

Lee County, Florida
DEPARTMENT OF COMMUNITY DEVELOPMENT
ZONING SECTION
STAFF REPORT

CASE NUMBER: DCI2022-00036
CASE NAME: TROPICAL FENCE CPD
TYPE OF CASE: MINOR PLANNED DEVELOPMENT
HEARING EXAMINER DATE: FEBRUARY 16, 2023
SUFFICIENCY DATE: DECEMBER 13, 2022

REQUEST:

An application has been submitted by Veronica Martin of TDM Consulting, Inc, on behalf of Mark and Sue Murphy, to rezone 0.46± acres from Two-Family Conservation District (TFC-2) to Commercial Planned Development (CPD) to legitimize the expansion of the existing Contractor and Builder use to the north by allowing open storage on the subject property.

The subject property is located at 393 and 397 Balboa Avenue, Fort Myers Shores Planning Community, Lee County, FL. (District #5), STRAP Numbers 04-44-25-04-00028.8870 and 04-44-25-04-00028.8890.

SUMMARY:

Staff recommends APPROVAL of the applicant's request with conditions found in Attachment C.

HISTORY OF PARCEL AND CHARACTER OF THE AREA:

The subject property is zoned Two-Family Conservation District (TFC-2) and does not have significant zoning history. The subject property is currently being used for open storage as an extension of the commercial use (Contractor and Builder, Group II) to the north. The subject property is located approximately 130 feet to the south of Palm Beach Boulevard (SR 80), a State-maintained arterial roadway. The property is accessed by Balboa Avenue, a County-maintained local roadway which extends along the western boundary of the property. The subject property is located within the Central Urban future land use category as designated by the Lee Plan (Attachment B) and is within the Tice Community Plan Area.

The surrounding development patterns can be characterized as follows:

North:

Property to the north is zoned Commercial (C-1) and is developed with fence contractor (Contractor and Builders, Group II). The owner of this property and the subject property is a single integrated development. This property is in the Intensive Development future land use category and is in the Mixed Use Overlay.

East, South, and West:

Properties to the east, south, and west are zoned Two-Family Conservation District (TFC-2) and are developed with residential uses. These properties are also in the Central Urban future land use category.

ANALYSIS

This request is to rezone 0.46± acres from Two-Family Conservation District (TFC-2) to Commercial Planned Development (CPD) to legitimize the expansion of the existing commercial business by allowing open storage for the existing fence contractor to the north. The applicant has provided a narrative that explains the request to rezone the property and has provided a Comprehensive Plan analysis for the request (Attachment D). The applicant has recently taken control of the company on the subject property, and has become aware that it was not zoned for commercial uses even though it has been used commercially for several years. By way of reference, aerial photography of the property show that the subject property was developed with the current use between 1998 and 2002. In an effort to correct this error, the applicant has elected to rezone the property. If approved, the subject property will be integrated into the property to the north as a single commercial development. The applicant seeks deviations from several portions of the Land Development Code to address the challenges of bringing the site fully into compliance with the Code.

Planned Development Rezoning:

Section 34-612 of the Lee County Land Development Code (LDC) describes the intent of the utilization of the Planned Development zoning district. The purpose of planned developments is to further implement the goals, objectives, and policies of the Lee Plan, while providing some degree of flexibility in the planning and design of proposed developments.

Section 34-145 of the LDC establishes the review criteria for all rezoning requests. Before recommending approval of a rezoning request, the Hearing Examiner must find the request:

- a) Complies with the Lee Plan;
- b) Meets the Land Development Code and other applicable County regulations or qualifies for deviations;
- c) Is compatible with existing and planned uses in the surrounding area;
- d) Will provide access sufficient to support the proposed development intensity;
- e) The expected impacts on transportation facilities will be addressed by existing County regulations and conditions of approval;
- f) Will not adversely affect environmentally critical or sensitive areas and natural resources; and
- g) Will be served by urban services, defined in the Lee Plan, if located in a Future Urban Area category.

For Planned Development rezoning requests, the Hearing Examiner must also find:

- a) The proposed use or mix of uses is appropriate at the proposed location;
- b) The recommended conditions provide sufficient safeguards to the public interest and are reasonably related to the impacts on the public's interest expected from the proposed development; and
- c) That each requested deviation:
 - 1) Enhances the achievement of the objectives of the planned development; and
 - 2) Preserves and promotes the general intent of this Code to protect the public health, safety and welfare.

Master Concept Plan:

The applicant has provided a one-page master concept plan titled “393 and 397 Balboa Avenue” with the most recent revision dated 11/2022. The master concept plan depicts the location of proposed development areas, access points, buffers, and open space (Attachment N). The Master Concept Plan also notes locations of the deviations proposed by the applicant.

Development Pattern Considerations:

The subject property is in the Central Urban future land use category, as described in Policy 1.1.3 of the Lee Plan. This future land use category is described as heavily settled with the highest range of public services. This category considers residential, commercial, light industrial, and public/quasi-public uses. The rezoning legitimizes an expansion of a commercial use, which is contemplated in this future land use category. Staff finds this request consistent with Policy 1.1.3.

A small portion of the property is noted to be in the Intensive Development future land use category, as described in Policy 1.1.2 of the Lee Plan. This category assumes the highest levels of intensity and density and is located along major arterial roadways. Staff finds that the proposed use is contemplated in the Intensive Development Category and finds the request consistent with Policy 1.1.2.

Objectives 2.1 and 2.2 of the Lee Plan intend to direct new growth to future urban areas in compact and contiguous growth patterns where adequate public facilities exist. Policy 2.2.1 encourages clustered mixed use development within Lee County where sufficient infrastructure exists. The applicant has provided sufficient documentation to demonstrate that the available infrastructure would support the development intensity that is proposed as evidenced by the letter of utility availability and the Traffic Impact Statement (Attachments H and K). The result of the rezoning will further legitimize an existing commercial use, and will facilitate compact urban growth patterns. Staff finds the proposed planned development rezoning consistent with Objective 2.1, Objective 2.2., and Policy 2.2.1.

Policy 5.1.5 of the Lee Plan intends to protect existing and future residential areas from any encroachment of uses that are potentially destructive to the character and integrity of residential development. The applicant recently has taken over operations of the existing business and recognized that the commercial use on the property is not permitted based on the current zoning district. When the applicant was made aware of the issue, the applicant sought to correct the issue by pursuing a planned development zoning to bring the site into compliance to the greatest extent possible. As a result, the applicant will be required to apply for development order and provide improvements on the property such as drainage, landscaping, and screening. Staff finds that the process of rezoning and improving the property will sufficiently mitigate the potential for negative impacts on the character and integrity of the neighborhood that exist today. The applicant also seeks deviations to reduce landscaping requirements, but staff finds that as conditioned, the deviations will be consistent with this Policy. Staff finds this planned development rezoning request, as conditioned, consistent with Policy 5.1.5.

Policy 6.1.1 of the Lee Plan requires that applications be reviewed for traffic and access impacts, incorporate landscaping and detailed site planning, provide screening and buffering, ensure availability of services and facilities, minimize impacts on adjacent uses, be located in proximity to other similar centers, and properly mitigate environmental considerations. The applicant has provided

the requisite information for a review of these factors that are assessed throughout this report. Staff finds request consistent with Policy 6.1.1.

Policy 6.1.4 of the Lee Plan requires that commercial uses be approved only when compatible with adjacent existing and proposed land uses as well as existing and programmed services and facilities. As previously stated in review of Policy 5.1.5, the process of bringing the site into compliance with the Land Development Code will enhance the compatibility with surrounding residential uses. Staff finds this request consistent with Policy 6.1.4.

Policy 6.1.6 of the Lee Plan requires commercial development to provide adequate and appropriate landscaping, open space, and buffering. The applicant has demonstrated compliance with the landscaping, open space, and buffering requirements of the LDC but seeks deviations from the landscaping requirements, which as conditioned, staff finds to be consistent with this Policy. Staff finds this request consistent with Policy 6.1.6.

Policy 6.1.7 of the Lee Plan prohibits commercial developments from locating in a way to open new areas to premature, scattered, or strip development. This rezoning request will result in legitimizing an expansion of an existing commercial use along the Palm Beach Boulevard corridor which is significantly built out with a mix of commercial and residential uses. Staff finds this request consistent with Policy 6.1.7.

Goal 34 of the Lee Plan describes the purpose of the Tice Historic Community Plan Area as facilitating redevelopment of the area into vibrant commercial, residential, and mixed use centers. Objective 34.1 promotes redevelopment activities that enhance the appearance, form and use of private and public buildings, and to improve public facilities and infrastructure systems. The redevelopment of this property to bring the site into better compliance with current Land Development Code requirements will promote consistency with this Goal and associated Objectives and Policies. Staff finds the request consistent with Goal 34 and Objective 34.1.

Policy 125.1.2 requires new development and additions to existing development to not degrade surface and ground water quality. The process of bringing the site into compliance with the Land Development Code will improve the surface water in the area by providing the required stormwater retention and pretreatment areas on the property. The applicant has not requested deviations from any water quality requirements in the Land Development Code, and therefore will be required to meet these standards with any future development on the property. Staff finds this request consistent with Policy 125.1.2.

Goal 158 of the Lee Plan establishes the County's intent to provide a diversified and stable economy by providing a positive business climate and employment opportunities for the residents of Lee County. Staff acknowledges that the legitimizing of the commercial expansion on this property will provide additional opportunities for employment in this area. Staff finds this planned development consistent with Goal 158.

Transportation Considerations:

The applicant has provided a traffic impact statement for the proposed development, and provided analysis on the surrounding transportation system (Attachment H). Infrastructure Planning staff has provided analysis and comment of the applicant's traffic impact statement (Attachment I), and determined that the proposed project will not have a detrimental impact on the surrounding roadway system.

Bicycle and Pedestrian Facilities:

The subject property is approximately 130 feet from Palm Beach Boulevard (SR 80), which is designated on Lee Plan Map 3-D to have a sidewalk. At the time of development order approval, all new development must comply with the bicycle and pedestrian requirements contained in Chapter 10 of the Land Development Code.

Environmental Considerations:

Environmental staff provided analysis on the applicant's request (Attachment J). There are several deviations to reduce landscaping requirements sought by the applicant to address site constraints. Environmental staff provided analysis for the proposed deviations later in the report. Staff notes that the applicant seeks alternative landscaping standards that will still adequately buffer to create visual relief for the neighboring residential properties.

Transit Facilities:

The subject property is within one-quarter mile of Lee Tran Route 100. At the time of development order approval, all new development must comply with the transit facility requirements found in Chapter 10 of the Land Development Code.

Urban Services:

The subject property is serviced by Fire and EMS approximately 1.35 miles from the property, and a Sheriff's substation 4.6 miles from the property.

Standards 4.1.1 and 4.1.2 address water and sanitary sewer requirements for commercial developments over 30,000 square feet of intensity. The applicant has provided a letter of utility availability to support the future development of this parcel as described in this request (Attachment K). Staff finds the proposed development consistent with Standards 4.1.1 and 4.1.2.

DEVIATIONS:

The applicant seeks the following deviations as part of this planned development rezoning (Attachment G). Staff provides the following analysis on the following deviation requests:

1. Deviation (1) Withdrawn.
2. Deviation (2) seeks relief from the LDC Section 10-416(d)(4) requirement for a Type C buffer to be 15-feet-wide with 5 trees and 18 shrubs per 100 linear feet with a solid wall, berm, or wall and berm combination, not less than 8 feet in height as measured from the finished grade of the project site. Request to permit the Type C buffer to be 10-feet-wide with 5 trees and 18 shrubs per 100 linear feet, for all vegetation to be native species, for all plant materials to meet the standards for Florida No. 1 or better, for all trees to be a minimum of 12 feet in height at time of planting, for all shrubs to be 24 inches in height at time of planting, and for the wall, berm, or wall and berm combination to be 6 feet in height.

Environmental staff provided analysis on the requested deviation (Attachment J), and based upon this analysis, staff recommends **approval** of this deviation, subject to the following condition:

Prior to development order approval, the applicant must depict on the landscape plans a ten-foot-wide buffer with a six-foot-high solid opaque fence setback ten feet from the property line along the east and south property lines abutting the residential uses. The buffer must include five trees and 18 shrubs per 100 linear feet. The trees must be 12-feet-in-height with a three-inch caliper, and six-foot-wide canopy spread. The shrubs must be 24-inches-in-height. All buffer vegetation must be 100 percent native species.

3. Deviation 3 seeks relief from the LDC Section 10-416(d)(4) requirement for a Type D buffer to be 15-feet-wide with 5 trees per 100 linear feet and double staggered hedge row. Request to permit the buffer adjacent to Balboa Avenue to be 10-feet-wide with 5 trees per 100 linear feet, a double-staggered hedge row, for all vegetation to be native species, for all trees to be a minimum of 12 feet in height at time of planting, and for all plant materials to meet the standards for Florida No. 1 or better.

Environmental staff provided analysis on the requested deviation (Attachment J), and based upon this analysis, staff recommends **approval** of this deviation, subject to the following condition:

Prior to development order approval, the applicant must depict on the landscape plans a ten-foot-wide right-of-way buffer with a six-foot-high solid, opaque setback ten feet and abutting Balboa Avenue. The buffer must include five trees per 100 linear feet and a double staggered hedge. The trees must be 12-feet-in-height with a three-inch caliper, and six-foot-wide canopy spread. The shrubs must be 24-inches-in-height. All buffer vegetation must be 100 percent native species.

4. Deviation 4 seeks relief from the LDC Section 10-415 requirement for small commercial developments to provide a minimum of 20% open space. Request to permit a minimum of 19% open space.

Environmental staff provided analysis on the requested deviation (Attachment J), and based upon this analysis, staff recommends **approval** of this deviation.

5. Deviation 5 seeks relief from the LDC Section 34-3005(b) requirement that all commercial or industrial outdoor storage be shielded behind a continuous visual screening at least 8 feet in height when visible from a residential use or residential zoning district and 6 feet in height when visible from any street right-of-way or street easement. Request to permit the continuous visual screen to be 6 feet in height when visible from a residential use or residential zoning district.

