

ZONING VARIANCE REVIEW REPORT

TO: Pasco County Development Review Committee      FILE: ZN10-2012  
FROM: Lee W. Millard      PETITION #2012  
Assistant Zoning/Code      Commission District #2  
Compliance Administrator  
SUBJECT: Variance Request      Development Review Committee  
Northwest Pasco County      Hearing Date: 5/27/10, NPR  
APPLICANTS:    **DEBRA K. RICKLE AND**      TAZ #136  
                         **BRENDA S. ADRIAN**

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PETITION SUMMARY:

Variance No. 2012 in the names of Debra K. Rickle and Brenda S. Adrian has been filed to allow adjustment of the standards established within Article 500, Section 525, C-1 Neighborhood Commercial District; Subsection 525.4, Special Exception Uses, and Section 526, C-2 General Commercial District; Subsection 526.2, Permitted Uses, of the Pasco County Land Development Code (LDC). The site under consideration is located on the southwest corner of the intersection of U.S. 41 and Bowman Road, extending westerly to Student Acres Street (Parcel ID No. 11-24-18-0030-00000-0010), and contains .63 acre, m.o.l.

EXPLANATION OF VARIANCE:

Section 525, C-1 Neighborhood Commercial, states:

*525.4 Special Exception Uses*

- A. Vehicle service stations, repair garages, and washing uses provided:
  - 3. No canopy shall be closer than 15 feet of the right-of-way of any road or street subject to Article 600 of this code.
  - 4. No pump island shall be closer than 25 feet of the right-of-way of any road or street subject to Article 600 of this code.

Section 526, C-2 General Commercial, states:

*526.2 Permitted Uses*

- A. Principal Uses:
  - 1. Unless otherwise provided in this code, all permitted and special exception uses in the C-1 Neighborhood Commercial District, except adult entertainment activities and conditional uses.

REQUESTED ADJUSTMENT:

The applicants are requesting:

- 1. A reduction in the required minimum setback for a fuel-pump canopy:
  - a. From 15 feet to 5.31 feet along the east front property line.
  - b. From 15 feet to 12.27 feet along the north front property line.
- 2. A reduction in the required minimum setback for fuel pump islands:
  - a. From 25 feet to 16.11 feet along the east front property line.
  - b. From 25 feet to 20.6 feet along the north front property line.

If this variance is approved, it will allow the applicants to install fuel-pump canopies and fuel-pump islands set back as listed above.

The surrounding zoning districts and land uses are as follows:

	<u>Zoning District</u>	<u>Land Use</u>
North:	C-2 General Commercial; A-R Agricultural-Residential	Bowman Road; Equipment Storage
East:	R-1 Rural Density Residential	U.S. 41; Single-Family Dwelling
South:	A-C Agricultural	Single-Family Dwelling
West:	A-C Agricultural	Single-Family Dwelling

FINDINGS OF FACT:

1. Presently, the subject site contains a convenience store and previously contained gas canopies and pump islands; is comprised of .63 acre, m.o.l.; and is located in a C-2 General Commercial Zoning District.
2. The applicants have stated that[sic]:

"The property includes a 2,400-square-foot +/- convenience store. Up until January 2010, the property also included a gas canopy and fuel dispensers. The former tenant of the site was required to remove the petroleum storage and distribution system. The owner wishes to reinstall the gasoline retail operation but cannot reinstall it in the former location because it was in the FDOT right-of-way, and taking into account the setbacks for the canopy and pump islands as stated in the LDC, there isn't a sufficient building envelope on site for those components."

**The granting of the variance will provide a net economic benefit to the taxpayers of Pasco County and is not in conflict with important Goals, Objectives, and Policies of the Comprehensive Plan.**

"The replacement of fuel sales to the site will provide Pasco County with an economic benefit in the form of fuel tax which is levied on fuel by what is called 'Local Option Fuel Tax'. Per the State of Florida briefing titled *Utilization of Local Option Fuel Taxes by Florida Counties* 'Local option fuel taxes are significant revenue sources to Florida's local governments. . . .' As represented in Table 1 of the briefing, Pasco County generates revenue on fuel sales by levying two forms of tax; 1) the 'ninth-cent fuel tax' and 2) the '1-6 cents fuel tax'. Fuel tax revenue is important to local transportation and infrastructure projects. It is also important to note that this site is located close to the county line between Pasco and Hernando counties and it is the last gas station before crossing the county line; therefore, there is a likelihood that the site will generate fuel tax revenue that would otherwise go to neighboring Hernando County. Table 1 of the briefing depicts an additional fuel tax of \$0.02 cents per gallon that Hernando County levies on fuel that Pasco County does not collect, so there is a competitive advantage to this site which will influence fuel sales across county lines."

**The variance is necessary to comply with State or Federal Law.**

"The former fuel underground storage tanks were removed to comply with F.A.C. 62-761.510(5) which covers petroleum storage systems, and requires that all underground storage tanks have to be of the 'double walled' type by December 31, 2009 (or March 31, 2010 with certain stipulations). Single-walled tanks, like the former tank at this site, were required to be removed, or converted (i.e.; lined) to double-walled configurations. The tank upgrade requirement to double-walled configurations is to allow for leak detection between the primary and secondary tank walls so corrective action can be taken before fuel is discharged into the environment.

