

**ID 24-3693 Resolution - Variance Petition (VP-23-000403) Request to the Land Development Code (LDC) Sec. 30-441(g) Landscape Buffer Width for the Property Located at 588 Bald Eagle Drive, Marco Island FL 34145 - Mary P. Holden, Planning Manager, Community Affairs/Growth Management**

The subject property is located on one of the four corners at the intersection of Elkam Circle and Bald Eagle Drive and is .94 of an acre or approximately 40,946 square feet. It is zoned C4. This zoning permits numerous uses that are authorized in the C-3 as well as C-4 zoned areas. The applicant had actual and or constructive notice at the time of its acquisition on October 6, 2023, the size of the subject property, that it is zoned C4 commercial and what uses could be built thereon without the need for any zoning or variance change.

Two of the other three corner properties at the same intersection contain less acreage than the subject property, they are zoned C-4 and they were developed without, to my knowledge, any zoning or variance change:

1. The 7 Eleven property incorporates a building on .67 acre or approximately 29,185 square feet,
2. The First Horizon Bank property contains .75 acre or approximately 32,670 square feet, and

The Dollar Store is located at 440 W. Elkam Circle on .72 of an acre or approximately 31,363 square feet.

Applicants property is larger than the two mentioned corner properties and the Dollar Store property and the subject property is fully able to be developed in accordance with present zoning without a zoning or variance change. In fact, Marco Island's Staff concluded at Staff Comments: "Not taking into consideration monetary impacts, it would appear a literal interpretation would not work unnecessary or undue hardship being the structure could be smaller with less required parking. " That means applicant could build on the property without zoning or variance changes..

There are numerous reasons why the applicant's Application for a Variance ought to be Denied.

**First, lets discuss Variances in more detail:**

**According to sound theory, zoning variances should be granted only when a property has a unique and unusual hardship, created by the physical characteristics of the land. City Staff stated that no such hardship exists in this matter.**

**“A variance is sometimes mistakenly believed to be simply a tool for allowing a more intense use than would otherwise be allowed.” Here the Applicant is attempting to use the Variance application as a tool to obtain a more intense use than is permitted. FLORIDA LAW REGARDING VARIANCES, Continuing Education, document attached) Notably, “**

**The hardship criteria has been interpreted to mean three things:**

a. **“A mere economic disadvantage due to the owner's preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance.” Applicant’s desire to do something with greater economic benefit is not sufficient to constitute a hardship that would entitle it to a variance. Burger King v. Metropolitan Dade County, 349 So.2d 210 (3 DCA 1977); Metropolitan Dade County v. Reineng, 399 So.2d 379 (3 DCA 1981); Nance, supra; Crossroads Lounge v. City of Miami, 195 So.2d 232 (DCA 1967).**

b. **“Neither purchase of property with zoning restrictions on it, nor reliance that zoning will not change, will constitute a hardship.” Here the property had no zoning restrictions on it, so again there is no hardship. Friedland v. Hollywood, 130 So.2d 306 (DCA 1961); Elwyn v. Miami, 113 So.2d 849 (3 DCA 1959).**

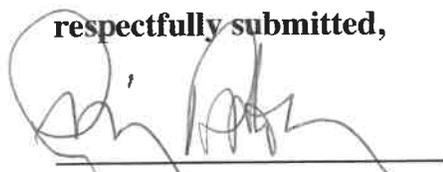
c. **If a purchaser buys land with a condition creating a hardship upon it, the owner is only entitled to such variance as his predecessor in title was entitled. As stated by your city Staff, the property has no hardship and is fully able to be developed without zoning or variance change. Coral Gables v. Geary, 383 So.2d 1127 (3 DCA 1980).**

**“Applicants are deemed to have purchased the property with constructive knowledge of the applicable land use regulations. Applicant bought unimproved property. A subjective expectation that the land could be developed is no more than an expectancy and does not translate into a vested right to develop the subject property.” See Graham v. Estuary Properties, Inc., 399 So.2d 1374, 1382, 1383 (Fla.), cert. denied sub nom. Taylor v. Graham, 454 U.S. 1083, 102 S. Ct. 640, 70 L. Ed. 2d 618 (1981). The Applicant does not have a vested right to develop p the property in the manner submitted.**