Environmental staff provided analysis on the requested deviation (Attachment J), and based upon this analysis, staff recommends **approval** of this deviation, subject to the following condition:

Prior to development order approval, the applicant must depict on the landscape plans a ten-foot-wide buffer with a six-foot-high solid opaque fence setback ten feet from the property line along the east and south property lines abutting the residential uses. The buffer must include five trees and 18 shrubs per 100 linear feet. The trees must be 12-feet-in-height with a three-inch caliper, and six-foot-wide canopy spread. The shrubs must be 24-inches-in-height. All buffer vegetation must be 100 percent native species.

6. Deviation 6 seeks relief from the LDC Section 34-1748(5) requirement that a paved turn-around, having a turning radius sufficient to accommodate a U-turn for a single unit truck, must be provided on the ingress side of the gate. The applicant is requesting to provide a T-turnaround for passenger cars as shown on the MCP.

Staff recommends **approval** of this deviation with the following condition:

At time of a development order submittal the applicant must provide signage indicating no parking in the area provided on the MCP for the T-turnaround.

CONCLUSION:

Based on the analysis provided above, staff offers the following review of the decision-making criteria for planned development rezoning requests. Staff finds that the proposed request:

- a) Complies with the Lee Plan

Based on the analysis above, staff finds that the proposed planned development rezoning, as conditioned, is consistent with the Lee Plan. The proposed use and intensity is compatible with existing and proposed uses, and meet or exceed the objectives and policies above.

- b) Meets this Code and other applicable County regulations or qualifies for deviations;

Staff recommends approval of the five requested deviations as conditioned.

- c) Is compatible with existing and planned uses in the surrounding area;

The mix of uses surrounding the subject property include similarly intense commercial uses; therefore, the proposed rezoning is compatible with the surrounding area.

- d) Will provide access sufficient to support the proposed development intensity;

Access is provided from Balboa Avenue, which accesses Palm Beach Boulevard. Impacts to these roadways will be required to be mitigated consistent with the requirements of the Land Development Code.

- e) The expected impacts on transportation facilities will be addressed by existing County regulations and conditions of approval;

Staff has reviewed the transportation impacts of the request, and has concluded that the request does not significantly impact the roadway network in the area.

- f) Will not adversely affect environmentally critical or sensitive areas and natural resources;

Staff has reviewed the potential environmental impacts and the project, as conditioned, sufficiently protects environmental resources.

- g) Will be served by urban services, defined in the Lee Plan, if located in a Future Urban area category.

The subject property will be serviced by urban services as defined in the Lee Plan.

Additionally, staff has concluded:

- a) The proposed use or mix of uses is appropriate at the proposed location;

The proposed commercial uses are similar to those surrounding the subject property.

- b) The recommended conditions provide sufficient safeguards to the public interest and are reasonably related to the impacts on the public's interest expected from the proposed development; and

Staff finds the proposed conditions appropriate for approval and sufficiently address impacts to the public's interest expected from the proposed development.

- c) That each requested deviation enhances the achievement of the objectives of the planned development and reserves and promotes the general intent of the Land Development Code to protect the public health, safety and welfare:

Staff recommends approval of the 5 deviations, as conditioned.

Staff, therefore, recommends approval of this Planned Development Rezoning, as conditioned in Attachment C.

ATTACHMENTS:

- A. Expert Witness Information
- B. Maps: surrounding zoning, future land use and aerial photograph
- C. Recommended Conditions and Deviations
- D. Request Statement
- E. Legal Description
- F. Applicant Proposed Conditions
- G. Deviation Requests
- H. Traffic Impact Statement
- I. Infrastructure Planning Memorandum
- J. Environmental Memorandum
- K. Letter of Utility Availability
- L. Waiver of Submittal Requirements
- M. Development Services Comments
- N. Master Concept Plan

ATTACHMENT A

LEE COUNTY STAFF EXPERT WITNESS INFORMATION
PROVIDED PURSUANT TO AC-2-6, SECTION 2.2.b(5)(f)3.

Dirk Danley, AICP, Principal Planner, Zoning, 1500 Monroe Street, Fort Myers, FL 33901

- Previously qualified as an expert witness by the Lee County Hearing Examiner. Current resume is on file with the Hearing Examiner.
- Seeking to be qualified as an expert witness in the Lee County Land Development Code, Lee Plan, zoning, and land use planning.
- Report and documents are submitted with the Staff Report for this case. Additional documents that may be relied upon and used as evidence during the hearing include: the Lee County Land Development Code; the Lee Plan; and documentation submitted by the applicant as part of the subject application.

Elizabeth Workman, Principal Planner, Zoning, 1500 Monroe Street, Fort Myers, FL 33901

- Previously qualified as an expert witness by the Lee County Hearing Examiner. Current resume is on file with the Hearing Examiner.
- Seeking to be qualified as an expert witness in the Lee County Land Development Code, Lee Plan, zoning, and land use planning.
- Report and documents are submitted with the Staff Report for this case. Additional documents that may be relied upon and used as evidence during the hearing include: the Lee County Land Development Code; the Lee Plan; and documentation submitted by the applicant as part of the subject application.

Marcus Evans P.E., Senior Engineer, Development Services, 1500 Monroe Street, Fort Myers, FL 33901

- Previously qualified as an expert witness by the Lee County Hearing Examiner. Current resume is on file with the Hearing Examiner.
- Seeking to be qualified as an expert witness in Traffic Engineering and Transportation Planning.
- Report and documents are submitted with the Staff Report for this case. Additional documents that may be relied upon and used as evidence during the hearing include: the Lee County Land Development Code; the Lee Plan; and documentation submitted by the applicant as part of the subject application.

Brandon Dunn, Principal Planner, Planning, 1500 Monroe Street, Fort Myers, FL 33901

- Previously qualified as an expert witness by the Lee County Hearing Examiner. Current resume is on file with the Hearing Examiner.
- Seeking to be qualified as an expert witness in the Lee Plan and land use planning.
- Report and documents are submitted with the Staff Report for this case. Additional documents that may be relied upon and used as evidence during the hearing include: the Lee County Land Development Code; the Lee Plan; and documentation submitted by the applicant as part of the subject application.

Rebecca Sweigert, Principal Environmental Planner, Planning, 1500 Monroe Street, Fort Myers, FL 33901

- Previously qualified as an expert witness by the Lee County Hearing Examiner. Current resume is on file with the Hearing Examiner.
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Nicholas DeFilippo, Senior Environmental Planner, Planning, 1500 Monroe Street, Fort Myers, FL 33901

- Previously qualified as an expert witness by the Lee County Hearing Examiner. Current resume is on file with the Hearing Examiner.
- Seeking to be qualified as an expert witness in the Lee Plan and land use planning.
- Report and documents are submitted with the Staff Report for this case. Additional documents that may be relied upon and used as evidence during the hearing include: the Lee County Land Development Code; the Lee Plan; and documentation submitted by the applicant as part of the subject application.

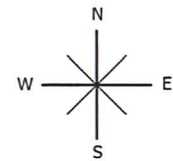


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Aerial

ATTACHMENT B

 Subject Property

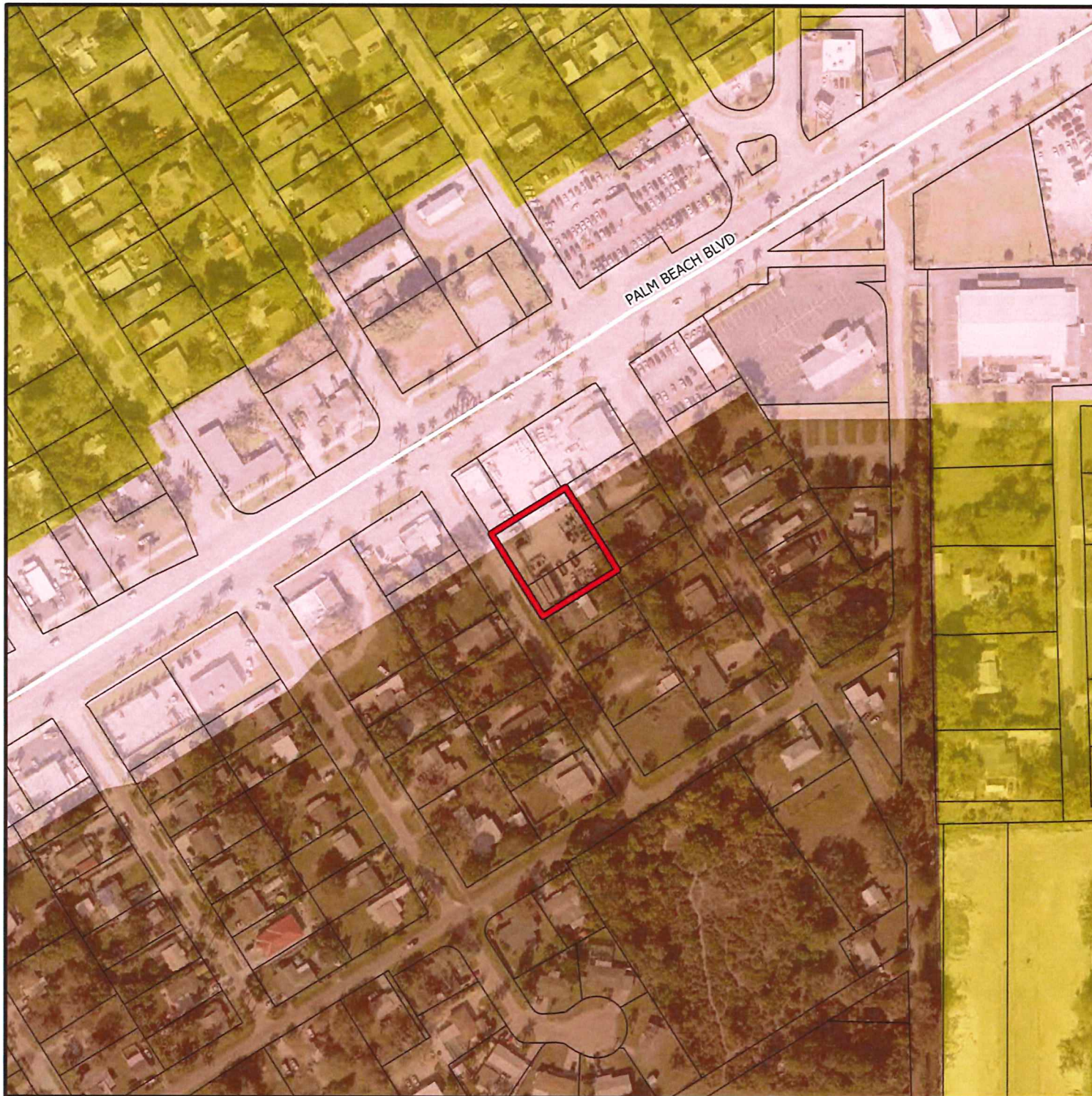


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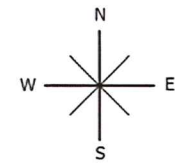


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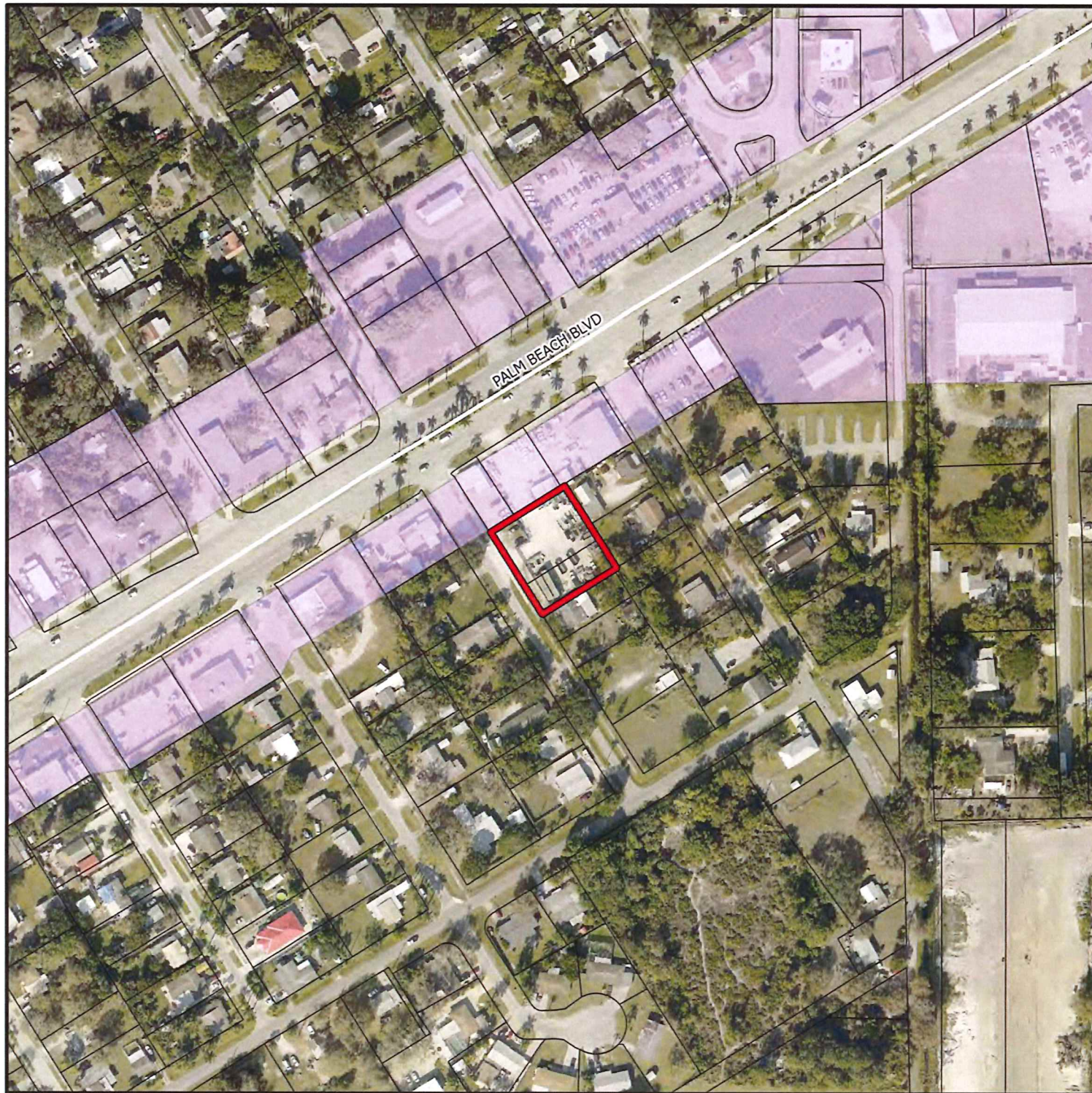
Future Land Use



