



City Council Staff Report

Meeting Date: August 17, 2020

TO: Marco Island City Council

FROM: Daniel J. Smith, AICP, Director of Community Affairs

DATE: August 5, 2020

RE: Variance Petition VP-20-000140

PROJECT DESCRIPTION:

Mr. Albert Lopez of CPH, Inc. has submitted a variance petition to deviate from Sec. 30-441 to allow for reduced buffer widths on all four sides of the lot. The northernmost buffer should be a 15-foot Type 'C' buffer, but currently is approximately 8-feet wide, a difference of approximately 7-feet (Deviation 2); and the eastern and westernmost side-yard buffers should be 10-feet, but they are currently approximately 5-feet wide, a difference of approximately 5-feet (Deviation 1). The southernmost buffer adjacent to Neil Bahr Way should be a 10-foot Type 'C' buffer, but currently is approximately 7-feet wide, a difference of approximately 3-feet.

The applicant has provided an application that includes the responses to the criteria for review of a variance and renderings of what the site will look like. All are attached to this staff report.

PLANNING BOARD OUTCOME:

The Planning Board considered this petition at their July 10, 2020 meeting. Planning Board members voiced concerns that the increased buffer heights may obscure sightlines coming into and leaving the property. The Director assured the members that the required buffer material would taper to shorter heights near the entrances and exits as required by code.

The owner and his contractor agreed that all conditions contained in this report will be accomplished, including aesthetic changes to the islands and increase of buffer material heights.

The Planning Board voted 7-0 to forward a recommendation of approval.

OWNER/APPLICANT:

McDonald's Corporation, a Delaware Corporation
1855 Veterans Park Dr. ste# 203
Naples, FL 34109

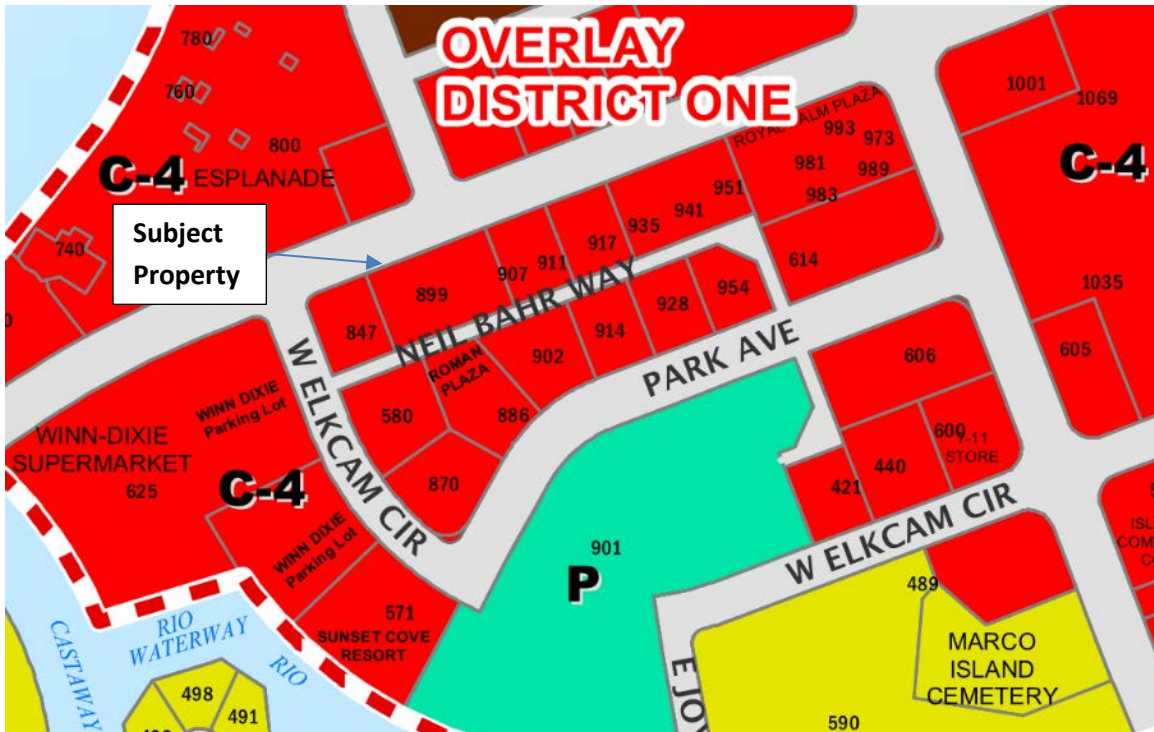
AGENT:

Albert Lopez, CPH Inc.
2216 A Altamont Ave.
Ft. Myers, FL 33901

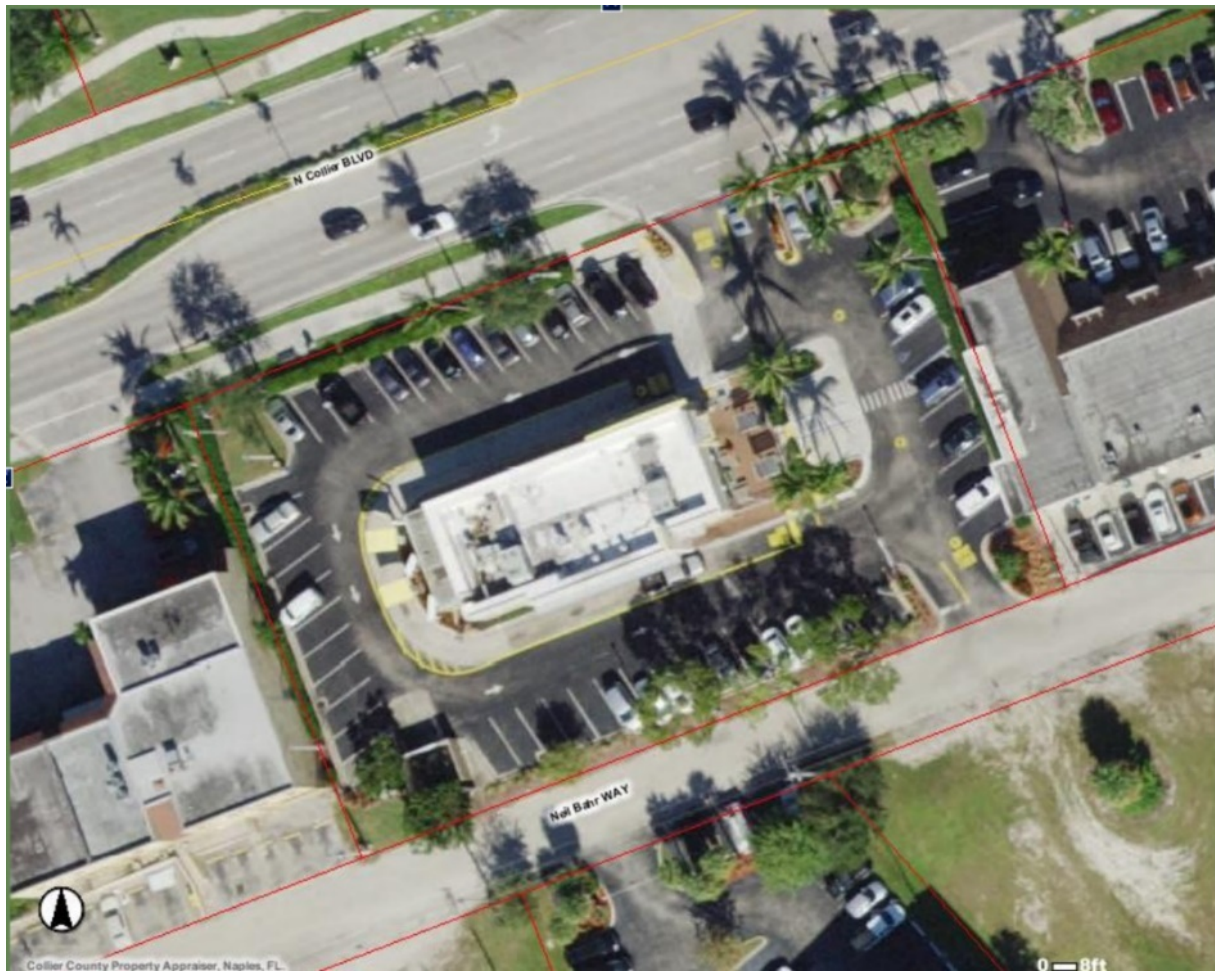
PROJECT ADDRESS:

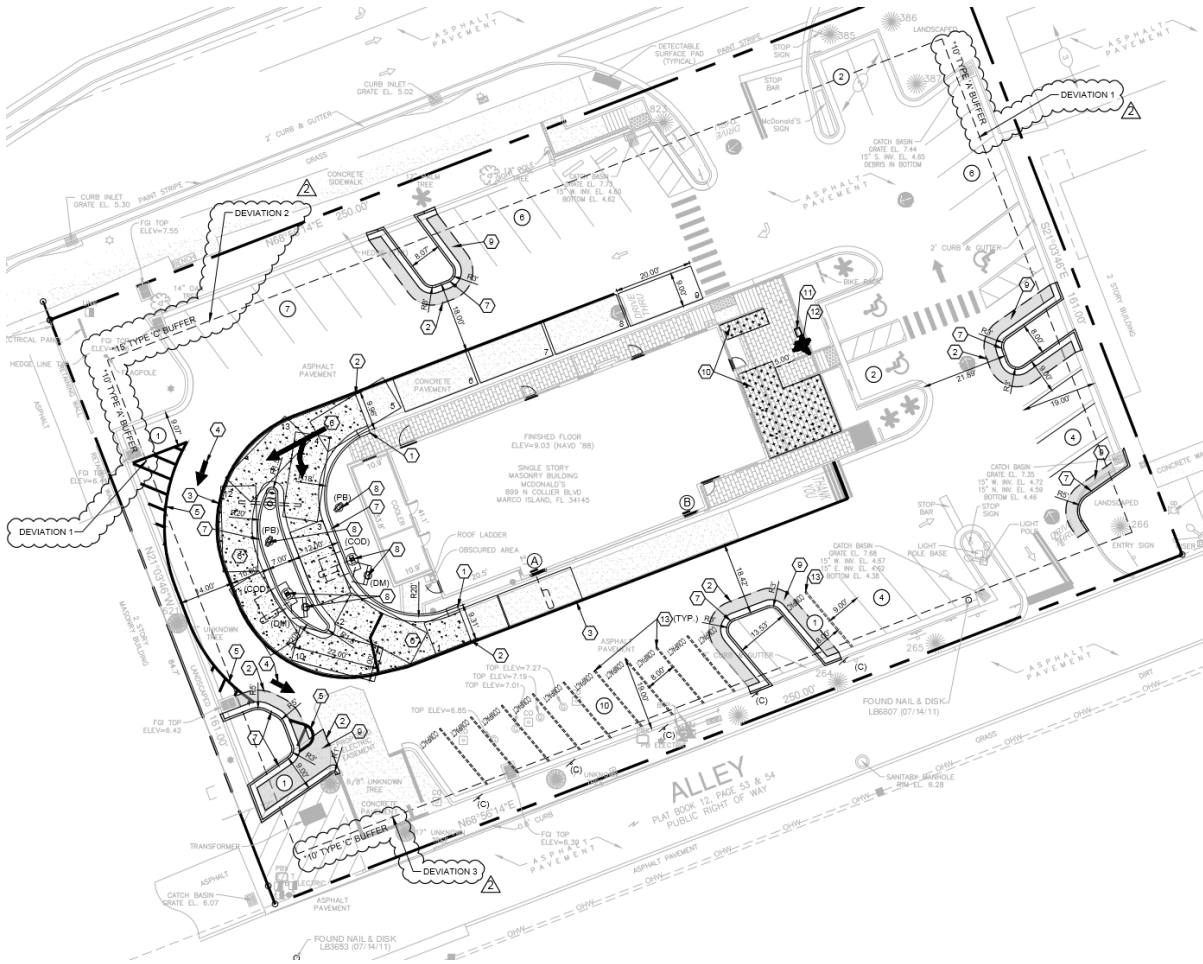
Street Address: 899 N. Collier Blvd.
Marco Island, FL 33950
Legal Description: Lots 2 and 3, Block 797, Replat of Tract "A" Marco Beach, Unit 6, according to the plat thereof, as recorded in Plat Book 12, Pages 53-54, Public Records of Collier County, Florida
Zoning: C-4