**The required hardship finding by this Council may not be found unless there is a showing that under present zoning, no reasonable use can be made of the property. As discussed previously there has been no showing by the Applicants that no reasonable use could be made of the property. In fact, the opposite was determined by city staff when it stated that no hardship existed as the structure could be smaller with less required parking. As mentioned the two corner properties and the Dollar store property are both smaller and C4 properties. They required no hardship variance. Thompson v. Planning Commission, 464 So.2d 1231 (1 DCA 1985). Herrera v. Miami, 600 So.2d 561 (3DCA 1992). Furthermore, the hardship must be such that it "renders it virtually impossible to use that land for the purpose or in the manner for which it is zoned." Here it cannot be said that the land cannot be used for which it is zoned. Hemisphere Equity v. Key Biscayne, 369 So.2d 996 (3 DCA 1979). It is the land, and not the nature of the project, which must be unique and create a hardship. There has been no showing that the subject parcel of land is unique and created a hardship. Nance, supra; Ft. Lauderdale v. Nash, 425 So.2d 578 (4 DCA 1982) (many other common violations in the neighborhood do not constitute a hardship); City of Miami v. Franklin Leslie, 179 So.2d 622 (3 DCA 1965).**

**Based on the law of variances and for other good consideration , I respectfully request that this Council deny Applicant's Variance request.**

