minimum distance requirements from a church or school for a liquor license location, if there exist one or more circumstances which negate the necessity for compliance with the distance requirements, included but not limited to the following:

1. *The commercial activity associated with the alcoholic beverage use is of a lesser intensity than the commercial activity associated with the alcoholic beverage use which previously existed; e.g., there has been a reduction in the number of seats or square footage or type of license;*
2. *The alcoholic beverage use is designed to be an integral part of a mixed planned unit development;*
3. *The alcoholic beverage use is located within a shopping center with an aggregate gross leasable area of 50,000 square feet or more, inclusive of all outparcels, and meets the definition of a bona-fide restaurant as defined in Section 656.805(c);*
4. *The alcoholic beverage use is not directly visible along the line of measurement defined in Section 656.806 and is physically separated from the church or school, thereby negating the distance requirement as a result of the extra travel time; or*
5. *There are other existing liquor license locations of a similar nature in the immediate vicinity of the proposed location; provided however, that no waiver shall be granted pursuant to this criterion if the proposed liquor license location is closer to the church or school than other existing locations.*

**WLD-19-13**  
**BEL**

**REPORT OF THE PLANNING AND DEVELOPMENT DEPARTMENT**  
**APPLICATION FOR WAIVER OF MINIMUM DISTANCE REQUIREMENTS**  
**FOR LIQUOR LICENSE LOCATION WLD-19-13**

**MAY 23, 2019**

<b><i>Location:</i></b>	4250 Moncrief Road
<b><i>Real Estate Number:</i></b>	085106-0000
<b><i>Waiver Sought:</i></b>	Reduce required minimum distance between a liquor license location to a church/school from 500 feet to 400 feet
<b><i>Current Zoning District:</i></b>	Commercial Community General-2 (CCG-2)
<b><i>Current Land Use Category:</i></b>	Community General Commercial (CGC)
<b><i>Planning District:</i></b>	Urban Core, District 1
<b><i>Agent:</i></b>	Zach Miller, Esq. 501 Riverside Avenue, Suite 901 Jacksonville, Florida 32202
<b><i>Owner:</i></b>	Malih Properties, LLC 11399 Glen Laurel Oaks Circle Jacksonville, Florida 32257
<b><i>Staff Recommendation:</i></b>	<b>DENY</b>

**GENERAL INFORMATION**

Application or Waiver of Minimum Distance Requirements for Liquor License Location **WLD-19-13** seeks to reduce the required minimum distance between an existing alcohol package sales store and the Harmony Missionary Baptist Church from 500 feet to 400 feet. The agent indicates the existing liquor store at 4220 Moncrief Road will relocate to 4250 Moncrief Road if the application is approved.

In 2018, a waiver of liquor distance was applied for on the same address. The applicant later withdrew the application.

A waiver of liquor distance was applied for in March 2016 for 4220 Moncrief Road. The Current Planning Division was not in support, however the Planning Commission granted the waiver with the following conditions.

- The package store shall not be open for business before 12:00 noon on Sundays.
- A six foot tall, 95% opaque fence shall be constructed along the southern property line.

It does not appear the establishment opened for business.

The property is located along a commercial corridor within the boundaries of the **29th and Chase Neighborhood Action Plan (NAP)** area. In conjunction with other uses typically found in CCG-2, the intensity of a proposed liquor store raises an immediate conflict with the overall goals of the NAP and its pursuit of “viable revitalization strategies for the community” and “providing retail and neighborhood services that invest in the community.”

The Plan pointed to the fact that a majority of Moncrief Road is zoned Commercial Community General-2 (CCG-2), the most intensive commercial zoning district and recommended zoning changes for the Moncrief Road corridor. CCG-2 is appropriate along arterial roadways, however Moncrief Road is a collector roadway and the appropriate zoning is Commercial Neighborhood (CN) or Commercial Community General-1 (CCG-1). Therefore, the proposed waiver is inconsistent with the **29th and Chase Neighborhood Action Plan** because it will permit the commercial intensification and sale of alcohol less than 500 feet from a church, which inherently conflicts with the economic goals and objectives outlined in the NAP.

#### DEFINITION

According to Section 656.1601 of the Zoning Code, the term *waiver* means a relaxation of the Zoning Code minimum distance requirements for liquor license locations, pursuant to Section 656.805 of the Zoning Code, and for minimum street frontage, pursuant to Section 656.407 of the Zoning Code. Waivers are authorized to be granted by the Planning Commission pursuant to the criteria set forth in Section 656.133 of the Zoning Code.

#### STANDARDS, CRITERIA AND FINDINGS

Pursuant to the provisions of Section 656.133 of the Zoning Code, a waiver of minimum distance requirements for liquor license location may be granted if the Planning Commission makes a positive finding based on substantial, competent evidence that the application meets one or more of the following criteria:

- 1) *Is the commercial activity associated with the alcoholic beverage use of a lesser intensity than the commercial activity associated with the alcoholic beverage use which previously existed; e.g., there has been a reduction in the number of seats or square footage or type of license?*

No. The location will operate at a higher intensity than the previous uses, which was a restaurant. The applicant wishes to intensify the use to a commercial establishment with a 4COP (beer, wine and distilled liquor consumed on premises) license.

Given the current saturation of liquor licenses within the vicinity (4211 Moncrief Road – convenience store with 2COP; 4220 Moncrief Road – internet café with 4COP), Staff recommends Planning Commission uphold the precedent previously established with **WLD-12-05** and promote more transitional and neighborhood-friendly uses that will complement the abutting residential properties situated along the periphery of Moncrief Road.

*2) Is the alcoholic beverage use designed to be an integral part of a mixed planned unit development?*

No. The surrounding neighborhood was platted as a single-family subdivision (Moncrief Heights) in 1912. Some lots along Moncrief were subsequently subjected to commercial development without regard to protection of the surrounding residential character and are currently designated CCG-2. The sale of alcoholic beverages at this location is not designed to be an integral part of a mixed Planned Unit Development. Additionally, the site abuts single-family residences and lacks the uncomplimentary landscape buffer provisions of Part 12.

*3) Is the alcoholic beverage use to be located within a shopping center with an aggregate gross leasable area of 50,000 square feet or more, inclusive of all out parcels, and meets the definition of a Restaurant as defined in Section 656.805?*

No. While the proposed alcoholic beverage use will be located within a shopping center, the aggregate gross leasable area of that shopping center is less than 50,000 square feet and the alcoholic beverage use will not be part of a bona fide restaurant.

*4) Is the alcoholic beverage use directly visible along the line of measurement defined in s.656.806 and physically separated from a church or school, thereby negating the distance requirement as a result of the extra travel time?*

Yes. The proposed will be physically separated by other building structures and will not be directly visible along the line of measurement.

No, the alcoholic beverage use is not directly visible from the church noted in the attached liquor distance survey.

*5) Are there are other existing liquor license locations of a similar nature in the immediate vicinity of the proposed location; provided, however, that no waiver shall be granted pursuant to this criterion if the proposed liquor license location is closer to the church or school than other existing locations?*

Yes. There is a similar liquor license location directly across the street from the subject property at 4211 Moncrief Road (**WLD-12-05**). Known as "M & A Foodmart," the store currently holds a 2APS (beer and wine package sales) but has also requested a license change to 4COP with

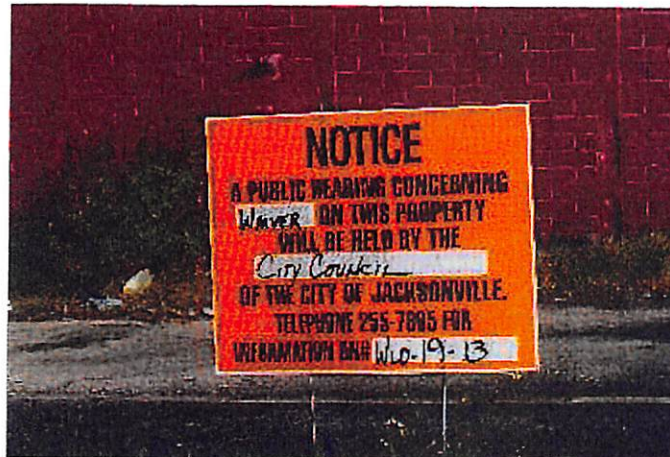


**WLD-12-05**—which was denied by Planning Commission because it is located closer to a church. Moreover, granting the proposed waiver at this location will unduly promote a saturation of liquor license locations within the Moncrief commercial node and further exacerbate intensive commercial uses that conflict with the **29th and Chase Neighborhood Action Plan**.

No, there are no other existing liquor license locations of a similar nature in the immediate vicinity of the proposed location.

### SUPPLEMENTARY INFORMATION

Upon visual inspection of the subject property May 10, 2019, the Planning and Development Department staff observed that the required Notice of Public Hearing signs were posted.



### RECOMMENDATION

Based on the foregoing, it is the recommendation of the Planning and Development Department that Application for Waiver of Minimum Distance Requirements for Liquor License Location **WLD-19-13** be **DENEID**.

CITY OF JACKSONVILLE  
PLANNING COMMISSION  
MEETING

Proceedings held on Thursday, May 23, 2019,  
commencing at 1:00 p.m., City Hall, Council Chambers,  
1st Floor, 117 West Duval Street, Jacksonville, Florida,  
before Diane M. Tropa, FPR, a Notary Public in and for  
the State of Florida at Large.

PRESENT:

NICOLE PADGETT, Chairwoman.  
JOSHUA GARRISON, Vice Chair.  
DAWN MOTES, Secretary.  
MARSHALL ADKISON, Commission Member.  
DANIEL BLANCHARD, Commission Member.  
ALEX MOLDOVAN, Commission Member.  
DAVID HACKER, Commission Member.  
DAVID WARD, Commission Member.

ALSO PRESENT:

FOLKS HUXFORD, Chief, Current Planning.  
KRISTEN REED, Chief, Community Planning Div.  
BRUCE LEWIS, Planning and Development Dept.  
LAURIE SANTANA, Transportation Planning Div.  
PAIGE JOHNSTON, Office of General Counsel.  
MATT SCHELLHORN, Military Representative.  
RANDY GALLUP, Duval County Public Schools.  
PATRICIA SALES, Planning and Development Dept.

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1 record must be kept of speakers and what is  
2 said. Everyone who wishes to speak must fill  
3 out a blue speaker's card. Place them in the  
4 basket beside the speakers' podium. Cards are  
5 located near the podium and at the back of the  
6 room.

7 The speaker's testimony is taken down by  
8 the court reporter, and it is important that  
9 participants speak clearly into the microphone  
10 and only one person should speak at a time.

11 Any tangible material submitted with a  
12 speaker's presentation will become a part of  
13 the public record and will be kept by this  
14 commission; therefore, please retain a copy of  
15 anything submitted if it is needed.

16 The public hearings on exceptions,  
17 variances, waivers, administrative deviations,  
18 and minor modifications are quasi-judicial,  
19 where you will be sworn in prior to your  
20 testimony, and the decisions by the Planning  
21 Commission today will be final.

