



AGENDA
COMMUNITY DEVELOPMENT BOARD MEETING
SEPTEMBER 16, 2020 AT 6:00 PM
116 FIRST STREET
NEPTUNE BEACH, FL 32266

1. Call to Order.
2. Approval of minutes for the August 12, 2020 meeting.
3. V20-01 Application for variance as outlined in Chapter 27, Article 8 of the Unified Land Development Code of Neptune Beach for Neptune Beach FI Realty, LLC for the property known as 540-580 Atlantic Blvd (RE#172395-0130). This property is former Lucky's Market in the Neptune Beach Plaza. The variance request is to provide relief from Note 6 of Table 27-229-1 by varying the 1000 linear foot requirement for businesses that operate under common business ownership or management, share a warehouse or distribution facility, or otherwise operate as an associated, integrated or cooperative business shall not exceed a combined sixty thousand (60,000) square feet of total gross floor area in aggregate.
4. Open Discussion.
5. Adjourn.

INSTRUCTIONS FOR THE SEPTEMBER 16, 2020 NEPTUNE BEACH HYBRID
COMMUNITY DEVELOPMENT REVIEW BOARD MEETING

This meeting will be a hybrid in-person and a webinar conducted electronically meeting. Space for the in-person meeting will be limited due to social distancing requirements. The webinar portion will be conducted as permitted in Governor Executive Order No. 20-69 and extended by Governor Executive Order 20-112. The City has adopted Emergency Rules Regarding to COVID-19 to Govern the Operation of Meetings of the City Council and Board of the City of Neptune Beach, which will also govern the webinar portion. Such rules are available from the City Clerk.

Registered webinar participants can also share comments live during the meeting; you must request to do this using the "raise your hand" feature during "Comments from the Public" portion of the meeting.

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<https://support.goto.com/webinar/how-to-join-attendees>



MINUTES
COMMUNITY DEVELOPMENT BOARD
AUGUST 12, 2020 AT 6:00 P.M.
COUNCIL CHAMBERS
116 FIRST STREET
NEPTUNE BEACH, FLORIDA 32266

Pursuant to proper notice a public hearing of the Community Development Board for the City of Neptune Beach was held meeting by Communications Media Technology on August 12, 2020 at 6:00 p.m. via the internet.

Attendance

Board members were in attendance:
Christopher Goodin, Chair
Ryan Dill, Vice-Chair
Charley Miller, Member
W. Jeremy Randolph, Member
Nia Livingston, Member
David Jaffee, Alternate Member
Jonathan Raiti, Alternate Member
Greg Schwartzenberger, Alternate Member

The following staff members were present:
Stefan Wynn, City Manager
Zachary Roth, City Attorney
Kristina Wright, Community Development Director
Piper Turner, Code Compliance Supervisor

Call to Order/Roll
Call

Chair Goodin called the meeting to order at 6:02 p.m. V20-01 for the former Lucky's Market has requested to delay their application,

Disclosure of
ex-parte
communications

Several members disclosed that they had spoken with the owner of the Local restaurant.

Minutes

Made by Randolph, seconded by Dill.

**MOTION: TO APPROVE THE JULY 8 AND JULY 15, 2020
MINUTES AS SUBMITTED.**

All in favor.

MOTION CARRIED

Swearing in Mr. Roth asked anyone appearing before the board to raise their right hand to be sworn in.

CDB 20-02
Art Project
301 Atlantic Blvd

Kristina Wright, Community Development Director gave her staff report and recommendation. Application CDB 20-02 301 Atlantic Boulevard is a request for an art project as outlined in Chapter 27, Sec. 27-596 of the Unified Land Development Code for the property known as 301 Atlantic Boulevard (PIN: 172982-0000) and the dumpster enclosure that is located on the City's right-of-way on Second Street adjacent to 301 Atlantic Boulevard. The property is owned by Huron Sophia, LLC and is occupied by The Local Restaurant. The request is to paint a mural on the eastern wall of the building and paint the dumpster enclosure to match. The property is zoned Commercial Business District.

According to Sec. 27-596: Any proposed art project in the commercial districts that in the opinion of a majority of the community development board is found to be public art that enhances the commercial district may be recommended to the City Council for its approval. If approved by the City Council, such an art project will be permitted as long as it is maintained in good condition. The City Council may place conditions for approval on the proposed project. Any such art project which deteriorates over time shall be removed by the applicant at the sole discretion of the City Council.

Sec. 27-596 also indicates that both the Community Development Board and the City Council shall determine the following: That the proposed art project will enhance the aesthetic beauty of the area of its proposed location:

The applicant is proposing a spray-painted mural on the eastern side of the building and dumpster that is approximately 43 feet x 14 feet. The applicant has indicated that they are seeking to enhance the aesthetic beauty of the surrounding area with this mural by bringing a "pop of color" on the large blank wall along Second Street.

1. *That the artist is capable of completing the work in accordance with the plan submitted as part of the application:*

The applicant is using a well-known, local company, Artistic Finishes, to complete the work. The applicant has indicated that the project will require an additional 2 to 3 days to complete.

2. *That the information in the application regarding the durability and expected maintenance of the proposed art project is correct:*

Durability is being addressed through the use of a heavy-duty exterior spray paint.

3. *That the materials to be used and the manner of application will not require excessive maintenance by its owner:*

The local artist will be available for any touch-ups if these are ever necessary.

Staff recommends approval of CDB 20-02 301 Atlantic Boulevard to the City Council.

Jack Demetree, representing property owner Huron Sophia, LLC, state he was available for any questions. No questions or comments were presented.

Public hearing was opened for comments there being none, public comments was closed.

Made by Livingston, seconded by Jaffee.

MOTION: MOVE TO RECOMMEND APPROVAL OF CDB 20-02 TO CITY COUNCIL FOR AN ART PROJECT AT 301 ATLANTIC BLVD.

ROLL CALL:

AYES 7-Jaffee, Raiti, Miller, Livingston, Randolph, Dill, Goodin
NOES 0

MOTION APPROVED.

The applicants were informed their request was approved and that the application would be forwarded to City Council for final review at their next regular meeting.

Adjournment

There being no further business, the meeting adjourned at 6:20 p.m.

Chairperson Christopher Goodin

ATTEST:

Piper Turner, Board Secretary

City of Neptune Beach

Kristina L. Wright, FRA-RA, Community Development Director
116 First Street • Neptune Beach, Florida 32266-6140
(904) 270-2400 x 34 • FAX (904) 270-2526



MEMORANDUM

TO: Community Development Board

FROM: Kristina L. Wright, FRA-RA, Community Development Director

DATE: September 3, 2020

SUBJECT: V20-01 540-580 Atlantic (PIN: 172395-0130)

Background

Application V20-01 540-580 Atlantic is a request for a variance that seeks to provide relief from Note 6 of Table 27-229-1 to remove the 1000 linear foot separation requirement for businesses that operate under common business ownership or management, share a warehouse or distribution facility, or otherwise operate as an associated, integrated or cooperative business shall not exceed a combined sixty thousand (60,000) square feet of total gross floor area in aggregate.

More specifically, the Note 6 referenced within Table 27-229-1 states:

Furthermore, any retail stores, wholesale warehouses, or other freestanding buildings for any permitted use located within one thousand (1,000) linear feet of each other that operate under common business ownership or management, share a warehouse or distribution facility, otherwise operate as an associated, integrated or cooperative business shall not exceed a combined sixty thousand (60,000) square feet of total gross floor area in aggregate.

The application was continued by the Applicant from July 8, 2020 CDB Meeting. Since that time the Applicant has revised the application to include elevations featuring numerous improvements and includes a revised site plan. The Applicant is proposing additional landscaped areas to increase the pervious surface area on-site while modernizing the existing building with significant façade improvements, public art, fountains, and advanced mobility options.

Summary

The Applicant, Neptune Beach, FL Realty LLC, is seeking to allow a second, smaller Publix Supermarket within Neptune Beach and hopes to enter into a lease with Publix for the existing Building located at 540-580 Atlantic Boulevard, which is within 500' of the existing Publix located at 630 Atlantic Blvd. The Applicant is the owner of 540-580 Atlantic Blvd., and their tenant Lucky's Market entered into a long-term lease (20-year initial term) dated as of September 1, 2015 for the 29,810 square foot Lucky's Market grocery store within Neptune Beach Plaza.

The Applicant states:

The smaller Publix location will provide for a concept distinct from the existing Publix, including an emphasis on grab-and-go prepared foods, organic groceries, and a "POURS" station (and they are) seeking to make architectural and placemaking improvements and provide additional vehicular and pedestrian connections to the 1977 shopping plaza.

The Applicant assumed the cost to construct the improvements required by the lease to renovate the store and the remainder of the property, including reimbursements to the tenant for their further improvements. In January 2020, Lucky's Market declared Chapter 11 Bankruptcy and closed nearly all the stores, including the store at 540-580 Atlantic Blvd. As part of the bankruptcy process, Publix Super Markets, Inc. entered into an agreement to purchase and take assignment of the Neptune Beach, FL lease from Lucky's Market. This purchase and assignment have been approved by the Bankruptcy Court and Publix has already completed the purchase of Lucky's Market leases elsewhere in the state.

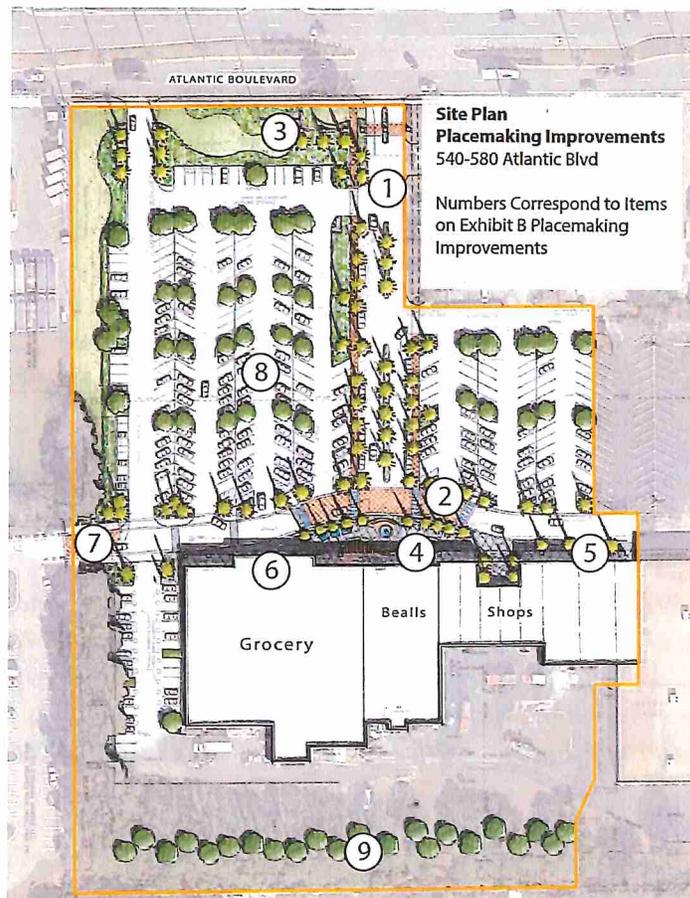
Representatives for the Applicant requested zoning verification letters and sought to change a provision within the City of Neptune Beach Land Development Code. At that time, this inquiry increased to administrative level discussions involving legal representation for all parties to clarify the intent of Note 6 referenced as part of Table 27-229-1 requiring a 1,000 linear foot distance separation from other business operating under common business ownership or management or that share a warehouse or distribution center or otherwise operate as an associated, integrated or cooperative business that is required not to exceed sixty thousand (60,000) square feet of total gross floor area in aggregate.

The Applicant and representatives assert that the provision is lot specific and has questioned the original motive for the creation of Ordinance 2006-13. Siting another Publix grocery store within 500' of an existing Publix would violate the provisions of Table 27-229-1, specifically the final sentence of Note 6, as the existing Lucky's Market grocery store at 540-580 Atlantic Blvd. is within 1,000 linear feet from an existing 54,310 square foot Publix grocery store at 630 Atlantic Blvd. which is leased by Publix from the owner(s) of that separate parcel. While the owner(s) of 630 Atlantic Blvd. are different from and have no affiliations with the owner of 540-580 Atlantic Blvd, both stores are affiliated with Publix Supermarkets, Inc. and the cumulative floor area of two separate stores would exceed 60,000 square feet, which stands in opposition to the provisions within the Neptune Beach Land Development Code, more specifically Table 27-229-1, Note 6.

As a result, the Applicant(s) are seeking a variance seeking relief from Note 6 of Table 27-229-1 to increase the maximum aggregate combined square footage from 60,000 to 89,500 to allow Publix to replace Lucky's Market as the tenant of the property owner and re-open a grocery store in the existing Lucky's Market premises at 540-580 Atlantic Blvd. The proposed store at 540-580 Atlantic Blvd. is distinct from the store at 630 Atlantic Blvd. as it presents a smaller format store (29,810 SF vs 54,310 SF) with features familiar to Lucky's Market shoppers, including an emphasis on prepared foods, organic groceries, and is planned to feature the "POURS" station, an in-store beverage bar concept from Publix's GreenWise branded-stores where shoppers can order beer and wine in addition to other non-alcoholic drinks.

According to the Applicant:

The variance will allow for the second Publix location to serve as a focused and distinct concept from the traditional existing Publix. The...Development Agreement...outlines and commits the landlord several architectural, placemaking, and mobility improvements. One such improvement which would extend Lemon Street to the parcel to the west with the existing Publix for vehicular and pedestrian access. This new interconnection will not only allow for vehicular traffic to travel to AIA without needing to travel upon Atlantic Blvd., but would also allow for an overall sense of place and natural connection to occur between the two shopping plazas.



Based on communications with the Applicant, they believe that the 1000' separation is lot specific, which is in opposition to the City's Comprehensive Plan Policy A.1.1.4 and the interpretation of Note 6, following Table 27-229-1. The preservation of the scale of development within a small, coastal community of 7,000 residents, which has been indicated within the City's Comprehensive Plan on page A-2. The City already has an existing Publix that would be sited within 500', and adjacent to, the proposed Publix.

While the Applicant notes that the "failure to grant the proposed variance will cause Publix to cancel its court-approved agreement to purchase the Neptune Beach lease and control of the future of the lease will return to Lucky's Market," financial motivations alone are not adequate justification for granting a variance to subvert the intent of Comprehensive Plan Policies and the

City's Land Development Regulations and must achieve the criteria established within 27-147, Required findings needed to issue a variance.

The Applicant explains:

Through the bankruptcy process Lucky's Market may then choose to reject the lease. Rejection would cause the lease (to be) terminated immediately, far earlier than the September 30, 2036 end of the initial term under the lease. The rejection of the lease due to the denial of the variance for Publix would be an exceptional hardship to the property owner and would result in a vacant anchor store, prevent the owner from obtaining an economic return on the investments it made in the lease, and would harm the property owner's other tenants who depend on the customer activity generated by the anchor tenant in the shopping center.

The Applicant further asserts that Council records demonstrate the intent of Council in drafting Note 6 in the Spring of 2006 was to prevent a Big Box retailer, specifically Walmart, from constructing a single store exceeding 60,000 SF in Neptune Beach. It was not the intent of Council to prohibit Publix from operating a separate store on a distinct parcel and within a separate shopping plaza at 540-580 Atlantic Blvd. per the meeting notes from the November 19, 2007 Council meeting on the intent of Ordinance 2006-13 (which added Note 6 to Table 27-229-1), Councilor Weldon, the sponsor of the Ordinance, made the following statement: "Councilor Weldon stated the intent of the Ordinance was to limit the amount **a single store from exceeding 60,000 square feet** ..." (emphasis added).

According to the Applicant:

The second Publix location will serve as a focused and distinct concept from the traditional existing Publix. The improvements proposed...will demonstrate this distinction by providing outdoor spaces to enjoy food and drink and by encouraging pedestrian use through outdoor seating/resting areas, pedestrian scale lighting, elimination of parking, addition of parking islands, traffic calming measures, and increased landscaping and green spaces.



