

PASCO COUNTY, FLORIDA
INTEROFFICE MEMORANDUM

TO: Development Review Committee

DATE: 4/12/10

FILE: ZN10-161

SUBJECT: Class III, Commercial Development Review - 3600 Commercial Subdivision, Preliminary/Construction Plan, Stormwater Management Plan and Report, and Variance Requests (Project No. SDU10-002)
DRC: 4/29/10, 1:30 p.m., NPR
Recommendation: Approval with Conditions

FROM: Debra M. Zampetti
Zoning/Code Compliance Administrator

REFERENCES: Land Development Code, Section 306, Development Review Procedures; Comm. Dist. 2

It is recommended that the data herein presented be given formal consideration by the Development Review Committee (DRC).

| | |
|----------------------------------|--|
| Commission District: | The Honorable Pat Mulieri, Ed.D. |
| Project Name: | 3600 Commercial Subdivision |
| Developers' Names: | Bad Lands, LLC, and We Shelter America, Inc. |
| Location: | On the east side of U.S. 41 and approximately 357 feet north of Swans Landing, Section 24, Township 26 South, Range 18 East. |
| Parcel ID Nos.: | 24-26-18-0000-01900-0020 and 24-26-18-0000-01900-0021 |
| Land Use Classification: | ROR (Retail/Office/Residential) |
| Zoning District: | C-2 General Commercial |
| Transportation Corridor: | U.S. 41 |
| Existing Right-of-Way: | 130 Feet |
| Required Right-of-Way: | 110 Feet from Centerline |
| Acreage: | 3.19 Acres, m.o.I. (Two Lots) .67 Acre, m.o.I. (Lot Not Included) |
| Number of Lots: | 3 (Two Lots Part of This Project, One Lot Not Included) |
| Water/Sewage: | Well/Septic |
| Transportation Impact Fee Zone: | 2 |
| Transportation Analysis Zone: | 282 |
| Initial Certificate of Capacity: | Conditional |

DEVELOPERS' REQUEST:

The developers of 3600 Commercial Subdivision are requesting preliminary/construction plan and Stormwater Management Plan and Report approval to subdivide 3.19 acres into two lots. Also requested are variances from the Land Development Code (LDC) as listed below and as further explained herein:

Variations:

Section 603.9.D.1, Type A Buffer

Section 603.9.D.4.a.(2), Type D Buffer

BACKGROUND:

1. On March 16, 1976, the Board of County Commissioners (BCC) approved a rezoning (Petition No. 28) from an R-2 Low Density Residential District to a C-2 General Commercial District.

2. On April 24, 1984, the BCC received a rezoning request (Petition No. 2455) from a C-2 General Commercial District to a C-3 Commercial/Light Manufacturing District. The request was withdrawn.

FINDINGS OF FACT:

1. Presently, the subject site contains existing offices and storage buildings, totaling 3,816 square feet.
2. The subject property is located in Flood Zone "X." Development is subject to the requirements of the LDC, Article 700, Flood Damage Prevention.
3. The surrounding zoning is as follows and, for reference purposes, the buffer requirements for the abutting properties is also provided:

| | <u>Zoning Districts</u> | <u>Types/Buffer Requirements</u> |
|--------|-----------------------------|--|
| North: | C-2 General Commercial | Type A Buffer 10 Feet |
| South: | C-2 General Commercial | Type A Buffer 10 Feet |
| East: | R-2 Low Density Residential | Type B Buffer 15 Feet |
| West: | U.S. 41 | Type D Buffer 15 Feet (Variance Request to Reduce to 10 Feet) |

4. The preliminary/construction plan, Stormwater Management Plan and Report, and variance requests have been reviewed by the Zoning and Site Development Department, and it has been determined that the proposed use is consistent with the above-referenced zoning district's permitted uses.
5. The preliminary/construction plan, Stormwater Management Plan and Report, and variance requests for the above-subject project were prepared for Bad Lands, LLC, and We Shelter America, Inc., by McNeal Engineering, Inc., and consist of nine sheets dated November 18, 2009; the sheets were last revised on March 18, 2010. The plans were originally received by the Zoning and Site Development Department on November 19, 2009, and final revisions were received on March 19, 2010.
6. Access to the property is from U.S. 41, FDOT, which has 130 feet of existing right-of-way with 100 feet of pavement, and has been designated a six-lane, arterial facility on Map 7-22, 2025 Future Number of Lanes, and Map 7-24, 2025 Future Roadway Functional Classification, of the Comprehensive Plan.
7. A Traffic Impact Study application was submitted and found to be exempt from the requirement to provide a traffic study and a Substandard Roadway Analysis.
8. The proposed request is consistent with the Pasco County applicable provisions of the Comprehensive Plan as conditioned.

VARIANCE REQUESTS:

The applicants/developers have requested specific variances from the following provisions of the LDC to be considered:

Section 603.9, Landscape Buffering and Screening

1. Subsection 603.9.D.1, Type A Buffer, which, if approved, would relieve the applicants/developers of providing a ten-foot-wide landscape buffer along the existing property lines and reduce to a five-foot-wide landscape buffer on each property line.

Relief is being sought pursuant to the LDC, Sections 316.1.A.1, 2, and 6, as the purpose for the variances which read as follows:

- (1) "The strict application of the land development regulation creates an unreasonable or unfair noneconomic hardship, or an inordinate burden that was not created by the variance applicant."

The applicants state:

"The applicant is requesting a variance for the dual 10', Type 'A' buffer along the existing property line to a single 10', Type 'A' buffer centered on the existing property line. The width of the shared Type 'A' buffer is established; a dual Type 'A' buffer would encroach on the existing buildings and other existing infrastructure, e.g., septic, onsite displays, etc. Additionally, the existing parcels contain active businesses which are in similar use (modular building retail). The existing buffer is maintained sod which allows pedestrian and vehicular traffic to move freely around and between both sites making it possible to load and offload shipments. This similar use condition creates cross-pedestrian traffic which the dual buffer would impede.

- (2) "The specific application of the land development regulation conflicts with an important Goal, Objective, or Policy of the Comprehensive Plan, or with the intent and purpose of another recently adopted land development regulation that serves a greater public purpose."

The applicants state:

"The applicants' request for this variance stems in part to the understanding that at present, an LDC review is underway regarding common, or shared, buffers. Since the adjacent property is of the same use, the equivalent of only one buffer is proposed."

- (6) "The granting of the variance is necessary to protect the public health, safety or welfare."

The applicants state:

"Modification of the buffer width would create circulation issues by blocking off shared use of this area to load and unload the retail product that each existing user provides. By establishing the required buffer, cross access, other than the frontage road, would not be possible. Although both businesses could continue to function, there would be an increased safety concern from forcing larger trucks and tractor-trailers to enter each parcel at only one location. Currently, there is the possibility of circulation between parcels that functions well. Again, with all of Tuffy's traffic being required to come through the project site, we want the existing uses to function as safely as possible and in harmony with each other."

Staff has reviewed the applicants' requests and recommends approval to reduce the landscape buffer to allow only one 10-foot Type A buffer between abutting north and south properties. Buildings already exist on site and to require a ten-foot buffer adjacent to each property line (internal) would ultimately make the existing buildings encroach into an easement. Current regulations prohibit easement encroachment.

2. Subsection 603.9.D.4.a, Type D 15-foot Landscape Buffer, which, if approved, would relieve the applicants/developers of providing the required 15-foot landscape buffer easement adjacent to U.S. 41 and reduce the buffer to 10 feet wide.

Relief is being sought pursuant to the LDC, Section 316.1.A.(1) and (6), as the purpose for the variances which read as follows:

- (1) "The strict application of the land development regulation creates an unreasonable or unfair noneconomic hardship, or an inordinate burden that was not created by the variance applicant."

The applicants state:

"The applicant is requesting a variance for the Type 'D' buffer width from 15' to 10'. First, the site is limited with the reduction of property due to the 33.44' forced right-of-way dedication required for corridor preservation. Secondly, a 15' buffer would create a 5' offset in the alignment with the existing cross access constructed for the neighboring business (Tuffy, constructed in 2006), which provides a 10' buffer (not 15'). If a 15' buffer remains required for the project site, driver expectability would be greatly impacted with a transition that could not meet FDOT SI 526 for the 5' shift. Additionally, the clear zone for the existing building would be reduced from 6' to 1', making it a safety hazard.

(6) "The granting of the variance is necessary to protect the public health, safety or welfare."

The applicants state:

"The aforementioned 5' offset created by the 15' buffer would adversely affect all crossing traffic. Since FDOT is requiring Tuffy to eliminate their driveway to U.S. 41, it is imperative that this function be safe."

Staff has reviewed the applicants' requests and recommends approval to reduce the 15-foot landscape buffer to 10 feet wide due to the existing conditions. Further, the applicants/developers will provide the appropriate landscaping within the reduced buffer.

CONCURRENCY ANALYSIS:

An Initial Certificate of Capacity is being issued for three lots. Any conditions required pursuant to the issuance of the certificate are attached to the Initial Certificate of Capacity.

RECOMMENDATION:

The Zoning and Site Development Department recommends approval of the preliminary/construction plan, Stormwater Management Plan and Report, and variance requests from the LDC, Sections 603.9.D.1 and 603.9.D.4.a.(2), with the following conditions:

Hard-Copy Site Development Permit

1. The owners/developers or project contractor shall obtain a hard-copy Site Development Permit from the Zoning and Site Development Department prior to commencing any construction. To obtain this permit, the following must be submitted to the Zoning and Site Development Department:
 - a. The completed notarized acknowledgment portion of the attached agenda memorandum.
 - b. Completion of any site-specific conditions listed as requiring completion prior to the issuance of the Site Development Permit.
 - c. A copy of the approved Southwest Florida Water Management District (SWFWMD) Permit and Plan must be submitted to the Zoning and Site Development Department. In the event the SWFWMD Permit and Plan require any changes to the County-approved plan, an amendment to the County-approved plan shall be submitted for review and approval prior to the issuance of the Site Development Permit.
 - d. National Pollutant Discharge Elimination System Permit/permit application.

No construction shall commence until the permit has been properly posted on the site.

2. The owners/developers or project contractor shall notify the Engineering Services Department at least two working days prior to commencing any activity on the site.

General

3. The required landscape buffer abutting U.S. 41 shall be ten feet in width and the required landscape buffer between Parcel Nos. 1 and 2 shall be reduced to a total of ten feet in width (five feet on each side of the property line). Buffers shall be planted with all required plantings per the LDC.
4. The developers acknowledge that any provisions of Pasco County ordinances and any rezoning conditions of approval not specifically waived shall be in full force and effect, including all impact fee ordinances.
5. In the event ordinances/resolutions are adopted by the BCC including, but not limited to, solid waste, public safety, or wildlife, the developers shall be required to comply with such ordinances/resolutions.
6. The owners/developers acknowledge that approval of the variance(s) and/or alternative standards request(s) as stated is based upon representation as set forth in the preliminary plan/preliminary site plan submittal dated March 18, 2010, and received by Pasco County on March 19, 2010. In the event that the preliminary plan/preliminary site plan is deemed void

and/or approval is withdrawn, then the variance(s) and/or alternative standards request(s) shall be considered void and all future development shall thereafter comply with all regulations currently in effect and shall be reviewed and approved as provided therein. Preliminary plan/preliminary site plan approval is contingent upon approval of variance application(s).

7. The owners/developers or successors in interest are advised of the following restrictions:
 - a. No owner of the property within the development may construct or maintain any building, residence, or structure, or undertake or perform any activity in the wetlands, buffer areas, and upland conservation areas described in the approved plan or record plat unless prior approval is received from the SWFWMD pursuant to environmental resource permitting.
 - b. No owner of the property within the development may construct or maintain any building, residence, or structure, or undertake or perform any activity within the 100-year floodplain described in the approved plan and/or record plat of the subdivision unless prior approval is received from the SWFWMD pursuant to environmental resource permitting.
 - c. No owner of the property may undertake any roadway improvements within this development unless prior written authorization or notification of exemption is received from the SWFWMD pursuant to environmental resource permitting.
8. All construction work, including roads, drainage, and utilities, shall be constructed in accordance with Pasco County design standards and tested in compliance with the Engineering Services Department's *Testing Specifications for Construction of Roads, Storm Drainage, and Utilities*.
9. The owners/developers shall acknowledge that should Pasco County collect funds under a guarantee document, the developers shall authorize the County, or its designee, access to the property in question to complete the required work.
10. The owners/developers shall acknowledge that should Pasco County be required to institute legal proceedings in order to collect any funds under a guarantee document, the developers shall be responsible for attorney's fees and court costs incurred by the County in such action.
11. The developers acknowledge that an appeal may be filed against the decision of the DRC within 30 days of the date of this approval. Any development that takes place within the 30-day appeal deadline shall not establish vested rights with respect to construction of the project.
12. Subject to the provisions of the Right-of-Way Preservation Ordinance, the developers shall convey at no cost to Pasco County 110 feet of right-of-way from the centerline of U.S. 41 (Pasco County Corridor Preservation Table, located in the Comprehensive Plan, Transportation Element, for arterial/collector and major intersection right-of-way requirements).
13. Where underground water mains and hydrants are to be provided, they shall be installed, completed, and in service prior to combustibles being brought on-site (National Fire Protection Association, NFPA-1, 16.4.3.1.3).
14. The owners are hereby notified that the effective date of this development approval shall be the date of the final County action; however, no activity shall commence on site until such time as the acknowledgment portion of this document is completed (including notarization) and received by the Zoning and Site Development Department.