**respectfully submitted,**

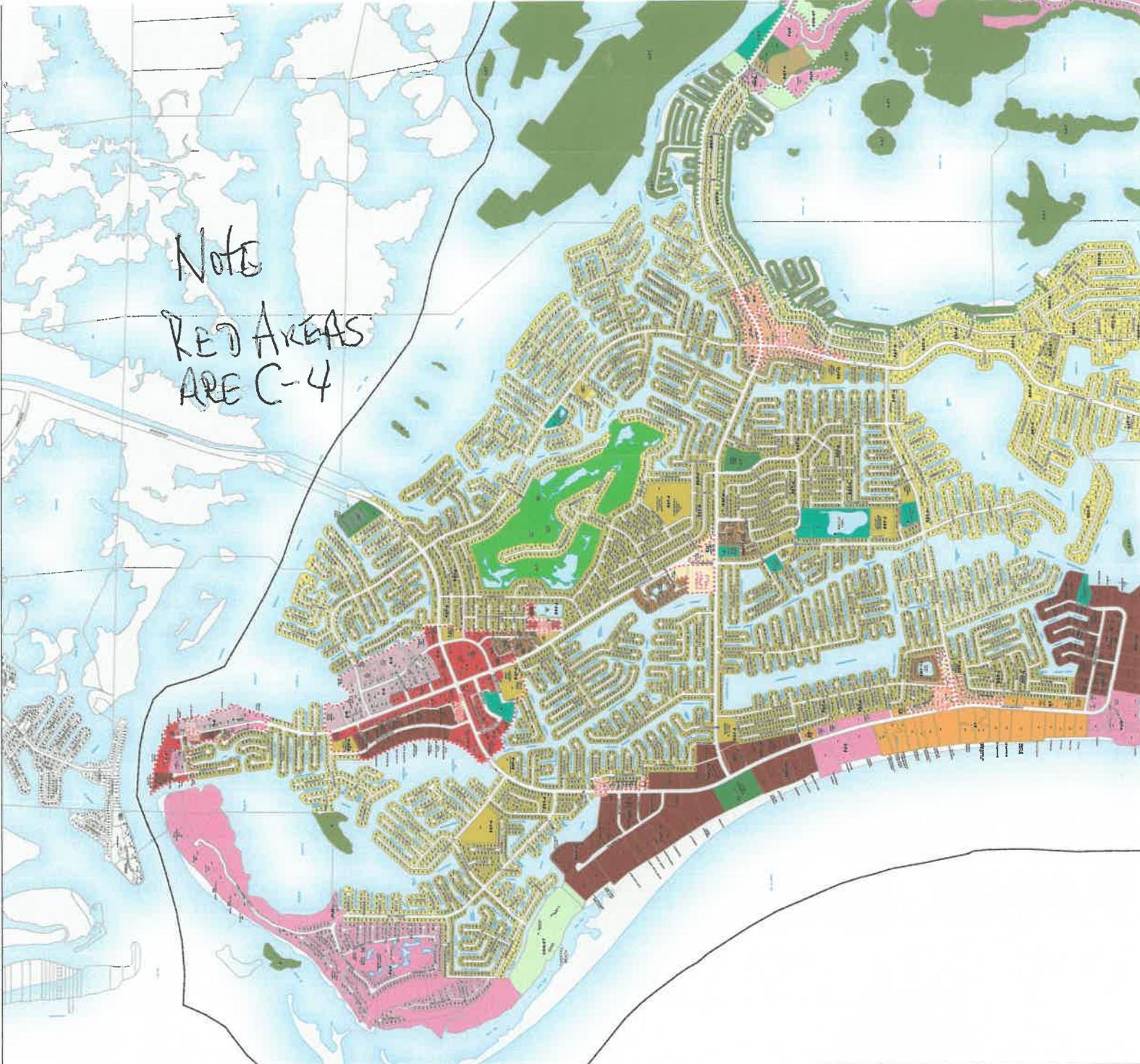


**Irvin Povlow**

**On behalf of the Jewish Congregation of Marco Island**

Note  
 RED AREAS  
 ARE C-4

RED  
 AREAS  
 C-4



**ZONING MAP**  
 CITY OF MARCO ISLAND

**Legend**

City Limits	CF, Rec/Open/GC/ST
Overlay Districts	GC, Rec/Open/GC/ST
Special Treatment	P, Rec/Open/GC/ST
Parcels	PUD, PUD
<b>Zoning</b>	RMF-12, Multi-Family
C-1/T, Commercial	RMF-16, Multi-Family
C-1, Commercial	RMF-6, Multi-Family
C-3, Commercial	RSF-2 Single Family

# Collier County Property Appraiser Property Summary

Parcel ID	57360200108	Site Address	688 BALD EAGLE DR	Site City	MARCO ISLAND	Site Zone	Notes	34146		
Name / Address	VO CAPITAL LLC PO BOX 703									
City	MARCO ISLAND	State	FL	Zip	34146					
Map No.	7808	Strap No.	774900 D 4.27B08	Section	8	Township	52	Range	28	
Legal	MARCO BCH UNIT 6 THAT PORTION OF TRACT D AS DEBC IN OR 4137 PG 3415									
Millage Area	68	Sub/Condo	774900 - MARCO BEACH UNIT 6	School	4.292	Other	5.1064	Total	9.3974	
Use Code	10 - VACANT COMMERCIAL	Millage Rates	Calculations						Acres	Estimated
									0.94	

### 2023 Certified Tax Roll

(Subject to Change)

Date	Book-Page	Amount	Land Value
10/06/23	6295-2335	\$ 0	(*) Improved Value
04/01/19	6618-592	\$ 710,000	(*) Market Value
11/14/06	4137-3430	\$ 2,900,000	(*) Assessed Value
11/14/06	4137-3415	\$ 1,800,000	(*) School Taxable Value
11/14/06	4137-3404	\$ 0	(*) Taxable Value
			Ad Valorem Taxes
			(*) Non Ad Valorem Taxes
			(*) Total Taxes
			\$ 1,282,842
			\$ 0
			\$ 1,282,842
			\$ 1,282,842
			\$ 1,282,842
			\$ 12,085.37
			\$ 0
			\$ 12,085.37

Values are as of January 1st each year. If all values are 0, this parcel was created after the Final Tax Roll.

Disclaimer: The actual total property taxes may vary due to changes in millage rates set by taxing authorities, the addition of non-ad valorem assessments, and special assessments. For the most accurate and up-to-date tax information, please visit the Collier County Tax Collector's office to see the final Tax bill.

*Subject Property*  
*E-4 JSM*

Collier County Property Appraiser

MAP SIZE: SMALL | MEDIUM | LARGE



- Introduction
- Search for Parcels by
- Search Results
- Parcel ID: 1574952002
- Address: 600 BALD EAGLE DR
- Build# / Unit#: 786 / 7

- Layers
- Legend
- Print

- Zoom In
- Zoom Out
- Identify
- Pan
- Measure
- Full County View
- Previous View
- Zoom To Selected
- Clear Map Graphics
- Overview

Aerial Year:  
2024  
Sales Year:  
OFF



Aerial Photography, January - 2024 Urban (RM) - 2024 Rural (2FT) - 2024 Rural (10FT) - 2024 Rural (50FT)

7 ELEVEN  
0.67 acre  
C4 zone

Print Tax Bills Change of Address

<b>Property Summary</b>		Property Detail		Sketches		Trim Notices				
Parcel ID	657490920002	Site Address	Discalmsr	600 BALD EAGLE DR	Site City	MARCO ISLAND	Site Zone	NOIG 34145		
Name / Address	7-ELEVEN, INC % RYAN LLC THREE GALLERIA TOWER 13165 NOEL RD #100 LB73							Zip	75240	
City	DALLAS	State	TX	Section	8	Township	52	Range	26	
Map No.	7B08	Strap No.	776500 798 77B08	Acres	Estimated	0.67				
Legal	MARCO BCH UNIT 6 TR A REP BLK 798 LOT 7, LESS WLY 165 FT AS DESC IN OR 2016 PG 1613 OR 1092 PG 920									
Millage Area	58	Sub./Condo		776500 - MARCO BEACH UNIT 6 REPLAT TR A		Millage Rates		Calculations	Other	Total