-  Subject Property
-  Intensive Development
-  Central Urban
-  Suburban



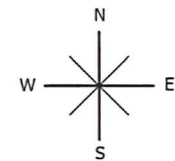
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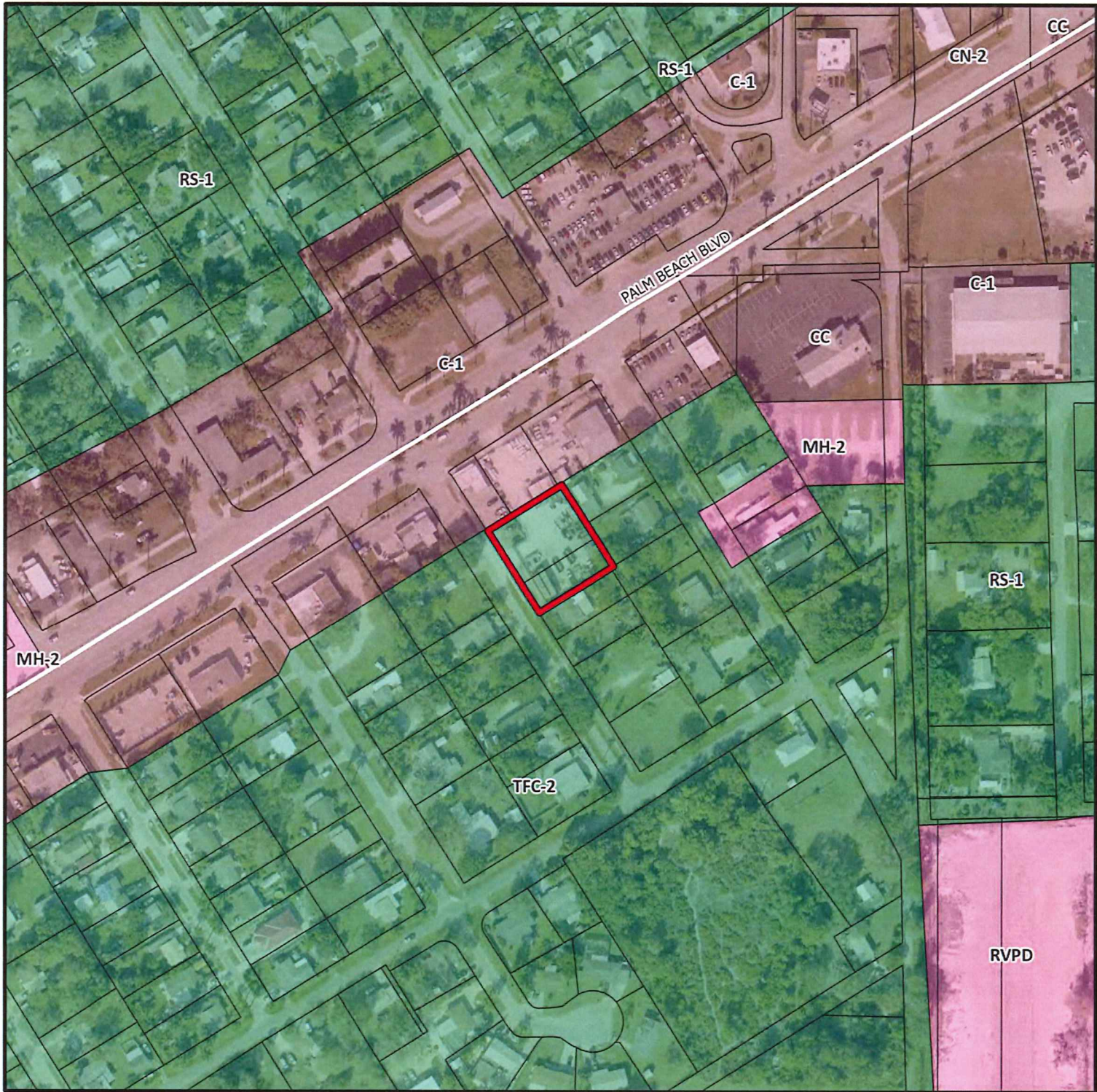
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Mixed Use Overlay

-  Subject Property
-  Mixed Use Overlay



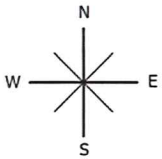
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Zoning

 Subject Property



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A. Conditions

1. Development must be consistent with the one-page Master Concept Plan (MCP) entitled "393 and 397 Balboa Avenue" prepared by TDM Consulting, Inc, dated last revised on 11/2022, except as modified by the conditions below. This development must comply with all requirements of the Lee County Land Development Code at time of local development order approval, except as may be granted by deviation as part of this planned development. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be necessary.

Project intensity is limited to the development of a maximum of 16,250 square feet of open storage in conjunction with to 'Contractor and Builders, Groups I and II'.

2. The following limits apply to the project and uses.

- a. Schedule of Uses

ACCESSORY USES AND STRUCTURES
 ADMINISTRATIVE OFFICES
 CONTRACTOR AND BUILDER, GROUPS I AND II
 ESSENTIAL SERVICES
 ESSENTIAL SERVICE FACILITIES: GROUP I
 EXCAVATION: WATER RETENTION
 FENCES, WALLS
 PARKING LOT: ACCESSORY
 SIGNS
 STORAGE, INDOOR, OPEN

- b. Site Development Regulations

- Lot Size

Minimum Lot Area:	20,000 square feet
Minimum Lot Width:	100 feet
Minimum Lot Depth:	100 feet

- Setbacks

Development Perimeter	15 feet
Street	25 feet – public roadway
Side	15 feet
Rear	15 feet

Maximum Lot Coverage 60 percent

Maximum Height 35 feet

D. Deviations

1. Deviation (1) Withdrawn.
2. Deviation (2) seeks relief from the LDC Section 10-416(d)(4) requirement for a Type C buffer to be 15-feet-wide with 5 trees and 18 shrubs per 100 linear feet with a solid wall, berm, or wall and berm combination, not less than 8 feet in height as measured from the finished grade of the project site. Request to permit the Type C buffer to be 10-feet-wide with 5 trees and 18 shrubs per 100 linear feet, for all vegetation to be native species, for all plant materials to meet the standards for Florida No. 1 or better, for all trees to be a minimum of 12 feet in height at time of planting, for all shrubs to be 24 inches in height at time of planting, and for the wall, berm, or wall and berm combination to be 6 feet in height.

Staff recommends **approval** of this deviation, subject to the following condition:

Prior to development order approval, the applicant must depict on the landscape plans a ten-foot-wide buffer with a six-foot-high solid opaque fence setback ten feet from the property line along the east and south property lines abutting the residential uses. The buffer must include five trees and 18 shrubs per 100 linear feet. The trees must be 12-feet-in-height with a three-inch caliper, and six-foot-wide canopy spread. The shrubs must be 24-inches-in-height. All buffer vegetation must be 100 percent native species.

3. Deviation 3 seeks relief from the LDC Section 10-416(d)(4) requirement for a Type D buffer to be 15-feet-wide with 5 trees per 100 linear feet and double staggered hedge row. Request to permit the buffer adjacent to Balboa Avenue to be 10-feet-wide with 5 trees per 100 linear feet, a double-staggered hedge row, for all vegetation to be native species, for all trees to be a minimum of 12 feet in height at time of planting, and for all plant materials to meet the standards for Florida No. 1 or better.

Staff recommends **approval** of this deviation, subject to the following condition:

Prior to development order approval, the applicant must depict on the landscape plans a ten-foot-wide right-of-way buffer with a six-foot-high solid, opaque setback ten feet and abutting Balboa Avenue. The buffer must include five trees per 100 linear feet and a double staggered hedge. The trees must be 12-feet-in-height with a three-inch caliper, and six-foot-wide canopy spread. The shrubs must be 24-inches-in-height. All buffer vegetation must be 100 percent native species.

4. Deviation 4 seeks relief from the LDC Section 10-415 requirement for small commercial developments to provide a minimum of 20% open space. Request to permit a minimum of 19% open space.

Staff recommends **approval** of this deviation.

5. Deviation 5 seeks relief from the LDC Section 34-3005(b) requirement that all commercial or industrial outdoor storage be shielded behind a continuous visual screening at least 8 feet in height when visible from a residential use or residential zoning district and 6 feet in height when visible from any street right-of-way or street easement. Request to permit the continuous visual screen to be 6 feet in height when visible from a residential use or residential zoning district.

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Prior to development order approval, the applicant must depict on the landscape plans a ten-foot-wide buffer with a six-foot-high solid opaque fence setback ten feet from the property line along the east and south property lines abutting the residential uses. The buffer must include five trees and 18 shrubs per 100 linear feet. The trees must be 12-feet-in-height with a three-inch caliper, and six-foot-wide canopy spread. The shrubs must be 24-inches-in-height. All buffer vegetation must be 100 percent native species.

6. Deviation 6 seeks relief from the LDC Section 34-1748(5) requirement that a paved turn-around, having a turning radius sufficient to accommodate a U-turn for a single unit truck, must be provided on the ingress side of the gate. The applicant is requesting to provide a T-turnaround for passenger cars as shown on the MCP.

Staff recommends **approval** of this deviation with the following condition:

At time of a development order submittal the applicant must provide signage indicating no parking in the area provided on the MCP for the T-turnaround.

ATTACHMENT D



**43 Barkley Circle, Suite 200
Fort Myers, FL 33907
Phone 239-433-4231 Fax 239-433-9632
www.tdmcivilengineering.com
Certificate of Authorization # 29086**

Tropical Fence Narrative of Request/Lee Plan Compliance

Revised 8/3/2022

Narrative of Request

The property owners/applicants inherited an existing fence contracting business, Tropical Fence, located at 4814, 4818, and 4822 Palm Beach Boulevard . The previous owners purchased the adjacent lots at 393 and 397 Balboa Avenue and expanded their business onto those vacant lots, using it as a storage yard. The subject property has been used as a storage yard for approximately 20 years and it has been in its current configuration since the early 2000's. When the property owners had their business appraised for insurance purposes, it came to their attention that the storage yard was zoned TFC-2. They approached County staff regarding their options, even though a code violation for the use was never issued. The property owners have decided to rezone the subject property from TFC-2 to CPD to legitimize the existing use of open storage.

Rezoning the property will trigger a Development Order and the applicants will be required to bring the site into compliance with the Land Development Code to the maximum extent possible. The only existing improvements to the site include a chain link fence with slats along the property boundary and a rolling gate. Proposed improvements include 10-foot wide buffers abutting the residential lots to the east and south and right-of-way to the west. A 6-foot high solid opaque wall set back 10 feet from the property line is proposed along the right-of-way and 8-foot high solid opaque walls are proposed along the residential lots. This allows the buffer vegetation to be located on the residential/street side of the wall. In addition, drainage swales and pipes will be provided to address stormwater and pre-treatment will be provided before it discharges into the drainage swale along the Balboa Avenue right-of-way. The rezoning is consistent with the Lee Plan, the Land Development Code (except where deviations have been requested), and other applicable codes and regulations.

Land Development Code Compliance

A Development Order will be required to bring the existing site into compliance with the Land Development Code and all other applicable codes and regulations to the maximum extent possible, including buffering and screening, drainage, and fencing. Four deviations have been requested with this rezoning request where existing site conditions prevent full compliance with the Land Development Code.

Lee Plan Compliance

The subject property has been developed as open storage for the past 20 years. The applicant recently discovered the use isn't consistent with the TFC-2 zoning district. The applicant intends to rezone the property to CPD to legitimize the use. A local development order will be required

to bring the site into compliance with the Land Development Code to the maximum extent possible.

POLICY 1.1.2: *The **Intensive Development** future land use category is located along major arterial roads. By virtue of their location, the County's current development patterns, and the available and potential levels of public services, areas with this designation are suited to accommodate high densities and intensities. Mixed use developments of high-density residential, commercial, limited light industrial, and office uses are encouraged to be developed as described in Objective 11.1, where appropriate. The standard density range is from eight dwelling units per acre (8 du/acre) to fourteen dwelling units per acre (14 du/acre), with a maximum total density of twenty-two dwelling units per acre (22 du/acre). The maximum total density may be increased to thirty dwelling units per acre (30 du/acre) utilizing Greater Pine Island Transfer of Development Units.*

POLICY 1.1.3: *The **Central Urban** future land use category can best be characterized as the "urban core" of the County. These areas are already the most heavily settled and have, or will have, the greatest range and highest levels of public services. Residential, commercial, public and quasipublic, and limited light industrial land uses will continue to predominate in the Central Urban future land use category. Future development in this category is encouraged to be mixed use, as described in Objective 11.1, where appropriate. The standard density range is from four dwelling units per acre (4 du/acre) to ten dwelling units per acre (10 du/acre), with a maximum total density of fifteen dwelling units per acre (15 du/acre). The maximum total density may be increased to twenty dwelling units per acre (20 du/acre) utilizing Greater Pine Island Transfer of Development Units.*

The subject property at 393 and 397 Balboa Avenue is located on the south side of Palm Beach Boulevard, east of Balboa Avenue, in the Tice Historic District. The majority of the site is the Central Urban future land use category with a small section in the Intensive Development future land use category (per Lee Spins). The site has been developed as an open storage yard for approximately 20 years, in conjunction with a fence contractor on the abutting property (Tropical Fence). Both the Central Urban and Intensive Development future land use categories are located in areas of the County that are most heavily settled and have the greatest range and highest levels of urban services. Commercial uses are permitted in both future land use categories. This is consistent with **Lee Plan Policy 1.1.2 and 1.1.3.**

OBJECTIVE 2.1: DEVELOPMENT LOCATION. *Contiguous and compact growth patterns will be promoted through the rezoning process to contain urban sprawl, minimize energy costs, conserve land, water, and natural resources, minimize the cost of services, and prevent development patterns where large tracts of land are by-passed in favor of development more distant from services and existing communities.*