22 (Commissioner Adkison enters the  
23 proceedings.)

24 THE CHAIRWOMAN: Decisions by this  
25 commission on rezonings and land use amendments  
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PROCEEDINGS

1 May 23, 2019 1:00 p.m.

2 ---

3 THE CHAIRWOMAN: Welcome to the May 23rd,  
4 2019, meeting of the Jacksonville Planning  
5 Commission.

6 As a courtesy, please place any mobile  
7 phones, tablets, or audible devices on silent  
8 mode.

9 Please join me now as we stand and recite  
10 the Pledge of Allegiance, and remain standing  
11 for a brief moment of silence.

12 (Recitation of the Pledge of Allegiance.)

13 THE CHAIRWOMAN: Thank you.

14 Let the record reflect that we have a  
15 quorum with Commissioners Hacker, Blanchard,  
16 Motes, Padgett, Garrison, Moldovan, and Ward.  
17 I do not see Commissioner Adkison.

18 In attendance is our military  
19 representative, Matt Schellhorn; members of the  
20 City's Planning and Development Department; and  
21 Office of the General Counsel.

22 This commission's bylaws provide that each  
23 member of the public who speaks before this  
24 commission is limited to a three-minute  
25 presentation. It is important that an accurate

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1 are recommendations only. The recommendations  
2 are transmitted to the City Council's Land Use  
3 and Zoning Committee which ultimately votes on  
4 these matters.

5 LUZ may or may not follow the  
6 recommendations of the Planning Commission.  
7 Unless specifically deferred by LUZ, items  
8 voted on by the Planning Commission today are  
9 heard before the Land Use and Zoning Committee  
10 in two weeks. LUZ will meet on Tuesday,  
11 June 4th, 2019, for another public hearing and  
12 vote. LUZ meets in Council Chambers in City  
13 Hall at 5 p.m.

14 (Mr. Gallup enters the proceedings.)

15 THE CHAIRWOMAN: For any questions  
16 regarding a specific application, please see  
17 staff.

18 A copy of the agenda is located at the  
19 back of the room. Items are generally  
20 addressed in the order in which they are listed  
21 on the agenda. Items may be heard out of order  
22 for the sake of efficiency or to accommodate  
23 scheduling conflicts.

24 At this time, I will ask the members of  
25 this commission to address the minutes from our  
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13

1 spaces on site.  
2 The property was previously approved for a  
3 church back in 1995, but they did not exercise  
4 that exception within the required one year,  
5 and so they are back.  
6 Staff, again, finds it meets the criteria  
7 and findings, and we are recommending approval  
8 of E-19-33.  
9 THE CHAIRWOMAN: Thank you, Bruce.  
10 (Audience member approaches the podium.)  
11 THE CHAIRWOMAN: How are you?  
12 AUDIENCE MEMBER: I'm fine. How are you  
13 doing today?  
14 THE CHAIRWOMAN: I'm good.  
15 Will you state your name and address for  
16 the record, please, and then Ms. Tropa will  
17 swear you in.  
18 AUDIENCE MEMBER: My name is Reverend  
19 Kendall Anderson. I live at 5563 Lynne Tree  
20 Lane North, Jacksonville, Florida, 32258.  
21 THE REPORTER: Would you raise your right  
22 hand for me, please.  
23 REVEREND ANDERSON: (Complies.)  
24 THE REPORTER: Do you affirm that the  
25 testimony you are about to give will be the  
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14

1 truth, the whole truth, and nothing but the  
2 truth?  
3 REVEREND ANDERSON: I do.  
4 THE REPORTER: Thank you.  
5 THE CHAIRWOMAN: Is there anything you  
6 would like to share with us today?  
7 REVEREND ANDERSON: I'm just here if  
8 there's any questions.  
9 THE CHAIRWOMAN: Okay.  
10 Is there anyone else here to speak on  
11 E-19-33?  
12 AUDIENCE MEMBERS: (No response.)  
13 THE CHAIRWOMAN: Seeing none --  
14 Oh, I'm sorry. Sir, when you're done, if  
15 you would, please see Ms. Patricia and fill out  
16 one of those blue speaker's cards.  
17 REVEREND ANDERSON: (Nods head.)  
18 THE CHAIRWOMAN: Let's close the public  
19 hearing on E-19-33 and bring it back to the  
20 Commission.  
21 COMMISSIONER GARRISON: Madam Chair, I  
22 move for approval of E-19-33.  
23 COMMISSIONER MOTES: Second.  
24 THE CHAIRWOMAN: I have a motion and a  
25 second for approval of E-19-33.  
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15

1 Discussion?  
2 COMMISSION MEMBERS: (No response.)  
3 THE CHAIRWOMAN: All those in favor?  
4 COMMISSION MEMBERS: Aye.  
5 THE CHAIRWOMAN: Any opposed?  
6 COMMISSION MEMBERS: (No response.)  
7 THE CHAIRWOMAN: Motion passes.  
8 Thank you, sir.  
9 REVEREND ANDERSON: Thank you ma'am.  
10 THE CHAIRWOMAN: WLD-19-13. Let's open  
11 the public hearing on that, please.  
12 Bruce.  
13 MR. LEWIS: This is application for waiver  
14 of minimum distance requirements for a liquor  
15 license location. WLD-19-13 seeks to reduce  
16 the required minimum distance between an  
17 existing alcohol package store and the Harmony  
18 Missionary Baptist Church from 500 feet to  
19 400 feet. The agent indicates that the  
20 existing liquor store that was approved at  
21 4220 Moncrief Road will relocate to  
22 4250 Moncrief Road if the application is  
23 approved.  
24 Back in 2018, a waiver was applied for at  
25 the 4220 Moncrief Road -- in March of 2016.  
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16

1 The Planning Department was not in support;  
2 however, the Planning Commission granted that  
3 waiver with two conditions: That the package  
4 store shall not be open for business before  
5 12 noon on Sundays, and a 6-foot-tall,  
6 95 percent opaque fence shall be constructed  
7 along the southern property line.  
8 The property is located in the commercial  
9 corridor of the 29th and Chase Neighborhood  
10 Action Plan. Again, staff has reviewed this  
11 application against that plan. The plan, we  
12 feel it is in conflict with the NAP in its  
13 pursuit of revitalization strategies for the  
14 community in providing retail and neighborhood  
15 services that invest in the community. So  
16 understanding the standards and findings, the  
17 Department is recommending denial of WLD-19-13.  
18 THE CHAIRWOMAN: Thank you, Bruce.  
19 Does anybody have ex-parte communication?  
20 Commissioner Garrison.  
21 COMMISSIONER GARRISON: Thank you, Madam  
22 Chair.  
23 I spoke with the applicant, Mr. Miller,  
24 yesterday by phone. He simply briefed me on  
25 the nature of the application.  
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1 Thank you.

2 THE CHAIRWOMAN: I, too, spoke to

3 Mr. Miller for a few minutes yesterday on this

4 application, and I also spoke to Mr. Peterson

5 yesterday morning about this application,

6 briefly.

7 Anyone else?

8 COMMISSION MEMBERS: (No response.)

9 THE CHAIRWOMAN: Okay.

10 Mr. Miller.

11 MR. MILLER: Good afternoon.

12 Zach Miller, 501 Riverside Avenue.

13 What Bruce said was sort of accurate, what

14 happened. Three years ago, in March 2016, this

15 commission unanimously voted to approve a

16 waiver of liquor distance between the Harmony

17 Missionary Baptist Church and the location at

18 4220 Moncrief Road based on the criteria in the

19 zoning code for waivers of liquor distance.

20 The main reason they voted for it was because

21 it was not in direct line of sight. That is

22 one of the criteria.

23 Per the application, and reading directly

24 from the Criteria: "With respect to action

25 upon Applications for Waivers, the Planning

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1 Commission shall grant a waiver for minimum

2 distance requirements from a church or school

3 for a liquor license location if there exists

4 one or more," of the following circumstances.

5 One is when it's not within direct line of

6 sight.

7 That applicant decided not to open the

8 package store at that location. It was too

9 big, they didn't want to refurbish it, so they

10 bought the property across the street. This,

11 like that property, is not in direct line of

12 sight from the church, so it meets the

13 requirements of 656.133(A)1 through 5.

14 Also, in Subsection 5 it says you "shall"

15 grant the application if a liquor license was

16 approved closer to the church. You've already

17 approved that three years ago. In fact, there

18 are three members of this commission that voted

19 unanimously to approve that three years ago.

20 The Planning Department has cited the

21 Moncrief Neighborhood Action Plan. There are

22 excerpts of that in the application in your

23 staff binder on Page 162.

24 This property is zoned CCG-2. Whether a

25 package store is allowed here was decided when

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1 it was rezoned. This is not for special

2 exception, this is not for rezoning, this is

3 just for a waiver of liquor distance. Nowhere

4 in the Neighborhood Action Plan does it talk at

5 all about package stores. It does not talk

6 about alcohol. It does not talk about any

7 particular use.

8 There is a recommendation that the

9 property that is CCG-2 that is not along Martin

10 Luther King Parkway should be rezoned to CCG-1.

11 In the 15 years since that report was written,

12 there has been no legislation to rezone the

13 property. That's why we're here. That's why

14 it was approved three years ago.

15 There is language in it talking about

16 getting rid of vacant property, derelict

17 property, improving lighting, improving

18 landscape standards. So while the Neighborhood

19 Action Plan is not criteria for a waiver of the

20 liquor distance, I believe that we actually

21 meet the Neighborhood Action Plan.

22 We're fine with limiting the conditions

23 that were limited in 2016. I don't believe we

24 need to build a fence because we've got

25 property in between us. We will condition it

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1 upon a landscaping plan that we've submitted as

2 part of our application.

3 I'm sure there are other people to speak

4 about it, so I will reserve any time for

5 rebuttal.

6 THE CHAIRWOMAN: Thank you, Mr. Miller.

7 MR. MILLER: Thank you.

8 THE CHAIRWOMAN: Mr. Wilcox.

9 After Mr. Wilcox, we will hear James

10 Henry, Mr. Robinson, and then Mr. Dawson.

11 (Audience member approaches the podium.)

12 THE CHAIRWOMAN: Mr. Wilcox, if you will

13 please state your name and address for the

14 record.

15 AUDIENCE MEMBER: Bryant Marshall Wilcox,

16 11596 Jerry Adams Drive, 32218.

17 THE CHAIRWOMAN: And Ms. Tropa will swear

18 you in.

19 THE REPORTER: Would you raise your right

20 hand for me, please.

21 MR. WILCOX: (Complies.)

22 THE REPORTER: Do you affirm that the

23 testimony you are about to give will be the

24 truth, the whole truth, and nothing but the

25 truth?