Since the initial submittal, several proposed improvements to the property include:

- New entry arrival street with landscaped center median, parallel on-street parking, and new pedestrian sidewalk linking Atlantic Blvd. with the shopping plaza;
- New entry monument sign and enhanced landscaping along Atlantic Blvd.;
- The creation of a centerpiece pedestrian plaza and outdoor space with furniture, trees, planting beds, hardscape, and public art features;
- A Beaches Modern façade with an emphasis on white painted stucco and natural wood tones;
- A Beaches Buggy pick-up/drop-off location; and
- New and expanded golf cart and bicycle parking.



On June 10, 2020, the Applicant came before the Community Development Board to provide an informational presentation about the project and former Councilor Weldon attended the June presentation to speak in support of the City and its regulations. Additionally, staff does not believe that these requirements are lot specific as this would create loopholes and code requirements could be subverted through simple lot splits and subdivisions to subvert an appropriate scale of development within the community.

Required findings needed to issue a variance (Section 27-147):

- (1) The property has unique and peculiar circumstances, which create an exceptional and unique hardship. For the purpose of this determination, the unique hardship shall be unique to the parcel and not shared by other property owners in the same zoning district.**

According to the Applicant, the hardship is the result of unique and peculiar circumstances which are unique to the parcel since they feel that a parcel analysis has determined that another Publix cannot be accommodated in any other location within the City of Neptune Beach based on a parcel analysis that has discovered that of the applicable parcels in C-3 and C-2, none of these are currently vacant.

Despite this objective observation, this does not demonstrate a hardship for the existing parcel simply because the proposal is not currently meeting the requirements of the Neptune Beach Land Development Code. The Applicant has also indicated that the tenant entered into an agreement with and received Bankruptcy Court approval for an assignment of the existing lease with the

property owner to Publix Super Markets, Inc. However, staff asserts that there are other viable alternatives exist.

The Applicant has indicated that a “strict application of Note 6 of Table 27-229-1 creates a hardship that is unique to this parcel and not shared by other property owners in the same zoning district”; however, this also does not preclude other economically viable alternatives that would meet the requirements of the Land Development Code.

The Applicant states that:

The hardship is the result of unique and peculiar circumstances which are unique to the parcel. First, hardship is created because a second Publix location cannot feasibly be located on any other parcel within the City of Neptune Beach. Second, hardship is created by the current and forecasted market conditions for brick-and-mortar retailers. Third, hardship is created because the Code is preventing two very different store concepts simply because they are operated by the same parent company. Fourth and finally, a hardship is created because the proposed Publix will serve a different geographic location.

The Applicant also outlines additional factors for consideration as follows:

- A. *Hardship is created because a second Publix location cannot feasibly be located on any other parcel within the City of Neptune Beach.*
- B. *Hardship is created by the current and forecasted market conditions for brick-and-mortar retailers. A record number of retail stores are expected to close permanently this year. The COVID-19 pandemic has accelerated an already declining industry. As internet sales take over for non-perishable goods, the only retail industry that looks with withstand the market shift is supermarkets. Even grocery stores, however, are falling victim to the current economic crisis. Coresight Research, a leading market-based research company focused on retail trends, predicts between 20,000 and 25,000 retail store closings this year alone—the most closings ever. Retailers which have filed for bankruptcy include not only Lucky’s Market, but also Earth Fare, Stein Mart, Pier 1 Imports, Tuesday Morning, and JCPenney. Additionally, the following retailers have announced intentions to close hundreds of retail locations permanently: GNC; Victoria’s Secret; Men’s Wearhouse; GameStop; Signet (Kay Jewelers, Zales, Jared the Galleria of Jewelry, etc.); Bed Bath & Beyond; AT&T; Chico’s; Walgreens; CVS; Macy’s; Office Depot; and Bath & Body Works. (See: <https://coresight.com/>; <https://moneywise.com/a/chains-closing-the-most-stores-in-2020>; <https://www.cnbc.com/2020/06/09/coresight-predicts-record-25000-retail-stores-will-close-in-2020.html>.)*

Forecasters say that the retail industry has been forever changed. Given this seismic shift of the retail industry resulting from the internet age and drastically accelerated by the COVID-19 pandemic, shopping plazas and malls are finding it more and more difficult to retain tenants. Publix has a superb reputation and strong financials. A viable alternative to Publix simply does not exist in the current and foreseeable market conditions for the 1977 purpose-built supermarket. Without Publix, the plaza is at risk of remaining mostly vacant due to these market conditions. A vacant anchor tenant will serve as inefficient use of space within the City and cause the City to lose significant tax dollars. A vacant anchor tenant may even trigger blight with spillover effects onto neighboring parcels. Accordingly,

the forever-changed retail market conditions are a valid hardship on the Applicant and principles of fairness urge for the granting of a variance.

C. Hardship is created because the Code is preventing two very different store concepts simply because they are operated by the same parent company. The second Publix location is not a standard Publix supermarket. The second location is significantly smaller in footprint to the existing traditional Publix. The second location will focus on prepared food in a grab-and-go concept. The second location will also have an emphasis on organic foods and a POURS station to allow customers to enjoy beverages while shopping. Even though the second location will be operating under the Publix brand, the offerings will be different than a traditional supermarket. In fact, the offerings provide a greater variety than if a Winn-Dixie or other major traditional supermarket brand were to move into the location. These two store different concepts should be accommodated within the Code and a failure to do so results in a hardship.

D. Hardship is created because the proposed Publix will serve a different geographic demographic and location. As it exists today, the existing traditional Publix has access only to Atlantic Blvd. and tends to serve those residing in west Neptune Beach and east Jacksonville. The second Publix location is anticipated to serve those residing near A1A, south Neptune Beach, and downtown Neptune Beach through Lemon Street. One of the major impacts of the Development Agreement is to provide vehicular and pedestrian interconnection between the two shopping plazas. Accordingly, approval of the variance would expand convenient access to the traditional Publix to more City residents. The Development Agreement would allow the two stores to work in harmony. The Development Agreement also highlights the differences in these store concepts as outdoor seating and a pedestrian plaza with ample bike racks are essential to the second Publix's concept. Overall, the property has unique and peculiar circumstances, which create an exceptional and unique hardship which is not shared by other property owners within the same zoning district.

(2) The proposed variance is the minimum necessary to allow the reasonable use of the parcel of land.

The proposed variance is requesting the minimum additional square footage necessary to allow Publix to replace Lucky's Market as the tenant without any expansion of the existing Lucky's Market footprint. The denial of the proposed variance would prohibit Publix from taking assignment of the lease and enable Lucky's Market to reject their lease with the property owner. The rejection of the lease would terminate the lease, despite approximately 16 years of term remaining per the terms of the lease. Failure to grant the proposed variance would deny the property owner the reasonable use of its land as the property owner would be permanently unable to attain its reasonable investment-backed expectations from the existing lease.

However, staff asserts that other alternatives exist, which would allow the property owner to realize benefits obtained through the reasonable use of their land. The application of the Code provision prevents only a small number of uses at most. Most uses of this site are unaffected by this provision.

According to the Applicant:

A viable alternative to Publix simply does not exist in the current and foreseeable market conditions. Without Publix, the plaza is at risk of remaining significantly vacant due to these market conditions. The Development Agreement works to minimize the variance as well, in that the intent of the Improvements is to minimize potential and perceived impacts due to the redevelopment for a Publix.

(3) The proposed variance would not adversely affect adjacent and nearby properties or the public in general.

The proposed variance does not alter the existing, permitted use of the property, a retail grocery anchor store, or alter any physical characteristics of the property from the existing condition. Therefore, the proposed variance would not adversely affect adjacent and nearby properties or the public in general. Further, the re-opening of a grocery store at the property, which is the purpose of the variance, would create positive benefits to the nearby properties and the public in general. Granting of the variance supports Neptune Beach Comprehensive Plan **Goal A.1 and Objective A.1.3 Redevelopment and Infill Development** by encouraging infill redevelopment and avoiding blighting influences. The opening of a Publix grocery store at 540-580 Atlantic Blvd. is anticipated to create 50 additional permanent jobs, in addition to construction jobs, will have a beneficial impact on tax collection, and provide essential service to the public. While improvements and redevelopment are desired along with the creation of additional jobs and revenues, the addition of another Publix within 500' of an existing Publix on the immediately adjacent parcel expands the scale of development within a small, coastal community sought through the establishment of Comprehensive Plan Policy A.1.1.4 especially when other viable alternatives exist that could be of universal benefit.

According to the Applicant:

The Development Agreement will also serve to increase nearby property values and to enhance the value to the public in general. The improvements outlined within the Development Agreement will provide an overall facelift and modernization for the 1977 plaza and will serve to provide enhanced landscaping and pedestrian access and spaces. Moreover, the public in general will benefit by having an additional, unique grocery option in the community.

(4) The proposed variance will not substantially diminish property values in, nor alter the essential character of, the area surrounding the site.

The proposed variance does not alter the existing, permitted use, a retail grocery anchor store. The applicant asserts that the proposed variance would not substantially diminish property values in, nor alter the essential character of, the areas surrounding the site and has indicated that the re-opening of a store, particularly an industry-leading grocery store with strong finances and significant history, provides for long-term stability in property values and further supports **Objective A.1.3 Redevelopment and Infill Development** by encouraging infill development. According to the Applicant, "The Development Agreement will enhance, not alter the essential character of the area surrounding site by providing important placemaking enhancements." However, the City's Comprehensive Plan and Land Development Code were written and amended to ensure a scale that is appropriate to a small, coastal community. Further, the City's Comprehensive Plan indicates, "The City shall maintain within its Land Development Regulations

provisions intended to retain the unique community identity, the architectural character, and the residential scale of the City” per Policy A. 1.1.4 (2012, p. A-2).

(5) The effect of the proposed variance is in harmony with the general intent of the ULDC and the specific intent of the relevant subject area(s) of the ULDC.

The property is in the Commercial C-3 Zoning District which corresponds to the Commercial High designation on the adopted Future Land Use Map. According to the Uniform Land Development Regulations **Sec. 27-222.- Purpose and Intent of Zoning Districts:**

The Commercial C-3 Zoning District is intended to provide retail sales and services that serve the overall community. This district corresponds to the commercial high designation on the adopted future land use map.

According to the Applicant, the proposed variance is in harmony with the general intent of the Land Development Code since they feel that the re-opening of a store which “provide[s] retail sales and services that serve the overall community” and, in particular, provide essential grocery service to the community. However, the intent quoted from the LDC does not preclude the viability of other alternatives.

The Applicant states:

Further, the Development Agreement will serve to provide a benefit to the community by providing significant improvements to the property and enhancing the vehicular and pedestrian interconnectivity of the property. Granting the variance conditioned upon approval of the Development Agreement is in harmony with the general intent of the Code and provides a communitywide benefit.

(6) The need for the variance has not been created by the actions of the property owner or developer nor is the result of mere disregard for the provisions from which relief is sought.

According to the Applicant, the need for the variance has arisen from a unique and peculiar circumstances relating to the bankruptcy of the tenant under an existing lease with the property owner. The need for the variance has not been created by the actions of the property owner. However, while Publix is assuming these leases throughout the State of Florida, the fact that the one in Neptune Beach is next to another existing Publix is not basis for relief from regulations of the LDC. Further, the need for the variance is created in part by the Property Owner in that the Property Owner seeks to enter into a lease that would result in a Code violation due to a longstanding business on the adjacent parcel.

The Applicant states:

A viable alternative to Publix simply does not exist in the current and foreseeable market conditions. Without Publix, the purpose-built supermarket location that has existed since 1977 is at risk of remaining vacant due to these market conditions, leaving the plaza without an anchor tenant. The Development Agreement ensures that there is no

“disregard” for the provisions from which relief is sought. Instead, it supports those provisions by ensuring that the community gains an additional, unique grocery option in the community.

- (7) Granting the variance will not confer upon the Applicant any special privilege that is denied by the ULDC to other lands, buildings, or structures in the same zoning district.**

According to the Applicant, the need for the variance has arisen from unique and peculiar circumstances that have created a unique hardship for this parcel alone. The Applicant believes that by granting the variance, this will not confer upon the property owner any special privilege that is denied to other lands, buildings, or structures in the same zoning district; however, staff disagrees because this application seeks to remove regulations within the code that seek to prevent development that is out of scale for the community as contemplated by the City of Neptune Beach Comprehensive Plan and the Land Development Code. For example, Comprehensive Plan Policy A.1.1.4 states, “The City shall maintain within its Land Development Regulations provisions intended to retain the unique community identity, the architectural character, and the residential scale of the City” (2012, p. A-2). While all lands within the C-2 and C-3 zoning districts are permitted to have a grocery store as a permitted use, this does not subvert this distance separation and size limitation requirements that has been codified within Table 27-229-1, Note 6.

The Applicant States:

Further, the Development Agreement will serve to provide a benefit to the community by providing significant improvements to the property and enhancing the vehicular and pedestrian interconnectivity of the property. Granting the variance conditioned upon approval of the Development Agreement provides a distinction between this property and others within the same zoning district.

Staff Recommendation

Even though the Applicant has made considerable effort to demonstrate the desire to improve the lot and the existing development, staff recommends a motion to deny application **V20-01 540-580 Atlantic** since the application does not demonstrate the achievement of the Required findings needed to issue a variance established within Section 27-147, which requires the demonstration of a unique hardship, and the proposal and request are not consistent with the Neptune Beach Comprehensive Plan Policy A.1.1.4. nor Land Development Code Table 27-229-1, Note 6.

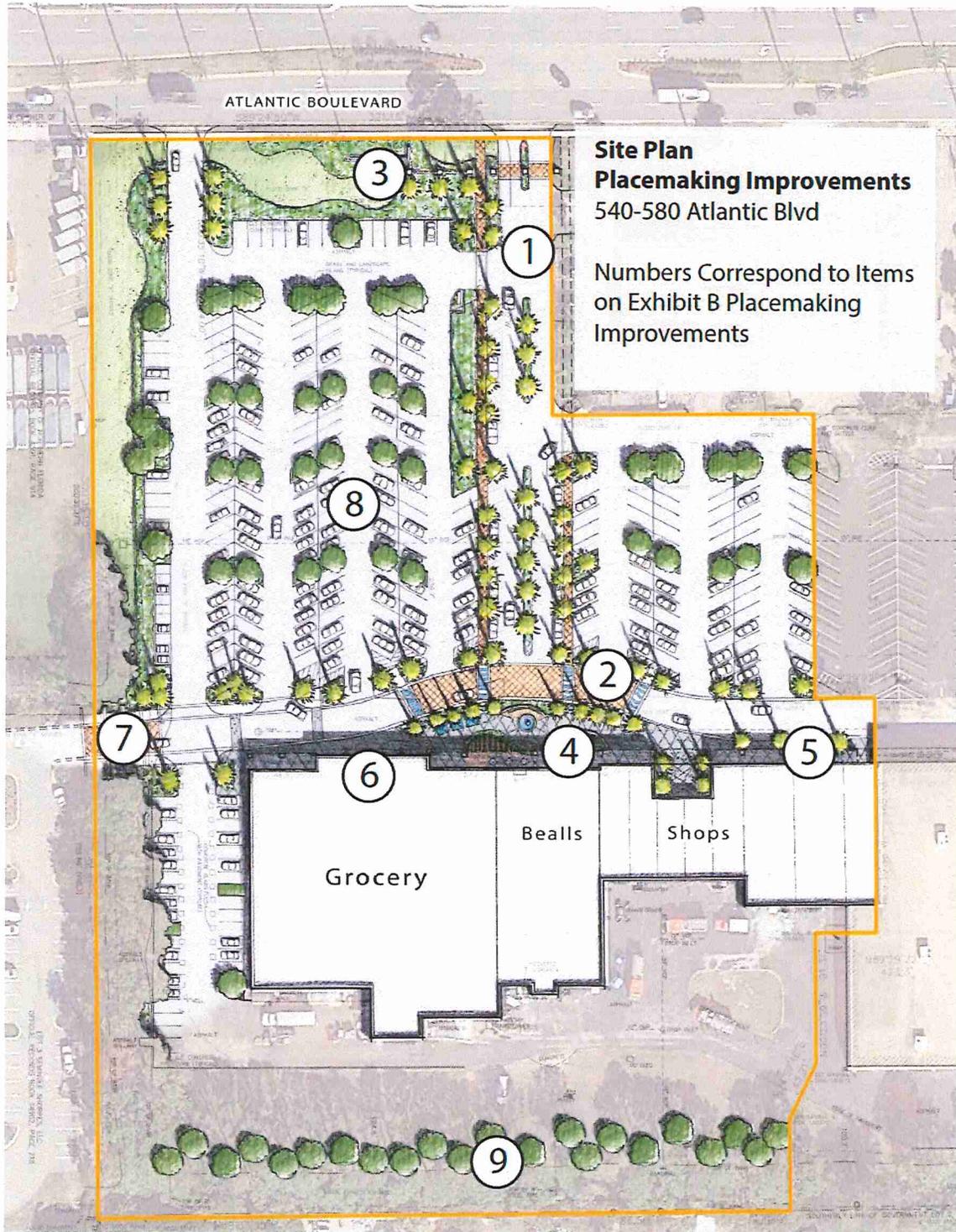
Recommended Motion

I move to deny application V20-01 540-580 Atlantic since the Applicant has not demonstrated the achievement of the criteria established within the Required findings needed to issue a variance within Section 27-147, which requires the demonstration of a unique hardship, and the proposal and request are not consistent with the Neptune Beach Comprehensive Plan Policy A.1.1.4. nor Land Development Code Table 27-229-1, Note 6.

EXHIBIT C

Conceptual Depictions of Placemaking Improvements

(This exhibit contains in-progress graphics of designs which continue to be refined)



View of New Arrival Pedestrian Plaza and Renovated Beaches Modern Façade



View of New Arrival Pedestrian Plaza



View of Transformation of Front Walk including New Outdoor Courtyard



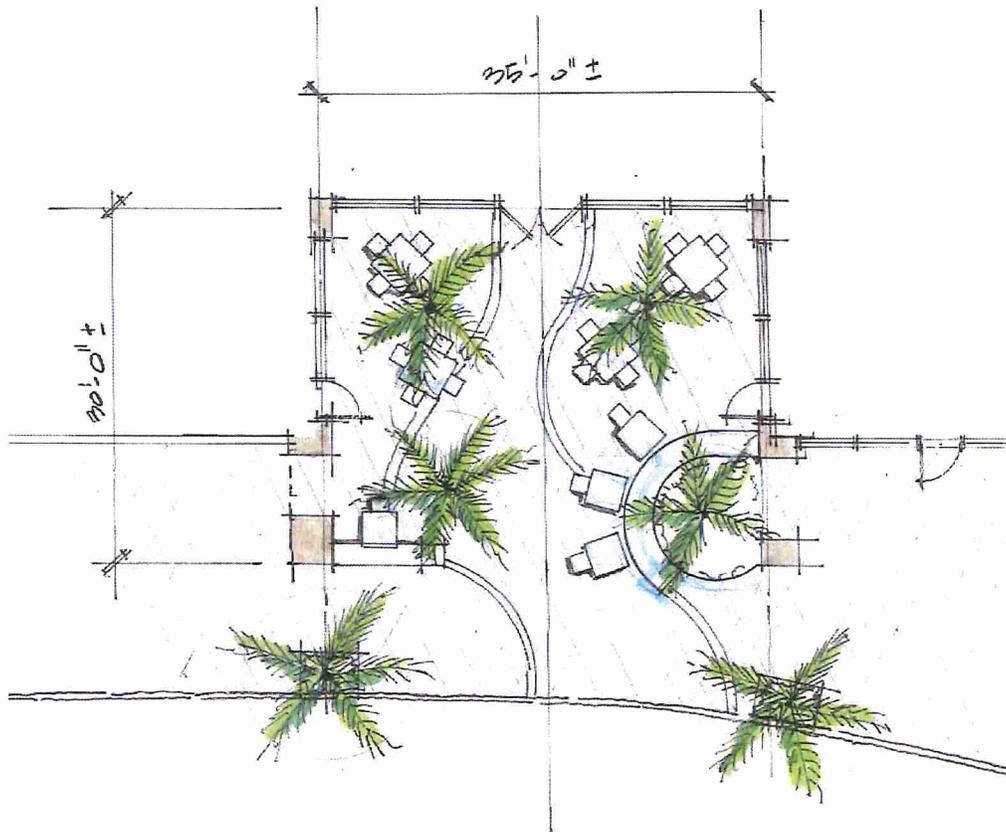
View of New Arrival Pedestrian Plaza



View of New Entry Monument Sign and Enhanced Landscape



Site Plan of New Outdoor Courtyard



View of New Arrival Pedestrian Plaza Showing “Surfboard” Trellis, Art on Building Wall and Water Feature



View of Beaches Modern Façade Renovation



**REVISED ATTACHMENT TO APPLICATION FOR ZONING VARIANCE
540-580 Atlantic Blvd., Parcel 172395-0130
Items 1, 2 and 3a-g**

***August 23, 2020 resubmittal changes are underlined.**

1. Explain the proposed relief being sought from the code(s):

The Applicant seeks relief from Note 6 to Table 27-229-1 to increase the maximum aggregate combined square footage from 60,000 to 89,500. Note 6 to Table 27-229-1 states: *“Furthermore, any retail stores, wholesale warehouses, or other freestanding buildings for any permitted use located within one thousand (1,000) linear feet of each other that operate under common business ownership or management, share a warehouse or distribution facility, or otherwise operate as an associated, integrated or cooperative business shall not exceed a combined sixty thousand (60,000) square feet of total gross floor area in aggregate.”*

2. Explain the purpose of the variance (if granted)?

The purpose of the variance is allow a second, smaller location for a Publix Super Market within Neptune Beach. Currently, a Publix is located at 630 Atlantic Blvd. The smaller Publix location will provide for a concept distinct from the existing Publix, including an emphasis on grab-and-go prepared foods, organic groceries, and a “POURS” station. For the reasons described below, the Applicant, Neptune Beach, FL Realty LLC, is seeking to enter a lease with Publix for the existing building located at 580 Atlantic Blvd. and is seeking to make architectural and placemaking improvements and provide additional vehicular and pedestrian connections to the 1977 shopping plaza.



The Applicant, the owner of 580 Atlantic Blvd., and Lucky's Market of Neptune Beach, FL entered into a long-term lease (with a 20 year initial term) dated as of September 1, 2015 for a 29,810 square foot Lucky's Market grocery store in Neptune Beach Plaza. Based upon the economic return of the executed long-term lease, the property owner expended significant funds to construct the improvements required by the lease, renovate the store and the remainder of the property, and reimburse the tenant for further improvements made by the tenant. Lucky's Market opened to the public in December 2016. In January 2020, Lucky's Market declared Chapter 11 bankruptcy and closed nearly all stores earlier this year, including the store at 580 Atlantic Blvd. As part of the bankruptcy process, Publix Super Markets, Inc. entered into an agreement to purchase and take assignment of the Neptune Beach, FL lease from Lucky's Market. This purchase and assignment have been approved by the Bankruptcy Court and Publix has already completed the purchase of Lucky's Market leases elsewhere in the state. However, City of Neptune Beach has advised Publix Super Markets, Inc. and the property owner that a Publix grocery store would violate the provisions of Table 27-229-1, specifically the final sentence of Note 6,¹ as the existing Lucky's Market grocery store at 580 Atlantic Blvd. is within 1,000 linear feet from an existing 54,310 square foot Publix grocery store at 630 Atlantic Blvd. which is leased by Publix from the owner(s) of that separate parcel. The owner(s) of 630 Atlantic Blvd. are different from and have no affiliations with the owner of 580 Atlantic Blvd. However, the cumulative floor area of two separate stores would exceed 60,000 square feet.

A variance is sought from Note 6 of Table 27-229-1 to increase the maximum aggregate combined square footage from 60,000 to 89,500, thereby allowing Publix to replace Lucky's Market as the tenant of the property owner and re-open a grocery store in the existing Lucky's Market premises at 580 Atlantic Blvd. The proposed store at 580 Atlantic Blvd. is distinct from the store at 630 Atlantic Blvd. as it presents a smaller format store (29,810 SF vs 54,310 SF) with features familiar to Lucky's Market shoppers, including an emphasis on prepared foods, organic groceries, and is planned to feature the "POURS" station, an in-store beverage bar

¹ Table 27-229-1, Note 6 of Article IV-B of the City of Neptune Beach Unified Land Development Regulations is a footnote to Sec. 27-238(a) which begins, "The impervious surface on any lot, or parcel of land, shall not exceed...". The applicant believes Table 27-229-1, Note 6 is not applicable across separate tax parcels and/or zoning lots. As such, the existing Lucky's Market on Parcel 172395-0130 would be in compliance with Table 27-229-1 if Publix Super Markets, Inc., or any affiliate of same, occupies the former Lucky's Market store as a "Publix" grocery store (or other grocery store tradename), even though there is a "Publix" grocery store on a separate tax parcel within 1,000 linear feet located immediately to the west. However, the City of Neptune Beach has advised that Table 27-229-1, Note 6 is applicable across separate tax parcels and/or zoning lots and a variance is required.

concept from Publix's GreenWise branded-stores where shoppers can order various drinks.

The variance will allow for the second Publix location to serve as a focused and distinct concept from the traditional existing Publix. The variance is proposed to be conditioned upon the approval of a Development Agreement which outlines and commits the landlord several architectural, placemaking, and mobility improvements. One such improvement which would extend Lemon Street to the parcel to the west with the existing Publix for vehicular and pedestrian access. This new interconnection will not only allow for vehicular traffic to travel to A1A without needing to travel upon Atlantic Blvd., but would also allow for an overall sense of place and natural connection to occur between the two shopping plazas.

Failure to grant the proposed variance will cause Publix to cancel its court-approved agreement to purchase the Neptune Beach lease and control of the future of the lease will return to Lucky's Market. Through the bankruptcy process Lucky's Market may then choose to reject the lease. Rejection would cause the lease terminated immediately, far earlier than the September 30, 2036 end of the initial term under the lease. The rejection of the lease due to the denial of the variance for Publix would be an exceptional hardship to the property owner and would result in a vacant anchor store, prevent the owner from obtaining an economic return on the investments it made in the lease, and would harm the property owner's other tenants who depend on the customer activity generated by the anchor tenant in the shopping center.

Council records demonstrate that the intent of Council in drafting Note 6 in the spring of 2006 was to prevent a Big Box retailer, specifically Walmart, from constructing a single store exceeding 60,000 SF in Neptune Beach. It was not the intent of Council to prohibit Publix from operating a separate store on a distinct parcel and within a separate shopping plaza at 580 Atlantic Blvd. Per the meeting notes from the November 19, 2007 Council meeting on the intent of Ordinance 2006-13 (which added Note 6 to Table 27-229-1), Councilor Weldon, the sponsor of the Ordinance, made the following statement: "Councilor Weldon stated the intent of the Ordinance was to limit the amount **a single store from exceeding 60,000 square feet...**" (emphasis added).

The proposed variance conditioned upon the approval of the Development Agreement continues to serve the intent and purpose of the Code. The second Publix location will serve as a focused and distinct concept from the traditional existing Publix. The improvements proposed under the Development Agreement

will demonstrate this distinction by providing outdoor spaces to enjoy food and drink and by encouraging pedestrian use through outdoor seating/resting areas, pedestrian scale lighting, elimination of parking, addition of parking islands, traffic calming measures, and increased landscaping and green spaces.



Existing Conditions



Concept Plan under Development Agreement



Existing Conditions



Concept Plan under Development Agreement

The approval of the Development Agreement is proposed to be a condition of the variance. In addition to the above, the Development Agreement calls for the following improvements:

- New entry arrival street with landscaped center median, parallel on-street parking, and new pedestrian sidewalk linking Atlantic Blvd. with the shopping plaza;
- New entry monument sign and enhanced landscaping along Atlantic Blvd;
- The creation of a centerpiece pedestrian plaza and outdoor space with furniture, trees, planting beds, hardscape, and public art features;
- A Beaches Modern façade with an emphasis on white painted stucco and natural wood tones;
- A Beaches Buggy pick-up/drop-off location; and
- New and expanded golf cart and bicycle parking.

3. Based on the required findings needed to issue a variance in Section 27-147 explain the following:

(1) The property has unique and peculiar circumstances, which create an exceptional and unique hardship. For the purpose of this determination, the unique hardship shall be unique to the parcel and not shared by other property owners in the same zoning district.

The hardship is the result of unique and peculiar circumstances which are unique to the parcel. First, hardship is created because a second Publix location cannot feasibly be located in on any other parcel within the City of Neptune Beach. Second, hardship is created by the current and forecasted market conditions for brick-and-mortar retailers. Third, hardship is created because the Code is preventing two very different store concepts simply because they are operated by the same parent company. Fourth and finally, a hardship is created because the proposed Publix will serve a different geographic location.

- A. Hardship is created because a second Publix location cannot feasibly be located in on any other parcel within the City of Neptune Beach.

A parcel analysis was performed to determine all possible locations for a second Publix location within the City of Neptune Beach, under the strictest reading of Note 6 of Table 27-229-1. Overall, the parcel analysis shows that Publix cannot currently be accommodated in any other location within the City of Neptune.

The parcel analysis showed that of the 33 parcels zoned C-3, only eight parcels are large enough to accommodate an approximately 30,000 SF supermarket with associated parking and required open space (minimum 2 acres). Of those eight parcels, ONLY two are NOT within 1,000 linear feet of the existing Publix. Of those two parcels, neither have vacancies. See **Exhibit 1** showing a map of the existing Publix and the sole two C-3 parcels outside of the 1,000 linear foot radius that could accommodate a 30,000 SF Publix.

Additionally, the parcel analysis reviewed parcels within the C-2 zoning district. Of the 73 parcels zoned C-2, only two parcels are large enough to accommodate an approximately 30,000 SF supermarket with associated parking and required open space (minimum 2.13 acres). While both of those parcels are not within 1,000 linear feet of the existing Publix, they are both fully occupied. See **Exhibit 2** showing a map of the existing Publix and the sole two C-2 parcels that could accommodate a 30,000 SF Publix.

The parcel analysis further reviewed parcels within both the C-2 and C-3 zoning districts that could accommodate a 60,000 SF Publix. Only one parcel, the existing Winn-Dixie site, could accommodate a 60,000 SF Publix. This significant parcel limitation is a direct result of the 1,000 linear foot prohibition from the existing Publix. Overall, a strict reading of Note 6 of Table 27-229-1 significantly limits the locations available within the City to place another small Publix (30,000 SF) to just four parcels, none of which have vacancies. Despite the lack of available

parcels, the community demand is high for a second Publix location within Neptune Beach.

Additionally, the parcel contains an existing lease for a 29,810 SF retail grocery store, a permitted use, and the tenant under that long-term lease filed for Chapter 11 bankruptcy protection in January 2020. The tenant entered into an agreement with and received Bankruptcy Court approval for an assignment of the existing lease with the property owner to Publix Super Markets, Inc. As noted above, the existing 54,310 SF store operated by Publix Super Markets, Inc. significantly limits the availability of parcels under a strict reading of Note 6 of Table 27-229-1. The combination of these circumstances has created an exceptional and unique hardship that, absent the granting of the proposed variance, will prohibit Publix from taking assignment of the lease and enable Lucky's Market to reject and terminate the long-term lease with property owner. The strict application of Note 6 of Table 27-229-1 creates a hardship that is unique to this parcel and not shared by other property owners in the same zoning district.

B. Hardship is created by the current and forecasted market conditions for brick-and-mortar retailers.

A record number of retail stores are expected to close permanently this year. The COVID-19 pandemic has accelerated an already declining industry. As internet sales take over for non-perishable goods, the only retail industry that looks with withstand the market shift is supermarkets. Even grocery stores, however, are falling victim to the current economic crisis.

