

Exhibit B

**M E M O R A N D U M
FROM
THE OFFICE OF THE
LEE COUNTY HEARING EXAMINER**

DATE: April 10, 2025

**TO: Board of County Commissioners FROM: Amanda L. Rivera
Lee County Deputy Hearing Examiner**

**RE: RAY AVENUE GAS STATION
Hearing Examiner Decision**

Deputy Hearing Examiner Amanda L. Rivera has rendered a Decision on the following zoning request:

RAY AVENUE GAS STATION

SEZ2024-00010

HEARD: April 9, 2025

A copy of the Decision is attached for ready reference.

cc: Anthony Rodriguez / Zoning Section
Brianna Schroeder / Zoning Section
Warren Baucom / Economic Development
Phil Gillogly / Natural Resources
Tracy Toussaint / Community Development
Applicant(s) & Representative(s)
Other Interested Parties

OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER DECISION

SPECIAL EXCEPTION: SEZ2024-00010

Regarding: RAY AVENUE GAS STATION

Location: 604 Meadow Road
Lehigh Acres Planning Community
(District 5)

Hearing Date: April 9, 2025

I. Request

Special Exception in the Commercial (C-2) zoning district to allow a Convenience Food and Beverage Store with 12 self-service fuel pumps.

II. Hearing Examiner Decision

Approval, subject to conditions set forth in Section V.

III. Discussion

The request seeks to increase the permitted number of self-service fuel pumps from eight to 12 on a 0.8± acre vacant parcel along SR 82.

The parcel lies within the Lehigh Acres Planning Community, at the SR 82/Griffin Drive intersection.¹ The site is uniquely positioned with frontages on three roads: Meadow Road, Ray Avenue South, and SR 82.² Commercial uses line SR 82 while residential uses dominate lands to the east. Gateway High School sits across SR 82.

Applicant seeks to develop a convenience store with 12 self-service fuel pumps. Convenience food and beverage stores with eight fuel pumps are permitted by right in the C-2 district.³ Requests for more than eight pumps require approval by special exception.⁴ Accordingly, the scope of review for this request is limited to

¹ Lee Plan Map 1-B, 2-A, 2-B.

² Meadow Road is a county-maintained minor collector road. Ray Avenue South is a county-maintained local road. SR 82 is a state-maintained arterial roadway. See Staff Report (pg. 1).

³ LDC §34-844.

⁴ LDC §34-844, Note 19.

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compliance with Land Development Code (LDC) and Lee Plan standards relating to the additional four fuel pumps.⁵

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

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.⁶

The Hearing Examiner has final decision-making authority on special exceptions.⁷

The Hearing Examiner *must* grant a special exception *unless*:

1. The request is contrary to public interest and the health, safety, welfare, comfort, and convenience of the citizens; or,
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.⁸

Lee Plan Consistency

Special exceptions must be consistent with the Lee Plan.⁹

The property is zoned C-2 and designated Central Urban by the Lee Plan.¹⁰ Central Urban areas are the county's urban core, with access to a wide array of public services and infrastructure.¹¹ Residential, commercial, public, quasi-public, and limited light industrial uses can be found on Central Urban lands.

The request is suitable within the Central Urban category. The site has access to public services and infrastructure, including improved roads, transit, and

⁵ LDC §34-145(c).

⁶ LDC §34-2.

⁷ LDC §34-145(c).

⁸ LDC §34-145(c)(4)b.

⁹ LDC §§34-145(c)(3) a.1, §34-491(a).

¹⁰ Lee Plan Future Land Use Map 1-A, Policy 1.1.1. The property is also within the Mixed-Use Overlay. Lee Plan Map 1-C, Goal 11.

¹¹ Lee Plan Policy 1.1.3.

