

**MEMORANDUM
FROM
THE OFFICE OF THE
LEE COUNTY HEARING EXAMINER**

DATE: November 3, 2023

TO: Board of County Commissioners **FROM:** Donna Marie Collins
Lee County Chief Hearing Examiner

RE: 7-ELEVEN ISLAND PARK SHOPPING CENTER
Hearing Examiner Decision

Chief Hearing Examiner Donna Marie Collins has rendered a Decision on the following zoning request:

7-ELEVEN ISLAND PARK SHOPPING CENTER

SEZ2022-00008

HEARD: November 2, 2023

A copy of the Decision is attached for ready reference.

cc: Anthony Rodriguez / Zoning Section
Elizabeth Workman / Zoning Section
Warren Baucom / Economic Development
Phil Gillogly / Natural Resources
Jamie Princing / Community Development
Applicant(s) & Representative(s)
Other Interested Parties

OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER DECISION

SPECIAL EXCEPTION: SEZ2022-00008

Regarding: 7-ELEVEN ISLAND PARK SHOPPING CENTER

Location: 16510 South Tamiami Trail
San Carlos Planning Community
(District 3)

Hearing Date: November 2, 2023

I. Request

Special Exception in the Commercial (C-1) zoning district for a Convenience Food and Beverage Store with 16 self-service fuel pumps.

II. Hearing Examiner Decision

Approval, subject to the conditions in Section V.

III. Discussion

The request seeks to increase the permitted number of self-service fuel pumps from eight to 16 on a 1.8 acre parcel in the Commercial (C-1) zoning district.

Special Exceptions

Special exceptions are departures from County land development regulations for uses generally not permitted within a zoning district but that may be permitted when controlled by conditions.¹

The Hearing Examiner is the final decisionmaker on special exceptions.²

The Hearing Examiner must grant a special exception unless she concludes:

1. The request is contrary to public interest and the health, safety, welfare, comfort, and convenience of the citizens of the County; or,

¹ LDC §34-2.

² LDC §34-145.

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2. The requested use conflicts with findings necessary to grant a special exception under the LDC.

The Hearing Examiner may attach conditions to an approved special exception to protect public health, safety, and welfare.³

Synopsis of Request

The 1.8 acre parcel lies within the Island Park Shopping Center, at the southwest corner of the intersection of US 41 and Island Park Road.⁴ Applicant seeks to redevelop a former bank parcel with a convenience store with 16 self-service fuel pumps. Convenience food and beverage store with 8 self-service fuel pumps are permitted by right in the C-1 district. However, requests for more than eight fuel pumps require approval by special exception.⁵

Department of Community Development staff recommended approval, finding the proposed special exception satisfies LDC review criteria.

Development History

Island Park Shopping Center first received development order approval in the mid 1980's. The center included a SunTrust Bank at the corner of US 41 and Island Park Road. The land supporting the bank use was split from the parent tract in 2022.⁶ A 7-Eleven convenience store, self-service fuel pumps, and car wash is slated to lease a 1.8 tract within the shopping center.⁷ Applicant filed administrative amendments seeking relief from LDC setback, buffer, and parking requirements. Staff found the application for administrative relief sufficient pending approval of this special exception.

Discussion

Special exceptions must be consistent with the Lee Plan.⁸

The property is zoned C-1 and designated Suburban by the Lee Plan.⁹ Suburban lands feature residential land uses at the fringe of the County's urban core.¹⁰

³ LDC §34-145(c)(4) b.

⁴ San Carlos Planning District Lee Plan Map 1-B.

⁵ LDC 34-844, Note 19.

⁶ The lot split followed bank demolition. The 1.8 acre parcel is larger than the area formerly supporting the bank use.

⁷ The County received a development order application in 2023 for a convenience store, fuel pump canopy, and car wash.

⁸ LDC §§34-145(c)(3) a.1, 34-491(a).

⁹ Lee Plan Future Land Use Map 1-A.

¹⁰ Lee Plan Policy 1.1.5.

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Commercial land uses surround the site. The site has access to public services and infrastructure including improved roads, transit, and bike/pedestrian facilities.¹¹ Redevelopment promotes compact and contiguous development patterns and constitutes infill development.¹²

Special exceptions must protect environmentally critical/sensitive areas when applicable.