Coresight Research, a leading market-based research company focused on retail trends, predicts between 20,000 and 25,000 retail store closings this year alone—the most closings ever. Retailers which have filed for bankruptcy include not only Lucky's Market, but also Earth Fare, Stein Mart, Pier 1 Imports, Tuesday Morning, and JCPenney. Additionally, the following retailers have announced intentions to close hundreds of retail locations permanently: GNC; Victoria's Secret; Men's Wearhouse; GameStop; Signet (Kay Jewelers, Zales, Jared the Galleria of Jewelry, etc.); Bed Bath & Beyond; AT&T; Chico's; Walgreens; CVS; Macy's; Office Depot; and Bath & Body Works. (See: <https://coresight.com/>; <https://moneywise.com/a/chains-closing-the-most-stores-in-2020>; <https://www.cnbc.com/2020/06/09/coresight-predicts-record-25000-retail-stores-will-close-in-2020.html>.)

Forecasters say that the retail industry has been forever changed. Given this seismic shift of the retail industry resulting from the internet age and drastically accelerated by the COVID-19 pandemic, shopping plazas and malls are finding it more and more difficult to retain tenants.

Publix has a superb reputation and strong financials. A viable alternative to Publix simply does not exist in the current and foreseeable market conditions for the 1977 purpose-built supermarket. Without Publix, the plaza is at risk of remaining mostly vacant due to these market conditions. A vacant anchor tenant will serve as inefficient use of space within the City and cause the City to lose significant tax dollars. A vacant anchor tenant may even trigger blight with spillover effects onto neighboring parcels. Accordingly, the forever-changed retail market conditions is a valid hardship on the Applicant and principles of fairness urge for the granting of a variance.

C. *Hardship is created because the Code is preventing two very different store concepts simply because they are operated by the same parent company.*

The second Publix location is not a standard Publix supermarket. The second location is significantly smaller in footprint to the existing traditional Publix. The second location will focus on prepared food in a grab-and-go concept. The second location will also have an emphasis on organic foods and a POURS station to allow customers to enjoy beverages while shopping.

Even though the second location will be operating under the Publix brand, the offerings will be different than a traditional supermarket. In fact, the offerings provide a greater variety than if a Winn-Dixie or other major traditional supermarket brand were to move into the location. These two store different concepts should be accommodated within the Code and a failure to do so results in a hardship.

D. *Hardship is created because the proposed Publix will serve a different geographic demographic and location.*

As it exists today, the existing traditional Publix has access only to Atlantic Blvd. and tends to serve those residing in west Neptune Beach and east Jacksonville. The second Publix location is anticipated to serve those residing near A1A, south Neptune Beach, and downtown Neptune Beach through Lemon Street. The variance is also proposed to be conditioned upon the approval of the Development

Agreement. One of the major impacts of the Development Agreement is to provide vehicular and pedestrian interconnection between the two shopping plazas. Accordingly, approval of the variance would expand convenient access to the traditional Publix to more City residents. The Development Agreement would allow the two stores to work in harmony. The Development Agreement also highlights the differences in these store concepts as outdoor seating and a pedestrian plaza with ample bike racks are essential to the second Publix's concept.

Overall, the property has unique and peculiar circumstances, which create an exceptional and unique hardship which is not shared by other property owners within the same zoning district.

(2) The proposed variance is the minimum necessary to allow the reasonable use of the parcel of land.

The proposed variance is requesting the minimum additional square footage necessary to allow Publix to replace Lucky's Market as the tenant without any expansion of the existing Lucky's Market footprint. The denial of the proposed variance would prohibit Publix from taking assignment of the lease and enable Lucky's Market to reject their lease with property owner. The rejection of the lease would terminate the lease, despite approximately 16 years of term remaining per the terms of the lease. Failure to grant the proposed variance would deny the property owner the reasonable use of its land as the property owner would be permanently unable to attain its reasonable investment-backed expectations from the existing lease. A viable alternative to Publix simply does not exist in the current and foreseeable market conditions. Without Publix, the plaza is at risk of remaining significantly vacant due to these market conditions.

The Development Agreement works to minimize the variance as well, in that the intent of the Improvements is to minimize potential and perceived impacts due to the redevelopment for a Publix.

(3) The proposed variance would not adversely affect adjacent and nearby properties or the public in general.

The proposed variance does not alter the existing, permitted use of the property, a retail grocery anchor store, or alter any physical characteristics of the property from the existing condition. Therefore, the proposed variance would not adversely affect adjacent and nearby properties or the public in general. Further, the re-opening of a grocery store at the property, which is the purpose of the variance, would create

positive benefits to the nearby properties and the public in general. Granting of the variance support Neptune Beach Comprehensive Plan **Goal A.1** and **Objective A.1.3 Redevelopment and Infill Development** by encouraging infill redevelopment and avoiding blighting influences. The opening of a Publix grocery store at 580 Atlantic Blvd. is anticipated to create 50 additional permanent jobs, in addition to construction jobs, will have a beneficial impact on tax collection, and provide an essential service to public.

The Development Agreement as a condition of approval will also serve to increase nearby property values and to enhance the value to the public in general.. The improvements outlined within the Development Agreement will provide an overall facelift and modernization for the 1977 plaza and will serve to provide enhanced landscaping and pedestrian access and spaces. Moreover, the public in general will benefit by having an additional, unique grocery option in the community.

(4) The proposed variance will not substantially diminish property values in, nor alter the essential character of, the area surrounding the site.

The proposed variance does not alter the existing, permitted use, a retail grocery anchor store, or alter any physical characteristics of the property from the existing condition. Therefore, the proposed variance would not substantially diminish property values in, nor alter the essential character of, the areas surrounding the site. Further, the re-opening of a store, particularly an industry-leading grocery store with strong finances and significant history, provides for long-term stability in property values and further supports **Objective A.1.3 Redevelopment and Infill Development** by encouraging infill development.

The Development Agreement will enhance, not alter the essential character of the area surrounding site by providing important placemaking enhancements.

(5) The effect of the proposed variance is in harmony with the general intent of the ULDC and the specific intent of the relevant subject area(s) of the ULDC.

The property is located in the Commercial C-3 Zoning District which corresponds to the Commercial High designation on the adopted Future Land Use Map. According to the Uniform Land Development Regulations **Sec. 27-222. - Purpose and Intent of Zoning Districts**, *“The commercial C-3, zoning district is intended to provide retail sales and services that serve the overall community. This district corresponds to the commercial high designation on the adopted future land use*

map.” The proposed variance is in harmony with the general intent of the Uniform Land Development Regulations by enabling the re-opening of a store which “provide[s] retail sales and services that serve the overall community” and, in particular, provide essential grocery service to the community.

Further, the Development Agreement will serve to provide a benefit to the community by providing significant improvements to the property and enhancing the vehicular and pedestrian interconnectivity of the property. Granting the variance conditioned upon approval of the Development Agreement is in harmony with the general intent of the Code and provides a communitywide benefit.

(6) The need for the variance has not been created by the actions of the property owner or developer nor is the result of mere disregard for the provisions from which relief is sought.

The need for the variance has arisen from a unique and peculiar circumstances relating to the bankruptcy of the tenant under an existing lease with the property owner. The need for the variance has not been created by the actions of the property owner.

A viable alternative to Publix simply does not exist in the current and foreseeable market conditions. Without Publix, the purpose-built supermarket location that has existed since 1977 is at risk of remaining vacant due to these market conditions, leaving the plaza without an anchor tenant. The Development Agreement ensures that there is no “disregard” for the provisions from which relief is sought. Instead, it supports those provisions by ensuring that the community gains an additional, unique grocery option in the community.

(7) Granting the variance will not confer upon the applicant any special privilege that is denied by the ULDC to other lands, buildings, or structures in the same zoning district.

The need for the variance has arisen from a unique and peculiar circumstances that have created a unique hardship for this parcel alone. Granting the variance will not confer upon the property owner any special privilege that is denied to other lands, buildings, or structures in the same zoning district. All lands within the C-2 and C-3 zoning districts are permitted to have a grocery store as a permitted use.

Further, the Development Agreement will serve to provide a benefit to the community by providing significant improvements to the property and enhancing

the vehicular and pedestrian interconnectivity of the property. Granting the variance conditioned upon approval of the Development Agreement provides a distinction between this property and others within the same zoning district.

Original Application

APPLICATION FOR ZONING VARIANCE



TO THE CITY OF NEPTUNE BEACH COMMUNITY DEVELOPMENT DEPARTMENT
116 FIRST STREET
NEPTUNE BEACH, FLORIDA 32266-6140
PH: 270-2400 Ext 34 FAX: 270-2432

IMPORTANT NOTE: THE COMMUNITY DEVELOPMENT BOARD, IN CONSIDERING YOUR PETITION, IS ACTING IN A QUASI-JUDICIAL CAPACITY AND ANY DISCUSSION WITH MEMBERS, OTHER THAN AT A PUBLIC MEETING IS PROHIBITED AND ANY SUCH CONTACT MAY VOID YOUR PETITION.

Date Filed: <u>MAY 11, 2020</u>	Zoning District: <u>C-3</u>	Real Estate Parcel Number: <u>172395-0130</u>
Name & Address of Owner of Record: <u>NEPTUNE BEACH, FL REALTY LLC</u> <u>295 MADISON AVE. 37TH FLOOR</u> <u>NEW YORK, NY 10017</u>		Property Address: <u>540-580 ATLANTIC BLVD.</u> <u>NEPTUNE BEACH, FL 32266</u>
Contact phone number# <u>240-888-9137</u>	Number of units on property <u>8 COMMERCIAL UNITS</u>	
e-mail address <u>agreene@tlmltd.com</u>	Have any previous applications for variance been filed concerning this property? <u>NONE KNOWN</u>	
If Yes, Give Date: _____		
Section 27-15 of the Unified Land Development Code (ULDC) defines a variance as follows: <i>Grant of relief authorized by the board of appeals, or the city council upon recommendation by the planning and development review board, that relaxes specified provisions of the Code which will not be contrary to the public interest and that meets the requirements set forth in article III, division 8 of this Code.</i>		
1. Explain the proposed relief being sought from the code(s): <u>SEE ATTACHED</u>		
2. Explain the purpose of the variance (if granted)? <u>SEE ATTACHED</u>		
3. Based on the required findings needed to issue a variance in Section 27-147 explain the following (attach additional sheets as necessary):		

A. How does your property have unique and peculiar circumstances, which create an exceptional and unique hardship? Unique hardship shall be unique to the parcel and not shared by other property owners. The hardship cannot be created by or be the result of the property owner's own action.

SEE ATTACHED

B. How is the proposed variance the minimum necessary to allow reasonable use of the property?

SEE ATTACHED

C. Indicate how the proposed variance will not adversely affect adjacent or nearby properties or the public in general.

SEE ATTACHED

D. Indicate how the proposed variance will not diminish property values nor alter the character of the area.

SEE ATTACHED

E. Explain how the proposed variance is in harmony with the general intent of the Unified Land Development Code.

SEE ATTACHED

F. Explain how the need for the proposed variance has not been created by you or the developer?

SEE ATTACHED

G. Indicate how granting of the proposed variance will not confer upon you any special privileges that is denied by the code to other lands, buildings or structures in the same zoning district.

SEE ATTACHED

4. **Required Attachments**-Applicant must include the following: **(INCOMPLETE PACKAGES WILL BE RETURNED)**

A. 8 1/2" by 11" overhead site plan drawn to an appropriate scale showing the location of all existing and proposed improvements to the property and including all setback measurements from property lines.
WHICH HAS NOT BEEN REDUCED.

B. Survey of the property certified by licensed surveyor dated within one year of application date.
WHICH HAS NOT BEEN REDUCED.

C. Copy of Deed

D. Pictures of the property as it currently exists

5. Letter of authorization for agent to make application (Required only if not made by owner)

6. **NON-REFUNDABLE FEE:**
\$300.00 (Residentially zoning property) / \$500.00 (Commercially Zoned Property)

NO APPLICATION WILL BE ACCEPTED UNTIL ALL THE REQUESTED INFORMATION HAS BEEN SUPPLIED AND THE REQUIRED FEE HAS BEEN PAID. THE ACCEPTANCE OF AN APPLICATION DOES NOT GUARANTEE ITS APPROVAL BY THE COMMUNITY DEVELOPMENT BOARD. THE APPLICANT AND SURROUNDING PROPERTIES WILL BE NOTIFIED OF THE PUBLIC HEARING BY MAIL AND POSTING OF THE PROPERTY. THE APPLICANT OR HIS/HER AUTHORIZED AGENT MUST BE PRESENT AT THE MEETING.

***If a residential zoning variance is granted, then a 30 day wait period must pass before any required building permits can be released, in order to allow time for appeals.**

***If a commercially zoned variance is granted by council, then a 30 day wait period must pass before any required building permits can be released, in order to allow time for appeals.**

I HEREBY CERTIFY THAT I HAVE READ AND UNDERSTAND THE INFORMATION CONTAINED IN THIS APPLICATION. THAT I AM THE PROPERTY OWNER OR AUTHORIZED AGENT FOR THE OWNER WITH AUTHORITY TO MAKE THIS APPLICATION, AND THAT ALL OF THE INFORMATION CONTAINED IN THIS APPLICATION, INCLUDING THE ATTACHMENTS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I HEREBY APPLY FOR A ZONING VARIANCE AS REQUESTED.

NAME (S) OF PROPERTY OWNER (S)

NEPTUNE BEACH FL REALTY LLC

NAME OF AUTHORIZED AGENT

ADDRESS OF PROPERTY OWNER

295 MADISON AVE, 37TH FLOOR
NEW YORK, NY 10017

ADDRESS OF AUTHORIZED AGENT

SIGNATURE OF OWNER OR AUTHORIZED AGENT:

BY: TKM REALTY CORP. MANAGER

Samuel J. Wehl

BY: RONALD OEHLE

ITS PRESIDENT

BELOW THIS LINE FOR CITY USE ONLY.

BOARD PUBLIC HEARING DATE:

BOARD DECISION:

APPROVAL _____ DENIAL _____

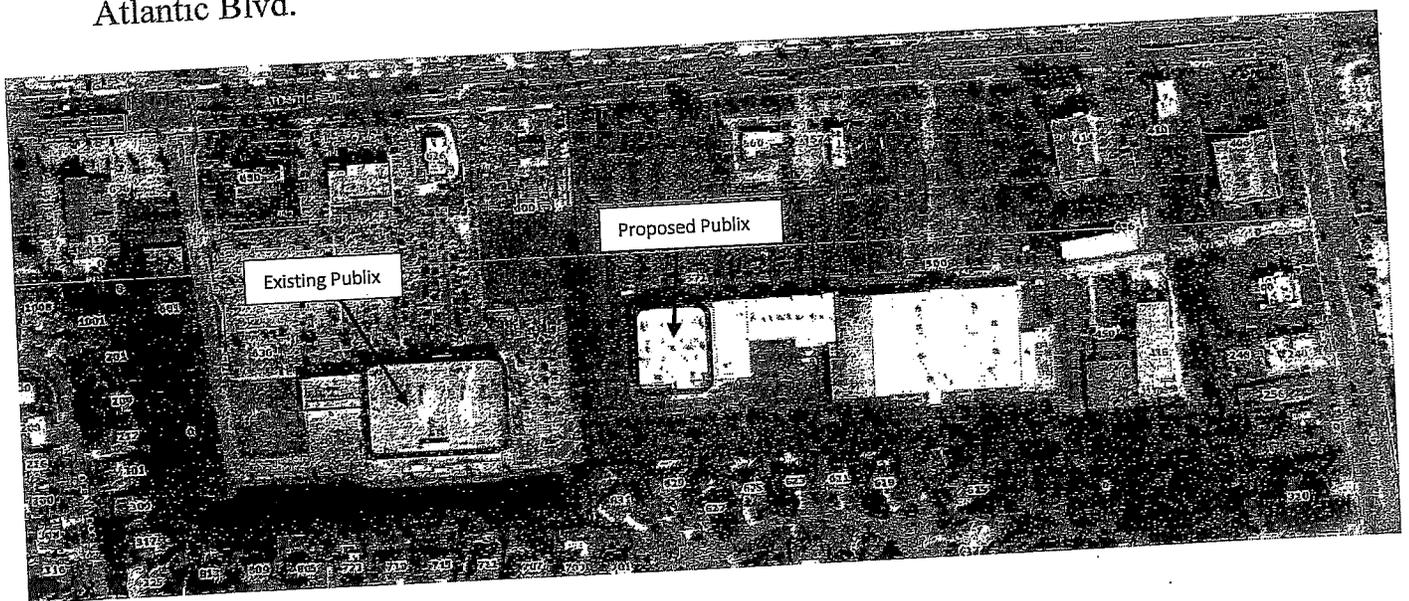
ATTACHMENT TO APPLICATION FOR ZONING VARIANCE
540-580 Atlantic Blvd., Parcel 172395-0130
Items 1, 2 and 3a-g

1. Explain the proposed relief being sought from the code(s):

The Applicant seeks relief from Note 6 to Table 27-229-1 to increase the maximum aggregate combined square footage from 60,000 to 89,500. Note 6 to Table 27-229-1 states: *"Furthermore, any retail stores, wholesale warehouses, or other freestanding buildings for any permitted use located within one thousand (1,000) linear feet of each other that operate under common business ownership or management, share a warehouse or distribution facility, or otherwise operate as an associated, integrated or cooperative business shall not exceed a combined sixty thousand (60,000) square feet of total gross floor area in aggregate."*

2. Explain the purpose of the variance (if granted)?

The purpose of the variance is allow a second, smaller location for a Publix Super Market within Neptune Beach. Currently, a Publix is located at 630 Atlantic Blvd. For the reasons described below, the Applicant, Neptune Beach, FL Realty LLC, is seeking to enter a lease with Publix for the existing building located at 580 Atlantic Blvd.



The Applicant, the owner of 580 Atlantic Blvd., and Lucky's Market of Neptune Beach, FL entered into a long-term lease (with a 20 year initial term) dated as of September 1, 2015 for a 29,810 square foot Lucky's Market grocery store in Neptune Beach Plaza. Based upon the economic return of the executed long-term lease, the property owner expended significant funds to construct the improvements required by the lease, renovate the store and the remainder of the property, and reimburse the tenant for further improvements made by the tenant. Lucky's Market opened to the public in December 2016. In January 2020, Lucky's Market declared Chapter 11 bankruptcy and closed nearly all stores earlier this year, including the store at 580 Atlantic Blvd. As part of the bankruptcy process, Publix Super Markets, Inc. entered into an agreement to purchase and take assignment of the Neptune Beach, FL lease from Lucky's Market. This purchase and assignment have been approved by the Bankruptcy Court and Publix has already completed the purchase of Lucky's Market leases elsewhere in the state. However, City of Neptune Beach has advised Publix Super Markets, Inc. and the property owner that a Publix grocery store would violate the provisions of Table 27-229-1, specifically the final sentence of Note 6,¹ as the existing Lucky's Market grocery store at 580 Atlantic Blvd. is within 1,000 linear feet from an existing 54,310 square foot Publix grocery store at 630 Atlantic Blvd. which is leased by Publix from the owner(s) of that separate parcel. The owner(s) of 630 Atlantic Blvd. are different from and have no affiliations with the owner of 580 Atlantic Blvd. However, the cumulative floor area of two separate stores would exceed 60,000 square feet.

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concept from Publix's GreenWise branded-stores where shoppers can order various drinks.

Failure to grant the proposed variance will cause Publix to cancel its court-approved agreement to purchase the Neptune Beach lease and control of the future of the lease will return to Lucky's Market. Through the bankruptcy process Lucky's Market may then choose to reject the lease. Rejection would cause the lease terminated immediately, far earlier than the September 30, 2036 end of the initial term under the lease. The rejection of the lease due to the denial of the variance for Publix would be an exceptional hardship to the property owner and would result in a vacant anchor store, prevent the owner from obtaining an economic return on the investments it made in the lease, and would harm the property owner's other tenants who depend on the customer activity generated by the anchor tenant in the shopping center.

Council records demonstrate that the intent of Council in drafting Note 6 in the spring of 2006 was to prevent a Big Box retailer, specifically Walmart, from constructing a single store exceeding 60,000 SF in Neptune Beach. It was not the intent of Council to prohibit Publix from operating a separate store on a distinct parcel and within a separate shopping plaza at 580 Atlantic Blvd. Per the meeting notes from the November 19, 2007 Council meeting on the intent of Ordinance 2006-13 (which added Note 6 to Table 27-229-1), Councilor Weldon, the sponsor of the Ordinance, made the following statement: "Councilor Weldon stated the intent of the Ordinance was to limit the amount a single store from exceeding 60,000 square feet..." (emphasis added).

3. Based on the required findings needed to issue a variance in Section 27-147 explain the following:

(1) The property has unique and peculiar circumstances, which create an exceptional and unique hardship. For the purpose of this determination, the unique hardship shall be unique to the parcel and not shared by other property owners in the same zoning district.

The hardship is the result of unique and peculiar circumstances which are unique to the parcel. A parcel analysis was performed to determine all possible locations for a second Publix location within the City of Neptune Beach, under the strictest reading of Note 6 of Table 27-229-1. Overall, the parcel analysis shows that Publix

cannot currently be accommodated in any other location within the City of Neptune.

The parcel analysis showed that of the 33 parcels zoned C-3, only eight parcels are large enough to accommodate an approximately 30,000 SF supermarket with associated parking and required open space (minimum 2 acres). Of those eight parcels, ONLY two are NOT within 1,000 linear feet of the existing Publix. Of those two parcels, neither have vacancies. See **Exhibit 1** showing a map of the existing Publix and the sole two C-3 parcels outside of the 1,000 linear foot radius that could accommodate a 30,000 SF Publix.

Additionally, the parcel analysis reviewed parcels within the C-2 zoning district. Of the 73 parcels zoned C-2, only two parcels are large enough to accommodate an approximately 30,000 SF supermarket with associated parking and required open space (minimum 2.13 acres). While both of those parcels are not within 1,000 linear feet of the existing Publix, they are both fully occupied. See **Exhibit 2** showing a map of the existing Publix and the sole two C-2 parcels that could accommodate a 30,000 SF Publix.

The parcel analysis further reviewed parcels within both the C-2 and C-3 zoning districts that could accommodate a 60,000 SF Publix. Only one parcel, the existing Winn-Dixie site, could accommodate a 60,000 SF Publix. This significant parcel limitation is a direct result of the 1,000 linear foot prohibition from the existing Publix. Overall, a strict reading of Note 6 of Table 27-229-1 significantly limits the locations available within the City to place another small Publix (30,000 SF) to just four parcels, none of which have vacancies. Despite the lack of available parcels, the community demand is high for a second Publix location within Neptune Beach.

Additionally, the parcel contains an existing lease for a 29,810 SF retail grocery store, a permitted use, and the tenant under that long-term lease filed for Chapter 11 bankruptcy protection in January 2020. The tenant entered into an agreement with and received Bankruptcy Court approval for an assignment of the existing lease with the property owner to Publix Super Markets, Inc. As noted above, the existing 54,310 SF store operated by Publix Super Markets, Inc. significantly limits the availability of parcels under a strict reading of Note 6 of Table 27-229-1. The combination of these circumstances has created an exceptional and unique hardship that, absent the granting of the proposed variance, will prohibit Publix from taking assignment of the lease and enable Lucky's Market to reject and terminate the long-term lease with property owner. The strict application of Note 6 of Table 27-229-

1 creates a hardship that is unique to this parcel and not shared by other property owners in the same zoning district.

(2) The proposed variance is the minimum necessary to allow the reasonable use of the parcel of land.

The proposed variance is requesting the minimum additional square footage necessary to allow Publix to replace Lucky's Market as the tenant without any expansion of the existing Lucky's Market footprint. The denial of the proposed variance would prohibit Publix from taking assignment of the lease and enable Lucky's Market to reject their lease with property owner. The rejection of the lease would terminate the lease, despite approximately 16 years of term remaining per the terms of the lease. Failure to grant the proposed variance would deny the property owner the reasonable use of its land as the property owner would be permanently unable to attain its reasonable investment-backed expectations from the existing lease.

(3) The proposed variance would not adversely affect adjacent and nearby properties or the public in general.

The proposed variance does not alter the existing, permitted use of the property, a retail grocery anchor store, or alter any physical characteristics of the property from the existing condition. Therefore, the proposed variance would not adversely affect adjacent and nearby properties or the public in general. Further, the re-opening of a grocery store at the property, which is the purpose of the variance, would create positive benefits to the nearby properties and the public in general. Granting of the variance support Neptune Beach Comprehensive Plan **Goal A.1 and Objective A.1.3 Redevelopment and Infill Development** by encouraging infill redevelopment and avoiding blighting influences. The opening of a Publix grocery store at 580 Atlantic Blvd. is anticipated to create 50 additional permanent jobs, in addition to construction jobs, will have a beneficial impact on tax collection, and provide an essential service to public.

(4) The proposed variance will not substantially diminish property values in, nor alter the essential character of, the area surrounding the site.

The proposed variance does not alter the existing, permitted use, a retail grocery anchor store, or alter any physical characteristics of the property from the existing condition. Therefore, the proposed variance would not substantially diminish property values in, nor alter the essential character of, the areas surrounding the

site. Further, the re-opening of a store, particularly an industry-leading grocery store with strong finances and significant history, provides for long-term stability in property values and further supports **Objective A.1.3 Redevelopment and Infill Development** by encouraging infill development.

(5) The effect of the proposed variance is in harmony with the general intent of the ULDC and the specific intent of the relevant subject area(s) of the ULDC.

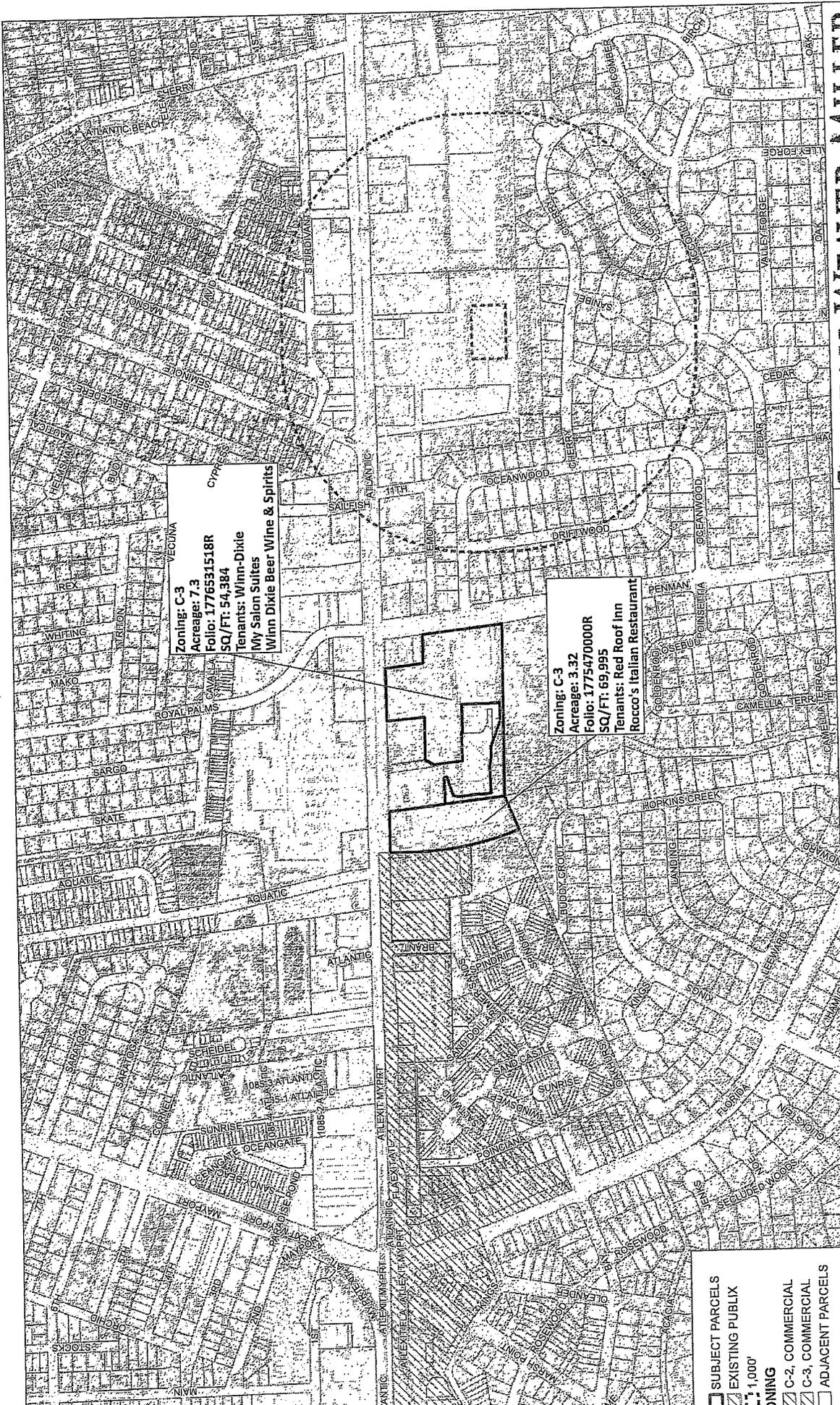
The property is located in the Commercial C-3 Zoning District which corresponds to the Commercial High designation on the adopted Future Land Use Map. According to the Uniform Land Development Regulations **Sec. 27-222. - Purpose and Intent of Zoning Districts**, *"The commercial C-3, zoning district is intended to provide retail sales and services that serve the overall community. This district corresponds to the commercial high designation on the adopted future land use map."* The proposed variance is in harmony with the general intent of the Uniform Land Development Regulations by enabling the re-opening of a store which "provide[s] retail sales and services that serve the overall community" and, in particular, provide essential grocery service to the community.

(6) The need for the variance has not been created by the actions of the property owner or developer nor is the result of mere disregard for the provisions from which relief is sought.

The need for the variance has arisen from a unique and peculiar circumstances relating to the bankruptcy of the tenant under an existing lease with the property owner. The need for the variance has not been created by the actions of the property owner.

(7) Granting the variance will not confer upon the applicant any special privilege that is denied by the ULDC to other lands, buildings, or structures in the same zoning district.

The need for the variance has arisen from a unique and peculiar circumstances that have a created a unique hardship for this parcel alone. Granting the variance will not confer upon the property owner any special privilege that is denied to other lands, buildings, or structures in the same zoning district. All lands within the C-2 and C-3 zoning districts are permitted to have a grocery store as a permitted use.



Zoning: C-3
Acres: 7.3
Folio: 1776531518R
SQ/Ft: 54,384
Tenants: Winn-Dixie
My Salon Suites
Winn Dixie Beer Wine & Spirits

Zoning: C-3
Acres: 3.32
Folio: 1775470000R
SQ/Ft: 69,995
Tenants: Red Roof Inn
Rocco's Italian Restaurant

- SUBJECT PARCELS
- EXISTING PUBLIC
- 1,000'
- ZONING**
- C-2, COMMERCIAL
- C-3, COMMERCIAL
- ADJACENT PARCELS

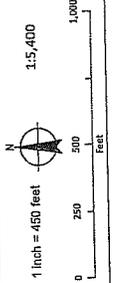


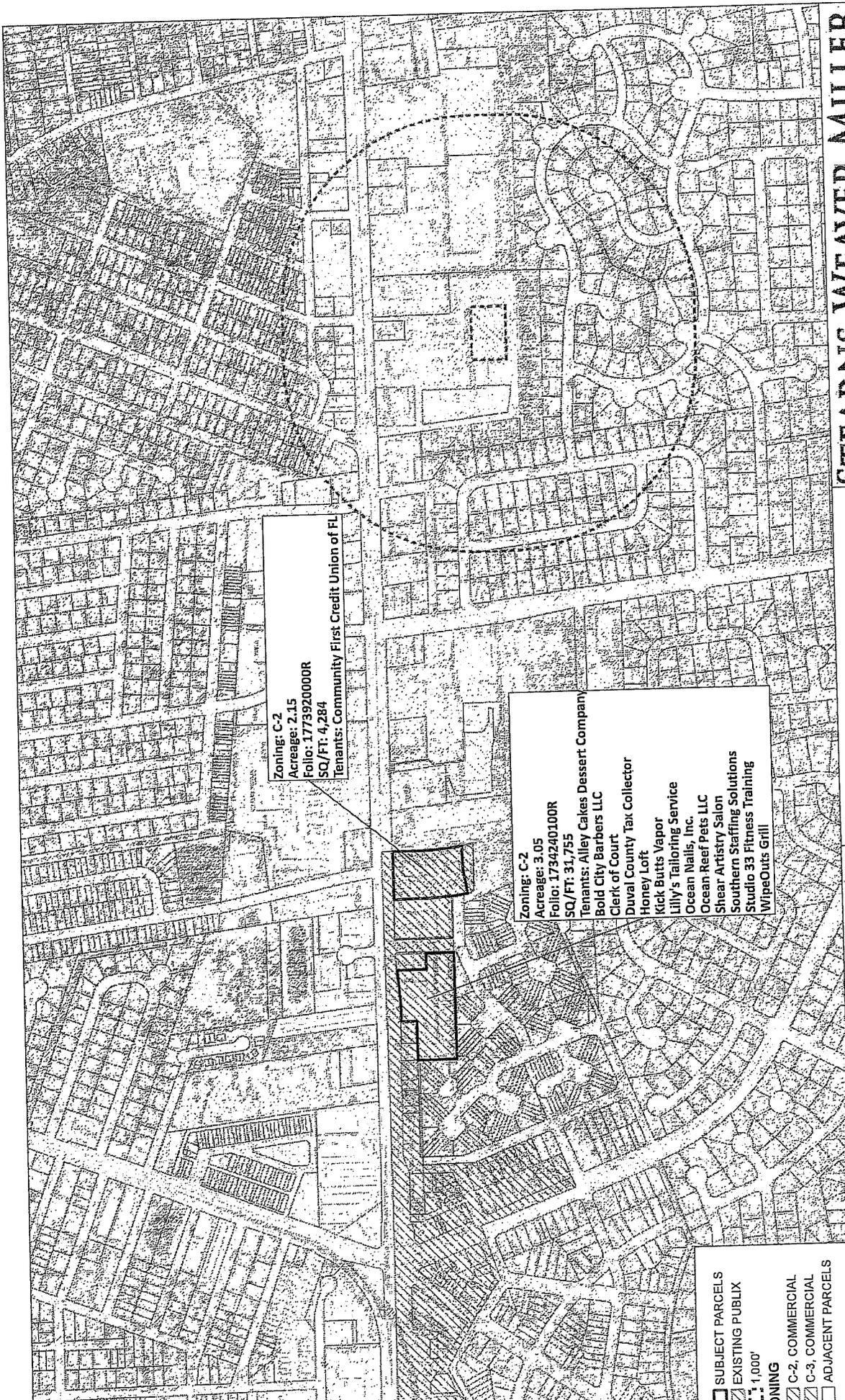
Exhibit 1

580 Atlantic Boulevard

Neptune Beach, Florida

STEARNS WEAVER MILLER

MAP DATE: Jun-17-2020 BY: CP Smith

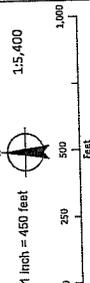


Zoning: C-2
 Acreage: 2.15
 Folio: 1773920000R
 SQ/FT: 4,284
 Tenants: Community First Credit Union of FL

Zoning: C-2
 Acreage: 3.05
 Folio: 1734240100R
 SQ/FT: 31,755
 Tenants: Alley Cakes Dessert Company
 Bold City Barbers LLC
 Clerk of Court
 Duval County Tax Collector
 Honey Loft
 Kick Butts Vapor
 Lilly's Tailoring Service
 Ocean Nails, Inc.
 Ocean Reef Pets LLC
 Shear Artistry Salon
 Southern Staffing Solutions
 Studio 33 Fitness Training
 WipeOuts Grill

- SUBJECT PARCELS
- EXISTING PUBLIC
- 1,000'
- DINING
- C-2, COMMERCIAL
- C-3, COMMERCIAL
- ADJACENT PARCELS

PROJECT:



580 Atlantic Boulevard
 Neptune Beach, Florida

Exhibit 2

STEARNS WEAVER MILLER

MAP DATE: Jun-17-2020 BY: CP Smith

8 1/2" by 11" Site Plan

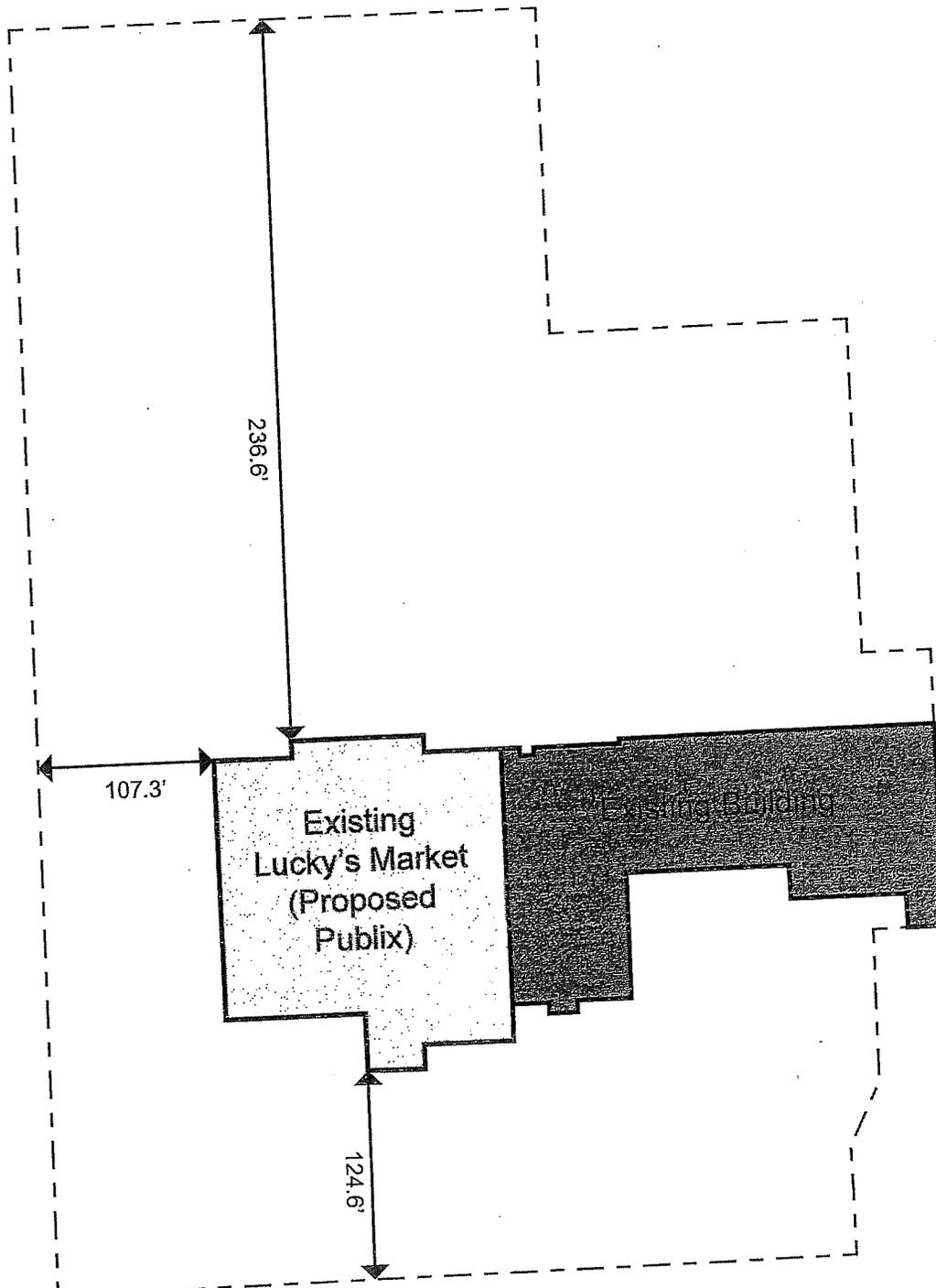
540-580 Atlantic Blvd.

Parcel 172395-0130

Neptune Beach, FL Realty LLC

1 inch equals 100 feet

Atlantic Blvd. ROW



This Instrument Prepared by
and Return to:

Dahan & Nowick LLP
123 Main Street, 9th Floor
White Plains, New York 10601
Attention: M. Marc Dahan, Esq.

Cross reference to instrument recorded at:

Document No. 2019036790, and Book 18691,
Page 2478, Official Records of Duval County,
Florida

Property Appraisers Parcel ID Numbers: 172395-0120 (Parcel A) and
172395-0100 (Parcel B)

CORRECTIVE QUIT-CLAIM DEED

THIS CORRECTIVE QUIT-CLAIM DEED, executed this ^{29th} day of March, 2019, by Neptune Beach, FL Realty LLC, a Florida limited liability company, whose post office address is 295 Madison Avenue, 37th Floor, New York, New York 10017, first party, to Neptune Beach, FL Realty LLC, a Florida limited liability company, whose post office address is 295 Madison Avenue, 37th Floor, New York, New York 10017, second party:

[Whenever used herein the terms "first party" and "second party" shall include singular and plural, heirs, legal representatives and assigns of individuals, and the successors and assigns of entities whenever the context so admits or requires.]

WITNESSETH: That the first party, for and in consideration of the sum of One Dollar (\$1.00), in hand paid by the said second party, the receipt whereof is hereby acknowledged, does hereby remise, release and quit-claim unto the said second party forever, all right, title, interest, claim and demand which the said first party has in and to the following described lot, piece or parcel of land, situate, lying and being in County of Duval, State of Florida, to wit:

SEE EXHIBIT A ANNEXED HERETO AND MADE A PART HEREOF

This property is not now nor ever has been the homestead property of the Grantor.

TO HAVE AND TO HOLD the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of the said first party, either in law or equity, to the only proper use, benefit and behoof of the said second party forever.

This Corrective Quit-Claim Deed is made to correct the legal descriptions of Parcel A and Parcel B in Exhibit A to the Quit-Claim Deed dated February 11, 2019 from the party of the first part to the party of the second part, recorded on February 14, 2019 as Document No. 2019036790, in Book 18691, Page 2478, Official Records of Duval County, Florida, so as to properly adjust the common boundary line between Parcel A and Parcel B as described in Exhibit A hereto.

[Signatures on Following Page]

IN WITNESS WHEREOF, the said Grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:

Kerstin Wenzel
(signature)

Name: KERSTIN WENZEL
(print)

David Diamond
(signature)

Name: DAVID DIAMOND
(print)

NEPTUNE BEACH, FL REALTY LLC,
a Florida limited liability company

By: TLM Realty Corp.,
a Delaware corporation,
Manager

By: *Ronald J. Oehl*
Ronald J. Oehl, President

STATE OF NEW YORK
COUNTY OF NEW YORK

The foregoing instrument was acknowledged before me this 22nd day of March, 2019 by Ronald J. Oehl, as President of TLM Realty Corp., a Delaware corporation, Manager of Neptune Beach, FL Realty LLC, a Florida limited liability company, on behalf of said corporation, as Manager of said limited liability company. He is personally known to me or has produced a New York driver's license as identification.

NOTARY PUBLIC:

Sign *Lyudmila Pinkhasova*

Print Lyudmila Pinkhasova

State of NY at Large (Seal)

My Commission Expires: 12/22/2022

LYUDMILA PINKHASOVA
Notary Public, State of New York
Registration #01P16316937
Qualified In Queens County
Commission Expires Dec. 22, 2022

EXHIBIT A – LEGAL DESCRIPTION

PARCEL A – (“Former Kmart Parcel”)

A PARCEL OF LAND LYING IN GOVERNMENT LOTS 1 AND 2, SECTION 21, TOWNSHIP 2 SOUTH, RANGE 29 EAST, DUVAL COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR A POINT OF REFERENCE COMMENCE AT THE SOUTHERLY RIGHT OF WAY LINE OF ATLANTIC BOULEVARD (HAVING A 100 FOOT RIGHT OF WAY) WITH THE WESTERLY RIGHT OF WAY LINE OF THIRD STREET NORTH (HAVING A 100 FOOT RIGHT OF WAY) AND RUN SOUTH 89°24'50" WEST ALONG THE SOUTHERLY RIGHT OF WAY LINE OF ATLANTIC BOULEVARD, 542.44 FEET TO THE NORTHWEST CORNER OF LANDS DESCRIBED IN THE OFFICIAL RECORDS OF SAID COUNTY IN VOLUME 2967, PAGE 363, FOR THE POINT OF BEGINNING.

FROM THE POINT OF BEGINNING THUS DESCRIBED RUN SOUTH 06°33'10" EAST ALONG THE WEST LINE OF SAID LANDS, 402.01 FEET TO THE SOUTHWEST CORNER OF SAID LANDS, RUN THENCE NORTH 83°26'50" EAST ALONG A PORTION OF THE SOUTH LINE OF SAID LANDS 33.0 FEET TO A POINT; RUN THENCE SOUTH 00°35'10" EAST, 351.87 FEET TO A POINT ON THE SOUTH LINE OF GOVERNMENT LOT 1, AFOREMENTIONED; RUN THENCE SOUTH 89°03'44" WEST ALONG SAID SOUTH LINE A DISTANCE OF 582.25 FEET; THENCE DEPARTING SAID SOUTH LINE, RUN NORTH 00°56'15" WEST, A DISTANCE OF 63.62 FEET; THENCE NORTH 24°57'16" EAST, A DISTANCE OF 43.21 FEET; THENCE NORTH 00°23'59" WEST, A DISTANCE OF 91.31 FEET; RUN THENCE NORTH 89°29'22" EAST, 42.23 FEET; RUN THENCE NORTH 00°30'38" WEST, 165.03 FEET; RUN THENCE SOUTH 89°29'22" WEST, 41.91 FEET; RUN THENCE NORTH 00°23'59" WEST, 198.91 FEET TO THE SOUTH LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 16740, PAGE 808; RUN THENCE NORTH 89°24'50" EAST, ALONG SAID SOUTH LINE, A DISTANCE OF 103.99 FEET; RUN THENCE NORTH 00°35'10" WEST, A DISTANCE OF 194.00 FEET TO A POINT LYING ON THE SOUTHERLY RIGHT OF WAY LINE OF SAID ATLANTIC BOULEVARD; RUN THENCE ALONG SAID SOUTHERLY RIGHT OF WAY LINE NORTH 89°24'50" EAST, A DISTANCE OF 383.97 FEET TO THE POINT OF BEGINNING.

PARCEL B – (“Lucky’s Parcel”)

A PARCEL OF LAND LYING IN GOVERNMENT LOT 2, SECTION 21, TOWNSHIP 2 SOUTH, RANGE 29 EAST, DUVAL COUNTY FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR A POINT OF REFERENCE COMMENCE AT THE SOUTHERLY RIGHT OF WAY LINE OF ATLANTIC BOULEVARD (HAVING A 100 FOOT RIGHT OF WAY) WITH THE WESTERLY RIGHT OF WAY LINE OF THIRD STREET NORTH (HAVING A 100 FOOT RIGHT OF WAY) AND RUN SOUTH 89°24'50" WEST ALONG THE SOUTHERLY RIGHT OF WAY LINE OF SAID ATLANTIC BOULEVARD, 1,533.56 FEET TO THE NORTHEAST

CORNER OF LANDS DESCRIBED IN THE OFFICAL RECORDS OF SAID COUNTY IN VOLUME 3177, PAGE 821 FOR THE POINT OF BEGINNING.