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bike/pedestrian facilities.¹² The proposal promotes compact and contiguous development patterns and constitutes infill development.¹³

Lee Plan maps further designate the property within the Lehigh Acres Community Plan and the Commercial Overlay Zone.¹⁴ The request achieves the goals of these designations by providing employment opportunities and offering a fueling facility with convenience store for area residents and the traveling public.¹⁵

The property may develop with a convenience food and beverage store and eight fuel pumps by right. The requested four additional fuel pumps on the site remain consistent with the Lee Plan.¹⁶

Natural Resources/Environmental Areas

Special exceptions must protect environmentally critical/sensitive areas where applicable.¹⁷

The property does not contain environmentally critical or sensitive features. Environmental reviews confirmed there are no wetlands or protected species on site.¹⁸

Injury to Neighborhood/Public Welfare

Special exceptions may not injure the neighborhood or be a detriment to the public welfare.¹⁹

Commercial land uses feature prominently along the SR 82 corridor. The proposed convenience store will be located at the corner of a highly trafficked

¹² Lee Plan Policies 6.1.1, 39.2.1. Conditions of approval require connection to potable water. Condition 5. Lee Plan Policy 25.9.1 directs availability of sewer and water within the Commercial Overlay Zone cannot be a requirement for zoning approval. The project must still comply with Standards 4.1.1 and 4.1.2. The request does not generate sufficient demand to require sewer connection under the Standard. Accordingly, Applicant will utilize a septic system. See Staff Report (pg. 6, Attachment J).

¹³ Lee Plan Objective 2.2, Policy 6.1.7. The site plan provides for interconnection to the adjacent property consistent with Lee Plan Policy 25.8.4.

¹⁴ Lee Plan Maps 2-A and 2-B, Goal 25, Objective 25.6.

¹⁵ Lee Plan Goal 25, Policy 25.6.1. The land is zoned for commercial use.

¹⁶ Lee Plan Goals 1, 4, 6, 25, 63, 77, Objectives 25.6, Policy 1.1.3, 2.1.1, 2.1.2, 5.1.5, 6.1.1, 6.1.4, 6.1.5, 6.1.6, 6.1.7, 6.1.8, 11.2.2, 25.8.4, 25.9.1, 25.9.2. Hearing testimony confirmed the additional pumps did not materially change expert findings of the project's compatibility or off-site impacts.

¹⁷ LDC §34-145(c)(3)a.2.

¹⁸ See Staff Report (pg. 6, Attachment G & O).

¹⁹ LDC §34-145(c)(3)a.4.

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intersection.²⁰ Lands across Ray Avenue host a variety store with an automotive repair/service center forthcoming.²¹

Residential uses occupy lands north of Meadow Road. Conditions of approval impose enhanced buffering to mitigate off-site impacts for nearby residents.²²

Site design contemplates two access points on Meadow Road. Applicant provided auto-turn exhibits demonstrating various circulation patterns to accommodate fuel trucks and other vehicles accessing the site.²³ Conditions of approval acknowledge access points may be adjusted during the development review process.²⁴

The proposed convenience food/beverage store with fuel pumps will serve the surrounding community and traveling public. Conditions of approval adequately mitigate off-site impacts.²⁵

Compliance with Zoning Regulations

Special exceptions must comply with zoning regulations and be compatible with existing/planned uses.²⁶

The purpose of the C-2 zoning district is to regulate commercial land uses lawfully existing as of August 1, 1986.²⁷ New applications to rezone property to the C-2 district are limited to lands within a Mixed-Use Overlay.²⁸ Since C-2 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.²⁹ Applicant seeks administrative relief from LDC standards to accommodate the proposed

²⁰ Gateway High School is located across SR 82. The record demonstrates the four additional requested fuel pumps do not jeopardize students. Lee Plan Policy 6.1.8, See Staff Report (pg. 5, Attachment M).

²¹ See Staff Report (pg. 2, *citing* DOS2025-00022).

²² Condition 6 requires an enhanced 20-foot buffer with 10 native trees planted per 100 feet and a double-staggered hedgerow planted at 36 inches/maintained at 48 inches. Hearing testimony confirms the enhanced buffering will mitigate headlight intrusion into proximate residential areas.

²³ See Staff Report (Attachment N).

²⁴ Condition 4. Hearing testimony confirmed the pending Administrative Amendment seeking relief from LDC development standards would be necessary even if the site provided only eight fuel pumps.

²⁵ Condition 3 limits hours of deliveries and Condition 4 imposes enhanced buffering standards.

²⁶ LDC §34-145(c)(3)a.5, LDC §34-145(c)(3)a.3.

²⁷ LDC §34-841(b).

²⁸ *Id.* The property is already designated within the Mixed Use Overlay. Lee Plan Map 1-C.

²⁹ LDC §34-1353, §34-1354.