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1 MR. WILCOX: I do.  
 2 THE REPORTER: Thank you.  
 3 THE CHAIRWOMAN: What would you like to  
 4 share with us today?  
 5 MR. WILCOX: Well, we're here discussing  
 6 the same thing in the same place, and we  
 7 maintain the same position. We do not want a  
 8 liquor store in our community. Not only do we  
 9 not want a liquor store in our community, but I  
 10 believe that it should be proposed legislation  
 11 that it prohibits counterproductive business  
 12 ownership in communities that are already  
 13 underdeveloped. I grew up in this community  
 14 and this community means a lot to me, and I  
 15 believe a liquor store in a community that is  
 16 already underdeveloped would not contribute to  
 17 the overall economic growth and progressive  
 18 productivity in the community.  
 19 I believe that we need more banks, we need  
 20 more black-owned grocery stores and other  
 21 things that would contribute to the well-being  
 22 of the community, and a liquor store would not  
 23 do that.  
 24 Thank you.  
 25 THE CHAIRWOMAN: Thank you, sir.  
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1 Mr. Henry.  
 2 (Audience member approaches the podium.)  
 3 THE CHAIRWOMAN: State your name and  
 4 address for the record, please, and Ms. Tropa  
 5 will swear you in.  
 6 AUDIENCE MEMBER: James Henry, 3132  
 7 Marland Street, Jacksonville, Florida, 32209.  
 8 THE REPORTER: If you would raise your  
 9 right hand for me, please.  
 10 MR. HENRY: (Complies.)  
 11 THE REPORTER: Do you affirm that the  
 12 testimony you are about to give will be the  
 13 truth, the whole truth, and nothing but the  
 14 truth?  
 15 MR. HENRY: I do.  
 16 THE REPORTER: Thank you.  
 17 MR. HENRY: I stand in opposition to this  
 18 liquor store once again. This is my third time  
 19 coming here for this same thing. We don't need  
 20 a liquor store in this neighborhood, and I  
 21 cannot understand why these people seem so  
 22 adamant about putting a liquor store in this  
 23 neighborhood. There's enough going on in this  
 24 neighborhood without adding to it. Plus, there  
 25 are two liquor stores already on Moncrief Road.  
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1 We don't need another one. We have tried in  
 2 the past to hinder this, and it seems that  
 3 Mr. Miller and his group seem to be determined  
 4 to open up a liquor store.  
 5 And the thing is, why is it that a liquor  
 6 store is so important at that location? We  
 7 need grocery stores there, and we have been  
 8 trying for years to get grocery stores. We  
 9 have been informed that the neighborhood will  
 10 not support grocery stores. But from what they  
 11 are saying, the neighborhood will support  
 12 liquor stores, and I am against that  
 13 completely.  
 14 I represent the Ministerial Alliance from  
 15 that area. We have been striving to try to get  
 16 a positive result in that neighborhood, and a  
 17 liquor store will only hinder the progress that  
 18 we have made.  
 19 Thank you.  
 20 THE CHAIRWOMAN: Thank you, sir.  
 21 Paige, did you want to clarify?  
 22 MS. JOHNSTON: Yes, thank you.  
 23 To the Commission, through the Chair, I  
 24 did want to clarify the language in the code  
 25 regarding the criteria for the waivers of  
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1 minimum distance. Under 656.133(A), in order  
 2 for the Commission to grant the request for  
 3 waiver, it is not a mandatory, it is a  
 4 discretionary. It states: "The waiver for  
 5 minimum distance requirements from a church or  
 6 school for a liquor license location may be  
 7 granted if there exist one or more  
 8 circumstances which negate the necessity for  
 9 compliance with the distance requirements," and  
 10 then there's the five provisions.  
 11 So I did want to clarify that in order to  
 12 find in favor of a waiver, you do need to find  
 13 that it meets one of the five criteria, but you  
 14 don't -- if you find that it meets one of the  
 15 criteria, you don't have to mandatorily grant  
 16 the waiver. So I did want to make that clear  
 17 on the record.  
 18 THE CHAIRWOMAN: Thank you.  
 19 MS. JOHNSTON: If you have any questions,  
 20 let me know.  
 21 THE CHAIRWOMAN: Thank you, Paige.  
 22 Mr. Robinson.  
 23 (Audience member approaches the podium.)  
 24 THE CHAIRWOMAN: How are you?  
 25 AUDIENCE MEMBER: All right.  
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1 THE CHAIRWOMAN: Please state your name  
2 and address for the record, and then Ms. Tropia  
3 will swear you in.  
4 AUDIENCE MEMBER: Pastor Jeremiah  
5 Robinson, Royal Tabernacle Missionary Baptist  
6 Church, 1320 West 21st Street.  
7 THE REPORTER: If you would raise your  
8 right hand for me, please.  
9 PASTOR ROBINSON: (Complies.)  
10 THE REPORTER: Do you affirm that the  
11 testimony you are about to give will be the  
12 truth, the whole truth, and nothing but the  
13 truth?  
14 PASTOR ROBINSON: I consent.  
15 THE REPORTER: Thank you.  
16 THE CHAIRWOMAN: What would you like to  
17 share with us today?  
18 PASTOR ROBINSON: We are totally in  
19 opposition of a liquor store in that community.  
20 We have crime up there now, violent people  
21 killing one another. We have daycares, we have  
22 churches, we have the park close to that  
23 position, and we totally object to any liquor  
24 store in our community. We've been down here  
25 three times. And so we are in opposition of a  
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1 liquor store in our community.  
2 We advocate grocery stores. We advocate  
3 pharmacies. The closest pharmacy in that  
4 community is out in Gateway. The closest  
5 grocery store is out in Gateway. We need to  
6 impact our community and stop all that crime  
7 and violence in our neighborhood, so we are  
8 completely against a liquor store in that  
9 neighborhood. Young children getting off the  
10 school bus. We've got enough violence up there  
11 right now, and we need to not put liquor stores  
12 in that community.  
13 And I wanted to say to this board, we will  
14 fight. I said we will fight until we will not  
15 have a liquor store in that community. So if  
16 anybody think they going to put a liquor store  
17 up there, there will be demonstrations, there  
18 will be neighborhoods rallying together because  
19 we don't needed violence in our neighborhood.  
20 And that's why we are in opposition of a liquor  
21 store.  
22 THE CHAIRWOMAN: Thank you, sir.  
23 Mr. Dawson.  
24 (Audience member approaches the podium.)  
25 THE CHAIRWOMAN: How are you doing?  
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1 AUDIENCE MEMBER: I'm doing well. How are  
2 you doing?  
3 THE CHAIRWOMAN: Good. If you would  
4 please state your name and address for the  
5 record, and Ms. Tropia will then swear you in.  
6 AUDIENCE MEMBER: Leo Dawson, 2136 Burpee  
7 Drive.  
8 THE REPORTER: If you would raise your  
9 right hand for me, please.  
10 MR. DAWSON: (Complies.)  
11 THE REPORTER: Do you affirm that the  
12 testimony you are about to give will be the  
13 truth, the whole truth, and nothing but the  
14 truth?  
15 MR. DAWSON: Yes, ma'am.  
16 THE REPORTER: Thank you.  
17 MR. DAWSON: First, thank you for the  
18 opportunity to speak.  
19 I grew up in the area and I've got a lot  
20 of good memories from when I was a child from  
21 the Church's Chicken that used to be there many  
22 years ago. (Inaudible.) My grandmother, every  
23 now and then, she would buy some chicken. It's  
24 where I grew up.  
25 The point that I want to bring is that I'm  
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1 in a community representing, doing things to  
2 try to help the community do better, and I  
3 don't believe that a liquor store across the  
4 street from a kids' bus stop will help that  
5 community.  
6 As I was thinking and I was doing my  
7 research, I realized that Malih Properties are  
8 trying to do this, and, from my understanding,  
9 that several other companies that's within  
10 (inaudible) for years have been trying to put  
11 liquor stores in that community. And my  
12 question to them would be, if trap houses was  
13 legal and we came to 11399 Glen Oaks, if that  
14 was legal and we put that right into their  
15 community, would they feel comfortable with  
16 somebody doing something to them at that level?  
17 You know, it brings a lot of problems, a  
18 lot of problems in the area if you have that  
19 kind of setting in your area. So a liquor  
20 store, to me, is equivalent to that because  
21 it's going to bring a lot of problems in the  
22 area. And then with the people have the  
23 mindset, it's going to take them on to another  
24 level.  
25 So, you know, we've got enough stores,  
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1 corner stores. We need grocery stores. We  
2 need things that are going to help build and  
3 not tear down.

4 So I ask them to consider that. If  
5 somebody brought bad things to their  
6 neighborhood, would they want -- would they be  
7 all right with that? And I don't think they  
8 would. So I ask them to back off. And if they  
9 want to do anything in that neighborhood, I ask  
10 them to help bring some positive things that's  
11 going to help us help our own community.

12 I'm a young man. I've been in this  
13 community for a long time, and I want to see it  
14 do better. And that's why I'm doing what I'm  
15 doing, to try to help it do better.

16 THE CHAIRWOMAN: Thank you.  
17 Ms. McDavid.

18 (Audience member approaches the podium.)

19 THE CHAIRWOMAN: How are you?

20 AUDIENCE MEMBER: Fine. How are you?

21 THE CHAIRWOMAN: I'm good. Please state  
22 your name and address for the record, and then  
23 Ms. Tropa will swear you in.

24 AUDIENCE MEMBER: Yes, it's Mary Lynn  
25 McDavid. I live at 4324 San Juan Avenue.

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1 THE REPORTER: If you would raise your  
2 right hand for me, please.

3 MS. McDAVID: (Complies.)

4 THE REPORTER: Do you affirm that the  
5 testimony you are about to give will be the  
6 truth, the whole truth, and nothing but the  
7 truth?

8 MS. McDAVID: Yes.

9 THE REPORTER: Thank you.

10 MS. McDAVID: I became aware of this  
11 liquor store when a friend of mine posted a  
12 picture of the notice for this meeting. I had  
13 seen a recent notice in my own neighborhood  
14 that listed the date, the time, the location.  
15 And what struck me was there was no -- none of  
16 that information, just this WLD-19-13 and a  
17 phone number.

18 And so I was reading sort of the  
19 scuttlebutt on this post, and it was apparent  
20 to me that everyone in the neighborhood --  
21 they're not all here. You know, they probably  
22 have children at home, they don't have  
23 transportation, maybe they're at work. This is  
24 one o'clock on a Thursday. But the  
25 neighborhood scuttlebutt was no one wants this

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1 liquor store. And apparently there's already a  
2 gas station across the street that has multiple  
3 police calls all the time. This is the  
4 situation: Build it, and they will come. And  
5 the wrong people will be coming.

6 Thank you.

7 THE CHAIRWOMAN: Thank you.

8 Resia Pandey, and then Stephen Roston after  
9 her.

10 (Audience member approaches the podium.)

11 THE CHAIRWOMAN: How are you?

12 AUDIENCE MEMBER: All right, ma'am.

13 THE CHAIRWOMAN: Can you please state your  
14 name and address for the record, and then  
15 Ms. Tropa will swear you in.

16 AUDIENCE MEMBER: Resia Pandey, 4113  
17 Moncrief Road.

18 THE REPORTER: If you would raise your  
19 right hand for me, please.

20 MS. PANDY: (Complies.)

21 THE REPORTER: Do you affirm that the  
22 testimony you are about to give will be the  
23 truth, the whole truth, and nothing but the  
24 truth?

25 MS. PANDY: Yes, ma'am.

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1 THE REPORTER: Thank you.

2 MS. PANDY: I live right across the street  
3 from where they are planning on opening up this  
4 liquor store, and we do not need a liquor store  
5 in our community. We already have two. And  
6 that's only going to bring more crime to our  
7 neighborhood, and we're trying to clean our  
8 neighborhood up. We need things that's  
9 productive to our neighborhood, a nursery, a  
10 grocery store, a restaurant.

11 We went around, we picked up and -- we  
12 wrote up a petition. We brought that. But  
13 this man is determined to put a liquor store in  
14 our community, which we do not need.

15 Thank you.

16 THE CHAIRWOMAN: Thank you, ma'am.  
17 Stephen Roston.

18 (Audience member approaches the podium.)

19 THE CHAIRWOMAN: How are you?

20 AUDIENCE MEMBER: I'm good. How are you?

21 THE CHAIRWOMAN: Good. If you would  
22 please state your name and address for the  
23 record, and then Ms. Tropa will swear you in.

24 AUDIENCE MEMBER: My name is Stephen  
25 Roston, 4129 Moncrief Road, Jacksonville,

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1 Florida, 32209.  
 2 THE REPORTER: If you would raise your  
 3 right hand for me, please.  
 4 MR. ROSTON: (Complies.)  
 5 THE REPORTER: Do you affirm that the  
 6 testimony you are about to give will be the  
 7 truth, the whole truth, and nothing but the  
 8 truth?  
 9 MR. ROSTON: I do.  
 10 THE REPORTER: Thank you.  
 11 MR. ROSTON: I'm here today for my  
 12 neighborhood and my community. We do not need  
 13 a liquor store in our community. We already  
 14 have a lot of violence, a lot of arguments.  
 15 The kids aren't growing the way they should  
 16 because we don't have anything in our  
 17 community. We don't need anything else that's  
 18 negative.  
 19 Again, my address is 4129 Moncrief.  
 20 That's my business address. My home address is  
 21 4127. I live directly across the street from  
 22 where they're trying to open up a liquor store.  
 23 I have numerous kids, and numerous kids that I  
 24 mentor to, and there's also a bus for  
 25 elementary school kids on that property where  
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1 they drop the kids off. So it's not good for  
 2 the community, period. No one in my community  
 3 is for it. I'm here as a representative for my  
 4 community.  
 5 Okay. We already have, like, 24-hour gas  
 6 station/convenience stores, which is no  
 7 problem. We need gas. We just don't need the  
 8 people loitering, shooting, which is -- we're  
 9 on Moncrief. Everybody reads the news.  
 10 Everybody sees. This is Moncrief. And  
 11 Moncrief runs far, but where I live and where  
 12 my business is is directly across the street  
 13 from where they want this liquor store. That  
 14 is the prime area of the violence. That is the  
 15 prime area of the drugs. We don't need any  
 16 more negative influences in our community if  
 17 we're going to bring it up. The news is there  
 18 at least twice a week with helicopters, a lot  
 19 of police and everything. This is not going to  
 20 do anything good for our community.  
 21 And I'm here today, this is my first time  
 22 here, but they have had this meeting numerous  
 23 times. I'm tired of it. I'm tired of people  
 24 coming out, coming to me back and forth, back  
 25 and forth. I have a barber shop, a community  
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1 center where everybody comes with their issues,  
 2 and I'm here to represent them. We don't need  
 3 it. It's not going to bring anything positive.  
 4 It's not going to bring any jobs. It's not  
 5 going to bring any healthy foods, no healthy  
 6 beverages. It's going to produce more guns,  
 7 more arguing, more shooting, more violence,  
 8 more killings, more drugs.  
 9 We're in poverty. I'm in poverty. We're  
 10 struggling now to get ahead. We can't get  
 11 ahead with more negative things coming to our  
 12 community.  
 13 Again, I want the gentleman to know, I'll  
 14 be here each and every time to fight against  
 15 it. If I got to do other petitions to stop  
 16 this and other things from coming, I'll be  
 17 here. I don't want to come over and over  
 18 again, but if I have to, get used to seeing my  
 19 face and me representing my community.  
 20 Thank you for your time.  
 21 THE CHAIRWOMAN: Thank you.  
 22 Is there anyone else here to speak on  
 23 WLD-19-13?  
 24 AUDIENCE MEMBERS: (No response.)  
 25 THE CHAIRWOMAN: Mr. Miller.  
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1 (Mr. Miller approaches the podium.)  
 2 MR. MILLER: Thank you again, Madam Chair.  
 3 Just to address one point, Ms. Johnston,  
 4 who is a wonderful asset to this body and a  
 5 great attorney, read from Section 656.113 and  
 6 talked about whether you "may" versus "shall."  
 7 113 also says, "Applications for waivers shall  
 8 be in writing on the form prescribed by the  
 9 Commission," meaning the application that we  
 10 fill out for waivers of liquor distance is the  
 11 application approved by this commission. That  
 12 application says "shall," if you meet any of  
 13 the criteria. The reason is that you would be  
 14 divorced from any standard, and any  
 15 quasi-judicial matter such as this could be  
 16 denied for any reason. Any quasi-judicial  
 17 matter has to be tied to some sort of standard.  
 18 In this case, the standard is if you're  
 19 not directly visible along the line of sight,  
 20 as set forth in Chapter 8, you negate the need  
 21 for the separation requirement. And that's not  
 22 just me saying this. This was from the last  
 23 time this was approved, again, closer to the  
 24 church. This was Commissioner Harding: "You  
 25 know, I think Mr. Harden makes a very  
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1 compelling case. The fact is that it would  
2 appear, based on the zoning, that this pastor  
3 could sell this church tomorrow and someone  
4 could put a package store in there. So it  
5 seems a little disingenuous to deny something.  
6 I mean, I think you make a compelling case for  
7 the line of sight issue, that it's not in the  
8 line of sight, but I think it's disingenuous to  
9 deny the approval based on the fact that a  
10 church exists just down the street, which is  
11 not -- was obviously not necessarily built as a  
12 church. Obviously, if you look around, you  
13 could easily turn around and sell that tomorrow  
14 and become a package store."

15 Commissioner Blanchard said the following:  
16 "Through the Chair to the applicant, you know,  
17 I'm not thrilled with the idea of a package  
18 store at this location, but I think that's more  
19 of a personal opinion of mine. I think based  
20 on the technical arguments you've made, I would  
21 tend to support the waiver of liquor distance."

22 And that was approved unanimously three  
23 years ago.

24 I'd also like to note that I have not  
25 heard anyone from the actual church, the

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1 Harmony Baptist Church get up here and speak  
2 today. That is the church that is within  
3 400 feet of this location. That is the church  
4 that was within 310 feet.

5 And as for the competent substantial  
6 evidence, the staff report that recommends  
7 denial, Subsection 4, "Is the alcoholic  
8 beverage use directly visible along the line of  
9 measurement defined in Chapter 8? No. The  
10 alcoholic beverage use is not directly visible  
11 from the church noted in the attached liquor  
12 distance survey." And the reason is because  
13 the last place that you approved is in between  
14 the two locations.

15 I'd also ask you to look on that fact that  
16 I'm not sure this church actually meets the  
17 definition of "church" as in Chapter 8. On  
18 Page 157 of your staff report, we actually have  
19 time-stamped photos of times when they are  
20 supposed to be holding scheduled services, and  
21 no one is at the church.

22 With that said, we will still abide by the  
23 condition that we will not be open on Sunday  
24 mornings, and the landscape plan, and the fence  
25 if you feel it's needed, but, again, the

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1 previous building blocks the view.

2 With that, I'm happy to answer any  
3 questions.

4 THE CHAIRWOMAN: Thank you, Mr. Miller.

5 I believe the councilwoman is here, and  
6 she may want to speak. If you would like  
7 another brief rebuttal after that --

8 No? Okay.

9 Is there anyone else here to speak who has  
10 not spoken on WLD-19-13?

11 AUDIENCE MEMBER: Can we offer rebuttal to  
12 what he just said?

13 THE CHAIRWOMAN: No, sir.

14 AUDIENCE MEMBER: I guess I respect that,  
15 but --

16 THE CHAIRWOMAN: No, sir. Sir, you cannot  
17 scream out from the audience.

18 AUDIENCE MEMBER: (Inaudible.)

19 THE CHAIRWOMAN: If there is no one else  
20 here to speak on WLD-19-13, I will close the  
21 public hearing and bring it back to the  
22 Commission.

23 COMMISSIONER GARRISON: Madam Chair, for  
24 the purpose of discussion, I move for approval  
25 of WLD-19-13 to discuss.

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1 COMMISSIONER NOTES: I second that for the  
2 purpose of discussion.

3 THE CHAIRWOMAN: I have a motion and a  
4 second for approval of WLD-19-13.

5 Discussion?

6 Mr. Gallup.

7 MR. GALLUP: Thank you, Madam Chairwoman.

8 I would like to provide the Commission  
9 with some detailed information regarding Duval  
10 County Public Schools bus stops in this  
11 location that I mentioned in 2018. This is  
12 provided for by our transportation department.

13 There is a bus stop at Moncrief and 33rd,  
14 which is right at this location, which serves  
15 Raines High School, which is Route 867, and  
16 Carter G. Woodson Elementary, which is Route  
17 553 and Route 357. Carter G. Woodson is also  
18 an elementary hub site, so we also have  
19 students that are picked up on the Carter  
20 G. Woodson bus and are delivered to Carter  
21 G. Woodson that are then shuttled to  
22 R.V. Daniels, Brentwood, Sallye B. Mathis,  
23 R.L. Brown, Lake Forest, Martin Luther King,  
24 Rufus Payne, Andrew Robinson, and John E Ford.