FROM THE POINT OF BEGINNING THUS DESCRIBED RUN SOUTH 00°35'10" EAST ALONG THE EAST LINE OF LAST MENTIONED LANDS AND THE SOUTHERLY PROLONGATION OF SAID LINE, 754.81 FEET TO AN IRON PIPE SET ON THE SOUTHERLY LINE OF SAID GOVERNMENT LOT 2, SECTION 21; RUN THENCE NORTH 89°03'45" EAST ALONG SAID SOUTHERLY LINE OF GOVERNMENT LOT 2, A DISTANCE OF 483.50 FEET; RUN THENCE NORTH 00°56'15" WEST, 63.62 FEET TO A POINT; RUN THENCE NORTH 24°57'16" EAST, 43.21 FEET TO A POINT; RUN THENCE NORTH 00°23'59" WEST, A DISTANCE OF 91.31 FEET TO A POINT; RUN THENCE NORTH 89°29'22" EAST, 42.23 FEET; RUN THENCE NORTH 00°30'38" WEST, 165.03 FEET; RUN THENCE SOUTH 89°29'22" WEST, 41.91 FEET; RUN THENCE NORTH 00°23'59" WEST, A DISTANCE OF 198.91 FEET TO A POINT LYING ON THE SOUTH LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 16740, PAGE 808; RUN THENCE SOUTH 89°24'50" WEST, ALONG SAID SOUTH LINE, AND ALONG THE SOUTH LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 8978, PAGE 2260, A DISTANCE OF 182.01 FEET TO THE SOUTHWEST CORNER OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 8978, PAGE 2260; RUN THENCE NORTH 00°35'10" WEST, ALONG THE WEST LINE OF THE LAST SAID LANDS, A DISTANCE OF 194.00 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF ATLANTIC BOULEVARD (100' RIGHT OF WAY AS NOW ESTABLISHED); RUN THENCE SOUTH 89°24'50" WEST ALONG SAID SOUTHERLY RIGHT OF WAY LINE OF ATLANTIC BOULEVARD, A DISTANCE OF 321.15 FEET TO THE POINT OF BEGINNING.

PARCEL C - ("Drive Fee Parcel")

A PARCEL OF LAND BEING PART OF HORNE'S NEPTUNE ACRES ACCORDING TO PLAT THEREOF RECORDED IN THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA IN PLAT BOOK 13, PAGE 87, SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF REFERENCE COMMENCE AT THE INTERSECTION OF THE SOUTHERLY RIGHT OF WAY LINE OF ATLANTIC BOULEVARD (HAVING A 100 FOOT RIGHT OF WAY) WITH THE WESTERLY RIGHT OF WAY LINE OF THIRD STREET NORTH (HAVING A 100 FOOT RIGHT OF WAY) AND RUN SOUTH 06° 33' 10" EAST ALONG SAID WESTERLY RIGHT OF WAY LINE OF THIRD STREET NORTH, 323.63 FEET TO A POINT FOR THE POINT OF BEGINNING. FROM THE POINT OF BEGINNING THUS DESCRIBED CONTINUE SOUTH 06° 33' 10" EAST ALONG SAID WESTERLY RIGHT OF WAY LINE, 42.0 FEET TO THE NORTHEASTERLY CORNER OF LANDS DESCRIBED IN OFFICIAL RECORDS OF SAID COUNTY IN VOLUME 3943, PAGE 165; RUN THENCE SOUTH 83 ° 26' 50" WEST ALONG THE NORTH LINE OF LANDS DESCRIBED IN SAID OFFICIAL RECORDS, 200.0 FEET TO A POINT; RUN THENCE SOUTH 62° 53' 28" WEST, 42.72 FEET TO A POINT ON THE WESTERLY LINE OF SAID HORNE'S NEPTUNE ACRES; RUN THENCE NORTH 06° 33' 10" WEST ALONG THE WESTERLY LINE OF SAID HORNE'S NEPTUNE ACRES, 45.0 FEET TO A POINT; RUN THENCE NORTH 80° 35' 05" EAST, 240.30 FEET TO THE POINT OF BEGINNING.

PARCEL D - ("Drive Easement from City")

TOGETHER WITH A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OVER THE FOLLOWING PARCEL OF LAND, AS GRANTED BY THAT CERTAIN DRIVEWAY EASEMENT, GRANTED BY THE CITY OF NEPTUNE BEACH, FLORIDA, TO DEVELOPERS DIVERSIFIED ENTERPRISES, LTD., DATED JANUARY 25, 1977 AND RECORDED IN VOLUME 4360, PAGE 933, IN THE OFFICIAL RECORDS OF DUVAL COUNTY, FLORIDA:

A PORTION OF GOVERNMENT LOT 1, SECTION 21, TOWNSHIP 2 SOUTH, RANGE 29 EAST, DUVAL COUNTY, FLORIDA; SAID PORTION BEING THE NORTHERLY 50 FEET OF A 60 FOOT WIDE STRIP OF LAND AS DESCRIBED IN DEED TO CITY OF NEPTUNE BEACH AS RECORDED IN DEED BOOK 1700, PAGE 153 OF THE CURRENT PUBLIC RECORDS OF SAID COUNTY. THE EAST LINE OF SAID NORTHERLY 50 FEET BEING THE WEST LINE OF HORNE'S NEPTUNE ACRES, AS RECORDED IN PLAT BOOK 13, PAGE 87, AND THE NORTH LINE OF SAID NORTHERLY 50 FEET BEING THE SOUTH LINE OF LANDS DESCRIBED IN THE OFFICIAL RECORDS OF SAID COUNTY IN VOLUME 2976, PAGE 363.

PARCEL E - ("Easement Acquired from Dr. Edmonds for Drive")

TOGETHER WITH A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OVER THE FOLLOWING PARCEL OF LAND, AS GRANTED BY THAT CERTAIN DRIVEWAY EASEMENT, GRANTED BY METROPOLITAN SECURITIES CO., INC. TO DEVELOPERS DIVERSIFIED ENTERPRISES, LTD., DATED MARCH 18, 1977, RECORDED IN VOLUME 4360, PAGE 929, IN THE OFFICIAL RECORDS OF DUVAL COUNTY, FLORIDA:

A 50 FOOT WIDE PARCEL OF LAND LYING IN GOVERNMENT LOT 1, SECTION 21, TOWNSHIP 2 SOUTH, RANGE 29 EAST, DUVAL COUTNY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF REFERENCE COMMENCE AT THE SOUTHERLY RIGHT OF WAY LINE OF ATLANTIC BOULEVARD (HAVING A 100 FOOT RIGHT OF WAY) WITH THE WESTERLY RIGHT OF WAY LINE OF THIRD STREET NORTH (HAVING A 100 FOOT RIGHT OF WAY) AND RUN SOUTH 89° 24' 50" WEST ALONG THE SOUTHERLY RIGHT OF WAY LINE OF SAID ATLANTIC BOULEVARD, 241.31 FEET TO A POINT; RUN THENCE SOUTH 06° 33' 10" EAST, 370.71 FEET TO THE SOUTHEAST CORNER OF LANDS DESCRIBED IN OFFICIAL RECORDS OF SAID COUNTY IN VOLUME 2976, PAGE 363; RUN THENCE SOUTH 83° 26' 50" WEST ALONG THE SOUTH LINE OF LAST MENTIONED LANDS, 60.0 FEET TO A POINT FOR THE POINT OF BEGINNING.

FROM THE POINT OF BEGINNING THUS DESCRIBED RUN SOUTH 06° 33' 10" EAST, ALONG THE WEST SIDE OF A 60 FOOT WIDE DRAINAGE RIGHT OF WAY AS DESCRIBED IN DEED BOOK 1700, PAGE 153, PUBLIC RECORDS OF SAID COUNTY, 50.0 FEET TO A POINT; RUN THENCE SOUTH 83° 26' 50" WEST, 211.73 FEET TO A POINT; RUN THENCE NORTH 00°35' 10" WEST, 50.27 FEET TO A POINT ON THE SOUTH LINE OF LANDS DESCRIBED IN SAID OFFICIAL RECORDS VOLUME 2976, PAGE 363; RUN

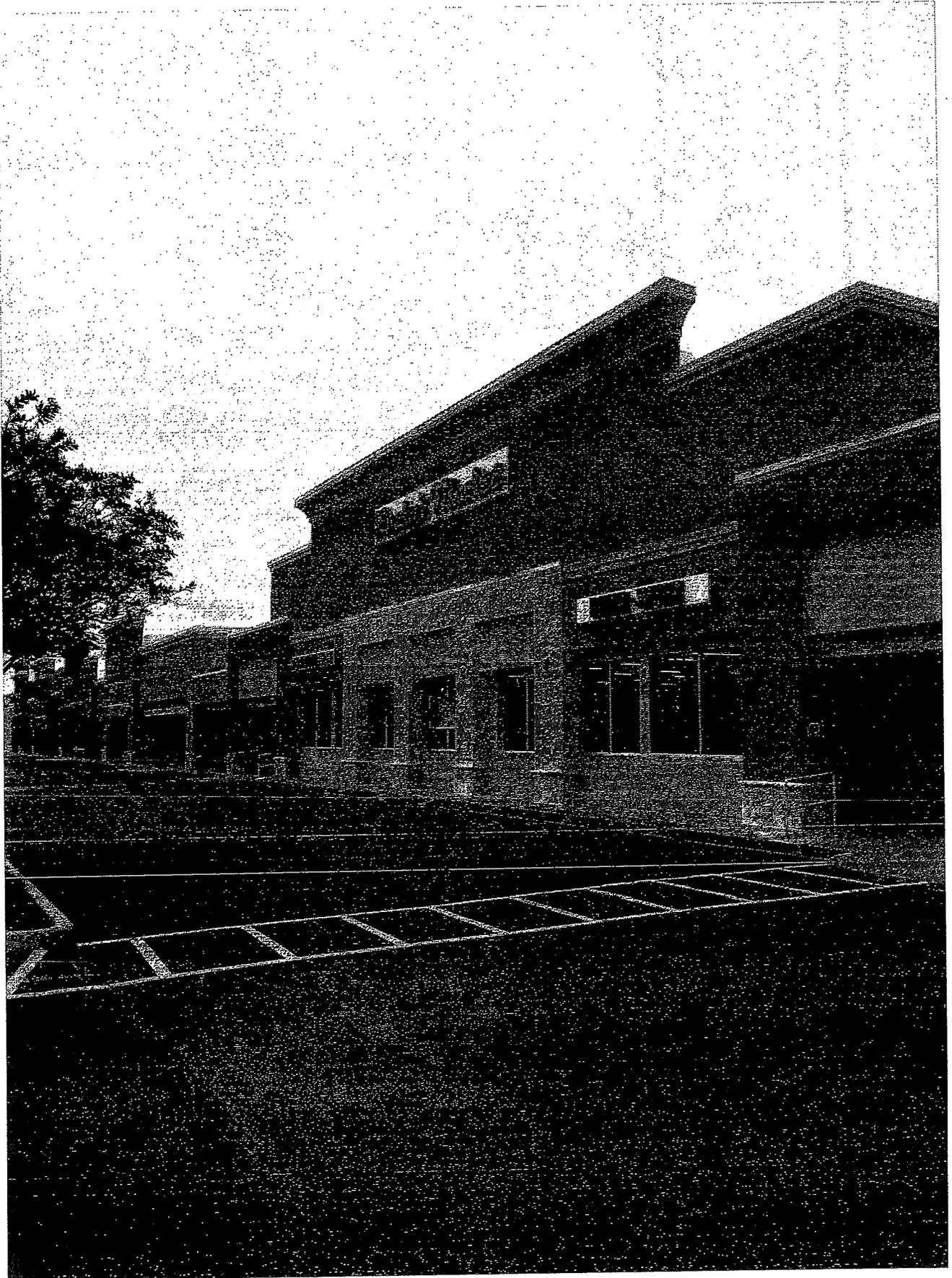
THENCE NORTH 83° 26' 50" EAST ALONG SAID SOUTH LINE, 206.5 FEET TO THE POINT OF BEGINNING.

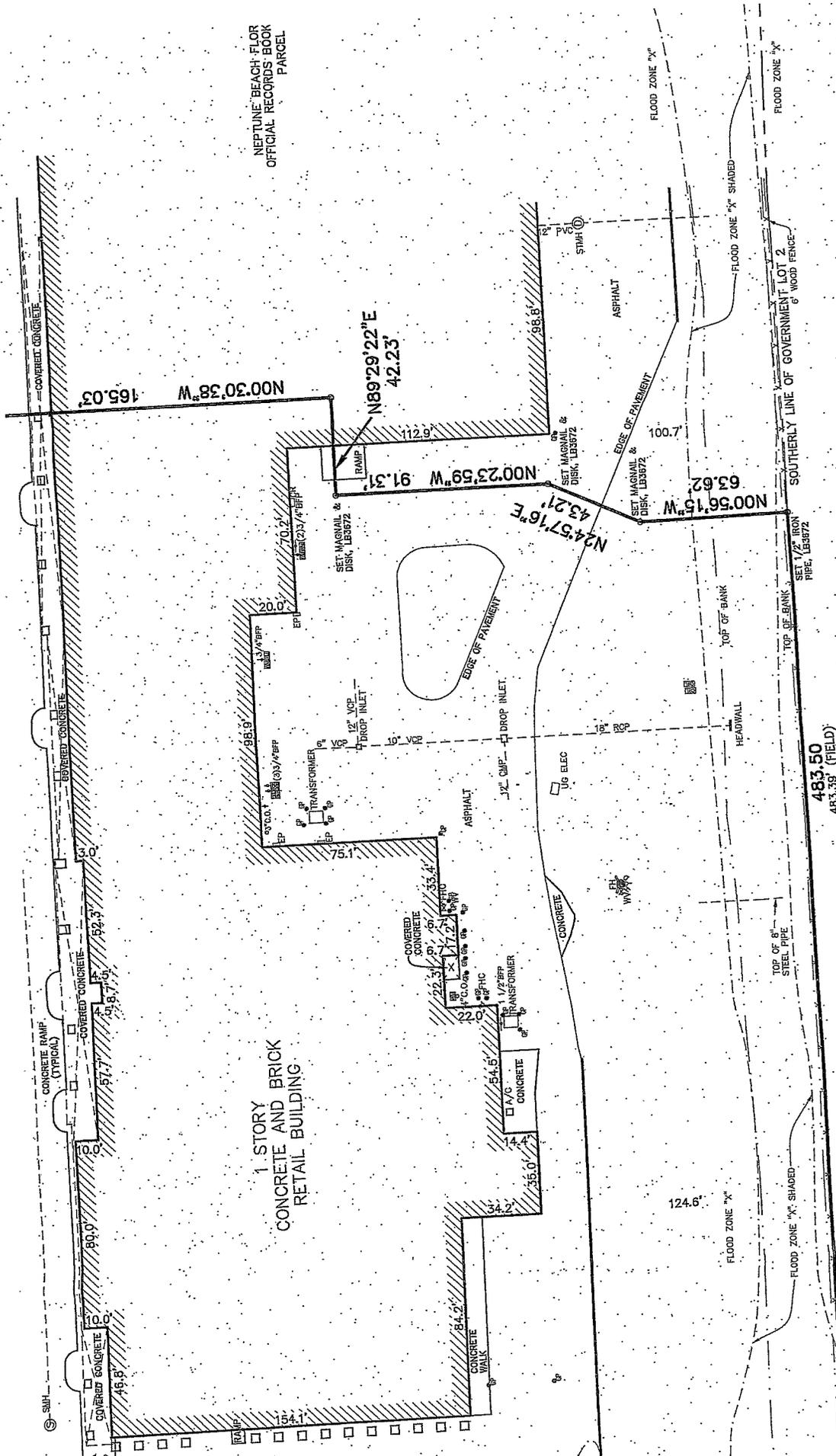
PARCEL F – ("Drainage Easement from Edmonds")

TOGETHER WITH A-NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OVER THE FOLLOWING PARCEL OF LAND, AS GRANTED BY THAT CERTAIN DRAINAGE EASEMENT AND BUILDING LINE AGREEMENT, GRANTED BY METROPOLITAN SECURITIES COMPANY, INC. TO DEVELOPERS DIVERSIFIED ENTERPRISES, LTD., DATED MARCH 18, 1977, RECORDED IN VOLUME 4360, PAGE 944, IN THE OFFICIAL RECORDS OF DUVAL COUNTY, FLORIDA:

A PARCEL OF LAND LYING IN GOVERNMENT LOT 1, SECTION 21, TOWNSHIP 2 SOUTH, RANGE 29 EAST, DUVAL COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF REFERENCE COMMENCE AT THE SOUTHERLY RIGHT OF WAY LINE OF ATLANTIC BOULEVARD (HAVING A 100 FOOT RIGHT OF WAY) WITH THE WESTERLY RIGHT OF WAY LINE OF THIRD STREET NORTH (HAVING A 100 FOOT RIGHT OF WAY) AND RUN SOUTH 89° 24' 50" WEST ALONG THE SOUTHERLY RIGHT OF WAY LINE OF SAID ATLANTIC BOULEVARD, 542.44 FEET TO THE NORTHWEST CORNER OF LANDS DESCRIBED IN THE OFFICIAL RECORDS OF SAID COUNTY IN VOLUME 2976, PAGE 363; RUN THENCE SOUTH 06° 33' 10" EAST ALONG THE WEST LINE OF SAID LANDS, 402.01 FEET TO THE SOUTHWEST CORNER OF SAID LANDS; RUN THENCE NORTH 83° 26' 50" EAST ALONG A PORTION OF THE SOUTH LINE OF SAID LANDS, 33.0 FEET TO A POINT; RUN THENCE SOUTH 00° 35' 10" EAST, 351.87 FEET TO A POINT ON THE SOUTH LINE OF GOVERNMENT LOT 1, AFOREMENTIONED FOR THE POINT OF BEGINNING.