POLICY 2.1.1: *Most residential, commercial, industrial, and public development is expected to occur within the designated future urban areas on the Future Land Use Map through the assignment of very low densities to the non-urban categories.*

POLICY 2.1.2: *New land uses will be permitted only if they are consistent with the Future Land Use Map and the goals, objectives, policies, and standards of this plan.*

OBJECTIVE 2.2: DEVELOPMENT TIMING. *Direct new growth to those portions of the future urban areas where adequate public facilities exist or are assured and where compact and contiguous development patterns can be created.*

POLICY 2.2.1: *Rezoning and DRI proposals will be evaluated as to the availability and proximity of the road network; central sewer and water lines; community facilities and services such as schools, EMS, fire and police protection, and other public facilities; compatibility with surrounding land uses; and any other relevant facts affecting the public health, safety, and welfare.*

POLICY 2.2.2: *The Future Land Use Map indicates the uses and density ranges that will ultimately be permitted on a given parcel. However, it is not a guarantee that such densities or uses are immediately appropriate, as the map provides for the County's growth beyond the 2045 planning horizon. During the rezoning process the Board of County Commissioners will balance the overall standards and policies of this plan with three additional factors:*

- 1. Whether a given proposal would further burden already overwhelmed existing and committed public facilities such that the approval should be delayed until the facilities can be constructed; and*
- 2. Whether a given proposal is for land so far beyond existing development or adequate public facilities that approval should be delayed in an effort to encourage compact and efficient growth patterns; and*
- 3. Whether a given proposal would result in unreasonable development expectations that may not be achievable because of acreage limitations contained in the Acreage Allocation Table (see Table 1(b)).*

As stated above, the subject property has been utilized as an open storage yard for approximately 20 years. The previous property owners purchased the property and expanded their fence contracting business onto the vacant lots. The properties on all sides are developed with a mix of commercial and residential uses. Lee County Utilities provided a letter of availability stating that potable water and sanitary sewer lines are in operation adjacent to the lots. The nearest Fire/EMS station is located approximately 1.4 miles to the southeast at 9351 Workmen Way. The nearest Lee County Sheriff's station is located at 121 Pondella Road, North Fort Myers, approximately 6 miles to the northwest. Lee Tran Route 100 services Palm Beach Boulevard so public transit is located nearby. In addition, pedestrian facilities are located along Balboa Avenue and Palm Beach Boulevard. This is an area of Lee County that is heavily developed and where urban services are available and adequate to service the site, including surrounding roads. This is consistent with **Objective 2.1: Development Location, Policies 2.1.1, 2.1.2, Objective 2.2: Development Timing, and Policies 2.2.1 and 2.2.2.**

GOAL 4: GENERAL DEVELOPMENT STANDARDS. *Pursue or maintain land development regulations which protect the public health, safety and welfare, encourage creative site designs and balance development with service availability and protection of natural resources.*

OBJECTIVE 4.1: WATER, SEWER, AND ENVIRONMENTAL STANDARDS. *Consider water, sewer, and environmental standards during the rezoning process. Ensure the standards are met prior to issuing a local development order.*

The applicant, Tropical Fence, is requesting to rezone the subject property in order to legitimize the existing open storage yard, which is used in conjunction with the fence contracting business located on the abutting lots along Palm Beach Boulevard. No structures are proposed as part of the rezoning request. However, Lee County Utilities provided a letter of availability stating that potable water and sanitary sewer lines are located adjacent to the site. No reuse lines are located in the vicinity.

The subject property is fully developed as an enclosed gravel/shell covered lot. No landscaping, open space or habitat of any kind is currently provided. Lee County approved a waiver from all environmental maps and reports since the site is 100% impervious. This is consistent with **Lee Plan Goal 4, Objective 4.1.**

OBJECTIVE 5.1: All development approvals for residential, commercial, and industrial land uses must be consistent with the following policies, the general standards under Goal 4, and other provisions of this plan.

POLICY 5.1.5: Protect existing and future residential areas from any encroachment of uses that are potentially destructive to the character and integrity of the residential environment. Requests for conventional rezonings will be denied in the event that the buffers provided in the LDC, Chapter 10, are not adequate to address potentially incompatible uses in a satisfactory manner. If such uses are proposed in the form of a planned development or special exception and generally applicable development regulations are deemed to be inadequate, conditions will be attached to minimize or eliminate the potential impacts or, where no adequate conditions can be devised, the application will be denied altogether. The LDC will continue to require appropriate buffers for new developments.

The open storage yard has been in existence for approximately 20 years, abutting residential uses to the east and south. The only existing improvements to the site consist of a chain link fence with slats along the property boundary, separating the commercial use from the residential use. There aren't any buffers or vegetation of any kind or drainage. The entire site is impervious surface, fenced in with a chain link fence. This rezoning request will not only legitimize the existing commercial use of the site, but it will bring the site into compliance to the maximum possible. Ten-foot wide Type C landscape buffers with an 8-foot high solid opaque wall are proposed abutting the residential lots to the east and south. This allows the buffer vegetation to be located between the wall and property line on the residential side. A Type C buffer is required to provide 5 trees and 18 shrubs per 100 linear feet. Note 4 states that the shrubs may not be pruned to reduce height, so they will effectively act as a living vegetative barrier in addition to the physical barrier of the wall. A 10-foot wide Type B buffer with 6-foot high solid opaque wall is proposed along the Balboa Avenue right-of-way. The addition of a solid, opaque wall with trees and shrubs on the residential side softens the commercial development when viewed from the residential lots and public right-of-way.

The applicant is not proposing any buildings or structures on the property. They're only requesting to be able to continue the same use as the past 20 years, which is basically an open storage yard that is fully enclosed and not visible from the right-of-way or abutting residential lots. The use itself is not changing and is not detrimental to the character or integrity of the residential environment. If anything, the addition of a solid opaque wall (instead of chain link fence) and vegetation is an improvement over what's currently there. The deviations and conditions minimize any potential impacts to the residential lots. This is consistent with **Lee Plan Objective 5.1 and Policy 5.1.5.**

GOAL 6: COMMERCIAL LAND USES. To permit orderly and well-planned commercial development at appropriate locations within the County.

OBJECTIVE 6.1: Development approvals for commercial land uses must be consistent with the following policies, the general standards under Goal 4 and other provisions of this plan.

POLICY 6.1.1: *All applications for commercial development will be reviewed and evaluated as to:*

- 1. Traffic and access impacts (rezoning and development orders);*
- 2. Landscaping and detailed site planning (development orders);*
- 3. Screening and buffering (planned development rezoning and development orders);*
- 4. Availability and adequacy of services and facilities (rezoning and development orders);*
- 5. Impact on adjacent land uses and surrounding neighborhoods (rezoning);*
- 6. Proximity to other similar centers (rezoning); and*
- 7. Environmental considerations (rezoning and development orders).*

POLICY 6.1.4: *Commercial development will be approved only when compatible with adjacent existing and proposed land uses and with existing and programmed public services and facilities.*

POLICY 6.1.5: *The land development regulations will require that commercial development be designed to protect the traffic-carrying capacity of roads and streets. Methods to achieve this include, but are not limited to: frontage roads; clustering of activities; limiting access; sharing access; setbacks from existing rights-of-way; acceleration, deceleration and right-turn-only lanes; and, signalization and intersection improvements.*

POLICY 6.1.6: *The land development regulations will require that commercial development provide adequate and appropriate landscaping, open space, and buffering. Such development is encouraged to be architecturally designed so as to enhance the appearance of structures and parking areas and blend with the character of existing or planned surrounding land uses.*

POLICY 6.1.7: *Prohibit commercial developments from locating in such a way as to open new areas to premature, scattered, or strip development; but permit commercial development to infill on small parcels in areas where existing commercial development would make a residential use clearly unreasonable.*

POLICY 6.1.8: *Prohibit commercial development from locating near existing or planned school areas in such a way as to jeopardize the safety of students.*

The subject property is used as a storage yard for a commercial contracting business, Tropical Fence, located at 4814, 4818, and 4822 Palm Beach Boulevard. The only improvements to the existing site consist of a chain link fence with slats along the property boundary, separating the commercial use from the residential use. This rezoning request will not only legitimize the existing commercial use of the site, but it will bring the site into compliance to the maximum possible. In addition to the commercial use along Palm Beach Avenue and the single-family residential uses to the east and south, other nearby uses include an auto repair shop, a pawn shop, the American Legion fraternal club, and other various commercial and residential uses. The open storage yard has been in existence for approximately 20 years, abutting residential uses to the east and south, Balboa Avenue right-of-way to the west, and commercial to the north. The open storage yard, as proposed, is compatible with existing uses in the neighborhood.

Direct access to the site will remain at the existing driveway on Balboa Avenue. Although this is a full-access driveway, most employees and visitors exit out onto Palm Beach Boulevard through the abutting property, which is Tropical Fence's primary location and main office. The existing business, Tropical Fence, has two driveways on Palm Beach Boulevard and one on Balboa Avenue. When Palm Beach Boulevard was widened and improved, the center turn lane was

eliminated, making Palm Beach Boulevard an arterial road with a divided median. Only traffic traveling eastbound can turn directly into the site from Palm Beach Boulevard. Due to the site layout of the overall development (including the main site on Palm Beach Boulevard), delivery trucks turn onto Balboa Avenue, enter the site at that driveway and exist onto Palm Beach Boulevard. This is the traffic circulation that works best for the existing conditions of the site and the surrounding roadway network. This allows vehicles to enter and exit the site in a forward manner since there isn't room to turnaround on site. According to the Traffic Impact Statement, the open storage development creates minimal traffic. The AM Peak Hour Average Vehicle Trip Ends is 2 and the PM Peak Hour Average Vehicle Trip Ends is 3. Balboa Avenue has sufficient capacity for the development and turn lanes are not required.

The site is currently development from property line to property line without buffers, open space or drainage. Due to the small size of the lots, the applicant is proposing 10-foot wide Type C landscape buffers with an 8-foot high solid opaque wall abutting the residential lots to the east and south. This allows the buffer vegetation to be located between the wall and property line on the residential side. A Type C buffer is required to provide 5 trees and 18 shrubs per 100 linear feet. Note 4 states that the shrubs may not be pruned to reduce height, so they will effectively act as a living barrier in addition to the physical barrier of the wall. A 10-foot wide Type B buffer with 6-foot high wall is proposed along the Balboa Avenue right-of-way. The vegetative buffers screen and soften the development from the outside and the walls enclose the open storage yard so it's not unattractive to the neighbors, community, and general public.

Lee County Utilities provided a letter of availability stating that potable water and sanitary sewer lines are in operation adjacent to the lots. The nearest Fire/EMS station is located approximately 1.4 miles to the southeast at 9351 Workmen Way. The nearest Lee County Sheriff's station is located at 121 Pondella Road, North Fort Myers, approximately 6 miles to the northwest. Lee Tran Route 100 services Palm Beach Boulevard so public transit is located nearby. In addition, pedestrian facilities are located along Balboa Avenue and Palm Beach Boulevard. Drainage swales and pipes are provided to collect storm water, pre-treat it as required, and discharge into the Balboa Avenue right of way swales. No building structures are proposed or parking, just open storage. Rezoning the subject parcel legitimizes the use that's been on this land for the past 20 years and does not open up the area to future commercial development. The nearest school is Orange River Elementary to the east, which is accessed from Lexington Avenue. Rezoning the subject property to commercial planned development for the proposed use will not have any detrimental effects on the elementary school. This is consistent with **Lee Plan Goal 6, Objective 6.1, and Policies 6.1.1, 6.1.4, 6.1.5, 6.1.6, 6.1.7, and 6.1.8.**

GOAL 34: TICE HISTORIC COMMUNITY PLAN. *Redevelop the Community Plan area into vibrant commercial and residential neighborhoods, with mixed use centers, landscaping, safe pedestrian and bicycle facilities, improved transit service, and an array of public space and recreational areas while protecting the community's historic resources.*

POLICY 34.1.1: *In the Tice Gateway and Tice Historic Center utilize the Mixed Use Overlay to encourage mixed use developments consistent with Goal 11 that integrate multiple land uses, public amenities and utilities at various scales and intensities in order to provide: diversified land development; a variety of housing types; greater connectivity between housing, workplaces, retail businesses, and other destinations; reduced trip lengths; more transportation options; and pedestrian and bicycle-friendly environments. Tice Gateway is defined as the properties with frontage on Palm Beach Boulevard. The Tice Historic Center is the area of the Community Plan*

area contiguous to the City of Fort Myers at the intersection of Tice Street and Palm Beach Boulevard.

OBJECTIVE 34.2: COMMERCIAL AND ECONOMIC LAND USES. *Provide commercial, economic, and employment opportunities within the Community Plan area by establishing active economic corridors centered along Palm Beach Boulevard, Ortiz Avenue, and Tice Street that feature high quality, distinct, and visually appealing commercial developments.*

POLICY 34.2.1: *Maintain land development regulations that address the following:*

c. Lots that have irregular size, depth, building placement, and lack parking, landscaping, and infrastructure facilities; and

d. Vegetative and light features that help unify and add visual appeal to developments.

POLICY 34.2.2: *Maintain development standards for commercial developments to be designed as to support a walkable, multimodal community with transportation facilities that provide for the needs of pedestrians, cyclists, transit riders, and drivers by providing:*

a. Interconnection of adjacent commercial uses in order to minimize vehicular access points on primary road corridors; and

c. Pedestrian connections such as sidewalks, trails, crosswalks, walkways and entrances, signalized and or lighted crossings, shade, and other pedestrian elements.

OBJECTIVE 34.3: TRANSITIONAL USES. *Establish transitional use areas between commercial corridors and single-family residential neighborhoods.*

POLICY 34.3.1: *Transitional uses include pedestrian oriented retail uses, commercial offices, day care centers, mid-rise multifamily buildings, live-work units, and accessory apartments.*

POLICY 34.3.3: *It is anticipated that transitional uses will coexist with existing single-family residences in the transitional use area.*

The subject property is in the Tice Historic District. The fence contracting business has frontage on Palm Beach Boulevard and Balboa Avenue. The lots with frontage on Palm Beach Boulevard are zoned correctly for the use (C-1) and are in the mixed-use overlay. As noted previously, the applicants recently discovered the two lots on Balboa Avenue are not zoned correctly for the existing use (TFC-2). The applicant intends to rezone the property from TFC-2 to CPD in order to legitimize a commercial use that has been in existence on the subject property for approximately 20 years. In doing so, the applicant will be required to bring the site into compliance with the current Land Development Code to the maximum extent possible.