25 We also have another stop at 33rd and  
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1 Baldwin, which is in the near location as well,  
 2 and that picks up for North Shore and Reynolds  
 3 Lane Elementary.  
 4 And the District is against this waiver,  
 5 of course.  
 6 Thank you.  
 7 THE CHAIRWOMAN: Thank you, Mr. Gallup.  
 8 Commissioner Ward.  
 9 COMMISSIONER WARD: Mr. Miller, I  
 10 appreciate your zealous advocacy, as well as  
 11 Ms. Johnson's.  
 12 MR. MILLER: I always feel like that's  
 13 going to come before a "but."  
 14 COMMISSIONER WARD: You know, my dad told  
 15 me everything that comes before the word "but"  
 16 doesn't matter.  
 17 MR. MILLER: Yeah.  
 18 COMMISSIONER WARD: And he said it in a  
 19 little different language, but I don't think  
 20 that's appropriate for a public forum.  
 21 So I did want to just -- hearing what you  
 22 stated about the mandatory and a lot of shalls  
 23 and a bunch of legalese, I've been reading over  
 24 here with Paige, and just for my fellow  
 25 commissioners, for our own edification, it is,  
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1 in fact, not mandatory that if we find one of  
 2 those five exceptions -- once again, I'm  
 3 stating this for informational purposes only,  
 4 not dictating what I think our decision should  
 5 be or my decision is, but one of the five  
 6 exceptions --  
 7 I believe there are five. Is that right,  
 8 Paige?  
 9 MS. JOHNSTON: Yes.  
 10 COMMISSIONER WARD: -- it is, in fact, not  
 11 mandatory that if we find one of those to be  
 12 the case, we must grant an exception. It is  
 13 very much a discretionary thing within this  
 14 body.  
 15 What Mr. Miller is talking about -- and  
 16 that's in the municipal code, right here in  
 17 front of my eyes. What Mr. Miller is talking  
 18 about is there is what one could argue to be a  
 19 poorly worded sentence on the application that  
 20 confuses that issue and says "shall." That --  
 21 however, the language on the application does  
 22 in no way, shape, or form trump what is in the  
 23 code.  
 24 And, Mr. Miller, I don't like to tell you  
 25 that, but you probably would agree. It would  
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1 hold up in a court of law that the application  
 2 does not trump what has actually been voted on  
 3 by the legislative body in the code.  
 4 All that being said for informational  
 5 purposes, I would just like to state that it is  
 6 very much a discretionary "may" choice that is  
 7 in front of this commission right now. The  
 8 only thing that is "shall" is that if we were  
 9 to approve that exception, this exception that  
 10 Mr. Miller is asking for, we must find one of  
 11 those five to apply, but it is not mandatory  
 12 that we must approve this exception.  
 13 No questions. I have no questions.  
 14 THE CHAIRWOMAN: Who is next?  
 15 Commissioner Adkison.  
 16 COMMISSIONER ADKISON: Well, I had a  
 17 couple listed. Number 3 on mine was a  
 18 definition of the "shall," and that's what I  
 19 wanted to make sure, we're using "shall" in the  
 20 ordinance and the application.  
 21 Through the Chair, who were the three  
 22 members? You got Blanchard out there.  
 23 MR. MILLER: One of them is speaking to me  
 24 right now, through the Chair.  
 25 COMMISSIONER ADKISON: That's what I  
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1 thought.  
 2 MR. MILLER: And one of them is sitting  
 3 right next to you on the other side.  
 4 THE CHAIRWOMAN: Talk about being thrown  
 5 under the bus.  
 6 COMMISSIONER ADKISON: Well, I just wanted  
 7 to -- you know, sometimes this commission looks  
 8 at things, and they look at environment. And  
 9 one of my other questions was -- and I see  
 10 you're here today, is, who is the council  
 11 person, what is she thinking? Obviously, she  
 12 can't voice her opinion, because she may have  
 13 to vote on this later, but it's nice to see her  
 14 in here either for support or denial. I can't  
 15 figure out which way it's going, but I can  
 16 assume.  
 17 Zach, looking at this thing here, you  
 18 brought up some points about the other side and  
 19 everything, and I do want to compliment you on  
 20 your plan. I'm going to change the way I feel  
 21 on this because I know the community is trying  
 22 to do stuff on it. And it's not that I'm going  
 23 back; it's probably what's happened over the  
 24 last three years. And the community does have  
 25 a right to try to clean up their area.  
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1 And with that being said, to the gentleman  
2 that said he's going to fight, fight, fight,  
3 try not to use that when you're talking about  
4 violence, because that gives me a double-edged  
5 sword right there. And what I'd like to see is  
6 y'all get together, get with some plan. I  
7 think some good development -- you-all  
8 mentioned nurseries. I understand we see a lot  
9 of nurseries coming in. Get with some small  
10 business leaders, get with some small  
11 businesses and see what y'all can do out there.

12 As of right now, I'm going to have to go  
13 back on my word of three years.

14 Thank you.

15 THE CHAIRWOMAN: Commissioner Hacker.

16 COMMISSIONER HACKER: Thank you.

17 Through the Chair, I just wanted to say  
18 thanks to the residents for coming and voicing  
19 your testimony. I think that was a catalyst we  
20 needed to hear. I know the area needs  
21 improvement, and I don't believe that a liquor  
22 store is going to contribute to that  
23 improvement. So I appreciate the time.

24 Thanks.

25 THE CHAIRWOMAN: Commissioner Blanchard.

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1 COMMISSIONER BLANCHARD: Thank you, Madam  
2 Chair.

3 It was maybe a year-and-a-half or two  
4 years ago where Councilman Brown came before  
5 us, before he was indicted on fraud charges,  
6 but one of his concerns was putting liquor  
7 stores in communities. And there was this  
8 legislation that he had prepared, and it was --  
9 it was poor, but the intent of it was to take  
10 these decisions away from this structure, in  
11 Planning Commission, and put them in the hands  
12 of Council. And not all of you were here for  
13 that. And I fought that pretty hard. And we  
14 won. And I think that the promise made was  
15 that, you know, at the Planning Commission  
16 level, is that we'll be certain to listen to  
17 the community and do what's right by the  
18 community in these situations. And waivers are  
19 not automatic approvals. They're not rubber  
20 stamped here. They do have to make sense, and  
21 we will listen to the community.

22 So I know Paul Tutwiler that works in this  
23 area. I haven't seen him in years, but he's  
24 done so much in this immediate area to help  
25 improve housing and to fix things up, and

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1 there's the kids golf thing across the street  
2 where they bring the young kids in and teach  
3 them golf and things. There's a lot of good  
4 things that are going the right direction, and  
5 I don't think a liquor store is it.

6 So I'll honor my word to Councilman Brown,  
7 in spite of the fight that we had that day,  
8 that we are listening to the community and we  
9 are voting our conscience and doing what is  
10 right. So I just don't think I can support  
11 this at this time.

12 THE CHAIRWOMAN: Commissioner Motes.

13 COMMISSIONER MOTES: Through the Chair,  
14 Zach, I'm probably going to be off the  
15 Christmas card list this year. And I'm not  
16 sure I was on it, but I'm going to preface  
17 that.

18 MR. MILLER: Marshall is the only one  
19 that's off the Christmas card list.

20 COMMISSIONER MOTES: I'm going to  
21 capitulate here. I want to thank Randall for  
22 giving us that information on the school bus  
23 stops. I think that's paramount in also  
24 helping protect the community.

25 Thank you to all of the community citizens  
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1 that came out and spoke on it. You've got to  
2 find something else. It's easy to come up here  
3 and say what you don't need and what you don't  
4 want. Work on what you can put there, what we  
5 can get from the community. And it takes you  
6 guys to help that, not just the man that owns  
7 the property or the firm that's representing  
8 him. Work on that as a community. Reach out  
9 and find out what you can put there. Get  
10 people to come in and help with that.

11 Zach, I still hope the rest of your day is  
12 full of smiles.

13 MR. MILLER: I've got one more thing up,  
14 so, hopefully.

15 THE CHAIRWOMAN: Anyone else?  
16 Commissioner Garrison.

17 COMMISSIONER GARRISON: Thank you, Madam  
18 Chair.

19 To Mr. Miller, to Zach, if you would like  
20 to give some sort of response to the may/shall  
21 debate, I'll ask you to do that, if you would  
22 like to.

23 MR. MILLER: I appreciate that.

24 And I appreciate Paige's position on this,  
25 but the code section at issue, 133, uses the  
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1 word "may," but that same section empowers the  
2 Planning Commission to come up with an  
3 application with standards. And the  
4 application that we have that was last updated  
5 on January 10th, 2017, and which is posted on  
6 the City of Jacksonville website uses the word  
7 "shall." So I understand that the permissive  
8 language in the code, that's permissive  
9 language to the Commission to develop an  
10 application with particular standards.

11 And I'd also disagree -- and here's the  
12 reason I know that. That section in the code  
13 says these five factors, but not limited to.  
14 So the code gives you the power to come up with  
15 an application. You did.

16 I assume that this application was  
17 approved by the Planning Commission, hopefully  
18 on January 10th, 2017, and it says the word  
19 "shall" in it. And I don't think that is by  
20 accident, because, otherwise, you would just  
21 deny an application unmoored from any objective  
22 criteria.

23 Again, we're not talking about a special  
24 exception. We're not talking about does it fit  
25 in the character of the neighborhood. That was

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1 decided when this was zoned CCG-2. We're  
2 talking about the liquor distance waiver, can a  
3 place that sells liquor be within 500 feet of a  
4 church or school. In this case, a church.  
5 That has been negated if you're not in direct  
6 line of sight.

7 So while I absolutely respect Commissioner  
8 Ward and Paige on this, I believe the code  
9 bears out a different result.

10 COMMISSIONER GARRISON: Thank you.

11 Thanks, Zach.

12 As far as the community is concerned, I  
13 certainly, sincerely do want what's best for  
14 Moncrief. Someone used the word "poverty" and  
15 getting a leg up and words of that nature, and  
16 I don't take lightly, that we've got to be  
17 mindful of those types of circumstances and any  
18 sort of things that we could do that might --  
19 that would stand some chance of being  
20 detrimental and damaging to that community.

21 There is -- you know, heartfelt, there is  
22 one criteria regarding public safety, and that,  
23 bona fide -- does concern me, you know, the  
24 safety of the neighborhood and the threat of  
25 adding things that tend to lend to violence and

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1 lend to poor decision-making from time to time.

2 So thank you.

3 THE CHAIRWOMAN: Thank you, Commissioner  
4 Garrison.

5 Anyone else?

6 Commissioner Adkison.

7 COMMISSIONER ADKISON: Through the Chair  
8 to the councilwoman, help us get this thing  
9 redone, get the wording right, follow what  
10 they're saying. That would help out  
11 tremendously, if you could carry on and get  
12 stuff like that fixed.

13 THE CHAIRWOMAN: Okay. I have a motion  
14 and a second for approval of WLD-19-13.

15 All those in favor of the approval, say  
16 aye.

17 COMMISSION MEMBERS: (No response.)

18 THE CHAIRWOMAN: All those opposed?

19 COMMISSION MEMBERS: Aye.

20 THE CHAIRWOMAN: That motion fails.

21 Do we need --

22 COMMISSIONER ADKISON: Through the  
23 Chair -- or to the Chair, I recommend denial.

24 COMMISSIONER BLANCHARD: Second.

25 COMMISSIONER MOTES: Second.

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1 THE CHAIRWOMAN: Okay. I have a motion  
2 and a second for denial of WLD-19-13.

3 All those in favor of the denial, say aye.

4 COMMISSION MEMBERS: Aye.

5 THE CHAIRWOMAN: All those opposed? .

6 COMMISSION MEMBERS: (No response.)

7 THE CHAIRWOMAN: That motion fails -- I'm  
8 sorry, that motion passes.

9 MR. MILLER: Thank you for the  
10 Commission's time.

11 THE CHAIRWOMAN: Thank you.

12 Thank you, everybody, for being here.

13 All right. Let's keep going. 2019-274.

14 Let's open the public hearing on that, please.

15 Kristen.

16 MS. REED: Thank you.

17 Ordinance 2019-274 is for a large scale  
18 land use amendment. The site is 5.58 acres,  
19 and it's located north of Merrill Road, between  
20 Wompi Drive and Fort Caroline Road. The  
21 request is to amend the land use from CGC to  
22 MDR. The current CGC is the result of a 2001  
23 land use amendment to change the site from MDR  
24 to CGC.

25 The area surrounding the site is

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## *Effie, Inc. v. Ocala*

Court of Appeal of Florida, Fifth District

September 29, 1983

No. 82-409

### Reporter

438 So. 2d 506 \*; 1983 Fla. App. LEXIS 24452 \*\*

EFFIE, INC., Appellant, v. CITY OF OCALA, Appellee

### Core Terms

ordinance, public hearing, city council, zoning, requirements, permits, traffic, alcoholic beverage, no evidence, consumption, premises, regulated

### Case Summary

#### Procedural Posture

Appellant business challenged a judgment of the trial court (Florida), holding that an ordinance of appellee city was a constitutional exercise of appellee's police power and denying a location permit to appellant for the sale and consumption of alcoholic beverages on premises owned by appellant.

#### Overview

Appellant business challenged the trial court's holding that appellee city's ordinance was constitutional, and which denied appellant's location permit for the sale and consumption of alcoholic beverages on appellant's premises. Appellant contended that the challenged provisions were invalid because they failed to provide any standards or guidelines upon which the city council might act, thereby permitting the exercise of unbridled discretion by the council, and denying appellant equal protection of the law. The court noted that the ordinance was silent as to what weight or effect certain enumerated matters would have. The ordinance also allowed the council to consider all other pertinent factors that may arise in connection with the particular application and location being considered which was patently *vague* and obscure. The court reversed because it found that the opportunity for the exercise of unbridled discretion was present, and whether or not exercised, rendered the ordinance unconstitutional.

#### Outcome

The court reversed the judgment of the trial court that deemed appellee city's ordinance constitutional and denied appellant business a location permit, because the ordinance denied equal protection under the law and was patently *vague* and obscure, which rendered the ordinance unconstitutional.

### LexisNexis® Headnotes

Constitutional Law > Equal Protection > Nature & Scope of Protection

Governments > Local Governments > Licenses

Governments > Local Governments > Ordinances & Regulations

#### [HN1](#) [↓] Equal Protection, Nature & Scope of Protection

The dispensation of alcoholic beverages is a highly regulated industry. Nevertheless the constitutional guaranty of equality before the law assures that every citizen, whether natural or corporate, be treated equally. To assure that right, regulations must be standard and criteria reasonably certain. An applicant for approval of a location must be in a position to determine the requirements and must be afforded an opportunity to comply with them. The requirements must be of uniform application. Once the requirements are met the governing body may not refuse the application. Any standards, criteria or requirements which are subject to whimsical or capricious application or unbridled discretion will not meet the test of constitutionality.

Governments > Local Governments > Licenses

stipulated facts,<sup>1</sup> [\*508] and found the ordinance to be a valid enactment of the exercise of the police power of

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<sup>1</sup> The stipulated facts, as they refer to the evidence presented at the public hearing, are:

C. That on or about January 6, 1981, a public hearing was held by the City of Ocala pursuant to the Code of the City of Ocala under Section 4-4(E) for the purpose of considering the application of the Plaintiff in this cause.

D. That with regard to evidence taken at that hearing there was no evidence that the location listed in the permit application of the Plaintiff was in such close proximity to the location of schools, churches, public recreation areas, public buildings and areas of public assembly as to preclude it from being granted a license.

E. That with regard to the above described public hearing there was no evidence presented that the location listed in the permit of the Plaintiff would change or alter the present land use character of the area.

F. That with regard to the location listed in the application of the Plaintiff there was no evidence presented that the granting of the permit of the Plaintiff would have detrimental effect upon the types of streets serving the area.

G. That with regard to the above described public hearing there was no evidence presented that the location listed in the application of the Plaintiff if granted a permit would detrimentally affect the type of traffic using the streets surrounding the location listed in the permit of the Plaintiff.

H. That with regard to the above described public hearing there was no evidence presented that the location listed in the application of the Plaintiff if granted a permit would detrimentally affect the health, safety and public morals of the public at large with regard to its proximity to other established places of businesses operating under permits D, E, F or G.

I. That with regard to the above described public hearing there was no evidence presented as to any other pertinent factors which would be detrimental if the application of the Plaintiff were granted.

J. That with regard to the above described public hearing held by the City Council the only objection presented out of the persons appearing and giving evidence was that the location was immediately adjacent to a mobile home park.

K. That with regard to the above described public hearing there was evidence presented that there were already other business establishments in the same area which would have the same impact upon the mobile home park as would the permit if granted to the Plaintiff.

the city. It further found that the ordinance supplied sufficient criteria upon which the city could exercise its discretionary powers, and that the city council was not required to confine itself to the enumerated items of the ordinance; that the action of the council was neither arbitrary nor capricious and therefore did not deny Effie either due process or equal protection of the law. The ordinance in question appears to have been enacted following the decision in the case of ABC Liquors, Inc. [\*5] v. City of Ocala, 366 So.2d 146 (Fla. 1st DCA 1979), cert. denied, 376 So.2d 69 (Fla.1979). In that case, it appeared that an applicant, holding a proper state license, and desiring to sell liquor for on-premises consumption on property properly zoned for that purpose, was nevertheless required to obtain consent of the city council through the enactment of an approving ordinance. No guidelines existed to guide the city council in determining which applicants would or would not be approved. In striking down the ordinance, the court held:

**HN1** [↑] The dispensation of alcoholic beverages is a highly regulated industry. Nevertheless the constitutional guaranty of equality before the law assures that every citizen, whether natural or corporate, be treated equally. To assure that right, regulations must be standard and criteria reasonably certain. An applicant for approval of a location must be in a position to determine the requirements and must be afforded an opportunity to comply with them. The requirements must be of uniform application. Once the requirements are met the governing body may not refuse the application. Any standards, criteria or requirements which are [\*6] subject to whimsical or capricious application or unbridled discretion will not meet the test of constitutionality. (Emphasis supplied)

366 So.2d at 149.

**[\*\*7]** **HN2** [↑]

The granting or withholding of a permit to engage in a legitimate business should not depend on the whim or caprice of the permitting authority. This principle is applicable equally to a highly regulated business such as the one involved here, ABC Liquors v. City of Ocala, supra; City of [\*509] Jacksonville v. Goodbread, 331 So.2d 350 (Fla. 1st DCA 1976); or to businesses not so closely regulated. Eskind v. City of Vero Beach, 159 So.2d 209 (Fla.1863); Broward County v. Narco Realty,

## [Miami v. Save Brickell Ave.](#)

Court of Appeal of Florida, Third District

February 1, 1983

Nos. 82-634, 82-742, 82-790

### Reporter

426 So. 2d 1100 \*; 1983 Fla. App. LEXIS 18558 \*\*

CITY OF MIAMI and SANTA MARIA DEVELOPMENT GROUP, Petitioners, v. SAVE BRICKELL AVENUE, INC., Respondent

**Prior History:** **[\*\*1]** On Petitions for Writ of Certiorari to the Circuit Court for Dade County, N. Joseph Durant, Jr., Gerald Kogan and Murray Goldman, Judges.

### Core Terms

ordinance, invalid, zoning, void, regulations, delegation, zoning ordinance, present case, open space, notice, cases

### Case Summary

#### Procedural Posture

Petitioners, city and development, group sought certiorari to review a decision from the appellate division of the Circuit Court for Dade County (Florida) which, on appeal by respondent association, reversed a Miami City Commission resolution approving a proposed planned area development project.

#### Overview

Respondent association sued petitioners, city and development group, challenging a proposed planned area development project. When an appellate court reversed a city commission resolution approving the project after it held that respondent had standing to challenge constitutionality of underlying ordinance and that ordinance was invalid as an unconstitutional delegation of legislative power, petitioners sought certiorari review. On appeal, the court held that respondent was attacking an essential procedure preceding enactment of a zoning resolution: the constitutionality of an enabling ordinance. The court denied petition for certiorari and affirmed because the court concluded that both trial court holdings fully comported with the essential requirements of the law.

The court noted that if definite standards were not included in an ordinance, it had to be deemed unconstitutional as an invalid delegation of legislative power to an administrative board.

#### Outcome

The court denied petitioners', city and development group, petition for certiorari and affirmed the holdings that respondent association had standing to challenge the constitutionality of the underlying ordinance and that the ordinance was invalid as an unconstitutional delegation of legislative power because both holdings fully comported with the essential requirements of the law.

### LexisNexis® Headnotes

Governments > Legislation > Interpretation

[HN1](#)  Legislation, Interpretation

A statute or part of a statute which is duly declared unconstitutional and rendered inoperative by the supremacy of the Constitution is inoperative from the time of its enactment and not only from the time of the decision. In other words, if a legislative enactment conflicts with an existing provision of the Constitution, such enactment never becomes law.

Business & Corporate Compliance > ... > Real Property Law > Zoning > Constitutional Limits

Civil Procedure > ... > Justiciability > Standing > General Overview

owners similarly conditioned, cannot be permitted to stand as a valid municipal enactment.'

Based upon the authority of *North Bay Village v. Blackwell, supra*, and *City of Coral Gables v. Deschamps, supra*, we hold that where the City of Miami Commission itself acts as a zoning authority, as under the presently enacted PAD ordinance, there is a requirement for sufficient standards in the exercise of such discretion.

Therefore, the second and final question becomes whether the present PAD ordinance lacks sufficient standards for the guidance and control of the Miami City Commission and as such is an unpermitted, arbitrary and unfettered delegation of authority to itself?

At the outset, we recognize that questions of zoning policy, of what is good or bad for the city and the public, involve an exercise of police **[\*\*10]** power and therefore are essentially matters within the legislative orbit. *Conetta v. City of Sarasota, 400 So.2d 1051 (Fla.2d DCA 1981)*; and, *City of Miami Beach v. Greater Miami Hebrew Academy, 108 So.2d 50 (Fla. 3d DCA 1958)*. However, in the present case, we need not consider whether the governing body has in fact acted capriciously or arbitrarily, <sup>4</sup> because *HN4* 'it is the opportunity, not the fact itself, which will render an ordinance vulnerable.' *ABC Liquors, Inc. v. City of Ocala, 366 So.2d 146 (Fla. 1st DCA 1979)*.

Appellee-Developer contends that the present PAD ordinance has sufficient standards and cites *Clarke v. Morgan, 327 So.2d 769 (Fla. 1975)*. We have examined that decision as well as other Florida cases <sup>5</sup> passing upon the question of the constitutionality vel non of the enabling act under which the legislative agency performs and find that, *HN5* 'the general rule **[\*\*11]** that a zoning ordinance must prescribe definite standards, in that... the city council... properly vested with discretionary rights in granting building permits or variances in exception to the zoning ordinance unless there has been established a definite standard to guide them in the exercise of such power.' *North Bay Village v.*

<sup>4</sup> Indeed, as previously discussed, Save-Brickell does not even possess standing to raise such question.