FROM THE POINT OF BEGINNING THUS DESCRIBED RUN NORTH 89° 03' 45" EAST, 244.25 FEET TO THE WESTERLY LINE OF A 60 FOOT WIDE DRAINAGE RIGHT OF WAY TO THE CITY OF NEPTUNE BEACH AS DESCRIBED IN DEED BOOK 1700; PAGE 153, CURRENT PUBLIC RECORDS OF SAID COUNTY; RUN THENCE NORTH 06° 33' 10" WEST ALONG SAID WESTERLY RIGHT OF WAY LINE, 40.19 FEET TO A POINT; RUN THENCE SOUTH 89° 03' 45" WEST, 240.07 FEET TO A POINT; RUN THENCE SOUTH 00° 35' 10" EAST, 40.0 FEET TO THE POINT OF BEGINNING.





NEPTUNE BEACH-FLOOR
OFFICIAL RECORDS BOOK
PARCEL

1.5 STORY
CONCRETE AND BRICK
RETAIL BUILDING

NB9°03'45"E
NB9°10'31"E

483.50
483.39' (FIELD)

FLOOD ZONE "X"

NEPTUNE BY THE SEA-UNIT THREE, PLAT BOOK 46, PAGE 78 - 78B

FOR TWRIGHT I AND SURVEYORS, inc. 1500 ROBERTS DRIVE JACKS

City of Neptune Beach

Kristina L. Wright, FRA-RA, Community Development Director
116 First Street • Neptune Beach, Florida 32266-6140
(904) 270-2400 x 34 • FAX (904) 270-2526



MEMORANDUM

TO: Community Development Board
FROM: Kristina L. Wright, FRA-RA, Community Development Director
DATE: July 1, 2020
SUBJECT: V20-01 580 Atlantic (PIN: 172395-0130)

Background

Application V20-01 580 Atlantic is a request for a variance that seeks to provide relief from Note 6 of Table 27-229-1 to remove the 1000 linear foot separation requirement for businesses that operate under common business ownership or management, share a warehouse or distribution facility, or otherwise operate as an associated, integrated or cooperative business shall not exceed a combined sixty thousand (60,000) square feet of total gross floor area in aggregate.

More specifically, the Note 6 referenced within Table 27-229-1 states:

Furthermore, any retail stores, wholesale warehouses, or other freestanding buildings for any permitted use located within one thousand (1,000) linear feet of each other that operate under common business ownership or management, share a warehouse or distribution facility, otherwise operate as an associated, integrated or cooperative business shall not exceed a combined sixty thousand (60,000) square feet of total gross floor area in aggregate.

Summary

The applicant, Neptune Beach, FL Realty LLC, is seeking to allow a second, smaller Publix Supermarket within Neptune Beach and hopes to enter into a lease with Publix for the existing Building located at 580 Atlantic Boulevard, which is within 500' of the existing Publix located at 630 Atlantic Blvd. The Applicant is the owner of 580 Atlantic Blvd., and their tenant Lucky's Market entered into a long-term lease (20-year initial term) dated as of September 1, 2015 for the 29,810 square foot Lucky's Market grocery store within Neptune Beach Plaza.

The applicant assumed the cost to construct the improvements required by the lease to renovate the store and the remainder of the property, including reimbursements to the tenant for their further improvements. In January 2020, Lucky's Market declared Chapter 11 Bankruptcy and closed nearly all the stores, including the store at 580 Atlantic Blvd. As part of the bankruptcy process, Publix Super Markets, Inc. entered into an agreement to purchase and take assignment of the Neptune Beach, FL lease from Lucky's Market. This purchase and assignment have been approved

by the Bankruptcy Court and Publix has already completed the purchase of Lucky's Market leases elsewhere in the state.

Representatives for the applicant requested zoning verification letters and sought to change a provision within the City of Neptune Beach Land Development Code. At that time, this inquiry increased to administrative level discussions involving legal representation for all parties to clarify the intent of Note 6 referenced as part of Table 27-229-1 requiring a 1,000 linear foot distance separation from other business operating under common business ownership or management or that share a warehouse or distribution center or otherwise operate as an associated, integrated or cooperative business that is required not to exceed sixty thousand (60,000) square feet of total gross floor area in aggregate.

The applicant and representatives assert that the provision is lot specific and has questioned the original motive for the creation of Ordinance 2006-13. Siting another Publix grocery store within 500' of an existing Publix would violate the provisions of Table 27-229-1, specifically the final sentence of Note 6, as the existing Lucky's Market grocery store at 580 Atlantic Blvd. is within 1,000 linear feet from an existing 54,310 square foot Publix grocery store at 630 Atlantic Blvd. which is leased by Publix from the owner(s) of that separate parcel. While the owner(s) of 630 Atlantic Blvd. are different from and have no affiliations with the owner of 580 Atlantic Blvd, both stores are affiliated with Publix Supermarkets, Inc. and the cumulative floor area of two separate stores would exceed 60,000 square feet, which stands in opposition to the provisions within the Neptune Beach Land Development Code, more specifically Table 27-229-1, Note 6.

As a result, the applicant(s) are seeking a variance seeking relief from Note 6 of Table 27-229-1 to increase the maximum aggregate combined square footage from 60,000 to 89,500 to allow Publix to replace Lucky's Market as the tenant of the property owner and re-open a grocery store in the existing Lucky's Market premises at 580 Atlantic Blvd. The proposed store at 580 Atlantic Blvd. is distinct from the store at 630 Atlantic Blvd. as it presents a smaller format store (29,810 SF vs 54,310 SF) with features familiar to Lucky's Market shoppers, including an emphasis on prepared foods, organic groceries, and is planned to feature the "POURS" station, an in-store beverage bar concept from Publix's GreenWise branded-stores where shoppers can order beer and wine in addition to other non-alcoholic drinks.

Based on communications with the applicant, they believe that the 1000' separation is lot specific, which is in opposition to the City's Comprehensive Plan Policy A.1.1.4 and the interpretation of Note 6, following Table 27-229-1. The preservation of the scale of development within a small, coastal community of 7,000 residents, which has been indicated within the City's Comprehensive Plan on page A-2. The City already has an existing Publix that would be sited within 500', and adjacent to, the proposed Publix.

While the applicant notes that the "failure to grant the proposed variance will cause Publix to cancel its court-approved agreement to purchase the Neptune Beach lease and control of the future of the lease will return to Lucky's Market," financial motivations alone are not adequate justification for granting a variance to subvert the intent of Comprehensive Plan Policies and the City's Land Development Regulations and must achieve the criteria established within 27-147, Required findings needed to issue a variance.

The applicant goes on to explain that:

Through the bankruptcy process Lucky's Market may then choose to reject the lease. Rejection would cause the lease (to be) terminated immediately, far earlier than the September 30, 2036 end of the initial term under the lease. The rejection of the lease due to the denial of the variance for Publix would be an exceptional hardship to the property owner and would result in a vacant anchor store, prevent the owner from obtaining an economic return on the investments it made in the lease, and would harm the property owner's other tenants who depend on the customer activity generated by the anchor tenant in the shopping center.

The applicant further asserts that Council records demonstrate the intent of Council in drafting Note 6 in the Spring of 2006 was to prevent a Big Box retailer, specifically Walmart, from constructing a single store exceeding 60,000 SF in Neptune Beach. It was not the intent of Council to prohibit Publix from operating a separate store on a distinct parcel and within a separate shopping plaza at 580 Atlantic Blvd. per the meeting notes from the November 19, 2007 Council meeting on the intent of Ordinance 2006-13 (which added Note 6 to Table 27-229-1), Councilor Weldon, the sponsor of the Ordinance, made the following statement: "Councilor Weldon stated the intent of the Ordinance was to limit the amount a single store from exceeding 60,000 square feet..." (emphasis added).

Former Councilor Weldon attended the June 10, 2020 presentation to speak in support of the City and its regulations. Additionally, staff does not believe that these requirements are lot specific as this would create loopholes and code requirements could be subverted through simple lot splits and subdivisions to subvert an appropriate scale of development within the community.

Required findings needed to issue a variance (Section 27-147):

- (1) The property has unique and peculiar circumstances, which create an exceptional and unique hardship. For the purpose of this determination, the unique hardship shall be unique to the parcel and not shared by other property owners in the same zoning district.**

According to the applicant, the hardship is the result of unique and peculiar circumstances which are unique to the parcel since they feel that a parcel analysis has determined that another Publix cannot be accommodated in any other location within the City of Neptune Beach based on a parcel analysis that has discovered that of the applicable parcels in C-3 and C-2, none of these are currently vacant.

Despite this objective observation, this does not demonstrate a hardship for the existing parcel simply because the proposal is not currently meeting the requirements of the Neptune Beach Land Development Code. The applicant has also indicated that the tenant entered into an agreement with and received Bankruptcy Court approval for an assignment of the existing lease with the property owner to Publix Super Markets, Inc.

However, staff asserts that this does not preclude other viable alternatives (i.e. GreenWise branding, subleasing, etc.).

The applicant has indicated that a "strict application of Note 6 of Table 27-229-1 creates a hardship that is unique to this parcel and not shared by other property owners in the same zoning district"; however, this also does not preclude other economically viable alternatives that would meet the requirements of the Land Development Code.

(2) The proposed variance is the minimum necessary to allow the reasonable use of the parcel of land.

The proposed variance is requesting the minimum additional square footage necessary to allow Publix to replace Lucky's Market as the tenant without any expansion of the existing Lucky's Market footprint. The denial of the proposed variance would prohibit Publix from taking assignment of the lease and enable Lucky's Market to reject their lease with the property owner. The rejection of the lease would terminate the lease, despite approximately 16 years of term remaining per the terms of the lease. Failure to grant the proposed variance would deny the property owner the reasonable use of its land as the property owner would be permanently unable to attain its reasonable investment-backed expectations from the existing lease.

However, staff asserts that other alternatives exist, which would allow the property owner to realize benefits obtained through the reasonable use of their land. The application of the Code provision prevents only a small number of uses at most. Most uses of this site are unaffected by this provision.

(3) The proposed variance would not adversely affect adjacent and nearby properties or the public in general.

The proposed variance does not alter the existing, permitted use of the property, a retail grocery anchor store, or alter any physical characteristics of the property from the existing condition. Therefore, the proposed variance would not adversely affect adjacent and nearby properties or the public in general. Further, the re-opening of a grocery store at the property, which is the purpose of the variance, would create positive benefits to the nearby properties and the public in general. Granting of the variance supports Neptune Beach Comprehensive Plan **Goal A.1 and Objective A.1.3 Redevelopment and Infill Development** by encouraging infill redevelopment and avoiding blighting influences. The opening of a Publix grocery store at 580 Atlantic Blvd. is anticipated to create 50 additional permanent jobs, in addition to construction jobs, will have a beneficial impact on tax collection, and provide essential service to the public. While improvements and redevelopment are desired along with the creation of additional jobs and revenues, the addition of another Publix within 500' of an existing Publix on the immediately adjacent parcel expands the scale of development within a small, coastal community sought through the establishment of Comprehensive Plan Policy A.1.1.4 especially when other viable alternatives exist that could be of universal benefit.

(4) The proposed variance will not substantially diminish property values in, nor alter the essential character of, the area surrounding the site.

The proposed variance does not alter the existing, permitted use, a retail grocery anchor store, or alter any physical characteristics of the property from the existing condition. Therefore, the

proposed variance would not substantially diminish property values in, nor alter the essential character of, the areas surrounding the site. Further, the re-opening of a store, particularly an industry-leading grocery store with strong finances and significant history, provides for long-term stability in property values and further supports **Objective A.1.3 Redevelopment and Infill Development** by encouraging infill development. The precedent of exceeding scale appropriate to a small, coastal community is in violation of our Comprehensive Plan and Code.

- (5) The effect of the proposed variance is in harmony with the general intent of the ULDC and the specific intent of the relevant subject area(s) of the ULDC.**

The property is in the Commercial C-3 Zoning District which corresponds to the Commercial High designation on the adopted Future Land Use Map. According to the Uniform Land Development Regulations **Sec. 27-222.- Purpose and Intent of Zoning Districts:**

The Commercial C-3 Zoning District is intended to provide retail sales and services that serve the overall community. This district corresponds to the commercial high designation on the adopted future land use map.

According to the applicant, the proposed variance is in harmony with the general intent of the Land Development Code since they feel that the re-opening of a store which “provide[s] retail sales and services that serve the overall community” and, in particular, provide essential grocery service to the community. However, the intent quoted from the LDC does not preclude the viability of other alternatives.

- (6) The need for the variance has not been created by the actions of the property owner or developer nor is the result of mere disregard for the provisions from which relief is sought.**

According to the applicant, the need for the variance has arisen from a unique and peculiar circumstances relating to the bankruptcy of the tenant under an existing lease with the property owner. The need for the variance has not been created by the actions of the property owner. However, while Publix is assuming these leases throughout the State of Florida, the fact that the one in Neptune Beach is next to another existing Publix is not basis for relief from regulations of the LDC. Further, the need for the variance is created in part by the Property Owner in that the Property Owner seeks to enter into a lease that would result in a Code violation due to a longstanding business on the adjacent parcel.

- (7) Granting the variance will not confer upon the applicant any special privilege that is denied by the ULDC to other lands, buildings, or structures in the same zoning district.**

According to the applicant, the need for the variance has arisen from unique and peculiar circumstances that have created a unique hardship for this parcel alone. The applicant believes that by granting the variance, this will not confer upon the property owner any special privilege that is denied to other lands, buildings, or structures in the same zoning district; however, staff disagrees because this application seeks to remove regulations within the code that seek to prevent development that is out of scale for the community as contemplated by the City of Neptune Beach Comprehensive Plan and the Land Development Code. For example, Comprehensive Plan Policy

A.1.1.4 states, "The City shall maintain within its Land Development Regulations provisions intended to retain the unique community identity, the architectural character, and the residential scale of the City" (2012, p. A-2). While all lands within the C-2 and C-3 zoning districts are permitted to have a grocery store as a permitted use, this does not subvert this distance separation and size limitation requirements that has been codified within Table 27-229-1, Note 6.

Staff Recommendation

Staff recommends a motion to recommend denial to the Neptune Beach City Council for application **V20-01 580 Atlantic** since the application does not demonstrate the achievement of the Required findings needed to issue a variance established within Section 27-147, in addition to the requirements of the LDC found within Table 27-229-1, Note 6 and the proposal and request are not consistent with Neptune Beach Comprehensive Plan Policy A.1.1.4.

Recommended Motion

I move to recommend denial of application V20-01 580 Atlantic to the Neptune Beach City Council since the applicant has not demonstrated the achievement of the criteria established within the Required findings needed to issue a variance within Section 27-147 and does not achieve the criteria established within Land Development Code Table 27-229-1, Note 6 and is not consistent with Neptune Beach Comprehensive Plan Policy A.1.1.4.