As it currently exists, the site doesn't have any buffers, green open space, or drainage; however there is an existing sidewalk along Balboa Avenue and Palm Beach Boulevard, providing pedestrian connectivity. In addition, the property is surrounded by a chain link fence with slats, which are no longer permitted. Proposed improvements include 10-foot wide vegetative buffers and a 8-foot high solid opaque wall on three sides of the property facing the residential lots and right-of-way. There's an existing rolling gate providing access to the site from Balboa Avenue. The existing gate may need to be replaced to match the new fence/wall at time of Development Order permitting. In addition, drainage swales and pipes are proposed to address storm water drainage. Upgrading a site that has been used for commercial purposes for 20± years is an improvement to the surrounding community, including the abutting residential properties. The few deviations that have been requested are to address the limitations of the existing site. The primary business, Tropical Fence, is a commercial business in the Mixed-Use Overlay on Palm

Beach Boulevard, while the two lots on Balboa Avenue act as a transition to the residential lots to the east and south. This is consistent with **Lee Plan Goal 34, Policy 34.1.1, Objective 34.2, Policies 34.2.1 and 34.2.2, and Objective 34.3, and Policies 34.3.1 and 34.3.3.**

The applicant has proven entitlement to the rezoning as set forth in LDC Sec. 34-145(d)(4). The request:

- (a) Complies with the Lee Plan;
- (b) Meets the Land Development Code and other applicable County regulations or qualifies for deviations;
- (c) Is compatible with existing and planned uses in the surrounding area;
- (d) Will provide access sufficient to support the proposed development intensity;
- (e) The expected impacts on transportation facilities will be addressed by existing County regulations and conditions of approval;
- (f) Will not adversely affect environmentally critical or sensitive areas and natural resources; and
- (g) Will be served by urban services, as defined in the Lee Plan, if located in a Future Urban area category.

Additional findings for planned developments:

- (a) The proposed use or mix of uses is appropriate at the proposed location;
- (b) The recommended conditions provide sufficient safeguards to the public interest and are reasonably related to the impacts on the public's interest expected from the proposed development;
- (c) The requested deviations enhance the achievement of the objectives of the planned development and preserve and promote the general intent of the LDC to protect the public health, safety, and welfare.

Exhibit A

ATTACHMENT E

LEGAL DESCRIPTION

LOTS 887, 888 AND 889, BLOCK 28, RUSSEL PARK ANNEX, A SUBDIVISION,
LOCATED IN SECTION 04, TOWNSHIP 44 EAST, RANGE 25 SOUTH, ACCORDING TO
THE PLAT THEREOF IN FILE AND RECORDED IN PLAT BOOK 7, PAGE 8, OF THE
PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

STRAP NOS.

04-44-25-04.00028.8870

04-44-25-04-00028.8890

REVIEWED
DCI2022-00036
Rick Burris, Principal
Planner
Lee County DCD/Planning
7/5/2022

ATTACHMENT F



43 Barkley Circle, Suite 200
Fort Myers, FL 33907
Phone 239-433-4231 Fax 239-433-9632
www.tdmcivilengineering.com
Certificate of Authorization # 29086

Tropical Fence
Property Development Regulations
Revised 8-2-2022

Property Development Regulations

Proposed Zoning	= Commercial Planned Development (CPD)
Min. Lot Size	= 20,250 sf / 0.46 acres
Max. Intensity	= N/A
Minimum Frontage	= 150 feet
Minimum Depth	= 135 feet
Max. Height	= N/A
Min. Open Space	= 19% *see Deviation #4

Open Space:

LDC Section 10-415 (small projects)	
Required Open Space	= 20%
	= 0.20 x 20,250 sf
	= 4,050 sf required
Provided Open Space	= 1,500 sf (east buffer) + 1,250 sf (south buffer) + 1,158 sf (east buffer) = 3,908 sf / 19.3% *see Deviation #4

Buffers:

COM to ROW: 10' wide Type D buffer proposed *see Deviation #3
COM to SFR: 10' wide Type C buffer proposed *see Deviation #2



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**Tropical Fence
Proposed Schedule of Uses**

Accessory Uses and Structures
Administrative Offices
Contractors and Builders, Groups I and II
Entrance Gate
Essential Services
Essential Services Facilities, Group I
Fences, Walls
Parking Lot, Accessory
Signs in Accordance with Ch. 30
Storage, Indoor, Open

ATTACHMENT G



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Tropical Fence Schedule of Deviations Revised 11-14-2022

DEVIATION #1:

WITHDRAWN

DEVIATION #2:

Seeks relief from the **LDC §10-416(d)(4)** requirement for a Type C buffer to be 15 feet wide with 5 trees and 18 shrubs per 100 linear feet with a solid wall, berm, or wall and berm combination, not less than 8 feet in height as measured from the finished grade of the project site. Request to permit the Type C buffer to be 10 feet wide with 5 trees and 18 shrubs per 100 linear feet, for all vegetation to be native species, for all plant materials to meet the standards for Florida No. 1 or better, for all trees to be a minimum of 12 feet in height at time of planting, for all shrubs to be 24 inches in height at time of planting, and for the wall, berm, or wall and berm combination to be 6 feet in height.

JUSTIFICATION:

This rezoning request is to legitimize the previous expansion of the commercial business (fence contractor) located along Palm Beach Boulevard onto the subject property. The expansion by the previous owners occurred between 1998 and 2002 as shown on the Lee Spins Aerial Photography. The site has been used as open storage since that time and has been fenced and gated since around 2007. The property owners/applicants intend to rezone the TFC-2 property to CPD and acquire a Development Order to bring the site into compliance to the maximum extent possible.

LDC Section 10-416(d)(3) requires either a 15-foot wide Type C buffer with 8-foot high wall or a 30' Type F buffer when commercial developments abut single-family developments. The site is only 150 feet wide by 135 feet in depth. In addition, the main delivery truck access is through the subject property. The gated access to the property on Balboa Avenue is set back 21 feet from the right-of-way, further limiting the developable area of the site. The applicant is proposing to provide a 10-foot wide Type C buffer with a 6-foot high opaque wall/fence, provide only native vegetation, and increase the height of the trees at time of planting from 10 feet to 12 feet. This is an improvement over what is currently provided between the open storage yard and abutting residential lots, which is a chain link fence with slats right on the property line. No buffer vegetation is currently provided.

The proposed 10-foot wide Type C buffer permits the drainage swale to overlap the buffer by 50% and still provide a 5-foot wide planting shelf, which is wide enough to accommodate the 5 trees

and 18 shrubs per 100 linear feet. The northeast buffer will require 8 trees and 27 shrubs while the southeast buffer will require 7 trees and 25 shrubs. Note 4 of LDC Section 10-416(d)(4) also states that “*shrubs required in this section are intended to provide visual screening and may not be pruned to reduce height.*”

Providing a 10-foot wide buffer abutting the residential uses reduces the open storage area by 2,850 square feet; however, the applicant wants to comply with the LDC to the maximum extent possible without losing the ability for continued use of the property. The 10-foot wide buffer and enhanced vegetation meets the intent of the LDC to buffer and screen abutting properties from the proposed commercial use. This deviation enhances the achievement of the objective of this planned development and will not cause a detriment to the public interest.

DEVIATION #3:

Seeks relief from the **LDC §10-416(d)(4)** requirement for a Type D buffer to be 15-feet wide with 5 trees per 100 linear feet and double staggered hedge row. Request to permit the buffer adjacent to Balboa Avenue to be 10 feet wide with 5 trees per 100 linear feet, a double-staggered hedge row, for all vegetation to be native species, for all trees to be a minimum of 12 feet in height at time of planting, and for all plant materials to meet the standards for Florida No. 1 or better.

JUSTIFICATION:

This rezoning request is to legitimize the expansion of the commercial business (fence contractor) located along Palm Beach Boulevard onto the subject property. The expansion by the previous owners occurred between 1998 and 2002 as shown on the Lee Spins Aerial Photography. The site has been used as open storage since that time and has been fenced and gated since around 2007. The property owners/applicants intend to rezone the TFC-2 property to CPD and acquire a Development Order to bring the site into compliance to the maximum extent possible.

LDC Sec. 10-416(d)(3) requires a Type D buffer when commercial developments abut a right-of-way. LDC Sec. 10-416(d)(4) requires a Type D buffer to be 15-feet wide; however, the site is small at only 135 feet in depth by 150 feet wide. In addition, the main delivery truck access is through the subject property. Adding buffers to 3 sides of the property reduces the developable area, or in this case, the available storage area of the property. LDC Sec. 34-3005(b) requires open storage to be shielded behind a continuous visual screening at least 6-feet in height when visible from any street right-of-way or easement. The applicant is proposing to reduce the buffer width to 10 feet, provide a 6-foot high opaque wall/fence, provide only native vegetation, and increase the height of the trees at time of planting from 10 feet to 12 feet. This is an improvement over what is currently provided between the open storage yard and right-of-way, which is a chain link fence with slats right on the property line. No buffer vegetation is currently provided.

The proposed 10-foot wide Type D buffer permits the drainage swale to overlap the buffer by 50% and still provide a 5-foot wide planting shelf, which is wide enough to accommodate the 5 trees per 100 linear feet and double-staggered hedgerow. Providing a 10-foot wide buffer abutting the right-of-way reduces the open storage area by 1,260 square feet; however, the applicant wants to comply with the LDC to the maximum extent possible without losing the ability for continued use of the property. The 10-foot wide buffer and enhanced vegetation meets the intent of the LDC to buffer and screen the right-of-way from the proposed commercial use. This deviation enhances the

achievement of the objective of this planned development and will not cause a detriment to the public interest.

DEVIATION #4:

Seeks relief from the **LDC §10-415** requirement for small commercial developments to provide a minimum of 20% open space. Request to permit a minimum of 19% open space.

JUSTIFICATION:

If this rezoning application is approved, the applicant will be required to bring the site into current code compliance to the maximum extent possible via a local development order. The site as it currently exists doesn't provide buffers, landscaping, open space, or drainage. Because the subject property is so small in size, the buffers have been reduced from 15 feet wide to 10 feet wide. This allows the applicant to have reasonable use of the property. However, that also means that only 3,908 square feet of open space is provided instead of the 4,050 square feet required. This is a deficit of only 142 square feet. That small amount of open space is negligible compared to the improvements the applicant is making to the site overall. This deviation enhances the achievement of this planned development and will not cause a detriment to the public interest.

DEVIATION #5:

Seeks relief from the **LDC §34-3005(b)** requirement that all commercial or industrial outdoor storage be shielded behind a continuous visual screening at least 8 feet in height when visible from a residential use or residential zoning district and 6 feet in height when visible from any street right-of-way or street easement. Request to permit the continuous visual screen to be 6 feet in height when visible from a residential use or residential zoning district.

JUSTIFICATION:

The applicant is proposing to provide a 10-foot wide Type C buffer with a 6-foot high wall to the northeast and southeast abutting existing single-family uses and a 10-foot wide Type D buffer with a 6-foot high wall abutting the right-of-way. This lot is small in size. Normally commercial developments that require a wall choose a berm and wall combination to equal the 8-foot height. However, due to the limited size of the property, the applicant is unable to use that alternative and must provide a solid opaque wall to buffer and screen the open storage area from residentially zoned lots and rights-of-way. As noted in Deviation #2, the northeast buffer will require 8 trees and 27 shrubs while the southeast buffer will require 7 trees and 25 shrubs and the shrubs may not be pruned to reduce height. Permitting the wall to be 6 feet in height instead of 8 feet allows for consistency in the fencing proposed and meets the intent of the LDC to shield the abutting residential property owners from the open storage area needed for the fence contracting business. This deviation enhances the achievement of this planned development and will not cause a detriment to the public interest.

DEVIATION #6:

Seeks relief from the **LDC §34-1748(5)** requirement that a paved turn-around, having a turning radius sufficient to accommodate a U-turn for a single unit truck, must be provided on the ingress side of the gate. The applicant is requesting to provide a T-turnaround for passenger cars as shown on the MCP.

JUSTIFICATION:

When FDOT made improvements to Palm Beach Boulevard back in the early 2000's, it added a median in front of the fence contracting business (Tropical Fence) located at 4822 Palm Beach Boulevard, effectively limiting direct access to the property when traveling west. As a result, vehicles traveling west are forced to make a U-turn on Palm Beach Boulevard. In addition, two of the three driveways on Palm Beach Boulevard were closed and are inoperable. The only direct access onto Palm Beach Boulevard is the one closest to the intersection with Balboa Avenue. Over the years, traffic conditions have created a traffic circulation pattern where vehicles turn south onto Balboa Avenue from Palm Beach Boulevard, enter the fence contracting business at the 393 Balboa Avenue site, and exit through the development at the existing driveway on Palm Beach Boulevard. This is essential for truck deliveries so they can exit the site in a forward manner without backing out as there is no room on-site for delivery trucks to turnaround.

This type of business doesn't get much traffic from the public. It's mostly employees and the occasional delivery truck. Fence contractors typically travel to the job site to provide cost estimates and installation/construction services. There isn't a showroom at this location, so customers don't typically visit this site.

The existing open storage yard is fenced and gated. This is required as a security measure to store their fencing materials onsite. The rolling gate at the entrance on Balboa Avenue is kept open during business hours and only closed after hours. The site is only 135 feet in depth. That is not sufficient depth to provide a paved turn-around before the gate. The applicant is proposing to provide a paved T-turnaround on the left side of the existing gate as shown on the Master Concept Plan (MCP). This will allow a passenger car to make a 3-point turn on the egress side of the gate and exit in a forward manner instead of backing out into the right-of-way. Doing so provides safe and efficient traffic circulation. This deviation enhances the achievement of the objective of this planned development and will not cause a detriment to the public interest.

The proposed deviations enhance the achievement of the objectives of the planned development and will not cause a detriment to the public interests. The location of each deviation is shown on the Master Concept Plan as required.