SUBJECT PARCEL ZONING MAP:



SUBJECT PARCEL AERIAL:



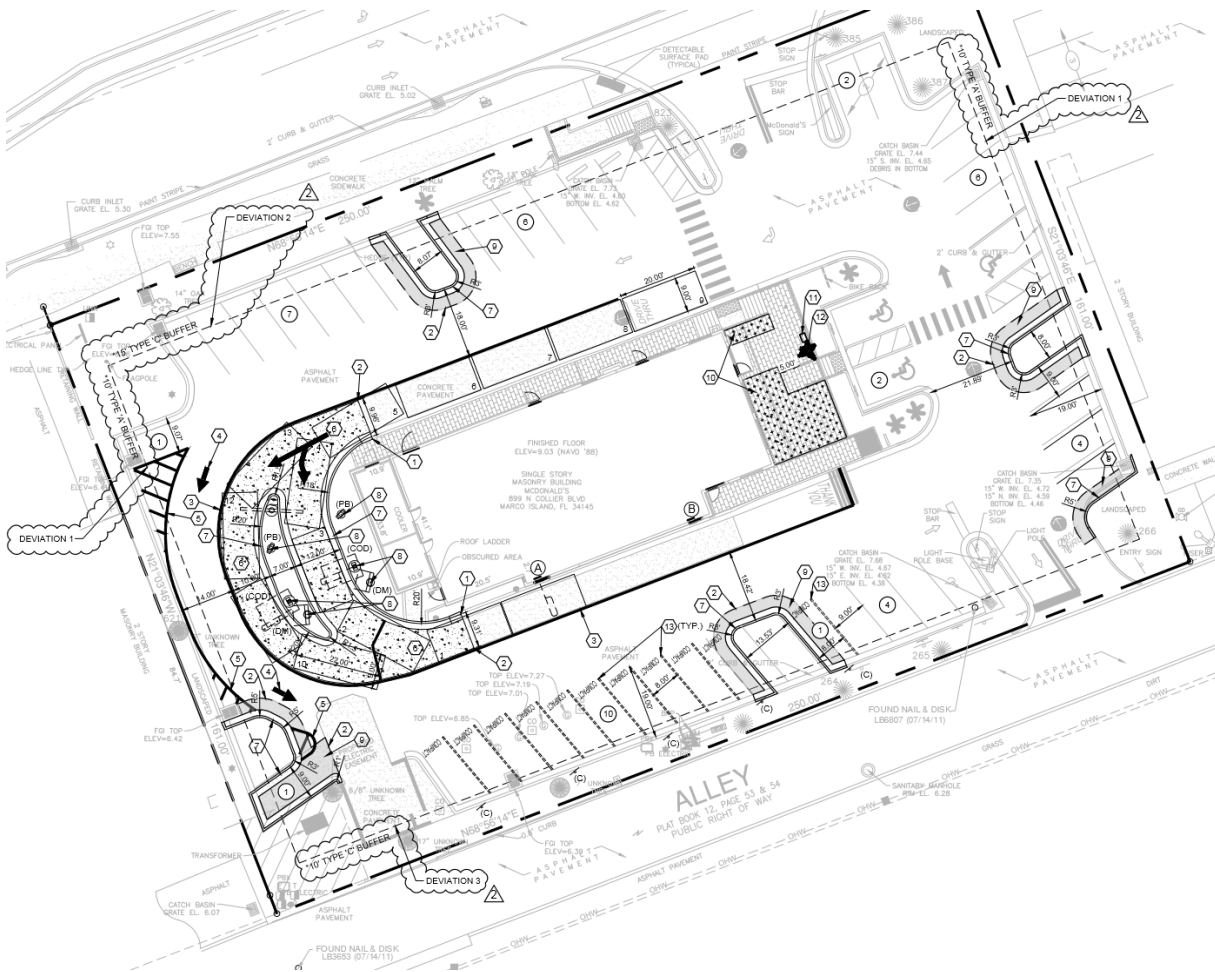


STAFF ANALYSIS

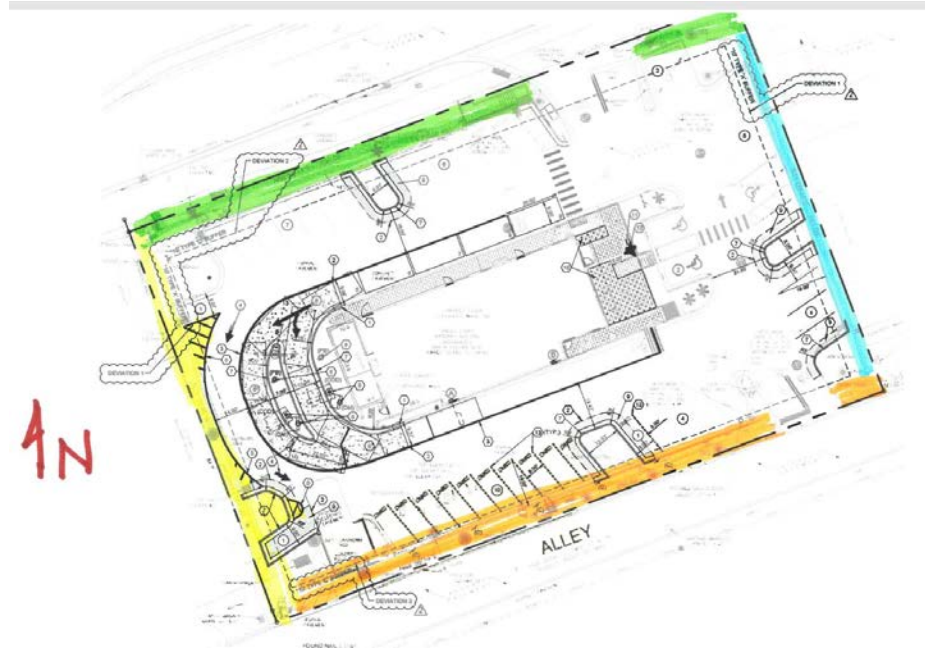
The site's current use is a quick-service restaurant. To allow for the reduced buffers while expanding the intensity of the drive-thru, the applicant proposes to add code required landscape islands while reducing customer seating and parking.

The site's most recent site development plan is from 2011 (SDP-11-000429) revising the parking lot configuration and reducing landscape areas for handicapped parking. The approval also required that missing landscape materials in the buffers be brought into compliance and the addition of approximately 290 sq. ft. of pervious pavers in the restaurant entrance area on the eastside of the building. Staff cannot confirm if the pervious pavers were installed or if landscape was brought up to code. The proposed plan does not reflect what is existing. The landscape buffers will need to be brought into compliance with current code requirements and consistent with the associated variance, if approved.

In walking the site, maintenance of the site is needed. Plant material is missing, leaving the buffers ineffective, concrete curbing is sunk and cracked, while other miscellaneous areas are in disrepair. Staff believes this plan does not go far enough for the granting a variance.



Proposed Plan



Staff is of the opinion that these minimum width buffers would be more effective if the right plant material was used, and minor changes to the plan were implemented such as:

1. Expanding the West buffer area (yellow) to include the striped area which is proposed for asphalt. This is unusable space that can be converted to landscape. These areas would also allow room for trees.



2. Revise the North buffer area hedge (green, Collier Blvd.) to be maintained at a height of 6 feet instead of 3 feet, double row. Due to the elevation of the site in relation to the road, this hedge has little impact on blocking parked vehicles or the stack-up drive thru vehicles.



3. Revise the South buffer area (orange), duplicating the North buffer along Collier Blvd.



4. Replace the concrete islands with pavers, providing aesthetics.



Our Code definition of landscape buffer is set forth in Section 30-10(c) as follows:

Landscape buffer means an area of land which is required to be set aside along the perimeter of a lot in which landscaping (existing, relocated or introduced) is used to provide a transition between, and to reduce the undesirable or incompatible impacts between differing land uses.

While variance approvals don't usually set a precedent, because each application must stand on its own, staff has taken into account, among other items, how this could set precedent, and whether this is a good precedent to set. This relates to whether there are special conditions peculiar to the lot, which is the first requirement for a variance set forth in Section 30-65(g)(3)a. of the LDC.

For your convenience, the following pages contain the applicant's response to the criteria for review and consideration of a variance.

The standards for granting a variance are set forth in Section 30-65(g)(3) of the Land Development Code. Below are the applicant's responses to the standards.

For variance requests for *existing structure(s)*, please provide the following information:

1. What is the requested encroachment?

The existing landscape buffers width does not meet the current Land Development Code requirements as the project was previously designed and constructed under an older code. Site developable area is maximized.

2. When property owner purchased property

September 1, 1988

3. When was the existing structure built (include building permit number if possible)?

1989 COUNTY 88-2493

4. How existing encroachment created?

Encroachment exists as a result of previous land development code in effect at the time of the original Site Plan approval.

5. What is the certified cost estimate for bringing the existing structure(s) into compliance?

N/A

6. What extenuating circumstances exist related to the existing structures encroachment?

The existing site is fully developed; bringing the buffers up to new LDC compliance will eliminate all parking spaces along the site perimeter.

7. Are there any life/safety concerns related to the existing structure(s)?

None

For variance requests for *proposed structure(s)*, please provide the following information:

1. What is the proposed encroachment?

N/A

2. Why is the encroachment is necessary?

N/A

3. What extenuating circumstances exist related to the proposed structure encroachment?

N/A

NATURE OF PETITION

Please note that staff and the Marco Island Planning Board shall be guided in their recommendation to City Council acting as the Board of Zoning Appeals, and that City Council shall be guided in its determination to approve or deny a variance petition by the below listed criteria. Please provide a *narrative* response to the listed criteria and/or questions. Attach additional pages if necessary.

1. Are there special conditions and circumstances existing which are peculiar to the location, size and characteristics of the land, structure or building involved?

The existing building, driveways and parking spaces required to support the Restaurant use are limiting the existing buffer areas impeding these to be brought to the current LDC buffer width requirements. However, the required landscape plant material will be met.

2. Are there special conditions and circumstances which do not result from the action of the applicant such as pre-existing conditions relative to the property which is the subject of the variance request?

The existing building, driveways and parking spaces required to support the Restaurant use are limiting the existing buffer areas impeding these to be brought to the current LDC buffer width requirements. However, the required landscape plant material will be met.

3. Will a literal interpretation of the provisions of this zoning code work unnecessary and undue hardship or create practical difficulties on the applicant?

N/A

4. Will the variance, if granted, be the minimum variance that will make possible the reasonable use of the land, building or structure and which promote standards of health, safety or welfare?

It is our understanding that the existing landscape buffers are in compliance with a former version of the LDC. The existing health, safety or welfare will not be altered by this request.

5. Will granting the variance requested confer on the petitioner any special privilege that is denied by these zoning regulations to other lands, buildings, or structures in the same zoning district?

It is our understanding that granting the requested variance should not be considered a special privilege due to the nature of the pre-existing conditions previously mentioned.

6. Will granting the variance be in harmony with the intent and purpose of this zoning code, and not be injurious to the neighborhood, or otherwise detrimental to the public welfare?

Yes

7. Are there natural conditions or physically induced conditions that ameliorate the goals and objectives of the regulation such as natural preserves, lakes, golf course, etc?

No

The standards for granting a variance are set forth in Section 30-65(g)(3) of the Land Development Code ("LDC"), below. In addition to the applicant's response, Staff has provided responses to the criteria based upon analysis of the information provided, our codes, and the Comprehensive Plan.

- (1) That there are special conditions and circumstances existing which are peculiar to the location, size and characteristics of the land, structure, or building involved.

Staff Comments: The site was originally developed prior to current City codes and required less buffering area than today. Because of the nature of the proposed site work

the entire site would need to be brought into conformity with today's code. The lot is relatively small for a restaurant of McDonald's intensity and additional area for buffers can't be found on the site without severely limiting the number of parking spaces, thus reducing the number of seats that they were previously approved to have.

- (2) That there are special conditions and circumstances which do not result from the action of the applicant such as pre-existing conditions relative to the property which is the subject of the variance request.

Staff Comments: The site was developed legally under a previous set of rules, and as the City has expanded and its codes changed to support the vision laid out in the Comprehensive Plan, the site is no longer in conformity. The non-conformity is not due to the actions of the owner(s)

- (3) That a literal interpretation of the provisions of this zoning code work unnecessary and undue hardship on the applicant or create practical difficulties on the applicant.