The property does not contain environmentally critical/sensitive features.

Special exceptions may not injure the neighborhood or be a detriment to the public welfare.

Commercial land uses feature prominently along the US 41 corridor.¹³ Island Park Road features a variety of residential land uses west of commercial centers at the intersection. The proposed convenience store will be located at the corner of the intersection of US 41 and Island Park Road, with access to both roadways.¹⁴ The Island Park Shopping Center parking lot abuts the parcel to the west and south. The shopping center's primary building buffers the use from residential developments further west.

The proposed convenience food/beverage store with fuel pumps will serve the surrounding community and traveling public.

Special Exceptions must comply with zoning and other applicable regulations.

The purpose of the C-1 zoning district is to regulate commercial land uses lawfully existing as of August 1, 1986.¹⁵ New applications to rezone property to the C-1 district are limited to lands within a Mixed Use Overlay.¹⁶ Since C-1 is a conventional zoning district, site development must comply with the LDC or seek variances.

Convenience food and beverage stores are subject to site specific development regulations to ensure compatibility with surrounding land uses.¹⁷ The pending development order application seeks administrative relief from certain site development requirements to accommodate redevelopment. Staff found

¹¹ Lee Plan Policies 1.1.1, 39.2.1.

¹² Lee Plan Objective 2.2, Policy 6.1.7, 6.1.11.

¹³ A variety of commercial zoning districts line US 41 in this area. Lee Plan Policy 1.1.1, 6.1.7.

¹⁴ US 41 is a six lane divided arterial road. Island Park Road is a two lane County maintained major collector. Lee County Administrative Code 11-1 (Functional Classification of Roadways). US 41 is maintained by the State.

¹⁵ LDC §34-841(b).

¹⁶ *Id.*

¹⁷ LDC §§34-1353, 34-1354.

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requested relief from setbacks, buffers, and parking requirements sufficient pending approval of the special exception.

Lee Tran services the US 41 corridor along the property frontage.¹⁸ Applicant will be required upgrade access to the bus stop as a condition of development order approval.¹⁹

The site plan relocates an existing driveway on Island Park Road further west and proposes a new access to US 41. The planned western shift of the Island Park Road access improves vehicle stacking at the US 41 intersection. US 41 is a state maintained facility. As such, FDOT has permit authority over driveway access and location. FDOT conceptually approved a right-in/right-out access to the property from US 41.²⁰ The newly proposed driveways facilitate direct access to two roadways and optimizes internal traffic circulation.

Public Participation

No member of the public attended the hearing before the Hearing Examiner.

Conditions

The County must administer the zoning process so that proposed land uses acceptably minimize adverse impacts on adjacent residential property. Conditions must rationally relate to impacts anticipated from the requested special exception.²¹ Special exception approval will be subject to conditions to ensure compliance with Applicant's proposed site plan.²²

Conclusion

The Hearing Examiner concurs with Staff's recommendation of approval. A special exception allowing up to 16 fueling stations meets LDC approval criteria. The Hearing Examiner also finds that as conditioned, the requested special exception will not be detrimental or injurious to County residents.

¹⁸ Lee Tran Route 140 (Stop ID 1563) Staff Report Attachment Q.

¹⁹ LDC §§10-441, 10-442(a); Lee Plan Map 3-C.

²⁰ Testimony of Wayne Arnold, AICP and James Banks, PE.

²¹ LDC §34-145(c)(4)b.

²² The condition requires the site design to be substantially comply with the site plan in Staff Report Attachment G.

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IV. Findings and Conclusions

Based upon the hearing record, the Hearing Examiner concludes that the requested special exception is approved subject to conditions, and finds the request:

- A. Is consistent with the Lee Plan. Lee Plan Goals 2, 4, 6, Objectives 2.1, 4.1, Policies 1.1.5, 2.1.1, 6.1.1, 6.1.4, 6.1.5, 6.1.6, 6.1.7, 6.1.11, Maps 1-A, 1-B, 3-C, 3-D, 4-A, 4-B, Table 1(b).
- B. Will be compatible with existing or planned uses. Lee Plan Goals 2, 6, Objectives 2.1, 2.2, Policies 1.1.5, 2.1.1, 2.1.2, 2.2.1, 6.1.4.
- C. Will not be injurious to the neighborhood or detrimental to the public welfare. Lee Plan Policies 6.1.4, 6.1.5, 6.1.6; and
- D. Will comply with LDC zoning regulations. LDC Chapters 2, 10, and 34.

V. Conditions of Approval

- 1. Special exception approval is conditioned on site development substantially consistent with the site plan revised June 20, 2023, attached as Exhibit B.
- 2. Special exception approval does not establish a right to obtain permits from state or federal agencies. Further, approval does not establish county liability if Applicant: (a) does not obtain requisite approvals or fulfill obligations imposed by state or federal agencies; or (b) undertakes actions that result in a violation of state or federal laws.

VI. Participants**Staff**

- 1. Elizabeth Workman

Applicant Representatives

- 1. Wayne Arnold
- 2. Jim Banks
- 3. Rachel Tracey

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VII. Legal Description

Exhibit A (scanned legal description with vicinity map).

Strap #: 01-46-24-L3-00007.002A

VIII. Exhibits Submitted at Hearing**Staff Exhibits**

1. *DCD Staff Report with attachments for DCI:* Prepared by Elizabeth Workman, Principal Planner, date received October 25, 2023 (multiple pages – 8.5"x11" & 11"x14") [black & white, color]
2. *PowerPoint Presentation:* Prepared by Lee County DCD Staff for 7-Eleven Island Park Shopping Center, SEZ2022-00008 (multiple pages – 8.5"x11")[color]
3. *Boundary Survey, Legal Description, and Title Certification:* (multiple pages – 8.5"x11")

Applicant Exhibits

- a. *48-Hour Notice:* Email from Sharon Umpenhour with Grady Minor, to Maria Perez, with copies to Elizabeth Workman, dated Tuesday, October 31, 2023, 9:44 AM (4 pages – 8.5"x11")
1. *PowerPoint Presentation:* Prepared by Grady Minor for 7-Eleven Island Park Shopping Center, SEZ2022-00008 (multiple pages – 8.5"x11")[color]
2. *Résumé:* For Rachel J. Tracey, P.E., Project Manager with Grady Minor (1 page – 8.5"x11")

IX. Unauthorized Communications

The LDC prohibits communications with the Hearing Examiner or her staff on the substance of pending zoning actions. There are limited exceptions for written communications requested by the Hearing Examiner, or where the Hearing Examiner seeks advice from a disinterested expert.

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X. Appeals

This Hearing Examiner Decision is final on the date rendered. The Decision may be appealed to the Circuit Court in Lee County within 30 days of the date rendered. Appeal is by Petition for *Writ of Certiorari* in accordance with LDC 34-146

XI. Copies of Testimony and Transcripts

- A. Every hearing is recorded. Recordings are public records that become part of the case file maintained by the Department of Community Development. The case file and recordings are available for public examination Monday through Friday between 8:00 a.m. and 4:30 p.m.
- B. A verbatim transcript may also be available for purchase from the court reporting service.

Decision rendered November 3, 2023.



Donna Marie Collins
Chief Hearing Examiner

Lee County Hearing Examiner
1500 Monroe Street, Suite 218
Post Office Box 398
Fort Myers, FL 33902-0398