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development separate from this special exception request.³⁰ Administrative requests for relief are undergoing Staff review.³¹

Site development must also comply with commercial design standards adopted for the Lehigh Acres Community.³²

Public Participation

Applicant held a community meeting consistent with LDC requirements for special exception requests in the Lehigh Acres Planning Community.³³

No members 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.³⁴

Special exception approval will be subject to conditions to ensure compliance with Applicant's proposed site plan and protect neighboring residents.³⁵

Conclusion

The Hearing Examiner concurs with Staff's recommendation of approval. A special exception allowing up to 12 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.

³⁰ See Staff Report (pg. 3, *citing* ADD2024-00225, seeking relief from LDC §34-1353(e)(1), §34-1353(d)(1), and §10-285).

³¹ See *Id.* Lee County Department of Transportation will re-evaluate access points during the development review process.

³² See LDC §§33-1411 *et. seq.*

³³ LDC §33-1401. The meeting was held before the Lehigh Acres Architectural, Planning, & Zoning Review Board on November 21, 2024. See Staff Report (Attachment F).

³⁴ LDC §34-145(c)(4)b.

³⁵ Condition 1 requires site design to substantially comply with the site plan in the Staff Report (Attachment D). Hours of delivery and enhanced buffer requirements mitigate off-site impacts to neighboring residents.

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IV. **Findings and Conclusions**

Based upon the testimony and evidence presented in the 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, 25, Objectives 2.1, 4.1, 25.6, Policies 1.1.3, 2.1.1, 2.1.2, 6.1.1, 6.1.4, 6.1.5, 6.1.6, 6.1.7, 11.2.2, 25.8.4, 25.9.1, 25.9.2, Maps 1-A, 1-B, 1-C, 2-A, 2-B, 3-C, 3-D, 4-A, Table 1(b).
- B. Will be compatible with existing or planned uses. Lee Plan Goals 2, 6, 25, Objectives 2.1, 2.2, Policies 1.1.3, 2.1.1, 2.1.2, 2.2.1, 5.1.5, 6.1.4, 25.6.1.
- 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, 6.1.8.
- D. Will comply with LDC zoning regulations. LDC Chapters 2, 10, 33, and 34.

V. **Conditions of Approval**

- 1. Site Plan. Development must be in substantial compliance with the Site Plan entitled "Ray Avenue Gas Station" prepared by Quattrone & Associates, Inc., stamped received March 25, 2025 (Exhibit B).
- 2. Development Parameters. Development is limited to a 2,220 square-foot convenience food and beverage store with a maximum of 12 fuel pumps.
- 3. Hours of Deliveries: Deliveries are limited to 6:00 a.m. to 8:00 p.m., Daily.
- 4. Connection Separation: Final approval of connection separation along Meadow Road is subject to ADD2024-00225. Modifications to the Special Exception site plan to address alternative access locations or design modifications required for permits from other agencies may be approved through the administrative amendment process.
- 5. Public Utilities: Development must connect to potable water.
- 6. Buffer conditions: Development Order plans must depict the following buffers:
 - a. North (Meadow Road): Enhanced 20-foot buffer with 10 native trees planted per 100 linear feet, and a double-staggered hedgerow planted at 36 inches and maintained at 48 inches.

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- b. South (SR 82): 15-foot right of way buffer, with 5 trees planted per 100 linear feet, and a double-staggered hedgerow.
 - c. West (Ray Avenue): 25-foot right-of-way buffer along Ray Avenue, with 5 native trees planted per 100 linear feet, and a double-staggered hedgerow as required by LDC Section 34-1353(e).
- 7. Development Permits. 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

Brianna Schroeder

Applicant Representatives

Josh Eisenoff

Public Participants

None

VII. Legal Description

Exhibit A (scanned legal description with vicinity map).

Strap #: 05-45-26-L1-03035.0010

VIII. Exhibits Submitted at Hearing

Staff Exhibits

- 1. *DCD Staff Report with attachments*: Prepared by Brianna Schroeder, Planner, date received May 11, 2025 (multiple pages – 8.5"x11" & 11"x14") [black & white, color]

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2. *Affidavit of Publication*: For Zoning Case SEZ2024-00010 Ray Avenue Gas Station (1 page – 8.5"x11")
3. *PowerPoint Presentation*: Prepared by Lee County Staff for SEZ2024-00010, Ray Avenue Gas Station, dated April 9, 2025 (multiple pages – 8.5"x11")

Applicant Exhibits

1. *PowerPoint Presentation*: Prepared by Quattrone & Associates, Inc., for SEZ2024-00010, Ray Avenue Gas Station, dated April 9, 2025 (multiple pages – 8.5"x11")
2. *Résumé*: For Joshua Eisenoff, P.E., Project Manager (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.