Staff Comments: The need for the variance to encroach into the landscape buffer is based on a potential loss of required parking for the restaurant. The adjacent lots have all been previously developed, and there is no practical way for McDonald's to expand their site area to accommodate the required buffers, drive-thru and existing parking without relief from the City Council.

- (4) That the variance, if granted, be the minimum variance that will make possible the reasonable use of the land, building or structure and which promote standards of health, safety or welfare.

Staff Comments: The variance sought will reduce the buffer widths by a minimum necessary to meet the intent of the site development requirements. McDonald's is not intending to expand their parking area to accommodate increased seating. In fact, they will be removing some seating from the patio area and will be adding drive-thru space which is considered a less intensive use in our parking regulations than patrons that sit down and must utilize the parking spaces.

- (5) That granting the variance requested will not confer on the petitioner any special privilege that is denied by this LDC to other lands, buildings, or structures in the same zoning district.

Staff Comments: Reducing the buffer widths does not allow the restaurant to increase seats beyond what has been previously approved and does not confer special rights to the owner to further develop the site beyond the already approved intensity.

- (6) That granting the variance be in harmony with the intent and purpose of this zoning code, and not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

Staff Comments: Granting the variance to reduce buffer widths does not measurably change the character of the commercial area that it currently exists within. The wider

area is already built out to a large extent and contains many other quick service and full-service restaurants which was the intent of the C-4 commercial zoning district. Public welfare will not be measurably impeded since the restaurant currently exists and has existed prior to the island becoming an independent municipality.

- (7) That there are natural conditions or physically induced conditions that ameliorate the goals and objectives of the regulation such as natural preserves, lakes, golf course, or similar circumstances.

Staff Comments: There are no natural or physical conditions that ameliorate the goals and objections of the regulations.

- (8) That the granting of the variance will be consistent with the Comprehensive Plan.

Staff Comments: The granting of the variance does appear to be consistent with the Comprehensive Plan. Policy 1.7.1 of the Future Land Use Element states:

The City will continue to enforce adopted architectural and site design regulations in the adopted Land Development Code (LDC).

Other than the requested reduction in buffer width, the building meets, or will meet current architectural and site-design standards. All other Planning and Zoning regulations will be applied to the site during the permitting process should the Site Development Plan be approved by City Council.

PLANNING BOARD ACTION

Staff recommends the Planning Board approve the requested variance based on the following findings and condition:

FINDINGS

- (1) Special conditions do exist on-site based on less restrictive codes that existed when the site was originally developed.
- (2) The special conditions were not due to the actions of the owner, the City codes have become more intense than when the site was originally developed.
- (3) Application of the current buffer widths would reduce the number of available parking spaces to something below what the restaurant would need to continue doing business at the intensity they were previously approved for.
- (4) The requested variance is the minimum necessary to meet the goals of the owner and the City's Comprehensive Plan and will not increase the intensity of seating or imperviousness of the site beyond what already exists and had been legally permitted.
- (5) The requested variances will not be injurious to neighbors or the wider community, the site will still be required to repair storm-damaged buffer areas and in-fill with replacement trees, bushes, and groundcover. The owner will be providing the minimum required number of code-compliant trees, perimeter plantings and will not increase the imperviousness of the site.

- (6) The requested variance is not in conflict with the words and intent of the Comprehensive Plan and would not confer special rights to the site.

The City will continue to enforce adopted architectural and site design regulations in the adopted Land Development Code (LDC).

CONDITION:

- (1) Variance 20-000140 plan is consistent with SDP.
- (2) Expand the west buffer area (yellow) to include the striped area which is propose for asphalt. This is unusable space that can be converted to landscape.
- (3) Revise the north buffer area hedge along Collier Blvd. to be maintained at a height of 6 feet (or 5' above the curb) instead of 3 feet, double row. Due to the elevation of the site in relation to the road, this hedge has little impact on blocking parked vehicles or the stack-up drive thru vehicles.
- (4) Revise the south buffer area (orange), duplicating the revised north buffer along Collier Blvd.
- (5) Replace the concrete islands with pavers, providing aesthetic.

Daniel J. Smith, AICP
Director of Community Affairs