<sup>5</sup> Cf. *Josephson v. Autrey, 96 So.2d 784 (Fla. 1957)*; *North Bay Village v. Blackwell, 88 So.2d 524 (Fla. 1956)*; *Tau Alpha Holding Corp. v. Bd. of Adjustments of City of Gainesville, 126 Fla. 858, 171 So. 819 (1937)*; and, *Safer v. City of Jacksonville, 237 So.2d 8 (Fla. 1st DCA 1970)*.

*Blackwell, supra*. In other words, if definite standards are not included in the ordinance, it must be deemed unconstitutional as an invalid delegation of legislative power to an administrative board. *Clarke v. Morgan, supra*.

In the present case, the PAD ordinance provides, in relevant part:

(3) USES, DENSITY, OPEN SPACE AND FLOOR AREA RATIO AND OTHER **[\*\*12]** REGULATIONS

Within a Planned Area Development, any principal and accessory use, density, open space and floor area ratio and other regulations is permitted which is already permitted in the existing zoning district or districts or PAD Districts as may be determined by the City Commission pursuant to a PAD application, in which such Planned Area Development is located. The distribution of these permitted principal and accessory uses, density, open space and floor area ratio, and other regulations or deviations therefrom, shall not be affected by existing zoning regulations, but shall be subject to the approval of the City Commission. Deviations from the permitted principal and accessory uses, density, open space and floor area ratio **[\*1105]** and other regulations may be granted upon approval of a PAD Conditional Use application by the City Commission. Criteria to be considered by the City Commission for approval of deviations as described above may include but are not limited to: (a) private renewal and redevelopment that creates a better urban environment through the assembly of land, (b) providing of public usable open space through the provision of plazas, parks, **[\*\*13]** and walkways, (c) clearance of obsolete, blighted or undesirable building and/or uses, (d) dedication of waterfront public easements at least twenty feet in width, (e) protection and enhancement of views for the public, especially bayfront or riverfront, (f) preservation of historical structures and/or areas, (g) provision of terminal facilities for off-street parking of automobiles and service vehicles, and (h) other public benefits. (emphasis added)

While it is true that criteria are listed in the ordinance for the City Commission consideration, further examination reveals that such criteria are solely permissive and not mandatory. The key phraseology is 'may include but are not limited to...' *HN6* In statutory construction, the word 'may' when given its ordinary meaning denotes a permissive term rather than the mandatory connotation



of the word 'shall'. I.E. Fixel v. Clevenger, 285 So.2d 687, 688 (Fla. 3d DCA 1973). Moreover, the wording of the ordinance clearly permits the Commission to totally disregard the listed criteria and instead to base a decision upon criteria that are not listed or no criteria at all. Certainly, an ordinance which permits a legislative agency **[\*\*14]** to totally disregard listed criteria and to base a decision upon unlisted or no criteria does not meet the standards recited in North Bay Village v. Blackwell, supra, and the other decisions cited above.

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End of Document

Parenthetically, it must be further noted that the ordinance in Sec. 4(3), cited above, and in Sec. 7 ('where there are conflicts between the requirements of this Article and other provisions of the zoning ordinance, the provisions of this Article shall apply') make it quite clear that existing zoning regulations do not apply to the PAD ordinance. None of the requirements for the issuance of variances found in the zoning laws, e.g., proof of hardship or the existence of special conditions, apply to the PAD ordinance, and most importantly, nothing is substituted for them. Therefore, the inescapable conclusion is that the presently drafted PAD ordinance gives a developer the opportunity to completely avoid the zoning laws.

We have read the cases cited by the Appellees, Clarke v. Morgan, supra; Bellemeade [Bellemeade] Company v. Priddle, 503 S.W.2d 734 (Ky.App. 1973); and Prince George's County v. M & B Construction Corp., [267 Md. 338] 297 A.2d 683 (Md. 1972) [\*\*15] and find the ordinances involved in each of these cases contained far more specific standards than does the Miami PAD ordinance.<sup>6</sup>

This case, in our viewpoint, is more closely analogous to the recent opinion in ABC Liquor[s], Inc. v. City of Ocala, supra. Without extensively reviewing this well-written decision, we believe that its logic and legal analysis is applicable to the present case.

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<sup>6</sup>For example, the present case is not analogous to Clark v. Morgan, supra, where the Court upheld a statute where it provided standards, in that, among other things, it authorized variances only if changes in the use of property would not be contrary to public interest, special conditions justified changes and changes would not become effective until it had been submitted to county planning commission for review and recommendation.

Certiorari denied.

## Everett v. City of Tallahassee

United States District Court for the Northern District of Florida, Tallahassee Division

December 18, 1992, Decided ; December 18, 1992, Filed, Entered

TCA 90-40152-WS

### Reporter

840 F. Supp. 1528 \*; 1992 U.S. Dist. LEXIS 21945 \*\*; 7 Fla. L. Weekly Fed. D 645

CARY A. EVERETT, Plaintiff, v. THE CITY OF TALLAHASSEE, a Municipal Corporation, Defendant.

**Subsequent History:** **[\*\*1]** As Amended July 2, 1993.

### Core Terms

zoning, rezoning, fire station, City's, residential, planning commission, non-residential, ordinance, notice, zoning ordinance, facilities, policies, parcel, municipal, adjacent, deprivation, rental, commercial use, land use, classification, violates, site, zoning code, plaintiffs', designated, map, residential use, neighborhood, properties, transition

### Case Summary

#### Procedural Posture

Plaintiff property owner filed a complaint pursuant to 42 U.S.C.S. § 1983 alleging, inter alia, that the application by defendant, the City of Tallahassee, Florida of its zoning laws was arbitrary and capricious and had violated both his substantive and procedural due process rights, as well as the *takings clause*. He also included a pendent state law claim for damages caused by an adjoining landowner's unlawful use of property.

#### Overview

The owner's property was zoned for low-density residential use, and he was denied an amendment for office-residential use, even though the city had, on several occasions, rezoned neighboring parcels to allow for non-residential use. Specifically, the court found that the city's placement of a fire station nearby the owner's property without following the statutory procedures for rezoning and giving him proper notice and opportunity to object had violated his procedural due process rights under the United States Constitution, as well as violating Tallahassee, Fla. Zoning Code § 6.5. Before converting

the residentially-zoned property to non-residential uses, the city was required to engage in a formal rezoning process with notice to public or to affected owners, and failure to provide such notice violated [Fla. Stat. ch. 166.041](#) as well. The Florida Supreme Court had also made it clear that zoning variations to accommodate city purposes should either have been anticipated in zoning ordinances before construction was commenced or construction should not have been started until the zoning ordinance had been changed to accommodate the proposed construction.

#### Outcome

The court found for the owner and against the state on the owner's procedural and substantive due process claims. There remained counts of the complaint yet to be tried, and the amount damages for the city's procedural and substantive due process violations remained to be decided.

### LexisNexis® Headnotes

Civil Rights Law > Protection of Rights > Section 1983 Actions > Scope

Constitutional Law > ... > Fundamental Rights > Procedural Due Process > Scope of Protection

Constitutional Law > ... > Fundamental Rights > Procedural Due Process > General Overview

#### [HN1](#) [↓] Protection of Rights, Section 1983 Actions

It is clear that an action under 42 U.S.C.S. § 1983 may be brought for a violation of procedural due process. In procedural due process claims, the deprivation by state

[\*\*59] It is a settled principle of law that simply [HN19](#) [↑] because one tract of land is allowed to be developed at a certain density level does not mean that adjoining properties must be permitted the same use. [Orange County v. Butler Estates Corp.](#), 328 So. 2d 864 (Fla. 4th DCA 1976). Thus, because one property is rezoned from residential use to office residential use does not mean that an adjoining piece of property must be accorded similar treatment. So long as the zoning authority presents "ample evidence of considerations that affected its decision and make it a fairly debatable one," its decision will be upheld. [Id. at 866](#). In this case, however, the *ad hoc* application of the uncodified and unconstitutionally vague Thomasville Road Policy to deny plaintiff's rezoning request violates plaintiff's substantive due process right.

[HN20](#) [↑] An ordinance which lacks sufficient standards against which the zoning authority's actions may be measured vests unreviewable discretion in the zoning authority and is void for vagueness. In [Henry v. Putnam County Board of County Commissioners](#), 509 So. 2d 1221 (Fla. 5th DCA 1987), [\*\*60] the court noted that

[HN21](#) [↑] Terms used in an ordinance must make reference to determinable criteria, and provide a context in which a court can determine a particular regulation is reasonable. No legislative body (City Commission) can delegate to an administrator arbitrary discretion to determine the meaning of a zoning code. If such standards or criteria do not exist, the zoning provision is a nullity.

[Henry](#), 509 So. 2d at 1222 (citing [Effie, Inc. v. Ocala](#), 438 So. 2d 506 (Fla. 5th DCA 1983), review denied, 444 So. 2d 416 (Fla. 1984). See also [St. Petersburg v. Schweitzer](#), 297 So. 2d 74 (Fla. 2nd DCA 1974) (holding invalid a zoning ordinance providing that the planning commission may grant special exceptions when no standards by which the commission could be guided were set forth in the ordinance); [Miami v. Save Brickell Ave, Inc.](#), 426 So. 2d 1100 (Fla. 3rd DCA 1983).

Plaintiff's rezoning request was clearly within the guidelines established by the City's comprehensive plan future land use map. That map designated plaintiff's parcel [\*\*61] and other properties fronting Thomasville Road south of I-10 and north of Woodgate Way as "mixed use B," which would include the office-residential use for which plaintiff applied. This comprehensive plan was adopted by city ordinance. Yet, one month after

adopting the "codified" future land use map, the city denied plaintiff's rezoning request on the basis of the 1978 uncodified Thomasville Road policy. Specifically, the Planning Commission viewed Everett's request as "being inconsistent with the Commission's adopted policy on land uses in the Thomasville Road/I-10 area, i.e. to not approve any non-residential rezoning requests on Thomasville Road north of Post Road (north of the Sun Bank property)." See Findings of Fact at P 40. Yet, the city approved similar requests in 1984 and 1985 by the owners of the Cureton and Moon properties and ignored the policy itself when it constructed the fire station and commercial rental facility at Oven Park. The City claims that it makes exceptions to the Thomasville Road policy "for differing circumstances and conditions" and notes that "other factors [besides the policy] are considered" in its rezoning decisions. However, none of these "circumstances," [\*\*62] "conditions" or "factors" are specified either in the uncodified policy or in any legislative enactment. Because no standards are set forth in the Thomasville Road Policy, the City's arbitrary and capricious use of the policy violates plaintiff's substantive due process rights.