**TRAFFIC IMPACT STATEMENT
FOR
A PROPOSED OPEN STORAGE AREA
393 and 397 Balboa Avenue**

PREPARED FOR:

**Mr. Mark and Ms. Sue Murphy, Owners
Tropical Fence
4822 Palm Beach Boulevard
Fort Myers, FL 33905**

PREPARED BY:



**43 Barkley Circle, Suite 200
Fort Myers, FL 33907
Phone 239-433-4231 Fax 239-433-9632
www.tdmcivilengineering.com
Certificate of Authorization # 29086**

June 2022



**Thomas
Dean Martin** Digitally signed by
Thomas Dean Martin
Date: 2022.06.21
07:44:50 -04'00'

DEAN MARTIN
FLORIDA P.E. #52022
VALID ONLY WITH EMBOSSED SEAL

1. PURPOSE

OBJECTIVE

This report has been prepared in accordance with Lee County Department of Community Development criteria as outlined in the Lee County Traffic Impact Statement Guidelines and the Lee County Turn Lane Policy for projects seeking Development Order approval. This report analyzes the anticipated traffic conditions of the proposed development in order to determine any adverse roadway impacts associated with the addition of **393 and 397 Balboa Avenue**.

The subject parcel per the most recent boundary survey by Harris-Jorgensen is 0.46 acres (20,250 square feet).

This Traffic Impact Statement is based on the assumption that the proposed facility will be completed in 2023.

2. SITE DESCRIPTION

SITE LOCATION

393 and 397 Balboa Avenue is a 0.46-acre project located on the east side of Balboa Avenue in Section 04, Township 44 South, Range 25 East, Lee County, Florida (see Exhibit 1). The applicant proposes to legitimize the existing 20,250 square foot open storage yard.

Access to the development is via one (1) proposed full-access driveway connection to Balboa Avenue. This report is based on this one (1) proposed driveway connection.

3. OBSERVATIONS

3.1 TRIP GENERATION CALCULATIONS

Vehicular trips generated by the development were calculated by using the equations provided by the Institute of Transportation Engineers, 11th Edition of the Trip Generation Manual, Land Use Code 151 (Mini-Warehousing) using the average rates shown in the tables. Note that LUC 151 is generally considered a reliable indicator of trip generations for the open storage use in the absence of actual use data in the ITE Manual.

Table 1. Raw Trip Generation - LUC 151 (Mini-Warehouse)

<u>20,250 Square Feet of Gross Floor Area:</u>	
A.	Daily Average Vehicle Trip Ends, Weekday $T = 1.45 (20.250) = 30$ (15 entering, 15 exiting)
B.	A.M. Peak Hour Average Vehicle Trip Ends (Adjacent Street) $T = 0.09 (20.250) = 2$ (1 entering, 1 exiting)
C.	P.M. Peak Hour Average Vehicle Trip Ends (Adjacent Street) $T = 0.15 (20.250) = 3$ (1 entering, 2 exiting)

Source: TDM, 2022

Based on this, the development will be analyzed using the criteria established for developments generating less than three hundred (300) vehicle trips during the peak hour as outlined in the Lee County Traffic Impact Guidelines.

3.2 TRIP DISTRIBUTION

As previously stated herein, traffic will enter and exit the development at the one (1) proposed full-access driveway connection to Balboa Avenue.

Because the nearest arterial street (Palm Beach Boulevard) is north of the site and only limited residential lots are south of the site, it is estimated for this report that 98% of traffic from the development will enter and exit from/to the north while 2% of traffic from the development will enter and exit from/to the south.

3.3 EXISTING TRAFFIC CONDITIONS

Palm Beach Boulevard is the nearest arterial road being indirectly accessed and is classified by the Lee County Comprehensive Plan as a six-lane divided arterial road. Per the 2021 Lee

County Concurrency Report, Palm Beach Boulevard has a “C” Level of Service near the development, a 2020 peak direction of flow volume of one thousand ninety-six (1,096) vehicles per hour, a Performance Standard “D” Level of Service, and a Performance Standard Capacity of three thousand one hundred seventy-one (3,171) vehicles per hour.

Based on the 2021 Traffic Count Report prepared by the Lee County Department of Transportation, traffic on Palm Beach Boulevard near the development heads west 69% of the time and east 31% of the time during the A.M. peak while traffic heads east 60% of the time and west 40% of the time during the P.M. peak.

Balboa Avenue is a County-maintained two-lane local road. It has a posted speed limit of twenty-five (25) miles per hour.

3.4 TURN LANE ANALYSIS (BALBOA AVENUE)

A. Traffic Conditions on Balboa Avenue (Local)

- A.M. Peak Hour Vehicle Trip Ends - 2
- P.M. Peak Hour Vehicle Trip Ends - 3
- Posted Speed Limit - 25 mph

B. Deceleration and Left Turn Lane

Based on the Turn Lane Policy, a deceleration and left turn lane is not required. None of the required warrants are satisfied. The posted speed limit of the local street is below the threshold; the number of left-turning movements from the local street during the peak hour of the local street is below the threshold, the available sight distance for the posted speed limit of the local street is above the threshold; and the access point connection is not controlled by a traffic signal.

C. Separate Left Turn Lane on the Access Point Connection

Based on the Turn Lane Policy, a separate left turn lane on the access point connection is not required. None of the required warrants are satisfied. The posted speed limit of the local street is below the threshold, the number of left-turning vehicles from the access point connection during the peak hour of the local street is below the threshold, and the access point connection is not controlled by a traffic signal.

D. Deceleration and Right Turn Lane

Based on the Turn Lane Policy, a deceleration and right turn lane is not required. None of the required warrants are satisfied. The posted speed limit of the local street is below the threshold, the number of right-turning movements from the local street during the

peak hour of the local street is below the threshold, the available sight distance for the posted speed limit of the local street is above the threshold, and the access point connection is not controlled by a traffic signal.

E. Separate Right Turn Lane on the Access Point Connection

Based on the Turn Lane Policy, a separate right turn lane on the access point connection is not required. None of the required warrants are satisfied. The posted speed limit of the intersecting street is below the threshold, the number of right-turning movements from the access point connection during the peak hour of the local street is below the threshold, and the access point connection is not controlled by a traffic signal.

3.5 RECOMMENDED IMPROVEMENTS (BALBOA AVENUE)

One (1) typical full-access driveway connection is proposed. No other improvements are required or proposed.

3.6 LEVEL OF SERVICE ANALYSIS (PALM BEACH BOULEVARD)

The development will not introduce a significant increase in traffic flows and will not degrade the Level of Service of Palm Beach Boulevard during the peak season below the Performance Standard Level of Service (see attached 100th Highest Hour Level of Service Calculation).

3.7 DETERMINATION OF POTENTIAL IMPACTS (PALM BEACH BOULEVARD)

The development will add one (1) vehicle trip to Palm Beach Boulevard in the peak hour peak direction. The maximum service volume at LOS “D” of Palm Beach Boulevard is three thousand one hundred seventy-one (3,171) vehicles in the peak hour in the peak direction.

Significance determination percentage = (Cumulative project traffic)/(maximum service volume at LOS standard) = (1)/(3,171) = 0.03%.

This does not meet the definition of a significant impact on Palm Beach Boulevard with less than 5% of the adopted peak hour LOS maximum service volume of the roadway.

The proposed development is not required to pay a proportionate share towards a future improvement of Palm Beach Boulevard.

100TH HIGHEST HOUR LEVEL OF SERVICE CALCULATION PALM BEACH BOULEVARD

ENGINEER: TDM Consulting, Inc.
Dean Martin, P.E.

DATE: June 20, 2022

PROJECT NAME: 393 and 397 Balboa Avenue

PROJECT LOCATION: Balboa Avenue, South of PBB

PERMANENT COUNTING STATION NUMBER: 5

100TH HOUR V.P.H.
(Year & Rate) = 2020 1,096

YEAR FOLLOWING PROJECT CONSTRUCTION: 2024

ADJUSTMENT FACTOR =

Count & Yr_{min} N/A

Count & Yr_{max} N/A

Adjustment Factor = $(\frac{0}{0} \text{ #####})^4$ 1.000

ADJUSTED 100TH HOUR V.P.H. = 1,096 x 1.000 1,096

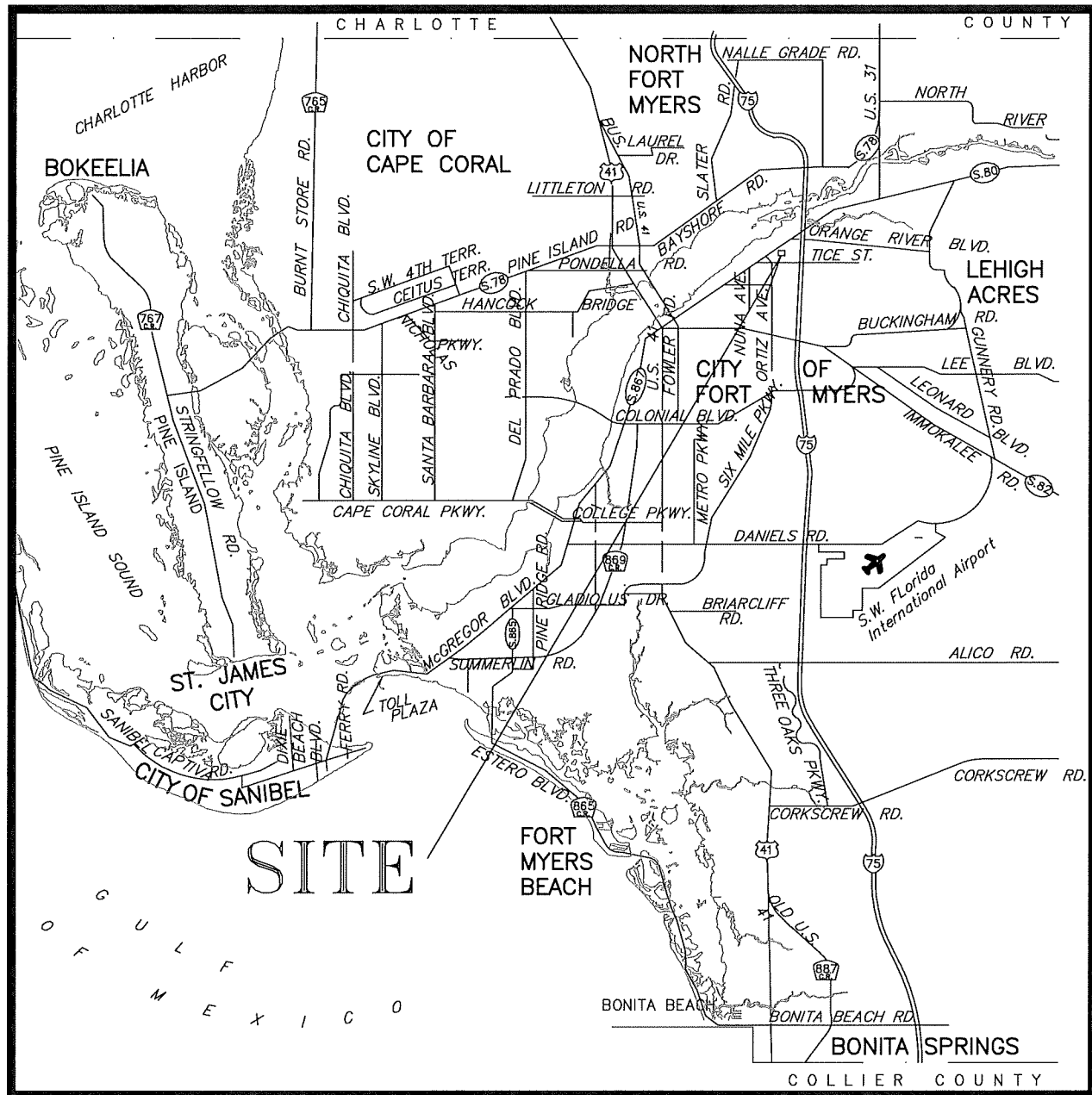
EXISTING LEVEL OF SERVICE = C

PROJECT V.P.H. = 2 (P.M. Exiting) x 98% x 60% (East-Bound) 1

TOTAL V.P.H. = 1,096 + 1 1,097

LEVEL OF SERVICE = C

COMMENTS:



LOCATION SKETCH
N.T.S.