X. Appeals

This Hearing Examiner Decision is final on the date rendered. The Decision may be appealed to the Lee County Circuit Court 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 are part of the case file maintained by the Department of Community Development. Case files and recordings are available for public examination Monday through Friday between 8:00 a.m. and 4:00 p.m.
- B. A verbatim transcript may also be available for purchase from the court reporting service.

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Decision rendered April 10, 2025.



Amanda L. Rivera
Deputy 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, stamped 3/25/25

Exhibit A

CASE NUMBER: SEZ2024-00010

LEGAL DESCRIPTION

LOTS 1, 2, 3, AND 4 BLOCK 35 LEHIGH ESTATES UNIT 3, SECTION 05, TOWNSHIP 45 SOUTH, RANGE 26 EAST, ACCORDING TO THE MAP OR PLAT THEREOF ON FILE IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT, RECORDED IN PLAT BOOK 15, PAGE 83, PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

STRAP NUMBER

05-45-26-03-00035.0010

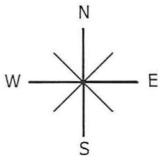
REVIEWED
SEZ2024-00010
Rick Burris, Principal
Planner
Lee County DCD/Planning
10/1/2024



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Zoning

 Subject Property



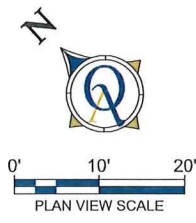
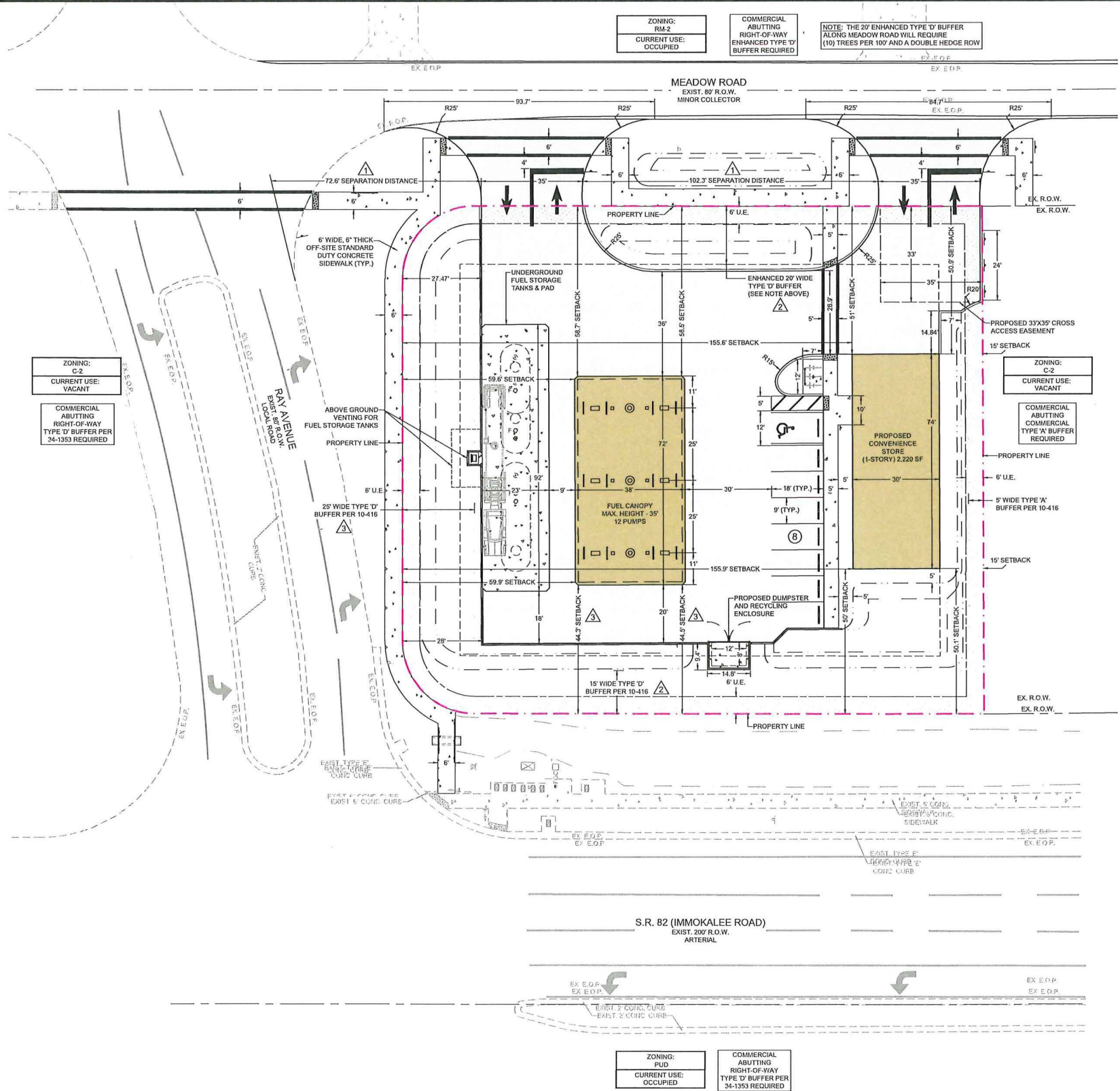
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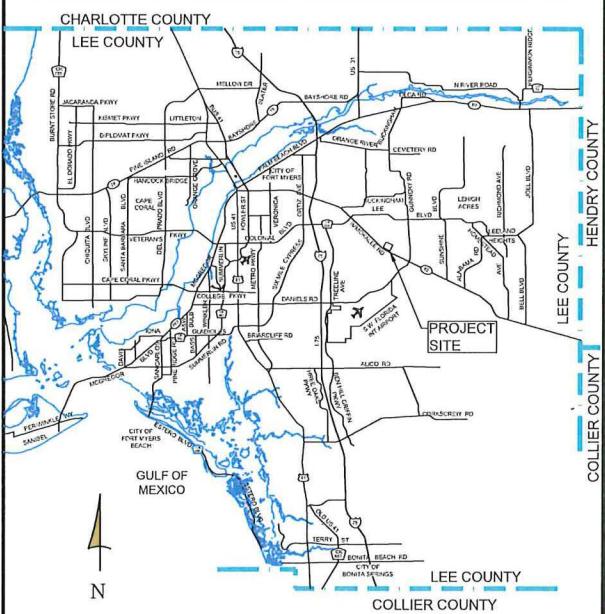
P:\2023 Projects\230704 RAY AVENUE GAS STATION - ACTIVE\01-CADD FILES\01-04I CADD - VERSION E\02-PRODUCTIONS PLANS\01-04I CADD - VERSION E.MCP (3)