Construction Plan

15. The owners/developers shall furnish to the Zoning and Site Development Department a Letter of Intent indicating approval and/or an approved Driveway Permit from the Florida Department of Transportation (FDOT). Prior to the first Certificate of Occupancy (CO), the owners/developers shall provide a letter from the FDOT stating that the improvements within the State right-of-way have been inspected and completed to its satisfaction.
16. No fill shall be placed within the 100-year floodplain designation unless compensating volume to mitigate the fill is provided on site or off site within the same basin and reviewed and approved by Pasco County.
17. All construction within non-County-maintained right-of-way will require a Driveway Connection Permit. The owners/developers shall obtain a Driveway Connection Permit from the Permits and Development Information Services Department's New Port Richey office.

18. The developers shall provide fire protection in compliance with the Pasco County Code of Ordinances, Chapter 46, Article III, and any subsequent amendments. The developers shall show hydrant site locations on the construction plans. Raised pavement markings shall be installed.
19. Any variation from the approved stormwater management or construction plans shall be reviewed and approval shall be obtained from the Zoning and Site Development Department.
20. Prior to any construction activity, the developers shall ensure that proper erosion and sediment control measures are in place. The developers shall control all fugitive dust originating from the project site and shall indicate on the construction drawings the manner in which fugitive dust is to be controlled. Further, all retention pond side slopes and associated swales shall be sodded to prevent soil erosion.
21. If, during construction activities, any evidence of historic resources including, but not limited to, aboriginal or historic pottery, prehistoric stone tools, bone or shell tools, historic trash pits, or historic building foundation, are discovered, work shall come to an immediate stop, and the Florida Department of Historic Resources (State Historic Preservation Officer) and Pasco County shall be notified within two working days of the resources found on the site.
22. If, during construction activities, any evidence of the presence of State and Federally protected plant and/or animal species is discovered, work shall come to an immediate stop, and Pasco County shall be notified within two working days of the plant and/or animal species found on the site.

Building Permit/Record Plat/Certificate of Occupancy

23. Unless otherwise approved by the Emergency Services Director, when the development is record platted, or where a plat is not required, prior to the issuance of the first Building Permit, the development shall be included into a Pasco County Municipal Fire Service Taxing Unit to provide fire protection. The developers shall submit a petition for inclusion into the Pasco County Municipal Fire Service Taxing Unit at the time of record plat submission, or when no plat is required, prior to the issuance of the first Building Permit. In no case shall a Building Permit be issued until such a petition has been received by the Emergency Services Director.
24. The owners/developers acknowledge that a Building Permit shall be obtained for all structures that have a footer, regardless of size, through the Central Permitting Division; i.e., including, but not inclusive of, buildings, accessories, and retaining walls.
25. Prior to the issuance of the first CO, the developers shall submit all necessary State and Federal permits including, but not limited to, dredge and fill, surface water, water distribution, wastewater collection, and reclaimed water from the appropriate agencies. The permit shall include the copies of the actual permit itself and all drawings that are approved by the respective regulatory agency. Any annual reports required by such agencies shall be submitted to the biologist and the stormwater engineer.

The DRC's approval of this preliminary/construction plan, Stormwater Management Plan and Report, and variance requests constitutes a finding by the DRC that the preliminary/construction plan, Stormwater Management Plan and Report, and variance requests, as conditioned, are consistent with those Goals, Objectives, and Policies of the Comprehensive Plan and those provisions of the LDC that are applicable to preliminary/construction plan, Stormwater Management Plan and Report, and variance requests approvals. This action is based on the office review of the plans, supporting documentation, and certifications of the Engineer of Record.

OWNERS' ACKNOWLEDGMENT:

The owners acknowledge that they have read, understood, and accepted the above-listed conditions of approval.

Date
STATE OF FLORIDA
COUNTY OF _____
BAD LANDS, LLC

Title

The foregoing instrument was acknowledged before me this _____ (date),
by _____ (name of corporation
acknowledging) a _____ (State or
place of incorporation) corporation, on behalf of the corporation. He/she is personally known to me or
who has produced _____ (type of identification) as identification.

Seal: _____
NOTARY

Date
STATE OF FLORIDA
COUNTY OF _____
WE SHELTER AMERICA, INC.

Title

The foregoing instrument was acknowledged before me this _____ (date),
by _____ (name of corporation
acknowledging) a _____ (State or
place of incorporation) corporation, on behalf of the corporation. He/she is personally known to me or
who has produced _____ (type of identification) as identification.

Seal: _____
NOTARY

ATTACHMENTS:

- 1. Location Map
- 2. Site Plan
- 3. Variance Visuals
- 4. Concurrency

DMZ/BET/ecm/drc042910/commsd3600zn10161/48

DEVELOPMENT REVIEW COMMITTEE ACTION:

Recommendation Approved _____/Disapproved _____