### [\*1547] 3. *City's Alleged Conflict of Interest in Purchasing Oven Park*

Between the fall of 1988 and autumn, 1989, the city sought to acquire plaintiff's property by purchase, donation or exchange for the expansion of Oven Park. The parties were unable to agree on the price to be paid for the property. During this period, a potential buyer offered plaintiff \$ 555,390.00 for the 1.5 acres of the property fronting Thomasville Road contingent upon approval of a P.U.D. amendment to allow commercial rezoning of the property for use as a bank and professional offices. According to plaintiff, the City's interest in purchasing plaintiff's property conflicted with its role in determining the propriety of plaintiff's rezoning application. Specifically, plaintiff contends that "the City's interest in acquiring Plaintiff's property at minimal cost suggests the presence of an ulterior consideration to deny Plaintiff's proposed [\*\*63] P.U.D. amendment which contributes to the arbitrariness of the decision reached." Document 46 at 17. The facts, however, do not support a causal relationship between the City's denial of plaintiff's rezoning request and its desire to purchase plaintiff's property at the lowest cost. Rather, the court deems this to be pure coincidence.

### C. *Conclusion*

For the reasons stated above, the court finds that the City's failure to provide plaintiff notice and an

# Alachua County v. Eagle's Nest Farms, Inc.

Court of Appeal of Florida, First District

July 18, 1985

No. BC-394

## Reporter

473 So. 2d 257 \*; 1985 Fla. App. LEXIS 14501 \*\*; 10 Fla. L. Weekly 1749

ALACHUA COUNTY, Appellant/Cross-Appellee, v.  
EAGLE'S NEST FARMS, INC., Appellee/Cross-Appellant

**Prior History:** [\*\*1] An Appeal from the Circuit Court for Alachua County. Theron A. Yawn, Jr., Judge.

## Core Terms

special use permit, airstrip, county's, comprehensive plan, appellee's, zoning, residential, Regulations, land use, ordinance, requirements, substantial impairment, zoning ordinance, incompatible

## Case Summary

### Procedural Posture

Appellant county sought review of the final judgment of the Circuit Court for Alachua County (Florida), that ordered the issuance of a special permit to appellee development company, and appellee cross appealed the trial court's grant of partial summary judgment that upheld the validity of appellant's special use permit ordinance.

### Overview

Appellant county challenged the trial court's final judgment that ordered the issuance of a special use permit so that appellee development company could build an airstrip. Appellee challenged the trial court's grant of a partial summary judgment that upheld the validity of appellant's special use permit ordinance. The court reversed the order to issue the special use permit and found that appellee had not met its burden to establish that the proposed airstrip would not interfere with or was not inconsistent with appellant's comprehensive plan. The court determined that because appellee failed to meet its burden, appellant's denial was not arbitrary, capricious, or unreasonable.

The court affirmed the partial summary judgment and found that the requirements set out in appellant's special use ordinance were specific enough to be uniformly applied so as to instruct appellee on its burden of proof and provided an adequate framework for review. The court found that the ordinance conformed to the Local Government Comprehensive Planning Act of 1975, [Fla. Stat. ch. 163.3161\(5\)](#), [163.3194 \(1\)](#), [163.3201](#).

### Outcome

An order to issue a special use permit was reversed because appellee offered no evidence that a proposed airstrip would not impact or be inconsistent with appellant's comprehensive plan and denial was not arbitrary, capricious, or unreasonable and partial summary judgment upholding a special use ordinance was affirmed because appellant's ordinance was specific enough to be uniformly applied and instructed appellee on its burden of proof.

## LexisNexis® Headnotes

Business & Corporate Compliance > ... > Real Property Law > Zoning > Variances

Environmental Law > Land Use & Zoning > Conditional Use Permits & Variances

Real Property Law > Zoning > General Overview

### [HN1](#) [↓] Zoning, Variances

The law of Florida is committed to the requirement that zoning ordinances and their exceptions must be predicated upon legislative standards which can be applied to all cases, rather than to the theory of granting an administrative board or even a legislative body the power to arbitrarily decide each case entirely within the

[HN1](#) [↑] The law of Florida is **[\*\*7]** committed to the doctrine of the requirement that zoning ordinances and their exceptions must be predicated upon legislative standards which can be applied to all cases, rather than to the theory of granting an administrative board or even a legislative body the power to arbitrarily decide each case entirely within the discretion of the members of the administrative board or legislative body, or to shift a particular parcel of property arbitrarily from one zoning classification to another, whether by "variance", "exception" or "special use".

Additionally, [HN2](#) [↑] the applicant "has a right to know what the requirements are that he must comply with in order to implement the permitted use; these requirements must be of uniform application, and once the requirements are met, the governing **[\*260]** body may not refuse the application." [Effie, Inc. v. City of Ocala, 438 So.2d 506, 509 \(Fla. 5th DCA 1983\)](#). Otherwise, "councilmen can act upon whim, caprice or in response to pressures which do not permit of ascertainment or correction." *Id.*

In view of the variety of proposed special uses considered by the Board in its role as issuer of special use permits, we consider that **[\*\*8]** the requirements set out in section 14.2 are specific enough to be uniformly applied so as to instruct an applicant as to his burden or proof, and to provide an adequate framework for review. The key factor is the reference in section 14.2 to the county's comprehensive plan and the zoning regulations. Moreover, the language in section 14.2 is distinguishable from the language in zoning ordinances which have been struck down. See [Drexel v. City of Miami Beach, 64 So.2d 317 \(Fla. 1953\)](#) (the ordinance provided that multiple level parking garages would not be allowed except upon approval by the City Council "after a public hearing at which due consideration shall be given to the effect upon traffic of the proposed use"); [Effie, 438 So.2d at 507](#) (the ordinance governing application for on the premises sale and consumption of alcoholic beverages provided that in consideration of the application, "the council shall take into account . . . all other pertinent factors that may arise in connection with the particular application and location being considered"); [Schild, 227 So.2d at 542](#) (the ordinance provided that the City Council had authority "in such cases as it deems necessary **[\*\*9]** and essential to preserve and protect health, safety and welfare of the citizens of Homestead, to grant special use permits").

Also, we agree with the trial court's conclusion that the standards in section 14.2 conform with the "Local Government Comprehensive Planning Act of 1975." See [Sections 163.3161\(5\), 163.3194\(1\) and 163.3201; City of Cape Canaveral v. Mosher, 467 So. 2d 468, 470-471 \(Fla. 5th DCA 1985\)](#) (J. Cowart, specially concurring). We therefore affirm the partial summary judgment.

Regarding the final judgment, the initial issue is whether the county's denial of appellee's special use permit application was a legislative or an administrative function. [HN3](#) [↑] Since the special use permit, as defined by the zoning regulations, is more analogous to a special exception than a rezoning, the denial or issuance of a special use permit is essentially an administrative function. See [Irvine v. Duval County Planning Commission, 466 So.2d 357 \(Fla. 1st DCA 1985\); Conetta v. City of Sarasota, 400 So.2d 1051 \(Fla. 2d DCA 1981\); 82 Am.Jur.2d, Zoning and Planning § 282 \(1976\); A. Rathkopf & D. Rathkopf, 3 The Law of Zoning and Planning, § 14.12\(1\) \(4th ed. 1985\); \*\*\[\\*\\*10\]\*\* E. Yokley, 3 Zoning Law and Practice, § 20-1 \(4th ed. 1979\)](#). Under this view, the test is not whether the denial was a fairly debatable issue before a legislative authority, but rather: (1) whether the applicant met the burden established in the zoning ordinance, and if so, then, (2) whether the Board demonstrated, by competent, substantial evidence, that the special use permit did not meet the standard of the zoning ordinance and was, in fact, adverse to the public interest. [Conetta, 400 So.2d at 1052; Rural New Town, Inc. v. Palm Beach County, 315 So.2d 478 \(Fla. 4th DCA 1975\)](#).

Section 14.2 provides that the applicant for a special use permit must establish that the permit can be granted *without substantial detriment to the public good, and that it will not substantially impair the intent and purpose of the comprehensive plan or the zoning regulations*. In the case at bar, appellee's witnesses testified that by restricting flight patterns, planes would not take off or land near residential areas. The county did not present any rebuttal evidence as to any *actual* safety or noise hazards associated with the proposed airstrip.

The second part of the test in **[\*\*11]** section 14.2, regarding the permit's effect on the comprehensive plan, however, was not satisfied by the applicant's evidence. The county's witnesses testified that issuance of the permit would impair the following **[\*261]** goals and objectives of the county's comprehensive land use plan:

Goal: To encourage the orderly, harmonious, and judicious use of land, and to provide for the

BEFORE THE PLANNING COMMISSION  
OF THE CITY OF JACKSONVILLE

APPLICATION NO: **WLD-19-13**

IN RE: The Application for Waiver of Minimum  
Distance Requirements for Liquor License Location of

**BANNER LIQUOR, INC.**

**ORDER DENYING APPLICATION FOR ZONING WAIVER  
OF MINIMUM DISTANCE REQUIREMENTS  
FOR LIQUOR LICENSE LOCATION WLD-19-13**

This matter came to be heard upon the Application for Waiver of Minimum Distance Requirements for Liquor License Location **WLD-19-13** filed by the Malih Properties, LLC, the owner of certain real property located at 4250 Moncrief Road, on behalf of Banner Liquor, Inc., seeking a waiver to reduce the required minimum distance between a liquor license location to a church or school from 500 feet to 400 feet in the CCG-2 Zoning District.

Having duly considered both the testimonial and documentary evidence presented at the public hearing on May 23, 2019, including the Report of the Planning and Development Department on Application **WLD-19-13** and all attachments thereto ("Staff Report"), a copy of which is attached as **Exhibit "A"**, the Planning Commission of the City of Jacksonville hereby adopts and incorporates herein the recommendations of the Staff Report, and,

**FINDS AND DETERMINES:**

1. That the applicant has complied with all application requirements set forth in Section 656.133 of the Zoning Code.
2. That the land which is the subject of application **WLD-19-13** is owned by the Malih Properties, LLC. A copy of the legal description of the subject property is attached as part of the **Exhibit "A"** and incorporated herein by reference.
3. **That substantial competent evidence fails to demonstrate that the application WLD-19-13 meets, to the extent applicable, the standards and criteria set forth in Section 656.133(a) of the Zoning Code.**


**NOW THEREFORE**, it is **ORDERED** by the Planning Commission:


1. Application for Waiver of Minimum Distance Requirements for Liquor License Location **WLD-19-13** is hereby **DENIED**.

Executed this 23rd day of May, 2019.

  
Nicole Sanzosti Padgett  
Chairman, Planning Commission

FORM APPROVED:

  
Paige Hobbs Johnston  
Assistant General Counsel

  
Dawn Motes  
Secretary, Planning Commission

Copies to:

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501 Riverside Avenue, Suite 901  
Jacksonville, FL 32202  
*Agent*

Malih Properties, LLC  
11399 Glen Laurel Oaks Circle  
Jacksonville, FL 32257  
*Owner*

**NOTICE: This Order does not become final until the expiration of the twenty-one (21) day appeal period provided in the Zoning Code.**

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