EXHIBIT 1
TRAFFIC IMPACT STATEMENT
LOCATION MAP
363 AND 397 BALBOA AVENUE
FORT MYERS, FL, 33905

SOURCE: TDM, 06/22



43 Barkley Circle, Suite #200
Fort Myers, FL 33907
Phone: (239) 433-4231
Fax: (239) 433-9632
Email: dean@tdmconsulting.com
Certificate of Authorization # 29086

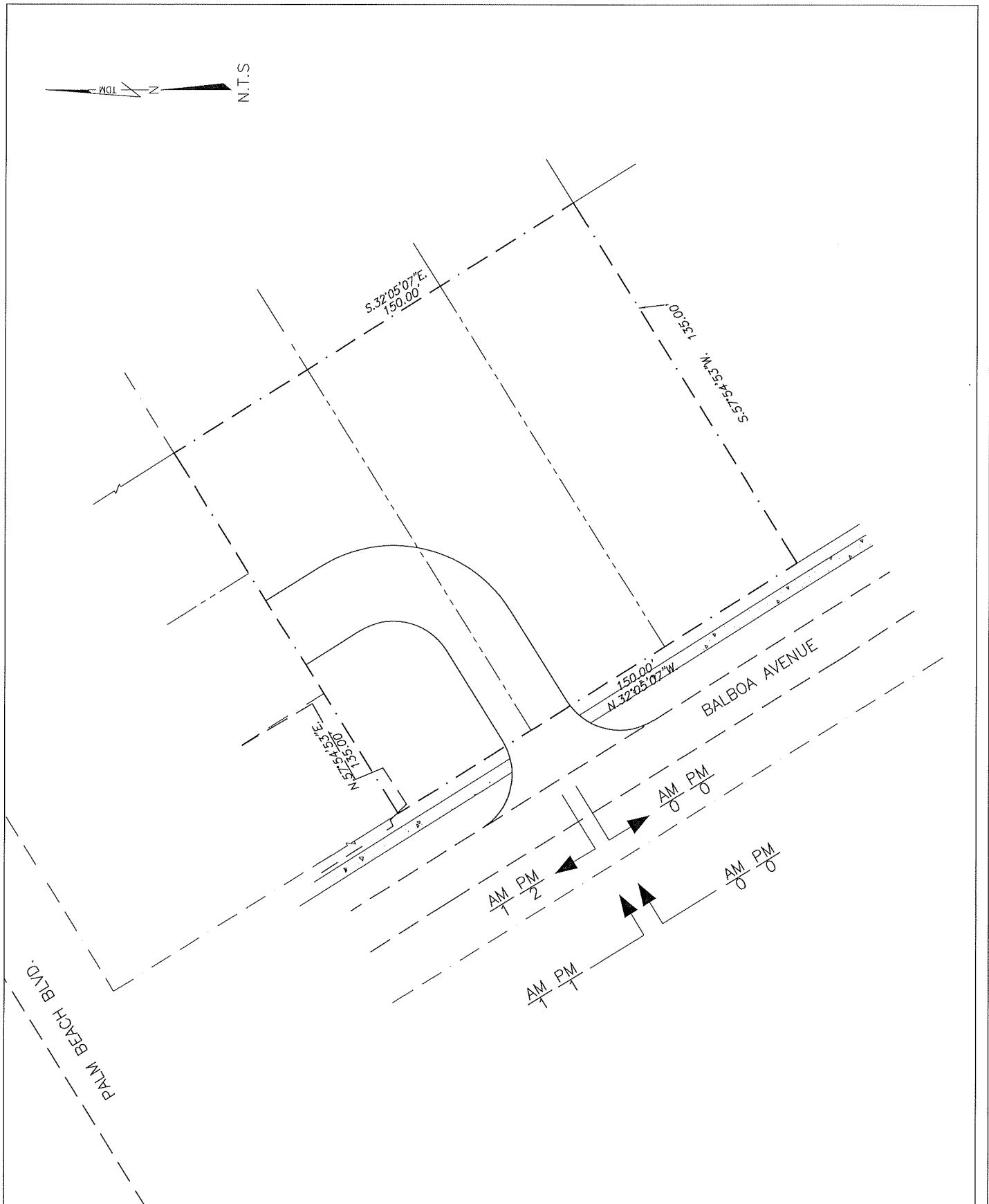
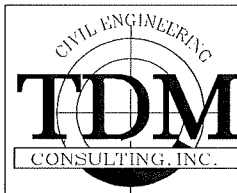


EXHIBIT 2
 TRAFFIC IMPACT STATEMENT
 PEAK HOUR TRAFFIC DISTRIBUTION
 393 AND 397 BALBOA AVENUE
 FORT MYERS, FL, 33905

SOURCE: TDM, 06/22



43 Barkley Circle, Suite #200
 Fort Myers, FL 33907
 Phone: (239) 433-4231
 Fax: (239) 433-9632
 Email: dean@tdmconsulting.com
 Certificate of Authorization # 29086

ATTACHMENT I



DEPARTMENT OF COMMUNITY DEVELOPMENT

Memo

To: Dirk A Danley Jr., Planner, Principal

From: Md Rakibul Alam, Senior Transportation Planner

Date: Jan. 09, 2023

Subject: Tropical Fence (DCI2022-00036) Transportation-Related Analysis

Proposed Development

This application requests approval to rezone approximately 0.5 acres from TFC-2 to CPD to legitimize the expansion of the existing commercial business located along Palm Beach Boulevard.

Site Location

The subject site (393 and 397 Balboa Avenue) is located on the east side of Balboa Avenue in Section 04, Township 44 South, Range 25 East, Lee County, Florida.

Site Access

Access to the development is via one (1) proposed full-access driveway connection to Balboa Avenue.

Trip Generation Review

The trip generation for the proposed development was determined by referencing the Institute of Transportation Engineer's (ITE) Trip Generation 11th Edition Report. Table 1 outlines the proposed project's trip generation for weekday A.M and P.M peak hour traffic volumes.

Table 1
Trip Generation

Land Use	Weekday A.M Peak Hour			Weekday P.M Peak Hour		
	In	Out	Total	In	Out	Total
Mini-Warehousing (20,250 sf)	1	1	2	1	2	3

Roadway Section & Intersection Traffic Operation Level of Service Analysis

The level of service (LOS) analysis for roadway section and intersection are not required for the application according to AC-13-17 because the project trip generation for AM & PM peak hours are less than 100 trips.

Conclusion

The proposed project will not have a detrimental impact on the surrounding roadway system.

ATTACHMENT J

Lee County, Florida
DEPARTMENT OF COMMUNITY DEVELOPMENT
ENVIRONMENTAL STAFF REPORT

CASE NUMBER: DCI2022-00036
TYPE OF CASE: Minor Planned Development
CASE NAME: Tropical Fence
TOTAL ACREAGE: 0.46
SUFFICIENCY DATE: December 13, 2022
HEARING EXAMINER DATE: February 16, 2022

Request

The applicant has requested to rezone 0.46 acres from Residential Two-Family Conservation (TFC-2) to Commercial Planned Development (CPD) to legitimize the expansion of the existing commercial business located along Palm Beach Boulevard. The project is located in Tice Community Plan area and in the Central Urban Community Future Land Use Category.

Open Space

The project is considered a small development per LDC Section 10-1 since it is under ten acres in size and under two acres of impervious. LDC Section 10-415(a) establishes the percent open space that an applicant must provide for a small development which is 20 percent. The applicant has provided a Master Concept Plan that states that the lot size is 20,250 square feet in size. The project size is 0.46 acres ($0.46 \times 43,560 = 20,037.6$ square feet). The applicant is required to provide 20 percent open space ($0.20 \times 20,037.6 = 4,007.52$ square feet) and the calculation is incorrect due to the incorrect lot size. The applicant states on the MCP the dimensions of each buffer will provide a total of 3,908 square feet of open space (19.3 percent) but with the correct square feet the is providing 19.5 percent open space.

The applicant has requested a deviation (Deviation #4) from LDC Section 10-415(a) to allow 19 percent open space.

Staff recommend **APPROVAL** of Deviation #4.

Buffers

LDC Section 10-416(d) requires certain buffers to be provided around the perimeter of a development. The type of buffer depends on the subject property use and the abutting properties use or if vacant the abutting properties zoning district. The subject parcel abuts residential uses to the south and east. Per LDC Section 10-416(d), the applicant must provide a Type-C buffer (15-foot-wide buffer with five trees and 18 shrubs per 100 linear feet with an eight-foot wall setback 15 feet) or a Type-F buffer (30-foot-wide buffer with ten trees per 100 linear feet and a double hedgerow). In addition to LDC Section 10-416(d) buffer requirements, the applicant must provide an eight-feet-high visual screen to shield the open storage yard from the abutting residential uses per LDC Section 34-3005(b)(1). The applicant is requesting deviations (Deviation #1 and Deviation #5) from the buffer requirements.

Deviation #2 is being requested to allow a Type-C buffer to be ten-feet-wide with five trees and 18 shrubs per 100 linear feet. The buffer vegetation is required to be native species with twelve-foot-in-height trees and 24-inch shrubs at time of planting. The applicant has stated that the landscape material will be Florida #1 or better but this specification is required by LDC Section 10-420(a). The wall or wall berm combination height is proposed to be six-feet-in-height with the twelve foot tree making up the two foot difference.

Staff recommend **APPROVAL** of Deviations #2 and #5 with the following condition:

Prior to development order approval, the applicant must depict on the landscape plans a ten-foot-wide buffer with a six-foot-high solid opaque fence setback ten feet from the property line along the east and south property lines abutting the residential uses. The buffer must include five trees and 18 shrubs per 100 linear feet. The trees must be 12-feet-in-height with a three-inch caliper, and six-foot-wide canopy spread. The shrubs must be 24-inches-in-height. All buffer vegetation must be 100 percent native species.

The applicant is required to provide a right-of-way buffer per LDC Section 10-416(d). The right-of-way buffer abutting Balboa Avenue must be 15-feet-wide with a six-foot-high solid opaque fence setback 15 feet with five trees per 100 linear feet and a double staggered hedge. The applicant is requesting Deviation #3 to allow a ten-foot-wide buffer with five trees per 100 linear feet and a double staggered hedge row. The buffer vegetation must be native species, the trees must be installed at 12-feet-in-height, and all material will be Florida #1 or better per LDC Section 10-420(a). The applicant must provide a six-foot-high fence setback the width of the buffer to screen the storage area.

Staff recommend **APPROVAL** of Deviation #3 with the following condition:

Prior to development order approval, the applicant must depict on the landscape plans a ten-foot-wide right-of-way buffer with a six-foot-high solid, opaque setback ten feet and abutting Balboa Avenue. The buffer must include five trees per 100 linear feet and a double staggered hedge. The trees must be 12-feet-in-height with a three-inch caliper, and six-foot-wide canopy spread. The shrubs must be 24-inches-in-height. All buffer vegetation must be 100 percent native species.

Conclusion

The applicant is requesting to rezone a parcel that is abutting the applicant's existing business to the north. The subject property will be used for open storage of fence materials to support the business. The applicant has provide alternative buffers that will screen and create visual relief from the commercial business. The LDC requires an eight-foot fence when a storage area is visible by a residential use and the applicant is providing a six-foot fence with 12-foot-high trees installed five trees per 100 linear feet. This will provide an alternative screening to protect the abutting residential properties. The alternative buffers being proposed through the deviation requests will protect the health, safety and welfare of the surrounding uses and will not encroach into the residential neighborhood due to the setbacks and buffering.

Staff recommend **APPROVAL** as conditioned above.



ATTACHMENT K

BOARD OF COUNTY COMMISSIONERS

Kevin Ruane
District One

Cecil L. Pendergrass
District Two

Raymond Sandelli
District Three

Brian Hamman
District Four

Frank Mann
District Five

Roger Desjarlais
County Manager

Richard Wm Wesch
County Attorney

Donna Marie Collins
*County Chief
Hearing Examiner*

July 27, 2022

Via E-Mail

Veronica Martin
TDM – Consulting, Inc.
43 Barkley Circle, Ste 200
Fort Myers, FL 33907

RE: **Potable Water and Wastewater Availability**
Tropical Fence, 4822 Palm Beach Blvd (for lots 393 and 397 Balboa Avenue)
STRAP # 04-44-25-04-00028.8870 and 04-44-25-04-00028.8890

Dear Ms. Martin:

The subject properties are located within Lee County Utilities Future Service Area as depicted on Maps 4A and 4B of the Lee County Comprehensive Land Use Plan. Potable water and sanitary sewer lines are in operation adjacent to lots 393 and 397 Balboa Avenue. However, in order to provide service to these lots, developer funded system enhancements such as line extensions may be required.

Your firm has indicated that these lots will continue to exist as a storage yard for Tropical Fence, so there will be no additional flow demand required.

Lee County Utilities presently provide potable water service to this area through our North Lee County Water Treatment Plant.

Sanitary sewer service is provided by the City of Fort Myers North Water Reclamation Facility.

There are no reuse mains in the vicinity of this parcel.

This letter should not be construed as a commitment to serve, but only as to the availability of service. Lee County Utilities will commit to serve only upon receipt of all appropriate connection fees, a signed request for service and/or an executed service agreement, and the approval of all State and local regulatory agencies.

Further, this letter of availability of potable water and sanitary sewer service is to be utilized for Zoning only. Individual letters of availability will be required for the purpose of obtaining building permits.

Sincerely,

LEE COUNTY UTILITIES

A handwritten signature in blue ink that reads "Mary McCormic". The signature is written in a cursive style with a large, stylized "M" and "C".

Mary McCormic
Technician Senior
239-533-8532
UTILITIES ENGINEERING



43 Barkley Circle, Suite 200

Fort Myers, FL 33907

Phone 239-433-4231 Fax 239-433-9632

www.tdmcivilengineering.com

Certificate of Authorization # 29086

Tropical Fence
Explanation of Utilities

The applicant is applying to rezone the lots at 393 and 397 Balboa Avenue in an effort to legitimize the expansion of their fence contracting business onto land with TFC-2 zoning. The subject property is used for storage of fencing materials, collection of solid waste, and the main driveway for deliveries. No buildings are proposed. As a result, there is no need to provide water or sewer facilities on the subject property.

ATTACHMENT L



**REQUEST FOR
SUBMITTAL REQUIREMENT WAIVER
FOR UNINCORPORATED AREAS ONLY**

Upon written request, the Director may modify the submittal requirements for Public Hearings, Development Orders, Limited Review Development Orders and other Administrative Action Applications where it can be clearly demonstrated that the submission will have no bearing on the review and processing of the application. The request and the Director's written response must accompany the application submitted and will become a part of the permanent file.