Exhibits to Hearing Examiner Decision

- A: Legal Description and Vicinity Map
- B: Site Plan

DESCRIPTION

A PARCEL OF LAND BEING THE LANDS DESCRIBED IN INSTRUMENT NUMBER 2018000171817, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA AND A PORTION OF LANDS DESCRIBED IN INSTRUMENT NUMBER 2015000242014, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, BEING FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT THE EASTERLY MOST CORNER OF LANDS DESCRIBED IN INSTRUMENT NUMBER 2018000171817, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE ALONG THE SOUTH LINE OF SAID LANDS AND THE EXTENSION THEREOF SOUTH 58°08'20" WEST, A DISTANCE OF 279.49 FEET; THENCE NORTH 31°51'40" WEST, A DISTANCE OF 287.65 FEET TO AN INTERSECTION WITH THE SOUTHEAST RIGHT-OF-WAY OF ISLAND PARK RD; THENCE ALONG SAID SOUTHEAST RIGHT-OF-WAY NORTH 58°22'42" EAST, A DISTANCE OF 255.64 FEET TO A POINT ON A NON TANGENTIAL CURVE TO THE RIGHT; THENCE CONTINUE ALONG SAID RIGHT-OF-WAY EASTERLY 39.27 FEET ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 90°00'22", (CHORD BEARING SOUTH 76°37'07" EAST, A DISTANCE OF 35.36 FEET) TO AN INTERSECTION WITH THE SOUTHWEST RIGHT-OF-WAY OF U.S. 41 (TAMIAMI TRAIL); THENCE ALONG SAID SOUTHWEST RIGHT-OF-WAY SOUTH 31°37'18" EAST, A DISTANCE OF 236.62 FEET TO A POINT ON A NON TANGENTIAL CURVE TO THE LEFT; THENCE CONTINUE ALONG SAID RIGHT-OF-WAY SOUTHEASTERLY 24.85 FEET ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 5,797.58 FEET, A CENTRAL ANGLE OF 00°14'44", (CHORD BEARING SOUTH 31°44'18" EAST, A DISTANCE OF 24.85 FEET) TO THE POINT OF BEGINNING.

CONTAINING 1.84 ACRES, MORE OR LESS.

NOTES:

1. BEARINGS SHOWN HEREON ARE BASED ON THE STATE PLANE COORDINATE SYSTEM ESTABLISHED BY THE NATIONAL GEODETIC SURVEY FOR FLORIDA WEST ZONE, 1983 DATUM WITH 1990 ADJUSTMENT OBTAINED UTILIZING RTK GPS OBSERVATIONS ON THE FDOT NETWORK AND REFER TO THE SOUTHEAST RIGHT-OF-WAY LINE OF ISLAND PARK RD, LEE COUNTY, FLORIDA AS BEING N 58°22'42" E.
2. DIMENSIONS SHOWN HEREON ARE IN U.S. SURVEY FEET AND DECIMALS THEREOF.
3. THIS SKETCH AND DESCRIPTION IS NOT VALID WITHOUT THE ORIGINAL SIGNATURE AND SEAL OR THE DIGITAL SIGNATURE AND DIGITAL SEAL OF A LICENSED FLORIDA SURVEYOR AND MAPPER. NO ADDITIONS OR DELETIONS TO THIS SKETCH AND DESCRIPTION ARE PERMITTED WITHOUT THE EXPRESSED WRITTEN CONSENT OF THE SIGNING PARTY.