7-ELEVEN  
 ~ 67 ACRES  
 04 June

Collier County Property Appraiser

MAP SIZE: SMALL | MEDIUM | LARGE



- Introduction
- Search for Parcels by
- Search Results
- Parcel ID: 6893160905
- Name: IBERIA BANK
- Address: 6893 BALD EAGLE DR
- Build#: UNTR 0 / 7.5

- Layers
- Legend
- Print

- Zoom In
- Zoom Out
- Identify
- Pin
- Measure
- Full County View
- Previous View
- Zoom To Selected
- Clear Map Graphics
- Overview

Aerial Year:  
2024

Sales Year:  
OFF



Aerial Photography, January - 2024 Urban (UW) - 2024 Rural (RT) - 2024 Rural (ORT) - 2024 Rural (SPT)

*Iberia Bank  
Now First Horizon Bank  
Call your*

Print Tax Bills Change of Address

<b>Property Summary</b>		Property Detail		Sketches		Trim Notices	
Parcel ID	6693160005	Site Address	Digitalmar 605 BALD EAGLE DR	Site City	MARCO ISLAND	Site Zone	Note 34145
Name / Address	IBERIABANK PO BOX 2078						
City	MEMPHIS	State	TN	Zip	38107	Acres	Estimated 0.76
Map No.	7B16	Strap No.	773100 G 7.57B16	Section	16	Township	52
Legal	MARCO BCH UNIT 4 PARCEL IN TR G DESC AS FOLL: COMM C/L OF INTSEC OF N COLIJER BLVD + SR S 951, S 20 DEG E 604FT, N 89 DEG E 60FT TO POB, N 69 DEG E 132.5FT, S 90 DEG E 265.28FT, S 89 DEG W 82.78FT, NWLY ALG CURVE TO RT 78.28FT, N 20 DEG W 205.04FT TO POB OR 1228 PG 243 OR 2008 PG 766						
Milling Area 60		Sub/Cenfo 773100 - MARCO BEACH UNIT 4		Milling Rates 60		Calculations	
				School		Other	
						Total	

*Theirio Bank*  
*Now First Horizon Bank*  
*0.75 acres*  
*C4 zone*

Collier County Property Appraiser

MAP SIZE | SMALL | MEDIUM | LARGE



Introduction

Search for Parcels by

Search Results

Parcel ID: 5749940008

Name: LB MARCO ISLAND LLC

Street & Name: 440 W ELKAM CIR

Build# / Unit#: 786 / 7.1

Layers

Legend

Print

- Zoom In
- Zoom Out
- Identify
- Path
- Measure
- Full County View
- Previous View
- Zoom To Selected
- Clear Map Graphics
- Overview

Aerial Year: 2024

Sales Year: OFF



Aerial Photography: January - 2024 Urban B (N) - 2024 Rural (2FT) - 2024 Rural (10FT) - 2024 Rural (50FT)

*Dollar Store*  
 440 W, ELKAM CIR  
 Zoned "Stores"  
 072 acre  
 C H JML

Print Tax Bills Change of Address

Property Summary Property Detail Sketches Trim Notices

Parcel ID 57490940008 Site Address **Disclaimer** 440 W ELKCAM CIR Site City MARCO ISLAND Site Zone **Notes** 34145

Name / Address LB MARCO ISLAND LLC 2838 FEROL LANE

City LYNN HAVEN State FL Zip 32444

Map No. 7808 Strip No. 776500 788 7, 17508 Section 8 Township 52 Range 26 Acres **Estimated** 0.72

Legal MARCO BCH UNIT 6 TR A REPLAT BLK 798 THE WELY PORTION OF LOT 7, AS DESC AS FOLL: COMM NE CNR OF LOT 7, S 89 DEG W 168.3 ALG N LI TO POB, CONT S 69 DEG W 166.26 FT, S 21 DEG E ALG W LI 30 FT, S 20 DEG E ALG W LI 181 FT, N 69 DEG E ALG S LI 168 FT, N 20 DEG W 191 FT TO POB OR 2018 PG 1810

Municipalities 58 Sub/Condo 776500 - MARCO BEACH UNIT 6 REPLAT TR A

Millage Rates • Calculations School Other Total

*Dollan Sur*  
*440 W ELKCAM CIR*  
*"Stores"*  
*• 72 acres*  
*C H zone*