APPLICATION FOR WAIVER OF REQUIRED SUBMITTAL ITEMS
(indicate the appropriate application type)

- ☐ Public Hearing - General Requirements (34-202)
- ☐ Public Hearing - Mining Excavation Planned Development (12-110)
- ☒ Public Hearing - Additional Requirements for:
 - ☐ Development of Regional Impact (34-202(b)(1))
 - ☒ Planned Developments (34-202(b)(2))
 - ☐ Planned Development Amendment (34-202(b)(2))
 - ☐ Rezoning other than Planned Developments (34-202(b)(3))
 - ☐ Special Exceptions (34-202(b)(5))
 - ☐ Variances (34-202(b)(6))
 - ☐ Limited Amendment to Existing Mine Zoning Approval [12-121(j)]
 - ☐ Private Recreational Facilities Planned Development (34-941(g))
- ☐ Development Order - Submittal Requirements (10-152)
 - ☐ Application Form and Contents (10-153)
 - ☐ Additional Required Submittals (10-154)
- ☐ Limited Review Development Order - Submittal Requirements (10-152)
 - ☐ Required Submittals (10-175)
- ☐ Administrative Action Application Requirements [34-203]

State the Type of Administrative Application: _____

PLEASE PRINT OR TYPE:

STRAP Number: 04-44-25-04-00028.8870 and 04-44-25-04-00028.8890
 Name of Project: Tropical Fence

Name of Agent: Veronica Martin, TDM Consulting, Inc.
 Street Address: 43 Barkley Cir, Suite 200
 City, State, Zip: Fort Myers, FL 33907
 Phone Number: 239-433-4231 Email Address: vmartin@tdmconsulting.com

Name of Applicant*: Sue Murphy for Trop-Snoop, LLC
 Street Address: 4822 Palm Beach Blvd.
 City, State, Zip: Fort Myers, FL 33905
 Phone Number: 239-896-4966 Email Address: sue@tropicalfence.com

***If applicant is not the owner, a letter of authorization from the owner must be submitted.**

LEE COUNTY COMMUNITY DEVELOPMENT
P.O. BOX 398 (1500 MONROE STREET), FORT MYERS, FLORIDA 33902
PHONE (239) 533-8585

A. SPECIFIC SECTION(S) AND REQUIREMENT(S) FOR WHICH A WAIVER IS SOUGHT:

Section Number		Requirement
#1	34-373(a)(4)(b)i	Soils Map
#2	34-373(a)(4)(b)ii	Vegetation & ground cover/FLUCCS Map
#3	34-373(a)(4)(b)iii	Rare & Unique Upland Habitat Map
#4	34-373(a)(4)(b)iv	Topographic Map
#5	34-373(a)(4)(b)v	Existing & Historic Flow-Ways Map
#6	34-373(a)(4)(c)	FLUCCS Map
#7	34-373(a)(4)(d)	Historical or Archaeological site files
#8		
#9		

B. SCOPE OF PROJECT AND REASON(S) FOR REQUEST:

Please provide an explanation of the scope of the project and the reason(s) why you think the request for submittal waiver(s) should be approved. Use additional sheets if necessary and attach to this application form. (Please print or type)

The property owner and their family have owned a block of 5 lots since May 19, 2000 (see attached Corporate Warranty Deed). The lots with frontage on Palm Beach Blvd are zoned C-1 (4822, 4818, and 4814 Palm Beach Blvd). The owners "assumed" the lots at 393 and 397 Balboa Avenue had the same C-1 zoning and expanded their fence contracting business onto those lots. As a result, those 2 lots have been developed since 2000-2001. Twenty-two years later, the lots are fully developed, without much green space, buffers, etc. The maps required by LDC Sec. 34-373(a)(4) will not provide staff with any information that isn't readily available on Lee Spins aerials or a site visit.

Under penalties of perjury, I declare that I have read the foregoing application and that the facts stated in it are true.

Veronica Martin

Signature of Applicant

4-19-2022

Date

.....
FOR STAFF USE ONLY

DIRECTOR'S DECISION:

☐

Request Denied

☒

Request Approved

☐

Request Approved Per Attached Comments

Electronically signed on 4/25/2022 by
 Anthony R. Rodriguez, AICP, Zoning Manager
 Lee County Department of Community Development

Director Signature

Date

Corporate Warranty Deed

10.50
900

This Indenture, made this 19 day of May
A.D. 2000 , Between
CIRCLE RADIATOR OF FORT MYERS, INC.

whose post office address is: 2135 S.E. 19TH PL.
CAPE CORAL, FL 33990

a corporation existing under the laws of the
State of Florida , Grantor and
PAUL S. MURPHY, As Trustee of the Paul S.
Murphy Trust dated 2-25-92

4822 Palm Beach Blvd.
whose post office address is:
FT. MYERS, FL 33905

Grantees' SSN:

Grantee,

Witnesseth, that the said Grantor, for and in consideration of the sum of (Ten & NO/100)
Dollars, to it in hand paid by the said Grantee, the receipt whereof is hereby acknowledged, has granted, bargained and
sold to the said Grantee forever, the following described land, situate, lying and being in the County of

LEE , State of Florida, to wit:

See Schedule A attached hereto and by this reference made a part hereof.

Said property is not the homestead of the Grantor(s) under the laws and constitution
of the state of Florida in that neither Grantor(s) nor any member of the household
of Grantor(s) reside thereon.

Subject to covenants, restrictions and easements of record.

Parcel Identification Number: 04-44-25-04-00028.8820

And the said Grantor does hereby fully warrant the title to said land, and will defend the same against the lawful
claims of all persons whomsoever.

In Witness Whereof, the said Grantor has caused this instrument to be executed in its name by its duly
authorized officer and caused its corporate seal to be affixed the day and year first above written.

CIRCLE RADIATOR OF FORT MYERS, INC.

Signed and Sealed in Our Presence:
(TWO SEPARATE WITNESSES REQUIRED)

By:

ANTHONY O'DAY
Its PRESIDENT

Witness Print Name:

Debra L. Petruzelli

Witness Print Name:

Amanda Heatley

(Corporate Seal)

State of FLA
County of Lee

The foregoing instrument was acknowledged before me this 19 day of May , 2000 , by
ANTHONY O'DAY
of CIRCLE RADIATOR OF FORT MYERS, INC.

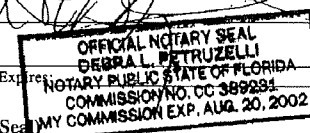
a corporation existing under the laws of the State of Florida
He/She is personally known to me or has produced

, on behalf of the corporation.
as identification.

PREPARED BY: Debra L. Petruzelli
RECORD & RETURN TO:
CAPE CORAL TITLE INSURANCE AGENCY, INC.
1307 Cape Coral Parkway
Cape Coral, Florida 33904
File No: 23557

Notary Public
Print Name:
My Commission Expires:

(Affix Stamp/Seal)



INSTR # 4881660
OR BK 03258 PG 1968
RECORDED 05/23/00 10:40 AM
CHARLIE GREEN CLERK OF COURT
LEE COUNTY
RECORDING FEE 10.50
DOC TAX PD (F.S. 201.02) 700.00
DEPUTY CLERK G Sherwood

Schedule A

Parcel A-Lots 882,883,887,888,889, Block 28, Less and except the
Northerly 42 feet of lots 882 & 883, Block 28, Russell Park
Annex Subdivision, Plat Book 7, Page 8, in the Public Records of
Lee County, Florida.

Parcel ID No. 04-44-25-04-00028.8820 and
04-44-25-04-00028.8870 and
04-44-25-04-00028.8890

This recorded instrument shall confer on the Trustee the Power
and authority either to protect, conserve, convey or to sell,
or to lease or encumber or to otherwise manage and dispose of the
real property described herein.

MEMORANDUM

Date: 01/31/2023**ATTACHMENT M****To:** Dirk Danley, AICP**From:** Brian Roberts *BR***Subject:** DCI2022-00036 Tropical Fence

The applicant is proposing to rezone 0.5+/- acres from Residential Two-Family Conservation (TFC-2) to Commercial Planned Development (CPD) to legitimize the expansion of the existing commercial business located along Palm Beach Boulevard. Development Services has reviewed the Master Concept Plan (MCP) and requested deviations with respect to Chapter 10 and Chapter 34 technical standards detailed in Land Development Code (LDC) and offers the following comments:

Deviation (6): seeks relief from the Lee County Land Development Code (LDC) Section 34-1748(5) requirement that a paved turn-around, having a turning radius sufficient to accommodate a U-turn for a single unit truck (SU) vehicle as specified in the AASHTO Green Book current addition, must be provided on the ingress side of the gate or gatehouse; to allow a T-turnaround for passenger cars as shown on the MCP.

Staff recommends **APPROVAL** with the following condition:

At time of a development order submittal the applicant must provide signage indicating no parking in the area provided on the MCP for the T-turnaround.

The proposed access gate will be open during normal business hours, is non-residential, is provided for security purposes, and therefore not subject to the locational standards in LDC 34-1748(1). The access is being provided to facilitate truck movement through the site and onto Palm Beach Boulevard. The site is currently occupied by a fencing contractor. Fencing contractors provide estimates and installation at the customer's site and there is no onsite showroom which limit public access to the site. The MCP provides sufficient area for passenger vehicles to perform a three-point turn outside of the right-of-way and exit to Balboa Avenue in a forward motion if necessary. The deviation request, as conditioned, does not impact the health, safety, or welfare of the public and will provide safer onsite vehicles circulation.

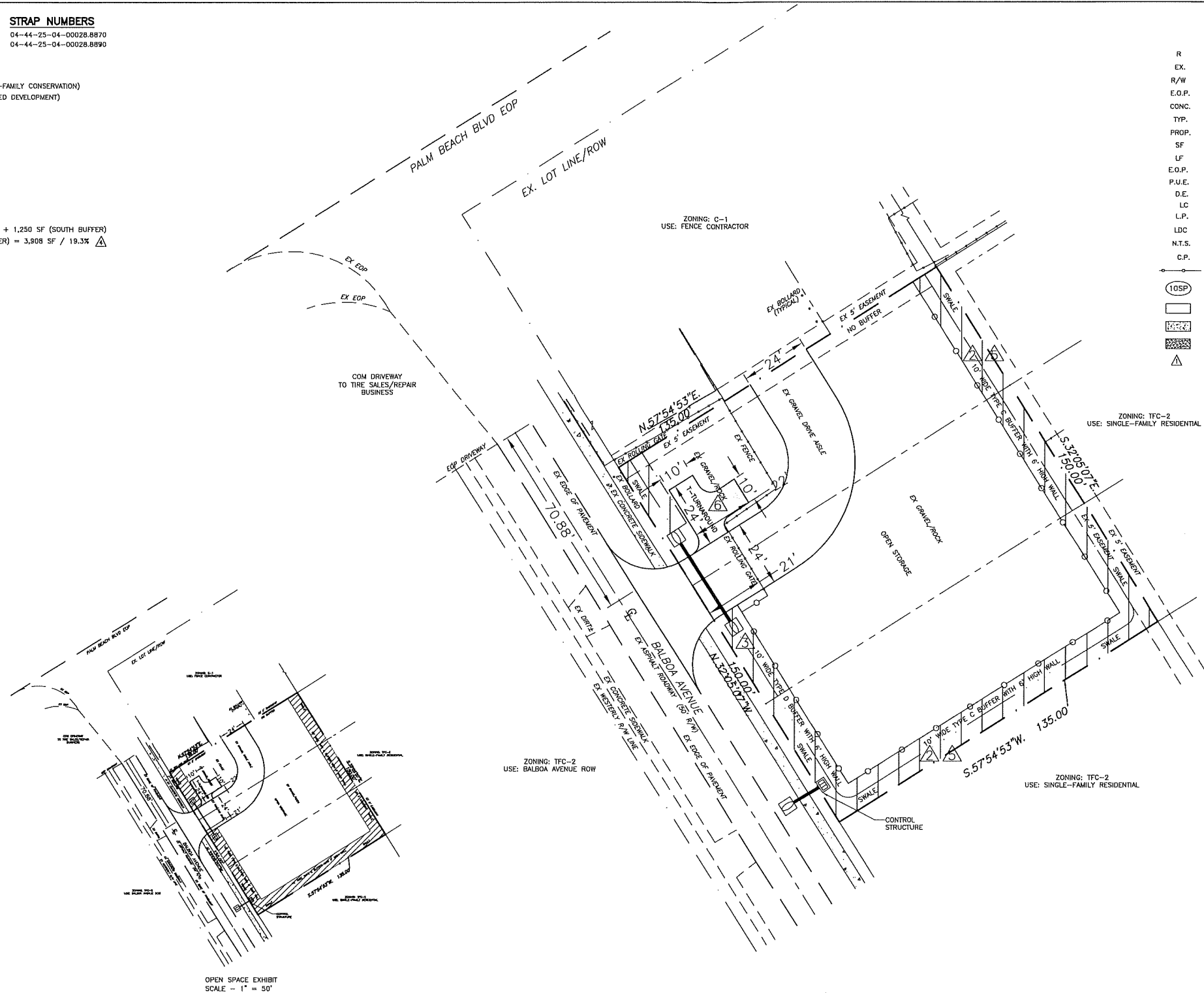
Please contact me if you have any further questions.

STRAP NUMBERS
04-44-25-04-00028.8870
04-44-25-04-00028.8890

CURRENT ZONING	= TFC-2 (RESIDENTIAL TWO-FAMILY CONSERVATION)
PROPOSED ZONING	= CPD (COMMERCIAL PLANNED DEVELOPMENT)
FUTURE LAND USE	= CENTRAL URBAN
PROPOSED USE	= OPEN STORAGE
LOT SIZE	= 20,250 SF (0.46 AC)

PER LDC SECTION 10-415 (SMALL PROJECTS)
REQUIRED OPEN SPACE = 20%
= 0.20 X 20,250 SF
= 4,050 SF REQUIRED

PROVIDED OPEN SPACE = 1,500 SF (EAST BUFFER) + 1,250 SF (SOUTH BUFFER)
+ 1,158 SF (WEST BUFFER) = 3,908 SF / 19.3% **4**



RADIUS (5' UNLESS OTHERWISE NOTED)
EXISTING
RIGHT-OF-WAY
EDGE OF PAVEMENT
CONCRETE
TYPICAL
PROPOSED
SQUARE FEET
LINEAR FEET
EDGE OF PAVEMENT
PUBLIC UTILITY EASEMENT
DRAINAGE EASEMENT
LEE COUNTY
LIGHT POLE
LAND DEVELOPMENT CODE
NOT TO SCALE
CONCRETE PAD
FENCE/WALL
NUMBER OF PARKING SPACES IN LOT
PROPOSED PAVEMENT
CONCRETE
GRAVEL
DEVIATION

$$1'' = 20'$$

	DATE	REVISIONS	DATE	DESIGNED BY:	DATE:
	1	REVISED PER LEE COUNTY COMMENTS	8/20/22		05/20/22
2	REVISED PER LEE COUNTY COMMENTS	11/02/23		DRAWN BY:	
				CHECKED BY:	
				TDM	
				APPROVED BY:	
DRAWING NAME: JONES POND #1 PUMP STATION & 30" AND 36" FORCE MAINS IMPROVEMENTS (2020) TDM, SEE SPEC.				TDM	

393 AND 397 BALBOA AVENUE
MASTER CONCEPT PLAN

Civil Engineering
and
Planning

dean@tdmconsulting.com
www.tdmcivilengineering.com

Fax: (239) 433-9632
Cert. of Authorization # 29086

Dean Martin, P.E.
Florida #52022

None of the documents are not
you are instructed to do so
procedures must be verified on any
date.

SCALE: AS NOTED

ATTACHMENT N