*NOT VALID WITHOUT
SHEET 2 OF 2*

DRAWN BY:	AH
CHECKED BY:	TJD
JOB CODE:	CC71141IP
SCALE:	N/A
DATE:	2 JUNE 2022
FILE:	21-128-SL
SHEET:	1 of 2

* NOT A SURVEY *

SKETCH AND DESCRIPTION

A PARCEL OF LAND

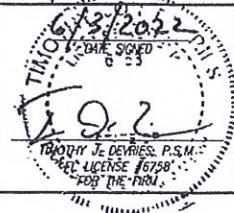
LYING IN
SECTION 1, TOWNSHIP 46 SOUTH, RANGE 24 EAST
LEE COUNTY, FLORIDA



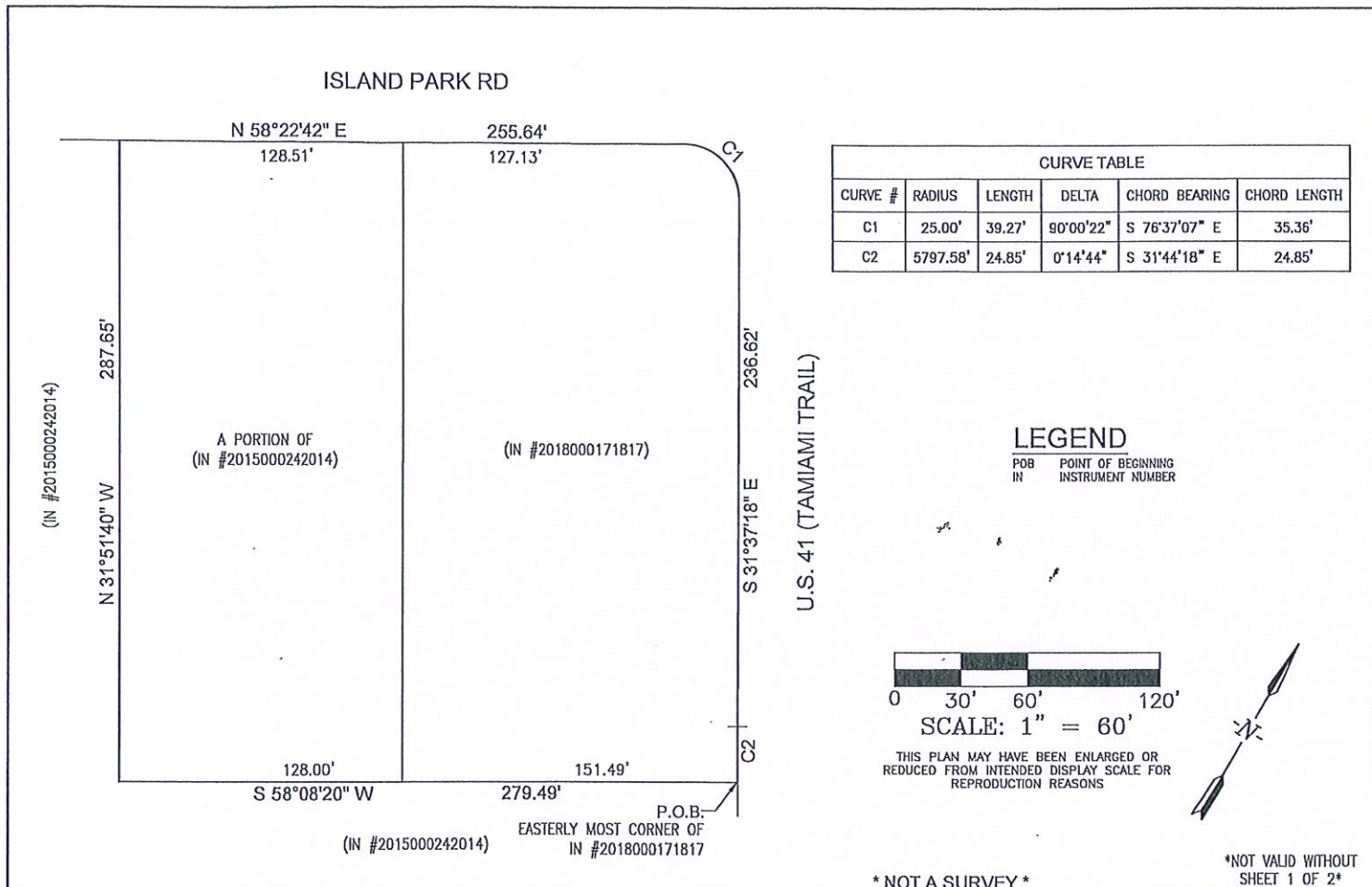
GradyMinor

Q. Grady Minor and Associates, P.A.
3800 Via Del Rey
Bonita Springs, Florida 34134

Civil Engineers • Land Surveyors • Planners • Landscape Architects
Cert. of Auth. EB 0005151 Cert. of Auth. LB 0005151 Business LG 26000260
Bonita Springs: 239.947.1144 www.GradyMinor.com Fort Myers: 239.690.4380



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Civil Engineers • Land Surveyors • Planners • Landscape Architects
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Q. Grady Minor and Associates, P.A.
 3800 Via Del Rey
 Bonita Springs, Florida 34134

SKETCH AND DESCRIPTION

A PARCEL OF LAND
 LYING IN
 SECTION 1, TOWNSHIP 46 SOUTH, RANGE 24 EAST
 LEE COUNTY, FLORIDA

DRAWN BY: AH
 CHECKED BY: TJD
 JOB CODE: CC71141P
 SCALE: 1" = 60'
 DATE: 2 JUNE 2022
 FILE: 21-126-SL
 SHEET: 2 OF 2

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SEZ2022-00008

Zoning

 Subject Property