RAY AVE. GAS STATION

LOCATED IN SECTION 05, TOWNSHIP 45-S, RANGE 26-E, LEE COUNTY, FLORIDA



MASTER CONCEPT PLAN



LOCATION MAP

PROJECT SUMMARY:

FUTURE LAND USE DESIGNATION
CENTRAL URBAN & MIXED-USE OVERLAY

PLANNING COMMUNITY
LEHIGH ACRES

CURRENT ZONING
C-2

PROPOSED ZONING
NO ZONING CHANGES ARE PROPOSED

STRAP #(S)
05-45-26-03-00035.0010

PROJECT ACREAGE
0.85 ACRES (37,187 SF - INCLUDES R.O.W. AREA)
0.80 ACRES (34,862 SF - EXCLUDES R.O.W. AREA)

OPEN SPACE REQUIREMENT
MIXED-USE OVERLAY FOR SMALL PROJECT SITE:
10% REQUIRED (0.08 ACRES), PROVIDED: 39% (0.31 ACRES)

PARKING CALCULATIONS REQUIREMENT
CONVENIENCE FOOD & BEVERAGE STORE W/ (12) FUEL PUMPS
(1) SPACE PER 200 SQ. FT. OF GROSS FLOOR AREA MINUS
(1) SPACE PER (4) FUEL PUMPS

2,200 SQ. FT. / 200 SQ. FT. = (11) SPACES MINUS (3) SPACES
FOR (12) FUEL PUMPS = (8) REQUIRED SPACES

0.55% REDUCTION PER THE 'MIXED-USE OVERLAY' LAND USE DESIGNATION = (5) REQUIRED SPACES

Δ - DEVIATION / VARIANCE

Quattrone & Associates, Inc.
Engineers, Planners & Development Consultants