"A second issue faced with the previous petroleum system location was the fact that it was in the public right-of-way. A specific state law could not be cited to support this variance request, but it is widely known that private improvements cannot be located on the public right-of-way without an agreement. A site-specific agreement for the location of those improvements could not be identified.

"Canopy Size: The 20' X 40' proposed canopy, although larger than the previous canopy, is smaller than the current industry standard canopy size for four (4) fueling positions. Standard canopies are 24' wide and 45' long to provide adequate clearance between fueling positions and overhang to protect the fueling area from weather. The smaller canopies which were typical in the past created situations where vehicles had to back into the fueling position which created a risk of backing into the dispenser. Newer canopies allow for a minimum of 25 feet between the dispensers so that vehicles can pull forward into all fueling positions.

"New Canopy and Petroleum Systems Equipment: The new equipment proposed has numerous improvements over the old equipment: 1) new dispensers have internal card readers which optimize the fueling activity and which protect from 'drive offs', 2) new dispensers are equipped with ADA compliant devices (i.e.; card reader, proper ergonomic heights, touch pads, etc.); 3) new canopy lights are flush, mounted fixtures which maintain lighting on the subject property versus old style fixtures which extend below the canopy deck and directed some of the light off-site; and 4) new canopies meet the current building code and wind load requirements and are therefore safer than older canopies."

3. Access to the property is from U.S. 41, which has 200 feet of right-of-way, and Bowman Road, which has 50 feet of right-of-way.
4. The subject property is located in Flood Zones "A" and "C," and development within the area designated Zone "A" is subject to the requirements of the LDC, Article 700, Flood Damage Prevention.
5. The surrounding area is characterized by commercial development.
6. The subject area has been designated ROR (Retail/Office/Residential) under the Comprehensive Plan.
7. Staff has reviewed the proposed request in accordance with the LDC, Article 300, Subsection 316.1.A, and finds the following:
  - a. 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 applicants.

The subject parcel's odd configuration located on a triple frontage site, bordered by U.S. 41 to the east, Bowman Road to the north, and Student Acres Drive to the west limits the location of where the canopies and pump islands can be placed. Additionally, the setback that must be met from the well to the canopies and pump islands also limits the applicant in this regard.

- b. The specific application of the land development regulation conflicts with important Goals, Objectives, or Policies of the Comprehensive Plan or with the intent and purpose of another recently adopted land development regulation that serves a greater public purpose.

N/A

- c. The granting of the variance will provide a net economic benefit to the taxpayers of Pasco County and is not in conflict with important Goals, Objectives, and Policies of the Comprehensive Plan.

Local option fuel taxes are a significant revenue source and provide funding for local transportation infrastructure. The applicant has provided a brief from the Florida Legislative Committee on Intergovernmental Relations titled *Utilization of Local Option Fuel Taxes by Florida Counties in Fiscal Year 2009-10* which shows the current motor fuel tax rate and estimates of total realized tax revenues for Fiscal Year 2009-10. Staff finds that the granting of the variance will provide a net economic benefit to the taxpayers of Pasco County.

- d. The granting of the variance is necessary to achieve an innovative site or building design that furthers the Goals, Objectives, and Policies of the Comprehensive Plan.

N/A

- e. The intent and purpose of the land development regulation, related land development regulations, and Comprehensive Plan provisions are met or exceeded through an improved or alternate technology or design.

N/A

- f. The granting of the variance is necessary to protect the public health, safety, or welfare.

N/A

- g. The variance is necessary to comply with State or Federal law.

N/A

- h. The variance satisfies variance criteria set forth in the specific County land development regulation that is the basis for the variance request.

N/A

- 8. Staff's recommendation and report is based upon a study of the factors outlined above.

STAFF RECOMMENDATION:

Approval with Conditions

CONDITIONS:

1. The owners/applicants shall obtain all required permits.
2. The owners/applicants shall submit a preliminary/site plan for review and approval in accordance with all requirements of the LDC, Article 300, Section 306, Development Review Procedures, prior to the use of the property for a gas station.

3. In addition to complying with the above conditions, 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 after the final action.

OWNERS'/APPLICANTS' ACKNOWLEDGMENT:

The owners/applicants acknowledge that they have read, understood, and accepted the above-listed conditions of approval. **Do not sign until you receive a copy of this petition with Development Review Committee results.**

\_\_\_\_\_  
(Date)

\_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
(Date)

\_\_\_\_\_

\_\_\_\_\_  
Printed Name

I hereby certify on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, A.D., before me personally appeared the owners/applicants, to me known to be the persons described in and who executed the foregoing document and severally acknowledged the execution thereof to be their free act and deed for the uses and purposes therein expressed.

Witness my hand and seal at \_\_\_\_\_, \_\_\_\_\_ County, Florida, the day and year aforesaid.

My commission expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_ at Large

DEVELOPMENT REVIEW COMMITTEE ACTION: